

The Drax Power (Generating Stations) Order

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

Closing Submissions
(Submitted for Deadline 9)



The Planning Act 2008
The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009 - Regulation 5(2)(q)

Drax Power Limited

Drax Repower Project

Applicant: DRAX POWER LIMITED
Date: March 2019
Document Ref: 8.5.24
PINS Ref: EN010091

Document History

Document Ref	8.5.24
Revision	001
Author	Alexis Coleman
Signed	Date 28/03/2019
Approved By	Richard Griffiths
Signed	Date 28/03/2019
Document Owner	Pinsent Masons LLP

Closing submissions on behalf of the Applicant

- 1.1 This document draws together the Applicant's submissions made to the Examining Authority during the course of the Examination. This document sets out the Applicant's case in the context of the requirements of section 104 of the Planning Act 2008 ("**PA 2008**"), and provides cross references to where its submissions have been made in more detail.
- 1.2 **Section 104(2): Having regard to important and relevant matters**
- 1.3 Section 104(2) lists matters the Secretary of State must have regard to. These matters include any local impact report submitted. The Councils jointly submitted a Local Impact Report (REP2-047) which the Applicant responded to (REP3-026). To the extent the Local Impact Report and the Applicant's response highlight differences between the parties, those matters have been resolved during the Examination, as set out in the final signed statement of common ground submitted at Deadline 9, save in relation to the extent of offsetting for adverse landscape effects, which remains a point of disagreement with North Yorkshire County Council ("**NYCC**") only (Selby District Council ("**SDC**") agree with the extent of offsetting as provided by the Applicant, as recorded further below in this document).
- 1.4 Any other matters prescribed in relation to the Proposed Scheme, including the National Policy Statements ("**NPS**"), are covered in the remainder of this note.
- 1.5 The Proposed Scheme's compliance with local planning policy and the National Planning Policy Framework ("**NPPF**") is relevant as a matter which the Secretary of State may consider important and relevant, and the Applicant's position in terms of policy compliance in this respect is set out in the Applicant's Planning Statement (APP-062) and the document submitted at Deadline 9 demonstrating compliance with the revised NPPF (as revised in 2018 and 2019), and is also reflected in the statement of common ground with NYCC and SDC submitted at Deadline 9.
- 1.6 **Section 104(3): Deciding the application in accordance with NPS**
- 1.7 Section 104(3) provides that the application must be decided in accordance with any relevant NPSs, except to the extent that one or more of subsections (4) to (8) applies. In section 5 of the Applicant's Planning Statement (APP-062), along with Table 2-1 to Appendix 2 to that document, the Applicant has considered and set out the conformity of the Proposed Scheme against the assessment principles, generic impacts and assessment and technology specific considerations of the relevant NPSs (EN-1, EN-2, EN-4 and EN-5). The Planning Statement demonstrates that there is no conflict with the NPS policy and that the Applicant has fully taken into account the guidance contained within the NPSs.
- 1.8 Further documents submitted during the Examination demonstrating the Applicant's compliance with the Energy NPSs include:
 - 1.8.1 landscape and visual effects (*Applicant's Response to Off-Site Mitigation Strategy* (REP6-012), *Applicant's Response to North Yorkshire County Council's and Selby District Council's Position on Landscaping* (REP8-011), and the *Outline Landscape and Biodiversity Strategy* submitted at Deadline 9). Those documents demonstrate that the Applicant has reduced the effects of the Proposed Scheme as far as reasonably practicable. That position is agreed with SDC. Whilst NYCC does not agree with the amount of offsetting provided, that position cannot be taken as suggesting a failure to comply with the NPS requirements, and it appears to accept in this respect that the effects of the Proposed Scheme have been *reduced* as far as reasonable practicable (as opposed to *offset*), as explained in the documents mentioned, in particular REP8-011; and

- 1.8.2 need, carbon and carbon capture readiness (“**CCR**”) (Applicant's Response to ClientEarth's Deadline 6 Submission (REP7-018), Carbon Capture Readiness Statement (REP7-005)).
- 1.9 The anticipated extent of the Proposed Scheme's contribution to the need for energy generation and the weight to be given to this in line with NPS EN-1 is discussed below, in relation to the balancing of factors to be undertaken pursuant to section 104(7). In addition, reference should be had to the *Applicant's Response to Written Questions* (REP2-035) and the *Applicant's Response to the Examining Authority's Further Written Questions* (REP6-013).
- 1.10 **Section 104(7): The planning balance**
- 1.11 The planning balance is carried out pursuant to section 104(7) of the PA 2008 in the context of the NPS policies. That context is set out at the section starting with paragraph 2.4 of the *Applicant's Note on Substantial Weight to be Given to Need and Application of Tests Under S104* (REP5-021) and in summary provides:
- 1.11.1 NPS EN-1, as re-affirmed by NPS EN-2, establishes the need for fossil fuel electricity generation. If there is a need for fossil fuel electricity generation then logically there is a need for a scheme for fossil fuel electricity generation. Therefore, the ExA and the SoS are told that need for the Proposed Scheme has been demonstrated;
- 1.11.2 NPS EN-1 requires that substantial weight be given to the contribution that the Proposed Scheme would make towards satisfying the identified need;
- 1.11.3 the weight, within the floor set of "substantial", that is attributed to the consideration of need in this case should be proportionate to the anticipated extent of the Proposed Scheme's actual contribution to satisfying the need for fossil fuel electricity generation;
- 1.11.4 there is a presumption in favour of granting consent for the Proposed Scheme; and
- 1.11.5 the ExA and the SoS then has to balance the Proposed Scheme's adverse impacts against its benefits (as per EN-1 paragraph 4.1.3, the latter includes the substantial weight that must be given to the Proposed Scheme's contribution to satisfying the identified need, with the weight within the floor set of "substantial" left to the ExA and the SoS as per paragraph 3.2.3 of EN-1).
- 1.12 Submissions made during the course of the Examination relevant to the legislative and policy requirements with respect to the balancing exercise to be undertaken are at paragraphs 2.1 to 2.20 of the *Applicant's Note on Substantial Weight to be Given to Need and Application of Tests Under S104* (REP5-021) and in answer to further written question ANC 2.1 set out in *Applicant's Responses to Examining Authority's Further Written Questions* (REP6-013). The *Applicant's Response to ClientEarth's Deadline 6 Submission* (REP7-018) is also relevant in this respect.
- 1.13 The Applicant has made submissions to the Examination as to how this balancing exercise should be undertaken. The factors to be taken into account in the balancing exercise pursuant to section 104(7) are:
- 1.13.1 **The anticipated extent of the Proposed Scheme's actual contribution to the need** identified in the Energy NPSs for fossil fuel electricity generation. This actual contribution is explained in detail in Section 3 of the *Applicant's Note on Substantial Weight to be Given to Need and Application of Tests Under S104* (REP5-021) and, as explained at paragraph 6.7 of that Note, the Proposed Scheme makes a significant contribution towards satisfying

the various aspects of the need identified for fossil fuel generating infrastructure in the Energy NPSs. A **high degree of substantial weight** should be given to the Proposed Scheme as the Proposed Scheme makes a significant contribution to meeting the need identified in NPS EN-1 in the following ways:

- (a) **Generation capacity** - The Proposed Scheme will be able to deliver 3.6GW of high efficiency generation as well as store up to 200MW of electricity in its proposed battery storage capability facility. This generation and storage capacity clearly satisfies the identified need for "*significant amounts of new large-scale energy infrastructure*" as set out in paragraph 3.2.3, NPS EN-1;
- (b) **Affordable electricity** - The Proposed Scheme contributes to the need to provide affordable energy in line with the Government's energy policy. It does this because of the efficiency gains associated with construction (in relation to reuse of existing land and infrastructure), but more importantly it will bring operational efficiencies the generation network as a whole, which will mean the Proposed Scheme displaces less efficient plant;
- (c) **System services** - The Proposed Scheme makes a significant and important contribution to need with respect to the security and resilience of electricity supply. The Proposed Scheme will provide system services which are essential to grid stability and security of supply and which cannot be provided by intermittent renewable sources. The Proposed Scheme would provide those services more efficiently (and at a lower carbon emissions intensity) than existing fossil fuel plants. NPS EN-1 at paragraph 3.3.4 supports a diverse mix of all types of power generation, stating that "*fossil fuel generation can be brought on line quickly when there is high demand and shut down when demand is low thus complementing generation from nuclear and the intermittent generation from renewables.*"; and
- (d) **Benefits to society and the economy** - The Proposed Scheme would provide benefits to society and the economy by assisting with reducing the average carbon intensity of the UK's electricity and the continued decarbonisation of other sectors as they electrify. This in turn results in indirect benefits from the Proposed Scheme in relation to reduced greenhouse gas emissions in other sectors.

The Proposed Scheme's contribution to the above factors is expanded upon in the following documents submitted during the Examination: Agenda Item 3 of the *Written Summary of Applicant's Oral Case at Issue Specific Hearing (Environmental Matters)* (REP4-012); Section 3 of the *Note on Substantial Weight to be Given to Need and Application of Tests Under S104* (REP5-021); the *Applicant's Response to Deadline 5 Submission by Julian May* (REP6-014); and the *Applicant's Response to ClientEarth's Deadline 6 Submission* (REP7-018). National Grid's response to Examining Authority's further written question ANC 2.3 (REP6-020) is also relevant in this respect.

1.13.2 **Other benefits of the Proposed Scheme:**

- (a) The use of existing operational land - this minimises the use of greenfield land and compulsory acquisition of existing farm land. This also means there are fewer environmental impacts during construction and operation than a new power station might have on previously undeveloped land, or on land that does not have an

existing electricity generating use (see submissions made under the heading “Affordability” starting at paragraph 3.5 of at *Note on Substantial Weight to be Given to Need and Application of Tests Under S104* (REP5-021));

- (b) The use of existing infrastructure - the re-utilisation of as much existing infrastructure as possible (such as the existing cooling systems, cooling towers (which are more efficient than any alternatives that could be newly constructed elsewhere) and steam turbines at Drax Power Station) avoids such infrastructure potentially becoming redundant despite remaining within its operating life and being capable of contributing to more efficient energy production and a lower carbon footprint (given it is already constructed) (see submissions made under the heading “Affordability” starting at paragraph 3.5 of the *Note on Substantial Weight to be Given to Need and Application of Tests Under S104* (REP5-021));
- (c) Support to the local economy by providing significant employment opportunities during the construction works, which would generate approximately direct 1,200 full-time equivalent (FTE) / jobs per year as well as approximately 600 FTE indirect and induced jobs, as well as job retention given Units 5 and 6 would be repowered as Units X and Y and carry on operating (see the summary of effects at section 14.12 of ES Chapter 14 Socio-Economics (APP-082));
- (d) Net gain for biodiversity for area-based habitats (7%) and linear habitats (8%) following implementation of a Landscape and Biodiversity Strategy (see Outline Landscape and Biodiversity Strategy and Biodiversity Net Gain Assessment, both of which are further updated at Deadline 9). Following construction, measures in the Landscape and Biodiversity Strategy would aim to deliver a further gain for biodiversity of habitats by restoring these within the footprint of the Proposed Scheme where possible (see explanation at paragraphs 5.1.6 – 5.1.8 of the *Appropriateness of Proposed Mitigation* (REP2-033)), and the Applicant has amended requirement 8 of the DCO so that the landscape and biodiversity strategy submitted pursuant to that requirement must include “an explanation for how the design of the authorised works comprised in the stage, which is the subject of the strategy, has sought to maximise the biodiversity net gain of the authorised development as far as practicable”; and
- (e) That the Proposed Scheme is able to contribute so significantly in terms of electricity generation without significant adverse impacts for various environmental topics is a very material benefit in itself (see paragraph 4.52 of the *Note on Substantial Weight to be Given to Need and Application of Tests Under S104* (REP5-021) where those environmental topics are set out).

1.13.3 Adverse impacts of the Proposed Scheme:

- (a) GHG emissions – The Proposed Scheme would result in an increase in GHG emissions of 90%. However, it is important to take into account that the Proposed Scheme also delivers a 173% increase in capacity and has indirect benefits on GHG emissions given it would (1) displace less efficient, higher GHG producing generating plant, and (2) facilitate decarbonisation and hence lower GHG emissions in other sectors due to electrification. Further, the Proposed Scheme is Carbon Capture Ready, and

therefore compliant with the requirement set out in EN-1 paragraph 3.6.6, EN-2, paragraphs 2.3.4 and 2.3.5 and the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013. In this way the scheme complies with Government policy which recognises that fossil fuel plant can contribute to the transition to a low carbon economy as a whole but requires such plant to be able to adopt measures to lower its individual carbon emissions as soon as such technology can be deployed. The Applicant has made detailed submissions in this respect to explain the considerations to be taken into account in relation to this adverse effect, in order to avoid an overly simplistic approach; see paragraphs 4.5 – 4.29 of the *Note on Substantial Weight to be Given to Need and Application of Tests Under S104* (REP5-021); and paragraphs 1.54 – 1.59 of the *Applicant's Response to ClientEarth's Deadline 6 Submission* (REP7-018) (in terms of the assessment methodology in this respect, the Applicant's position is as set out in response to further written questions ANC 2.2 and 2.4 (REP6-013) and the Applicant's response to the Examining Authority's Rule 17 request, submitted at Deadline 9 in which the Applicant addressed questions in relation to the grant of consent for Unit X alone. A further point in this regard (not expressly stated in the Rule 17 letter response), is that withholding consent for Unit Y would effectively lead to a portion of an existing site for electricity generation not being used. Plainly this would be inefficient and likely to lead to the requirement for a lesser site with knock on environmental effects elsewhere. Where the need exists for the electricity generated, existing generation sites ought to be used as efficiently as possible. The Applicant considers that the standalone effect from GHG emissions should be given limited weight because it does not reflect the totality of impacts of the scheme in this regard which would in fact be beneficial;

- (b) Landscape and visual effects – The landscape measures proposed by the Applicant are proportionate and sufficient to minimise the visual effects on Landscape Character Areas / Types and the Lower Derwent Locally Important Landscape Area to the extent reasonably practicable given the scale and nature of the Proposed Scheme and its visual context. The Applicant has continued to consider what further mitigation it can provide throughout the Examination in order to reduce or offset the adverse effects of the Proposed Scheme. The Applicant's efforts in this respect are recorded in the *Appropriateness of Proposed Mitigation document submitted at Deadline 2* (REP2-033) and the *Applicant's Response to North Yorkshire County Council's and Selby District Council's Position on Landscaping* (REP8-011), and the update to the Deadline 8 response submitted at Deadline 9, which confirms that the Applicant has agreed with Selby District Council ("**SDC**") to provide an increased contribution towards projects to offset the adverse landscape effects of the Proposed Scheme, in addition to the mitigation already proposed. SDC and the Applicant are agreed that the Applicant has reduced the effects of the Proposed Scheme as far as reasonably practicable, and is providing an appropriate amount of offsetting. Whilst it appears NYCC agrees that the Applicant has reduced the effects of the Proposed Scheme as far as reasonably practicable (given its focus, in the mitigation hierarchy, on offsetting, as set out in the *Applicant's Response to North Yorkshire County Council's and Selby District Council's Position on Landscaping* (REP8-011)), it does not agree that the Applicant has provided sufficient offsetting and considers an amount of £3 million would be appropriate. The reasons why the

Applicant considers this unreasonable are set out in the *Applicant's Response to North Yorkshire County Council's and Selby District Council's Position on Landscaping* (REP8-011) and the update to that submitted at Deadline 9. Accordingly, the Applicant considers that it has taken the necessary measures to minimise the effects of the Proposed Scheme on landscape and visual amenity as far as reasonably practicable as required by paragraphs, 2.6.5 and 2.6.8 of EN-2. Accordingly, the visibility of the Proposed Scheme can be given limited weight pursuant to paragraph 2.6.10 of NPS EN-2;

- (c) Socio economic – A limited reduction in jobs is anticipated during the operational phase. The reduction in the number of jobs during operation will be managed through natural reductions in staff (e.g. due to retirement). Where possible, staff would be redeployed. This impact is unlikely to be significant at the local or regional level relative to the sizeable retention of jobs on the site, and should be given limited weight.
- (d) Traffic and transport – Moderate adverse, short term effects are predicted on vehicular delays and junction performance. These effects will be temporary, and are expected to occur for two months during the construction stage for Unit X and then Unit Y. These impacts can therefore be given limited weight.
- (e) Heritage – There would be a temporary, short-term adverse effect of minor significance to the setting of Drax Augustinian Priory resulting from the temporary construction laydown during the construction of Unit X and Unit Y. There would be a permanent, long-term adverse effect on the setting of the Priory of minor significance resulting from the impact of new built forms in the landscape (Units X and Y) during operation. There would be a temporary short-term adverse effect of minor significance to the setting of the Scurff Hall resulting from the construction of the Gas Pipeline and the associated Above Ground Installation. In the context of the NPPF, effects of minor significance in the Historic Environment Chapter of the Environmental Statement (APP-076) equate to less than substantial harm. Therefore, the effects of the Proposed Scheme will result in less than substantial harm on designated heritage assets. Given the small and largely temporary degree of harm caused to heritage assets, the Applicant considers that the public benefits of the Proposed Scheme outweigh that harm (in accordance with NPS EN-1, paragraph 5.8.15) and it can accordingly be given limited weight.

1.14 The Applicant considers that the high category of substantial weight that should be given to the anticipated extent of the Proposed Scheme's actual contribution to satisfying the demonstrated need (as well as the other beneficial impacts of the Proposed Scheme) is **not** outweighed by the above adverse impacts.

1.15 **Section 104(4)-(6): Decision that results in a breach of international obligation or UK enactment, or would be unlawful**

1.16 With respect to section 104(4), deciding the Application in accordance with the relevant NPSs would not lead to the UK being in breach of any of its international obligations. The Applicant has made extensive submissions during the Examination in this respect, including from paragraph 3.48 of the *Written Summary of Applicants Oral Case at Issue Specific Hearing (Environmental Matters)* (REP4-012); section 5 and paragraphs 6.11 – 6.23 of *Applicant's Note on Substantial Weight to be Given to Need and Application of Tests Under S104* (REP5-021); from paragraph 1.66 of *Applicant's Response to ClientEarth's Deadline 6 Submission* (REP7-018). In addition, the

Applicant's response to the Examining Authority's Rule 17 letter dated 14 March 2019 is relevant in this regard.

1.17 With respect to section 104(5) and (6), deciding the Application in accordance with the relevant NPSs would not lead to the Secretary of State being in breach of any duty imposed on him by an enactment, nor would it be unlawful by virtue of an enactment. The Applicant has made submissions on this point at section 5 and paragraphs 6.24 – 6.29 of the *Applicant's Note on Substantial Weight to be Given to Need and Application of Tests Under S104* (REP5-021). The submissions made with respect to sub-section (4) (noted above) are also relevant to sub-sections (5) and (6) given the Climate Change Act 2008 implements international obligations.

1.18 **Conclusion**

1.19 A high degree of substantial weight should be afforded to the anticipated extent of the Proposed Scheme's actual contribution to satisfying the need identified in NPS EN-1. That substantial weight, along with the other benefits of the Proposed Scheme, is not outweighed by the adverse impacts of the Proposed Scheme and none of the exceptions in section 104(4) to (8) of the PA 2008 apply. The Applicant submits that the Proposed Scheme can therefore be approved in accordance with the relevant energy NPSs, and the DCO made in line with the draft DCO submitted by the Applicant at Deadline 9.