

From: Mark de Pulford [REDACTED]
Sent: 30 January 2019 17:24
To: Manston Airport
Subject: Re: MANSTON DCO EXAMINATION - PRELIMINARY MEETING

Just to add, for the sake of clarity, that the commentators all seem to say that Article 5 of the relevant EU Directive is binding. I can see that the question of fact (whether or not RSP's EIA conforms to the Scoping Opinion) is in the first instance a matter for the ExA. However, the question of principle - the need for conformity and the consequences of failure - ought to be something you could comment upon, surely?

Article 5

1. 1. Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report. The information to be provided by the developer shall include at least:
 1. (a) a description of the project comprising information on the site, design, size and other relevant features of the project;
 2. (b) a description of the likely significant effects of the project on the environment;
 3. (c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
 4. (d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;
 5. (e) a non-technical summary of the information referred to in points (a) to (d); and
 6. (f) any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.

Where an opinion is issued pursuant to paragraph 2, the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. The developer shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report.

2. Where requested by the developer, the competent authority, taking into account the information provided by the developer in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment, shall issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report in accordance with paragraph 1 of this Article. The competent authority shall consult the authorities referred to in Article 6(1) before it gives its opinion.

Member States may also require the competent authorities to give an opinion as referred to in the first subparagraph, irrespective of whether the developer so requests.

3. In order to ensure the completeness and quality of the environmental impact assessment report:

1. (a) the developer shall ensure that the environmental impact assessment report is prepared by competent experts;
2. (b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report; and
3. (c) where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment.

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On Wed, 30 Jan 2019 at 16:04, Mark de Pulford <[REDACTED]> wrote:
The question is whether it is the Inspectorate's understanding that failure to adhere to a voluntary scoping opinion is conclusively fatal to a DCO. I ask the question because all the authorities I have been able to consult seem to say that an EIA will not be compliant with the relevant superior EU if it fails to adhere to the the most recent scoping opinion. Is that the guidance PINS issue on the matter - or are you silent upon it? I am unclear why this question of principle, about PINS, should be submitted to the ExA but please go ahead if that is what it taeks.

Thanks

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