

Application by EP Waste Management Ltd for South Humber Bank Energy Centre Project
The Examining Authority's further written questions and requests for information (ExQ2)
Issued on 5 March 2021

The following table sets out the Examining Authority's (ExA's) further written questions and requests for information – ExQ2.

Questions are set out using an issues-based framework derived from the Initial Assessment of Principal Issues provided as Annexe C to the Rule 6 letter of 23 September 2020. Questions have been added to the framework of issues set out there as they have arisen from the Applicant's responses to the first round of written questions and requests for information, responses to the deadlines set to date and to address the assessment of the application against relevant policies.

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

Each question has a unique reference, which starts with the letter B (indicating that it is from ExQ2) and then has an issue number and a question number. For example, the first question on general and cross-topic issues is identified as QB.1.1. When you are answering a question, please start your answer by quoting the unique reference.

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

Responses are due by Deadline 5: Friday 19 March 2021.

Abbreviations used:

AA	Appropriate Assessment	HRAR	Habitat Regulations Assessment Report
Consented Development	North East Lincolnshire Council Planning Permission DM/1070/18/FUL	ICE	In-Combination Effect
DCO	Development Consent Order	IPs	Interested Parties
dDCO	draft Development Consent Order	LSE	Likely Significant Effect
EA	Environment Agency	NELC	North East Lincolnshire Council
ES	Environmental Statement	PPA	Planning Performance Agreement
EU	European Union	SoCG	Statement of Common Ground
ExA	Examining Authority	UK	United Kingdom
ExQ1	ExA's First Written Questions		

The Examination Library

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

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

It will be updated as the examination progresses.

Citation of Questions

Questions in this table should be cited as follows:

Question reference: issue reference: question number, eg ExQ2 B.1.1 – refers to question 1 in this table.



Index

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

ExQ2: Friday 5 March 2021**Responses due by Deadline 5: Friday 19 March 2021**

ExQ2	Question to:	Question:
1. General and Cross-topic Questions		
QB.1.1	The Applicant/ North East Lincolnshire Council (NELC)	<ul style="list-style-type: none"> • Please provide an update with regard to whether the development consented by NELC under DM/1070/18/FUL (Consented Development) has been implemented on site, including what has been undertaken to constitute that commencement. Please also confirm: <ul style="list-style-type: none"> i) whether any current applications have been submitted to NELC in regard to the discharge of pre-commencement conditions and if so which conditions are currently being sought to be discharged and the progress made in regard to that discharge of condition submission; ii) the pre-commencement conditions discharged by NELC, if different from those advised by the Applicant/ NELC in their written responses to the ExA's first written questions (ExQ1); and iii) whether a contractor has been formally appointed to undertake the Consented Development, including confirmation that contracts with the Contractor to undertake the Consented Development have been signed, dated and completed.
QB.1.2	The Applicant/ NELC	<ul style="list-style-type: none"> • The Applicant's Written Summary of Oral Submissions – Development Consent Order (DCO) Issue Specific Hearing document [REP4-012], under the heading "<i>Agenda Item 5 – Consents licences and other agreements</i>", makes reference to the current status of the proposed Deed of Variation that seeks to vary the current Section 106 Agreement, completed under the Town and Country Planning Act 1990 (as amended) and secured against the Consented Development, is noted. Whilst the ExA appreciates that the Deed of Variation is currently with the Applicant's Mortgagee for confirmation that they are content with the Deed of Variation, please provide an update of progress in regard to this Deed of Variation and provide a prospective timetable for the submission of the completed Deed of Variation into the Examination.
QB.1.3	The Applicant/ NELC	<ul style="list-style-type: none"> • Reference to the completion of a Planning Performance Agreement (PPA), between the Applicant and NELC, is made within the Applicant's Written Summary of Oral Submissions – DCO Issue Specific Hearing document [REP4-012]. Please explain: <ul style="list-style-type: none"> i) When the PPA will be completed; ii) What exactly it is proposed to secure within the agreement; and iii) Whether it is intended to submit a copy of this PPA into evidence as part of this Examination.

ExQ2: Friday 5 March 2021**Responses due by Deadline 5: Friday 19 March 2021**

ExQ2	Question to:	Question:
QB.1.4	The Applicant/ NELC	<ul style="list-style-type: none">• The Applicant's Written Summary of Oral Submissions – DCO Issue Specific Hearing document [REP4-012] makes reference to the Applicant's responses to the ExQ1. Within the ExQ1 and revisions to the draft Development Consent Order (dDCO), submitted at Deadline 2, it is confirmed that piling works will not be carried out as part of the permitted preliminary works and that it is the Applicant's intention to submit an application to NELC that seeks to vary Conditions 3 and 11 of the Consented Development. Please confirm whether such an application has been made to NELC. If an application has been made, please confirm whether it has been registered by NELC as a valid planning application, provide NELC's Planning Reference Number and provide an update in regard to progress made on this planning application. Should the applicant not have submitted such a planning application to date, please explain why and give an indication as to timelines for the submission of such an application.
QB.1.5	The Applicant/ NELC	<ul style="list-style-type: none">• Would the Applicant explain how Article 5 and Schedule 3 would work in the event that a Planning Application is approved by NELC that varies existing conditions imposed on the Consented Development, hereafter referred to as a Variation Consent, and that, or subsequent, Variation Consents become the substantive Planning Permission.• Are NELC satisfied that Article 5 and Schedule 3 adequately apply to and secure any Variation Consent, so as to ensure that the effects of Article 5 and Schedule 3 equally apply to any such Variation Consent(s). If NELC are satisfied, please explain why.
QB.1.6	The Applicant/ National Grid	<ul style="list-style-type: none">• Within the Applicant's Written Summary of Oral Submissions – DCO Issue Specific Hearing document [REP4-012] the response to Action Point 7 is noted. However, please provide an update in regard to progress made in response to:<ul style="list-style-type: none">i) whether National Grid, being National Grid Electricity Transmission PLC and National Grid Gas PLC, are maintaining their concerns over the wording "<i>Extinguished or Suspended Rights of, Removal or...</i>" bearing in mind these words were removed in the dDCO submitted at Deadline 2; andii) the completion of a Statement of Common Ground (SoCG) between the Applicant and National Grid and any agreement in regard to the wording of any Protective Provisions being sought.
QB.1.7	The Applicant	<ul style="list-style-type: none">• The Applicant's document entitled "<i>...Health and Safety Executive Zone Information...</i>" [REP4-014] appears to erroneously include a plan related to the Tomatin Distillery Company. Please confirm this plan has no relevance to this DCO submission.

ExQ2: Friday 5 March 2021**Responses due by Deadline 5: Friday 19 March 2021**

ExQ2	Question to:	Question:
QB.1.8	The Applicant/ IPs	<ul style="list-style-type: none"> Are there any implications for the DCO application arising from the policy paper published by the Department for Environment, Food and Rural Affairs (DEFRA) on 1 January 2021 and the more recent guidance from DEFRA on 24 February 2021 relating to changes to the Conservation of Habitats and Species Regulations 2017 (as amended) (known as the Habitats Regulations) following the departure of the United Kingdom (UK) from the European Union (EU)? If so, what are they?
QB.1.9	Applicant/ IPs	<ul style="list-style-type: none"> Are there any changes to Government policy or guidance that have resulted from the UK's departure from the EU on the 31 December 2020 that have any implications for this DCO application? If yes what are these changes and what are the implications.
2. Air Quality		
QB.2.1	The Applicant	<ul style="list-style-type: none"> The Applicant's Document entitled "<i>Applicant's comments on Relevant Representations</i>" [REP1-008] paragraph 8.1.6 makes reference to an Environment Agency (EA) Internal Briefing Note. Please enter a copy of this briefing note into the examination.
QB.2.2	The Applicant/ EA	<ul style="list-style-type: none"> The EA briefing note, mentioned at QB.2.1 above, is, in part, quoted in the "<i>Applicant's comments on Relevant Representations</i>" [REP1-008] paragraph 8.1.6 and states "...the concentrations of PM in the exhaust gases of modern EfW plants are so low that it is very difficult to get an accurate result from these tests, and will remain so until new monitoring methods and technology can be developed, validated and standardised for use." Please advise the ExA in regard to whether any new monitoring methods and technologies have been developed, validated and standardised for use in regard to monitoring Energy from Waste plants, especially in regard to the monitoring of Particulate Matter of PM₁₀ µg/m³ and PM_{2.5} µg/m³ emissions, as referred to in the EA briefing note.
3. Cultural Heritage		
QB.3.1	N/A	<ul style="list-style-type: none"> No specific questions at present, which aren't already covered by other questions within this document.
4. Design and Layout		
QB.4.1	N/A	<ul style="list-style-type: none"> No specific questions at present, which aren't already covered by other questions within this document.

ExQ2: Friday 5 March 2021

Responses due by Deadline 5: Friday 19 March 2021

ExQ2 5.	Question to:	Question:
QB.5.1	The Applicant	<ul style="list-style-type: none"> The altered wording within the dDCO [REP4-004], submitted at Deadline 4, being the replacement of the wording "<i>carry out/ carrying out/ carried out</i>" with the wording "<i>construct/ construction/ constructed</i>" is noted, as is the explanation of the change set out in the Schedule of Changes to the dDCO [REP4-011] submitted at Deadline 4. However, standard practice for DCOs is to refer to development to be "<i>carry out/ carrying out/ carried out</i>" rather than "<i>construct/ construction/ constructed</i>" in the following articles: definition of the Order limits (in this case in article 2); the article relating to the grant of development consent (in this case article 4); articles relating to street works (in this case articles 11 and 13); and articles relating to discharge of water (in this case article 15). These are articles based on the model provisions, which have been adopted in most DCOs. Bearing this in mind, please point the ExA to any recent drafting precedent in other DCOs that adopts the revised approach you propose. Should you not be able to direct the ExA to any other recent precedents, please revert to the wording "<i>carry out/ carrying out/ carried out</i>" or provide a more detailed explanation as to why you consider it is appropriate to deviate from drafting precedent in this case. Note: Article 5 and the Protective Provisions are more individually tailored for this dDCO, however, if the drafting reverts back to "<i>carry out/ carrying out/ carried out</i>" in the other articles these should also be amended for consistency within the DCO.
QB.5.2	The Applicant	<ul style="list-style-type: none"> The ExA would ask the Applicant to explain whether within the dDCO [REP4-004] they consider the terms "<i>construct/ construction/ constructed</i>" in regards to the authorised development could be interpreted as having a more restrictive meaning than "<i>carry out/ carrying out/ carried out</i>"; and whether this change in terminology would potentially have implications for all references in the DCO and whether they could potentially alter the intended effect of the provisions? For example, being tied to actual physical construction work, whereas "<i>carry out/ carrying out/ carried out</i>" could encompass anything which is sought to implement the DCO.
QB.5.3	IPs, with the benefit of the protective provisions.	<ul style="list-style-type: none"> Bearing in mind the Applicant's proposed altered wording within the dDCO [REP4-004], referred to in QB.5.1 and QB.5.2 above, the ExA would seek the views of the IPs with the benefit of protective provisions on amending the drafting of the DCO in the way described.

ExQ2: Friday 5 March 2021**Responses due by Deadline 5: Friday 19 March 2021**

ExQ2	Question to:	Question:
QB.5.4	The Applicant	<ul style="list-style-type: none">The explanation of the change set out in the Schedule of Changes to the dDCO [REP4-011], submitted at Deadline 4, in regard to the replacement of the word 'shall' is noted. However, within the dDCO [REP4-004] there are a couple of occasions when the word "shall" has been removed and not been replaced at all and other occasions, especially in regard to the Network Rail Protective Provisions, where the word "shall" still remains. Please explain why these instances have occurred and amend as appropriate within any updated version of the dDCO to be submitted at Deadline 5.
QB.5.5	Network Rail	<ul style="list-style-type: none">Best practice for Statutory Instrument drafting, as issued by the Office of Parliamentary Counsel, entitled Drafting Guidance is to avoid the use of "shall", but there may of course be exceptions to this. It is noted that the Protective Provisions detailed in the Applicant's SoCG agreed with Network Rail [REP4-008] and set out in the dDCO [REP4-004] submitted at Deadline 4 uses the term "shall" several times. Bearing in mind the Drafting Guidance referred to above, it is considered that these could easily be replaced with "must" or "will". Network Rail's comments in regard to whether the word "shall" within the Network Rail's proposed Protective Provisions should be replaced with the words "must" or "will" are sought.
QB.5.6	The Applicant/ NELC	<ul style="list-style-type: none">Schedule 2 Requirement 8(4) reads: "<i>The details approved under this requirement must be implemented as part of the construction of the authorised development...</i>" The ExA would seek the comments/ opinions of the Applicant/ NELC with regard to the use of the wording "<i>...as part of...</i>" within requirement 8(4) and whether alternative terminology should be used, such as 'prior to', for example?
QB.5.7	Network Rail	<ul style="list-style-type: none">The content of the Applicant's SoCG with Network Rail [REP4-008] is noted. However, the ExA also notes that despite Network Rail being specifically listed as a consultee within Requirement 16 (Construction Traffic Management and Travel Planning) and Requirement 24 (Delivery and Service Plan), Article 5 and Schedule 3 of the dDCO would have the effect of transferring any conditions already discharged against the Consented Development over and into the DCO, should the DCO be granted. This would include Planning Condition 10 (Construction Management Plan) and Condition 18 (Delivery and Servicing) of the Consented Development, which have already been discharge by NELC under their references DM/0713/19/CND and DM/1117/19/CND respectively.

ExQ2: Friday 5 March 2021**Responses due by Deadline 5: Friday 19 March 2021**

ExQ2	Question to:	Question:
		<p>The likely effect of this means that no further consultation with Network Rail would be required, unless the Applicant seeks to submit further details pursuant to those conditions or seeks to amend existing details already approved by NELC under those discharge of Planning Conditions.</p> <p>Bearing the above in mind, the ExA would seek confirmation that Network Rail are cognisant, and agreeable, to the effects of Article 5 and Schedule 3, especially in regard to Requirements 16 and 24?</p> <p>When responding, please bear in mind the details set out within the agreed SoCG and the fact that Network Rail have previously indicated to NELC that they had no objections to the discharge of Planning Condition 10 (NELC Planning Reference DM/0713/19/CND).</p>
QB.5.8	The Applicant	<ul style="list-style-type: none"> • Within the Applicant's Written Summary of Oral Submissions – DCO Issue Specific Hearing document [REP4-012] the response to Action Point 28 is noted. However, the SoCG completed with Royal Mail [REP2-005] clearly sets out a provision at paragraph 4.2.4 that states: "Provided that the Draft DCO is amended to reference Royal Mail after 'local highway authority' in Requirement 16(3)(a)..." The dDCO has not been amended in accordance with this paragraph in the SoCG. Please explain why or amend accordingly.
QB.5.9	The Applicant	<ul style="list-style-type: none"> • The Applicant's Written Summary of Oral Submissions – DCO Issue Specific Hearing document [REP4-012] under the heading "Agenda Item 4 – Article 25 of the dDCO – Certification of Plans" in the final full paragraph appears to erroneously refer to Requirement 26. Please confirm these references should relate to Requirement 27 or explain how the reference to Requirement 26 is relevant?
6.	Ecology	
QB.6.1	The Applicant	<ul style="list-style-type: none"> • In the Applicant's response to ExQ1 it is noted that the response to Question Q6.0.8, which relates to Outline Drainage Strategy, is a duplication of the response given to Question Q6.0.7, which relates to Air Quality. As such ExQ1 Question Q6.0.8 has not been answered. The ExA would therefore ask the Applicant to provide their response to ExQ1 Question Q6.0.8.
7.	Environmental Impact Assessment and Environmental Statement	

ExQ2: Friday 5 March 2021

Responses due by Deadline 5: Friday 19 March 2021

ExQ2	Question to:	Question:
QB.7.1	N/A	<ul style="list-style-type: none"> No specific questions at present, which aren't already covered by other questions within this document.
8. Flood Risk, Hydrology and Water Resources		
QB.8.1	N/A	<ul style="list-style-type: none"> No specific questions at present, which aren't already covered by other questions within this document.
9. Geology and Land Contamination		
QB.9.1	N/A	<ul style="list-style-type: none"> No specific questions at present, which aren't already covered by other questions within this document.
10. Habitat Regulations Assessment		
QB.10.1	The Applicant	<ul style="list-style-type: none"> The Applicant's response to ExQ1 Question Q10.0.5 is noted. However, the original request to incorporate into the Habitat Regulations Assessment Signposting document (HRAR) [REP2-001] the information required to inform the appropriate assessment was not fulfilled. Please address the original request. For ease of reference the original request at ExQ1 Q10.0.5 was: <i>"The Applicant considers that all information deemed necessary to undertake the Habitat Regulations Assessment is contained in the Environmental Statement (ES) particularly in Chapters 4-8, 10, 14, and 17, [APP-038] to [APP-041], [APP-044], [APP-048] and [APP-051] respectively (para 3.4.4, HRAR [APP-027]). The HRAR states that a separate process is required to address the specific obligations of the Habitats Regulations which the HRAR document seeks to provide by assisting the Competent Authority in directing them to the necessary aspect chapters in the ES. However, the HRAR does not include detailed information to inform an Appropriate Assessment (AA); Section 7 of the HRAR instead provides summary information and cross-references to where the detailed information can be found in the ES chapters, such as Chapters 7 (Air Quality), 8 (Noise and Vibration), 10 (Ecology) and 17 (Cumulative and Combined Effects). Please update the HRAR to include detailed information to inform an AA."</i>
QB.10.2	The Applicant	<ul style="list-style-type: none"> The response to ExQ1 Q10.0.10 regarding In-Combination Effects (ICE), the Applicant stated that as no construction and operational visual disturbance Likely Significant

ExQ2: Friday 5 March 2021**Responses due by Deadline 5: Friday 19 March 2021**

ExQ2	Question to:	Question:
		<p>Effects (LSEs) were predicted they were not considered in the ICE assessment (Section 6). However, HRAR [REP2-001] Table 5.1 (LSEs during construction) and the new Table 5.3 (LSE's during decommissioning) indicate a LSE arising from visual impacts during construction and decommissioning to SPA and Ramsar site birds using the arable field to the south (Field 37). As such, these should have been considered for ICEs in Section 6 of the Report.</p> <p>In the light of this please provide an updated HRAR that includes in-combination assessments of visual impacts on SPA and Ramsar site birds using Field 37, during both construction and decommissioning, and also update the matrices as necessary.</p>
QB.10.3	Natural England	<ul style="list-style-type: none"> The ExA would draw Natural England's attention to the Applicant's response to ExQ1 Question Q10.0.6, which can be found in the Applicant's document entitled "<i>Applicant's Response to the Examining Authority's First Written Questions</i>" [REP2-008] submitted at Deadline 2. Please confirm whether Natural England consider that all of the correct site features are represented in Table 4.1 of the HRAR [REP2-001].
QB.10.4	The Applicant	<ul style="list-style-type: none"> The Applicant's response to ExQ1 Question 10.0.2 (See document entitled "<i>Applicant's Response to the Examining Authority's First Written Questions</i>" [REP2-008] submitted at Deadline 2) is noted. Please amend the integrity matrices so that they clearly reflect each of the LSEs identified in the screening assessment.
QB.10.5	The Applicant	<ul style="list-style-type: none"> The Applicant's response to ExQ1 Question 10.0.31 (See document entitled "<i>Applicant's Response to the Examining Authority's First Written Questions</i>" [REP2-008] submitted at Deadline 2) is noted. However, the ExA would ask the Applicant to revise the HRAR screening and integrity matrices to ensure that the qualifying features set out therein are consistent with those identified on Natural England's website.
11. Landscape and Visual Amenity		
QB.11.1	N/A	<ul style="list-style-type: none"> No specific questions at present, which aren't already covered by other questions within this document.
12. Noise and Vibration		
QB.12.1	N/A	<ul style="list-style-type: none"> No specific questions at present, which aren't already covered by other questions within this document.

ExQ2: Friday 5 March 2021**Responses due by Deadline 5: Friday 19 March 2021**

ExQ2	Question to:	Question:
13.	Planning Policy	
QB.13.1	N/A	<ul style="list-style-type: none">No specific questions at present, which aren't already covered by other questions within this document.
14.	Socio-economic Effects	
QB.14.1	N/A	<ul style="list-style-type: none">No specific questions at present, which aren't already covered by other questions within this document.
15.	Traffic, Transport and Waste Management	
QB.15.1	The Applicant	<ul style="list-style-type: none">The Transport Assessment – Annex 28: Framework Construction Traffic Management Plan [REP1-009] at paragraph 4.1.3 in the last sentence states "<i>Network Rail will also be consulted in advance...</i>" In terms of timescales, please clarify what the term "<i>advance</i>" means? (i.e. 1 month, 1 week, 1 day, etc.)
QB.15.2	The Applicant	<ul style="list-style-type: none">The Transport Assessment – Annex 28: Framework Construction Traffic Management Plan [REP1-009] at paragraph 5.1.3 relates to monitoring and refers to complaints "<i>...raised by members of the public...</i>" The ExA would seek clarification as to what procedures are in place regarding any complaints received by other parties, such as local businesses or parties that have made relevant representations, for example.