Department for Business, Energy & Industrial Strategy

**Department for Business, Energy & Industrial Strategy**

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**Our Ref**: EN010091

4 October 2019

Dear Mr Doyle

**PLANNING ACT 2008**

**APPLICATION FOR THE DRAX POWER (GENERATING STATIONS) ORDER**

## 1. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to advise you that consideration has been given to the report dated 4 July 2019 of the Examining Authority ("the ExA"), a Panel comprising Richard Allen (Lead Member) and Menaka Sahai (Panel Member), which conducted an Examination into the application submitted on 29 May 2018 ("the Application") by Drax Power Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Drax Power Station Re-Powering Project ("the Development").

1.2 The Application was accepted for Examination on 26 June 2018. The Examination began on 4 October 2018 and was completed on 4 April 2019. A number of changes were made to the Application during the Examination which did not materially or significantly alter the application proposals. The details of these changes were made available to interested parties and examined by the ExA.

1.3 The Order, as applied for, would grant development consent for the construction and operation of two gas-fired generating units ("Unit X" and "Unit Y" as designated by the Applicant) each with an electrical generating capacity of up to 1,800MW and two battery storage generating units situated within and adjacent to the boundary of the existing Drax Power Station near Selby in North Yorkshire. The Order would also provide for related and necessary infrastructure. The Development would comprise:

- Work No 1 – an electricity generating station (Unit X) fuelled by natural gas and with a gross electrical output capacity of up to 1,800MW including up to two gas turbines, one turbine hall, a new main pipe rack, modifications to the existing steam turbine, generating plant and turbine hall building, a new underground gas pipeline, and associated works (ground preparation, lighting, roadways and car parking, drainage and waste management, and landscaping);

- Work No 2 – an electricity generating station (Unit Y) fuelled by natural gas and with a gross electrical output capacity of up to 1,800MW including up to two gas turbines, one turbine hall, a new main pipe rack, modifications to the existing steam turbine, generating plant and turbine hall building, a new underground gas pipeline, and associated works (ground preparation, lighting, roadways and car parking, drainage and waste management, and landscaping);

- Work No 3 – up to two battery storage facilities including a structure protecting the battery energy storage cells;

- Work No 4 – new Gas Insulated Switchgear ("GIS") banking buildings;

- Work No 5 – a Gas Receiving Facility compound;

- Work No 6 – an Above Ground Installation including creation of a permanent access from Rusholme Lane, creation of a permanent access into the field to the south of Dickon Field Drain, and creation of a culvert on Dickon Field Drain;

- Work No 7 – an underground gas pipeline connection, approximately 3km in length and up to 600 millimetres (mm) nominal diameter, together with telemetry cabling;

- Work No 8 – underground electrical connections (up to 400 kilovolt (kV)) between the new GIS banking buildings and the existing National Grid substation busbars;

- Work No 9 – temporary construction laydown areas including two means of access, and car parking;

- Work No 10 – Carbon Capture and Storage ("CCS") readiness reserve space and diversions for public rights of way;

- Work No 11 – retained and enhanced landscaping and biodiversity enhancement measures;

- Work No 12 – decommissioning and demolition of sludge lagoons and construction of replacement sludge lagoons, bund walls, underground pipework, valves and sluices and access roads;

- Work No 13 – removal of an existing 132kV overhead line and removal of two 132kV pylons and foundations;

- Work No 14 – construction of a temporary passing place on Rusholme Lane; and

- Associated development in connection with and in addition to work nos. 1–14 but only within the Order Limits and insofar as it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

1.4 In addition, the Applicant sought the compulsory acquisition of land, rights over land and the temporary possession of land in order to ensure the Development could proceed to construction and operation.

1.5 Published alongside this letter on the Planning Inspectorate's website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in Chapters 3 - 10 of the ExA's Report, and the ExA's summary of conclusions and recommendation is at Chapter 11.

## 2. Summary of the ExA's Report and Recommendation

2.1 The ExA assessed and tested a range of issues during the Examination, which are set out in the ExA's Report under the following broad headings:

- Legal and Policy context, including consideration of the relevant National Policy Statements, European, National and Local Law and policy (Chapter 3);
- Planning issues arising from the Application and during Examination (Chapter 4) which includes consideration of the Principle of the Proposed Development and Conformity with National Policy Statements; Climate Change Impacts; Carbon Capture Storage Readiness; Combined Heat and Power Readiness; Traffic and Transport; Air Quality; Noise and Vibration; Historic Environment; Biodiversity; Landscape and Visual Amenity; Flooding and Water; Waste Management; Ground Conditions and Contamination; Socio-Economics; Major Accidents and Disaster Prevention; Statutory Nuisance and Human Health; Consideration of Alternatives; and Cumulative and Combined Effects;
- Findings and Conclusions in relation to the Habitats Regulations Assessment (Chapter 6);

- Conclusions on the case for Development Consent (Chapter 7);
- Alternative Recommended DCO for Consenting Unit X Only (Chapter 8);
- Compulsory Acquisition and Related Matters (Chapter 9), and
- Draft Development Consent Order and Related Matters (Chapter 10).

2.2 For the reasons set out in the Summary of Findings and Conclusions (Chapter 11) of the ExA's Report, the ExA recommended that consent for the Development should be withheld.

## 3. Summary of the Secretary of State's Decision

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make, with minor modifications, an Order granting development consent for the proposals in the Application. This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

## 4. Secretary of State's Consideration of the Application

4.1 The Secretary of State has considered the ExA's Report and all other material considerations. The Secretary of State's consideration of the ExA's Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA Report (in the form "[ER X.X.X]").

4.2 The Secretary of State has had regard to the Local Impact Report ("LIR") submitted jointly by North Yorkshire County Council and Selby District Council [ER 3.10] as the relevant local authorities for the area of the proposed Development and the Development Plan for the area of the proposed Development [ER 3.11] which cites a number of relevant North Yorkshire County Council and Selby District Council policies. The Secretary of State has also had regard to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4.3 The Secretary of State notes 323 relevant representations were made by statutory authorities, non-statutory authorities and members of the public. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. The Secretary of State has considered the findings, conclusions and recommendations of the ExA as set out in the ExA's Report in reaching her own conclusion on the Application. The reasons for the Secretary of State's decision are set out in the following paragraphs.

**Secretary of State's consideration of the ExA's findings and conclusions in relation to the planning issues**

**The Principle of the Proposed Development and Conformity with National Policy Statements**

4.4 The Secretary of State notes that this subject formed the overriding principal issue in the Examination [ER 5.2.1]. The ExA's view was that there were two key relevant issues. Firstly, whether the need for the Development was a matter before the Secretary of State and secondly, if so, the individual contribution that the Development would make to meeting identified need [ER 5.2.4]. The ExA concluded that EN-1 draws a distinction between the need for energy nationally significant infrastructure projects ("NSIPs") in general and the need for any particular development and that the former did not axiomatically support the latter [ER 5.2.21]. The ExA therefore determined that it was necessary to examine the individual contribution of the Development towards meeting need against the three overarching policy objectives underpinning the Overarching National Policy Statement for Energy (EN-1), namely security of energy supply, energy affordability and decarbonisation [ER 5.2.25], and that, in doing so, it was appropriate to take into account evidence of changes in energy generation since the publication of EN-1 in 2011 [ER 5.2.23].

4.5 The ExA's report goes on to conclude that it has not been demonstrated by the Applicant that the Development meets an identified need for gas generation capacity when assessed against these high-level objectives. The ExA's conclusion is based mainly on an assessment that the greenhouse gas emissions ("GHGs") from the operational facility would increase substantially when compared with a baseline scenario in which the existing plant was not re-powered (see paragraphs 4.21 – 4.28 below). The ExA found that, in view of this substantial increase in GHGs, the Development would conflict with the decarbonisation objective in the NPS whilst making a neutral contribution to security of supply and affordability in view of the evidence it considered regarding changes in energy generation since the publication of EN-1.

4.6 The Secretary of State has carefully considered the findings on these matters set out within the ExA's Report [ER 5.2.1-74]. She notes that section104(3) of the 2008 Act sets out that decisions on NSIPs where a national policy statement has effect must be taken in accordance with the relevant national policy statement except where she is satisfied that doing so would lead to a breach of the UK's international obligations (section 104(4)), lead to the Secretary of State being in breach of any duty imposed on her by or under any enactment (section104(5), be unlawful by virtue of any enactment (section 104(6)), or where she is satisfied that the adverse effects of a development outweighs its benefits (the last at section 104(7) of the Act).

4.7 She also notes that the ExA's findings on these matters led it to conclude that the Development would not be in accordance with the relevant National Policy Statements for the purposes of section104(3) of the 2008 Act [ER 7.3.6] and would undermine the Government's commitment to cut GHG emissions as set out in the Climate Change Act 2008 ("the CCA"). Furthermore, when considering the planning balance for the purposes of section104(7) of the 2008 Act, the ExA gave no positive weight to the contribution of the Development towards meeting identified need and

gave considerable negative weight in the planning balance to both the adverse effects of the Development's GHG emissions on climate change (see paragraphs 4.21 – 4.28 below) and the perceived conflict with the NPSs' overarching decarbonisation objective.

4.8 The Planning Act 2008 together with the National Policy Statements set out a process for decision-makers to follow in considering applications for NSIPs. In the first instance, the decision-maker needs to consider whether the proposed NSIP is in accordance with the relevant NPS(s).

4.9 The Secretary of State takes the view that the relevant National Policy Statements are clear in setting out the policies which apply for this purpose. Paragraph 3.1.1 of EN-1 states that: *"[T]he UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions"*. Further, paragraph 3.1.3 sets out that: *"[T]he IPC [the decision-taker] should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this part."*

4.10 Paragraph 3.6.1 of EN-1 states: *"…..Fossil fuel power stations play a vital role in providing reliable electricity supplies……They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy……".* In addition, paragraph 3.6.8 concludes*…"….it is clear that there must be some fossil fuel generating capacity to provide back-up for when generation from intermittent renewable generating capacity is low and to help with the transition to low carbon electricity generation. It is important that such fossil fuel generating capacity should become low carbon, through development of CCS, in line with carbon reduction targets. Therefore, there is a need for [carbon capture ready] fossil fuel generating stations……."*

4.11 Finally, paragraph 4.1.2 of EN-1 states that, *"Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in part 3 of the NPS….the [decision-maker] should start with a presumption in favour of granting consent to applications for Energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused."*

4.12 In light of the provisions set out above, the Secretary of State considers that the proposed Development – a gas-fired generating station which would be carbon capture ready (with directly linked battery storage) – is a type of infrastructure that is covered by EN-1 and by the National Policy Statement for Fossil Fuel Electricity Generation Infrastructure (EN-2) and as such the presumption in favour of granting consent that is set out in paragraph 4.1.2 of EN-1 should apply.

4.13 The Secretary of State has considered the assessment that the ExA has undertaken to determine whether the Development would meet an identified need for gas generation capacity by reference to the high-level objectives of security of supply, affordability and decarbonisation. However, the Secretary of State is of the view that

the NPSs clearly set out the specific planning policies which the Government believes both respect the principles of sustainable development and are capable of facilitating, for the foreseeable future, the consenting of energy infrastructure on the scale and of the kinds necessary to help us maintain, safe, secure, affordable and increasingly low carbon supplies of energy. The Secretary of State's view is that these policies, including the presumption in favour of granting consent for energy NSIPs in EN-1 have already taken account of the need to achieve security of supply, affordability and decarbonisation at a strategic level. The NPSs do not, therefore, require decision makers to go beyond the specific and relevant policies they contain to assess individual applications against those high level objectives and there was no need, therefore, for the ExA to make a judgement on those issues when assessing whether this specific application was in accordance with the NPS. The ExA's views on these matters do not, therefore, remove the need to apply the general presumption in favour of Carbon Capture Ready ("CCR") fossil fuel generation which already assumes a positive contribution from such infrastructure.

4.14 Despite concluding that the presumption in favour of fossil fuel generation applies to the proposed Development, the Secretary of State must still consider whether any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. As indicated above, the ExA identified that there would be significant adverse effects from the Development in respect of GHG emissions which gave rise to a perceived conflict with the decarbonisation objective of EN-1. The Secretary of State has considered the ExA's arguments on GHG emissions.

4.15 However, in line with paragraph 4.13 above, the Development's impacts on decarbonisation must, in the first instance, be assessed by reference to the specific policies on carbon emissions from energy NSIPs which are contained in the relevant NPSs and which reflect the appropriate role of the planning system in delivering wider climate change objectives and meeting the emissions reduction targets contained in the CCA. In this regard, the Secretary of State has noted that section 2.2 of EN-1 explains how climate change and the UK's GHG emissions reduction targets contained in the CCA have been taken into account in preparing the suite of Energy NPSs. She has also noted the policy contained in paragraph 5.2.2 of EN-1 which sets out (underlining added):

> *"CO2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). However, given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies aimed at decarbonising electricity generation such as EU ETS (see Section 2.2 above), Government has determined that CO2 emissions are not reasons to prohibit the consenting of projects which use these technologies or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR and, for coal, CCS requirements). Any ES* [Environmental Statement] *on air emissions will include an assessment of CO2 emissions, but the policies set out in Section 2, including the EU ETS, apply to these emissions. The [decision-maker] does not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets and this section does not address CO2 emissions or any Emissions Performance Standard that may apply to plant."*

4.16 This policy is also reflected in paragraph 2.5.2 of EN-2. It is the Secretary of State's view, therefore, that, while the significant adverse impact of the proposed Development on the amount of greenhouse gases that will be emitted to atmosphere is acknowledged, the policy set out in the relevant NPSs makes clear that this is not a matter that that should displace the presumption in favour of granting consent.

4.17 In light of this, the Secretary of State considers that the Development's adverse carbon impacts do not lead to the conclusion that the Development is not in accordance with the relevant NPSs or that they would be inconsistent with the CCA. The Secretary of State notes the need to consider these impacts within the overall planning balance to determine whether the exception test set out in section104(7) of the 2008 Act applies in this case. The ExA considers that the Development will have significant adverse impacts in terms of GHG emissions which the Secretary of State accepts may weigh against it in the balance. However, the Secretary of State does not consider that the ExA was correct to find that these impacts, and the perceived conflict with NPS policy which they were found to give rise to, should carry determinative weight in the overall planning balance once the benefits of the project are properly considered, including in particular its contribution towards meeting need as explained below.

4.18 The ExA's views on the need for the Development and how this is considered in the planning balance have also been scrutinised by the Secretary of State. As set out above, paragraphs 3.1.3 of EN-1, and the presumption in favour of the Development already assume a general need for CCR fossil fuel generation. Furthermore, paragraph 3.1.4 of EN-1 states: *"the [decision maker] should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent".* The ExA recommends that no weight should be given to the Development's contribution towards meeting this need within the overall planning balance. This is predicated on its view that EN-1 draws a distinction between the need for energy NSIPs in general and the need for any particular proposed development. The Secretary of State disagrees with this approach. The Secretary of State considers that applications for development consent for energy NSIPs for which a need has been identified by the NPS should be assessed on the basis that they will contribute towards meeting that need and that this contribution should be given significant weight.

4.19 The Secretary of State notes that paragraph 3.2.3 of EN-1 states that *"the weight which is attributed to considerations of need in any given case should be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure"*. The Secretary of State has, therefore, considered whether, in light of the ExA's findings, there is any reason why she should not attribute substantial weight to the Development's contribution to meeting the identified need for new CCR fossil fuel generation infrastructure in this case. In particular, she has considered the ExA's views on the changes in energy generation since the EN-1 was published in 2011, and the implications of current models and projections of future demand for gas-fired electricity generation and the evidence regarding the pipeline of consented gas-fired infrastructure which the ExA considered to be relevant [ER 5.2.40-43].

4.20 The Secretary of State's consideration of the ExA's position is that (i) whilst a number of other schemes may have planning consent, there is no guarantee that these will reach completion; (ii) paragraph 3.3.18 of EN-1 sets out that the Updated Energy and Emissions Projections (on which the ExA partially relies on to reach its conclusions on current levels of need) do not *"reflect a desired or preferred outcome for the Government in relation to the need for additional generating or the types of electricity required*"; and (iii) paragraph 3.1.2 of EN-1 explains that *"[i]t is for industry to propose new energy infrastructure projects within the strategic framework set by Government. The Government does not consider it appropriate for planning policy to set target for or limits on different technologies"*. These points are reinforced elsewhere in EN-1, for example in paragraphs 2.2.4 and 2.2.19, which explain that the planning system will complement other commercial and market based mechanisms and rules, incentives and signals set by Government to deliver the types of infrastructure that are needed in the places where it is acceptable in planning terms – decisions on which consented energy schemes to build will therefore also be driven by these factors. In light of this, the Secretary of State does not accept that the ExA's findings on these issues should diminish the weight to be attributed to the Development's contribution towards meeting the identified need for CCR gas fired generation within the overall planning balance. The Secretary of State considers that this matter should be given substantial weight in accordance with paragraph 3.1.4 of EN-1. The Secretary of State's overall conclusions on the planning balance are set out at paragraphs 6.1 – 6.14 below.

**Climate Change Impacts**

4.21 The ExA's Report notes that EN-1 references the reduction in carbon emissions set out in the Climate Change Act 2008 where a target of an at least 80% reduction in greenhouse gas emissions by 2050 is set out. The Report also notes the aims of the Paris Agreement signed in 2016 which seeks to limit the rise in global temperature to less than $2^0$C above pre-industrial levels.

4.22 The Application sets out the level of greenhouse gas emissions from the existing coal-fired units 5 and 6 at the Drax Power Station while noting the Government's intention to phase out unabated coal-fired electricity generation by 2025 and limit emissions to 450g CO2/kWh. The ExA notes that this level is much lower than the level of the current coal-fire units which is 840g CO2/kWh.

4.23 There was considerable discussion during the Examination about what constituted a baseline for measuring changes in GHG emissions resulting from the Development with the Applicant and other parties each submitting different scenarios. The Applicant considered that the baseline would follow one of two scenarios post-2025:

- the coal-fired generation at Units 5 and 6 would continue at the proposed limit of 450g CO2/kWh; or

- if Units 5 and 6 stopped generation and were decommissioned, their output would be replaced by other generation operating at similar emission levels.

4.24 The Applicant also sets out that once Units 5 and 6 have been replaced by the proposed Development, the new Units would generate at an emissions level of 380g CO2/kWh which would mean a reduction of 55% in the emissions intensity from previous levels. After 2025, when any coal-fired generation would need to meet the 450g CO2/kWh limit, the reduction in emissions intensity would be 16% lower.

4.25 As far as the net effect is concerned, the Applicant sets out that from 2020 to 2050 over the life of the Development, there would be a 90% increase in GHG emissions when measured against the baseline scenario but this would be set against a 173% rise in generating capacity as measured against the generating capacity of the existing coal-fired units.

4.26 The ExA noted that there were wide divergences of view on how the baseline should be assessed and tested these during the Examination. ClientEarth, BiofuelWatch and an individual questioned whether the coal-fired units at Drax could continue operating after 2025 because they would not be able to meet the Government's proposed emissions limit of 450g CO2/kWh. In response, the Applicant stated that there were a number of ways in which the 450g CO2/kWh limit could be met economically after 2025 (including the use of biomass co-firing and carbon capture and storage technology).

4.27 As far as assumptions about the emissions intensity of any generating capacity are concerned, in its overall conclusion, the ExA found that the total increase in GHG emissions of more than 90% against the baseline figure would represent a significant adverse impact and thus weighed against the Development being granted consent. The ExA concludes, therefore, that the Development would conflict with the decarbonisation objective of the NPSs for Energy and would undermine the Government's commitment to reduce GHG emissions as set out in the Climate Change Act 2008. The Secretary of State does not agree with this conclusion for the reasons set out at paragraphs 4.14 - 4.17 above. The effect of this matter within the overall planning balance is considered further at paragraphs 6.6 – 6.7 below,

4.28 The Secretary of State notes that the ExA also concluded that there was no evidence that granting consent for the Development would itself lead the Secretary of State to be in breach of her statutory duties under the CCA or any other enactment [ER 7.3.8]. The Secretary of State agrees with the ExA's conclusion in this matter. The implications of the recent amendment to the CCA are considered further at paragraphs 5.6 – 5.9 below.

**Carbon Capture Readiness**

4.29 The Secretary of State notes that, as set out in NPSs EN-1 and EN-2, all commercial scale fossil fuel generating stations with a gross generating capacity of 300MW or more have to be 'Carbon Capture Ready' ("CCR"). Applicants are required to demonstrate that their proposed development complies with guidance issued by the Secretary of State in November 2009[1] or any successor to it. In the case of the

[1] Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

Development, the proposed fossil-fuelled generating capacity is up to a maximum of 3,600MW and so falls under the provisions of relevant legislation and the guidance.

4.30 In order to ensure carbon capture readiness, BEIS guidance sets out a number of tests which must be met to indicate that readiness:

- that sufficient space is available in which to site any carbon capture infrastructure which might be necessary at some future point;
- that retro-fitting carbon capture equipment to an existing plant is technically feasible;
- that a geological storage site would be available for the CO2 produced;
- that the transportation of any produced CO2 is technically feasible; and
- that the economic feasibility of the retro-fitting, transport and storage of the CO2 within the lifetime of the plant in question has been demonstrated.

4.31 The Applicant submitted a 'Carbon Capture Readiness Statement' with the Application which was revised as it progressed through Examination in light of comments from the ExA and other parties (principally, the Environment Agency). The Statement considered the carbon capture provisions in the Application against the tests set out in EN-1.

4.32 The ExA considered these matters during the Examination (including taking into account the views of the Environment Agency) and concluded that the proposed Development accords with all legislation and policy requirements. The Secretary of State agrees with the ExA's conclusion in this matter.

4.33 Another issue in relation to carbon capture provision (raised by ClientEarth during the Examination of the Application) was whether any Order that might be made for the Development should contain a requirement requiring the Applicant to incorporate carbon capture and storage mechanisms into the project infrastructure to be used during its operation so that the climate change impacts of the project could be mitigated.

4.34 In response, the Applicant stated that carbon capture storage infrastructure was not part of the Application and, in any case, the relevant technology was so far untested and the cost of fitting it had not been modelled. The Applicant also stated that the UK Government did not intend to roll out carbon capture and storage until the 2030s once appropriate testing had been undertaken. Finally, the Applicant stated that the Development was fully in accordance with the relevant legislation and guidance in being carbon capture ready.

4.35 Despite the Applicant's arguments, the ExA did consider whether it was possible for the Secretary of State to include a condition in any consent that would compel the Development to be carbon capture ready. In response, the Applicant

stated that the inclusion of any such condition would make the consent unbankable and would, thus, render the project undeliverable.

4.36 The ExA's conclusion was that the uncertainties over carbon capture storage technology meant a requirement requiring such technology was not reasonable. The ExA did not, therefore, recommend to the Secretary of State that such a requirement should be included in any development consent order that might be made. The ExA has, however, included two requirements in the Order which ensure that space for carbon capture readiness is provided for in the Development and that that space cannot be disposed of without the consent of the Secretary of State. The Applicant is also required to provide a monitoring report to the Secretary of State setting out how it is meeting the requirement to maintain space for carbon capture infrastructure. The Secretary of State accepts the ExA's arguments in this matter and considers that this approach is the correct one as it is in accord with the policy requirements set out in the NPSs.

**Combined Heat and Power ("CHP")**

4.37 Any application to develop a thermal generating station under the Act must either include proposals for CHP facilities or contain evidence that the possibilities for CHP have been fully explored to inform the Secretary of State's consideration of the application.

4.38 The Applicant provided a CHP Statement as part of its application documentation which concluded that the provision of heat and steam to local users was not currently viable. The Development would, however, be designed as CHP-ready although any decision to install the necessary infrastructure would depend on a local demand (for heat and steam) being identified and be subject to economic feasibility.

4.39 The ExA considered CHP during the Examination in light of concerns expressed by the Environment Agency about the adequacy of the space provision for CHP set aside by the Applicant. The Environment Agency also indicated that CHP would be considered as part of the concurrent application to vary the existing Environmental Permit for the Drax Power Station.

4.40 The Applicant included a provision in the Order to require that a review of CHP opportunities is undertaken at regular intervals and provided to the Environment Agency. However, during the Examination, the Applicant submitted a revised version of the Order which removed the CHP provision on the basis that it overlapped with the Environment Agency's Environmental Permitting scheme.

4.41 The ExA disagreed with the Applicant's analysis and has re-instated the CHP provision into the version of the Order that it has submitted to the Secretary of State with its Report. The ExA considered that there were no foreseeable barriers to CHP readiness with regards to space allocation and technical feasibility and concluded that the Development would, therefore, meet all policy and legal requirements. The Secretary of State agrees with the ExA's conclusion in this matter and has decided to include the CHP provision in the Order.

## Traffic and Transport

4.42 The ExA notes that the NPS EN1 states that the consideration of transport impacts is an essential part of the Government's policy objectives for sustainable development.

4.43 There would be considerable traffic movements generated by the construction of the Development (which would be spread over a long period of time – around seven years in total – if both gas-fired units were built). There would be a number of peaks for traffic movements during this timescale. The Applicant stated that all construction materials would be moved to the site by road, following prescribed routes along motorway or main roads directly to the construction site. Any abnormal indivisible loads would be transported to the site by road from their landing point at Goole Docks.

4.44 The Applicant considered that there would be likely significant negative effects from traffic movements during construction but that these would not be long-term or permanent and that mitigation would be put in place to limit them (largely through a Construction Traffic Management Plan which would need to be agreed with the local authority).

4.45 There was considerable discussion of transport issues during the Examination which resulted in some amendments to the transport routes and mitigation measures.

4.46 The Canal and River Trust and the Commercial Boat Operators Association stated that they wanted to promote the use of the River Ouse and the Drax Jetty for construction traffic, but the Applicant indicated that there were significant problems in making the jetty suitable for this activity.

4.47 In conclusion, the ExA acknowledged that there would be impacts from construction traffic that might mean disruption to local people driving in the vicinity of the Development. However, the mitigation measures to be put in place would minimise the level of disruption. On this basis, the ExA considered that the impact of transport and traffic changes would be neutral in the planning balance. The Secretary of State agrees with this assessment.

## Air Quality

4.48 The NPSs set out that the Secretary of State should consider air quality issues in taking a decision on development consent applications for energy infrastructure. The Applicant provided an air quality assessment that looked at the potential impacts of emissions from the Development during both its construction (mainly from dust and exhaust emissions) and operation (stack emissions of a range of chemical compounds including carbon monoxide (CO), sulphur dioxide (SO2) and hydrogen chloride (HCl) gases). The Applicant concluded that the impacts of emissions would not be significant for either human or environmental receptors.

4.49 The issue was considered during the Examination when there was an exchange about the optimal height of the emissions stacks to ensure the least possible impact on air quality during the operation of the Development. The Applicant signed a number of Statements of Common Ground with several interested parties – the Environment

Agency, Natural England, North Yorkshire County Council and Selby District Council – which set out agreements on air quality issues.

4.50 The ExA concluded [ER 5.7.24] that there would be no significant negative impacts arising from the construction and the operation of the Development on sensitive air quality receptors. The ExA notes that emissions from the Development would be controlled by the Environmental Permitting regime administered by the Environment Agency. The ExA also finds that the Development would be in accord with the relevant NPSs in this regard. Finally, the ExA notes that the Order contains a number of mitigation measures to limit air quality impacts. The ExA's overall conclusion is that the impact of the issue in the planning balance is neutral in the planning balance. The Secretary of State agrees with the ExA's conclusion.

**Noise and Vibration**

4.51 The Applicant assessed that there was potential for varying degrees of impacts from noise and vibration during construction – though this would not be significant for residential properties providing suitable mitigation measures were put in place – and operation, where the potential for significant effects was identified. However, in the case of the latter, acoustic attenuators would mitigate the impacts.

4.52 There were no concerns about noise and vibration impacts raised by Interested Parties during the Examination – with local councils and regulators all content with what was being proposed.

4.53 Having considered the evidence, the ExA concluded that there would be no significant noise and vibration effects arising from the construction, operation or decommissioning of the Development. In addition, the ExA found that the Development would accord with all relevant legislative and policy requirements and suitable mitigation was secured by Requirements in the Order. The effect on the planning balance would, therefore, be neutral. The Secretary of State agrees with this conclusion.

**Historic Environment**

4.54 The Applicant identified a large number of heritage assets within 10km of the Development, including 19 scheduled monuments, 11 Grade I listed buildings, 17 Grade II* listed buildings and 440 Grade II listed buildings. The Applicant indicated that there was potential for negative impacts from construction of the Development on scheduled monuments in its vicinity although these were not anticipated to be significant. There was also potential for negative impacts on the settings of heritage assets due to the visibility of the emissions stacks from the Drax Augustinian Priory.

4.55 The potential impacts of the Development on heritage assets was considered at Examination. Concerns were expressed that the Development would introduce a discordant view into an established industrial landscape and would conflict with the currently symmetrical layout of the Drax Power Station, despite attempts to mitigate its impacts. There was a discussion about whether the Drax Power Station might be considered for listed building status: it was noted that while such listing had been considered, no decision had been taken on its status.

4.56 The Secretary of State notes that there were no outstanding issues on the Historic Environment at the close of Examination and the ExA was satisfied, therefore, that there would be no significant negative effects from the construction and operation of the Development. The ExA drew attention to the provision in the Order that established a mechanism to investigate and record archaeological remains if discovered during construction. In its overall conclusion, the ExA considers that the Development meets relevant policy requirements in the NPSs. The effect of the impacts on the historic environment is deemed to be neutral in the planning balance. The Secretary of State agrees with the ExA's assessment in this matter.

**Biodiversity**

4.57 The Applicant identified a number of impacts on biodiversity arising from the construction and operation of the Development including the temporary and permanent loss of some important sites within the Drax Power Station site. It also identified a number of designated biodiversity sites within 15km of the Development. The Applicant contends that mitigation measures set out in the Order would provide suitable safeguards for a range of creatures including bats and water voles.

4.58 The Examination considered concerns about the impacts of the Development on biodiversity including whether Biodiversity Net Gain had been demonstrated in accordance with the requirement in the National Planning Policy Framework ("NPPF"). During the Examination, this idea was comprehensively tested with the Applicant and several of the Interested Parties. In response, the Applicant made amendments to the Construction Environmental Management Plan to provide enhanced mitigation for certain biodiversity receptors. In addition, a number of Statements of Common Ground were signed by the Applicant and those Interested Parties with an interest in biodiversity – North Yorkshire County Council, Selby District Council, Natural England and the Yorkshire Wildlife Trust which look to improve the Biodiversity Net Gain.

4.59 The ExA concludes that with mitigation measures put in place, there would be no significant adverse effects on biodiversity and because there is a Biodiversity Net Gain, the effect in the planning balance is positive. The Secretary of State agrees with this conclusion. A Habitats Regulations Assessment that considers the impact of the Development on sites designated under the EU Habitats Directive is published alongside this decision. The conclusions of the Assessment are outlined in paragraphs 5.22 – 5.36 below.

**Landscape and Visual Amenity**

4.60 The NPSs indicate that nearly all nationally significant energy infrastructure projects will have effects on the landscape and that those effects may extend over a considerable distance. The Secretary of State should, therefore, judge whether the adverse impact of any project on the landscape would be so damaging that it is not offset by the benefits (including need) of the project. It is, however, possible to mitigate those impacts in certain situations. The NPSs also consider the impact of projects on open spaces and green infrastructure.

4.61 The Applicant provided a considerable amount of material in its application documents that assessed the landscape and visual impacts of the Development, set out the factors that influenced its design and layout and set out the impacts of the Development during construction and operation. The Applicant's assessment was that there would be a significant effect on a range of local landscape features and local receptors within 3km of the Development. The significant impacts would not be mitigated by measures such as planting to screen the Development.

4.62 The effect of the Development on landscape character was one of the key issues considered during the Examination with North Yorkshire County Council and Selby District Council showing a strong interest. (North Yorkshire County Council maintained an objection to this aspect of the Development through the Examination.) There was considerable disagreement during the Examination between the Applicant and the two Councils about the level of mitigation that could reasonable be put in place to minimise visual and landscape impacts.

4.63 The ExA sought throughout the Examination to find areas of agreement between the parties on this issue, particularly in relation to the Off-site Mitigation Strategy. North Yorkshire County Council provided a revised Off-Site Mitigation Strategy which prioritised eight sites within a 3km radius of the Drax Power Station that it stated would be deliverable within five years with a project cost of £3.1 million. The Applicant did not accept the revised Strategy. It considered it was not justified and this matter was still unresolved between the parties at the end of the Examination.

4.64 In conclusion, the ExA agrees that there will be significant impacts from the Development on landscape and visual amenity despite attempts to mitigate them. The ExA challenges North Yorkshire County Council's position on mitigation and the need for community funding. It also indicates that the Applicant could have been more active in a stewardship role given the prominence of the Drax Power Station and the Development in the local area. However, the overall conclusion is that all policy requirements are satisfied but that there will be a net negative impact although the ExA says this carries only minimal weight in the planning balance because of the supportive comments on visual impacts arising from major energy infrastructure in the NPSs. The Secretary of State concurs with this assessment.

**Flooding and Water [Quality]**

4.65 The Applicant identifies the need to consider flood risk at all stages of the planning process and to direct development away from those areas which are at the highest risk of flooding. In the case of the Development, the Applicant considers that there is a risk of flooding but concludes that there would not be any significant negative effects on flooding and water quality.

4.66 During the Examination, the ExA probed both the Applicant and other relevant bodies (the Environment Agency, North Yorkshire County Council and Selby District Council) about flooding and water quality issues. The Environment Agency confirmed that a full assessment under the provisions of the Water Framework Directive was not needed. Statements of Common Ground were signed between the Applicant, the Environment Agency and the two Councils agreeing that there would be no significant

negative effect on flooding, hydromorphology or groundwater and there were no outstanding issues to be resolved in this matter.

4.67 The ExA concluded that the Development would have no significant effects in respect of flooding, flood defences and pollution of ground and surface water and that the effect on the planning balance is neutral. The Secretary of State agrees with that position.

**Waste Management**

4.68 The Applicant considered the generation and disposal of waste material from the construction of the Development and concluded that there would be no significant effects.

4.69 The Examination considered the issues, noting there was general agreement with the Applicant's Assessment.

4.70 The ExA concluded that the Development would accord with all relevant policies and legislation with mitigation secured in the Order and the effect in the planning balance was neutral. The Secretary of State agrees with this assessment.

**Ground Conditions and Contamination**

4.71 The Applicant identified the potential for contaminant releases into the environment – soil, surface water and ground water. However suitable mitigation measures would be put in place in accordance with an agreed Construction Environmental Management Plan which would result in no likely significant effects.

4.72 There were no concerns raised by Interested Parties about the Applicant's assessment during Examination.

4.73 The ExA concluded that all legislative and policy requirements had been met and considered the effect in the planning balance was neutral. The Secretary of State agrees with this assessment.

**Socio-Economics and Public Rights of Way**

4.74 The ExA states [ER 5.15.12] that the Development would not have any significant effects on socio-economic matters or on Public Rights of Way. The ExA does conclude [ER 5.5.14] that there would be disruption to agricultural practices during construction but that this would not be damaging – with mitigation being secured by Requirements in the Order. The ExA concludes that there would be employment generation as a result of the Development and concludes that the net effect on the planning balance is positive. The Secretary of State agrees with this conclusion.

**Major Accidents and Disaster Prevention**

4.75 The ExA concluded [ER 5.16.6] that the Development would accord with all relevant legislative and policy requirements and that accident and disaster mitigation

matters are thoroughly provided for. The ExA concludes that the effect in the planning balance is neutral. The Secretary of State agrees with the ExA's analysis.

**Statutory Nuisance and Human Health**

4.76 The ExA concluded [ER 5.17.6] that the Development would have no significant adverse impacts on nuisance or human health, with adequate provision made in the Order. The ExA judged that the effect in the planning balance was neutral. The Secretary of State agrees with that analysis.

**Consideration of Alternatives**

4.77 The ExA concluded [ER 5.18.11] that alternative siting options for the proposed generating plant had been considered by the Applicant in line with the requirements of the NPSs and the Environmental Impact Assessment Regulations. In addition, the ExA noted that the Development would re-use an existing site for energy generation leading to a positive effect in the planning balance. The Secretary of State also notes that some of the existing infrastructure at the Drax Power Station would also be re-used and agrees with the ExA's conclusion on this matter.

**Cumulative and Combined Effects**

4.78 The ExA concluded [ER 5.19.8] that while there would be impacts from the Development, particularly in respect of landscape and visual matters, there were not likely to be any significant cumulative effects and the impact in the planning balance was, therefore, neutral. The Secretary of State agrees with the ExA's conclusion.

**Other Matters**

**The Planning Act 2008: Battery Storage**

5.1 The ExA considered whether the Battery Storage Units that are included in the Application should be classed as NSIPs as defined in the 2008 Act (for which development consent is required) or whether they constituted associated development, again, as defined in the 2008 Act, which may be included in an order granting development consent [ER 3.2.1 – 3.2.12]. The Applicant's position was that they were classified as NSIPs but the ExA concluded that because sections 14 and 15 of the Act had not been amended to refer specifically to battery storage as a form of generating station, this classification represented a policy position rather than a statement of law. However, the ExA also concluded that the Battery Storage Units met the test for associated development which was capable of being included in the Order.

5.2 It is the Government's view that Battery Storage Facilities constitute a form of "generating station" within the meaning of the legislation and, therefore, they can currently qualify as NSIPs if they meet the criteria set out in sections 14 and 15 of the Act. It is not correct to say that the Government's position to treat Battery Storage Facilities as NSIPs is simply a matter of policy. The Secretary of State, therefore, disagrees with the way in which the ExA has characterised the Government's position

and concludes that the Battery Storage Facilities should be categorised as NSIPs in this case.

5.3 The Application is made on the basis that the Development includes up to four individual generating stations (Unit X and Unit Y and the two related Battery Storage Units). The ExA concluded that the Battery Storage Units would, in fact be reliant on Units X and Y and would be incapable of independent operation [ER 3.2.9]. It is arguable, therefore, that each of the Battery Storage Units in fact constitutes an integral part of Units X and Y respectively. However, the Secretary of State does not consider it is necessary to resolve this matter in this case given that each of the prospective generating stations exceeds the capacity thresholds necessary to be considered an NSIP in its own right. In future, similar projects may need to consider this issue to determine how Battery Storage Facilities which do not independently meet the NSIP thresholds should be categorised within application for development consent under the Act.

5.4 The Secretary of State also takes issue with the ExA's conclusion [ER 3.2.11] that, were she to conclude that the Battery Storage Units are NSIPs, then this part of the Application should be considered against section105 of the 2008 Act because none of the NPSs has effect in relation to battery storage developments.

5.5 The Secretary of State's analysis of the 2008 Act's provisions in relation to this matter is that the Application should be treated as a whole and determined under section 104 (Decisions in cases where national policy statement has effect). This section, and section 105 (Decisions in case where no national policy statement has effect) are mutually exclusive and it would not be correct to determine different parts of the Application under different provisions. In any event, the Secretary of State does not consider that determining the whole application under section 104 has a material impact on the overall outcome in this case. Section 104(2)(d) of the 2008 Act enables the Secretary of State to give consideration to any important and relevant matters appropriate to this aspect of the application. In this regard, the Secretary of State agrees with the ExA that the planning impacts and environmental effects of the Development including battery storage have been assessed and, therefore, its acceptability can be determined on the strength of the ExA's Report [ER 3.2.12]. The Secretary of State further notes that, while there is no National Policy Statement which explicitly covers battery storage projects, the Overarching National Policy Statement for Energy (EN-1) does consider that the storage of energy will, in general terms, play an important role in the United Kingdom`s energy mix. This position is reinforced in the 'Smart Systems and Flexibility Plan' published by BEIS and OFGEM in July 2017. In this case the Battery Storage Facilities would support Unit X and Unit Y in providing fast and flexible electricity export and other ancillary services. Therefore, the Secretary of State's conclusions regarding the need for the Development set out at paragraph 4.20 above are unaltered.

**The Climate Change Act 2008 (2050 Target Amendment) Order 2019: "Net Zero"**

5.6 As noted above, the policies contained in the NPSs reflect wider UK decarbonisation objectives arising from the legally binding targets set out in the Climate Change Act 2008 ("the CCA") which, as originally enacted, required an at least 80% reduction in the UK's GHGs emissions by 2050 when measured against the 1990

baseline for such emissions. On 26 June 2019, the Climate Change Act 2008 (2050 Target Amendment) Order 2019 was made (SI 2019 No.1056), coming into force the following day. This amended the CCA by replacing the 80% target with 100%.

5.7 The Secretary of State considers that the amendment to the CCA, which sets a new legally binding target of an at least 100% reduction in GHG emissions against the 1990 benchmark ("Net Zero"), is a matter which is both important and relevant to the decision on whether to grant consent for the Development and that regard should be had to it when determining the Application. The new target post-dates the NPSs and, while there is a reference in the ExA's Report to Net Zero, the ExA does not deal with its implications due to the timing of the amendment to the CCA [ER 3.4.2].

5.8 The Secretary of State notes with regard to the amendment to the CCA that it does not alter the policy set out in the National Policy Statements which still form the basis for decision making under the Act. Section 2.2 of EN-1 explains how climate change and the UK's GHG emissions targets contained in the CCA have been taken into account in preparing the suite of Energy NPSs. As paragraph 2.2.6 of EN-1 makes clear, the relevant NPSs were drafted considering a variety of illustrative pathways , including some in which "*electricity generation would need to be virtually [greenhouse gas] emission-free, given that we would expect some emissions from industrial and agricultural processes, transport and waste to persist."* The policies contained in the relevant NPSs regarding the treatment of GHG emissions from energy infrastructure continue to have full effect.

5.9 The move to Net Zero is not in itself incompatible with the existing policy in that there are a range of potential pathways that will bring about a minimum 100% reduction in the UK's emissions. While the relevant NPSs do not preclude the granting of consent for developments which may give rise to emissions of GHGs provided that they comply with any relevant NPS policies or requirements which support decarbonisation of energy infrastructure (such as CCR requirements), potential pathways may rely in future on other infrastructure or mechanisms outside the planning regime offset or limit those emissions to help achieve Net Zero. Therefore, the Secretary of State does not consider that Net Zero currently justifies determining the application otherwise than in accordance with the relevant NPSs or attributing the Development's negative GHG emissions impacts any greater weight in the planning balance. In addition, like the ExA, the Secretary of State does not consider there to be any evidence that granting consent for the Development would in itself result in a direct breach of the duties enshrined in the CCA, given the scope of the targets contained in the CCA which apply across many different sectors of the economy. This remains the case following the move to Net Zero and therefore she does not consider that the exception in section 104(5) of the 2008 Act should apply in this case.

**Compulsory Acquisition**

5.10 The Secretary of State notes the ExA's assessment that, in the event a decision to grant consent is taken, consideration would need to be given to the Applicant's request for the compulsory acquisition of land, rights over land and the temporary possession of land is justified in the current case.

5.11 The Planning Act 2008, together with related case-law and guidance, sets out that compulsory acquisition can only be granted if certain conditions are met.

5.12 The Applicant states that in order to ensure that the Development can be built, maintained and operated, the acquisition of a number of property interests in third party ownership are necessary. In respect of the compulsory acquisition of land, the Applicant states that this power is only requested on land where other powers would not be sufficient or appropriate to enable the construction, operation and maintenance of the Development. Also, new rights are required to construct, operate and maintain the necessary infrastructure on land not within the Applicant's ownership.

5.13 The Applicant is also seeking the compulsory acquisition of new rights over land occupied by National Grid which is classified as a 'statutory undertaker'. While the land of a statutory undertaker may be compulsorily acquired, that acquisition may only be granted providing that the right can be taken without serious detriment to the carrying out of that undertaking.

5.14 The ExA assessed each of the relevant issues in considering whether the case for compulsory acquisition was made in the current Application. The ExA noted [ER 9.5.8] that there were no outright objections to the compulsory acquisition or temporary acquisition of land during the Examination.

5.15 During the Examination, the Applicant stated that it was hoping to achieve voluntary agreement over the acquisition of rights with all relevant parties. At the end of the Examination, in response to a request from the ExA, the Applicant set out that it had settled negotiations on compulsory acquisition with most of the parties over whose land rights were sought, but there were still four plots of land owned by an individual (Plots 8, 10, 13 and 15) where agreements were still being finalised.

5.16 The ExA queried the justification for the acquisition of the whole of Plot 8 which had been earmarked in compliance with CR policy for land necessary to accommodate carbon capture storage infrastructure. In response, the Applicant amended its request for the acquisition of Plot 8 to one for the acquisition of rights over it. The ExA also challenged the Applicant's justification for the compulsory acquisition of other plots but was generally satisfied by the answers received.

5.17 However, consistent concerns were raised by an interested party throughout the Examination about the compulsory acquisition of Plots 10, 13 and 15 and these concerns were not resolved by agreement during the Examination. However, the ExA concluded [ER 9.6.11] that the Applicant had satisfactorily addressed the concerns raised.

5.18 The ExA's Report draws all the various arguments together and concludes that the case is made by the Applicant for the compulsory acquisition of land or rights over land in respect of the revised list of plots and that there is a justification for what is being requested. However, the ExA concludes [ER 9.6.7] that as the case for development consent is not made out, there is no compelling argument that it would be in the public interest to acquire the land and rights over it.

5.19 However, the ExA also addresses the position where the Secretary of State takes the view that development consent should be granted for the Development (in either a two- unit or one-unit configuration) and considers the consequences for the compulsory acquisition. The ExA concludes that, despite the absence of objections to the grant of the compulsory acquisition powers and the fact that private agreements have been put in place for most of the plots subject to the compulsory acquisition powers, there would, potentially, be substantial losses for individuals as well as for communities and businesses were the powers to be granted. Nevertheless, the ExA recommends [ER 9.6.12 and 9.6.13] that the Secretary of State could conclude that the relevant Planning Act tests have been met (including in respect of statutory undertakers).

5.20 The ExA also provides the Secretary of State with a recommendation in respect of a Unit X only outcome that the Planning Act tests would also be met in respect of this configuration as well.

5.21 The Secretary of State agrees with the ExA that, in the event consent is granted the case has been made against the Planning Act tests in respect of the grant of compulsory acquisition powers for the Development in both two unit or one unit configurations.

## Habitats Regulations Assessment

Impacts on European Wildlife Sites and Protected Species

Effects on European Sites and their features

5.22 The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 ("the Habitats Regulations") require the Secretary of State to consider whether a project would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site, as defined in the Habitats Directive. If likely significant effects ("LSE") cannot be ruled out, then an Appropriate Assessment ("AA") must be undertaken by the Secretary of State to address potential adverse effects on site integrity. Consent may not be granted if it is ascertained that it will not adversely affect the integrity of a European site. The Secretary of State's Habitats Regulations Assessment ("HRA") for the Development is published alongside this decision letter. Its findings are summarised below.

5.23 The Applicant considered the potential impacts of the proposed Development on ten sites designated under the Habitats Directives which were identified as being within a 15km radius of it:

- Lower Derwent Valley Special Area of Conservation ("SAC");
- Lower Derwent Valley Special Protection Area ("SPA");
- Lower Derwent Valley Ramsar;
- River Derwent SAC;
- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar;

- Skipwith Common SAC;
- Thorne and Hatfield Moors SPA; and
- Thorne Moor SAC.

5.24 A LSE could not be excluded at all ten European sites due to the potential for multiple site features to be affected by air emissions from the Development during operation.

5.25 A LSE could not be excluded at four of the ten European sites (Lower Derwent Valley SAC, River Derwent SAC and Humber Estuary and Ramsar) due to the potential for habitat disturbance and hydrological changes to affect the otter, sea lamprey and river lamprey features of these sites.

Conclusions on Air Quality

5.26 Despite the Applicant's Habitats Regulations Assessment ("HRA") Report identifying some exceedances in air emissions thresholds, these would fall far below the point at which research suggests one might observe a potentially adverse effect on the qualifying habitats at these sites, being of a level that falls within the bounds of natural variation and which is predicted to lead to negligible and imperceptible change.

5.27 The Applicant and NE agreed that no further direct mitigation of air emissions was necessary beyond setting an appropriate stack height and including NOx and ammonia emissions control by use of a Selective Catalytic Reduction ("SCR") process with an annualised ammonia emissions budget.

5.28 The appropriate stack height is secured by provisions in Schedule 13 of the Order.

5.29 The Environment Agency ("EA") and NE agreed that operational emissions from the Development would be further controlled through the EA's Environmental Permitting regime. The EA confirmed it would only approve an Environmental Permit if it did not adversely affect a European site.

5.30 The Secretary of State has considered the Applicant's HRA in light of the conservation objectives for the ten European sites. Given the low magnitude of the air quality effects and the conservatism of the air quality modelling, the Secretary of State agrees with the recommendations of the ExA and the views of NE and the Applicant and concludes that subject to the mitigation secured at Schedule 13 of the Order, the Development will not have an adverse effect on the integrity of any of the ten European sites, either alone or in combination with other plans and projects.

Conclusions on Habitats Disturbance and Hydrological Changes

5.31 The Applicant's HRA Report identified a potential for indirect impacts to otters, sea lamprey and river lamprey using functionally linked habitat during construction and operation as a result of pollution to watercourses. It identified potential for disturbance to otters present as a result of light, visual, noise and vibration. During construction, a risk of mortality to otters was identified as a result of collision with moving construction vehicles or interaction with construction materials and compounds and excavations.

The Report considered that such impacts may result in the killing or injury of otters, the reduction and degradation of available otter and fish habitat and food sources and/or displacement of otters from areas used for commuting, foraging, resting and breeding.

5.32 Measures designed to avoid and mitigate against these effects are secured in the Order through the following Requirements for the implementation of an agreed:

- Landscape and Biodiversity Strategy (LBS) (secured by Requirement 8)
- Construction Environmental Management Plan (secured by Requirement 17)
- Decommissioning Environmental Management Plan (secured by Requirement 26)
- Surface Water Drainage Strategy (secured by Requirements 13 and 17)
- Ecologically sensitive lighting design (secured by Requirement 10).

5.33 By the close of Examination all relevant parties were satisfied with the final versions of plans to ensure appropriate mitigation of any potential impacts of disturbance and hydrological effects on otter, sea lamprey and river lamprey.

5.34 NE considers that there would be no adverse effects on the integrity of any European site resulting from disturbance and hydrological impacts and the ExA states that it is 'content that there would be no adverse effect on the integrity of the European sites or their qualifying features as a result of hydrological impacts and impacts to functionally linked land from the proposed Development alone or in combination with other plans and projects. Adequate mitigation is secured in the Recommended Order [ExA 6.5.89].

5.35 The Secretary of State is satisfied that appropriate mitigation is secured via Requirements in the Order, and that any impact to otters from the Development alone would be minor and short term, with no perceptible effect on site populations, and that any residual effects on sea lamprey and river lamprey from the Development alone would be so minimal as to be imperceptible. The Secretary of State is further satisfied that there would be no in-combination effect with other plans or projects

5.36 The Secretary of State has considered the Applicant's HRA in light of the conservation objectives for the relevant European sites. Given the low magnitude of the effects of hydrological changes and disturbance, she agrees with the recommendations of the ExA and the views of NE and the Applicant and concludes that, subject to the mitigation secured at Requirements 8, 10, 13, 17 and 26 of the Order, the Development will not have an adverse effect on the integrity of any of the European sites, either alone or in-combination with other plans and projects.

## 6. **Conclusions on the Case for Development Consent**

6.1 In taking a decision on whether to grant or refuse development consent under the terms of the Planning Act 2008 in cases where an NPS has effect, section 104(3) of the Act requires the Secretary of State to determine the Application in accordance with any relevant NPS except to the extent that one or more of the exceptions set out in section 104 (4) – (8) applies. In particular, section 104(7) of the Act provides an

exception where the Secretary of State is satisfied that the adverse impacts of the Development would outweigh its benefits. The Secretary of State, therefore, needs to consider the impacts of any proposed development and weigh these against the benefits of any scheme.

6.2 First of all, the Secretary of State needs to consider whether the proposed Development is in accordance with EN-1 (the Overarching NPS for Energy). As indicated in paragraph 4.4 above, the ExA has not applied the policy presumption in favour of granting consent for energy NSIPs set out in EN-1 when determining whether the Development was in accordance with the relevant NPSs. The Secretary of State considers that the Development should benefit from the presumption because there are no more specific and more relevant NPS policies which clearly indicate that consent should be refused and therefore the Development accords with the relevant NPSs.

6.3 In the case of the Development, the ExA's assessment of impacts and benefits under section 104(7) accords a neutral weighting to the following issues: CCS readiness; CHP readiness; traffic and transport; air quality; noise and vibration; the historic environment; flooding and water [quality]; waste management; ground conditions and land contamination; major accident and disaster prevention; the Habitats Regulations Assessment; and cumulative and combined effects.

6.4 The ExA gives a positive weight to biodiversity outcomes, socio-economics and the proposed re-use of existing infrastructure at the Drax Power Station.

6.5 Set against the positive aspects of the Development, the ExA attaches considerable negative weight to impacts on decarbonisation and climate change. While the landscape and visual impacts of the Development would be significant, the ExA takes the view that this negative impact does not weigh heavily in the overall consideration of planning balance for the Development.

6.6 The Secretary of State considers that the ExA's interpretation of the need case set out in the NPSs is incorrect. In taking the position it did on need and GHG emissions, the ExA arrived at a position where it recommended that consent for the Development should be refused. The Secretary of State considers that the NPSs support the case for new energy infrastructure in general and, in particular, the need for new CCR fossil fuel generation of the kind which the Development would provide. While acknowledging the GHG emissions from the Development, the generating capacity of the Development in either two- or one-unit configurations is a significant argument in its favour, with a maximum of 3.8GW possible if the Applicant builds out both gas-fired and battery storage units as proposed. Therefore, the Secretary of State considers, that the Development would contribute to meeting the identified need for CCR fossil fuel generation set out in the NPS and that substantial weight should be given to this in the planning balance.

6.7 In assessing the issue of GHG emissions from the Development and the ExA's conclusions in this matter, the Secretary of State notes that the Government's policy and legislative framework for delivering a net zero economy by 2050 does not preclude the development and operation of gas-fired generating stations in the intervening period. Therefore, while the policy in the NPS says GHG emissions from fossil fuel

generating stations are accepted to be a significant adverse impact, the NPSs also say that the Secretary of State does not need to assess them against emissions reduction targets. Nor does the NPS state that GHG emissions are a reason to withhold the grant of consent for such projects. It is open to the Secretary of State to depart from the NPS policies and give greater weight to GHG emissions in the context of the Drax application but there is no compelling reason to do so in this instance.

6.8 As far as the negative visual and landscape impacts are concerned, the Secretary of State is content to accept the ExA's assessment of overall weighting of this matter. There are no other negative issues that weigh against the Development.

6.9 As noted above, the ExA identifies positive effects from the Development in respect of biodiversity outcomes, socio-economics and the proposed re-use of existing infrastructure at the Drax Power Station. The Secretary of State's overall conclusion on the planning balance is that there are strong arguments in favour of granting consent for the full, two gas units and two battery storage units, 3.8GW project because of its contribution to meeting the need case set out in the NPSs. On balance therefore Secretary of State considers that the benefits of the Development outweigh its adverse effects.

6.10 While noting the exception to the requirement to determine development consent applications in accordance with the relevant NPSs identified in section 104(7) of the Planning Act, other exceptions are also identified. These exceptions apply where granting consent would: lead to a breach of the UK's international obligations (section 104(4)); lead to a breach of any duty imposed on the Secretary of State by or under any enactment (section 104(5)); be unlawful (section 104(6)); and, where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met (section 104(8)).

6.11 In the case of section 104(4), there is no evidence that granting consent for the Development would lead to a breach of the UK's international obligations

6.12 In the case of section 104(5), notwithstanding the ExA's conclusions on the Development's adverse climate change impacts, it also found that there was no evidence to suggest that granting consent for the Development would in itself lead to the Secretary of State to be in breach of the duty set out in the CCA to ensure that the UK's target for 2050 is met. The Secretary of State agrees with this conclusion.

6.13 In the case of section 104(6), given the position already set out above and a consideration of all other relevant matters, there is nothing that leads the Secretary of State to conclude that the grant of consent for the Development would be unlawful.

6.14 Finally, in relation to section 104(8), the Secretary of State does not believe that a condition to preclude deciding the Application in accordance with a NPS has any relevance to the Development.

**Equality Act 2010**

6.15 The Equality Act 2010 ("the Act") includes a public sector duty which requires a public authority, in the exercise of its functions, to have due regard to the need to:

(a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g age; gender reassignment; disability, marriage and civil partnerships; pregnancy and maternity; religion and belief; and race) and persons who do not share it ; and (c ) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.16 The Secretary of State has considered the potential impacts of a development of this type in the context of the general equality duty and concluded that they are not likely to result in any significant differential impacts on any of the protected characteristics. In considering the Application, the Secretary of State has not been presented with any evidence which suggests that such differential impacts are likely in the present case.

**Human Rights**

6.17 The Secretary of State has considered the potential infringement of human rights by the Development, in relation to the European Convention on Human Rights, including any infringement of the Convention as a result of the inclusion of compulsory acquisition powers in the Order. She considers that any interference with human rights arising from implementation of the Development is proportionate, legitimate and strikes a fair balance between the rights of the individual and the public interest, and, that compensation would be available in respect of any quantifiable loss. The Secretary of State agrees with the ExA's conclusion [ER 9.6.15 and 11.1.12] that there is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998. She has no reason to believe, therefore, that the grant of the Order would give rise to any unjustified interference so as to conflict with the provisions of the Human Rights Act 1998.

**Late Submissions**

6.18 The Applicant addressed representations to the Secretary of State after the ExA's Report had been received in the Department (on 4 July 2019). The first representation, dated 12 July 2019, referred to an Asset Protection Agreement ("APA") under discussion with National Grid Carbon Limited. The second representation, submitted on 5 September 2019, set out the Applicant's views on how the amendment to the CCA (to require a minimum 100% net reduction in Greenhouse Gas Emissions by 2050) should be considered by the Secretary of State in her decision-making on the case.

6.19 The Secretary of State notes that the Applicant's letter of 12 July 2019 does not seek to amend the Application and is provided for information and completeness only. The Secretary of State, therefore, does not consider that this is a matter that is relevant to her decision.

6.20 In respect of the second submission, the Secretary of State does not consider that this provides any information that alters her conclusions set out in paragraphs 5.6 – 5.9 and 6.7 above.

**Environmental Permit**

6.21 The Secretary of State notes that the proposed Development would be subject to the Environmental Permitting regime under the Environmental Permitting Regulations 2016 ("EPR") covering operational emissions from the generating station - in the Environment Agency's Statement of Common Ground submitted at Examination.

6.22 The Secretary of State must be satisfied that potential emissions from the Proposed Development can be adequately regulated under the EPR, as outlined in paragraph 4.10.7 of NPS EN-1. EN-1 also offers the following: "the [decision-maker] should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational permits or licences or other consents will not subsequently be granted. The Secretary of States notes that the ExA records that the Environment Agency confirmed that it was:

> *"of the opinion that a project of this type and nature should be capable of being adequately regulated under the Environmental Permitting Regulations (EPR) and at this point the Environment Agency knows of no obvious errors or issues which would prevent a permit being granted at this time. However, as the permit application has not yet been fully assessed it would be premature to provide comments on whether or not a permit would be issued at this stage."*

6.23 In the circumstances, the Secretary of State considers there are no reasons to believe the Environmental Permit will not be granted in due course.

**Natural Environment and Rural Communities Act 2006**

6.24 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

6.25 The Secretary of State is of the view that the ExA's report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

## 7. Secretary of State's conclusions and decision

7.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting consent for the Development. The Secretary of State considers that the Development would be in accordance with the relevant NPSs and, given the national need for such development as set out in the relevant NPSs, the Secretary of State does not believe that its benefits are outweighed by the Development's potential adverse impacts, as mitigated by the proposed terms of the Order. As such, the Secretary of State has decided to make the Order granting development consent, to include modifications made during Examination and

recommended by the ExA and by her officials. The compulsory acquisition powers sought by the Applicant are also granted.

## 8. Modifications to the Order by the Secretary of State

8.1 The Secretary of State has made minor modifications to the Order recommended by the ExA as follows:

- Article 6 (benefit of the Order) has been amended for consistency with other recent Orders which provide for National Grid Gas plc and National Grid Electricity Transmission plc to have the benefit of provisions relating to specific gas/electricity works;

- Article 44 (guarantees in respect of payment of compensation) has been amended to clarify that the Secretary of State must approve both the form and the amount of any guarantee of alternative form of security provided under that provision;

- Schedule 1, description of Work No.5 (f) has been amended to clarify that reference to total installed capacity in this context is a reference to thermal input capacity rather than gross electrical output capacity;

- Schedule 2, Requirement 6 (approved details and amendments to them) has been amended to remove reference to documents certified under article 40 and the parameters specified in Schedule 13. The Secretary of State does not consider it appropriate for amendments to these documents or parameters, which are referred to on the face of the Order, to be approved in writing by the relevant planning authority. Schedule 6 of the 2008 Act provides an appropriate procedure to apply to the Secretary of State for changes to these aspects of the Order should they be necessary in future;

- Schedule 2, Requirement 7 (detailed design approval) has been amended to ensure that paragraph (11) refers to numbered works 1, 2, 3, 4, 5, 6 and 9A. It is assumed that the omission of numbered works 3B and 9A from the recommended draft Order was an error as approvals in respect of those works are also required under Requirement 7;

- Schedule 2, Requirement 16 (Archaeology) has been amended to make clear that any written scheme of investigation approved under paragraph (1) of the requirement must be implemented as approved; and

- Schedule 2, Requirement 21 (Decommissioning strategy) has been amended to clarify that this provision is without prejudice to any other consent or permission which may be required to decommission any part of the authorised development.

8.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of

language), changes in the interests of clarity and consistency and changes to ensure that the Order has the intended effect.

## 9. Challenge to decision

9.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

## 10. Publicity for decision

10.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

10.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has 14 given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

**GARETH LEIGH**
**Head of Energy Infrastructure Planning**

**ANNEX**

## LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/drax-re-power/

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)**