



APPLICANT'S SUMMARY OF ORAL CASE AT ISSUE SPECIFIC HEARING 4 (ISH4)

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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PUBLIC

**WRITTEN SUMMARY OF DRAX POWER LIMITED'S ORAL CASE PUT AT
ISSUE SPECIFIC HEARING 4: DRAFT DEVELOPMENT CONSENT ORDER
24 MARCH 2023**

1. INTRODUCTORY REMARKS

- 1.1 Issue Specific Hearing 4 was held at 10:00am on 24 March 2023, both in person at The Parsonage Hotel & Spa, Escrick, York, YO19 6LF and using the virtual platform of Microsoft Teams.
- 1.2 Issue Specific Hearing 4 took the form of running through the items listed in the agenda published by the Examining Authority ("**The ExA**") on 6 March 2023 (the "**Agenda**"), with respect to the proposed Drax Bioenergy with Carbon Capture and Storage ("**BECCS**") project (the "**Scheme**").

2. AGENDA ITEM 1 – INTRODUCTION OF THE SPEAKING PARTICIPANTS

- 2.1 The ExA: Caroline Jones and Ben Northover.
- 2.2 Drax Power Limited (the "**Applicant**"):
 - 2.2.1 Speaking on behalf of the Applicant: Richard Griffiths (Partner at Pinsent Masons LLP).
 - 2.2.2 Present from the Applicant: Jim Doyle (Planning and Consents Manager) and Chris Summers (Technical Manager – Operations).
 - 2.2.3 The Applicant's consultants and legal advisors: Alexis Coleman (Senior Associate at Pinsent Masons LLP), Matthew Fox (Associate at Pinsent Masons LLP), and Matt Stocks (Associate Director – Planning at WSP).
- 2.3 North Yorkshire County Council ("**NYCC**"): Kelly Dawson (appearing on behalf of both NYCC and SDC) and Michael Reynolds.
- 2.4 Selby District Council ("**SDC**"): Jenny Tyreman.
- 2.5 Environment Agency: Frances Edwards.
- 2.6 National Highways: Paul Bellingham, Simon Jones.
- 2.7 National Grid Carbon Limited: Tom McNamara, BDB Pitmans LLP.
- 2.8 Biofuelwatch: Katy Brown.
- 2.9 Stuart Boothman: Just Transition Wakefield.
- 2.10 James Hewitt: independent.

3. **AGENDA ITEM 2 – PURPOSE OF ISSUE SPECIFIC HEARING 4**

3.1 **The ExA** set out the purpose of Issue Specific Hearing 4 to all parties.

4. **AGENDA ITEM 3 – MATTERS PREVIOUSLY DISCUSSED AT ISSUE SPECIFIC HEARING 2 (ISH2)**

4.1 In accordance with Regulation 14(2) of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010, **the ExA** gave an opportunity for any additional Interested Party (IP) or additional Affected Person (AP), as a result of the Applicant's proposed changes PC-01 and PC-02, to make oral representations on the matters previously discussed at ISH2 on the dDCO.

4.2 No representations were made.

5. **AGENDA ITEM 4 – ARTICLES AND SCHEDULES OF THE DDCO (EXCLUDING SCHEDULES 2, 11, 12 AND 13)**

5.1 **The ExA** asked the Applicant to briefly highlight changes which have been made to the dDCO submitted at Deadline 2 (D2) **[REP2-007]**.

5.2 **Richard Griffiths** explained that the changes made to the dDCO **AS-076**, in the Deadline 2 version, dDCO **REP2-008**, are set out in the Schedule of Changes **[REP2-009]**.

5.3 **Richard Griffiths** outlined the key amendments to dDCO **REP2-008** as follows:

5.3.1 Amendments were made to the definitions in Article 2 for consistency and in response to comments from the ExA at ISH2. Two new definitions have been added, being the "FGD Plant" added to reflect amendments to Requirement 2, and the "outline local employment plan" added due to new Requirement 21.

5.3.2 Amendments were made to Article 10, to align the powers in the Article with the accompanying Schedule 5. At Deadline 4 Article 10(2)(d) will be deleted from the dDCO in agreement with the Councils.

5.3.3 Amendments to Article 18 were made in response to the ExA's comments at ISH2, in order to insert references to s158 of the Planning Act 2008 at sub-paragraph (1) and the compensation provisions in sub-paragraph (5), in both cases to better align with the explanation in the Explanatory Memorandum.

5.3.4 Amendments to Articles 20 and 21, and the accompanying Schedule 8, were made to provide clarity as to where new rights are sought and where powers to extinguish rights on plots only (i.e. plots shaded green on the land plans) are sought. As noted in the Compulsory Acquisition Hearing

(“**CAH**”), the Applicant will add the additional plots from the Drax Power Station Site to Part 2 of Schedule 8 at Deadline 4.

5.3.5 In Article 40 the timeframe for approvals was amended from six to eight weeks in agreement with the Councils.

5.3.6 The Crown Rights article (formerly Article 44) was deleted following confirmation that there is no Crown land. It is noted that the removal of the Crown Land was discussed in the CAH1 and that the Applicant is taking actions to provide confirmation that title has passed to the highway authority and is no longer Crown Land. The Applicant agreed to keep the Crown Land article under review, pending resolution of this issue.

5.3.7 In Schedule 1 (the authorised development), amendments have been made to reflect the Councils becoming one unitary Council. Other amendments have been made to Schedule 1 in response to ExA’s comments at ISH2 in terms of a consistent approach to “including” and “comprising”, and this is also now explained in the Explanatory Memorandum.

5.3.8 In Schedule 1, Work No. 1D(v) and (vi), and Work No. 2(a) and (b) have been amended to include monitoring and metering equipment, which is needed to demonstrate the quality of the carbon to National Grid Carbon Limited. Work No. 2(a) was also amended to include reference to pipelines, to be clear that the works that followed are part of the compound and / or the pipelines.

5.3.9 Work No. 4 was amended to provide greater clarity on the scope of Work No. 4, by restricting the types of works that are carried out within this area on the works plans.

5.3.10 Schedule 6 has been amended to include an additional PRoW that may be temporarily stopped up. The Register of Environmental Actions and Commitments (“**REAC**”) includes a commitment to seek to keep this PRoW open where possible and safe, but that is not possible, this PRoW may need to be temporarily closed.

5.3.11 Schedule 13, certified documents, has been updated to reflect updated and new documents in the Examination.

5.4 **The ExA** asked the Local Authorities whether they were content with the definition of “commence” and **Kelly Dawson**, on behalf of SDC and NYCC, confirmed the Local Authorities were content with this.

5.5 **The ExA** asked the Applicant about Article 6, and whether there was a discrepancy between the benefit of Work No. 1F being given to the Applicant “and” NGESOL, and the Explanatory Memorandum which refers to the benefit being given to “either” the Applicant or NGESOL.

Richard Griffiths agreed to take this action away to ensure both documents are consistent. **Post hearing note:** Amendments have been made to the Explanatory Memorandum at Deadline 4 to make clear the benefit of the specific work numbers could be for either or both the undertaker and the other named party.

5.6 In terms of Article 12, **the ExA** asked the Applicant to consider whether the reference to “temporary stopping up” was accurate, and whether it should instead be “temporary closure”. The ExA referred the Applicant to The Southampton to London Pipeline Development Consent Order 2020. **Richard Griffiths** agreed to make this change, and this is reflected in the draft DCO submitted at Deadline 4.

5.7 **The ExA** referred to Article 16, the authority to survey and investigate land, and asked the Applicant whether, as Article 16 references the payment of compensation, it should be referenced in Article 42. **Richard Griffiths** explained that Article 42 relates to compensation in the context of compulsory acquisition, whereas Article 16 was not seeking to give the Applicant a power to acquire an interest in land, and instead was authorising access to undertake works i.e. surveys. Therefore the Applicant’s view was that Article 16 should not be added to Article 42.

5.8 With respect to Article 40, **the ExA** sought confirmation that the Local Authorities agreed with the 8 week timescale, and **Kelly Dawson** confirmed this.

6. **AGENDA ITEM 5 – SCHEDULE 2 OF THE DDCO – REQUIREMENTS; AND SCHEDULE 11 – PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

6.1 The ExA asked the Applicant to outline the updates made to Schedules 2 and 11.

6.2 **Richard Griffiths** explained that as an overarching comment on Schedule 2, amendments had been made throughout the schedule to reflect the new unitary Council, The North Yorkshire Council. Richard Griffiths noted that further amendments would be made in this respect at Deadline 4, to make clear the unitary Council is referenced using its full correct name, “The North Yorkshire Council” and to reinsert requirements to consult with the highway authority where relevant.

6.3 **Richard Griffiths** explained that amendments were also made to pick up on ExA’s ISH2 comments about securing implementation and ongoing compliance with strategies and plans. He went to also confirm that at Deadline 4, references to consultation with the highways authority would be restored to the relevant Requirements, following discussion with the Councils, to reflect the different functions of the Council, notwithstanding that the functions are within one unitary body.

Requirement 2 (phasing of the authorised development)

- 6.4 **Richard Griffiths** explained that paragraph 2(1) had been amended to expand the number of works covered by the phasing plan. Work Nos. 5, 6 and 8 have not been included as these each represent discrete elements of the Scheme; Work No. 5 being construction laydown (and which is controlled by Requirement 14), Work No. 6 being the habitat provision area (controlled by Requirement 7), and Work No. 8 being the overhead line diversion works which are off-site, on the AIL route to the power station site.
- 6.5 **Richard Griffiths** explained that paragraph 2(2) had been amended to deal with the concern from the Councils in relation to the overlapping of the FGD Plant with the construction of the BECCS plant. The Applicant did not assess the cumulative effect of these two sets of works, and the requirement makes clear that they cannot happen concurrently.
- 6.6 Former paragraph 2(2) was more appropriately dealt with in Requirement 6.
- 6.7 There were no comments on Requirement 2 from any parties.
- Requirement 6 (detailed design approval)
- 6.8 **Richard Griffiths** explained that paragraph 6(2) had been amended to secure the parameters in Schedule 14 (formerly part of Requirement 2).
- 6.9 **The ExA** asked whether the maximum parameters for the absorber columns in Schedule 14 were still required, and **Richard Griffiths** confirmed that flexibility was still needed in this respect, as the design of the columns had not yet been through detailed design.
- 6.10 **The ExA** highlighted that the operative provision in Schedule 14 needed to be updated, and this has been done in the dDCO submitted at Deadline 4.

Requirement 7 (provision of landscape and biodiversity mitigation and enhancement)

- 6.11 **Richard Griffiths** explained that amendments had been made to this requirement so that the Landscape and Biodiversity Strategies to be submitted were linked to the phases approved as part of the phasing plan in Requirement 2 (except for work numbers 5, 6 and 8). The purpose of the amendment was to reduce the potential number of Landscape and Biodiversity Strategies to be submitted for approval. Paragraph 7(2) provides further detail as to what the strategies will contain for clarity and assurance.
- 6.12 **Kelly Dawson** confirmed that whilst the Local Authorities would prefer one strategy to be submitted, the amendments to Requirement 7 are welcomed. **Kelly Dawson** clarified that the Local Authorities' position reflected more a concern from an administrative perspective, rather than any concern that the strategies submitted would not constitute a holistic strategy if submitted in phases or parts.

Requirement 10 (surface water drainage)

- 6.13 **Richard Griffiths** explained that Requirement 10 had been amended to cover only operation, as construction is covered by the Construction Environmental Management Plan ("**CEMP**"). **The ExA** asked whether the surface water drainage strategy being submitted in parts had an impact on the mitigation required under the Habitat Regulations Assessment ("**HRA**"). **Richard Griffiths** confirmed that as the Applicant does detailed design, it will be able to design the drainage strategy to reflect the detail of the Scheme, and that will be done in accordance with requirements of the Register of Environmental Actions and Commitments and any HRA mitigation. The strategy being in parts would not impact HRA outcomes or requirements.

Requirement 11 (flood risk mitigation)

- 6.14 **Richard Griffiths** explained that Requirement 11 had been amended in discussion with the Environment Agency ("**EA**"), and that one further subparagraph would be inserted at Deadline 4, reflecting agreement with the EA. **Frances Edwards** confirmed that the EA is happy with the requirement, as proposed to be amended at Deadline 4.
- 6.15 In response to a question from **the ExA** about whether the requirement would cover any successor bodies to the EA, **Richard Griffiths** confirmed that Article 2(6) ensures that references to bodies captures successor bodies.

Requirement 12 (ground conditions)

- 6.16 **Richard Griffiths** explained that amendments had been made in response to the ExA's first written questions and comments in the Local Authorities' Local Impact Report. **Kelly Dawson** confirmed that the Local Authorities are content with this requirement.

Requirement 13 (archaeology)

- 6.17 **Richard Griffiths** explained that amendments had been made in response to the ExA's first written questions and comments in the Local Authorities' Local Impact Report. **Richard Griffiths** explained that additional work numbers had been added to the requirement, however, there was also provision for the planning authority to agree that a written scheme of investigation is not needed for a work number.

Requirement 14 (construction environmental management plan)

- 6.18 **Richard Griffiths** explained that amendments made to Requirement 14 responded to the Local Authorities' comments on the Local Impact Report, and expanded the permitted preliminary works that cannot be undertaken until the CEMP is approved. **Kelly Dawson** confirmed that the amendments were welcomed by the Local Authorities.

Requirement 15 (construction traffic management plan) & Requirement 16 (construction worker travel plan)

- 6.19 **The ExA** asked the Applicant to explain why Requirements 15 and 16 only relate to Work Nos. 1, 2 and 8. **Richard Griffiths** agreed that both requirements should include reference to Work No. 3, given those works will likely be undertaken in conjunction with Work Nos. 1 and 2. This amendment has been made in the dDCO submitted at Deadline 4. With respect to the remaining Work Nos. **Richard Griffiths** explained that: Work No. 4 relates to works to facilitate construction access which was not envisaged to generate construction traffic; Work No. 5 is construction laydown and is similarly not expected to generate traffic; and Work Nos. 6 and 7 also are only expected to generate low traffic numbers. **The ExA** queried the justification for excluding Work No. 5, given this would involve the movement of heavy duty vehicles, however **Richard Griffiths** clarified that whilst this was correct, the plans secured by Requirements 15 and 16 related to traffic management and the numbers of vehicles associated with Work No. 5 was not such as to warrant the relevant plans being in place to manage them.
- 6.20 **The ExA** asked the Applicant to set out this justification in the Explanatory Memorandum, and the Applicant has done this for Deadline 4. **Post hearing note:** This has been done for Deadline 4.
- 6.21 **Richard Griffiths** also confirmed that at Deadline 4 Requirement 16 would be amended to include National Highways as a consultee.

Requirement 20 (local liaison committee) & Requirement 21 (local employment plan)

- 6.22 **Richard Griffiths** explained that Requirements 20 and 21 had been added to the dDCO as they were removed from the draft section 106 agreement as planning obligations in response to the ExA's comments at ISH2 and in agreement with the Local Authorities. **Richard Griffiths** noted that the Applicant had agreed with the Local Authorities to extend the application of both requirements to decommissioning, and this amendment has been made in the dDCO for Deadline 4.
- 6.23 **Kelly Dawson** confirmed the Local Authorities' agreement to the amendments.
- 6.24 **Stuart Boothman** asked whether local trade unions could be involved in the local employment plan and local liaison committee. **Richard Griffiths** explained that with respect to Requirement 20 (local liaison committee), representatives for that committee would be nominated as required pursuant to the requirement, noting that the local liaison committee was about ensuring Drax was a good neighbour to those living nearby. The Applicant agreed to consider whether there was scope for local trade unions to be included in the outline local employment plan.
- 6.25 **Post hearing note:** The Applicant has a positive and productive working relationship with a number of key Unions who represent a significant number of staff and colleagues within the Drax Group. Drax has engaged and will continue to engage with these Unions as the BECCS project moves from the planning phase through to execution. Unions have been and will continue to be informed of the relevant opportunities available in connection with the Proposed Scheme and have joined supplier events we have run already. Drax has also been in dialogue with the Unions and the Contractors regarding National Agreement for the Engineering Construction Industry ("NAECI") conditions for the project delivery phase. Drax has undertaken a number of supplier days and will continue to have further events which allow suppliers to engage with Drax and other contractors to better understand the packages of work which will be procured as part of the construction and operation of the BECCS Scheme. In light of all of this, the Applicant does not propose to amend Requirement 21 or the local employment plan in respect of this point.
- 6.26 In terms of the Local Liaison Committee, this is envisaged to be a committee to explain to, in the main, Local Residents and Parish Councils, the progress regarding the development and any upcoming issues to be aware of. Drax already has a regular liaison group which has been operating successfully for a number of years.
- 6.27 **The ExA** asked the Applicant whether it had further thoughts in relation to the point raised previously by the ExA in relation to a requirement similar to the one imposed on the Keadby 3 scheme, restricting commencement of the scheme until certain consents for the transport and storage of captured carbon were in place. **Richard Griffiths**

confirmed that the Applicant's position remains as set out in section 2.1 of the Schedule of Changes **[REP2-009]**, reiterating that the Applicant does not agree that a similar requirement to Keadby 3 should be placed on any Order made for the Proposed Scheme. The points set out in section 2.1 of the Schedule of Changes included that the Proposed Scheme can be distinguished from Keadby 3, given it was an application for a new gas fired power station, which would be emitting CO₂ without the transport and storage of carbon being in place. This is in contrast to the biomass generating stations at Drax which are already in operation and not the subject of the Application before the ExA. **Richard Griffiths** explained that whilst the transport and storage for the Proposed Scheme is going through the consenting process, Drax could be undertaking early works for the Proposed Scheme, to ensure it is operating at the earliest possible date, to assist with meeting Net Zero. The Applicant's position is that a similar requirement to Keadby 3 is not justified.

- 6.28 With respect to Schedule 11 of the dDCO, **Richard Griffiths** explained that amendments to this schedule were to change timescales agreed with the Local Authorities and to allow partial discharge of requirements as discussed at ISH2. **Richard Griffiths** confirmed that the Applicant had agreed with the Local Authorities to extend the timeframes in paragraphs 3(2) and (3) from 10 and 15 working days to 21 working days in both cases. **Kelly Dawson** confirmed the Local Authorities' agreement with the Schedule, once amended.

7. **AGENDA ITEM 6 – SCHEDULE 12 OF THE DDCO – PROTECTIVE PROVISIONS**

- 7.1 **Richard Griffiths** provided an update on protective provisions as follows:

7.1.1 **National Grid Electricity Transmission plc** – protective provisions (“PPs”) have been agreed on 15 March 2023. The dDCO for Deadline 4 will reflect the agreed PPs. The Applicant confirmed that it would seek to update the NGET SoCG to reflect this agreement.

7.1.2 **National Grid Carbon Limited** – PPs continue to be negotiated. The Applicant anticipates reaching agreement during the course of the Examination and will then include the agreed PPs in Schedule 12. This position was agreed by **Tom McNamara**.

7.1.3 **National Highways** – PPs continue to be negotiated. The progress on the PPs was dependent upon some discussions with NH on various points, which have now been clarified, and PPs are expected to be agreed during the course of the Examination and inserted into Schedule 12. This position was agreed by **Paul Bellingham**, who noted that the dDCO is not currently acceptable without PPs included.

7.1.4 Network Rail – Parties have agreed a form of Deed of Undertaking, which the parties will shortly be signing. The parties agree that given the limited likelihood of interaction with Network Rail assets or property, and with the Deed of Undertaking in place, protective provisions are not required. These will be removed from the Deadline 4 dDCO. The Applicant referred to a letter from Network Rail, published on the PINS website on 23 March 2023, which confirmed this position.

7.1.5 Yorkshire Water – PPs are already included at Part 1 of Schedule 12 of the dDCO. The Applicant is in contact with Yorkshire Water and will respond at Deadline 4 in terms of their 5 areas of concern – this is set out in the Applicant's Summary of Case at the CAH1. The Applicant awaits comments from Yorkshire Water on whether they require bespoke PPs.

8. AGENDA ITEM 7 - SCHEDULE 13 OF THE DDCO – DOCUMENTS AND PLANS TO BE CERTIFIED

8.1 The ExA asked whether certified documents should be updated to reflect the new unitary Council, The North Yorkshire Council. **Richard Griffiths** confirmed that if the Applicant would be updating documents or submitting new documents from 1 April 2023 (when the new Unitary Council takes effect) it would update the Local Authorities, however, it would not otherwise update certified documents as this would be a large job and Article 2(6) of the dDCO in any event covers successor bodies where the body referred to in the dDCO or certified document has been succeeded by a new body.

8.2 The ExA asked if the Special Category Land Plan needed to be included as a certified document. **Richard Griffiths** explained that the Open Space relates to two plots, which are identified on the Land Plans as being needed only for temporary possession. As a result, section 132 of the Planning Act 2008 is not triggered and so there are no articles in the dDCO that refer or relate to the Special Category Land Plan.

8.3 The ExA asked if the Biodiversity Net Gain (“**BNG**”) assessment needed to be a certified document. **Richard Griffiths** explained that this was not necessary as the update to the BNG assessment and the delivery of the BNG was delivered via the section 106 agreement, which defined the BNG assessment.

8.4 Stuart Boothman noted that the Outline Local Employment Plan in Schedule 14 was missing details. **Richard Griffiths** explained that this was because the last version of the dDCO submitted to the Examination was at Deadline 2 and the information about the Outline Local Employment Plan was not available until that document was submitted at Deadline 3. This has been updated in the dDCO at Deadline 4.

9. AGENDA ITEM 8 – CONSENTS, LICENCES AND OTHER AGREEMENTS

- 9.1 **The ExA** asked for an update on the Environmental Permit Variation application and the submission of the information to the EA as part of the staged process. **Jim Doyle** confirmed that Drax envisaged submitting the outstanding documents to the EA by the end of March 2023 as part of the staged application.
- 9.2 In terms of the District Level Licence, at the hearing **Richard Griffiths** confirmed that the stage 1 has now been signed by Natural England. **Post hearing note:** The Applicant understood the position as reported in the hearing to be correct, however, it has transpired that there are some administrative arrangements still being worked out with Natural England before they will sign off the licence. These arrangements are being settled with Natural England at the moment, and it is hoped the licence will be signed shortly.
- 9.3 In terms of the Modification Application to NGESO, **Richard Griffiths** noted that there was no update in this respect, but undertook to seek an approximate timeframe from NGESO.
- 9.4 **The ExA** asked the Applicant to update the Other Consents document, Rows 10-14, to give an indication of when the consents listed would ordinarily be obtained during scheme development. The Applicant agreed to do this for Deadline 5.
- 9.5 **The ExA** asked the Applicant to explain the amendments to the draft section 106 agreement. **Richard Griffiths** explained that amendments had been made to remove the local employment scheme as a planning obligation. As a result the draft agreement contains one schedule, relating to ecological off site improvement works (including in relation to river habitat). As explained at ISH3, paragraphs 1 and 2 contain an obligation to submit an update to the BNG assessment to take into account the detailed design of the Scheme. Paragraph 2 deals with when the Applicant will provide the updated BNG assessment, and requires the Applicant to agree with the Local Authority the appropriate timing for the update to take place, having regard to the detailed design and Landscape and Biodiversity Strategies. Paragraph 3 requires the Applicant to demonstrate 10% BNG value. The provisions also cover the situation in which any of the BNG is on land not in Drax's ownership, such as the off-site rivers BNG, and how it will be demonstrated to the Local Authority that that has been secured, including the ongoing management and monitoring of the habitat. Paragraph 5 relates to the timing of delivery of the BNG, providing this must be done prior to the end of the construction period and maintained for 30 years. With respect to the Off-Site Habitat Provision Area, this must be delivered prior to commencement of the Scheme, and also maintained for 30 years.
- 9.6 **Richard Griffiths** recorded that the Applicant was in discussions with the Local Authorities on the drafting of the agreement, and parties were hopeful of reaching agreement before the end of the Examination. **Richard Griffiths** noted that in respect of the off-site rivers BNG, without prejudice to discussions, there had been a call with the Calder and Colne

Rivers Trust (CCRT) earlier in the week in relation to how best to secure the BNG. The Applicant is about to submit a proposal to the Local Authorities in this respect as to how it will be secured. **Richard Griffiths** noted that the current draft section 106 agreement does already secure the off-site BNG, and it was envisaged by the Applicant that it would demonstrate satisfaction of the obligation with contracts between the Applicant and landowner with respect to the BNG. **Richard Griffiths** noted that whilst there may be separate unilateral undertaking with the landowner of the rivers BNG and the host authority (Calderdale Council), this wasn't needed for security of delivery in this Examination, given the obligations in the main section 106 agreement. **Richard Griffiths** noted that a similar approach had been taken on the Cory Riverside DCO.

9.7 **Richard Griffiths** confirmed that the strategy was to agree the wording of the agreement with the Local Authorities, and then present this to EA and Natural England for their agreement, which would be captured in the SoCGs.

9.8 **Kelly Dawson** confirmed the wording of the Schedule to the draft s106 agreement was agreed, with some refinement being discussed around the triggers. **Kelly Dawson** confirmed that the Local Authorities are comfortable that delivery of the off site rivers BNG is capable of being demonstrated to its satisfaction, via a requirement in the s106 agreement.

10. **AGENDA ITEM 9 – STATEMENTS OF COMMON GROUND RELEVANT TO THE DCO**

10.1 **Matt Stocks** provided an update on Statements of Common Ground (“SoCGs”) as follows –

10.1.1 Discussions have continued with all stakeholders.

10.1.2 At Deadline 3, the Applicant submitted two updated SoCGs with SDC and NYCC and East Riding of Yorkshire Council (“**ERYC**”). It was noted that the Applicant did seek to submit an updated version with National Highways after Deadline 3, and this will be resubmitted at Deadline 4.

10.1.3 National Highways and the Applicant have reached agreement on all matters other than Protective Provisions.

10.1.4 The updated SoCG with SDC and NYCC confirms agreement has now been reached in respect of Water Environment, Materials and Waste, and Other Consents and Licenses.

10.1.5 The updated SoCG with ERYC adds confirmation that agreement has been reached in respect of Planning Policy and Other Consents and Licenses.

10.1.6 Matters remain agreed with Historic England, Selby IDB, and Goole and Airmyn IDB, and therefore an updated SoCG was

not submitted at Deadline 3. The SoCG with Historic England is finalised and signed. The Applicant will endeavour to submit a signed SoCG with the IDBs as soon as possible, hopefully at Deadline 5.

10.1.7 In respect of the EA, the Applicant is in continued positive discussions, and has recently reached agreement in relation to Water matters. The Applicant is updating the current SoCG to submit at either Deadline 4 or 5.

10.1.8 In respect of Natural England, due to availabilities, the Applicant has been unable to hold an update meeting with Natural England to enable an agreed approach to the updating of the SoCG. An updated SoCG was therefore unable to be submitted at Deadline 3. The Applicant is in proactive dialogue and a meeting is planned with Natural England after Deadline 4.

10.1.9 In general, good progress being made across the board.

11. **AGENDA ITEM 10 – REVIEW OF ISSUES AND ACTIONS ARISING**

11.1 **The ExA** clarified the actions arising from the hearing as follows:

11.1.1 Article 6 – **the Applicant** to consider wording in the dDCO and Explanatory Memorandum to ensure they are aligned - for Deadline 4. **The Explanatory Memorandum has been amended at Deadline 4. (Action Ref. ISH4-AP1)**

11.1.2 Article 12 – **the Applicant** to consider whether the dDCO can provide for temporary stopping up – for Deadline 4. **The Applicant has made amendments to the dDCO at Deadline 4 in this respect. (Action Ref. ISH4-AP2)**

11.1.3 Schedule 14 – **the Applicant** to update the operative provision to Requirement 6 – for Deadline 4. **The Applicant has made this amendment at Deadline 4. (Action Ref. ISH4-AP3)**

11.1.4 Requirements 15 & 16 – **the Applicant** to include Work No. 3 and include an explanation in the Explanatory Memorandum as to why other work numbers are not included – for Deadline 4. **The Explanatory Memorandum has been amended at Deadline 4. (Action Ref. ISH4-AP4)**

11.1.5 **The Local Authorities** to confirm comments on which work numbers should be included in Requirements 15 and 16 – for Deadline 4.

11.1.6 Requirement 21 – **the Applicant** to confirm whether local trade unions are to be included in the outline local employment plan – for Deadline 4. **The Applicant has set out its position in this note. (Action Ref. ISH4-AP6)**

11.1.7 Other consents & licences document – **the Applicant** to provide anticipated timescales for rows 10-14, and confirm ModApp timescale with NGESO – for Deadline 5. (**Action Ref. ISH4-AP7**)

12. **AGENDA ITEM 11 – ANY OTHER BUSINESS**

12.1 **James Hewitt** made comments about the Climate Change Committee's recent report and unabated biomass; funding allocated in the Budget for CCS and nuclear; Drax's recent press release; and querying why the draft DCO did not include controls on the credentials of woody biomass used by the power station.

12.2 **Richard Griffiths** noted responded as follows:

12.2.1 With respect to the Climate Change Committee ("**CCC**") report, the Applicant has set out its position as to what it envisages is a likely scenario post-2027 when subsidies expire, which is that Drax's biomass generating station would keep operating. There is no legal position from the Government that would prevent this, nor any indication of a change in the law intended to shut biomass generating stations. In any event, the CCC report makes clear there is a role for biomass with carbon capture applied – the point made by James Hewitt refers to unabated biomass.

12.2.2 In terms of funding, announcements are awaited (and expected at the end of March 2023) from Government in terms of its Track 1 and 2 carbon capture clusters and projects, and allocation of Government funding in this respect. Regardless of these announcements, the Applicant would still be seeking consent for the Scheme, in order to demonstrate the consent is in place and that the Scheme can be delivered when funding is allocated.

12.2.3 With to the recent Drax press release, the Applicant confirmed that the Front End Engineering Design ("**FEED**") process is still ongoing and Drax is investing in that process and the current DCO process.

12.2.4 In terms of controls on woody biomass credentials, the Applicant has previously been clear that the Application is for carbon capture, not a new generating station, and therefore it is not appropriate for the DCO to include controls with respect to inputs to the existing generating station.

12.3 In response to comments from **Katy Brown**, Jim Doyle provided further detail around the FEED process that Drax continues to invest in for the Scheme. He noted that Drax has already invested significant amounts of money into the process, and there is no pause on investment into the FEED package – **Jim Doyle** confirmed that this process would be

completed. **Jim Doyle** further confirmed that Drax absolutely does envisage progressing the project with Government support. Jim Doyle explained that the FEED process provides Drax with a more detailed view of the information needed to construct the Scheme, and is being undertaken by consultants working for Drax. This process will give Drax a better outline of what the Scheme will look like and is a fairly significant body of work.

12.4 **Richard Griffiths** reiterated that investment is continuing through the FEED process. He noted that other elements may be held back slightly until further clarifications on the business model, which is not surprising given the Scheme is currently privately funded. Some elements might be slowed down, however, the Application continues to be progressed, as does the drive to continue to meet Net Zero. The Funding Statement demonstrates funding for compulsory acquisition, and in terms of deliverability the ExA has more than enough comfort in this respect, based on the detail of the Funding Statement.

12.5 **The ExA** noted that the Examination would continue unless the Application is withdrawn.