



# Department for Energy Security & Net Zero

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Ref: EN010120

Jim Doyle  
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16 January 2024

Dear Mr Doyle,

## **PLANNING ACT 2008: APPLICATION FOR DEVELOPMENT CONSENT FOR DRAX BIOENERGY WITH CARBON CAPTURE AND STORAGE PROJECT**

### **1. Introduction**

- 1.1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the report dated 17 October 2023 of the Examining Authority (“the ExA”) consisting of two examining inspectors; Caroline Jones (Panel Lead) and Ben Northover. The ExA conducted an Examination into the application (“the Application”) submitted on 23 May 2022 by Drax Power Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“PA2008”) for the Drax Bioenergy with Carbon Capture and Storage Project (“the Proposed Development”).
- 1.2. The Application was accepted for Examination on 20 June 2022. The Examination began on 17 January 2023 and closed on 17 July 2023. The Secretary of State received the ExA’s Report on 17 October 2023.
- 1.3. The Order as applied for would grant development consent for the Proposed Development, which consists of the extension to an existing biomass generating station (Units 1 and 2 of the generating station), to include the construction, operation, and maintenance of post-combustion carbon capture technology. The Proposed Development works comprise:
  - Work No.1 – Extension of an onshore biomass powered generating station, with Carbon Capture technology;
  - Work No.2 – Infrastructure to transport compressed carbon dioxide;
  - Work No.3 – Supporting works in connection with and in addition to Work Nos. 1, 2 and 5;
  - Work No.4 – Works to facilitate construction access to Work Nos. 1 to 5 and 7;
  - Work No.5 – Temporary construction laydown areas;
  - Work No.6 – Habitat provision area;
  - Work No.7 – Works to create a floodplain compensation area;

- Work No.8 – Works to facilitate the delivery of abnormal indivisible loads to the site.
- 1.4. The Applicant also seeks compulsory acquisition (“CA”) and temporary possession (“TP”) powers, set out in the draft Order submitted with the Application.
  - 1.5. Elements of the proposed development are for a purpose directly related to the generation of electricity, and as a result amount to the extension of a generating station for the purposes of section 15(1) of PA2008. As the existing generating station has a capacity of more than 50 megawatt (MW), the Drax Bioenergy with Carbon Capture and Storage (“BECCS”) Project falls within section 15(2) of PA2008 and meets the definition of a Nationally Significant Infrastructure Project (“NSIP”) as set out in section 14 (1) of PA2008 and as such, the Proposed Development requires a Development Consent Order (“DCO”).
  - 1.6. Published alongside this letter on the Planning Inspectorate’s National Infrastructure Planning website<sup>1</sup> is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in Chapters 3-5 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at Chapter 8. All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report [“ER \*.\*.”].

## **2. Summary of the ExA’s Report and Recommendation**

- 2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following general headings:
  - The principle of the development
  - Air quality and emissions
  - Biodiversity and ecology
  - Greenhouse gas (GHG) emissions
  - Historic environment
  - Landscape and visual amenity
  - Land use, ground conditions and contamination
  - Noise and vibration
  - Water environment and flood risk
  - Socio-economic effects
  - Traffic, transport and waste management
  - Climate change resilience
  - Major accidents and disasters
  - Cumulative and combined effects
- 2.2. The ExA concludes that the Proposed Development meets the tests in section 104 of PA2008 and that the case for the development has been made and recommends that the Secretary of State should make the Proposed Development in the form attached at Appendix D of the ExA’s Report [ER 8.2.1].
- 2.3. This letter is intended to be read alongside the ExA’s Report and, except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons

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<sup>1</sup><https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/drax-bioenergy-with-carbon-capture-and-storage-project/>

for the Secretary of State's decision are those given by the ExA in support of her conclusions and recommendations.

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

- 3.1. Section 104(2) of PA2008 requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement ("NPS"). Subsection (3) requires that the Secretary of State decide the application in accordance with the relevant NPS except to the extent that one or more of subsections (4) to (8) apply.
- 3.2. The Secretary of State has considered the ExA's Report and all other material considerations, including relevant representations ("RR") received after the close of the ExA's Examination, all of which are dealt with as appropriate in the decision letter below.
- 3.3. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the public benefits associated with the Proposed Development outweigh the harm identified, and that development consent should therefore be granted.
- 3.4. The Secretary of State has decided under section 114 of PA2008 to make, with modifications, an Order granting development consent for the Proposed Development. This letter is the statement of the reasons for the Secretary of State's decision for the purposes of section 116 of PA2008 and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment ("EIA") Regulations 2017 ("the EIA Regulations").
- 3.5. In making her decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant.

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

- 4.1. The Secretary of State has had regard to the Local Impact Report ("LIR") submitted by North Yorkshire Council ("NYC"), environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of PA2008 including relevant policy set out in the NPSs EN-1 and EN-3.
- 4.2. The Energy White Paper, *Powering Our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs were not being suspended in the meantime. The review of the energy NPS suite were subject to a consultation which closed on 29 November 2021 and a further consultation on the revised drafts of the NPSs that closed on 23 June 2023. The ExA report stated in the event the new suite of Energy NPSs are designated before a decision is made, the Secretary of State may wish to consider any alterations made to the Draft National Policy Statements ("dNPSs") prior to designation, and may wish to seek the views of IPs on this matter [ER 8.1.11]. The new NPS suite was published on 22 November 2023 but are pending parliamentary approval in 2024. The transitional guidance in dNPS EN-1 makes clear that the assessment of any decision-making about NSIP applications in progress should continue to be made with reference to the currently designated NPS suite which remains in force and therefore forms the basis of the Secretary of State's consideration of the Application. Although the new NPSs have not been designated, the Secretary of State considers them to be important and relevant for the purpose of section 104 of PA2008. As such, the Secretary of State has had regard to the new energy NPSs in deciding the Application but does not consider that there is anything contained within them that would lead her to reach

a different decision on the Application. The Secretary of State has also had regard to the British Energy Security Strategy (“BESS”) published on 7 April 2022, which outlined the steps to accelerate the government’s progress towards achieving Net Zero by 2050 and a long-term shift in delivering cheaper and cleaner power.

4.3. The Secretary of State agrees with the findings, conclusions, and recommendations of the ExA as set out in the ExA Report. The reasons for the Secretary of State’s decision align with those given by the ExA in relation to the following matters:

- Principle of the development (very great positive weight) [ER 3.2 et seq.].
- GHG emissions (very great positive weight) [3.5 et seq.].
- Historic environment (little negative weight) [3.6 et seq.].
- Landscape and visual amenity (little negative weight) [ER 3.7 et seq.].
- Land use, ground conditions and contamination (little negative weight) [3.8 et seq.].
- Noise and Vibration (neutral) [3.9 et seq.].
- Water environment and flood risk (neutral) [3.10 et seq.].
- Socio-economic effects (moderate positive weight) [3.11 et seq.].
- Traffic, transport and waste management (neutral negative weight) [ER 3.12 et seq.].
- Other Matters (neutral) [3.13 et seq.].

4.4. The paragraphs below set out the Secretary of State’s consideration of those matters the Secretary of State has considered further.

#### The Principle of the Development and Greenhouse Gas Emissions

4.5. The ExA concluded that the Proposed Development would make a meaningful contribution to meeting the urgent need for carbon capture storage (“CCS”) infrastructure to support the transition to Net Zero by 2050 [ER 3.2.71]. The ExA was satisfied with the Proposed Development in regards to the alternatives, including the ‘do nothing’ scenario, the approach to site selection, layout and technologies, and the Proposed Development met the requirements in the designated NPSs [ER 3.2.73]. The ExA was satisfied of the ability of the Proposed Development to achieve a 95% capture efficiency [ER 3.2.70]. The ExA considered it was reasonable to treat the biomass combustion emissions as zero rated and that the Applicant provided sufficient justification [ER 3.5.41] including that the biomass generating station already benefits from consent [ER 3.2.55]. The ExA concludes that over the whole life of the Proposed Development there would be negative GHG emissions due to carbon captured in the operational phase [ER 3.5.51].

4.6. The Secretary of State agrees with the ExA’s assessment in relation to the principle of the development and GHG emissions.

#### *The Biomass Strategy*

4.7. The ExA recommended that the Secretary of State may wish to consider the implications of the Biomass Strategy [ER 3.5.10] and the report ‘Ability of BECCS to generate negative emissions’ [ER 3.2.51], in reaching her decision and whether parties should be consulted on these documents [ER 3.5.52]. This is an application aimed at facilitating the retrofitting of carbon capture storage (“CCS”) to an existing biomass generating station, not a new generating station. The Secretary of State has considered both documents, but is of the view that there is nothing contained within either which could lead her to reach a materially different decision on the Application. As a result, she does not consider it necessary to seek further views on these documents.

## Air Quality and emissions

### *Regulation of Potential Pollutant Releases*

- 4.8. A number of RRs raised concerns related to the impacts of amine and nitrosamine compounds on human health receptors and Biofuelwatch raised numerous concerns including relating to the assessment [ER 3.3.30 and 3.3.35].
- 4.9. The UK Health Security Agency (“UKHSA”) was satisfied the Proposed Development should not result in any significant adverse impact on public health [ER 3.3.34]. Natural England (“NE”) initially raised concerns and the Applicant undertook further modelling which addressed all of NE’s concerns [ER 3.4.19 et seq.].
- 4.10. The Applicant explained it sought to reduce the risk to as low as reasonably practicable by process controls within the CCS plant with emissions regulated by the EA under the Environmental Permit (“EP”) regime [ER 3.3.31]. The EA in its Statement of Common Ground (“SoCG”) confirmed that the ADMS Amine Chemistry Module was an accepted way of assessing atmospheric amine chemical reactions [ER 3.3.40], modelling study parameters were set at their worst case [ER 3.3.40], and Appendix 6.3 of the Environmental Statement (“ES”) provided detailed information on the atmospheric dispersion modelling and the amine chemistry modelling used in the assessment [ER3.3.40].
- 4.11. The ExA was satisfied the Applicant had provided sufficient evidence to address the concerns raised, had adequately assessed the impacts of the Proposed Development on air quality [ER 3.3.44], and no significant effects on air quality on human receptors are likely to arise from the Proposed Development [ER 3.3.51 et seq.].
- 4.12. In accordance with NPS EN-1 the ExA has assumed the relevant pollution control and environmental regulatory regimes will be properly applied and enforced [ER 3.3.48] and the EA is the competent authority to issue and regulate EPs [ER 3.3.5]. Having regard to the signed SoCG with the EA, the ExA did not consider there were any reasons why the EP variation application would not be granted, as no specific concerns that could not be acceptably addressed were identified during the Examination [ER 3.3.48].
- 4.13. The ExA consulted the EA at ExQ1 whether further assessment of the impacts to human health was required, and the EA explained it had begun a programme of works to determine new Environmental Assessment Levels (“EAL”) to take into account new research regarding the impact of amines [ER 3.3.33]. The EA confirmed in its SoCG that it will take new EALs into account during the EP variation determination process [ER 3.3.33].
- 4.14. The EP variation application was made on 18 May 2023 and determination of the application is not expected before March 2024 [ER 3.3.45]. The ExA asked the EA questions in respect of issues relating to air quality and emissions including amines in ExQ1 and R17QA [ER 3.3.46]. The EA was not able to provide further comment other than to confirm, in response to the Rule 17 request, that the matters would be considered as part of the EP determination process [ER 3.3.46].
- 4.15. Based on the SoCG with the EA the ExA considers there is no reason why mitigation measures proposed to increase the plume buoyancy and reduce SO<sub>2</sub> emissions cannot be incorporated into the EP conditions [ER 3.3.52]. Other mitigation measures are also secured in R14 (CEMP), R15 (CTMP), R16 (CWTP), R18 (DEMP) and R19 (DTMP) of the Order [ER 3.3.51].

- 4.16. The ExA noted that the Secretary of State may wish to satisfy herself that the Environment Agency (“EA”) are satisfied that potential releases can be adequately regulated, and that the effects of existing sources of pollution are not such that the cumulative effects of pollution will make the proposed development unacceptable [ER 3.3.49].
- 4.17. However, due to Paragraphs 4.8 to 4.16 above the Secretary of State is satisfied that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced by the EA. As the EA note, these matters, including cumulative effects, will be considered in the EP and the Secretary of State has no reasons to believe that the EP variation application would not be granted. Consequently the Secretary of State considers that further consultation is not required.

#### *The Secretary of State’s Conclusions*

- 4.18. The Applicant’s assessment identified pollutants of concern that are potentially elevated resulting from the construction and operation of the Proposed Development, these include particulate matter (“PM10” and “PM2.5”), nitrogen oxides (“NOx”), ammonia (“NH3”), hydrogen chloride (“HCl”), sulphur dioxide (“SO2”), amine and nitrosamine compounds [ER 3.3.10].
- 4.19. Temporary, direct moderate adverse effects were identified during the construction phase, and the assessment concluded that the residual effects of dust and PM10 would be negligible (not significant) following the application of mitigation measures [ER 3.3.16]. The ExA concluded the residual impacts from construction and decommissioning activities can be effectively managed through the mitigation [ER 3.3.51].
- 4.20. In the operational phase the pollutants assessed comprise NOx, SO2, NH3, PM10, PM2.5 and amine and nitrosamine compounds [ER 3.3.20]. In their response to the concerns raised in RRs, the Applicant notes the approach taken is to reduce the risk to as low as reasonably practicable by process controls within the CCS plant, with emissions regulated by the EA under the EP regime [ER 3.3.31]. The Applicant stated that the maximum modelled combined concentration of nitrosamines and nitramines would result in an annual mean impact of 0.019ng/m3 [ER 3.3.31]. The Applicant identified that the Proposed Development, both alone and cumulatively with other proposed projects, would not result in significant air quality effects on human receptors even with the sensitivity testing of the worst-case emissions profile and the amine chemistry model sensitivity testing [ER 3.3.27].
- 4.21. The ExA concluded that no significant effects on air quality of human receptors are likely to arise during either the construction, decommissioning or operational phases [ER 3.3.51 and 3.3.52]. The ExA gave air quality and emissions neutral weight in the planning balance [ER 3.3.53].
- 4.22. The Applicant’s Air Quality Technical Note 2 identified a ‘slight adverse’ impact on air quality when modelling pollutants following the application of mitigation measures, to which the Secretary of States agrees. The Secretary of State considers that whilst these emission increases are not considered to be significant and welcomes the proposed mitigation, the Applicant’s assessment shows there is a slight increase in pollutants overall. The Secretary of State considers a neutral weighting is too favourable in the planning balance and that little negative weight more accurately reflects the impact and the policy in the NPS.

## Biodiversity and Ecology

### *OLBS and CEMP*

- 4.23. The Outline Landscape and Biodiversity Strategy (“OLBS”) (rDCO, R7(1)) and the Construction Environmental Management Plan (“CEMP”) (rDCO, R14(1)) are to be submitted in consultation with the EA.
- 4.24. NE is a relevant Statutory Nature Conservation Body [ER 3.4.64] and NE’s evidence is discussed within the ExA report regarding biodiversity and ecology [ER 3.4 et seq.]. The Secretary of State considers that NE should also be consulted as the OLBS & CEMP will include mitigation and compensation measures for habitats and species which are within the remit of NE. The Order has been amended to include this change.

### *Peregrine Falcons*

- 4.25. The Applicant’s Preliminary Ecological Appraisal notes that peregrine falcons have been recorded breeding on the main stack in previous years. A detailed approach to avoidance and mitigation has been afforded to some protected species (e.g., otters and badgers) but not for peregrine falcons [ER 3.4 et seq.].
- 4.26. NE signed a SoCG with the Applicant [ER 1.4.9] and following review of the Applicant’s latest information confirmed this issue was resolved [ER 3.4.19 et seq.].
- 4.27. The Secretary of State notes NE has implicitly accepted the Applicant’s viewpoint of no expected disturbance effects on peregrine falcons but notes NE has not explicitly stated whether the Applicant requires a licence. The Secretary of State reminds the Applicant of its responsibilities under the Wildlife and Countryside Act 1981 to protect peregrine falcons and to secure a licence if necessary.

### *The Secretary of State’s Conclusions*

- 4.28. There are significant effects on protected species during construction [ER 3.4.13 et seq.]. Effects on habitats, bats, and terrestrial invertebrates were considered significant adverse at a local scale, and on breeding and wintering birds at the district scale [ER 3.4.13]. Effects on green-winged orchid were considered to be significant adverse at a county scale [ER 3.4.13]. The Applicant proposed mitigation and compensation measures to reduce the effects [ER 3.4.56 and 3.4.66].
- 4.29. The ExA agreed that whilst there would be significant adverse effects on some protected species during construction, these would be temporary or short-term until compensation measures have reached target condition [ER 3.4.56 and 3.4.13]. The ExA gave biodiversity and ecology moderate positive weight in the planning balance [ER 3.4.69].
- 4.30. The Secretary of State considers it will take a significant amount of time for the habitats to mature to a condition that resembles the existing habitat or reach the condition to produce positive compensation. The Secretary of State also considers it will take a significant amount of time for protected species populations to recover from disturbance during construction, particularly if associated habitats are removed or degraded. The Secretary of State therefore considers the adverse effects would not be short term, but of a medium to long term nature.
- 4.31. The Applicant proposes compensation measures securing a 10% off-site Biodiversity Net Gain (BNG) [ER 3.4.59] and this would be a long-term measure [ER 3.4.66]. The ExA

consider there would be beneficial effects for some species due to the mitigation and compensation measures in the long term [ER 3.4.69].

4.32. Whilst the Secretary of State welcomes the proposed mitigation and compensation measures, paragraph 5.3.7 of NPS EN-1 states that development should aim to avoid significant harm to biodiversity and geological conservation interests [ER 3.4.3]. In assessing the environmental impact of a project developers should, in order of importance, look to first avoid, then minimise, then restore, and finally as a last resort offset the impact. Due to the impacts the Secretary of State considers a moderate positive weight is too favourable in the planning balance and that little positive weight more accurately reflects the policy in the NPS.

## **5. Habitats Regulations Assessment**

5.1. This section must be read alongside the published Habitats Regulations Assessment (“HRA”) (Annex C), which provides the full record of the Secretary of State’s consideration of these matters.

5.2. The Conservation of Habitats and Species Regulations 2017 (as amended) (“the Habitats Regulations”) aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects.

5.3. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under Regulation 63 of the Habitats Regulations, the Secretary of State is required (as Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects (“LSE”) cannot be ruled out, the Secretary of State must undertake an appropriate assessment (“AA”) addressing the implications for the protected site in view of its conservation objectives.

5.4. The Secretary of State may grant development consent only if, having carried out the AA, it has been ascertained that the Proposed Development will not, either on its own or in combination with other plans or projects, adversely affect the integrity of protected sites unless she chooses to continue to consider derogation tests set out in the Habitats Regulations. The derogation issue does not arise in this case. The complete process of assessment is commonly referred to as a HRA.

5.5. The Secretary of State agrees with the ExA that sufficient information has been provided for her to fulfil her duties under the Habitats Regulations.

5.6. The Secretary of State has carefully considered the information presented during the Examination, including the Report on the Implications for European Sites (“RIES”), the ES, representations made by Interested Parties (“IP”), and the ExA’s Report. She considers that the Proposed Development has the potential to have a LSE on eight protected sites when considered alone and in-combination with other plans or projects:

- Humber Estuary Ramsar site;
- Humber Estuary SAC;
- Humber Estuary SPA;
- Lower Derwent Valley Ramsar site;
- Lower Derwent Valley SAC;
- Lower Derwent Valley SPA;
- River Derwent SAC; and



- Thorne Moor SAC.
- 5.7. The Secretary of State has undertaken an AA in respect of the conservation objectives of the sites. The Secretary of State has considered all information available to her including the recommendations of the ExA, the advice of NE as the Statutory Nature Conservation Body, the view of all other IPs, as well as the Applicant's case.
- 5.8. The LSEs considered by the Secretary of State to have the potential to result in an AEoI of the identified protected sites are:
- Accidental releases of waterborne pollutants (alone and in-combination);
  - Loss and disturbance of functionally linked land ("FLL") (alone and in-combination);
  - Dust emissions on FLL (alone and in-combination);
  - Increased risk of pollution from sediment load on FLL (alone and in-combination);
  - Increased visual disturbance of FLL from plant and personnel (alone and in-combination);
  - Emissions of treated flue gas to air (acid deposition) (alone); and
  - Emissions of treated flue gas to air (nitrogen and acid deposition) (in-combination).

#### *The Secretary of State's Conclusion on the HRA*

- 5.9. Having considered the available information, including the mitigation measures proposed by the Applicant, the Secretary of State is satisfied that an AEoI on the identified protected sites can be excluded beyond reasonable scientific doubt, subject to the secured mitigation measures. This conclusion and its reasoning are consistent with the advice provided during the Examination by NE, the EA, and the ExA's recommendation. The Secretary of State is satisfied that, subject to the secured mitigation measures, there is no significant risk to any protected site and their qualifying features as a result of the Proposed Development.
- 5.10. The Secretary of State is also satisfied that the Proposed Development, either alone or in-combination with other plans or projects, would not have a LSE on any protected site in other European Economic Area states.

## **6. Consideration of Land Rights and Related Matters**

- 6.1. The Secretary of State notes that the Applicant is seeking powers of CA and TP of land and rights which it has not been able to acquire by voluntary agreement. The Applicant is seeking these powers to:
- acquire land permanently within the Order limits;
  - temporarily possess land within the Order limits;
  - acquire rights over some land within the Order limits;
  - extinguish rights over some of the land within the Order limits; and
  - temporarily suspend rights over some of the land within the Order limits in order to construct, operate and maintain the Proposed Development [ER 6.4.1. et seq.].
- 6.2. At the close of the examination a number of parties had unsigned agreements, and the ExA recommended that the Secretary of State should seek updates. The Secretary of State wrote

to these parties and the Applicant on 14 November 2023 requesting an update<sup>2</sup>. On 19 December 2023 the Secretary of State consulted again<sup>3</sup>.

### National Grid Electricity Transmission (“NGET”)

6.3. On 14 November 2023 NGET confirmed it and the Applicant have reached an agreement on the form of Protective Provisions (“PP”) within a side agreement and NGET had withdrawn its objection on 12 October 2023<sup>4</sup>. This was confirmed by the Applicant on 24 November 2023<sup>5</sup>.

### Northern Gas Networks (“NGN”)

6.4. On 28 November 2023 NGN stated it was progressing with the Private Asset Protection Deed and had received a further draft from the Applicant on the 11 October 2023. NGN stated it was hopeful the agreement can be concluded<sup>6</sup>. The Applicant replied on 24 November 2023 saying discussion was well progressed and the Applicant expected an agreement to be reached shortly.

6.5. On 20 December 2023 NGN responded to the second consultation but no further update was provided<sup>7</sup>. The applicant replied on 10 January 2024 stating the Applicant has responded to NGN regarding two outstanding points, and feels the outstanding points can be resolved shortly<sup>8</sup>. No agreement had been reached before the deadline for this decision.

### East Riding of Yorkshire Council (“ERoY”)

6.6. On 24 November 2023 the Applicant replied confirming discussions were ongoing and the impacts to the ERoY’s landholdings were addressed by the commitments made in REAC and the EroY’s agreement to this is noted in the SoCG. The Applicant stated it will formalise the property arrangements with the EroY, but this is not expected to conclude prior to the Secretary of State's decision.

6.7. On 28 November 2023 ERoY stated discussions in respect of the temporary and permanent rights needed over its agricultural land had recently been reopened by the Applicant and revised Heads of Terms (HoTs) submitted to the Council for consideration. ERoY stated the matter also remains subject to formal approval by the Council, but it is hoped that suitable terms can be agreed on a voluntary basis<sup>9</sup>.

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<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001643-Consultation%20letter.pdf>

<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001649-Consultation%20letter%2020.12.2023.pdf>

<sup>4</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001644-Drax%20-%20Secretary%20of%20State%20Consultation%20Response%20-%20NGET.pdf>

<sup>5</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001646-SoS%20Consultation%20Response%20-%20Drax%20BECCS%20Letter.pdf>

<sup>6</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001648-Drax%20-%20Secretary%20of%20State%20Consultation%20Response%20-%20Northern%20Gas%20Networks.pdf>

<sup>7</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001651-RE\\_%20EXT\\_Drax%20BECCS%20-%20Secretary%20of%20State%20Consultation%20%20-%20Response%20required%20by%2010%20January%202024.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001651-RE_%20EXT_Drax%20BECCS%20-%20Secretary%20of%20State%20Consultation%20%20-%20Response%20required%20by%2010%20January%202024.pdf)

<sup>8</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001650-Drax%20BECCS%20Letter%20to%20SoS%20100124.pdf>

<sup>9</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001647-Drax%20-%20Secretary%20of%20State%20Consultation%20Response%20-%20East%20Riding%20of%20Yorkshire%20Council.pdf>

6.8. On 10 January 2024 the Applicant responded to the second consultation stating HoTs have not yet been completed and property arrangements will be formalised following receipt of Secretary of States decision.

#### Court House Farm/Delta Enterprise Park (“the Consortium”)

6.9. On 23 November 2023 the Consortium confirmed the HoTs have been agreed but await respective signatures with the expectation that documents will be signed and exchanged within the next 2 to 3 weeks<sup>10</sup>. On 24 November the Applicant confirmed an agreement had been reached with the Consortium.

6.10. On 7 January 2024 the Consortium responded to the second consultation stating HoTs have been signed<sup>11</sup> and on the 10 January 2024 the Applicant responded also confirming this.

#### Northern Powergrid

6.11. The Applicant responded on 24 November 2023 stating an agreement was reached and a side agreement, containing a modified form of (“PP”), with Northern Powergrid (“NPG”) was completed on 19 September 2023 and that NPG’s objection was withdrawn by email to the Planning Inspectorate the same day.

#### Secretary of State’s Conclusion

6.12. The Secretary of State has considered all the information in regard to the updates.

6.13. Agreement has been reached with NGET, NPG and the Consortium, and the Secretary of State considers these matters are now resolved (See paragraph 6.3, 6.10 and 6.11 above).

6.14. The ExA was satisfied that the PPs in the dDCO are sufficient to ensure there would be no serious detriment to NGN’s assets [ER 6.7.12 and 13]. The Secretary of State agrees with the ExA.

6.15. The ExA conclude that if the agreement with EroY remains unsigned it was satisfied the amount of land requested would be the minimum necessary and any private harm would be outweighed by the public benefit from the Proposed Development, and recommends the grant of CA and TP sought in relation to these plots [ER 6.7.21]. The Secretary of State agrees with the ExA.

6.16. Overall, the ExA found a compelling case in the public interest for the CA and TP powers sought and recommended acceptance [ER 6.8.2]. The Secretary of State has considered all the information and agrees.

6.17. The Secretary of State has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

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<sup>10</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001645-Delta%20Enterprise%20Park.pdf>

<sup>11</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001658-DRAX%20COMBINED\\_Redacted.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010120/EN010120-001658-DRAX%20COMBINED_Redacted.pdf)

## **7. Examination of the Development Consent Order and Protective Provisions**

### National Grid Carbon Limited Protective Provisions

- 7.1. In its RR National Grid Carbon Limited (“NGCL”) requested the inclusion of PPs to protect its assets related to its position as promoter of the Humber Low Carbon Pipelines Project (“HLCP”) [ER 7.3.16]. During the Examination, NGCL announced that it was withdrawing from the project and the Northern Endurance Partnership (“NEP”) would take over [ER 7.3.16]. At the close of the Examination, NGCL was still in commercial discussions on the transfer of the HLCP project [ER 7.3.16].
- 7.2. Having considered the position of both parties, the ExA was persuaded by the Applicant that as NGCL has no statutory undertaking or apparatus in-situ and has formally announced its departure from the HLCP project, the pragmatic approach would be for the new promoter of the HLCP to negotiate a set of reciprocal PPs based on that promoter’s requirements and plans for development, which may differ from those held by NGCL [ER 7.3.20].
- 7.3. The ExA saw no reason why this could not be imposed on the Proposed Development within the future DCO for the HLCP project [ER 7.3.20].
- 7.4. The ExA notes that the Secretary of State may be minded to take a different approach to the ExA regarding these PPs [ER 7.3.21]. The Secretary of State has considered all the information and agrees with the ExA’s assessment.

### Requirement to Restrict Commencement

- 7.5. The ExA suggested the Secretary of State should consider whether to include a requirement in the Order to restrict commencement of the development until an EP and consents for the transport and storage of carbon dioxide (“CO<sub>2</sub>”) were in place similar to R33 of the Keadby 3 Order 2022 [ER 7.3.22 et seq.].
- 7.6. The ExA agreed with the Applicant that the two projects are distinguishable by virtue of the fact that the Proposed Development does not seek consent to generate electricity in a way that also emits carbon as was the case in the Keady 3 Order [ER 7.3.25]. In the Keady 3 Order consent was granted for a new gas-fired generating station, from which CO<sub>2</sub> would be emitted if allowed to operate without the CO<sub>2</sub> transport and storage system in place [ER 7.3.24]. In the Proposed Development consent is already in place for the biomass station [ER 7.3.25].
- 7.7. The Draft National Policy Statement for Energy (“dNPS EN-1”) acknowledges that due to the approach of deploying CCS in clusters with shared transport and storage, it is likely that development consent applications may not include the full CCS chain [ER 7.3.25].
- 7.8. The ExA note there was nothing before it which indicates the variation to the EP would not be granted by the EA [ER 7.3.25]. The ExA does not therefore consider that such a requirement is necessary for the Proposed Development [ER 7.3.26].
- 7.9. The Secretary of State agrees with the ExA.

### Commencement Time Period

- 7.10. The Applicant requested a change to Schedule 2, R1 to extend the time in which to commence the Order from five to seven years due to the anticipated change to the promoter and operator of the HLCP [ER 7.3.4].

- 7.11. The ExA asked the Applicant to further justify this amendment. The Applicant responded that following the Government's announcement regarding Track 1 Cluster sequencing and the change in the organisational structure and equity associated with the transport and storage system provider, it believed it was prudent to extend the window within which to commence development [ER 7.3.5]. The Applicant still expected to be in a position to progress the Proposed Development with the aim of delivering it to a timescale that would assist the Government in meeting its target for GHG emissions removal by 2030 [ER 7.3.6].
- 7.12. The ExA considered whether the extension could impact on biodiversity and ecology matters [ER 3.4.60] and was satisfied it would not have any adverse implications [ER 3.4.63]. The ExA also considered whether the extension could impact on traffic and transport matters [ER 3.12 et seq]. The Applicant considered the agreed management measures are sufficiently flexible and robust to adapt to prevailing traffic conditions at the time of construction [ER 3.12.29 et seq.].
- 7.13. Having regard to the responses received, the ExA saw no reason why extending time from five to seven years in Schedule 2, R1 would lead it to reach different findings or conclusions and it accepted the Applicant's amendment [ER 7.3.11].
- 7.14. The Secretary of State has considered all the information and notes the ExA's position on time limits. However, the Secretary of State considers that the standard 5-year period to commence a DCO, is a sufficient length of time and does not consider that the Applicant has advanced a sufficient reason to justify an increase to this time period. The Secretary of State considers the need for low carbon energy is urgent and this is a further reason for not extending this time, and notes the Applicant can apply for an extension to increase the time period if required.

## **8. Secretary of State's Consideration of the Planning Balance**

- 8.1. Where NPSs have effect, section 104 of PA2008 requires the Secretary of State to have regard to a range of policy considerations including the relevant NPSs, Development Plans and LIRs prepared by local planning authorities in reaching a decision.
- 8.2. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- Principle of the development (very great positive weight)
  - GHG emissions (very great positive weight)
  - Historic environment (little negative weight)
  - Landscape and visual amenity (little negative weight)
  - Land use, ground conditions and contamination (little negative weight)
  - Noise and vibration (neutral)
  - Water environment and flood risk (neutral)
  - Socio-economic effects (moderate positive weight)
  - Traffic, transport and waste management (neutral)
  - Other Matters (neutral)
- 8.3. The Secretary of State disagrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- Air quality and emissions (neutral weight ascribed by ExA and little negative weight ascribed by Secretary of State. See Paragraph 4.22, above)

- Biodiversity and ecology (moderate positive weight ascribed by ExA and little positive weight ascribed Secretary of State. See Paragraph 4.32, above)

8.4. The Secretary of State acknowledges that all NSIPs will have some potential adverse impacts. In the case of the Proposed Development, most of the potential impacts have been assessed as being in accordance with NPS EN-1 and the NPS EN-3 and the emerging draft NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.

## **9. Secretary of State's Conclusions and Decision**

9.1. For the reasons given in this letter, the Secretary of State considers the benefits of the Proposed Development outweigh its adverse impacts.

9.2. Consequently, the Secretary of State considers development consent should be granted for the Proposed Development. The Secretary of State considers that the national need set out in the relevant NPSs outweighs the Proposed Development's potential adverse impacts, as mitigated by the proposed terms of the Order.

9.3. The Secretary of State has therefore accepts the ExA's recommendation to consent. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the LIR submitted by NYC, the NPSs, draft NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of PA2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

## **10. Other Matters**

### Equality Act 2010

10.1. The Equality Act 2010 includes a public sector equality duty ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships<sup>12</sup>; pregnancy and maternity; religion and belief; and race.

10.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

10.3. The Secretary of State is confident that, in taking the recommended decision, she has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State

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<sup>12</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

#### Natural Environment and Rural Communities Act 2006

- 10.4. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.
- 10.5. The Secretary of State is of the view that the ExA’s Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform her in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

#### Environmental Principles Policy Statement

- 10.6. From 1 November 2023 Ministers are under a legal duty to give due regard to the Environmental Principles Policy Statement when making policy decisions. This requirement does not apply to planning case decisions, and consequently the Secretary of State has not taken it into consideration in reaching her decision on this application.

### **11. Modifications to the draft Order**

- 11.1. Following consideration of the draft Order provided by the ExA, the Secretary of State has made the following modifications to the draft Order:
- a) Articles 18, 21 and 23, and paragraph 1 of Schedule 2 have been amended to change the time limit for the commencement period from 7 years to 5 years, for the reasons set out at paragraph 7.14 above.
  - b) Paragraphs 7 and 14 of Schedule 2 have been amended to add Natural England as a consultee for the OLBS and CEMP, for the reasons set out at paragraph 4.24 above.
  - c) Article 2, paragraph 2 of Schedule 11 and Schedule 13 have been amended to make clear that the relevant Habitats Regulations Assessment conclusions are those of the Secretary of State, not those contained in the Applicant’s report to inform the Habitats Regulations Assessment.
- 11.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency and to achieve consistency with other DCOs.

### **12. Challenge to decision**

- 12.1. The circumstances in which the Secretary of State’s decision may be challenged are set out in Annex A to this letter.

### **13. Publicity for decision**

- 13.1. The Secretary of State’s decision on this Application is being publicised as required by section 116 of the PA2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

13.2. Section 134(6A) of the PA2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,



David Wagstaff OBE

Head of Energy Infrastructure Development



## **ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

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

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/drax-bioenergy-with-carbon-capture-and-storage-project/>

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

## ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effects on Integrity
Applicant	Drax Power Limited
BECCS	Bioenergy with Carbon Capture Storage
BESS	British Energy Security Strategy
BNG	Biodiversity Net Gain
CA	Compulsory Acquisition
CCS	Carbon Capture Storage
CEMP	Construction Environmental Management Plan
CO <sub>2</sub>	Carbon dioxide
DCO	Development Consent Order
dDCO	Draft Development Consent Order
dNPS	Draft National Policy Statement
EA	Environment Agency
EAL	Environmental Assessment Level
EIA	Environmental Impact Assessment
EP	Environmental Permit
ERoY	East Riding of Yorkshire Council
ES	Environmental Statement
ExA	The Examining Authority
FLL	Functionally linked land
GHG	Greenhouse gas
Habitats Regulations	Conservation of Habitats and Species Regulations 2017
HCl	Hydrogen Chloride
HLCP	Humber Low Carbon Pipelines Project
HoTs	Heads of Terms
HRA	Habitats Regulations Assessment
IPs	Interested Parties
IROPI	Imperative Reasons of Overriding Public Interest
LIR	Local Impact Report
LSE	Likely Significant Effect
MW	Megawatt
NE	Natural England
NEP	Northern Endurance Partnership
NGCL	National Grid Carbon Limited
NGET	National Grid Electricity Transmission
NGN	Northern Gas Networks
NH <sub>3</sub>	Ammonia
NO <sub>x</sub>	Nitrogen Oxides
NPG	Northern Powergrid
NPS	National Policy Statement
NSN	National Site Network

NSIP	Nationally Significant Infrastructure Project
NYC	North Yorkshire Council
OLBS	Outline Landscape and Biodiversity Strategy
PA2008	The Planning Act 2008
PM10	Particulate matter of 10 micrometers or less in diameter
PM2.5	Particulate matter of 2.5 micrometers or less in diameter
PP	Protective Provisions
PSED	Public Sector Equality Duty
Proposed Development	Drax Bioenergy with Carbon Capture and Storage Project
Ramsar Convention	Convention on Wetlands of International Importance 1972
Ramsar Sites	Listing of wetlands of international importance
REAC	Register of Environmental Actions and Commitments
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SO2	Sulphur Dioxide
SoCG	Statement of Common Ground
SPA	Special Protection Area
The Consortium	Investors in Court House Farm/Delta Enterprise Park
The EIA Regulations	Infrastructure Planning (Environmental Impact Assessment (EIA) Regulations 2017
TP	Temporary Possession
UKHSA	UK Health Security Agency