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To: [Millbrook Power](#)
Cc: [Dutch, Claire](#); [BRODRICK Claire](#); [GRIFFITHS Richard](#)
Subject: EN010068 - Application by Millbrook Power / Our reference: 20010106 (Covanta Rookery South Limited)
Date: 17 April 2018 17:39:34
Attachments: [O2C_Works_Plans - 2 of 2.pdf](#)

Dear Sirs

We act for Covanta Rookery South Limited ("CRSL") in relation to the above application and we refer to our written submissions of 16 January 2018 and 9 March 2018 and our appearance at the preliminary meeting and DCO ISH on 13 March 2018.

Update

The Applicant has shared with CRSL an opinion of Michael Humphries QC in response to the opinion of Simon Bird QC submitted on behalf of CRSL on 9 March 2018. CRSL disagrees with the opinion submitted on behalf of the Applicant and notes that it does not deal with the essential issue raised in Simon Bird QC's opinion, i.e. why there is a need for the power in Section 120(5)(b) if the scope of Section 120(5)(a) is as wide as the Applicant contends.

The Applicant has also kindly shared with CRSL its proposed amendments to the draft DCO. Notwithstanding CRSL's position in relation to the need to amend the Rookery South Order, CRSL will liaise with the Applicant in relation to these amendments.

Update in relation to CRSL Work No. 5

At the DCO ISH on 13 March 2018, CRSL agreed to provide an update on progress in relation to the construction of the access road linking Green Lane with the RRF (the "Access Road"). The Access Road is Work No. 5A pursuant to the Rookery South Order. Uncertainty on the Applicant's part as to whether (and where) the Access Road would be constructed has led to it seeking powers of compulsory acquisition over a wide area of land on which CRSL's development will take place.

CRSL started construction of the Access Road in January 2018 and its current construction programme anticipates completion of the Access Road by the end of June 2018, in good time before the completion of the Examination in September 2018. The "as constructed" route of the Access Road will follow substantially the alignment shown on Sheet 2 of the Rookery South Works Plan (attached for ease of reference), allowing the Applicant to connect its own Short Access Road (as defined in the application) to the Access Road.

Examining Authority question 1.12.10 – "How would an interface agreement (which is contractual and only capable of enforcement by the parties) be tied to the DCO for certainty?"

CRSL considers that the appropriate means to regulate the interface between the Rookery South Order and the proposed development is by way of an agreement managing the practical interaction between the two developments. It does not consider that any such agreement would need to be "tied" to the DCO in order to be robust.

This approach is consistent with that endorsed by the Examining Authority (report at 4.7.8 – 4.7.13) and Secretary of State (decision letter at paragraph 4.24) in relation to the North London Heat and Power Generating Station Order 2017 and concerning the interaction between that project and the

North London Reinforcement Project.

If the parties consider it necessary, any contractual arrangements can be structured so as to bind successors to or assigns of the parties (e.g. by way of a deed of covenant).

As CRSL noted in its letter of 9 March 2018, to the extent that the Examining Authority considers that it is appropriate to insert into the Rookery South Order provisions for the protection of the Applicant, such provisions should be limited to the protections in paragraph 26 of Schedule 11 to the draft DCO, with reciprocal protections in favour of CRSL.

Kind regards

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