Response to Secretary of State's Request for Information (6 November 2026)

Secretary of State Request for Information		Applicant's Response
Decarbonisation Readiness Statement		
6.	The **Applicant** and **Environment Agency** are requested to provide comments on the following proposed amendments to the Order relating to the applied for environmental permit for the Proposed Development and decarbonisation readiness conditions (amendments are indicated in bold and underline). **Schedule 2 Paragraph 1(1)** ***"decarbonisation readiness conditions" means all the conditions at paragraph 9(4)(a) to (c) of Schedule 25C to the Environmental Permitting (England and Wales) Regulations 2016;*** *"environmental permit" means a permit granted pursuant to the Environmental Permitting (England and Wales) Regulations 2016(a) (or any such licence, authorisation or consent as may replace it)* ***subject to the modification specified in paragraph 1(3).*** **Schedule 2 Paragraph 1(3)** ***The Environmental Permitting (England and Wales) Regulations 2016 apply to any environmental permit application for the authorised development as if that application were submitted to the Environment Agency***	The Applicant has no in principle concern with the proposed amendments and has no substantive objection to the Development Consent Order being amended to achieve the outcome of ensuring decarbonisation readiness is legally required (notwithstanding that both the Applicant and EA are proceeding on that basis in any event). For completeness, the Applicant would note that the proposed insertion at paragraph 1(3) of Schedule 2 would have the effect of requiring the decarbonisation readiness conditions to be imposed in the environmental permit by virtue of treating the application as one made after Environmental Permitting (Electricity Generating Stations) (Amendment) Regulations 2025 come into effect. On that basis, the remaining elements of the drafting are duplicative and superfluous, and may not future proof against amendments which could be made in the future to the Environmental Permitting (England and Wales) Regulations 2016. Notwithstanding the Applicant has no in principle objection to the effect of the proposed amendments, if the Secretary of State agrees that the proposed paragraph 1(3) achieves the outcome desired, there would therefore be no necessity for any of the other amendments suggested.

	after the date on which the Environmental Permitting (Electricity Generating Stations) (Amendment) Regulations 2025 came into force. **Schedule 2 Requirement 30** *30. —(1) Until such time as an environmental permit* ***that includes the decarbonisation readiness conditions*** *is granted for the authorised development, the undertaker shall not, without the consent of the Secretary of State—* *(a) dispose of any interest in Work No. 11; or* *(b) except for use as a laydown area (which for the avoidance of doubt includes any temporary use of the land for construction purposes associated with the authorised development) during the construction of the authorised development, do any other thing, or allow any other thing to be done or to occur, which may reasonably be expected to diminish the undertaker's ability within two years of such action or occurrence, to prepare the carbon capture readiness reserve space for the installation and operation of carbon capture equipment, should it be deemed necessary to do so.* **Schedule 2 Requirement 31**	

	31.—(1) The undertaker shall submit a written report ('carbon capture readiness monitoring report') to the Secretary of State— *(a) on or before the date on which three months have passed from the commissioning of the authorised development; and* *(b) within one month of the second anniversary, and each subsequent even numbered anniversary, of that date.* *(2) Each carbon capture readiness monitoring report shall—* *(a) provide evidence that the undertaker has complied with requirement 30;* *(b) state whether the undertaker considers the retrofit of carbon capture technology is feasible, explaining the reasons for any such conclusion and whether any impediments could be overcome; and* *(c) state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture readiness proposals.* *(3) This requirement shall cease to have effect upon the date that an environmental permit* ***that includes the decarbonisation readiness conditions*** *is granted for the authorised development.*	

Climate Change Assessment		
7.	The Secretary of State notes Chapter 18 of the ES assumes that the Proposed Development would be operational for 25 years [APP-052 – 18.6.12]. The **Applicant** is requested to identify whether the assumed operational lifetime of the Proposed Development would be secured through the DCO, environmental permit or any other mechanism, and specify the relevant provisions. If the assumed operational lifetime of the Proposed Development is not currently secured by any mechanism, the Applicant is requested to provide without-prejudice proposed drafting for the DCO that would secure that the operational lifetime of Proposed Development would not exceed 25 years	*The Applicant's in principle position on the proposed Requirement* The Applicant objects in the strongest possible terms to the imposition of a requirement which restricts the operation of the Proposed Development. The Applicant's position is based on the following points: 1. The 25-year design life referenced by the Secretary of State (and discussed further below) was adopted for the purposes of a reasonable worst-case assessment. As a matter of law and the Secretary of State's consistent practice, not every such granular assumption requires to be the subject of a Requirement. 2. The test for the imposition of a Requirement is based on the underlying restriction or condition being "necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects" (as per paragraph 4.1.17 of EN-1). 3. The imposition of a Requirement would not be necessary, nor reasonable on the basis that: a) such controls are not necessary because a number of appropriate mitigation measures, and wider controls, are in place for that worst case scenario; b) a number of controls exist outwith the DCO which can be relied upon in this context (and is therefore duplicative of other controls in place) and Government policy specifically states that economy-wide matters will be the appropriate mechanism for controlling operational emissions and controlling the demand and use of different energy generating technologies; c) it would not follow the standard and accepted practice of the Secretary of State which means that such a Requirement would unfairly prejudice the Proposed Development compared with its competitors and other comparable developments consented and in turn would provide a commercial benefit or subsidy to every

		other operational CCGT development in the country, including existing plant of considerably lower efficiency (and therefore higher carbon intensity) than the Proposed Development; d) it risks undermining the commercial viability of the Proposed Development by imposing an artificial restriction on the period during which the Proposed Development may lawfully operate. This in turn risks preventing a key offtaker project for the hydrogen economy from moving forward and thereby reduces the certainty of the UK being able to develop a hydrogen to power decarbonisation pathway, which is counter to UK strategy; and e) it risks UK security of supply by requiring the decommissioning of what would be one of the most efficient dispatchable gas-fired generating stations in the event that its generating capacity was still required by the national transmission system operator. This creates a scenario where the system operator would rely on older, less efficient plant (with higher associated GHG emissions per MW of electricity produced) and reduce the resilience and availability of the electricity supply system. If the transmission system operator requires dispatchable power from the Proposed Development beyond the 25-year period, it would be perverse, and contrary to Government policy, in the Applicant's view if the most efficient power station on the system was required to cease operations due to a restriction that was imposed in that power station's planning consent before the power station was even built. Such a requirement could separately prematurely force the closure and cessation of generation from the UK's and Europe's first hydrogen-fired power station. It is respectfully submitted that this cannot be the Government's intention. The Applicant provides further detail on its position below. This position reflects the strong objection it had previously provided in respect of restrictions to operational hours contained in its response to the Secretary of

		State's Request for Information dated 4 September 2026 (C1-004b, 22 September 2026). The Applicant wishes to underline the fact that the imposition of Requirements on either operational hours per annum, or lifetime operations on hydrogen enabled generation projects could give rise to commercial risks that would jeopardise enabling the hydrogen economy in the UK. *The basis for the reasonable worst-case assessment, and why it does not reflect an operational lifetime Requirement* The Applicant, in line with EIA best practice, identified a reasonable worst-case design life for the purposes of the GHG assessment that reflects Government policy-driven expectations regarding the role of dispatchable plant over time, based on published energy generation forecasts and its own projections which are based on its extensive understanding and experience of its plants in operation and the market. The purpose of the design life assumption is to provide a sufficiently representative period of operation to enable the decision maker to understand the environmental consequences of the development and determine the significance of its likely effects. Continued operation beyond that period does not, simply by reason of its duration, invalidate that assessment or mean that the significance conclusions would change. In particular, the Applicant wishes to highlight that the 25-year design life assumption in the GHG assessment is based on average operating hours of 3,500 per year for the first 15 years and average operating hours of 1,500 per year thereafter, reflecting the anticipated transition of the Proposed Development towards a predominantly peaking and balancing role. In other words, the assumed 25-year period provides a robust envelope within which to assess the likely total lifecycle GHG emissions of the Proposed Development based on projections of the

		expected need for and role of the plant. These projections were based on the Applicant's current understanding of the future energy market, which is in turn based on the UK government's future energy policy. The assessment therefore considers the overall lifetime as a whole rather than any particular fixed endpoint. If the Proposed Development would operate for a longer number of years, but with lower operational hours, the impacts arising under the "reasonable worst case" would not arise. Attempting, therefore, to impose a Requirement based on the number of years would prevent the Proposed Development from operating within the environmental envelope assessed. Chapter 4 of the Environmental Statement (APP-038) sets out that "This ES has assumed that the Proposed Development could operate for longer than 25 years, and in relevant chapters has considered and assessed the potential for operational impacts/ effects to continue beyond this timeframe." It is on this basis, for example, that the Flood Risk Assessment explains that "FRA has assessed the likely "extended" operation period (currently estimated at 35 years) and 75 years as requested by the EA." The particular "reasonable worst case" in terms of the operational life therefore varies across the chapters. The reference to a 25-year assessment period in Chapter 18 therefore falls to be understood in the context of the environmental information as a whole. The fact that an assumption has been adopted in defining a reasonable worst-case scenario for the purposes of EIA does not automatically mean that the granular assumption must subsequently be secured as a limitation on the authorised development. The EIA Regulations require likely significant environmental effects to be identified, described and assessed in an appropriate manner, taking account of the individual case. The nature and extent of that assessment involves evaluative

		judgment. As confirmed by the Supreme Court in Finch, determining whether an effect is significant, and the nature and extent of the assessment reasonably required, are evaluative matters for the decision-maker. The relevant question is therefore whether the environmental information enables the Secretary of State to reach a reasoned conclusion on the likely significant effects of the Proposed Development, rather than whether every parameter or assumption used to undertake that assessment is replicated as a control in the DCO. It should be noted that the assessment has been based on the assumption that when operating the Proposed Development would operate at 100% load (i.e. maximum generation). In practice, it is expected that the operational load will be variable dependent on the requirements of the electricity grid during generation periods. Where the Proposed Development operates at lower load points, fuel gas consumption will be reduced and therefore associated GHG emissions will be reduced proportionally. Therefore, these assumptions provide a conservative assessment of the quantities of GHG to be emitted in line with EIA best practice. It is unduly restrictive to therefore impose a Requirement with that underlying rationale. *Government policy, and managing operational emissions through an economy-wide approach* NPS EN-1 (2024) paragraph 5.3.12 is clear that "Operational emissions will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international climate commitments". The imposition of a Requirement for the purposes of managing operational emissions is not an economy-wide matter, but a selective restriction on the Proposed Development.

		In line with that policy, neither the DCO nor the environmental permit would restrict the operational lifetime. Instead, the control of operational emissions in a managed, economy-wide approach is principally carried out through two mechanisms. First, the Government's decarbonisation strategy relies in part on carbon pricing through the UK Emissions Trading Scheme (UK ETS). The UK ETS places a carbon cost on emissions from the power sector and establishes an overall cap on emissions from sectors covered by the scheme. By attaching a cost to carbon emissions, the UK ETS incentivises lower carbon and more efficient generation. As a result, newer, high efficiency gas-fired generation is generally more competitive than older, less efficient fossil fuel plant, which incurs higher carbon costs for each unit of electricity generated. The UK ETS is intended to support a least cost pathway to decarbonisation by influencing investment and operational decisions across the electricity sector. Secondly, electricity generation is dispatched broadly according to the market 'merit order', whereby plant with the lowest marginal operating costs tends to run first. Carbon prices form part of those operating costs. As carbon prices increase, and as lower carbon technologies continue to enter the generation mix, higher emitting generation becomes progressively less competitive and is therefore expected to move further down the merit order, resulting in lower levels of utilisation relative to lower carbon alternatives. These obligations are layered by the requirements of the Climate Change Act 2008. That Act imposes duties on the Secretary of State: (1) to ensure net zero GHG emissions by 2050 (section 1); (2) to set carbon budgets covering successive five-year budgetary periods with a view to meeting the commitment to achieve net zero (sections 4, 8 and 10); (3) to prepare such proposals and policies as the Secretary of State for

		Energy Security and Net Zero considers will enable carbon budgets that have been set to be met (section 13); and (4) to ensure that the UK's net GHG emissions for a budgetary period do not exceed the relevant carbon budget (see section 4(1)(b)). Accordingly, market and policy mechanisms already exist to incentivise lower carbon generation and to discourage prolonged operation of higher emitting generating plant where lower cost and lower carbon alternatives are available. As a matter of law, the Secretary of State is entitled to have regard to and rely upon these control regimes outside the planning system when granting permission or consent; there is no requirement to duplicate such controls which are often the responsibility of other bodies; such duplication is expressly discouraged and the Secretary of State should generally assume those regulatory process will operate effectively. These principles derive from *Gateshead MBC v Secretary of State for the Environment* [1995] Env. L.R. 37. In *R (Boswell) v Secretary of State for Energy Security and Net Zero* [2025] EWCA Civ 669, concerning Net Zero Teesside, the Court of Appeal confirmed at [81] that it was not unlawful for the decision-maker to proceed on the basis that GHG emissions would be managed across the economy to ensure consistency with the statutory carbon budgets and the 2050 net-zero target. In the *Bristol* case, the High Court dismissed the argument advanced by the claimant that the Secretary of State had erred in treating the Climate Change Act 2008 (CCA 2008) as a "separate pollution control regime" for the purposes of the National Planning Policy Framework and instead found no fault that the specific duties in the CCA 2008 require the setting of carbon budgets and trading emission schemes at a national level which are designed to control emissions.

		The proposed Requirement would, in effect, conflict with these economy-wide measures and suggest these mechanisms are ineffective. It also conflicts with the Gateshead principle which holds these mechanisms should be assumed to operate effectively. It would, in effect, upend a consistent line of precedent, create significant uncertainty on how operational emissions are to be controlled, introduce doubt as to whether the Government is committed to its economy-wide approach, and do so at the detriment of the Proposed Development which is anticipated to be one of the first-of-a-kind hydrogen enabling developments in the UK. For the avoidance of doubt, the Applicant's operational lifetime assumption utilised for the GHG assessment is compatible with NESO's central Future Energy Scenario (FES) 2025 whereby unabated gas remains an important part of the system for security of supply, but with a declining utilisation profile over time. In particular, NESO's FES 2025 indicates that unabated gas generation is expected to continue to play an important role in maintaining security of supply through the transition to net zero, whilst operating at progressively lower load factors as low-carbon flexibility, energy storage, hydrogen-to-power and gas generation with carbon capture and storage are deployed at scale. FES therefore supports a future in which gas-fired generation remains a necessary component of the electricity system but transitions from a higher-utilisation balancing role in the 2030s to a lower-utilisation peaking and security-of-supply function thereafter. The 25-year operational lifetime assumption adopted for the GHG assessment is consistent with this anticipated trajectory and provides a robust basis for the lifecycle GHG assessment. *Precedent* The Secretary of State's question appears to proceed on an assumption that an assessment assumption must either be secured by the DCO or secured through some other regulatory mechanism. Respectfully, that

		does not follow. The EIA question and the Requirement question are legally distinct. The former asks whether the Secretary of State has sufficient environmental information to reach a reasoned conclusion on the likely significant effects of the Proposed Development. The latter asks whether restricting the authorised development in that way satisfies the six policy tests in NPS EN-1. The Applicant's position is that the 25-year assumption enables the former but does not establish the necessity, reasonableness or policy justification for the latter. As well as not complying with planning policy tests, the Applicant is not aware of any hydrogen-ready or gas fired combined cycle power station planning permission in England or any DCO which has been subject to such a requirement, including the recently granted Net Zero Teesside Order 2024. Such a restriction would create a competitive disadvantage for the Proposed Development and risk the Proposed Development not being able to support UK decarbonisation targets and energy security, with older, less efficient generating stations continuing to operate for longer to meet demand. Section 2.3 of NPS EN-1 identifies a continued need for unabated gas to provide capacity to back up intermittent renewables. If the DCO restricted operational lifetime, the Proposed Development would be required to cease operations after 25 years even if it remained one of the most efficient and lowest-emitting dispatchable generating stations on the system, and even if NESO required its continued availability for security of supply, and could potentially be one of the only 100% hydrogen plants in the UK. This could undermine security of supply or result in older and less efficient, more carbon intensive plants being retained in operation for longer. The Proposed Development is designed to run on 100% hydrogen and able to run on 100% natural gas or a blend of natural gas and hydrogen. An operational lifetime restriction imposed in the interests of managing GHG emissions would, in the Applicant’s view, perversely prevent the continued operation of a generating station that may by that time have

		decarbonised through conversion to hydrogen, or through the fitting of carbon capture equipment. The Applicant has reviewed relevant generating station DCOs made since 2020. None of these DCOs granted between 2020 and 2026 impose restrictions on operational lifetime. It is of particular relevance that the greenhouse gas assessment made for the Net Zero Teesside project used exactly the same methodology as was used by the Applicant for this Proposed Development, including assessing a hypothetical 25 year running scenario as a representative worst case, and no time limit was included in that DCO. The Applicant does not consider that the Proposed Development, or the draft DCO [REP6-003], has any characteristics which would justify a departure from these precedents, and there is no basis for providing a commercial benefit to that development. For the reasons above, there is in fact a strong reason not to restrict the operational lifetime of the Proposed Development (which would be the effect of any such requirement), which is more efficient and will help unlock the hydrogen economy. Imposing the proposed requirement on hydrogen-enabled schemes could create significant commercial uncertainty which does not apply to existing, less efficient modes of energy generation. The Applicant therefore considers the Secretary of State has appropriate information to refuse to impose any requirement which would restrict the operational lifetime of the Proposed Development and thereby unduly impede its delivery as a catalyst for the hydrogen economy. For the reasons set out above, the Applicant does not agree that such a provision restricting the operational lifetime of the Proposed Development to 25 years is necessary, appropriate, or reasonable.

		As noted above, there is no relevant precedent and so the drafting provided below is bespoke. Without prejudice to the Applicant's position set out above, as specifically requested, the Applicant's proposed drafting below provides for the cessation of commercial operation of the Proposed Development but permits an extension with the agreement of the relevant planning authority or the Secretary of State within the environmental envelope of the scheme. The Applicant's proposed drafting is as follows: *(1) The authorised development must cease commercial operation no later than the date falling on the specified date ("the initial operational period"), unless the undertaker has obtained the prior written approval of the relevant planning authority, or the Secretary of State, to an extension of the operational period in accordance with sub-paragraph (2).* *(2) The relevant planning authority or the Secretary of State may approve an extension of the operational period beyond the initial operational period where they are satisfied that the continued operation of the authorised development will not give rise to any materially new or materially different environmental effects than those assessed in the environmental statement, having regard to (among other relevant matters) any measures undertaken by the undertaker under the environmental permit or otherwise.* *(3) In this paragraph, the "specified date" means 25 years after the date on which the authorised development first generates electricity for commercial use.*