



SUMMARY OF ORAL CASE AT ISSUE SPECIFIC HEARING 2

Drax Bioenergy with Carbon Capture and Storage

The Infrastructure Planning (Examination Procedure) Rules 2010 - Rule 8(1)(c); The Planning Act 2008

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1. INTRODUCTION

1.1. PURPOSE OF THIS DOCUMENT

- 1.1.1. On 23 May 2022, Drax Power Limited ("the Applicant") made an application ("the Application") for a Development Consent Order (DCO) to the Secretary of State for Business, Energy and Industrial Strategy ("the SoS"). The Application relates to the Drax Bioenergy with Carbon Capture and Storage (BECCS) Project ("the Proposed Scheme") which is described in detail in Chapter 2 (Site and Project Description) of the Environmental Statement (ES) (APP-038).
- 1.1.2. The Application was accepted for Examination on 20 June 2022.
- 1.1.3. This document, submitted at Deadline 1 of the Examination, contains the Applicant's written summaries of oral submissions made at hearings in the week commencing 16 January 2023, including responses to post-hearing actions.

2. INTRODUCTORY REMARKS

- 2.1.1. Issue Specific Hearing 2 (“ISH2”) regarding the draft Development Consent Order (“DCO”) was held at 10am on 19 January 2023 both in person at The Parsonage Hotel & Spa, Escrick, York, YO19 6LF and virtually via the Microsoft Teams platform.
- 2.1.2. The DCO Hearing took the form of running through the items listed in the agenda published by The Examining Authority (“The ExA”) on the 13 December 2022 (“the Agenda”). The discussion on DCO matters predominantly focused on:
1. a brief overview of each part of the draft DCO (“dDCO” also referred to in this document as “the Order”);
 2. the changes which have been made to the dDCO since the original submission version;
 3. an overview of the requirements contained in the dDCO;
 4. an update on the progress between the parties regarding protective provisions;
 5. a review of the documents to be certified contained in Schedule 13 of the dDCO;
 6. progress on consents, licences and other agreements; and
 7. an update on Statements of Common Ground relevant to the DCO.

3. AGENDA ITEM 1 – INTRODUCTION OF THE PARTICIPANTS

3.1.1. The ExA: Caroline Jones and Ben Northover.

1. The Applicant:
2. Speaking on behalf of the Applicant: Richard Griffiths (Partner at Pinsent Masons LLP).
3. Present from the Applicant: Jim Doyle (Planning and Consents Manager) and Steven Foster (Environmental Regulatory Manager).
4. The Applicant's consultants and legal advisors: Alexis Coleman (Senior Associate at Pinsent Masons LLP), Matthew Fox (Associate at Pinsent Masons LLP), Matthew Stocks (Planning Consultancy, Associate Director, WSP), Philip Peterson (Ecologist, WSP) and Nicola Ashworth (Associate Director, WSP).

3.1.2. Host Authorities:

1. Selby District Council ("**SDC**"): Jenny Tyreman (Senior Planning Officer); and
2. North Yorkshire County Council ("**NYCC**"): Kelly Dawson (Senior Solicitor) and Michael Reynolds (Senior Policy Officer (Infrastructure)).

3.1.3. Interested Parties:

1. Environment Agency ("**EA**"): Chris Gaughan and Matthew Wilcock (Planning Specialist);
2. Biofuelwatch: Katy Brown and Merry Dickinson;
3. Just Transition Wakefield: Stuart Boothman;
4. National Grid Carbon Limited ("**NGCL**"): Tom McNamara (Senior Associate, BDB Pitmans LLP); and
5. Independent: James Hewitt and Michael Chaloner.

4. AGENDA ITEM 2 – PURPOSE OF ISH2

4.1.1. **The ExA** set out the purpose of ISH2 to all parties.

5. AGENDA ITEM 3 – ARTICLES AND SCHEDULES OF THE DDCO (EXCLUDING SCHEDULES 2,11, 12 & 13)

5.1. BRIEF OVERVIEW OF EACH PART OF THE DDCO

- 5.1.1. **The ExA** invited the Applicant to talk through the structure of the Order and changes made to it since submission.
- 5.1.2. **Alexis Coleman**, on behalf of the Applicant, explained that the Order has been drafted having regard to guidance published by the Planning Inspectorate, best practice and precedents established in other made DCOs, in particular energy DCOs. It includes 43 articles, divided into 7 Parts, and then 14 Schedules, which are given effect by, or tie into, the articles.
- 5.1.3. The draft Order is proposed to be called the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order, and is drafted to consent the construction, operation and maintenance and decommissioning of the authorised development, as described in Schedule 1.
- 5.1.4. Article 2 of the Order sets out the definitions of terms used within the Order.
- 5.1.5. **Alexis Coleman** explained that Part 2 of the Order sets out the Principal Powers – including granting the undertaker consent for the authorised development, as constrained by the Order limits and numbered areas shown on the Works Plans. This part of the Order also authorises the maintenance and operation of the authorised development.
- 5.1.6. Articles 6 and 7 give the benefit of the Order to Drax (and to other parties for specific work numbers, where another party may undertake the authorised development) – and set out provisions relating to the transfer of the benefit of the Order.
- 5.1.7. Article 8 disapplies various statutory provisions including sections of the Land Drainage Act 1991 and provisions of the Neighbourhood Planning Act 2017. This Article also disapplies the legislation listed in Schedule 3 where incompatible with the powers contained in the Order. Article 8 deals with the overlap of the Order and other operative consents for the existing Drax Power Station, in order to provide clarity from an enforcement perspective for the local planning authority. This Article also deals with the extant Drax Power (Generation Stations) Order 2019, confirming the undertaker won't commence works under that order from the date that the BECCS Order takes effect.
- 5.1.8. **Alexis Coleman** explained that Part 3 of the Order provides a suite of powers in relation to street works, including carrying out street works within streets, altering the layout of streets, creating accesses, temporarily stopping up public rights of way and entering into agreements with street authorities. These provisions give effect to Schedules 4 to 7.

- 5.1.9. **Alexis Coleman** explained that Part 4 contains supplemental powers, relating to discharge of water, giving the authority to survey and investigate land and removal of human remains.
- 5.1.10. **Alexis Coleman** explained that Part 5 of the Order contains the powers of acquisition and temporary possession. These include powers to compulsorily acquire rights in land, to extinguish rights in land, or to take temporary possession of land. These articles relate only to the Order land, as shown on the land plans. There are also standard provisions relating to compensation payable to affected persons, and powers in relation to land and apparatus of statutory undertakers. These articles give effect to schedules 8 to 10.
- 5.1.11. **Alexis Coleman** explained that Part 6 contains powers relating to Operations. These include providing powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Scheme and protective works to buildings.
- 5.1.12. **Alexis Coleman** explained that Part 7 includes various miscellaneous or general provisions. These cover –
1. Article 34 provides protection for statutory undertakers through the protective provisions (set out in Schedule 12).
 2. Articles 35 and 36 provide for how landlord and tenant law applies in relation to the Order and that the Order Land will be "operational land" for the purposes of the Town and Country Planning Act 1990.
 3. Articles 37 to 43 includes provisions relating to defence to proceedings in respect of statutory nuisance; the certification of plans and documents relevant to the Order; service of notices under the Order; procedure in relation to approvals required under the Order; arbitration; guarantees in respect of the payment of compensation; electronic communications and Crown rights.
- 5.1.13. **Alexis Coleman** explained that the Order then has a series of Schedules, 1 through to 14, and that each Schedule identifies its operative article in the Order, in the top right of the Schedule.
- 5.1.14. Schedule 1 – sets out the authorised development. The works numbers align with the numbered areas on the Works Plans.
1. Work No. 1 is the NSIP being a carbon capture plant as an extension to an existing generating station. This is comprised of works to modify and upgrade different components of the existing generating station such as the water pre-treatment plant and cooling water system. Work No. 1 also includes works to upgrade, modify and extent existing boilers and turbines. Work No. 1D is the carbon capture plant itself, and the remaining elements of Work No. 1 are carbon dioxide processing and compression plant and integral electrical connections.
 2. Work Nos. 2 to 8 are associated development, comprising –
 - a) Work Number 2 – infrastructure to transport compressed carbon dioxide in order to connect into the national grid carbon limited pipeline, comprising of a

new carbon dioxide delivery terminal compound and pipeline, or simply the new carbon dioxide delivery pipeline;

- b) Work Number 3 – supporting works such as pipelines, drainage, modifications to existing precipitators, cable connections, hard and soft landscaping, and internal roadways;
- c) Work Number 4 – works to facilitate construction access for the other work numbers. This includes road modifications;
- d) Work Number 5 - temporary construction laydown areas including parking, laydown areas for storage, site and welfare offices;
- e) Work Number 6 – habitat provision area – including soft landscaping, biodiversity enhancement and means of enclosure;
- f) Work Number 7 – works creating floodplain compensation area;
- g) Work Number 8 – works to facilitate the delivery of abnormal indivisible loads, including diversion of existing electrical and telecommunications overhead lines; and
- h) Further associated development including drainage works, utilities, hard standing and hard landscaping, biodiversity measures, closed circuit television cameras and other security measures, site preparation works, temporary construction laydown areas and contractor facilities, parking and storage facilities, access routes tunnelling and boring works, and any other necessary works, that are unlikely to give rise to any materially different environmental effects from those already assessed in the Environmental Statement.

- 5.1.15. **Alexis Coleman** explained that Schedule 3 sets out legislation to be disapplied in relation to railways, drainage and utilities in the vicinity of the Order Limits.
- 5.1.16. Schedule 4 (Streets subject to street works) sets out the streets that are to be subject to street works by reference to the Access and Rights of Way Plans. The Schedule relates to Article 9 (Street works).
- 5.1.17. Schedule 5 (Alteration of streets) sets out the streets that are to be temporarily altered (Part 1) and permanently altered (Part 2) by reference to the Access and Rights of Way Plans. This Schedule relates to Articles 10 (Power to alter layout, etc., of streets) and 11 (Construction and maintenance of altered streets).
- 5.1.18. Schedule 6 (Public rights of way to be temporarily stopped up) sets out the location of the public right of way to be temporarily stopped up. It references the Access and Rights of Way Plans. This Schedule relates to Article 12 (Temporary stopping up of public rights of way).
- 5.1.19. Schedule 7 (Access to works) sets out the temporary means of accesses to works (Part 1) and permanent means of accesses to works (Part 2). It references the Access and Rights of Way Plans. The Schedule relates to Article 13 (Access to works).

- 5.1.20. Schedule 8 (Land in which only new rights etc. may be acquired) sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the Land Plans and the nature of the rights in column 2 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 20 (Compulsory acquisition of rights).
- 5.1.21. Schedule 9 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965.
- 5.1.22. Schedule 10 (Land of which temporary possession may be taken) sets out the land of which only temporary possession may be taken, pursuant to Article 26 (Temporary use of land for constructing the authorised development). This land is shown yellow on the Land Plans, and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding Works Plans.
- 5.1.23. Schedule 14 (design parameters) relates to Requirement 2 which requires that the authorised development must be carried out in accordance with the parameters in this Schedule. The parameters have been divided into 3 parts; Part 1 being design parameters associated with Carbon Capture Plant for Unit 1, Part 2 the design parameters associated with the Carbon Capture Plan for Unit 2 and Part 3 the design parameters associated with the common infrastructure required for both the Carbon Capture Plant for Unit 1 and 2.

5.2. CHANGES MADE TO THE ORDER SINCE THE ORIGINAL SUBMISSION VERSION

- 5.2.1. **The ExA** invited the Applicant to talk through the changes that have been made to the dDCO since the original submission version.
- 5.2.2. **Richard Griffiths** explained that there have been three further revisions of the DCO submitted since the original submission version. The first revision was in response to section 51 advice, the second revision was submitted alongside the responses to relevant representations and addressed stakeholder comments, and the third revision was in connection with the Proposed Changes Application.
- 5.2.3. Changes made in response to the section 51 advice comprised of amendments and corrections to certified documents in Schedule 13 and amendments to plot numbers in Schedules 8 and 10 to align with the Book of Reference.
- 5.2.4. Changes to requirements in response to relevant representations included amending requirements in Schedule 2 to:
1. Secure additional measures in the Register of Environmental Actions and Commitments (“REAC”) with respect to detailed design;

2. Provide for consultation with the Environment Agency with regards to the Construction Environmental Management Plan (“CEMP”), Ground Conditions, and Decommissioning Environmental Management Plan;
3. Require that measures in the Decommissioning Environmental Management Plan are consistent with the REAC; and
4. Provide that Natural England is consulted on the CEMP in relation to soil matters.

5.2.5. Changes made relating to the Proposed Changes Application consist of:

1. Amendment to Article 6 to reflect the additional Work No.s 8A and 8B and that the electricity and telecommunications owners of the overhead lines being diverted should have the benefit of the provisions of the Order in relation to those work numbers.
2. Articles 10 & 11 were amended to split Schedule 5 (alteration of streets), in order to allow for both the temporary and permanent alteration of streets.
3. Article 13 was amended to allow for both temporary and permanent means of access to works, reflecting amendments made to Schedule 7.
4. As the changes introduced a small area of Crown Land, the standard Crown Rights article was added at Article 44.
5. In Schedule 1, additional Work No.s 7, 8A and 8B were added which is the flood compensation works and diversion of overhead lines and other works to allow for access to the site for abnormal indivisible loads.
6. In Schedule 2, the new numbered works have been added to the requirement relating to landscape and biodiversity mitigation and enhancement to ensure appropriate mitigation is secured with respect to the proposed changes.
7. Amendments were made to Schedule 5 – the Schedule was split into two parts. Part 1 being the temporary alteration of layout and Part 2 permanent alteration of layout.
8. Amendments were made to Schedule 7 – the Schedule was split into two parts. Part 1 being the temporary means of access to works and Part 2 being permanent means of access to works.
9. Amendments were made to Schedule 8 to include additional plots for which new rights may be acquired in connection with new Work Nos. 8A and 8B.
10. Schedule 10 (land of which temporary possession may be taken) has been amended to include additional plots to be temporarily possessed in connection with Work No. 8.
11. Amendments were also made to Schedule 13 (documents and plans to be certified) to reflect further revisions to certified documents and new certified documents.

5.3. QUESTIONS FROM THE EXA IN RESPECT OF ARTICLES AND SCHEDULES IN THE DDCO

- 5.3.1. **The ExA** asked a series of questions in respect of articles and schedules in the dDCO.
- 5.3.2. **The ExA** noted the definition of “commence” in Article 2, highlighting that the definition excludes ‘permitted preliminary works’, which is also defined within the Article. **The ExA** queried whether there would be any implications if the permitted preliminary works were to take place before the relevant planning authority has approved details of measures to protect the environment under the requirements. **Richard Griffiths** explained that the Applicant has carefully considered which works should be included within the ‘permitted preliminary works’ and that the Applicant is confident based on the findings of the environmental impact assessment, that the works that have been identified would not give rise to adverse environmental impacts that would need to be controlled by the requirements. **Matthew Fox** also added that for the requirements within Schedule 2, as necessary, the definition of commence has been amended so that permitted preliminary works are not excluded, with examples being Requirement 12 (ground conditions), 13 (archaeology), and 14 (construction environmental management plan).
- 5.3.3. **The ExA** referred to the reference to section 56(4) of the Town and Country Planning Act 1990 in the definition of “commence”, and whether any class of development has been prescribed pursuant to section 56(5)(c) (for the purposes of defining “material development” in the context of section 56(4)). **Matthew Fox** confirmed that a class of development could be prescribed pursuant to section 56(5)(c) for the purposes of section 56(4). Section 56(4) defines a “material operation” including by reference to change in use that constitutes “material development”, and section 56(5) then sets out what amounts to “material development”. The Applicant took an action to confirm whether any statutory instrument had been made under section 56(5)(c), and **Matthew Fox** later confirmed to **The ExA** that no legislation had been made prescribing additional classes of development (falling within what is meant by “material development”) not already captured.
- 5.3.4. **The ExA** queried the definition of ‘limits of deviation’ as limits of deviation have not been defined on the Works Plans. **Richard Griffiths** confirmed that the ‘limits of deviation’ are defined in Article 2 as the area up to the edge of the area shown for each numbered work on the Works Plans. The limits of deviation therefore go up to the edge of the hatching for the corresponding area on the Works Plans, and no change to the plans themselves is therefore considered necessary.
- 5.3.5. **The ExA** highlighted the definition of “maintain”, querying whether the term “worse” is subjective. **Richard Griffiths** confirmed that whilst this does provide for a planning judgement call, if the Applicant were to remove the word “worse”, this would preclude any benefits that may result (which would otherwise fall within the description of “materially new or materially different” environmental effects). **Richard Griffiths** also confirmed that The Drax Power (Generating Stations) Order 2019 used the same

wording. In response to further questions from **The ExA**, **Richard Griffiths** explained that compliance with the restriction in the definition of “maintain” would be the responsibility of the Applicant, to be mindful of the Order when undertaking maintenance.

- 5.3.6. With respect to the relevant planning authority, it was explained by North Yorkshire County Council that NYCC and SDC will become one unitary Council on 1 April 2023 and that the Councils were in discussions with the Applicant as to the necessary changes to the drafting as a result. **Post Hearing Note:** The Applicant will make amendments to reflect this in the dDCO submitted for Deadline 2.
- 5.3.7. **The ExA** queried whether Article 6 (benefit of the Order) allowed for an “either or” situation, where additional beneficiaries are identified. **Richard Griffiths** confirmed that the whole of the Order is for the benefit of the Undertaker, Drax Power Limited. However, it has been recognised, in the case of certain work numbers (Work No. 1F, 2, 8A and 8B), that it might be that another party is better placed to take the benefit of the Order and undertake works and exercise powers with respect to the identified work number. The Article therefore provides for that flexibility for the undertaker for those work numbers to be either the undertaker and / or the other named party. **The ExA** requested that this is further explained in the Explanatory Memorandum (“EM”). The Applicant will make this amendment for Deadline 2 (ExA’s Action ISH2-AP4).
- 5.3.8. **The ExA** referred to Article 8 (application and modification of statutory provisions), and highlighted that justification is expected within the EM for these powers. **Richard Griffiths** confirmed that the EM does provide justification in paragraphs 4.4.14-20.
- 5.3.9. **The ExA** queried Article 8(3) and what is meant by “to the extent already commenced”. **Richard Griffiths** confirmed that the Applicant has not commenced The Drax Power (Generating Stations) Order 2019 (the “2019 Order”). The wording is in place as the 2019 Order is a planning permission that could be legally implemented. The wording is ensuring that if the Applicant were to commence works under the 2019 Order, those works would have to stop if the Drax Bioenergy with Carbon Capture and Storage Order was made.
- 5.3.10. **The ExA** queried the need for Article 9(3). **Matthew Fox** confirmed that this provides that the same protection as would ordinarily be in place under sections 54 and 106 of the New Roads and Street Works Act 1991 (the “1991 Act”) is in place in relation to street works under this Article, where the Applicant is not the “street authority”. **The ExA** queried whether this should be included within Schedule 12 (protective provisions) and **Matthew Fox** confirmed that this was not necessary as the 1991 Act is the standard approach and continues to be; protective provisions would be a departure from that.
- 5.3.11. In response to comments from **The ExA**, the Applicant will correct “alternations” to “alterations” in Article 11, in the dDCO submitted for Deadline 2 (ExA’s Action ISH2-AP6).

- 5.3.12. **The ExA** queried whether Article 12 needed to be as broad as it is, given that there is only one public right of way contained within Schedule 6 (public rights of way to be temporarily stopped up). **Richard Griffiths** explained that the general power in Article 12(1) is required so as to ensure that if during construction further public rights of way are required to be stopped up the power is available. **The ExA** highlighted that further explanation would be appreciated within the EM, and the Applicant will update the EM with this detail at Deadline 2 (ExA's Action ISH2-AP7).
- 5.3.13. **The ExA** highlighted that the EM for Article 16 refers to instances where consent is required pursuant to that article (relating to authority to survey and investigate land), and that Article 40 (procedure in relation to certain approvals etc) does not seem to be engaged. **Richard Griffiths** confirmed that there is a consent aspect to Article 16, for example sub-paragraph (4), therefore Article 40 would be engaged. **Richard Griffiths** pointed to sub-paragraph (1) of Article 40 which makes clear that the article relates to any request of a consenting authority for any consent, agreement or approval required under the Order. Sub-paragraph (7) then confirms the authorities captured by the term "consenting authority", which includes (for the purposes of Article 16) the street authority. **The ExA** queried whether Article 16 should therefore refer to Article 40. **Richard Griffiths** clarified that this was not necessary, read as a whole, the application of Article 40 is clear.
- 5.3.14. **The ExA** highlighted that the EM for Article 18 refers to section 158 of the Planning Act 2008 ("PA 2008"), whereas the Article itself does not refer to the PA 2008. Similarly with Article 18(4)(a), the EM refers to Section 152, whereas the Articles does not. **Post Hearing Note:** The Applicant has further considered the point raised by **The ExA** and has amended the drafting of the DCO to include references to section 158(2) and section 152(5) of the Planning Act 2008. These amendments will be included in the dDCO submitted at Deadline 2 (ExA's Action ISH2-AP8).
- 5.3.15. **The ExA** requested a more detailed justification of the general power to impose new rights over the Order land, suggesting that further detail is required in column 2 of Schedule 8 (land in which only new rights etc. may be acquired). **Richard Griffiths** highlighted that the Applicant has identified that some improvements are to be made to Articles 20 and 21 and the corresponding Schedule 8, and these will be made to the dDCO for Deadline 2 and the EM updated accordingly (ExA's Action ISH2-AP9). With respect to the level of detail relating to the rights sought in Schedule 8, **Richard Griffiths** noted that the Applicant would further consider this, however confirmed the rights could not be drafted in a way that was overly prescriptive, in order to ensure the undertaker had the appropriate powers to implement and carry out the authorised development.
- 5.3.16. **Post Hearing Note:** The Applicant has further considered the approach to the rights sought in Schedule 8. The Applicant does not propose any amendments to Schedule 8 of the dDCO in respect of the wording of the rights being sought as it considers the approach taken to the drafting is standard and is consistent with other made Orders, and therefore sufficiently detailed. See for example Schedule 8 of The Drax Power (Generating Stations) Order 2019; Schedule 7 of The Riverside Energy Park Order

2020; Schedule 8 of The Eggborough Gas Fired Generating Station Order 2018; and Schedule 6 of The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, in which the same, or substantially the same, drafting was adopted.

- 5.3.17. **The ExA** highlighted the notice period within Article 26, stating 14 days appears to be very short. **Richard Griffiths**, confirmed that the Applicant considers this to be sufficient and appropriate to provide 14 days' notice, highlighting that temporary possession within the Order is not extensive. To keep to programme, the 14-day notice period is considered acceptable, along with being standard within most made DCOs. **Richard Griffiths** indicated that whilst the Neighbourhood Planning Act 2017 does provide for a longer notice period, this would restrict the temporary possession power. The longer notice period could potentially lead to greater land being taken on a precautionary basis to avoid programme disruption, to the detriment of affected persons. The power is being used to avoid compulsory acquisition, where not required to undertake assessments. Further notice period would delay the process.
- 5.3.18. **Richard Griffiths** also explained that the temporary possession largely relates to Work Numbers 8A and B concerning the overhead line and telecommunications cable. **Matthew Fox** added that communication would be undertaken with stakeholders as the project progresses. The REAC [AS-092] contains measures that would be included in the CEMP secured by the Order. For example, at item G5(e) of the REAC there is reference to a stakeholder communication plan and item G21, where the landowner has specifically responded to the consultation on the changes asking for continued engagement and the Applicant has therefore committed to this in the REAC.
- 5.3.19. **The ExA** highlighted that Article 27(3), provides for 28 days' notice with respect to temporary possession for maintenance purposes. **Matthew Fox** confirmed that the 14 days relating to temporary possession during construction follows a process of communication related to the construction of the scheme. Whereas the maintenance power lasts up to 5 years and therefore the notice may not be as expected.
- 5.3.20. **The ExA** highlighted Article 32(4) and made comments that that usually an article of this kind identifies relevant hedgerows intended for removal, including a Schedule and plan to specifically identify the hedgerows. **Richard Griffiths** confirmed that there is only a very small amount of hedgerows, and the Applicant agreed to consider whether a Schedule identifying the hedgerow number would be appropriate, or equally whether the Article could cross refer to the landscaping plan. **Post Hearing Note:** The Applicant has considered this point. As the full detail of the hedgerows requiring removal cannot be confirmed at this stage, the Applicant proposes providing that detailed Landscape and Biodiversity Strategies submitted for approval pursuant to Requirement 7 include details of any hedgerows to be removed and details of if and how they are to be replaced. The Applicant will amend Requirement 7 at Deadline 2 in this respect (ExA's Action ISH2-AP10).

- 5.3.21. With respect to Schedule 1 of the dDCO, **The ExA** highlighted that within the description of the authorised development, there is an inconsistency between use of the words “comprising” and “including”. **Post Hearing Note:** The Applicant has considered this point further following the hearing. In the dDCO submitted for Deadline 2, the Applicant will make amendments to this Schedule to ensure a consistent approach to the use of “comprising” and “including”. The general approach adopted is that where multiple sub-works packages are listed out, the paragraph introducing those uses the term “comprising”. For example, Work No. 1 “comprises” of Work Nos. 1A – 1E. Similarly, Work No. 1C “comprises” Work No. 1C(i), (ii) and (iii). The work packages listed under Work No. 1 constitute all the works packages included within Work No. 1 (that is, there are no more works packages forming part of Work No. 1, other than 1A – 1E), which is why “comprising” is used (in other words, it is intended to be an exhaustive list of the works packages). Where there is then a list of works (for example, the works listed as being part of Work No. 1B or the works listed as being within Work No. 1C(i)) “including” is used, due to the potential for the list of more general works included at the end of Schedule 1 to be carried out as part of the works package, and so the list is not exhaustive.
- 5.3.22. **The ExA** asked the Applicant about the works comprised within Work No. 2 and whether some items in Work No. 2(a) should be listed as being part of the pipeline rather than the carbon dioxide delivery terminal compound. **Post Hearing Note:** the Applicant has further reflected on this point, and will make amendments to the dDCO submitted at Deadline 2 to ensure the approach to the drafting is consistent for Work No. 2(a) and (b).
- 5.3.23. **The ExA** queried why the further associated development works listed at the end of Schedule 1 are required, noting that it appears repetitive. **Richard Griffiths** confirmed that whilst the development has been divided into works packages on a logical basis, as a contractor has not been appointed some of the more minor works specified in the further associated development paragraph could happen across any part of the Order Limits. **The ExA** requested an explanation be included within the EM, and the Applicant will provide this for Deadline 2 (ExA’s Action ISH2-AP11).
- 5.3.24. **The ExA** highlighted Work Number 4 as shown on the Works Plans, noting that the works package covers a large area, including buildings which are not understood likely to be temporarily removed. **Richard Griffiths** explained that this is a working power station that is being modified and extended, and given the nature of the work included within Work No. 4, it could be undertaken in various locations across the site, which are difficult to identify. To limit the extent of the power may lead to unintentional errors. In response to further questioning from **The ExA**, the Applicant agreed to consider this further.
- 5.3.25. **Post Hearing Note:** The Applicant has considered whether any structures could be removed from Work No. 4 as shown on the Works Plans. Whilst not all structures within the area of Work No. 4 would necessarily be impacted, some external parts of existing structures and buildings may need to be modified (and then reinstated) to allow for the safe passage of construction vehicles within the operational Drax Power

Station site. Some flexibility is needed in this respect, as it is not possible to identify at this stage all the structures and buildings, which may require temporary modification. For Deadline 2, the Applicant proposes amending how Work No. 4 is described within Schedule 1 of the dDCO, to make clear the limited and temporary nature of some of the proposed works that would occur within Work No. 4, in particular that removal of street furniture and landscaping, and modifications to external parts of structures and buildings, would be temporary and reinstated (ExA's Action ISH2-AP12).

- 5.3.26. **The ExA** referred to the table in Schedule 5, Part 1, Rows 10, 11 and 13, comprising of three separate rows referring to points marked R and S, R and T, and S and T on the Access and Rights of Way Plans. **The ExA** asked if this resulted in doubling counting of where powers were needed on the plans. **Richard Griffiths** confirmed the Applicant would review this with its transport team. **Post Hearing Note:** The Applicant's transport team has now considered the identified Rows in Schedule 5 alongside the Access and Rights of Way Plans. The Applicant can confirm that it does not consider there to be any duplication between the rows in Schedule 5, as they provide for the full scope of possible works that may be required for all the vehicles that may be required, going either way around the roundabout (at points S and T) (ExA's Action ISH2-AP13).

6. ITEM 4 – SCHEDULE 2 OF THE DRAFT DCO – REQUIREMENTS, AND SCHEDULE 11 – PROCEDURE FOR DISCHARGE OF REQUIREMENTS

- 6.1.1. **The ExA** asked the Applicant to provide an overview of the requirements.
- 6.1.2. **Alexis Coleman** explained that the requirements are contained in Schedule 2. The requirements relate to construction, operation and decommissioning, and gave a brief description of each requirement as follows.
1. Requirement 1 (Commencement of the authorised development) – the authorised development must not be commenced after the expiration of five years from the date the Order comes into force.
 2. Requirement 2 (Phasing of the authorised development) - a phasing plan must be approved by the relevant planning authority. **Alexis Coleman** highlighted that the Applicant intends to make an amendment to Requirement 2(3) as that is better suited to detailed design which is the subject of Requirement 6 (ExA's Action ISH2-AP14).
 3. Requirement 3 (Notice of date of full commissioning) – requires notification to be given of the date of full commissioning of each Unit.
 4. Requirement 4 (Requirement for written approval) - approval of agreement under the requirements must be provided in writing.
 5. Requirement 5 (Approved details and amendments to them) – relates to the process and limited circumstances in which amendments can be made to certified documents or approved documents.
 6. Requirement 6 (Detailed design approval) – relates to approval of detailed design and secures compliance with
 7. design principles in the REAC.
 8. Requirement 7 (Provision of landscape and biodiversity mitigation and enhancement) — requires the submission and approval of strategies in substantial accordance with the outline landscape and biodiversity strategy and sets out the details the strategies must include.
 9. Requirement 8 (External lighting during operation) – relates to approval of a permanent external lighting strategy.
 10. Requirement 9 (Highway accesses during construction) – requires the details of accesses to be approved.
 11. Requirement 10 (Surface water drainage) – requires the submission and approval of surface water drainage strategies.
 12. Requirement 11 (Flood risk mitigation) - the authorised development must be carried out and operated in accordance with the Flood Risk Assessment (“FRA”).
 13. Requirement 12 (Ground conditions) – sets out requirements for a written strategy relating to contamination risk and includes details of what the strategy must

include such as a site investigation scheme and if needed, a remediation strategy and verification plan.

14. Requirement 13 (Archaeology) – includes requirements for a written scheme of investigation to be approved and sets out details of what the scheme should include.
15. Requirement 14 (Construction environmental management plan) - a CEMP plan must be approved and must be substantially in accordance with the REAC.
16. Requirement 15 (Construction traffic management plan) – requires the approval of a construction traffic management plan, and for notices to be erected indicating approved routes during construction.
17. Requirement 16 (Construction worker travel plan) – requires the submission and approval of a construction worker travel plan.
18. Requirement 17 (Control of noise during operation) – requires that numbered Works 1, 2 or 3 may not commence until a noise mitigation scheme is approved. The scheme is to contain details of how the design of that numbered work has incorporated noise mitigation measures to achieve rating levels set out in the requirement and will also include a set of noise limits that must not be exceeded during operation.
19. Requirement 18 (Decommissioning environmental management plan) - no decommissioning works must be carried out until the relevant planning authority has approved the decommissioning environmental management plan. The undertaker must submit the plan for approval within 12 months of deciding to decommission any part of the authorised development.
20. Requirement 19 (Decommissioning traffic management plan) - no decommissioning works must be carried out until the relevant planning authority has approved the decommissioning traffic management plan. The plan must be submitted within 12 months of deciding to decommission any part of the authorised development.

6.1.3. **Alexis Coleman** explained that Schedule 11 (Procedure for discharge of requirements) provides a bespoke procedure for dealing with an application made to the Relevant Planning Authority for any consent, agreement or approval required by the Requirements in Schedule 2 of the Order. It provides for a 6-week decision making period, the ability to request further information and to consult with stakeholders, application fees and an appeals procedure.

6.1.4. **The ExA** noted that they were not convinced by the drafting in relation to the requirements, stating that all requirements should include an implementation clause, if needed a timing clause, a retention clause and where necessary a maintenance clause. The Applicant agreed to review the requirements and make any necessary amendments for the dDCO to be submitted at Deadline 2.

6.1.5. **The ExA** raised the phasing of flue gas desulfurisation plant demolition, and the proposed scheme, noting that in the Statement of Common Ground with Selby District Council and North Yorkshire County Council the Applicant provided the draft

requirement text along with a suggestion that this is discussed further post submission. The Councils did not have comments on this requirement, and **Richard Griffiths** noted that the Applicant was proposing some tweaks to the drafting of the requirement for Deadline 2.

- 6.1.6. **The ExA** queried whether Requirement 6(1)(d) should require consultation with the highway authority. **Richard Griffiths** confirmed that this was not required as it is internal vehicular access within the Drax Power Station site. The Councils confirmed that they did not have anything to add.
- 6.1.7. **The ExA** queried whether the matters referred to in Requirement 6(1)(d) only apply to Work Number 3 and, if so, should they be listed separately to the matters relating to Work Numbers 1 and 2. **Richard Griffiths** confirmed that whilst Work Number 3 does include these elements so could Work Numbers 1 and 2, due to the further associated development listed at the end of Schedule 1, which had been previously discussed.
- 6.1.8. **The ExA** highlighted in Requirement 6(2) that of the items of the REAC, there are some that do not appear to apply directly under sub-paragraph (1). **The ExA** gave the example of NV3, which refers to noise monitoring, querying whether it is appropriate for this to be contained in Requirement 6 or 17. **The ExA** also referred to H1 which refers to known below ground heritage assets and areas of higher potential for buried heritage assets. **The ExA** queried whether H1 was more relevant to Work Numbers 5 and 6. **The ExA** also queried WE1-5 and 7, which relate to surface water management, asking whether this is appropriate here or Requirement 10.
- 6.1.9. Taking each in turn, the Applicant's response is as follows (ExA's Action ISH2-AP15):
1. NV3 – the Applicant has considered this further following the hearing, and agrees that NV3 can be removed from Requirement 6(2) and instead secured via requirements 14 and 17. The Applicant will make this amendment to the dDCO at Deadline 2.
 2. H1 – relates to avoidance through design, which is why the Applicant has included H1 as a design principle in Requirement 6, to ensure that when the design is carried out sensitively with regards heritage assets.
 3. WE1-5 and 7 – these items in the REAC don't relate specifically to design of the drainage itself but how the rest of the scheme is designed to account for water impacts, hence being secured as a design principle in Requirement 6.
- 6.1.10. **The ExA** asked for a general review of what has been included and to provide an explanation of why they have been included. **Post Hearing Note:** an explanation for the remaining REAC items referenced in Requirement 6 is provided below (ExA's Action ISH2-AP15).
- 6.1.11. D1, 2, 3, 5, 6, 7, 8, 9, 10 – are all design related commitments and are considered appropriate to be secured via the detailed design requirement.
- 6.1.12. CC1 & CC2 – these commitments relate to design in the context of climate change resilience and are therefore relevant to detailed design.

- 6.1.13. GHG1 – this commitment relates to reducing embodied carbon as part of the design, and so is also relevant to detailed design.
- 6.1.14. **Tom McNamara**, on behalf of NGCL, confirmed that in relation to Requirement 6 NGCL is happy with the approach that the Applicant has taken. **Tom McNamara** suggested NGCL be consulted on the detailed design approval under Requirement 6 of Work No. 2. **Richard Griffiths** confirmed that the Applicant is in discussion with NGCL on this and the Applicant does not have an issue in principle in relation to Work Number 2(a) only. **Richard Griffiths** noted that Protective Provisions are being negotiated with NGCL and it is considered sufficient that NGCL would approve the details of this part of the authorised development pursuant to those provisions. Consultation under Requirement 6 is not needed in addition to that approval of details.
- 6.1.15. With respect to Requirement 7, **The ExA** queried the rationale behind submitting a written strategy for each of the numbered works rather than the development as a whole. **Richard Griffiths** explained that it was drafted in such a way to allow for flexibility as to how the scheme is to be phased. **The ExA** highlighted that this could mean that there are eight strategies coming forward and that the landscaping relates to the scheme rather than individual work numbers. **Richard Griffiths** explained that, for example Work Number 2 could be undertaken by a third party as the power could be transferred to NGCL, for example. Secondly, requiring the final detailed landscaping could potentially gridlock the Applicant on a part of the Scheme that did not require landscaping to be provided. By being drafted in this way, it allows for flexibility. **The ExA** asked the applicant to review whether this is necessary and if so an explanation of how eight different strategies could be put forward. **The ExA** also asked for a further explanation as to how the landscaping that is proposed in the outline landscape and biodiversity strategy links to each of those works numbers.
- 6.1.16. Philip Peterson, ecologist at WSP, highlighted that the detail is only available for some of the phases at a point in time. This is why it would be advantageous to be able to have the landscaping and ecological mitigation in the strategy approved in phases. **The ExA** confirmed that they understood this but would still require a further explanation.
- 6.1.17. **Post Hearing Note:** As set out during the hearing, the Applicant considers that it is important for Requirement 7 (Provision of landscape and biodiversity mitigation and enhancement) to include provision for the Requirement to be discharged in parts. This is necessary in order to retain flexibility for the detailed design, site clearance and construction works to proceed in phases. This reflects the likelihood that detailed design (and subsequent implementation) will proceed in phases, and hence work may need to start on parts of the Proposed Scheme prior to detailed design being completed for the entire Scheme. Under such circumstances, it may not be possible to produce detailed ecology and landscape proposals for the entirety of the Proposed Scheme, as these would necessarily be informed by, for example, the detailed design of earthworks, other engineering features, and site clearance footprints. Under such circumstances, it would be necessary to produce a Landscape and Biodiversity

Strategy covering those parts of the Proposed Scheme for which detailed design was available, and for that Strategy to be approved by the relevant planning authority. Without such approval, the parts of the Proposed Scheme for which detailed design was available could not proceed.

- 6.1.18. In addition, until site and vegetation clearance requirements and subsequent habitat reinstatement for the entirety of the Proposed Scheme are finalised, the final Biodiversity Net Gain (BNG) to be delivered cannot be calculated. It is therefore also necessary to retain flexibility for the phased discharge of Requirement 7 in order to allow refinement of habitat creation proposals to achieve 10% BNG in response to the actual habitat loss and disruption that will occur as part of the Proposed Scheme.
- 6.1.19. **The ExA** asked the Applicant whether they considered any commitments in the REAC, should be included in Requirement 7. **Matthew Fox** explained that for the most part the REAC acts as a document that signposts to where commitments are secured, and where there is an outline strategy or management plan prepared (as is the case with the Outline Landscape and Biodiversity Strategy), the commitments in the REAC are replicated in the appropriate outline strategy or management plan, which is then secured via a requirement.
- 6.1.20. **The ExA** raised that Requirement 7 was lacking an implementation clause. **Richard Griffiths** highlighted Requirement 7(4) which requires that the approved strategies must be implemented and maintained in accordance with the implementation timetable. **The ExA** stated that the wording suggests the implementation of the timetable rather than the strategy as a whole. **Richard Griffiths** explained that a strategy needs to be implemented and maintained in line with the timetable approved as part of the strategy. **The ExA** requested that the Applicant consider the addition of “details of timetable and strategy”. **Richard Griffiths** confirmed that the Applicant would be happy to add in the wording. **Post Hearing Note:** The Applicant has amended the requirement in the dDCO to be submitted for Deadline 2, in response to the comments made by **The ExA**.
- 6.1.21. Stuart Boothman, on behalf of Just Transition Wakefield, queried whether Requirement 7 could be strengthened with respect to ongoing monitoring of biodiversity. **Matthew Fox** responded that the detail in relation to biodiversity and long-term monitoring is in the Outline Landscape and Biodiversity Strategy (Section 6) [AS-094]. **The ExA** suggested the Mr Boothman review the strategy following the hearing.
- 6.1.22. With respect to Requirement 8 **The ExA** highlighted that the document referred as outline lighting strategy, is the document submitted by the Applicant entitled ‘draft lighting strategy’ and should be changed to ensure consistency. **Post Hearing Note:** the Applicant has amended the dDCO for Deadline 2 accordingly (ExA’s Action ISH2-AP2).
- 6.1.23. **The ExA** queried why the lighting during construction is to be approved under the CEMP rather than as a requirement within the DCO. **The ExA** also asked whether it

would be clearer for the requirement to be modified to apply to external lighting during both construction and operation, as in the Drax Repower 2019 Order.

- 6.1.24. **The ExA** requested an outline CEMP be submitted into the examination. **Richard Griffiths** explained that the purpose of the REAC is to clearly set out the detail of what the CEMP would contain. That is the approach that the Applicant has taken rather producing a draft CEMP.
- 6.1.25. Nicola Ashworth, WSP, explained that in her experience of environmental management plans, it is a framework document that secures other management plans. The CEMP is primarily to ensure the Applicant mitigates environmental affects, and the items to be secured in the CEMP are fully covered in the REAC. **Post Hearing Note:** The Applicant has produced a further note in this respect, and this is attached to this document at Appendix 1. In summary, when drafting the REAC the intention has been that it should fulfil the objectives of an Outline CEMP and great care has therefore been taken to ensure that the REAC includes commitments at an appropriate level of detail and that the measures within it are properly secured. As a result, the Applicant considers that the purpose of an Outline CEMP has been fulfilled through the REAC which is considered to be proportionate and sufficient to mitigate and manage the environmental effects of the Proposed Scheme, and the measures within which are secured via the draft Development Consent Order. The analysis in the note at Appendix 1 supports this position.
- 6.1.26. With respect to Requirement 9 **The ExA** queried whether the word ‘commence’ was correct given the context of “commencing” an “access”. **Richard Griffiths** confirmed that the Applicant will review the drafting. **Post Hearing Note:** The Applicant has amended the dDCO for Deadline 2 accordingly (ExA’s Action ISH2-AP16).
- 6.1.27. **The ExA** also queried why Requirement 9 has not been drafted to be prior to the commencement of development. **Matthew Fox** confirmed that this is because the accesses might come forward at different times, depending on the phasing. The Requirement is to ensure that the accesses work in connection with access from the highway. As the accesses are not a requirement for environmental reasons, they do not require a trigger to ensure they are in place by a certain point.
- 6.1.28. **The ExA** highlighted with respect to Requirement 10, that the “surface water drainage strategy report” does not match the submission document name being the “proposed surface water drainage strategy”. **Post Hearing Note:** The Applicant has amended the dDCO for Deadline 2 accordingly (ExA’s Action ISH2-AP3).
- 6.1.29. **The ExA** highlighted a potential drafting error with Requirement 10(2) and (4). **Richard Griffiths** confirmed that there is duplication between Requirement 10(2) and (4) and that this will be resolved. **Post Hearing Note:** The Applicant is amending the requirement for the dDCO to be submitted at Deadline 2 to remove Requirement 10(2) and remove the word ‘and construction’ from Requirement 10(4). Construction drainage matters are covered by the matters set out in item WE8 of the Register of Environmental Actions and Commitments [AS-092] and the commitment in paragraph

1.1.4 of that document that a Surface Water Management Plan will form part of the CEMP secured by Requirement 14 (ExA's Action ISH2-AP17).

- 6.1.30. With respect to Requirement 11 **The ExA** asked whether the Environment Agency is happy with the drafting of this requirement securing the FRA. Matthew Wilcock, on behalf of the Environment Agency, confirmed that the EA is content with the requirement that considers that the FRA is sufficient. **Matthew Fox** highlighted that within the FRA there are various conditions, such as flood conservation areas which the Applicant is committed to consult with the Environment Agency on. **The ExA** requested the Applicant confirm that the FRA contains details or commitments to retain what is proposed in that assessment and for those commitments to be maintained in accordance with the details (as reflected in (ExA's Action ISH2-AP18). **Post Hearing Note:** The Applicant can confirm that the FRA provides for measures to be put in place, retained and maintained. Further to discussions with the EA, the FRA will be being updated at Deadline 2, to provide more certainty in the language on this point in relation to any potential extension to the design life of the Proposed Scheme.
- 6.1.31. In relation to Requirement 12 **The ExA** queried why the written strategy is able to be submitted in parts. **Richard Griffiths** confirmed that it was, in general, the same reasoning as Requirement 7, as this relates to ground conditions, it is intended for the Applicant to have flexibility depending on the phasing of the authorised development. **Matthew Fox** explained that Requirement 12 has a number of steps within it. The ground investigations are more specific to the areas of the Order limits that are being investigated over time and require consultation with the Environment Agency, which is an approach that lends itself to having a strategy approved in parts.
- 6.1.32. **The ExA** referred to Requirement 12(5) and the need for the piling risk assessment to be submitted and approved by the Environment Agency, noting that it would be the relevant planning authority who would be responsible for enforcing against any of the requirements. Richard Griffith confirmed that the discharging authority is the Environment Agency, and suggested that the Applicant can make an amendment to make clear that where there is another body discharging the requirements, the relevant planning authority will be sent the application, for information purposes. **The ExA** asked whether the Environment Agency was happy with the wording which Matthew Wilcock, confirmed they were. **Post Hearing Note:** The Applicant has amended the dDCO for Deadline 2 accordingly (ExA's Action ISH2-AP19).
- 6.1.33. **The ExA** queried whether there is a need for ongoing monitoring under Requirement 12. **Richard Griffiths** referred to Requirement 12(2), which sets out a stepped process including a requirement for long term monitoring, where there is a need.
- 6.1.34. **The ExA** asked why Requirement 13 only applies to Work Number 5. **Richard Griffiths** confirmed that due to the outcome of the environment assessment Work Number 5 (being the temporary construction laydown area located outside the operational power station) was the work package where archaeological mitigation was required. The works do not affect archaeology on other areas outside of the power station site. **The ExA** queried whether this was the same case for Work

Number 6. **Matthew Fox** explained that in terms of the Off-Site Habitat Provision Area, that area is not included within this requirement because it was considered that the works would be unlikely to affect archaeology. In addition, there are commitments in the REAC relating to archaeology, which would form part of the CEMP, including for example with respect to Work No. 8. **Post Hearing Note:** The Applicant will amend Requirement 13 in the dDCO submitted at Deadline 2 to include reference to Work Nos. 6 and 8 in the requirement.

- 6.1.35. **The ExA** asked the host authorities whether they were satisfied with this requirement. Jenny Tyreman, on behalf of Selby District Council, confirmed that in terms of the requirements and this one specifically there is an ongoing review which will be confirmed at Deadline 1. Kelly Dawson, on behalf of North Yorkshire County Council, confirmed that the Council is broadly happy with what has been submitted to date.
- 6.1.36. **The ExA** queried the use of the terms 'may' and 'must' in Requirement 17. **Post Hearing Note:** The Applicant has amended the dDCO for Deadline 2 accordingly.
- 6.1.37. With respect to Requirement 17, **The ExA** queried whether there should be a separate plan for noise during construction, as this requirement relates to operation. **Richard Griffiths** confirmed that control of noise during construction is secured by the CEMP and the mitigation measures are identified in the REAC.
- 6.1.38. In relation to Requirement 18, **The ExA** queried whether the commitments in the REAC should be expressly referred to within the requirement. The EM refers to the commitments in the REAC. **Matthew Fox** explained that sub-paragraph (4) had been added to the Requirement to secure the measures in the REAC, however, specific measures have not been identified (and instead principles are referred to) given that decommissioning (and therefore the preparation of the decommissioning environmental management plan) would be at least 25 years in the future.
- 6.1.39. **The ExA** queried why Requirement 19 (decommissioning traffic management plan) is separate to Requirement 18 (decommissioning environmental management plan). **Matthew Fox** confirmed it is the same logic as construction and often authorities prefer the plans to be separate.
- 6.1.40. With respect to Schedule 11 (Procedure for discharge of requirements), **The ExA** highlighted that the time period of six weeks in paragraph 2(1) is shorter than the usual 8 weeks. **Richard Griffiths** confirmed that the Applicant will be discussing this with the host authorities, and that there are examples in made DCOs of different timescales being adopted.
- 6.1.41. **The ExA**, highlighted paragraph 3(2) which requires the relevant planning authority to notify the undertaker within 10 working days. **The ExA** also highlighted in paragraph 3(3) the relevant planning authority must issue the consultation to the requirement consultee within 5 working days, stating the timescales appear short. **Richard Griffiths** explained that as this is nationally significant the timescales are going to be quicker than an ordinary planning permission. The Councils confirmed they will

provide comments on Schedule 11, including timescales, at Deadline 1, and the Applicant will consider those submissions.

- 6.1.42. **The ExA** asked that when a requirement is discharged in parts, how this would work in terms of application fees and when the requirement would be considered discharged. **Richard Griffiths** confirmed that requirements could be discharged in part, and a fee would be payable upon submission of an application (whether that is to discharge just a part or a whole requirement). **Richard Griffiths** confirmed that the Applicant can make it clear in paragraph 4 of Schedule 11 that a requirement can be discharged in full or part. **Post Hearing Note:** The Applicant has amended the dDCO for Deadline 2 accordingly (ExA's Action ISH2-AP20).

7. AGENDA ITEM 5 – SCHEDULE 12 OF THE DRAFT DCO – PROTECTIVE PROVISIONS

- 7.1.1. **The ExA** invited the Applicant to provide an update on the protective provisions included in Schedule 12, including any revisions that may have been made since the dDCO was originally submitted.
- 7.1.2. **Alexis Coleman** explained that Part 3 of Schedule 3 contains protective provisions with National Grid as the electricity and gas undertaker, confirming that the Applicant is in negotiations with National Grid's lawyers on those protective provisions. The Applicant received comments back last week which are being considered. The Applicant is confident of reaching agreement within the timeframe of the Examination.
- 7.1.3. Part 4 includes protective provisions for Network Rail, the Applicant is also in discussions with Network Rail's lawyers. It has been agreed that the interaction with railway property from the authorised development is quite limited and therefore it might be that the protective provisions are removed or significantly simplified.
- 7.1.4. The Applicant is proposing in further drafts of the DCO that there will be two more sets of protective provisions. One being with NGCL, with whom discussions are ongoing. The other set of protective provisions being with National Highways, who have provided a set of protective provisions which the Applicant is considering. In both cases, agreement is expected during the course of the Examination. In the case of NGCL, this was confirmed by Tom McNamara on behalf of NGCL.

8. AGENDA ITEM 6 – SCHEDULE 13 OF THE DRAFT DCO – DOCUMENTS AND PLANS TO BE CERTIFIED

- 8.1.1. **The ExA** explained that they were going to ask whether the CEMP should be submitted and included in Schedule 13, but now understands the Applicant's position that this is covered in the REAC.
- 8.1.2. **The ExA** also raised the design framework document. Chapter 9 states that the design framework's intended use is as a basis of reference for the detailed design phases. **The ExA** queried whether the Applicant's approach is that this is secured under item D within the REAC, rather than the document needing to be certified itself. **Richard Griffiths** confirmed that the design framework has informed the design principles that have been contained in the REAC, and which are secured under item D pursuant to the detailed design requirement.

9. AGENDA ITEM 7 – CONSENTS, LICENCES AND OTHER AGREEMENTS

- 9.1.1. **The ExA** highlighted that the application for the variation to the environmental permit was submitted to the Environment Agency in August 2022, asking the Applicant for an update on the progress and timescale of the application. **Richard Griffiths** confirmed that the Applicant needs to update the Other Consents and Licences document to refer to the submission of the environmental permit variation application being submitted in August 2022. **Richard Griffiths** explained that the application is going through the staged process.
- 9.1.2. **The ExA** asked the Environment Agency if they had any comment. **Chris Gaughan**, on behalf of the Environment Agency, confirmed that this is the case, and that there are seven stage elements to be submitted, with the deadline date for six of those being circa March / April 2023, and the seventh being November 2023. It is the Environment Agency’s understanding that the Applicant intends to submit all seven of the staged elements by March / April 2023. Steven Foster, Environmental Regulatory Manager at Drax, confirmed that this is the case. **Chris Gaughan** confirmed that once the staged elements have been submitted, the application can move to the “duly made” stage. Steven Foster confirmed that the Applicant is targeting March 2024 for determination of the application.
- 9.1.3. **The ExA** asked for an update on other consents, licences and permits referred to in the Other Consents and Licences document [APP-035]. **Richard Griffiths** explained that most of the other consents and applications are ones that can only be applied for post consent of the DCO being granted. The only other one is the District Level Licence (“DLL”) for Great Crested Newts, which is being progressed with Natural England. Following discussions between Natural England’s DLL Officers and the Applicant’s ecologists to clarify details relating to the Proposed Scheme, the Applicant intends to enter into agreement with Natural England to secure use of the DLL. Some details are currently being clarified, and the Applicant anticipates the future use of the licence will be secured by the 30th of January, subject to confirming final details with Natural England.
- 9.1.4. **The ExA** asked for an update on the section 106 agreement and asked when the ExA is likely to see a first draft. **Richard Griffiths** explained that the Heads of Terms for the s106 agreement is in the examination. In terms of a draft this has been provided to the host authorities back in October 2022 and we are awaiting comments. **Richard Griffiths** confirmed that the Applicant could provide the current draft at Deadline 1.
- 9.1.5. **The ExA** highlighted that they will need to ensure that the s106 meets the relevant tests, explaining that Paragraph 57 of the NPPF states that obligations should only be used where it is not possible to address acceptable and unacceptable impacts through a planning condition or requirement within the DCO. The ExA asked the Applicant to provide a brief explanation of why the matters within the s106 cannot be secured through a requirement, and to briefly set out how each matter meets the test

of being necessary to make the development acceptable, directly related to the development and fairly and reasonable related in scale and kind to the development.

- 9.1.6. **Richard Griffiths** explained that with respect to the local employment scheme, this is a similar obligation to that agreed with the local authorities in the section 106 for the Drax Repower project. The reason it was provided for within the s106 agreement is due to the level of detail that it goes into, in respect of how contracts will be entered into etc. **Richard Griffiths** explained that the local employment scheme links directly to the benefits of the scheme. The scheme will give rise to economic jobs – green economic jobs – which is what policy also refers to in terms of the cluster and projects. Therefore, the scheme helps ensure that the scheme delivers benefits to the local area and people, and the obligation is directly relevant for this reason. The Applicant will work with the host authorities to ensure that the job opportunities are advertised, and that local people and businesses can bid for contracts. (ExA’s Action ISH2-AP21)
- 9.1.7. The second item is a Local Liaison Committee which is included in the section 106 agreement at the request of the local authorities and reflecting the approach for the Drax Repower project. **Richard Griffiths** agreed that this could be moved into the requirements if necessary. Post Hearing Note: The Applicant has agreed with the Councils that the Local Liaison Committee obligation will be removed from the section 106 agreement and included as a requirement in the dDCO to be submitted at Deadline 2. The parties are also discussing whether the local employment scheme obligation could be a DCO requirement.
- 9.1.8. **Matthew Fox** explained that the Off-Site Habitat Provision cannot be included in the DCO, being the ecological offsite improvement works, as it is offsite and binds land outside of the Order limits. This obligation secures the delivery of the ecological mitigation that was determined to be necessary following the environmental impact assessment (“EIA”). It is directly related because as the EIA identifies the ecological mitigation is necessary as a result of the impacts of the scheme. This obligation also helps to achieve the biodiversity net gain in relation the development. In terms of scale and kind, it covers the land that is required to deliver ecological mitigation and to deliver the commitments on biodiversity net gain in the outline Landscape and Biodiversity Strategy. (ExA’s Action ISH2-AP21)
- 9.1.9. The ExA queried the Applicant’s response to its question in relation to the Off-Site Habitat Provision area in document AS-017, as the Applicant had stated that some flexibility was needed in terms of the exact requirement for the amount of land needed to achieve the biodiversity net gain off-site, and this is why it was not included within the Order limits. The ExA asked whether this meant that the Applicant is going to need more land than indicated. **Matthew Fox** explained that as the biodiversity net gain (“BNG”) is made up of different elements, the Applicant needs to determine how much land within the Order limits is needed to achieve the mitigation aims as well as BNG. Highlighting that in terms of river areas, as in the S106 Heads of Terms, the Applicant is to confirm to the local planning authority how the BNG for river habitats would be delivered. **Matthew Fox** confirmed that the Applicant has made progress in

identifying how the mitigation is to be secured, that it is outside of the Order limits, and that the Applicant is working with the Rivers Trust. The Applicant will confirm this during the examination process.

- 9.1.10. **Post Hearing Note:** The Applicant notes that one of the first written questions published by the ExA relates to how the section 106 obligations satisfy the above-mentioned tests. The Applicant will provide an update at Deadline 2 in terms of the obligations that remain in the section 106, following discussions with the Councils, and further address the tests for the relevant obligations in response to the appropriate question as necessary. (ExA's Action ISH2-AP21).

10. AGENDA ITEM 8 – STATEMENTS OF COMMON GROUND RELEVANT TO THE DCO

- 10.1.1. **The ExA** highlighted that the Statement of Commonality for the Statements of Common Ground identifies that further discussion is required on the matter of DCO and protective provisions in several of the Statements of Common Ground (“SoCGs”), asking the Applicant to provide an update focusing on just the matters where progress has been made.
- 10.1.2. **Matthew Stocks, WSP**, noted that the SoCGs are all being updated in liaison with the relevant stakeholders with the intention to submit updated SoCGs by Deadline 1. The updates reflect the Rule 6 letter to ensure the required scope is addressed, and to address the submission of the Applicant’s change request. The current exception to this is the SoCG with Historic England which was previously finalised and agreed. Matthew Stocks noted that the Applicant is seeking confirmation from stakeholders as to their position in light of the Applicant’s Proposed Changes Application, and any amendments needed to the SoCG as a result will then be made.
- 10.1.3. The Applicant is also preparing SoCGs with National Grid Electricity System Operator (“NG ESO”) and National Grid Electricity Transmission. The Applicant is seeking to submit an agreed position by Deadline 1, albeit no response has been received from NG ESO to date, so that may be a unilateral position statement.
- 10.1.4. In addition to the Historic England SoCG being finalised, there are currently no matters under discussion with Selby Internal Drainage Board (“IDB”) or East Riding of Yorkshire. Matters continue to be under discussion with all other stakeholders at this time, as will be set out in the SoCGs and summarised in the Statement of Commonality.
- 10.1.5. The Applicant advised in the Preliminary Meeting that an SoCG will not be prepared with the Health and Safety Executive, as neither party considers it to be necessary (as set out in the Applicant’s response to the Rule 6 letter dated 6 January 2023).
- 10.1.6. The Applicant also anticipates preparing an SoCG with Goole and Airmyn IDB following the conclusion of the consultation on the proposed changes, which the Applicant will submit at a subsequent deadline.
- 10.1.7. **Matthew Fox** added in response to **the ExA’s** specific question about the DCO and Protective Provision columns of the table in the Statement of Commonality, that the majority are the National Grid bodies. In the case of Natural England, they have indicated they are happy with all the requirements (apart from Requirement 7, although it is noted that post hearing, they have now confirmed they are also happy with this requirement).
- 10.1.8. The ExA asked about the Environment Agency, and **Matthew Fox** confirmed good progress has been made. **Chris Gaughan** confirmed that the Environment Agency are working with the Applicant on the SoCG, with many areas already agreed.

APPENDIX 1 - JUSTIFICATION FOR SECURING CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN MEASURES VIA COMMITMENTS IN THE REGISTER OF ENVIRONMENTAL ACTIONS AND COMMITMENTS

The Institute of Environmental Management and Assessment (IEMA) Guidance “Environmental Impact Assessment Guide to: Delivering Quality Development” (July 2016) describes an Environmental Management Plan (EMP) as “A document (or set of documents) that sets out the mitigation needed to manage environmental effects associated with a development during the construction ... phases”.

It is considered that the Register of Environmental Actions and Commitments (“REAC”) (AS-092), and other documents included within the Application including the Draft Lighting Strategy (APP-184), Outline Construction Traffic Management Plan (AS-086), Framework Construction Worker Travel Plan (APP-120) and Outline Landscape and Biodiversity Strategy (AS-094) provide a sufficient and proportionate level of detail on the measures to mitigate and manage the environmental effects of the Proposed Scheme and it is therefore not considered that producing an Outline Construction Environmental Management Plan (“CEMP”) is needed in order to secure necessary environmental mitigation or would provide value to the Examination.

The mitigation measures within the REAC that are relevant to the construction of the scheme and to be included in the CEMP are secured via the draft Development Consent Order which includes, within Schedule 2, Requirement 14: Construction Environmental Management Plan, the following requirement:

1. No part of the authorised development must commence (including permitted preliminary works comprising site clearance only), until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority, after consultation with the Environment Agency, and in respect of soil management matters, Natural England.
2. The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the register of environmental actions and commitments.
3. All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

At this stage of the Proposed Scheme, detailed design and construction methodologies are being developed. The contractor responsible for constructing the works would have their own policies and procedures that they would follow when producing their CEMP. It is therefore considered that the level of detail that would be provided in an Outline CEMP at this stage would not be useful as it would be likely to include generic information which would not necessarily reflect what will then be produced by the Main Contractor. However, the detail within the REAC and other supporting documents outlined above, will be used to inform the contractor’s CEMP. It is considered that the commitments in the REAC are sufficiently detailed and precise, to usefully inform the preparation of the CEMP by the contractor, and to ensure required mitigation measures are included within it.

In order to provide further justification for this approach a comparison has been carried out using National Highways' Design Manual for Roads and Bridges (DMRB) Standards for Highways LA120: Environmental Management Plans Appendix A Table A.1 EMP content and structure – First Iteration (design stage) and this is presented in Table 1 below. LA120 is an up-to-date standard which has been used on a number of other Nationally Significant Infrastructure Projects (NSIPs) and represents good industry practice. A comparison has also been carried out with the level of information provided in Keadby 3 Carbon Capture Power Station Framework Construction Environmental Management Plan ("FCEMP") (REP6-003), a recently consented Development Consent Order Application (Requirement 17 of The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 required that a CEMP be submitted and approved, and must be in accordance with the FCEMP, which is a certified document).

Table1 – Comparison between LA120, Drax BECCS documentation and Keadby 3 FCEMP

Content (from LA120 Table A.1)	Included in Drax BECCS REAC	Justification for including / not including in the Drax BECCS REAC	Level of Detail Provided in Keadby FCEMP
1. Introduction & background to project	No	<p>Information included in the ES: Chapter 2 Project and Site Description.</p> <p>It is not considered helpful to duplicate this information.</p>	Information included. This information duplicates information provided elsewhere in the application.
2. Project team roles and responsibilities	Partially	<p>The Main Contractor would identify overall roles and responsibilities in order to implement the mitigation identified through the EIA.</p> <p>Specific roles that would be required in order to deliver the mitigation identified in the ES are included in the REAC including, “a suitably qualified ecologist” [D4, E4, E5, E13]; an “Archaeological Clerk of Works (ACoW)” [H2] and a “landscape architect” [LVIA6].</p> <p>In addition, the Outline Landscape and Biodiversity Strategy (AS-094) includes Section 1.5 “Roles and Responsibilities”.</p>	<p>Overall project team roles and responsibilities are not included.</p> <p>The Framework CEMP details that “The final CEMP will set out all roles and responsibilities...”</p> <p>Indicative roles and responsibilities have been included for waste management.</p> <p>The Framework CEMP also signposts to other documents including their Biodiversity Management and Enhancement Plan.</p>
3. Environmental actions and commitments	Yes	As detailed in the REAC. The format used in the Drax BECCS REAC has been informed by the structure described in LA120.	Included in Section 3.0.
4. Consents and Permits	No	Information included in Other Consents and Licences (APP-035).	Not included in Framework CEMP.

Content (from LA120 Table A.1)	Included in Drax BECCS REAC	Justification for including / not including in the Drax BECCS REAC	Level of Detail Provided in Keadby FCEMP
5. Environmental asset data and as built drawings	N/A		
6. Details of maintenance and EMP monitoring activities	Yes	<p>Monitoring included in the REAC [T2, AQ1, NV3, MW3].</p> <p>Maintenance requirements are included in the REAC [G6, G8, G18, LVIA6, CC1].</p> <p>Monitoring activities are also included in the Framework Construction Worker Travel Plan (FCWTP) (APP-120). Similarly, maintenance activities are also included in the Outline Landscape and Biodiversity Strategy (AS-094) and the Flood Risk Assessment (AS-088).</p>	Yes, with some details to be confirmed in the CEMP.
7. Induction, training and briefing procedures for staff	No	It is considered that the Main Contractor is best placed to produce induction, training and briefing procedures for staff in line with their own management systems procedures.	In section 3.2.1 the Framework CEMP states that the final CEMP will include training requirements.
8. References and Glossary	No	<p>A Glossary (AS-069) has been produced and submitted with the Application.</p> <p>There are no references for the REAC.</p>	Included within the Framework CEMP.
9. Annexes			
Annex A: Constraints Plan	No	Environmental Constraints Plans have been submitted with the Application: Figure 2.1 (APP-059) and Proposed Changes Application Report: Figure 1 – FCA Constraints Plan (AS-046) and Figure 2 – OHL Constraints Plan (AS-047).	Not included in the Framework CEMP.

Content (from LA120 Table A.1)	Included in Drax BECCS REAC	Justification for including / not including in the Drax BECCS REAC	Level of Detail Provided in Keadby FCEMP
<p>Annex B: Relevant management plans.</p> <p>LA120 states that these are “produced at this stage where commitments have been made to produce specific management plans in outline format”.</p>	Yes – where deemed appropriate	<p>In relation to management plans, it should be noted that a “management plan” in a CEMP may be a separate management plan included in an appendix, for example, or equally can be a section of the overall CEMP.</p> <p>The list of standalone management plans that have been identified for the Proposed Scheme (REAC section 1.1.4) are dealt with below.</p>	
	Yes	<p><u>Materials Management Plan</u></p> <p>The requirements for the MMP are included in the REAC at [G3]. The MMP would be produced following the Site Investigation (SI).</p>	Not included.
	No	<p><u>Stakeholder Communication Plan</u> It is considered that the Main Contractor is best placed to produce the Stakeholder Management Plan which would be in line with their procedures for Stakeholder Management.</p>	Not included. Requirement 17 requires the CEMP submitted for approval to include a scheme for notification of significant construction impacts to local residents and to deal with handling complains.
	No	<p><u>Invasive Species Strategy</u></p> <p>To date, no invasive species have been identified in relation to the Proposed Scheme. As such it is not deemed appropriate to produce an Invasive Species Management Plan at this stage.</p>	<p>Standalone plan not included.</p> <p>Details on the management of invasive species are included within Section 3.0 Impact Avoidance and Mitigation Measures Implementation Plan, Table 5: Biodiversity and Nature Conservation.</p>

Content (from LA120 Table A.1)	Included in Drax BECCS REAC	Justification for including / not including in the Drax BECCS REAC	Level of Detail Provided in Keadby FCEMP
	Yes	<p><u>Soils Handling Management Plan</u></p> <p>Measures that would be included in the Soils Handling Management Plan (SHMP) are included in the REAC at GC2.</p> <p>The SHMP would be approved by the Local Planning Authority (LPA) following consultation with Natural England. The SHMP would be informed by the SI.</p>	<p>Framework Soils Resources Plan included in Appendix B which “seeks to guide the appointed contractor and Applicant in relation to the approach that will be implemented during the construction phase for the handling, movement and temporary storage of soils”.</p> <p>Appendix B includes policy and legislative background, baseline information, the requirement to carry out a pre-construction soils survey and some general guidance on the handling and storage of soils during construction. The information provided is largely generic.</p> <p>Soil management plan is required to be in the CEMP submitted for approval, pursuant to Requirement 17.</p>
	Yes	<p><u>Surface Water Management Plan</u></p> <p>Measures that would be included in the Surface Water Management Plan are included in the REAC at [WE8].</p>	<p>Not included.</p> <p>Details on the management of surface water are included within Section 3.0 Impact Avoidance and Mitigation Measures Implementation Plan, Table 8 Water Environment and Flood Risk, and within a Contractor CEMP for works relating to Railway Wharf.</p>

Content (from LA120 Table A.1)	Included in Drax BECCS REAC	Justification for including / not including in the Drax BECCS REAC	Level of Detail Provided in Keadby FCEMP
	Yes	<p><u>Site Waste Management Plan</u></p> <p>Elements that would be included in the SWMP are included in the REAC at [MW3].</p> <p>A SWMP is usually an electronic spreadsheet based system e.g. BRE SMARTWaste Plan, to forecast and monitor construction waste produced. The Main Contractor would therefore implement their own SWMP in line with their procedures.</p>	<p>A Framework SWMP has been included which “provides an outline waste management strategy for the construction phase” and includes information on the waste hierarchy, waste management legislation and policy context, and provides general guidance on the management of waste including identifying typical roles and responsibilities but is largely generic.</p> <p>Keadby Framework CEMP states that a final SWMP would be developed by the appointed construction contractor. The final SWMP is required to be part of the CEMP pursuant to Requirement 17.</p> <p>The Framework SWMP provides general guidance but does not reflect what is likely to be implemented by the contractor.</p>
<p>Annex C: Environmental Method Statements.</p> <p>LA120 states that these should be produced at this stage [design] where commitments have been made to produce specific management plans in outline format, including relevant method statements</p>	Partially	<p>Whilst the REAC does not include Environmental Method Statements, there are various measures within the REAC which require method statements to be produced, including: G5 – in relation to adverse weather and environmental incidents and complaints, WE10 – in relation to mitigation measures to be taken in the event of flooding, and WE12 in relation to works in the vicinity of the IDB watercourses.</p> <p>It is considered that the Main Contractor is best placed to</p>	

Content (from LA120 Table A.1)	Included in Drax BECCS REAC	Justification for including / not including in the Drax BECCS REAC	Level of Detail Provided in Keadby FCEMP
where commitments have been made to do so.		produce Environmental Method Statements for the Proposed Scheme as these will be informed by the REAC and DCO Application supporting documents, developing design and construction methodologies and the Main Contractor's environmental policies and procedures.	

References:

Institute of Environmental Management and Assessment (IEMA) (2016) Guide to Delivering Quality Development. Lincoln, IEMA.

National Highways (2020) Design Manual for Roads and Bridges LA120 Environmental Management Plans Revision 1 [online] available at: [REDACTED] accessed 23/01/2023.