

South Humber Bank Energy Centre Project

Planning Inspectorate Reference: EN010107

South Marsh Road, Stallingborough, DN41 8BZ

The South Humber Bank Energy Centre Order

Document Reference 8.10: Applicant's Comments on Deadline 2 Written Representations



Applicant: EP Waste Management Ltd
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GLOSSARY

Abbreviation	Description
ACC	Air-cooled condenser
CCGT	Combined Cycle Gas Turbine
DCO	Development Consent Order: provides a consent for building and operating an NSIP
EfW	Energy from Waste: the combustion of waste material to provide electricity and/or heat
EIA	Environmental Impact Assessment
EPH	Energetický A Prumyslový Holding
EPUKI	EP UK Investments Ltd
EPWM	EP Waste Management Limited ('The Applicant')
ES	Environmental Statement
ExA	Examining Authority
ha	Hectares
HGV	Heavy goods vehicles
IDB	Internal Drainage Board
mAOD	Metres Above Ordnance Datum
MOD	Ministry of Defence
MW	Megawatt: the measure of power produced
NELC	North East Lincolnshire Council
NELIDB	North East Lindsey Internal Drainage Board
Network Licence	Network licence granted under section 8 of the Railways Act 1993
NG	National Grid Electricity Transmission Plc and National Grid Gas Plc
NR	Network Rail
NSIP	Nationally Significant Infrastructure Project: for which a DCO is required
PA 2008	Planning Act 2008
Proposed DCO	South Humber Bank Energy Centre Project Development Consent Order
RDF	Refuse derived fuel
PPs	Protective Provisions
SHBPS	South Humber Bank Power Station

EP Waste Management Ltd

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SoCG	Statement of Common Ground
SoS	Secretary of State
tpa	Tonnes Per Annum
WR	Written Representation

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1.0 INTRODUCTION

1.1 Overview

- 1.1.1 This 'Applicant's Comments on Deadline 2 Written Representations' document (Document Ref. 8.10) has been prepared on behalf of EP Waste Management Limited ('EPWM' or the 'Applicant'). It relates to the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy, under section 37 of 'The Planning Act 2008' (the 'PA 2008').
- 1.1.2 EPWM is seeking development consent for the construction, operation and maintenance of an energy from waste ('EfW') power station with a gross electrical output of up to 95 megawatts (MW) including an electrical connection, a new site access, and other associated development (together 'the Proposed Development') on land at South Humber Bank Power Station ('SHBPS'), South Marsh Road, near Stallingborough in North East Lincolnshire ('the Site').
- 1.1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under sections 14 and 15(2) of the PA 2008.
- 1.1.4 The DCO, if made by the SoS, would be known as the 'South Humber Bank Energy Centre Order' ('the Order').
- 1.1.5 Full planning permission ('the Planning Permission') was granted by North East Lincolnshire Council ('NELC') for an EfW power station with a gross electrical output of up to 49.9 MW and associated development ('the Consented Development') on land at SHBPS ('the Consented Development Site') under the Town and Country Planning Act 1990 on 12 April 2019. Since the Planning Permission was granted, the Applicant has assessed potential opportunities to improve the efficiency of the EfW power station, notably in relation to its electrical output. As a consequence, the Proposed Development would have a higher electrical output (up to 95 MW) than the Consented Development, although it would have the same maximum building dimensions and fuel throughput (up to 753,500 tonnes per annum (tpa)).

1.2 The Applicant

- 1.2.1 The Applicant is a subsidiary of EP UK Investments Limited ('EPUKI'). EPUKI owns and operates a number of other power stations in the UK and is a subsidiary of Energetický A Průmyslový Holding ('EPH'). EPH owns and operates energy generation assets in the Czech Republic, Slovak Republic, Germany, Italy, Hungary, Poland, Ireland, and the United Kingdom.

1.3 The Proposed Development Site

- 1.3.1 The Proposed Development Site (the 'Site' or the 'Order limits') is located within the boundary of the SHBPS site, east of the existing SHBPS, along with part of the carriageway within South Marsh Road. The principal access to the site is off South Marsh Road.

- 1.3.2 The Site is located on the South Humber Bank between the towns of Immingham and Grimsby; both over 3 km from the Site.
- 1.3.3 The Site lies within the administrative area of NELC, a unitary authority. The Site is owned by EP SHB Limited, a subsidiary of EPUKI, and is therefore under the control of the Applicant, with the exception of the highway land on South Marsh Road required for the new Site access.
- 1.3.4 The existing SHBPS was constructed in two phases between 1997 and 1999 and consists of two Combined Cycle Gas Turbine (CCGT) units fired by natural gas, with a combined gross electrical capacity of approximately 1,400 MW. It is operated by EP SHB Limited.
- 1.3.5 The Site is around 23 hectares ('ha') in area and is generally flat, and typically stands at around 2.0 m Above Ordnance Datum (mAOD).
- 1.3.6 A more detailed description of the Site is provided at Chapter 3: Description of the Proposed Development Site in the Environmental Statement ('ES') Volume I (Document Ref. 6.2 / APP-034 to APP-055).

1.4 The Proposed Development

- 1.4.1 The main components of the Proposed Development are summarised below:
- Work No. 1— an electricity generating station located on land at SHBPS, fuelled by refuse derived fuel ('RDF') with a gross electrical output of up to 95 MW at ISO conditions;
 - Work No. 1A— two emissions stacks and associated emissions monitoring systems;
 - Work No. 1B— administration block, including control room, workshops, stores and welfare facilities;
 - Work No. 2— comprising electrical, gas, water, telecommunication, steam and other utility connections for the generating station (Work No. 1);
 - Work No. 3— landscaping and biodiversity works;
 - Work No. 4— a new site access on to South Marsh Road and works to an existing access on to South Marsh Road; and
 - Work No. 5— temporary construction and laydown areas.
- 1.4.2 Various types of ancillary development further required in connection with and subsidiary to the above works are detailed in Schedule 1 of the DCO.
- 1.4.3 The Proposed Development comprises the works contained in the Consented Development, along with additional works not forming part of the Consented Development ('the Additional Works'). The Additional Works are summarised below:
- a larger air-cooled condenser (ACC), with an additional row of fans and heat exchangers;
 - a greater installed cooling capacity for the generator;
 - an increased transformer capacity; and

- ancillary works.

1.4.4 A more detailed description of the Proposed Development is provided at Schedule 1 'Authorised Development' of the draft DCO and Chapter 4: The Proposed Development in the ES Volume I (Document Ref. 6.2 / APP-034 to APP-055) and the areas within which each of the main components of the Proposed Development are to be built is shown by the coloured and hatched areas on the Works Plans (Document Ref. 4.3 / APP-010). Three representative construction scenarios (timescales) are described within Chapter 5: Construction Programme and Management in the ES Volume I (Document Ref. 6.2 / APP-034 to APP-055) and assessed in the Environmental Impact Assessment ('EIA').

1.5 Purpose of this Document

1.5.1 This document is intended to provide the Applicant's comments on the matters raised in all written representations ('WRs') submitted at Deadline 2 of the Application.

1.5.2 The full text of the WR and the Applicant's comments on each WR are provided in separate sections of this document dedicated to each WR received. These are as follows and the ordering corresponds to the order in which they appear on the Planning Inspectorate project web page:

- Section 2 - Response to North East Lindsey Drainage Board WR (Examination Library Ref. REP2-016);
- Section 3 - Response to Network Rail Infrastructure Limited WR (Examination Library Ref. REP2-019);
- Section 4 - Response to National Grid Electricity Transmission Plc and National Grid Gas Plc WR (Examination Library Ref. REP2-021);
- Section 5 - Response to Ministry of Defence WR (Examination Library Ref. REP2-022);
- Section 6 - Response to Anglian Water Services Limited WR (Examination Library Ref. REP2-025);
- Section 7 - Response to Environment Agency WR (Examination Library Ref. REP2-024);

1.5.3 The document has been submitted for Deadline 3 of the Examination.

2.0 RESPONSE TO NORTH EAST LINDSEY DRAINAGE BOARD WR

- 2.1.1 The Written Representation (REP2-016) provided by North East Lindsey Internal Drainage Board (NELIDB) is as follows:

“Thank you for the opportunity to comment on the above proposed development. The site is within the North East Lindsey Drainage Board area.

The Board has no comments on the questions.

As a matter for correction on the ‘Key Watercourses & Direction’ drawing ‘Land Drain 3’ is shown as flowing towards ‘Oldfleet Drain’ this is incorrect all flows from the catchment flow to the gravity outfall/Middle Drain pumping station.

As a matter of record it is noted that surface water discharge will be limited to the greenfield rate.

Under the terms of the Land Drainage Act. 1991 the prior written consent of the Board is required for any proposed temporary or permanent works or structures within any watercourse including infilling or a diversion. This includes any outfalls. As noted in the Document Reference: 5.4 Other Consents and Licences”.

- 2.1.2 In response to the North East Lindsey Internal Drainage Board's Written Representation the Applicant includes an updated version of the 'Key Watercourses & Direction' Figure at Deadline 3 (Document Ref. 8.8) following the IDB's point of correction on the direction of flow. This correction does not alter the findings or conclusions of the reports that accompanied the DCO application including the Environmental Statement (Document Ref. 6.1 to 6.4).

3.0 RESPONSE TO NETWORK RAIL INFRASTRUCTURE LIMITED WR

- 3.1.1 The WR provided by Network Rail Infrastructure Limited (REP2-019) is provided within a table at **Appendix 1**.
- 3.1.2 The Applicant notes the WR provided by Network Rail Infrastructure Limited and has provided a response to each matter within the table at **Appendix 1**. The Applicant has considered protective provisions in detail separately within the table at **Appendix 2**.

4.0 RESPONSE TO NATIONAL GRID ELECTRICITY TRANSMISSION PLC AND NATIONAL GRID GAS PLC WR

4.1.1 The WR provided by National Grid Electricity Transmission Plc and National Grid Gas Plc WR (REP2-021) is as follows:

“National Grid Electricity Transmission Plc and National Grid Gas Plc (together “National Grid”) wish to make a written representation to protect its position in relation to infrastructure and land which is within or in close proximity to the proposed Order limits.

National Grid’s rights to retain its apparatus in situ and rights of access to inspect, maintain, renew and repair such apparatus located within or in close proximity to the Order limits must be maintained at all times and access to inspect and maintain such apparatus must not be restricted.

As set out in the Relevant Representation submitted, the following assets, which form an essential part of the electricity transmission and gas networks in England and Wales are within, or in close proximity to, the Order limits:

Electricity Transmission

Overhead Lines

- *2AH 400kV Overhead Line and Tower*
- *Above and below ground associated apparatus.*

Substation

- *South Humber Bank 400kV*

Gas Transmission

- *Feeder Main 9 – Brocklesby to Stallingborough*
- *Above and below ground associated apparatus*

As a responsible statutory undertaker, National Grid’s primary concern is to meet its statutory obligations and ensure that any development does not impact in any adverse way upon those statutory obligations.

We note that the Applicant has not sought powers of compulsory acquisition or temporary possession in the Draft DCO (Document Ref. 2.1). However, the Draft DCO does contain powers (in Article 19) allowing the Applicant to extinguish or suspend the rights of, remove or reposition the apparatus belonging to statutory undertakers. This article is subject to the protective provisions and protective provisions for the benefit of National Grid are therefore essential to protect National Grid’s undertaking and performance of statutory functions and to ensure compliance with relevant safety standards.

A form of protective provisions for the benefit of National Grid was included in the draft DCO; however, this form of protective provisions is not agreed by National Grid. The final form of the protective provisions is currently being negotiated between the parties but is not yet agreed. The parties will keep the Examining Authority informed of progress. The full details of the issues

agreed and outstanding between the parties are contained in a Statement of Common Ground.

National Grid reserves the right to make further representations as part of the examination process but in the meantime will negotiate with the Promoter with a view to reaching a satisfactory agreement.”

- 4.1.2 The Applicant notes the WR provided by National Grid Electricity Transmission Plc and National Grid Gas Plc ('NG').
- 4.1.3 The Applicant notes that Article 19 has been amended at Deadline 2 (Document Ref. 2.1 / REP2-014) to restrict the powers to re-positioning of apparatus.
- 4.1.4 The Applicant notes NG's comments regarding the inclusion of Protective Provisions in the DCO. The Applicant considers that the form of protective provisions included in the DCO is sufficient to protect NG's statutory undertaking and apparatus, but as noted by NG the parties are continuing to negotiate the terms of the Protective Provisions and will update the ExA in due course.

5.0 RESPONSE TO MINISTRY OF DEFENCE WR

5.1.1 The WR provided by the Ministry of Defence ('MOD') (REP2-022) is as follows:

"Thank you for consulting Defence Infrastructure Organisation (DIO) on the above proposed development. This application relates to a site outside of Ministry of Defence (MOD) statutory safeguarding areas (SOSA). We can therefore confirm that the MOD has no safeguarding objections to this proposal.

In the interests of air safety, the MOD requests that the structure is fitted with aviation warning lighting. The mast should be fitted with a minimum intensity 25 candela omni directional flashing red light or equivalent infra-red light fitted at the highest practicable point of the structure.

I trust this adequately explains our position on this matter, however should you have any questions regarding this matter please do not hesitate to contact me."

5.1.2 The Applicant notes the WR provided by the Ministry of Defence and can confirm that this specification of aviation warning lighting is secured by DCO Requirement 30 'Air Safety' in the draft DCO (Document Ref. 2.1). For reference the full requirement wording is set out below:

"(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the authorised development for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

(2) The information submitted to and approved under sub-paragraph (1) must include—

(a) location of development;

(b) date of commencement of construction;

(c) anticipated date of completion of construction of tall structures including the emissions stacks;

(d) height above ground level of tall structures including the emissions stacks;

(e) maximum extension height of any construction equipment; and

(f) details of aviation warning lighting to be fitted to the tall structures, which must include fitting the emissions stacks with a minimum intensity 25 candela omni directional flashing red light or equivalent infra-red light fitted at the highest practicable point of the structure.

(3) The aviation warning lighting details submitted to and approved under sub-paragraph (2)(f) must be implemented in full before the construction of the emissions stacks is complete unless otherwise agreed by the relevant planning authority.

(4) At the earliest opportunity prior to the date of completion of the construction of the stacks, the anticipated date of construction completion must be submitted to the relevant planning authority.

(5) All details submitted to and approved under this requirement must be implemented as approved and maintained throughout (to the extent relevant) the construction of the authorised development and the operation of the authorised development unless otherwise agreed by the relevant planning authority.”

5.1.3 Based on the above proposed wording for Requirement 30, when compared to the WR received from the MOD, no amendment is considered to be required.

6.0 RESPONSE TO ANGLIAN WATER SERVICES LIMITED WR

- 6.1.1 The WR provided by Anglian Water Services Limited (REP2-025) is provided in table format within **Appendix 3**.
- 6.1.2 The Applicant notes the WR provided by Anglian Water Services Limited and has provided responses to the points made within the table included at **Appendix 3**.

7.0 RESPONSE TO ENVIRONMENT AGENCY WR

7.1.1 The Written Representation provided by the EA (REP2-023) is as follows:

“Thank you for your letter of 17 November 2020 inviting the submission of Written Representations in respect of the above project. The following comments are provided as an update to the Relevant Representations made by the Environment Agency on 15 July 2020. Our Written Representations should be read alongside the Statement of Common Ground (SoCG) agreed between the Environment Agency and the Applicant on 21 October 2020; we understand the Applicant will submit the SoCG to you for Deadline 1.

Environmental Permit

We commented in paragraph 3.2 of our Relevant Representations that the existing power station and the Consented Development has the benefit of a joint operating permit and that this would need to be varied to accommodate the Proposed Development. An approach to varying that permit to increase the electrical output and transfer the Proposed Development into a separate permit has now been agreed. Section 4.1 of the SoCG notes agreements made between the Applicant and the Environment Agency on this topic.

Flood risk

All issues in respect of the required flood risk mitigation are agreed between the Applicant and the Environment Agency. We can confirm that we have not yet finalised or issued any new baseline data in respect of water levels for the Humber Estuary. Accordingly, we confirm that the flood risk assessment contains the most up to date information available on flood risk to the site. Please see section 4.2 of the SoCG in respect of all agreements made on flood risk.

Protection of groundwater and land contamination

All matters in respect of groundwater protection and land contamination are agreed between the Environment Agency and the Application, as per section 4.3 of the SoCG. As confirmed in paragraph 4.3.4 of the SoCG the Environment Agency will now be included as a named consultee in Requirements 17 and 19-21 of the DCO. Accordingly, we have no further comments to make on this issue.

Water quality

We have no further comments to make on this issue. Foul water drainage Paragraph 4.3.4 of the SoCG confirms that the Environment Agency will be included as a named consultee for the discharge of Requirement 14 in the DCO and, accordingly, we have no further comments to make on this issue.

Waste management & pollution prevention

We have no further comments to make on this issue. In summary, we can confirm that we have no objection to the proposed development, as submitted. The submitted SoCG contains details of all agreements made to date with the Applicant. However, we reserve the right to add to or amend these representations, including requests for DCO Requirements and

protective provisions should further information be forthcoming during the course of the examination on issues within our remit. If you have any questions regarding these representations, please contact me on the number below”.

- 7.1.2 The Applicant welcomes the EA's confirmation of agreement on matters as outlined above which references the SoCG submitted at Deadline 1 (Document Ref. 7.3) (REP1-001). The Applicant also wishes to confirm that there have been no changes required to the SoCG since it was signed at Deadline 1. All matters as noted above have been agreed with the EA and there are no outstanding matters yet to be agreed.
- 7.1.3 For the ExA's information, the Applicant notes that the Proposed Development Environmental Permit application was duly made by the Environment Agency on 23rd December 2020.

APPENDIX 1: RESPONSE TO WR PROVIDED BY NETWORK RAIL INFRASTRUCTURE LIMITED

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
1.1	This written representation (Written Representation) is submitted on behalf of Network Rail Infrastructure Limited (Network Rail) in response to the application by EP Waste Management Ltd (Applicant) for the South Humber Bank Energy Centre Project Development Consent Order (Proposed DCO). Network Rail submitted its earlier section 56 representation (Examination Library Reference No RR-001) on 15 July 2020.	No comment.
1.2	The Proposed DCO seeks development consent for the construction and operation of an energy from waste plant of up to 95 megawatts gross capacity including an electrical connection, landscaping and access (Proposed Development) on land at South Humber Bank Power Station, South Marsh Road, near Stallingborough in North East Lincolnshire (Power Station Site) as specifically detailed in Schedule 1 of the Proposed DCO.	No comment.
1.3	Network Rail owns, operates and maintains the railway infrastructure of Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993 (Network Licence). A key element of Network Rail's statutory undertaking and a condition under the Network Licence, is to ensure the safety of the railway and those using and/or operating it. The Power Station Site is located to the west and south-west of the Manchester to Cleethorpes railway line (Railway Line).	The Applicant acknowledges that NR's duty is to remove risk at level crossings or to reduce risk to as low as reasonably practicable. This duty applies to the operation of NR's railway infrastructure, irrespective of third party development, and is applied with consideration of cost benefit. The Applicant considers that referencing the Manchester to Cleethorpes railway line is misleading, as a reader may infer that this is the relevant railway line on which the level crossings referred to in this document are located. The

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
		<p>relevant line is a single line, the Pyewipe Branch (Engineers' Line Reference PYE) which, whilst it remains open for use and is known to be used occasionally, has no regular rail traffic over it. The Proposed Development Site is to the north and north-east of both the Manchester to Cleethorpes line and the Pyewipe Branch.</p>
1.4	<p>Network Rail does not object in principle to the Proposed Development. However, Network Rail objects to the Proposed DCO and the Proposed Development, as:</p> <p>(a) there is currently no mechanism in place to prevent increases in traffic crossing the Railway Line on the Kiln Lane level crossing, reaching levels that would cause an unacceptable increase in risk to users of the level crossing;</p> <p>(b) the additional traffic travelling over the Railway Line to and from the Proposed Development during its construction and its operation, will have an adverse impact on the lifespan of the Kiln Lane level crossing; and</p> <p>(c) the Marsh Lane level crossing is unsuitable for the passing of heavy goods vehicles (HGVs) and there is currently no mechanism to ensure that HGVs travelling to the Proposed Development are not diverted via this route.</p>	<p>The Applicant's response to each point is as follows:</p> <p>(a) The Applicant agrees that the DCO does not include a mechanism to limit traffic crossing the Kiln Lane level crossing but considers that there is no justification for doing so. Kiln Lane is suitable for HGV traffic in highway terms and the designated HGV route has been approved by NELC (following consultation with, and no objection in relation to traffic levels by, NR). The DCO, requirements and relevant plans are considered to provide adequate control in relation to the traffic movements relating to the Proposed Development.</p> <p>(b) The Applicant accepts that the Proposed Development will put additional HGV traffic on the Kiln Lane and over the Kiln Lane level crossing as a public highway user. In the absence of evidence to the contrary the Applicant considers that the impact of this traffic will be marginal in the context of the other existing and forecast future road traffic.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
		<p>NR did not raise concerns regarding the Consented Development traffic (which is exactly the same as the Proposed Development traffic) affecting the level crossing when it commented on the planning application or the Delivery and Servicing Plan for the Proposed Development.</p> <p>(c) The Applicant agrees that South Marsh Road (west of Hobson Way), where the Marsh Lane level crossing is located, is unsuitable for HGVs. North East Lincolnshire Council (NELC) has recently confirmed that South Marsh Road (west of Hobson Way) is a bridleway, which means there are no public rights to use it with a vehicle. The Applicant has included an additional requirement (37) in Schedule 2 to the Draft DCO (Document Ref. 2.1, version 3), preventing HGVs from using the relevant part of South Marsh Road.</p>
1.5	<p>In this Written Representation, the Kiln Lane level crossing and the Marsh Lane level crossing (shown marked 'PYE2 0.1138 M. Yds' (Kiln Lane) and 'PYE2 1.0549 M. Yds' (Marsh Lane) on the plan attached to this Written Representation as Appendix 4) are together referred to as the Crossings.</p>	No comment.
1.6	<p>In order to be able to withdraw its objection, Network Rail will need to be confident that sufficient mitigation measures are agreed to ensure that traffic travelling to and</p>	<p>The Applicant's response to each point is as follows:</p> <p>(a) The Applicant considers the impact of the</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>from the Proposed Development during its construction and operation will not have an unacceptable impact on lifespan of the Kiln Lane level crossing and will not have an unacceptable impact on the safety of the railway and those using and/or operating it. To achieve this the following will need to be in place:</p> <p>(a) appropriate protective provisions in the Proposed DCO that protect and safeguard Network Rail's statutory undertaking;</p> <p>(b) amendments to the requirements in the Proposed DCO to regulate the use of the Crossings; and</p> <p>(c) an agreement with the Applicant that regulates the use of the Crossings and the carrying out of all necessary mitigation measures/ improvement works to the Crossings.</p>	<p>Proposed Development traffic on Kiln Lane level crossing will be marginal as a public highway user and therefore does not agree that protective provisions are required. The Applicant has considered the protective provisions in detail in the table at Appendix 2.</p> <p>(b) The Applicant considers that there is no justification for the DCO to include a mechanism to limit traffic crossing the Kiln Lane level crossing. Kiln Lane is suitable for HGV traffic in highway terms and the designated HGV route has been approved by NELC (following consultation with NR). Marsh Lane will not be used by HGV traffic and has recently been confirmed as being a bridleway. The DCO, requirements and relevant plans are considered to provide adequate control in relation to the traffic movements relating to the Proposed Development. The revised draft DCO submitted at Deadline 3 also expressly prohibits Proposed Development HGVs from using South Marsh Road (west of Hobson Way) as referenced above.</p> <p>(c) The Applicant considers the impact of the Proposed Development traffic on the Kiln Lane level crossing will be marginal as a public highway user. On the basis of the scale of the impact, the Applicant does not agree that mitigation measures or improvement works are required to enhance the</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
		existing arrangements at this level crossing.
1.7	<p>Network Rail therefore requests that the bespoke protective provisions for the benefit of the safety of railway interests which are at Appendix 3 to this Written Representation (NR Protective Provisions) are included in the Proposed DCO, and that the NR Requirement Amendments, as defined and detailed at paragraph 4.1 below and in Appendix 3 to this Written Representation, are made to the Proposed DCO.</p>	<p>The Applicant's comments on the protective provisions requested by NR (Appendix 3 of the NR WR) are provided in Appendix 2. Overall the protective provisions seek to provide Network Rail with protections which far exceed what is proportionate or necessary in the circumstances, and the Applicant does not consider that they should be included in the draft DCO.</p> <p>With regards to the amendments to Requirements 16 (Construction traffic management and travel planning), 24 (Delivery and servicing plan), 25 (Operational travel plan) and 29 (Road condition survey), and the proposed new Requirement 37 (Maximum vehicle movements), as requested by NR (Appendix 5 of the NR WR), the Applicant considers that there is no justification for NR having control or approval over the matters covered in the requirements or the protective provisions which are proposed by NR. Such a role should sit solely with the local planning authority.</p> <p>The Applicant has however amended the draft DCO at Deadline 3 to include NR as a consultee in relation to the Construction Traffic Management Plan (Requirement 16) and Delivery and Servicing</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
		<p>Plan (Requirement 24), which both relate to HGV traffic.</p> <p>The Operational Travel Plan (Requirement 25) relates to operational staff vehicles and the Applicant considers it is not relevant for NR to be consulted on this document. This has now been agreed with NR.</p> <p>The Applicant notes that Requirement 29 only applies to "South Marsh Road (east of Hobson Way)". There is no railway property in that part of South Marsh Road.</p> <p>The additional Requirement 37 requested by NR suggests a maximum of 1,200 HGVs should access or egress the Proposed Development per day. The annual fuel tonnage, which has a direct effect on the total number of HGVs accessing and egressing the Proposed Development, will be controlled via restrictions in the Environmental Permit so a restriction in the DCO is unnecessary duplication and the Applicant does not agree to the inclusion of the Requirement 37 requested by NR. (To avoid any confusion, the Applicant notes that a new requirement numbered 37 has been included in the revised draft DCO at Deadline 3, but this relates to the prevention of Proposed Development</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
		HGVs from using South Marsh Road (west of Hobson Way).)
1.8	Without the benefit of the NR Requirement Amendments and the NR Protective Provisions (further details of which are set out in paragraph 3 below) Network Rail considers that the Secretary of State, cannot conclude that the Proposed DCO can be granted without serious detriment to Network Rail's statutory undertaking arising.	<p>As noted above, the Applicant considers the impact of the Proposed Development traffic on the Kiln Lane level crossing will be marginal as a public highway user and therefore does not agree that the impacts are sufficient to warrant protective provisions or further controls. However as noted above in response to NR WR paragraph 1.7, the Applicant has amended the wording of Requirements 16 and 24 to include NR as a consultee in relation to the Construction Traffic Management Plan and the Delivery and Servicing Plan. NELC has previously consulted NR on the Delivery and Servicing Plan for the Consented Development and NR made no comment or objection.</p> <p>It is striking that Network Rail's case is that the Secretary of State "<i>cannot conclude that the Proposed DCO can be granted without serious detriment to Network Rail's statutory undertaking</i>" without its proposed amendments to the DCO. If the position is so serious it remains surprising that Network Rail failed to object to the Consented Development or Delivery and Servicing Plan to identify and seek to resolve its concerns, and did</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
		<p>not request the same terms. The Applicant is not clear why "<i>serious detriment</i>" – a significant matter – was not alleged in relation to a development which for these purposes is identical.</p> <p>In addition the Applicant notes that Network Rail appears not to have responded to First Written Question 15.0.7 which is also relevant to this, concerning the fallback position which exists through the Planning Permission.</p>
1.9	<p>Network Rail and the Applicant are engaging in detailed discussions regarding the assessment of risk to the Crossings. However, to date the Applicant's solicitors have only provided an undertaking of £3,000 for Network Rail's internal costs and £1,000 in respect of legal fees. Furthermore, the Applicant's solicitors have been instructed not to engage with Network Rail's solicitor in relation to NR Protective Provisions and an agreement with Network Rail to regulate the use of the Crossings and the carrying out of all necessary mitigation measures/ improvement works to the Crossings.</p>	<p>As set out in the Applicant's response at Deadline 1, the Applicant has engaged extensively with NR and provided reasonable undertakings to NR. However as the Applicant considers the Proposed Development to have only marginal impacts as a public road user on NR assets, the Applicant does not agree that protective provisions, an agreement to regulate the use of the level crossings or mitigation measures/ improvement works to the level crossings are required.</p>
1.10	<p>In the absence of reaching agreement to safeguard its interests, Network Rail, as an interested party, seeks to be heard at the compulsory acquisition hearing and at any issue specific hearings on the Proposed DCO, and</p>	<p>In the interests of clarity, the Applicant confirms that the DCO does not include any compulsory acquisition powers so a compulsory acquisition hearing will not be required.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	respectfully makes the requests set out above and detailed in paragraph 4 below.	
2.1	The Applicant notes that employees of the Power Station Site would likely utilise South Marsh Road and Marsh Lane level crossing as the primary means of access to the power station site. The Applicant has also proposed that the Kiln Lane level crossing is included in the designated route providing HGV access to the Proposed Development (HGV Designated Route) as referred to in the Transport Assessment.	The Applicant confirms that the main access to the Site will be on South Marsh Road (east of Hobson Way), where there is no railway property, and that the Transport Assessment assumed some Proposed Development staff would use South Marsh Road (west of Hobson Way) resulting in an additional 27 car movements per day. NELC has recently advised that South Marsh Road (west of Hobson Way) is a bridleway which means there are no public rights to use it with a vehicle.
2.2	Based on the Applicant's figures (a) traffic movements over the Kiln Lane level crossing would increase on average by 686 vehicle movements (11.8%) per day during the three year plus construction period (of which the vast majority are HGVs), and on average by 645 vehicle movements (10.5%) per day during the ongoing operation of the Proposed Development (of which the vast majority are HGVs) ; and (b) traffic movements over the Marsh Lane level crossing would increase on average by 45 vehicle movements (5.5%) per day during the three year plus construction period and on average by 27 vehicle movements (3.2%) during the ongoing operation of the Proposed	The traffic movements and % impacts quoted by NR are consistent with the findings of the Applicant's Transport Assessment. On the basis of these numbers, the Applicant considers the Proposed Development traffic will have marginal impacts on Kiln Lane level crossing as a public highway user. As noted above in response to NR WR paragraphs 1.4 and 1.6, South Marsh Road (west of Hobson Way) has recently been confirmed to be a bridleway. The draft Statement of Common Ground with NR (Document Ref. 7.7, January

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>Development. Without sufficient improvement works to the Kiln Lane level crossing, this increase in traffic will lead to an increased risk to users of the Kiln Lane level crossing and Crossings and will have an adverse impact on its lifespan, as detailed below</p>	<p>2021, as submitted at Deadline 3) records at paragraph 4.4.2 that the parties agree that <i>“No HGV traffic and no non-HGV traffic will be able to use South Marsh Road (west of Hobson Way) as this is confirmed as being a bridleway”</i>. There clearly cannot be an impact on the Marsh Lane level crossing given this position (and without prejudice to the Applicant's position that no impact was ever shown by NR).</p>
2.3	<p>The application documents make no reference to an alternative route for HGV traffic should Kiln Lane be closed for any reason, for example, to allow upgrade/mitigation works to be completed. Network Rail is concerned about what would happen to the HGV traffic in particular in this scenario, and this is one of the reasons Network Rail has requested that it is consulted on: (a) the Construction Traffic Management Plan; (b) the Delivery and Servicing Plan; and (c) the Operational Travel Plan as set out in the NR Requirement Amendments at paragraph 4.1.</p>	<p>It is agreed that the DCO Application does not discuss alternative routes, as there is no need for it to do so. It is possible that any part of the designated HGV route could at some point be subject to works (by third parties) and require a temporary diversion of all traffic which would otherwise use that route. In the event of a road closure, HGVs will follow temporary diversion signs installed by the street works licensee licensed by NELC in accordance with the New Roads and Street Works Act 1991.</p> <p>As noted above in response to NR WR paragraph 1.7 above, the Applicant has amended the wording of Requirements 16 and 24 to include NR as a consultee in relation to the Construction Traffic Management Plan and the Delivery and Servicing Plan.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
		<p>As the Construction and Operational Travel Plans (Requirements 16 and 25) relate to construction and operational staff vehicles the Applicant considers it is not relevant for NR to be consulted on these documents.</p>
2.4	<p>Network Rail is concerned that the Delivery and Servicing Plan, the Operational Travel Plan and the Construction Traffic Management Plan do not limit the number of HGVs using the Kiln Lane level crossing and does not provide a mechanism to re-evaluate the safety of the Kiln Lane level crossing should there be an increase in vehicle numbers beyond those detailed in the Transport Assessment.</p>	<p>The Applicant agrees that the DCO does not include a mechanism to limit traffic crossing the Kiln Lane level crossing but considers that there is no justification for doing so. Kiln Lane is suitable for HGV traffic in highway terms and the designated HGV route has been approved by NELC (following consultation with NR). The DCO, requirements and relevant plans are considered to provide adequate control in relation to the traffic movements relating to the Proposed Development.</p> <p>As noted above in response to NR WR paragraph 1.7, operational HGV traffic will be limited by the restriction on annual fuel throughput that will be imposed by the Environmental Permit.</p> <p>For clarity, the Operational Travel Plan relates to staff vehicles, not HGVs.</p>
2.5	The Applicant has acknowledged in the Statement of	As noted above in response to NR WR paragraphs

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>Common Ground with Network Rail that the Delivery and Servicing Plan does not limit the number of HGVs using the Kiln Lane level crossing per day. Network Rail requests that an additional requirement be added to the Proposed DCO restricting the number of HGVs that can use the Kiln Lane level crossing for access to, or egress from, the Proposed Development without Network Rail's written consent to 1,200 per day (as set out at paragraph 4.1(f) and Appendix 5 below).</p>	<p>1.4 and 1.7, the Applicant considers that the DCO, requirements and relevant plans are considered to provide adequate control in relation to the traffic movements relating to the Proposed Development, but NR have been added as a consultee in relation to the Construction Traffic Management Plan and Delivery and Servicing Plan (Requirements 16 and 24). In addition the Environmental Permit will include an annual limit on fuel throughput which will limit the number of operational HGVs to well below 1,200 per day.</p>
2.6	<p>The Applicant has noted in the Transport Assessment that the Marsh Lane level crossing is unsuitable for the passing of HGVs and as such was not included in the Delivery and Servicing Plan. Network Rail is concerned that should Kiln Lane be unavailable for any reason (for example during the period of improvement works) that HGVs would reroute via South Marsh Road and the Marsh Lane level crossing. Network Rail therefore requests that an additional requirement be added to the Proposed DCO restricting the use of South Marsh Road by HGVs travelling to or egressing from the Proposed Development (as further set out at Appendix 5)</p>	<p>The Applicant's position on South Marsh Road (west of Hobson Way) is set out above.</p> <p>In the event of a road closure on Kiln Lane, HGVs will follow temporary diversion signs installed by the street works licensee licensed by NELC in accordance with the New Roads and Street Works Act 1991.</p>
2.7	<p>The Crossings are in place to enable traffic and pedestrians to cross the Railway Line safely, and are</p>	<p>As noted above, the Applicant considers the Proposed Development traffic will have only</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>required to be maintained in line with safety standards. The additional traffic caused by the Proposed Development will adversely impact the Kiln Lane level crossing by significantly increasing its use by HGVs therefore resulting in the deterioration of the crossing at an increased rate. The mitigation of this impact should be at the cost of the Applicant, not Network Rail.</p>	<p>marginal impacts on Kiln Lane level crossing as a public highway user and does not agree that additional mitigation is required.</p> <p>The Applicant notes that Network Rail is funded to operate, maintain and renew its assets as required, taking account of changes to road traffic and other factors. The Applicant considers the proposed changes at Kiln Lane level crossing to fall within that ambit.</p> <p>Notwithstanding the Applicant's position above that the Proposed Development does not justify a contribution, it is nevertheless engaging with NR to understand what proportion of these estimated Kiln Lane level crossing improvement works costs the Applicant is being asked by NR to pay. Please refer to the Applicant's response to NR WR paragraph 2.22 below in which consideration is given, on a without prejudice basis, to a contribution that would be proportionate.</p>
2.8	<p>Network Rail have conducted 'all level crossing risk model' (ALCRM) assessments for the Crossings to calculate the increased risk posed by the Applicant's predicted average number of additional movements during the operational phase of the Proposed Development.</p>	<p>No comment.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
2.9	These ALCRM assessments are at Appendix 1 of this Written Representation, and an aid to understanding the ALCRM scores and what they mean has been included at Appendix 1 of this Written Representation.	No comment.
2.10	In summary, the ALCRM assessments considered if the current risk level (which is based on the baseline traffic survey data from the Network Rail censuses for the Crossings) would increase, if it was assumed that the number of proposed vehicle movements in the Traffic Assessment during the operational phase of the Proposed Development were taking place, to determine whether the increased traffic movements would result in additional risk for users of the Railway Line and the Crossings.	No comment.
2.11	The ALCRM assessments also incorporate a range of other parameters to assess risks to the users of the railway (including level crossings) and railway vehicles, such as volume of traffic, speed of road, type of freight line, frequency of railway movements, speed of line, etc. The model also facilitates cost-benefit analysis for new operation scenarios, mitigation measures and upgrades.	No comment.
2.12	The results allocate a risk score to the level crossing. The risk scores go from A – M for individual risk with A being the highest risk, L being the lowest and M being 'zero risk' and 1-13 for collective risk with 1 being the highest risk, 12	No comment.

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	being the lowest and 13 'zero risk'.	
2.13	Individual risk, being risk to individual users of the crossing, and collective risk being overall risk of any incident involving any person or vehicle on the crossing, including train staff and passengers, as well as users of the crossing.	No comment.
2.14	Network Rail also uses the standard railway signalling aspect colours to denote the relative risk of a crossing. These are, from preferred to least preferable: Green, Yellow, Double Yellow and Red.	No comment.
2.15	The results also produce a fatalities and weighted injuries (FWI) index score which measures safety performance. The index collates all non-fatal injuries that have occurred over the previous 12 months normalised per 100,000 worker hours using a weighting factor to produce a total number of 'fatality equivalents'. For example, 10 major injuries or 200 class 1 minor injuries or shock/trauma, or 1000 class 2 minor injuries or shock/trauma are taken as being 'statistically equivalent' to one fatality.	No comment.
2.16	The results were as follows: (a) Kiln Lane Level Crossing (i) Risk colour rating: Yellow (ii) Current ALCRM Score: I5 (iii) Current FWI Score: 7.63E-04 (iv) ALCRM Score with Transport Assessment predicted	The Applicant was provided with the revised ALCRM risk assessment outputs for Kiln Lane and Marsh Lane level crossings by NR on 26 November 2020, and the Applicant accepts these findings as recorded in the Statement of Common Ground submitted at Deadline 1.

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>average operational traffic added: I5 (v) ALCRM Score with Transport Assessment predicted average operational traffic and barrier mitigation upgrades added: J6 (vi) FWI Score with Transport Assessment predicted average operational traffic added: 8.25E-04 (vii) FWI Score with Transport Assessment predicted average operational traffic and barrier mitigation upgrades added: 2.65E-04 (b) Marsh Lane Level Crossing (i) Risk colour rating: Double Yellow (ii) Current ALCRM Score: J6 (iii) Current FWI Score: 1.19E-04 (iv) ALCRM Score with Transport Assessment predicted average operational traffic added: J6 (v) FWI Score with Transport Assessment predicted average operational traffic added: 1.20E-04</p>	<p>The Applicant has not yet received information regarding the inputs to the Marsh Lane level crossing ALCRM assessment, but as set out above South Marsh Road (west of Hobson Way) is a bridleway and consideration of impacts on the Marsh Lane level crossing is no longer relevant.</p>
2.17	<p>The results show that the increased vehicle movements created as a result of the Proposed Development (as detailed in the Transport Assessment) would not alter the colour rating for either Crossing but would lead to an increase in the FWI score for both Crossings.</p>	<p>As noted above the Applicant has accepted the ALCRM risk assessment findings, based on the information provided by NR on 26 November 2020, as recorded in the Statement of Common Ground submitted at Deadline 1.</p>
2.18	<p>The ALCRM score for Kiln Lane level crossing remained at I5 when the additional vehicle movements were added. However, the FWI score increased from 7.63E-04 to 8.25E-04. The FWI decreased to 2.65E-04 when</p>	<p>As noted above the Applicant has accepted the ALCRM risk assessment findings, based on the information provided by NR on 26 November 2020, and agrees that no upgrades to the level crossings</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>additional barrier upgrade works were incorporated into the ALCRM assessment. The ALCRM score for Marsh Lane level crossing remained at J6 when the additional vehicle movements were added, and the FWI increased marginally from 1.19E04 to 1.20E-04. Network Rail considers that the cost of upgrading the Crossings to ABCL, MCBOD or any other intermediate upgrades are not required due to the low risk rating and FWI score produced by the ALCRM assessment and that the cost of such works would be disproportionate. It is not therefore necessary for any significant upgrades to the Crossings or changes of the crossing type to be carried out.</p>	<p>are required, as recorded in the draft Statement of Common Ground with NR that was submitted at Deadline 1.</p>
<p>2.19</p>	<p>However, the additional traffic movements would increase wear on the rubber panels of the crossing deck and to the surface of the roads approaching the Kiln Lane level crossing. This would increase the need for repair and reduce the time that the deck would remain adequate. The average lifespan of a level crossing such as Kiln Lane is approximately 20 years. The decking for the Kiln Lane level crossing was fitted in 2007 and Network Rail estimates an approximate remaining lifespan of 4 to 7 years, depending on the levels of traffic and types of vehicles utilising the crossing. However with the additional traffic movements caused by the Proposed Development, particularly the significant increase in the number of HGV movements, Kiln Lane level crossing would be expected to last between 2 and 5 years, however if the proposed</p>	<p>The Applicant notes the new information provided by NR on the remaining lifespan of the Kiln Lane level crossing, some 5 months after NR's Relevant Representation. The Applicant considers the Proposed Development traffic will have only marginal impacts on Kiln Lane level crossing as a public highway user.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	improvement works are a carried out, the lifespan of the Kiln Lane level crossing would be expected to be approximately 20 years.	
2.20	The required improvement works would involve upgrading the deck of the level crossing from a mix of 600mm wide rubber panels and anti-slip substance 'polysafe' to 1,200mm wide rubber panels throughout the whole crossing. The higher grade 1,200 mm panels would be reinforced on both sides, improving the distribution of the weight of vehicles across the panel and reducing the stress on the tracks, with a result that the decking would be more able to withstand the significant increase in HGV movements. Without such upgrades, there would be a higher risk of damage to the tracks as a result of the increased pressure from the additional movements.	The Applicant notes the new information provided by NR on the proposed deck improvement works but considers the Proposed Development traffic will have only marginal impacts on Kiln Lane level crossing as a public highway user. The Applicant does not consider that an upgrade of the level crossing surface is justified prior to its renewal date. The Applicant accepts that renewal in modern equivalent form of 1,200 mm panels at the time of renewal will be a good asset management decision but considers that this is a decision that NR will take at the time of renewal irrespective of the Applicant's proposal (i.e. in accordance with NR's usual cycles of works, maintenance and funding).
2.21	Improved signage and new road markings are also required to improve the safety of users of the Kiln Lane level crossing. The Proposed Development would initially cause an increase in traffic levels of irregular users who are not familiar with the area or the Kiln Lane level crossing. Therefore improved signage and road markings would improve visibility of the upcoming crossing and alert drivers as to hazards.	The Applicant considers the Proposed Development traffic will have only marginal impacts on Kiln Lane level crossing as a public highway user and does not agree that any additional mitigation is required. The Applicant accepts that road markings are renewed as and when required as part of the renewal of level crossing surfaces and on condition as part of the maintenance of the

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
		<p>safety arrangements at level crossings. The Applicant does not consider that the additional traffic is sufficient to justify additional renewal of road marking beyond on condition renewal. The Applicant understands that no changes are required to the configuration of the level crossing or the information conveyed by signage as a result of the Proposed Development. The Applicant considers that aging and degradation of signage which leads to its replacement is independent of road traffic levels. Any proposal to enhance signage by NR or NELC should be considered in the ordinary course of NR and NELC's duties (as rail and highway authority respectively), and the Applicant does not consider that marginal change in traffic from the Proposed Development is sufficient to justify enhancement to the signage.</p>
2.22	<p>Therefore, Network Rail has requested that the Applicant makes a contribution towards the cost of these improvement works (estimated at approximately £70,200) to ensure that the Kiln Lane level crossing remains fit for purpose for the lifetime of the Proposed Development and beyond. The costs are broken down as follows and are intended to be an approximate guide:</p>	<p>Notwithstanding the Applicant's position above that the Proposed Development does not justify any contribution by it, it is nevertheless engaging with NR to understand what proportion of these estimated Kiln Lane level crossing improvement works costs the Applicant is being asked by NR to pay. The following is noted without prejudice to the Applicant's position that no contribution is necessary.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response																				
	<table border="1"> <thead> <tr> <th data-bbox="427 363 837 416">Category</th> <th data-bbox="837 363 1240 416">Cost (£)</th> </tr> </thead> <tbody> <tr> <td data-bbox="427 416 837 469">Decking</td> <td data-bbox="837 416 1240 469">25,000</td> </tr> <tr> <td data-bbox="427 469 837 549">Surfacing roads approaching Kiln Lane level crossing</td> <td data-bbox="837 469 1240 549">17,000</td> </tr> <tr> <td data-bbox="427 549 837 601">Road traffic lines</td> <td data-bbox="837 549 1240 601">4,000</td> </tr> <tr> <td data-bbox="427 601 837 654">Road closure cost</td> <td data-bbox="837 601 1240 654">2,500</td> </tr> <tr> <td data-bbox="427 654 837 707">Staffing (x3 shifts)</td> <td data-bbox="837 654 1240 707">14,000</td> </tr> <tr> <td data-bbox="427 707 837 759">Machinery</td> <td data-bbox="837 707 1240 759">4,200</td> </tr> <tr> <td data-bbox="427 759 837 812">Signage</td> <td data-bbox="837 759 1240 812">1,500</td> </tr> <tr> <td data-bbox="427 812 837 865">Material</td> <td data-bbox="837 812 1240 865">2,000</td> </tr> <tr> <td data-bbox="427 865 837 917">TOTAL</td> <td data-bbox="837 865 1240 917">70,200</td> </tr> </tbody> </table>	Category	Cost (£)	Decking	25,000	Surfacing roads approaching Kiln Lane level crossing	17,000	Road traffic lines	4,000	Road closure cost	2,500	Staffing (x3 shifts)	14,000	Machinery	4,200	Signage	1,500	Material	2,000	TOTAL	70,200	<p>Since the Applicant would not be the sole HGV user of the crossing and is anticipated to increase the number of HGV movements by only about 10%, it is reasonable that any contribution should be capped proportionally i.e. $10\% \times £70,000 = £7,000$.</p> <p>The Applicant also notes that Network Rail anticipates (WR paragraph 2.19) that in the worst case the major maintenance/ renewal of the crossing might be brought forward by up to 2 years, or some 10% of the design life of the crossing, and that this would provide savings on annual maintenance costs. If this were say £500/ year saved, the Applicant's reasonable contribution falls still further to £6,000.</p> <p>The Applicant has also obtained lower material costs from railway maintenance providers and suppliers and therefore has doubts regarding the scale of the quoted materials and related costs, which have not been factored into the above. The Applicant is continuing discussions with NR.</p>
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2.23	<p>Network Rail have suggested an alternative route which does not include the Crossings. This alternative route is via South Marsh Road (east of Hobson Way), Hobson Way (North & Southbound), Laporte Road (North &</p>	<p>The Applicant has robustly considered the alternative route via the overbridge on Queens Road, as set out in the Applicant's response to NR's objection in October 2020 (and submitted to</p>																				

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>Southbound) via Queens Road (East & Westbound) onward to Kings Road (East & Westbound) to join the A1173 and then the A180 as shown on the plan attached at Appendix 6. This route is approximately 1.5 miles longer than the HGV Designated Route but utilises a road over a rail bridge to cross the Railway Line on Queens Bridge Road. According to Network Rail's Asset Protection team, Queens Bridge was reconstructed in 2008 and has no weight restrictions, meaning that it could withstand the levels of increased traffic movements proposed by the Transport Assessment. This route would best remove or minimise the risk of interface between members of the public and the Railway Line.</p>	<p>the ExA at Deadline 1). As the designated HGV route has already been agreed with NELC (in consultation with NR) for the Consented Development, the Applicant does not agree that the alternative route is necessary or appropriate.</p>
<p>2.24</p>	<p>Network Rail would like clarification from the Applicant as to why these alternative routes were not selected. The Applicant has not provided a sufficient rationale as to why the most direct route was chosen rather than one that does not include interfaces with the railway</p>	<p>See above response to NR WR paragraph 2.23.</p>
<p>3.1</p>	<p>Despite the proposed main access route to the Proposed Development crossing the Railway Line at the Kiln Lane Level Crossing, there are no protective provisions included within the Proposed DCO to protect the interests of Network Rail.</p>	<p>As noted above (including in response to NR WR paragraph 1.4), the Applicant considers the Proposed Development to have only marginal impacts on Kiln Lane level crossing as a public highway user and therefore does not agree that protective provisions are required.</p>
<p>3.2</p>	<p>Network Rail acknowledges that no new rights are being</p>	<p>See above response to NR WR paragraph 3.1.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>acquired over its land, and that none of its land is at threat of compulsory acquisition, and therefore it would not expect its full protective provisions to be included in the Proposed DCO. However, Network Rail is surprised that no protective provisions at all relating to the Crossings have been included in the Proposed DCO.</p>	
<p>3.3</p>	<p>Network Rail therefore instructed their solicitor's (at Network Rail's cost) to draft the bespoke NR Protective Provisions to be included within the Proposed DCO to protect its interests. These were sent to the Applicant's solicitor on 25 August 2020 along with a draft agreement relating to the use of the Crossings that would provide Network Rail with sufficient reassurance to allow it to withdraw its objection to the Proposed DCO. However, the Applicant has failed to engage with Network Rail in relation to the proposed agreement and/or the NR Protective Provisions, and has instructed its solicitors not to review these documents.</p>	<p>The draft protective provisions were provided to the Applicant in August 2020 but the information required by the Applicant (and requested since July 2020) regarding the impacts of the Proposed Development on the level crossing risk assessments was not provided until 26 November 2020, and then only in relation to Kiln Lane level crossing. When the information regarding impacts on Kiln Lane level crossing was provided to the Applicant by NR, the conclusion was significantly revised compared to NR's original objection (21 September 2020). The Applicant was not able to engage with NR's solicitors meaningfully until the requested information was provided, since the Applicant had to understand the basis for NR's requested contribution and protective provisions.</p>
<p>3.4</p>	<p>Without the NR Protective Provisions, Network Rail has no control over the safe use of the Crossings and has no land available to it which it can require the Applicant to use as</p>	<p>As noted above (including in response to NR WR paragraph 1.4), the Applicant considers the Proposed Development traffic will have only</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>an alternative to the Crossings, meaning that the detriment caused to the Crossings, and the safety of railway users by the increased traffic related to the Proposed Development, cannot be made good by Network Rail without Network Rail allocating funds to carry out upgrades to the Crossings. A cost that should equitably be met by the Applicant.</p>	<p>marginal impacts on Kiln Lane level crossing as a public highway user and does not agree that additional mitigation is required.</p> <p>As noted in response to NR WR paragraph 2.22 above, the Applicant is nonetheless engaging with NR to understand what proportion of the estimated improvement works costs the Applicant is being asked to pay.</p>
3.5	<p>The NR Protective Provisions are summarised below:</p> <p>(a) Proposed paragraphs 44 to 46 of Part 5 of Schedule 1 to the Proposed DCO require that the travel plans required under the Proposed DCO (Construction Traffic Management Plan, Delivery and Servicing Plan and Operational Travel Plan) must be approved by Network Rail before being submitted to the relevant planning authorities. This is to ensure that Network Rail is aware of, and agrees to, the routes and levels of traffic that would utilise the Crossings, and is comfortable that the appropriate mitigation measures resulting from the increase in traffic have been put in place.</p> <p>(b) Proposed paragraph 47 of Part 5 of Schedule 1 to the Proposed DCO requires that Network Rail is provided with a report on the results of traffic surveys along South Marsh Road (east of Hobson Way) and the Applicant shall not commence any required improvement works without Network Rail approval, insofar as such works would</p>	<p>The Applicant's comments on NR's proposed protective provisions are provided in Appendix 2.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>impact on railway property. This would ensure that Network Rail is aware of, and has mitigated against, any additional risks posed to the Marsh Lane level crossing and its users by the improvement works.</p> <p>(c) Proposed paragraphs 48 and 49 of Part 5 of Schedule 1 to the Proposed DCO require that the Applicant repays all Network Rail's reasonable costs incurred as a result of the provision of engineers to approve the travel plans, the provision of services required to ensure the safety of railway property and its users, and as a result of specified works or damages caused to railway property as a result of the Proposed Development. They also require that the Applicant indemnifies Network Rail against claims arising out of or in connection with specified works. This is to ensure that Network Rail and the tax payer are not unduly financially burdened as a result of the Proposed Development taking place.</p>	
4.1	<p>Network Rail will continue to engage with the Applicant but given their lack of engagement, Network Rail invites the Examining Authority to request that the Applicant makes the following amendments to the Proposed DCO:</p> <p>(a) The NR Protective Provisions are included at Part 5 of Schedule 1 to the Proposed DCO, as we refer to above (and as attached at Appendix 3);</p> <p>(b) Requirement 16 (Construction traffic management and travel planning) of Schedule 2 to the Proposed DCO is amended to refer to the consultation with, and approval by</p>	<p>As evidenced in the Applicant's response to NR's Relevant Representation (submitted at Deadline 1), the Applicant has engaged with NR throughout the preparation of the DCO Application (and the preceding planning application for the Consented Development) but was not able to consider the need for protective provisions for Kiln Lane level crossing until receipt of the Kiln Lane level crossing risk assessment information provided by NR on 26 November 2020.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>Network Rail, of the Construction Traffic Management Plan in so far as the Plan addresses construction traffic affecting the operational railway (in particular at the Crossings) (as shown on the attachment at Appendix 5)</p> <p>(c) Requirement 24 (Delivery and servicing plan) of Schedule 2 to the DCO is amended to refer to the consultation with, and approval by Network Rail, of the Delivery and Servicing Plan in so far as the Plan addresses construction traffic affecting operational railway (in particular at the Crossings) (as shown on the attachment at Appendix 5)</p> <p>(d) Requirement 25 (Operational travel plan) of Schedule 2 to the DCO is amended to refer to the consultation with, and approval by Network Rail, of the Operational Travel Plan in so far as the Plan addresses construction traffic affecting operational railway (in particular at the Crossings) (as shown on the attachment at Appendix 5);</p> <p>(e) Requirements 29(3) and (4) of Schedule 2 to the Proposed DCO to refer to copies of the traffic surveys along South Marsh Road being promptly provided to Network Rail (as shown on the attachment at Appendix 5); and</p> <p>(f) A new requirement 37 of Schedule 2 to the Proposed DCO to require that: (i) the number of heavy goods vehicles accessing, or egressing from, the authorised development does not exceed 1,200 without the Applicant having first obtained the written approval of Network Rail; and (ii) the Applicant will not use or permit the use of</p>	<p>As noted in response to NR WR paragraph 3.3 above, the level crossing risk assessment information provided on 26 November was significantly different to the information provided in NR's previous objection on 21 September 2020, and the cost estimates for level crossing works have also fluctuated significantly between July 2020 and the present time (from £50,000 up to over £4million and back to £100,000 and then £70,200). As noted in the response to NR WR paragraph 2.22 above, the Applicant is engaging with NR to understand the contribution it is being asked by NR to pay,</p> <p>The Applicant's comments on NR's requests are noted above in our responses to NR WR paragraphs 1.7 and at Appendix 2.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
	<p>South Marsh Road (between North Moss Lane and Hobson Way) and South Marsh Lane level crossing by heavy goods vehicles travelling to or egressing from the authorised development. These provisions are to ensure South Marsh Road is not used by HGVs (as it is acknowledged by the Applicant in the Transport Assessment that this road is not suitable for HGVs), to protect the Marsh Lane level crossing against damage by HGVs, and to ensure the number of HGV using the Kiln Lane level crossing are not allowed to increase to a level which would have an unacceptable impact on the safety of those using the crossing. ((b) – (f) together being the NR Requirement Amendments)</p>	
5.1	<p>Network Rail does not object in principle to the Proposed Development. However, it strongly objects to the impact of the Proposed Development on the lifespan of the Kiln Lane level crossing, the absence of a mechanism in the Proposed DCO to require the reassessment of the number of vehicles using the Kiln Lane level crossing and the need to restrict the use of South Marsh Road by HGVs. To mitigate this risk, Network Rail considers it to be of utmost importance that the NR Protective Provisions and the NR Requirement Amendments are included in the Proposed DCO.</p>	<p>The Applicant considers the Proposed Development traffic will have only marginal impacts on Kiln Lane level crossing as a public highway user. As noted in response to NR WR paragraph 1.7, the Environmental Permit will restrict the annual fuel tonnage (which is directly related to the number of operational HGVs accessing and egressing the Proposed Development) so no additional control is required in the DCO, but the Applicant has amended the DCO to include NR as a consultee on the Construction Traffic Management Plan and Delivery and Servicing Plan.</p>

Network Rail WR Paragraph	Network Rail Comments	Applicant's Response
5.2	Network Rail respectfully requests that the Secretary of State does not grant the Proposed DCO without the NR Protective Provisions and the NR Requirement Amendments being included in the Proposed DCO.	As noted in response to NR WR paragraph 1.7 above, the Applicant is not able to accept the protective provisions requested by NR, but has amended the wording of Requirements 16 and 24 in response to NR's comments.
5.3	Network Rail has attempted to engage with the Applicant to enter into a voluntary agreement to secure appropriate mitigation measures, without success and until such time as Network Rail is given the protection and assurances requested as detailed in this Written Representation, Network Rail's objection to the Proposed DCO will not be withdrawn.	As noted in response to NR WR paragraphs 1.9 and 4.1, the Applicant has engaged extensively with NR but does not agree that mitigation or protective provisions are required or appropriate.

APPENDIX 2: APPLICANT'S COMMENTS ON NETWORK RAIL'S REQUESTED PROTECTIVE PROVISIONS

South Humber Bank Energy Centre: Applicant's Comments on Network Rail's Requested Protective Provisions

The Protective Provisions referenced in this document are those appended to Network Rail's Written Representation submission for Deadline 2, as contained at Appendix 3 of that document. For ease of reference, this document adopts the same numbering as used in that submission.

Matters agreed between the Applicant and Network Rail since that version are also noted below.

Network Rail provided a further version of the protective provisions to the Applicant on 19 January 2021. Those are reflected in Appendix 2 to the draft Statement of Common Ground between the parties (see Document Ref. 7.7 as submitted at Deadline 3). The Applicant is considering those revised protective provisions but has not had the opportunity to provide commentary on the amended protective provisions in the below. The Applicant's over-arching position remains the same however, that protective provisions in favour of Network Rail are not necessary.

Provision Requested by Network Rail	Applicant's Comments
41. For the protection of Network Rail as defined in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Network Rail	No comment, a standard provision where protective provisions are required.
42. In this part of this Schedule— "Network Rail" means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any associated company of Network Rail which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 (meaning of "subsidiary" etc.) of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail	No comment, standard provisions where protective provisions are required.

Provision Requested by Network Rail	Applicant's Comments
<p>Infrastructure Limited;</p> <p>“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;</p>	
<p>43—(1) Where under this Part Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.</p>	<p>No comment, a common provision where protective provisions are required.</p>
<p>(2) Subject to subparagraph (1) where Network Rail is asked to give its consent, agreement or approval pursuant to this Part, such consent, agreement or approval must not be unreasonably withheld but may be given subject to reasonable conditions.</p>	<p>No comment, a common provision where protective provisions are required.</p>
<p>44. —(1) The undertaker shall not submit the construction traffic management plan to the relevant planning authorities in accordance with requirement 16 of Schedule 2 (Construction traffic management and travel planning) without having first obtained the written approval of Network Rail in accordance with subparagraph (2).</p>	<p>In these provisions Network Rail is seeking an approval right over the construction traffic management plan ("CTMP"), and sets out the process for that and terms on which approval is given.</p> <p>The Applicant's position remains that Network Rail has not justified the need to exercise control over the draft CTMP, and that this is a matter which should properly be left to the local planning authority to determine. The Applicant has provided for Network Rail to be consulted on the draft CTMP in the updated Draft DCO submitted at Deadline 3 (at Requirement 16, Schedule 2, Document Ref. 2.1 Revision 3),</p>

Provision Requested by Network Rail	Applicant's Comments
	<p>as this matches the approach taken by NELC on the relevant conditions to the Planning Permission (with for instance Network Rail being consulted in January 2020 on the draft Delivery and Servicing Plan for the Consented Development, and confirming no objection).</p> <p>Network Rail has not demonstrated that there is an impact or level of risk to the railway which requires it to have a right of veto over the CTMP. In itself that means that paragraph 44 is not required, but a veto is also a position which would be in stark contrast to its powers in relation to not only the Consented Development but also various other major traffic-generating developments in the area.</p> <p>In addition the Applicant notes that such an approval would mean a duplication of controls in the Order, and the Applicant potentially being 'stuck' between Network Rail and NELC. It is already known that those parties have different opinions on the appropriate HGV route for the authorised development traffic, with NELC having approved (on various occasions) the route via Kiln Lane and Network Rail now objecting to it (notwithstanding having previously confirmed no objection). It is clear that the Applicant is could well be put in an impossible situation by such a duplication of control, with the authorised development potentially frustrated.</p> <p>Such a position could also give Network Rail a 'second bite' at the authorised development, with it seeking to use its approval of the CTMP to require a contribution to level crossing works. The potential for this is expressly</p>

Provision Requested by Network Rail	Applicant's Comments
	acknowledged in paragraph 44(5) below, which makes clear that Network Rail can seek the entire level of funding for the works it says are required if contributions from other parties have not been received.
<p>(2) The undertaker shall provide Network Rail with a draft of the construction traffic management plan for approval and Network Rail shall within a period of 28 days beginning with the date on which the draft construction traffic management plan is received by Network Rail serve written notice on the undertaker confirming that:</p> <p>(a) the draft construction traffic management plan is approved; or</p> <p>(b) the draft construction traffic management plan is approved subject to reasonable amendments as required by Network Rail; or</p> <p>(c) the draft construction traffic management plan is not approved and the reason for the non-approval; or</p> <p>(d) that further information is required in order for Network Rail to make its determination (in which case this paragraph 44(2) shall apply to such further information from the date of its receipt by Network Rail).</p>	See comments above against 44(1).
<p>(3) In the event that Network Rail fails to serve written notice in</p>	See comments above against 44(1).

Provision Requested by Network Rail	Applicant's Comments
<p>accordance with paragraph 44(2) within 28 days of receipt Network Rail shall be deemed to have served a notice pursuant to paragraph 44(2)(a).</p>	
<p>(4) The undertaker must include any amendments which are required by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to paragraph 44(2)(b) in the draft construction traffic management plan it submits to the relevant planning authorities and finalises in accordance with requirement 16 of Schedule 2 (Construction traffic management and travel planning) and the undertaker shall not submit any such written details to the relevant planning authorities or finalise a construction traffic management plan which has not been approved by Network Rail in accordance with paragraphs 44(2) or (3).</p>	<p>See comments above against 44(1).</p>
<p>(5) In deciding whether to approve the draft construction traffic management plan or request any amendments Network Rail shall take into account any funding received from any other third party in respect of upgrade works to the Kiln Lane level crossing and/or the South Marsh Lane level crossing (even if such upgrade works have not yet been completed by Network Rail). Any approval must not be conditional on the undertaker contributing funding towards a full barrier at Kiln Lane level crossing and/or South Marsh Lane level crossing. However, approval may be denied if Network Rail confirms that upgrade works will be required to Kiln Lane level crossing and/or South Marsh Lane level crossing due to the additional traffic proposed</p>	<p>See comments above against 44(1) and in particular those in respect of the powers in this paragraph for Network Rail to continue to have opportunities to seek or require funding from the undertaker.</p> <p>Whilst the paragraph excludes a contribution to a “full barrier”, this is not defined and allows Network Rail to seek funding for other upgrades, and goes beyond what its Written Representation says is required (re-surfacing). It also allows Network Rail to pass the entire cost of any upgrades it says are required on to the undertaker, and is likely to positively incentivise Network Rail to simply rely on this provision rather</p>

Provision Requested by Network Rail	Applicant's Comments
<p>within the construction traffic management plan and Network Rail do not have sufficient funding to complete the required upgrades.</p>	<p>than seeking funding from others.</p> <p>The Applicant also notes that the concept of “additional traffic” is not defined – at best that means there is further uncertainty in the provisions, and potentially it is to the benefit of Network Rail who could use the provision to assert that there would be “additional” traffic and that that required certain works at the level crossing.</p> <p>The Applicant’s position on South Marsh Road is set out in the main response to Network Rail’s Written Representation, and clearly there is no justification for it to be referred to in the protective provisions.</p>
<p>(6) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph 44 shall:</p> <p>(a) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc’s special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and</p> <p>(b) contain a clear statement on its front page that the matter is urgent and Network Rail must respond within 28 days of receipt.</p>	<p>No comment.</p>
<p>(7) In the event that any subsequent changes are made to the construction traffic management plan following its approval by</p>	<p>See comments above against 44(1).</p>

Provision Requested by Network Rail	Applicant's Comments
<p>Network Rail, in so far as such changes impact on railway property, the undertaker shall not submit any such written details to the relevant planning authorities or finalise any updates to the construction traffic management plan which have not been approved by Network Rail in accordance with paragraphs 44(2) or (3).</p>	
<p>45. —(1) The undertaker shall not submit the delivery and servicing plan to the relevant planning authorities in accordance with requirement 24 of Schedule 2 (Delivery and servicing plan) without having first obtained the written approval of Network Rail in accordance with subparagraph (2).</p>	<p>See comments above against 44(1).</p> <p>In addition the Applicant notes that Network Rail specifically confirmed it had no objection to the Delivery and Servicing Plan approved pursuant to the Planning Permission.</p> <p>This provision would give Network Rail a veto over any necessary revisions to the Delivery and Servicing Plan and it is conceivable that this would prevent operation of a nationally significant electricity generating station and waste management facility. That is a significant position to be put in, and is entirely unjustified by the impacts or risks which Network Rail asserts will arise (and which in any case the Applicant does not agree with).</p>
<p>(2) The undertaker shall provide Network Rail with a draft of the delivery and servicing plan for approval and Network Rail shall within a period of 28 days beginning with the date on which the draft delivery and servicing plan is received by Network Rail serve written notice on the undertaker confirming that:</p> <p>(a) the draft delivery and servicing plan is approved; or</p> <p>(b) the draft delivery and servicing plan is approved subject to</p>	<p>See comments above against 44(1).</p>

Provision Requested by Network Rail	Applicant's Comments
<p>reasonable amendments as required by Network Rail; or</p> <p>(c) the draft delivery and servicing plan is not approved and the reason for the non-approval; or</p> <p>d) that further information is required in order for Network Rail to make its determination (in which case this paragraph 45(2) shall apply to such further information from the date of its receipt by Network Rail).</p>	
<p>(3) In the event that Network Rail fails to serve written notice in accordance with paragraph 45(2) within 28 days of receipt Network Rail shall be deemed to have served a notice pursuant to paragraph 45(2)(a).</p>	<p>See comments above against 44(1).</p>
<p>(4) The undertaker must include any amendments which are required by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to paragraph 45(2)(b) in the draft delivery and servicing plan it submits to the relevant planning authorities and finalises in accordance with requirement 24 of Schedule 2 (Delivery and servicing plan) and the undertaker shall not submit any such written details to the relevant planning authorities or finalise a delivery and servicing plan which has not been approved by Network Rail in accordance with paragraphs 45(2) or (3).</p>	<p>See comments above against 44(1).</p>
<p>(5) In deciding whether to approve the draft delivery and servicing plan or request any amendments Network Rail shall take into account any funding received from any other third party in respect of upgrade works to the Kiln Lane level crossing and/or the South Marsh Lane level crossing (even if such upgrade works have not yet been completed by Network Rail). Any approval must not be conditional on the undertaker</p>	<p>See comments above against 44(1) and 44(5).</p>

Provision Requested by Network Rail	Applicant's Comments
<p>contributing funding towards a full barrier at Kiln Lane level crossing and/or South Marsh Lane level crossing. However, approval may be denied if Network Rail confirms that upgrade works will be required to Kiln Lane level crossing and/or South Marsh Lane level crossing due to the additional traffic proposed within the delivery and servicing plan and Network Rail do not have sufficient funding to complete the required upgrades.</p>	
<p>(6) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph 45 shall:</p> <p>(e) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and</p> <p>(f) contain a clear statement on its front page that the matter is urgent and Network Rail must respond within 28 days of receipt.</p>	<p>See comments above against 44(1).</p>
<p>(7) In the event that any subsequent changes are made to the delivery and servicing plan following its approval by Network Rail, in so far as such changes impact on railway property, the undertaker shall not submit any such written details to the relevant planning authorities or finalise any updates to the delivery and servicing plan which have not been approved by Network Rail in accordance with paragraphs 44(2) or (3).</p>	<p>See comments above against 44(1).</p>
<p>46 <i>[Paragraph 46 is in similar terms to paragraphs 44 and 45 but with reference to the operational travel plan and</i></p>	<p>NR has agreed that paragraph 46 is not applicable and can be deleted.</p>

Provision Requested by Network Rail	Applicant's Comments
<i>requirement 25]</i>	Please refer to the revised SoCG with Network Rail submitted for Deadline 3 (Document Ref. 7.7, January 2021) which records this (see Appendix B in which the relevant paragraph has been deleted).
47 [<i>Paragraph 47 is in similar terms to paragraphs 44 and 45 but with reference to the road condition survey and requirement 29]</i>	NR has agreed that paragraph 47 is not applicable and can be deleted. Please refer to the revised SoCG with Network Rail submitted for Deadline 3 (Document Ref. 7.7, January 2021) which records this (see Appendix B in which the relevant paragraph has been deleted).
48. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—	Paragraph 48 requires all of Network Rail's costs to be repaid by the undertaker, on a very broad basis. The comments against paragraphs 44 above and 49 below are relevant here.
(a) in respect of the approval by the engineer of the construction traffic management plan, the delivery and servicing plan, the operational travel plan and the scheme of improvement works submitted by the undertaker;	See comments above against 48(1).
(b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;	See comments above against 48(1).
(c) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer,	See comments above against 48(1).

Provision Requested by Network Rail	Applicant's Comments
<p>require to be imposed by reason or in consequence of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others or from the substitution or diversion of services which may be reasonable necessary for the same reason; and</p>	
<p>(d) in respect of any additional temporary lighting of railway property, being lighting made reasonably necessary by reason or in consequence of damage to railway property as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others.</p>	<p>See comments above against 48(1).</p>
<p>49. —(1)The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—</p> <p>(a) by reason of the construction or maintenance of a specified works or the failure thereof or</p> <p>(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified works or</p> <p>(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development or</p> <p>(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the</p>	<p>The Applicant does not consider that paragraph 49 is necessary or appropriate and considers it should be deleted in its entirety.</p> <p>Specifically in relation to paragraph 49(1)(a) and (b), the concept of "specified works" (or "specified work") is common in protective provisions for the benefit of Network Rail. In other DCOs a definition of this term is provided, for example it has been defined as meaning "so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property" (taken from the York Potash Harbour Facilities Order 2016, Schedule 7, paragraph 2). No part of the South Humber Bank Energy Centre authorised development is within the zone defined by this definition, either in terms of the 15 metre measurement or in terms of part of the authorised development adversely affecting it. Network Rail's written representation does not make the case that there is any such impact from the authorised</p>

Provision Requested by Network Rail	Applicant's Comments
<p>railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;</p> <p>and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified works or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.</p>	<p>development (i.e. its built form). It appears that Network Rail may have omitted this definition from the protective provisions as it did not apply, whilst simultaneously seeking to still apply the associated costs and indemnity provisions through paragraphs (a) and (b). It is clearly unreasonable to seek to include a costs and indemnity provision in these circumstances.</p> <p>Paragraphs (c) and (d) appear to cover similar matters and it is not clear to the Applicant why both are sought, and the Applicant's position is that neither is justified. Both paragraphs seek full costs coverage for Network Rail (and associated indemnity) in relation to any person who is accessing to or egressing from the authorised development. This provision would allow Network Rail to seek to claim the full costs of any maintenance, damage or the other listed matters from the undertaker, and without reference to the fact that:</p> <p>the undertaker's traffic will be using the public highway in the normal way and as it is permitted to do;</p> <p>that use will be alongside and with all other traffic which is using the public highway;</p> <p>there is no additional traffic over and above that for the Consented Development, to which Network Rail confirmed it had no objection (other than in relation to large loads);</p> <p>Network Rail has not sought contributions or cost / indemnity</p>

Provision Requested by Network Rail	Applicant's Comments
	<p>coverage from any other developer in the area in relation to the Kiln Lane level crossing, through the local plan or planning application processes.</p> <p>It is not reasonable or necessary for a costs and indemnity provision to be included in these circumstances.</p>
<p>(2) Network Rail must give the undertaker reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.</p>	<p>The remaining provisions of paragraph 49 are ancillary and additional to those in paragraph 49(1) – see above comments.</p>
<p>(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.</p>	<p>See the comments against paragraph 49(1) above.</p>
<p>(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.</p>	<p>See the comments against paragraph 49(1) above.</p>
<p>(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).</p>	<p>See the comments against paragraph 49(1) above.</p>
<p>(6) In this paragraph— "the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by</p>	<p>See the comments against paragraph 49(1) above.</p>

Provision Requested by Network Rail	Applicant's Comments
<p>each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified works or any such act or omission as mentioned in subparagraph (1); and</p> <p>"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.</p>	
<p>50. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.</p>	<p>No comment.</p>

APPENDIX 3: WR PROVIDED BY ANGLIAN WATER SERVICES LIMITED

Anglian Water WR Section	Anglian Water Comments	Applicant's Response
Section 1 Introduction	1.1 Anglian Water Services Limited ("Anglian Water") is appointed as the water and sewerage undertaker for the Anglian region, by virtue of an appointment made under the Water Industry Act ("WIA") 1991. Anglian Water is a wholly owned subsidiary of AWG plc. The principal duties of a water and sewerage undertaker are set out in the WIA.	Noted - no response required.
Section 1 Introduction	1.2 Anglian Water is considered a statutory consultee for the proposed offshore windfarm under section 42 of the Planning Act (2008) and Regulation 3 of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009.	Noted. The project type is incorrect but does not affect Anglian Water's status nor the rest of its representation.
Section 1 Introduction	1.3 Anglian Water is the appointed water and sewerage undertaker for the development.	Noted - no response required.
Section 1 Introduction	1.4 Anglian Water has engaged as an Interested Party in the Examination in order to ensure adequate provisions are included within any final Development Consent Order to protect Anglian Water's existing and future assets and Anglian Water's ability to perform its statutory duties.	Noted. The Applicant and AW have engaged on matters relevant to the Proposed Development as is outlined within the SoCG between the Applicant and AW (Document Ref. 7.8) and there are no matters outstanding between the parties (REP1-005).
Section 1 Introduction	1.5 Anglian Water is in principle supportive of the development.	Noted. The Applicant welcomes AW's support in principle.
Section 2 Anglian Water's Interests and Assets affected Existing Assets Affected	2.1 There are a number of water mains in Anglian Water's ownership located within the boundary for the proposed power station. These assets are critical to enable us to carry	Noted.

Anglian Water WR Section	Anglian Water Comments	Applicant's Response
	out Anglian Water's duty as a water undertaker.	
Section 2 Anglian Water's Interests and Assets affected Existing Assets Affected	2.2 In relation to the water supply assets within the boundary of the Development Control Order, having laid the asset under statutory notice, Anglian Water would require the standard protected easement widths for these assets and for any requests for alteration or removal to be conducted in accordance with the Water Industry Act 1991 and the Protective Provisions sought by Anglian Water (outlined in section 3). Set out below is the standard easement width requirements;	As noted in the SoCG between the Applicant and AW (Document Ref. 7.8) (REP1-005) submitted to the ExA at Deadline 2, Protective Provisions for Anglian Water assets have been agreed and were included in the revised draft DCO submitted at Deadline 2 (Document Ref. 8.6)
Section 2 Anglian Water's Interests and Assets affected Existing Assets Affected	2.3 Standard protected strips are the strip of land falling the following distances to either side of the medial line of any relevant pipe; • 2.25 metres where the diameter of the pipe is less than 150 millimetres, • 3 metres where the diameter of the Pipe is between 150 and 450 millimetres, • 4.5 metres where the diameter of the Pipe is between 450 and 750 millimetres, • 6 metres where the diameter of the Pipe exceeds 750 millimetres	As noted in the SoCG between the Applicant and AW (Document Ref. 7.8) (REP1-005) submitted to the ExA at Deadline 2, Protective Provisions for Anglian Water assets have been agreed and were included in the revised draft DCO submitted at Deadline 2 (Document Ref. 8.6).

Anglian Water WR Section	Anglian Water Comments	Applicant's Response
Section 2 Anglian Water's Interests and Assets affected Existing Assets Affected	2.4 There is not expected to be a requirement to divert the existing water mains to enable the development of the site as set out in the agreed Statement of Common Ground (REP1-005).	The Applicant agrees with AW and confirms that there is not expected to be a requirement to divert any existing AW assets. This is agreed in the SoCG between the Applicant and AW (Document Ref. 7.8) (REP1-005) submitted to the ExA at Deadline 2.
Section 2 Anglian Water's Interests and Assets affected Connections to the water supply/ foul and surface water sewerage networks	<p>2.5 We had previously raised concerns in respect of wording of articles 15, 20 and 27 of the Draft DCO.</p> <p>2.6 It is agreed that no changes are required to these articles, but that reference will be made to consultation with Anglian Water in respect of Requirements 14 and 15 as set out in the agreed Statement of Common Ground.</p> <p>2.7 Therefore, we are supportive of the wording of the Draft DCO subject to these changes being made</p>	The draft DCO submitted at Deadline 2 (Document Ref. 8.6) was amended to include AW as a consultee in relation to Requirements 13 (Surface water drainage) (referred to by AW in its WR as Requirement 14) and 14 (Foul water drainage) (referred to by AW in its WR as Requirement 15).
Section 2 Anglian Water's Interests and Assets affected Connections to the water supply/ foul and surface water sewerage networks	2.8 Should a water supply or wastewater service be required, and once agreement has been reached, there are a number of applications required to deliver the necessary infrastructure. These are outlined below:	Noted.
Section 2 Anglian Water's	2.9 Once agreement has been reached, there	Noted.

Anglian Water WR Section	Anglian Water Comments	Applicant's Response
<p>Interests and Assets affected Connections to the water supply/ foul and surface water sewerage networks</p>	<p>are a number of applications required to deliver the necessary infrastructure. These are outlined below:</p> <p><u>Provision of infrastructure:</u></p> <ul style="list-style-type: none"> • Water Section 51a Water Industry Act 1991 • Onsite Foul water Section 104 Water Industry Act 1991 • Offsite Foul water Section 104 Water Industry Act 1991 	
<p>Section 3 Draft Development Consent Order</p>	<p>3.1 Anglian Water has had constructive dialogue with the applicant regarding the wording of protective provisions specifically for the benefit of Anglian Water to be included in the Draft Development Consent Order (DCO). The DCO as currently drafted includes protective provisions specifically for the benefit of Anglian Water (Schedule 8, Part 1) as previously requested. We have also agreed an amendment to the wording of paragraph 9 of the protective provisions to address our comments as set out in our relevant representations.</p> <p>3.2 Therefore, we are supportive of the wording of the protective provisions included in the Draft DCO as revised.</p>	<p>Noted. The Applicant welcomes AW support of the wording of the Protective Provisions included in the draft DCO.</p>

Anglian Water WR Section	Anglian Water Comments	Applicant's Response
Section 4 Statement of Common Ground with Anglian Water	4.1 Anglian Water has agreed with EP Waste Management Limited a Statement of Common Ground in relation to the above project which has been submitted to the Examining Authority on behalf of both parties.	Noted. The Applicant concurs and confirm that they have engaged on matters relevant to the Proposed Development as is outlined within the SoCG between the Applicant and AW (Document Ref. 7.8) (REP1-005), which was submitted to the ExA at Deadline 2.