

The Drax Power (Generating Stations) Order

Land at, and in the vicinity of, Drax Power Station, near Selby, North Yorkshire

Applicant's Response to the Examining Authority's Schedule of
Changes to the Draft Development Consent Order

(Submitted for Deadline 8)



The Planning Act 2008

Drax Power Limited

Drax Repower Project

Applicant: DRAX POWER LIMITED
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Reference	Text as set out in draft DCO [REP7-003]	ExA's recommended amendment	[ExA's] Reason and Notes	Applicant's response
Part 1 Article 2 <i>Interpretation</i> <i>"maintain"</i>	<i>"includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development to the extent that such activities are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly;</i>	<i>"includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of the authorised development, <u>provided that any such activities do not</u> give rise to any materially new or materially different environmental effects to those identified in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly"</i>	<p>The ExA notes the Applicant's response [REP6-013] to FWQ DCO 2.2 [PD-014] and the subsequent alterations to this definition it made in the dDCO at D7 [REP7-003].</p> <p>The ExA accepts the attempts to allay the concerns that maintenance works could exceed the scope and assessment in the Environmental Statement (ES). However, because the test remains "unlikely to", the ExA does not consider the wording as currently drafted rules out such works, individually or cumulatively, exceeding the scope and assessment of the ES. It is the ExA view that it should. The Applicant's drafting also only has the effect of preventing activities that give rise to materially new or materially different environmental effects <i>which are worse than those assessed</i></p>	<p>The Applicant is content to accept the insertion of the wording <i>"provided that any such activities do not"</i> into the definition.</p> <p>However, the Applicant does not agree with the deletion of the words <i>"which are worse than those assessed"</i>. The Applicant is unclear on the reason for this (as there is no explanation for the deletion by the ExA) because without the caveat, the definition would prohibit maintenance activities resulting in new or different effects which were improvements on those identified in the ES. The Applicant's position in this respect was explained in its response to FWQ DCO 2.2 (REP6-013), in particular at paragraph 6.1.5.</p> <p>The Applicant therefore proposes the definition is as</p>

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			<p><i>in the environmental statement.</i></p> <p>The ExA proposes to use the Applicant's wording as set out at D7, but to amend the wording to ensure that the definition has the effect that activities which give rise to materially new or different environmental effects to those assessed will not be authorised through Article 4. The ExA recommends a tighter definition as worded replaces that set out in D7.</p>	<p>follows: <i>"includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of the authorised development, <u>provided that any such activities do not</u> give rise to any materially new or materially different environmental effects <u>which are worse than those assessed in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly</u>"</i></p>
Part 1 Article 2 Interpretation "stage 1"	<i>"means numbered works 1, 3A, 4A, 5, 6, 7, 8A, 9 (only in so far as applicable to numbered work 1), 11 (only in so far as applicable to numbered work 1), 12A, 13 and 14";</i>	<i>"means numbered works 1, 3A, 4A, 5, 6, 7, 8A, 9 (only in so far as applicable to numbered work 1), 11 (only in so far as applicable to numbered work 1), 12A, 13 and 14 <u>and stage 1 shall have the same meaning as it does in the environmental statement</u>"</i>	The ExA asks whether Stage 1 ought to be defined to make it clear where Stage 1 originates from, as currently it has no context.	The Applicant is content with the principle, but considers that the proposed additional wording does not work, given (a) the word "shall" is against drafting convention and (b) the additional wording effectively provides two meanings for stage 1. The Applicant therefore suggests that the following words are inserted; "...and as further

Reference	Text as set out in draft DCO [REP7-003]	ExA's recommended amendment	[ExA's] Reason and Notes	Applicant's response
				<p><i>described in the environmental statement", so the definition reads:</i></p> <p><i>"means numbered works 1, 3A, 4A, 5, 6, 7, 8A, 9 (only in so far as applicable to numbered work 1), 11 (only in so far as applicable to numbered work 1), 12A, 13 and 14 and as further described in the environmental statement"</i></p>
Part 1 Article 2 <i>Interpretation</i> <i>"stage 2"</i>	<i>"means numbered works 2, 3B, 4B, 8B, 9 (only in so far as applicable to numbered work 2), 11 (only in so far as applicable to numbered work 2), 12B";</i>	<i>"means numbered works 2, 3B, 4B, 8B, 9 (only in so far as applicable to numbered work 2), 11 (only in so far as applicable to numbered work 2), 12B and stage 2 shall have the same meaning as it does in the environmental statement"</i>	<p>The ExA asks whether Stage 2 ought to be defined to make it clear where Stage 2 originates from, as currently it has no context.</p>	<p>The Applicant is content with the principle, but considers that the proposed additional wording does not work, given (a) the word "shall" is against drafting convention and (b) the additional wording effectively provides two meanings for stage 2. The Applicant therefore suggests that the following words are inserted; "...<i>and as further described in the environmental statement</i>", so the definition reads:</p> <p><i>"means numbered works 2, 3B, 4B, 8B, 9 (only in so far as applicable to numbered work 2), 11 (only in so far as</i></p>

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				<i>applicable to numbered work 2), 12B <u>and as further described in the environmental statement</u></i>
<p>Part 1 Article 2 <i>Interpretation</i> Paragraph (3)</p> <p>Schedule 1 Work No 7</p>	<p><i>(3) "All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access rights of way plans are to be taken to be measured along that work."</i></p>	<p>Delete "approximately" from the description of Schedule 1 Work No 7</p>	<p>Advice note fifteen: Drafting Development Consent Orders recommends that if a paragraph is included in the Interpretation Article saying that distances, directions, lengths, areas etc are approximate, the word 'approximately' in conjunction with any of these dimensions does not appear in the rest of the DCO.</p> <p>The ExA notes paragraph 3 of Part 1 Article 2. The ExA also notes the description of Work No 7 as being a gas pipeline approximately 3 km in length. The ExA recommends that "approximately" is removed and is removed anywhere else in the rest of the dDCO where the use of the word is unnecessary given the Interpretation Article.</p>	<p>The Applicant is content to accept this deletion and will delete any other references to "approximate / approximately" in the DCO as necessary (save for in Schedule 1).</p>

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<p>Part 3 Article 13 Permanent stopping up of public rights of way Paragraphs (3)(a) and (4)</p> <p>Part 6 Article 35 Protective works to buildings Paragraphs (5), (7), (8), (9) and (10)</p>	<p>(3)(a) "all rights of way over or along the public right of way so stopped up shall be extinguished"; (4) "Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act"</p> <p>(5) "...the undertaker shall, except in the case of emergency..."</p> <p>(7) "The undertaker shall compensate the owners and occupiers..."</p> <p>(8) "...the undertaker shall compensate the owners and occupiers..."</p> <p>(9) "Nothing in this article shall relieve the undertaker from any liability..."</p> <p>(10) "Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation)."</p>	<p>(3)(a) all rights of way over or along the public right of way so stopped up <u>must</u> be extinguished;</p> <p>(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article <u>must</u> be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act</p> <p>(5) "...the undertaker <u>must</u>, except in the case of emergency..."</p> <p>(7) "The undertaker <u>must</u> compensate the owners and occupiers..."</p> <p>(8) "...the undertaker <u>must</u> compensate the owners and occupiers..."</p> <p>(9) "Nothing in this article relieves the undertaker from any liability..."</p> <p>(10) "Any compensation payable under paragraph (7) or (8) <u>must</u> be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation)."</p>	<p>Advice note fifteen: Drafting Development Consent Orders recommends that "shall" is avoided.</p> <p>The ExA recommends the DCO is amended as set out. The ExA also requests the Applicant considers the use of "shall" elsewhere in the dDCO and either replaces the word with an acceptable alternative or confirms that it is appropriate drafting and does not raise ambiguity about its meaning.</p>	<p>The Applicant is content to accept these amendments, and will consider whether further amendments are required to the use of the word "shall" elsewhere in the DCO.</p>

Reference	Text as set out in draft DCO [REP7-003]	ExA's recommended amendment	[ExA's] Reason and Notes	Applicant's response
Schedule 2 Requirement 7 (9)	<i>(9) "In relation to the pedestrian bridge in numbered work 9A, no development of any part of the pedestrian bridge must commence until the undertaker has submitted to the highway authority for approval details design and safety drawings of the pedestrian bridge"</i>	<i>(9) "In relation to the pedestrian bridge in numbered work 9A, no development of any part of the pedestrian bridge must commence until the undertaker has submitted to the relevant planning authority in consultation with the highway authority for approval details design and safety drawings of the pedestrian bridge"</i>	Should this be changed to be consistent with the remainder of the Requirement? The ExA considers the "relevant planning authority" should be the determining authority for all the discharge of all Requirements.	<p>The Applicant does not consider this amendment should be made to Requirement 7(9). Whilst the other detail to be approved pursuant to Requirement 7 is within the relevant planning authority's scope, the approval of the engineering and safety detail of the pedestrian bridge is the responsibility of the local highway authority only.</p> <p>The requirement has been drafted specifically to meet the technical and safety requirements of the local highway authority in this respect, and dovetails with a separate side agreement between the Applicant and the local highway authority in relation to the construction, maintenance and dismantling of the pedestrian bridge.</p>
Schedule 2 Requirement 18 (3)	<i>(3) Notices must be erected and maintained throughout the period of construction at every entrance....</i>	<i>(3) Notices must be erected and maintained by the undertaker throughout the period of construction at every entrance....</i>	As currently drafted, it is not clear who is responsible for this element of the Requirement. The ExA suggests it is clarified as set	The Applicant is content to accept this amendment.

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			out.	
Schedule 2 No Requirement	N/A	<p>New Requirement on Combined Heat and Power (Suggest Requirement 28)</p> <p>Combined heat and power 28.—(1) On the date that is 12 months after the date of Work No. 1A full commissioning (or such other date that is agreed with the environment agency having regard to any condition relating to combined heat and power imposed on any environmental permit issued by the environment agency in relation to the operation of the authorised development), the undertaker must submit to the environment agency for its approval a report (“the CHP review”) updating the CHP statement.</p> <p>(2) The CHP review submitted and approved must— (a) consider the opportunities that reasonably exist within 15 kilometres of the authorised development for</p>	<p>As set out in FWQ DCO 2.7 [PD-014] the ExA considers a requirement is necessary for combined heat and power, for the reasons already given.</p> <p>The ExA recommends the insertion of a new requirement in the form of words as suggested by the Applicant in its response to the question [REP6-013]. The ExA suggests this is inserted as Requirement 28 to avoid other changes needed to alter the referencing in the current Requirement 23.</p>	The Applicant is content to insert a CHP requirement into its draft Order, the wording of which to reflect the wording proposed in the Applicant's response to FWQ DCO 2.7 [REP6-013]. The Applicant agrees that the new requirement should be Requirement 28.

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		<p>the export of heat from numbered work 1A and, following the date of Work No. 2A full commissioning, numbered work 2A at the time of submission of the CHP review; and (b) include a list of actions (if any) that the undertaker is reasonably required to take (without material additional cost to the undertaker) to increase the potential for the export of heat from numbered work 1A and, following the date of Work No. 2A full commissioning, numbered work 2A.</p> <p>(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.</p> <p>(4) On each date during the operation of numbered work 1A and, following the date of Work No. 2A full commissioning, numbered work 2A, that is four years</p>		

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		<p>after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority (or such shorter timeframe that is agreed with the environment agency having regard to any condition relating to combined heat and power imposed on any environmental permit issued by the environment agency in relation to the operation of the authorised development), the undertaker must submit to the environment agency for its approval a revised CHP review.</p> <p>(5) Sub-paragraphs (2) and (3) apply in relation to a revised CHP review submitted under subparagraph (4) in the same way as they apply in relation to the CHP review submitted under subparagraph (1).</p>		
Schedule 10 Land of Which Temporary Possession May Be	Table 11 (1) Number of plot shown on the lands plans 11, 19, 21, 26, 26a, 28, 28a, 30, 30a, 32, 35,	Table 11 (1) Number of plot shown on the lands plans 11, 19, 21, 26, 26a, 28, 28a, 30, 30a, <u>31</u> , 32,	Sheet 5 of the Land Plans submitted at D5 [REP5-004] indicates a Plot 31 (land south of Plot 29a) which is indicated	The Applicant agrees that Plot 31 be added to Table 11 of Schedule 10.

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Taken	39, 41, 44, 45, 46, 48, 51, 52, 53, 54, 55 (2) Purpose for which temporary possession may be taken Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work No. 7 Temporary use for the improvement, reinstatement, and retention of existing planting to facilitate construction of Work No. 7	35, 39, 41, 44, 45, 46, 48, 51, 52, 53, 54, 55 (2) Purpose for which temporary possession may be taken Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work No. 7 Temporary use for the improvement, reinstatement, and retention of existing planting to facilitate construction of Work No. 7	for temporary possession but is not listed in Table 11 Column (1) of Schedule 10. The ExA considers this maybe an oversight and suggests Plot 31 is added to Table 11 column (1)	
Schedule 11 Paragraph (4)	<i>(4) "In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted"</i>	<i>(4) "In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted"</i>	The ExA authority considers it is not for this Order to dictate to the Secretary of State or their appointed person the limitations on which additional information is required. Furthermore and as currently worded, the appointed person would be prevented at any point during the appeal process from obtaining further evidence necessary to determine the appeal, or from exercising natural justice in seeking comments from all	The Applicant is content to accept the deletion of the timescale, but considers that a cross reference is necessary to paragraph 5(2): <i>"In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required and the date by which the information</i>

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			<p>parties on it.</p> <p>The ExA suggests the time limit restriction is removed. Alternatively, insert "as soon as practicable" after "he must".</p>	<p><i>is to be submitted <u>and the appointed person must make any notification and set the date for the receipt of such further information having regard to the timescales in paragraph 5(2).</u></i></p>
Schedule 12 Protective Provisions Part 4 Paragraph 32(2)	<p><i>(2) "Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid."</i></p>	<p><i>(2) "Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand <u>as previously described.</u>"</i></p>	<p>The ExA notes that this Schedule will have been prepared in consultation with National Grid Gas and National Grid Electricity Transmission.</p> <p>The ExA also notes that discussions are ongoing such that these protective provisions may not be deemed necessary.</p> <p>Advice note fifteen: Drafting Development Consent Orders recommends that archaisms are avoided. The ExA recommends the dDCO is amended as set out. The ExA also asks the Applicant to ensure that elsewhere in the dDCO any archaisms are removed and replaced with appropriate</p>	<p>The Applicant is content to make this amendment, and the Applicant will consider whether there are any further archaisms in the DCO that require amendment.</p>

Reference	Text as set out in draft DCO [REP7-003]	ExA's recommended amendment	[ExA's] Reason and Notes	Applicant's response
			modern drafting.	

