The Eggborough CCGT Project

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The Eggborough CCGT (Generating Station) Order

Land at and in the vicinity of the Eggborough Power Station site, near Selby, North Yorkshire, DN14 0BS

Applicant's Responses to the Examining Authority's Further Written Questions - Deadline 5

The Planning Act 2008

Applicant: Eggborough Power Limited
Date: January 2018

DOCUMENT HISTORY

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GLOSSARY

Abbreviation	Description
AGI	Above Ground Installation
Applicant	Eggborough Power Limited
BAT	Best Available Techniques
CRT	Canal & River Trust
DCO	Development Consent Order
EPL	Eggborough Power Limited
ES	Environmental Statement
ExA	Examining Authority
FWQ	Further Written Questions
MW	megawatts
NSIP	Nationally Significant Infrastructure Project
PA 2008	Planning Act 2008
PIG	pipeline cleaning and inspection
Proposed Development	Eggborough CCGT Project
ROV	Remotely Operated Valve
SoS	Secretary of State
SUDS	surface water run off
the Order	Eggborough CCGT (Generating Station) Order

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TABLES

1.0 INTRODUCTION

1.1 This document (Document Ref. 9.11) has been prepared on behalf of Eggborough Power Limited ('EPL' or the 'Applicant') in respect of its application (the 'Application') for a Development Consent Order (a 'DCO') for the Eggborough CCGT Project (the 'Proposed Development'). The Application was submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy on 30 May 2017 and was accepted for examination on 27 June 2017.

1.2 The Proposed Development comprises the construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 2,500 megawatts ('MW'), including electrical and water connections, a new gas supply pipeline and other associated development, on land at and in the vicinity of the existing Eggborough coal-fired power station, near Selby, North Yorkshire.

1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under Sections 14 and 15(2) of The Planning Act 2008 (the 'PA 2008'). The DCO, if made by the SoS, would be known as the 'Eggborough CCGT (Generating Station) Order' (the 'Order').

1.4 This document includes the Applicant's responses to the Examining Authority's (the 'ExA's') Further Written Questions ('FWQs') issued on 14 December 2017. The Applicant's responses are provided in Section 2. The document has been submitted for Deadline 5 of the Examination.

2.0 APPLICANT'S RESPONSES TO THE EXA'S FURTHER WRITTEN QUESTIONS

2.1 The Applicant's responses to the ExA's FWQs are set out in Table 2.1 on the following pages of this document.

2.2 Table 2.1 includes the reference number for each of the ExA's FWQs, the full text of the question under the relevant topic heading and the Applicant's response to each question. The Applicant's responses cross-refer to the Application Documents and other documents submitted since the start of the Examination where relevant.

Table 2.1 - Applicant's Response to the ExA's Further Written Questions

AQ	Air Quality		
ExA Question		**Question**	**Applicant's Response**
AQ 2.1	*Black Start Facility* **The Applicant** **The Environment Agency**	The Environmental Statement (ES) [APP-046] states that the Black Start facility will not operate more than 50 hours per annum. The ExA is concerned that, should the Environmental Permitting Regime allow this figure to be increased, potential additional effects would not have been assessed in the ES. Notwithstanding the Applicant's response to the ExA's Written Question AQ 1.14 [REP2- 014], explain whether a restriction of hours for the operation of the Black Start facility, as assessed in the ES should be secured in the draft Development Consent Order (DCO) [REP3-003], or cite existing provisions in the draft DCO which serve this purpose.	The Environmental Statement (ES) has made conservative assumptions for the use of the Black Start Plant. The air quality assessment has modelled the Black Start Plant in continuous operation, thereby capturing worst-case meteorological conditions for the assessment of short-term impacts. The assessment of the Black Start Plant indicates that the worst-case short-term process contribution at receptors is much lower than predicted for the peak operation of the main plant. Therefore even with extended running hours beyond 50 hours, there would not be significant impacts at receptors as a result of black start operation. The Environmental Permit will restrict the running hours of the black start facility in a similar way to the restrictions that will be imposed on the peaking plant operation, although an exact formal 50 hour limit is unlikely to be imposed as the need for black start is determined by failure of the wider national transmission system and therefore is outside the Applicant's control. Based on the above, the Applicant does not consider that any amendments to the draft DCO are required to limit the operation of the Black Start Plant, and to do so could well cut across the provisions of the Environmental Permit.
AQ 2.2	*Odour from Ammonia* **The Applicant**	Hensall Parish Council (Mr Tams) in its Written Representation submitted after the date for Deadline 3 [REP3-028] raises concerns in respect to odour from ammonia should selective catalytic reduction be deemed to be the best available technology. The ExA notes the Applicant's statements on such matters contained within the Statutory Nuisance Statement [APP-034] and also contained within paragraphs 8.6.32 to 8.6.39 of the ES [APP-046], although reference to odour is limited. The ExA invites the Applicant to make a specific response in this regard.	The Applicant provided a response to Hensall Parish Council's Written Representation at Deadline 4 (Document Ref. 9.10). Should ammonia injection be required (if SCR is selected) it will be carefully controlled and also continuously monitored. The ammonia itself may be stored as urea or in a low hazard form so as to minimise any safety or odour concerns and any risk of odour will be controlled through the Environmental Permit which will impose a requirement to prevent odour beyond the site boundary through the use of Best Available Techniques (BAT). With regards to odour from ammonia if released from the stack, the maximum predicted concentration at a human health receptor (Receptor 22) is 16 µg/m3 (as shown in Table 8A.14 of Appendix 8A (ES Volume III). This is a fraction of the reported odour detection threshold level (100-11,000 µg/m3) (Odour Measurement and Control AEA Report to Department of Environment). Therefore it is considered that odour would be negligible at any sensitive receptor as a result of any emission of ammonia from the stacks through the use of SCR.

AH	Archaeology and Heritage		
ExA Question		**Question**	**Applicant's Response**
AH 2.1	*Requirement 16* **North Yorkshire County Council** **Selby District Council**	Confirm that the wording of Requirement 16 of the draft DCO [REP3-003] addresses concerns on adequate recording of archaeological findings if discovered during the construction of Works No 6.	Requirement 16 was amended by the Applicant at Deadline 3 to take account of the revised wording proposed by the Local Authorities and this was included in the updated draft DCO (Revision 3.0) submitted for that Deadline. The Authorities have subsequently identified the omission of the word "identified" at sub-paragraph (5) of the Requirement. This omission has been addressed in the updated draft DCO (Revision 4.0) submitted for Deadline 5.

BE	Biodiversity and Ecology		
ExA Question		**Question**	**Applicant's Response**
BE 2.1	*Precautionary Working Method Statement* **The Applicant**	The Statement of Common Ground between the Applicant and Natural England [REP1- 007] agrees that a Precautionary Working Method Statement is necessary for both pre- construction and construction phases of the proposed development within 300m of Waterbody 11 to manage small risks on wildlife. Clarify how this is secured in the draft DCO [REP3-003].	Table 5A.7 of the Framework Construction Environmental Management Plan ('CEMP') (Appendix 5A of ES Volume III) states that *"A Precautionary Working Method Statement will be produced"*. This will be completed as part of the CEMP, secured under Requirement 18 of the draft DCO and which expressly requires the document submitted pursuant to the requirement to be in accordance with the Framework CEMP submitted with the Application.

BE	Biodiversity and Ecology		
ExA Question		**Question**	**Applicant's Response**
BE 2.2	*Off-site Mitigation* **The Applicant**	i) Provide an update, if necessary, on the Planning Agreement to secure off-site biodiversity enhancements as discussed at the Issue Specific Hearing on Environmental Matters [EV-007] and set out in written responses by the Yorkshire Wildlife Trust and the Applicant at Deadline 3 [REP3-016 to 019] and [REP3-010] respectively, and when this will be submitted. ii) Confirm that such off-site enhancements have no bearing on the ES.	i) A revised draft of the Planning Agreement was submitted at Deadline 4. The Planning Agreement is circulating between the parties. The Applicant will submit a copy of the completed agreement once available. ii) The ES remains a robust and comprehensive assessment of the impacts of the Proposed Development, and the commitment of the Applicant to an off-site ecological contribution does not affect it and nor is any revision or update required as a result. The ES did not identify any significant adverse ecological effects, and the Applicant proposed ecological enhancement as part of the Proposed Development, noting the policy in NPS EN-1 (sections 5.3 and 5.10 in particular) and which was assessed as part of the ES. Following consultation with various stakeholders, the additional off-site enhancement contribution has been proposed in order to provide substantial ecological and related benefits. The details of any such enhancement works are yet to be developed by Yorkshire Wildlife Trust but have no bearing on the Proposed Development and associated ES.

CA	Compulsory Acquisition		
ExA Question		**Question**	**Applicant's Response**
CA 2.1	*Update* **The Applicant**	Provide an update on negotiations with the Webster Family Trust and the Environment Agency in respect to agreements to use land.	i) The Webster Family Trust - An email from affected party's agent was received on 21 December 2017 confirming receipt of the revised Heads of Terms issued on 20 December 2017 and his intention to meet his client in-between Christmas and the New Year. A further email was sent to affected party's agent on 5 January 2018 seeking an update on the proposed meeting. A telephone call was made to affected party's agent on 8 January 2018 seeking an update. A response is awaited. ii) The Environment Agency - Heads of Terms were issued to the affected party's agent on 5 January 2018 following the agreement of technical solutions (documented within the Statement of Common Ground with the EA submitted at Deadline 3). A response is awaited.
CA 2.2	*Plots 610 and 615* **The Applicant**	i) Explain why the Land Plans [REP2-007] show the land divided differently from the Works Plan Sheet No 6 [APP-015]. ii) In the absence of indicative drawings within the Works Plans [APP-015], justify the amount of the land take needed for both Works Nos 7A and 7B.	i) The Land Plans show the nature of interest in land required to develop the Proposed Development, so showing in pink (plot 610) the freehold land required for the siting of both the Applicant's and National Grid's Above Ground Installations ('AGIs'), the connection to the existing gas pipeline and landscaping proposals. These are respectively shown on the Indicative AGI Plans (Document Ref. 4.11), marked "EPL compound", "National Grid compound", "NTS Feeder 29" and "landscape planting". Once this land has been acquired it is the Applicant's intention to transfer the freehold interest in the relevant part to National Grid – the mechanics for this are something to be discussed further between the Applicant and National Grid as part of the connection agreement. The two areas to the west of the AGIs (respectively hatched purple and orange on Plan 4.11) are required for the construction of the AGIs. These areas are contiguous with Plot 615 - the freehold interest in these areas is not therefore required, and therefore for Plot 615, only temporary possession is sought in the DCO. The Works Plans show a different split, related to the person who is developing the relevant part of Work No. 7, rather than the nature of land interest required. Work No. 7A is that part of the overall AGI which National Grid will use or operate, including the National Grid temporary construction compound and the National Grid AGI. This encompasses the northern 'half' of both plots 610 and 615. Work No. 7B is that part of the overall AGI which EPL will use or operate, including the Applicant's temporary construction compound and the Applicant's AGI. This encompasses the southern 'half' of both plots 610 and 615. ii) Whilst the Works Plans show the overall area needed for the two parts of Work No. 7, the Indicative Above Ground Installation Plans (Document Ref. No. 4.11) provide indicative information on the likely layout of the AGIs. The total land take required for the Above Ground Installation (AGI) site is approximately 1.4 ha.

CA	Compulsory Acquisition		
ExA Question		**Question**	**Applicant's Response**
			Pre-application correspondence with National Grid outlined that for Work No. 7A National Grid would require 0.72 ha of land at the AGI site, comprising: • A 60m x 60m compound for the gas connection; and • A 60m x 60m laydown area next to the connection site. This is required for the following infrastructure: • Remotely Operated Valve (ROV) – required for remote isolation of the feed to the Proposed Power Plant for operation, maintenance or emergency isolation; • ROV by-pass – to allow maintenance removal of the ROV whilst maintaining supply to the Proposed Power Plant; • pressurisation bridle – to allow safe pressurisation of the downstream system during start-up and following maintenance activities. The bridle also provides above ground pipework for connection of pressure instrumentation and sampling point; • instrumentation and electrical kiosk; and • telemetry equipment – either a satellite link or hardwired connection with associated instrument panels located with the kiosk. The equipment will be used to share information from the AGI compound and allow control of equipment by National Grid operations. The Applicant also requires a site and construction laydown area of similar, albeit slightly smaller size (approx. 0.7 ha), to support the following infrastructure in Work No. 7B: • an isolation valve; • an emergency shutdown valve; • pipeline cleaning and inspection (PIG) launcher; • instrumentation and electrical kiosk s; and • telemetry equipment. Combined, these areas result in approximately 1.40 ha of land take, required for the AGI site, which is the area of land sought for the construction and operation Work No. 7.
CA 2.3	*Protected Provisions - Indemnity Cap* **The Applicant**	The Canal & River Trust (CRT) at the Compulsory Acquisitions Hearing [EV-012] raised concerns regarding the indemnity cap set out in paragraph 32(6) and the exclusion of consequential losses in paragraph 32(2)(b) of Schedule 12 of the DCO [REP2-003], confirmed in writing in its post-Hearing submissions [REP3-020]. The Applicant states in its written response at Deadline 3 [REP3-009] that "it is not reasonable or proportionate to have an unlimited indemnity, and that the cap is more than sufficient" i) Justify the approach taken to require CRT, a charitable trust, to be liable for costs as a result of works undertaken by the applicant. ii) Explain why it is not reasonable or proportionate to remove any liability on CRT, and to enable the CRT to recover consequential losses. iii) The SoS accepted that CRT should not be subjected to an indemnity cap on the Wrexham DCO. Explain why the SoS should he accept such a requirement in this DCO. iv) If the ExA was minded to remove such a cap on the CRT, explain the consequences to the project.	i) The Applicant notes the submissions made by CRT at the Compulsory Acquisition Hearing, however it does not consider that there is any risk that the liability of CRT would be greater than £5 million. In fact, the Applicant considers that a £5 million cap provides CRT with very substantial 'headroom' over the potential worst case scenario. The Applicant has undertaken a technical exercise to support this position, and provided CRT with the following justification:- • *"The worst-case scenario would be a collapse of the river bank as a result of construction activities leading to obstruction to navigation, or the creation of an unsafe environment for navigation, on the River. This worst case also assumes that this collapse occurs outside of the cofferdam area constructed to facilitate works at the water intake.* • *The collapse of the river bank would require a series of significant failures at design stage and following on into the construction stage to occur. Good industry practice in engineering includes the detailed review of a design at each development stage up to the commencement of construction, as well health, safety and environmental risk assessment before the commencement of site works. Consequently, we consider a scenario resulting in the collapse of the river bank very unlikely to occur.* • *However, should a collapse occur, the repair of the bank would require the insertion of sheet piling to shore it up and back filling to restore its profile. This work would be completed from a barge on the River Aire (in the same manner that the cofferdam would be constructed). We believe that the total reinstatement costs would therefore be significantly less than the £5 million liability cap proposed."*

CA	Compulsory Acquisition		
ExA Question		**Question**	**Applicant's Response**
			Whilst the above represents the worst case event, the Applicant considers that it is very unlikely to occur. In addition, the Applicant notes that under the protective provisions, CRT is to approve the works that the Applicant proposes to carry out. CRT will therefore have an opportunity to review the proposed works and working methods, and to provide any comments on these, and to require changes where appropriate. Therefore, the Applicant does not consider that CRT would suffer any loss or shortfall, on the basis that the £5 million cap proposed is more than sufficient to cover any losses that may arise, or be suffered by CRT, as a result of the Proposed Development. For the reasons explained below, the Applicant notes that to impose an uncapped liability may have a detrimental economic impact on the Proposed Development. ii) The Applicant's commercial position is that it is unable to accept an indemnity which includes consequential losses. Whilst the Applicant is able to provide for direct losses in any indemnities, indirect (or consequential) losses should not be included in an indemnity. The distinction between the two is that, whist direct losses are generally seen as losses that would objectively arise naturally from a breach (e.g. physical damage), indirect losses are much more subjective and are sufficiently unlikely to occur as a result of a breach. Indirect losses can be much more remote and encompass losses with very tenuous links to the breach. Any losses suffered as a result of a breach are sufficiently accounted for in the indemnities proposed by the Applicant and therefore the Applicant considers that an indemnity for indirect losses is unnecessary and, notwithstanding the above, is contrary to its general commercial procedures. iii) The Applicant has reviewed the Wrexham Order, however cannot see that Protective Provisions for the benefit of CRT were included. The Applicant notes that an uncapped indemnity was included in the CRT protective provisions in the Keuper Underground Gas Storage Facility Order 2017. That position appears to have been agreed between CRT and the applicant for that DCO. The Applicant notes that Protective Provisions are negotiated on a project-by-project basis, and that the detail and content of those provisions is dependent upon the circumstances of the project and the commercial requirements of each project promoter. Whist it is helpful to review and consider what has been agreed for other Orders, it would be unduly restrictive to apply those provisions in every case. As the protective provisions appear to have been agreed in the Keuper DCO, it is not an example of where the Secretary of State considered the extent of indemnity that was appropriate and decided it should be uncapped. The indemnity was not considered in either the Secretary of State's decision or the examining authority's recommendation report. iv) The Proposed Development, as for any similar project, will depend on being commercially viable in order for financial close (i.e. funding contractually committed) to be achieved. This financial viability will be dependent on the commerciality of the project and any risk directly linked to its implementation. The Applicant strives - in all negotiations as part of this project and as part of its wider business dealings - to limit any financial risks, such as uncapped indemnities, that could add unnecessary risk into the financing of the relevant project, including this one. To that end, the Applicant has worked with all parties with whom it is contracting to find a fair and propionate solution in its negotiations. Avoiding uncapped indemnities will be important to any investor and will ensure financial close is more likely to be accomplished. v) By way of further update, the Applicant received further comments from CRT on 4 January 2018 on the Indemnity and Expenses drafting. The Applicant is considering these with a view to providing an update to the ExA for Deadline 6. Some further amendments on the other provisions have been made, and the ExA is referred to the revised draft DCO and Explanatory Note submitted for Deadline 5 in this regard.
CA 2.4	*Crown Land* **The Applicant**	Provide an update on negotiations with the Crown Estate in respect to agreements to use land.	Heads Terms have been agreed. A plan is to be appended to the Heads of Terms to be produced by The Crown Estate. An email was sent to affected party's agent on 4 January 2018 seeking update on production of the plan. A response was received on 5 January 2018

CA	Compulsory Acquisition		
ExA Question		**Question**	**Applicant's Response**
			confirming the plan is yet to be produced by The Crown Estate but there are no outstanding issues preventing its production.
CA 2.5	*Plot 40* **The Applicant**	Explain why this plot is required for Compulsory Acquisition of land.	Plot 40 is part of Work No. 8 – retained landscaping – and currently comprises trees and planting which are part of that surrounding areas of the existing coal-fired power station site. As part of Work No. 8 the landscaping is to be retained and maintained and, where approved pursuant to requirement 6 (landscape and biodiversity protection management and enhancement), could be enhanced with further landscaping and biodiversity measures. Plot 40 is currently managed by the Applicant and is largely within its fence line. However it is unregistered land and the Applicant does not have title deeds which confirm that it is the owner. The Applicant may be able to obtain registered title to the majority of plot 40 (through having been in control of the land for a sufficient period of time), and hence why the Applicant is listed as the owner in the Book of Reference. However, it is also possible that an unknown third party could seek to prove their ownership of the land through title deeds that they possess or through some other evidence. Whilst the Applicant is not aware of any such third parties, in order to ensure that the Applicant can deliver and maintain the entirety of Work No. 8 and comply with the terms of Requirement 6 and documents approved pursuant to it, powers of compulsory acquisition of the freehold of plot 40 are required. The use proposed (and secured in the draft DCO) is one which is squarely within section 122(2)(b) of the Planning Act 2008 (Purpose for which compulsory acquisition may be authorised), being land which is "required to facilitate or is incidental to [the development to which the development consent relates]". The DCLG 'Guidance related to procedures for the compulsory acquisition of land' expressly identifies an example for this category as "the acquisition of land for the purposes of landscaping the project" (paragraph 11). The existence of the 'retained landscaping' areas was an important part of the decision to site the Proposed Development where it is proposed, and the Applicant's ability to maintain and enhance that landscaping is therefore central to the achievement of the mitigation proposed. The Applicant therefore considers that compulsory acquisition powers in respect of plot 40 are justified and proportionate.

COD	Construction, Operation and Demolition		
ExA Question		**Question**	**Applicant's Response**
COD 2.1	*Demolition of Existing Coal Fired Station* **The Applicant**	At the Issue Specific Hearing on Environmental Matters [EV-007], the Applicant agreed to review its position in respect to whether the demolition of the existing power station should be controlled. In its post-Hearing submissions [REP3-010 and REP3-014], the Applicant explained that it will secure its demolition in the form of a Planning Agreement. The ExA welcomes the Appellant's change of position in this regard. i) Confirm the form such planning agreement will take (i.e through a development consent obligation under s.106 of the Town and Country Planning Act, or other mechanism), and when such an agreement/obligation will be submitted, and whether it will be done so in draft.	The Planning Agreement will take the form of a development consent obligation under section 106 of the Town and Country Planning Act 1990. A draft of the agreement has been submitted at Deadline 5 (Document Ref. 9.13).
COD 2.2	*Demolition of Existing Coal Fired Station* **The Applicant**	In paragraph 2.8 of the Applicant's submission document on the demolition of the existing power station [REP3-014], it is stated that the Applicant would be obligated to apply for Prior Approval Under Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 for removal of the existing power station within two years of commercial operation of the proposed development, and must be demolished within five years of receiving prior	i) There are potentially two stages that the Applicant will have to go through under Part 11 – first it must seek SDC's confirmation as to whether SDC's prior approval is required. If not, then nothing further is needed under Part 11. If prior approval is needed, then the Applicant must then seek that prior to carrying out the demolition. The draft Agreement provides the backstop position (i.e. by when the Applicant must have made the application) – including that the first stage must be completed by 12 months and (if required) that prior approval must be sought prior to the first commercial use of the Proposed Development.

COD	Construction, Operation and Demolition		
ExA Question		**Question**	**Applicant's Response**
		approval, or, if it is not needed, within 7 years of first commercial operation of the power plant. i) Explain when the Applicant intends to apply for Prior Approval, as it is not clear when this application is to be made. ii) If Prior Approval is deemed by the relevant planning authority to be required, explain why a scheme for demolition can only be worked up ***after*** the proposed CCGT has been constructed and is operational, and not prior to or during its construction. iii) Justify the need for such proposals to take two years for a scheme of demolition to be worked up. iv) Explain the contingencies should Prior Approval be refused, and how this would affect the timescales for demolition as set out in Paragraph 2.8 [REP3-014]. v) In respect of the questions above, the ExA requests the Applicant revise such wording in the forthcoming Planning Agreement which removes 2.8.1 and the first part of 2.8.2, and states that "*demolition of the existing power station be completed within five years of the first commercial operation of the proposed development*".	It is of course open to the Applicant to submit the prior approval application (if required) earlier, and it would do so if it intended to demolish the existing coal-fired power station earlier than those 'backstop' timescales. ii) The Applicant has altered this aspect in the draft Agreement and has provided that the application for Prior Approval must be submitted prior to the first commercial operation of the Proposed Development (clause 4.1). iii) As noted in the response to question ii) above, the Applicant has altered the relevant timescales for these obligations. iv) In the event of a refusal of Prior Approval, the Applicant would engage with SDC to understand the reasons for refusal and submit a revised application for Prior Approval. The Applicant has provided for such engagement in the draft Agreement (see clause 4.2). The timescale for demolition would need to be extended to allow for that re-submission and re-determination. Please refer to clause 4.3 of the draft Planning Agreement. v) The Applicant has drafted the Planning Agreement on the basis requested, subject to the reply to iv) above. Please refer to clause 4.3 of the draft Planning Agreement.
COD 2.3	*Demolition of Existing Coal Fired Station* **The Applicant**	In paragraph 2.12 of the Applicant's response to Deadline 3 [REP3-014], it is stated that there would be "no obligation to demolish any part of the existing coal-fired power station which is to be used for another purpose pursuant to permitted development rights". i) Explain what the Applicant envisages by this. ii) Explain whether these envisaged uses been assessed in the ES. iii) Explain whether this exemption conflicts with Requirement 4 of the draft Development Consent Order [REP3-003] which forbids the authorised development from entering commercial use if the existing coal-fired power station has not ceased to generate electricity. iv) Consider revising/removing this specific exemption.	i) The existing coal-fired power station has a substantial number of buildings that are used for a variety of purposes. Although some are directly related to the production of electricity by the combustion of coal, many are used for ancillary activities (such as storage of equipment, offices, amenities, water management and solids handling) and may be suitable for re-use for other purposes. At this stage the Applicant has not identified any specific future re-use and therefore nothing is currently proposed by the Applicant. By way of example, the following illustrate what may be possible: • Cooling tower basins (subsurface infrastructure) may be suitable for control of surface water run off (SUDS). • Stores buildings may be suitable for warehousing or storage of equipment. • Maintenance workshop may be suitable as a light engineering facility. ii) The potential re-uses of these buildings have not been considered in the ES as they are not known at this stage – they are merely potential future proposals, which the Applicant is providing for in the detailed terms of the obligation to demolish the existing coal-fired power station. iii) This exemption would not conflict with Requirement 4 as the Applicant does not envisage reuse for generation of electricity by the existing coal-fired power station. As per the illustrations above, the re-use would be for different purposes. iv) The Applicant has retained the exemption from the obligation to demolish, but has limited its scope. Where the Applicant obtains an express 'Relevant Consent' (as defined), the relevant buildings can be retained. In relation to PD rights for the re-use of buildings however, the largest buildings have been excluded. This is achieved through the definition of Qualifying Part and clause 4.4. The Applicant has also included exceptions for a) development carried out pursuant to the 2001 Flue Gas Desulphurisation consent which includes conditions requiring demolition of relevant structures; b) any part of the existing coal-fired power station which is

COD	Construction, Operation and Demolition		
ExA Question		**Question**	**Applicant's Response**
			owned, operated or required by statutory undertakers – the plan to be attached to the agreement excludes the National Grid substation, but this exception is included to ensure that any other small scale buildings or structures which are required for a statutory undertakers' operation are not required to be demolished; and c) the rail line, to ensure it can be retained if required.

DML	Deemed Marine Licence		
ExA Question		**Question**	**Applicant's Response**
DML 2.1	*Paragraph 3(4)(b) Schedule 12* **The Applicant Marine Management Organisation**	At the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the Marine Management Organisation set out ongoing concerns with the wording of Paragraph 3(4)(b) as currently worded in the draft DCO [REP2-003] which they say potentially allows for works not assessed in the ES. The ExA was informed at the Hearing that revised wording had been discussed between the parties. Provide an update in respect to the acceptability of this paragraph.	As set out in the Statement of Common Ground submitted for Deadline 4, the Marine Management Organisation ('MMO') proposed alternative wording for paragraph 3(4)(b) which has been agreed with the Applicant. The Applicant refers the ExA to the updated draft DCO submitted for Deadline 5, which contains a revised draft DML. The Applicant is checking the co-ordinates for Table 13, and any other amendments as may be required to Table 12, with the MMO and expects to be able to confirm the position by Deadline 6. The wording of the DML, including the wording of paragraph 3(4)(b), has now been approved and agreed with the MMO, save for the cross-checking of the coordinates.

Draft DCO	Development Consent Order		
ExA Question		**Question**	**Applicant's Response**
DCO 2.1	*Definition of "Commence" – Part 1 Article 2* **The Applicant**	At the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the ExA requested the definition of "commence" be set out in once place in the draft DCO, and have one definition save for areas where it did not apply. The ExA notes that the revised draft DCO [REP3-003] removes reference to "commence" in Schedule 2, and also moves the definition of "permitted preliminary works" from Schedule 2 to Article 2. The ExA welcomes this change. However, the ExA remains concerned that the definition is confusing, because it essentially has two part meanings for different parts of the draft DCO. The ExA considers the Applicant has merely stitched the two definitions together rather than amend and redefine the definition to be clear and concise. i) Consider substituting: "*the carrying out of a material operation, as defined in section 155 of the Planning Act 2008 (which explains when development begins) other than permitted preliminary works, comprised in or carried out for the purposes of the authorised development and the words "commencement*" and "commenced" and cognate expressions are to be construed accordingly. ii) If this wording is not to be considered by the Applicant, set out clearly and precisely the effects of such wording on the proposed development and put forward similar but alternative wording. [N.B – removing Articles 11 and 21 from the definition of "*permitted preliminary works*" is dealt with below].	The Applicant notes this and question DCO 2.3, and has proposed an alternative drafting approach in the Draft DCO submitted at Deadline 5. The Applicant has amended the definition of "commence" to remove the reference to "permitted preliminary works", and instead has 'carved out' "permitted preliminary works" in the drafting of requirements in Schedule 2. The definition of "commence" is therefore broad, wherever used in the DCO. In the requirements, where appropriate, that defined term is then caveated by use of the following drafting: "…no development must commence (other than the permitted preliminary works) until…" Given the above, the Applicant has not provided responses to the two specific questions raised. The ExA is also referred to the Applicant's responses to question DCO 2.2 regarding the definition of "permitted preliminary works", as well as the updated draft DCO submitted for Deadline 5.

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DCO 2.2	*Definition of "Permitted Preliminary Works" – Part 1 Article 2* **The Applicant**	At the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the ExA requested the definition of "permitted preliminary works" be amended to be considerably more focused and narrower in definition to that as set out in the draft DCO [REP2-003]. The ExA notes that the definition has been removed from Schedule 2 to Article 2 of the revised draft DCO [REP3-003]. The ExA welcomes this change. However, the Applicant has ignored all other requests of the ExA. The ExA accepts that "permitted preliminary works" may likely be necessary for matters relating to, for example, land contamination and archaeological works to enable pre- investigation works to take place prior to discharging of requirements and commencement works for the proposed development. The ExA is concerned that as currently worded, the Order permits the Applicant to undertake a wide ranging number of works across a number of area which the ExA considers has not been adequately justified. i) Precisely explain the purpose of "permitted preliminary works". ii) Explain why, for example, "permitted preliminary works" is necessary for matters such as surface and foul water drainage, access or fire prevention matters, which could be undertaken under the current definition.	The purpose of the "permitted preliminary works" is to enable the Applicant to undertake certain early works prior to the discharging of the pre-commencement requirements set out at Schedule 2 to the draft DCO. This would assist in shortening the construction programme for the Proposed Development, enabling its significant benefits, notably in terms of its contribution to national energy security, to be delivered at the earliest possible opportunity. The "permitted preliminary works" are works that it is considered would not give rise to significant environmental effects or conflict with the discharge of the pre-commencement requirements at Schedule 2 to the draft DCO. The Applicant welcomes the ExA's comment that "permitted preliminary works" may be necessary relating to matters such as land contamination and archaeological works to enable pre-investigation works to take place prior to the discharging of pre-commencement requirements. The definition of "permitted preliminary works" currently includes "*environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions*" and the Applicant therefore proposes to retain such works within the definition. Following the issue of the ExA's Further Written Questions on the 14 December 2017, the Applicant has, however, further considered the definition of "permitted preliminary works" and the scope of the works. In response to questions DCO 2.2 and 2.3 and further to discussions with the Local Authorities, the Applicant has amended the definition within the draft DCO to make clear that the "permitted preliminary works" would be confined to the parts of the Proposed Development that lie within the boundary of the existing coal-fired power station (namely Work Nos. 1, 2, 3, 4, 5, 6, 8, 9 and 10 which are within that site) – this ensures that such works could not take place outside these areas (for example, no such works would be undertaken within the Proposed Gas Connection corridor or at the AGI site). Furthermore, in response to comments received from the Local Authorities, the definition has been amended to exclude the *"demolition of buildings"* and the *"removal of plant and machinery"*. The Applicant has also excluded "earthworks and excavations" which could potentially have been included under *"the preparation of facilities for the use of contractors".* The Applicant considers that these amendments significantly narrow the scope of the "permitted preliminary works" that can be undertaken prior to the discharge of the pre-commencement requirements, both in terms of the types of works and the areas to which they relate. The proposed amended definition (included in the updated draft DCO submitted for Deadline 5) is as follows: *"permitted preliminary works" means works within the areas of Work Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 which are within the area of the existing coal-fired power station, including environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;* The above definition is consistent with that agreed with the Local Authorities in respect of the draft DCO for the White Rose CCS Project. The Local Authorities have indicated that they would agree to the definition as previously agreed in respect of that draft DCO. Given the above, the Applicant has not provided responses to the two specific questions raised.
DCO 2.3	*Definition of "Permitted Preliminary Works" – Part 1 Article 2* **The Applicant**	In the Applicant's post-Hearing response to the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the Applicant states at paragraphs 2.19 and 2.20 [REP3-011] that a tighter definition of "permitted preliminary works" would "*detrimentally affect the deliverability of the Proposed Development*" and "*…would prevent the Applicant from starting works on Site as soon as possible…*" i) Justify this assertion precisely, and particularly how a tighter and more	The ExA is referred to the Applicants' response to question DCO 2.2 above.

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		focused definition would do this having regard to the above questions. ii) Consider substituting: "*excluding Articles 11 and 21 of this Order, means any investigation works that may be required for the purposes of…[applicant to insert Requirements where "permitted preliminary works" are necessary in respect to response to questions above*"]. iii) If this wording is not to be considered by the Applicant, set out clearly and precisely the effects of such wording on the proposed development and put forward similar but alternative wording.	
DCO 2.4	*Definition of "Maintain" – Part 1 Article 2* **The Applicant**	At the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the ExA requested the definition of "maintain" be amended to be considerably more focused and narrower in definition to that as set out in the draft DCO [REP2-003]. The ExA notes that the definition has be altered in the revised draft DCO [REP3-003], which distinguishes maintenance works to "*in part, but not the whole*" of the authorised development. The ExA welcomes this change. However, the ExA remains concerned that the definition as currently worded permits a wide range of maintenance works which could exceed the Rochdale Envelope of the ES. In the Applicant's post-Hearing response to the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011], the Applicant states at paragraph 2.24 [REP3-011] that "*…maintenance has been implicitly assessed in the ES…the Applicant considers that any maintenance activities would fall within the envelope of the assessment presented in the ES*". i) Justify why therefore the Applicant will not commit to this assertion in the draft DCO. ii) The Applicant's post-Hearing response to the Issue Specific Hearing on the draft Development Consent Order held on Thursday 23 November 2017 [EV-011] does not explain how "materially new or different" is to be determined, and by whom. Explain who would be the arbiter of such works being "materially new or different" as opposed to being only "new or different". iii) Explain how maintenance works which are "materially new or different" would be enforceable in practice. iv) The Applicant is at pains to point out in its post-Hearing response [REP3-011] to the Issue Specific Hearing on the draft DCO held on Thursday 23 November 2017 [EV-011] that maintenance activities cannot be quantified precisely. Explain how tying the definition of "maintain" to the scope assessed in the ES in any way prejudices such activities from taking place. v) Consider substituting:	i) While the Applicant considers that the wording it proposed provides appropriate controls and safeguards regarding the environmental effects of potential maintenance activities, it is content to adopt the alternative wording in the draft DCO. This has been updated in the revised draft DCO submitted at Deadline 5. On the basis of the above, the Applicant has not provided responses to the questions posed that relate to the Applicant's original wording.

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ExA Question		**Question**	**Applicant's Response**
		"to the extent that such works have been assessed in the Environmental Statement, includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of the authorised development and "maintenance" and "maintaining" are to be construed accordingly. vi) If this wording is not to be considered by the Applicant, set out clearly and precisely the effects of such wording on the proposed development and put forward similar but alternative wording.	
DCO 2.5	*Requirement 26* **The Applicant**	In paragraph 23.2 of the draft Statement of Common Ground with North Yorkshire County Council and Selby District Council [REP2-011], it is stated that Requirement 26 be amended so that NYCC is specifically consulted as the waste planning authority, and the Applicant is in agreement to make this amendment. No such changes appear to have been made in any version of the draft DCO [APP-005, REP2-003, REP3-003]. Clarify and if necessary, amend the draft DCO.	The Applicant agrees that Requirement 26 should be amended in this way. The Applicant refers the ExA to the revised draft DCO submitted for Deadline 5, in which this change has been made.
DCO 2.6	*Guide to the Application* **The Applicant**	The ExA wishes to be assured that the definition of 'Environmental Statement' contained within Article 2, and Article 38 of the draft DCO [REP3-003] encompass the totality of all certified document and all up-to-date plans and statements and disregard those which have been superseded. i) Consider whether the Guide to the Application [currently REP3-002] should form part of the Certified Plans in Article 38 of the DCO [REP3-003] and/or should be included as part of the definition of 'Environmental Statement' set out in Article 2 of the draft DCO. ii) Ensure all revisions to Tables 20.3 of the ES [REP2-019], 8.20A and 8.20B [REP2-018], 8.22A and 8.22B [REP2-023] are referenced in the Guide to the Application document [REP3-002] as the Applicant has cited these as updating and/or providing additional information to that presented in the ES.	i) The Applicant has amended article 38 of the draft DCO to include the Application Guide as one of the documents to be certified by the Secretary of State. The ExA is referred to the updated draft DCO submitted for Deadline 5 in this regard. The Applicant does not consider that this should also be included in the definition of 'Environmental Statement'. The Application Guide lists each and every document forming part of the Application; however the Application Guide does not form part of the Environmental Statement itself. The scope of the Application Guide extends to all documents comprised within the application, and not just those documents forming part of the Environmental Statement. ii) The Applicant has updated the Application Guide, and will continue to do so throughout the Examination, to ensure it is clear which revision of each document is the final and correct version and to where any parts of documents have been replaced or updated.
DCO 2.7	*Article 14* **The Applicant**	Consider amending paragraph (1) by inserting "subject to paragraphs (3) and (4)" before "the undertaker may use any watercourse…" to correctly reflect the limitations on the power of this Article.	The Applicant does not consider that any amendments are required to this article. The drafting of article 14 reflects the model provisions (The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) and has been included in a number of other development consent orders which have been made by the Secretary of State. It is not necessary when drafting statutory instruments to expressly refer to paragraphs within articles or schedules as being "subject to" another part of the article. In this case, any discharge of water is clearly subject to the limitations and requirements of sub-paragraphs (3) and (4), without additional wording. In the event that the Applicant sought to discharge water (for example) without the appropriate consents or without complying with plans, then the Applicant would, notwithstanding that there is no "subject to" wording in sub-paragraph (1), be in breach of article 14, and therefore the Order.
DCO 2.8	*Article 20* **The Applicant**	Consider substituting paragraph (3) to reflect the changes in the Housing and Planning Act 2016 with as follows: *"(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice*	Section 8 of the Compulsory Purchase Act 1965 (the "1965 Act") sets out what an owner of land - which is proposed to be acquired - may require an 'acquiring authority' (in this case, the Applicant) to do, where that land, as result of the acquisition, would be divided. This section of the 1965 Act was amended in February 2017 – as result of the changes brought about by the Housing and Planning Act 2016 - to provide that where the land which is to be acquired is part of a (i) house, building or factory, or (ii) a park or garden belonging to a

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		to treat) to the 1965 Act (as substituted by paragraph 10 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the undertaker acquires a right over land, the undertaker is not required to acquire a greater interest in that land".	house, then the procedure is to be governed by the provisions set out in the newly inserted Schedule 2A of the 1965 Act. In conjunction with the powers contained in article 20(4) of the draft DCO – which brings in to play Schedule 9 of the draft DCO and modifies those enactments relating to compensation and the provisions of the 1965 Act (including Schedule 2A) – the Applicant does not consider that it is necessary to amend article 20(3) in the way proposed by the ExA. Article 20(3) is subject to section 8 of the 1965 Act and section 8, as a result of the amendments brought about by Schedule 17 of the Housing and Planning Act 2016, is expressly subject to the provisions in Schedule 2A.

LV	Landscape and Visual		
ExA Question		**Question**	**Applicant's Response**
LV 2.1	*Indicative Landscape and Biodiversity Strategy* **North Yorkshire County Council**	In their response to Deadline 2 [REP2-037 and REP2-039] and as specified in the draft Statement of Common Ground [REP2-011], North Yorkshire County Council and Selby District Council raise concerns with what they say is the inadequacy of the Indicative Landscape and Biodiversity Strategy [APP-035] in respect to planting and hedgerows, and improvements to green infrastructure within the local area.	
	Selby District Council	The Applicant states in its response to Deadline 3 [REP3-009] that Requirement 6 will be sufficient to ensure such a strategy is acceptable, which must be agreed by the relevant planning authority. i) Comment whether Requirement 6 of the draft DCO [REP3-003] would adequately deal with Councils' concerns. ii) If not, set out what it would expect to see either within the ILBS or in Requirement 6.	The Local Authorities have suggested further changes to Requirement 6. The Applicant is currently considering these and will provide an update at Deadline 6.

NV	Noise and Vibration		
ExA Question		**Question**	**Applicant's Response**
NV 2.1	*Operational Noise* **North Yorkshire County Council** **Selby District Council**	Comment on the revised wording of Requirement 24 of the draft DCO [REP3-003].	The Applicant received comments from the host local authorities in December 2017 seeking minor amendments to this requirement, which the Applicant has confirmed are agreed. These have been included in the revised draft DCO submitted at Deadline 5.