

NLC's responses to the ExA's first written questions (ExQ1) Issued 23 November 2022

ExQ1	Question	NLC Answer
Q1.0.1	<p>A number of RRs express concern over the adequacy of consultation.</p> <p>(ii) Can the council confirm that they are satisfied that the legislative tests were met in undertaking each round of consultation?</p>	<p>NLC previously confirmed that, based upon the Consultation Report and appendices submitted by the applicant, the consultation undertaken was adequate to comply with their statutory requirements.</p> <p>The council are still of the view that the scheme of consultation set out within the Consultation Reports and appendices is sufficient to meet the legislative tests at each round of consultation, provided that it has been carried out in full.</p> <p>However, NLC has recently received complaints that hard copy documents were not available to view at Crowle Market Hall, which was listed as a deposit location within the Consultation Report. We have also received complaints that those within Zone 1 (3km from the project) did not all receive a consultation document as stated. These complaints have been received from local residents within this consultation zone.</p> <p>The Applicant's Consultation Report does identify at 5.5.13 and 5.5.14 that there was an issue with the distribution of consultation materials to Crowle Community Hub and Winterton Library; but that this was rectified after 2 days once the issue was identified. They confirm that they distributed the documents to these venues by hand and that they received no requests to view the documents prior to them being made available.</p> <p>Ultimately it is for the Applicant to demonstrate that they carried out the consultation set out in their Consultation Report and should this be the case then it is considered that the legislative tests will have been met.</p>
Q1.0.13	<p>(i) In light of question 1.0.9 what are the council's views on the temporary closure of these rights of way and the mechanisms for reinstatement/alternative provision?</p>	<p>(i)): North Lincolnshire Council would be amenable and pragmatic with respect to any proposed necessary temporary closures, providing these were effected by appropriate legislative means, e.g. section 14 of the Road Traffic</p>

	<p>(ii) Do you consider disability rights or protected characteristics have been fully considered in presenting the proposals?</p>	<p>Regulation Act 1984 (though it should be noted that this provision permits the traffic authority to regulate traffic on footpaths for up to six months only, with extensions on application via the authority to the Secretary of State for Transport).</p> <p>(ii) of the 'protected characteristics' listed within section 4 of the Equality Act 2010, only disability appears to us to be relevant to a person's ability to use a public right of way as well as another not so categorised. We believe it should be borne in mind, however, that these are rural footpaths with essentially natural surfaces. It is our understanding that in providing services with regard to the 2010 Act, we must endeavour to make these accessible by all, but only if it is reasonable to do so; and that we should balance the operational needs of landowners too.</p>
<p>Q1.0.15</p>	<p>FLIX178 would currently appear to be a dead end. Should the public have access from Flixborough onto Nisa Way or does the RoW terminate short of the public highway?</p>	<p>FP178 is indeed a dead end as represented on the definitive map, terminating as it does on the boundary between Flixborough and Scunthorpe. This situation is as a result of the Scunthorpe side of the boundary having been land classified as 'fully developed' when the definitive map was published in 1968 (under section 35 of the National Parks and Access to the Countryside Act 1949 and repealed by section 58 of the Wildlife and Countryside Act 1981). Historical mapping, a 1916 diversion agreement between the then rural district council and Lysaght Ltd, a then steelworks owner, and a significant residual length recorded as a footway on the list of streets of highways maintainable at the public expense as per section 36(6) of the Highways Act 1980 indicate that this footpath in fact once continued a further approximately 2,700 metres southwards to Ferry Road, Crosby. North Lincolnshire Council are hopeful FP178's southern terminus can eventually once again be formally linked to a connecting highway. Meanwhile, however, we believe that the permissive footpath the applicant is offering along the southern side of the former mineral railway (and which he intends bringing back into use), which would lead west from FP178 to connect with FP177, about 460 metres distant only, should be instead dedicated as a footpath in perpetuity such that it be added to the definitive map.</p>

Q1.0.16	<p>(i) It is anticipated that both the volume of material going to landfill and the content will change over time as both recycling and other elements in the supply chain and manufacturing of materials changes. [APP-054, Table 5] Do you agree the anticipated nature of the change to RDF during the operational period has been reasonably assessed to reflect these changes that are anticipated to occur.</p> <p>(ii) Do you consider this has been adequately assessed within the ES to forecast potential areas of effect as predicted by the Applicant? If not, what areas of concern do you have?</p>	<p>(i) NLC agree that the anticipated change to RDF composition has been reasonably assessed based on the information currently available.</p> <p>(ii) NLC has no areas of concern to raise in this respect.</p>
Q1.0.17	<p>(i) The Applicant states the OEMP will cover all environmental pollution activities not covered by an environmental permit. Do you agree that this is the case?</p> <p>(ii) In the event that there is not agreement please advise of the areas where you consider there are gaps between the planning and permitting regimes and advise how you consider they might be best addressed.</p>	<p>Having reviewed the OEMP, NLC are content that it will cover environmental pollution activities not covered by an environmental permit. We have not identified any gaps between the planning and permitting regimes.</p> <p>It is anticipated that the EA would provide further clarification on this matter as the site would be regulated through an A1 permit.</p>
Q1.0.20	<p>The Environment Act passed into law on 9 November 2021. While many of its provisions await detail and implementation, does this have any implications for the application documentation submitted for the Proposed Development?</p>	<p><u>Biodiversity Net Gain</u></p> <p>Schedule 15: “Biodiversity gain in nationally significant infrastructure projects” has not yet come into force. Nevertheless, the submitted Biodiversity Net Gain Assessment states that:</p> <p><i>“The Metric demonstrates a net-gain in biodiversity overall, with hedgerows and watercourses achieving well above the minimum target of 10%. Habitat delivery also exceeds 10% at 13.7%. This is despite the Order Limits incorporating large areas to the east of the Energy Park Land which will simply be retained as arable cropland, neutral grassland and unenhanced ditches [...]. The inclusion of these areas within the calculator is a significant constraint on</i></p>

		<p><i>achieving a higher net gain percentage for habitats, i.e. if they were excluded, the net-gain for habitats would be considerably higher”</i></p> <p>Therefore, as the applicant is voluntarily offering to deliver Biodiversity Net Gain, the implementation of Schedule 15 would not materially affect the proposal.</p> <p><u>Local Nature Recovery Strategies (LNRS)- Environment Act para 104</u></p> <p>The LNRS for Greater Lincolnshire has not yet been produced. However, it is anticipated that the LNRS Habitat Map will evolve from the Biodiversity Opportunity Maps (BOM) already produced. The applicant’s landscape and habitat proposals are largely compatible with the North Lincolnshire BOM and are likely to be compatible with the LNRS Habitat Map once it has been produced.</p> <p><u>Species Conservation Strategies (para 109) & Protected Site Strategies (Para 110)</u></p> <p>The applicant’s ES has considered priority and notable species as well as protected species, so the measures proposed are likely to be broadly compatible with any Species Conservation Strategies that may be produced for the area. A Humber Estuary Protected Site Strategy is in production. Implementing any restrictions or conditions required by the Habitats Regulations Assessment should ensure that the project is compatible with the Protected Site Strategy.</p> <p><u>Schedule 16: Controlling the felling of trees in England</u></p> <p>Part 6 of the proposed dDCO would allow the applicant to fell trees and remove hedgerows. Therefore, Schedule 16 of the Environment Act 2021 would not affect the project.</p>
--	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p><u>Environment Act 2021 Part 7: Conservation Covenants</u></p> <p>The applicant is not proposing to create a conservation covenant.</p> <p>The Environment Act 2021 brings in changes to the regulation of waste, air quality and water, but these do not appear to affect the proposal.</p>
Q1.0.29	Does North Lincolnshire Council agree with the plans or projects that have been included within the cumulative effects assessment (ES Chapter 18)?	<p>The most appropriate plans or projects appear to have been included in the cumulative effects assessment.</p> <p>For in-combination effects in relation to the Habitats Regulations Assessment, it may be worth checking the Humber Nature Partnership in-combination database.</p>
Q1.0.32	<p>(i) Does NLC agree with the Applicant’s assessment of adverse effects caused by the construction of the proposed scheme regarding those matters for which it is the regulatory authority?</p> <p>(ii) Does NLC agree that sufficient control of any adverse effects identified under (i) will be achieved by NLC’s approval, prior to the commencement of construction, of a Construction Environmental Management Plan (CEMP) submitted by the Applicant (ES Chapter 3 6.1.1.3)?</p>	<p>(i) Yes, the impacts of construction (dust, noise) have been assessed using appropriate guidance. The assumptions have been developed with the project engineers to represent a reasonable worst case. To manage construction impacts, works will be undertaken in accordance with a CEMP. Lead contractors will submit the CEMP for agreement with North Lincolnshire Council. The CEMP will set out BPM measures to minimise construction noise and vibration, including control of working hours.</p> <p>(ii) A CEMP can offer sufficient control of adverse impacts during the construction phase. However, NLC have raised concerns, through our LIR, over the proposed noise measures listed in Appendix A of “Summary of Mitigation Measures and Securing Mechanisms during Construction” which are limited in nature and do not contain sufficient detail for a project of this nature.</p> <p>In addition, the proposed working hours include weekdays till 7pm during winter months, there is no mention of construction lighting during hours of darkness and how this will be appropriately managed and controlled.</p>
Q4.0.2	(i) In considering the alternative Option A and B for the DPHWN do you consider that there are only two factors at play i.e traffic v’s noise or are there other areas the ExA	<p>(i) <u>Archaeology</u></p> <p>There are no archaeological implications for Options A and B as this land is previously disturbed by open cast workings</p>

	<p>should weigh in the balance in considering these alternatives?</p> <p>(ii) Please show where you have set out the differing time frames for the construction of the alternatives, and the alternative mitigation that you have considered in addressing the identified adverse effects.</p>	<p><u>Ecology</u></p> <p>Option A would take the DHPWN down Normanby Road, where it would be necessary to consider the risk of spreading Japanese Knotweed which grows near the electricity substation. This invasive non-native species is listed on Schedule 9 of the Wildlife and Countryside Act 1981, and must not be allowed to spread in the wild.</p> <p>Option B would take the DHPWN down Bessemer Way, passing areas of open mosaic habitat on previously developed land (OMH- a priority habitat), Including Bessemer Way Brownfield Site Local Wildlife Site. If works are confined to the highway, this is not likely to be a problem. Indeed, disturbance of OMH is essential to maintain the early successional plant communities.</p> <p><u>Highways</u></p> <p>Whilst the impact of noise and traffic on existing residents/businesses will be a key consideration in determining the most appropriate route, the suitability of each option for construction needs to be considered, along with traffic management requirements to facilitate the works. For example, the section of Normanby Road in question is predominantly dual carriageway, whereas the alternative routes are single carriageway. Depending upon the traffic management requirements to facilitate the provision of the DPHWN, then Normanby Road may be a more appropriate route as any traffic management may cause less disruption to road users and traffic flows.</p> <p>(ii) This part of the question is for the applicant to answer.</p>
Q4.0.3	In the event that both alternatives are considered acceptable, would not a requirement which makes clear that only one alternative can be exercised be more appropriate	NLC agrees that a requirement would be more appropriate and clearer than relying upon compulsory acquisition powers.

	than relying upon compulsory acquisition powers as currently drafted.	
Q4.0.4	In the event that the ExA recommend to the SoS one option over the other, is there an alternative wording for the dDCO that should be presented to the SoS?	NLC do not wish to offer any suggested amended wording but are happy to comment on any such alternative wording provided by the Applicant should this be necessary.
Q7.0.6	Are any APs aware of any inaccuracies in the BoR [APP-010], Statement of Reasons (SoR) [APP-011] or Land Plans [APP-014]? If so, please set out what these are and provide the correct details	NLC is currently liaising with the Applicant and reviewing the submitted information to confirm that it is accurate with regards to the council's land ownership. We will look to complete this review and provide confirmation in this regard as soon as possible.
Q7.0.7	Do any APs have any concerns that they have not yet raised about the legitimacy, proportionality or necessity of the CA or TP powers sought by the Applicant that would affect land that they own or have an interest in?	The council does not wish to raise concerns regarding the legitimacy, proportionality or necessity of the CA or TP powers sought by the Applicant at this stage. However, we are currently liaising with the Applicant regarding 2 parcels of land that the council is in the process of selling and whether these need to be included.
Q7.1.4	<p>Definition of 'maintain'</p> <p>(i) Is the extent of alternatives included within the definition reasonably justified?</p> <p>(ii) Does this reasonably comply with Planning Inspectorate Advice Note 15? The definition includes "alter, remove, refurbish or reconstruct". On its face, that would include decommissioning and the construction of a new generating station. The ExA doubts this is what is intended nor is this obviously to be limited by reference to new or materially different environmental effects. However, lesser reconstructions may pass that test but nonetheless be development which ought to be regulated by planning control?</p> <p>(iii) Might the following definition be adequate: "maintain" includes inspect, repair, adjust, alter, clear, refurbish or improve, and any derivative of "maintain" is to be construed</p>	<p>(i) NLC believe that the extent of works included within the definition of 'maintain' is too wide and that this has not be reasonably justified.</p> <p>(ii) Allowing for the removal and rebuilding of any/all buildings and structures within the Order Limits would seem to go some way beyond what could reasonably be considered maintenance works. The council are not sure that the definition in its current form is accurate or would comply with Advice Note 15.</p> <p>(iii) The suggested alternative definition is agreed, this would limit the works to those that would normally be associated with maintenance and would restrict the more large-scale, intrusive works that should be subject to planning controls, such as the demolition and rebuilding of buildings/structures.</p> <p>(iv) As stated above the council would have concerns that the current definition would allow for the demolition and rebuilding of any and all elements of the consented development. We would have concerns that this could be undertaken without any requirement for further consent and/or</p>

	<p>accordingly”, with the addition of the prohibition relating to maintenance causing environmental effects?</p> <p>(iv) If the NLC consider that the current definition is too wide, would they please give examples of development it permits but which NLC considers should be subject to planning control? Would they please also consider whether the ExA’s suggestion above would deal with any concern and give reasons?</p> <p>(v) If the Applicant disagrees with the ExA’s suggestion, please will it, in answering the question, explain clearly the intent of the breadth of the definition and reflect on whether it ought to be reduced?</p>	<p>review by the LPA and that structures that are replaced/rebuilt may not be subject to the same design considerations as the original development. The definition is considered to be too wide and would allow for uncontrolled development of the site in the future.</p> <p>The council’s concern relates to the potential to remove and reconstruct elements of the scheme without approval. The alternative wording suggested by the ExA would remove these elements from the definition and as such would resolve the council’s concerns in this regard.</p>
Q7.1.12	<p>(i) Please explain how the limits of deviation would apply to areas not covered by specific works numbers as set out under Article 5 of the dDCO.</p> <p>(ii) Do the Council agree that the limitations as currently drafted appropriately control the potential extent of works proposed?</p>	<p>(i) The limits of deviation set out in Article 5 relate specifically to numbered works and do not appear to relate to other works or areas. It is assumed that the Applicant will clarify this point.</p> <p>(ii) It is agreed that the limitations as currently drafted control the extent of numbered works.</p>
Q7.1.18	<p>Article 10 (7)</p> <p>Is five working days agreed?</p>	<p>NLC have no comments to make regarding the five working days period in Article 10 (7). This relates to notification provided to the SoS prior to transferring benefits of the order and it is assumed that the SoS will determine whether this period of time is adequate.</p>
Q7.1.19	<p>Public Rights of Way Article 15 (1) (b)</p> <p>Should a time period be specified for the notification of the highway authority and for the subsequent period of diversion?</p>	<p>Article 15 (1) (b) appears to secure a substitute temporary right of way being provided prior to temporary stopping up of any existing right of way. It should also require that the temporary right of way is retained until the temporary stopping up has ceased. For clarity it would be helpful to have a time period for notification of the highway authority, which we would suggest 28 days would be reasonable. Check with Colin</p>
Q7.1.20	<p>Accesses Article 16 (3)</p>	<p>The 28 day period is agreed by the local highway authority.</p>

	Is the 28-day period agreed?	
Q7.1.21	<p>Part 4 Compulsory Acquisition Funding - 22 (4)</p> <p>Is a 10-year limitation reasonable, particularly if a 7-year period to exercise rights is also sought? By way of reference EN010093 Riverside Energy Park gave 15 years</p>	NLC are not sure why a 10 year limitation with regards to funding has been proposed or the justification for this. It is assumed that the Applicant will provide clarification on this point.
Q7.1.22	<p>Time Limit for exercise of authority to acquire land and rights Article 24 (1)</p> <p>As referred to in ISH2 please provide a full explanation for the justification for the 7-year period sought. Other DCOs have accepted a 5-year period EN010093 Riverside Energy Park- 5 years EN010012 The Sizewell C project - 5 years TR010025 A303 Amesbury to Berwick Down – 5 years</p>	Again NLC would expect the Applicant to provide clarification on this point and has no comment to make at this stage.
Q7.1.24	<p>PART 5 Supplemental Powers</p> <p>No reference is made within the dDCO to dealing with human remains. The heritage assessment makes reference to a 'bog body' which it is assumed relates to human remains. While it may not be anticipated that human remains are likely to be found, what would the consequence be for the DCO in the event one was to be found?</p>	<p>Human remains found during programmes of archaeological works required by the DCO would be dealt with by the archaeological contractor undertaking the works. The relevant legislation and procedure for dealing with human remains should be set out in all archaeological written schemes of investigation approved under the DCO Requirements, such as:</p> <p><i>'Should human remains be discovered during the course of the excavations, the remains will be covered and protected and left in situ in the first instance, in accordance with current best practice. Should human remains be discovered, all works within the vicinity of the relevant area of the Proposed Development Site will stop until the remains have been removed. The Archaeological Contractor will notify H.M. Coroner with details of the remains immediately. The removal of human remains will only take place in accordance with a licence from the Ministry of Justice and under the appropriate Environmental Health regulations and the Burial Act 1857.'</i></p>

		<p>The written scheme of investigation should also set out the methodology for the excavation, recovery, assessment and analysis of human remains according to current best practice and reference the relevant professional guidelines.</p> <p>It is suggested that the overarching archaeological mitigation strategy provides that in the event that human remains are discovered where no archaeological works are being undertaken, the appropriate procedure would be that:</p> <p><i>‘the remains will be covered and protected and left in-situ in the first instance, in accordance with current best practice. Should human remains be discovered, all works within the vicinity of the relevant area of the Proposed Development Site will stop until the remains have been removed. The Applicant will notify the H.M. Coroner with details of the remains immediately. The Applicant will liaise with the Applicant’s Archaeological Representative in order to determine an appropriate mitigation strategy and to estimate the additional time and resources needed should removal of human remains be required. The removal of human remains will only take place in accordance with a licence from the Ministry of Justice and under the appropriate Environmental Health regulations and the Burial Act 1857.’</i></p>
Q7.1.25	<p>PART 7 Miscellaneous and General Operational Land Article 42</p> <p>(i) Is it correct to interpret this as facilitating extensive permitted development rights for the whole of the Order land?</p> <p>(ii) Is this reasonable in light of the extensive powers that this would facilitate for the whole DCO site in respect of future permitted development rights?</p>	<p>(i) As currently drafted Article 42 would see the entirety of the Order Limits be defined as operational land and this would confer significant permitted development rights as set out in Part 15 of Schedule 2 of the General Permitted Development Order.</p> <p>(ii) Given the size of the Order Limits and the extensive nature of permitted development rights for operational land it is not considered to be reasonable. NLC believe that the area of land to be classed as operational land should be clearly defined and restricted to those areas of the site that would be clearly associated with the ERF and the production/transmission of hydrogen.</p>

	(ii) Where is the evidence that this has been appropriately assessed within the ES and could be appropriately controlled within the extent of what the ES has assessed, or mitigation offered through requirements or other controls?	(iii) It is not clear that the extent of permitted development rights that could be achieved has been considered through the ES. A narrowing of the area defined as operational land and the associated limiting of the extent of permitted development that could be undertaken may address this point.
Q7.1.26	<p>Certification of Plans Article 44</p> <p>(i) Should this include the Design and Access Statement (DAS) and Navigation Risk Assessment (NRA)?</p> <p>(ii) If the DAS or NRA are not included, please provide an explanation how the design considerations and navigation risks considered will be secured.</p>	(i) NLC believe that Article 44 should include both the DAS and NRA.
Q7.1.41	<p>Refuse Derived Fuels (RDF)</p> <p>(i) The description of Work No 1. Includes 'an electricity generating station fuelled by RDF. Is RDF defined in guidance/legislation or other form of document which the ExA can rely upon to understand the standard/constituent parts of the fuel and how this then might influence the outcomes considered in the ES for example in respect of air quality?</p> <p>(ii) Is the content of RDF monitored and if so by whom?</p> <p>(iii) Please explain how Requirement 15 limiting the fuel to processed waste corresponds with/relates to RDF and how this would be monitored and enforced.</p> <p>(iv) The basis of the assessment appears to be an assumed composition of the RDF described at 5.4.2.11, other operating assumptions (Tables 6-10) supported by sensitivity analysis. - How is this secured/controlled?</p>	<p>(i) NLC are not aware if there is a standard definition of RDF or any standardised composition. Hopefully the Applicant or the EA are able to answer this point.</p> <p>(ii) NLC are unable to answer this part of the question conclusively. It is assumed that the content of RDF would be monitored by the producer of the waste (in terms of calorific values etc.) and potentially by the EA if it is a permitted facility?</p> <p>(iii) Again we would defer to the Applicant/EA to answer this point.</p> <p>(iv) Again we would defer to the Applicant/EA to answer this point.</p>
Q7.1.43	Requirement 16	(i) Requirement 16 as currently drafted does not acknowledge the need to have due regard to flood risk. Although it may be intended that flood risk

	<p>(i) Does this requirement achieve and set out appropriately the acknowledgment that the decommissioning will need to have due regard to flood risk as set out in Table 2 of [APP-057]?</p> <p>(ii) In the event that any party considers this requirement should be changed please provide an alternative wording.</p>	<p>would be incorporated within the Decommissioning Plan or Decommissioning Environmental Plan.</p> <p>(ii) It is suggested that there should be an explicit reference to flood risk within Requirement 16 and approval of the LPA should be subject to consultation with the EA.</p>
Q7.1.45	<p>(i) Considering the uncertainty in the design, is it accepted that impact limit values could be set to ensure that significant effects would be avoided during construction or operation of the authorised development? Examples might include, operational waste import quantities, type and composition, traffic types and volumes, and noise, in addition to stack emission limit values.</p> <p>(ii) Please justify the current approach if the incorporation of limit values is not intended to be introduced into the dDCO and provide clarity as to how mitigation would be delivered in the absence of the inclusion of limit values.</p>	<p>(i) NLC consider that impact limit values could be set to avoid significant effects during construction and operation. In particular we feel that there should be a limit on the import of operational waste.</p> <p>(ii) This part of the question is for the Applicant to address.</p>
Q7.1.46	<p>Permitted preliminary development works construction environmental management plan (PPDW CEMP)</p> <p>(iv) Is it correct to understand that the relevant local authority can override their approval of a CMP/CEMP that they have approved?</p> <p>(v) Is it accepted that 4(2) would appear to be adequate on the basis that the approved CEMP would include provisions for change management and revision?</p>	<p>(iv) The council could override the requirements within a CEMP/CMP if a statutory nuisance was determined from these activities.</p> <p>(v) It is agreed that 4(2) would appear to be adequate on the basis that the approved CEMP would include provisions for change management and revision.</p>
Q7.1.47	<p>Requirement 2</p>	<p>(i) Requirement 4 secures the provision of a CEMP prior to each part of the authorised development commencing. These CEMPS will be approved by the LPA in consultation with the EA and NE where relevant.</p>

	(i) Would it not be appropriate to have a CEMP provided in advance of each part to be approved by the relevant local authority?	
Q7.1.49	Requirement 4 (6) (c) Environmental management (i) What relationship does the surface water strategy have with the construction flood management plan, FRA etc.? (ii) Should they be cross referenced within requirements and the dDCO?	(i) NLC would expect that the surface water drainage strategy would link to the flood management plan and FRA as these documents should be considering all types of flood risk (pluvial and fluvial). (ii) On this basis we would expect the documents to be cross referenced within the Requirements and the dDCO.
Q7.1.51	Requirement 6 – Landscape design Is the term ‘must be based on’ regarded as sufficiently precise?	The council are not sure that the term ‘must be based upon’ is sufficiently precise. An alternative approach would be as follows: <i>“The scheme submitted and approved under sub-paragraph (1) must be in accordance with the indicative landscape and biodiversity plans... any departure from the indicative landscape and biodiversity plans shall be explained and justified in the landscaping scheme.”</i>
Q7.1.55	Requirement 8 – Surface water drainage Should there be prior consultation with NLC, the Water Management Board and or EA?	NLC are of the view that prior consultation with the EA and WMB should be required in advance of approval.
Q7.1.56	Requirement 8 – Surface water drainage Do you consider the timing appropriate such that it would ensure that the mitigation/plan is in place in a timely manner?	NLC are of the view that the surface water drainage should be submitted at an early stage so that it can be considered and incorporated into the detailed design of the development. We would suggest that a wording along the following lines would be more appropriate: <i>“No part of the authorised development may commence, save for preliminary works until details of the permanent surface water drainage systems...”</i> We are content that the Requirements secures the implementation of the drainage scheme in full prior to operation and secures maintenance during operation.

Q7.1.57	<p>Requirement 9 – Foul water drainage</p> <p>Do you consider the timing appropriate such that it would ensure that the mitigation/plan is in place in a timely manner?</p>	<p>NLC are of the view that the foul water drainage should be submitted at an early stage so that it can be considered and incorporated into the detailed design of the development. We would suggest that a wording along the following lines would be more appropriate:</p> <p><i>“No part of the authorised development may commence, save for preliminary works until details of the permanent foul water drainage systems...”</i></p> <p>It is anticipated that the EA and/or Severn Trent Water would want to comment on the suitability of Requirement 9.</p>
Q7.1.60	<p>Requirement 12 – Flood risk</p> <p>(i) Is the timing appropriate? If not submitted until after commissioning, will it not be too late to resolve any potential difficulties and or to consider during the design stage?</p>	<p>(i) NLC consider that the timing in Requirement 12 is not appropriate. The flood management plan should be submitted at an earlier stage so that it can be incorporated into the detailed design of the development. It is considered that a wording along the following lines would be more appropriate:</p> <p><i>“No part of the authorised development may commence, save for preliminary works until a flood management plan...”</i></p> <p>It is anticipated that the EA will provide further advice on this Requirement.</p>
Q7.1.61	<p>Requirement 14 – New highway access</p> <p>What ensures that the road is completed to an appropriate standard and made available for the use by the public?</p>	<p>Further discussions with the applicant are probably required to understand this. Paragraph 5.2.9 of the Transport Assessment (Appendix A of ES Chapter 13) states that <i>“it is intended that the New Access Road would be constructed to adoptable highway standards to enable it to form part of the public highway maintained by NLC.”</i> Whilst NLC has agreed the alignment and layout of the road in principle, we have not seen any construction details. We would normally enter into a S38 agreement with the developer; however we would anticipate that the preference would be to include all aspects within the DCO. If this is the case, then it may be necessary to amend the requirements or include additional requirements, which ensure that detailed designs are submitted to NLC for approval prior to work starting on the access road and once designs have been agreed, the access road must be constructed in accordance with them. We would also want to see provision for NLC to</p>

		undertake site inspections of the work and for a 12-month maintenance period to be included, prior to us formally adopting the New Access Road.
Q7.1.62	<p>Requirement 15 – Fuel</p> <p>Would it not be more appropriate to restrict the waste to non-recyclable wastes to ensure compliance with the 2011 Waste Regulations?</p>	NLC are not sure that it would be possible to ensure that no recyclable wastes formed part of the fuel or how this would be monitored. It is likely that regardless of the efforts of the producers of the RDF that there will always be some recyclable elements that are not able to be sorted/extracted. The ambition appears to be to ensure that as little recyclable material as possible is contained within the fuel, but as the Applicants will not be responsible for producing the RDF it would be difficult for them to control the exact composition.
Q7.1.64	<p>Schedule 2 PART 2 Procedure for discharge of requirements</p> <p>(i) Should there be a section on fees payable to the discharging authority in line with the planning Inspectorate Advice Note? If this is not agreed please provide an explanation</p>	(i) NLC would welcome a section on fees being included in Part 2 of Schedule 2 given the complexity of the scheme, the work that will be associated with the discharge of requirements and the timeframes for determining these applications. We would be happy to discuss this matter with the Applicant.
Q7.1.66	<p>[APP-040] The Statutory Nuisance Statement.</p> <p>(i) If the ES has only assessed air quality, noise, visible plumes and artificial lighting – is it reasonable to include all other categories of nuisance within the defences to proceedings of statutory nuisance in Article 43?</p>	This would not be reasonable unless it is explained by the applicant why the remaining categories are not applicable. Those which may remain relevant include for example insects.
Q7.1.67	<p>Defence to proceedings of statutory nuisance</p> <p>(i) Should there not be reference to construction and operation being undertaken in accordance with the various control documents and in line with the mitigation offered?</p> <p>(ii) If this is not considered appropriate please provide a reasoned justification for your approach.</p>	NLC agree that there should be reference to construction and operation being undertaken in accordance with the various control documents and in line with the mitigation offered.
Q7.1.68	Code of Construction Practice (CoCP)	(ii) NLC are happy to see the commitment to undertaking and reporting noise monitoring but would appreciate further clarity on when and how this monitoring will be undertaken/reported. It is anticipated that details will be

	<p>With reference to paragraph 7.2.1.3 of ES Chapter 7 and e-page 43 of the CoCP.</p> <p>(ii) Does North Lincolnshire Council have any comments on the proposed noise monitoring during construction?</p>	<p>provided and agreed through the submission of the CEMP(s); however Requirement 4 does not currently make reference to noise or vibration.</p>
Q7.1.74	<p>SoR</p> <p>North Lincolnshire is a Unitary Authority.</p> <p>(i) Please explain the reference to the Lincolnshire County Council Joint Municipal Waste Management Strategy.</p> <p>(ii) This Strategy is not referenced within Chapter 2 of the ES [APP-050]. Please update this document as necessary or provide an explanation.</p> <p>(iii) Paragraph 5.16 of the SoR says this strategy is for the region. In your answer please be clear what area this represents, which authorities it includes and if it reflects a recognised waste area.</p>	<p>North Lincolnshire is a Unitary Authority and does not form part of Lincolnshire County Council's area and as such we are not part of or subject to the Lincolnshire County Council Joint Municipal Waste Management Strategy.</p> <p>It is assumed that this strategy relates to the area covered by Lincolnshire County Council (to the south of North Lincolnshire) and encompasses the relevant District Authorities.</p> <p>It is anticipated that the Applicant will be able to provide further clarity on the relevance of this document.</p>
Q9.0.1	<p>Mitigation</p> <p>Within [APP-060] Section 7 on mitigation identifies at paragraph 5.5.4.2 that the archaeologist would have a mandate to stop work, and this is also referenced within the Written Scheme of Investigation paragraph 7.1.1.4.</p> <p>(ii) Do you consider the current mechanism for securing a protocol to suspend works is sufficiently robust?</p> <p>(iii) In the event that the current mechanisms are not considered sufficient what change would you seek?</p>	<p>(i) No, the current mechanism is not considered to be sufficiently robust.</p> <p>(ii) At this stage, prior to the completion of archaeological evaluation and the revised assessment of significance and of all the development impacts based on the results, we are not satisfied with the proposal that 'comprehensive watching briefs where an archaeologist has a mandate to stop works should any unexpected remains be encountered' would form any part of a satisfactory archaeological mitigation strategy for a development of this scale.</p> <p>5.5.4.2 refers to Geophysical survey under Section 5 Assessment Methodology and Significance Criteria; it is unclear why introducing and partially describing a proposed mitigation measure is included in this section.</p>

		<p>7.1.1.4 asserts that 'each Impact Area should be monitored and recorded' and refers to 'a detailed protocol for suspension of works' suggesting that archaeological evaluation and mitigation works would then take place.</p> <p>As set out in the Cultural Heritage section of the council's LIR, Section 7.1.1.4 prematurely implies that monitoring and recording will be the accepted mitigation in all impact areas. In our opinion, it is unlikely that such programmes of work conducted during construction will be considered appropriate across the application site, other than to manage the residual risk of encountering unknown archaeology that has not been identified through a thorough programme of pre-determination archaeological evaluation.</p> <p>Our advice is that archaeological evaluation should be undertaken as part of the pre-application assessment to identify and assess the significance of any archaeological remains within the application site and to inform the appropriate mitigation strategy to conserve the archaeological evidence.</p> <p>The applicant is currently undertaking further evaluation including an initial phase of archaeological trial trenching and we would expect that the results will be presented to the ExA and will inform an updated Mitigation Strategy that can adequately detail the nature, extent and methodologies for any areas of impact.</p> <p>As pointed out in the LIR response, we do not consider that archaeological 'watching briefs' during construction even including protocols to suspend works are a suitable mechanism for informed archaeological mitigation on development works of this scale, other than to manage residual risk of unexpected archaeology.</p> <p>We would anticipate that where the results of archaeological evaluation identify archaeological remains or identify where remains are likely or suspected to be present, that a mitigation strategy of pre-construction archaeological excavation will be required to ensure that the archaeological</p>
--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>evidence can be appropriately recovered and recorded without causing any delay to the construction works.</p> <p>Where archaeological watching briefs during construction may be considered appropriate, for example where evaluation has been undertaken but not identified any significant remains but there remains a low risk of encountering archaeology, it is expected that the archaeologist supervising the construction works (one person to one machine) will have the authority to direct specified aspects of the works such as the machinery and equipment to be used, the method of soil stripping to remove the soil in level horizontal strips, to halt works should potential archaeology be exposed, to establish safe working areas around the potential archaeology and fence these off and prevent any vehicle tracking over the protected area, to have access to a full team of archaeologists and specialists to bring in to assess the remains and prepare a written proposal for further archaeological recording and mitigation (including contingency to extend the area of works to secure the integrity of the archaeological evidence) to be submitted to and approved in writing by the LPA in consultation with their archaeological advisor.</p>
Q9.0.4	<p>Written Scheme of Investigation (WSI)</p> <p>(i) Please provide a critique of the WSI contained within appendices E and F of [APP-060].</p> <p>(ii) Are you satisfied that the content and level of detail would allow you to discharge your responsibilities?</p>	<p><u>Appendix E: Written Scheme of Investigation for a Geoarchaeological Borehole and ERT Surveys</u></p> <p>We are satisfied with the geoarchaeological and geophysical scope and methodology set out in the WSI. There are sections in the WSI that would not normally be expected in an assessment methodology document, in summary there is a misplaced assumption of what the development impacts are and what the archaeological mitigation will be prior to obtaining the results of these assessment surveys that are necessary to inform the impact assessment and mitigation design.</p> <p>For example, Section 3, reference to the Proposed Impacts described even before the evaluation necessary to assess any and all impacts of the proposed development has taken place; these 'Impacts' even fail to include the new access road through the site.</p>

		<p>7.16 includes the mitigation proposal that ‘The near surface archaeological potential will be covered by a comprehensive watching brief covered under another WSI (ERM 2022).’ It is inappropriate to make this statement in a WSI for the archaeological assessment that is intended to inform what the appropriate mitigation strategy should be.</p> <p>7.4 The statement ‘It seems likely that any remains of the medieval port will have been relatively shallow and therefore disturbed or destroyed by twentieth century activity at the wharf’ is a further premature assumption. Para 7.5 indicates that 4-5m of alluvial silt clay overlies deep peat potentially dating from the Neolithic to the Early Iron Age, in which case the clay could contain organic remains dating from Iron Age through to the Post-medieval period including the remains of the Flixborough Inn identified by the GPR survey and if these potential 17th century remains survive, earlier Medieval staithe remains may be preserved.</p> <p>7.9 Transect 5 (Figure 8) non-existent.</p> <p><u>Appendix F: Archaeological Evaluation, Written Scheme of Investigation 26 May 2022.</u></p> <p>This (second) version of the WSI for trial trenching did not make adequate provision for trenches to assess the known and potential archaeology within the entire development site. It focussed on evaluating those areas of predetermined development impacts and proposed mitigation outcomes. The geoarchaeological boreholes and ERT surveys (Appendix E) were not completed, and results were not available to inform the trial trenching strategy as intended in the iterative staged approach to evaluation. Detailed comments were provided in June 2022 (see attached copy of annotated comments) and again in September 2022.</p>
--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		An updated (third) version of the WSI was received 28/11/22 and discussed 1/12/22, final revisions including the need to clarify development proposals and identify all numbered trench locations on accurately scaled Ordnance Survey base maps are yet to be received and approved, but the trial trench excavations have commenced in the agreed areas on 5 December 2022.
Q9.0.5	<p>Assessment of heritage Assets and any Impacts</p> <p>With the limitations identified in section 5.5 of [APP-060] are you satisfied that the ES has fully assessed the likely adverse effects on cultural heritage.</p>	<p>No, the ES relies on the preliminary stage of desk-based assessment of existing records and sources. It does not include the results of the suite of archaeological evaluation recommended at Scoping, with the objective of accurately identifying, characterising, dating and assessing the significance of all archaeological assets within the development area, including the potential for unknown remains.</p> <p>As such there is insufficient information on which to base a robust assessment of the significance of heritage assets and the likely adverse effects of the specific development proposals on the cultural heritage.</p> <p>5.5.3.1 states that ‘the extensive mitigation works described in Section 7, are specifically designed to increase the reliability of predicted impact assessments.’ This conflates evaluation and mitigation which are two distinct and separate stages in assessing and preserving heritage interest, the first stage necessary to inform the second.</p> <p>Archaeological evaluation is undertaken to assess the reliability of preliminary desk-based assessment in order to provide sufficient information for impact assessment thereby enabling appropriate mitigation measures to be designed to conserve, avoid or minimise any harm to heritage assets, or to draw up detailed proposals for further appropriate archaeological programmes of work to off-set any unavoidable and justifiable destruction and harm.</p>
Q9.0.6	<p>Mitigation</p> <p>(i) Are you satisfied with the mitigation as proposed and content it is appropriately secured through the dDCO?</p>	(i) No, we are not satisfied with the mitigation as proposed because we do not consider it to be an adequate or proportionate response to the scale of the development and the impacts on the significance of heritage assets that are yet to be satisfactorily evaluated and assessed.

	<p>(ii) In the event this is not the case please provide a proposed form of words for a requirement or other form of securing the necessary mitigation as appropriate.</p>	<p>As we advised in our LIR it is necessary for the archaeological evaluation to be completed to provide the information necessary to prepare an appropriate Mitigation strategy for cultural heritage and archaeology. The content of an appropriate Mitigation Strategy can then be secured through an appropriately worded DCO requirement.</p> <p>(ii) At the time of writing, the following alternative wording is suggested as draft but we would ask that further consultation on the wording of the Archaeology requirement is carried out as results of the ongoing archaeological evaluation are received and the updated assessment and overall Mitigation strategy can be prepared during the Examination:</p> <p>11.—(1) No part of the authorised development is to commence until the following sequence of measures has been completed —</p> <ul style="list-style-type: none"> (a) the undertaker has commissioned a programme of exploratory archaeological investigation of areas within the development site that provides for the identification and evaluation of the extent, character and significance of archaeological remains in any areas of the development where previous evaluation investigations have not taken place or are incomplete (b) the undertaker has submitted to the local planning authority a Written Scheme of Investigation (WSI) prepared by the appointed archaeological contractor setting out the details of the programme of evaluation for the planning authority to approve in writing prior to commencement of the investigations (c) the investigations have been completed and final reports submitted to the planning authority in accordance with the details and timings of the approved WSI; the evaluation fieldwork must be timed so that the results can inform the scope of the further archaeological mitigation measures, referred to in sub-paragraph (2) (d) an updated assessment report of the significance of all identified and potential heritage assets and the impact of the proposed development
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>on that significance has been submitted to and approved by the planning authority, and</p> <p>(e) the submission of an updated Mitigation Strategy for the approval in writing of the planning authority that details all mitigation measures to preserve and enhance all heritage assets affected by the development</p> <p>AND</p> <p>(2) No part of the authorised development is to commence until a programme of archaeological mitigation measures informed by the exploratory investigations referred to in sub-paragraph (1) and by earlier phases of investigation has been implemented in accordance with the updated Mitigation Strategy and further written schemes of investigation for archaeological fieldwork which have been approved in writing by the relevant planning authority. The Mitigation Plan and written schemes of investigation must include and make provision for the following elements—</p> <p>(a) mitigation fieldwork including measures to ensure the preservation in situ or by record of archaeological features of identified importance</p> <p>(b) post-mitigation fieldwork methodologies for assessment and analysis</p> <p>(c) reporting and dissemination of findings including publication of significant results</p> <p>(d) preparation of site archive, arrangements and timetable for deposition and sustainable management at a store approved in writing by the relevant planning authority</p> <p>(f) a timetable including sufficient notification and allowance of time to ensure that the mitigation fieldwork is undertaken and completed in accordance with the strategy before construction commences</p> <p>(g) curatorial monitoring arrangements, including the notification in writing to the North Lincolnshire Historic Environment Record Office of the commencement of archaeological works and the opportunity to monitor such works</p>
--	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>(h) a list of all staff involved in the implementation of the mitigation strategy, including sub-contractors and specialists, their responsibilities and qualifications</p> <p>(i) arrangements for community involvement</p> <p>(j) measures to enhance the interpretation and public appreciation of heritage assets</p> <p>(3) The approved mitigation measures must be carried out in accordance with the written scheme of mitigation measures.</p>
Q9.0.10	<p>Significance of Effect</p> <p>[APP-060] at paragraphs 2.2.1.9 and 5.2.2.3 recognise that noise can have an adverse effect on heritage assets. This is not subsequently addressed within this chapter of the ES.</p> <p>(iii) Are HE and NLC content with the assessment of heritage assets with regard to potential noise and or vibration effects?</p>	<p>(iii) No, the assessment should consider aspects other than visual impacts, including the effects of noise, odour, vibration, dust, smoke ie anything that may affect the senses in experiencing a heritage asset.</p>
Q9.0.11	<p>Degree of Harm</p> <p>(ii) Do you agree with the Applicant's overall conclusion at 9.3.1.4 that the effects would constitute less than substantial harm? Please explain your response as necessary.</p>	<p>(ii) We disagree.</p> <p>Paragraph 9.3.1.4 refers to specific heritage assets referred in Section 9.3 Impact Assessment.</p> <p>In terms of harm to irreplaceable archaeological evidence, any impact that removes or destroys the significance and integrity of the remains would be considered substantial harm to that asset, and potentially to the setting of other assets.</p> <p>Until archaeological evaluation is completed, and the results used to update the assessments of heritage significance and the effects of direct and indirect impacts of the development, the level of harm to known individual assets cannot be specified.</p>

		With regard to the Flixborough Saxon Nunnery site, until any heritage assets that may contribute to the significance of the scheduled monument, including within the setting are adequately identified and assessed, the level of harm to the monument cannot be assessed.
Q9.0.12	<p>Conservation Areas</p> <p>(i) Section 8.3 of [APP-060] sets out the ES conclusions on impact upon Heritage Designated Sites. Can the Applicant set out where the assessment of effects on Conservation Areas can be found?</p> <p>(ii) Please provide copies of the Conservation Area Appraisals and Conservation Area Maps for each of the Conservation Areas addressed within the assessment.</p>	<p>(i) The applicant does not appear to have assessed the effects on any Conservation Areas; we note that several Conservation Areas are identified on Chapter 12 Appendix A Figure 1a as follows:</p> <ul style="list-style-type: none"> • Burton upon Stather • Normanby • Crosby • New Frodingham <p>Additionally, on Figure 2b:</p> <ul style="list-style-type: none"> • Alkborough • Winterton • Appleby <p>(ii) Copies of the Conservation Area Maps and Appraisals for these Conservation Areas have been provided with this response.</p>
Q9.0.13	<p>Historic Landscape Character Assessment (HLCA)</p> <p>(ii) Do the Council and Historic England agree that the Axholme Fens and Normanby Scarp HLCA has moderate value??</p> <p>(iii) What weight should this assessment have within the planning balance?</p>	<p>(ii) The applicant has identified that 'The greater part of the Energy Park Land falls within 'The Axholme Fens'.' The Historic Landscape Character Area (HLCA) is the highest-level category of the Lincolnshire Historic Landscape Characterisation survey data and covers an extensive area to the east and west of the River Trent as shown on Chapter 12 Appendix A Figure 6.</p> <p>The applicant has not assessed the significance of or the effects of the proposed development on the Historic Landscape Character at the more local level within the development area. The available datasets include the Broad Type, the Historic Landscape Character Type and the Previous Type, each type being recorded to the level of individual fields or groups of fields.</p>

		<p>Assessment of the Historic Landscape Character at this finer grain would allow a more nuanced understanding of the character and survival of the historic landscape within the development area and surrounding area and the effects of the proposed development on that character.</p> <p>Furthermore, the assessment should refer to <i>The Isle of Axholme, Historic Landscape Characterisation Project</i> 1997 Countryside Commission, Leeds. This was an earlier, highly detailed characterisation study of the Axholme area to the west of the Trent. The development has the potential to affect the setting of the historic landscape character of the Isle including areas of Riverside Ancient Open Strip Field landscape of potential high sensitivity on the opposite bank of the Trent to the main development area, at and around Amcotts.</p> <p>Further assessment of the significance of the historic landscape character within the development site should be carried out to confirm the applicant's assessment of significance of moderate value.</p> <p>In addition, the contribution of the historic landscape character to the significance of other heritage assets that the development has the potential to affect, including Flixborough Saxon Nunnery scheduled monument should be carried out and described, as well as how the historic landscape character may illustrate the evidence and historic value of the drainage and warping of this part of the Trent valley.</p> <p>(iii) The landscape heritage asset is a non-designated heritage asset and as such, should be considered in the planning balance in accordance with NPPF para 203, <i>'The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.'</i></p>
--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>Q10.0.2</p>	<p>Design Approach</p> <p>It is important that the proposal represents a good quality sustainable design which can be effectively integrated into the landscape. As such, please comment on whether the following measures would ensure this would be achieved in the detailed design, construction and operation phases:</p> <p>i) The provision of a ‘design champion’. Such a role would advise on the quality of sustainable design and the spatial integration of the Proposed Development into the landscape.</p> <p>ii) A ‘design review panel’ to provide a ‘critical friend’ role. Such a role would provide comment on the development of sustainable design proposals.</p> <p>iii) The current approach relies on the production of an approved ‘design code’ which would establish the approach to delivering the detailed design specifications to ensure good quality sustainable design.</p> <p>Please advise on how such measures could be secured. In addition, please comment as to whether any other measures or approaches are considered necessary and provide your view on the quality and enforceability of the Design Code as drafted?</p>	<p>(i) The Institute of Civil Engineers proposes that the role of Design Champion is important to ensure that good design is prioritised alongside other factors, such as cost, safety and technical compliance as a project evolves. Part of the Design Champion’s role would be to focus on sustainable outcomes.</p> <p>(ii) A ‘design review panel’ would be an alternative way of achieving the same outcomes as the Design Champion. By involving a number of people with different specialisms and perspectives, the panel could give the different, sometimes competing, elements of good design thorough consideration.</p> <p>(iii) The ambitions presented in the design code have a lot of merit, but it is too early to say to what extent the code is enforceable or leads to better design than would otherwise be presented. The government has produced a National Model Design Code. This incorporates matters such as biodiversity, landscape and sustainability. Presumably the national model would be expected to form the basis of the site-specific design code to be produced by the developer.</p> <p>NLC would definitely benefit from the Design Champion, or Design Review Panel approaches as the advice of these specialists would be extremely helpful in the council assessing the detailed design of such a large-scale project and ensuring that the opportunities to achieve good quality design are maximised. This is not an area of expertise that the local authority currently has ‘in-house’.</p>
<p>Q10.0.3</p>	<p>Design Approach</p> <p>(i) In preparing the Design and Access Statement much has been explained as to the approach taken. This though is then not subsequently referenced in the dDCO, nor does it obviously appear as a control document. In light of what it</p>	<p>NLC agree that the DAS sets out the vision for and development approach to achieving sustainable design. It appears to be the starting point in producing the Design Codes and as such it would appear logical that this document should be the starting point for submission of detailed designs and that the Design Codes should link back to the DAS.</p>

	<p>sets out, should not this provide the starting point for any submission of details to be agreed through subsequent approvals?</p> <p>(ii) Should the Design Codes link back to the Design and Access Statement as the document which sets out the vision for and the development of the approach to achieving sustainable design?</p>	
Q10.0.6	<p>Design Approach</p> <p>Are the Council satisfied with the Design Code as drafted and confident it would give a robust framework for the control of the design of the Proposed Development which would lead to the delivery of a quality scheme as envisaged by the NPS EN-1 tests on Design?</p>	<p>The council generally support the principles and codes set out within the Design Code. They do appear to provide a robust framework and give some certainty and control to the detailed design of the proposal and should ensure consistency across such a large development that is likely to be delivered in multiple phases. However, we have limited experience of using design codes in practice and so are unsure how successful they are as a sole means of ensuring high quality design at the detailed design stage.</p>
Q10.0.8	<p>Design Principles</p> <p>(i) Can the Council advise what their objective is in design terms and whether the method of assessment and delivery as set out would achieve this objective?</p> <p>(ii) In the event there are concerns please explain what you consider needs to be changed to aid in achieving the design objective?</p> <p>(iii) How do you propose to assess the quality of the scheme, and do you consider the dDCO, the requirements and control documents will aid you in doing this?</p> <p>(iv) If there are concerns or additional controls, you consider are appropriate please set out what they are.</p>	<p>(i) NLC's objective in design terms is to achieve a high-quality development in accordance with the key design principles set out in policy CS5 of the North Lincolnshire Core Strategy (2011). This includes securing a sustainable development that is safe, accessible and respects both the historic and natural environment.</p> <p>Ultimately the council's aim is to achieve a high-quality built environment within North Lincolnshire, which is attractive to residents, investors and visitors.</p> <p>The council believes that the vision set out in the DAS and the principles and codes set out in the Design Codes will help in delivering a high-quality design. However, the council currently lacks the expertise is with regards to the assessment and delivery of the development at the detailed design stage. It is considered that the use of a Design Review Panel or Design Champion at the detailed design stage would ensure that opportunities to deliver high quality design are maximised and provide the LPA with assistance and assurance when they are assessing the detailed design of such a large project.</p>

<p>Q10.0.9</p>	<p>Visual Barrier at the railhead</p> <p>(i) Chapter 11 proposes a visual barrier to be installed along the railhead edge or along the development platform of the ERF. This is referenced in the Outline Operational Environmental Management Plan [APP-075], however there are no timescales attached. Should the wording be strengthened to ensure that the barrier is constructed prior to commissioning of the Proposed Development?</p> <p>(ii) Do the visualisations currently provided include this barrier? Please advise which image provides greatest clarity to understand what the implications of this element are?</p> <p>(iii) In the event this is not clearly shown please provide a visualisation to aid in understanding of this element of the proposed development.</p>	<p>(i) Yes the visual barrier forms part of the mitigation proposed and as such it should be secured prior to operation. The wording should be strengthened to secure this.</p> <p>(ii) & (iii) It is anticipated that the Applicant will provide clarification in respect of their visualisations.</p>
<p>Q10.0.12</p>	<p>Visual Plumes</p> <p>NPS EN-1 at paragraph 5.9.20 states “The IPC should ensure applicants have taken into account the landscape and visual impacts of visible plumes from chimney stacks and/or the cooling assembly”</p> <p>(ii) In the event that plumes could be generated by the Proposed Development what requirements might be appropriate to mitigate such effects?</p>	<p>Neither the existing or revised Landscape Character Assessment and Guidelines specifically mention the visual impact of plumes. The Guidelines for Landscape and Visual Impact Assessment 3rd Edition (GLVIA3, 2013), produced by the Landscape Institute and the Institute of Environmental Management & Assessment, raise the visual impact of plumes as an impact worthy of consideration, but they do not suggest any mitigation measures.</p> <p>The National Character Area profiles for the Humberhead Levels and the Trent and Belvoir Vales highlight power stations, and in the latter case plumes, as issues in the landscape. Again, no specific mitigation measures are suggested.</p> <p>Given that plumes could be visible to a significant height for miles around, low level planting or screening would not provide much mitigation. The applicant’s LVIA acknowledges that plumes will be visible on colder days, irrespective of planting. However, with a number of power stations, the steelworks and</p>

		other industrial facilities in the area, plumes are, to a degree an accepted feature of the existing landscape.
Q10.1.2	<p>Flixborough Wharf Lighting</p> <p>Within the relevant representation from Anna Flewker reference has been made to the installation of floodlights at the Flixborough Wharf.</p> <p>(i) Are you able to advise when these floodlights were installed? (ii) Whether they were subject to or required planning permission?</p>	<p>(i) NLC do not hold any records of when flood lighting has been installed at the wharf. There is significant external lighting in the area associated with the wharf and industrial estate operations. Our Environmental Protection team has received complaints regarding light pollution from the wharf/industrial estate at Flixborough but these have not identified the position of the lights in question.</p> <p>(ii) As we are not aware of the lights that are being referred to the council are unable to confirm whether planning permission would be required for the lights. Having checked our planning database there are no specific planning permissions for flood lighting at the wharf; nor are there any records of investigations by our planning enforcement team relating to the installation of floodlighting at the wharf. Planning permissions relating to development at the wharf that may have included external lighting are all historic with the most recent planning permission dating from 2003.</p> <p>It is noted that the wharf operators would benefit from relatively extensive permitted development rights that would likely allow for floodlights deemed to be necessary for the operation of the wharf; furthermore, it is unlikely that floodlighting attached to a building would constitute development requiring planning permission, provided it did not materially affect the appearance of the building.</p>
Q10.1.3	<p>Requirement 5</p> <p>(ii) Do you regard the current wording would achieve an appropriate method of ensuring a balance between operational safety and protection of amenity? Please explain your response to (ii) by setting out how you have balanced the competing interests and what lighting/safety standards you rely upon in support of the approach taken.</p>	<p>(ii) NLC is not aware of the operational requirements of the wharf with regards to safety. The current wording of Requirement 5 appears geared towards minimising light emissions and protecting amenity and does not explicitly refer to any balance with operational/safety requirements; however these operational/safety requirements will obviously be a key consideration when the lighting scheme is devised. There should perhaps be a requirement to consult with the wharf operators prior to approval of any lighting scheme to ensure that safety requirements have been adequately addressed.</p>

<p>Q12.0.2</p>	<p>Construction noise assessment and the ABC method</p> <p>It is noted that Table 5 on page 20 of [APP-055] is not the same as Table E1 in BS 5228. The BS5228 'ABC' method adjusts thresholds of potential significance according to the existing ambient noise level. The rural communities closest to the main site of the proposed scheme, being relatively quiet, fall into the lowest category: A.</p> <p>(i) Does the Applicant accept, and would NLC agree that according to the Applicant's assessment (Table 13 62dB v 55dB at R3) construction works in the evening would, subject to the works lasting for more than a month (implicit from BS5228 E.3.3), cause a likely significant adverse noise effect at some dwellings within those communities?</p> <p>(ii) On the reasonable assumption that the predictions account for best practicable means of noise control on site does the Applicant accept that limiting construction hours to 0700-1900 Mon - Fri and 0700-1300 Sat (public holidays excluded) would be the preferred method of avoiding this and achieve consistency with EN1?</p> <p>(iii) Any requirement can be drafted so that flexibility could be agreed to by NLC via existing statutory regimes. If the Applicant disagrees with the above approach, please provide further evidence or identify it within the submissions.</p>	<p>(i) Table 13 provides Predicted Noise Levels for Construction of the Buildings in the Northern Part of the Energy Park Land. R3 relates to '3 Charmaine' and demonstrates that during the evening the levels predicted are 62dB which is 7dB over the threshold of 55dB for Category A of BS5228. A potential significant effect is indicated if the LAeq, T noise level arising from the site exceeds the threshold level for the category appropriate to the ambient noise level. NLC therefore agree with this statement.</p> <p>(ii) This part is for the applicant to answer. However, NLC would agree with this approach.</p> <p>(iii) Again, this part of the question is for the applicant to answer.</p>
<p>Q14.0.1</p>	<p>Planning Policy</p> <p>Paragraph 4.1.8 of EN-1 states "The IPC (now SoS) may take into account any development consent obligations that an applicant agrees with local authorities. These must be relevant to planning, necessary to make the proposed</p>	<p>The required highway works are the removal of the traffic signals at Neap House and amending the signing on the approaches to the New Access Road, to reflect the amended road layout. Both are required as a result of the proposed development.</p>

	<p>development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects.”</p> <p>(i) Can both the Applicant and the Council set out how the proposed agreement offering a financial contribution towards highway works meets each of these tests.</p>	<p>The New Access Road will serve the existing Flixborough Industrial Estate and Port area, as well as the Project and will remove existing traffic from Stather Road via Neap House. Neap House is very narrow and unsuitable for two-way HGV movements, traffic signals control the flow of traffic at this pinch point. There are also residential properties in close proximity to the carriageway. The New Access Road, coupled with the stopping up of Stather Road will remove traffic from Stather Road and negate the need for the traffic signals at Neap House. Having discussed this with Highways colleagues, our preference is for the traffic signals to be removed as they will no longer be required.</p> <p>The signs on the approach arms to the New Access Road need to be amended to reflect the revised road layout.</p> <p>Both elements of the highways works are required as a direct result of the New Access Road. The financial contribution will cover the cost of removing the traffic signals and replacing the signage on the approach arms.</p>
Q14.0.5	<p>Planning Policy</p> <p>[[APP-050] Chapter 2 addresses the Policy and legislative context, however does not reference the National Policy Statement on Ports, the ExA invite your consideration on whether there should be reference to this National Policy, even as an associated policy statement and the consideration of any effects on river transport, ports or navigation issues?</p>	<p>The NPS on Ports provides a framework for decisions on proposals for new port development and associated development. The proposed development in this instance is not seeking new port development. The proposed development plans to make use of the existing port to facilitate import of fuel and materials but does not propose any extension or alteration to these existing port facilities. As such NLC are of the view that this NPS is of little relevance to the assessment of the current application and that the relevant NPSs are NPS EN-1, NPS EN-3 & NPS-EN5.</p>
Q14.0.6	<p>Planning Policy</p> <p>Draft NPS EN-1, EN-3, EN-5 have been published as recognised in the ES Chapter 2 [APP-050] At the current time an examination of an NSIP should be considered against the extant NPS.</p>	<p>(i) Although the draft NPSs are in draft form and not adopted, NLC is of the view that they are relevant and important for the purpose of Section 104 of the Planning Act 2008. As such the SoS should have regard to the draft NPSs in deciding the application but they would carry limited weight at this time and the adopted NPSs should still form the principal basis for determining the application.</p>

	(i) What weight if any do you consider the ExA and subsequently the SoS should attribute to the Draft NPS in preparing the recommendation report, and subsequently in taking the decision?	
Q14.0.9	<p>Policy Approach</p> <p>If not already provided, please submit complete copies of all relevant development plan and emerging policies and indicate in LIRs whether the status of any of those plans has changed since the application was submitted.</p>	<p>Copies of all relevant development plan and emerging policies have been provided alongside this response.</p> <p>As detailed in the council's LIR, the Submission North Lincolnshire Local Plan (2022) was submitted for examination on 11 November and as such the examination is still at an early stage. We are currently anticipating that the new local plan would be able to be adopted late 2023/early 2024 at the earliest. NLC are giving limited weight to this emerging plan at the current time.</p>
Q15.0.2	<p>Annual Monitoring Report</p> <p>Section 9.2 of Chapter 14 Economic, Community and Land Use Impacts [APP-062] proposes an Annual Monitoring Report against agreed criteria in the Employment and Skills Policy. This is stated to be secured through the CEMP. Whilst the CoCP [APP-074] refers to the "Preparation of an Employment and Skills Policy to maximise use of local suppliers and local employment opportunities" (e-page 76), there is no reference to the monitoring report.</p> <p>(ii) Are the Council content that the production of an annual monitoring report would secure to an appropriate level the use of local suppliers and employment opportunities?</p>	<p>(ii) Without understanding the context of the specifics in relation to commitments to be achieved and/or consequences for failing to do so it would be difficult for the Council to agree to an annual report being sufficient. We would want the applicant to make some strong commitments, work with the authority to ensure genuine opportunities would arise for local suppliers and ensuring strong employment opportunities. We feel it would be prudent as well for the applicant to consider working with the authority to sign up to the armed forces covenant, being a disability confident employer whilst maximising the opportunity to work with care leavers to give them the opportunity for a prosperous future career in the region. The applicant's scheme to create circa 3,550 FTE jobs during the construction phase should be a significant opportunity for local suppliers given the transferrable skills already within the region due to our history of manufacturing, engineering and construction.</p>
Q16.0.1	<p>Draft Obligation</p> <p>(i) A draft deed of development consent obligation has been provided (Doc 5.13) [APP-047]. Please provide an update on the progress of this obligation.</p>	<p>(i) NLC's Traffic Team are in the process of providing cost estimates for the required works to enable the agreement to be finalised.</p> <p>(ii) The answer to Q14.0.1 clarifies why the works are required. In addition to this, the works fall outside of the redline boundary and as such could not be secured through the DCO. The intention would be for NLC to arrange for the</p>

	<p>(ii) Please advise why this obligation is considered necessary and how the works that it would deliver would be secured and in what timeframe.</p>	<p>works to be completed, with the financial obligation provided by the developer. The timeframes still need to be confirmed with the developer, but NLC would suggest that obligation is paid when works commence on site.</p> <p>We would want to see the New Access Road completed and open to all vehicles, before the traffic signals at Neap House are removed. It is suggested suggest that the traffic signals at Neap House should be removed within six months of the New Access Road being completed and open to all vehicles. We would need to clarify with the developer, whether this would be 6 months from the start of the maintenance period prior to adoption, or 6 months from NLC adopting the road.</p> <p>We would want to see the signing amended prior to the New Access Road being completed and open to all vehicles.</p>
Q16.0.5	<p>6.2.13 ES Chapter 13 Traffic and Transport [APP-061] - sustainability and modal split</p> <p>(i) What are the views on what would be a sustainable transport plan in terms of the proportion of materials imported and exported by river, rail and road during construction and operation?</p> <p>(ii) How could this be represented and secured in the DCO?</p>	<p>(i) NLC is keen to see the use of river/rail transport during the construction and operational phase. Whilst Chapter 13 of the ES provides an indication of the number of rail/river movements that could be made during both the construction (maximum of 50 trains per year and 80 vessel movements per year), limited information is provided on the practicalities of this or how realistic the aspirations are.</p> <p>We accept that the use of rail during the construction phase is dependent upon the phasing of the works to reinstate the disused branch line from Dragonby Sidings through to the Project.</p> <p>Any modal shift to river/rail during the construction phase would offer significant environmental benefits.</p> <p>Once operational NLC would wish to see the use of rail/river transport maximised with material brought in via road only where it is not possible to use rail/river.</p>

		<p>Given the current uncertainties on the timescales for the delivery of the railway reinstatement works and relevant permissions required to use the railway it is difficult for NLC to suggest what a viable sustainable transport might look like at this time.</p> <p>(ii) It is assumed that further work would need to be undertaken by the applicant to investigate the feasibility of this and to enter into agreements with the relevant operators to secure these movements and develop transport plans. These could then potentially be secured via requirement as part of the DCO.</p>
Q17.0.4	<p>Water Disposal</p> <p>(i) How are the methods of water disposal secured? Paragraph 8.2.1.3 states “Construction activities could require the disposal of water from the Application Land. Therefore, all construction contractors will be required, in conjunction with the Project, to reach an agreement with the EA with regard to detailed methods of disposal.”</p> <p>(ii) In light of the above can the ExA be confident there would not be discharge to the River Trent?</p> <p>(iii) As currently drafted the CoCP requires CEMPS to be submitted at each stage of development for NLGEP approval. Do either NLC or EA consider this appropriate?</p>	<p>(i) It is not currently clear how the methods of water disposal are proposed to be controlled.</p> <p>(ii) It is assumed that consent would be required from the EA and/or the WMB to discharge into the River Trent; however the EA/WMB would need to clarify this.</p> <p>(iii) Due to the scale of the proposed development and the fact that it will be delivered in a number of stages it is considered appropriate that a CEMP should be submitted and approved for each phase of the development. This is an approach that has been taken on large-scale NSIP projects.</p>
Q17.1.1	<p>National Policy Statement EN-1 and PPG on Flood Risk</p> <p>At paragraph 5.7.6 reference is made to the Planning Practice Guide which at the time of publishing linked to Planning Policy Statement 25. Would the Applicant and the Council please set out their view on the weight to be attributed to the latest guidance and advise if it should be</p>	<p>The council are of the view that the latest guidance set out in the PPG should be considered as a relevant and important consideration. It is believed that this is referenced as a source of further guidance rather than a part of the policy within the NPS.</p>

	considered as part of the policy within the NPS, or as an important and relevant consideration?	
Q17.1.7	<p>FRA</p> <p>The FRA proposes numerous design measures to be implemented (eg recommended flood levels which are not secured in the Parameters Table in Schedule 1 Part 3 of the draft DCO), as well as three mitigation options in respect of flood risk for the Steel Works warehouse. The ExA notes the need for a flood management plan to be submitted to and approved by the relevant planning authority prior to commissioning of the Proposed Development.</p> <p>(i) Would it be more appropriate for these measures to be determined at an early stage, ie during design, as opposed to only being required before the energy park works are commissioned?</p>	<p>(i) As set out in our response to Q7.1.60, the council are of the view that the flood management plan and any necessary mitigation measures should be determined during detailed design as opposed to being required prior to commissioning. Flood management and mitigation will be a fundamental element of the design of the proposal and need to be considered at this earlier stage. Leaving these matters to a later date could mean that revisions to the design are required following construction.</p>
Q17.1.8	<p>Flood Risk</p> <p>Reference is made in Table 2 of [APP-057] of additional measures to be employed by EA or NLC over the next 40 years.</p> <p>(i) Please explain what these measures might include, how they are assessed and delivered and if they should be secured as part of this DCO.</p> <p>(ii) In the event that they are not to be secured through this DCO, what reliance does the FRA make on these future measures in ensuring the proposed development is not at flood risk through out the life time of the project?</p>	<p>(i) The need for additional flood measures has not yet been determined and any such measures would have to be agreed with the EA through a collaborative approach. It is the council's view that future flood defence measures should not be secured through the DCO as they are not directly related to the proposed development.</p> <p>(ii) & (iii) It is anticipated that the EA can provide further clarification on the suitability of the FRA and implications for off-site flooding relating to unplanned future flood improvement works</p>

	(iii) Are there implications for off site flooding in the event these measures do not occur?	
Q17.1.11	<p>Flood management</p> <p>Chapter 9 [APP-057] at paragraph 9.1.1.3 states “To manage the areas where the increase in flood risk has not been mitigated, a Flood Management Plan will be developed for the Project.”</p> <p>(i) Please provide commentary on whether this approach is regarded as policy compliant in light of the approach set out in NPS EN-1 and EN-3</p>	(i) NLC would expect the EA to provide clarification on this matter. However, it is noted that the NPSs seek to avoid or wholly mitigate flood risk. Where this is not possible the increased flood risk should be weighed against the benefits of the project, taking account of the nature and degree of the risk, the future impacts on climate change and the advice provided by the EA.
Q17.1.12	<p>Strategic Flood Risk Assessment (SFRA)</p> <p>The FRA [APP-070] relies in part on the North Lincolnshire SFRA (2011).</p> <p>(i) Is this SFRA the agreed starting point for flood risk in the area?</p> <p>(ii) Is this the most up to date information available?</p>	<p>(i) The North Lincolnshire SFRA (2011) was the starting point for flood risk in North Lincolnshire until June 2022 when a new SFRA was adopted by the council. The applicant’s FRA was produced in May 2022, prior to the new SFRA being adopted. A copy of the new SFRA has been provided with this response, the SFRA maps are wholly digital now and are available at: MAP.NORTHLINCS.GOV.UK</p> <p>(ii) The SFRA 2022 is the most up to date information available in respect of flood risk in North Lincolnshire.</p>
Q17.1.14	<p>Mitigation</p> <p>(i) Do the EA and the Council agree that the timing of the mitigation set out under Requirement 12 is appropriate to safeguard the site from flood risk?</p> <p>(ii) Should the Requirement also need the approval of the Council as Lead Local Flood Authority/Emergency Planning Authority or would prior consultation in advance of approval be sufficient?</p>	<p>(i) NLC has no objection to the timing of the mitigation delivery.</p> <p>(ii) Prior consultation in advance of approval would be considered sufficient.</p>