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All Interested Parties and Statutory
Parties

Your Ref:

Our Ref: EN010120

Date: 13 December 2022

Dear Sir/ Madam,

Planning Act 2008 – sections 89 and 123; and The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 – Regulation 6

Application by Drax Power Limited for an Order Granting Development Consent for the Drax Bioenergy with Carbon Capture and Storage Project

Procedural Decision following request to make changes to the application

We are writing to inform you of the Procedural Decision made by the Examining Authority (ExA) following the change request made by the Applicant dated 5 December 2022 (Examination Library references [\[AS-044 to AS-066\]](#)). All documentation referred to herein has been published under the 'Documents' tab on the [project webpage](#)¹ of the National Infrastructure Planning website.

Section 2.2 of the Proposed Changes Application Report (PCAR) [\[AS-045\]](#) provides a summary of the proposed changes. Two changes are proposed, and both have been the subject of the Applicant's non-statutory consultation exercise. This formal change request follows on from the Applicant's letters of 12 September 2022 [\[AS-004\]](#) and 30 September 2022 [\[AS-017\]](#) which identified the nature of changes proposed and advised of the Applicant's intention to request that the changes described in the letters be accepted as changes to the Development Consent Order (DCO) application.

On 10 October 2022 we responded [\[PD-006\]](#) providing guidance on the Applicant's intended approach to the submission of the proposed changes and the proposed consultation, drawing the Applicant's attention to the requirements of [Advice Note 16: 'How to request a change which may be material'](#)². The ExA has reviewed the information

¹<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/drax-bioenergy-with-carbon-capture-and-storage-project/>

²<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-16/>

provided and assessed the Applicant's request in line with paragraphs 109 to 115 of the DCLG Guidance '[Planning Act 2008: Examination of Applications for Development Consent](#)'³ and the Planning Inspectorate's Advice Note 16 and has reached the following conclusions.

ExA's reasoning and decision

The ExA agrees with the Applicant that neither of the proposed changes is so material that it constitutes a materially different project. The proposed changes are not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied for in May 2022.

Proposed Change 01 (PC-01) is required to mitigate against the loss of floodplain due to construction of the Proposed Development within the Drax Power Station site and reflects a commitment in the submitted Flood Risk Assessment [[APP-160](#)] to provide a Floodplain Compensation Area. Whilst PC-01 requires additional land, that land is owned and under the control of the Applicant and no land powers are proposed over it.

Proposed Change 02 (PC-02) is required for the relocation of existing overhead lines in respect of two electrical lines and two telecommunications lines which cross the access route to the site to allow for the delivery of Abnormal Indivisible Loads. PC-02 involves land that is outside of the current Order Limits that is not in the ownership of the Applicant and over which it is proposed to compulsorily acquire rights. The ExA agrees with the Applicant that on this basis the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) are invoked.

The consultee responses are summarised in Appendix 8 of the PCAR [[AS-057](#)] and Table 5.1 of the PCAR [[AS-045](#)] did not identify any change in or new significant effects for any topics assessed in the ES. The Applicant therefore concluded that neither PC-01 or PC-02 would result in any new or materially different significant effects on the environment or any change to the conclusions presented in the Habitats Regulations Assessment (HRA) [[APP-185](#)].

On this basis, together with the small-scale nature of the additional land in comparison to the Order Land as a whole, the ExA considers that PC-01 can be deemed to be non-material and can be accepted into the Examination. With regard to PC-02, given the amendment to the Order Limits requires an extension to the Order Land within the scope of Compulsory Acquisition, this change goes beyond what can be considered non-material in the facts and circumstances of this application but can nonetheless, in accordance with Regulation 6 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010, be accepted into the Examination. In reaching this decision the ExA is satisfied that it complies with the requirements of Regulation 5 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance- final_for_publication.pdf

The ExA is satisfied that there is sufficient time within the Examination for the proposed changes to be properly and fairly examined including the opportunity for written submissions and any oral representations to be made at any hearings that are required, along with the procedural requirements of the CA Regulations. Having accepted the proposed changes into the Examination, and on the basis that the consent of all those with an interest in the land has not been obtained, the Applicant will need to submit full copies of the documents required by Regulation 5 of the CA Regulations and to notify the Affected Persons in accordance with the requirements of Regulations 7, 8 and 9. The ExA requests that this is carried out in accordance with the timescales contained within the Applicant's letter of 30 September 2022 which states that consolidated updated application documents would be submitted by **3 January 2023** with the first CA Regulations notifications and notices arriving or published on **5 January 2023**.

The ExA requests that the updated application documents should contain:

- full copies of all documents submitted for consideration as part of the Proposed Changes Application (tracked change and clean versions);
- consolidated updates of the Book of Reference, Statement of Reasons, Funding Statement and Land Plans as a result of PC-01 and PC-02 (tracked change and clean versions); and
- a separate set of Crown Land Plans (in addition to the Land Plans).

In reviewing the submissions for the change request, the ExA has made some observations on the Land Plans and Work Plans and would ask the Applicant to review and consider the below prior to the submission of its consolidated updates on 3 January 2022:

- Plots 01-82 and 01-92 on the Land Plans each appear to comprise two distinct sub-plots. Should each of these apparent sub-plots be individually numbered as a separate plot?
- Please provide an insert of 01-55 on the Land Plans for clarity.
- Should plots 01-47, 01-78, 01-80, 01-114 and 01-115 on the Land Plans be shaded green?
- Please ensure that a Key Plan in accordance with Regulation 5(4) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 is submitted with the updated Land Plans, as this is omitted from the Land Plans submitted with change request.
- Should centre lines be shown for Work No. 8 on the Works Plans given it relates to overhead lines?

Given the timing of the formal change request the ExA considers that the Applicant and other attendees at the Preliminary Meeting should have an opportunity to comment on how the proposed changes should be examined with reference to the draft Examination Timetable issued with the Rule 6 letter.

Next steps

It is now the Applicant's responsibility to publicise the proposed changes that incorporate additional land in accordance with the CA Regulations. The Applicant must advise the

Case Team of its proposed schedule as soon as possible, so that an appropriate form for making Relevant Representations about the proposed provision for the Compulsory Acquisition of additional rights over land under PC-02 can be made available on the project webpage of the National Infrastructure Planning website. Upon completion of the Relevant Representation period, we will issue a revised Examination Timetable, which will include the deadline for Written Representations to be submitted and any necessary hearings.

Note that the acceptance of PC-02 is made on the basis that all the processes can be completed in the required time prior to the close of the Examination and in accordance with the revised Examination Timetable that we will publish in due course. If this is not achieved, then we will not be in a position to take the change request into account in our recommendation report to the Secretary of State as it will not have complied with the relevant statutory procedures.

Yours faithfully

Caroline Jones

Caroline Jones
Lead Member of the Examining Authority

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