

The Drax Power (Generating Stations) Order

Land at, and in the vicinity of, Drax Power Station, near Selby, North Yorkshire

Written Summary of Drax Power Limited's ("the Applicant") Oral Case
put at the Issue Specific Hearing – 12th February 2019

(Submitted for Deadline 7)



The Planning Act 2008

Drax Power Limited

Drax Repower Project

Applicant: DRAX POWER LIMITED
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WRITTEN SUMMARY OF DRAX POWER LIMITED'S ("THE APPLICANT") ORAL CASE PUT AT THE ENVIRONMENTAL MATTERS ISSUE SPECIFIC HEARING – 12 FEBRUARY 2019

1. INTRODUCTORY REMARKS

- 1.1 The Issue Specific Hearing ("ISH") regarding Environmental Matters was held at 13:30 on 12 February 2019 at the Goole Leisure Centre, North Street, Goole DN14 5QX.
- 1.2 The ISH took the form of running through items listed in the agenda published by the ExA on 5 February 2019 (the "**Agenda**"). The Applicant's substantive oral submissions commenced at item 2 of the Agenda, therefore this summary does not cover item 1 which was procedural and administrative in nature.

2. AGENDA ITEM 2 – INTRODUCTION OF THE PARTICIPANTS

- 2.1 The ExA: Richard Allen as the lead member of the panel and Menaka Sahai as a panel member.

2.2 The Applicant:

2.2.1 Speaking on behalf of the Applicant: Richard Griffiths (Partner at Pinsent Masons LLP).

2.2.2 Present from the Applicant: Oliver Baybut (Environment and Governance Section Head at Drax Power Limited) and Jim Doyle (Environmental Consents Officer at Drax Power Limited).

2.2.3 The Applicant's consultants and legal advisors: Alexis Coleman (Senior Associate at Pinsent Masons LLP), Abigail Sweeting (Solicitor at Pinsent Masons LLP), Lara Peter (Principal Consultant at WSP and Project Manager for Drax Repower) and Dr Chris Taylor (Associate Director at WSP and EIA Lead for Drax Repower).

2.2.4 The Applicant's environmental consultants (listed alongside their relevant environmental topic area):

(a) Ecology: Philip Davidson (Associate Director at WSP); and

(b) Landscape and visual impact: Maritta Boden (Associate Director at WSP).

2.3 The following parties participated in the ISH:

2.3.1 North Yorkshire County Council ("**NYCC**") and Selby District Council ("**SDC**"), together the "**Councils**": Sarah Morton (Senior Solicitor (Business and Environmental Services)), Michael Reynolds (Senior Policy Officer (Infrastructure)), John Wainwright (Principal Landscape Architect), Martin Woolley (independent Landscape Consultant commissioned by NYCC and SDC) and Liz Small (Heritage Services Manager); and

2.3.2 Yorkshire Wildlife Trust ("**YWT**"): Sara Robin.

3. AGENDA ITEM 3 – MAIN DISCUSSION POINTS

Changes to the compulsory acquisition of land

- 3.1 **The ExA** noted that both a Compulsory Acquisition and Open Floor Hearing were held prior to this ISH, giving Affected Persons and Interested Parties an opportunity to make

submissions, and wanted to confirm whether any Interested Parties or Affected Persons wished to make any oral statement or raise any concern over the changes to the compulsory acquisition of land at the ISH.

3.2 No parties confirmed they wanted to speak.

The effectiveness of the outline Landscape and Biodiversity Strategy submitted at D6 in respect of:

a) Landscaping and biodiversity additional mitigation in respect of the “Bingley Land” (Wren Hall Lane) by the introduction of a 25m-wide broadleaved woodland, additional hedgerows and semi-improved grassland, and the resurfacing of the Trans Pennine Trail where it lies within 3km of the site; and

b) The views of North Yorkshire County Council (NYCC), Selby District Council (SDC) and Yorkshire Wildlife Trust (YWT), and an update in negotiations between Applicant and YWT.

Landscape and visual effects

3.3 **The ExA** asked the Councils if they have prioritised the areas where they have landscape concerns and if the Councils could highlight these priorities and confirm how they arrived at their decision.

3.4 **John Wainwright** stated that the Proposed Scheme resulted in significant landscape and significant visual effects which is accepted by all parties and is set out in the Applicant's landscape and visual impact assessment. In terms of priorities, the highest priority areas are those closest to the Proposed Scheme (within 3 kilometres (km)) but the adverse effects do reach out to the 10 km radius.

3.5 **The ExA** asked the Councils to clarify: (i) how they have distinguished between landscape and visual effects; and (ii) if there was a rationale for choosing the Councils' priorities relating to landscape and visual impact.

3.6 **Mr Wainwright** confirmed that the difference between landscape and visual effects is well recognised in guidance which is taken into account in the Applicant's landscape and visual impact assessment and stated that:

3.6.1 Landscape effects predominantly deal with the direct impact on the elements of landscape as well as the character and setting of the power station. The character areas are already recognised by the Councils in existing landscape, character assessments that pre-date this Application. These documents are used by the Councils in assessing applications and are also taken into account by the Applicant when undertaking its landscape and visual impact assessment; and

3.6.2 Visual effects are quite separate as they deal with individual views from individual receptors which relate to people rather than the wider character and setting of the area. For example, who can see something from a property.

3.7 **The ExA** asked for confirmation if there is a sliding scale in severity and diminishment in the likely significant effects as you move away from the Site and if some areas are more sensitive than others.

3.8 **Mr Wainwright** confirmed that generally most significant effects are likely to be closer to the Site. The Applicant has identified all the receptors that could be affected in its landscape and visual impact assessment and the effect and magnitude of effect on those receptors.

- 3.9 **The ExA** asked the Applicant why it had questioned why the proposals put forward by the Councils in the Martin Woolley Off-Site Mitigation Strategy (Examination Library Ref REP4-016) extended up to 10km from the Site.
- 3.10 **Richard Griffiths** on behalf of the Applicant explained that the effects on landscape character beyond the 3km radius are not significant, and outlined that at paragraph 2.3.3 of the Applicant's Response to the Off-Site Mitigation Strategy (Examination Library Reference REP6-012) the Applicant refers to its Environmental Statement (Chapter 10 Landscape and Visual Amenity) (Examination Library Reference APP-078) which states:
- at Paragraph 10.5.48 in relation to landscape character "*outside of a 3 km radius of the Site it is anticipated that whilst the presence of the Proposed Scheme would affect the aesthetic and perceptual qualities of the local landscape from certain locations, the effects would not be significant*"; and
- Paragraph 10.5.55 in relation to Lower Derwent Corridor: "*It should be noted that effects would be concentrated within a 3 km area of the ILA and diminish with distance.*"
- 3.11 **Mr Griffiths** agreed with the Councils that the concentration of effects is within a 3 km radius of Site. However, when the options were put forward by the Councils in their Off-Site Mitigation Strategy, the figures show a "blanket cover" for landscape and visual effects within a distance of 10km without recognition of the concentration of effects within 3km (this is as set out in the Applicant's Response to the Off-Site Mitigation Strategy (Examination Library Reference REP6-012) at paragraph 2.3.4). The Applicant's Outline Landscape and Biodiversity Strategy (Examination Library Reference REP6-009) sets out measures to reduce the residual effects, and this strategy does reduce significant effects. The Applicant has gone even further through discussions with landowners and the land now commonly known as the "Bingley Land" has been added to reduce the effects of the Gas Receiving Facility (the "**GRF**").
- 3.12 **Maritta Boden** on behalf of the Applicant outlined that in terms of effects diminishing beyond the 3km radius, there are also effects within the 3km study area that are not categorised as significant based on proximity, orientation, location and intervening vegetation. That also applies to the 10km study area. Therefore, the effects the Applicant has identified in its assessment within the 3km radius are "worst case".
- 3.13 **The ExA** asked the Councils to clarify if they have prioritised areas of impact in the Martin Woolley Off-Site Mitigation Strategy.
- 3.14 **Mr Wainwright** responded that the study areas of 3 and 10kms have been defined through agreement with the Applicant, and it is agreed that these are appropriate. The Councils accept that closer to the Proposed Scheme the effects are more significant. However, the Councils' understanding is that there are also significant landscape effects extending out beyond the 3km that are set out in the Applicant's assessment of landscape and visual effect. The Councils have accepted this assessment on the basis that it is a good, representative summary of the effects for both the 3 and 10km study area.
- 3.15 **Martin Woolley** explained that the reason for the blanket coverage is that the summary of effects in the Applicant's assessment identifies there are significant, adverse effects on whole landscape character areas which extended to 1, 3 and 10km radius. This is why the Councils have looked at the 10km boundary. Mr Wainwright added that the landscape character area assessment assesses those areas as a whole, which is the usual approach.
- 3.16 **Mr Griffiths** on behalf of the Applicant confirmed that the methodology for the landscape and visual impact assessment has been agreed with the Councils and this is documented in the draft Statement of Common Ground ("**SoCG**") between the Applicant

and the Councils at paragraph 3.16 (Examination Library Reference REP4-008). Paragraph 3.16.6 of the SoCG also sets out that:

"It is agreed that there would be significant adverse effects on landscape character, including on LCT 23 Levels Farmland, LCT 24 River Floodplains, LCT 4 River Corridors including LCA 4A Derwent Valley, LCA 4B River Ouse Corridor and LCA 4D River Aire Corridor, local landscape character and the Lower Derwent Important Landscape Area. Such effects would be more pronounced within 3 km of the Site and would diminish with distance. For local landscape features, and subject to proposed mitigation, some effects would diminish once planting has matured (by 15 years post Stage 3)."

- 3.17 **Mr Griffiths** stated that it is agreed with the Councils that the mitigation proposed in the Applicant's Outline Landscape and Biodiversity Strategy does reduce the effects and, without this mitigation, the effects would be worse. The Applicant does acknowledge that not all the effects are removed entirely as a result of its proposed mitigation.
- 3.18 **Ms Boden** on behalf of the Applicant added that in terms of a reduction of the effects, as set out in the Outline Landscape and Biodiversity Strategy (Examination Library Reference REP6-009), the reduction of effects is focussed on local landscape character in terms of the power station and Gas Pipeline, and that there will be a reduction in effects following 15 years maturation of planting. Further, localised visual effects will diminish, whilst some effects will still remain significant. Effects which would diminish as a result of planting relate to the Above Ground Installation (AGI), Wren Hall Lane, public rights of way close to Wren Hall Lane and an additional area outlined in the Outline Landscape and Biodiversity Strategy.
- 3.19 **The ExA** asked the Councils whether, given they can prioritise the areas of concern as being the areas within the 3km radius, they can apply the same approach to the proposed mitigation and can prioritise the options in the Martin Woolley Off-Site Mitigation Strategy (Examination Library Reference REP4-016) for the benefit of the ExA and the Applicant.
- 3.20 **Mr Wainwright** confirmed the Applicant and the Councils are in agreement on the methodology and the effects identified. The Councils understand that the most significant effects are closest to the Site. The Councils' position in respect of mitigation is that there needs to be more detailed work carried out. The Councils think there are real opportunities for mitigation with partners, but recognise that this work may take a number of years given its nature.
- 3.21 **Mr Griffiths** on behalf of the Applicant responded that the Applicant has carried out an assessment and put forward a proposal for mitigation. The Applicant has also looked at and assessed the options in Martin Woolley's Off-Site Mitigation Strategy (Examination Library Reference REP4-016) and has concluded that such options will not alter the effects identified in the Environmental Statement save for one option, and that option only has a change in effect because the planting it proposes is so significant that it alters the existing character area, thus changing the existing baseline. The options in Martin Woolley's Off-Site Mitigation Strategy (Examination Library Reference REP4-016) have not been assessed by the Councils. Mr Griffiths responded to Mr Wainwright's comment that the Councils think there are real opportunities for mitigation with partners and highlighted that this is not certain or deliverable. The Councils cannot say that a contribution from the Application would reduce the effects of or mitigate the Proposed Scheme. Such a contribution cannot therefore be taken into account in terms of its impact on the landscape and visual effects of the Proposed Scheme. The strategy put forward by the Applicant does reduce the effects and it has looked at how it can reduce the effects further.
- 3.22 **Mr Griffiths** referred to the "Bingley Land" and explained that at the time the Application was submitted, the Applicant's position was that they had sufficiently mitigated the effects of the GRF. Any further mitigation would have required the further acquisition of

land, which would conflict with compulsorily acquisition principles. The duty of compulsory acquisition is to reduce land take as much as possible. Through the Applicant's discussions with landowners, the "Bingley Land" landowner wants to strengthen her boundary and is agreeable to the proposed planting, and therefore the Applicant can now include planting on land outside of the red line boundary, which will be secured by private agreement (that is, not in reliance on powers in the development consent order ("DCO")).

- 3.23 **Mr Griffiths** also stated that it is the Applicant's understanding that the Councils are not saying that the landscape and visual effects of the Proposed Scheme are so damaging that this Application should be refused (referencing the National Policy Statement ("NPS")). The Councils agree in the draft SoCG with the Applicant that the need for the Proposed Scheme outweighs the landscape and visual effects. What is at issue is the extent of the mitigation measures in the Outline Landscape and Biodiversity Strategy.
- 3.24 **Mr Griffiths** directed that if the ExA accepts that: (1) there is a need for the Proposed Scheme; (2) the Site (being an existing power station site) is a suitable location for a gas fired power station given it is an existing brownfield site close to water and the road network, close to an existing gas supply and has existing employment; and (3) there are adequate design controls in the draft DCO (which is agreed by the Councils), then NPS EN-2 says that limited weight should be given to visual effects. The outstanding point in that context is the amount of mitigation for landscape and visual effects; the Applicant considers that what it has put forward in this respect is reasonable, practicable and deliverable and what it proposes is as far as it can reasonably go.
- 3.25 **The ExA** asked Mr Wainwright if the harm extends to landscape character or visual effects. Mr Wainwright confirmed the harm extends to both. Mr Wainwright also confirmed the Councils' position, in response to a question from the ExA, that the more significant effects are within the 3km study area, but that there are some sites beyond 3km, in the 10km study which are also of concern.
- 3.26 **The ExA** asked the Councils for clarification on what in the Applicant's Outline Landscape and Biodiversity Strategy they are dissatisfied with in terms of dealing with landscape character in the 3km zone. Mr Wainwright referred to the Applicant's assessment of effects in Chapter 10 of the Environmental Statement, where there is a summary of effects on both landscape character and visual effects. Mr Wainwright asserted that in the summary table there are a number of significant effects listed, however no mitigation is proposed.
- 3.27 The ExA noted in response that this related to the landscape character as a whole and what the ExA is trying to understand is what the Councils' concerns are in relation to the 3km zone and what they expect the Applicant to address. Mr Wainwright responded that in his view the Applicant should look at which areas are most affected and identify what mitigation can be provided there. In response to further questions from the ExA, Mr Wainwright said that he was satisfied with the level of appraisal, but that the Councils wanted ongoing work to further reduce the effects. The point of appointing Mr Woolley had been to review available opportunities, and give certainty that real projects exist that will make a difference.
- 3.28 **The ExA** explained that it has to write a report to the Secretary of State and set out that the Councils are dissatisfied with the Applicant's Outline Landscape and Biodiversity Strategy and that it would be incumbent on the ExA to set out for the Secretary of State what part of the Applicant's strategy the Councils are unhappy with. So far, the ExA has identified that the Councils are not able to do this. The ExA again asked the Councils to identify a specific site or area where they say further mitigation is required, and to identify the project or plan that can provide that mitigation. Mr Woolley responded that opportunities are identified in the NYCC landscape character assessment, which identifies existing weaknesses in the landscape character, pre-dating the Proposed Scheme. The ExA asked if the Councils were expecting the Applicant to address every requirement identified for each landscape character. Mr Woolley confirmed that this

was not the Councils' expectation, but that they were expecting the Applicant to identify live projects to repair some of the existing lost landscape character.

- 3.29 **Mr Griffiths** on behalf of the Applicant stated that the Applicant has looked at the options in Martin Woolley's Off-Site Mitigation Strategy (Examination Library Reference REP4-016). Mr Griffiths explained that a third party cannot simply put forward theoretical proposals; there needed to be an assessment of the proposals and what they deliver, and the Councils have not done this. The Applicant has undertaken this exercise and has concluded that the options included in the Martin Woolley Off-Site Strategy do not change the effects of the Proposed Scheme (with the exception of the effect explained earlier, which results in a change to the existing baseline as the planting proposed by the option would change the existing character of the landscape).
- 3.30 **Mr Griffiths** stated that the Applicant is confused by the Local Authority Response to the ExA's further written question LV 2.2 (Examination Library Reference REP6-019) where they state that "*The Authorities consider that the focus of any landscape measures or fund should be on delivering projects which reduce the effects of the proposed development on the landscape character*" and "*Martin Woolley has put together a suite of options through the Off-Site Mitigation Strategy which he believes could make a notable difference and has stopped at a point when this is achieved*" (emphasis added). Mr Griffiths submitted that it is not clear what "notable difference" means. It appears from the Councils' document, however, that Mr Woolley has put together packages of options and "stopped" when a "notable difference" has been reached, and on average, each of those options means a contribution of ten million pounds. The Councils have stated in their response to written question LV 2.2 that they consider the focus should be on delivering projects which will reduce the landscape effects of the Proposed Scheme, however, the Applicant has analysed the options put forward (which the Councils do not appear to have done), and concluded that none of the options would alter the effects of the Proposed Scheme (see Applicant's Response to Off-Site Mitigation Strategy, Examination Library Reference REP6-12). The Applicant has looked at its own mitigation, and at the measures set out in the Martin Woolley Off-Site Mitigation Strategy, and it considers that what it now proposes reduces the effects of the Proposed Scheme as far as reasonably practicable. The Councils agree with the Applicant that the need for the Proposed Scheme is **not** outweighed by the landscape and visual effects. In this context, the Applicant is not sure what more it can do.
- 3.31 **The ExA** noted that clarification was needed from the Councils, as the response to written question LV 2.2 on the one hand states that not all options are sought and that £10m was not sought, but on the other hand states that a notable difference is achieved when one of the options is delivered. The ExA asked Mr Woolley for clarification on what "notable difference" means and, if the Councils had to pick a couple of sites in the Martin Woolley Off-Site Mitigation Strategy that would make a "notable difference", what these would be.
- 3.32 **Mr Woolley** responded, stating that the landscape character areas have already been assessed in NYCC's Character Assessment document. The options put forward in his document are a matter of professional judgement. The Applicant is saying the options would make no difference, but the Councils are of the opinion that they will "make a difference". Mr Woolley asserted that the measures in the Off-Site Strategy would strengthen existing weaknesses of the landscape character areas.
- 3.33 **Mr Griffiths** on behalf of the Applicant highlighted that what has been said by Mr Woolley goes against what is written in the Local Authority Response to the ExA's further written question LV 2.2 (Examination Library Reference REP6-019). The Councils' response to the question refers to wanting to reduce the effects of the Proposed Scheme, whereas what Mr Woolley has said is that the Off-Site Mitigation Strategy is aimed at improving existing weaknesses of the landscape character.
- 3.34 **The ExA** asked the Councils how the suite of options in the Martin Woolley Off-Site Strategy helps the ExA know what is required to make the Application acceptable and

sought confirmation as to whether there is a particular project that they feel the Applicant should be contributing towards in a particular way that would mitigate the effects of the Proposed Scheme. The ExA put it to the Councils that it was for them to say where the harm is and what is needed to be done to mitigate it.

3.35 **Mr Wainwright** responded that the detail of Martin Woolley's options still needs to be worked out. Mr Wainwright stated that the Councils can identify some actual projects which they believe can make a difference. Mr Wainwright referred to the Bingley Land, and noted that the Applicant has shown through the discussions on the "Bingley land" what further work can be done.

3.36 **The ExA** asked the Councils if they were asking for a financial contribution from the Applicant towards live projects to improve the landscape. Mr Wainwright confirmed that this was correct, as projects can be funded to deliver the overarching principles. The ExA asked where these overarching principles are set out. Mr Wainwright confirmed that the documents may need some adjustment but that the main document produced by the Applicant containing the overarching principles is the Outline Landscape and Biodiversity Strategy. Mr Wainwright confirmed that most of the principles included in this document are sound and are agreed by the Councils and the Applicant. Other documents that the Councils have referred the Applicant to include the Leeds City Region Green Infrastructure Strategy as the Councils are linked to this strategy.

3.37 **The ExA** asked Mr Wainwright to confirm that the detailed design work for the projects and the delivery of the overarching principles would happen outside of this Examination, and this was confirmed by Mr Wainwright.

3.38 **Mr Griffiths** on behalf of the Applicant responded that:

3.38.1 There has been a move away from what the Councils have said in the Local Authority Response to the ExA's further written question LV 2.2 (Examination Library Reference REP6-019) where they stated that "*the focus of any landscape measures or fund should be on delivering projects which reduce the effects of the proposed development on the landscape character*". The examples and options discussed do not reduce the effects of the Proposed Scheme. What now appears to be suggested instead by the Councils is a community benefit fund, which is wider than this project, in order to deliver a wider community benefit. This is different from the Council's approach in their paper responding to written question LV 2.2.

3.38.2 With respect to the deliverability of the options and projects discussed, the requirement that they can be achieved only by negotiations with the landowner to acquire land or rights over land, means that there can be no certainty for the ExA or SoS as to the deliverability of the planting schemes. The Councils cannot confirm if there is a fund that will deliver particular schemes and at what price. Further, such a community benefit fund does not satisfy the legal tests for planning obligations and cannot therefore be secured by a legal agreement pursuant to section 106 of the Town and Country Planning Act 1990. Mr Griffiths queried how the Councils proposed such a fund be secured.

3.38.3 The Environmental Statement does acknowledge that there is to be a long-term, significant environmental effect on landscape (which in EIA terms would be a permanent effect). However, the NPS recognises that the effects of a Nationally Significant Infrastructure Project such as a power station are capable of being reversed. Whilst in the context of a human lifetime, the effects are certainly long term, in the context of the landscape itself, effects of 25-30 years are not a long period and are capable of being reversed. In the draft DCO, there is a requirement for a decommissioning strategy relating to when the power station is no longer operational, requiring identification of the parts of the Proposed Scheme that will be demolished. The NPS EN-1 (paragraph

5.9.16) requires the ExA and the Secretary of State to have regard to whether any adverse impact is temporary, and/or whether any adverse impact on the landscape will be capable of being reversed in a timescale that the SoS considers reasonable.

- 3.39 **The ExA** asked the Applicant whether, given the scale of the Proposed Scheme, a community benefit fund would be a sensible way forward. Mr Griffiths responded that a fund of £10 million or any percentage of the Proposed Scheme's cost was not acceptable to the Applicant as the significance of effects of the Proposed Scheme would not be mitigated as a result of this fund.
- 3.40 **The ExA** asked if the Councils were to present a more detailed proposal than that submitted at Deadline 4, would the Applicant look at this and respond on this.
- 3.41 **Mr Griffiths** on behalf of the Applicant responded that the Applicant would need to consider its position on this, given the agreed position between the Councils and the Applicant that the Site is acceptable as it re-uses an existing power station site which has good existing connections, there are appropriate controls in place with respect to the design of the Proposed Scheme, and whilst there are adverse landscape and visual effects, it is agreed that those do not outweigh the need for the Proposed Scheme. The Applicant has put together an Outline Landscape and Biodiversity Strategy and has done further work to further reduce the effects of the Proposed Scheme. The Applicant does not consider there is anything else needed to make the Proposed Scheme acceptable. Mr Griffiths confirmed that any proposal submitted by the Councils would need to include an assessment of its proposals, rather than just present with options, together with an explanation as to how the financial contribution would be secured (i.e. if it met the section 106 tests or was outside the planning system and a community benefit contract was being requested). The ExA confirmed in response to this that any proposal put by the Councils would need to put forward the live projects the Councils contend are needed in order to mitigate the effects of Proposed Scheme, including an assessment of how those effects would be reduced as a result.
- 3.42 **The ExA** referred the Councils to the Local Authority Response to the ExA's further written question LV 2.2 (Examination Library Reference REP6-019) where they refer to mitigation "*proportionate in scale and kind to the Development*" and suggest that "*any landscape delivery fund could be linked to a percentage of the total project cost to demonstrate reasonableness and proportionality.*" The ExA asked the Councils if they were aware of any similar scaled projects where such approach has been adopted.
- 3.43 **Mr Wainwright** confirmed that on page 7 of the Martin Woolley Off-Site Strategy three projects were identified, which each has an offsite mitigation fund in the form of a community trust fund. He acknowledged that these were not similar projects to the Proposed Scheme but stated that they demonstrated the scale of funding that can be achieved through a fund. Mr Griffiths noted that it was clear from this response, that the Councils were referring to community trust funds. Mr Griffiths asked how the community funds were secured, noting this is an important point, as a community benefit fund would legally be outside of what could be secured in Section 106 Agreements. Ms Morton confirmed that the Councils would need to consider how the fund would be secured.
- 3.44 **Mr Wainwright** noted that mitigation linked to a percentage of the project costs (he gave the example of 0.5%) would mean it would not be prohibitive.
- 3.45 **The ExA** confirmed that it was asking the Councils to consider the list of projects and prioritise these and confirm the level of funding being requested; which specific projects the funding would relate to; the justification for the funding and identified projects; and the mechanism by which such funding would be secured. The ExA emphasised that this work should be done as soon as possible to allow the Applicant and the ExA to review the Councils' conclusions.

- 3.46 **Mr Griffiths** on behalf of the Applicant responded to Mr Wainwright's assertion that a project of the size of the Proposed Scheme can afford to contribute to a community fund. Mr Griffiths explained that it should not be automatically assumed that a project of this size can afford to contribute to such a fund, particularly in the sums being mooted by the Councils. As raised at other hearings, one of the benefits of the Proposed Scheme is that it is re-using existing infrastructure which helps with the high efficiency of the repowered generating stations. This is important as it affects where the power station falls within the stack (that is, National Grid's merit order of electricity generators, which it calls upon to supply electricity based on cost), meaning it has a direct impact on the affordability of electricity for the consumer.
- 3.47 **The ExA** then turned to discuss the Applicant's proposals for the Bingley Land and the Trans-Pennine Trail. The ExA asked Mr Griffiths to identify the Bingley Land on a map and referred to the Trans-Pennine Trail.
- 3.48 **Mr Griffiths** referred the ExA to the plan attached to the Applicant's Outline Landscape and Biodiversity Strategy (Examination Library Reference REP6-009) which identifies the Bingley Land (see Figure 6.7.9: Compensation Area – Development Parcel J in Appendix 1 to the Outline Landscape and Biodiversity Strategy).
- 3.49 **Ms Boden** on behalf of the Applicant explained that the Applicant has been actively exploring additional areas of mitigation and has entered into discussions with the landowner of the Bingley Land to introduce low level planting to reduce visual effects of the Proposed Scheme. These effects relate to the GRF and associated infrastructure. The visual effects on receptors such as occupiers of Wren Hall will be reduced by year 15 from major-adverse to moderate-major adverse. The visibility in terms of planting would relate to the GRF and low elevations of Units X and Y. Effects on users of Wren Hall Lane and of two public rights of way in the vicinity would also reduce. Such effects would reduce from moderate-major and moderate-minor to moderate and minor-adverse.
- 3.50 **Ms Boden** explained that in terms of the vegetation itself, the proposals comprise:
- 3.50.1 A 25 m wide area of broadleaved woodland to the south of the proposed Gas Pipeline. Approximately 14 m of woodland would be planted within the Site Boundary and within the Order Limits, whilst the remainder is on an arable field to the south (0.82 ha – 0.45 ha within the Order Limits and 0.37 ha outside of the Order Limits).
 - 3.50.2 An area of broadleaved woodland planting to the east of the GRF, set back from the overhead powerlines (0.16 ha).
 - 3.50.3 A native hedgerow planted along the northern perimeter of the proposed woodland (150 linear metres).
 - 3.50.4 Infill hedgerow planting and hedgerow trees to the west of Wren Hall Lane (0.03 ha).
 - 3.50.5 The retention of two access points between arable fields for maintenance.
- 3.51 **Ms Boden** explained in respect of the proposed resurfacing of the Trans-Pennine Trail that the proposal resulted in part from a recommendation in Mr Woolley's paper relating to footpath widening and re-surfacing. It was considered by the Applicant that the proposal would respond to the objectives in the Leeds City Region "Green and Blue" Infrastructure Strategy. The Applicant has offered to make a contribution of approximately £50,000 towards re-surfacing work in the 3 km radius of the Proposed Scheme (the area of the Trans-Pennine Trail within 3 km of the Site is shown in pink on Figure 1.2, Appendix 3 to the Applicant's Response to Off-Site Mitigation Strategy (Examination Library Reference REP6-012). Ms Boden clarified that surveys would be needed to identify exactly where the resurfacing would be needed, but that the Martin

Woolley Off-Site Mitigation Strategy had identified two areas of the trail based on existing projects.

- 3.52 **The ExA** asked the Applicant how it had arrived at these options.
- 3.53 **Mr Griffiths** confirmed that the Applicant had submitted the Outline Landscape and Biodiversity Strategy with the Application which included the mitigation it thought was necessary in relation to the Proposed Scheme. As a result of negotiations with the landowner (in order to secure land needed for the Proposed Scheme voluntarily), an opportunity arose to include further planting on the "Bingley Land", both within and outside the red line boundary to further increase the mitigation around the GRF. Mr Griffiths confirmed that this was not a deliberate effort to mitigate the effects of the GRF, as it was considered that the original proposal was acceptable in this respect. Mr Griffiths also confirmed that the Applicant would not be changing the Order Land to accommodate the Bingley Land outside the red line, and as the planting can be delivered through a private agreement.
- 3.54 With respect to the Trans-Pennine Trail, Mr Griffiths explained that this is one of the Council's projects. Mr Griffiths noted that the Applicant had taken the Councils' proposals seriously and appraised them accordingly. The re-surfacing works do not mitigate the direct effects of the Proposed Scheme however due to the green infrastructure benefits, and the project being within the 3km radius of the Site, the Applicant has agreed to contribute towards this scheme.
- 3.55 **Mr Griffiths** queried whether the Councils' position had changed with respect to the Trans-Pennine Trail, given their response to the ExA's further written question LV 2.2 (Examination Library Reference REP6-019) where they refer to the Applicant's offer and state "*an offer that does not address the significant adverse effects and is unacceptable in planning terms*".
- 3.56 **The ExA** asked the Councils if their position had changed with respect to the Trans-Pennine Trail. Mr Wainwright responded that the two schemes that have been put forward by the Applicant are relevant, including the Trans-Pennine Trail, as they are linked to landscape improvements in the area and are welcomed by the Councils. However, Mr Wainwright expressed the Council's view was that these two options are not sufficient in landscape mitigation terms. The Councils' view is that the "Bingley Land" demonstrates what can come forward as a result of more detailed work.
- 3.57 **The ExA** asked Mr Griffiths how the "Bingley Land" is secured in the Application. Mr Griffiths explained that the Bingley Land is secured by Requirement 8 of the draft DCO "Provision of landscape and biodiversity mitigation", which secures delivery of the Landscape and Biodiversity Mitigation Strategy. Mr Griffiths confirmed that the revised Outline Landscape and Biodiversity Strategy submitted at Deadline 6 included the Bingley Land. Mr Griffiths explained that it is hoped that the land agreement with the landowner will be in place before the end of the Examination, however due to the personal circumstances of the landowner, there may be a delay with this being completed. The Applicant is aiming, however, to provide confirmation of agreement with the landowner's agent prior to the end of the Examination.
- 3.58 **The ExA** asked if the Councils have assessed the impact of the proposals in the Martin Woolley Off-Site Mitigation Strategy on the Best and Most Versatile Agricultural Land ("**BMV**"). Mr Woolley responded that the Councils have identified where the Grade 3b land is and the woodland scheme option (in the Off-Site Mitigation Strategy) includes Grade 3b land rather than the highest BMV land. This is based on the most up to date information available from Government.
- 3.59 **Ms Boden** on behalf of the Applicant commented that having reviewed the plans it is clear that the Grade 3b land lies in a different location to where the direct effects of the Proposed Scheme are dominant and within a 3km radius from the Site. Ms Boden explained that the extent of Grade 3b land identified is focused to the north, north east

and north west, and to the south, south west and west of the Proposed Scheme and within the 10km study area, with small pockets elsewhere and on this basis would not reduce the direct impact on the aesthetic and perceptual effects associated with landscape character, as the effects of the Proposed Scheme are most perceptible to the north east, east and south east.

- 3.60 **Mr Wainwright** responded that the "Bingley Land" shows that landscape mitigation can be achieved without affecting BMV land.
- 3.61 **Mr Griffiths** concluded that the Applicant awaits a detailed proposal from the Councils. Mr Griffiths noted that NPS EN-1 recognises that all nationally significant energy projects have effects on landscape and visual character. The Proposed Scheme generates 3,800 MW of electricity and does have significant effects on the landscape. However, it is on an existing power station site which has been in the landscape since the 1960s/70s and the Site does not lie in, or affect, a landscape designation of national importance. There are local landscape areas of importance, however the NPS is clear that projects should not be refused on the grounds of local designations where the site and need for the project is accepted as is the position between the Councils and the Applicant. The Applicant's position, which is agreed by the Councils, is that the need for the Proposed Scheme outweighs the landscape and visual effects.

Biodiversity

- 3.62 **The ExA** asked Mr Griffiths to outline the additional biodiversity net gain that has been identified in the Applicant's submission at Deadline 6.
- 3.63 **Philip Davidson** on behalf of the Applicant responded explaining that as a result of the additional planting proposed at the "Bingley Land":
- 3.63.1 the woodland planting follows the alignment of a previous hedgerow and reinstates this linear feature thereby increasing connectivity for species such as bats and birds; and
- 3.63.2 the woodland planting ties into planting on the eastern side of the GRF and the woodland proposed to the north-east of the GRF and provides connectivity for a range of habitats.
- 3.64 **The ExA** asked how this increases biodiversity net gain.
- 3.65 **Mr Davidson** responded there is now an area based net gain of 7% and a linear based net gain of 8% which is an increase of 2% in each case from the Applicant's previous calculations. The conservative approach previously taken by the Applicant has been retained. It is still anticipated that the level of habitat loss predicted is a maximum given that when the Proposed Scheme is built out, it is unlikely to be built out to its maximum parameters and there will therefore be an opportunity to introduce additional planting through detailed design.
- 3.66 **Sara Robin** on behalf of YWT commented that the increased net gain is welcomed; however she would like to see a further increase which is to be expected of a wildlife trust. Wildlife trusts nationally responded to DEFRA's biodiversity net gain consultation that finished last week where it was commented that a net gain of 20% would be more appropriate (not in relation to this particular Application but for applications generally). Ms Robin commented that Lichfield Council adopted a Biodiversity SPD in May 2018 which requires 20% additional net gain. Ms Robin confirmed DEFRA has not yet responded to this consultation.
- 3.67 **The ExA** sought confirmation from Ms Robin that she is requesting more net gain than is currently offered and how the ExA could secure this. Ms Robin confirmed this was the case and 10% should be a minimum and 20% best practice and the ExA should request 10% net gain to be secured by the Applicant.

- 3.68 **The ExA** asked the Applicant to respond to this and also raised the point that at the last ISH, it was discussed that the Applicant would look at its own landholding to try to improve the net gain of the Proposed Scheme. Mr Davidson responded that through the Examination process, extra enhancements have been identified where the Applicant is confident they can be delivered as part of the Proposed Scheme.
- 3.69 **The ExA** identified that YWT are looking for the Applicant to commit to 10% and asked the Applicant if it thinks it can achieve this. Mr Davidson responded that the Applicant cannot be certain at this point but it is prepared to look at this again. Mr Davidson referred to Natural England's revised metric that is out to consultation and commented that if this metric is available during the Examination it would be helpful to utilise this, given the limitations associated with the current metric for the purposes of calculating linear based gain. Ms Robin commented that the new metric seems a lot more accurate than the existing one and it would be good if this new metric showed further gain.
- 3.70 **Sarah Morton** added the net gain is welcomed by the Councils but it is disappointing that the Applicant has not looked at their landholding to identify further gains. The Councils would welcome further "gapping up" and reinstatement of hedgerows.
- 3.71 **The ExA** asked if the Applicant has looked at their existing landholding. Mr Davidson confirmed that the Applicant has continued to engage with the local farming community and the increases from the "Bingley Land" have come about as a result of this process.
- 3.72 **Mr Griffiths** highlighted that the SoCG with the Councils (Examination Library Reference REP4-008) at paragraph 3.15.10, records that the Councils agree that the net gain assessment adequately sets out that "there would be an acceptable net gain of area based and linear habitats".
- 3.73 **The ExA** asked what the likelihood was of the net gain of 7% and 8% going down. The ExA also asked the Applicant for a rough estimate of how these percentages may increase once detailed design has been completed. Mr Griffiths confirmed the percentages were minimum figures, and that the amount of net gain would not decrease. Mr Griffiths stated that the Applicant will check the Outline Landscape and Biodiversity Strategy and if there is not a commitment in that strategy to securing a minimum 7% area based and linear based 8% net gain, the Applicant will revise this to make it clear that the Applicant is committing to these figures. In terms of the increase, this will depend on the design of the scheme, for example, where planting can be located to support habitat creation.
- 3.74 **Mr Davidson** outlined how the net gain can be maximised through detailed design, depending on the clearance distances required for construction, what is being placed in a particular location and if the full Order Limits need to be utilised.
- 3.75 **Mr Griffiths** proposed that the Applicant could commit to including information demonstrating how it has had regard to trying to increase net gain when submitting details to the relevant planning authority pursuant to Requirement 7 (Detailed Design Approval).
- 3.76 **The ExA** asked for the Councils' view of the proposal. Ms Morton responded that the Councils welcomed this and the wording will have to be checked with their ecologist who could not be at the ISH.
- 3.77 **The ExA** asked why the appropriate place to deal with this commitment was through Requirement 7, not Requirement 8 (Provision of landscape and biodiversity mitigation). Mr Griffiths responded that any increase to net gain will come through detailed design and therefore it made sense to deal with it in Requirement 7, but noted that the Applicant would consider this further with a view to submitting the amended requirement for Deadline 7. It is noted that, following a further review of the requirements after the ISH, the draft DCO submitted by the Applicant at Deadline 7 amends Requirement 8 as suggested by the ExA (rather than Requirement 7).

- 3.78 **The ExA** noted that in the SoCG between the Applicant and YWT it states there is likely to be matters of disagreement and asked for confirmation if this related to the amount of net gain. Ms Robin responded that it related to this and some issues relating to climate change but these issues have been covered previously. Mr Griffiths agreed with Ms Robin.

4. **AGENDA ITEM 4 – MATTERS FOR CLARIFICATION**

The ExA to state that it has examined all matters relating to Climate Change and has no further questions either written or oral

- 4.1 **The ExA** confirmed it had read all the material that has been received on climate change matters, and that there had been fairly lengthy discussion on these matters at the issue specific hearing in December 2018 as well as two rounds of written questions. The ExA thanked all parties for their submissions and responses to questions. The ExA noted that it now has the explanations it requires and has everything needed to consider the issues and make a recommendation to the Secretary of State on this point. The ExA wanted to give a final chance at this ISH for anybody to ask any questions not yet covered in the Examination. No parties had further comments or questions. The ExA again confirmed that everything submitted and discussed to date had been read and understood by it, and that it had no further questions on these matters.
- 4.2 **Mr Griffiths** asked for confirmation that the Applicant would have the opportunity to respond to the material submitted at Deadline 6 as permitted by the timetable.
- 4.3 **The ExA** confirmed that no party is prevented from submitting further written submissions.

Updates on agreement with Environment Agency (EA) on the use of secondary abatement technology and on the Environmental Permit

- 4.4 **The ExA** asked for an update on the Environmental Permit (“**EP**”).
- 4.5 **Mr Griffiths** on behalf of the Applicant responded that the position is as set out in the Applicant’s response to the ExA’s second written question AQ 2.1 (Examination Library Reference REP2-035). In December 2018 DEFRA made the decision that the Best Available Techniques Reference (BREF) document relevant NOx Associated Emission Levels (AELs) for new large combustion plant would apply to high efficiency CCGT plant (such as the Proposed Scheme). The Applicant is looking at whether it will achieve those AELs using primary or secondary abatement, both of which have been assessed for the purposes of the draft DCO. Once a decision has been made, the Applicant will seek an amendment to the application to vary the EP which the Applicant hopes to make in February or March 2019.
- 4.6 **Mr Griffiths** confirmed that the SoCG with the Environment Agency (Examination Library Reference REP4-007) sets out that there is no impediment to the granting of the EP. The Applicant anticipates that this SoCG will be signed before the close of the Examination and it will potentially submit an updated draft SoCG to the ExA at Deadline 7.
- 4.7 **The ExA** sought clarification that the HRA took into account primary and secondary abatement and that neither adversely affects the integrity of European Sites. Mr Griffiths confirmed that the HRA has assessed secondary abatement (SCR) and the worst case in terms of primary abatement and neither adversely affects the integrity of European Sites.

The Applicant or the EA to update the position in relation to carbon capture storage having regard to the response by IPs at D6

- 4.8 **Richard Griffiths** confirmed that the EA is happy with the Applicant's response to their technical questions on carbon capture storage. This is set out in the EA's response to the ExA's second written questions (Examination Library Reference REP6-018). The EA has raised a further technical question on the OCGT and this has been responded to.
- 4.9 **Mr Griffiths** confirmed that the Applicant will update the Carbon Capture Readiness Statement and this will be submitted to the ExA.
- 4.10 **The ExA** asked if the SoCG will set out the EA's position on carbon capture storage. Mr Griffiths confirmed it would, and that the only outstanding point with the EA in the SoCG is the protective provisions (in relation to consents related to drainage and abstraction) on which the Applicant awaits a response from the EA.

Statements of Common Ground

- 4.11 **The ExA** asked for an update on the SoCG with Natural England. Mr Griffiths confirmed this is as per the signed SoCG submitted at Deadline 1 (Examination Library Reference REP1-004).
- 4.12 **The ExA** asked for an update on all other SoCGs.
- 4.13 **Mr Griffiths** confirmed that:
- 4.13.1 **Highways England ("HE")** - the Applicant hopes to submit a revised draft at Deadline 7 and is pressing HE for a response to get this agreed and signed. Mr Griffiths noted that from the Applicant's perspective everything is agreed.
- 4.13.2 **The Councils** – the Applicant's understanding is that everything should be agreed apart from some additional wording to be added to the draft DCO with respect to the pedestrian bridge, and the landscape and visual impact mitigation. It is expected the landscape and visual mitigation may remain outstanding at the end of the Examination, although this will be subject to further discussions.
- 4.13.3 **YWT** - the SoCG has already been discussed and it is looking like the parties have agreed all they can and the points on the 10% net gain and the baseline for climate change will remain outstanding. The Applicant will progress this to signature and submit it to the ExA.

NYCC/SDC to confirm whether they are content with the dDCO submitted at D5 [REP5-011] includes all necessary provisions to control the footbridge design

- 4.14 **Mr Griffiths** confirmed the Applicant received a response from the Councils last week and it has agreed that it will add some additional wording into a Requirement in the draft DCO requiring additional safety plans to be submitted to the Councils for approval before the footbridge can be constructed. A side agreement is also being negotiated with the Councils to cover liability. The Applicant sees no reason why this point now cannot be agreed.
- 4.15 **Sarah Morton** confirmed this reflects the position and the Councils await the revised wording from the Applicant.
- 4.16 **The ExA** asked the Applicant when it anticipates being able to submit an updated version of the draft DCO. Mr Griffiths confirmed it will be submitted at Deadline 7 and the aim is for this version to include all the updated wording discussed at today's ISH.
- 4.17 **The ExA** advised that it may issue its revised draft DCO and if it were to do this, it would be in the form of a table of suggested changes. The ExA asked the Applicant if there were points of disagreement on the drafting, for ExA referred to the definition in the draft

DCO of “maintain” which had been discussed at a previous ISH and by way of written questions. The ExA asked the Applicant that if it were to make a recommendation to the Secretary of State for wording different to that proposed by the Applicant, would the Applicant want to comment on such wording again.

4.18 **Mr Griffiths** responded that the Applicant's position is as per its previous answers and the draft DCO to be submitted at Deadline 7 will set out the Applicant's wording.

4.19 **The ExA** confirmed that it would still include the proposed changes to the definition of “maintain” in its schedule of changes, and the Applicant can respond by cross referring to where it has previously set out its position in this respect. This approach was agreed by the Applicant.

An updated outline Public Rights of Way Management Plan does not appear to have been submitted at D6 as per the Applicant's response to FWQ TT 2.1. Applicant to confirm this and NYCC/SDC to confirm its position

4.20 **The ExA** asked for confirmation as to when the revised Public Rights of Way Management Plan would be submitted.

4.21 **Mr Griffiths** confirmed this document is agreed and the final form document will be submitted at Deadline 7.

4.22 **Sarah Morton** confirmed her agreement.