

A badly written DCO.

Frankly, I could care less about the language of the DCO, but I noticed that the examiner recently mentioned the poor English and inconsistent referencing, so I had a look. The use of language is indeed dreadful.

Actually, his frustration is shared by the Secretary of State, who recently took it upon himself to impose some copy-editing expertise. In the Cottam DCO corrections, he removed (“entirely, as unnecessary”) the opening paragraph of Schedule 1. The equivalent sentence in the East Yorkshire DCO is “In the Unitary authority areas of East Riding ...” This sentence in Boom’s DCO doesn’t even bother with a main verb.

In the immediately following paragraph, we find that the East Yorkshire project “comprises up to one generating station...” Up to one? “Up to one” is either zero or one. If the project has zero generating stations, don’t write a DCO for it; if it has one, the phrase is “comprises a generating station...”

A quick scan of the dDCO shows that these are not isolated oversights. Most paragraphs have opaque language with minimal punctuation, and there is dismal attention to accuracy throughout, particularly where copy–paste from a previous DCO appears to have been used.

A few examples will illustrate the problems.

Article 2.—(4). Some previous DCO must have had something like Works 4A and 4B. East Yorkshire uses only numerals for its Works. Get rid of it.

If Article 44 is “Not used,” why is it there? Likewise, SCHEDULE 15? Get rid of them.

Numerous sentences are seven lines long, with 2.—(2) having no punctuation whatsoever.

SCHEDULE 14 6.—(2) has nine lines, and the impenetrable 9.—(3) has a whopping 13.

Undecipherable language was the hallmark of excellence in Dickensian London legal practice. Today, the government wants clear and concise language, as explained in its guidance notes. Boom should comply with this directive.

And, look at 18.—(1) (Decommissioning) in SCHEDULE 2.

“Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for that part (or both relevant planning authorities where that part falls within the administrative areas of both East Riding of Yorkshire Council and North Yorkshire Council) for approval a decommissioning environmental management plan for that part.”

The phrase “Within 12 months” means everything from 12 months before to 12 months after decommissioning has started. This is not a sensible restriction. And, should it be 12 months from the date that the decision was taken, or 12 months from the planned start of decommissioning? Legal English must be precise. If this paragraph is going to be corrected, it would be sensible to make it readable as well.

This isn’t difficult.

“At least 12 months prior to the start of decommissioning of any part of the authorised development, the undertaker must submit a decommissioning environmental management plan to the relevant planning authority for approval. Where the part lies within the administrative areas of both East Riding of Yorkshire Council and North Yorkshire Council, approval must be sought from both authorities.”

SCHEDULE 11 (Certified documents) is particularly dismal in terms of referencing errors, formatting and accuracy. Each certified document must be uniquely and unambiguously identified. This requires the document’s title and revision number. That’s all.

1) The Date (column 4) is superfluous. The Document reference number (column 2) looks nice and technical, but some numbers are shared across multiple documents (e.g. Environmental Statement documents), so this column serves no purpose.

2) Examination Library Reference (column 5) is both superfluous and inaccurate. If this column is to be included it will be necessary to certify the Examination Library as well, and include it in the document package. However, once a DCO and its documents are approved by the SoS, the record of superceded versions and unrelated examination communication is just distracting and irrelevant.

3) The document titles are correctly formatted (initial letter capitalisation, consistent with the documents) for the first three pages with the exception of “Environmental statement,” but are lowercase thereafter. “Reference” is capitalised in the column 5 heading, but not in the column 2 heading. Attention to detail.

4) “Crown land plans” is certified in the table but not referenced in the DCO. So, is there a missing DCO article? If not, get rid of its definition in Article 2.—(1) (Interpretation).

5) PART 1 (ES docs) should be extensively revised or removed.

a) These are document folders containing multiple documents. They have no identifiable revision number or date.

b) According to column 5, the referenced documents are the original revision 0 publications, many of which have been superceded. Only the final revision documents should be certified and included in the release package.

c) The date for “Environmental statement” (19/01/2024) seems to correspond to some revision 1 ES publications. Why?

6) The column numbering ((1), (2), (3), etc) is also superfluous. The DCO text does not refer to columns in this table by number (or, indeed, at all). Get rid of this.

As I said at the top, I really don’t care about the casual attitude Boom takes with its official document. This is exactly the attitude it has shown to residents since the consultation ended. I would much rather they made the DCO worse but honoured just one of their consultation promises. But if they want to give the impression of taking this process seriously, they need to give the DCO to an experienced legal copy-editor. A competent editor would at least produce a document suitable for presentation before parliament as proposed legislation.