

The Drax Power (Generating Stations) Order

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

Applicant's Response to North Yorkshire County Council's and Selby District Council's Position on Landscaping

(Submitted for Deadline 9)



The Planning Act 2008

Drax Power Limited

Drax Repower Project

Applicant: DRAX POWER LIMITED
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1. CONTEXT

- 1.1. This document responds to the following submissions put to the Examination by or on behalf of NYCC and SDC:
- a) Martin Woolley - Draft mitigation strategy (REP4-016), submitted at Deadline 4 ("**the MW strategy**");
 - b) NYCC and SDC's response to the ExA's further written question LV2.2 (REP6-019), submitted at Deadline 6 ("**NYCC/SDC response to LV2.2**");
 - c) The oral submissions made by NYCC (and on behalf of SDC) at the Issue Specific Hearing on environmental matters on 12 February 2019 ("**NYCC/SDC oral submissions**");
 - d) NYCC/SDC's response to Deadline 6 submissions (REP7-017), submitted at Deadline 7 ("**NYCC/SDC Deadline 7 response**").
 - e) SDC's response to further information requested by the ExA (REP 8-015), submitted at Deadline 8 ("**SDC Deadline 8 response**"); and
 - f) NYCC's response to further information requested by the ExA (REP 8-016) submitted at Deadline 8 ("**NYCC Deadline 8 response**").
- 1.2. This document, originally submitted to the Examination at Deadline 8 (REP8-011), has been updated for Deadline 9 to reflect the final position of the parties.
- 1.3. In this document, any reference to "the Councils" means NYCC and SDC.

2. AGREED AND OUTSTANDING MATTERS

- 2.1. The Applicant, NYCC and SDC are agreed that the need for the Proposed Scheme is established in NPS EN-1, and the substantial benefits of the Proposed Scheme, including its satisfaction of the need, outweigh its adverse impacts including its landscape and visual impacts (see paragraph 3.24.2 of the Statement of Common Ground with NYCC and SDC submitted at Deadline 9 (Applicant's Reference: 8.1.4) ("**the SoCG**").
- 2.2. The Applicant, NYCC and SDC are agreed that the Site is acceptable for the Proposed Scheme as it re-uses an existing power station site which has good existing infrastructure connections. It is also agreed that there are appropriate controls in place with respect to the design of the Proposed Scheme, including requirement 7 of the DCO which relates to approval of detailed design (see paragraphs 3.6.3-3.6.4, 3.7.4 and 3.16.9 of the SoCG).
- 2.3. The Applicant and SDC are now agreed that the Applicant has provided mitigation to reduce the effects of the Proposed Scheme as far as reasonably practicable, and that the extent of offsetting to be provided by the Applicant is also appropriate. The agreed offsetting is secured in a section 106 Agreement, which is currently being finalised for execution. It is the intention, at this Deadline 9, for the signed Agreement to be submitted on or before 4 April 2019.
- 2.4. As at Deadline 8 (as reported in the earlier version of this document, REP8-011), the Applicant, NYCC and SDC were not agreed in terms of the extent of mitigation that should be provided for the Proposed Scheme. There remains disagreement with NYCC in this respect. It is accepted by all parties that the adverse landscape and visual effects of the Proposed Scheme are unable to be avoided entirely (see page 4 of the NYCC/SDC response to LV2.2). This is, of course, accepted by NPS EN-2 paragraph 2.6.5 which states that "*It is not possible to eliminate the visual impacts associated with a fossil fuel generating station.*" The Applicant considers it has provided measures as far as reasonably practicable to *reduce* the landscape and visual effects of the Proposed Scheme (as required by

paragraph 2.6.5 of NPS EN-2); that position is now agreed with SDC, and it would appear NYCC also agrees with that position. We say this based on NYCC's approach to seeking *offsetting* as set out in the MW strategy, and the NYCC/SDC Deadline 7 response, in which the Councils state:

"The Authorities are seeking offsetting and improvement to landscape within the area directly affected by the proposals. ...

Compensation or offsetting is an established principle within the mitigation hierarchy. The Guidelines for Landscape and Visual Impact Assessment (GLVIA3) suggests that 'where landscape effects are significant and adverse, proposals for preventing/avoiding, reducing, or offsetting or compensating for them should be described' (GLVIA3 para. 5.56)."

- 2.5. This is further confirmed by the NYCC Deadline 8 response which also refers to offsetting and compensating the effects of the Proposed Scheme.
- 2.6. It is clear from this that in the mitigation hierarchy, NYCC's view is that there is nothing further that can be done in terms of preventing / avoiding or reducing effects, and the level of the hierarchy under consideration is now offsetting. The Applicant agrees with that position; whilst the Applicant and SDC are agreed as to the appropriate amount of offsetting that is required, the outstanding issue with NYCC is the extent of that offsetting. However, given that the Applicant, NYCC and SDC are agreed that the Site is acceptable for the Proposed Scheme and that there are appropriate controls in place with respect to the design of the Proposed Scheme, paragraph 2.6.10 of NPS EN-2 applies, which states that *"the visibility of the fossil fuel generating station should be given limited weight."*
- 2.7. The Applicant also understands from NYCC's focus on measures associated with landscape character and green infrastructure, that it accepts there is nothing further that can reasonably be done in relation to the mitigation of visual effects. This appears to be confirmed by the NYCC/SDC response to LV2.2 which states:

"The Authorities agree that it is not possible to completely screen the power station and that it is not possible to directly mitigate the visual impact of the development itself. The only way to prevent the visual impact of the development would be to not build it. However if the development is built, then this results in adverse impacts on the landscape which must be mitigated." (page 4)

"the [Martin Woolley] strategy focuses solely on landscape character and green infrastructure, and not visual effects" (page 6)

The Applicant has set out its understanding in this respect in the Applicant's Response to Off-Site Mitigation Strategy (REP6-012); see paragraph 1.1.8 in which the Applicant states *"The Applicant notes that the OSMS appears to accept that "it is not possible to eliminate the visual impacts associated with a fossil fuel generating station" (EN-2, paragraph 2.6.5), as aside from Figures on page 5 and 6 of the OSMS which relate to visual effects, the focus of the OSMS relates only to impacts on landscape character rather than visual effects."* The Councils have not raised any objection to this statement.

- 2.8. In the discussion of the types of projects that could achieve any offsetting, NYCC has stated in its oral submissions made at the Issue Specific Hearing on 12 February 2019 that whilst it thinks there are opportunities for projects to offset the effects of the Proposed Scheme, this work may take a number of years. Mr Wainwright said at the Issue Specific Hearing:

"There are partners out there who can help achieve that mitigation, but it does require more detailed work and that work may take a number of years. It is not realistic to think that the Applicant has got resources or the time within this Examination period to fully resolve and identify every little bit of mitigation."

See also paragraph 3.20 of the Written Summary of the Applicant's Oral Case put at the Issue Specific Hearing - 12 February 2019 (REP7-015). The Applicant agrees that finding offsetting schemes is a process that would take some time. This in itself demonstrates that such measures are not reasonably practicable.

- 2.9. The Applicant has undertaken an assessment of the proposals in the MW strategy, set out in the Applicant's Response to Off-Site Mitigation Strategy, REP6-012. That assessment concluded that the proposals in the MW strategy would not reduce the effects of the Proposed Scheme¹. It appears to the Applicant that NYCC does not disagree with that assessment, given the NYCC/SDC Deadline 7 response made clear that it was in response to the Applicant's Deadline 6 response and addressed the several points the Councils did not agree with. Those points of disagreement were set out as being the appropriateness of mitigation and the interpretation of "mitigation" and "enhancement"; there appears to be no issue with the Applicant's actual assessment (the Applicant's assessment of the Councils' proposals remains the only one - the Councils themselves have not actually assessed what impact their proposals would have). This is consistent with NYCC's position being that there are no measures available to reasonably practicably reduce or avoid the effects of the Proposed Scheme (noting that offsetting would not reduce the effects of the Proposed Scheme).
- 2.10. The outstanding point for determination, therefore, relates to the extent of offsetting for landscape effects that should be provided. At Deadline 6, the Applicant submitted its *Response to Off-Site Mitigation Strategy* (REP6-012), in which it proposed offsetting in the form of a contribution to the resurfacing of the Ouse Bank Landscape Corridor of the Trans Pennine Trail, within 3km of the Site. This reflected the agreement or acceptance by all parties that the worst effects are within 3km of the Proposed Scheme. That proposed contribution totalled £42,750 and would be used for the purposes of resurfacing the Ouse Bank Landscape Corridor of the Trans Pennine Trail to support objectives identified in the Leeds City Green and Blue Infrastructure Strategy ("**the Trans Pennine Trail Contribution**").² The Applicant proposed that this contribution could be secured by way of a section 106 agreement, with the Councils' agreement, or a unilateral undertaking if agreement is not reached.
- 2.11. Subsequent to this proposal, the Applicant and SDC have agreed a further obligation to fund offsetting projects. The final detail of the obligations, and the draft of the section 106 agreement are currently being finalised and the completed agreement will be submitted to the Examination on or before 4 April 2019. The obligations with respect to landscape offsetting included in the section 106 agreement are not agreed with NYCC. As a consequence, the approach agreed with NYCC and SDC is that the landscaping obligations in the section 106 agreement are only between Drax and SDC.
- 2.12. SDC is agreed that the combination of the measures to be secured through the section 106 agreement, together with the measures described in the Outline Landscape and Biodiversity Strategy (Applicant's Reference: 3.1.4) submitted at Deadline 9, will provide adequate mitigation for the Proposed Scheme.
- 2.13. Whilst there is an acceptance from NYCC that the area for offsetting should be focussed to within 3km of the Site (as the most significant effects are close to the Site) and on landscape impacts rather than visual impacts, NYCC continues to seek a contribution from the Applicant of approximately £3.1m towards all projects (1-8) in the NYCC Deadline 8 response³ to offset the effects of the Proposed Scheme.

¹ Noting for completeness that for Recommendation 3 in the MW strategy, that does result in a change to the effects but as the proposals would so dramatically change the existing baseline landscape character, the resulting effects are said to be "neutral" as whether they would be viewed as beneficial or adverse would be down to the individual.

² Note, this figure was included in the MW Strategy as a figure of approximately £50,000 and subsequently revised to £42,750 by NYCC for Deadline 8.

³ Note, this figure has decreased from £10m to £3.1m based on an agreed focus for offsetting within 3km of the Site.

3. APPLICANT'S POSITION ON LANDSCAPE & VISUAL EFFECTS

3.1. Policy context

- 3.2. The Applicant has addressed the applicable policy in relation to the landscape and visual effects of the Proposed Scheme at section 2 of the Appropriateness of Proposed Mitigation document submitted at Deadline 2 (REP2-033) and section 2.2 of the Applicant's Response to Off-Site Mitigation Strategy (REP6-012). The relevant NPSs for the Proposed Scheme are the Overarching NPS for Energy (EN-1), the NPS for Fossil Fuel Generating Infrastructure (EN-2), the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) and the NPS for Electricity Network Infrastructure (EN-5), prepared in 2011 by the Department of Energy and Climate Change (DECC), now Business, Energy and Industrial Strategy (BEIS). Both the Applicant's documents cited above set out the key paragraphs of NP EN-2 which are relevant to decision making with respect to landscape and visual effects and these are set out below:

"[Secretary of State] decision making

2.6.5 It is not possible to eliminate the visual impacts associated with a fossil fuel generating station. Mitigation is therefore to reduce the visual intrusion of the buildings in the landscape and minimise impact on visual amenity as far as reasonably practicable.

2.6.6 Applicants should design fossil fuel generating stations with the aim of providing the best fit with the existing local landscape so as to reduce visual impacts. This may include design of buildings to minimise negative aspects of their appearance through decisions in areas such as size, external finish and colour of the plant as far as compliance with engineering and environmental requirements permit. The precise architectural treatment will need to be site-specific.

2.6.7 Reduction of visual impacts may often involve enclosing buildings at low level as seen from surrounding external viewpoints. This makes the scale of the plant less apparent, and helps conceal the lower level, smaller scale features of the plant. Earth bunds and mounds, tree planting, or both may be used for softening the visual intrusion and may also help to attenuate noise from site activities. Where the existing landscape is more industrial, design may involve other forms of visual impact mitigation.

2.6.8 As stated in EN-1, the applicant should have undertaken an appropriate landscape and visual assessment using recognised methodologies and have taken measures to minimise the effects of the fossil fuel generating station on landscape and visual amenity as far as reasonably practicable. In considering whether the measures proposed are sufficient to achieve these objectives the [Secretary of State] should take advice from the relevant statutory consultees.

2.6.9 In requiring any design adjustments to minimise adverse effects, the [Secretary of State] needs to be aware of the statutory and technical requirements that inform plant design and may require the incorporation of certain design details for example chimney stack height, as set out in Section 5.9 of EN-1.

2.6.10 For the reason given in paragraph 2.6.5 above if, having regard to the considerations in respect of other impacts set out in EN-1 and this NPS, the [Secretary of State] is satisfied that the location is appropriate for the project, and that it has been designed sensitively (given the various siting, operational and other relevant constraints) to minimise harm to landscape and visual amenity, the visibility of a fossil fuel generating station should be given limited weight."

- 3.3. The Appropriateness of Proposed Mitigation document (REP2-033) sets out how the Proposed Scheme is compliant with the above policy, with particular focus on demonstrating that the Applicant has identified mitigation measures "to reduce the visual intrusion of the

buildings in the landscape and minimise impact on visual amenity as far as reasonably practicable". That document also explains (for the purposes of paragraph 2.6.10 of EN-2) how the objectives of the Proposed Scheme have influenced choices in relation to layout, structures and technologies, which have in turn influenced or provided parameters and constraints for the design of the Proposed Scheme including mitigation. Two objectives were to reutilise existing infrastructure and as much existing operational land as possible with the siting of Units X and Y and the battery storage facility within the curtilage of the existing power station site.

3.4. Proposed mitigation & its effect

- 3.5. The landscape and visual effects are set out in ES Chapter 10, section 10.7 (residual effects) (APP-078) and Section 3 of the Appropriateness of Proposed Mitigation document (REP2-033). The assessment of effects is agreed with the Councils (see paragraphs 3.16.1 – 3.16.9 of the SoCG).
- 3.6. The mitigation proposed by the Applicant is set out in ES Chapter 10, section 10.6 (APP-078) and Section 5 of the Appropriateness of Proposed Mitigation document (REP2-033), with the further mitigation measures to reduce (planting on the Bingley Land) and offset (the Trans Pennine Contribution) effects set out in Section 2.8 of Applicant's Response to Off-Site Mitigation Strategy (REP6-012). In addition, the Applicant has now agreed to provide funding for a package of further offsetting projects with SDC, as referred to above. The mitigation measures to reduce the effects of the Proposed Scheme are set out in the Outline Landscape and Biodiversity Strategy ("**OLBS**") submitted for Deadline 9 (Applicant's Ref: 6.7) (which includes the planting on the Bingley Land).
- 3.7. The effect of the OLBS mitigation on the adverse effects of the Proposed Scheme is best summarised as follows:
 - a) The landscape mitigation identified through the OLBS would generate a positive effect on local landscape character and associated features. Effects would alter from moderate adverse to minor beneficial by Year 15 and following the maturation of planting.
 - b) Landscape mitigation measures would reduce the extent of visual effects on a small number of visual receptors relating to the AGIs and other infrastructure including the GRF. Visual receptors include, but are not limited to:
 - Residents of Diamond Cottage (experiencing a view of the AGIs);
 - Residents to the south and east of the AGIs (experiencing a view of the AGIs);
 - Residents of Wren Hall Lane;
 - Users of PRoW 35/47/10/1 and 35/6/12/1 to the north of Additional Area 1;
 - Users of PRoW 35/26/2/1 and 35/26/5/1;
 - Users of Wren Hall Lane; and
 - Users of roads to the south of the AGIs (experiencing a view of the AGIs).
 - c) Visual effects would reduce from major and moderate - major adverse down to major, moderate-major and minor adverse for residents within 1 km of the Site, local transport users and recreational users of PRoW and other facilities within 3 km of the Site. Effects would be subject to the orientation of the visual receptor, location of the receptor along a route as well as intervening vegetation and the built form.

- d) Without such measures identified in the OLBS the effects on local landscape character and the visual receptors identified above would remain unchanged. There would be no change in effects on landscape character areas, local landscape designations and remaining visual receptors refer to ES Chapter 10, Section 7 and Table 10.15 (APP-078), Table 2.1 of the OLBS (REP7-007) and Table 1 of the Appropriateness of Proposed Mitigation document (REP2-033).
- 3.8. The further effect that the additional mitigation on the Bingley Land has in terms of reducing effects on the Gas Receiving Facility is discussed at Section 2.8 of the Applicant's Response to Off-Site Mitigation Strategy (REP6-012), and the assessment concludes:
- "In terms of visual effects, such effects are likely to reduce as a result of the mitigation proposed on the Bingley Land, due to the extent of planting albeit such effects would remain significant. Receptors who would benefit following the implementation of mitigation and by Year 15 include residents of Wren Hall, users of Wren Hall Lane and users of PROW 35.26/2/1 and 35.26/5/1."*
- 3.9. The Trans-Pennine Trail Contribution and the further offsetting projects agreed with SDC offset the effects of the Proposed Scheme and do not reduce effects, as explained (with respect to the Trans-Pennine Trail Contribution) at paragraph 2.8.13 of Applicant's Response to Off-Site Mitigation Strategy.
- 3.10. **The Applicant's efforts to provide mitigation to reduce effects as far as reasonably practicable**
- 3.11. Whilst the Applicant considers its Application (and the accompanying original OLBS submitted) included the mitigation necessary in relation to the Proposed Scheme, the Applicant has continued to investigate what further measures could be undertaken in order to further reduce the effects of the Proposed Scheme, and to demonstrate that it has reduced visual intrusion on the landscape and minimised visual impact as far as reasonably practicable. Since submission the Applicant has:
- a) Revised the OLBS at Deadline 2 to set out the optioneering process and referred to mitigation measures (where feasible) through a Strategy Mitigation Plan with supporting strategic objectives, targets and indicators. Internal design objectives were also introduced to provide further planting where possible during detailed design. This is explained further at paragraphs 5.1.2 – 5.1.9 of the Appropriateness of Proposed Mitigation document (REP2-033);
 - b) Provided additional planting on the Bingley Land, reducing the visual impact of the Gas Receiving Facility and lower elevations of the Proposed Scheme, as explained above and at Section 2.8 of the Applicant's Response to Off-Site Mitigation Strategy (REP6-012);
 - c) Proposed the Trans Pennine Trail Contribution towards the resurfacing of the Ouse Bank Landscape Corridor of the Trans Pennine Trail, as an offsetting measure within 3km of the Site;
 - d) Agreed with SDC to fund a further package of offsetting projects;
 - e) Considered the opportunity for further areas of mitigation as referred to in Table 2.2 of the OLBS (submitted at Deadline 9), however, these areas were discounted on the basis of that:
 - land was considered important to retain as high quality farmland either Grade 1 or 2;
 - land included mitigation measures associated with the original power station scheme and altering its current form would negated measures agreed;
 - locations offered limited opportunities for landscape or ecological compensation / mitigation; and

- land was allocated for future use by the Applicant.
- f) Considered (as an indicative exercise) the amount of mitigation that would be required to redress the significant adverse effects within 1km of the Proposed Scheme. Such mitigation was extensive and would only have resulted in a marginal reduction in effect, not sufficient to change the level of significance of effects. The measures would have required a significant amount of private land, which would have resulted in the loss of agricultural land and a negative impact on farmers' livelihoods. For these reasons, it was considered that such mitigation was not feasible and not reasonably practicable. See Section 6 of the Appropriateness of Proposed Mitigation document (REP2-033);
- g) Considered the proposals put forward in the MW strategy. The MW strategy is addressed further below, however, in summary, the Applicant undertook its own assessment of the MW strategy (which is not disputed by the Councils), which concluded that the proposals would not reduce the effects of the Proposed Scheme⁴. (see Section 2.6 of the Applicant's Response to Off-Site Mitigation Strategy (REP6-012)). These measures would not achieve any reduction in effects, and are in any event not of a nature and scale which could be considered reasonably practicable (for reasons set out in the Applicant's Response to Off-Site Mitigation Strategy and elsewhere in this document); and
- h) As requested by the Examining Authority at the Issue Specific Hearing on 12 February 2019, and as the Applicant has continually done throughout the Examination, the Applicant has looked further at its own land holdings to consider whether it can provide more planting on its land. The Applicant has identified two potential additional land where it may be possible to improve Biodiversity Net Gain if needed to meet DCO requirements.. The OLBS refers to this additional land as a reference for the final OLBS, but at this point it cannot be confirmed that these additional areas will be available in time for the commencement of the Proposed Scheme.
- 3.12. Where measures have been identified which were reasonably practicable to undertake and had the effect of reducing the effects of the Proposed Scheme, they have been adopted by the Applicant. The Applicant has also agreed to provide some reasonable offsetting, although this would not reduce effects for the purposes of paragraph 2.6.5 of NPS EN-2. Where the Applicant has discounted the further mitigation considered above, that is because the measures have not been reasonably practicable and/or they would not achieve any reduction in the effects of the Proposed Scheme.
- 3.13. **Conclusion with respect to position on NPS tests**
- 3.14. The Proposed Scheme would be of a size and scale to have an adverse effect in terms of the landscape resource and also its visual impact. Although it is noted that such effects are ultimately reversible (although considered "permanent" for EIA purposes).
- 3.15. Paragraphs 2.6.5 and 2.6.6 of NPS EN-2 state that it is not possible to eliminate the visual impact of fossil fuel generating stations and that mitigation should reduce visual intrusion in the landscape and minimise the impact on visual amenity as far as reasonably practical.
- 3.16. Whilst the Applicant has identified mitigation measures to reduce the effects of the Proposed Scheme (as set out in the OLBS, secured by requirement 8 to the DCO), this would not be sufficient to fully mitigate the effects on the landscape of the proposal, nor the visual effects, and there would be some residual unmitigated visual and landscape impacts. Whilst other measures have been identified and assessed, they would not achieve a

⁴ Noting for completeness (as already noted above) that for Recommendation 3 in the MW strategy, that does result in a change to the effects but as the proposals would so dramatically change the existing baseline landscape character, the resulting effects are said to be "neutral" as whether they would be viewed as beneficial or adverse would be down to the individual.

reduction in the effects, or to the extent they would (which is limited), they are not reasonably practicable.

- 3.17. However, the Proposed Scheme would comply with paragraphs 2.6.5 and 2.6.6 of NPS EN-2 by reducing the visual intrusion in the landscape and minimising the impact on visual amenity as far as reasonably practicable. The location is appropriate for the Proposed Scheme, and appropriate controls are in place to ensure the detailed design of the scheme is such that it is sensitive to its surroundings and minimising harm to landscape and visual amenity.
- 3.18. Whilst the other adverse effects of the Proposed Scheme are considered elsewhere (this relates only to adverse effects in connection with carbon emissions, which are addressed at paragraphs 4.5 and 6.9(b) of the Applicant's Note on Substantial Weight to be Given to Need and Application of Tests Under S104 (REP5-021)), in general the proposal would not have any adverse effects after mitigation, with the exception of the impacts on landscape and carbon emissions.
- 3.19. As regards public benefit, EN-1 sets out a clear and urgent need for new electricity generation (which has been discussed more fully at Sections 2 and 3 of the Applicant's Note on Substantial Weight to be Given to Need and Application of Tests Under S104 (REP5-021) and which is agreed by the Councils). As explained in Section 6 of the Applicant's Note on Substantial Weight to be Given to Need and Application of Tests Under S104, matters associated with this urgent need result in substantial weight in favour of the Proposed Scheme (along with other benefits as set out at Section 4 of REP5-021).
- 3.20. It is considered that the anticipated extent of the Proposed Scheme's actual contribution to satisfying the urgent need for fossil fuel generating stations would outweigh any harm to the landscape.

4. THE APPLICANT'S RESPONSE TO COUNCILS' SUBMISSIONS

- 4.1. The Applicant has responded to each of the Councils' submissions below. Where the Applicant has responded elsewhere, the relevant document is referenced, and points raised by the Councils are not responded to where they have been subsequently superseded or clarified by later submissions from the Councils.
- 4.2. **Response to the MW strategy**
- 4.3. The Applicant has responded comprehensively to the MW strategy, in response to further written question LV2.3 from the Examining Authority (see Applicant's Response to Off-Site Mitigation Strategy, REP6-012). As part of that response, the Applicant has undertaken its own assessment of the proposals put forward by Mr Woolley on behalf of the Councils, and that assessment has not been challenged by the Councils. The assessment is at Section 2.6 of that document, and concludes that Recommendations 1 and 2 from the MW strategy would result in only a slight reduction to the magnitude of change, which is not sufficient to change the category of magnitude of change nor the significance of the effects. The assessment concluded that Recommendation 3 from the MW strategy would have a dramatic change to the baseline landscape character (which could be classed as a project in its own right and would require a full environmental assessment as well to determine the effects of changing the baseline; none of which has been done by the Councils), resulting in a medium to large magnitude of change, and a moderate to major effect which cannot be categorised as beneficial or adverse (and so is neutral) because how the extensive change would be appreciated, would depend on the individual. Recommendation 3 is simply not plausible given the dramatic nature of the proposal on the baseline. Recommendation 4 would also not result in any change in effects.
- 4.4. Section 2.6 of the Applicant's Response to Off-Site Mitigation Strategy has also considered each recommendation against the planning tests for development consent obligations and concluded that the proposals in the MW strategy failed to meet those tests, for the reasons set out in that document.

4.5. Response to the NYCC/SDC response to LV2.2

4.6. The NYCC/SDC response to LV2.2 is somewhat confusing in its use of terminology and in setting out what it is the Councils require. That confusion has been clarified somewhat by the Councils' oral submissions and responses to the ExA's questioning at the Issue Specific Hearing on 12 February 2019, as well as the NYCC/SDC Deadline 7 response.

4.7. The Councils set out their agreement with the Applicant at page 4 *"that it is not possible to completely screen the power station and that it is not possible to directly mitigate the visual impact of the development itself. The only way to prevent the visual impact of the development would be to not build it"*.

4.8. This paper is specifically in response to the ExA's further written question LV2.2, which asked the Councils to:

"Justify the mitigation as set out in the D4 submission [REP4-016], specifically that the financial contributions sought meet the tests of Paragraph 56 of the National Planning Policy Framework in that they are:

a) Necessary to make the development acceptable in planning terms;

b) Directly related to the development; and

c) Fairly and reasonably related in scale and kind to the development."

4.9. The Councils' response does not address these tests, and includes no assessment or justification of the proposals in the MW strategy.

4.10. The NYCC/SDC response to LV2.2 is somewhat confusing as to the Councils' position. The Applicant's understanding of the Councils' position of support for the Proposed Scheme overall was recorded at the Issue Specific Hearing (as reported by the Applicant at paragraphs 3.23, 3.30, 3.41 and 3.61 of the Applicant's Oral Case put at the Issue Specific Hearing - 12 February 2019 (REP7-015)) and the Councils have not sought to disagree with those oral submissions nor the Applicant's written summary of those oral submissions. In this respect, the Councils' support for the Proposed Scheme is apparent from the SoCG, in particular that:

3.4.3 There are no outstanding matters to be agreed with regard to the principle of the Proposed Scheme, which is supported by NYCC and SDC.

...

3.4.20 In conclusion, it is agreed that the principle of the Proposed Scheme is supported by national and local planning policy.

...

3.5.7 It is agreed that the Proposed Scheme would provide an important role in supporting the transition to a low carbon economy and would contribute to addressing the urgent need that exists for new electricity generating capacity in the UK and would improve the security, diversity and resilience of the UK electricity supplies generally, supporting the UK's transition to low carbon electricity generation.

3.5.8 The Parties note paragraph 4.1.2 of EN-1 which provides that the decision maker (formerly the IPC) should start with a presumption in favour of granting consent to applications for energy NSIPs.

3.5.9 There are no outstanding matters to be resolved with regard to the need for the Proposed Scheme.

- 4.11. SDC's support for the Proposed Scheme has since been further confirmed in the SoCG in which it agrees "*that the extent of mitigation measures proposed would minimise the impact on local landscape character and visual amenity as far as reasonably practicable and in accordance with NPS EN-1 and NPS EN-2.*" The Applicant's understanding of NYCC's position (in light of the above context) is that whilst it does not think sufficient offsetting of landscaping effects has been provided, it does not consider the adverse landscaping effects outweigh the benefits of the scheme, nor that such offsetting is needed in order to make the Proposed Scheme acceptable in planning terms.
- 4.12. With respect to the requirement that the proposals in the MW strategy are directly related to the development, the relevance appears to be that the proposed offsetting projects are within a 10km radius of the Proposed Scheme (this has subsequently been narrowed to 3km as noted above). It is clear from submissions from the Councils made at the Issue Specific Hearing that its proposals are only directly relevant to the Proposed Scheme in that they are located in proximity to the Proposed Scheme, rather than being directly relevant to the adverse effects of the Proposed Scheme (being measures aimed at offsetting rather than reducing the effects).
- 4.13. In relation to the requirement to be fairly and reasonably related in scale and kind to the development, NYCC/SDC repeatedly state in the response to LV2.2 that they are not seeking £10 million (for example on page 2, which states "*The Authorities have not asked for £10m. The Strategy is a suite of options that show examples of realistic and deliverable landscape mitigation options*" – the Councils "re-iterate" at page 6 that they have "*not asked for £10m*"). Yet the statements made elsewhere in this document do not support that position. On page 6 the Councils state:
- "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. As stated above, the strategy focuses solely on landscape character and green infrastructure, and not visual effects."*
- 4.14. This statement does not support the position that the MW strategy sets out a suite of options from which some projects may be selected. This statement suggests that to make a "notable difference", the totality of one of the options in the strategy must be delivered (the average cost of which is around £10m), and that anything less than that would make no "notable difference". As noted at the Issue Specific Hearing the Applicant is unclear what "notable difference" means, however, the inference is clear that in order to have any effect the Councils consider contributions to projects in the sum of around £10m is required.
- 4.15. It is noted, however, that the MW strategy does not suggest that an amount of £10m reduces the effects of the Proposed Scheme, it only suggests this would provide some difference. It is very clear that a contribution of that amount, to even merely achieve a "notable" difference⁵ is wholly unreasonable and disproportionate to the effects of the Proposed Scheme and the extent to which they would be reduced as a result of such contribution (if at all). The Applicant's understanding (which has not been corrected, or contradicted by anything said by the Councils during discussion on this point at the Issue Specific Hearing) is that no assessment has been done of Mr Woolley's proposed measures in the MW strategy in terms of what their impact would be on the adverse effects of the Proposed Scheme (and as noted above, the Councils appear to accept the Applicant's assessment in this respect)⁶, which begs the question what the suite of circa £10m options is actually based on. The £10m figure is clearly unreasonable and disproportionate having regard to the effects of the Proposed Scheme, however it is all the more unreasonable given that (i) there is no detailed explanation for how that figure has been assessed or arrived at,

⁵ Although that any difference would result has not been established, given the lack of assessment by the Councils of the effect of the Martin Woolley proposals, and the Councils apparent acceptance of the Applicant's assessment in this respect.

⁶ Mr Woolley, at the Issue Specific Hearing, said that the recommendations in the MW strategy were a matter of professional judgement, and referred only to the assessment that had already been undertaken of the existing landscape character areas in NYCC's Character Assessment document (see paragraph 3.32 of the Applicant's Oral Case put at the Issue Specific Hearing - 12 February 2019 (REP7-015)).

and so there is no indication as to how the figure is related to the effects of the Proposed Scheme, and (ii) the expenditure of that figure does not achieve a reduction in significance of effects, and so cannot be considered proportionate given the limited benefit it would deliver.

4.16. The other suggestion in terms of the amount of the contribution, made at page 6 of the NYCC/SDC response to LV2.2 was that a *"landscape delivery fund could be linked to a % of the total project cost to demonstrate reasonableness and proportionality"*. At the Issue Specific Hearing, the Councils volunteered a percentage by way of example of 0.5%, which would equate to approximately £3 million (which is what NYCC now seeks in the NYCC Deadline 8 response). It is not clear how a percentage of the project cost is reasonable and proportionate to the amount of offsetting required for the Proposed Scheme, given there is no relationship between a scheme's adverse landscape and visual effects and its total cost.

4.17. The NYCC/SDC response to LV2.2 stated that *"In its current form the OLBS [the Applicant's Outline Landscape and Biodiversity Strategy] would not reduce the significant adverse effects"* (page 1). This is in conflict with NYCC/SDC's acceptance of the Applicant's assessment of the landscape and visual effects, which has regard to the mitigation in the OLBS. NYCC/SDC does not dispute the Applicant's assessment conclusions. NYCC/SDC's position seems to have shifted in some respect on this point in its NYCC/SDC Deadline 7 response where it refers to there being *"almost no effective mitigation proposed"*. NYCC/SDC has not, however, undertaken any assessment of its own of the effect of the OLBS, nor has it demonstrated that the effect of the proposals in the MW strategy would be to reduce the adverse effects of the scheme further. As noted above in this respect, SDC agrees that there is nothing further that can reasonably and practicably be done to reduce the adverse effects of the Proposed Scheme. It would appear that NYCC also accept this; we say this because:

- a) NYCC has not challenged the Applicant's assessment that the MW strategy proposals do not reduce the effects of the Proposed Scheme⁷ (as set out in Section 2.6 of the Applicant's Response to Off-Site Mitigation Strategy (REP6-012)) and would appear to have accepted that assessment, given the NYCC/SDC Deadline 7 response to that document sets out the points from the Applicant's document with which it disagrees and it does not refer to the assessment outcomes; and
- b) Whilst NYCC's position in the NYCC/SDC response to LV2.2 was not completely clear as to what it was seeking, at the Issue Specific Hearing on 12 February 2019 and as confirmed by its subsequent letter submitted at Deadline 7 (the NYCC/SDC Deadline 7 response), it is not seeking measures which would reduce the effects of the Proposed Scheme, but measures which would offset the effects of the Proposed Scheme. This was made clearer by oral submissions at the Issue Specific Hearing (recorded in the Applicant's Oral Case put at the Issue Specific Hearing - 12 February 2019 (REP7-015) at paragraph 3.32) that the measures in the MW strategy *"would strengthen existing weaknesses of the landscape character areas"*. This was also reflected in the response to LV2.2 where it states (at page 5):

"The Character Assessments identify existing weaknesses in landscape character and prescribe management objectives for improvement. It is these acknowledged 'weaknesses' and management objectives that the MW OSMS uses as a basis for developing a range of options to mitigate, offset and compensate the adverse effects of the development."

⁷ Noting the aforementioned point in relation to Recommendation 3 and the dramatic change to the existing baseline landscape character.

It is clear from this that the proposals put by NYCC are aimed at addressing existing weaknesses in the landscape character (and green infrastructure), not caused by the Proposed Scheme, as a means of offsetting the impact of the scheme. It follows from that (in particular having regard to the mitigation hierarchy set out in the NYCC/SDC Deadline 7 response) that it does not consider there are measures available to reduce the effects of the Proposed Scheme.

- 4.18. Whilst NYCC has stated that it does not accept that nothing further can be reasonably and practicably done to reduce the effects of the Proposed Scheme, it must follow from its position as set out above, that it in fact does accept this point, and that its position is more accurately described as being that it disagrees that sufficient offsetting has been provided. Indeed, the fact that NYCC stated at the Issue Specific Hearing on 12 February 2019 that it would take years to identify schemes, demonstrates this very point.
- 4.19. NYCC has stated at the Issue Specific Hearing that it wants options that “make a difference” to the significant adverse landscape impacts (see paragraph 3.27 and 3.35 of the Applicant’s Oral Case put at the Issue Specific Hearing - 12 February 2019 (REP7-015)), and the Applicant agrees that this should be the focus, that is, reducing the significant adverse effects. However, as demonstrated by the Applicant, there are no further measures it can reasonably and practicably take to change the adverse effects more than it has, and whilst NYCC does not expressly concede this point, the essence of their oral submissions, recent written submissions and proposals, is that they do accept nothing further can be done to reduce the effects, and have therefore shifted their focus to offsetting.
- 4.20. NYCC states that to ignore the adverse landscape and visual effects of the Proposed Scheme would be to “*fail the residents the Authorities both serve*”. The language here is unnecessarily emotive. The Applicant has never sought to ignore the adverse effects of the Proposed Scheme. However, the reality is, as acknowledged by the NPS EN-2, for this nationally significant energy project, it is not possible to avoid its adverse landscape and visual effects. The Applicant’s view is that it has reduced the effects as far as reasonably practicable, and it acknowledges that adverse residual effects remain. In addition, the reference to “*failing residents*” is not corroborated by any of the relevant or written representations received in relation to the Proposed Scheme, other than those submitted by NYCC/SDC. No local residents have appeared at any of the hearings to raise concerns about landscape and visual effects. Whilst Yorkshire Wildlife Trust has made submissions in relation to various off-site projects, it agrees that the “*Outline Landscape and Biodiversity Strategy submitted at Deadline 6 (REP6-009) addresses the key landscape and visual effects as far as reasonably practicable and in accordance with NPS EN-1*” (see the SoCG with Yorkshire Wildlife Trust submitted at Deadline 8, paragraph 1.1.22). It would be fair to say that the local population do not appear to be overly concerned with the effect of the Proposed Scheme on their existing landscape and views.
- 4.21. **NYCC/SDC Deadline 7 response**
- 4.22. As noted above, the NYCC/SDC Deadline 7 response addressed the points it disagreed with in the Applicant’s Response to Off-Site Mitigation Strategy (REP6-012) “*In particular relating to the appropriateness of the Applicant’s mitigation, and the interpretation of ‘mitigation, and ‘enhancement’.*”
- 4.23. In terms of the appropriateness of the Applicant’s mitigation, the Councils state that they disagree that there is no off-site mitigation that could make a difference to the effects identified in the Applicant’s ES (although it is noted, that this is more accurately described as NYCC’s position, given the agreement reached with SDC). NYCC says that more can be done and the MW strategy demonstrates this. However, NYCC does not raise any issues with the Applicant’s assessment of the MW strategy (Applicant’s Response to Off-Site Mitigation Strategy (REP6-012)) which shows that the proposals would not reduce the

significance of the effects of the Proposed Scheme⁸, and does not put forward any assessment of their own to demonstrate how the MW strategy reduces the effects set out in the ES. Further, NYCC's focus is on how to offset the scheme's effects, rather than to reduce it. NYCC's inability to back up its own stated position, by providing proposals (and an assessment of them) that would change the significance of the effects identified, ultimately supports the Applicant's position that it has provided measures to reduce the effects of the Proposed Scheme as far as reasonably practicable.

4.24. In terms of "mitigation versus enhancement", the clarification from NYCC is welcomed. The significance of the distinction between measures to reduce and offset effects has been discussed throughout this note. In summary, accepting what NYCC says, in terms of the hierarchy of mitigation, measures that would avoid or reduce the effects of the Proposed Scheme would change the significance of effects. Failing that, measures that would offset the effects are sought.

4.25. NYCC further clarifies:

"The Authorities are seeking offsetting and improvement to landscape within the area directly affected by the proposals. The Authorities' proposals are Landscape mitigation supported by existing Landscape Character Assessments and Green Infrastructure Strategies."

This statement reflects what NYCC has explained in the NYCC/SDC response to LV2.2; that their approach has been to focus on how to achieve improvements identified in existing assessments / strategies:

"The Character Assessments identify existing weaknesses in landscape character and prescribe management objectives for improvement. It is these acknowledged 'weaknesses' and management objectives that the MW OSMS uses as a basis for developing a range of options to mitigate, offset and compensate the adverse effects of the development."

and

"The approach of the MW OSMS has been to improve local landscape character and green infrastructure within the area directly affected by the proposed development and to provide meaningful landscape offsetting and compensation."

4.26. The clarification that the focus within the mitigation hierarchy is on offsetting, is helpful in confirming an acceptance that the significance of the effects of the Proposed Scheme cannot be reduced further, and that instead proposals should be aimed at offsetting those effects in the areas where they will be experienced. As stated above, the Applicant considers that the offsetting it has proposed, in terms of the Trans Pennine Trail Contribution and the funding of further offsetting projects is reasonable. Other possible options put to the Applicant (based on the MW strategy and the Councils' oral submissions at the Issue Specific Hearing) are not considered reasonable because:

- a) The amount of the contributions to offsetting projects (which now appears to be somewhere in the range of £3m - £10m) is excessive, unreasonable, and disproportionate to the effects of the Proposed Scheme and the degree of offsetting that could be achieved by such measures.
- b) There is no certainty as to the projects that would be undertaken, with the Councils themselves stating that it can be some years for

⁸ Noting for completeness the earlier point about Recommendation 3 and the dramatic effect on the existing baseline landscape character.

projects to be identified and implemented. A requirement to contribute to such a project is unreasonable in those circumstances.

- c) There is no certainty as to delivery of the projects. Several of the types of projects included in the MW strategy and discussed at the Issue Specific Hearing rely on acquiring third party land. There are no compulsory acquisition powers available with respect to the implementation of such projects, and so acquisition of land relies on agreement from landowners. There is therefore considerable uncertainty as to the ability of any such projects to be delivered.
- d) Given the failure of contributions to projects in the sum of £3-£10m not meeting the required tests for planning obligations, it would not be appropriate to secure those contributions by way of a legal agreement pursuant to section 106 of the Town and Country Planning Act 1990. There is therefore uncertainty as to the delivery mechanism for such contributions.

4.27. SDC Deadline 8 response

- 4.28. As foreshadowed in the SDC Deadline 8 response, SDC and the Applicant have reached agreement on an appropriate package of offsetting projects, which will be secured by way of a section 106 agreement. As noted above, given NYCC does not agree to those obligations, the obligations in the section 106 agreement will be only between SDC and the Applicant.

4.29. NYCC Deadline 8 response

- 4.30. The NYCC Deadline 8 response includes a revised Mitigation Strategy which identifies 8 offsetting projects within a 3km radius of the Site.
- 4.31. The Council argues that based on *“the scale of the development with a total project cost of £600 million. It is reasonable to expect that measures to mitigate the significant and adverse landscape effects should be proportionate to the scale of the proposed development and its predicted impacts. The £3.1 million cost associated with delivering and maintaining the projects for a 25 year period represents 0.5% of the project cost for a development lifespan likely to be excess of 30-40 years.”*
- 4.32. The Applicant disagrees that all of the offsetting measures are justified for the reasons outlined previously in this paper and has instead proposed its own contribution to offset the effects of the Proposed Scheme via some of the projects identified in the strategy, which have been agreed with SDC as outlined above.
- 4.33. NYCC also argues in its points of further clarification associated with the revised Mitigation Strategy that there is *“capacity for the delivery partners to implement the works in the future”*. This, as outlined previously, does not give any certainty that such proposals will be delivered and are therefore considered unreasonable by the Applicant.
- 4.34. In response to NYCC’s points of clarification that *the “word potentially or potential is used at para 1.1, 1.2.2, 1.3 and 4.4, not to cast doubt on their effective improving mitigation, but in the sense that existing landscape projects will have a beneficial effect if implemented in the future,”* the Applicant agrees that while such projects will address some weaknesses in the landscape character baseline, the proposals will not respond to the direct effects caused by the Proposed Scheme. Such effects relate to changes in aesthetic, perceptual and experiential qualities of the Existing Drax Power Station Complex as a consequence of the Proposed Scheme. This focus on addressing existing weaknesses, rather than the effects of the Proposed Scheme is further confirmed in paragraph 1.3 where it refers to the identified projects having potential to *“offset or compensation for the predicted significant adverse effects on the landscape by restoring acknowledged landscape character weaknesses ...”*.

The relevance of this to NYCC's acceptance that the Applicant has done all it can to *reduce* the effects of the Proposed Scheme, is explained elsewhere in this note.

- 4.35. Furthermore, it is noted that the ES Chapter 10, LVIA Appendix 10.5 (APP-121), which was agreed by the Councils as per paragraph 3.16.15 of the SoCG, states that the landscape character areas / types have some capacity to absorb the Proposed Scheme due to the presence of large scale industrial and transport features (including the existing power station).

5. CONCLUSION

- 5.1. The Applicant, NYCC and SDC are agreed that the need for the Proposed Scheme is established in NPS EN-1, and the substantial benefits of the Proposed Scheme, including its satisfaction of the need, outweigh its adverse impacts including its landscape and visual impacts. The Applicant, NYCC and SDC are also agreed that the Site is acceptable for the Proposed Scheme and that there are appropriate controls in place with respect to the design of the Proposed Scheme.
- 5.2. It is accepted by all parties that the adverse landscape and visual effects of the Proposed Scheme are unable to be avoided entirely. SDC accepts, and NYCC appears to accept, that the Applicant has provided measures as far as reasonably practicable to *reduce* the landscape and visual effects of the Proposed Scheme (as required by paragraph 2.6.5 of NPS EN-2). SDC accepts, and NYCC appears to accept that nothing further can be done with respect to visual effects, and the area of disagreement between NYCC and the Applicant relates to the extent of offsetting for landscape effects. NYCC considers that the Applicant should contribute approximately £3.1 m to projects to offset the effects of the Proposed Scheme. For the reasons set out in this paper, the Applicant disagrees that such offsetting is justified, and has instead proposed its own contribution to offset the effects of the Proposed Scheme which has been agreed with SDC.
- 5.3. Whilst the Applicant has identified mitigation measures to reduce the effects of the Proposed Scheme (as set out in the OLBS, secured by requirement 8 to the DCO), this would not be sufficient to fully mitigate the effects on the landscape of the proposal, nor the visual effects, and there would be some residual unmitigated visual and landscape impacts. Whilst other measures have been identified and assessed (including offsetting proposals put forward by NYCC), they would not achieve a reduction in the effects, or to the extent they would (which is limited), they are not reasonably practicable.
- 5.4. However, the Proposed Scheme would comply with paragraphs 2.6.5 and 2.6.6 of NPS EN-2 by reducing the visual intrusion in the landscape and minimising the impact on visual amenity as far as reasonably practicable. The location is appropriate for the Proposed Scheme, and appropriate controls are in place to ensure the detailed design of the scheme is such that it is sensitive to its surroundings and minimising harm to landscape and visual amenity.
- 5.5. As regards public benefit, EN-1 sets out a clear and urgent need for new electricity generation, and substantial weight should be given to the contribution the Proposed Scheme would make to that identified need. It is considered that the anticipated extent of the Proposed Scheme's actual contribution to satisfying the urgent need for fossil fuel generating stations urgent would outweigh any harm to the landscape.