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All Interested Parties and Statutory
Parties

Your Ref:

Our Ref: EN010120

Date: 26 April 2023

Dear Sir/ Madam,

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

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

Procedural Decision following request to make changes to the application

We are writing to inform you of the Procedural Decision made by the Examining Authority (ExA) following the change request made by the Applicant dated 21 April 2023 (Examination Library references [\[AS-100 to AS-126\]](#)). All documentation referred to herein has been published under the 'Documents' tab on the [project webpage](#)¹ of the National Infrastructure Planning website.

Section 2.2 of the Second Change Application Report (SCAR) [\[AS-126\]](#) provides a summary of the proposed change. This formal change request follows on from the Applicant's letter of 13 April 2023 [\[REP5-021\]](#) which identified the nature of the proposed change to the Development Consent Order (DCO) application and advised of the Applicant's intention to request the change described in the letter to be accepted into the Examination.

Following acceptance of Work No. 8 into the Examination on 13 December 2022 [\[PD-009\]](#), further technical work and ongoing discussions with the owners of the affected overhead lines has enabled a refinement of the proposed design works to facilitate Abnormal Indivisible Loads to the site. The effect to Work No. 8 set out in the SCAR includes reducing third party land take within the Order Limits, the proposed compulsory acquisition of rights over plots depicted on the Land Plans which were previously proposed to be

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

subject to powers of extinguishment of existing rights only, and a small amount of additional temporary land to undertake and maintain relocated electrical and telecommunications infrastructure.

The ExA has reviewed the information provided and assessed the Applicant's request in line with paragraphs 109 to 115 of the DCLG Guidance '[Planning Act 2008: Examination of Applications for Development Consent](#)'² and the [Planning Inspectorate's Advice Note 16](#)³, and has reached the following conclusions.

ExA's reasoning and decision

The ExA agrees with the Applicant that the proposed change is not so material that it constitutes a materially different project and the proposed change is not considered to lead to the project being different in nature or substance to that which was originally applied for in May 2022.

Given the proposed 'upgrade' in powers sought over some plots, the ExA agrees with the Applicant that the proposed change would invoke the requirements of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations).

Section 3 of the of the SCAR details the ongoing consultation that the Applicant has been undertaking with the affected land interests, including those interests in the plots affected that will be subject to the CA Regulations. In its letter of 14 April 2023 [[PD-014](#)], the ExA confirmed that the consultation was appropriate and proportionate given the specific targeted nature of the proposed change and that further non-statutory consultation was not required on this basis.

Table 5.1 of the SCAR did not identify any change in or new significant effects for any topics assessed in the Environmental Statement and an improved position for a number of topics. On this basis, together with the small-scale nature of the proposed change in comparison to the Order Land as a whole, the ExA considers it can be accepted into the Examination in accordance with Regulation 6 of the CA Regulations. In reaching this decision the ExA is satisfied that it complies with the requirements of Regulation 5 of the CA Regulations.

In the Applicant's cover letter dated 21 April 2023 [[AS-123](#)], it states that the Regulation 9a Notice and Regulation 9b Certificate will be submitted by 12 June 2023. On this basis, the ExA is satisfied that there is sufficient time within the Examination for the proposed change to be properly and fairly examined including the opportunity for written submissions and any oral representations to be made at any hearings that are required, along with the procedural requirements of the CA Regulations. Having accepted the proposed change into the Examination, and on the basis that the consent of all those with an interest in the land has not been obtained, the Applicant will need to submit full copies of the documents required by Regulation 5 of the CA Regulations. The ExA notes that consolidated updates

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance-final_for_publication.pdf

³<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-16/>

to the Funding Statement and Statement of Reasons were not submitted with the change request application and would request that these are submitted by Deadline 6 which is **9 May 2023**. The Applicant will also need to notify the Affected Persons in accordance with the requirements of Regulations 7, 8 and 9. The ExA requests that this is carried out in accordance with the timescales contained within the Applicant's letter of 13 April 2023 which states that the first CA Regulations notices would arrive or be published on **4 May 2023**.

Next steps

It is now the Applicant's responsibility to publicise the proposed change in accordance with the CA Regulations. The Applicant must advise the Case Team of its proposed schedule as soon as possible, so that an appropriate form for making Relevant Representations about the proposed provision for the compulsory acquisition of additional rights over land can be made available on the project webpage of the National Infrastructure Planning website. Upon completion of the Relevant Representation period, we will issue a revised Examination Timetable, which will include the deadline for Written Representations to be submitted and any necessary hearings.

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

Yours faithfully

Caroline Jones

Caroline Jones
Lead Member of the Examining Authority

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