



## Drax Bioenergy with Carbon Capture and Storage (BECCS) Project – EN010120

### Section 51 advice regarding draft application documents submitted by Drax Power Limited

On 4 February 2022, Drax Power Limited submitted the following draft documents for review by the Planning Inspectorate as part of its Pre-application Service<sup>1</sup>:

1. Draft Development Consent Order
2. Draft Explanatory Memorandum
3. Draft Works Plans

The advice recorded in the table comprising this document relates solely to matters raised upon the Planning Inspectorate's review of the draft application documents, and not the merits of the proposal. The advice is limited by the time available for consideration and is raised without prejudice to the acceptance or otherwise of the eventual application.

Draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
1.	General	Some use of 'comprising', some use of 'including'. Is this an inconsistency?
2.	General	Is there a need for an Article to address Electronic Communication? There is precedent for this in other Development Consent Orders (DCO). Should it be included within Part 1?

<sup>1</sup> See <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>



<b>Draft Development Consent Order</b>		
<b>Ref No.</b>	<b>Article/ Requirement/ Schedule</b>	<b>Comment/Question</b>
3.	General	There is an absence of Requirements relating to protected species, fire protection, the control of noise during construction and operation, piling and penetrative foundation design, waste management, restoration of land for construction and combined heat and power which might often be found within generating station DCOs. The Applicant may wish to review whether any of these may be required in this case.
4.	Article 26	The heading before Article 26 could refer to the 1965 Act as this has already been defined (and would be consistent with the heading before Article 24).
5.	Schedule 1	'... extension of a generating station, with a gross electrical output capacity of over 50 megawatts'. Gross output capacity is normally quoted 'of up to'. As this is an extension, as presented, could this indicate that there is no upper limit? The Applicant may need to confirm that this does not override the limit on the existing consent.
6.	Requirement 8	Requirement 8 does not include enhancement. The expectation would be that Nationally Significant Infrastructure Projects (NSIP) provide enhancement even if there is no current legislative/ policy requirement to do so.

<b>Explanatory Memorandum</b>		
<b>Ref No.</b>	<b>Article/ Requirement/ Schedule</b>	<b>Comment/Question</b>
7.	1.10	Four units run on biomass. Are the remaining two units coal fired?



Explanatory Memorandum		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
8.	1.17.1 – 1.17.6	These are summaries of each respective Work No. rather than the full detail.
9.	1.17.1 Work No. 1C	Are the works extending the existing generating station boilers – is capacity increasing? Why do the boilers need extending otherwise?
10.	1.19	What are the implications of the 2 options in terms of the DCO? The DCO addresses this through Work No. 2.
11.	3.6ff	Section 115(1)(a) ‘Development consent may be granted for development which is development for which development consent is required’. Paragraphs 3.8 and 3.9 do not appear to provide greater clarity that carbon capture as an extension is covered by the Planning Act 2008 (PA2008).
12.	3.9	Where is it specified that ‘generating station’ has the same meaning under the PA2008 as in Part 1 of the Electricity Act 1989? Assuming that the meaning also applies to the PA2008, the key phrase of the definition would appear to be ‘for a purpose directly related to the generation of electricity...’.
13.	3.12 – 3.15	Extension also covers ‘for a purpose directly related to the generation of electricity...’. Why is ‘the definition of ‘extension’ [is] not intended to be exhaustive; it only ‘includes’ the activity which is described.
14.	3.14	This appears somewhat contrived. Certainly not ‘therefore clear’ that the word ‘Extension’ is intended to be interpreted more widely. Nevertheless, is carbon capture a purpose directly related to the generation of ‘electricity’?
15.	4	Could greater reference be made to where model provisions have been followed or conversely where precedent has greater application and why?
16.	4.3.7	‘In addition, the Land Plans show the land over which temporary possession may be taken and land that is excluded from both the Order itself and the compulsory acquisition powers in the Order’. Please explain why it is excluded from the Order?



Explanatory Memorandum		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
17.	4.4 (sub-paragraph (2))	Is there precedence for this?
18.	4.5	Sub-paragraphs (3) to (7) are standard although some of the drafting is not particularly concise. Part 1 does not include an Article addressing Electronic Communications which has been included in recent DCOs. Would it be appropriate here?
19.	4.14	While precedent for most of the provisions can be found in other Orders, paragraph 4.15 would benefit from an explanation as to why those provisions are appropriate in the circumstances of the current DCO.
20.	4.15	No justification is provided for the inclusion of the provision in this Article including at Article 8 (1)(f) although 4.18 may be suggesting the reasoning for this.
21.	4.22	First mention of decommission. Should decommission be addressed more widely?
22.	4.25	Article 12 does not include a notice period or requirement to advertise unlike similar provisions. Does the Applicant wish to consider this?
23.	4.27	Article 14 is a model provision but why is it required in this case?
24.	4.29	Article 16 is a model provision but why is it required in this case?
25.	4.40	Article 21 is based on model provisions but departs from it and precedents are provided. However, the reason why the departure from the model provisions in this case is not explained.
26.	4.62/ 4.63	As an observation, Articles 34 (felling of lopping of trees etc.) and 35 (protective works to buildings) are included under Part 6 (Operations) whereas in other DCOs they are often included under Part 4 (Supplemental Powers).



Explanatory Memorandum		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
27.	4.74	What is the basis of Article 44? Is it a model provision? Why is it needed and why has the time period of 15 years been included?
28.	5.2.2 (Work No. 2)	At what stage will a decision be made in respect of Work No. 2A or 2B?
29.	5.3	This states that Work No. 1 consents the extension to the generating station, not the generating station itself which is already consented and operational and not the subject of the application. For that reason, it states that there is no restriction on overall output capacity on the generating station. Would this allow the output of the generating station to increase beyond what is already permitted? Isn't output capacity normally restricted?
30.	5.4	Work No. 1 is drafted so as to be non-specific as to technology and configuration of the plant. The need for flexibility is acknowledged – is this degree of flexibility reasonable?
31.	5.5.2	Maximum parameters have been provided. What about minimum, particularly for stack heights?
32.	5.33 (Schedule 3)	This could make reference to Article 8.
33.	Schedules 3 – 9	Noted that no detail provided for comment.



Works Plans		
Ref No.	Plan ref	Comment/Question
34.	General	The presentation of the Works Plans as a single overlay followed by each Work No. on a separate plan is very helpful in presentation terms. However, it does emphasise how broad the parameters have been drawn for each Work No. Will these be narrowed down prior to submission of the application, during Pre-examination, Examination or Post-decision (subject to approval)?