



Planning Act 2008

## North Lincolnshire Green Energy Park

9.22 Written summaries of oral submissions put at Issue Specific Hearing 3 (Day two – 26 January 2023)

PINS reference: EN010116

February 2023

Revision number: 0



## 1. INTRODUCTION

- 1.1 The Development Consent Order (**DCO**) application for the North Lincolnshire Green Energy Park (**NLGEP**) was submitted on 31 May 2022 and accepted for examination on 27 June 2022.
- 1.2 The third Issue Specific Hearing (**ISH3**) for the NLGEP DCO application was a blended event which was held in person at Forest Pines Spa and Golf Resort, Ermine Street, Broughton, Brigg, DN20 0AQ and virtually by Microsoft Teams on Wednesday 25 and Thursday 26 January 2023 at 10.00am each day.
- 1.3 The Examining Authority (**ExA**) invited the Applicant to respond to the matters raised and the Applicant confirmed it would respond in writing after the hearing.
- 1.4 This document seeks to fully address the representations made by the Interested Parties at ISH3 on Thursday 26 January.
- 1.5 The Applicant has responded to the issues raised by each attending party and provided cross-references to the relevant application or examination documents in the text below. The document is supported by the following Appendices:
- 1.6 Appendix one – approach taken to HGV restrictions on other DCO projects; and
- 1.7 Appendix two – clarification on the Applicant's responses to ExQ1 Q1.0.23 and Q17.1.13.

## 2. THE APPLICANT'S SUBMISSIONS IN RESPONSE TO MATTERS RAISED AT ISH3

Ref	Questions / Issues Raised at ISH3 and Hearing Action Points	Summary of Applicant's Response at ISH3	Applicant's Written Response
<b>Agenda Item 3: Issues in respect of waste</b>			
1.	The ExA noted that the RDF supply assessment has been revised and it is different. The ExA asked what has changed and why?	The Applicant stated that this has changed due to the passage of time. The original study was carried out in late 2021 and it was updated taking account of new data that emerged in the next year.	The Applicant has no further comments.
<b>Agenda item 3 (a) The likely balance between waste as fuel (WaF) supply and energy from waste (EfW) capacity in England until 2035</b>			
2.	<p>The ExA asked about the balance between amount of waste available as fuel and the actual capacity of facilities in England. EN1 4.1.3 states that only waste that cannot be reused/recycled can be used for energy recovery and this is supported by EN1 2.5.70.</p> <p>With reference to Table 3 (Management of all Local Authority collected waste financial year figures, England 2015/16 to 2020/21) and the figures given for 2020 for C&amp;I waste is 22 million tonnes, how has the</p>	<p>The Applicant started with data from DEFRA's Waste Data Interrogator, then applied filters, filtering hazardous, inert and construction and demolition waste, filtering out certain chapters and codes, then filtering out certain site categories where we were aiming to capture those that represented the final disposal treatment of waste to avoid double counting.</p> <p>The Applicant arrived at 22 million tonnes after filtering these out.</p> <p>For C&amp;I waste, every study leads to a different answer, therefore the Applicant has tried to benchmark against other studies and the Applicant's figures are appropriate, however, possibly slightly conservative.</p>	The Applicant further clarifies that the approach described in 2 above does not capture exported waste as it does not count waste shipments where final treatment is abroad.

	Applicant divided the figure for the C&I waste for 2020.		
3.	<p>With reference to the graph in UKWIN's report, the figure for 2022 was approximately 25 million tonnes. The ExA asked UKWIN whether they would agree to using 22 million tonnes (2020) as the baseline figure for waste available.</p> <p>UKWIN confirmed they are happy to use 22 million tonnes as the starting figure.</p> <p>The ExA asked how the 22 million tonnes figure is going to change. How has the Applicant started from this figure and projected forwards?</p>	<p>In the initial RDF supply assessment and revisions 1 and 2, the Applicant projected to 2035, recognising that there is uncertainty about the future and how the waste available will change.</p> <p>The Applicant took the assumption that government recycling targets are met (to increase household recycling to 65% by 2035) and essentially drew a straight line, taking into account representations from UKWIN we then extended out to 2042, taking into account that the government adopted a new target of reducing residual waste by 50% by 2042. The Applicant applied this target to the volumes being looked at.</p>	For clarity, the Applicant adds that the approach described here applies to the 'Base Case' presented in the RDF Supply Assessment, in which the Government's recycling and waste reduction targets are met. The RDF Supply Assessment also presents a case in which these targets are not met.
4.	Simon Nicolson (RAIN) stated that in 2021 the Applicant said that that no organic or biomass waste would be incinerated.	The Applicant stated that the Environment Agency permit will control this. There will be no source separated materials for either recycling or compost purposes able to be received at the site, so that includes biomass materials.	The Applicant has no further comments.
5.	Turning to waste demand, the ExA asked UKWIN whether they agree with the list of facilities and the capacity they represent in Table A6.	In response to UKWIN's response, the Applicant confirmed it has responded to UKWIN's written representation ( <b>REP 3-022</b> ). The Applicant has taken UKWIN's point into account and added an assumption that a certain amount of materials goes to cement kilns and kept this assumption constant.	The Applicant has no further comments.

6.	<p>The ExA referred to paragraphs 4.7.10 of EN-1 and 4.8.9 of the draft EN-1.</p> <p>Given what the policy says and the size of the plant, the ExA asked the Applicant how does the Applicant thinks that policy will affect EfW capacity and if it does at what point of time will it come to effect?</p>	<p>The Applicant noted it is quite hard to take a view as to when it will change.</p> <p>The Applicant agreed with the ExA's assessment on current policy and has tried to take a view on the direction of policy. We note the government did issue a call for evidence on removing that 300 megawatt threshold so that smaller combustion plant would be required to demonstrate CCS readiness. This is why the Applicant has looked at it as part of the RDF supply assessment and then taken wider account of the ambition to decarbonise the electricity grid by 2035 as set out in the energy security strategy.</p>	The Applicant has no further comments.
7.	The ExA asked UKWIN to comment on how emerging policy will affect closure of existing plant/plans to build new plants.	In response to UKWIN's response, the Applicant stated in relation to the Carbon Capture and Storage (CCS) point, the recent Net Zero Review by Chris Skidmore MP quotes the Climate Change Committee as saying that CCS is a necessity and not an option. If one is to meet the net target then the vast majority of residual waste will need to be treated by facilities with CCS fitted. On the none R1 point, energy recovery is higher up the waste hierarchy and so R1 facilities should be preferred over none R1 facilities.	The reference in the Net Zero Review is at paragraph 395. A link to the document is provided as follows: <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128689/mission-zero-independent-review.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128689/mission-zero-independent-review.pdf</a>
8.	The ExA stated that in previous hearings, when asked about the extent of carbon capture, the Applicant explained that it is limited to what is proposed because actually undertaking that	<p>The Applicant stated that a detailed assessment of the economics of carbon capture has not been done because the cost information is not available as it is an emerging technology.</p> <p>The Applicant has done an admittedly more subjective assessment, in identifying a number of criteria to see if facilities would have a high,</p>	The Applicant has no further comments.

	<p>carbon capture is a cost to the scheme.</p> <p>The ExA asked the Applicant how it is squaring that circle with the commercial side and what you're saying to us about availability and future pressure on EfW plants?</p>	<p>medium or low likelihood of fitting CCS. If a facility is near a CCS cluster then it would be high (like this one). If it is in a coastal location, so likely to transfer via ship, or those where the operator has announced they are looking at CCS (which adds mainland locations), then it would be medium.</p> <p>At the minute, CCS is not economic without a subsidy although this could change if it is brought into ETS (Emissions Trading Scheme). The Applicant has tried to apply a view of which facilities are more likely to be well placed to fit CCS.</p>	
9.	<p>The ExA stated that the RDF supply assessment shows some ageing facilities coming to the end of their operational life, there may be other commercial reasons where they may be likely to close, and the Applicant gave a number of those facilities that may close in the short term.</p> <p>The ExA asked the Applicant to explain which facilities these are and the evidence which supports this?</p>	<p>The Applicant stated that for most facilities, the Applicant has assumed a life of 50 years, so this has been applied unless the Applicant has contrary information.</p> <p>The facilities the Applicant has identified as those that may close by 2030 are: Coventry, London Waste Edmonton (however, this is being replaced by new facility that the Applicant has included), and Stoke.</p>	The Applicant has no further comments.
10.	<p>UKWIN asked the Applicant why, with reference to the criteria in relation to CCS potential that the Applicant has applied, the proposed Boston Alternative Energy Facility has not been</p>	<p>The Applicant confirmed that only consented projects have been considered in relation to pipeline projects and the Boston Alternative Energy Facility has not yet been consented.</p>	The Applicant has no further comments.

	identified as having CCS capacity, as waste would be transported by ship and the Applicant has states a seaside location would be medium likelihood.		
11.	The ExA asked, in relation to the facilities the Applicant has mentioned as short term closures (Coventry, Stoke, London Waste Edmonton), whether, apart from the assumptions made, notice of closure has been given or any commercial signal?	<p>The Applicant confirmed that Stoke has started to tender for a replacement project. The Applicant is unsure about the status of Coventry. The Applicant has already confirmed that Edmonton is to be replaced by another facility.</p> <p>The Applicant stated that there is a commercial attraction to CCS. Net zero and government's legal requirement to hit this by 2050 mean it is clear CCS fitted plants have the opportunity to contribute to moving towards this goal.</p> <p>There has to be a better commercial position for a facility fitted with CCS. It is inevitable that some plant will therefore become less commercially attractive. It is at an early stage regarding commerciality, but some plants are much more likely to close over time because of their carbon intensity over time.</p>	The Applicant clarifies that the Coventry EfW facility was commissioned in 1975 and applying our assumption of a 50-year life implies closure in 2025. However we are not aware of any announced closure.
12.	UKWIN stated that generally speaking these facilities have permanent planning permission, and it is possible that they would be refurbished and it ought to be assumed that their lifetime extended.	The Applicant explained that the assessment has not looked on a site by site basis whether these old facilities can be refurbished. The old facilities are operating in a difficult environment and a 50 year life is a reasonable assumption.	The Applicant has no further comments.

13.	Simon Nicholson (RAIN) stated that the Applicant is talking about a 50 year lifecycle yet the proposed lifecycle of the development is only 25 years	The Applicant stated that in any investment it is common to assume an operating life that is shorter than the actual life.	The Applicant has no further comments.
14.	The ExA noted that the Rivenhall facility has been identified in UKWIN's list of "under construction facilities" but is not in the list prepared by the Applicant, and asked if this should have been included?	The Applicant confirmed Rivenhall should have been on the list and was included in the updated analysis in the RDF Supply Assessment (revision 2) submitted at Deadline 3 ( <b>REP3-041</b> ).	The Applicant has no further comments.
15.	<p>The ExA asked that the next draft of the SoCG with UKWIN includes a robust agreed position of the status of this balance and the ExA would like to see this starting at 2020 with 5 years intervals to 2040.</p> <p>The ExA is happy for this to be presented as a central case – there will be a central case a most likely case, and you can do your most pessimistic, optimistic. In all cases assume that the residual waste reduction target is progressing towards the government target, the 2022 target. If there could be some consensus around this.</p>	The Applicant confirmed it will work with UKWIN to submit a draft SoCG by the next deadline (deadline 4) and that a meeting has been set up with UKWIN on Friday 3 February to discuss.	The Applicant can confirm that a draft SoCG with UKWIN is being submitted at Deadline 4 (Document Reference 8.2.11).



16.	UKWIN made further comments about waste as fuel, cement kilns, sustainable aviation fuels and the Applicant's approach.	<p>The Applicant asked for the points raised by UKWIN at ISH3 to be made in writing by UKWIN which the Applicant will consider and respond to.</p> <p>The Applicant also made the point that it is not a question of the government closing incinerators, it is the commercial market they are operating in – that is what is going to drive some facilities to close.</p>	The Applicant will aim to respond further at Deadline 5, assuming receipt of UKWIN's written submissions at Deadline 4.
<b>Agenda item 3 (b) Securing consistency with the waste hierarchy through the use of a draft requirement.</b>			
17.	<p>The ExA asked whether consistency with the waste hierarchy can be secured through the use of a requirement. The Applicant has proposed requirement 15.</p> <p>The ExA asked what evidence suggests that this is a proven way to achieve consistency with policy?</p>	<p>The Environmental Permit (<b>EP</b>) will restrict the categories of waste the plant can receive.</p> <p>The EP will restrict the waste types that can be received at the energy recovery facility (ERF) to specific types defined in the European Waste Code list of wastes, including but not limited to code 19 12 “wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) not otherwise specified” and sub-code 10 “combustible waste (refuse derived fuel)”.</p> <p>The Environment Agency (EA) has confirmed that the EP will be required and that pre-application discussions have commenced (<b>REP3-022</b>). Permit conditions will be enforced by the EA through periodic inspection.</p> <p>The Requirement is intended to go beyond the obligations of the permit, which are the extent of what is legally required, in order to ensure that facility is not required to reject the waste received because waste producers and fuel suppliers have not met their obligations under</p>	The Applicant has no further comments.

		<p>the Waste (England and Wales) Regulations 2011, which is the instrument that implements the waste hierarchy.</p> <p>The draft DCO (<b>REP2-005</b>) includes Requirement 15 further to ensure that compliance with the waste hierarchy is secured.</p> <p>Requirement 15 provides for the submission and approval of a waste hierarchy scheme which sets out arrangements for maintenance of the waste hierarchy in priority order and which aims to minimise recyclable and reusable waste received at the authorised development during the commissioning and operational period of the authorised development. The scheme will include the following.</p> <ul style="list-style-type: none"><li>• The arrangements that must be put in place for ensuring that as much reusable and recyclable waste as is reasonably possible is removed from waste to be received at the authorised development.</li><li>• Including contractual measures to encourage as much reusable and recyclable waste being removed as far as possible.</li><li>• The arrangements that must be put in place for ensuring that commercial suppliers of residual waste operate a written environmental management system which includes establishing a baseline for recyclable and reusable waste removed from residual waste and specific targets for</li></ul>	
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		<p>improving the percentage of such removed reusable and recyclable waste.</p> <ul style="list-style-type: none"> <li>• The arrangements that must be put in place for suspending and/or discontinuing supply arrangements from commercial suppliers who fail to retain or comply with any environmental management systems.</li> <li>• Monitoring arrangements and keeping of records on the composition of waste, which must be available for inspection by the Local Planning Authority.</li> </ul> <p>This type of requirement was accepted in the Cory Riverside Energy Park Order to address the waste hierarchy position.</p>	
18.	<p>The ExA asked Interested Parties view on this and whether Requirement 15 will be consistency with policy. Comments were made by UKWIN, the Environment Agency and North Lincolnshire Council.</p> <p>UKWIN asked the Applicant to clarify who would be inspecting what, the process, the consequences and whether the information be made public?</p>	<p>The Applicant agreed there is a duplication of regimes here that is perhaps not very helpful.</p> <p>The Applicant noted that the Environment Agency's (<b>EA</b>) response set out what the EA will do to enforce the permit, so that should be enough to give confidence – the key effect of the facility on the hierarchy is to take waste at the bottom and move it up the hierarchy to energy recovery. The evidence that it is needed includes the increase of landfill in Yorkshire and Humber from 2020 to 2021 in the footprint.</p> <p>The advantage of requirement 15 is that it obliges the Applicant to engage with its fuel suppliers to a greater extent than the EP alone and would to try and encourage them further to ensure the waste hierarchy will be applied in</p>	<p>The Applicant has no further comments.</p>

		<p>full. This is an obligation which is under the Waste (England and Wales) Regulations 2011.</p> <p>The Applicant feels that requirement 15 provides further confidence that the waste hierarchy will be applied, although, the EP is the main control.</p> <p>The proposed development includes a Plastics Recycling Facility which is intended to help facilitate the separation of plastics from waste by suppliers to the site and so includes plastic recycling.</p>	
19.	<p>Simon Nicholson (RAIN) asked, if waste monitoring is at source, and if all recyclable material has been removed and there is no biomass, then what is left?</p>	<p>The Applicant explained that there are materials such as waste paper, card and plastics in residual waste as they have not been separated out - it is that sink of materials that the government is hoping will provide for the higher levels of recycling and composting and that the Applicant has allowed for in the capacity assessment.</p> <p>We often refer to recycling in terms of its technical and economic possibility – it is not possible to separate everything that might appear recoverable eg dirty cat litter paper.</p> <p>In relation to the reference to waste monitoring at source the Applicant assumes this is referring to the fuel provider and where they collect from. The contract between the Applicant and its fuel providers will include a fuel specification that will be closely monitored. Material deviations from the specification will result in the rejection of delivered RDF. The fuel providers will source from their customers (municipal or commercial). Commercial</p>	<p>The Applicant has no further comments.</p>

		<p>customers have a requirement to apply the waste hierarchy. The waste monitoring part is to ensure those waste suppliers are taking measures to ensure they are only collecting residual waste themselves and that their customers are taking measures to apply the hierarchy.</p>	
<p>20.</p>	<p>UKWIN made further comments that waste policy has to be controlled by planning and not the EP and in relation to the draft requirement.</p> <p>The ExA invited NLC and UKWIN to make written submission on what would make the requirement more effective.</p>	<p>The Applicant confirmed that requirement 15 in the dDCO is based on the requirement in <b>Riverside Energy Park DCO</b> (Cory Riverside) and notes that it is a relatively new approach.</p> <p>The Applicant also referred the ExA to the Secretary of State's decision letter in Cory Riverside at paragraph 4.9, where the Secretary of State agreed that the drafting should ensure the development will not breach the principles of the waste hierarchy. In relation to points raised about "gold plating", the waste hierarchy is an obligation that ties to everybody in the chain. We accept that the principal requirement is on the operator, but this adds a belt and braces approach to check that the supplier is complying with the waste requirement.</p> <p>The Applicant made reference to a typical EP condition and the Applicant has looked at <b>Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility (Kemsley)</b> as an example. Waste can only be accepted if it complies with the list in the EP, and if there is any source segregated materials that haven't been recycled, they cannot be accepted unless</p>	<p>The Applicant has no further comments.</p>

		<p>it is demonstrated they are unsuitable for recycling.</p> <p>The Applicant noted that Kemsley is in Kent, which has 1.2 or 1.4 million tonnes of EfW capacity and that it was within that local context that the potential for overcapacity judgement was made. That is a very different situation to this one.</p>	
<p><b>Agenda item 3 (c): Sustainable transport policy and how that might be secured.</b></p>			
21.	<p>The ExA asked about sustainable transport policy and how that might be secured (EN-3 para 2.5.24 and 2.5.25)</p> <p>The ExA asked the Applicant to comment on the possibility of a limit on the number of HGVs?</p>	<p>The Applicant stated that it is worth referring to paragraph 5.13.10 of EN1 which states that <i>"water-borne or rail transport is preferred over road transport at all stages of the project, where cost-effective."</i></p> <p>In relation to HGV limits, where DCOs have done that before, e.g. nuclear power, that is usually led by the capacity of the road network and its ability to accommodate very significant increases in traffic..</p> <p>Government policy at all levels is clear that access by sustainable modes is strongly supported. Indeed, this has been a guiding principle in the Applicant's site selection process and access by road, river and rail was a key reason that the Application site was chosen. It is actually fairly unusual for a site to be served by both rail and river and both can be utilised with relatively little additional infrastructure. We really should be making the best use of these types of sites.</p> <p>The Applicant started with how it is chicken and egg about how you provide services in</p>	<p>The NSIPs concerned were:</p> <p><b>East Midlands Gateway Strategic Rail Freight Interchange</b> (<a href="#">link</a>), the DCO providing for up to 260,000 square metres of the 557,400 square metres of floorspace to be occupied prior to the rail terminal being made available for use (DCO Schedule 2 requirements section 2(3) page 37). See also Decision Letter, Secretary of State for Transport, 12 January 2016, paragraphs 14-26.</p> <p><b>West Midlands Interchange Strategic Rail Freight Interchange</b> (<a href="#">link</a>), the DCO providing for up to 186,000 square metres of the 743,200 square metres of floorspace to be occupied, or up to 6 years from the first occupation of 47,000 square metres of floorspace, prior to completion of the rail terminal (DCO Schedule 2 Part 2 section 35 page 55). See also Decision Letter, Secretary of State for Transport, 4 May 2020, paragraphs 27-33.</p> <p>The NSIP applying for a non-material change to the timing of the rail facilities provisions within the DCO is the <b>Northampton Gateway Strategic Rail Freight Interchange</b> (<a href="#">link</a>). The undertaker is seeking to revise the original provision in the DCO for the rail terminal to be available prior to occupation of any floorspace (Schedule 2 Part 1 section 3(3) page 44) due to delays in securing access to the national rail network controlled by a third party (Network Rail).</p>

		<p>advance of the material that's necessary in order to make those services available, and the need for flexibility around that, which is a principle that's been discussed and acknowledged by the Secretary of State on previous NSIP projects, particularly in the context of strategic rail freight interchanges, where some applicants have chosen to try and hardwire the delivery of rail services and infrastructure because of the external dependencies. One of those has recently come unstuck and others have decided to phase in the provision of rail infrastructure. In terms of the nature of the rail works (No. 3 reinstatement of the branch line and No. 4 putting in the rail terminal) the railway line is already there and it's been retained as there was a feeling that rail services would come back. The Applicant's development creates the opportunity for critical mass and we see that in the operations that currently run out of Manchester, Merseyside and West London where there are doing one or two trains a day of compacted RDF sealed in steel containers to move from recovery facilities in the urban areas out to energy recovery facilities outside of those urban areas. It is no coincidence that the reason those services are running is because not only is there a scale of material, but the contracts with the waste authorities go on for a long period, 25 years plus in some cases, which creates a stable, predictable environment for rail to be delivered at scale, commercially viable and operationally viable. The issue here, which is the same as other similar facilities, is until the facility is consented it is difficult to go out to the market to bring waste to a site. The providers of that waste will say, well where's your facility? They and we</p>	<p>Examples of ERF facilities with rail access provisions include:</p> <ul style="list-style-type: none"> <li>• <b>Severnside Energy Recovery Centre</b> (South Gloucestershire): rail terminal constructed in parallel with the ERF, rail services used from the outset in connection with the West London Waste Authority waste contract, which was signed in the period between SUEZ securing planning consent on Appeal in 2013 and the start of construction on site. A daily train delivers RDF from two railheads in West London;</li> <li>• <b>Wilton Energy Recovery Centre</b> (Redcar &amp; Cleveland): rail terminal constructed in parallel with the ERF, rail services used from the outset in connection with the Merseyside Recycling and Waste Authority waste contract, which was signed in the period between SUEZ securing planning consent and the start of construction on site. Two trains per day deliver RDF from a railhead in Knowsley;</li> <li>• <b>Rookery South Resource Recovery Facility</b> (Bedfordshire): rail terminal yet to be constructed, Section 106 agreement dated 18<sup>th</sup> July 2011 requires the Undertaker to provide a Rail Feasibility Report to the Local Planning Authority after 2 years and every 5 years thereafter on the feasibility of using rail to deliver RDF (Schedule 1 paragraph 15);</li> <li>• <b>Ferrybridge Multifuel 1 &amp; 2</b> (Wakefield): rail terminal constructed in parallel with the ERF, no use of the facility to date. Undertaker required to provide a Sustainable Fuel Transport Management Plan to the Local Planning Authority prior to commissioning of the Development and throughout its lifetime (FM1 Decision Letter, Secretary of State for DECC, 31<sup>st</sup> October 2011, pages 5-6 and Section 36 consent section 61 page 27-28, FM2 DCO Schedule 2 section 35 pages 28-29. Note that the DCO also requires under the same provisions that an assessment must be made of the viability of using water transport to move fuel and ash;</li> <li>• <b>Lostock Sustainable Energy Plant</b> (Cheshire): rail terminal yet to be constructed (the site has an active rail access to an adjacent user), the Undertaker expected to keep opportunities under review for non-road modes of transport for fuel (Decision Letter, Secretary of State for DECC, 2<sup>nd</sup> October 2012, page 2</li> </ul>
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		<p>will need to engage with Network Rail and the ORR to get agreements in place and get timetables sorted out, and they will say, where is the facility? The application needs to get at least through determination first. This point is recognised in part, partly in the way other ERF facilities have been developed out. Eg Enfinium at Ferrybridge have built the rail terminal so it is ready as soon as they are ready to use it, rather than not build it at all. Other facilities, I think Rookery South, has a requirement through its planning consent to report to the local authority every couple of years to say we've had another look at rail and we're not sure we're ready yet. So you've got different approaches. Those DCOs that have a big rail component to them, not least strategic rail freight interchanges, in the case of West Midlands Interchange, SRFI and East Midlands Gateway, they deliberately phased when the rail was going to come in. Partly to allow the occupier and the activities to build on site to create critical mass so that train services can then work commercially and operationally, but also recognising there are external actors to engage with and this takes time to get in place. The Secretary of State acknowledged this in the decision letters on both of those projects, because the concerns were raised that they're not putting the rail infrastructure in from day one so how can we be satisfied they're ever going to use rail. Secretary of State responded, quoting National Networks NPS paragraph 2.45 on the need for flexibility to allow the operator to respond to the commercial conditions as they arise. Northampton Gateway strategic rail freight interchange by contrast went straight for putting rail services in from day one and they</p>	<p>and Variation of Section 36 dated 10<sup>th</sup> July 2019 Annex sections 8-11 pages 7-8).</p> <p>The Birch Coppice Strategic Rail Freight Interchange refers to a 2006 Appeal by TNT Logistics UK on the wording of a planning condition on a rail-served industrial building, the original condition stating (our highlighting):</p> <p><i>“The rail link shown into the site and hereby approved shall be provided, maintained and utilised for the full life of the development as the <b>primary</b> means of receiving goods into the site.”</i> (planning permission PBAEBC / 0937 / 2000 / FAP, dated 20 October 2000, condition 22).</p> <p>The Inspector leading the Appeal concluded:</p> <p>“However, although in some circumstances policies may require the provision of appropriate facilities, national, regional and SP policies encourage the use of rail rather than force it. In contrast, Condition 22 of the October 2000 permission effectively requires the majority of the goods received at the appeal site to be transported by rail and in this respect I consider that it imposes a greater burden than required by these policies (para 7).”</p> <p>“I fully understand and support the Council's objective of seeking to maximise the amount of material transported by rail, which I consider to be in accord with the principles of sustainable development. There is logic in the Council's argument that if permissions only provide and maintain rail facilities without use, the policy will not be effective in achieving its objective. However, the Council accepts that the policy should not be used to impose an inefficient movement of goods. Without particular justification, I am not convinced that it is reasonable or strictly in accord with the wording of Policy TPT5 to impose a requirement for a specific percentage of material to be imported by rail. The reasoned justification for the policy refers to 'encouraging' the large scale movement of freight by more sustainable modes. It does</p>
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		<p>have come unstuck because between them and an external party, Network Rail, they are unable to deliver that rail connection so the DCO is the subject of an application for revision to try and break that connection. On the point about HGVs, the Birch Coppice strategic rail freight interchange, one of the buildings on there had at the request of the local authority a condition that required 50% of traffic to that building had to come by rail. The operator found that, because at the time their business was about importing components from mainland Europe, and because of problems with the rail services to and from mainland Europe, this was commercially fettering their ability to do what they needed to do – they could not honour the commitment because it was outside of their control. If they ran the trains they would have more control, but they do not. The ExA agreed and put it down to best endeavours rather than an absolute obligation. It is trying to pick up that flexibility – where this is included, the traffic does flow. Trains need rather large volumes of traffic, you would need 900-1000 tonnes of material, based on what existing rail services are carrying, for rail to make it operationally and commercially viable. This is why Manchester, Merseyside and West London have chosen to go down that route.</p> <p>The number of vessel movements in the Humber Estuary and the River Trent has significantly decreased in the last 20 years. Vessel movements in the River Trent dropped from 2,500 to 1,000 between 1999 and 2019, while vessel movements at Flixborough Wharf dropped from 450 to 300. Noting that access to the River Trent is limited by the high tides</p>	<p>not refer to 'requiring' such movement, albeit that the Policy requires provision to maximise the movement of goods by rail. The Council acknowledges that it cannot force a developer to use rail as a means of transport and that Policy TPT5 is intended to be consistent with SP and regional policies. I am satisfied that these policies seek to encourage and facilitate freight movement by rail rather than impose it. I therefore conclude that the deletion of Condition 22 and its replacement with a condition requiring the retention of the rail terminal and its maintenance in working order for the full life of the development would not conflict with prevailing planning policies designed to encourage the use of alternatives to road transport and to make provision for the use of rail to be maximised (para 12)."</p> <p>"Although the operation of the plant as a whole has been successful over the last four years, I have no reason to doubt the appellant's claim that the requirement to use rail to transport the majority of goods into the site is making the operation less competitive and having an impact on the ability of the appellant to meet its customers' demands... The appellant has no direct control over how and when the goods are transported by those operators and in my judgment this imposes an unreasonable restriction on the competitiveness of the operation. For this reason, I conclude that the condition is unreasonable in this case, and does not meet the tests for conditions set out in Circular 11/95 (para 19)."</p> <p>"The proposed replacement of Condition 22 would have no impact on the ability of the site to continue to be served by rail freight, but would give greater flexibility to the appellant in arranging for the supply of goods. I agree with the appellant that the concept of maximisation should include consideration of what is a practical maximum in the circumstances. Under the present operating conditions, I consider that it is unreasonable to require the appellant to receive the majority of goods by rail. In summary, I conclude that the variation of the condition sought by the appellant would not conflict with prevailing planning policies. The rail link would be retained and, given the</p>
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		<p>resulting in only a limited number of vessels being able to access and depart during these windows. With departures from the wharf being able to occur approx. 2 hours before high water and arrivals approx. 1 hour before high water.</p> <p>There is an increase in vessel movements associated with the import of fill material during the construction phase. This has been estimated to represent between 4 and 16 additional vessel movements at the wharf per month and a maximum total of 80 vessel movements per year. This assumes that a cargo vessel would handle on average 2,500t of fill material. The assumed total amount of fill material required per year is approx. 100,000t over a four-year period. This equates to 40 vessels the same as saying 80 vessel movements per year at the wharf assuming all the material would arrive by the river.</p> <p>The number of vessels movements during the operation phases consider the following assumptions:</p> <p>The maximum number of vessel movements during a high tide is two vessels arriving at the wharf and two vessels departing and sailing downstream to the Humber in each spring tidal cycle.</p> <p>It is noted that there may be operational constraints that limit vessels (e.g. pilotage), however, for the purpose of estimating a worst-case number of vessels to feed into environmental studies, such as noise and air</p>	<p>desire of [the appellant] to use rail transport if it becomes viable, it seems to me that opportunities to maximise the use of rail would be retained. The existing condition is unreasonable because it requires the appellant to depend upon the performance of certain third parties (para 23-24).”</p> <p>The Inspector allowed the Appeal and replaced the wording of the Condition with the following:</p> <p>“The rail link shown into the site and hereby approved shall be retained and maintained in working order for the full life of the development for the purpose of receiving goods into the site.”</p> <p>Appeal decision letter, The Planning Inspectorate, reference APP / R3705 / A / 05 / 1189533 dated 31 July 2006.</p>
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		<p>impacts, it is assumed that this does not limit movements.</p> <p>The number of additional vessels arriving during a Neap period is calculated based on the ratio of vessels arriving in a Spring/Neap tide given by ABP.</p> <ul style="list-style-type: none"><li>• The number of vessels arriving and departing per year were calculated for both Spring and Neap tides, assuming 26 spring tides per year and 26 neap tides per year.</li><li>• The total vessel movements per year at Flixborough were then compared to the information on vessel movements from Associated British Ports (ABP) to allow for a percentage increase of vessel operations to be calculated.</li><li>• The vessel movements at Flixborough Wharf between 2019 and 2020 were incorporated into the marine traffic assessment to estimate the total vessel movements and consider overall capacity at the wharf was being considered.</li><li>• RDF density assumed to be 387kg/m<sup>3</sup></li><li>• Density of liquid Carbon Dioxide (CO<sub>2</sub>): 1029kg/m<sup>3</sup></li><li>• An assumed amount of export of CO<sub>2</sub> due to carbon capture plant</li></ul>	
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		<ul style="list-style-type: none"><li>• 80 Twenty-foot Equivalent Units (TEU) per vessel in average has been assumed for the capacity of the future container vessels. Assuming a container volume to be 33m<sup>3</sup>, resulting in each container being approx. 13t.</li></ul> <p>A total number of vessels movements was assessed for both 24hrs and 12hrs operations at the wharf. However, due to the potential of likely operational constraints that would restrict the number of vessel movements the 24hr operations was unrealistic and so for the estimated vessel movements the 12hr operation was used to determine the vessel movements.</p> <p>As such, the vessel movements expected during the operational phase (in addition to baseline traffic) are:</p> <ul style="list-style-type: none"><li>• offloading of containerised waste (RDF): approximately 350 vessel movements per year, equating to about 24% of the overall RDF supplied to the site</li><li>• offloading of bulk materials: approximately 180 vessel movements per year; and</li><li>• loading of Carbon dioxide (CO<sub>2</sub>): approximately 50 vessel movements per year</li></ul> <p>The combination of all the new activities would result in 580 additional vessel movements at the wharf per year, nearly 50 additional vessel movements per month. This represents a significant increase of nearly 200% at</p>	
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		<p>Flixborough Wharf (compared to the 305 movements in 2019).</p> <p>The number of vessel movements related to the offloading of RDF was determined by calculating the number of vessels required for the Carbon Dioxide loading and offloading of bulk materials and subtracting those away from the total number of vessel movements. Resulting in the remaining 350 vessel movements which allows for approx. 182,000t per year which equates to approx. 24% of the total tonnage of RDF per year supplied to the project.</p> <p>Based on the capacity assessment presented in the Preliminary NRA, the increase of vessel movements during the operational phase can be accommodated at Flixborough Wharf with the existing two berths available.</p> <p>It is considered that all the vessel movements can be accommodated within the current permitted / consented working hours of the wharf.</p> <p>Considering the traffic baseline, and the historic traffic in the Humber Estuary and the River Trent, it is considered that the navigation impact of the river freight associated with the Project will be limited and that total vessel movements will remain within a level which has already been experienced in the 1990's.</p> <p>It is also worth noting as a final point that access via the river will be restricted by the tides and that a maximum of 4 additional vessel movements per high tide could be</p>	
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		<p>accommodated i.e., 2 vessels arriving and 2 vessels departing the Wharf. It is the Applicants understanding that all the vessels entering and existing the River Trent will be piloted by an Associated British Ports ABP pilot.</p>	
22.	<p>The ExA asked what the Applicant considers the consented hours of the wharf to be?</p> <p>The ExA also noted they had asked for evidence of the original permission but did not think one could be found. The ExA asked if there was any update to the position?</p>	<p>The Applicant confirmed it believes there are no constraints on operational hours.</p> <p>The Applicant confirmed it has not been able to confirm a specific permission, likely due to the age of any consent, and as such it has not been possible to check whether there is a limit on operational hours. The Applicant believes NLC has also looked into this but has not been able to find a permission</p> <p>The 24 hour operation of the wharf has been ongoing for a considerable amount of time and the Applicant has sought to obtain the information from Associated British Ports.</p>	<p>The Applicant has no further comments.</p>
23.	<p>UKWIN stated that neither rail nor water can be described as certain or straightforward – so traffic/environment impacts should be made on the basis that any requirement may be altered or lifted.</p> <p>In line with the flexibility referred to by the Applicant, it makes sense for the assessment to be made on the basis of the maximum for each of the three methods –</p>	<p>The Applicant confirms that the EIA assessments were carried out on worst case scenario. Air Quality assumed 100% by each mode to ensure the maximum worst case.</p>	<p>The Applicant has no further comments.</p>

	<p>eg 25% by water, 100% by road.</p> <p>The ExA asked the Applicant to comment.</p>		
24.	<p>The ExA asked that where there was a HGV limit in a DCO, was the comment that this is to do with road capacity?</p> <p>The ExA also mentioned a road limit on Cory Riverside.</p>	<p>The Applicant explained that in some instances there are other environmental factors, eg air quality. The Applicant does not think any apply here.</p> <p>The Applicant can check the point about the Riverside DCO and others which include a HGV limit and provide a summary of the circumstances that applied in those cases.</p>	See document at Appendix one which responds on this point.
<b>Agenda item 3 (d): Local waste related concerns raised by Interested Parties.</b>			
25.	<p>The ExA asked the Applicant to confirm the areas where has reached agreement with AB Agri as AB Agri has raised concerns about the impact of contamination.</p>	<p>The Applicant confirms there is ongoing engagement with AB Agri, in particular regarding the written representation made and the concerns they have raised. The Applicant replied in full at Deadline 3 (<b>REP3-022</b>) which hopefully addresses some of those concerns.</p> <p>At least one of the items raised is regarding flood risk which will be the next agenda item. Regarding contamination risk, that was responded to in our response to the written representation (<b>REP3-022</b>).</p>	The Applicant has no further comments.
26.	<p>The ExA invited AB Agri to comment and detail their concerns. The ExA asked AB Agri what it is seeking. AB Agri stated that protective measures will need to be taken on their facility in order</p>	<p>The Applicant stated that it will discuss this further with AB Agri as works to their facilities has not been raised directly with the Applicant before.</p> <p>For pest control, the Applicant has referred to approaches for dealing with pest management</p>	A workshop between AB Agri and the Applicant has been arranged for 27 February to discuss this further.

	<p>to reduce risk and to ensure they can operate within parameters including improving manufacturing techniques.</p>	<p>via the EP and the Applicant's assessment and works and the way the plant operates mean there is low risk of odour and the waste is baled and sealed.</p> <p>There is a very low level risk in terms of pest management required for a facility of this type. The Applicant will pick that up separately with AB Agri and continue to discuss.</p>	
27.	<p>The ExA asked NLC whether odour is an area of disagreement and whether they want this addressed through a requirement.</p> <p>Annie Ward of NLC stated that in terms of odour, NLC is looking for a qualitative risk approach, which would be in line with the Institute of Air Quality Management guidance document – that would be used at this stage for screening of potential odour impacts.</p> <p>Annie Ward of NLC stated that, in terms of a requirement, there is some overlap with the Environment Permit. Would the Applicant consider an Odour Management Plan as part of a requirement?</p>	<p>The Applicant stated that the EP would cover things like odour management and if it was necessary a plan would be part of this. NLC is a consultee for the EP and will have the opportunity to comment.</p>	<p>NLC requested that the Applicant undertake a qualitative odour assessment in line with the requirements of the Institute of Air Quality Management 2018 odour guidance. The Applicant has undertaken this assessment and it has been included as part of the submissions at Deadline 4 (see updated ES Chapter 5: Air Quality [Revision 1] (document reference 6.2.5).</p>
28.	<p>Simon Nicholson (RAIN) asked what happens when</p>	<p>Regarding odour, the Applicant acknowledges the point that a qualitative assessment has not</p>	<p>The Applicant has no further comments.</p>



	<p>the facility is not in operation and how will negative pressure be maintained.</p> <p>Regarding road transport, strange conservation with a landowner and quoted something stated by Mr Bradley of the Applicant - "the rail and the river are smoke screens and it will all end up going by road".</p>	<p>been undertaken. The EA guidance note H4 sets out the methodology.</p> <p>In order to do this, one has to have an odour source in the first place. Following H4, which would be part of the Environment Permit, if the Environment Agency (EA) considers odour is an issue, one has to come to the point of frequency.</p> <p>The plant is inherently designed to manage and destroy odour. The combustion temperature and conditions are sufficient to destroy those compounds and therefore there is no odour being emitted from the stack.</p> <p>The reception hall is under negative pressure – that is the air used in the combustion process, so anything arising in the tipping hall is entirely contained within the fabric of the building and taken into combustion process and destroyed.</p> <p>The facility is deemed to be odour free during normal operations.</p> <p>When the plant is offline, for example, the plant has downtime for routine maintenance, typically around 10% of the year, the plant has multiple lines so one line can be shut down and the other two left in operation.</p> <p>If there is any foreseen large scale maintenance activity, that can be scheduled in so the waste bunker is empty and all the waste is used up, so the circumstances for odour will not arise.</p>	
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29.	The ExA asked the Applicant to confirm that there will not be a complete shut down and that there will not be any waste sitting inside of the hall without negative pressure?	The Applicant confirmed this is correct. If there is a need during the life of the plant to have a complete shutdown that is an anticipated event and so the Applicant can ensure that there will be no waste sitting around leading to odour.	The Applicant has no further comments.
30.	The ExA asked whether the Applicant would be happy to have a requirement which ensures that all waste comes in sealed containers and is baled and wrapped.	<p>The Applicant confirmed that this is already secured and covered in the Operational Environmental Management Plan (<b>OEMP</b>) (<b>APP-075</b>) which is secured through requirement 4 of the draft DCO.</p> <p>The OEMP secures how RDF is transported to the site and what would be required.</p> <p>Table 1 of the Operational Environmental Management Plan (OEMP) (<b>APP-075</b>) repeats</p>	The Applicant has no further comments.

		the mitigation measures from the Environmental Statement and states how these will be delivered.	
31.	<p>UKWIN asked the EA to confirm that the EP relates only to the facility itself and not odours enroute to and from the site.</p> <p>The EA confirmed the EP only relates to within the curtilage of the facility – it can include a formal management plan but the EP won't cover odours enroute to and from site.</p>	<p>The Applicant acknowledged what the EA said.</p> <p>The purposes of the OEMP for the DCO acknowledges there is overlap between EP and DCO.</p> <p>The Applicant confirmed that pursuant to requirement 4(5) it is only matters that will not be dealt with in the EP that will be covered in the OEMP and that transport to the site is one such item.</p>	The Applicant has no further comments.
32.	Simon Nicholson (RAIN) asked how other raw materials such as plastic for recycling, or any waste removed from the site as a by-product will be transported. Will it be taken in the original containers it was received in?	The Applicant confirmed it may need to come back on this question.	Source segregated plastic will be aggregated and collected in smaller quantities and is less likely to be transported by rail or river and it has been assessed that the 25,000 tonnes identified for the PRF will be transported by road. Any residual waste from the PRF will be recovered through the ERF. Any metals recovered from the ERF bottom ash will be removed by road to a metal recycling facility off site. Concrete products will be transported by rail, river and road. Carbon dioxide captured from the ERF will be utilised on site in the production of concrete products or transported off site by rail, river or road. No modelling has been undertaken for back-loading recycled plastic or concrete products in waste containers.
33.	The ExA said that the position stated by NLC is that the Applicant's statement that odour is dealt with through the design of the facility is not satisfactory and asked	<p>The Applicant stated that it is about the scoping out process as well. The Applicant will consider further and will make particular reference to the EN1 paragraph referred to as well.</p> <p>The Statutory Nuisance Statement (<b>APP-040</b>) refers to odours and the Applicant will look at</p>	The Applicant has undertaken an odour assessment and it has been included as part of the submissions at Deadline 4 (see updated ES Chapter 5: Air Quality [Revision 1] (document reference 6.2.5)). The assessment was undertaken according to the guidance of the Institute of Air Quality Management. The Applicant will revisit the Statutory Nuisance Statement (APP-040) and amend it, if necessary, in the light of the conclusions of the abovementioned odour assessment.

	<p>NLC to confirm if this is still the case?</p> <p>Annie Ward of NLC advised NLC is in the process of arranging a meeting next week with the Applicant and odour is one of the items tabled to be discussed at that meeting.</p> <p>The ExA then asked the Applicant to explain how it has screened out the need for an odour assessment.</p> <p>EN1 Para 5.6.7 states that the Secretary of State should satisfy itself an assessment has been carried out.</p> <p>The ExA stated that this is an area of risk if position remains the same. If the Applicant's expert could predict what the assessment could say then it should be done as it resolves an issue.</p> <p>Also, what happens when something goes wrong? It will inevitably happen at some point? That element should be covered by a risk assessment.</p>	<p>that and see if any further information can and should be added.</p>	
<p><b>Agenda item 3 (e): The carbon intensity of incineration v landfill and incineration v displaced power generation.</b></p>			

<p>34.</p>	<p>The ExA asked about The carbon intensity of incineration v landfill and wanted to know the analysis taken to date and the consensus reached</p>	<p>The Applicant stated the carbon balance assessment presented in the Environment Statement (<b>APP-054</b>) is consistent with IEMA guidance (Environmental Impact Assessment Guide: Assessing Greenhouse Gas Emissions and Evaluating their Significance, Institute of Environmental Management &amp; Assessment, 2017) and further guidance published by Defra (Energy recovery for residual waste. A carbon based modelling approach. Defra, February 2014). Many assessments have been presented using this method.</p> <p>The assessment presented in the Environment Statement (<b>APP-054</b>) is a conservative one, generally representing a reasonable worst case with respect to the benefits offered by the development in terms of carbon reduction.</p> <p>In response to UKWIN's comments, the Applicant has relaxed some of those conservative assumptions, which demonstrates the overwhelmingly positive outcome that can be expected. Examples of the conservative approach are as follows.</p> <p>The assessment does not take account of a degree of heat recovery, only a very limited carbon degree of capture is considered and that a Greenhouse Warming Potential (GWP) value for methane is used that is typical in such an assessment, but that significantly underestimates the impact of methane on global warming in the short term</p> <p>The Applicant has also adopted an approach that gives credit for the slow decomposition of biodegradable wastes in landfill. Slow</p>	<p>The Applicant has no further comments.</p>
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		<p>decomposition results in some emissions that would only occur in 100 years or more, and these are excluded from the assessment. This approach assumes that we are not concerned with emissions 100 years or more in the future. Arguably we should be concerned, not least for reasons of intergenerational equity and because climate change is unlikely to have been solved 100 year hence.</p> <p>The Applicant is reluctant to present a circumstance where unlikely conservative assumptions all manifest themselves together. Rather than mitigating an impact, this risks underestimating a significant benefit. As one combines conservative assumptions, the likelihood of the outcome is found by multiplying their outcomes, e.g. if two 1 in 100 values were to be combined, the overall likelihood of that occurrence is 1 in 10,000 chance.</p> <p>The assessment has looked at emissions from the EfW plant, the chemicals used in flue gas control, materials brought in for CBMF, a small proportion of carbon capture, substitution of electricity produced by combined cycle gas turbine.</p> <p>The remainder of the counterfactual (i.e. if we were not to build the facility) considers the materials recovered at the plant; metals and ash. The Applicant has not considered the benefits of the Plastics Recycling Facility.</p> <p>The Applicant has mentioned the emissions from landfill itself, modelled on reasonable rates of decomposition; taking into account</p>	
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		<p>energy from the methane captured and its substitution for electricity that would be generated elsewhere.</p> <p>It ends up with a balance that is positive – it provides for a reduction in greenhouse gases compared to the counterfactual.</p>	
35.	<p>The ExA stated that there is sensitivity to the actual composition of the waste. The ExA asked the Applicant to explain more about typical composition and how that is likely to change in view of the targets and what effect that would have on the assessment?</p>	<p>The Applicant has used reasonably comprehensive data that exists from DEFRA to come up with a typical waste composition. This composition would be controlled by fuel specifications negotiated with suppliers. This is something which has also been confirmed by the Environment Agency in its comments..</p> <p>The composition of the fuel delivered to the facility is assumed to be different from the residual wastes arising, and assumes a degree of processing will be undertaken by the fuel supplier to take out other recyclables, particularly plastics.</p> <p>The balance of greenhouse gases associated with the development will depend on the precise composition of waste from day to day and month to month. The Applicant believes that these compositions used are reasonable averages over the longer term.</p> <p>Ultimately, if more fossil carbon containing waste is used as a fuel, the benefit of the plant would drop. However, if more biomass is in the fuel, the benefit of the plant would increase. If we look at the key fossil carbon containing component of the waste that is plastic. There is a real prospect society will use less plastic in the future, which would have a</p>	<p>The Applicant has no further comments.</p>

		<p>beneficial effect on the overall carbon balance. It is also likely that more plastics will be produced from biomass sources which do not have the same effect as oil and gas based plastics and are taken to be carbon neutral (I.e. they have no net effect on the carbon balance).</p>	
36.	<p>UKWIN stated that they do not agree that the Applicant's approach is conservative. The Applicant is overstating the benefits and the facility will have a net disbenefit. UKWIN will respond to latest arguments at Deadline 4.</p> <p>The Applicant is not in accordance with Defra and IEMA guidance. The stricter the Applicant is on fuel will mean the further away and less local the supply will need to come from.</p> <p>Regarding the government guidance, the EfW says it is appropriate for EfW and more broadly changes in demand, which can derive from not just reducing electricity being used, but also generating additional electricity. That is consistently with conversations had with the government.</p>	<p>The Applicant stated that BEIS guidance documents referred to by UKWIN in its written submission as a source of marginal electricity emission factors (Valuing greenhouse gas emissions in policy appraisal) is intended for assessments of proposed policies changing energy consumption. To use it in an assessment of this type is out of context, as can be seen by the text in the guidance documents themselves.</p>	<p>The Applicant has no further comments.</p>



37.	Simon Nicholson (RAIN) said that it was stated earlier by the Applicant that biomass and biodegradable fuel will not be accepted at the plant, so will these bioplastics be removed instead of incinerating?	The Applicant stated that the development of biobased plastics is a fairly complex area – there will be some polymers that are indistinguishable from plastics we see today and these will be recyclable. There may be some biobased plastics that are not suitable for recycling and that material will remain in the waste stream at end of life.	The Applicant has no further comments.
<b>Agenda Item 4: Issues in respect of flood risk and the water environment</b>			
<b>Agenda item 4 (a): Application of the Sequential and Exception Tests, whether these have been carried out appropriately?</b>			
38.	<p>The ExA asked about the application of the Sequential Tests and whether this has been carried out appropriately.</p> <p>EN1 5.7.3, 5.7.9 – sequential test has been applied as part of site selection – key part – responses to EXQs 4.0.5, 4.0.8 and 17.1.3 can't see ref to criteria on flood risk in site selection.</p>	<p>The principal point is what EN1 says regarding sites being reasonably available and there being no reasonably available alternatives in applying the sequential test.</p> <p>In terms of the application of the sequential test, the Applicant responded in their answer to EXQs Q.4.0.8. The Applicant undertook a commercial exercise of sites suitable to deliver a RDF. A number of criteria were considered in determining alternative sites. There were no reasonably available alternatives identified in the Application's site selection exercise. Of the eight sites that fall within a location potentially capable of meeting the needs of the Yorkshire &amp; Humber and East Midlands region, two, including the Application site fall within, or partly within Flood Zone 3, two are not of sufficient size to accommodate an ERF. One is being developed for alternative mixed-use schemes and two are being developed for EfWs. Of the two sites that would potentially meet the regional need and are not being developed for alternative uses, none are commercially available or accessible by river,</p>	The Applicant has no further comments.

		<p>so although these sites are in a zone with a lower risk of flooding, they didn't meet the test of availability in EN1. It should also be noted that for the site selection exercise, the Applicant considered the characteristics of sites at a relatively high level and therefore there may be other reasons, as well as availability, that these two sites may not be suitable for an ERF, but they have not been explored in the level of detail that the Application site has.</p> <p>It was not a site selection exercise led by flood risk, as that is a reasonable approach to take – it is appropriate to start by looking at meeting the need.</p> <p>On the basis that there are no reasonably available sites which meet the same need identified by the Project in Flood Zones 1 and 2, the sequential test is passed.</p>	
39.	Simon Nicholson asked the Applicant to confirm which was the alternative site that was not commercially available?	The Applicant confirmed the British Steel site in Scunthorpe was the other site which was not commercially available.	The Applicant has no further comments.
40.	Simon Nicholson (RAIN) stated that during conversations with Applicant in statutory consultation, it was said that "the Chinese wouldn't speak to us". The chief executive of NLC said that the British Steel site is a far better site as there would be no rail recommissioning,	<p>Fundamentally the Applicant has been told that the site is not available and has been the subject of long discussions. The Applicant cannot comment on Mr Nicholson's information relating to the suitability of the alternative site.</p> <p>Regarding the suitability of this site, the core strategy identifies the Flixborough industrial estate as suitable for EfW, policy CS20 of the</p>	The Applicant has no further comments.

	<p>no reloading and loading of boats as would all be done at coast, road capacity is there (used to be 40 wagons run from Immingham to Scunthorpe every day).</p> <p>The Applicant needs to have a far better conversation with British Steel, who would benefit from the production of "green energy" in inverted commas.</p> <p>I do not understand what the obstruction is if British Steel is open to discussion. There are brownfield sites up there to fit your project on with the flood risk removed and stack would be at a height that would not impact local residents.</p>	<p>adopted core strategy. The Applicant has to consider local policy.</p> <p>The British Steel site does not have the benefit of immediate port access, noting the rail link to the coast. The site meets a number of policy attributes from a planning perspective. In looking at site selection, that is carried out at high level – the Applicant is not required to look at the effects of delivering a facility in the alternative location.</p> <p>It is difficult to compare the detailed assessment of the site with alternatives.</p>	
41.	<p>The ExA asked the Applicant to confirm that it is not arguing that the site falls within an exception that removes the need to do sequential test.</p>	<p>The Applicant confirmed that it is not seeking to rely on any exceptions.</p>	<p>The Applicant has no further comments.</p>
<p><b>Agenda item 4 (b) Flood management plan – role of NLC and their view on the suitability of Requirement 12 of the draft Development Consent Order (dDCO).</b></p>			
42.	<p>The ExA stated that in paragraph 5.7.25 of the Planning Statement (<b>APP-035</b>), the Applicant states that development is</p>	<p>The Applicant confirms that it is correct that this is what is stated by the Applicant in paragraph 5.7.25 of the Planning Statement (<b>APP-035</b>) but this is not a central part of the Applicant's argument and the Applicant is not</p>	<p>The Applicant has no further comments.</p>

	<p>appropriate through the local planning process – has it been overstated as the Area Action Plan was for a housing scheme?</p> <p>A justification has been promoted there as there is a shortage of housing available in lower risk flood areas.</p>	<p>relying on it to satisfy any of the policy tests in EN1.</p> <p>The Applicant's arguments regarding sequential test are set out in the flood risk assessment (<b>APP-070</b>). The background is that that area has been identified for development through Lincolnshire Lakes Area Action Plan. The point referred to in oral submissions earlier is that the principal site on which the ERF is to be located is allocated through the Core Strategy as being appropriate for an EfW.</p>	
	<p>The ExA asked the Applicant to explain the intended role of the Flood Management Plan in Requirement 12 of the draft Development Consent Order (dDCO) and whether this is limited to what is referred to or whether there are design implications.</p> <p>The ExA then asked if there is no intention for the Flood Management Plan to cover physical works, just the evacuation of the plant during a flooding event?</p>	<p>The Applicant explained that the Flood Management Plan is to deal with the operational management of the site when works are in operation.</p> <p>The Flood Management Plan is to include evacuation and flood resilience plans. That is primarily to deal with operational requirements.</p> <p>The Applicant confirmed the Flood Management Plan just covers evacuation of the plant during a flood event and is not intended to cover physical works.</p>	<p>The Applicant has no further comments.</p>
43.	<p>The ExA asked the EA whether it has any outstanding concerns regarding requirement 12.</p> <p>Annette Hewitson for the EA stated that the EA does have</p>	<p>The Applicant recognises that there isn't a specific requirement that addresses the physical mitigation measures covered by Work No. 13 of the dDCO.</p> <p>In addition to the amendments made to refer to the Flood Risk Assessment (<b>APP-070</b>) in</p>	<p>The Applicant has amended requirement 12 in the dDCO submitted at Deadline 4, following email correspondence with the EA in relation to the proposed amendments. The EA has confirmed to the Applicant it is content with the form of amended requirement.</p>

	<p>outstanding concerns. There is still further assessment required to inform mitigation. The Applicant has suggested an addition into the design requirement but this is not sufficient.</p>	<p>requirement 4, the Applicant is proposing to agree a bespoke requirement to deal with the approval process of the detailed design of the physical mitigation measures and associated works in Work No. 13.</p> <p>The Applicant has discussed draft wording for the requirement and hopes to provide this to the EA shortly to agree that wording and add to dDCO for Deadline 4.</p>	
<p><b>Agenda item 4 : AB Agri comment on the (Flood Risk Assessment) FRA questions the suitability of the model used and whether it accurately reflects the risks of flooding in light of the relative crest heights of current defences, and</b></p>			
<p>44.</p>	<p>The ExA stated that AB Agri has expressed concerns about the Flood Risk Assessment and the suitability of model used and whether it accurately reflects the risks of flooding in light of the relative crest heights of current defences.</p>	<p>With reference to the following:</p> <ul style="list-style-type: none"> <li>• Flood Risk Assessment (<b>APP-070</b>);</li> <li>and</li> <li>• Image 3 – FRA Figure 5.8.</li> </ul> <p>Hydraulic modelling has been undertaken to support the Flood Risk Assessment (FRA) (<b>APP-070</b>) and inform its outcomes. Early engagement with the EA and NLC, has been undertaken to ensure that the latest approved and most appropriate hydraulic flood model was obtained and used as the basis of the FRA.</p> <p>The NLC 2017 flood model used to design the Lincolnshire Lakes Flood Defence Scheme was agreed to be the most relevant model. It extends approximately 60km upstream from Newark-on-Trent to 10km downstream to the River Humber. This model has been updated to include the most recent EA Humber Extreme Water Level model to inform the tidal boundary taking into account the latest</p>	<p>The Applicant has no further comments.</p>

		<p>UKCP18 advice on climate change and sea level rise.</p> <p>The hydraulic model utilises topography that is averaged across a grid resolution of 25m by 25m. This resolution allows the flood model to assess a large area of ~970km<sup>2</sup> within a reasonable computational run time. As the proposals extend across a distance of 1.5km in the floodplain, this grid resolution is considered to be appropriate for the purposes of assessing the impact of the proposals to surrounding areas as well as identify the flood mechanism that will put users of the development at risk.</p> <p>As it can be seen in Image 3, approximately 97 hours after the start of a tidal surge, the proposed development is at risk from:</p> <ul style="list-style-type: none"><li>• overtopping of the east bank of the River Trent approximately 3km north of the site; and</li><li>• overtopping of the east bank at the Industrial Estate and agricultural fields within the site.</li></ul> <p>Once overtopped, floodwater generally flows north to south, into, through and beyond the site.</p> <p>By assessing this large extent beyond the site boundary, the hydraulic model has enabled iterative testing of the development proposals and its layout to ensure minimal impact to third parties. Further description of this process is provided in Appendix A of the FRA.</p> <p>During consultation with AB Agri there was discussion with regard to the flood model</p>	
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		<p>potentially overestimating the ground elevation level at the wharf that may prevent the model from representing overtopping at the wharf in the future extreme baseline condition. Therefore, when the development is added to the flood model it could potentially displace the overtopping flow path and redirect it northwards onto the AB Agri site.</p> <p>Following these discussions, further interrogation of the flood model has been undertaken. Topographic levels along the wharf and existing defences have not been amended in the baseline flood model received from NLC. The data in the model is based on survey data undertaken in 2016 as part of the NLC Lincolnshire Lakes flood defence scheme project and considered the most appropriate data at the time the modelling was undertaken.</p> <p>Through reviewing the topography in and around the wharf, it was found that if overtopping did occur floodwater would flow eastwards and primarily along First Avenue or southwards towards Stather Road. With the development in place, floodwater prevented from flowing east would either pond at the development's western edge or continue to flow along First Avenue or southwards.</p> <p>As part of the FRA, to ensure the assessment was robust when assessing risk to and from the site, it was agreed during consultation with the EA that two breach scenarios were also tested and that the results informed the design criteria. Immediately south of the wharf, a 50m stretch of the existing embankment was removed to represent a potential failure or collapse in the defence. Due to the significant</p>	
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		<p>increase in flows, floodwater was observed to be prevented to flow east due to the new development and it spread north and southwards. This resulted in an increased depth of approximately 200mm at the location of the warehouse in the AB Agri site. As such, this led to the inclusion of a new flood defence wall and gate around the perimeter of the AB Agri site as part of the design proposals set out in the FRA.</p> <p>It should be noted that there is an existing low embankment approximately 1m higher than the road level that borders the AB Agri site along First Avenue that is not specifically picked up in the flood model. This embankment would help prevent flood water to flow into their site.</p> <p>The proposed flood defence wall and gate would prevent any overtopping at the wharf or breach in the defences to flow along First Avenue and therefore not increase the flood risk to other parts of the Industrial Estate.</p> <p>To manage the flood risk around the wharf and wider area, it is proposed that a Flood Evacuation and Management Plan is put in place. This will require the operators of the new development to receive appropriate flood alerts and warnings of a potential tidal surge event. This information can be disseminated and coordinated with other users at the wharf. It is the intention that the new development will have staff on site for 24 hours and therefore be able to close the proposed flood gate day or night. It is anticipated that there will be a minimum 48 hour flood warning time before an extreme event. The new access road,</p>	
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		<p>proposed as part of the development, will be set above the future extreme tidal flood level and would therefore provide a dry evacuation route for users of the Industrial Estate out towards higher ground. The Flood Evacuation and Management Plan will be developed in consultation with NLC Emergency Planning team</p> <p>It is noted in the FRA that as part of the detailed design stage further flood modelling should be undertaken. This will be undertaken at a higher resolution to include localised topographic features to better ascertain and inform the exact setting of flood defence levels. Discussions are ongoing with the Environment Agency regarding elevation levels around the wharf and bank levels. It is understood that an updated flood model for the River Trent is in the process of being completed by the EA and that this will be the basis of the detailed flood model used at the next stage of design.</p> <p>It is important to note that the EA has confirmed that the flood model used to support the FRA has been reviewed, and the EA has confirmed that it is fit for purpose for its use at this stage of design to support the FRA. We will continue engagement with AB Agri on this and in updating the Statement of Common Ground.</p>	
45.	<p>The ExA invited AB Agri to comment.</p> <p>AB Agri commented on the concerns they have with the model used and their</p>	<p>The Applicant confirmed that since speaking to AB Agri's consultants, the Applicant has taken further analysis looking at topography and is happy to share this information with AB Agri.</p>	<p>The information was shared with AB Agri on 31 January and the SoCG with AB Agri has been updated to reflect this and was also shared with AB Agri the same day. An updated SoCG including these amends has been submitted at Deadline 4 (document reference 8.2.6).</p>

	<p>concern that the findings of the FRA are not accurate or suitable for the proposed development. AB Agri stated that this can be resolved by the model grid which should be maximum of 5 metres<sup>2</sup>. This is a key refinement. We would also like to see clarity as to why the model doesn't show overtopping.</p> <p>The ExA asked the EA to respond to AB Agri's concerns.</p> <p>Harvey Speed of the EA stated that, in terms of the model resolution, this is quite a large catchment as the River Trent is the third longest in the country.</p> <p>Given this is a strategic stage of design, the EA can take a view that the model resolution can be of a coarser nature at this stage. It has been discussed with Applicant that at a future stage the EA would expect a finer resolution of the model, especially around this area.</p> <p>In terms of risk, the EA has asked the Applicant to take a high level assessment if there was overtopping at the</p>	<p>The Applicant will be undertaking more detailed flood risk modelling at detailed design to make sure it is appropriately setting defences.</p> <p>The Applicant will share this information with AB Agri ahead of Deadline 4.</p>	
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	<p>wharf, and is taking a conservative look at what would happen. Bunding and flows would be directed in a different direction to AB Agri's site.</p> <p>In addition to the flood bund, the EA feels there is sufficient protection at this stage and that there is no risk that cannot be mitigated against at detailed design stage.</p>		
46.	<p>Simon Nicholson (RAIN) asked why the local flood model has been taken as priority over the Climate Central Report September 2021. This flood map has been done by NASA and it may annul all of the Applicant's flood risk mitigation.</p> <p>If that model is not used, the Applicant can put up bunds wherever, but there is an equal and opposite reaction – pushes the flooding elsewhere. I live to the north and flood water will flow north – what mitigation is the Applicant going to put for the effects on other properties both sides of the river, nobody speaks about the</p>	<p>The Applicant stated that it is understood that the NASA model mentioned looks at the sea level rise on the coast and extrapolates the estimated level across the land going inland. So it is slightly coarser flood model that does not take into account local topography or local defences. We have created a more site-specific model for the River Trent which does take this into account. This has been discussed and agreed with EA and NLC as the most suitable model. It does include sea level rise, as part of EA Humber Extreme Water Level study.</p> <p>In terms of the potential impact to further sites, one of the reasons the Applicant used this flood model was because it has a large catchment area and the Applicant looked at modelling the scheme and compared it to the baseline and looked at impacts on a wide area and that informed the design layout proposed. Therefore, in the areas mentioned there is no additional anticipated flood risk in those areas</p>	The Applicant has no further comments.

	west who will be unduly affected	due to the development. The assessment looks at the wider area not just the site itself.	
<b>Agenda Item 4 (d): Severn Trent Water have indicated a limited capacity for accommodating foul water. Has it been determined if an on site package treatment plant would be required?</b>			
47.	The ExA stated that Severn Trent Water has indicated a limited capacity for accommodating foul water. Has it been determined if an on site package treatment plant would be required?	<p>Severn Trent Water has indicated that they do not have sufficient capacity to take both foul and trade effluent.</p> <p>The Applicant is discussing with Severn Trent Water and looking at improvements downstream and what can be provided. There are two alternative options:</p> <ul style="list-style-type: none"> <li>• Trade effluent on site – to reuse on site after a multi stage process, with it being used in CBMF etc. In this case, only the domestic flow will go to the Severn Trent network.</li> <li>• In the case that domestic flows cannot be discharge to the Severn Trent network, the domestic flow to be treated via certified package treatment plant and then discharged into the ground or wetland area to the west of the access road. A Discharge Permit would be required in this option. Re whether STW have suggested if we can discharge to their sewer, will be a long process and don't expect a timely response. EA requested to be included as</li> </ul>	The Applicant has updated the Works in the dDCO submitted at Deadline 4 to reflect this.

		<p>consultee for Requirement 9 and will be updated at Deadline 4.</p> <p>As the Applicant will not get an early answer from Severn Trent Water, onsite treatment is to be included as part of the scheme by updating Work No. 1 in the draft DCO.</p>	
48.	<p>The ExA asked whether the wetland the Applicant refers to is to the east or west as this appears to have been confused.</p> <p>The ExA asked if the treatment plant has been assessed and where that is in the Environment Statement?</p>	<p>The Applicant stated that the wetland is to the west of the access road and the area adjacent to existing buildings</p> <p>With regards to the Environmental Statement, the Applicant stated this needs to be discussed with the Environmental Statement team and the Applicant will revert.</p>	<p>Having reviewed this matter further in the relevant application documents the Applicant advises the Examining Authority that some of our responses to First Written Questions Q1.0.23 and Q17.1.13 were at cross purposes. The Applicant has provided additional clarification in Appendix two of this document and also updated the ES Chapter 3 Project Description and Alternatives [APP-051] paragraph 3.2.3.41.</p> <p>Process water treatment is covered in Section 8.2.3 of APP-057 and treatment and attenuation in paragraph 8.2.4.8 a packaged sewage treatment plant (STP) has not been specifically addressed. A STP would be a small facility effectively contained within the much larger infrastructure, such that its construction and operational presence would not have any environmental effects that could be differentiated from the overall development. Its treated effluent would pass via the surface water treatment and attenuation ponds before eventually discharging to Lysaght's Drain. The effects on the water quality of a surface water feature that drains agricultural land would not be significant. The operational performance and monitoring of the STP would be addressed within the terms of the Environmental Permit (or the OEMP, APP-075).</p>
49.	<p>Simon Nicholson (RAIN) discharge into the wetland area to the west of the proposed road – there are a number of sites around the country where land is made wet by effluent and is treated supposedly naturally. What else will be put through the</p>	<p>The Applicant confirmed that sewage discharge will be in the treatment plant, not through the wetland. The surface water drainage strategy agreed with the internal drainage board and NLC is to discharge from our site to natural ditches that occur, Lysaght's drain and eventually the River Trent.</p>	<p>The Applicant has no further comments.</p>

	wetland and will it be used to discharge the rainfall through the site? If not where will it be stored, processed etc.	With regard to surface water drainage, the wetland is designed to attenuate the flow based on water events.	
50.	Simon Nicholson (RAIN) stated that as the rainfall from the whole site will go through that narrow strip, be slowed down by the wetland. At times the wetland will be a river. What else is the wetland going to be used to "purify".	The Applicant confirmed that no other water than surface water and treated water is intended to drain through the wetland. It will only be for discharging water that goes through the hardstanding – where water falls on the green field land it will discharge as it does now.	The Applicant has no further comments.
51.	<p>The ExA asked the EA what their position is as the Applicant is engaging with Severn Trent Water, but it would appear to be quite a long process, assuming we're unlikely to have an answer by 15 May examination close. Would the EA agree a temporary package treatment plant?</p> <p>Annette Hewitson of the <b>EA</b> stated the EA considers foul water drainage to package treatment plant as a last resort and do not consider that lack of capacity in a main sewage treatment is sufficient.</p> <p>The EA might permit package treatment as a</p>	The Applicant stated that it will need to discuss this and will come back.	The Applicant has a meeting scheduled with Severn Trent on 9 February to discuss the upgrades required to the mains system and the relevant timescales for these to see if they align with the programme for the Project. The Applicant will look to update the indicative drainage strategy following that meeting.

	<p>temporary measure, but will look to the Applicant to work with Severn Trent Water to get mains capacity improved and ensure that is available to them.</p> <p>The EA cannot say whether a permit would be forthcoming as cannot pre-determine this. The EA is satisfied that Requirement 9 in the DCO will cover this and the EA will be a consultee. We would expect the plan/drainage strategy to include a commitment to connect to the mains drainage when that is available.</p>		
<p><b>Agenda Item 4 (e): Water Quality, monitoring and treatment - Should this be controlled now through the Code of Construction Practice (CoCP) rather than as suggested form part of the Construction Environmental Management Plan (CEMP)? And 4 (f) Water Framework Directive – understanding of whether there are any outstanding concerns of the EA of if controls proposed through Requirements is satisfactory.</b></p>			
52.	<p>The ExA asked for figure 3 in the Environmental Statement (<b>APP-049</b>) to be displayed.</p> <p>The ExA thinks the drawing is correct – cross hatching to the east of the road is flood mitigation only and to the west of the access road will be a wetland area. The response to EXQs 17.1.13,</p>	<p>The Applicant confirms the drawings in the Environment Statement (<b>APP-049</b>) are correct and will revisit their answer to the EXQ 17.1.13 given in the Applicant's Response to Written Questions (<b>REP2-033</b>)</p>	<p>Having reviewed this matter further in the relevant application documents the Applicant advises the Examining Authority that some of our responses to First Written Questions Q1.0.23 and Q17.1.13 were at cross purposes. The Applicant has provided additional clarification at Appendix two of this document and also updated the ES Chapter 3 Project Description and Alternatives [APP-051] paragraph 3.2.3.41.</p>

	<p>has created a lot of confusion between east and west.</p> <p>The ExA asked the Applicant to revisit their answer EXQ 17.1.13 as that refers to the wetland landscape as the blue hatched land.</p>		
53.	<p>The ExA asked whether there were any further issues regarding flood risk or any other business.</p>	<p>The Applicant stated that they are in ongoing dialogue with AB Agri and are keen to continue this. The Applicant has put forward a suggestion for a working group.</p> <p>The Applicant is prepared to do further work in assessing any potential risks with regard to contamination/biohazards and, with reference to the potential works which AB Agri has stated are required to their manufacturing facility and systems, the Applicant has put out the offer to have a joint meeting with AB Agri to progress matters further.</p>	<p>The Applicant has no further comments.</p>
54.	<p>Simon Nicholson (RAIN) stated that a couple of points covered yesterday afternoon when he wasn't here.</p> <p>One thing omitted to be mentioned is the proximity of EPR energy, who sit next door to AB Agri. EPR energy are an incinerator currently burning waste from various sources – they have the spurious practice of nothing</p>	<p>The Applicant noted the further written submissions expected from Mr Nicholson's expert and stated that the Applicant's Air Quality expert was no longer present at the hearing to comment.</p> <p>The Applicant is aware of the proximate facility referred to and confirmed it has been taken into account by the Applicant.</p>	<p>The Applicant will wait to see the information submitted by Mr Nicholson into the examination.</p>



	<p>coming out of chimney during the day but at night.</p> <p>The development will add to that and in the plume prediction from the Applicant has that been taken into account in the compound effect of pollutants to be deposited on the wind. Have a plume expert doing a plume accurate information – he says the plume entered does not bear any relation to what it should be like.</p> <p>The ExA asked Simon Nicholson to ask his expert to make a written submission by the next deadline so that the Applicant has a chance to comment.</p>		
<b>Agenda Item 5: Review of issues and actions arising.</b>			
55.	<p>The ExA summarised that the following actions arising from the hearing:</p> <ol style="list-style-type: none"> <li>1. UKWIN confirmed there will be further submissions at Deadline 4 regarding their ongoing position regarding capacity;</li> <li>2. Simon Aumonier (for the Applicant) referred to</li> </ol>		<ol style="list-style-type: none"> <li>1. This action was not for the Applicant;</li> <li>2. Not all feedstock for Sustainable Aviation Fuel (SAF) will be the same as the wastes from which the proposed development will source its fuel. For example, BP's SAF website states " Some typical feedstocks used are cooking oil and other non-palm waste oils from animals or plants; solid waste from homes and businesses, such as packaging, paper, textiles, and food scraps that would otherwise go to landfill or incineration. Other potential sources include forestry waste, such as waste wood, and energy crops, including fast growing plants and algae. Air bp's SAF is currently made from used cooking oil and animal waste fat <a href="#">What is sustainable aviation fuel (SAF) and why is it important?   News and</a></li> </ol>

	<p>further info re jet fuel in terms of the distinction between the different types of where waste fuel can potentially go;</p> <ol style="list-style-type: none"> <li>3. Adjustments to Requirement 15 are anticipated and an explanation with how that links to the Environment Permit;</li> <li>4. Clarity on the planning permission for the Wharf from NLC;</li> <li>5. Comments from NLC, UKWIN and any other IPs on how Requirement 15 could be improved;</li> <li>6. Reference to any physical measures that might be covered through Work No. 13 and potential adjustments to requirement reflect EA concerns;</li> <li>7. Clarify regarding other DCOs details of relevant paragraphs of Secretary of State decision letters from Nick Gallop (for the Applicant) on rail and separately in terms of comments from Sarah</li> </ol>		<p><a href="#">views   Air bp</a> The Applicant will review the submissions that UKWIN indicated would be made at Deadline 4 in respect of this point and if necessary will look to respond further at Deadline 5.</p> <ol style="list-style-type: none"> <li>3. The Applicant has nothing further to add although will wait to receive any comments from interested parties on requirement 15;</li> <li>4. This action was not for the Applicant;</li> <li>5. This action was not for the Applicant;</li> <li>6. The Applicant has amended requirement 12 in consultation with the EA – see response at row 42;</li> <li>7. See the Applicant's response at row 21 and document at Appendix one;</li> <li>8. The Applicant has undertaken an odour assessment and it has been included as part of the submissions at Deadline 4 (see updated ES Chapter 5: Air Quality [Revision 1] (document reference 6.2.5)). The assessment was undertaken according to the guidance of the Institute of Air Quality Management;</li> <li>9. The Applicant will revisit the Statutory Nuisance Statement (APP-040) and amend it, if necessary, in the light of the conclusions of the abovementioned odour assessment;</li> <li>10. The Applicant shared this information with AB Agri on 31 January – see the Applicant's response at row 44;</li> <li>11. Having reviewed this matter further in the relevant application documents the Applicant advises the Examining Authority that some of our responses to First Written Questions Q1.0.23 and Q17.1.13 were at cross purposes. The Applicant has provided additional clarification in Appendix two of this document and also updated the ES Chapter 3 Project Description and Alternatives [APP-051] paragraph 3.2.3.41;</li> </ol>
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	<p>Price (for the Applicant) on traffic/HGV limitations;</p> <p>8. Odour assessment – clarity on the Applicant's position on that from a risk assessment perspective;</p> <p>9. The Applicant to revisit the Statutory Nuisance Statement in respect of odour;</p> <p>10. The Applicant to share information with AB Agri regarding further flood risk analysis referred to by the Applicant;</p> <p>11. The Applicant to revisit the answer to EXQ 17.1.13; and</p> <p>12. The Applicant to revert on the assessment of the waste treatment plant.</p>		<p>12. Process water treatment is covered in Section 8.2.3 of APP-057 and treatment and attenuation in paragraph 8.2.4.8 a packaged sewage treatment plant (STP) has not been specifically addressed. A STP would be a small facility effectively contained within the much larger infrastructure, such that its construction and operational presence would not have any environmental effects that could be differentiated from the overall development. Its treated effluent would pass via the surface water treatment and attenuation ponds before eventually discharging to Lysaght's Drain. The effects on the water quality of a surface water feature that drains agricultural land would not be significant. The operational performance and monitoring of the STP would be addressed within the terms of the Environmental Permit (or the OEMP, APP-075).</p>
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## Appendix one

## **Approach taken to HGV restrictions on other DCO projects.**

This note is prepared by the Applicant in response to the Examining Authority's query at Issue Specific Hearing (ISH) 3 on the feasibility of including a requirement in the draft DCO restricting the number of HGVs associated with the Project.

The Applicant referred at ISH3 to their experience of other DCOs where HGV restrictions have been put in place to address concerns relating to impact on the highway network, specifically around highway capacity. The Applicant referred to Hinkley Point C and Sizewell C DCOs where this was the case, particularly given the very significant HGV numbers associated with the construction of nuclear new builds.

This note briefly explores the approach taken at Hinkley Point C and Sizewell C and on other Energy Recovery Facility DCOs.

### **Hinkley Point C DCO**

Paragraph 4.1.14 of the ExA's Panel Recommendation Report for the Hinkley Point C nuclear power station<sup>1</sup> explains the reason for imposing an HGV restriction during construction as follows:

*"The overall aim of the proposals is to limit the amount of traffic that would be generated during the construction period to that which the existing road network could accommodate (with the improvements proposed). To this end, the s106 Agreement contains provisions that would regulate the number of heavy goods vehicles (HGVs) allowed to travel to and from the site and the routes they would be permitted to take."*

At paragraph 4.1.20 the report also considers the use of water-borne transport, noting the word encourage:

*"The proposals also include measures to encourage water-borne transport, as opposed to road transport, in accordance with NPS EN-1 paragraph 5.13.10." (our emphasis)*

In this case the S106 also included a clause to ensure that no more than 20% of the bulk concrete materials should be delivered by road, once the proposed temporary jetty was available.

Paragraph 8.2.0.3 of the ExA's also states:

*"However, we have no reason to doubt the Applicant's good faith in seeking to maximise the seaborne delivery of bulk materials via the proposed jetty."*

### **Sizewell C**

Traffic and transport are considered at Section 5.22 of the ExA's report<sup>2</sup>. NPS policy is summarised in paragraphs 5.22.5 to 5.22.7 as follows:

*"Paragraph 5.13.6 acknowledges that a new energy NSIP may give rise to substantial impacts on the surrounding transport infrastructure and that the decision maker should ensure that the applicant has sought to mitigate these impacts, including during the construction phase."*

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<sup>1</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010001/EN010001-000011-121219\\_EN010001\\_%20SoS%20HPC%20Decision%20Letter%20Annex%20A.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010001/EN010001-000011-121219_EN010001_%20SoS%20HPC%20Decision%20Letter%20Annex%20A.pdf)

<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010012/EN010012-011162-SZC-Volume-3-Sections-5.14-5.23-FINAL.pdf>

*Paragraph 5.13.10 highlights the preference for water-borne or rail transport at all stages of the project, where cost effective.*

*Finally, Paragraph 5.3.11 states that the decision maker may attach requirements where there is likely to be substantial HGV transport.”*

The ExA’s conclusion on the Applicant’s Freight Management Strategy, at paragraphs 5.22.108 and 5.22.109 was as follows:

*“The Applicant has endeavoured to increase the potential for more marine and rail freight, by submitting Change 1 and 2 [AS-105]. They are hoping to better align their freight transport strategy with the preference for water-borne or rail transport set out in NPS EN-1. Whereas IPs were generally supportive of the increased use of sea and rail use they had outstanding concerns over the level of HDV traffic. The impact of HDV traffic during construction, particularly in the early years, is examined in more detail later in this chapter.*

*In conclusion we consider that the Applicant’s revised approach, following Changes 1 and 2, would be effective in meeting the preference for water borne and rail transport.”*

For reference, Changes 1 and 2 introduced a revised Freight Management Strategy<sup>3</sup> which sought to increase the level of construction material being delivered by rail and sea, up to 60% by sea and rail, subject to a number of detailed considerations.

The reason for the changes proposed by Sizewell C was objections from the host authorities based on transport and community impact. The Freight Management Strategy quotes the relevant representations of the host authorities as follows:

*“1.193...we want to work with SZC Co. to maximise the use of rail and sea and avoid unacceptable impact on residents.”*

*“..because it is not a sustainable strategy, because an increased proportion of rail transport (and potentially sea-borne transport) could reasonably be achieved and because it does not currently mitigate its transport impacts on the highway network to acceptable levels for the community.”*

In the case of nuclear new builds, they are complex projects with significant impacts during construction and are linked to the very high levels of HGV traffic (in the case of Sizewell C up to 1,000 HGV movements a day at peak and 1,500 HGV movements at peak for Hinkley Point C).

This compares to an absolute worst-case daily peak of 707 HGV movements for the Project site (see Table 6.5 of the Transport Assessment [APP-061, Appendix B] during operation, assuming no deliveries come to site by rail or river, and therefore in reality movements will be considerably lower.

The Riverside Energy Park DCO made in April 2020 is an example of an Energy Recovery Facility which has restrictions in relation to the number of HGVs that can access the site during operation. It should be noted that none of the other recent ERF DCOs have had requirements imposed to limit HGV numbers, for instance South Humber Bank Energy Centre<sup>4</sup> (order made in December 2021), which proposed 100% HGV access and 624 HGV movements (312 in and 312 out) and Ferrybridge

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<sup>3</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010012/EN010012-002905-SZC\\_Bk8\\_8.18\\_Freight\\_Management\\_Strategy.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010012/EN010012-002905-SZC_Bk8_8.18_Freight_Management_Strategy.pdf)

<sup>4</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010107/EN010107-000636-EN010107\\_Final\\_Recommendation\\_Report.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010107/EN010107-000636-EN010107_Final_Recommendation_Report.pdf)

Multifuel 2 (made in October 2015), which was proposing to utilise an existing rail link but where the Examining Authority accepted the Applicant's position that there could be no commitments of the use of rail or barge as no contracts were yet in place with suppliers (see paragraph 4.32.49 of the ExA Report<sup>5</sup>). In the case of Ferrybridge Multifuel, a requirement (35) was included in the DCO which required the submission and approval of a Sustainable fuel transport management plan, which should be periodically reviewed to set out the measures to be undertaken to promote the sustainable transport of fuel by means other than road, including rail and barge, but without fixed commitments or targets.

The reason for the imposition of an HGV restriction on the Riverside Energy Park DCO is considered in the ExA's report as follows:

*"Paragraph 5.6.45 - In its response to LBB the Applicant agreed to a limit of 90 HGVs a day delivering waste to the ERF and AD facility secured through a Requirement in the draft DCO. This was included as a provision in the draft DCO submitted at Deadline 2 [REP2-007]. It considered that this showed that maximum use of the River Thames had been demonstrated."*

*"Para 5.6.21 - At the ISH on environmental matters and its subsequent written submission [REP3-038], the GLA proposed that in order to ensure that a high proportion of waste was delivered by river, there should be a daily limit on the number of HGVs delivering waste by road. With the support of TfL, it proposed a cap of 80 vehicles delivering waste which would deliver approximately 25% of the ERF's maximum waste throughput and 32% of the nominal throughput of 655,000 tonnes a year."*

Requirement 14 in the made DCO includes restrictions to control the following, in summary:

- 75 two-way HGV movements (150 total) during the commissioning and operational period;
- 100% of bottom ash by river;
- 300 two-way HGV movements during commissioning and operation in the event of a jetty outage.

The Riverside Energy Park has several important distinctions from the NLGEP Project:

- It is located in Greater London which is a more complex and congested road network than in the vicinity of the Application Site, passing through built-up urban areas. As an example, Table 6.8 of the Riverside Transport Assessment, Appendix B.1 provides the Ratio to Flow Capacity (RFC) results for a key roundabout effected during the operational stage of the project – this has RFCs of between 0.2 and 0.7 in the AM peak, assuming 100% of operational traffic is by road. These are all below the desirable RFC of 0.85, but well in excess of the NLGEP Application's impact, which is shown in Table 7.4 of the Transport Assessment and in all cases is well below 0.1 [APP-061, Appendix B].
- There was much more certainty on the sources of waste – in this case 75% of the waste was proposed to come from Waste Transfer Stations on the River Thames and 25% from waste collected in refuse collection vehicles, whereas in the case of the Application site, the sources would be determined by future commercial arrangements.
- London Plan policy S1 8, which at the time was in draft, and was an important and relevant consideration, placed significant policy emphasis on supporting the use of rail and waterway networks to transport waste. Although NPS EN1 encourages use of water-borne transport

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<sup>5</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010061/EN010061-000716-Examining%20Authority%20recommendation%20report.pdf>

where possible, the North Lincolnshire Core Strategy and emerging draft North Lincolnshire Local Plan does not include similar local policies.

The Applicant made oral submissions [include reference to written summary] which made it clear that it would maximise the use of the port, which is available immediately with no extra investment and rail, which would be upgraded at considerable additional cost and the delivery of which is controlled through the dDCO [REP2-004] (requirement 20).

It is therefore considered that it is not necessary to impose additional requirements that commit the Applicant to meet particular percentages of rail and water-borne transport, or to limit the number of HGVs associated with the delivery of waste to the Application site.



## Appendix two

In light of the matter of references to future uses of the land to the east of the new access road and some potential confusion over references to future land uses west of the access road, the Applicant has revisited its responses to the Examining Authority's First Written Questions.

	<b>Response provided in 9.8 Applicant's Response to Written Questions</b>	<b>Clarification at Deadline 4</b>
<b>Q1.0.23</b>		
<p>Area of land to the east of the proposed Access Road</p> <p>(i) Figure 3 of ES Chapter 1 [APP-049] and the corresponding Figure 4 in ES Chapter 3 [APP-051] identify this area of land as flood management by way of blue hatching. Within [APP-058] ES Chapter 10 Ecology and Nature Conservation on page 17 within Table 2, in response to comments from Natural England who identify that "Large areas of land within the Order Limits will remain undeveloped, although it is unclear whether any works are proposed" you direct the reader to a figure within Chapter 3. Please confirm this refers to Figure 4.</p>	<p>The response on page 17 within Table 2 ES Chapter 10: Ecology and Nature Conservation does intend to refer to Figure 4 in ES Chapter 3: Project Description and Alternatives [APP-051].</p>	<p>Revised response: As set out in the Applicant's response in 9.8 Applicant's Response to Written Questions, this text was referring to Figure 4a in ES Chapter 3 [APP-051].</p>
<p>(ii) Further reference is given to the Project Description [APP-051], Flood Risk Assessment [APP-070], and Economic, Community and Land Use Impact Chapter [APP-062]. Please identify within each of the chapters referenced where reference to this area of land is set out and explain how the future use would be secured expressing clearly where this is linked within the DCO and or supporting mitigation documentation.</p>	<p>Reference to this land is made throughout the FRA [APP-070], in particular Section 5.1.23 (Site East) and Section 5.1.24 - 5.1.29. ES Chapter 3: Project Description and Alternatives [APP-051] refers to the new area of wetland at paragraph 3.2.3.42, as follows: "The wetland will be designed to create opportunities for protected and notable species including amphibians, birds, bats, water vole, otter, other small animals and invertebrates. Long-term management of the wetland will maintain its productivity and help secure long-term gains for biodiversity. The wetland landscape will incorporate a number of informal paths that facilitate physical activity, play, and relaxation through improved quality and access to open space/nature for both local residents and people working at the Project and Flixborough Industrial Estate."</p>	<p>Revised response: The Flood Risk Assessment [APP-070] refers to this land as 'Site East' in various places in a flood risk context but does not specify its future use.</p> <p>ES Chapter 14 Economic, Community and Land Use Impact Chapter [APP-062] refers to the future use of this land at paragraphs 8.2.5.2 and 8.3.6.2, the latter of which states: <i>This excludes 103ha of BMV agricultural land which will be permanently set aside to provide replacement floodplain storage. Although the use of this land for flood compensation may marginally affect how it is used for agricultural production, this is unlikely to significantly affect its agricultural value.</i> However, APP-062 does not provide a plan specifically showing this land.</p>

	<b>Response provided in 9.8 Applicant's Response to Written Questions</b>	<b>Clarification at Deadline 4</b>
	<p>ES Chapter 14: Economic Community and Land Use [APP-062] refers to the wetland area at paragraph 7.2.13, where mitigation measures are listed, as follows:</p> <p>“the areas identified for future mitigation and an area of wetlands created beside the River Trent will allow for public access and this will result in a net increase in open space provision.”</p> <p>Paragraph 8.3.5.4 of APP-062 also notes that the Applicant is in discussions with the Lincolnshire Wildlife Trust about potential future management of the wetland area.</p> <p>The wetland area is secured through the Outline Landscape and Biodiversity Management and Monitoring Plan (LBMMP) [APP-041] in particular at paragraph 4.1.10 onwards. Requirement 7 of the draft DCO [AS-006] requires the submission and approval of the Landscape and Biodiversity Management and Monitoring Plan, to be in accordance with the Outline LBMMP plan submitted with the Application.</p>	<p>Land to the east of the access road has been identified to support the flood risk management strategy for the site. There is a proposal to allow space for constructing a flood defence bund around the western perimeter of Park Ings Farm (Section 5.1.24(3) FRA APP-070). This is secured in the dDCO under Requirement 12.</p> <p>No other changes are proposed to the fields east of the access road. However, to reduce the risk of tidal flooding to the new development and to other sites outside of the red line boundary, this land, east of the access road, will be used to flood to slightly deeper depths than currently estimated in a future extreme tidal event, overtopping the bank of the River Trent.</p>
<b>Q.17.1.13</b>		
<p>Following on from Q1.0.23 [APP-051] at paragraph 3.3.3.41 states “create new wetland landscape to the east of the new access road which will provide flood mitigation and ecological mitigation.</p>		<p>Revised response:</p> <p>This paragraph erroneously referred to creating new wetland landscape to the <i>east</i> of the new access road and the paragraph has now been corrected in ES Chapter 3: Project Description and Alternatives (document reference 6.2.3) as follows:</p> <p>3.2.3.41 Given that much of the Application Land is located adjacent to the River Trent and within Flood Zones 2 &amp; 3, the importance of the existing drainage network and the need for attenuation ponds to mitigate the existing flood risk, has created an opportunity to combine and integrate these features creating a new wetland landscape to the <del>east</del> west of the new access road which will</p>

	Response provided in 9.8 Applicant's Response to Written Questions	Clarification at Deadline 4
		<p>provide flood mitigation and ecological mitigation. This wetland landscape will create ecologically diverse habitats that, <u>together with the enhancements along Lysaght's Drain to the east of the new access road and the biodiversity enhancement area in the northeast part of the Application Land</u>, improve the ecological connectivity between the River Trent and the Phoenix Parkway Nature Reserve to the east of the Energy Park Land. The wetland features will incorporate the planting of reeds, rushes, lowland meadow species and wet woodland. <u>The remaining fields to the east of the new access road will remain in agricultural use but will also be used, as part of the flood management strategy, to flood to slightly deeper depths than currently estimated in a future extreme tidal event overtopping the bank of the River Trent.</u></p>
<p>(iv) Please confirm this relates to the blue hatched land identified in Figures 3 of ES Chapter 1 [APP-049] and the corresponding Figure 4 in ES Chapter 3 [APP-051].</p>	<p>Figures 3 of ES Chapter 1 [APP-049] and the corresponding Figure 4 in ES Chapter 3 [APP-051] illustrate the new wetland landscape as blue hatched land, which is labelled Wetland / SuDS within the Legend on both drawings.</p>	<p>Revised response: Paragraph 3.2.3.41 of ES Chapter 3 Project Description [APP-051] was not referring as such to the blue hatched area to the east of the new access road, but mainly to the land to the west of the new access road, plus the enhancements along Lysaght's Drain to the east of the new access road and the biodiversity enhancement area in the northeast part of the Application Land. This paragraph has been amended as set out above.</p>
<p>(v) Explain the need for this area of land in meeting the safe mitigation of flood risk for the proposed development, and</p>	<p>The proposed wetland / SuDS are required to provide appropriate flood storage capacity during the future design storm event (1 in 100 year+40% allowance for climate change). These areas ensure that additional runoff created by the new hard landscaping areas and buildings is</p>	<p>Revised response: Land to the east of the access road has been identified to support the flood risk management strategy for the site. There is a proposal to allow space for constructing a flood defence bund around the western perimeter of</p>

	<b>Response provided in 9.8 Applicant's Response to Written Questions</b>	<b>Clarification at Deadline 4</b>
	captured before being discharged at a controlled rate into the existing ditches as outlined in the stormwater drainage strategy [APP-072].	<p>Park Ings Farm (Section 5.1.24(3) FRA APP-070).</p> <p>No other changes are proposed to the fields east of the access road. However, to reduce the risk of tidal flooding to the new development and to other sites outside of the red line boundary, this land, east of the access road, will be used to flood to slightly deeper depths than currently estimated in a future extreme tidal event, overtopping the bank of the River Trent.</p>
(vi) The management of this area of land for both ecological and flood management purposes.	A maintenance plan will be compiled as part of the next stage of design that sets out the minimum requirements to ensure that these areas function as designed.	<p>Revised response:</p> <p>The areas of blue hatched land to the east of the new access road will not have any ecological or biodiversity enhancement function above and beyond any such function currently provided. To reduce the risk of tidal flooding to the new development and to other sites outside of the red line boundary, this land, east of the access road, will be used to flood to slightly deeper depths than currently estimated in a future extreme tidal event, overtopping the bank of the River Trent. There is also a proposal to allow space for constructing a flood defence bund around the western perimeter of Park Ings Farm (Section 5.1.24(3) FRA APP-070). This will be maintained by the Applicant.</p>
(vii) The apparent inconsistency with Plans included in [APP-024] and	The new wetland landscape (blue hatched land), which is labelled Wetland / SuDS within the Legend in Figures 3 of ES Chapter 1 [APP-049] and the corresponding Figure 4 in ES Chapter 3 [APP-051] is the same as wetland habitat within the Indicative Landscape and Biodiversity Plans [APP-024]. It should be noted that due to the scale and overlapping colours, shown on Figures 3 of ES Chapter 1 [APP-049] and the	<p>Revised response:</p> <p>The Applicant's original response was referring to the land to the west of the new access road. The Plans included in APP-024 show that the agricultural land to the east of the new access road will remain unused for the Proposed Development, other than biodiversity enhancement along the margins of Lysaght's Drain and landscaping and biodiversity</p>

	<b>Response provided in 9.8 Applicant's Response to Written Questions</b>	<b>Clarification at Deadline 4</b>
	corresponding Figure 4 in ES Chapter 3 [APP-051], the extent of the wetland habitat between the railhead and CBMF isn't as clear as the extents shown on the Indicative Landscape and Biodiversity Plans [APP-024].	enhancement along the access road itself and adjacent to the infrastructure at the northern and southern ends of the access road.
(viii) Whether this land is intended to be covered by the LBMMP [APP-041]	The land is included in the LBMMP for the purposes of ecological management (see e-page 34 of APP-041).	Revised response: Areas of landscaping and biodiversity enhancement to the east of the new access road shown in APP-024 will be covered by the LBMMP [APP-041].
(ix) How this area and the purposes it serves is secured within the DCO	The area of land to be used for flood mitigation is secured and protected in the dDCO by virtue of the proposed drainage rights and a restrictive covenant set out in Schedule 10 in both Part 1 Option A (page 59-60) and Part 2 Option B (page 72). The restrictive covenant will benefit the Order Land and prevent anything being done on the relevant plots as specified "which shall or which it is reasonably foreseeable may interfere with the rights to drain."	Revised response: The area of land to the east of the new access road to be used for flood mitigation to reduce the risk of tidal flooding in a future extreme tidal event (as referred to above in response to point vi) is secured and protected in the dDCO by virtue of the proposed drainage rights and a restrictive covenant set out in Schedule 10 in both Part 1 Option A (page 59-60) and Part 2 Option B (page 72). The restrictive covenant will benefit the remainder of the Order Land and prevent anything being done on the relevant plots as specified "which shall or which it is reasonably foreseeable may interfere with the rights to drain."