

EN010091.Drax Re-Power: Comments on the draft documents

These queries relate solely to matters raised by the drafting of the Applicant's documents, and not the merits of the proposal. They are limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. They are provided to assist the preparation of the next iteration.

Draft Development Consent Order

<i>Point no.</i>	<i>Ref</i>	<i>Extract</i>	<i>Question/Comment</i>
1	n/a	General	The applicant should provide sufficient justification for each power/provision (for example, why is article 18 removal of human remains necessary?) particularly where the inclusion of the article, requirement or other provision or the drafting of it is novel. Notwithstanding that drafting precedent has been set by previous DCOs or orders, it will be for the ExA to judge whether or not a particular provision in the DCO is appropriate taking account of the facts of the DCO application in particular and having regard to any views expressed by the relevant authorities and interested parties
2	n/a	General	The law and policy relating to planning conditions, imposed on planning permissions under the Town and Country Planning Act 1990, will generally apply when considering requirements to be imposed in a DCO in relation to the terrestrial elements of a proposed NSIP. The applicant should be satisfied that every requirement is precise and enforceable, necessary, relevant to the development and reasonable in all other respects.
3	n/a	General	The applicant should ensure that there are no inconsistencies within the DCO and its constituent parts such as definitions or expressions in the articles, requirements, protective provisions, other Schedules and the book of reference.
4	n/a	General	The applicant should be aware that the DCO (in its final draft) should: <ul style="list-style-type: none"> • Have been drafted using the Statutory Instrument (SI) template; • Have followed guidance and best practice for SI drafting (for example avoiding "shall/should") in accordance with the latest version of guidance from the Office of the Parliamentary Counsel and • Have followed best practice drafting guidance from the Planning Inspectorate and the Departments in Advice Note 15 – Drafting development consent orders
5	Article 2	Interpretation	The definition of "permitted preliminary works" is wide (including as it does "any other works agreed by the relevant planning authority"). The applicant should be able to fully justify the need to exclude such works from the definition of "commence" and the ExA will need to consider whether these works should be controlled by any requirements

6	Article 3 and schedule 1	Authorised Development	The authorised development is described as being “up to four generating stations”. Presumably the storage facilities are being treated as “generating stations”. On what basis?
7	Article 8	Disapplication and modification of legislative provisions	<ul style="list-style-type: none"> • What is the justification for modifying the Hedgerows Regulations and is the LPA in agreement with this? • It is noted that, given the timescale for bringing them into force, in the interests of certainty the temporary possession provisions in the Neighbourhood Planning Act (NPA) are to be disapplied. However, if the DCO doesn’t mirror the NPA provisions (for example providing a right to serve a counter notice) what is the justification for this departure?
8	Article 20	Statutory authority to override easements and other rights	The applicant should explain why it is necessary “for the avoidance of doubt” to include this article, given the effect of sections 152 and 158 of the Planning Act 2008.
9	Article 22	Compulsory acquisition of rights etc	It would be helpful if the applicant could provide further justification for the need to clarify that compensation applies in relation to creation of new rights and the need to amend existing compensation legislation as set out in Schedule 8, particularly in the light of the Secretary of State’s decision to remove similar provisions in the National Grid (Hinkley Point C Connection Project) Order 2016.
10	Article 24	Application of the Compulsory Purchase (Vesting Declarations) Act 1981	To the extent that it is relevant to understand the meaning of this article, it would be helpful if the applicant could explain what changes were made by the Housing and Planning Act 2016 to the Compulsory Purchase (Vesting Declarations) Act 1981 and the effect of reflecting those changes in this article.
11	Article 25	Acquisition of subsoil only	Is it clearer to say “does not prevent” rather than “must not prevent”?
12	Article 26	Application of Part 1 of the Compulsory Purchase Act 1965	To the extent that it is relevant to understand the meaning of this article, it would be helpful if the applicant could explain what changes were made by the Housing and Planning Act 2016 to the Compulsory Purchase Act 1965 and the effect of reflecting those changes in this article.
13	Article 30	Statutory undertakers	The applicant should note that where a representation is made under section 127 of the 2008 Act and has not been withdrawn, the Secretary of State will be unable to authorise article 30 unless satisfied of specified matters set out in section 127.
14	Article 31	Apparatus and rights of statutory undertakers in streets	The Secretary of State will also be unable to authorise removal or repositioning of apparatus unless satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates in accordance with section 138 of the 2008 Act. The applicant should provide relevant justification either in the Explanatory Memorandum or Statement of Reasons.

15	Article 36	Application of landlord and tenant law	The applicant should provide more detail about why this article is necessary in the circumstances of this NSIP.
16	Article 37	Operational land for purposes of the 1990 Act	The applicant should provide more detail about why this article is necessary in the circumstances of this NSIP.
17	Article 38	Defence to proceedings in respect of statutory nuisance	Section 65 (noise exceeding registered level) of the Control of Pollution Act 1974 was repealed by the Deregulation Act 2015. The applicant should ensure that this and all statutory references are updated before submission.
18	Work No. 8B	Electrical connections	Work No. 8B includes security and site lighting infrastructure. Is this required for Work No. 8A (i.e. if only unit X is built out?)
19	Work No. 8B	Electrical connections	There are two options for the electrical connection for Unit Y. The reason for two options does not appear to have been justified. Will one be presented within the submission documents or will two options remain?
20	Schedule 2	Requirements	<p>In principle there seems to be no drafting issue in splitting the requirements into parts as proposed. However, the views of the LPA (who will have responsibility for discharge of requirements and enforcement) will be important and the applicant should bear in mind the following:</p> <ul style="list-style-type: none"> • If the site reconfiguration works are removed from the DCO after submission/ acceptance this would constitute a change to the application. The applicant would need to be very clear about any consequent amendments required as a result of removing these works to the rest of the DCO and all relevant plans and application documents, including the ES. The guidance and advice in (MHCLG) Guidance on examination of applications for development consent and Advice Note 16 requesting a material change will also need to be considered and a view taken about whether such change is material • If Drax wants the flexibility to implement the site configuration works either under the planning permission or the DCO, the ExA will want to understand whether this impacts on any other DCO provisions (such as benefit of the Order, power of compulsory acquisition and temporary possession) and to be satisfied that the drafting provides for any unforeseen circumstances arising as a result of choosing one of the options. • Requirement 3 is drafted as a Grampian condition. Law and guidance relevant to planning conditions is also relevant to DCO requirements. In this context, consider the drafting of requirement 3 which doesn't restrict implementation of the DCO but prevents the carrying out of the site reconfiguration works under the planning permission before service of the notice. Is this covered by the power in section 120 (1) and (2)?

21	Schedule 2	Interpretation	Schedule 2 Article 1 identifies some documents as being certified which are not listed in Article 39 of Part 7.
22	Schedule 2 Part 2 Requirement 8	Detailed design approval	Is there a reason detailed design approval is not necessary for Work No. 4 (gas insulated switchgear banking buildings) when these are permanent structures? Note that paragraph 5.103 of the Explanatory Memorandum (EM) states that "Schedule 2 provides that the undertaker must obtain the approval of the relevant planning authority to the siting, layout, scale and external appearance of all new buildings and structures " (PINS emphasis).
23	Schedule 2 Part 2 Requirement 10	Provision of landscaping and ecological mitigation	Is a strategy required for each work number, or are specific work numbers to be inserted in the [****] of the first line? If it is intended that the relevant planning authority is to approve numerous strategies for separate work numbers, it is recommended that this approach is discussed with them so they understand the number of plans they would need to review to discharge this requirement.
24	Schedule 2 Part 2 Requirement 15 paragraph 3	Surface and foul water drainage	It is assumed that permanent surface and foul water drainage systems would be required for numerous work numbers, however it is unclear whether paragraph 3 applies to all Work No's of the main development. The EM states "The undertaker must then also obtain the approval of the planning authority of the equivalent permanent systems, which must occur prior to the start of construction of any part of those systems"; thus implying it could only apply to Work No's 7 and 9 (as per paragraph 1) (as being 'equivalent').
25	Schedule 2 Part 2 Requirement 16	Flood risk mitigation	Is there a reason this requirement only applies to work numbers 1, 2, 3A, 5 and 6?
26	Schedule 2 Part 2 Requirement 19(2)	"Where a protected species is shown to be present, the relevant numbered work must not commence, save for the permitted preliminary works, until, after consultation with Natural England, a written scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority."	The wording of this requirement implies that consultation will take place between the Applicant and Natural England prior to the scheme being submitted to the relevant planning authority - is this correct? Or should consultation take place between the relevant planning authority and Natural England once the scheme has been submitted by the Applicant?

27	Schedule 2 Part 2 Requirement 22	Construction workers travel plan	Is there a reason this requirement does not apply to Work No. 13 (Removal of existing OHL)?
28	Schedule 2 Part 2 Requirement 23(3)(a)	"do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority in accordance with requirement [***];"	There does not appear to be a requirement related to construction noise, therefore it is unclear which requirement the '[***]' relates. Is a separate requirement for the control of noise during construction necessary in the dDCO? It is unclear how this requirement will be enforced e.g. Will noise be measured constantly and at what locations along the Order limits? What will happen if the noise limit is exceeded?
29	n/a	n/a	Note – the requirement numbers in the DCO do not match those in the EM and some requirements have not been included in the EM.
30	n/a	Flexibility provided through requirements	As advised in paragraph 19.4 of Advice Note 15 the applicant should provide justification for the need for this flexibility. In relation to requirement 12 (which requires implementation of external lighting etc schemes "unless otherwise agreed") and other similar requirements, see also paragraph 19.3 of Advice Note 15 – "the tailpiece should not be drafted in a way which allows the LPA to dispense with the need for a scheme altogether. Neither should the tailpiece enable the LPA to vary the scheme in writing such that the scheme then departs from the principles fixed by the application."

Draft Explanatory Memorandum

<i>Point no.</i>	<i>Ref</i>	<i>Extract</i>	<i>Question/Comment</i>
1	Para 1.2	"Drax is seeking development consent for the repowering of up to two existing coal-powered generating units (units 5 and 6) at Drax Power Station with the construction of two new gas generating stations (or units) that would operate in both combined cycle and open cycle modes. Each new gas generating unit would utilise part of the existing infrastructure of units 5 and 6"	The first sentence states there would be repowering of 'up to two' existing coal-powered units. The following sentence states each new gas generating unit would utilise parts of units 5 and 6 - this implies both existing units could be affected by just the construction of Unit X. The glossary of ES Chapter 1 states that whilst Unit X is construction, one coal unit would continue to operation. Clarification within the EM is recommended. In addition, should it be "the construction of up to two new gas generating stations"?

2	Para 1.11.5	Up to two new gas insulated switchgear banking buildings (Work Number 4).	The dDCO splits Work No. 4 into 4A and 4B. Should this be reflected in the EM?
3	Para 1.11.9	Work Number 8A – in connection with Unit X, up to 400 kilovolt underground electrical connection between Work No. 4B (PINS emphasis)	Should this be Work No. 4A?
4	n/a	Requirements	Where a requirement is only applicable to certain work numbers, it is recommended that this is justified.

Draft Works Plans

Point no.	Ref	Extract	Question/Comment
1	n/a	n/a	The works plans are comprehensive and are necessarily 'busy'. It is useful to see each works number on an individual plan so that they can be distinguished from other Works, however it is difficult to appreciate the interaction of different work numbers for Unit X and Unit Y. Although plans 70037047-2.5A-IPL and 70037047-2.5B-IPL go some way to doing this, they do not utilise the works numbers from the dDCO and therefore it is not simple to cross refer between the works plans and the authorised development as described in the dDCO. Given that the two units are proposed to be constructed in a phased manner, it would be useful if plans could be provided, for information purposes, identifying (i) all of the works associated with Unit X and (ii) all of the works associated with Unit Y.

Draft Land Plans

Point no.	Ref	Extract	Question/Comment
1	n/a	n/a	Generally good quality, plots and order limits (red line boundary) are clearly delineated.
2	n/a	n/a	Plan cut lines shown on the key plan (sheet 1), don't appear to match up with the areas shown on the subsequent sheets. An example of this can be seen on sheet 7. The key plan this shows an corridor running roughly East to West that extends across the sheet. However on Eastern end of sheet 7, the corridor turns to the South (area containing plots 55 – 57). This area is not shown as being on sheet 7 on the key plan, only on sheet 8.

Draft Plans 70037047-2.5A-IPL and 70037047-2.5B-IPL

Point no.	Question/Comment
1	Why are cable sealing ends shown on these plans for the two unit option but not the single unit option, when the dDCO includes cable sealing ends for both units?
2	Sludge lagoons are shown on the two unit option but not the single unit option. Why is this the case? Both the ES (Chapter 3) and Work No. 12A of the dDCO identify works to sludge lagoons in connection with Unit X.
3	The coloured lines on these plans are difficult to see on a computer screen. Suggest the lines are darkened/ thickened to make more visible.

Environmental Statement – Chapter 1, Chapter 2 and Chapter 4

No comments

Environmental Statement – Chapter 3

Note – it is acknowledged that some of the comments below may be addressed in ES chapters not provided to the Inspectorate. However, the comments have been included in the Table below for completeness.

Point no.	Ref	Extract	Question/Comment
1	Table 3-1	Area G – no longer part of the proposed scheme	To avoid confusion for readers, it is recommended that any references to areas no longer part of the proposed scheme are removed completely from the ES (including figures if applicable).
2	Para 3.2.9	In order to re-power to gas, a new gas pipeline would be constructed from the Existing Drax Power Station Complex to the National Transmission System (NTS) operated by National Grid.	It would be useful if the ES could confirm whether there would be any differences in the gas pipeline infrastructure should one or two units be constructed.
3	Para 3.2.12	Work No. 14	The table in the ES states that Work No. 14 is 'site reconfiguration works'. This is Work No. 15 in the dDCO (Work No.14 is the passing place on Rusholme Lane).

4	Para 3.2.16	Heat Recovery Steam Generators (HRSGs)	In order to understand the production processes, the ES should explain whether the use of the HRSGs in combined cycle mode would have different potential impacts and resultant effects (e.g. air quality or noise) from the open cycle mode. The ES should explain how this has influenced the worst case scenario that has been assessed.
5	Para 3.2.16	Cooling solution	The ES should quantify the volume of water abstracted and discharged for the cooling solution. The likely significant effects of the use of natural resources should be assessed.
6	Para 3.3.11	For the construction of the gas pipeline, a contractors' compound approximately 100 m x 100 m and a pipe storage yard approximately 150 m x 60 m is also required. The locations of these are not yet confirmed.	As the locations of the construction compounds have not yet been determined, the ES should explain and justify what assumptions have been made in assessing effects arising from the construction compound(s).
7	Para 3.3.18	Areas containing constraints, such as roads and drainage ditches, which must be crossed by the pipeline, Drax will consider the use of trenchless crossing techniques.	The Inspectorate expects that, should trenchless crossing techniques be required to mitigate potentially significant effects on the environment in any particular location, the relevant locations and trenchless construction methodology should be secured through the dDCO.
8	Table 3-2	Cooling water spray screen	There is a discrepancy between the maximum length in the draft ES (stated to be 20m) and the dDCO (stated to be 320m). (It is noted that the Applicant's cover letter states dimensions are subject to refinement).
9	Table 3-2	Turbine outage storage	Turbine outage storage dimensions are provided in Table 3-2 of the draft ES but are not in Schedule 13 Part 4 of the dDCO. Turbine outage buildings are referenced in Schedule 13 Part 3 for Unit X only (where the height is stated to be 28m which does not accord with the 18m stated in Table 3-4 of the draft ES). Is the reference of table outage storage in Table 3-2 of the draft ES an error? (It is noted that the Applicant's cover letter states dimensions are subject to refinement). For all references to heights in both the ES and the dDCO, it should be clear whether the maximum height is measured as AOD, above existing ground level or above proposed ground level. With this in the mind, the ES should explain whether the ground level will be altered as part of the site configuration works. It is noted that the dDCO defines 'AOD' however does not use the term further.
10	Table 3-2	Modular buildings and riggers store	The dimensions provided do not appear to accord with the dDCO. (It is noted that the Applicant's cover letter states dimensions are subject to refinement).

11	Table 3-5	Maximum footprint	The maximum footprints in Table 3-5 appear to represent that of just one of each element. E.g. for two turbine buildings, Table 3-5 states the footprint would be 2,024m ² which is the same as for one turbine building in Table 3-4. It would be useful to clarify in the table headings that the dimensions and footprints refer to one structure, or to calculate the maximum footprint of the total number of relevant buildings/ structures.
12	Table 3-5	By-pass stack	Maximum lengths and maximum widths have been provided for the bypass stack in Table 3-5 (i.e. for Unit Y) but not Table 3-4 (i.e. for Unit X). Is this a typographical error? The Inspectorate would expect the ES and dDCO to include the diameter of the stack as this will have implications on potential landscape and visual impacts.
13	Table 3-5	Gas receiving facility	The maximum height of the gas receiving facility (8.5m) does not accord with maximum height in Schedule 13 Part 2 of the dDCO (10m). (It is noted that the Applicant's cover letter states dimensions are subject to refinement).

Statement of Reasons

Point no.	Reference	Question/Comment
1.	General	The draft Statement of Reasons seems to have had regard to the DCLG guidance which relates to procedures for the compulsory acquisition of land.
2.	CA schedule	The Applicant to provide a schedule with the Application to show how negotiations on CA are progressing.

Book of Reference

Point no.	Reference	Question/Comment
1.	Part 1 and Part 3	The Inspectorate advises the applicant to check that all parties listed in Part 3 of the Book of Reference are also listed in Part 1 of the Book of Reference
2.	Part 2	Part 2 of the Book of Reference contains no Category 3 persons. As there are dwellings along the pipeline route, the consultation report needs to justify why the Applicant does not regard anyone living in the vicinity of the project as a Category 3 person

