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Stephen Collings
Eversheds LLP

Your Ref: Roosecote Biomass Power Station Scheme

Our Ref: EN010044

By email

Date: 20 April 2012

Dear Mr Collings

**EN010044 – Roosecote (Barrow) Biomass Power Station
Draft Development Consent Order, Explanatory Memorandum and related
documents**

Thank you for your email dated 21 March 2012 attaching a draft Development Consent Order, Explanatory Memorandum and related documents. In your email you requested our comments on the draft documents.

We have now considered the documents provided and set out our initial comments in the attached schedule. I hope you find these comments useful at this stage of the process and that they will assist in preparation of further drafts of the DCO. Our comments are entirely without prejudice to any future decisions of the Secretary of State, including the decision under Section 55 of the Planning Act 2008 to accept any application.

Yours sincerely

Chris White

Case Manager
The Planning Inspectorate

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.



SCHEDULE

ROOSECOTE (BARROW) BIOMASS POWER STATION

COMMENTS ON DRAFT DEVELOPMENT CONSENT ORDER (DCO) AND EXPLANATORY MEMORANDUM (EM) SUBMITTED ON 21 MARCH 2012

1. Introduction

1.1. This schedule is set out as follows:

- (a) General comments
- (b) Comments on the scope and definition of the main project works
- (c) Comments on other DCO provisions
- (d) Missing information

2. General comments

- 2.1. Missing information: It is acknowledged that the draft DCO has been submitted at a stage when all of the details of the project are not yet known. This is reflected in the absence of a significant amount of information from the draft DCO. The missing information includes significant detail about the scope of the project (including railways works and port works), details of the streets that will be affected, protective provisions for statutory undertakers, details of replacement land for special category land and details of the works encompassed by the deemed marine licence. We would expect to see this information in any further revision of the draft DCO, together with relevant plans and any other documents referred to in the draft DCO. A list of the main missing information is at the end of this document.
- 2.2. Draft EM: In general, we would encourage more explanation of the provisions in the DCO. It should be noted that Regulation 5(2)(c) of the APFP Regulations requires the "purpose and effect" of the provisions to be set out in the EM. This includes the purpose and effect of provisions in the schedules. Where provisions from the railways or harbours model provisions are used instead of the general model provisions, the EM should explain why. Further comments on specific parts of the EM are set out below.
- 2.3. References to the IPC and to relevant planning authorities: Following abolition of the IPC you will obviously need to consider whether references to "the Commission" and "decision-maker" should be amended to refer to the Secretary of State. Where "the Commission" is referred to as the body from which consent is required under requirements, you may wish to consider whether this should be the local planning authority. The references to the relevant planning authority should also be consistent between the main body of the DCO and the requirements (incidentally, the requirements appear to contain two defined terms: "the relevant planning authority" and "the planning authorities").
- 2.4. Drafting issues: We have not commented on minor typographical errors and other minor drafting issues. However, it is worth noting that the draft DCO contains a number of minor errors including some repetition of articles and headings (this includes article 49, which appears to repeat article 22, and article

48, which appears to repeat article 21). In addition, the numbering in the draft EM does not in all cases match with draft DCO (for example, the EM refers to article 50 but this appears to be a reference to article 51).

3. Comments on the scope and definition of the main project works

3.1. Scheduled works

- (a) It should be noted that there is currently a discrepancy between the number of scheduled works identified on the draft works plans (3 works identified), the number of works in Schedule 1 (5 works) and works identified in the body of the DCO (Art 8 refers to Works 1-9).
- (b) Both Schedule 1 and the EM should make it clear which elements of the project fall within s115(1)(a) ("development for which development consent is required") and which elements fall within s115(1)(b) ("associated development").
- (c) Where associated development is identified, the EM should explain how it conforms to DCLG guidance (please note new draft guidance was published by DCLG this month).
- (d) You may wish to consider whether further clarity could be provided in the description of the scheduled works, in particular with regards to the meaning of the terms "existing infrastructure", "nominal gross electrical output", "considered necessary" (by whom and necessary for what purpose?), "the site of the existing generating station", "unfilling" (Work No.2) and "gas terminal site".
- (e) The EM should explain the relationship between works in Schedule 1 and the works powers in the main body of the DCO where there is apparent overlap (e.g. both Work No.4(a) and Art 25 authorise dredging.)

3.2. "Ancillary Works": If this defined term is used, the relevant works should be listed in Schedule 1 and explained in the EM. It is also noted that paragraph 2.7.2 of the EM refers to "ancillary development", which term is not used in the Planning Act 2008 or in the DCO.

3.3. "Maintenance": The EM should explain the purpose and effect of intended "maintenance" powers. This should include an explanation of the effect of including the words "from time to time" and an explanation, in relation to the main works, of the intended scope of the powers to "adjust", "reconstruct" and "replace".

3.4. Power to deviate: You may wish to give more consideration to, and explain further in the EM, how Art 8 will operate alongside the other provisions in the DCO including, for example, the detail design approval requirements (e.g. requirement 5). You may also wish to consider whether the meaning of "lines and situations on the works plan" (in Art 8 and Art 5) is clear.

4. Comments on other DCO provisions

4.1. Provisions relating to railways (including Arts 3 and 51): The purpose and effect of each of the provisions incorporated from the Railways Clauses Acts should be

explained in the EM. This should include an explanation of the provisions that will apply to level crossings and why sections 5 and 7 of the 1863 Act are included but not Art 18 of the model railways provisions. Further explanation is also required of the purpose and effect of Article 51 (Operation and use of railways).

- 4.2. Article 4 – Disapplication of legislative provisions: The EM should explain the purpose and effect the disapplication of each provision dealt with.
- 4.3. Article 6 – Procedure in relation to approvals under requirements: The EM should clarify how it is intended that this provision will operate including the “rules and regulations” to which this article refers and the purpose and effect of paragraph (3).
- 4.4. Article 9 – Operation of a generating station: Further explanation may be required of the statement in the EM that Article 9(1) is required in order to “satisfy” section 140 of the Planning Act 2008. As regards the explanation in the EM of Article 9(2) (which is referred to as Article 7(2) in the EM), you may wish to explain further why the company considers that it does not require a licence.
- 4.5. Provisions relating to streets and street works: Obviously the content of schedules 2, 3 and 4 has not yet been provided. The content of the schedules should be supplemented in the EM. The EM should explain the likely scope and duration of the works and/or cross-refer to any other application document which contains such information. As regards Article 12, you may wish to explain in the EM why it is considered that paragraphs (2) and (3) are “unnecessary”. The EM should also confirm that that article does not authorise street works that affect a trunk road (see note to model provision 8).
- 4.6. Third party consents: Several provisions, including articles 15, 16 and 18, seek to limit the ability of third party bodies to refuse consent for works that form part of the project. The EM should identify the third parties involved, explain why these provisions are required, and set out details of any discussions with those third parties about these matters. For example, in Art 18 (Discharge of Water), the EM should identify, to the extent known, the “persons” referred to para (8) and confirm whether those persons have agreed, or commented on, the deemed consent provision in para (8). Similarly, the EM should identify, so far as known, the internal drainage boards and sewerage undertakers refer to in Art 18(9)(a).
- 4.7. Provisions relating to harbours and tidal works (including Arts 25 to 31 and 55): The EM should provide further information on these provisions including their integration with any existing harbour legislation and other relevant legislation and the views of the bodies mentioned in those provisions on the matters dealt with. You may wish to consider whether the MMO, as opposed to the Secretary of State (as currently drafted), should be the consenting body named in these provisions. It is also noted that, unlike the model harbours provisions, there is no definition of “Trinity House”.
- 4.8. Article 33 – Incorporation of the mineral code: You may wish to explain further in the EM the relevance of this article to this project.
- 4.9. The effect of other powers: Various articles contain general powers affecting the land and rights of third parties, including Articles 19, 20, 21, 40 and 40. To the extent that such land and rights is not intended to be specifically listed in schedules to the DCO, you may wish to indicate in the EM, if known, the land and rights that are likely to be affected by these powers.

- 4.10. Prescribed consents: Where the draft DCO contains provisions that encompass the subject matter of prescribed consents under s150 of the Planning Act 2008 and the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010, the EM should explain the progress that has been made on seeking approval from the relevant consent authorities for their inclusion in the DCO.
- 4.11. Requirements: You have indicated that the requirements are the subject of discussion with the relevant planning and highways authorities. Therefore at this stage we have not provided detailed comments. However, you may wish to consider the following:
- (a) Procedure(s) for approval of schemes: The requirements envisage that various schemes and details will be approved after the DCO (if made) comes into force. You may wish to consider whether there would be any benefit in including a standalone general provision dealing with some of the aspects of how this will work. Such a provision could potentially deal with when and in what form schemes are to be submitted, who approves them and subsequent compliance.
- (b) Clarity/certainty: You may wish to consider whether further clarity could be provided around the meaning of the following:
- "Biomass" in R3
 - "Principles" in R5, 11
 - "first accepting fuel" in R9, R15
 - "Code of construction practice" in R15, R16 (not defined)
 - "abnormal load" and "emergency" in R17
 - "following consultation" R17(1) (who consults?)
 - "measured" in R19 (by who and when?)
 - "mitigation measures" in R22
- 4.12. **Deemed marine licence:** Given your indication that the conditions of the deemed marine licence are currently the subject of discussion with the MMO, and the absence of information about the works that will be the subject of the deemed marine licence, we have not provided detailed comments on the provisions of the deemed marine licence. It should be noted that the draft EM should contain an explanation of the purpose and effect of the provisions of the deemed marine licence.

5. **Missing information**

Information not contained in, or submitted with, the version of the draft DCO received by the Planning Inspectorate on 21 March 2012 includes:

- (a) In Schedule 1, details of the proposed railway works (Work Nos. 2 and 3), the sewer works (Work No.5) and the quay works (Work No. 4).
- (b) Various plans referred to in the draft DCO including the "New Access and Temporary Diversion of Public Rights of Way Plan" (referred to in the definition of "the footpath plan"), the approved plans (Requirement 1) and the land plan.
- (c) Details of the special category land and replacement land (Art 43).

- (d) Details of the relevant highway and planning authorities (Requirement 1).
- (e) Various details of the requirements including details of the fuel tonnage (Requirement 4), exceptions to the restrictions on operational hours (Requirement 16) and details of the vibration monitoring scheme.
- (f) Any details of the streets subject to street works (Schedule 2), the streets to be permanently and temporarily stopped up (Schedules 3 and 4), access to works (Schedule 5), and the land of which temporary possession will be taken (Schedule 6).
- (g) Protective provisions for statutory undertakers (Schedule 8).
- (h) Various details of the deemed marine licence including details of the quay works (deemed marine licence conditions 4 and 5), the dredging works (deemed marine licence condition 11), the maintenance dredging (deemed marine licence condition 14) and the deposit of harbour dredgings (deemed marine licence condition 17).