



**Application by EP Waste Management Ltd for South Humber Bank Energy Centre Project**  
**The Examining Authority's written questions and requests for information (ExQ1)**  
**Issued on 17 November 2020**

The following table sets out the Examining Authority's (ExA's) written questions and requests for information - ExQ1. If necessary, the examination timetable enables the ExA to issue a further round of written questions in due course. If this is done, the further round of questions will be referred to as ExQ2.

Questions are set out using an issues-based framework derived from the Initial Assessment of Principal Issues provided as Annexe C to the Rule 6 letter of 23 September 2020. Questions have been added to the framework of issues set out there as they have arisen from representations and to address the assessment of the application against relevant policies.

Column 2 of the table indicates which Interested Parties (IPs) and other persons each question is directed to. The ExA would be grateful if all persons named could answer all questions directed to them, providing a substantive response, or indicating that the question is not relevant to them for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

Each question has a unique reference number which starts with 1 (indicating that it is from ExQ1) and then has an issue number and a question number. For example, the first question on air quality and emissions issues is identified as Q2.0.1. When you are answering a question, please start your answer by quoting the unique reference number.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact Liam Fedden and include 'South Humber Bank Energy Centre Project' in the subject line of your email.

**Responses are due by Deadline 2: Tuesday 22 December 2020.**

**Abbreviations used:**

<b>AA</b>	Appropriate Assessment	<b>MHW</b>	Mean High Water
<b>ALA 1981</b>	Acquisition of Land Act 1981	<b>MMO</b>	Marine Management Organisation
<b>Art</b>	Article	<b>MP</b>	Model Provision (in the MP Order)
<b>BoR</b>	Book of Reference	<b>MP Order</b>	The Infrastructure Planning (Model Provisions) Order 2009
<b>CA</b>	Compulsory Acquisition	<b>NE</b>	Natural England
<b>CEMP</b>	Construction and Environmental Management Plan	<b>NELC</b>	North East Lincolnshire Council
<b>CFA</b>	Continuous Flight Auger	<b>NELLP</b>	North East Lincolnshire Local Plan
<b>CPO</b>	Compulsory Purchase Order	<b>NOx</b>	Nitrogen Oxides
<b>DCO</b>	Development Consent Order	<b>NPS</b>	National Policy Statement
<b>dDCO</b>	draft Development Consent Order	<b>NSIP</b>	Nationally Significant Infrastructure Project
<b>DRS</b>	Deposit Return Schemes	<b>NRMM</b>	Non-Road Mobile Machinery
<b>EIA</b>	Environmental Impact Assessment	<b>PA2008</b>	The Planning Act 2008
<b>EM</b>	Explanatory Memorandum	<b>POPs</b>	Persistent Organic Pollutants
<b>EPR</b>	Extended Producer Responsibility	<b>RDF</b>	Refuse Derived Fuel
<b>ES</b>	Environmental Statement	<b>RR</b>	Relevant Representation
<b>ExA</b>	Examining Authority	<b>s.106</b>	Section 106 Agreement
<b>FGT</b>	Flue Gas Treatment	<b>SAC</b>	Special Area of Conservation
<b>GCN</b>	Great Crested Newts	<b>SHG</b>	South Humber Gateway
<b>HRA</b>	Habitat Regulations Assessment	<b>SI</b>	Statutory Instrument
<b>HRAR</b>	Habitat Regulations Assessment Report	<b>SNCB</b>	Statutory Nature Conservation Body
<b>IAQM</b>	Institute of Air Quality Management	<b>SNCR</b>	Selective Non-Catalytic Reduction



<b>ICE</b>	In-Combination Effect	<b>SoS</b>	Secretary of State
<b>IP's</b>	Interested Parties	<b>SPA</b>	Special Protection Area
<b>LIR</b>	Local Impact Report	<b>SSSI</b>	Site of Special Scientific Interest
<b>LPA</b>	Local planning authority	<b>SU</b>	Statutory Undertaker
<b>LSE</b>	Likely Significant Effect	<b>TCPA</b>	Town and Country Planning Act 1990 (as amended)
<b>LWS</b>	Local Wildlife Site	<b>TP</b>	Temporary Possession
<b>MDA</b>	Main Development Area	<b>TPO</b>	Tree Preservation Order

### The Examination Library

References in these questions set out in square brackets (eg APP-010) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link:

[South Humber Bank Energy Centre Project Examination Library](#)

It will be updated as the examination progresses.

### Citation of Questions

Questions in this table should be cited as follows:

Question reference: issue reference: question number, eg ExQ1 1.0.1 – refers to question 1 in this table.



## Index

<b>1. General and Cross-topic Questions.....</b>	<b>5</b>
<b>2. Air Quality .....</b>	<b>8</b>
<b>3. Cultural Heritage .....</b>	<b>9</b>
<b>4. Design and Layout .....</b>	<b>9</b>
<b>5. Draft Development Consent Order (dDCO).....</b>	<b>11</b>
<b>6. Ecology .....</b>	<b>22</b>
<b>7. Environmental Impact Assessment and Environmental Statement .....</b>	<b>26</b>
<b>8. Flood Risk, Hydrology and Water Resources .....</b>	<b>27</b>
<b>9. Geology and Land Contamination .....</b>	<b>28</b>
<b>10. Habitat Regulations Assessment .....</b>	<b>30</b>
<b>11. Landscape and Visual Amenity .....</b>	<b>41</b>
<b>12. Noise and Vibration .....</b>	<b>42</b>
<b>13. Planning Policy .....</b>	<b>43</b>
<b>14. Socio-economic Effects .....</b>	<b>43</b>
<b>15. Traffic, Transport and Waste Management .....</b>	<b>43</b>

ExQ1	Question to:	Question:
<b>1. General and Cross-topic Questions</b>		
Q1.0.1	The Applicant/ NELC	<ul style="list-style-type: none"> <li>Reference to the Planning Permission granted by North East Lincolnshire Council (NELC) under their reference DM/1070/18/FUL, dated 12 April 2019, is made throughout the submitted documentation. Please enter a copy of: any supplementary reports provided by Officers of the Council’s Planning Committee of the 12 April 2019 that relate to the Council’s consideration of the Planning Application (DM/1070/18/FUL) and the minutes of that planning committee meeting relevant to the decision made on the planning application. Alternatively, please direct the Examining Authority (ExA) to where these documents have been provided in the documentation submitted as part of the Development Consent Order (DCO) application.</li> </ul>
Q1.0.2	The Applicant/ NELC	<ul style="list-style-type: none"> <li>The Environmental Statement (ES) at Appendix 1A <a href="#">[APP-104]</a> refers to the Applicant being likely to progress the Planning Permission (DC/1070/18/FUL) in accordance with the extant consent. Additionally, the ES at Chapter 4 (The Proposed Development) <a href="#">[APP-038]</a> sets out a number of scenarios in regard to the construction programme of the proposed development. The first scenario, if implemented, indicates construction work would commence in the second quarter of 2020. However, during the Examining Authorities (ExA’s) unaccompanied site inspection of the 24 August 2020 there was no obvious evidence of commencement of works granted by the Planning Permission referred to above. Please explain the current progress made with regard to the implementation of the Planning Permission, including the number of pre-commencement conditions that needed to be discharged prior to commencement, where the Applicant has reached in the discharge of those pre-commencement conditions and whether a lawful commencement of the Planning Permission is considered to have occurred.</li> </ul> <p>Additionally, in the light of the above, please explain the relationship of the Planning Permission and the DCO Application, as set out, in the ES and the conditions and requirements relied upon to inform the assessment that the development is extant.</p>
Q1.0.3	The Applicant	<ul style="list-style-type: none"> <li>Bearing the question above (Q1.0.2) in mind, please also explain to what extent the progress made has had with regards to implementation affects and is accounted for in baseline information presented within the ES?</li> </ul>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q1.0.4	The Applicant	<ul style="list-style-type: none"><li>• Please provide an update as to the construction programme and indicate which option currently represents the most likely proposed construction programme?</li></ul>
Q1.0.5	The Applicant and NELC	<ul style="list-style-type: none"><li>• Please confirm which planning conditions imposed under NELC Planning Permission reference number DM/1070/18/FUL, dated 12 April 2019, are considered to be pre-commencement planning conditions. In responding please provide the condition number, a title for the condition (i.e. Ecology; Archaeology; Etc.), a brief synopsis of the purpose of the condition and its current status (i.e. whether it: has be discharged; remains outstanding; Etc.). Finally, if they remain outstanding, please confirm what is being done to enable the pre-commencement condition(s) to be discharged and how long it is anticipated the discharge of the relevant pre-commencement condition(s) will take?</li></ul>
Q1.0.6	The Applicant	<ul style="list-style-type: none"><li>• The ES Paragraph 4.2.8 sets out '<i>further associated development that may be required in connection with the above, which are within the scope of the works assessed in this ES</i>'. Can the Applicant clarify what further authorised development works may be required that are not currently stipulated but are deemed to be within the envelope of assessment? Furthermore, if these or other works, such as site accesses, are classed as pre-commencement works, please clarify and explain how it can be ensured that the works do not rely on mitigation requirements that would not be discharged until the Proposed Development 'commences'?</li></ul>
Q1.0.7	The Applicant/ Environment Agency	<ul style="list-style-type: none"><li>• The Environmental Permit, and matters stipulated within it, is referred to a number of times throughout the documentation submitted with the application. Please provide a draft copy of the Environmental Permit or point the ExA to where this has been provided in the submitted documentation? If the document is only in draft at the present time please provide the most up to date draft of the Environmental Permit.</li></ul>
Q1.0.8	The Applicant/ Environment Agency	<ul style="list-style-type: none"><li>• Please advise if the Environmental Permit is a template permit or bespoke?</li></ul>
Q1.0.9	The Applicant	<ul style="list-style-type: none"><li>• The Statutory Nuisance Statement <a href="#">[APP-028]</a> Paragraph 3.2.5 (Page 8) appears to refer to Section 3 erroneously. Please amend.</li></ul>
Q1.0.10	The Applicant	<ul style="list-style-type: none"><li>• The Statutory Nuisance Statement <a href="#">[APP-028]</a> Paragraph 4.2.2 relates to minimising the risk of statutory nuisance from occurring and lists a number of measures that will be put in place. Once such measure is a Preventative Maintenance Plan? Please advise</li></ul>

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<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
		what a Preventative Maintenance Plan is, what it prevents and what it's aim and purposed would be? For example, is its aim and purpose to prevent the premises falling into disrepair, such as it will become prejudicial to health or a nuisance?
Q1.0.11	The Applicant/ Environment Agency	<ul style="list-style-type: none"><li>• The Statutory Nuisance Statement <a href="#">[APP-028]</a> Paragraph 4.3.11 - It is noted that the resulting combustion flue gas will be cleaned in a Flue Gas Treatment (FGT) plant and that each fuel combustion line will be fitted with: Selective Non-Catalytic Reduction (SNCR) for the abatement of emissions of nitrogen oxides (NOx) (if required); lime (or equivalent reagent) injection for the abatement of acid gases including hydrogen chloride and sulphur dioxide; activated carbon injection for the abatement of Persistent Organic Pollutants (POPs), dioxins and furans and heavy metals; and fabric bag filters for the abatement of particulate emissions, including the injected reagent and activated carbon. Will these measures be covered in the Environmental Permit or will it need to be a Requirement in the DCO?</li></ul>
Q1.0.12	The Applicant	<ul style="list-style-type: none"><li>• The Statutory Nuisance Statement <a href="#">[APP-028]</a> Paragraph 4.4.28 suggests there will be times when the plant would be non-operational. Why would the site be non-operational and what levels of Refuse Derived Fuel (RDF) would be stored on site when the site is non-operational? Additionally, please explain what the combustion/ fire risk is both during operation and when the plant is non-operational and what measures are to be put in place to ensure combustion/ fire does not occur?</li></ul>
Q1.0.13	The Applicant	<ul style="list-style-type: none"><li>• The Statutory Nuisance Statement <a href="#">[APP-028]</a> Paragraph 4.6.1 indicates that the RDF will be delivered in covered or enclosed containers, tipped inside an enclosed reception hall and stored internally. It also indicates that due to the operational nature of the Proposed Development a high turnover of RDF will be contained in the fuel bunker. The Applicant considers that the measures outlined in Paragraph 4.6.1 will minimise the potential for vermin, including insects (such as flies). However, what measures will be put in place if such incidents do occur or when the site is non-operational?</li></ul>
Q1.0.14	The Applicant	<ul style="list-style-type: none"><li>• The Statutory Nuisance Statement <a href="#">[APP-028]</a> Paragraph 4.6.2 indicates that the fuel reception hall will be regularly cleaned and that regular inspections of the Site, boundary fence, gates and access road in the immediate vicinity of the facility entrance will be carried out. Please advise what the term regular means? (i.e. Once a year/ Once every 6 months/ Once a month/ Once a week/ once a day, Etc.)</li></ul>

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<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q1.0.15	The Applicant	<ul style="list-style-type: none"> <li>The Statutory Nuisance Statement <a href="#">[APP-028]</a> Paragraph 4.6.3. What is meant by the term 'minimum' and what is meant by the term 'regular'? Additionally, this paragraph states that Approved chemical pesticides may be used as required or as directed by professional companies. What does the term 'approved chemical pesticides' mean (i.e. approved by whom) and what would be the impact of such chemical pesticides be on protected species, the adjoining Ramsar/ SPA/ SAC?</li> </ul>
Q1.0.16	The Applicant	<ul style="list-style-type: none"> <li>Appendix 5A – Outline CEMP <a href="#">[APP-107]</a> refers to "<i>Regular environmental audits of the construction works...</i>" (Paragraph 2.5.4). Please advise what the term regular means? (i.e. Once a year/ Once every 6 months/ Once a month/ Once a week/ once a day, Etc.)</li> </ul>
Q1.0.17	The Applicant	<ul style="list-style-type: none"> <li>Appendix 5A – Outline CEMP <a href="#">[APP-107]</a> Tables 3.1 to 3.12 (inclusive) sets out the 'Potential Impacts' and the 'Mitigation/ Enhancement Measures'. However, in the sections related to 'Monitoring Requirements' and 'Responsibility' the document consistently states, "To be confirmed in the CEMP". Please advise in regard to progress made in regard on the CEMP and whether there is further clarity as to the sections marked 'Monitoring Requirements' and 'Responsibility' and the phrase "To be confirmed in the CEMP".</li> </ul>
Q1.0.18	The Applicant	<ul style="list-style-type: none"> <li>Is there a requirement to store the bottom ash on site prior to removal? If so please explain why, where the bottom ash is proposed to be stored prior to removal and what measures would be required to ensure it is appropriately stored?</li> </ul>
Q1.0.19	The Applicant	<ul style="list-style-type: none"> <li>No reference is made to waste being stored on site for any length of time. Whilst this may be achievable when the plant is in operation, please explain what waste will be stored on site during the periods of shutdown, including breakdowns and when the site is shut down for repairs and planned maintenance.</li> </ul>
<b>2. Air Quality</b>		
Q2.0.1	The Applicant	<ul style="list-style-type: none"> <li>The ES considers mitigation (Section 7.7) as part of the Environmental Impact Assessment (EIA) <a href="#">[APP-041]</a>. The ES however also considers 'embedded' mitigation to be implemented during construction (ES Paragraph 7.5.2) and Operation (ES Paragraph 7.5.4). A Construction and Environmental Management Plan (CEMP) is relied upon specifically. The ES Paragraphs 7.5.2 and 7.5.4 suggest that mitigation has been taken into account for the assessment of Likely Significant Effect(s) (LSE).</li> </ul>



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<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
		Please confirm precisely what the mitigation relied upon in the assessment is and how such mitigation is to be secured?
Q2.0.2	The Applicant/ Environment Agency	<ul style="list-style-type: none"><li>Will the stacks heights and need to ensure the flue gas is emitted with a velocity of at least 15 m/s be specified in the Environmental Permit or will these need to be a Requirement specified in the Development Consent Order? (See Statutory Nuisance Statement <a href="#">[APP-028]</a> Paragraph 4.3.12)</li></ul>
Q2.0.3	The Applicant	<ul style="list-style-type: none"><li>The ES Appendix 1A: (Environmental Impact Assessment Scoping Report) <a href="#">[APP-104]</a> paragraph 7.2.4 refers to the prevailing wind direction. Please confirm the prevailing wind direction or indicate where within the submitted documentation this information has been provided?</li></ul>
<b>3. Cultural Heritage</b>		
Q3.0.1	The Applicant	<ul style="list-style-type: none"><li>The ES Section 13.3 sets out that the Study area is based upon a zone of theoretical visibility. This indicates that above ground heritage has been considered but no below ground heritage, which could be impacted through construction, operation or decommissioning either through direct physical impact or indirectly appears to have been considered. Please explain the extent to which the study area takes into account impacts on below ground heritage during construction, operation and decommissioning of the Proposed Development?</li></ul>
<b>4. Design and Layout</b>		
Q4.0.1	The Applicant	<ul style="list-style-type: none"><li>The notes in the Environmental Statement (ES) Chapter 6 <a href="#">[APP-040]</a> Paragraph 6.15 are noted, as is the summary of the design evolution in Table 6.2 of the same document. However, limited information and explanation of the evolution of the design has been provided, other than notes that the design parameters are consistent with the parameters of the development permitted by NELC under the Town and Country Planning Act 1990 (As amended) (TCPA) under Planning Permission reference number DM/1070/18/FUL, dated 12 April 2019. Please provide a full written explanation of the design objectives of the proposed development, what has influenced the design of the proposed development and explain how the way the design of the proposed development has evolved over time meets each of those objectives/ influences?</li></ul>
Q4.0.2	The Applicant	<ul style="list-style-type: none"><li>What is the optimum operational throughput for RDF to produce power – not capacity? Optimum Operating settings (Tolerance).</li></ul>

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<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q4.0.3	The Applicant	<ul style="list-style-type: none"><li>• Will the plant be self-sufficient in terms of energy generation (i.e. Will it generate energy to the grid, as well as generating energy to run itself?)</li></ul>
Q4.0.4	The Applicant	<ul style="list-style-type: none"><li>• Will the grid be able to accept the entire generation capacity of the plant at all times?</li></ul>
Q4.0.5	The Applicant/ Environment Agency	<ul style="list-style-type: none"><li>• Will the temperatures within the combustion system and in particular to the main flue gas temperature being at least 850°C for a minimum of two seconds, Etc., be covered in the Environmental Permit or will it need to be a Requirement in the Development Consent Order?</li></ul>
Q4.0.6	The Applicant/ Environment Agency	<ul style="list-style-type: none"><li>• In terms of emissions, please explain what is the impact of this plant in-combination with other plant already in situ and whether this is considered as part of the Environmental Permitting regime?</li></ul>
Q4.0.7	The Applicant	<ul style="list-style-type: none"><li>• It is noted that the Appellant does not consider an Odour Management Plan to be required (See the Statutory Nuisance Statement <a href="#">[APP-028]</a> Paragraph 4.4.26 and 4.4.27). However, the justification for not providing one is limited and whilst it is appreciated that the proposed development is situated approximately 1km from the nearest dwelling, nuisance from odour could still arise. Therefore, please provide an Odour Management Plan or strong justification and evidence as to why one should not be provided.</li></ul>
Q4.0.8	The Applicant	<ul style="list-style-type: none"><li>• It is noted that the building will contain a fully enclosed fuel reception area, which incorporates a fuel reception hall and enclosed fuel storage bunker, and that the reception hall and bunker hall will be fitted with fast acting doors and maintained under slight negative pressure to reduce the risk of odour escaping. However, with the nearest dwelling only being situated some 1km and other businesses being located closer to the site, please explain why deodorising spray is not been proposed or considered necessary in this instance in addition to the mitigations already being promoted to prevent odour from escaping.</li></ul>
Q4.0.9	The Applicant	<ul style="list-style-type: none"><li>• Please confirm RDF will only be contained inside the building.</li></ul>
Q4.0.10	The Applicant	<ul style="list-style-type: none"><li>• Please confirm how long bottom ash needs to remain on site before it can be removed for disposal and where it is to be stored on site whilst awaiting disposal (Also see Question Q1.0.18 above).</li></ul>

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**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
Q4.0.11	The Applicant	<ul style="list-style-type: none"> <li>The Planning, Design and Access Statement <a href="#">[APP-024]</a> at Paragraph 4.3.7 to 4.3.11 discuss the combustion system. Please confirm that the proposed development is a mass burn facility and that the level of maintenance set out in the ES Non-Technical Summary <a href="#">[APP-033]</a> at Paragraph 7.4.7 is appropriate.</li> </ul>
Q4.0.12	The Applicant	<ul style="list-style-type: none"> <li>The ES Appendix 1A: (Environmental Impact Assessment Scoping Report) <a href="#">[APP-104]</a> paragraph 2.1.4 indicates the 'Main Development Area' currently comprises a vegetated area used as the route for the underground cooling water pipes (connecting the two CCGT units and the cooling water pumping station) and other buried services and associated access road. Please confirm what other services are buried here and how the underground cooling water pipes and other buried services will be impacted by the proposed development?</li> </ul>
<b>5. Draft Development Consent Order (dDCO)</b>		
Q5.0.1	The Applicant	<ul style="list-style-type: none"> <li>Bearing in mind ExA question Q1.0.6 above, can the Applicant confirm if mitigation requirements are necessary to control impacts associated with the pre-commencement activities identified in the DCO? Additionally, what requirements are in place to ensure that such mitigation is delivered prior to these activities taking place?</li> </ul>
Q5.0.2	The Applicant	<ul style="list-style-type: none"> <li>The Development Consent Obligation (Document Reference 5.13) <a href="#">[APP-032]</a> seeks to vary the Section 106 (s.106) Agreement, dated 11 April 2019, completed as part of Planning Permission DM/1070/18/FUL. However, Section 106 of the TCPA distinguishes between planning obligations and development consent obligations. In particular s.106(9) provides that:  <i>(9) A planning obligation may not be entered into except by an instrument executed as a deed which— (a) states that the obligation is a planning obligation for the purposes of this section; (aa) if the obligation is a development consent obligation, contains a statement to that effect;</i>                      A development consent obligation is defined in s.106(14) as a:  <i>planning obligation entered into in connection with an application (or a proposed application) for an order granting development consent.</i>                      The original s.106 agreement naturally refers to the creation of a planning obligation. The proposed variation also refers to the planning obligation. As such</li> </ul>

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**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>there is uncertainty about the legality of the s.106 and doubt about the necessary mitigation being secured. Consequently, the ExA requests the applicant to either provide a draft for a separate s.106 development consent obligation to ensure the habitats mitigation required by the DCO or to give reasons, by reference to the provisions of s.106, why they do not consider this to be necessary?</p>
Q5.0.3	The Applicant	<ul style="list-style-type: none"> <li>Should the ExA be minded to recommend changing the wording of the DCO to ensure that the existing permission ceases to have effect on implementation of the DCO, please make submissions on the most appropriate course of action in relation to securing the s.106 agreement.</li> </ul>
Q5.0.4	The Applicant	<ul style="list-style-type: none"> <li>The ExA has concerns in regard to the provisions of Article 5 (Effect of the Order on the SHBEC planning permission) of the DCO. Article 5(2)(i) of the DCO would result in the conditions imposed in the Planning Permission ceasing to have effect, but the Planning Permission still existing, notwithstanding the provision within Article 5(2)(a) of the DCO. Please provide your views on: <ul style="list-style-type: none"> <li>i) why such a provision is necessary;</li> <li>ii) why the two consents could not co-exist;</li> <li>iii) whether the inclusion of a provision to either: a) revoke the existing Planning Permission; or b) for the existing Planning Permission to cease to have effect should be included within the DCO;</li> <li>iv) whether iii) a) and iii) b) above, would be tantamount to having the same effect of revoking the Planning Permission?</li> </ul> <p>In responding to iii) and iv) above, please consider the legal consequences of revoking a Planning Permission and whether any of those legal consequences would apply if the SoS revoked or caused the Planning Permission to cease to have effect as a result of the DCO.</p> </li> </ul>
Q5.0.5	The Applicant	<ul style="list-style-type: none"> <li>Please explain how conditions discharged under the Planning Permission are to be secured as part of the DCO and highlight how you have done this within the draft DCO <a href="#">[APP-005]</a>.</li> </ul>
Q5.0.6	The Applicant	<ul style="list-style-type: none"> <li>The documentation submitted with the DCO application indicates that there is no intention to implement both the Planning Permission and the DCO, if granted. However, you have also consistently referred to the Planning Permission as 'extant'</li> </ul>

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ExQ1	Question to:	Question:
		<p>and indicated that you propose to implement the Planning Permission, through-out the documentation submitted with this application. Please explain, clarify or correct as necessary.</p>
Q5.0.7	The Applicant	<ul style="list-style-type: none"> <li>Document Reference 4.12 (Proposed and consented development comparison plan) <a href="#">[APP-019]</a> shows the DCO order limits and the planning application boundary. Please clearly explain how the two interact, particularly given that the planning permission site is not entirely subsumed within the DCO order limits? The ExA considers that it is particularly important to understand the differences between the DCO boundary and the planning application boundary in light of Article (Art) 5 of the DCO, which attempts to transfer works commenced under the planning permission to works regulated under the DCO and to effectively deem discharge of Requirements by information submitted and approved for discharge of conditions of planning permission.</li> </ul>
Q5.0.8	The Applicant	<ul style="list-style-type: none"> <li>The Explanatory Memorandum (EM) (Document Reference 2.2) <a href="#">[APP-006]</a> at Paragraph 1.5.1 identifies the “additional works” as works not forming part of the “consented development”. However, there is no reference in the EM to the corresponding works in the DCO, so it is unclear exactly which of the works for which consent is sought in the DCO are additional to the works consented in the Planning Permission. Furthermore, there is no definition of “additional works” in the DCO.</li> </ul> <p>To be sure which works are additional in the DCO, to that consented within the existing planning permission (defined as the SHBEC planning permission in the DCO Art 2), the ExA will need to fully understand the differences and ensure that those works are adequately controlled by Requirements that cannot be deemed to be discharged by discharge of conditions under the planning permission. Please explain clearly the “additional works” and how those works will be adequately controlled by the Requirements in the DCO.</p>
Q5.0.9	The Applicant	<ul style="list-style-type: none"> <li>You seek to set out the intended purpose of Art 5 of the dDCO, within the EM <a href="#">[APP-006]</a> at Paragraphs 4.2.6 – 4.2.25. These paragraphs express the opinion that it is possible to modify conditions of planning permission under s.120(5)(a) Planning Act 2008 (PA2008) because the term “statutory provision” as defined in s.120(6), is capable of including conditions of a planning permission as provisions of an instrument</li> </ul>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>(the planning permission) made under the TCPA. The effect of Art 5 of the draft Development Consent Order (dDCO) would not really be trying to seek to modify or exclude the conditions, but instead provide that the conditions will “cease to have effect”. Additionally, reference is made to s.120(5)(b) and 120(5)(c) PA2008 as being sections under which the Secretary of State (SoS) could authorise the provisions in this article.</p> <p>Please explain how s.120(5)(a), s.120(5)(b) and s.120(5)(c) of the PA2008 are applicable here.</p>
Q5.0.10	The Applicant	<ul style="list-style-type: none"> <li>• S.120(5)(c) enables a DCO to include any provision that appears to the SoS to be necessary and expedient for giving full effect to any other provision of the order. Whilst this could be wide enough to encompass the provisions sought in the dDCO (Article 5) it needs to be shown that it is necessary and expedient for giving full effect to another provision in the order. The EM <a href="#">[APP-006]</a> states at paragraph 4.2.15 “<i>The undertaker considers that article 5 is necessary to ensure conditions in the Planning Permission no longer apply and that the whole development is regulated by the DCO going forwards</i>”.</li> <li>• Please explain in more detail how s.120(5)(c) is considered to be satisfied in relation to the provisions in Article 5. In particular please explain what other provision it is necessary and expedient to give full effect to.</li> </ul>
Q5.0.11	The Applicant	<ul style="list-style-type: none"> <li>• At EM <a href="#">[APP-006]</a> Paragraph 4.2.16 refers to the legal effect of Art 5(2) and states “<i>The legal effect of article 5(2) is that the planning permission continues to exist but it has no enforceable conditions. The fact that it continues to exist is not a concern, since article 5(2)(a) secures that no further development can take place pursuant to it. It therefore in effect becomes part of the planning history for the Site, not a 'live' consent.</i>”</li> </ul> <p>Given that this is the intention, please explain why you are not simply seeking to revoke the existing planning permission once development is to proceed and be</p>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		regulated by the DCO. The ExA considers this would seem a neater and more certain way to proceed.
Q5.0.12	The Applicant	<ul style="list-style-type: none"> <li>• Art 5(1) of the dDCO provides that the undertaker (defined in Art 2 as EP Waste Management LTD or a person with benefit of the order in accordance with Arts 8 &amp; 9) must not construct any part of the authorised development pursuant to the order until a notice has been served under paragraph (2).</li> </ul> <p>It is notable that the term "construct" is used and not "commence". Unlike commence, "construct" is undefined in the DCO. Please explain why the term "construct" is not linked to "commence" or include a definition of "construct" in Art 2.</p>
Q5.0.13	The Applicant	<ul style="list-style-type: none"> <li>• The EM <a href="#">[APP-006]</a> at Paragraph 4.2.6 indicates that the undertaker cannot "implement" the DCO until it has served a notice, but provides no further explanation. Please provide further and a fuller explanation in this regard and amend the dDCO, as appropriate.</li> </ul>
Q5.0.14	The Applicant	<ul style="list-style-type: none"> <li>• dDCO Art 5(3) sets out that, notwithstanding 5(1), the undertaker may exercise any "other powers" under the order in respect of the authorised development. Please explain what "other powers" means in this context.</li> </ul>
Q5.0.15	The Applicant	<ul style="list-style-type: none"> <li>• Should notice be served pursuant to Art 5(2), as currently drafted in the current dDCO, this would appear to have the effect of resulting in conditions attached to an implemented planning permission ceasing to have effect. Please clarify whether you consider this to be the effect of this Art and if not what the effect/ intent of the Art is?</li> </ul>
Q5.0.16	The Applicant	<ul style="list-style-type: none"> <li>• The effect of Art 5(2)(a) is that once the undertaker serves notice on the Local Planning Authority (LPA) there must be no further development of the planning permission. The notice served by the undertaker must be included on the planning register. Although it is clear that the intention is for the undertaker to be the same person as the developer implementing the planning permission (i.e. EP Waste Management Ltd) it does not appear possible for this to be secured. Please can the applicant comment on this and the implications that flow from this.</li> </ul>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q5.0.17	NELC	<ul style="list-style-type: none"><li>• Would placing a copy of the notice served under Art 5(2)(a) on the planning register be sufficient to inform any party affected that any development undertaken in accordance with the SHBEC Planning Permission will be in breach of the DCO from the date the notice is served? Please give a full explanation of your response, including any justification/ evidence which supports your reply.</li></ul>
Q5.0.18	NELC	<ul style="list-style-type: none"><li>• dDCO Art 5(2)(b)(i) and (ii) provide that from the date of the notice the conditions of the planning permission will cease to have effect and the Requirements of the DCO will apply to development that has or is to take place within the Order limits which is part of the authorised development. This would mean that once the notice is served any development undertaken in compliance with the planning permission will be regulated by the Requirements in the DCO and not the conditions of the planning permission from that date. Please confirm whether you are satisfied that all the conditions which apply to the existing planning permission are replicated satisfactorily in the DCO.</li><li>• Art 5(5) of the DCO clarifies that where details/ plans have been approved or agreed by the LPA pursuant to a condition in column 1 of schedule 3 the corresponding requirement in column 2 of schedule 3 will be deemed to be discharged. As such the ExA will need to be satisfied that the discharge of the condition corresponding to each Requirement is sufficient to discharge the Requirement, even though the condition will not relate to the additional works included in the DCO. For example, in terms of the landscaping condition the ExA will need to be satisfied that the details submitted to discharge the landscaping condition within the planning permission were acceptable to deem discharge the corresponding Requirement in the DCO. As such please confirm whether NELC, acting as the LPA, are content with the acceptability of this Art in principle and in practice, providing justification for your response.</li></ul>
Q5.0.19	The Applicant/ NELC	<ul style="list-style-type: none"><li>• dDCO Art 5(6) requires the undertaker to issue a requirements discharge schedule (defined in Art 2). The LPA must state within 3 weeks whether the details in this are agreed or, if not, what parts it considers are incorrect. What happens in the event that the LPA does not agree with the applicant's schedule?</li></ul>



**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q5.0.20	The Applicant	<ul style="list-style-type: none"><li>As noted at Q5.0.7 above, the redline boundary of the planning permission is not entirely subsumed within the DCO. For example, the land which is within the planning permission boundary but outside of the red line boundary (see comparison plan 4.12 and EM <a href="#">[APP-006]</a> Paragraph 3.4.1) will in effect be land which benefits from the existing planning permission but which is not subject to the Requirements in the DCO. Once the conditions "cease to have effect" this land will have the benefit of the planning permission with no conditions. Bearing the above in mind, what would the consequences be as a result of the provisions in Art 5(2) generally and specifically in regard to the National Grid Gas above ground installation and the National Grid Electricity Substation?</li></ul>
Q5.0.21	The Applicant	<ul style="list-style-type: none"><li>dDCO Art 8(2) provides that in relation to Work No 2(e) the order is for the benefit of the undertaker and EP SHB Limited. The EM <a href="#">[APP-006]</a> does not explain who this is but instead refers to "appropriate statutory undertakers" (see 4.2.28). Please clarify who EP SHB Limited is and explain why it is appropriate for them to have the benefit of the order in relation to work No 2(e)? Additionally, please explain the reference to appropriate Statutory Undertakers (SU) in the EM.</li></ul>
Q5.0.22	The Applicant	<ul style="list-style-type: none"><li>dDCO Art 9(4) permits the transfer of the benefit without SoS consent. Art 9(4)(b) applies to "relevant statutory undertakers" or "licence holders" and this is potentially a very wide category of persons. What is the justification for permitting the transfer of these benefits to these persons? Additionally, please provide a definition for "relevant statutory undertaker" and "licence holder" in this context, as it is unclear exactly who would fall into these categories.</li></ul>
Q5.0.23	The Applicant	<ul style="list-style-type: none"><li>The transfer of benefits applies to "utility or other infrastructure connection works" (See dDCO <a href="#">[APP-005]</a> Art 9-(4)(b)). To provide sufficient certainty as to which works this relates to, please provide a definition to this term.</li></ul>
Q5.0.24	The Applicant	<ul style="list-style-type: none"><li>The EM <a href="#">[APP-006]</a> paragraph 4.2.30 attempts to justify the provision within dDCO Art 9(4) by stating that the transfers without consent are permissible because they are transfers to persons of a similar regulatory standard as the Applicant and refers to</li></ul>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
		<p>precedents in Progress Power and Eggborough DCOs. However, neither the Progress Power and Eggborough DCO included transfer to “relevant statutory undertakers or licence holders”. In the light of this please explain why the transfer of such powers would be justified in this instance or direct the ExA to relevant and appropriate precedent(s) that permit such transfers.</p>
Q5.0.25	The Applicant	<ul style="list-style-type: none"><li>• ES Paragraph 4.3.2 states that Paragraphs (3) and (4) of Art 12 of the dDCO mirror the defence in section 58 of the Highways Act 1980. Please explain fully why it is necessary to include this defence in the DCO if it is already available in the Highways Act?</li></ul>
Q5.0.26	The Applicant	<ul style="list-style-type: none"><li>• dDCO Arts 10, 11, 12 and 13 – Whilst the EM <a href="#">[APP-006]</a> at paragraph 3.4.2 explains the Applicant’s control of the land, bearing in mind the Book of Reference (BoR) <a href="#">[APP-007]</a>, in the absence of any Compulsory Acquisition (CA) and Temporary Possession (TP) please explain how you will exercise these powers over private and public streets and highways, especially bearing in mind the Category 1 and 2 parties identified in BoR at Parts 1 and 3?</li></ul>
Q5.0.27	The Applicant	<ul style="list-style-type: none"><li>• Whilst the definition of ‘public sewer’ and ‘drain’ is provided within Art 15 of the dDCO, these terms are used elsewhere throughout the document (See Arts 2, 10 and 21) as well as the Schedules. Please clarify why these terms have not be included within Art 2 (definitions) of the dDCO?</li></ul>
Q5.0.28	The Applicant	<ul style="list-style-type: none"><li>• Art 17(1) of the dDCO permits the undertaker to fell or lop any tree or shrub “near any part of the development”. This does not provide sufficient certainty in terms of identifying which trees the undertaker is permitted to fell or lop. Please explain the acceptability of this, particularly in consideration of Art 17(6), which provides that the authority given under subparagraph (1) is a deemed consent under the relevant Tree Preservation Order (TPO) or amend the dDCO accordingly.</li></ul> <p>In addition to the above, please provide details of the TPO referred to in Art 17(6) of the dDCO.</p>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q5.0.29	The Applicant	<ul style="list-style-type: none"><li>• Art 19 of the dDCO gives the undertaker the power to extinguish or suspend the rights of, remove or reposition the apparatus belonging to SU(s). Please explain why this does not amount to CA or the acquisition of land by agreement (See Section 138 of the PA2008), or the TP of Land?</li><li>• Additionally, the ExA needs to be satisfied that extinguishment or suspension of SU rights and removal or repositioning of SU apparatus is necessary and justified. Please provide full justification of why extinguishment or suspension of SU rights and removal or repositioning of SU apparatus is necessary and justified?</li></ul>
Q5.0.30	Statutory Undertakers	<ul style="list-style-type: none"><li>• Consideration needs to be given to the protective provisions and the views of the affected SU's. Could any SU effected by the proposed development advise whether they consider whether there should be any specific compensation provisions included in the DCO for extinguishment or suspension of SU rights or if these are adequately addressed by the relevant protective provisions?</li></ul>
Q5.0.31	The Applicant	<ul style="list-style-type: none"><li>• dDCO Art 23 – The EM [APP-006] does not adequately explain why it is necessary to ensure that the land will be operational land in the circumstances of this particular Nationally Significant Infrastructure Project (NSIP). The EM simply refers to precedent (see EM paragraph 4.6.6) but does not explain why in response to that question. Please provide full and clear explanation for the need for this provision.</li></ul>
Q5.0.32	The Applicant/ NELC	<ul style="list-style-type: none"><li>• dDCO Art 27 – Art 27(2) contains a deemed approval procedure for applications other than those made under the Requirements. Please advise which provisions in the DCO this applies to and whether the consenting authorities are happy with this provision. Additionally, bearing Art 27 in mind, the ExA would seek the views of NELC, acting as the relevant LPA and Highway Authority, and any other street authority as is relevant to this DCO application, on the acceptability of this provision and the timescales provided?</li></ul>
Q5.0.33	The Applicant	<ul style="list-style-type: none"><li>• In terms of Schedule 1 Work 2 Please explain as to when a decision will be made on underground or overground for the electrical connection?</li></ul>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q5.0.34	The Applicant	<ul style="list-style-type: none"><li>• Schedule 1 Further Development - Please consider drafting which ensures that all further development (a) – (j) falls within the scope of works assessed in the ES or explain why such amendments to the DCO are not considered necessary?</li></ul>
Q5.0.35	The Applicant	<ul style="list-style-type: none"><li>• Schedule 2 General - As per comments above on Art 5, if Art 5 remains as drafted, all of the conditions of the planning permission will need to be completely incorporated into the Requirements of the DCO. This is because the operation of Art 5 will in effect remove the existing conditions and all works undertaken in relation to the planning permission will be subject to the Requirements in the DCO instead. Should Art 5 be retained, please ensure that the dDCO completely incorporates all of the conditions of the planning permission within the Requirements of the DCO.</li></ul>
Q5.0.36	The Applicant	<ul style="list-style-type: none"><li>• Schedule 2 Requirement 1 &amp; Other Requirements relating to Permitted Preliminary Works - Requirement 1 contains a definition of permitted preliminary works and several Requirements permit these works to take place before the Requirement is discharged (See Requirements 5, 6, 8, 10, 13, 14, 19, 20 ,29 and 30 for example). Please explain fully and clearly why it is appropriate in each case for these works to take place before the Requirement is discharged and therefore without the control of the Requirement?</li></ul>
Q5.0.37	The Applicant	<ul style="list-style-type: none"><li>• Schedule 2 Requirement 3 and tailpieces in other Requirements - The ExA would query the use of tailpieces such as "<i>unless otherwise approved by the LPA</i>" and asked the Applicant to consider removing them or provide an explanation and justification for each tailpiece. It would be helpful for the Applicant to explain the interaction of the tailpieces with Requirement 3(2). The ExA would draw your attention to PINS AN 15 on DCO drafting, section 17, in relation to tailpieces. Whilst EM <a href="#">[APP-006]</a> Paragraph 5.2.4 is noted, the ExA needs to consider, in each Requirement where the tailpiece arises, whether it is acceptable. As such a full and clear explanation/ justification in regard to each tailpiece, in consideration of PINS AN 15 section 17, is requested.</li></ul> <p>Your attention is drawn in particular to Requirement 15(3), which enables the LPA to agree that the development does not need to be carried out in accordance with the</p>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
		<p>approved CEMP. This seems to undermine the purpose of the Requirement itself which is to ensure that the CEMP is in accordance with appendix 5A of the ES and incorporates the information in Requirement 15(2). Requirements 16, 17, 22, 24 and 25 are likely to warrant similar concerns.</p> <p>Furthermore, whilst Requirement 34 is noted Art 28 relates to appeals against LPA decisions on applications to discharge Requirements. This does not seem to get around the difficulty that “unless otherwise agreed with the LPA” allows the LPA to approve details outside of the parameters of the Requirements.</p> <p>Please address the above matters within the dDCO or provide a full explanation as to why each of the matters identified above does not need to be amended and/ or addressed within the dDCO.</p>
Q5.0.38	The Applicant	<ul style="list-style-type: none"><li>• Schedule 2 Requirements 5 &amp; 6 - These Requirements appear to permit work number 1 to be undertaken in different parts and the Requirement discharged separately for each part. It is unclear what constitutes a “part” of the authorised development in Work No 1 and you are asked to give clear and precise clarification in this regard.</li></ul>
Q5.0.39	The Applicant	<ul style="list-style-type: none"><li>• Schedule 2 - Requirement 29 - For consistency with other Requirements, please rephrase to say “no part of the authorised development may commence...” instead of “No development may take place...”</li></ul>
Q5.0.40	The Applicant	<ul style="list-style-type: none"><li>• Schedule 3 – This Schedule needs to be considered in conjunction with the operation of Art 5 and the ExA will need to be satisfied that the discharge of each condition in column 1 will be sufficient to discharge the corresponding requirement in column 2. Please explain how you consider this is achieved in relation to each condition/ Requirement?</li></ul>
Q5.0.41	Statutory Undertakers identified in the BoR and Schedule 8 of the dDCO.	<ul style="list-style-type: none"><li>• Please confirm you are content that the Protective Provisions, Arts and Requirements within the dDCO provide adequate protection?</li></ul>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q5.0.42	The Applicant	<ul style="list-style-type: none"><li>BOR - Part 1 Second Column is headed "<i>Extent, Description and Situation of Land or Right to be Acquired.</i>" As the Applicant indicates that there is no acquisition proposed in this case you are asked to amend this heading to read "<i>Extent, Description and Situation of Land</i>" to avoid any confusion.</li></ul> <p>Additionally, Part 2 of the BoR does not include any category 3 persons. Please explain how you have reached this conclusion?</p>
Q5.0.43	The Applicant	<ul style="list-style-type: none"><li>Does the Applicant accept that Section 138(4) of the PA2008 will not apply unless the DCO includes the authorisation of the acquisition of land over which there is a relevant right or there is on, over, or under the land, relevant apparatus?</li></ul>
<b>6. Ecology</b>		
Q6.0.1	The Applicant	<ul style="list-style-type: none"><li>The ES Table 8.18 sets out that the Humber Estuary is identified as Receptor 3. The ES has scoped out traffic noise on the Humber estuary as it is 385m away. However, there is no clear justification for this ecological receptor being scoped out, apart from distance. Notwithstanding the distances involved, please explain the extent to which there is agreement with Natural England (NE) that noise impacts from traffic during construction and operation are unlikely to result in effects on ecological receptors at the Humber Estuary?</li></ul>
Q6.0.2	The Applicant	<ul style="list-style-type: none"><li>No ponds are located within the Proposed Development or within 250m of the Proposed Development. As such Great Crested Newts (GCN) have not been considered further in the Ecological Impact Assessment. A potential hibernacula and ditches with standing water during times of no flow are present and there is potential for GCN to be in the wider area, so the ES states that a watching brief will be carried out during the ground clearance of the Main Development Area (MDA). Please explain why the survey area for the presence of GCN was set at a radius of 250m and clarify how the watching brief will be overseen and how it is secured through the DCO. Additionally, please clarify what is meant by the term MDA. Does the MDA extend to the Order limits or is it restricted to specific areas within the Order?</li></ul>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q6.0.3	The Applicant	<ul style="list-style-type: none"><li>• Please explain why the search radius of 1km was chosen for the Phase 1 Habitat survey for the study of notable and protected aquatic macroinvertebrate and macrophyte species?</li></ul>
Q6.0.4	The Applicant	<ul style="list-style-type: none"><li>• Aquatic macroinvertebrate sampling was carried out by two experienced aquatic ecologists, and field surveys were carried out as part of the macrophyte survey by two experienced ecologists as stated in Section 2.2 of Appendix 10D <a href="#">[APP-124]</a>. The water vole and otter surveys were also completed by suitably experienced ecologists (Section 2.2) <a href="#">[APP-125]</a>. However, the reptile survey does not state it was carried out by professional ecologists <a href="#">[APP-126]</a>. Therefore, please cite the professional expertise and qualifications of the ecologists and other experts who carried out any of the surveys and made the assessment of all likely ecological impacts and significance of effects from the Proposed Development submitted as part of this DCO application. Please also confirm which survey(s) and/ or assessment(s) each ecologist or other expert worked on.</li></ul>
Q6.0.5	The Applicant and Natural England	<ul style="list-style-type: none"><li>• NE <a href="#">[RR-008]</a> note that the Applicant has used significance criteria for disturbance to birds based on bird behaviour and noise monitoring studies undertaken by Xodus Group during construction piling for the Grimsby River Terminal. That assessment classifies the peak noise levels of 75dB L<sub>Amax</sub> as having a minor adverse impact and concludes no LSE. However, NE considers that this increase in noise levels could disturb bird species using the Pyewipe mudflats and require additional information to demonstrate that a LSE can be ruled out. Can NE clarify what additional information they require and can the Applicant comment on this.</li></ul>
Q6.0.6	The Applicant	<ul style="list-style-type: none"><li>• The potential use of impact piling and/or Continuous Flight Auger (CFA) piling is referred to in various chapters of the ES including Chapter 8 (Noise and Vibration) <a href="#">[APP-042]</a> and Chapter 10 (Ecology) <a href="#">[APP-044]</a>. Please clarify what piling technique will be used during construction and confirm if that technique has been assessed for LSEs?</li></ul>
Q6.0.7	The Applicant	<ul style="list-style-type: none"><li>• NE <a href="#">[RR-008]</a> notes that the air quality assessment suggests that there will be exceedances of environmental thresholds of annual mean NO<sub>x</sub> (Nitrogen oxide) at Laporte Road Local Wildlife Site (LWS) in-combination with other plans/projects. Stallingborough Fish Ponds, Healing Cress Beds and Sweedale Croft Drain LWSs all exceed the environmental thresholds both alone and in-combination with other</li></ul>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>plans/ projects for proposed nitrogen deposition rates. Please clarify how you have considered the potential impacts from the Proposed Development in respect of exceedances of environmental thresholds of annual mean NOx at Laporte Road LWS cumulatively with other plans/ projects and exceedances for nitrogen deposition rates for Stallingborough Fish Ponds, Healing Cress Beds and Sweedale Croft Drain LWSs, both alone and cumulatively with other plans/ projects, as part of the assessment of likely effects on these LWS sites.</p>
Q6.0.8	The Applicant	<ul style="list-style-type: none"> <li>It is noted that the foul drainage options are set out in ES Chapter 4 <a href="#">[APP-038]</a> and in the Outline Drainage Strategy (Appendix 14B) <a href="#">[APP-137]</a>. An on-site package treatment plant that discharges to one of the surface water ditches within the MDA, and will ultimately discharge to the Humber Estuary is not predicted to have any impacts on water quality within the receiving ditches or the Humber Estuary as described in ES Chapter 14 <a href="#">[APP-048]</a>. NE <a href="#">[RR-008]</a> has noted the Outline Drainage Strategy (Appendix 14B) states that the means of foul drainage disposal has not been decided, but that an on-site package treatment plant is the Applicant's preferred option. NE advises that this should be considered further as part of the Habitat Regulations Assessment (HRA) process if the Applicant decide on a different drainage option. In the light of NE's Relevant Representation (RR) in regard to this matter, please advise the ExA as to progress on the choice of foul drainage disposal.</li> </ul>
Q6.0.9	Natural England and The Applicant	<ul style="list-style-type: none"> <li>An Indicative Lighting Strategy is provided <a href="#">[APP-031]</a>, and lighting impacts are considered in the HRA Signposting Document <a href="#">[APP-027]</a> (HRAR). NE suggests <a href="#">[RR-008]</a> that the arrangement of temporary construction lighting to minimise glare outside the construction site should be secured in the CEMP, and that mitigation measures for operational lighting impacts should be minimised as far as possible and secured through a detailed lighting strategy.</li> </ul> <p>Can NE clarify whether the Indicative Lighting Strategy and the relevant information in the HRAR address their concerns over lighting?</p> <p>Can the Applicant comment on NE's suggestion with respect to these mitigation measures and state whether they are intending to prepare a detailed lighting strategy and if so how this would be secured in the DCO?</p>
Q6.0.10	Natural England	<ul style="list-style-type: none"> <li>NE is not satisfied that the proposal is unlikely to damage features of interest of the Humber Estuary Site of Special Scientific Interest (SSSI) <a href="#">[RR-008]</a>. Many of the</li> </ul>



**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>species included in the Humber Estuary Special Protection Area (SPA)/ Ramsar water bird assemblage are also part of the Humber Estuary SSSI citation, and so the above impacts also have the potential to impact upon the notified features of the Humber Estuary SSSI. NE advises that, if approved, the project must be subject to all necessary and appropriate requirements, which ensure that unacceptable environmental impacts either do not occur or are sufficiently mitigated (para 3.2.11).</p> <ul style="list-style-type: none"> <li>• Can NE clarify what appropriate requirements would be necessary, such as mitigation measures, that the Applicant has not already proposed for the DCO, to satisfy NE that no unacceptable environmental effects would occur at the Humber Estuary SSSI designated site?</li> </ul>
Q6.0.11	The Applicant	<ul style="list-style-type: none"> <li>• NE concurs with the conclusion that LSEs from noise and vibratory disturbance cannot be excluded and consider that the proposed mitigation to use CFA piling, rather than drop hammer piling, could adequately mitigate for these impacts. However, NE state that it is unclear if the figures provided at 10.6.23 are for the location of the noise receptor (LT3) or at a central location within the field on neighbouring functionally linked land (fields to north and south) during construction and operation. NE recommend that a noise contour map is provided to illustrate this conclusion and seasonal piling restrictions might also adequately mitigate for these impacts. NE advise that further evidence should be provided to demonstrate there would be adequate alternative undisturbed habitat available, as the noise assessment indicates that there could also be increased noise levels on the nearby mudflats too.</li> </ul> <p>Please provide clarification in writing, and shown on a map, the precise location of noise receptor (LT3) and provide further evidence to demonstrate there would be adequate alternative undisturbed habitat available.</p> <ul style="list-style-type: none"> <li>• Please also provide a noise contour map, as recommended by NE in their RR <a href="#">[RR-008]</a>.</li> </ul>
Q6.0.12	The Applicant	<ul style="list-style-type: none"> <li>• Piling noise mitigation options considered appropriate by the Applicant are described in Section 10.7. The PEI Report provides further detail on the impacts from CFA piling and are assessed in ES Chapter 8 (Noise and Vibration) <a href="#">[APP-042]</a> and effects on birds at functionally linked fields are assessed at paragraphs 10.6.15, 10.6.23 and 10.6.28.</li> </ul>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<ul style="list-style-type: none"> <li>Paragraph 10.6.15 states that the use of CFA piling has been considered. NE considers that if this piling technique is used, it can be concluded that likely significant impacts can be ruled out for bird species using the foreshore <a href="#">[RR-008]</a>. Can the Applicant clarify whether the CFA piling technique will be used during construction and how this is secured in the DCO? If not please advise the piling method chosen and how that will be secured through the DCO?</li> </ul>
Q6.0.13	The Applicant	<ul style="list-style-type: none"> <li>NE notes <a href="#">[RR-008]</a> that the Applicant has proposed enhancement measures including planting a species-rich hedgerow, enhancing ditch habitats within the Proposed Development site for the benefit of water vole and widening and reprofiling a section of ditch to allow a range of aquatic plant species to establish. NE welcomes these measures and the commitment to the management and maintenance schedule. NE advises that these measures should be secured through a Biodiversity Mitigation and Enhancement Plan. Please confirm whether the above additional enhancement measures will be included within a Biodiversity Mitigation and Enhancement Plan and clarify how this plan would be secured through the DCO process.</li> </ul>
Q6.0.14	NELC	<ul style="list-style-type: none"> <li>The ES Ecology Chapter <a href="#">[APP-044]</a> and the Biodiversity Strategy <a href="#">[APP-030]</a> indicate that the proposed area of species-rich grassland to be created to the west of the SHBPS will be monitored once every other year during the establishment period for five years, (commencing one year after planting) to determine whether any management intervention is required (para 10.7.13). Can NELC confirm that they are satisfied with this level of monitoring?</li> </ul>
Q6.0.15	The Applicant	<ul style="list-style-type: none"> <li>It is noted that based on Institute of Air Quality Management (IAQM) guidance (IAQM, 2014), receptors potentially affected by dust soiling and short-term concentrations of PM10 generated during construction activities are limited to those located within 350 m of the nearest construction activity (See the ES Appendix 1A: (Environmental Impact Assessment Scoping Report) <a href="#">[APP-104]</a> paragraph 7.2.8). However, this paragraph also indicates that during the construction phase, Ecological receptors are limited to those located within 50 m of the nearest construction activity. Please advise why only Ecological receptors located within 50 m of the nearest construction activity have been assessed in terms of construction dust and Non-Road Mobile Machinery (NRMM) emissions?</li> </ul>

**7. Environmental Impact Assessment and Environmental Statement**

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q7.0.1	The Applicant	<ul style="list-style-type: none"><li>ES Figure 4.1 (Proposed Development Layout) <a href="#">[APP-061]</a> and ES Figure 4.3 (Comparison of the Consented and Proposed Development) <a href="#">[APP-063]</a> do not show the proposed full Order Limits and does not match the interpretation of Order Limits defined in the dDCO Paragraph 2 (Interpretations) or as detailed on the currently submitted Works Plans <a href="#">[APP-010]</a> (Drawing Number: S2522-0610-0005 (Sheets 1 through to 8) Revision 1.0). Please review these Figures and provide revised Figures that depict all of the Order limits.</li></ul>
Q7.0.2	The Applicant	<ul style="list-style-type: none"><li>The Appendix 1A: (Environmental Impact Assessment Scoping Report) <a href="#">[APP-104]</a> paragraph 2.1.4 states that the 'Main Development Area' is shown on Figures 2 and 3. This is incorrect as Figure 2 does not show the 'Main Development Area'. Please correct.</li></ul>
Q7.0.3	The Applicant	<ul style="list-style-type: none"><li>The ES Appendix 1A: (Environmental Impact Assessment Scoping Report) <a href="#">[APP-104]</a> paragraph 4.3.1 indicates that several alternative sites, within the landholding of the Applicant's parent company, were considered. Please confirm which alternative sites were considered and why they were discounted or indicate where within the submitted documentation this information has been provided? Additionally, please advise whether any sites not within the control of the applicant or their parent company were considered or indicate where within the submitted documentation this information has been provided?</li></ul>
<b>8. Flood Risk, Hydrology and Water Resources</b>		
Q8.0.1	The Applicant	<ul style="list-style-type: none"><li>The ES Paragraph 14.7.13 states 'Facilities will be provided during the construction phase of the Proposed Development, where necessary, to ensure controlled discharge of any surface water runoff that might occur.' Please provide further detail on what such 'facilities' may comprise and explain why such facilities have been omitted from the assessment? Furthermore, in answering this question, please set out how such 'facilities' will be controlled and/ or delivered.</li></ul>
Q8.0.2	The Applicant	<ul style="list-style-type: none"><li>Operation of the site will require an Environmental Permit, please provide an update as to the progress to obtain such a permit. Additionally, please enter into the examination a copy of the most up to date version of the draft Environmental Permit or, if issued by the Environment Agency, a copy of the Environmental Permit as issued.</li></ul>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q8.0.3	The Applicant	<ul style="list-style-type: none"> <li>The ES paragraph 14.7.21 sets out a number of measures that may be implemented to manage flood risk. Please confirm if this list has been reviewed by the Environment Agency? Please also set out how:               <ol style="list-style-type: none"> <li>a decision is made on which measures to implement and by when;</li> <li>what are the implications of not implementing such measures; and</li> <li>detail where such measures are secured in the DCO?</li> </ol> </li> </ul>
Q8.0.4	The Applicant	<ul style="list-style-type: none"> <li>The ES Ecology Chapter <a href="#">[APP-044]</a> Paragraph 10.3.24 states that comments from the Marine Management Organisation (MMO) (as referenced in paragraph 10.3.23) do not apply as they relate to any works below the Mean High Water (MHW) level, which may require a licence or consent from the MMO. Please provide a plan, at an appropriate scale, which shows the MHW level relative to the proposed development site.</li> </ul>
Q8.0.5	The Applicant/ Anglian Water	<ul style="list-style-type: none"> <li>The ES Waste Management Chapter (Chapter 16) <a href="#">[APP-050]</a> at Paragraph 16.3.10 indicates excess liquid effluent would be stored on site and tankered off by a suitable contractor, or discharged to Anglian Water foul sewer, under a trade effluent consent. Please advise of any progress in regard to how liquid effluent is to be dealt with on site. Additionally, please provide evidence of any discussions with Anglian Water in this regard or copies of any agreements reached with them in regard to this matter.</li> </ul>
Q8.0.6	The Applicant	<ul style="list-style-type: none"> <li>During shutdown of the plant for repairs/maintenance, there is likely to be a higher amount of excess liquid effluent produced, especially if waste is being stored on site during the shutdown period. What provisions are being put in place to deal with such excess liquid effluent during these shutdown periods?</li> </ul>
<b>9. Geology and Land Contamination</b>		
Q9.0.1	The Applicant	<ul style="list-style-type: none"> <li>It is noted that the risks to controlled waters are considered to be moderate to high. This is due to the site overlying a Principal Aquifer and the number of drainage channels surrounding the site (See Appendix 12A: Phase 1 Geo-Environmental and Geotechnical Desk Study Report <a href="#">[APP-129]</a>). Bearing in mind the risks identified please advise why the assessment has not progressed to a Phase 2 Assessment?</li> </ul>
Q9.0.2	The Applicant	<ul style="list-style-type: none"> <li>Appendix 12A: Phase 1 Geo-Environmental and Geotechnical Desk Study Report <a href="#">[APP-129]</a> Paragraph 8.2.1 refers to targeted ground investigation works being undertaken in advance of construction of the Consented Development across the Main Development Area. Paragraph 8.2.3 of the same Appendix states "<i>Following the</i></li> </ul>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p><i>ground investigation, a factual and interpretative report will be prepared. This will include assessment and interpretation of ground conditions, geology, hydrogeology, contamination observations, in ground features and obstructions, geotechnical assessment and environmental risk assessment. The interpretative report will include an updated risk assessment based on the ground conditions encountered and the laboratory analysis undertaken."</i></p> <p>Bearing the above in mind, as well as the preferred construction programme commencing in Q2 2020, the ExA would ask if the targeted ground investigation works across the site have been undertaken and whether the factual and interpretative report has been prepared? If they have please submit the factual and interpretative report into evidence, update the ES Chapter 12 (Geology, Hydrology and Land Contamination) <a href="#">[APP-046]</a> and Appendix 12A: Phase 1 Geo-Environmental and Geotechnical Desk Study Report <a href="#">[APP-129]</a> accordingly. If the targeted ground investigation works across the site have not been undertaken, please advise why and provide a clear indication of when such investigation works will commence?</p>
Q9.0.3	The Environment Agency and NELC	<ul style="list-style-type: none"> <li>Bearing in mind the risks to controlled waters are considered to be moderate to high (See Q9.0.1 above), please confirm whether the ES Chapter 12 (Geology, Hydrology and Land Contamination) <a href="#">[APP-046]</a> and Appendix 12A: Phase 1 Geo-Environmental and Geotechnical Desk Study Report <a href="#">[APP-129]</a> satisfactorily deals with the potential risks to controlled waters and whether imposing Requirements within the DCO would be adequate to control/ deal with this concern?</li> </ul>
Q9.0.4	The Applicant	<ul style="list-style-type: none"> <li>Appendix 12A: Phase 1 Geo-Environmental and Geotechnical Desk Study Report <a href="#">[APP-129]</a> Paragraph 7.4 refers to 'Aggressive Ground Conditions' and indicates that two types need to be considered in relation to this development. Bearing in mind the risks to controlled waters and the potential to create a 'Pathway' please advise what further investigations have been undertaken in regard to this matter and what the conclusions/ mitigations have been made/ proposed in the light of those investigations?</li> </ul>
Q9.0.5	The Applicant	<ul style="list-style-type: none"> <li>Has testing and assessment of the soils beneath the Site been undertaken to determine the level of risk. If so what are the conclusions/ mitigation required and do they address the risk caused by common stylolitic surfaces and pyrite nodules which are known to be present in the underlying Flamborough Chalk?</li> </ul>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q9.0.6	The Applicant	<ul style="list-style-type: none"> <li>Has a scheme of ground investigation works been designed in accordance with Appendix 12A: Phase 1 Geo-Environmental and Geotechnical Desk Study Report <a href="#">[APP-129]</a> Paragraph 7.4? If so please submit into evidence and update the ES Chapter 12 (Geology, Hydrology and Land Contamination) <a href="#">[APP-046]</a> and Appendix 12A: Phase 1 Geo-Environmental and Geotechnical Desk Study Report <a href="#">[APP-129]</a> accordingly.</li> </ul>
Q9.0.7	The Environment Agency and NELC	<ul style="list-style-type: none"> <li>Bearing in mind Questions Q9.0.4 to Q9.0.6 above, please confirm whether the ES Chapter 12 (Geology, Hydrology and Land Contamination) <a href="#">[APP-046]</a> and Appendix 12A: Phase 1 Geo-Environmental and Geotechnical Desk Study Report <a href="#">[APP-129]</a> satisfactorily deals with the potential risks to controlled waters arising from potential aggressive ground conditions and whether imposing Requirements within the DCO would be adequate to control/ deal with this concern?</li> </ul>
<b>10. Habitat Regulations Assessment</b>		
Q10.0.1	The Applicant and Natural England	<ul style="list-style-type: none"> <li>NE state in their RR <a href="#">[RR-008]</a> that further information is required to assess the potential for the Proposed Development's impact on the European sites. NE is not satisfied that it can be excluded beyond reasonable scientific doubt that the Proposed Development would not have an adverse effect on the integrity of the Humber Estuary SPA or Ramsar site. Could the Applicant and NE provide an update with regard to what is being done to overcome the concerns of NE in this regard?</li> </ul>
Q10.0.2	The Applicant	<ul style="list-style-type: none"> <li>The HRAR <a href="#">[APP-027]</a> provides information on the construction and operational activities of the Proposed Development. Only brief references to decommissioning are provided in the screening and integrity matrices and their accompanying footnotes. Please provide an updated HRAR that includes an assessment of potential decommissioning effects?</li> </ul>
Q10.0.3	The Applicant	<ul style="list-style-type: none"> <li>The HRAR <a href="#">[APP-027]</a> paragraph 3.4.6 states that the approach to the assessment of Natura 2000 sites (European sites) differs to that taken in assessing LSEs from the Proposed Development for the purposes of the EIA. For the HRA, the Applicant considered a search radius of 10 km when examining the potential pathways for air quality impacts on the sites. However, it is recognised that the HRA is separate to the EIA. Bearing the above in mind, please explain how a 10km study area was selected</li> </ul>

ExQ1	Question to:	Question:
		<p>for air quality in the HRA and whether this study area was agreed with relevant consultation bodies?</p>
Q10.0.4	The Applicant	<ul style="list-style-type: none"> <li>• The HRAR <a href="#">[APP-027]</a> (Section 5) sets out how the Applicant has identified European sites that could potentially be affected by the Proposed Development. Sites have been identified using the potential source-receptor pathways methodology. This has been considered for construction (HRAR Paragraph 5.1.1) and operation (HRAR Paragraph 5.2.1).</li> </ul> <p>Three European sites associated with the Humber Estuary identified by the Applicant are:</p> <ul style="list-style-type: none"> <li>• the Humber Estuary Special Area of Conservation (SAC);</li> <li>• the Humber Estuary SPA; and</li> <li>• the Humber Estuary Ramsar site.</li> </ul> <p>All of these sites are located approximately 175m east of the Proposed Development. There are no cross-references from the HRAR to any figures that identify the location of European sites, but the above sites are depicted on Figure 10C.2: Statutory and Non-statutory Designations in ES Appendix 10C and on ES Figure 3.3: Environmental Receptors within 5km.</p> <p>Please provide a figure or figures showing the location of the European Sites identified in the HRAR.</p>
Q10.0.5	The Applicant	<ul style="list-style-type: none"> <li>• The Applicant considers that all information deemed necessary to undertake the Habitat Regulations Assessment is contained in the Environmental Statement (ES) particularly in Chapters 4-8, 10, 14, and 17, <a href="#">[APP-038]</a> to <a href="#">[APP-041]</a>, <a href="#">[APP-044]</a>, <a href="#">[APP-048]</a> and <a href="#">[APP-051]</a> respectively (para 3.4.4, HRAR <a href="#">[APP-027]</a>).</li> </ul> <p>The HRAR states that a separate process is required to address the specific obligations of the Habitats Regulations which the HRAR document seeks to provide by assisting the Competent Authority in directing them to the necessary aspect chapters in the ES. However, the HRAR does not include detailed information to inform an Appropriate Assessment (AA); Section 7 of the HRAR instead provides summary information and cross-references to where the detailed information can be found in the ES chapters,</p>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>such as Chapters 7 (Air Quality), 8 (Noise and Vibration), 10 (Ecology) and 17 (Cumulative and Combined Effects). Please update the HRAR to include detailed information to inform an AA.</p>
Q10.0.6	The Applicant	<ul style="list-style-type: none"> <li>The construction, operation and in-combination LSEs identified in HRAR <a href="#">[APP-027]</a> Section 7.1 (Appropriate Assessment) are not consistent with those identified in Tables 5.1, 5.2, 6.1 and 6.2 (Screening Assessment). The subsequent information provided in Sections 7.2 – 7.4 (Construction, operation and in-combination construction effects on integrity, respectively) is not consistent with that in either Section 7.1 or the above tables. Please submit an updated HRAR which addresses these discrepancies.</li> </ul>
Q10.0.7	The Applicant	<ul style="list-style-type: none"> <li>The methodologies used to gather data or evidence to inform the HRA are not set out or justified in the HRAR <a href="#">[APP-027]</a> document. Please provide this information and/or make specific reference to where the data and evidence used to inform the HRA process is located in the submitted examination documentation.</li> </ul>
Q10.0.8	The Applicant and Natural England	<ul style="list-style-type: none"> <li>The ES Chapter 10, <a href="#">[APP-044]</a> Table 10.4, states that NE were consulted in relation to the information needed to support a HRA for the Proposed Development. Table 10.5 summarises NE’s Section 42 consultation comments, made in December 2019, which include points relating to the European sites. However, NE in its RR <a href="#">[RR-008]</a> consider that additional information is required to assess the potential for the Proposed Development to impact on SAC habitats as well as the passage/ wintering bird assemblage of the Humber Estuary SPA and Ramsar site. Can the Applicant and NE clarify what progress has been made to agree what additional information is needed to predict the likely effects?</li> </ul>
Q10.0.9	The Applicant	<ul style="list-style-type: none"> <li>In-combination’ and ‘cumulative’ are used interchangeably to describe HRA in-combination effects, the assessment of which is based on information provided in ES Chapter 17 (Cumulative and Combined Effects) <a href="#">[APP-051]</a>. Please clarify the distinction in the use of these two terms and ensure that this is reflected in an updated HRAR?</li> </ul>
Q10.0.10	The Applicant	<ul style="list-style-type: none"> <li>HRAR <a href="#">[APP-027]</a> Tables 6.1 and 6.2 identify 13 projects that were considered in the screening In-Combination Effects (ICE) assessment for construction and operation, respectively, and indicate which potential impacts were considered to have potential to</li> </ul>



**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>result in LSEs. Not all of the effects considered in the screening assessment of the Proposed Development are considered in the ICE assessment. Construction air quality, and both construction and operational visual disturbance effects are not listed. Please amend Tables 6.1 and 6.2 of the HRAR to set out the ICE assessment of these effects or explain why they did not need to be considered?</p>
Q10.0.11	The Applicant	<ul style="list-style-type: none"> <li>• The Humber Estuary SPA and Ramsar site have not been separated out in HRAR <a href="#">[APP-027]</a> Tables 6.1 and 6.2, and the Humber Estuary SAC has been omitted. Although an LSE arising from operational air quality impacts of the Proposed Development was predicted, this is not reflected in the ICE assessment presented in Table 6.2. Please update the tables to ensure LSE from all sites screened in have been included. Additionally, the screening assessment of the Proposed Development concluded some LSEs on the Humber Estuary SAC and therefore there is a requirement to take them forward to AA. As such please update Tables 6.1 and 6.2 to set out the assessment for the separate designations and include the information for the Humber Estuary SAC.</li> <li>• In addition to the above, although visual disturbance is not included in the HRAR Tables 6.1 and 6.2 reference is made in both tables to visual screening under 'Noise Disturbance to the SPA/Ramsar'; this text appears to be erroneous. Please update Tables 6.1 and 6.2 as necessary?</li> </ul>
Q10.0.12	The Applicant	<ul style="list-style-type: none"> <li>• Consideration at AA stage of the identified ICE takes into account the effect of contributions from developers of other projects to the South Humber Gateway (SHG) strategic mitigation scheme. Please provide references to the relevant information within the application documents to support the statements on contributions to the SHG mitigation scheme?</li> </ul>
Q10.0.13	The Applicant and NELC	<ul style="list-style-type: none"> <li>• Reference is made to the SHG strategic mitigation scheme. Please provide substantive information, in relation to the SHG strategic mitigation scheme, the background to the strategy, it's purpose/ current status or how the conclusions within it have been derived. Details submitted into evidence pursuant to this request should include any advice provided by Natural England.</li> </ul>
Q10.0.14	The Applicant and NELC	<ul style="list-style-type: none"> <li>• It is noted that the draft Planning Obligation <a href="#">[APP-032]</a> would, if the DCO is made, secure a financial contribution towards strategic mitigation in accordance with Policy 9 of the North East Lincolnshire Local Plan (NELLP) and the North East Lincolnshire SHG</li> </ul>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>Ecological Mitigation Delivery Plan (Delivery Plan) . This financial contribution is to be used to mitigate against the impact of the development on the Humber Estuary SPA/Ramsar. Please enter into evidence a copy of the written justifications as to the need for this financial contribution, including a copy of the Delivery Plan and any other relevant documents that explain the background to the Delivery Plan and its purpose / current status and/ or how the conclusions within it have been derived. Alternatively, please direct the ExA to where a copy of the Delivery Plan, together with any of the other relevant documents that explain the background to the Delivery Plan and its purpose / current status and/ or how the conclusions within it have been derived, are located within the examination documentation.</p> <p>Please enter into evidence Policy 9 of the NELLP and any relevant pre/ post amble relevant to this policy and/ or make specific reference to where the policies together with the relevant pre and post amble to the relevant policies are located within the examination documentation.</p>
Q10.0.15	The Applicant	<ul style="list-style-type: none"> <li>NE notes <a href="#">[RR-008]</a> that the HRAR <a href="#">[APP-027]</a> states that <i>"it is concluded that air quality impacts will not result in an adverse effect on the integrity of the Humber Estuary SPA/ Ramsar."</i> NE notes that this should refer to the SAC. Please amend this in the updated HRAR.</li> </ul>
Q10.0.16	The Applicant	<ul style="list-style-type: none"> <li>The screening conclusions for each of the three sites are summarised in Tables 5.1 and 5.2.</li> </ul> <p>The HRAR <a href="#">[APP-027]</a> Table 5.1 signposts the relevant chapters of the ES as evidence for the conclusions that there will be an LSE on the European sites.</p> <p>During construction -</p> <ul style="list-style-type: none"> <li>Humber Estuary SAC: Loss of habitat within the Proposed Development boundary for populations of European importance Annex I and Annex II overwintering wildfowl and wading birds. Internationally important assemblage of migratory and wintering birds; noise impacts during construction to birds using Pyewipe mudflats; noise/vibration impacts during construction to birds using arable field to the south (field 37) and using arable fields to the north (fields 30 and 31); and</li> </ul>

ExQ1	Question to:	Question:
		<p>visual impacts during construction to birds using arable field to the south (field 37); and</p> <ul style="list-style-type: none"> <li>• Humber Estuary Ramsar: Internationally important populations of passage wildfowl and waders potentially affected by noise impacts during construction to birds using Pyewipe Mudflats; noise/vibration impacts during construction to birds using arable field to the south (field 37) and using arable fields to the north (fields 30 and 31); and visual impacts during construction to birds using arable field to the south (field 37).</li> </ul> <p>During operation -</p> <ul style="list-style-type: none"> <li>• Humber Estuary SAC habitats: Changes in air quality from NOx emissions, and Nitrogen deposition; and</li> <li>• Humber Estuary Ramsar site’s estuarine habitats: Changes in air quality from NOx emissions, and Nitrogen deposition.</li> </ul> <p>Many of the evidence notes linked to the Screening and Integrity matrices do not contain any references to supporting information within the HRAR. Please provide specific references to the location of all relevant supporting evidence in an updated HRAR?</p> <p>In addition to the above, a summary of the qualifying features of each of the three Humber Estuary designated sites is provided in Section 4, Table 4.1, however several features appear to have been omitted. Furthermore, the qualifying features set out in Tables 5.1 and 5.2 (LSEs during construction and operation, respectively) are not consistent with those identified in Table 4.1. Please amend the HRAR to reflect the correct qualifying features according to NE’s current site information?</p> <p>Turning to Section 3 of the HRAR, this states that it is usual to apply a search radius of 10km to identify potential pathways for air quality effects on European sites. No information is provided in the HRAR in respect of the study areas/zones of influence for the other potential effects, such as noise/vibration, visual disturbance, displacement, and surface water quality. Please signpost to where this information is provided in the application documents.</p>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
Q10.0.17	The Applicant	<ul style="list-style-type: none"> <li>Mitigation for some effects relies on the implementation of the SHG strategic mitigation approach under Policy 9 of the NELLP. The NELLP requires an appropriate financial contribution towards delivery of mitigation to be secured by a Section 106 Agreement (paras 7.2.2 – 7.2.5, 7.4.1, 7.4.2, 7.5.3, 8.1.2 and evidence notes to the matrices). The mitigation comprises areas of land allocated in the Local Plan for the creation of strategic mitigation habitat for water birds (see ES Chapter 10, Sections 10.4 and 10.5) <a href="#">[APP-044]</a>. This mitigation is included in the Indicative Biodiversity Mitigation and Enhancement Plan (contained in the Biodiversity Strategy, <a href="#">[APP-030]</a>), and the dDCO <a href="#">[APP-005]</a>, Requirement 12 provides that the approved Plan must be in accordance with the principles of the Indicative Plan. It is noted that the Development Consent Obligation <a href="#">[APP-032]</a> is a Deed of Variation to the original Planning Obligation secured against Planning Permission [DM/1070/18/FUL] and that it has not been completed. Please explain why a separate Planning Obligation is not being provided in its own right and how the SHG strategic mitigation is secured in this Deed of Variation, such that reliance may be placed on this mitigation?</li> </ul>
Q10.0.18	The Applicant	<ul style="list-style-type: none"> <li>Requirement 17(2) of the dDCO <a href="#">[APP-005]</a> requires that a written specification for piling would be approved by the relevant planning authority and must include a scheme to mitigate the effects of piling noise on ecological receptors, which shall be in accordance with Section 7 of the Biodiversity Strategy <a href="#">[APP-030]</a>. Requirement 17(2) repeats the text in the HRAR <a href="#">[APP-027]</a> and provides no additional information or certainty of the measures to be employed and no reference is made in the HRAR to the Biodiversity Strategy. Please clarify how seasonal piling restrictions or use of CFA piling referred to in the Biodiversity Strategy would be secured as mitigation for piling noise effects through the DCO?</li> </ul>
Q10.0.19	The Applicant	<ul style="list-style-type: none"> <li>In relation to operational visual disturbance to Field 37 (paragraphs 7.3.3 – 7.3.4) it is stated that the fence installed along the southern site boundary would be retained during operation to provide visual screening and that lighting impacts beyond the site boundary would be minimised 'as far as possible', by use of methods in accordance with the Indicative Lighting Strategy <a href="#">[APP-031]</a>. No conclusion is presented on the anticipated effectiveness of the measures proposed. Please provide an assessment of</li> </ul>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		the effectiveness of these proposed mitigation measures, and a plan which indicates the extent of illumination proposed, both with and without mitigation.
Q10.0.20	The Applicant	<ul style="list-style-type: none"> <li>The effects included in the Integrity matrices are not consistent with the LSEs identified in the screening assessment. Please clarify which LSEs have been assessed and taken forward to AA from the screening assessment and amend the Integrity matrices as necessary to reflect any changes?</li> </ul>
Q10.0.21	The Applicant	<ul style="list-style-type: none"> <li>The HRAR <a href="#">[APP-027]</a> - During the operation, visual disturbance to the arable field to the south (Field 37) (paras 7.3.3 – 7.3.4) is not identified as an LSE in Table 6.1 at screening stage. Please amend the HRAR accordingly and submit the revised document into evidence.</li> </ul>
Q10.0.22	The Applicant	<ul style="list-style-type: none"> <li>The HRAR <a href="#">[APP-027]</a> - For in-combination construction impacts, visual disturbance for bird species occupying functionally linked habitats (paras 7.4.3 – 7.4.4) is not identified as an LSE in Table 6.2 at Screening stage. Please amend the HRAR accordingly and submit the revised document into evidence.</li> </ul>
Q10.0.23	The Applicant	<ul style="list-style-type: none"> <li>The HRAR <a href="#">[APP-027]</a> Para 7.1.1 summarised the LSEs, including ICE, for all of the sites together. However, it is not made clear whether all the LSEs listed apply equally to the features of each of the designated sites. Please provide a separate summary of the LSEs for each of the designated sites (Humber Estuary SAC, Humber Estuary SPA and Humber Estuary Ramsar) and identify the in-combination LSEs separately.</li> </ul>
Q10.0.24	The Applicant	<ul style="list-style-type: none"> <li>The conservation objectives for the Humber Estuary SAC and SPA are summarised in Section 4, Table 4.2. Please confirm the conservation objectives for Humber Estuary Ramsar sites, or confirm they are the same objectives for the Humber Estuary SAC, and Humber Estuary SPA as set out in Table 4.2 mentioned above.</li> </ul>
Q10.0.25	The Applicant	<ul style="list-style-type: none"> <li>Is the Applicant proposing, or aware of, any relevant monitoring or proposed monitoring of the Cress Marsh site to assess its effectiveness as mitigation?</li> </ul>
Q10.0.26	Natural England or other IPs	<ul style="list-style-type: none"> <li>Noise Disturbance to Arable Field (Field 37) to the South is identified as a temporary likely significant adverse effect on the protected bird species using this habitat, and it is explained that the noise mitigation measures would be determined by the contractor using the best available technique for noise abatement during the piling works, which will be agreed with NELC (para 7.2.13).</li> </ul>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		Do NE or other IPs have any comments on the mitigation proposed?
Q10.0.27	Applicant and Natural England	<ul style="list-style-type: none"> <li>Section 8 of the HRAR <a href="#">[APP-027]</a>, concludes that the Proposed Development would not give rise to an adverse effect on the integrity of the Humber Estuary SAC/ SPA/ Ramsar sites. However, potential LSEs were identified at the HRA screening stage with the two other developments proposed in the area (Stallingborough Link Road and Sustainable Transport Fuels Facility) of the Proposed Development result in the loss of functionally linked habitat. These other developments are committed to the delivery of habitat mitigation through the SHG strategic mitigation proposal, so it is concluded that there would be no adverse effects on the Humber Estuary SPA/ Ramsar in-combination with the Proposed Development as a result of the losses of functionally linked habitat (para 8.1.3).</li> </ul> <p>NE <a href="#">[RR-008]</a> is not satisfied that it can be excluded beyond reasonable scientific doubt that the Proposed Development would not have an adverse effect on the integrity of the Humber Estuary SPA or Ramsar site. NE advises that, if approved, the Proposed Development must be subject to all necessary and appropriate requirements, which ensure that unacceptable environmental impacts either do not occur or are sufficiently mitigated.</p> <p>Can the Applicant and NE clarify what progress has been made to agree what additional information is needed to predict the likely effects?</p>
Q10.0.28	The Applicant	<ul style="list-style-type: none"> <li>Please clarify in the updated HRAR <a href="#">[APP-027]</a> whether any priority habitats or species are on the European sites which may be affected by the Proposed Development?</li> </ul>
Q10.0.29	The Applicant	<ul style="list-style-type: none"> <li>Integrity matrices 2A.2 and 2A.3 (Humber Estuary SPA and Ramsar site, respectively) are incorrectly entitled Screening matrices. Can the Applicant correct the titles of these Integrity matrices in the updated HRAR?</li> </ul>
Q10.0.30	The Applicant	<ul style="list-style-type: none"> <li>Discrepancies or errors appear to have been made in the Integrity matrices (Appendix 2):            Table 2A.2: Humber Estuary SPA            - Although a heading is included in the matrix it does not include information on air quality, which was identified as an LSE.            Table 2A.3: Humber Ramsar site</li> </ul>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>- Information on loss of functionally linked habitat during construction is included in the matrix but was not identified as an LSE.</p> <p>- Operational changes in air quality were identified as an LSE, both alone and in-combination, but no information is presented in the matrix.</p> <p>- In-combination construction noise disturbance is identified as an LSE, but no information is presented in the matrix.</p> <p>- Loss of functionally linked habitat during construction is included in the Integrity matrix, for an LSE both alone and in-combination, but this was not identified as an LSE alone at Screening stage.</p> <p>All three Integrity matrices include headings for impacts which were not concluded to result in LSEs and no information is provided in the matrices.</p> <p>Please provide revised matrices which address the above points?</p>
Q10.0.31	The Applicant	<ul style="list-style-type: none"> <li>The HRAR <a href="#">[APP-027]</a> Screening and Integrity matrices (Appendices 1 and 2) list qualifying features and interests of the European sites that have been assessed for LSE. However, the qualifying features are not listed in the matrices for the sites considered in the HRAR. The qualifying features listed in Tables 5.1 and 5.2 for the SPA, SAC and Ramsar sites are general rather than listing those features according to the relevant current conservation objectives.</li> </ul> <p>Please submit revised matrices for Appendices 1 and 2 of the report which list in full detail the qualifying features of the European (Natura 2000) sites according to the relevant current conservation objectives.</p>
Q10.0.32	The Applicant	<ul style="list-style-type: none"> <li>The HRAR <a href="#">[APP-027]</a> states that evidence for, or against, LSEs on the European sites and their qualifying features are provided in footnotes to the Screening and Integrity matrices in the HRAR. Tables 5.1 and 5.2 also provide references to the relevant chapters in the ES to support the assessment.</li> </ul> <p>Many of the evidence notes linked to the Screening and Integrity matrices do not contain any references to information within the HRAR or other application documents. Those that cross refer to the relevant information correctly identify their location in the ES and not in the HRAR.</p>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>Please check all references within the HRAR and in updating the HRAR ensure that all cross references for the Screening and Integrity matrices are linked to relevant evidence notes within the HRAR or other application documents where appropriate.</p>
Q10.0.33	The Applicant	<ul style="list-style-type: none"> <li>The matrices do not confirm that mitigation measures have been taken into consideration. Mitigation measures are considered elsewhere in the HRAR <a href="#">[APP-027]</a>. Please update the HRAR matrices explanatory notes to clarify where information on mitigation measures is found and clarify how this has been taken into consideration? Additionally, there does not appear to be any reference to agreement with Statutory Nature Conservation Bodies (SNCB) on mitigation. Please advise what agreements have been reached with SNCB's on mitigation.</li> </ul>
Q10.0.34	The Applicant	<ul style="list-style-type: none"> <li>NE's RR <a href="#">[RR-008]</a> states that there are a number of matters which have not been resolved satisfactorily as part of the pre-application process which must be addressed by the Applicant and the ExA as part of the examination and consenting process before development consent can be granted. NE consider that some of these matters are important enough to mean that if they are not satisfactorily addressed it would not be lawful to permit the Proposed Development due to its impacts on the SAC, SPA, and Ramsar interests. However, NE's view is that all these matters are capable of being overcome. NE's specific concerns, set out in paragraphs 3.3.1-3.3.9 of their RR, are: <ul style="list-style-type: none"> <li>- Impacts on air quality during operation in-combination with other plans and projects;</li> <li>- Noise disturbance to SPA/Ramsar birds using Humber Estuary foreshore during construction and operation;</li> <li>- Noise and vibratory disturbance to SPA/Ramsar birds using neighbouring functionally linked land (fields to south) during construction and operation; and</li> <li>- Noise and vibratory disturbance to SPA/Ramsar birds using neighbouring functionally linked land (fields to north) during construction and operation.</li> </ul> </li> </ul> <p>NE also state <a href="#">[RR-008]</a> that further evidence or assessment work is required and that further justification in the information for the AA to demonstrate that there will be no</p>



**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>adverse impacts on the integrity of the European sites despite exceedances in the environmental thresholds for annual mean NOx and nitrogen deposition rates in combination with other plans/projects. NE note that the background NOx concentrations already exceed the critical levels, and regular inundation and nutrient inputs from estuary water are likely to have a greater influence over the establishment and changes to saltmarsh habitat (para 3.3.1, <a href="#">[RR-008]</a>).</p> <p>NE note that D3.11 of Appendix 7A states that “the cumulative effect of acid deposition on the Dune habitat has been considered in detail in the report to inform the HRAR” <a href="#">[APP-027]</a>, but NE state that this does not appear to have been discussed in the HRAR. NE require further information to demonstrate why there will be no adverse effects on the integrity of the European sites in question (para 3.3.2 <a href="#">[RR-008]</a>).</p> <p>In the light of the above, please provide further information to demonstrate there would be no adverse impacts on the integrity of the European sites from the Proposed Development despite exceedances in the environmental thresholds for annual mean NOx and nitrogen deposition rates, and acid deposition in-combination with other plans/ projects.</p>
Q10.0.35	The Applicant	<ul style="list-style-type: none"> <li>• Please provide noise contour maps, showing dB LAeq and dB LAm<sub>ax</sub>, to illustrate noise levels across the Humber Estuary foreshore and functionally linked land due to site activities. Activities should include CFA and/or hammer piling as appropriate. This information is required to demonstrate that the Applicant’s conclusions regarding effects are robust in order to evidence their conclusions over likely adverse effects.</li> </ul>
Q10.0.36	The Applicant	<ul style="list-style-type: none"> <li>• NE <a href="#">[RR-008]</a> state that evidence of undisturbed habitat availability should be provided to support the argument that there is plenty of alternative undisturbed foraging/roosting areas, if birds are displaced through noise and vibration impacts, which can provide functional supporting habitat for the bird species on affected SPA and Ramsar sites. As such, please provide evidence of sufficient undisturbed habitat for alternative foraging and roosting areas for birds?</li> </ul>

**11. Landscape and Visual Amenity**

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q11.0.1	The Applicant	<ul style="list-style-type: none"><li>The ES identifies a LSE during construction, operation and decommission at Middle Drain Public Right of Way (Viewpoint 9). The proposed development is concluded as being of Moderate Adverse significant effect in regard to Viewpoint 9. However, the ES does not propose to mitigate the LSE in regard to this Viewpoint. Notwithstanding ES Paragraph 11.7 (Mitigation and Enhancement Measures), please explain what, if any, mitigation options have been considered and exist to address the anticipated significant effect on Viewpoint 9 (Middle Drain Public Right of Way)? Additionally, please also explain why any such mitigation/ option has not been proposed in the DCO application?</li></ul>
Q11.0.2	The Applicant	<ul style="list-style-type: none"><li>It is stated that screening provided through planting for the current SHBPS will be retained and maintained to provide mitigation screening for the Proposed Development. Please set out where this mitigation is secured and whether additional planting or other forms of screening and mitigation are proposed on site? Please note that the ES should not rely on mitigation and screening being provided by another development.</li></ul>
<b>12. Noise and Vibration</b>		
Q12.0.1	The Applicant	<ul style="list-style-type: none"><li>The ES Section 8.7 discusses mitigation required for Receptor R4 – field south of the site in relation to hammer piling. However, there does not appear to be any similar discussion in regard mitigation to Receptor R5 – Field north of the Proposed Development. Please explain why mitigation measures are not identified for Receptor R5 – Field north of the Proposed Development despite the conclusions at ES Paragraph 8.6.24?</li></ul>
Q12.0.2	The Applicant	<ul style="list-style-type: none"><li>There is ambiguity in the ES with regards to the need for percussive piling as a construction technique. Can the Applicant confirm if percussive piling will be required to construct the Proposed Development and to what extent?</li></ul>
Q12.0.3	The Applicant	<ul style="list-style-type: none"><li>Please explain whether the impacts associated with such a construction technique have been assessed within the ES and are accounted for within the assessment of LSEs?</li></ul>
Q12.0.4	The Applicant	<ul style="list-style-type: none"><li>Please explain if NE have been engaged in discussions in relation to the proposed construction techniques and whether they are content that it would not represent a significant effect to relevant nearby ecological receptors?</li></ul>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
Q12.0.5	The Applicant	<ul style="list-style-type: none"><li>The ES is required to assess the LSEs. The use of hammer piling is likely and has therefore been assessed. Therefore, the ES should set out mitigation for any significant adverse effect, and this should be secured. Please review this and consider how mitigation related to this form of piling can be secured, including through the dDCO. Please provide appropriate wording for the dDCO and include within a revised dDCO.</li></ul>
Q12.0.6	The Applicant	<ul style="list-style-type: none"><li>The ES Non-Technical Summary <a href="#">[APP-033]</a> at Paragraph 7.3.6 refers to operational noise modelling and states that the modelling "<i>...shows that noise from the operational Site is not predicted to have a significant adverse effect on the nearest residential and ecological receptors due to the adoption of appropriate mitigation measures and the location of the Site away from residential properties.</i>" Bearing this in mind, please confirm the level of effect that is shown to occur and, if required, what mitigation is proposed.</li></ul>
<b>13. Planning Policy</b>		
Q13.0.1	The Applicant	<ul style="list-style-type: none"><li>The Planning Design and Access Statement <a href="#">[APP-024]</a> Paragraph 5.6 refers to the Local Plan, with paragraphs 5.6.2 and 5.6.3 referring to specific policies contained in the adopted NELLP 2013-2032. Please enter copies of the policies detailed in these paragraphs into the examination, along with copies of the relevant pre and post amble to the policies listed, and/ or make specific reference to where the policies together with the pre and post amble to the relevant policies are located within the examination documentation.</li></ul>
Q13.0.2	The Applicant	<ul style="list-style-type: none"><li>The ES Appendix 1A: (Environmental Impact Assessment Scoping Report) <a href="#">[APP-104]</a> paragraph 5.5.1 indicates that allocation ELR020 is identified as an Enterprise Zone. Please check and confirm that this is correct.</li></ul>
<b>14. Socio-economic Effects</b>		
Q14.0.1	N/A	<ul style="list-style-type: none"><li>No specific questions at present, which aren't already covered by other questions within this document.</li></ul>
<b>15. Traffic, Transport and Waste Management</b>		
Q15.0.1	The Applicant	<ul style="list-style-type: none"><li>Is the proposed one way traffic system within the proposed development included as part of the Environmental Permit or does it need to form part of the Development</li></ul>

**ExQ1: Wednesday 11 November 2020**

**Responses due by Deadline 2: Tuesday 22 December 2020**

ExQ1	Question to:	Question:
		<p>Consent Order? (See: Statutory Nuisance Statement <a href="#">[APP-028]</a> Paragraph 4.4.15). Additionally, it is noted that fuel in transit would be delivered to the site by enclosed and covered containers. Please confirm that reference to fuel means RDF? If not, or fuel means RDF in addition to other fuel, please define what is meant by the term 'fuel'? Additionally, please confirm how you will ensure/ control such deliveries are contained in enclosed/ covered containers during transit and when delivered to the site?</p>
Q15.0.2	The Applicant	<ul style="list-style-type: none"> <li>Appendix 5A – Outline Construction and Environmental Management Plan (CEMP) <a href="#">[APP-107]</a> advises that the CEMP should be read alongside other environmental documents related to the construction phase and makes specific reference to the Construction Workers Travel Plan, The Construction Traffic Management Plan and the Materials Management Plan. Please provide these documents, and any other Environmental documents relevant to the CEMP, or direct the ExA to where they can be found within the examination documentation submitted.</li> </ul>
Q15.0.3	The Applicant	<ul style="list-style-type: none"> <li>The Fuel Availability and Waste Hierarchy Assessment <a href="#">[APP-026]</a> (Document Reference 5.7) at Paragraph 4.1 (Legislative and Policy Basis) discusses the transition period as a result of the United Kingdom leaving the European Union and indicates that updates in regard to legal references will be provided during the examination. Whilst it is appreciated that the transition period has not yet lapsed, is there any update in respect of legal references, as indicated in Paragraph 4.1.4?</li> </ul>
Q15.0.4	The Applicant	<ul style="list-style-type: none"> <li>The ES Waste Management Chapter (Chapter 16) <a href="#">[APP-050]</a> at Paragraph 16.4.4 states: "...there is insufficient information to estimate future levels of waste arisings in the region..." However, the Waste Disposal Authority for the area and Waste Disposal Authorities for adjoining areas predict growth. For residential at the very least the Waste Authorities would be able to predict growth, even if Extended Producer Responsibility (EPR) and Deposit Return Schemes (DRS) may alter waste produced and kerbside collections respectively. As such please update the ES accordingly in relation to estimate future levels of waste arisings in the region, and the future annual baseline waste arising or justify why such information has not been sought from the relevant Waste Authorities and provided within the ES.</li> </ul>
Q15.0.5	The Applicant and NELC	<ul style="list-style-type: none"> <li>In the light of the RR made on behalf of Network Rail <a href="#">[RR-001]</a> and Appendix 2 (Consented Development Officers Report) to the Planning, Design and Access</li> </ul>

**ExQ1: Wednesday 11 November 2020****Responses due by Deadline 2: Tuesday 22 December 2020**

<b>ExQ1</b>	<b>Question to:</b>	<b>Question:</b>
		Statement <a href="#">[APP-024]</a> , please enter into evidence a copy of any representation made by, or on behalf of Network Rail, in relation to the Planning Permission granted under Planning Reference DM/1070/18/FUL.
Q15.0.6	Network Rail	<ul style="list-style-type: none"><li>Appendix 2 (Consented Development Officers Report) to the Planning, Design and Access Statement <a href="#">[APP-024]</a> indicates Network Rail raise no objections to planning application DM/1070/18/FUL, subject to the inclusion of informative(s). Whilst the differences between the development permitted under the TCPA Planning Permission and the NSIP application, currently under consideration, are noted, please provide comment on the change in Network Rails position from that set out by NELC in their Consented Development Officers Report.</li></ul> <p>In responding, please bear in mind the documentation before NELC when they considered and approved Planning Application DM/1070/18/FUL. Please draw the ExA's attention to anything within the submitted documentation related to this NSIP Application, including ES Chapter 9: Traffic and Transport <a href="#">[APP-043]</a> and/ or its Appendices <a href="#">[APP-115]</a>, <a href="#">[APP-116]</a>, <a href="#">[APP-117]</a>, <a href="#">[APP-118]</a>, <a href="#">[APP-119]</a> and <a href="#">[APP-120]</a>, that resulted in Network Rail becoming concerned and caused them to object to the proposed development, as set out in their RR <a href="#">[RR-001]</a>.</p>
Q15.0.7	The Applicant and Network Rail	<ul style="list-style-type: none"><li>Please comment on whether a realistic fallback position exists in relation to the Planning Permission granted under Planning Reference DC/1070/18/FUL, or has the potential to exist within the lifetime of the above mentioned Planning Permission. Please comment on whether such a fallback position has any bearing on the RR <a href="#">[RR-001]</a> made by Network Rail?</li></ul>