The Millbrook Power (Gas Fired Power Station) Order

Responses to the Examining Authority Written Questions – Submitted at Deadline 2

Planning Act 2008
The Infrastructure Planning
(Applications: Prescribed Forms and Procedure) Regulations 2009

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The Millbrook Power (Gas Fired Power Station) Order

Applicant's response to Examining Authority's First Round of Written Questions

PINS Reference Number: EN010068

Deadline 2: 17th April 2018

On behalf of **Millbrook Power Limited**

Project Ref: 40334 | Rev: A | Date: April 2018

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Summary

1.1.1 The Applicant, Millbrook Power Limited (MPL), is applying to the Secretary of State (SoS) under the Planning Act 2008 (PA 2008) for development consent to construct, operate and maintain an Open Cycle Gas Turbine (OCGT) gas fired peaking power generating station, fuelled by natural gas with a rated electrical output of up to 299 Megawatts (MW).

1.1.2 The Development Consent Order (DCO) Application for the Millbrook Power Project (the Project) was submitted by the Applicant to the SoS in October 2017. It was formally accepted to progress to examination in November 2017. Following acceptance, the Applicant consulted on the accepted Application pursuant to Section 56 of the PA 2008.

1.1.3 This document sets out the Applicant's responses to the Examining Authority's First Round of Written Questions received on 20th March 2018.

1.1.4 A glossary of key terms is provided in the Examination Library [APP-004].

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?

1.1.5 Section 5 of the Planning Statement [APP-056] identifies the relevant planning policies and guidance against which the DCO Application will be determined including the Minerals and Waste Local Plan: Strategic Sites and Policies (MWLP:SSP). Compliance with Policy WSP2 of the MWLP:SSP is assessed in paragraphs 6.3.38 - 6.3.43 of the Planning Statement [APP-056].

1.1.6 Paragraph 5.2.4 of the Planning Statement [APP-056] identifies that Section 104 of the PA 2008 provides that the SoS must decide applications in accordance with such relevant NPS(s) unless such a decision:

a. would lead to the UK being in breach of any of its international obligations;

b. would lead to the SoS being in breach of any duty imposed on the SoS;

c. would be unlawful by virtue of any enactment; or

d. the adverse impacts of the proposal would outweigh its benefits.

1.1.7 The SoS must also take into account any other matters which he thinks are both important and relevant to his decision (s104(2)(d)).

1.1.8 The NPSs relevant to the Project are NPSs EN-1, EN-2, EN-4 and EN-5, as recognised in Paragraph 5.1.1 of the Planning Statement [APP-056].

1.1.9 Paragraph 5.3.4 of the Planning Statement [APP-056] identifies that NPS EN-1 provides the primary basis for decisions on DCO applications along with the other relevant technology-specific energy NPSs.

1.1.10 Paragraph 5.3.6 of the Planning Statement [APP-056] identifies that Paragraph 3.1.4 of EN-1 states that the SoS '*should give substantial weight*' to the contribution that projects would make towards satisfying the need for those types of infrastructure when considering applications for development consent under the PA 2008.

1.1.11 Paragraphs 5.6.71 - 5.6.78 of the Planning Statement [APP-056] summarise the relevant sections of the MWLP:SSP, being planning policies that the SoS is likely to consider are "important and relevant" to his decision. Paragraph 5.6.75 recognises that MWLP:SSP Policy WSP2 allocates the Rookery South Pit (107ha) for waste recovery uses including non-landfill waste management recovery operations and non-hazardous landfill, with opportunities for pre-treatment recovery operations prior to landfill. Figure 5-4 of the Planning Statement [APP-056] shows an extract of MWLP:SSP Policies Map Inset 2 illustrating the extent of Rookery South allocated by Policy WSP2.

1.1.12 Paragraph 6.3.40 acknowledges that the Project Site is allocated for proposed waste management uses by Policy WSP2 of the MWLP:SSP and thus the Applicant considers that the Project would conflict with Policy WSP2 of the MWLP:SSP.

1.1.13 Paragraph 6.3.43 concludes that although the Project conflicts with the provisions of Policy WSP2 the decision should be weighed favourably in balance of the DCO Application given the need to determine NSIPs primarily in accordance with relevant NPSs, and the substantial weight that should be applied to energy infrastructure applications set out in NPS EN-1. The DCO Application is in accordance with NPS EN-1 and there are no adverse impacts that would outweigh its benefits. Furthermore, determining the DCO Application in accordance with NPSs EN-1, EN-2, EN-4 and EN-5 would not bring the UK or the SoS in breach of its international or national obligations/duties. The Applicant would contend, therefore, that the DCO Application should be determined favourably under Section 104 of the PA 2008.

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?

1.1.14 Section 5 of the Planning Statement [APP-056] identifies the planning policies and guidance relevant to the DCO Application.

1.1.15 Paragraph 5.7.23 of the Planning Statement [APP-056] identifies that the Project Site is located within the Brickfields Landscape Zone in the Forest of Marston Vale Plan ('FoMVP') (page 15). Paragraph 5.7.24 of the Planning Statement [APP-056] recognises that the FoMVP allocates the Brickfields Landscape Zone as an area where there is a need to secure a higher level of new planting than elsewhere in the community forest (page 16).

1.1.16 Section 6 of the Planning Statement [APP-056] provides an assessment of the Project which takes account of the relevant NPSs and other matters which are considered to be both 'important and relevant' under the provisions of Section 104 of the PA 2008.

1.1.17 Paragraphs 6.3.69 - 6.3.74 of the Planning Statement [APP-056] set out the Applicant's consideration of compliance with the FoMVP which provides planning guidance of relevance to the Project.

1.1.18 Paragraph 6.3.74 of the Planning Statement [APP-056] explains how the Applicant has taken account of the relevant planning guidance in the FoVMP in the design of the Project. The DCO Application proposes a significant area of planting within the Project Site (approximately 3.7ha) commensurate with the aims of the FoVMP to secure a higher level of new planting within Brickfields Landscape Zone. Should the Project be developed independently of Covanta, approximately 3.7ha new planting would be provided. If both the Project and the Covanta RRF Project are developed, an additional 1.2ha of planting would be provided by the Applicant in order to supplement the planting already provided by the Covanta RRF Project.

1.1.19 Furthermore, the Applicant is in the process of working up a Section 106 Agreement obligation to ensure that an appropriate level of additional planting is provided for (commensurate with the aims of the Forest of Marston Vale Plan) as part of the Project. A draft of the obligation is with the Forest of Marston Vale Trust.

1.1.20 Requirement 3 of the draft DCO [APP-012] states that the development must not commence until a written strategy including details of tree planting has been submitted to and approved by the relevant planning authority in accordance with the outline landscape and ecological mitigation and management strategy (LEMMS).The strategy must include: '*the location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting.'*

1.1.21 Details of proposed tree planting are provided in the Outline LEMMS provided as Appendix 11.2 in Environmental Statement (ES) Appendices Volume K (Revision 1, submitted at Deadline 2).

1.1.22 The FoMVP was referred to as part of the work undertaken for the Landscape and Visual Impact Assessment (LVIA) (Chapter 6 of APP-033) and the Outline LEMMS (Revision 1, submitted at Deadli.

1.1.23 Paragraph 4.1.1 of the LEMMS states:

1.1.24 "The Landscape and Ecology Strategy Plan (Appendix 2 of the LEMMS) includes the creation of a new structurally diverse and species-rich belt of woodland planting to reflect the species composition within the wider Marston Vale Forest. Additional planting and appropriate management of existing blocks of planted woodland would be expected to enhance their nature conservation value…"

1.1.25 Paragraph 4.1.3 of the Outline LEMMS states that it is anticipated that existing planting will be retained and vegetation that is required to be removed during construction will be replanted within the Project Site where

possible. Appendix 1 of the Outline LEMMS provides a detailed plant schedule which identifies the tree and other plant species that will form the basis of the landscape planting strategy for the Project.

1.1.26 Section 5 of the Outline LEMMS provides details of the ecological management measures proposed to retain and protect existing trees. Paragraph 5.1.13 sets specific objectives for retaining existing trees and paragraph 5.1.14 sets objectives for planting new trees. Appendix 2 of the Outline LEMMS provides a Landscape & Ecology Strategy Plan which shows the proposed location of new trees as proposed belts of woodland plating on drawing no. 31116-05 Rev H and 31116-07 Rev E.

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.

1.1.27 The Applicant refers to the Works Plans [APP-010], the Land Plans [APP-009] and the Rights of Way, Streets and Access Plan [APP-011].

1.1.28 The white area along Green Lane has been included to enable the Applicant to have the necessary street powers required to construct the Proposed Development.

1.1.29 The other white areas are required for landscaping, access and temporary use during construction as follows (referring to the plot numbers on the Land Plans):

- Plots 3_PGP and 12_EC are required for access.
- Plot 11_EC is temporarily required for construction.
- Plots 2_GC, 3_GC, 4_GC and 6_GC are required for landscaping and access.

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?

1.1.30 In the ES, the term Power Generation Plant Site includes the Access Road. The Applicant refers to its response to written question 1.12.2 in relation to the need for the Order limits to cover all of this area.

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 Development in 2020. Please provide a copy of the Option Agreement.

1.1.31 The Applicant refers to its response to written question 1.0.7.

1.1.32 As a requirement has been included in the draft DCO (see requirement 20 of the draft DCO (Revision 1) submitted for Deadline 2) to ensure that the relevant parts of the LLRS are completed prior to the commencement of the Proposed Development, the Applicant does not consider it necessary to provide a copy of the Option Agreement. In any event, the terms of the Option Agreement are confidential.

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.

1.1.33 Paragraph 3.1.7 of the ES [APP-033] states that the re-profiling and buttressing to the eastern side of Rookery South Pit may not be completed prior to the construction of the Project, and this has therefore been taken into account when carrying out the environmental impact assessment.

1.1.34 The completion of the elements of the Low Level Restoration Scheme (LLRS) which constitute the baseline within the ES [APP-033] will be secured via a requirement (see response to written question 1.0.7).

1.1.35 The ongoing maintenance of those elements of the LLRS works to be completed as part of the baseline will be the responsibility of the landowner (O&H). The terms of the property transfer between MPL and the landowner will place an obligation on the landowner to ensure that the pumping station and attenuation pond, for example, are maintained with step-in rights for MPL in the event of a breach of this contractual obligation.

1.1.36 The Site Environmental Management Plan for the LLRS which was submitted by O&H to discharge a number of conditions attached to the LLRS planning permission (including specifically condition 9 for provision of a surface water drainage scheme) includes at section 4.4.3 the following:

'Rookery Pit surface water management system will be maintained by the landowner – O&H Properties. The surface water drainage infrastructure such as the attenuation pond, interceptor channels, the Mill Brook Watercourse, and the surface water pumping station will be inspected monthly (or after any significant rainfall / flood event) by a visiting maintenance team. Basic inspection and maintenance will include:

- *'Inspection of trash screens and cleaning (as required);*
- *Inspection of catch pit on inlet pipe from attenuation lake and clearing (as required);*
- *Inspection of catch pit and hydrobrake flow control device on gravity return from Rookery North and clearing (as required);*
- *Inspection of control kiosk and identify if any alarms have been activated (to be undertaken bi-weekly);*
- *Inspect safety and security of fencing and guard rails;*
- *Clearance of weeds and litter as necessary;*
- *Check the operation of any remote telemetry (if installed);*
- *Clear debris from the Mill Brook watercourse and tributary, and any debris which has collected at any culverts as necessary to maintain flow;*
- *Routine servicing and inspection of pumps, motors and control gear by specialist maintenance contractor in accordance with manufacturers recommendations.'*

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.

1.1.37 As referred to in its oral submissions at the DCO Issue Specific Hearing held on 13 March 2018 in response to point 2.2 of the agenda, the Applicant refers to The Rookery Low Level Restoration Scheme – Baseline Works for Millbrook Power plan submitted for Deadline 2 which details the elements of the LLRS that are assumed to have been completed prior to the

commencement of the Proposed Development for the purposes of the baseline in the ES.

1.1.38 The Applicant has also submitted a document at Deadline 2 which confirms whether or not the elements of the LLRS referred to in the baseline of the ES have been completed.

1.1.39 The Applicant has included in the draft DCO submitted for Deadline 2 a requirement which states that no part of the authorised development may commence until the LLRS works shown on the aforementioned plan have been completed to the satisfaction of the relevant planning authority (see requirement 20 in the draft DCO (Revision 1) submitted for Deadline 2).

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.

1.1.40 Figure 1.2 of the ES [APP-049] shows the road network in the immediate vicinity of the Project Site, as well as clearly showing the access point to the Project Site from Green Lane, which was the intention of paragraph 3.1.13 of the ES. However, Figure 12.2 [APP-049] shows this in more detail, as well as highlighting the access points to the Project Site from Green Lane, Station Lane and Houghton Lane.

1.1.41 Although the temporary laydown area is shown on Figure 1.2, it is acknowledged that this is not clearly defined or labelled. The text in paragraph 3.2.15 is, however, referring to the laydown area as shown on Figure 3.1 where it is defined and labelled.

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.

1.1.42 The reference made in paragraph 3.2.9 of the ES [APP-033] was intended to highlight that the air dispersion modelling has determined the appropriate stack height for the Generating Equipment, which is shown in row 2 of Table 3.1 in the ES [APP-033]. The actual stack height sensitivity study is shown in Insert 6.1 of the ES (Chapter 6).

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.

1.1.43 The Applicant confirms that this is correct, the base of the pit would be at 31.5 m AOD following completion of the LLRS. Parts of the Electrical Connection and Gas Connection (for example the SECs and AGI) would be on higher land (49 m and 70 m AOD respectively) as shown by the footnotes to Table 3.1 in the ES [APP-033]. The Applicant notes that the asterisks associated with these footnotes have not appeared in the final table in the ES. This typo is noted, and the table is re-provided here with the correct footnotes (note that the footnotes appear at the end of the table that secures the parameters in requirement 2(2) of Schedule 2 to the draft DCO (Revision 1, submitted at Deadline 2).

Building or structure	***Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)***	***Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)***	***Maximum length (metres)***	***Minimum length (metres)***	***Maximum width (metres)***	***Minimum width (metres)***
Gas turbine generator (including gas turbine, generator, air inlet filter house, air inlet duct, exhaust diffuser, and auxiliaries such as lube oil system, air dryers, fuel gas filter package, instrument air system, compressor washing)	27	–	50	–	40	–
Exhaust gas emission flue stack	35	32.5	12	–	12	–

Building or structure	***Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)***	***Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)***	***Maximum length (metres)***	***Minimum length (metres)***	***Maximum width (metres)***	***Minimum width (metres)***
Control room/office/ workshop	7	–	45	–	25	–
Emergency Generator	6	–	13	–	5	–
Raw/fire water tank	15	–	15	–	15	–
Demineralised water tank	5	–	5	–	5	–
Gas receiving station (including compression station, emergency generator, Joule-Thompson boilers and other auxiliary control cabinets)	10	–	70	–	50	–
Fin Fan Cooler(s)	10	–	28	–	14	–
Transformer compound (including generator step up transformer, unit and other transformers, overhead line gantry and associated equipment.)	15	–	65	–	60	–
Gatehouse	4.5	–	9	–	8	–
Above Ground Installation*	3	–	85	–	35	–
Pipeline inspection gauge facility*	3	–	35	–	30	–
Minimum offtake connection*	3	–	35	–	35	–

Building or structure	***Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)***	***Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)***	***Maximum length (metres)***	***Minimum length (metres)***	***Maximum width (metres)***	***Minimum width (metres)***
Substation (including the auxiliary building)	14		200		150	
Each Sealing end compound**	17	–	45	–	35	–
Transmission tower**	49	–	40	–	30	–
Each Temporary tower or mast**	55	–	47	–	32	–

* Existing site level is approximately 70 m AOD
** Existing site level is approximately 49 m AOD

1.0.11	Applicant	Please explain the two footnotes to ES Table 3.1.

1.1.44 As noted in response Written Question 1.0.10 the asterisks associated with these footnotes have not appeared in the final table in the ES [APP-033]. An updated version of Table 3.1 has been provided in the Applicant's response to Written Question 1.0.10 for clarity.

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.

1.1.45 Figure 3 of the Indicative Site Layout Plans [APP-007] shows the indicative "Access Road". Note that as explained in paragraph 3.2.18 of the ES, the "Access Road" refers to the entire access road that would be built from Green Lane (public highway) to the Generating Equipment Site in the event that the Covanta RRF Project is not built. The "Short Access Road" is the short length of access road that would be required to connect the end of the Covanta RRF Project's access road to the Generating Equipment Site in the event that the Covanta RRF Project is built first. As such the "Access Road" includes the "Short Access Road". The Access Road is referred to as Option 2A in Schedule 1 of the draft DCO and the Short Access Road is referred to

as Option 2B in Schedule 1 of the draft DCO (Revision 1, submitted at Deadline 2) and shown on the Works plans [APP-010].

1.1.46 Because the location of the terminus of the Covanta RRF Project's access road is not certain, the exact length and route of the Short Access Road cannot be determined at this stage. Please also see the Applicant's response to Written Question 1.12.2.

1.1.47 However, to aid the examination, the Applicant has prepared an additional drawing showing the indicative location of the 'Short Access Road' – Figure 3, Revision A included as Appendix A.

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 shown on any application plans. If the need is uncertain how is this provided for in the draft DCO?

1.1.48 The Rights of Way, Streets and Access Plan (Sheet 2 of 3) [APP-011] shows the LLRS Secondary Access Road shaded light orange. The part of the LLRS Secondary Access Road that will be diverted, which is required to accommodate parts of the Electrical Connection, is shown between the points marked Z and AA and details are given in Schedule 7 of the draft DCO (Revision 1, submitted at Deadline 2).

1.1.49 Figure 1 of Indicative Site Layout Plans [AP-007] shows how the LLRS Secondary Access Road may be diverted.

1.1.50 The diversion will be located within the area shown hatched orange on the Rights of Way, Streets and Access Plan (Sheet 2 of 3) [APP-011]. The exact location and extent of the diverted section of the LLRS Secondary Access Road will be dependent on the precise location of the Sealing End Compounds forming part of the Electrical Connection.

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.

1.1.51 At this stage, it has not been decided which piling method will be used during construction. This will be determined through the detailed design process post-consent once a contractor has been appointed.

1.1.52 Paragraph 3.6.19 of the ES [APP-033] and paragraph 3.4.3 of the Outline CEMP (Revision 1, submitted at Deadline 2) states that a Foundation Works Risk Assessment (FWRA) will be carried out by the contractor once the

proposed foundation solutions are known, which will then form part of the final CEMP. This will be in accordance with 'Piling and Penetrative Ground Improvements Methods on Land Affected by Contamination: Guidance on Pollution Prevention, NGCLC report NC/99/73' and is required to ensure that the proposed foundations do not adversely affect the water environment beneath the site. Requirement 8 of Schedule 2 of the draft DCO (relating to contamination and groundwater) specifies that the approved scheme must identify appropriate foundation design measures.

1.1.53 For the purpose of the ES, driven piling has been assumed as the worst-case scenario for the noise assessment presented in Chapter 7 [APP-033]. It is likely that driven piles would be noisier given the nature of driving them into the ground with percussive methods, and has therefore been included in the noise calculations derived in paragraph 7.7.3 and is captured under the heading of 'Ground works' in Table 7.14. Other than for the topics of noise and ground conditions (Chapters 7 and 10 of the ES [APP-033] respectively), the different piling options do not make a difference to the assessments.

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.

1.1.54 The Applicant confirms that the ES [APP-033] has been undertaken based upon the maximum working width of the Gas Connection as defined by the Order Limits shown in the Works Plans [APP-010]. The working width is generally 50m but varies to account for natural and man made features along the route.

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.

1.1.55 Paragraph 3.5.35 of the ES [APP-033] was included to provide a high level description of the likely construction techniques to be used, as the final construction methods won't be determined in detail until a contractor has been appointed. Nevertheless, the Applicant can confirm that the ES [APP-033] has taken account of these methods. The worst case scenario assumed in the assessment for construction of the Gas Connection is open cut technique for the entire length of the Gas Pipeline as this results in a greater level of ground disturbance and therefore potential environmental effects than, for example, boring or horizontal direct drilling.

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.

1.1.56 Paragraph 3.5.53 of the ES [APP-033] states that a working assumption has been used that the above ground elements of the Electrical Connection (save in respect of the replacement transmission tower for the existing 400kV overhead line) and Gas Connection would be decommissioned after 25 years. However, the ES recognises that elements of both Connections would be owned and operated by NGET and NGG and as such the decision on decommissioning of these elements would not be up to the Applicant. In accordance with their statutory duties, NGET and NGG may use these assets in the future as part of their wider network. As such, the date of any decommissioning cannot be certain and the 25 years working assumption has been used simply to allow for an assessment of decommissioning effects in this ES rather than being a date when the Generating Equipment, Electrical Connection and Gas Connection would all be decommissioned.

1.1.57 The Electrical Connection consists of a number of elements, including the replacement transmission tower for the **existing** 400kV overhead line owned and operated by NGET. This forms part of the NETS and it is entirely appropriate for it to continue in use after the decommissioning of the Generating Equipment.

1.1.58 Regarding the rationale for allowing a longer life for the NGET and NGG assets, the Applicant refers the ExA to the justification given by NGET and NGG during the Examination of the Progress Power (Gas Fired Power Station) Order 2015. Appendix B of this document includes an extract from the "Written summary of oral case made at the hearing 11 December 2014 by National Grid Electricity Transmission plc (NGET) and proposed amendment to the DCO".

1.1.59 With reference to the AGI (which forms part of the Gas Connection), the Applicant notes that this would be a stand-alone facility designed specifically for the Project. As set out in the Gas Pipeline Statement [APP-055], the MOC (which is part of the AGI) will be owned and operated by NGG. If the Applicant chose to decommission the facility and terminate the 'Network Exit Agreement' (NExA) National Grid would have the opportunity to choose to re-use the facility for their own benefit or look to the Applicant to fund the decommissioning as stated in the NExA. Accordingly, it would not be the Applicant's decision as to whether or not the AGI would be decommissioned at the same time as the Generation Equipment.

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.

1.1.60 The Applicant refers to the answer given to Written Question 1.0.17.

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.

1.1.61 Under Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (the Industrial Emissions Directive (IED)), the Power Generation Plant will be limited to "not operate for more than 1500 hours per year as a rolling average over a period of five years". This will be monitored by the Environment Agency under the Environmental Permit for the Project and by Central Bedfordshire Council (CBC) under requirement 17 of the draft DCO (Revision 1, submitted at Deadline 2).

1.1.62 In July 2015 a protocol was adopted under the IED, stipulating how this is to be applied in practice, a copy of which is provided at Appendix C of this document. This protocol sought to strike a balance between allowing a plant to run all of its 7,500 hours in a single year for any given 5 year period, yet allowing some flexibility as was clearly intended by the wording used in the IED regarding 'a rolling average over a five year period'. The adopted protocol set a cap of 2,250 hours for the number of operating hours in any one year and this is the basis on which the EIA for the Project has been carried out. The Environment Agency have confirmed their understanding of the 5 year rolling average is consistent with the Applicant's and agreed with the Applicant that this is the approach that should be taken.

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 adequately specified in the dDCO Requirement 17.

1.1.63 The Power Generation Plant will be allowed to operate for up to 2,250 hours each year for the first five years until the total hours of operation has reached 7,500. Once the five years have been established, the average is calculated on a rolling annual basis thereafter (i.e. a 12-month period's contribution falls off as another 12-month period's contribution is added). For example, the Power Generation Plant could run for 1,600 hours for each of the first four years, after which it would have run for a total of 6,400 hours. In the fifth year, it would then only be allowed to run for 1,100 hours without exceeding the 5-year rolling average of 1,500 hours per year (or 7,500 total for 5 years). The number of hours of operation would be monitored by the Environment

Agency under the Environmental Permit and CBC under requirement 17 of the draft DCO (Revision 1, submitted at Deadline 2).

1.1.64 The Applicant considers that requirement 17 of the draft DCO adequately specifies the limitation of operating hours of the Generating Equipment which is in line with the IED. Anything different could conflict with the anticipated environmental permit for the Project.

1.1.4	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?

1.1.65 The Applicant consulted Central Bedfordshire Council (CBC) and Bedfordshire Borough Council (BBC) on the list of projects to be included in the assessment of cumulative effects. Neither CBC or BBC identified any cumulative developments in addition to those set out at Paragraph 4.10.7 of the ES [APP-033] to be included in the assessment.

1.1.66 Appendix D of this document provides email records which show that on 3rd May 2017 the Applicant sent a list of projects to be included in the cumulative assessment to CBC with a request for details of additional projects that should be assessed. Appendix D of this document also provides email records which show that CBC duly responded to the Applicant on 3rd May 2017 stating that they were not aware of any additional projects that should be included in the cumulative assessment.

1.1.67 Appendix E of this document provides email records which show that on 3rd May 2017 the Applicant sent a list of projects to be included in the cumulative assessment to BBC with a request for details of additional projects that should be assessed. BBC did not respond to the email and therefore did not provide the details of any additional projects that should be assessed in addition to the list of cumulative projects provided by the Applicant. It is noted that a Statement of Common Ground is now agreed with BBC, which is currently being signed.

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?

1.1.68 The Applicant can confirm that it was this same study that identified the Millbrook Power site as feasible for the location of this project. Appendix F of this document contains an excerpt from the Progress Power Examination – "Annex 6 of the PPL's written summary of oral representations: CPO and Issue Specific Hearings, 9, 10th and 11th December 2014".

1.1.69 The text highlighted in yellow within this Annex 6 confirms that the Millbrook Power site was part of this study.

1.1.70 The findings of this study were reviewed in 2017 when the Millbrook Project re-started and were still considered to be appropriate.

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?

1.1.71 As stated in Paragraphs 2.2.5 and 2.2.6 of the ES [APP-033], Regulation 37(2)(a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 states that, where a scoping opinion has already been requested before the commencement of the new (2017) EIA regulations, the previous EIA regulations (the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)) would continue to apply.

1.1.72 As a Scoping Report was submitted for the Project in June 2014 (Appendix 1.2 of the ES [APP-035]), the ES has been undertaken in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. The requirements of section 14(1)d of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 therefore do not apply to the Application.

1.1.73 However, Chapter 5 of the ES [APP-033] provides an overview of the main alternatives considered by the Applicant in terms of site, Generating Equipment, Electrical Connection and Gas Connection. It is considered that the assessment of alternatives presented in Chapter 5 of the ES [APP-033] is appropriate and robust for the purposes of the Project, and has been

provided in compliance with paragraph 18 of Schedule 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

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.

1.1.74 Taking forward option 4 rather than option 3 would not result in an overall smaller footprint. Although there would only be one sealing end compound (SEC) for option 4, it would be approximately two times the size of one of the SECs required for option 3. Therefore the total land requirement is the same for both option 3 and option 4.

1.1.75 Option 3 was taken forward rather than option 4 largely on account of economic considerations. This is due to the fact that the cabling required for option 4 would need to be rated to carry the entire load of one of the existing 400 kV circuits whereas the cabling required for option 3 only needs to be able to carry the export capacity of the Project.

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.

1.1.76 The results for the maximum number of hours has been used to demonstrate the impacts at the points of maximum ground level concentration. As stated in paragraph 6.5.31 of the ES [APP-033], the maximum number of hours (2,250) would not result in significant impacts (less than 10% of the short term and 1% of the long term objectives) at the points of maximum ground level concentration. The predicted pollutant concentrations for 1,500 operating hours per year are lower than for 2,250 operating hours per year; as the maximum predicted concentrations for 2,250 operating hours are not significant, the results for 1,500 hours are also not significant.

1.1.77 The predicted pollutant concentrations at individual receptor locations are lower than at the point of maximum ground level concentration and therefore are also not significant, for both 2,250 operating hours and 1,500 operating hours. As the Power Generation Plant must not exceed 1,500 hours operation per annum over a rolling five year period, quoting the results for 1,500 operating hours at the individual receptor locations is a more realistic estimate of what the impact would likely be. The Environment Agency and CBC have both agreed the approach to air quality modelling, the subject of which is included within statements of common ground which are currently being agreed with both parties.

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 documents.

1.1.78 The pollutant concentrations for the Covanta RRF Project were taken from Table A.8 of the Covanta RRF ES Volume 3. However, the results of cumulative modelling outlined in Table 6.3.3 of Appendix 6.3 [APP-040] outlined the annual mean increment for 2,250 operating hours for both plants (the Project and Covanta RRF) operating together.

1.1.79 It is appreciated that the results for the Project operating for 2,250 hours (a worst case operating regime rather utilising 1, 500 hours which is considered more appropriate for specific receptors) and for the Covanta RRF Project

operating continuously would potentially be a more realistic worst case scenario. As such, this is shown in the updated table below.

Table 1 Long-term Results of Stack Modelling for Human Health Sensitive Receptors with Covanta

ID	Nitrogen Dioxide (NO_2)					
	Annual mean PC ($\mu g/m^3$)			Total Percentage of EAL (%)	Annual mean PEC ($\mu g/m^3$)	Percentage of EAL (%)
	Millbrook	Covanta	Total			
R1	0.03	0.56	0.59	4.9	14.1	35.2
R2	0.03	0.55	0.58	5.9	14.4	35.9
R3	0.04	0.53	0.57	7.5	14.4	35.9
R4	0.04	0.56	0.59	6.1	14.4	36.0
R5	0.01	0.18	0.19	5.5	11.4	28.6
R6	0.01	0.25	0.26	5.0	12.1	30.2
R7	0.01	0.28	0.30	4.8	12.1	30.2
R8	0.01	0.26	0.27	5.1	13.2	33.0
R9	0.01	0.24	0.26	4.7	12.0	30.1
R10	0.01	0.14	0.15	4.1	13.3	33.2
R11	0.00	0.11	0.11	3.9	12.9	32.3
R12	0.00	0.12	0.13	2.8	12.9	32.3
R13	0.00	0.12	0.13	3.4	12.7	31.8
R14	0.00	0.18	0.19	2.7	11.9	29.7
R15	0.00	0.08	0.08	5.3	11.8	29.4
R16	0.00	0.12	0.12	2.7	14.1	35.3
R17	0.00	0.12	0.12	2.5	14.1	35.3
R18	0.00	0.09	0.09	3.3	13.0	32.4
R19	0.00	0.09	0.10	3.4	12.4	31.1
R20	0.01	0.20	0.21	5.0	12.0	30.0
Criteria	**0.4**			**1**	**40**	**100**

1.1.80 A comparison of the quoted modelling results from Table A.8 of the Covanta RRF ES Volume 3 at the same receptor locations is shown in the table below.

Table 2 Comparison of Covanta RRF Environmental Statement Volume 3 Table A.8 results

ID	Annual mean Nitrogen Dioxide (NO_2) PC	
	Millbrook Modelling	Covanta Table A.8
R1	0.56	0.8
R2	0.55	0.8
R3	0.53	1.1
R4	0.56	0.8
R5	0.18	0.4
R6	0.25	0.6
R7	0.28	0.7
R8	0.26	0.6
R9	0.24	0.6
R10	0.14	0.3
R11	0.11	0.3
R12	0.12	0.3
R13	0.12	0.3
R14	0.18	0.4
R15	0.08	0.1
R16	0.12	0.2
R17	0.12	0.1
R18	0.09	0.1
R19	0.09	-
R20	0.20	-

1.1.81 The overarching results of the two sets of modelling are consistent with each other. Whilst there are minor differences in the predicted results, which are likely to stem from differences in the model set up, for example different meteorological data and older software, the results are the same order of magnitude, with the process contributions being well below the objectives. The conclusions of the assessment based on the Project operating for 2,250 hours per year and Covanta RRF operating continuously are the same as the conclusions set out in the ES. The PECs are well below the assessment level, and no likely significant effects are anticipated.

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.

1.1.82 Although this part of the methodology was not specifically agreed prior to assessment, no concerns have been raised throughout the consultation process by any relevant consultees.

1.1.83 Natural England have confirmed in their Relevant Representation [RR-020] that there are no impacts from air quality on sensitive ecological sites.

1.1.84 The Applicant is in the process of agreeing a Statement of Common Ground with Natural England which confirms that they are content with the methodology set out in the ES. The Statement of Common Ground will be forwarded to the ExA at the earliest available opportunity.

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.

1.1.85 Figure 6.1 [APP-049] shows the location of the residential and ecological receptors in the vicinity of the Project Site. As illustrated in Figure 6.1, these receptors are appropriate for the consideration of the impacts of construction and operation of the Power Generation Plant and the Gas Connection and Electrical Connection. The impacts of the construction work for the Gas Connection and Electrical Connection will primarily be associated with the generation of fugitive dust, the study area for these impacts is limited to 350

metres from the construction activity and therefore the chosen receptors are appropriate (see paragraph 6.5.5 of the ES [APP-033]).

1.1.86 Paragraph 6.6.7 of the ES [APP-033] which describes residential receptors in close proximity to the Power Generation Plant also includes receptors within 350 m of the Gas Connection and Electrical Connection (e.g. Lower Farm and Church Farm Cottages).

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.

1.1.87 As per paragraph 6.5.19 of the ES [APP-033], all buildings associated with the Power Generation Plant have been taken into consideration when assessing potential effects of building downwash on plume dispersion. It is also noted that building downwash is taken into account if buildings are within a distance from the stack which is equivalent to five times the stack height, and if the building height is greater than approximately 30 per cent of the stack height. All buildings are assumed to be located in the indicative layout as shown in Figure 3.1 [APP-049] and to be of the maximum dimensions in Table 3.1 in the ES [APP-033].

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.

1.1.88 The Applicant confirms that the significance criteria for assessing decommissioning effects of dust is as per the construction effects (Tables 6.5-6.7 in the ES) [APP-033]. For operation and maintenance, local effects are those that may occur within the study area. Long-term effects are deemed to be permanent changes. The change in pollutant concentrations is defined in the chapter; below a 1% increase in annual average (long term) concentrations and 10% increase in short term (1 hour or 8 hour average) concentrations is deemed to be not significant (see paragraphs 6.5.42 to 6.5.45 of the ES). As all of the increases are below these concentrations, the increases are deemed to be not significant.

1.1.89 The aim of Table 6.27, and indeed all Tables setting out the summary of residual effects in the ES [APP-033], was to derive a consistent approach across all topic chapters to aid the reader in easily understanding the residual effects of a specific topic and then being able to cross-refer directly to other topics.

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 dust risk impact level have not been provided. Please provide this information.

1.1.90 The area sensitivity is described in Table 6.5 of the ES [APP-033], and the emission magnitude in Table 6.6 of the ES [APP-033]. These are combined in terms of the risk of dust impacts in Table 6.7 of the ES [APP-033]. The risk of impacts is used to define the required level of mitigation; high, medium or low. In accordance with the IAQM guidance on which the assessment is based, with the mitigation in place, the significance of dust effects is not significant.

1.1.91 Paragraph 4.7.3 of the ES [APP-033] states that in order to provide a consistent approach and enable comparison of effects upon different environmental components, the assessments generally follow the structure and use the terminology set out in Tables 4.1 – 4.3 in the ES [APP-033]. However, it is noted that for some environmental topics, significance criteria may need to differ depending on the topic assessment and conditions encountered at the Project Site.

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.

1.1.92 The Applicant acknowledges that this was a typo. Appendix 6.2 [APP-040] contains the cumulative model set up for the Covanta RRF Project and Appendix 6.3 [APP-040] contains the results of the cumulative modelling. Section 6.8 of the ES [APP-033] contains information on the cumulative modelling.

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.

1.1.93 The assessment methodology (as described in section 6.5 of the ES) follows the IAQM guidance which assesses the level of risk of dust impacts occurring to identify the appropriate mitigation. With mitigation in place, construction dust effects are not considered to be significant. There is no way of quantifying dust impacts and therefore it is not possible to undertake a cumulative assessment by adding together two separate impacts; one is reliant on the correct application of mitigation to ensure that effects are not significant.

1.1.94 However, the potential for cumulative dust impacts is limited as the area over which individual effects are considered is only 350 metres. Receptors would need to be within this distance from both construction projects to be potentially affected. Figure 6.1 [APP-049] shows that there are no receptors that meet these criteria and therefore it is considered unlikely that the insignificant effects of the Project and Covanta RRF could cumulatively result in significant effects.

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 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.

1.1.95 Please see the Applicant's response to written question 1.3.2.

1.1.96 For the maximum ground level concentrations, Paragraph 8.7.23 of Volume I of the Covanta RRF ES concluded:

'The results of the dispersion modelling demonstrate that the emissions from the EfW Facility for all substances are not significant and therefore it is considered highly unlikely that any air quality standards will be exceeded as a result of emissions from the plant.'

1.1.97 The following table shows the Covanta RRF Project predicted NO_2 and CO concentrations at the specific receptor locations from Table A.8 Volume III of the Covanta RRF ES. There would appear to be an error in the quoted results for hourly mean NO_2 concentrations as some are predicted to be less than the quoted baseline concentration. However, the maximum predicted hourly mean NO_2 concentration anywhere in the receptor grid was quoted to be 14.5 µg/m^3 (Table 8.7, Volume I) and the results at the specific receptors are lower than this maximum.

Table 3 Predicted Covanta RRF NO_2 and CO concentrations from Table A.8 Volume III of the Covanta RRF ES

ID	Covanta RRF Process Contributions (µg/m^3)		
	Nitrogen Dioxide		Carbon Monoxide
	Annual Average	99.79th %ile Hourly Average	8 Hour Running Average
R1	0.8	2.1	7
R2	0.8	1.6	7
R3	1.1	1.2	6
R4	0.8	1.1	7
R5	0.4	-	5
R6	0.6	-	5
R7	0.7	-	4
R8	0.6	-	4
R9	0.6	-	3
R10	0.3	-	2
R11	0.3	-	2
R12	0.3	-	2
R13	0.3	-	3
R14	0.4	5.8	5
R15	0.1	7.7	5
R16	0.2	1.2	4
R17	0.1	-	4
R18	0.1	-	3
R19	-	-	-
R20	-	-	-
Objective	**40**	**200**	**10,000**

1.1.98 It should be recognised that there is a significant difference in stack heights between the two facilities; and therefore, the pattern of dispersion of the emissions will be significantly different. The Covanta RRF stack, being taller, will disperse the emissions over a wider area. There is therefore very little interaction between the dispersion plumes from the two facilities. The Applicant also highlights that the maximum ground level pollutant concentrations anywhere within the receptor grid of the modelling from the Project are not significant. In accordance with Environment Agency guidance, it is not necessary to consider the baseline pollutant

concentrations when the maximum concentrations are not significant. Nevertheless, at each of the selected receptor locations, the Predicted Environmental Concentrations are shown, for both the Project alone and with the Covanta RRF Project. The Predicted Environmental Concentrations are significantly below the assessment levels.

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.

1.1.99 The following is taken from Paragraphs 8.3.5 and 8.3.6 of the Covanta RRF ES:

1.1.100 "It would be expected that the operation of the EfW Facility would therefore have no detrimental effect on the condition of the sites with regard to the species that the site is capable of supporting at all sites. The exception is Kings Wood and Glebe Meadows where there is predicted to be a marginally significant impact related to nutrient nitrogen deposition. However, it should be noted that this result is based upon assessment of impacts using a stack height of 100m, and the extension of the stack to 105m is likely to reduce the impacts to below 1% for the upper limit.

1.1.101 On this basis, the impacts to statutory national or European sensitive ecological receptors are considered not significant for all sites except Kings Wood and Glebe Meadows where there is potentially a minor adverse impact."

1.1.102 The minimum height in the Covanta RRF DCO (i.e. 132.5m AODS) is lower than that which was modelled for Covanta (105m). An increase in the Covanta RRF stack height would likely improve dispersion and reduce maximum ground level concentrations. At greater distances from the point of maximum concentration, there may be a slight increase in concentrations as dispersion is improved, but this would be against much lower process contribution. Therefore, the worst case has been assessed.

1.1.103 The results for the Project modelling at Kings Wood and Glebe Meadows shows that the contribution from the Project is not significant (Tables 6.21 to 6.24 of the ES [APP-033]). The NO_x critical level is not predicted to be

exceeded, and the contribution to the nitrogen and acid deposition critical loads are a maximum of 0.02% and 0.002% of the critical loads respectively. The operation of the Project will therefore not have a significant impact on the habitat either alone in cumulatively with the Covanta RRF.

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.

1.1.104 Tables 6.21 to 6.24 show that the contribution from the Project at all of the ecological receptors is not significant; either the critical load is not exceeded or where the critical load is exceeded, the development contribution is significantly below the level that would be considered potentially significant.

1.1.105 As per our answer to written question 1.3.11, the impact of the Covanta RRF Project alone was not considered significant apart from at Kings Wood and Glebe Meadows SSSI. As the Project's contribution at the ecological receptors is very low, the cumulative assessment is therefore predominantly the result of the Covanta RRF Project's contribution.

1.1.106 Nevertheless, as per paragraph 6.8.27 of the ES [APP-033] the Covanta RFF stack has been modelled with the Project stack, and it is concluded that even though the critical load is exceeded at Kings Wood and Glebe Meadows SSSI, the cumulative impact is not significant. This is because, in all cases, the process contribution of the Project and the Covanta RRF Project operating together are below 1% of the critical load and therefore below the threshold of significant effects.

1.1.107 In all cases where the critical load is exceeded, this is due to background concentrations. The Project, either alone or in combination does not give rise to significant effects (e.g. more than 1% of the critical load) or cause the critical load at any receptors to be exceeded.

1.1.108 This statement also mirrors that in the Covanta RRF ES.

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 Pillinge Farm and Pillinge 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?

1.1.109 As stated in Chapter 7 of the ES [APP-033] the method for rating and assessing sound of an industrial nature (such as the Project) is provided in BS 4142:2014 'Methods for rating and assessing industrial and commercial sound'. This standard was revised in 2014 and has formed the basis of the assessment undertaken for the Project. The assessment of the Covanta RRF Project would have been undertaken using the superseded version of the standard from 1997.

1.1.110 One of the main differences from the previous version of the standard is that BS 4142:2014 requires context to be taken into account when concluding on the assessment of impacts. Context can include all pertinent factors such as the absolute level of sound, the character and level of the residual sound compared to the character and level of the specific sound. In addition to context, the assessment of impacts has changed by describing a low impact when the rating level does not exceed the background levels, with a difference of around +5 dB likely to be an indication of an adverse impact. The previous version of the standard described industrial noise being 10 dB below background as a level which would indicate a low likelihood of complaints.

1.1.111 For the Project the context is important. In determining the noise limits the character of the specific source has been reviewed. This is set out in section 7.7 of the ES [APP-033]. The Project would not be operating continuously and would in the majority of time become active during periods of peak electrical demand which are likely to be during the daytime and outside of the times when the lowest background noise levels will occur. The Covanta RRF Project would be running continuously and is therefore more likely to impact on quieter periods of the daytime and night-time. It is in this context and due to the different assessment criteria due to the revised BS 4142 standard that a higher noise level is considered acceptable.

1.1.112 Furthermore, as described in section 7.6 of the ES, background noise levels have risen in the area, not only since the Covanta RRF Project was granted consent, but also since previous background measurements for the Project were undertaken in 2014. Therefore, higher permissible noise levels for the Project based on the background measurements are considered to be acceptable.

1.4.2	Applicant	The study area and receptor locations within it are identified in Table 7.3 (page173 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 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.

1.1.113 The determination of the study area has been based on a professional judgement and ensuring that the nearest noise sensitive receptors are assessed. The nearest receptors (e.g. South Pillinge Farm) are, in the main, isolated dwellings away from major sources of noise. Therefore, by assessing at these receptors which are the closest and subject to a low noise environment the worst case has been assessed. As a consequence of propagation losses, such as distance loss (geometrical spreading), air and ground absorption, receptors further away would be subject to lower noise levels from the development and therefore if noise levels are acceptable at the nearest sensitive receptor, they will automatically be acceptable at those receptors located further away.

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 Pillinge Cottages and South Pillinge 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.

1.1.114 Moreteyne House is located approximately 270 m further away to the south west from the Project Site than South Pillinge Farm at which the assessment has been undertaken. Due to the impact at South Pillinge Farm being acceptable it can be concluded that the impact at Moreteyne House would also be acceptable.

1.1.115 The aim of Table 7.3 was to highlight the likely source of predominant noise from the closest items of plant to the properties. It is appreciated that the gas turbine generator, exhaust gas flue stack and fin fan cooler(s) were not specifically referred to, but these were not excluded from the assessment which was based on all noisiest construction activities taking place at the same time (e.g. paragraph 7.7.3 of the ES).

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.

1.1.116 Paragraph 7.5.9 of the ES [APP-033] should read:

> "The approximate locations of the sound survey locations are shown in Figures 1, 2 and 3 of Appendix 7.2 and Figure 1 of Appendix 7.3 The methodology for all surveys was agreed with CBC."
>
> The locations of the 2014 survey location(s) are shown on revised versions of Appendices 7.2 (Revision 1) and 7.3 (Revision 1) which have been submitted for Deadline 2.

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 Pillinge 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.

1.1.117 Appendices 7.2 and 7.3 have been amended to present the $L_{A10,T}$; $L_{A90,T}$; $L_{Aeq,T}$; and L_{AFmax} results for all surveys. Survey results for Lower Farm are now included in Appendix 7.2 (Revision 1).

1.1.118 These revised appendices (Appendix 7.2 (Revision 1) and Appendix 7.3 (Revision 1)) have been submitted for Deadline two.

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.

1.1.119 The topography of the sides of Rookery South pit in the immediate vicinity of the Power Generation Plant Site (e.g. to the west) would be re-graded as part of the LLRS works required prior to commencement of the construction of the Project. Although the re-grading of the eastern slopes of the pit, furthest away from the Project site may not be totally complete prior to operation of the Project, this will have no impact on the conclusions of the noise modelling, particularly given their distance from the main sources of noise (e.g. Power Generation Plant) and sensitive receptors.

1.1.120 The Applicant refers to its response to Written Question 1.0.7 in respect of the inclusion of a requirement in the draft DCO (Revision 1, submitted for Deadline 2) that ensures that the LLRS baseline works are completed.

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 clarifying information to support the conclusion regarding effects from noise on ecological receptors.

1.1.121 The potential impacts of noise to ecological receptors was not considered relevant as the ecological baseline (as set out in section 8.6 of the ES [APP-033]) did not identify any receptors of sufficient value to require impact assessment to be undertaken.

1.1.122 The scope and detail of assessment undertaken in the ES was agreed with consultees at several points during the pre-application process. The Applicant is in the process of agreeing a Statement of Common Ground with Natural England which specifically agrees the methodology for undertaking the assessment. The Statement of Common Ground will be forwarded to the ExA at the earliest available opportunity.

1.1.123 Nevertheless, the LLRS re-profiling works will replace any terrestrial habitat suitable for protected species. Although GCN would be translocated to a pond in relatively close proximity to the Project Site (C. 500m), this species are not considered to be sensitive to changes in noise environment; Natural England's standing advice in relation to assessing impacts of development on newts, does not extend to consideration of noise impacts.

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.

1.1.124 The dimensions in Section 7.4 of the ES [APP-033] represent the elements of the Gas Turbine Generator and fin-fan coolers which could emit noise (as stated in paragraph 7.4.2). Table 3.1 and the dDCO have the maximum dimensions, including plant / buildings which do not emit noise. The use of the dimensions in Section 7.4 provides for a more accurate model and assessment.

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.

1.1.125 The assessment presented in Appendix 7.3 (Revision 1 submitted for Deadline 2) has considered a worst case scenario in that the Covanta RRF Project is operating at its maximum capacity and in line with it operational noise limits at South Pillinge Farm which are 39 LAeq,1hr during the day and 35 LAeq, 5mins during the night. These noise levels at South Pillinge Farm have been logarithmically added to the predicted Rating Level from the Millbrook Power Project to determine the cumulative noise level.

1.1.126 The cumulative impact associated with the introduction of a source to an area is considered within the BS4142:2014 methodology. This is implemented in the assessment by considering contextual factors (such as those set out in paragraph 7.7.18 of the ES), which could include recent or expected changes to the existing noise climate.

1.1.127 In this case, the contextual information is that sound associated with the Covanta RRF when operational will form part of the existing environmental sound climate, introducing sources typically associated with power generation into the wider soundscape. It is assumed that the sound generated by the operation of the Covanta RRF Project is within the operational noise limits (which is a reasonable position to take) and in so doing does not give rise to a significant adverse impact.

1.1.128 In this context, the impact significance is not expected to be elevated beyond that concluded by the numerical assessment.

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.

1.1.129 The noise assessment methodology (section 7.5 of the ES [APP-033]) sets out the concepts defined in Noise Policy Statement for England (NPSE) and Planning Practice Guidance - Noise (2014). These documents provide guidance on the effects of noise exposure, relating these to people's perception of noise and linking them to effect levels. These are defined as:

- LOAEL – Lowest Observed Adverse Effect Level - the level above which adverse effects on health and quality of life can be detected.
  - Example of outcome: Noise can be heard and causes small changes in behaviour and/or attitude by, for example, turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life.
- SOAEL – Significant Observed Adverse Effect Level - The level above which significant adverse effects on health and quality of life occur.
  - Examples of outcomes: The noise causes a material change in behaviour and/or attitude, eg avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.

1.1.130 The LOAEL is defined as the level at which mitigation measures should be applied to try and reduce noise to a minimum.

1.1.131 Based on the concepts above, the most relevant guidance for assessing noise emissions from plant has been reviewed which is BS4142:2014 "Methods for rating and assessing industrial and commercial sound". BS4142 describes the method for assessing whether noise sources of an industrial, commercial or fixed nature are likely to give rise to complaints from people residing in the area. BS4142 states: "The significance of sound of an industrial and/or commercial nature depends upon both the margin by which the rating level of the specific sound source exceeds the background sound level and the context in which the sound occurs".

1.1.132 The standard states a difference of around +10 dB or more is likely to be an indication of a 'significant adverse impact', depending on the context. This has therefore been defined as the SOAEL.

1.1.133 The standard then states that a difference of around +5 dB is likely to be an indication of an 'adverse impact', depending on the context. Therefore, a level of +5 dB above the background is considered to be the level when adverse effects can be detected and relates to the LOAEL.

1.1.134 With regards to the operating times, based on current peak electrical demand, the Project would typically operate during the evening in winter months. Notwithstanding the above, the assessment considers the potential noise impact should the Generating Equipment operate during the night-time. Calculations indicate that the rating level associated with the operation of the Generating Equipment is likely to fall below the background sound level at South Pillinge Farm by 1 dB during the night-time. With reference to BS4142 this is an indication of the specific sound source having a low impact and therefore not significant, depending on the context.

1.1.135 In terms of construction hours, this was discussed at a meeting between the Applicant and CBC on 27th February 2018 where it was acknowledged that Requirement 13 of Schedule 2 to the draft DCO (Revision 1, submitted for Deadline 2) provided for the same construction hours as the Covanta RRF Project. However, the wording of the requirement sought to clarify that start up and shut down activities (i.e. when works could arrive/change into work gear and leave the site) could be carried out during the 30 minutes before and after the specified construction hours. A requirement to monitor construction noise has been added to revision 1 of the draft DCO submitted for Deadline 2 in response to comments raised by CBC.

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.

1.1.136 The Applicant is in the process of agreeing a Statement of Common Ground with Natural England which confirms that Natural England is satisfied with the assessment and mitigation measures proposed in the ES. The Statement of Common Ground will be forwarded to the ExA at the earliest available opportunity.

1.1.137 There is a European Protected Species (EPS) licence in place which authorises the translocation of great crested newts from Rookery South to mitigation areas in Rookery North Pit, and recently created habitat to the north east. This translocation is to facilitate the LLRS. The EPS licence was secured by BSG Ecology on behalf of its client, O&H Properties Limited. BSG Ecology is currently in the process of securing a revision to the licence so as to allow herpetological fencing to remain in place until 2026 (License Reference: 2014-1762-EPS-MIT-1).

1.1.138 The Applicant is not aware of any impediments which would prevent the EPS licence from being extended.

1.1.139 The baseline for the ES assumes that further re-profiling works to Rookery South Pit will be undertaken prior to the commencement of the Project (see the Applicant's response to written question 1.0.7) thereby requiring the herpetological fencing to remain in place.

1.1.140 As with any development site where there is a gap between surveys being undertaken, planning being granted and commencement of development, additional surveys will be undertaken prior to commencement. Paragraph 3.6.6 of the outline CEMP (Revision 1, submitted at Deadline 2) includes for the provision of undertaking additional great crested newt surveys prior to construction if considered necessary. This approach has been agreed with Natural England. The CEMP itself is secured via Requirement 10 of the draft DCO (Revision 1, submitted at Deadline 2).

1.1.141 In the unlikely event that Great Crested Newts are found to be present on the Power Generation Plant Site, the Applicant will apply for the necessary licences to translocate any Great Crested Newts prior to the commencement of any part of the authorised development on the Power Generation Plant Site.

1.1.142 The Applicant therefore considers that it was appropriate to assume for the purposes of the ES assessment that there would be no great crested newts present in the base of the Rookery South Pit.

1.1.143 The terms of the Option Agreement with the landowner are confidential.

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.

1.1.144 The Applicant does not consider that a requirement is necessary and refers to its answer to written question 1.5.1. Measures for the ongoing protection of great crested newts are outlined in Paragraph 3.6.6 of the outline CEMP (Revision 1, submitted for Deadline 2) such as working under a precautionary approach and method statement and the undertaking additional great crested newt surveys prior to construction if considered necessary.

1.1.145 As outlined above in our response to written question 1.5.1 there is an existing license in place to facilitate translocation of GCN as part of the ongoing LLRS works.

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.

1.1.146 The Applicant refers to its response to written question 1.0.7. The LLRS works for Rookery South Pit which form part of the baseline assessment are set out in 3.1.5 of the ES [APP-033]. The LLRS baseline works are shown on the The Rookery Low Level Restoration Scheme – Baseline Works for Millbrook Power plan (drawing reference J0008128-409, submitted at Deadline 2) which will be a certified document under the DCO.

1.1.147 The completion of the LLRS baseline works will be secured via a requirement (see requirement 20 of draft DCO (Revision 1, submitted for Deadline 2)).

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?

1.1.148 Requirement 20 of the draft DCO (Revision 1, submitted for Deadline 2) requires the LLRS baseline works to be completed to the reasonable satisfaction of CBC prior to the commencement of the authorised development. CBC will therefore need to be satisfied that the baseline conditions assumed in the ES (i.e. the completion of the LLRS baseline works) have been completed before discharging this requirement. The monitoring and control of the baseline is therefore with CBC. Regarding great crested newts, the position is no different to any development site where there is a gap between surveys being undertaken, planning being granted and commencement of development, additional surveys will be undertaken prior to commencement. Paragraph 3.6.6 of the outline CEMP (Revision 1, submitted at Deadline 2) includes for the provision of undertaking additional great crested newt surveys prior to construction if considered necessary. This approach has been agreed with Natural England. The CEMP itself is secured via Requirement 10 of the draft DCO (Revision 1 submitted at Deadline 2).

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.

1.1.149 As described in paragraph 8.9.14 of the ES [APP-033] and paragraph 3.6.6 of the outline CEMP (Revision 1, submitted at Deadline 2)) appropriate measures to safeguard great crested newts will be set out in a Method Statement that will include measures specified having regard to the location, extent and timing of works. The detailed measures will be specified in response to site conditions at the time of works but will include the following:

- Seasonal timing of the vegetation works to the period when great crested newts are least likely to be present within the construction area i.e. clearance to be undertaken during the breeding period, (March – June inclusive);
- Directional vegetation clearance using hand tools or light machinery to encourage great crested newts to move to the safety of retained habitat;

- Advance clearance of woody vegetation down to approximately 30cm outside the bird nesting season (i.e. over winter);
- Cut ruderal and/or grassland vegetation to 15cm during the March – June period to encourage great crested newts to move to the safety of retained habitat. Second cut down to 5cm / ground level after 24 hours and following a fingertip search by the ecologist;
- Dismantling of debris / log piles or potential hibernacula / refugia by hand in the presence of the a suitably licenced ecologist;
- Construction area to be managed so as to provide unsuitable conditions for great crested newts i.e. little or no vegetation, with no stockpiled debris, logs or materials which could be used as hibernacula.

1.1.150 All of the above activities will be undertaken in the presence of an ecologist who holds as a minimum a Class 1 Natural England licence to survey for great crested newts. In the circumstance that a great crested newt is discovered during works it will be recovered and placed in suitable retained habitat. In the event that great crested newts are encountered in significant numbers during works the licenced ecologist will consider whether the works should stop and a suitable licence be obtained from Natural England in order to allow the works to continue lawfully.

1.1.151 Requirement 10 of Schedule 2 of the DCO (Revision 1 submitted at Deadline 2) ensures that works are not commenced until the CEMP covering that numbered work has been submitted to and approved by the relevant planning authorities.

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?

1.1.152 The surface water balancing pond, associated drainage channels and pumping station referred to in the Flood Risk Assessment [APP-029] are being provided as part of the LLRS baseline works pursuant to the LLRS planning permission (included at Appendix 2 of the Planning Statement [APP-056]). The LLRS baseline works is secured under requirement 20 of revision 1 of the draft DCO submitted for Deadline 2.The LLRS baseline works assumed for the Proposed Development are shown on the The Rookery Low Level Restoration Scheme – Baseline Works for Millbrook Power plan (drawing reference J0008128-409, submitted for Deadline 2) which will be a certified document under the DCO.

1.1.153 Condition 9 of the LLRS planning permission required details of a surface water management strategy to be agreed with CBC prior to commencement of development.

1.1.154 In accordance with the LLRS planning permission (particularly condition 9, as referenced above), O&H Properties prepared a Site Environmental Management Plan in 2011 (Document Ref 14081/052/Rev 01) which sets out details of the inspection and maintenance regime that applies to surface water management infrastructure including drainage ditches, the attenuation pond and pumping station. The Site Environmental Management Plan has been approved by the relevant authorities and clearly states, at paragraph 4.4.3, that the responsibility for the inspection and maintenance regime lies with the landowner, O&H Properties. The Applicant refers to its response to Written Question 1.0.6. An extract from paragraph 4.4.3 is quoted below to assist with the examination:

"Rookery Pit surface water management system will be maintained by the landowner – O&H Properties. The surface water drainage infrastructure such as the attenuation pond, interceptor channels, the Mill Brook Watercourse, and the surface water pumping station will be inspected monthly (or after any

significant rainfall / flood event) by a visiting maintenance team. Basic inspection and maintenance will include:-

- *Inspection of trash screens and cleaning (as required);*
- *Inspection of catch pit on inlet pipe from attenuation lake and clearing (as required);*
- *Inspection of catch pit and hydrobrake flow control device on gravity return from Rookery North and clearing (as required);*
- *Inspection of control kiosk and identify if any alarms have been activated (to be undertaken bi-weekly);*
- *Inspect safety and security of fencing and guard rails;*
- *Clearance of weeds and litter as necessary;*
- *Check the operation of any remote telemetry (if installed);*
- *Clear debris from the Mill Brook watercourse and tributary, and any debris which has collected at any culverts as necessary to maintain flow;*
- *Routine servicing and inspection of pumps, motors and control gear by specialist maintenance contractor in accordance with manufacturers recommendations".*

1.1.155 Requirement 7 of Schedule 2 to the DCO (Revision 1, submitted at Deadline 2) requires the Applicant to submit a surface and foul water drainage strategy for approval by the relevant planning authority prior to the commencement of numbered works 1, 2, 3A, 5 and 6. The strategy shall incorporate elements of the low level restoration drainage strategy where applicable, including the standard and availability of the attenuation pond.

1.1.156 The Applicant therefore considers that the standard and availability of the attenuation pond is already secured in the DCO.

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.

1.1.157 The criteria used to define the sensitivity of receptors and the magnitude of effects are presented in the tables below. The Applicant appreciates that these were not originally included in the ES and may have benefitted the reader if they had been.

1.1.158 As set out in paragraph 9.5.13 of the ES [APP-033], in the absence of 'industry standard' significance criteria, a qualitative approach was employed for the EIA, based largely upon professional judgement. The matrix presented below provides further details and examples of qualitative approach employed that combines sensitivity and magnitude.

Table 4 Sensitivity/Value of Receptor

Sensitivity/value of a Receptor	Description	Example
High	Attribute with a high quality and rarity, local scale and limited potential for substitution. Attribute with a medium quality and rarity, regional or national scale and limited potential for substitution. Attribute highly sensitive to change.	Examples include: Receiving watercourse classified as High or Good Ecological status/potential under WFD Site protected under EU or UK wildlife legislation (SAC, SPA, SSSI). Species protected under EU or UK wildlife legislation Site located within a Groundwater Source Protection Zone (SPZ) inner or outer protection zone (Zone 1), National Planning Policy Framework (NPPF) Flood Risk Vulnerability Classification "Essential Infrastructure" or "Highly Vulnerable" Environment Agency current groundwater quantitative and chemical qualities defined as Good Human receptors (construction workers and future residents)
Medium	Attribute with a medium quality and rarity, local scale and limited potential for substitution. Attribute reasonably tolerant of change.	Examples include: Floodplain providing a moderate volume of storage Receiving watercourse classified as Good or Moderate Ecological status/potential under WFD NPPF Flood Risk Vulnerability Classification "More Vulnerable"
Low	Attribute with a low quality and rarity, local scale and limited potential for substitution. Attribute tolerant of modest change.	Examples include: Environment Agency current river ecological quality defined as Poor / Bad and chemical quality defined as Fail

		Floodplain with limited existing development. Receiving watercourse classified as Poor Ecological status/potential under WFD NPPF Flood Risk Vulnerability Classification "Less Vulnerable"
Negligible	Attribute of very limited quality and tolerant of substantial change.	Examples include: Floodplain essentially rural in nature, characterised by agricultural land use NPPF Flood Risk Vulnerability Classification "Water Compatible"

Table 5Table 2 Magnitude of effect

Magnitude of Effect	Description	Example
Large	Results in a loss of attribute and/or quality and integrity of the attribute. Following development, the baseline situation is fundamentally changed.	Examples include: Change in ecological and/or chemical qualities of the surface water. Loss of flood storage/increased flood risk. Large change in: ■ water quality of receiving watercourse; ■ NPPF Flood Risk Vulnerability Classification; ■ surface water flood risk; ■ fluvial flood risk; ■ water supply volume; and ■ foul drainage volume.
Moderate	Results in impact on integrity of attribute, or loss of part of attribute. Following development, the baseline situation is noticeably changed.	Examples include: Contribution of a significant proportion of the effluent in the receiving river, but insufficient to change its qualities. Moderate change in: ■ water quality of receiving; watercourse; ■ NPPF Flood Risk Vulnerability Classification; ■ surface water flood risk; ■ fluvial flood risk; ■ water supply volume; and ■ foul drainage volume.
Small	Results in some measurable change in attribute's quality or vulnerability.	Examples include: Measurable changes in attribute, but of limited extent/duration. Small change in: ■ water quality of receiving watercourse;

Magnitude of Effect	Description	Example
	Following development, the baseline situation is largely unchanged with barely discernible differences.	▪ NPPF Flood Risk Vulnerability Classification; ▪ surface water flood risk; ▪ fluvial flood risk; ▪ water supply volume; and ▪ foul drainage volume.
Negligible	The impacts are unlikely to be detectable or outside the norms of natural variation.	

Table 6 Determining Significance of Effect

		Sensitivity of Receptor			
		High	**Medium**	**Low**	**Negligible**
Magnitude of Impact	**Large**	Large	Large	Moderate	Slight
	Moderate	Large	Moderate	Slight	Negligible
	Small	Moderate	Slight	Slight	Negligible
	Negligible	Slight	Negligible	Negligible	Negligible

1.6.3	Applicant	Chapter 9 Section 9.8 of the ES describes the potential for cumulative and in-combination 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.

1.1.159 Section 9.5.1 of the ES [APP-033] states that the study area extends to include the reaches of watercourse and surface water drainage infrastructure shown in Figure 9.1 [APP-049] as (in the professional opinion of the assessor) these have the potential for significant interaction with the Project. The study area has also been defined following previous consultation with the EA and Internal Drainage Board (IDB).

1.1.160 The 2km radius used for identifying proposals that may give rise to cumulative effects was based on professional judgement taking into consideration the type of development, its location, setting and vulnerability to flooding. The purpose of using a search radius was to identify those developments in close proximity to the Project Site which had the potential for direct combined effects, and those which were more remote. The study area referred to above is within the 2km radius.

1.1.161 When considering cumulative effects for water quality / flood risk, the starting position is that, irrespective of geography, other schemes must comply with policy in respect of flood risk and water quality, meaning that they would be categorised as 'nil detriment'. As the Project is also classified as 'nil detriment', there will therefore be no significant cumulative effects, locally or otherwise. Therefore, irrespective of search radius parameters, the conclusions set out in section 9.8 of the ES [APP-033] remain valid.

1.1.162 A plan showing the location of the Project Site and cumulative developments in relation to existing water bodies and watercourses is provided at Appendix G of this document.

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 been 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?

1.1.163 The Applicant refers to the response to written question 1.0.7. The completion of the LLRS baseline works will be secured via a requirement (see requirement 20 of the draft DCO (Revision 1, submitted for Deadline 2)).

1.1.164 The majority of the LLRS baseline works relating to surface water drainage requirements have already been substantively completed.

1.1.165 The Project is not reliant on any mitigation measures for the Covanta RRF Project that are required in addition to the LLRS baseline works. Therefore, in respect of surface water and drainage it is not relevant whether the Covanta RRF Project is completed or not.

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?

1.1.166 The Applicant acknowledges that this question is directed at Natural England but responds as follows to assist the examination:

1.1.167 Correspondence with Natural England on 24th July 2017 set out the Applicant's position on soil resources and agricultural land (i.e. that the Applicant wished to scope it out). Natural England confirmed by email return (10th August 2017) that they had no further comment:

"On the basis of the additional information you have provided in your email regarding the extent of land impacted, we do not propose to make any detailed comments in relation to agricultural land quality and soils, although more general guidance is available in Defra Construction Code of Practice for the Sustainable Use of Soils on Construction Sites, and we recommend that this is followed."

1.1.168 The Applicant is in the process of agreeing a Statement of Common Ground with Natural England. This states that a sentence will be added into the Outline CEMP stating: "*Defra's general guidance on the 'Construction Code of Practice for the Sustainable Use of Soils on Construction would be adhered to' (paragraph 3.4.4).* This additional sentence has been added to the Outline CEMP (Revision 1, submitted at Deadline 2).

1.1.169 The Statement of Common Ground will be forwarded to the ExA at the earliest available opportunity.

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 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?

1.1.170 The Applicant acknowledges that this question is directed at Environment Agency but responds as follows to assist with the examination:

1.1.171 Requirement 8 of the draft DCO (Revision 1, submitted for Deadline 2) has been amended to specifically refer to groundwater baseline monitoring and assessment.

1.1.172 It is intended that the Phase 1 Ground Conditions Assessment [APP-044] would be used as the basis for a Phase 2 ground investigation, helping to identify site specific issues.

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?

1.1.173 The Applicant acknowledges that the question is directed at the Environment Agency, however has responded as follows:

1.1.174 The assessment presented in the ES is based upon existing historical borehole information, as well as additional groundwater sampling undertaken in both 2014 and 2017. The Applicant therefore considers that the conclusions and approach are reasonable.

1.1.175 Additionally, the Applicant has discussed this matter with the Environment Agency, who have confirmed that Requirement 8 of the dDCO satisfies the need for additional intrusive site investigation and groundwater monitoring. A Statement of Common Ground is currently being finalised with the Environment Agency, which will be submitted to the Examination shortly.

1.7.4	Applicant	It is noted that not all of the developments identified in paragraph 10.8.1of 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.

1.1.176 The remaining projects not cited in Paragraph 10.8.1 of the ES [APP-033], but which are included in Paragraph 4.10.7 are:

- Land at the former Fullers Earth Quarry, Ampthill Road, Clophill – 50 dwellings approximately 6 km south-east of Gas Connection;
- Marston Vale Business Park, land south of Fields Road, Wootton – commercial/retail approximately 6 km north of Access Road;
- Kiln Road, Kempston Hardwick – B1 office building and auction hall approximately 7 km north of Access Road;
- Land to the West of Mill Road, Cranfield - residential development of 230 units approximately 7 km west of Generating Equipment Site;
- Chantry Avenue, Kempston – redevelopment to provide 52 dwellings approximately 8 km north of Access Road;
- Cemetery Road, Kempston – construction of 55 dwellings approximately 8 km north of Access Road;
- Four Winds Industrial Estate, West End, Haynes, Bedford, MK45 3QT - Redevelopment and expansion of waste transfer station and materials recycling facility approximately 6 km south-east of Gas Connection;
- Land East of Anglia Way, Great Denham – 48 dwellings and associated infrastructure approximately 7km north of Access Road;
- Brogborough Landfill 11kV compound – Reinstatement of two engines to generate 2.3MW of energy using natural gas, and associated infrastructure approximately 7 km south-west of Power Generation Plant Site;
- Brogborough Landfill 33kV compound – Conversion of 10 landfill gas powered engines (either by refurbishment or replacement) to natural gas powered engines, plus associated infrastructure (approximately 7 km south-west of Power Generation Plant Site); and
- The Brickmakers Arms PH Woburn Road Kempston – 16MW Gas fuelled electricity generating plant and associated works, Green Frog Power Ltd approximately 4.5 km north of Access Road.

1.1.177 As per paragraph 10.8.2 of the ES [APP-033], in relation to developments outside of the study area for the Project the Applicant considers that the

above developments and any effects arising from them are also outside the study area as they are outside the zone of influence (within which significant effects could occur, such as through the mobilisation of contamination) for this topic. This means that any cross over in study areas, and therefore effects, would be extremely unlikely. Furthermore, each of the developments referred to above are likely to have their own construction environmental management plans applying best practice construction methods so as to minimise impacts on ground conditions and from contamination. As such it is considered that no significant cumulative or in combination effects are likely to arise in relation to ground conditions or from contamination during the construction or decommissioning phases of the Project. These developments were not included in the original list for these reasons.

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.

1.1.178 The ZTV was extended from the original radius provided for in the Phase 1 s.42 consultation (2014). However, it is acknowledged that Figures 11.1 and 11.5 [APP-049] show a ZTV which does not extend to the full 10km radius from the Generating Equipment. An amended plan showing the correct radius is included as a replacement for Figure 11.1 and has been submitted as a separate document for Deadline 2 (Figure 11.1-Revision 1). The extent of the ZTV shown on the plan does not alter the assessment findings presented in Chapter 11 of the ES [APP-033].

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'.

1.1.179 Despite the omission of the notes referred to, the Applicant can confirm that the location of the stack referred to on Figure 11.1 is from 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' [APP-007].

1.8.3	Applicant	It is stated in Table 11.1 (page 315 of the ES) that a plan showing all landscape features 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.

1.1.180 The Applicant confirms that Table 11.1 (page 315 of the ES) should instead refer to Figure 11.4, entitled 'Landscape Planning Constraints'. Additionally, it is accepted that Figure 11.4 does not show PRoW. The reference should have been to Appendix 12.1 [APP-046].

1.1.181 Public Rights of Way (PRoW) are shown as part of the OS map base on Figure 11.2 [APP-049], which sets out locations of the LVIA viewpoints in relation to the PRoW. The Applicant confirms that there are no long-distance paths within the Project Site, and that there are three long-distance paths within the 'surrounding area', as identified in Table 11.2 of the ES [APP-033]. The long-distance paths are legible and labelled on the OS map base of Figure 11.2 [APP-049].

1.1.182 Table 11.2 of the ES [APP-033] uses correct terminology for the purpose of the LVIA, in terms of local PROW. The table notes that there are no PRoW within the Power Generation Plant Site, but that there are various local PRoW in the surrounding area.

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.

1.1.183 Section 11.5 of the ES [APP-033] details the overall study area used for the assessment. Table 11.2 of the ES [APP-033] sets out the full baseline data to provide information, and context, of the Project Site.

1.1.184 Whilst it is recognised that the same study areas do not apply to every category of receptor which has been assessed, receptors have been selected based on a mixture of judged value (importance) and likelihood of being impacted by the Project (e.g. within the ZTV).

1.1.185 Furthermore, it is recognised in paragraph 11.5.2 of the ES [APP-033] that the assessment of landscape and visual effects aims to be as objective as possible, however, as explained in GLVIA3:

"Professional judgement is a very important part of LVIA. While there is some scope for quantitative measurement of some relatively objective matters, for example the number of trees lost to construction… much of the assessment must rely on qualitative judgements, for example about what effect the introduction of a new development or land use change may have on visual amenity, or about the significance of change in the character of the landscape and whether it is positive or negative".

1.1.186 Scheduled Monuments data was provided in Table 11.2 of the ES [APP-033] for up to 5km from the Project Site (the caption for which should have said within 5km, not 2km, of the Project Site). The scheduled monuments identified as 3.7km and 4.9km from the Project Site are therefore within this area.

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 receptors proposed to be scoped out. Please identify the landscape receptors that have been scoped out.

1.1.187 The Applicant confirms that this is a typo and the reference should be to Table 11.12, not 11.2.

1.8.6	Applicant, Central Bedfordshire	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

	Council and Bedfordshire Borough Council	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.

1.1.188 The approach was not agreed explicitly with the consultees. However, no issues were raised in this regard during the s42 consultation. The Applicant is in the process of agreeing Statements of Common Ground with both CBC and BBC which include agreement to the cumulative assessment methodology and, more widely the methodology for assessment of landscape and visual impacts. These will be forwarded on to the ExA at the earliest available opportunity.

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.

1.1.189 The LVIA includes a robust cumulative landscape and visual effects assessment (CLVEA) which clearly and separately considers incremental cumulative effects and combined cumulative effects. The approach was not agreed explicitly with the consultees; however no issues were raised in this regard, nor in relation to the conclusions during the s42 consultation. The Applicant is in the process of agreeing Statements of Common Ground with both CBC and BBC which include agreement to the cumulative assessment methodology. These will be forwarded on to the ExA at the earliest available opportunity.

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 10-year period would commence, and provide the justification for not extending that period further.

1.1.190 Paragraph 1.1.1 of the LEMMS submitted with the Application [APP-045] states that the LEMMS could cover a total period of 25 years:

"It covers the period from completion of the landscape works during the operational phase for the first ten years, and can be extended up to the decommissioning stage after a further 15 years."

1.1.191 Paragraph 1.1.17 of the LEMMS submitted with the Application [APP-045] states for the LEMMS temporal scope:

"The management plan covers an initial 10-year period commencing 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 of the project."

1.1.192 The Applicant acknowledges that some clarification is required and responds as follows:

1.1.193 As the LEMMS sets out protection and management of existing features during construction (paragraphs 5.1.1 to 5.1.7), the LEMMS temporal scope actually covers the time periods as follows:

- the 22-month construction period;
- the 10-year maintenance and management strategy period detailed in the LEMMS; and
- the further 15 years continued management, up to decommissioning.

1.1.194 The maximum length of time that the LEMMS covers is therefore 25 years and 22 months.

1.1.195 A revised version of the LEMMS (Revision 1, submitted for Deadline 2) contains updated paragraphs 1.1.1 and 1.1.17 o to reflect the above position and make it clearer for the reader.

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.

1.1.196 Requirement 3 of Schedule 2 of the dDCO (Revision 1, submitted for Deadline 2) requires that a written strategy (substantially in accordance with the outline landscape and ecological mitigation and management strategy) is submitted to and approved by Central Bedfordshire Council before each of numbered works 1, 2, 3A, 4, 5, 6 and 7 commence. Requirement 4 of the dDCO requires that all landscaping works and ecological mitigation measures must be carried out in accordance with the strategy approved under requirement 3.

1.1.197 The implementation of the measures set out in the LEMMS (Revision 1, submitted for Deadline 2) is therefore secured in the dDCO. It is the Applicant's responsibility to ensure the landscape and ecological mitigation and management strategy is carried out (either by the Applicant or the landowner) otherwise the Applicant will be a breach of requirement 4.

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.

1.1.198 Paragraph 11.8.8 of the ES correctly states that The planting scheme for the Project has taken account of the planting scheme for the Covanta RFF Project, so that both mitigation planting schemes can co-exist. The purpose

of this is to provide an appropriate level of mitigation for the Project, whilst not detrimentally affecting the delivery of the original level of mitigation intended by the Covanta RFF planting scheme.

1.1.199 The majority of the Covanta planting scheme would remain undisturbed by the planting scheme for the Project. Where disturbance is necessary, this has been mitigated for in developing the planting strategy for the Project assuming the Covanta planting is in place first. This is shown on Figure 3 of Revision 1 of the LEMMS, submitted for Deadline 2.

1.1.200 Appendix 2 of the LEMMS (Revision 1, submitted for Deadline 2) includes a plan showing the Landscape and Ecology Strategy Plan for the Project, without Covanta. Should the Covanta RRF Project not progress then this planting scheme would be suitable to provide the intended mitigation to limit effects of the Project alone.

1.1.201 The measures set out in Appendix 2 are secured through requirements 3 and 4 of the dDCO (see response to Written Question 1.8.9)

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?

1.1.202 It is considered that the level of planting and mitigation proposed in the LEMMS (Revision 1, submitted for Deadline 2) is proportionate to the scale of Project.

1.1.203 As summarised in paragraph 11.12.2 of the ES [APP-033] the only viewpoint for which significant visual impacts are predicted 15 years after planting is viewpoint 14. This viewpoint is on a footpath directly to the south of the Project Site. Therefore, the planting which has been proposed (inside the Project Site boundary) is the only proportionate way to limit views from this location. Opportunities for off-site planting were considered, however, as the footpath is in the middle of an open field, this was not considered feasible or appropriate.

1.1.204 Further mitigation in terms of siting and design of the Project have also been explored and are set out in the Design and Access Statement [APP-057].

1.1.205 Beneficial landscape effects are predicted 15 years after planting (Paragraph 11.12.3 of the ES [APP-033]).

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 method.

1.1.206 Section 5 of the outline LEMMS (Revision 1, submitted for Deadline 2) includes details for the management of landscape elements during construction, operation and up to 10 years after planting. As per our response to Written Question 1.8.8, the LEMMS also recognises the potential to extend management measures up to decommissioning. The effective management of the planting would ensure that it's benefits could be maximised, which the Applicant considers is appropriate for the Project.

1.1.207 As set out in response to Written Question 1.8.10, Requirement 3 of the dDCO (Revision 1, submitted for Deadline 2) sets out the need for a landscape and ecology mitigation and management strategy to be produced and approved by Central Bedfordshire Council prior to the commencement of each of numbered works 1, 2, 3A, 4, 5, 6 and 7 commences and Requirement 4 requires that all landscaping works and ecological mitigation measures must be carried out in accordance with the strategy approved under Requirement 3.

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.

1.1.208 The Applicant is in the process of agreeing Statements of Common Ground with CBC, BBC and Historic England (HE) which confirm their acceptance of the LVIA methodology and viewpoints chosen. These will be forwarded to the ExA at the earliest available opportunity.

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?

1.1.209 The Applicant acknowledges that this question is directed at the highways authorities, but has provided a response to assist with the examination as follows:

1.1.210 The Transport Assessment [APP-046] was prepared to accompany the DCO Application following extensive liaison with the Joint Authorities – Highways England, Bedford Borough Council, Central Bedfordshire Council, and Network Rail in 2014 - 2015. It was supported by a traffic and non-motorised user data collection exercise in the area, as agreed with the Joint Authorities.

1.1.211 The Transport Assessment was agreed by all parties in February 2015 – this is recorded in the Notes of a meeting which took place on February 11th 2015 – included as Appendix 2.2 of the TA [APP-046].

1.1.212 In order to update traffic, pedestrian and cycle movements within the vicinity of the Site, a series of surveys were undertaken in May 2017.

1.1.213 This work was resubmitted to all the Joint Authorities in 2017, and has been agreed with all of them.

1.1.214 A statement of Common Ground has been signed between the Applicant and Highways England, which was provided to the ExA at Deadline 1. A Statement of Common Ground has also been signed between the Applicant and BBC which has been submitted at Deadline 2 which specifically agree on the scope and assessment of traffic and transport effects. The Applicant is also in the process of signing a Statement of Common Ground with CBC which is at an advanced stage and will be provided to the ExA at the earliest available opportunity.

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.

1.1.215 The Applicant acknowledges that this question is directed at the local authorities but responds as follows:

1.1.216 The Applicant can confirm that CBC agrees with this conclusion. This issue was discussed between the Applicant and the CBC Planning Archaeologist during pre-application consultations and this is the basis of the proposed mitigation strategy that has been proposed and agreed with CBC as set out in section 13.9 of the ES [APP-033]. None of the remains potentially affected are within the jurisdiction of BBC so agreement has not been expressly sought from BBC.

1.1.217 The Applicant is in the process of agreeing a statement of common ground with CBC, which, amongst other aspects relating to the project includes an agreement on the assessment of potential effects on archaeology. This will be provided to the ExA at the earliest available opportunity.

1.1.218 Section 13.6 of the ES [APP-033] establishes the baseline of the Project Site and study area. The evidence described in the baseline section (resulting from review of previous archaeological investigations and searches of the local Historic Environment Record) identifies the vast majority of previous archaeological finds to be of local importance.

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.

1.1.219 The cumulative impacts of the Project and other consented schemes is addressed on an asset by asset basis in appendix 13.2 of the ES [APP-047].

1.1.220 In respect of the issue of "harm", the Applicant refers the Examining Authority to the Applicant's response to HE's Relevant Representation submitted for Deadline 2 which refers to the relevant policy test and the submission of additional supporting visual materials to support the assessment conclusions.

1.1.221 The Applicant is in the process of agreeing a statement of common ground with HE which clarifies the position on the potential for the Project to cause 'harm' to designated assets, both in isolation and cumulatively with other developments. It is agreed between HE and the Applicant that the impact of the Proposed Development on designated assets is "less than substantial harm."

1.10.3	Applicant	There is a commencement requirement for a programme of archaeological mitigation prior to construction (archaeological field evaluation, geophysical survey and trail 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-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.

1.1.222 The Applicant understands that HE's concerns on this matter were based on ensuring that the appropriate discussions and agreement with CBC were undertaken to inform the proposed mitigation works. All non-designated heritage assets that could potentially be impacted have been covered by the proposed mitigation strategy that has been agreed with CBC and set out in Requirement 9 of the draft DCO (Revision 1, submitted for Deadline 2). HE does not have a statutory role in relation to non-designated heritage assets and has accepted that the proposed mitigation works are appropriate and have been agreed with CBC.

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.

1.1.223 The approved plans referred to in condition 2 of the low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8) have been submitted at Deadline 2.

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?

1.1.224 The Applicant refers to its response to its response to written question1.0.7.

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?

1.1.225 The Applicant is currently in discussions with the landowner, O&H, regarding amending the approved plans referred to the LLRS planning permission (reference number BC/CM/2000/8) to permit the drainage channel to be constructed in the location shown in the Application as well as the location already permitted under the LLRS planning permission.

1.1.226 The Applicant has discussed the relocation of the drainage channel with CBC. CBC has confirmed that it would be minded to approve an amendment

to the approved plans which can be amended by agreement pursuant to condition 2 of the LLRS planning permission.

1.1.227 Assuming that such an amendment to the LLRS planning permission is approved by CBC, the Applicant is proposing to remove the "permitted preliminary works" from the draft DCO. However, until the amendment is approved, it is necessary for the "permitted preliminary works" to remain in the draft DCO to ensure that the Proposed Development can be constructed without delay.

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?

1.1.228 As stated in response to written question 1.11.3, if the amendment to the LLRS planning permission (reference number BC/CM/2000/8) is approved by CBC, the Applicant is proposing to remove the "permitted preliminary works" from the draft DCO.

1.1.229 Until such amendment is made, the Applicant considers the exclusion of such works from the definition of 'commencement' to be necessary for the reasons set out below.

1.1.230 As set out in paragraph 16 of the Explanatory Memorandum (Revision 1) submitted for Deadline 2, Article 2 of the draft DCO defines 'commencement' to exclude surveys, site investigations, temporary fencing and site notices and a category of works defined as the 'permitted preliminary works' (being the carrying out of the low level restoration scheme drainage works).

1.1.231 The definition of 'low level restoration scheme drainage works' refers to a drainage channel of about 375m in length along the southern margin of the limit of deviation for numbered work 1D and forming part of numbered work 1D(e), as set out on Figure 4 of the Indicative Site Layout Plans [APP-007].

1.1.232 A drainage channel has already been consented pursuant to LLRS planning permission. However, the proposed location for this channel needs to be altered to enable the construction of the Proposed Development.

1.1.233 Given that the drainage channel has already been consented under the LLRS planning permission and given that the revised location for the drainage channel shown on Figure 4 is not materially different to that proposed under the LLRS planning permission (as recognised by CBC who have indicated that it would be minded to approve an amendment to the

approved plans which can be amended by agreement pursuant to condition 2 of the LLRS planning permission), the Applicant considers it appropriate to allow for the early completion of this work (without triggering the requirements set out in Schedule 2 of the draft Order).

1.1.234 This will prevent a situation where the drainage channel is constructed pursuant to the LLRS planning permission which then needs to be moved by the Applicant.

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.

1.1.235 The Order limits include parts of Green Lane and Houghton Lane. These areas are included within the Order limits so that the street powers contained Articles 8 to 15 of the draft DCO apply to this land.

1.1.236 However, no compulsory acquisition or temporary use powers are being sought over this land so the areas do not form part of the Order land (as shown on the Land Plans [APP-009].

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 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.

1.1.237 The Applicant's position is that the current definition of undertaker is correct. Where the term undertaker is used in the draft Order, the term means Millbrook Power Limited except where another person has the benefit of the Order pursuant to Article 6 (i.e. "undertaker" can mean National Grid in respect of numbered works 3A, 5, 6 and 7).

1.1.238 However, the Applicant is happy to include the following alternative wording (which achieves the same objective) and this wording has been added to the draft DCO (Revision 1) submitted at Deadline 2:

1.1.239 Article 2:

1.1.240 "undertaker" means

1.1.241 (a) in relation to the authorised development, Millbrook Power Limited; and

1.1.242 (b) in relation to numbered works 3A, 5, 6 and 7, Millbrook Power Limited and National Grid.

1.1.243 In respect of Article 7, the Applicant does not consider that it is appropriate or necessary to name specific undertakers. The authorised development will be a commercial asset and Millbrook Power Limited is free to transfer the authorised development (and therefore the benefit of the order) to any other person provided that it complies with Article 7.

1.1.244 If a transfer of benefit takes place, the name of the transferee, and therefore the "undertaker" once the transfer has taken place, will be specified in the notice sent to the Secretary of State in accordance with Article 7(6). Pursuant to Article 7(2), the term "undertaker" would then include references to the transferee or the lessee.

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.

1.1.245 As set out in paragraph 33 of the Explanatory Memorandum (Revision 1) submitted for Deadline 2, in order to comply with the requirements it may be necessary to undertake surveys on land outside of the order limits. For example, the locations specified in the written noise scheme for monitoring noise may be outside of the order limits. The Applicant will always try to obtain voluntary access to land to carry out surveys. However, if access to such land is refused, a statutory power is required to prevent the Applicant from being in breach of any of the requirements in Schedule 2 of the draft DCO which constitutes an offence pursuant to s161 of the PA 2008.

1.1.246 This wording is included in the model provisions and has precedent in the Progress Power (Gas Fired Power Station) Order 2015, the Meaford Gas Fired Generating Station Order 2016, and the Wrexham Gas Fired Generating Station Order 2017.

1.1.247 As set out in paragraph 33 of the Explanatory Memorandum (Revision 1) submitted for Deadline 2, sub-paragraph (7) of Article 17 (authority to survey and investigate land) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. The use of section 13 of the 1965 Act is justified so that a warrant can be obtained to ensure access in the event that the landowner prevents access for surveys. This is needed to ensure that the Applicant can comply with the requirements, as explained above.

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.

1.1.248 As noted on Document ref 2.5 drawing no J0008128-101 and explained in paragraph 1.3.2 of the Statement of Reasons ([APP-014], the intention is for the access road to connect into any road that may be constructed by Covanta pursuant to numbered work 5A of the Rookery South (Resource Recovery Facility) Order 2011 (the Rookery South DCO). The size of plot 4_PGP reflects the limits of deviation on the Works Plans [APP-010] for Work No. 2 which is consistent with the limits of deviation for the access road shown on the works plan referred to in the Rookery South DCO.

1.1.249 As the Applicant will need to connect to the end of the access road used for the Rookery RRF Project, and in light of the fact that the location of such road is not specified in the Rookery South DCO, there is a need for the Applicant to maintain flexibility until such time as the location of the access road for the Rookery RRF Project is constructed and completed with no ability for the road to be moved. Whilst Covanta has submitted drawings to CBC in order to discharge its requirements, these drawings could be amended prior to construction of the access road.

1.1.250 In the unlikely event that the Applicant builds the access road, the proposed protective provisions at Part 6 of Schedule 11 (in the draft DCO (Revision 1) submitted for Deadline 2) require the Applicant to seek approval from Covanta before submitting details of the location of Work No 2 to the relevant planning authority.

1.1.251 Therefore, the limits of deviation and the protective provisions are designed to ensure that should the Applicant construct the access road (i.e. before Covanta), that the position of that access road matches with the intention of Covanta.

1.1.252 For the reasons set out in the Statement of Reasons [APP-014], the Applicant considers that the tests set out in section 122 of the PA 2008 have been satisfied.

1.1.253 Until such time as the access road has been constructed and completed with no ability for the road to be moved, the Applicant needs to seek compulsory acquisition powers over all of the land within plot 4_PGP to ensure that the Proposed Development, which is a nationally significant infrastructure project, can be constructed without impediment. However, rights of access will only be sought over the minimum amount of land necessary to access the Proposed Development.

1.1.254 There is therefore a compelling case in the public interest for the whole of plot 4_PGP to be included in the Order land.

1.1.255 The Applicant will keep monitoring the situation and should the access road be constructed and completed with no ability for the road to be moved, then the Applicant may be in a position to reduce the area marked as 4_PGP over which compulsory rights are sought.

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?

1.1.256 Sub-paragraph (13) of Article 28 (temporary use of land for carrying out the authorised development) and sub-paragraph (12) of Article 29 (temporary use of land for maintaining the authorised development) have been added to the draft DCO (Revision 1) submitted for Deadline 2. These provisions dis-apply the provisions of the Neighbourhood Planning Act 2017 that relate to temporary possession.

1.1.257 The Applicant's rationale for this is that the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been made (or even consulted on). The Applicant is of the view that it is not currently possible to understand or reflect accurately the temporary possession provisions as intended by Government in respect of DCOs. As such, it is considered appropriate to apply the 'tried and tested' temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date.

1.1.258 This approach has also been taken in the draft DCOs submitted in respect of the applications for the Silvertown Tunnel, Eggborough CCGT and Tilbury 2.

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?

1.1.259 The land (including rights over land) belonging to statutory undertakers is set out in the Book of Reference [APP-016]. However, in order to be able to construct the authorised development without impediment the powers in Article 30 must apply to both existing and any future land (including rights over land) belonging to statutory undertakers. The Applicant does not therefore consider it appropriate to restrict the powers in Article 30 to the

existing land (including rights over land) identified in the Book of Reference [APP-016]. This is consistent with the approach taken in the Wrexham Gas Fired Generating Station Order 2017.

1.1.260 It should be noted that the exercise of the powers in Article 30 is subject to the protections afforded by the protective provisions in Schedule 10.

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.

1.1.261 The Applicant refers to the baseline ecological assessment within the ES (section 8.6 [APP-033]) which did not identify any important hedgerows within the Order limits.

1.12.6	Applicant	Please explain the purpose of and necessity for Articles 34, 35 and 36 in the context of the Proposed Development.

1.1.262 The Applicant has deleted Article 34 (Railway undertakings) in the version of the draft DCO (Revision 1) submitted for Deadline 2.

1.1.263 As set out in paragraph 50 of the Explanatory Memorandum (Revision 1) submitted for Deadline 2, Article 34 (Application of landlord and tenant law) of the draft DCO (Revision 1) submitted for Deadline 2 is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development in the event that a lease is entered into in respect of any land required for the authorised development.

1.1.264 As set out in paragraph 51 of the Explanatory Memorandum (Revision 1) submitted for Deadline 2, Article 35 (Cases in which land is to be treated as not being operational land) of the draft DCO (Revision 1) submitted for Deadline 2 is a model provision which has the effect of ensuring that the land on which the authorised development is constructed is not excluded from being "operational land" under the Town and Country Planning Act 1990 by the effect of section 264 of that Act. This provision is required to ensure the DCO falls within the definition of "specific planning permission" under section 264(5) and also as some elements of the authorised development will be owned and operated by National Grid in its capacity as a statutory undertaker. A similar provision has been included in other made Orders for gas fired generating stations, including the Progress Power (Gas Fired Power

Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

1.12.7	Applicant	Please update Article 37 to take into account the repeal of s65 of the Control of Pollution Act 1974.

1.1.265 The draft DCO (Revision 1) submitted for Deadline 2 has been amended to take into account the repeal of s65 of the Control of Pollution Act 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 lex specialis 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.

1.1.266 The Applicant refers to the legal opinion from Michael Humphries QC dated 11 April 2018 included as Appendix H to this document.

1.1.267 Whilst it is the Applicant's case that the protective provisions in Schedule 11 of the draft DCO are being promoted as 'modifications' of the 'statutory provisions' in the RRF DCO under s.120(5)(a), in the event that the Secretary of State disagrees, the Applicant has set out why it is necessary or expedient for those protective provisions to be included in the RRF DCO as "amendments" to the 'statutory provisions' in the RRF DCO under s.120(5)(b). The Applicant has submitted a revised Explanatory Memorandum at Deadline 2 setting out why it would be "necessary" or "expedient" to make the amendments (see paragraph 86 of the Explanatory Memorandum (Revision 1)), but in summary:

- The amendments are necessary to ensure that the authorised development (which is a NSIP) can be constructed, used and maintained without impediment;
- If the Rookery South (Resource Recovery Facility) Order 2011 is not regulated, then the Order land would be sterilised;

- There is no overlap between the generating station and the waste recovery facility (Work Nos. 1 and 2) in the Rookery South (Resource Recovery Facility) Order 2011 and the generating equipment and substation (Work Nos. 1A, 1B, 1C, 1D and 5) in the Order;
- The restrictions on the use of the statutory powers in the Rookery South (Resource Recovery Facility) Order 2011 proposed by Schedule 11 will not apply to the access road or the land required for the NSIP authorised by the Rookery South (Resource Recovery Facility) Order 2011;
- It is unclear from a review of the Rookery South (Resource Recovery Facility) Order 2011 precisely why the powers that MPL is seeking to regulate under proposed new paragraph 25 of Schedule 7 of the Rookery South (Resource Recovery Facility) Order 2011 are required by Covanta over the Millbrook Order land;
- The powers have not been removed, rather the exercise of the powers requires MPL's consent where it effects land required for the authorised development and such consent is not to be unreasonably withheld; and
- An interface agreement will not automatically bind successors to the Order or the Rookery South (Resource Recovery Facility) Order 2011. An interface agreement does not therefore provide sufficient protection to ensure that the authorised development can be constructed, used and maintained without impediment.

1.1.268 In respect of the submissions from Covanta on the use of s120 at [AS-008] and [AS-009], please refer to the legal opinion from Michael Humphries QC dated April 2018 included as Appendix H to this document.

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.

1.1.269 Article 7 of the RRF DCO permits the transfer of the benefit of all or part of the RRF DCO to a third party. Whilst any transferee is automatically bound by the restrictions, liabilities and obligations set out in the RRF Order, the transferee is not automatically bound by any obligations contain in a private interface agreement. Therefore, with no privity of contract binding the transferee, any private interface agreement that the Applicant enters into with

Covanta would not be enforceable in respect of the exercise of the powers in the RRF DCO by the transferee. This would be unacceptable.

1.1.270 Within this context, the Applicant needs to ensure that there is no potential for the use of the broad statutory powers contained in the RRF DCO to hinder or prevent the Applicant from constructing and/or operating the Project.

1.1.271 The RRF DCO was the first development consent order confirmed under the PA 2008 regime and the powers it granted extend over a wider area than is required to construct the authorised development itself. This is an important point to recognise. Whilst it is accepted that the Rookery Resource Facility is a NSIP and already has consent, that does not mean that the RRF DCO cannot be subject to amendment. Statutory provisions are amended as and when circumstances change. In this case, the RRF DCO granted various powers over an excessively large area of land, wider than that required for the authorised development itself. Covanta has acknowledged in its relevant representation [RR-015] that "There is, however, no overlap between the generating station and waste recovery facility (Work Nos. 1 and 2) in the Rookery South Order and the generating equipment and substation (Work Nos. 1A, 1B, 1C, 1D and 5) in the Draft DCO" and "the works proposed in the Draft DCO can be constructed and operated without causing any material adverse impacts to development authorised by the Rookery South Order".

1.1.272 If the RRF DCO is not regulated, then the Millbrook Order Land would be sterilised, preventing not only the Project but also any other potential NSIP or other development from being constructed on the land.

1.1.273 It is unclear from a review of the RRF DCO precisely why the powers that the Applicant is seeking to regulate under proposed new paragraph 25 of Schedule 7 of the RRF DCO (contained in paragraph 3 of Schedule 11 of the draft DCO) are required by Covanta over the Millbrook Order land (as defined in proposed new paragraph 23 of Schedule 7 to the RRF DCO (contained in paragraph 3 of Schedule 11 of the draft DCO) – note, this definition excludes the Millbrook access road land (being plots 4_PGP, 5_PGP, 5A_PGP, 6 _PGP and 7_PGP on the land plans)). Indeed, it would appear that Covanta's representative at the DCO Issue Specific Hearing held on 13 March 2018 himself did not know.

1.1.274 In any event, even if there is a need, that need cannot be for the generating facility itself, rather it would be most likely for mitigation works, such as landscaping. Whatever the "need" is, the regulation of the powers listed in the proposed new paragraph 25 of Schedule 7 of the RRF DCO would not impact upon the construction and operation of the Rookery Facility.

1.1.275 Accordingly, the Applicant considers that it is more appropriate to have 'protective provisions' to protect it from the exercise of the powers in the RRF DCO (except with the consent of the Applicant) rather than simply a private contractual arrangement. Given the absence of need for the RRF DCO powers over the Millbrook Order land (as defined in Schedule 11 to the draft

DCO), there is no justification to keep those powers unfettered and potentially hinder another NSIP. Given their statutory nature, the only way to ensure that there is no hindrance (especially in terms of future funding) is by regulating those powers on the face of the RRF DCO. The question of "certainty" is covered in the Applicant's response to written question 1.12.10.

1.1.276 In addition to the statutory overlap that can only be satisfactorily resolved through amending the RRF DCO, the Applicant is in discussions with Covanta in order to explore ways that any practical conflict may be managed with a view to agreeing solutions to resolve any difficulties arising from overlap between the two projects. The Applicant last met with Covanta on 11 January 2018 and will seek to hold further meetings during the course of the Examination. The ExA will be kept up to date with the status of any further discussions.

1.1.277 One difficulty in relation to entering in to an interface agreement between the parties is the covenant strength of Covanta; currently their land interest is simply a licence thus it does not have a land interest through which an agreement could be secured against title.

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

1.1.278 An interface agreement will not automatically bind successors to the draft DCO or the RRF DCO. The transfer of benefit provisions in the RRF DCO can be used to transfer the whole or part of the benefit of the RRF DCO irrespective of whether there is a contractual restriction in an interface agreement preventing or restricting such a transfer. An interface agreement does not, therefore, provide sufficient protection to ensure that the draft DCO can be constructed, used and maintained without impediment.

1.1.279 Additionally, if either the Applicant or Covanta became insolvent and the benefit of either the draft DCO or the RRF DCO was transferred to a third party, the new undertaker would not automatically be bound by the provisions of the interface agreement.

1.1.280 The Applicant therefore strongly considers that an interface agreement alone is not sufficient, given there would be no certainty that the contractual arrangements regulating the statutory provisions of the RRF DCO over the Millbrook Order Land (as defined in proposed new paragraph 23 of Schedule 7 to the RRF DCO (contained in paragraph 3 of Schedule 11 of the draft DCO)) would be appropriately secured and binding. This would be an unacceptable position for the Applicant, and one that could hinder and impede the Project. Given there is simply no justification for the RRF statutory powers to remain unfettered (especially as Covanta has acknowledged that "the works proposed in the Draft DCO can be constructed and operated without causing any material adverse impacts to development

authorised by the Rookery South Order") and for the Millbrook Order Land to effectively be sterilised, the RRF DCO should be amended in the manner proposed in Schedule 11 of the draft DCO to enable both NSIPs to proceed.

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?

1.1.281 There is nothing either express or implied in the wording of s.120 PA 2008 to state that the agreement of Covanta would be required in order to use s.120 to modify the RRF DCO. The RRF DCO is an Order made by the Secretary of State under which Covanta as undertaker has the benefit of the provisions of the Order. The Secretary of State has the power, by virtue of s120(5), to modify or amend the RRF DCO. Covanta has no veto on that power. We refer to the legal opinion from Michael Humphries QC dated 11 April 2018 included as Appendix H to this document.

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.

1.1.282 The Applicant has updated Article 39 (formerly Article 40) of the draft DCO (Revision 1) submitted for Deadline 2 to include all of the documents and plans referred to in the draft DCO.

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 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.

1.1.283 The Applicant has included an equivalent article (Article 43) in the version of the draft DCO (Revision 1) submitted for Deadline 2.

1.1.284 The Applicant has based the article on Article 39 of the Wrexham Gas Fired Generating Station Order 2017.

11.3 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?

1.1.285 Requirement 18 of the draft DCO provides for the decommissioning of numbered work 1.

1.1.286 As noted in the Environmental Statement at paragraph 3.5.53 [APP-033] the Electrical Connection and parts of the Gas Connection will be owned and operated by NGET and NGG respectively. In accordance with its statutory duties, NGET and NGG may use these assets in the future as part of its wider network. Some elements of the Gas Connection and Electrical Connection (such as the Pipeline and underground electrical cables) may be left in situ as this is likely to cause less environmental effects than removal.

1.1.287 The Applicant refers to its response to written questions 1.0.17 and 1.0.18.

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?

1.1.288 Requirement 19 relates to amendments to approved details and is based on a model provision. Similar wording has been included in the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

1.1.289 The purpose of this wording is to enable very minor changes to be made if agreed by the relevant planning authority. For example, moving a work area by a few centimetres or increasing the permitted parameters by a very small amount.

1.1.290 It is for the Applicant to demonstrate to the relevant planning authority that the amendment to the details set out in requirement 2 is so minor that requirement 19 can be used. If the relevant planning authority is not satisfied or there is any doubt then an application for a non material amendment would need to be made. Control is, therefore, with the planning authority.

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.

1.1.291 The Applicant considers that the phase "unlikely to" is appropriate in the context of environmental effects given the test for environmental assessment is whether the development is "likely to" give rise to environmental effects. The language in requirement 19 is, therefore, following the legislative language.

1.1.292 This wording was included in requirement 15 of the Wrexham Gas Fired Generating Station Order 2017.

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.

1.1.293 The overlapping nature of the LLRS planning permission and the Applicant's application for development consent means that there is a need for such a requirement.

1.1.294 Requirement 20 (now Article 44 of the draft DCO (Revision 1) submitted for Deadline 2) states that in complying with an article under the Order or a requirement pursuant to Schedule 2, the undertaker shall not be in breach of any condition contained in the LLRS planning permission.

1.1.295 The requirement /Article ensures that the Applicant does not inadvertently find itself having breached the LLRS planning permission through compliance with the Requirements of the DCO which have been approved by the relevant planning authority.

1.1.296 This gives the Applicant certainty in discharging the requirements. The purpose of requirement 20 / Article 44 is to make it clear on the face of the draft DCO that, given the overlapping nature of the LLRS planning permission and the draft DCO, any works carried out under the subsequent draft DCO would not place the undertaker in breach of the LLRS planning permission. Its purpose also provides a useful record for the planning authority in terms of future monitoring where the land in question is subject to overlapping consents. The requirement / Article confirms that the subsequent consent, the draft DCO, takes precedence (which is logical given the subsequent approvals given in the draft DCO and under any requirements).

1.1.297 An example of an LLRS condition to which such provision could relate is conditions 24-26 which pertain to landscaping. There is a possibility, for example, that landscaping and restoration under the Millbrook DCO could conflict with this depending on conflicts within the construction timelines.

1.1.298 The Applicant has discussed the proposed requirement with CBC and CBC has agreed to it in principle (subject to it being included in the main body of the DCO as opposed to in the Schedule 2). This change has been made to the the draft DCO (Revision 1) submitted for Deadline 2.

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.

1.1.299 The Applicant is not aware of any precedents that have the same effect as requirement 20.

1.1.300 The Applicant refers to its response to written question 1.14.6 in respect of the ability to include a defence to offences within a DCO.

1.1.301 As set out in the response to written question 1.13.4, the wording of requirement 20 is now included as an Article in the draft DCO (Revision 1) submitted for Deadline 2.

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.

1.1.302 The protective provisions for the benefit of National Grid (Part 3 of Schedule 10) are agreed and a side agreement is in an agreed form and being circulated for signature.

1.1.303 The protective provisions for the benefit of EPN (Part 4 of Schedule 10) are agreed and a side agreement has been entered into.

1.1.304 The protective provisions for the benefit of Anglian Water (Part 5 of Schedule 10) as included in the draft DCO (Revision 1) submitted for Deadline 2 are agreed.

1.1.305 The protective provisions for the benefit of Covanta (Part 6 of Schedule 10) are not yet agreed and discussions between Covanta and the Applicant are ongoing.

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 covering schedule 10 part 6 and schedule 11 together with a plan showing the overlap of the respective Order lands.

1.1.306 The Applicant understands that Covanta's position is that it does not agree to the inclusion of Schedule 11 of the draft DCO. Discussions between Covanta and the Applicant are ongoing.

1.1.307 A plan showing the overlap between the respective Order lands is set out in Annex 2 of Appendix 5 of the Planning Statement [APP-056].

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.

1.1.308 The definition of Millbrook Order land in Schedule 11 of the draft DCO has been amended in the version submitted for Deadline 2. This removes the small section of Green Lane to the north of the access road.

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.

1.1.309 The powers referred to in proposed new paragraph 25 of Schedule 7 to the RRF DCO contained in paragraph 3 of Schedule 11 to the draft DCO) can be exercised over a wider area of land than the land defined as the Order limits in the RRF DCO.

1.1.310 For example, the powers in Article 16 (Authority to survey and investigate land) can be exercised over any land which may be affected by the authorised development. In theory this could be exercised over all of the Millbrook Order land.

1.1.311 It is therefore necessary to include all of the Order land to the south of the access road in the scope of the protective provisions.

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?

1.1.312 The Applicant has included a dispute resolution process in Schedule 11 of the draft DCO (Revision 1) submitted at Deadline 2

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?

1.1.313 The purpose of paragraphs 27 and 28 of Schedule 11 is for the benefit of Covanta as opposed to for the benefit of the Applicant.

1.1.314 The Applicant considers that it is appropriate for the protective provisions in Schedule 11 to contain provisions such as those in paragraphs 27 and 28, deeming Covanta not to be in breach of any requirements of the RRF DCO in specified circumstances and providing a defence to criminal proceedings under s.161 of the Planning Act 2008. The provisions ensure that Covanta is not put in difficulties as a result of what would otherwise be technical breaches of its requirements, through no fault of its own.

1.1.315 For example, paragraph 25(i) prevents Covanta from exercising its power to take temporary possession for maintenance of the Millbrook Order Land without the Applicant's consent. Requirement 9(2) requires Covanta to replace any seriously damaged or diseased tree or shrub in the first available planting season. In the event that construction works for the Project means that the Applicant cannot give its consent to allow Covanta access to replace a tree, then Covanta would have automatically breached its requirement. Breach of a requirement is automatically an offence regardless of whether the relevant planning authority decides to take enforcement action.

1.1.316 The provisions serve related but separate purposes: paragraph 27 mitigates the risk of any non-criminal proceedings (for example, for injunctive relief) being brought in respect of any breach of the requirements, whilst paragraph 28 provides a defence to criminal proceedings. As such, both are necessary.

1.1.317 Whilst there are no precedent provisions in development consent orders modifying earlier instruments (because no order has yet sought to modify an earlier instrument), provisions either deeming a person to have authority or to have complied with a particular requirements placed upon them, or dealing with defences to offences, are commonplace in law more generally. Examples in statute include s.158 (1) & (2) of the Planning Act 2008 and s.48(2) of the Water Resources Act 1991.

1.1.318 Closely comparable to the provision proposed in this case is the defence set out in Regulation 40(1) of the Environmental Permitting Regulations 2016. It is noted that this provision is contained in a statutory instrument rather than primary legislation.

Appendix A Plan showing short access road

100.0m 0.0m 100.0m 200.0m 300.0m 400.0m 500.0m 600.0m 700.0m 800.0m 900.0m 1000.0m

Scale = 1 : 5,000

GREEN LANE

STEWARTBY

MARSTON VALLEY RAILWAY LINE

ROOKERY PIT NORTH

ROOKERY PIT SOUTH

SHORT ACCESS ROAD

POINT AT WHICH THE COVANTA RRF PROJECT ACCESS ROAD IS EXPECTED TO TERMINATE

Stewartby Lake

Marston Vale Millennium Country Park

Lagoon Corner

Playing Field

LEGEND:-

- ORDER LIMITS
- INDICATIVE LOCATION OF LLRS PERMITTED FOOTPATH (CONSTRUCTED BY OTHERS)
- 2m FOOTWAY
- SHORT ACCESS ROAD

NOTES:-

1. ALL PROPOSALS ARE SUBJECT TO DETAILED DESIGN
2. VERTICAL ALIGNMENT SUBJECT TO DETAILED DESIGN

Mark	Revision	Date	Drawn	Chkd	Appd
A	SHORT ACCESS ROAD IDENTIFIED, COVANTA TERMINATION IDENTIFIED	27.03.18	ST	JPH	JPH

SCALING NOTE: Do not scale from this drawing. If in doubt, ask.

UTILITIES NOTE: The position of any existing public or private sewers, utility services, plant or apparatus shown on this drawing is believed to be correct, but no warranty to this is expressed or implied. Other such plant or apparatus may also be present but not shown. The Contractor is therefore advised to undertake their own investigation where the presence of any existing sewers, services, plant or apparatus may affect their operations.

Drawing Issue Status

INDICATIVE

INDICATIVE LAYOUT OF THE ACCESS ROAD

Client

Millbrook Power
A Drax Group company

Date of 1st Issue	Designed	Drawn
26.09.17	ST	ST
A3 Scale	Checked	Approved
1:5000	EM	EM
Drawing Number		Revision
FIGURE 3		A

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Appendix B Written summary of oral case made at the hearing 11th December 2014 by National Grid Electricity Transmission plc (NGET)

“1.2 Suffolk County Council (“SCC”) asserts that the substation, as associated development, is only lawful to the extent it operates for the exclusive connection of the PGP, that there should be controls ensuring this in the DCO and that NGET should be restrained from connecting other customers to this substation once it is part of the National Electricity Transmission System (“NETS”).

1.3 To that end, SCC is seeking the imposition of three-fold controls in the DCO:

1.3.1 Amendments to Article 6 to confer benefit of Work 5 on NGET only insofar as the substation operates for the PGP;

1.3.2 Widening of requirement 21 to include decommissioning of the substation;

1.3.3 Requirement 22 preventing the commissioning of the substation until the PGP has commenced construction.

1.4 It was acknowledged by Mr Wilkes from SCC in his oral submissions on 11 December 2014 that SCC are seeking these controls to ensure that the substation is owned and operated by NGET purely for the benefit of PGP.

1.5 The legal of grounds of NGET’s resistance to each of these measures are set out in paragraphs 1.7 to 1.28 below.

1.6 Generally-speaking, this position is misconceived, has no reasonable justification and fails to take into account the following:

1.6.1 The recognition of need for new electricity network infrastructure in EN-1 and in particular that “It is important to note that new electricity network infrastructure projects, which will add to the reliability of the national energy supply, provide crucial national benefits, which are shared by all users of the system.” (3.7.3)

1.6.2 “The [IPC] should consider that the need for any given proposed new connection or reinforcement has been demonstrated if it represents an efficient and economical means of connecting a new generating station to the transmission or distribution network...” (EN-1 paragraph 3.7.10)

1.6.3 The express recognition in EN-1 that National Grid own and manage the transmission network in England and Wales (4.9.1) of which the substation will form part;

1.6.4 The advice in EN-1 that wherever possible the related infrastructure for a project should be included in the same application for assessment of cumulative impacts, however it is not mandatory and it is for a developer to decide what connection infrastructure to

include and how it will demonstrate that there is no impediment to grid connection (4.9.2);

1.6.5 The acknowledgement in EN-1 that grid connection works may be "undertaken by different legal entities subject to different commercial and regulatory frameworks (for example grid companies operate within OFGEM controls)." (4.9.1)

1.6.6 "The [IPC] should also take into account that National Grid, as the owner of the electricity transmission system in England and Wales, as well as Distribution Network Operators (DNOs), are required under section 9 of the Electricity Act 1989 to bring forward efficient and economical proposals in terms of network design, taking into account current and reasonably anticipated future generation demand. National Grid is also required to facilitate competition in the supply and generation of electricity and so has a statutory duty to provide a connection whenever or wherever one is required." (EN-5, paragraph 2.3.5);

1.6.7 SCC's position also ignores the fact that any future projects in the vicinity seeking a connection to the NETS, or works to expand the capacity of the substation, would themselves be subject to assessment and regulation via the planning regime."

Specifically on decommissioning form the same response

"1.17 SCC is seeking the amendment of requirement 21 to include the decommissioning of the substation at the same time as decommissioning of the PGP (Work No 1).

1.18 As previously submitted, NGET's assets are designed with a 40-year lifespan to ensure that maximum efficiency and economy can be gained from that investment.

1.19 Further, condition C8 of its transmission licence under the Electricity Act 1989 requires NGET to offer a connection to any customer seeking connection.
1.20 Therefore it is entirely possible, given the immediate need for new electricity infrastructure, that other customers may be connected to the substation at the time the PGP is decommissioned.

1.21 It is outside the power of the DCO to impose such a condition, which would effectively require the disconnection of other users and the construction of entirely new infrastructure to connect those users to the NETS.

1.22 Such a requirement would therefore be unreasonable, impossible to enforce, unjustifiable and is clearly inconsistent with National Planning Policy, in particular those sections of EN-1 and EN-5 listed in paragraph 1.6 above"

Appendix C Protocol for IED Annex V 1500 Limited Hours Derogation July 2015

Version 5.1 Protocol for IED Annex V 1500 Limited Hours Derogation July 2015

INTRODUCTION

This paper describes a protocol for the application of the limited hours derogation (1500 hours per annum) in Part 1(2) of Annex V of the Industrial Emissions Directive (IED). This protocol applies in England and Wales.

1.0 WHAT IS THE 1500 LIMITED HOURS DEROGATION?

Part 1(2) of Annex V of the Industrial Emissions Directive (IED) states that combustion plants using solid or liquid fuels which were granted a permit before 27 November 2002 and which do not operate more than 1500 operating hours per year as a rolling average over a period of five years, may be subject to alternative emission limit values depending upon specific criteria. These values are set out in Annex V subject to the total rated thermal input of the plant. There is also a 500 hours derogation for gas fired plants which is explained in section 7.0 of this paper.

The IED states that the 1500 hours derogation, known as the Limited Hours Derogation (LHD), may be applied at a boiler or unit level rather than a stack level[1]. If applied to part of a combustion plant the applicable ELV is based on the total rated thermal input capacity of the entire plant and an operator is required to ensure that emissions will be monitored separately at each flue.

2.0 WHAT ARE THE RELEVANT EMISSION LIMIT VALUES?

Annex V sets out emission limit values (ELVs) for any existing plant using solid or liquid fuels that do not operate for more than 1500 hours per year as a rolling average over a period of five years:

Emission Limit Values	**Existing Plant (Part 1)***		
	SO_2	NO_x	Dust
Solid Fuels	800		20
Solid or liquid fuels (not exceeding 500MW)		450	20
Solid fuels (greater than 500MW)		450[+]	20
Liquid Fuels (not exceeding 300MW)	850		20
Liquid Fuels (greater than 300MW)	400		20

* this limited load derogation can be applied to an individual unit within a combustion plant of several units provided the individual flue can be monitored separately. It is only available to plants permitted before 27 Nov 2002 and operational before 27 Nov 2003 (SO_2).

[+] applies to plants granted a permit before 1 July 1987 (NO_x).

[1] at the level of one or more separate flues within a common stack

For gas turbines, the NO_x ELV specified in Annex V is 150 mg/m^3 when firing natural gas and 200 mg/m^3 when firing other gases or liquid fuels.

In addition, UK regulators have discretion to apply BAT based ELVs which might be more stringent than the ELVs set out in the IED. In order to minimise SO_2 emissions, for example, the EA have stated that they wish to set BAT ELVs which require the operation of existing post combustion abatement equipment such as FGD. Section 5.0 provides more information about BAT based ELVs.

3.0 WHEN CAN A PLANT ENTER THE LIMITED HOURS DEROGATION?

Operators can enter plant/units into LHD from 2016 under different circumstances. An operator can choose to enter this derogation from 2016 for one or more units. Alternatively an operator can enter plant/units into the LHD at the end of the period of the Transitional National Plan (TNP) (30 June 2020) or when they exit the TNP (if earlier). Defra confirmed in an annex to a letter dated 28 December 2011 that:

> *"A plant can take the Annex V 1,500 hours derogation upon completion of the TNP on 30 June 2020: it will be for the regulator to consider how the last sub-paragraph of paragraph 2 of Part 1 of Directive Annex V applies"*

This letter also explained that an operator could enter the LHD before the end of the TNP period (30 June 2020):

> *"A plant can leave the TNP at any time between 1 January 2016 and 30 June 2020 to be subject to Annex V 1500 hour derogations: it will be for the regulator to consider how the last sub-paragraph of paragraph 2 of Part 1 of Directive Annex V applies."*

But it is important to note that this letter explains that "*The whole of a plant must be subject to the TNP, so only a whole plant can leave*". Given that the TNP covers only whole plants, as defined by the "*common stack*", there is no scope for differentiation between units within a plant. It is not possible, therefore, for operators to run units under the TNP and the LHD at the same time. This was first explained by Defra in 2011 in the aforementioned letter which reads:

> "… *the TNP can cover only <u>whole</u>[2] large combustion plants[3] which were first permitted by the relevant environmental regulator[4] before 27 November 2002 or for which a permit application had been made by that date and which were put into operation within a year of that date"*

However, when a plant leaves the TNP, an operator can place one or more units into ELV compliance and one or more units into the LHD. Individual units within an LCP can opt for the 1500 hour derogation, but each must have a separate flue. If more than one unit within

[2] That is to say, not parts of a plant.
[3] As defined in Article 3(25) and within the scope set out in Article 28 of the Directive.
[4] The Environment Agency for plants in England and Wales, the Scottish Environment Protection Agency and the Northern Ireland Environment Agency.

an LCP opts for the derogation, then the 1500 hours applies to all the derogated units, so that they have an aggregated total of 1500 hours collectively, not 1500 hours each. Where the whole LCP opts for the LHD, the 1500 hours total applies to the whole LCP.

ELVs applicable to LHD plant are set out in Annex V. The LHD[5] is not available to combustion plants for which an Article 33 undertaking has been given (Limited Life Derogation Declaration). In other words, it is not possible for an operator to run under the LHD and the Limited Life Derogation (17 500 hours) at the same time.

4.0 HOW WILL THE ROLLING FIVE YEAR AVERAGE BE CALCULATED?

The derogation can apply to either the whole combustion plant or to individual units/boilers. If applied to an individual unit then the emissions from that unit must be measured separately. This is explained by Annex V Part 1(2) which reads:

> "*A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of five years, may be subject to the emission limit values set out in the preceding two paragraphs in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately."*

Prior to the end of the initial five year period, required to establish a rolling five year average, a unit cannot be operated for more than a total of 7500 hours. Further conditions apply and are set out below. The rolling five year averaging period starts on the date of entry into the derogation and ends on the date of exit from the derogation. Therefore a year refers to a 12 month period of operation, not a calendar year.

Once the five years have been established, the average is calculated on a rolling annual basis thereafter (i.e. a 12 month period's contribution falls off as another 12 month period's contribution is added). The LHD Plant/Unit may run for more than 1500 hours in a 12 month period but must not exceed the upper threshold of 7500 hours over a five year rolling average. A separate approach is needed in the case of plant exit from the LHD or plant closure, and this is discussed below.

In the initial years of operation under the LHD, there is a need to provide some flexibility in the number of hours that can be operated, as the market demand for lower output plants can vary substantially from year to year. To impose a strict pro-rata annual limit of 1500 hours per annum in each individual year of the LHD would not allow any flexibility to respond to market conditions with a demand for above average output from these plants, and would go significantly beyond the requirements of the IED. In addition, there can be significant seasonal fluctuations in market demand, both within a year and between years, which a strict approach cannot accommodate. This seasonal fluctuation was recognised in the regulation of the LCPD 2000 hours LHD, for example.

[5] The "1500 hours" derogation is set out in footnotes to the tabulated ELVs in Annex V. Under the "limited life" derogation, those ELVs do not apply

Version 5.1 Protocol for IED Annex V 1500 Limited Hours Derogation July 2015

Equally, it would not be reasonable to allow the entire 7500 hours allowed under the 5 year average to be used in any individual year. A balance is required that allows sufficient, but not excessive, flexibility. The approach set out in this protocol in the table below is considered to deliver an appropriate balance between the need for flexibility and the need to ensure that a plant is compliant with the LHD upon exit from the LHD. The cumulative total operating hours set out the table are derived from two guiding rules:-

- Operation in any individual year should not exceed 2250 hours.
- If operation has reached 2250 hours in one year, then the average operation across other years should not exceed 1650 hours.

If a plant exits the LHD prior to the completion of 5 years (either to close or operate in compliance with the IED ELV conditions) then the cumulative average operating hours must be less than 1500 hours per year. Operation for part of a year (12 months) will be assessed on a pro-rata basis. For example, if a plant exits the LHD after 18 months then the total number of operating hours must be less than 2250 hours, giving an average of 1500 hours per year over the 18 month period.

If a plant exits the LHD after 5 years have been completed, then the average across the preceding 5 years must be less than 1500 hours. Unless the plant has closed on the anniversary of entry to the LHD, a pro-rata assessment will be necessary. This will be managed by calculating the average operating hours across the preceding 60 months of operation.

Based on these principles the following table sets out the averaging arrangements for different durations of, and subsequent operation after, the LHD:

Application of LHD condition

Normal operation	
(a) Unit operates for 5 years and beyond	A unit cannot exceed 7500 hours over a 5 year period. A unit cannot exceed 2250 hours in any individual year. Limit on average operating hours in intervening years:- End of year 1 = 2250 End of year 2 = 2250+1650= 3900 End of Year 3 = 2250+(1650*2) = 5550 End of Year 4 + 2250+(1650*2) + 1500= 7050 End of year 5 = 7500 After 5 years, the earliest 12 months are replaced in the calculation when a further full 12 month period is completed. Starting point is date of entry into the derogation.

Version 5.1 Protocol for IED Annex V 1500 Limited Hours Derogation July 2015

Exit to ELVs or closure	
(b) Unit closes, or exits to ELV, before 5 year average is established	The cumulative average operating hours must be less than 1500 hours per year at the date of closure or exit, with the contribution from any part year period assessed on a pro-rata basis. The plant cannot close or exit until this condition has been met. *Example of closure or exit before 5 year average is established:* • *Plant enters LHD on 1st July 2018* • *Plant exits LHD on 30th September 2021, i.e. after 3 years and 3 months operation.* • *Average operating hours must be less than 1500 hours per annum pro-rata. This is equivalent to a total cumulative number of hours of [(3 x 1500 hours) +(3/12 X 1500 hours)] = 4875 hours.*
(c) Unit exits to closure after 5 years, part way through a year	60 months rolling average must not exceed 1500 hours.

5.0 PRINCIPLES FOR DETERMINING IED BAT BASED ELVS

The determination of BAT for plant or individual units entering the LHD is addressed separately.

6.0 WHAT MONITORING AND REPORTING MEASURES NEED TO BE PUT IN PLACE?

Article 30 (4) makes reference to the provision that Annex V ELVs may be applied to part of a combustion plant with a limited number of operating hours. Section 3.2 of the IED monitoring protocol[6] specifies that units in the LHD are treated as separate LCPs for monitoring and compliance purposes (including the determination of operating hours). Further details of monitoring and compliance are set out in the monitoring protocol and reference should be made to this document.

IED Article 72 (4) (b) requires the annual reporting of the number of operating hours for each unit subject to a LHD.

[6] Monitoring And Reporting Emissions from Utility Boilers and Gas Turbines for Compliance Purposes: A Guide to Current Best Practice for the Operators of Power Plant, JEP 2014 .

Appendix D Email sent from the Applicant to CBC on 3rd May 2017 and email response sent from CBC to the Applicant on 3rd May 2017

Chris Leach

From: Francesca Rowson
Sent: 22 March 2018 19:38
To: Francesca Rowson
Subject: MPL Cumulatives

From: Annabel Robinson [mailto:Annabel.Robinson@centralbedfordshire.gov.uk]
Sent: 03 May 2017 14:22
To: Nick Johnson <NJohnson@stagenergy.com>
Subject: RE: MPL Cumulatives

Hi Nick,

I do not think there are any other major new developments other than the ones you have already mentioned.

Warm Regards,

Annabel

Annabel Robinson (Gammell)
Senior Planning Officer
Development Management (West Area)
Regeneration and Business Directorate

Please note my normal working hours are 8.30 – 17.00 Monday, Wednesday and Thursday.

Central Bedfordshire Council Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire, SG17 5TQ
Direct Dial: 0300 300 4158 | Internal: 74158 | Email: annabel.robinson@centralbedfordshire.gov.uk

From: Nick Johnson [mailto:NJohnson@stagenergy.com]
Sent: 03 May 2017 11:43
To: Annabel Robinson
Subject: RE: MPL Cumulatives

Hi Annabel

I'm not sure if you gave me any feedback on the list of cumulative projects that we are going to include in our ES? You may have said something verbally but I cant find an email? Can you let me know if you there are any other projects that we should be taking into account?

Many thanks

Nick

From: Nick Johnson
Sent: 28 March 2017 13:26

To: Annabel Robinson <Annabel.Robinson@centralbedfordshire.gov.uk>
Subject: FW: MPL Cumulatives

Hi Annabel

Following our meeting last week, please find attached a brief meeting note, and also a list of the cumulative projects in the area which we shall be taking into consideration in our EIA. Please can you let me know if you have anything to add to the meeting note and or any comment on the list of cumulative projects – have we missed anything?

I will get the draft PPA to you shortly.

Best regards

Nick

Nick Johnson
Stag Energy
0131 550 3380
07712805912

From: Chris Leach [mailto:cleach@peterbrett.com]
Sent: 21 March 2017 18:22
To: Nick Johnson <NJohnson@stagenergy.com>
Subject: MPL Cumulatives

Nick,

Please see below and attached in case you want to present anything at your meeting tomorrow.

Kind regards,

Chris Leach
Associate
For and on behalf of Peter Brett Associates LLP - London Brewhouse Yard

t
m 07880242454
e cleach@peterbrett.com
w peterbrett.com

From: Jonathan Sebbage
Sent: 21 March 2017 17:28
To: Chris Leach <cleach@peterbrett.com>; Dermot Scanlon <dscanlon@peterbrett.com>; Sarah Chandler <slchandler@peterbrett.com>

Cc: Edward Buckingham <ebuckingham@peterbrett.com>; Rhona Mitchell <rmitchell@peterbrett.com>
Subject: RE: LLRS and Cumulative text

Chris,

See attached initial draft list of cumulative developments. This is very much a quick working draft list that needs to be reviewed and looked at further, but hopefully assists as a starting point for now.

Let me know if you have any queries.

Kind regards,

Jonathan Sebbage
Principal Planner
For and on behalf of Peter Brett Associates LLP - Reading

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w peterbrett.com

Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

Please consider the environment before printing this e-mail. Thank you

Appendix E Email sent from the Applicant to BBC on 3rd May 2017

Chris Leach

From: Nick Johnson
Sent: 03 May 2017 11:51
To: Alastair Wren; Paul Lennox
Subject: Millbrook Power - Cumulative projects to be considered in Environmental Statement
Attachments: MPL - Cumulative Developments March 17 - working draft.docx

Alastair, Paul,

Please find attached a list of projects which will be considered in the cumulative impact assessment of the ES for the MPL Project.

Please can you let me know if there is anything else that you feel we should be considering?

Many thanks

Nick
Nick Johnson
Stag Energy

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Edinburgh
EH1 3JD

Appendix F Annex 6 of the PPL's written summary of oral representations: CPO and Issue Specific Hearings, 9th, 10th and 11th December 2014

ANNEX 6

INFORMATION ON ALTERNATIVE SITES CONSIDERED BY THE APPLICANT FOR THE PROJECT

4.4 Paragraph 4.4.1 of NPS EN-1 confirms that “[f]rom a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option”.

4.5 Paragraph 4.4.2 of NPS EN-1 acknowledges that applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant’s choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility. The NPS notes, moreover, that in some circumstances there are specific legislative requirements, notably under the Habitats Directive, for the Secretary of State to consider alternatives.

4.6 Paragraph 4.4.3 of NPS EN-1 notes that "given the level and urgency of need for new energy infrastructure, the [Secretary of State] should, subject to any relevant legal requirements (e.g. under the Habitats Directive) which indicate otherwise, be guided by the following principles when deciding what weight should be given to alternatives:

4.6.1 the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner;…

4.6.2 alternative proposals which mean the necessary development could not proceed, for example because the alternative proposals are not commercially viable …, can be excluded on the grounds that they are not important and relevant to the [Secretary of State’s] decision…"

4.7 NPS EN-2, however, makes clear (para 2.2.1) that “it is for energy companies to decide which applications to bring forward and the government does not seek to direct applicants to particular sites for fossil fuel generation stations.”

4.8 Section 5 of the Environmental Statement (document reference 6.1) outlines the main alternatives considered. These are:

4.8.1 Strategic alternatives

(a) Alternative development sites

4.8.2 Local alternatives

(a) Alternative Power Generation Plant layouts and technologies

(b) Alternative gas connections

(c) Alternative electrical connection

4.9 The Local alternatives are addressed in section 5 of the Environmental Statement (document reference 6.1) and the Electrical Connection Siting Report (document reference 10.3).

4.10 Further information is provided below outlining the Applicant’s site selection process for the Project

4.11 **Key factors in determining site selection**

4.12 The following key factors are applied throughout the site selection process, but are principally brought into play once the number of sites has been distilled down into a manageable number of around 20.

4.13 Key factors considered during the site selection were broadly fourfold: **technical**, **environmental**, **economic**, and whether or not the proposal would **be in line with local planning policy.**

4.13.1 **Technical criteria:** To explain in more detail, two main factors were taken into consideration in relation to technical constraints: a site of up to 10 hectares (i.e. large enough to support a power generation plant of up to 299 MW and integral infrastructure), constraints in term of accessing gas and electricity connections e.g. topography / rail tracks.

4.13.2 **Environmental criteria:** From an environmental perspective, the site must have due regard to close sensitive receptors (to avoid unnecessary impacts from noise and visual disturbance), the current make up of the surrounding area (to limit impacts on the landscape character of the area), previous site uses and land quality (to avoid sterilisation of the best and most versatile agricultural land or mineral assets) and proximity to sensitive ecological habitats.

4.13.3 **Economic criteria:** Proximity of a site to appropriate gas and electrical connection points. A connection opportunities buffer for connection to gas and electrical infrastructure was set at 5 km in order to reduce the cost and environmental impact of the project and develop a cost effective solution to the UK consumer. Technology choice (i.e. Combined Cycle Gas Turbine, Combined Heat and Power, Reciprocating Gas Engines and Simple Cycle Gas Turbine) for the Power Generation Plant when running at up to 1500 hrs per year was also a factor.

4.13.4 **Local planning policy**: The Applicant was keen to ensure that the Project would broadly be in accordance with local planning policies, so a high level assessment was undertaken during the site selection process.

4.14 **Site selection process**

4.15 In 2010 the Applicant began looking for sites to locate 299 MW Power Generation Plants. (It should be noted that at this stage the Applicant had not yet identified the technology of choice for the gas fired power station – discussed in section 5 of the Environmental Statement (document reference 6.1)). In 2012 the Applicant identified 4 sites to take forward to application, including Eye Airfield.

4.16 The process for identifying those sites was as follows. The following steps were undertaken to identify appropriate sites:

4.16.1 **Stage 1 - Identification of a database of sites**

4.16.2 A database of brownfield sites throughout England was identified from the National Land Use Database (of Previously Developed Land).

4.16.3 This yielded more than 24,000 sites of varying size and shape.

4.16.4 **Stage 2 – Further identification of sites and strategic decision to locate sites south of the Humber**

4.16.5 The Applicant made a strategic decision, driven by National Grid's transmission use of system (TNUoS) charging zones, which incentivises

developers of electrical generation to locate as close as possible to large sources of demand, to locate the Project to the south of the Humber.

4.16.6 A land agent was employed to identify sites and subsequently help with land negotiations.

4.16.7 In addition to the employment of the land agent, a “call for sites” was issued to a variety of estate agents and land agents.

4.16.8 This resulted in a reduction of potential sites to some 15,000

4.16.9 **Stage 3 – Application of high level screening criteria and creation of a Geographic Information System (GIS) database**

4.16.10 A GIS database, which mapped the 400 kV overhead lines and cables, 132 kV overhead lines, and the national and local gas distribution networks throughout England and Wales was used

4.16.11 Sites with an area of 10 ha and greater were then plotted on to the GIS

4.16.12 A buffer of 5 km was then applied to the electrical connections and gas pipelines. Where these buffers crossed and sites of the relevant size met, these sites were taken forward to a more fine-grained assessment.

4.16.13 Stage 3 resulted in just over 600 sites being identified.

(a) Of the ~ 600 sites considered during the site selection process, 28 separate sites (including the former Eye Airfield) were identified between Ipswich and Norwich. Sites in other parts of the country have led to another three DCO projects being progressed by sister companies of Progress Power Limited.

4.16.14 **Stage 4 – Fine grained assessment and robust application of the key factors for assessment as outlined at the beginning of this note.**

4.16.15 A more fine-grained assessment was then undertaken of the 600 sites referred to above including:

(a) Site visits

(b) Meetings with local authorities to understand if this type of project would meet local planning policies / would be supported in principle

(i) It was typical that clusters of sites (up to five or six) were located within a particular local authority.

(c) Grid connection studies

(d) High level environmental impact assessments

(i) Habitat review

(ii) Flood Risk

(e) Meetings with National Grid, Distribution Network Operators and gas distribution network operators

(f) Discussions with land owners to determine if land was for sale

4.16.16 A number of sites were rejected for the following reasons (this is not an exhaustive list):

(a) Sites access concerns

(b) Close proximity to residential receptors

(c) Obvious engineering difficulties with gas and electricity connections

(d) Sites already identified for housing development

(e) Lack of grid capacity in the distribution network

(f) Sites too close to European Sites (e.g. SAC and SSSI)

(g) Sites in a Flood Risk Zone

(h) Advice from the local planning officers

(i) Land was not for sale, though it should be noted that not all landowners were available for discussion. Promising sites where the landowner could not be contacted were left as potential sites and progressed at Stage 5.

4.16.17 The more fine-grained assessment allowed the Applicant to focus down to a shortlist of 22 high graded sites and enter into discussions with landowners over the potential sale of these sites.

4.16.18 18 of these 22 high graded sites are commercially sensitive and sites which the Applicant may revisit at a future date, but for the purposes of this note, the Applicant is content to give a broad location of these sites as follows. The 18 were located in the following geographic locations:

(a) 2 in North Warwickshire

(b) 2 in Central Bedfordshire

(c) 1 in Peterborough

(d) 2 in Aylesbury Vale

(e) 2 in Wychavon

(f) 2 in Bedford Borough

(g) 1 in Nuneaton and Bedworth

(h) 1 in Market Harborough

(i) 2 in Teignbridge

(j) 3 in Hinkley and Bosworth

4.16.19 **Stage 5 – Distilling the 22 sites to the four sites that have been taken forward by the Applicant**

4.16.20 The principle reasons for the reduction from 22 sites to the four that have been progressed are as follows:

(a) Land not for sale. Land owners that were not contactable at Stage 4, were subsequently contacted, but were not interested in a sale.

(b) The Applicant was looking for a 5 year option on any site. In some instances, 3 year options were offered by the land owner. These were rejected by the Applicant

(c) In some cases, the land owner would only sell the land outright and wasn't interested in an option agreement.

(d) Sites where a 5 year option was negotiable were prioritised by cost and the terms of the offer.

4.16.21 The Applicant is currently proposing to take four sites through the Development Consent Order process, being:

(a) Progress Power – currently in Examination (ends 24 January 2015)

(b) Hirwaun Power – currently in Examination (ends 23 January 2015)

(c) Millbrook Power – currently in Pre Application (target submission to PINS – Q1 2015)

(d) Abergelli Power - currently in Pre Application (target submission to PINS – Q1 2015)

4.17 **Why the Applicant selected the former Eye Airfield**

4.18 The former Eye Airfield was considered suitable for the siting of a 299 MW gas fired power station for the following reasons:

4.18.1 Close proximity (<1km) to the gas National Transmission System;

4.18.2 Close proximity (<1.5km) to a high voltage electrical transmission infrastructure;

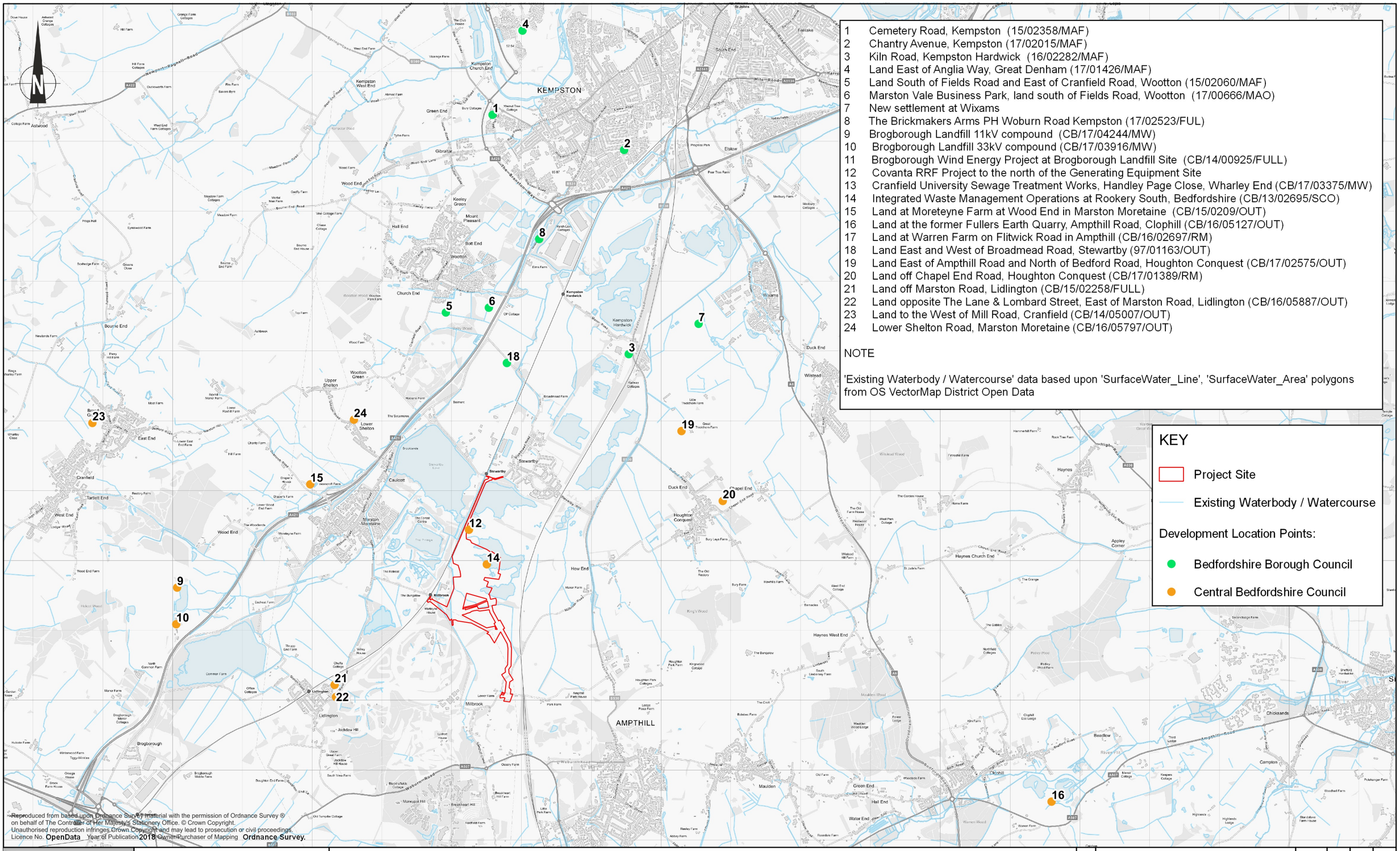
4.18.3 The site is within an existing industrial estate;

4.18.4 The site is surrounded by similar industrial developments including the Eye Chicken Litter Power Station;

4.18.5 The area is identified in the emerging EADF as an area that MSDC has aspirations to develop as an energy park (note: this does not indicate that MSDC sold the site for development, the land is in private ownership); and

4.18.6 There is more than adequate space on site to develop the Power Generation Plant and integral infrastructure.

Appendix G Location of development proposals considered in cumulative assessment (Figure 1.6.3.1)



1 Cemetery Road, Kempston (15/02358/MAF)
2 Chantry Avenue, Kempston (17/02015/MAF)
3 Kiln Road, Kempston Hardwick (16/02282/MAF)
4 Land East of Anglia Way, Great Denham (17/01426/MAF)
5 Land South of Fields Road and East of Cranfield Road, Wootton (15/02060/MAF)
6 Marston Vale Business Park, land south of Fields Road, Wootton (17/00666/MAO)
7 New settlement at Wixams
8 The Brickmakers Arms PH Woburn Road Kempston (17/02523/FUL)
9 Brogborough Landfill 11kV compound (CB/17/04244/MW)
10 Brogborough Landfill 33kV compound (CB/17/03916/MW)
11 Brogborough Wind Energy Project at Brogborough Landfill Site (CB/14/00925/FULL)
12 Covanta RRF Project to the north of the Generating Equipment Site
13 Cranfield University Sewage Treatment Works, Handley Page Close, Wharley End (CB/17/03375/MW)
14 Integrated Waste Management Operations at Rookery South, Bedfordshire (CB/13/02695/SCO)
15 Land at Moreteyne Farm at Wood End in Marston Moretaine (CB/15/0209/OUT)
16 Land at the former Fullers Earth Quarry, Ampthill Road, Clophill (CB/16/05127/OUT)
17 Land at Warren Farm on Flitwick Road in Ampthill (CB/16/02697/RM)
18 Land East and West of Broadmead Road, Stewartby (97/01163/OUT)
19 Land East of Ampthill Road and North of Bedford Road, Houghton Conquest (CB/17/02575/OUT)
20 Land off Chapel End Road, Houghton Conquest (CB/17/01389/RM)
21 Land off Marston Road, Lidlington (CB/15/02258/FULL)
22 Land opposite The Lane & Lombard Street, East of Marston Road, Lidlington (CB/16/05887/OUT)
23 Land to the West of Mill Road, Cranfield (CB/14/05007/OUT)
24 Lower Shelton Road, Marston Moretaine (CB/16/05797/OUT)

NOTE

'Existing Waterbody / Watercourse' data based upon 'SurfaceWater_Line', 'SurfaceWater_Area' polygons from OS VectorMap District Open Data

KEY

Project Site

Existing Waterbody / Watercourse

Development Location Points:

Bedfordshire Borough Council

Central Bedfordshire Council

pba peterbrett
Offices throughout the UK and Europe
www.peterbrett.com

Client: Millbrook Power (A Drax Group company)

SCALING NOTE: Do not scale from this drawing. If in doubt, ask.

Location of Development Proposals Considered in Assessment of Cumulative Impacts

0 1 2 3 4 km

Mark	Revision	Date	Drawn	Chkd	Appd

Drawing Status: INFORMATION

Date of 1st Issue: 28.03.2018		Drawing Number: FIGURE 1.6.3.1	Revision -
A3 Scale: 1:50,000			
Design MI	Drawn MI		
Chkd MW	Appd SH		

Appendix H Legal Opinion from Michael Humphries QC

IN THE MATTER OF A PROPOSED DEVELOPMENT CONSENT ORDER

MILLBROOK POWER LIMITED

ADVICE

Introduction

1. I am asked to advise Millbrook Power Limited ('MPL') in respect of its proposed use of the powers contained in s.120(5) of the Planning Act 2008 ('the 2008 Act') (disapplying other legislation) in its application for development consent for the construction of an open cycle gas turbine ('OCGT') power station at the former Rookery Pit, Stewartby, Bedfordshire ('the site'). In Schedule 11 to the draft Millbrook Power Gas Fired Power Station Order 201* ('the draft Millbrook DCO'), MPL seeks to make changes to the effect of the Rookery South (Resource Recovery Facility) Order 2011 ('the Covanta DCO').

2. Shortly before the preliminary meeting for the examination into the draft Millbrook DCO, Covanta Rookery South Limited ('Covanta') produced an Written Advice from Simon Bird QC dated 7 March 2018 that raises issues about Schedule 11 of the draft Millbrook DCO and the use of s.120(5). I am asked to comment on those matters and the Examining Authority's First Written Question ('FWQ') Question 1.12.8 concerning s.153 and Sch 6 to the 2008 Act and Question 1.12.11 concerning any requirement for Covanta's consent to the exercise of the Secretary of State's powers under s.120(5).

Relevant Background

3. By way of context, I note that some of the land included within the site upon which MPL proposes to build its OCGT power station is already the subject of powers granted by the Covanta DCO. The Covanta DCO was the first development consent order confirmed under the 2008 Act regime and the powers it granted extend over a wider area than is required to construct the authorised development itself.

4. The Covanta project has been considerably delayed, although Covanta has now begun to discharge the requirements of the Covanta DCO and, I understand, has exercised powers of compulsory acquisition and temporary possession in relation to some of the Order Land. In addition, I understand that Covanta commenced development under the Covanta DCO on 8 January 2018.

5. A comparison of the approved plans forming part of the Covanta DCO and the plans for the draft Millbrook DCO indicate that there are areas where both parties have or seek overlapping powers.

6. In order to overcome any potential conflict between the construction and operation of the two projects, the draft Millbrook DCO seeks to regulate the relationship between the two projects by (a) inserting protective provisions into the Covanta DCO for the benefit of MPL, and (b) inserting protective provisions into the draft Millbrook DCO for the benefit of Covanta. The purpose of these protective provisions is intended to regulate the relationship between the powers contained in the two DCOs.

Section 120 of the 2008 Act

7. As a matter of law it is possible for a DCO to include provision that changes, or changes the effect of, certain other legislation. Insofar as relevant, s.120(5) of the 2008 Act provides that a DCO may:

"(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order; [and]
(b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of the order or in connection with the order..."

8. Thus s.120(5) applies where an applicant seeks to 'apply, modify or exclude' a *"statutory provision"* (s.120(5)(a)) or 'amend, repeal or revoke' a *"statutory provision"* (s.120(5)(b)). It is clear that the term 'statutory provision' is wide enough to relate to the Covanta DCO as that term is defined in s.120(6) as being *"a provision of an Act or of an instrument made under an Act"* (emphasis added). The Covanta DCO is itself a statutory instrument made under an Act

(the Planning Act 2008) and its provisions (i.e. its articles and schedules) are, therefore, clearly 'statutory provisions' for the purposes of s.120(5)(a) and (b).

9. Section 120(5)(a) permits a DCO to 'apply', 'modify' or 'exclude' a statutory provision which *"relates to any matter for which provision may be made in the order"* (i.e. the DCO for which the application is being made). Section 120(3) provides that *"An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted"* and s.120(4) provides that *"The provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5"* (emphasis added). Thus as the range of matters that may be included in the draft Millbrook DCO is wide and 'includes' the matters in Schedule 5, the range of matters that may be 'modified' or 'excluded' in the Covanta DCO is similarly wide.

10. The term 'modify' in s.120(5)(a) needs to be understood in the context of statutory drafting conventions. The Office of Parliamentary Counsel Drafting Guidance (Dec 2017) ('the Drafting Guidance') states that:

"A 'non-textual modification' is a modification of an enactment that is not intended to result in a change to the text of the modified enactment when the enactment is next printed (in contrast to a textual amendment, which is)." (para 6.9.1)

"Use of the word 'modification' does not of itself exclude the possibility that what is intended is a textual amendment. The word is sometimes used (rightly) to describe a textual amendment — see for example section 517(6) of the Education Act 1996 and section 26(2) of the Criminal Justice and Court Services Act 2000." (para 6.9.4)

11. Thus the meaning of the words 'modify' or 'modification' are wide and encompass both 'textual amendments' and 'non-textual modifications'. The two examples in the quotation above demonstrate that the term 'modification' does include 'textual amendments' to statutory provisions. By contrast, a 'non-textual modification' leaves the primary 'statutory provision' unchanged, but changes its effect in a particular circumstances. Thus a provision might apply a particular Act, but state that a particular provision in that Act is modified where it relates to a certain circumstance. This is, in effect, what a DCO schedule containing 'protective provisions' does; it modifies the 'effect' of an article in a DCO to protect the

interests of a particular party (often a statutory undertaker). Clearly, see above, that 'modification' can be achieved by a 'textual amendment'.

12. Thus the term 'modify' is wider than, for example, the term 'amend'. By way of example, s.237(3) of the 2008 Act itself states that *"An order made under subsection (1) may amend, repeal, revoke or otherwise modify ... (a) an Act ... or (b) an instrument ..."* (emphasis added). The use of the expression 'otherwise' in 'otherwise modify' makes it clear that 'amend', repeal' and 'revoke' are also all forms of 'modification'. A modification, therefore, changes the effect of a statutory provision.

13. Section 120(5)(b) permits a DCO to 'amend', 'repeal' or 'revoke' statutory provisions which are *"of local application"* and which *"appear to the Secretary of State to be necessary or expedient in consequence of a provision of the order or in connection with the order..."*. It seems clear that the articles and schedules in the Covanta DCO are statutory provisions 'of local application' as its powers are limited to a defined area. Using the Millbrook DCO to 'amend', 'repeal' or 'revoke' the Covanta DCO under s.120(5)(b) would require MPL to demonstrate that such action was *"necessary or expedient"* in consequence of a provision of the order or in connection with the order.

14. I note that s.120(5)(c) and (d) provide that a DCO may:

"(c) include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order; [and]
(d) include incidental, consequential, supplementary, transitional or transitory provisions and savings".

15. These powers appear to be supplementary to the principal powers in s.120(5)(a) and (b).

Modifications to and amendments of the Covanta DCO in schedule 11 of the draft Millbrook DCO

16. The effect of Schedule 11 of the draft Millbrook DCO is to insert a new Part 2 into Schedule 7 to the Covanta DCO for the protection of MPL and to make the necessary consequential amendments to article 33 to give effect to that insertion. Apart from that, Schedule 11 to the

draft Millbrook DCO does not amend any of the articles in the Covanta DCO. The newly inserted protective provisions in Part 2 of Schedule 7 to the Covanta DCO do, however, modify the effect of the substantive provisions in the Covanta DCO and do so for the protection of MPL.

17. The effect of the new Part 2 of Schedule 7 to the Covanta DCO is as follows:

    a. Proposed new paragraph 24 of Schedule 7 regulates the operation of the powers in the Covanta DCO and the draft Millbrook DCO in respect of the Millbrook access road land (a term defined in paragraph 23). Its effect is to restrict the application of Covanta's powers over this land such as to permit MPL to construct, use and maintain its own Work No.2. This is a clear modification of those powers, which are not themselves amended, but subject to a 'non-textual modification' for the protection of MLP.

    b. Proposed new paragraph 25 of Schedule 7 provides that Covanta shall not exercise its powers under articles 10, 11, 12, 13, 15, 16, 17, 18, 26, 27 and 31 of the Covanta DCO without the prior written consent of MPL. This is a clear modification of those powers, which are not themselves amended, but subject to a 'non-textual modification' for the protection of MPL.

    c. Proposed new paragraph 26 of Schedule 7 requires Covanta to exercise its powers in such a way as to co-operate with MPL and used its reasonable endeavours to avoid any conflict between the carrying out of the two projects. This is again a clear modification of Covanta's powers, which are not themselves amended, but subject to a 'non-textual modification' for the protection of MPL.

    d. Proposed new paragraph 27 of Schedule 7 provides that compliance with paragraph 25 shall prevent Covanta from being in breach of a requirement under Part 2 of Schedule 1 to the Covanta DCO and that it shall be a defence to an offence under s.161 of the Planning Act 2008 to prove that non-compliance with a requirement in Part 2 of Schedule 1 was due to the effect of paragraph 25. Again, this is clearly a non-textual modification' to the effect of those other statutory provisions for the benefit of Covanta.

18. Thus the 'textual amendment' of inserting a new Part 2 into Schedule 7 to the Covanta DCO makes a number of 'non textual modifications' to the effect of the articles in that DCO. This falls full-square within the concept of 'modification' as explained in the drafting guidance of the Office of Parliamentary Counsel (above).

Issues raised in Simon Bird QC's Advice

19. As stated above, Simon Bird QC's Written Advice dated 7 March 2018 discusses the powers under s.120(5)(a) and (b) in the context of the draft Millbrook DCO and, in particular, Schedule 11 to that DCO. I comment on various aspects of Simon Bird's QC Advice, as follows:

a. Para 9 – Simon Bird QC's Advice states that *"Section 120(5)(b) applies only to statutory provisions of 'local application'. Public General Acts cannot be amended, repealed or revoked."*. Whilst it is right that 'Public General Acts' cannot be amended under s.120(5)(b), that does not mean that they cannot be amended by statutory instrument at all, they clearly can, and nor does it mean that they cannot be amended under s.120(5)(a). This point is somewhat otiose, however, as the Covanta DCO is not a Public General Act.

b. Para 9 – Simon Bird QC's Advice states that *"... Parliament's decision to use the term 'modify' in section 120(5)(a) can be seen as deliberate and to indicate that it means something other than amend (the term used in section 120(5)(b)). If the two terms were synonymous, there would be no need for section 120(5)(b) to refer to anything other than repeals or revocations, because amendments to all statutory provisions would fall within the compass of section 120(5)(a)."*. It is clearly correct that 'modify' and 'amend' are not synonymous; 'modify' is much wider than 'amend' and encompasses both 'textual amendments' and 'non-textual modifications' as the Drafting Guidance makes clear (see above). The reason for a separate power under s.120(5)(b) seems to derive from that power allowing amendments, repeals or revocations that do not relate to any matter for which provision could be made in the DCO itself. Thus, a DCO might need to amend or repeal a provision in an old private Canal Act; a matter for which (say) an energy DCO could not make provision and for which it could not, therefore, bring forward as a 'modification' under s.120(5)(a).

c. Para 10 – Simon Bird QC's Advice says that *"As to the meaning of 'modify', read in the context of the words 'apply' and 'exclude', it is clear that it is intended to mean to take the relevant statutory provision and to apply it in appropriately modified form to the development to be authorises by the DCO, leaving the original statutory provision unchanged."*. First, there is no need in this case for the draft Millbrook DCO to 'apply'

the Covanta DCO, as the powers in that DCO already apply throughout the Covanta DCO Order limits. Secondly, however, the purpose of the proposed new 'protective provisions' in Part 2 of Schedule 7 to the Covanta DCO is precisely to 'modify' the effect of the powers set out in the articles of the Covanta DCO, leaving the original statutory provisions unchanged. The draft Millbrook DCO makes a 'textual amendment' (the insertion of the 'protective provisions') in order to make 'non-textual modifications' to the effect of the articles of the Covanta DCO.

d. Para 11 – Simon Bird QC's Advice states that *"... it would be unusual for Parliament to use the term 'modify' to describe amendments to primary and secondary legislation and the context shows that this was clearly not the intention."*. That is, however, exactly what Parliament did in the examples used in paragraph 6.9.4 of the Drafting Guidance (above). Thus section 517(6) of the Education Act 1996 states that: *"As from such day as the Secretary of State may by order appoint this section shall have effect with the following modifications – In sections (1) and (3) for 'not maintained by them or another local authority' substitute 'which is neither a maintained or grant-maintained school' ..."* (emphasis added). This is the 'modification' of primary legislation by a 'textual amendment' (a substitution of text) taking effect pursuant to an Order being made by the Secretary of State.

e. Para 12 – Simon Bird QC makes the point that *"... Article 39 and Schedule 11 to the MPL Order are headed 'Modifications to and amendments of the Rookery South (Resource Recovery Facility) Order 2011' indicating that MPL itself recognises that what it proposes extends beyond the scope of the power contained in section 120(5)(a)."*. I disagree. As made clear above, the term 'modification' has a wide meaning and is capable or referring to both 'textual amendments' and 'non-textual modifications'. Schedule 11 of the draft Millbrook DCO does indeed make both 'textual amendments' (minor consequential amendments to the working of article 33 and the insertion of a new Part 2 of Schedule 7 to the Covanta DCO) and 'non-textual modifications' (changing the effect of various of the articles and schedule within the Covanta DCO for the benefit of MPL without changing the wording of those provisions). It seems to me, therefore, that the title of Schedule 11 is perfectly appropriate.

f. Para 13 – Simon Bird QC's Advice states that *"Section 120(5)(b) would in principle allow a subsequent DCO to effect amendments to an earlier potentially inconsistent DCO. The RRF DCO is a statutory provision of local application and I can see no reason in principle why the power of amendment should not be available in relation to it."*. Thus it seems to

be common ground that s.120(5)(b) is available to MPL, subject to it being demonstrated that the 'amendments', 'repeals' or 'revocations' are *"necessary or expedient"*.

g. Para 18 – Simon Bird QC says that *"I am also concerned about the proposals in relation to the requirements of the RRF Order contained in paragraphs 27 and 28 of Schedule 11 Part 2 of the draft DCO. Effectively the Secretary of State is being invited to sanction unspecified breaches of requirements with no particularisation of the likely effects of such breaches. That is not reasonable."*. In fact, the effect of these provisions is altogether more modest. Paragraph 27 makes it clear that if Covanta is complying with paragraph 25 of the Schedule and that prevents Covanta from complying with a requirement of the Covanta DCO, then that is not a breach of requirement. The context is that paragraph 25 requires Covanta to seek the consent of MPL to the exercise of its powers on the Millbrook DCO Order Land. Thus, for example, if Covanta cannot undertake landscaping works contemplated in its own project because the land for such works is now within the draft Millbrook DCO Order Land and MPL does not give consent because such landscaping conflicts with its own project, that will not place Covanta in breach of its own DCO. Such a provision is necessary and proportionate because the Covanta DCO Order Limits and powers are so wide and cover the Millbrook DCO Order Land.

h. Para 19 – Simon Bird QC also states that in relation to paragraph 27 (above) and paragraph 28 (defence to offence under s.161) that *"The only suggestion as to a relevant enabling statutory power for these paragraphs is to section 125(4) and schedule 5 paragraph 10 to the 2008 Act (protection of the property or interests of any person). That power does not in my view extend to the creation of defences to offences contained within the 2008 Act."*. Paragraph 27 of the new Part 2 to Schedule 7 to the Covanta DCO provides that failure to comply with a requirement of the Covanta DCO because of the effect of paragraph 25 (works on Millbrook Order Land and MPL does not give consent) is not a breach of requirement. This is a clear 'modification' of the effect of the Covanta DCO under s.120(5)(a). Paragraph 28 simply provides that, in the same circumstances, this same failure is not an offence under s.161. That is, again, a 'modification' of the effect of s.161 under s.120(5)(a), but in any event would be a *"provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order"* (namely, the new 'protective provisions' for MPL in Part 2 of Schedule 7) under s.120(5)(c).

20. Thus I do not agree with Simon Bird QC's interpretation of s.120(5) or the criticisms he makes of Schedule 11 to the draft Millbrook DCO.

Why the use of section 153 and Sch 6 would be inappropriate

21. Section 153 of and Sch 6 to the 2008 Act makes provision for changes to existing DCOs. The Examining Authority's FWQs Question 1.12.8 asks why, taking into account the principle of *lex specialis*, it is appropriate to use the powers in section 120 to modify the Covanta DCO rather than the power in section 153?

22. This question has a straightforward answer. First, the use of s.153 and Sch 6 to make 'changes' to an order granting development consent, is no more *lex specialis* in this context than the use of s.120(5) to 'modify' or 'amend' a development consent order (see above). Both are specific provisions in the 2008 Act that allow the Secretary of State to modify or amend an existing DCO. Secondly, the principal difference between the two processes is that s.120(5) requires an applicant to be promoting a second DCO, whereas s.153 and Sch 6 does not. Thus, in so far as the principle *lex specialis* is applicable in the current circumstances it indicates that s.120(5) is the more appropriate process, as a second applicant (MPL) is here promoting a separate DCO (the Millbrook DCO). A contrary view would suggest that an applicant for a new DCO, who could (as proposed) simply 'modify' or 'amend' an existing DCO under s.120(5), would instead have to promote a wholly separate application to 'change' that existing DCO under s.153 and Sch 6, with no guarantee that the two process would be synchronised or even heard by the same Secretary of State if the projects were for different infrastructure types. Thirdly, s.153 and Sch 6 do not state, or even imply, that they contain an 'exclusive' means by which a DCO may be modified. If s.153 and Sch 6 had been intended to provide the 'only' means of changing a DCO, that would have been clearly stated in the legislation. Contrast, for example, s.118 (legal challenges) that makes it clear that a challenge to a DCO may *"only"* be brought by a claim for judicial review. Fourthly, s.153 and Sch 6 are required because most parties wishing to change an existing DCO will not themselves be promoting a separate DCO and so some other 'mechanism' for change is necessary. For that reason alone, it is necessary to have a s.153 and Sch 6 procedure. In this case, however, MPL is currently promoting the Millbrook DCO in any event and so can use that order to 'modify' or 'amend' provisions in the Covanta DCO under s.120(5).

23. Furthermore, there is no question of the procedural safeguards embedded within the changes procedure being circumvented by the use of the s.120(5) power because the requirements contained in Part 2 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 ('the 2011 Regulations') which would apply to an application under the changes regime largely replicate the procedure for *de novo* DCO applications, including requirements for consultation, written questions, preliminary meeting, hearings and the like.

24. Indeed, my view on the appropriateness of using s.120(5) procedure in these circumstances is entirely consistent with the Secretary of State's own views on this issue. During the examination into the Hinkley Point C Connection project ('HPCC') DCO in 2015, North Somerset Council ('NSC') pursued an objection to the routing of part of the proposed overhead line based on its potential conflict with a proposal to re-open a length of railway track between Portishead to Parsons Street, Bristol ('the Portishead Railway'). That project would itself be a nationally significant infrastructure requiring the promotion of a DCO, although at the time of the HPCC DCO examination, the Portishead Railway project had not even undergone pre-application consultation. The Examining Authority's Report ('ER') records NSC's position that, in considering the application for the HPCC DCO, the Secretary of State should assume that an operational railway existed and protection for that railway should be inserted into the HPCC DCO (ER paras 8.4.67/68).

25. The Secretary of State's decision letter, dated 19 January 2016, deals with this objection at paragraphs 109-114. Paragraph 114 states as follows:

"Whilst the Secretary of State notes the importance of promoting new infrastructure projects and that the Portishead Railway scheme has the support of the MetroWest Councils and the Local Enterprise Partnership, consideration has been given to the stage in the planning process at which the Portishead railway line application is at and whether the Order proposed would necessarily prevent the promotion of the railway project. The Secretary of State considers that it would be possible for a future DCO to vary an existing DCO, if necessary for the later project. That decision, though, is for consideration in the context of the later project, when all details of that later project are known. The Secretary of State agrees with the ExA's conclusion that the powers in the Order should not be restricted in the manner suggested by North Somerset

Council and that new or additional protective provisions in the Order are not necessary. Consequently, the Secretary of State considers that the future promotion of the Portishead Railway scheme, and the need for that project to seek development consent under the Planning Act 2008, is not a sufficient reason to preclude the making of the current DCO as recommended in relation to this matter by the ExA." (emphasis added)

26. The Secretary of State's very clear statement, in the context of potential conflict between two DCOs, that *"it would be possible for a future DCO to vary an existing DCO, if necessary for the later project"* and, furthermore, that that decision *"is for consideration in the context of the later project, when all details of that later project are known"* is a direct endorsement of my views set out above.

Does Covanta have to consent to the Secretary of State using the power in s.120(5) to modify or amend the Covanta DCO

27. I am asked, in the context of the Examining Authority's FWQs Question 1.12.11, whether the Secretary of State requires Covanta's consent before exercising the powers in s.120(5). The short answer is 'no'. The Covanta DCO is a statutory instrument made under the 2008 Act and there is no express or implied restriction in s.120(5) such that the Secretary of State may only exercise the power to modify or, indeed, amend a statutory instrument with the consent of a person having the benefit of the powers under that statutory instrument; if that had been intended it would have been clearly expressed in the section.

Conclusions

28. In conclusion I make the following points:

a. it will be apparent from the above that I do not agree with Simon Bird QC's Written Advice on the proper interpretation of s.120(5) in relation to Schedule 11 of the draft Millbrook DCO;

b. in my view it is proper to promote the protective provisions in Schedule 11 of the Millbrook DCO under s.120(5)(a) as 'modifications' of the 'statutory provisions' in the Covanta DCO, namely the articles and schedules in that DCO;

c. in any event, it seems to be common ground that the protective provisions in Schedule 11 of the Millbrook DCO could properly be promoted as an 'amendment' to the

'statutory provisions' in the Covanta DCO under s.120(5)(b), subject to MPL demonstrating that those amendments were 'necessary or expedient';

d. that MPL has a clear case for arguing that the protective provisions in Schedule 11 of the Millbrook DCO are 'necessary or expedient' for the purposes of s.120(5)(b) and I note that such arguments are now set out in the latest version of MPL's DCO Explanatory Memorandum. Those arguments appear to me to be compelling;

e. that MPL is not required to 'modify' or 'amend' the Covanta DCO by applying for 'changes' to an existing DCO under s.153 and Sch 6; and

f. the Secretary of State should be invited to conclude that Schedule 11 of the Millbrook DCO made be confirmed under the power contained in s.120(5)(a) or, if the Secretary of State considers more appropriate, under the power contained in s.120(5)(b); in both cases together with the power in s.120(5)(c), to any extent necessary; and

g. Covanta's consent is not required for the Secretary of State to exercise the powers under s.120(5).

[redacted]

Michael Humphries QC

11 April 2018

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IN THE MATTER OF A PROPOSED

DEVELOPMENT CONSENT ORDER

MILBROOK POWER LIMITED

ADVICE

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