



Meeting note

File reference	EN010024
Status	Final
Author	James Bunten
Date	19 February 2014
Meeting with	Navitus Bay Development Limited (NBDL)
Venue	The Planning Inspectorate Offices, Bristol
Attendees	<u>The Applicant</u> Helen Cassini – NBDL Daniel Bates – NBDL Stuart Grant – NBDL John Houghton – Bond Dickinson Claire Rees – Bond Dickinson <u>The Planning Inspectorate</u> Richard Price -Case Leader Jessica Powys – Infrastructure Planning Lead Jackie Anderson – Case Leader Justin John – Legal Team Hannah Pratt – EIA Advisor James Bunten – Case Officer
Meeting objectives	To receive project update and to issue feedback on draft documents provided by the applicant
Circulation	All above

Summary of key points discussed and advice given:

Following introductions, the Planning Inspectorate (PINS) advised on its openness policy that any advice given would be recorded and placed on the National Infrastructure Planning Portal website under section 51 of the Planning Act 2008 as amended (the 2008 Act). Any advice given under section 51 does not constitute legal advice upon which applicants (or others) can rely.

Project update

Following an announcement on 6 February 2014, the applicant – Navitus Bay Development Limited (NBDL) – outlined the changes to the site boundary, which included a smaller development area of 153km² and a reduction of turbines from 218 to 194, in response to their fourth phase of section 47 consultation/second stage of section 42 consultation.

PINS queried whether a number of smaller 5MW turbines had been removed as part of the reduction, with NBDL advising that although the area had been reduced other parameters such as turbine sizes remaining the same, and the removed turbines were of various sizes producing between 5MW to 8MW.

NBDL emphasised that the changes to the site boundary were in response to consultation and did not materially change the application, although the visual impact of the development is significantly reduced. Therefore the changes did not trigger a need for an additional phase of formal consultation.

NBDL highlighted that a response from statutory consultees had been limited since the announcement but well received nonetheless and noted a further newsletter is to be issued to highlight the changes to the development site prior to submission of the application.

PINS discussed the potential response regarding the Adequacy of Consultation (AoC) request and queried responses influenced by local government elections.

Preparation of application and anticipated submission

A revised submission date was discussed with NBDL advising that submission is now anticipated in quarter 2 - 2014.

NBDL noted there were documents that will remain unaffected by the scheme changes however some chapters will be rewritten in the Environmental Statement and the Consultation Report. NBDL also noted they may add addendums to chapters where the alteration has been affected. PINS advised that a matrix of changes would be beneficial and stated they were happy to review updated versions of Consultation Report, Development Consent Order (DCO) and plans.

PINS stressed that the Consultation Report needs to be robust enough to demonstrate the scheme changes are a response to consultation and not an entirely new scheme, if the former is the case.

The PINS project case team and resourcing were discussed with PINS advising that if the application is submitted in Q2 2014, as currently anticipated, the Case Leader is likely to be Jackie Anderson. PINS explained that if submission slips the case leader may change.

PINS advised that an electronic index should be included with the application and noted that all electronic documents should be named clearly with both the document reference and title. PINS asked whether a draft section 55 checklist would be beneficial to complete before submission. NBDL advised that it would and requested an electronic copy.

PINS presentation to local authorities

PINS advised they held a presentation for local authorities on 22 January 2014 which set out the procedural aspects of being a local authority on an NSIP application.

There was discussion on the ambiguity regarding the status of some local authorities. PINS advised the status of all local authorities should be included in the Consultation Report.

NBDL advised they had already begun early engagement with local authorities regarding Statements of Common Ground (SoCG). PINS encouraged early engagement as SoCGs are usually requested early in the Examination; often with the ExA's first round of written questions.

There were further discussions regarding adequacy of consultation (AoC) representations with PINS highlighting the potential scope for equivalent representations from local authorities not within s43 PA 2008 (e.g. possibly the Isle of Wight) being regarded. NBDL noted that some coastal authorities not within s60(2) PA 2008 have been engaging in the process and queried whether non-statutory consultees are eligible to submit Local Impact Reports (LIR). PINS advised that on some other offshore NSIPs representations in the nature of LIRs have been accepted from consultees not within s60(2) during examination.

PINS advised that it plans to give a further presentation, following a request from the Poole and Christchurch Bays Association, to be held on 24 February 2014.

A potential outreach event at pre-examination stage was discussed, with NBDL advising a newsletter detailing the registration and relevant representation process is planned. PINS noted an increase in enquires from members of the public following NBDL's fourth phase of consultation.

Feedback on draft documents

PINS provided NBDL with high-level observations on the draft DCO and accompanying draft Explanatory Memorandum, which are summarised below.

PINS noted these observations did not constitute legal advice on which NBDL or others may rely. Any party requiring legal advice on which they may rely should seek it independently.

Explanatory Memorandum

Any blank details will need to be populated.

In relation to the current draft explanations of:

Article 5 - questioned whether the reference to section 140 of the PA 2008 was to the correct section?

Article 23 - suggested that further clarity of drafting may be required and is currently uncertain what is meant by "if indeed vesting ever occurs".

Requirement 12 - this refers to "highway authority", but requirement 12 in the draft DCO refers to "planning authority". The two should be consistent.

Development Consent Order

NBDL may wish to consider/reconsider:

Amending the preamble wording;

Listing all relevant plan numbers included in various definitions in Article 2 (1);

The meaning and significance of "any related further associated development" in the definition of "connection works" in Article 2 (1);

The definition of "decision-maker" in Article 2 (1) and the reference in it to "section 103" (as that section no longer contains the term "decision-maker");

Avoiding the use of the phrase "and/or" anywhere in the DCO and, instead, drafting with greater precision in relation to possible alternatives;

The definition of "maintain" in article 2(1), both in relation to the extent of it and possible current ambiguity of some of the words used;

The definition of "relevant highway authority" in article 2 (1)-should "local" be deleted?;

The definition of "relevant planning authority" in article 2 (1)-should "district" be replaced by "local"?;

The definition of "statutory undertaker" in article 2 (1) and the references in it to sections of the PA 2008 which have been repealed;

The definition of "undertaker" in article 2 (1) and if referring to named company to include its company number;

Any blank details will need to be populated;

Provisions relating to marine licences, the MMO, maintenance provisions and provisions relating to transfer of benefit of the order or of marine licences in light of any further comments received from the MMO;

NBDL will need to be able to justify their approach to article 7 relating to the benefit and transfer of benefit of the Order and of marine licences. Article 7 would also appear, in any event, to require some amendment for accuracy of meaning and cross references;

In Article 8 should "a development consent" to be amended to "an order granting development consent"?

In Article 9 should reference to extinguishment be amended to suspension? The applicant will, in any event, need to be able to justify their approach to this article;

In Article 13 what do they mean by "licensee"? Greater precision/definition required. The applicant confirmed that this wording was requested by The Crown Estate. It was also confirmed that they realised this article would not override any need to obtain any consents under section 135 PA 2008;

In Article 20 (5) should "prior consent" be amended to "prior written consent"?

Whether or not the definition in Article 22 (6) should be moved to article 2 (1)?;

Whether Article 27 (6) (a) requires redrafting. For example should the first alternative be the earlier of the current (i) or (ii) and the second alternative be the current (iii)?

Also, should it be made more clear that the words commencing "that any or all..." apply to all alternatives within 27 (6) (a)?;

In Article 42 should the reference to "decision-maker" be amended to "Secretary of State"?

In the description of "Work No.1" in Schedule 1 Part 1, whether it would be prudent to include a minimum output capacity which is not less than the minimum for it to qualify as a NSIP under the PA 2008?;

Whether or not any of the ancillary works listed in Schedule 1 Part 2 are "development" under section 32 PA 2008?-as the current article 2 (1) states that they are not;

The following references to numbered Requirements are to those appearing and so numbered in Schedule 1 Part 3:

Requirement 7 refers to a programme being submitted to the Secretary of State for approval but it does not provide that development should not commence until that programme has been approved. Should this be amended?;

Requirement 12 - should relevant planning authority approval be following consultation with the relevant highway authority? Also should it be amended so that approval must be obtained before commencement of the works?

Whether or not the definition in Requirement 12 (3) should be moved to article 2 (1)?;

Should a definition of "CEMP" be added into Requirement 13?;

The references to documents and plans in Requirements 14 to 25 should be consistent with the documents and plans listed in Requirement 13;

In Requirements 18 and 23, are the words "in writing" superfluous, bearing in mind Requirement 31?;

Is there a need to define "bank holidays" in Requirement 26, or add "or public holidays" to it?;

Whether Requirement 32 (2) requires amendment to preclude material amendments or variations?;

In paragraph 3 (1) of Schedule 15 should "to the Secretary of State" be inserted immediately after "may appeal"?

In paragraph 3 (2)(c) of Schedule 15 is the word "must" appropriate? Should this type of proposed provision give the Secretary of State discretion as to whether to appoint a person or to decide an appeal himself/herself?

Consultation Report, Book of Reference and Plans

PINS gave concise feedback on the draft Consultation Report, noting that NBDL should create their own consultation list; the 'reg 9 list' (Infrastructure Planning (Environmental Impact Assessment) Regulations 2009) created by PINS should not be used by applicants. PINS stressed the status of all local authorities should be included. PINS encouraged NBDL to be mindful of any perceived negative remarks relating to non-engaging consultees. PINS also advised that it would be helpful to include the correspondence sent to local authorities regarding SoCCs.

The Book of Reference (BoR) was briefly discussed with PINS advising that it should be submitted as one complete document. NBDL confirmed that extra plots are still to be added before submission. PINS noted that plots could be described more accurately in the BoR.

NBDL queried the standard convention for land plan colours. PINS emphasised the plans must be clear and legible and noted that following the convention is not mandatory. PINS also noted each plan should include an individual reference number.

PINS advised that comments on the draft Habitat Regulations Assessment (HRA) are to follow shortly.

Any other business

NBDL advised that the updated shape file will be issued two weeks before formal submission.

PINS advised to be aware of the Secretary of State's (SoS) ongoing duty under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 to consider the potential impacts of the project on other EEA states, and that PINS would undertake a transboundary screening exercise on behalf of the SoS if the project is accepted for examination. PINS explained that the Channel Islands are not an EEA state and therefore cannot be notified under Regulation 24, however noted that Guernsey were invited to participate in the examination for Rampion offshore windfarm.

NBDL queried how the Examining Authority (ExA) size is decided. At this stage it was noted it is currently envisaged that any ExA would be a panel rather than a single examiner due to the amount of political and local interest and navigational and tourism concerns, but that they are aware it will need to be decided at a later date if the application is accepted for examination. PINS advised that submission levels and specialism are factors taken into account in determining the size of an ExA but noted that Relevant Representation (RR) submission levels are difficult to gauge. NBDL noted a similar response of engagement as Atlantic Array is expected.

PINS advised it may be beneficial that if NBDL are in contact with any local opposition groups they highlight that multiple submissions of the same issue does not necessarily carry more weight.

PINS advised that, if the application is accepted for examination the SoS – the Department for Energy and Climate Change (DECC) – will, at the end of examination, want the final DCO submitted as a PDF, a clean Word version and a track changed Word version and queried whether NBDL were using the Statutory Instrument (SI) DCO template. NBDL advised they have the SI template but intend to convert the DCO

for the final submission due to the template being quite unstable if amended multiple times. PINS advised they will feed back the issues to National Archives.

PINS advised that Richard Price will remain the lead contact until further notice.

Specific decisions / follow up required?

PINS to forward a blank version of the precedent s55 acceptance checklist

NBDL to submit a matrix of updates and related appendices

NBDL to forward contact details for any local opposition groups