



Drax Power Station
Selby
North Yorkshire
YO8 8HP



Caroline Jones, Lead Member of Examining Authority
National Infrastructure Planning
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

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Drax Bioenergy with Carbon Capture and Storage Project

Proposed Changes Request and the Examination Timetable

Document Reference: 8.2.4 Cover Letter (5)

Dear Ms Jones,

This letter constitutes Drax Power Limited's (the 'Applicant') response to your letter dated 23 September 2022 (the 'ExA Letter') regarding the Applicant's proposed changes (the 'Changes') to its application for the Bioenergy with Carbon Capture and Storage (BECCS) at Drax project (the 'Scheme') set out in the Applicant's letter dated 12 September 2022 (the 'Letter').

The Applicant's response to the questions posed in the ExA Letter are set out below. This includes responses to all of the topics in the ExA Letter to assist the ExA as soon as possible.

Proposed Changes

Is the proposed delay to the commencement of the examination of the DCO Application until January 2023 justified in the context of paragraphs 40 and 45 of the DCLG Examination Guidance?

and

Does the Applicant consider that the proposed delay is the minimum required despite being around four months longer than the indicative maximum in paragraph 45 of the DCLG Examination Guidance, and if so, why?

As set out in the Letter, the Applicant has been mindful of the DCLG Examination Guidance in bringing forward its proposed approach for dealing with the proposed changes to the Scheme.

The Applicant's approach in the Letter was informed by seeking to find a way forward that accounted for the procedural requirements of the Infrastructure Planning (Compulsory Acquisition) Regulations (the 'CA Regulations'), the Planning Inspectorate's Advice Note 16 ('AN16') and the Applicant's professional team's



experience of managing changes during the Examination process, in particular the confusion that can be caused to Interested Parties whilst an Examination of the application as ‘unchanged’ continues alongside consultation and consideration of the proposed changes.

By way of example, the Sunnica Energy Farm project recently brought forward a change which, although it did not include additional land, was minor in nature, and it was agreed by the Examining Authority that the Change Application should be brought forward prior to the Examination commencing.

The programme that was put forward in the Letter sought to minimise delay as much as possible by commencing the various proposed consultation activities as soon as possible after previous steps had been completed (including those that had been proposed to comply with the requirements of the CA Regulations) and allowing the minimum possible time for consultation responses to be taken into account before forming part of the Change request.

However, notwithstanding this, I can confirm that the Applicant is not averse to, and would support, the Examination commencing whilst the procedural process for the Changes takes place, if the Examining Authority considered this to be the appropriate course of action. On that basis, it has proposed a revised programme, set out below, which again seeks to ensure each step is taken forward as quickly as possible to minimise impacts to the Examination timetable.

What implications would there be for the Examination Timetable if the Examination commenced while the Applicant is progressing the proposed change request?

In light of the above and the discussion of consultation requirements in the ExA Letter, the Applicant proposes that the Changes could be dealt with as follows:

Date	Step(s)
13 October (to allow for ExA response to this letter and lead in times for press notices)	First consultation notice published in local newspapers setting out that consultation responses should be sent to the Applicant. Posters placed in deposit locations. Letters and consultation booklet arrives with: <ul style="list-style-type: none"> • properties within the consultation zone referenced in the Letter; • section 42(1)(d)/section 44 parties for the land that is the subject of both of the proposed changes; • relevant section 42(1)(a)-(c) parties (the changes report to be submitted will explain the Applicant’s logic for any such parties that are not included in this list); and • the Yorkshire Ramblers’ Group.
20 October	Second newspaper notice published in local newspapers.
21 October	30-day consultation period begins.
15-17 November	Example dates of when Preliminary Meeting and initial Hearings could take place. It would be able to be acknowledged at the Hearing that the Changes process is on-going whilst focussing discussion on the Application as it currently stands.
20 November	Consultation Period ends.
5 December	Changes Request submitted. This would include the non-statutory consultation report covering the matters set out in the ExA Letter and the other matters set out in Step 6 of the Letter.

	<p>We would suggest that Deadline 1 of the Examination (for responses to Relevant Representations) could fall on or around this date to allow for progress to be made in the Examination.</p>
Before Christmas	<p>The Examining Authority could decide whether the Changes Request is accepted.</p> <p>In this period, Deadline 2 (for responses to the ExA's First Written Questions ('FWQs')) could take place.</p> <p>The Applicant also notes that if initial hearings were to involve a DCO Hearing, the Applicant could submit an updated DCO at Deadline 1, to take account of Hearing submissions and Relevant Representation responses (and on the presumption that there wouldn't also be FWQs on the DCO if there is also a hearing). If this were not the case, then the DCO could be submitted at Deadline 2 to take account of responses to FWQs as well.</p> <p>The Applicant mentions this as it is acknowledged that DCO matters will need to progress outside of changes to drafting influenced by the Changes. However, to avoid confusion between different versions of the DCO, its intention would be to submit only a track changed extract of the relevant sections of the DCO that change as a result of the Proposed Changes with the Change Request (as with all other application documents impacted by the Changes). This is consistent with the approach suggested in the Letter.</p>
3 January	<p>Consolidated updated Application documents submitted by the Applicant (to be referred to by the notices referred to in the following steps) on the basis of the Changes application having been accepted and also to enable compliance with Regulation 5 of the CA Regulations.</p> <p>The Applicant proposes that the supplemental Book of Reference, Land Plans and Statement of Reasons required to be submitted pursuant to Regulation 5 would be in the form of the updates of the Book of Reference, Land Plans and Statement of Reasons submitted as consolidated updates as a result of Proposed Changes 1 and 2, rather than producing an additional separate set of such documents dealing solely with Proposed Change 2.</p> <p>The Funding Statement would also be updated to deal with both of the Changes.</p>
5 January	<p>First CA Regulations Notices published and notifications arriving with recipients in line with CA Regulations requirements and with regard to Proposed Change 2 only.</p>
12 January	<p>Second CA Regulations Notice published.</p>
10 February	<p>CA Regulations consultation period finishes.</p>
Week commencing 13 February	<p>ExA could in this week make a decision on how Proposed Change 2 is accounted for in the remaining Examination period.</p>

	This is on the presumption that further Examination deadlines could have taken place over the course of January and early February.
Week commencing 13 March	Compulsory Acquisition Hearing could take place in this week (accounting for the 21-day notice period required by the Infrastructure Planning (Examination Procedure) Rules 2010). As this would hypothetically be taking place at the end of month 4 of the Examination, it would still allow for consideration of the changed application as a whole to be undertaken during a good amount of the rest of the Examination process.

It is considered that the approach set out in the table above allows for the Changes to be dealt with alongside the Examination whilst minimising delay as much as possible.

How does the Applicant intend to ensure that any new or different environmental effects have been adequately assessed and consulted upon?

As set out in the Letter, the consultation booklet that will form part of the proposed consultation on the Changes will include a high-level consideration of the likely environmental impacts of the Proposed Changes. The formal Changes Request will set out an appraisal of whether the Proposed Changes would lead to a change in the conclusions of the Environmental Statement for each environmental topic.

Can the Applicant provide more information about the exact status and rights of the agricultural tenant affected by Proposed Change 1?

The tenant affected by Proposed Change 1 is a shorthold tenant for whom Drax is the landlord who uses the land for grazing. Drax is able to terminate this tenancy with 28 days' notice; and so such notice would be able to be served in sufficient time to allow the activities proposed by Proposed Change 1 to be undertaken.

Submission of Environmental Information Pertaining to Air Dispersion Model and Assessment Assumptions for Amines

When does the Applicant intend to submit the technical note?

In the Letter, the Applicant had proposed submitting the technical note at the same time as the changes request for the Proposed Changes on the basis that it would aid third parties' understanding to submit all the proposed documents (including the typographical updates, Response to Relevant Representations and Statements of Common Ground) mentioned in the Letter at the same time; and to allow the Examination to then have its delayed start with those documents demonstrating that progress had been made on key matters notwithstanding the delay.

However, in light of the ExA's comments, if the proposed approach to the Proposed Changes set out above is accepted, the Applicant proposes to submit the technical note, as well as the typographical corrections referred to in the Letter, on 7 October. The Response to Relevant Representations and Statements of Common Ground will then be submitted at the relevant date identified in the ExA's forthcoming Rule 6 Letter.

Will the Applicant be reviewing the new information and reporting on whether there would be any changes to all relevant ES aspect chapters and/ or to the conclusions of the Habitats Regulations Assessment (HRA)?



The Technical Note will report on and confirm the statement in the Letter that the matters it is reporting on would not lead to any changes to the conclusions of any of the ES chapters or the conclusions of the HRA.

Does the Applicant consider that this new information would require updates to the ES constituting Further Environmental Information that would necessitate publicity in line with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations)? Should consultation not be undertaken, this approach should be fully justified.

The Applicant does not consider that the technical note will constitute 'Further Environmental Information' as it would not constitute information that is directly relevant to reaching a reasoned conclusion on the significant effects of the Scheme. It will report on slight changes to the raw numbers set out in APP-042 and APP-127 to APP-129, but these changes do not lead to any changes to the conclusions of the assessment. The ExA will be able to consider this matter further once the technical note is submitted on 7 October.

Off-Site Habitat Provision Area

What was the rationale in securing the provision of these works by way of a s106 agreement and not including this land within the Order Limits?

And

Would it be more appropriate for this land to be included within the Order Limits including any Compulsory Acquisition of land and/ or rights and securing the works through the DCO?

The Off-Site Habitat Provision Area is not included within the Order Limits due to its dual role as both mitigating Scheme impacts and assisting in the achievement of Biodiversity Net Gain. As the latter role is subject to on-going work to understand the exact nature and extent of 'gain habitat' that needs to be achieved, it is the case that the land that may be subject to the requirements of a detailed landscape and biodiversity strategy to achieve 10%, may be less than what is currently shown as forming the whole Off-Site Provision Area. The Applicant is therefore looking to retain flexibility as to the land that will be subject to the requirements of the section 106 agreement (and via Requirement 7 of the draft DCO) whilst work continues through the Examination process (acknowledging that a decision will need to be made prior to the end of Examination to allow the section 106 agreement to complete and be properly taken into account by the ExA) to establish the likely physical extent of works that may be required to deliver the necessary gain habitat.

In any event, it is noted that the Off-Site Habitat Provision Area is owned by Drax with no subsisting tenancies. As such, no compulsory acquisition powers would be necessary.

Would a s106 agreement satisfactorily secure the provision of the works and any maintenance?

The Applicant considers that it would adequately secure the provisions of the works and any maintenance as a result of the interplay of clauses 1.4.4 to 1.4.6 of the Heads of Terms [APP-157], Requirement 7 of the draft DCO and the Outline Landscape and Biodiversity Strategy [APP-180] (the 'OLBS').

The OLBS sets out the works that are required to be undertaken on the Off-Site Habitat Provision Area and proposals for on-going management. The detail of this will then be approved by the local planning authority pursuant to Requirement 7. Clauses 1.4.4 to 1.4.6 of the Heads of Terms then propose that the section 106 Agreement will ensure that works and maintenance on the Off-Site Habitat Provision Area are carried out in accordance with those approved details.

The Applicant notes that the Heads of Terms refers to Requirement 6, when it should refer to Requirement 7, this error will be corrected in the 7 October submission discussed above.



Does the use of a s106 agreement to secure the provision of these works accord with paragraphs 55 and 57 of the National Planning Policy Framework?

The Applicant considers that the provisions of the draft section 106 agreement, as based on the submitted Heads of Terms will accord with paragraphs 55 and 57 of the National Planning Policy Framework.

In relation to paragraph 55, it is considered that the proposed section 106 agreement is inherently intertwined with Requirement 7 (being the equivalent of a 'planning condition') - it is essentially an adjunct to it.

In relation to paragraph 57 it is considered that the section 106 agreement would be:

- necessary to make the development acceptable in planning terms; as it secures the delivery of ecological mitigation determined to be necessary following the EIA process for the Scheme;
- directly related to the development, as it secured ecological mitigation for the impacts of the Scheme and helps the achievement of biodiversity net gain; and
- fairly and reasonably related in scale and kind to the development, as it will cover the land that is required for ecological mitigation purposes, and further to the response to the above question, the necessary land to deliver biodiversity net gain.

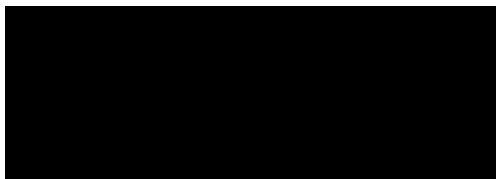
When does the Applicant intend to submit a draft s106 agreement into the Examination?

The Applicant submitted a draft 'full form' version of the draft section 106 Agreement to the local planning authority in late July 2022, based on the application Heads of Terms. No comments have yet been received on this draft.

I can confirm that the Applicant would look to submit a draft agreement into the Examination as soon as possible once negotiations progress sufficiently.

I hope that this letter has provided sufficient clarity to the matters posed in the ExA Letter and we look forward to hearing from the ExA in due course whether or not the proposals within this letter are accepted.

Yours sincerely,



Jim Doyle

Planning and Consents Manager

