

Application by Millbrook Power Limited for an Order Granting Development Consent for a Proposed Millbrook Power project

The Examining Authority's Written Questions and Requests for Information (ExA WQs)

Issued on Tuesday 20 March 2018

The following table sets out the Examining Authority's (ExA's) written questions and requests for information – ExA WQs. If necessary, the Examination Timetable enables the ExA to issue a further round of written questions in due course. If this is done, the further round of questions will be referred to as ExA WQ2.

Questions are set out using an issues-based framework derived from the Initial Assessment of Principal Issues provided as Annex B to the Rule 6 letter of **12 February 2018**. Questions have been added to the framework of issues set out there as they have arisen from representations and to address the assessment of the application against relevant policies.

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

Each question has a unique reference number which starts with 1 (indicating that it is from ExA WQ1) and then has an issue number and a question number. For example, the first question on Project and site description is identified as ExA WQ1.0.1. When you are answering a question, please start your answer by quoting the unique reference number.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact MillbrookPower@pins.gsi.gov.uk.

Responses are due by **Tuesday 17 April 2018**

The Examination Library

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

[https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010068/EN010068-000517-MILL%20-%20Examination%20Library%20\(Internal\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010068/EN010068-000517-MILL%20-%20Examination%20Library%20(Internal).pdf)

It will be updated as the examination progresses.

Citation of Questions

Questions in this table should be cited as follows:

Question reference: issue reference: question number, eg ExA WQ1.0.1 – refers to question 1 in this table.

ExQ1 Question to:		Question:
1.0	Project and Site Description	
1.0.1	Applicant, Central Bedfordshire Council (CBC) and Bedfordshire Borough Council (BBC)	The Environmental Statement (ES) [APP-033] paragraph 2.7.75 states that the Mineral Waste Local Plan – Strategic Sites and Policies (MWLP: SSP) identifies the whole of the Rookery South Pit area as allocated for non-landfill waste management recovery operations and non-hazardous landfill, with opportunities for pre-treatment recovery operations prior to landfill. Please provide comment on whether the proposed use of part of this site for electricity generation is consistent with this policy?
1.0.2	Applicant	The site for the Proposed Development lies within the brickfields landscape zone identified in the Forest of Marston Vale Plan as an area where there is a need to secure a higher level of new planting than elsewhere in the Community Forest. What account has been taken of this Plan in designing the Proposed Development?
1.0.3	Applicant	Figure 1.2 of the ES shows separate coloured areas for the Generating Equipment Site, the Electrical Connection and the Gas Connection. Other areas within the Order Limits are shown in white. Please set out the reason for the inclusion of these white areas and the use that will be made of this land.
1.0.4	Applicant	ES Figure 1.2 shows a substantial area in blue marked as the Power Generation Plant Site. The area to the north of the Generating Equipment Site appears to be land that would largely be occupied by the Covanta Resource Recovery Facility (Covanta RRF). Please explain why all of that land is included in the Order Limits. To the extent that some of this land is required in order to provide access to the Generating Equipment Site can an access corridor be specifically identified?
1.0.5	Applicant	The Low Level Restoration Scheme (LLRS) is assumed to have been completed before the commencement of the Proposed Development and forms part of the baseline for the ES. This restoration work is taking place independently of the Proposed Development but the Applicant has an Option Agreement with the landowner which contains provisions to ensure that specific elements of the LLRS are completed prior to the anticipated commencement of the Proposed

ExQ1		Question to:	Question:
			Development in 2020. Please provide a copy of the Option Agreement.
1.0.6	Applicant		Some of the LLRS works listed in ES paragraph 3.1.5 – e.g. the attenuation pond and pumping station and the buttressing and re-profiling to the eastern side of Rookery South Pit - may lie outside the order limits but still be essential for the operation of the Proposed Development. Please explain how the completion and subsequent maintenance of these facilities will be ensured.
1.0.7	Applicant		Please consider including a requirement in the draft Development Consent Order (dDCO) that would make commencement of the Proposed Development conditional on the completion of the LLRS and certification by an appropriate authority that it meets the standard assumed in the baseline reported in the ES.
1.0.8	Applicant		ES paragraph 3.1.13 refers to road access to the site being shown on Figure 1.2 and paragraph 3.2.15 refers to a temporary construction laydown area. Figure 1.2 does not show either of these elements. Please confirm whether the access routes listed here are those shown in Figure 12.2 and the laydown areas are as shown in Figure 3.1 or provide further figures showing the details.
1.0.9	Applicant		Paragraph 3.2.9 in the ES refers to details of a study setting out height parameters for the Generator stack being in Table 3.1. Table 3.1 does not include such details. Please provide the correct reference.
1.0.10	Applicant		Please confirm that the AOD level of 31.5m referred to in ES Table 3.1 is the level of the base of the former clay pit after completion of the LLRS. Please also confirm that the maximum heights shown for the electrical and gas connection equipment take into account that these would be set on land which is higher than the base of the clay pit.
1.0.11	Applicant		Please explain the two footnotes to ES Table 3.1.
1.0.12	Applicant		ES paragraph 3.2.17 refers to the "Access Road" and the "Short Access Road". Please identify the location of these roads on ES Figure 1.2 or other plans.
1.0.13	Applicant		ES paragraph 3.4.4 refers to the possible need for a short permanent diversion to the LLRS secondary access. Please identify where on the site this might be required, and whether it is

ExQ1		Question to:	Question:
			shown on any application plans. If the need is uncertain how is this provided for in the draft DCO?
1.0.14	Applicant		ES paragraph 3.5.10 refers to the use of bored or driven piles in certain parts of the site. Please clarify which option will be used and how the worst case scenario has been taken into account in the ES – eg in respect of noise during construction.
1.0.15	Applicant		ES paragraphs 3.5.32 and 3.5.33 state that work would ‘likely’ take place within a certain working width along the length of the gas connection pipeline. Please confirm that a maximum working width has been taken into account in the ES assessments and is specified in the land plans and the dDCO.
1.0.16	Applicant		ES paragraph 3.5.35 refers to certain elements of the work which ‘may’ be required. Please confirm that these options have been taken into account in the ES, whether the worst case scenario has been considered, and what that would be.
1.0.17	Applicant		ES paragraph 3.5.53 leaves open the possibility that the Electrical Connection and the Gas Connection would continue in use after the decommissioning of the Generating Equipment. Consent for these elements of the Project is being sought as Associated Development and they have been evaluated on that basis. Please set out the rationale for allowing a longer life for these assets and confirm whether this has been factored into the ES.
1.0.18	Applicant		In the Progress Power DCO the timing of the decommissioning of the electrical and gas connection equipment is tied to the decommissioning of the generation plant. Please set out any reasons why this approach should not be adopted in the current case.
1.1.	EIA Methodology		
1.1.1.	Applicant		ES paragraph 4.8.1 sets out the proposed operating hours for the Generating Equipment as a maximum of 2,250 hours in any one year subject to a five year rolling average of 1,500 hours. In the Progress Power DCO output is limited to 1,500 in any one year. Please set out the reason for seeking a higher level in some years.
1.1.2.	Applicant		Please set out how it is proposed that the rolling average level of hours of operation would be calculated during each of the first five years of operation and consider whether this is

ExQ1		Question to:	Question:
			adequately specified in the dDCO Requirement 17.
1.1.3.	Central Bedfordshire Council and Bedfordshire Borough Council		Please confirm that CBC and BBC are satisfied that the list of projects set out at ES paragraph 4.10.7 includes all of the developments that need to be taking into account in the assessment of cumulative effects?
1.2.	Alternatives		
1.2.1.	Applicant		ES paragraph 5.2.3 refers to a detailed feasibility assessment of potential sites for power generation of the sort proposed. Please confirm if this is the same study that was referred to in the application for the Progress Power and Hirwaun generating stations or whether some additional work has been carried out to identify the Millbrook Power site?
1.2.2.	Applicant		How has the Applicant taken into account the requirements of section 14(1)d of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 on the assessment of alternatives?
1.2.3.	Applicant		ES paragraph 5.5.11 states that option 4 for the Electrical Connection, which would only require one sealing end compound, is unlikely to be feasible for a number of technical and financial reasons. This option would have a smaller footprint than the preferred option 3. Please provide further explanation as to why this option has been rejected.
1.3.	Air Quality		
1.3.1.	Applicant		ES paragraph 6.5.31 states that air dispersion modelling has been carried out on the basis of full load for 2,250 hours but that results at individual receptors have been reported on the basis of 1500 hours operation per annum – the five year average. Please explain how the use of the lower number of operational hours affects the results at individual receptors and why the maximum number of hours in a single year has not been used as the worst case.
1.3.2.	Applicant		ES Tables 6.18 – 6.24 show the cumulative impacts with the Covanta RRF. There appear to be only small increases in NOx and CO attributable to the Covanta RRF. Please confirm that this is consistent with the projections for NOx and CO set out in the Covanta RRF application

ExQ1		Question to:	Question:
			documents.
1.3.3.	Applicant		Ecological site-relevant critical loads for nitrogen and acid deposition according to the Air Pollution Information System (APIS) database are shown in Table 6.11 in the ES, and the existing baseline depositions for those sites are shown in Table 6.12. It is stated in paragraph 6.6.12 that as there is no site-specific information listed on APIS for the Country Wildlife Sites (CWS) an 'appropriate sensitive habitat has been selected based on the ecology of the site, and the habitat and location-specific information from APIS is shown'. This appears to suggest that APIS data for other sites considered to be similar to the CWSs has been utilised; however, it is unclear, and it is not stated whether this approach has been agreed with the relevant consultees. Please clarify the position.
1.3.4.	Applicant		Paragraphs 6.6.14 and 6.6.15 note that the baseline conditions and receptors established in relation to the gas and electrical connections are the same as for the power generation plant. However, the gas and electrical connections extend considerably beyond and to the south of the power generation plant. The ES does not explain the extent to which there may be other receptors affected by the gas and electrical connections construction work. Please justify the extent and appropriateness of the selected study area.
1.3.5.	Applicant		Please explain the extent to which the modelling used to assess the air quality impacts from downwash has taken into account the presence of the proposed structures on the generating equipment site.
1.3.6.	Applicant		The terminology used to describe magnitude (large, local, short-term, not significant) in Table 6.27, the air quality residual effects summary table (pages 150 – 155 of the ES), is not explained in the chapter. Therefore, other than in relation to construction dust emissions, the criteria used for this assessment is unclear. Please provide this information.
1.3.7.	Applicant		Levels of risk of dust impacts are described in Table 6.7 (page 116 of the ES) as ranging from negligible to high and are determined by combining the sensitivity of an area with the magnitude of a dust emission and applying professional judgement. It is stated that risks of medium or above are considered to be significant. However, the criteria used to define each

ExQ1		Question to:	Question:
			dust risk impact level have not been provided. Please provide this information.
1.3.8.	Applicant		The ES Contents list refers to Appendix 6.1 as 'Air Quality Cumulative Modelling' (Doc 6.2 - Appendix 6.2, Volume G, [APP-040]), and it is described in Chapters 8 and 15 as containing the results of the modelling of the Proposed Development and the Covanta RRF together. However, Appendix 6.1 is titled 'Air Quality Sensitivity Test' and contains the results of stack height sensitivity testing based on data from Bedford meteorological station (as cross-referenced from paragraph 6.5.23 of this ES chapter). No information has been provided in the ES chapter specifically in relation to cumulative modelling, and it is unclear whether such information has been omitted from Appendix 6.2 in error. Please explain the discrepancy and provide the missing information, as appropriate.
1.3.9.	Applicant		Paragraph 6.8.11-12 of the ES notes that it was stated in the ES for the Covanta RRF project that the residual effects of construction dust resulting from that project were judged to be 'not significant', and paragraph 6.8.13 states that it is considered that there will be 'no effects' arising from the Millbrook Power Project. The summary of residual effects contained in Table 6.27 reflects that, with embedded mitigation, the residual effect will be 'not significant'. Effects that are predicted but are judged not to be significant alone can contribute to a significant cumulative effect with effects from other projects that are also judged not to be significant. As the predicted level of the effects is not specified, and only described in terms of whether it is significant or not, it is not clear from the information provided for both projects whether any dust emissions effects are predicted, and therefore whether there is potential for a significant cumulative effect. Please provide clarification of their assessment, explaining the level of significance that applies to the assessment of impacts from dust due to the project alone and cumulatively with other projects including the Covanta RRF.
1.3.10.	Applicant		Section 6.8 of the ES refers to stack modelling results and conclusions contained within the Covanta RRF ES, and cumulative results for this project together with the Covanta RRF are provided in Appendix 6.3 (Doc 6.2, Volume G). For some elements, such as, for example, NOx and CO, there appear to be only small increases attributable to the Covanta RRF. Please

ExQ1		Question to:	Question:
			provide the relevant data and conclusions from the Covanta RRF ES, so that the cumulative results and the relative contribution of each project can be clearly understood.
1.3.11.	Applicant		Paragraph 6.8.23 of the ES states that the modelling results contained in the Covanta RRF ES were based on a stack height of 100m but that the extension to 105m in the approved DCO would be likely to reduce its impacts (on the Kings Wood and Glebe Meadows, Houghton Conquest SSSI) to below 1% 'for the upper limit'. The justification for this conclusion is not provided. The ES describes 105m as the maximum height of the stack from the Finished Floor Level (equivalent to 136m above ordnance datum (AOD)), while Article 5 of the Covanta RRF DCO provides that the stack cannot be lower than 132.5m AOD. Please explain any implications that this may have for the modelling results.
1.3.12.	Applicant		Paragraph 6.8.27 of the ES states that all air quality impacts on ecological receptors from the Proposed Development would be insignificant, except for the Kings Wood and Glebe Meadows SSSI, where the impact would be minor adverse due to increased levels of nutrient nitrogen deposition. The cumulative impact assessment does not identify any significant effects. However, the quantitative results presented in the ES, both for the Proposed Development alone (contained in Tables 6.23 and 6.24) and cumulatively with the Covanta RRF (contained in Tables 6.3.6 and 6.3.7 of Appendix 6.3), indicate that the PEC exceeds the CL at a number of sites, in relation to both nitrogen and acid deposition. Please explain and justify the conclusion.
1.4.	Noise and Vibration		
1.4.1.	Applicant		Paragraph 7.8.4 and Tables 7.22 and 7.23 of the ES show the noise limits during operation set out in the Covanta RRF DCO at South Pilling Farm and Pilling cottages. These will be exceeded by the cumulative noise impact of the two projects. Please explain why a higher noise level than was required of the Covanta RRF should be acceptable?
1.4.2.	Applicant		The study area and receptor locations within it are identified in Table 7.3 (page 173 of the ES) and on Figure 7.1 (Doc 6.3, [APP-049]). The study area is defined as extending to 350m beyond the boundary of the Proposed Development site, and was selected on the basis that the nearest noise sensitive receptors (NSRs) to the Proposed Development lie within 350m of the

ExQ1		Question to:	Question:
			site. It is assumed that this is for the purpose of assessing the worst case scenario. Please clarify how the study area for the assessment has been determined and how it is sufficient to encompass the extent of the impacts and those noise-sensitive receptors that could be significantly affected.
1.4.3.	Applicant		Moreteyne House is identified in Table 7.3 of the ES as only likely to be impacted by noise during construction and decommissioning of the electrical connection. However, it appears (from Figure 7.1) to be in close proximity to Pilling Cottages and South Pilling Farm, for which noise impacts are also anticipated from the gas turbine generator, exhaust gas flue stack and fin fan cooler(s). Please explain the reasoning for this conclusion.
1.4.4.	Applicant		Paragraph 7.5.9 of the ES notes that the approximate noise survey locations are shown in Figures 2, 3 and 4 of Appendix 7.1 (which is titled 'Noise Terminology' and explains acoustic terms in Doc 6.2, Volume H, [APP-041]). However, there is only one such plan in Appendix 7.3 (Figure 1) which shows the 2017 noise survey location. No figures showing the 2014 survey location(s) are provided. It appears that these have been omitted. Please provide the missing figures.
1.4.5.	Applicant		Paragraph 7.5.10 of the ES refers to four different noise measurement types used in the noise surveys: LA10,T; LA90,T; LAeq,T; and LAFmax. However, only LA90 is reported in Appendix 7.2 (2014 results), and LA10,T is not included in Appendix B to Appendix 7.3 (2017 results). In addition, Appendix 7.2 contains 2014 survey results only for South Pilling Farm (the nearest NSR) although noise levels were also surveyed at Lower Farm. Please explain why only these results have been presented, and provide the equivalent information if necessary.
1.4.6.	Applicant		Details of the acoustic model used to predict noise levels are provided in Appendix 7.3 (Doc 6.2, Volume H). Paragraph 7.7.13 of the ES indicates that the modelling took into account the topography of the Rookery pits post-LLRS works. Please confirm how it is secured that these works would all be completed by the time the Proposed Development is operational.
1.4.7.	Applicant		The ES concludes that noise impacts to ecological receptors will not be significant. However, the information supporting this conclusion is limited and lacks sufficient clarity. Please provide

ExQ1		Question to:	Question:
			clarifying information to support the conclusion regarding effects from noise on ecological receptors.
1.4.8.	Applicant		There are inconsistencies between Chapter 7 Section 7.4, Chapter 3 Table 3.1 of the ES, the dDCO, and Appendix 7.3 in relation to the dimensions of the gas turbine generator and the fin fan cooler. Please explain the extent to which these apparent discrepancies may affect the findings in the ES, particularly in regard to the modelling undertaken and the results presented.
1.4.9.	Applicant		The potential cumulative noise impacts of the Proposed Development are considered in Section 7.8 of the ES and the results of the modelling for the operational phase provided in the 'Operational Plant Noise Impact Assessment' contained in Appendix 7.3 (Doc 6.2, Volume H). No information is provided on how the modelling of cumulative impacts was done. Please provide these details, including information on any limitations or assumptions that were identified or used to inform the modelling.
1.4.10.	Applicant		In its Relevant Representation (RR), CBC raised concerns about the approach to defining LOAEL and SOAEL, including the assumption that the Proposed Development will typically operate in the daytime; that the proposed noise limits are excessive and 4dB above those allowed in the Covanta RRF DCO; and about the proposed construction hours during which noisy works can take place, which differ to those in the Covanta RRF DCO. Please provide a response to these concerns.
1.5.	Ecology		
1.5.1.	Applicant		ES paragraph 8.5.21 refers to provisions in the Rookery South RRF Order 2011 and in the Land Option Agreement to maintain newt fencing in place until 2020. Please provide copies of the relevant agreements which ensure this fencing remains in place. What provision is made for continued provision of this fencing after 2020, if required? Please could NE state whether they are satisfied with this method of mitigation and the level of certainty that the Land Option Agreement can be relied upon to ensure that the fencing remains in situ after 2020 if required.
1.5.2.	Applicant		Please consider including a requirement in the draft DCO to ensure that newt fencing remains in place before and after the start of the Proposed Development.

ExQ1		Question to:	Question:
1.5.3.	Applicant		ES paragraph 8.6.2 assumes as the baseline for the ecological assessment that elements of the LLRS work have been completed. Please identify these works and set out how their completion is ensured through the land option agreement.
1.5.4.	Applicant		What provision is there to ensure that if work on the LLRS is completed by 2020 but work on the Proposed Development does not start until a later date that the baseline conditions assumed in the ES have not changed?
1.5.5.	Applicant		ES paragraph 8.6.43 acknowledges that construction of the gas connection (GC) and electrical connection (EC) could result in accidental harm to great crested newts (GCN). It states that 'appropriate management measures will be put in place to ensure no breach of the legislation that protects GCN'. Please set out what measures will be taken and how this is secured through the dDCO.
1.6.	Water Quality and Resources		
1.6.1.	Applicant		The Flood Risk Assessment [APP-029] relies on the availability of the attenuation pond to the north of the site for the generating equipment to prevent flooding from a 1 in 100 year rainfall event. The attenuation pond is being created as part of the LLRS. Please explain what guarantee there is that this attenuation pond will be completed to the standard required to provide this level of protection. Who will be responsible for maintaining the attenuation pond over the life of the Proposed Development? How can the Applicant be sure that the attenuation pond will be available to provide flood protection over the life of the Proposed Development?
1.6.2.	Applicant		Table 9.2 (page 267 of the ES) provides definitions of significance criteria. Effects of moderate or above are considered significant in EIA terms. Although Table 9.3 (page 281 of the ES) identifies sensitivity of receptors and magnitude of impact on receptors, neither sensitivity nor magnitude is defined in the chapter, so it is unclear how the significance of an effect has been determined. Please provide definitions of the criteria that were used in the assessment to define sensitivity and magnitude and explain how these informed the determination of the significance of an effect.
1.6.3.	Applicant		Chapter 9 Section 9.8 of the ES describes the potential for cumulative and in-combination

ExQ1 Question to:		Question:
		effects. It is stated that the developments identified in Chapter 4 Section 4.10 of the ES which are over 2km from the site are outside the water quality and resources study area, and it is concluded that as there is no overlap in the study areas no significant effects would occur. Please provide further justification for employing a 2km study area for the assessment of cumulative effects when considering water quality and resources, and a plan that shows the location of these developments in relation to waterbodies.
1.6.4.	Applicant	Please explain how it would be made certain that the elements of the LLRS works that would contribute to avoiding significant effects on water receptors will be implemented by the time work on the proposed development commence, and what the implications would be in the event that those LLRS works were not completed. In addition, please explain the implications if the mitigation associated with the Covanta RRF scheme were not implemented, ie is the Proposed Development reliant on mitigation associated with the scheme if that scheme is built out and how would mitigation be ensured in the absence of the Covanta RRF being completed?
1.7.	Ground Conditions	
1.7.1.	Natural England	Impact on soil resources and agricultural land has been scoped out. Section 10.5.18 of the ES indicates that this has been agreed with key stakeholders e.g. Natural England, as highlighted in Table 10.1 (page 287); however, Natural England's response in Table 10.1 was to request that an agricultural land survey and soil resources assessment should be considered and not that agricultural land can be scoped out. Is Natural England satisfied with the assessment that has been presented in the ES?
1.7.2.	Environment Agency	High piezometric groundwater levels - considered in section 10.7.6 of the ES - may have the potential to result in ground heave in the base of the pit if piezometric pressures exceed confining pressures from the overlying structures, resulting in the potential for uncontrolled release of groundwater, described as resulting in a large adverse significant effect. This is expected to be controlled by the placement of engineered low permeability fill across the base of the pit as part of the LLRS works. This cannot be confirmed until further ground investigations (uplift forces acting upon any permanent buried Structures) have been

ExQ1		Question to:	Question:
			undertaken (Section 10.9). Mitigation is therefore proposed in the form of further investigations, prior to construction the findings of which would determine a foundation solution and reappraisal of risk (dDCO requirement 8). Is the EA satisfied that this mitigation as secured in the dDCO is adequate?
1.7.3.	Environment Agency		Section 10.6 of the ES describes site specific assessment, and historical published information as determining that the permeability of the Blisworth Limestone Formation is relatively low, and the quality of the groundwater within the strata is generally poor. It is considered that the deposits do not constitute a significant water source for abstraction purposes and that they act as aquitards. Is the EA in agreement with the approach adopted and the results of the assessment?
1.7.4.	Applicant		It is noted that not all of the developments identified in paragraph 10.8.1 of the ES have been included in paragraph 4.10.7, and only two have been taken forward for further consideration, and no justification has been provided of why some developments have been omitted. Please explain the omission and justify why particular developments do not appear to have been considered.
1.8.	Landscape and Visual Impact		
1.8.1.	Applicant		CBC, in their 2014 PEIR comments (contained in Table 11.1 of the ES), commented that a 10km ZTV radius was preferable to the 5km radius applied by the Applicant. Although the Applicant's response indicates that the ZTV was extended Figures 11.1 and 11.5 show a 5km radius. Please confirm the extent of the ZTV that was used for the assessment, and provide a corrected plan, as necessary.
1.8.2.	Applicant		The notes referred to in Figure 11.1 have not been included. Note 1 in the legend relates to the location of the power generation stack. Please confirm that the location of the stack and other buildings represents the same site layout as that shown on Figure 1 'Indicative Layout Generating Equipment and Electrical Connection Reg5(2)(o)' of Doc 2.3 'Indicative Site Layout Plans'.
1.8.3.	Applicant		It is stated in Table 11.1 (page 315 of the ES) that a plan showing all landscape features

ExQ1		Question to:	Question:
			including Public Rights of Way (PRoW) is provided in Figure 11.3. It is assumed that this should instead refer to Figure 11.4, entitled 'Landscape Planning Constraints', as Figure 11.3 shows landscape character areas. Three long distance paths are identified in Table 11.2 (page 331) as being in the 'surrounding area', and Appendix 11.1 (Landscape and Visual Impact Assessment Tables [APP-045]) includes a number of PRoW, however Figure 11.4 does not show any PRoW. Appendix 2.1 ('Proposed Site Access Plans') of the Transport Assessment contained in Appendix 12.1 (Doc 6.2, Volume L, [APP-046]) identifies footpaths described as in 'close proximity' to the Proposed Development site, however the site is not delineated, and it is indicated in Table 11.2 that these are local PRoW. Please clarify the discrepancies and provide a plan that identifies the relevant PRoW.
1.8.4.	Applicant		The study areas used for the different elements of the landscape assessment are unclear, and where they are specified no justification for the selected boundaries is provided. Table 11.2 of the ES identifies landscape designations, however the extent of the study areas are not defined for all the categories, ie conservation areas, Registered Parks and Gardens of Special Historic Interest, woodlands, long distance paths/National Cycle Network, designated public open space, and Tree Preservation Orders. Some categories refer to the presence of features on the 'Project Site', eg listed buildings, and others to features on only the 'Power Generation Plant Site', eg scheduled monuments. Within the information under particular categories, eg scheduled monuments, some features are then identified according to their proximity to the 'Project Site', and others according to their proximity to different elements of the Proposed Development. Although it is indicated that scheduled monuments within 2km of the Proposed Development site were considered, two developments are identified as 3.7km and 4.9km from the site. Please clarify and justify the extent of the respective study areas.
1.8.5.	Applicant		Paragraph 11.6.7 explains that landscape and visual receptors within the study area which are not likely to experience a significant effect resulting from the Proposed Development, due to distance, landform and intervening vegetation, have been scoped out, and are described in Table 11.2. However, Table 11.2 identifies landscape designations in the local area, not

ExQ1	Question to:	Question:
		receptors proposed to be scoped out. Please identify the landscape receptors that have been scoped out.
1.8.6.	Applicant, Central Bedfordshire Council and Bedfordshire Borough Council	Two of the schemes included in the agreed list of developments to be considered in the cumulative effects assessment (CEA) provided in paragraph 4.10.7 (ES Chapter 4), have been explicitly scoped out from the CLVEA. The proposed Rookery South Pit Integrated Waste Management Facilities development has been scoped out on the basis that insufficient information on that development was available at the time of writing the ES; and land at Warren Farm, Flitwick Road, Ampthill on the basis that an intervening feature (Greensand Ridge) will prevent any intervisibility. It is not stated whether this approach has been agreed with relevant consultees. Please confirm whether and with whom it was agreed. Please could CBC and BBC provide their views on the appropriateness of the Applicant's approach.
1.8.7.	Applicant, Central Bedfordshire Council and Bedfordshire Borough Council	Cumulative adverse significant landscape effects are anticipated on woodland, trees and hedgerows during construction and at completion; and beneficial significant effects are anticipated on these receptors 15 years after planting. It is not indicated whether the methodology and conclusions of the cumulative assessment were agreed with any key bodies. Please could the Applicant confirm the position. Please could CBC and BBC provide their views on the Applicant's conclusions.
1.8.8.	Applicant	It is not clear for how long the measures contained within the final Landscape and Ecology Mitigation and Management Strategy (LEMMS) are intended to continue. Paragraph 1.1.1 of the outline LEMMS (Doc 6.2K Appendix 11.2, [APP-045]) indicates that it covers the period from the completion of the landscape works during the operational phase for the first ten years, and suggests that it 'can' be extended up to the decommissioning stage. However, paragraph 1.1.17 of the outline LEMMS states that it covers an initial 10-year period starting at the beginning of the construction phase, and will form the basis of a longer term management plan for up to 25 years in total, up to the assumed decommissioning date. As noted above, particular significant effects are anticipated to continue beyond 10 years from planting. Please clarify the intention and, if it was concluded unnecessary beyond 10 years, explain when the

ExQ1		Question to:	Question:
			10-year period would commence, and provide the justification for not extending that period further.
1.8.9.	Applicant		Paragraph 1.1.19 of the outline LEMMS notes that the execution of the LEMMS will be the responsibility of the developer/operator of the Proposed Development, except for certain areas which may be managed by the landowner under agreement. Please explain how this would be secured in the dDCO so that it can be ensured that all the measures contained in the LEMMS would be implemented.
1.8.10.	Applicant		Paragraph 11.11.4 of the ES indicates that the Covanta RRF landscape strategy has been taken into account in designing the LEMMS, and that no areas of mitigation planting for that scheme will be disturbed by the Proposed Development. However, paragraph 4.1.8 of the LEMMS states that provisions have been put in place so that if any such areas are disturbed they will be replanted or equivalent planting provided. It is not stated where this provision is set out or how it would be secured. It is also not made explicit whether, if the Covanta RRF did not go ahead, in the absence of the mitigation for that scheme, any additional mitigation measures would be required to address potential effects of the Proposed Development. Please provide clarification of these matters and how they are accounted for in the ES and dDCO.
1.8.11.	Applicant		As identified above, and summarised in Section 11.12 of the ES, a number of significant landscape and visual effects will remain 15 years after planting. It is concluded that no further additional mitigation to that proposed is required. No justification is provided for this conclusion or explanation of why it would not be possible to provide further mitigation. Please explain the extent to which other opportunities to further reduce the significant residual effects from the Proposed Development have been explored?
1.8.12.	Applicant		The ES chapter 11 does not propose any monitoring of the effectiveness of the proposed mitigation measures. Other than a few generalised references, specific reference is not made to monitoring arrangements in the LEMMS, although information is provided on periodic maintenance activities. Please explain what, if any, monitoring arrangements are proposed, and how their implementation would be secured in the dDCO or by other suitably binding

ExQ1		Question to:	Question:
			method.
1.8.13.	Applicant		It is noted in Table 11.1 (page 315 of the ES) that the locations of the viewpoints used for the assessment were agreed with key consultees, such as CBC. As noted above, it is not clear whether the methodology and conclusions of the assessments have been agreed with all relevant bodies. Please provide commentary on this point.
1.9.	Traffic and Transport		
1.9.1.	Highways Authorities		Do the relevant Highways Authorities agree with the conclusions of the Traffic and Transport assessment (Section 12 of the ES) that there would be no significant effects in the local area resulting from traffic movements during the construction, operation and decommissioning phases of the Proposed Development?
1.10.	Historic Environment		
1.10.1.	Central Bedfordshire Council and Bedfordshire Borough Council		Paragraph 13.6.18 of the ES indicates that based on data contained within the Bedford and Central Bedfordshire Historic Environmental Records and discussion with the Bedfordshire Archaeology Team it is considered that any remains present within the gas connection route are most likely to be of local significance. Please confirm whether CBC and BBC agree with this conclusion.
1.10.2.	Applicant		Historic England have commented in their relevant representation (19 January 2018) on the potential for the Proposed Development to result in harm to the significance of heritage assets (these assets are identified in Section 13.8.17 of the ES), and have raised concerns about the cumulative impacts of the Proposed Development when seen in conjunction with other previously consented schemes at this location. Please explain how these concerns have been addressed in the EIA.
1.10.3.	Applicant		There is a commencement requirement for a programme of archaeological mitigation prior to construction (archaeological field evaluation, geophysical survey and trial trenching of the connection routes) and this would be secured through DCO Requirement 9. This approach was recommended by the CBC Archaeological officer Appendix 13.3 (Doc.6.2, Volume M, [APP-

ExQ1		Question to:	Question:
			047]). It is noted that in their Relevant Representation response (19 January 2018) Historic England have raised the need for a programme of archaeological works in relation to non-designated heritage assets within the development boundary. Please explain to what extent the dDCO Requirement will address non-designated assets, as raised by HE.
1.11.	Development Consent Order. Article 2 – Interpretation		
1.11.1.	Applicant		There are several references to the low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8) (the LLRS). The text of BC/CM/2000/8 is included as an appendix to the Planning Statement but no plans of the work have been provided. Please provide these plans.
1.11.2.	Applicant		Completion of the LLRS is assumed in defining the baseline for the ES. When does the Applicant expect that work to be completed and how will the satisfactory completion of this work be ensured through the DCO – eg a “Grampian” requirement to provide for certification of completion by a third party before commencement of the Proposed Development?
1.11.3.	Applicant and Central Bedfordshire Council		The LLRS drainage works defined in the DCO provides for the construction of a drainage channel which is different from the one provided for in BC/CM/2000/8. In the EM it is argued that the revised location is not materially different to that proposed under the planning permission. Have the party responsible for implementing the LLRS and CBC expressed any view about whether there would be any conflict with the planning permission and whether any variation of the planning permission would be required?
1.11.4.	Applicant		These drainage works are defined as ‘permitted preliminary works’ which fall outside of the definition of ‘commencement of the development’. Why does the Applicant consider it necessary to exclude these works from commencement? When would such work take place?
1.11.5.	Applicant		Separate definitions are given for ‘Order land’ and Order limits’. Please will the applicant explain why some land included in the order limits is not classed as order land. What is this land required for? Please check that the wider term order limits is only used when appropriate.
1.11.6.	Applicant		‘Undertaker’ is defined as ‘Millbrook Power or any other person who for the time being has the benefit of this Order in accordance with Articles 6 and 7’. Current practice in DCOs is to limit

ExQ1		Question to:	Question:
			the definition to a specific undertaker without the reference to 'any other person ...' The benefit of the order (Article 6) and transfer of benefit (Article 7) should also be specific to named undertakers. National Grid (Richborough Connection Project) Development Consent Order 2017 provides a recent example. Please consider redrafting in line with recent practice.
1.12.	Development Consent Order. Other Articles		
1.12.1.	Applicant		Article 17 provides for entry onto land within the order limits 'or any land which may be affected by the authorised development...' Please explain which land might be covered by these additional words and why access to this land is necessary for the project. Please also provide a justification for the use of section 13 of the 1965 Act in subsection 7.
1.12.2.	Applicant		Article 22 authorises the compulsory acquisition of rights over the Order land. Doc ref 2.5 drawing no J0008128-101 shows a substantial area marked as 4_PGP over which compulsory rights are sought. The note on the drawing states that a right of access of no more than 15m in width is required but the whole area has been included as a limit of deviation. This area is the land on which the Rookery South development would take place. Why has a specific route for the access road not been defined with CA rights limited to that corridor? Please set out reasoning that the requirement for these rights meets the conditions in s122 of PA 2008, in particular that there is a compelling case in the public interest.
1.12.3.	Applicant		Articles 28 and 29 may be affected by the provisions of the Neighbourhood Planning Act 2017 when these come into force. Has the Applicant considered what changes might be required?
1.12.4.	Applicant		Article 30 refers to land belonging to statutory undertakers within the Order land. Please explain why the land affected is not identified by reference to the land plans and the Book of Reference as summarised in Table 3 of the Statement of Reasons?
1.12.5.	Applicant		Please confirm that there are no 'important hedgerows' within the Order limits which might be affected by the provisions of Article 33.
1.12.6.	Applicant		Please explain the purpose of and necessity for Articles 34, 35 and 36 in the context of the Proposed Development.
1.12.7.	Applicant		Please update Article 37 to take into account the repeal of s65 of the Control of Pollution Act

ExQ1		Question to:	Question:
			1974.
1.12.8.	Applicant		Article 39 provides for the modification and amendment of the Rookery South (Resource Recovery Facility) Order 2011 with the detailed proposal set out in Schedule 11. The EM sets out the basis on which the Secretary of State could use s120 of PA 2008 to make such a modification. There is no precedent for using s120 in this way. Please elaborate the case, with any supporting legal advice for using s120 rather than s153 and schedule 6 taking into account the principle of <i>lex specialis</i> which would point to the use of the specific powers in s153 rather than the general powers in s120. Please also comment on the submissions from Covanta on the use of s120 at [AS-008] and [AS-009] in the Examination Library.
1.12.9.	Applicant		Covanta has set out its view in its relevant rep and in its submission at [AS-009] that its preferred approach to addressing the physical overlaps between the two projects is to have an interface agreement between the two operators and not to amend its DCO. Does the Applicant consider that this could be an acceptable approach? Please provide an update on progress on reaching agreement with Covanta.
1.12.10	Applicant, and Covanta		How would an interface agreement (which is contractual and only capable of enforcement by the parties) be tied to the DCO for certainty?
1.12.11	Applicant		Does the Applicant consider that it would be reasonable to continue down the s120 route in the absence of agreement with Covanta which has the benefit of the Rookery South Order?
1.12.12	Applicant		Article 40 provides for the certification of plans. This list does not include all the plans referred to elsewhere in the DCO which set out the way in which different aspects of the development will be defined – eg the outline construction environment management plan, the outline landscape and ecological mitigation and management strategy and others. Is there a reason that plans such as these are not listed for certification? Please provide an updated list of plans to be certified.
1.12.13	Applicant		Additional Article. At present the DCO does not provide any security that funds will be available to pay compensation for compulsory acquisition. The Funding Statement refers to the resources of the Drax Group plc being available to fund the project but no guarantee of

ExQ1		Question to:	Question:
			payment is provided. Provisions to guarantee payments have been included in recent DCOs - eg Article 9 of the Keuper Underground Gas Storage Facility Order and Article 7 of the Progress Power (Gas Fired Power Station) Order. Please consider the inclusions of an equivalent article in the draft DCO.
1.13.	Development Consent Order. Schedule 2 – Requirements		
1.13.1.	Applicant		Requirement 18 provides for the decommissioning of the generation plant. Please set out reasons for not also including decommissioning of the electrical and gas connection works which are included in the DCO as associated development?
1.13.2.	Applicant		Requirement 19 provides some flexibility on the details of the development set out in Requirement 2. What sorts of amendments is this requirement intended to cover?
1.13.3.	Applicant		Requirement 19(2) states that this provision would apply to amendments that are 'unlikely to give rise to any materially new or materially different environmental effects'. Can this be firmed up by changing 'unlikely to' to 'will not' as eg in the Progress Power DCO.
1.13.4.	Applicant		Requirement 20 appears to provide a wide-ranging defence to breach of conditions in the Rookery South Pit planning permission. Please set out reasons for including this provision and identify the requirements in the planning permission for the LLRS to which this might, in practice, be expected to apply.
1.13.5.	Applicant		Please provide any precedents that have the same effect as Requirement 20. Please set out reasons for including this provision as a Requirement governed by the powers in s120(1) and (2) of PA 2008 rather than in the operative part of the DCO and cite any precedents? Please consider, as an alternative, the inclusion of this provision as an article in Part 2 of the dDCO.
1.14.	Development Consent Order. Other schedules		
1.14.1.	Applicant		Please provide an update on the drafting of the protective provisions in Parts 1 to 6 of schedule 10.
1.14.2.	Applicant		Schedule 11 sets out the specific proposals for amending the Rookery South DCO. If agreement has been reached please provide a statement of common ground with Covanta

ExQ1		Question to:	Question:
			covering schedule 10 part 6 and schedule 11 together with a plan showing the overlap of the respective Order lands.
1.14.3.	Applicant		In the Interpretation section the Millbrook Order 'land' is defined as the land falling within the Millbrook Order limits but excluding the Millbrook access road land. This access road land is defined by reference to specific plots on the land plans. That appears to result in all of the land to the south of the access road being included in the Millbrook Order land and also the small section of Green Lane to the north of the access road. Please confirm whether that is correct.
1.14.4.	Applicant		Please explain why it is necessary to include all of the Order land to the south of the access road in the scope of this protective provision rather than just the land where there is an overlap with the Rookery South development.
1.14.5.	Applicant		Has consideration been given to the inclusion of a dispute resolution procedure e.g. arbitration under the provisions of Article 43 rather than just relying on a duty to cooperate as set out paragraph 26?
1.14.6.	Applicant		Paragraphs 27 and 28 of schedule 11 appear to provide a defence for unspecific non-compliance with requirements in the Rookery South DCO. Please provide justification for the inclusion of these provisions and identify the powers in PA 2008 which allow the creation of a defence of this sort in a protective provision?