



The Millbrook Power (Gas Fired Power Station) Order

Applicants Responses to Written Representations – Submitted at Deadline 3

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

PINS Reference Number:	EN010068
Document Reference:	N/A
Regulation Number:	N/A
Author:	Peter Brett Associates LLP

Revision	0
Date	May 2018
Description	Examination Version



The Millbrook Power (Gas Fired Power Station) Order



Applicant's Responses to Written Representations

PINS Reference Number: EN010068

Deadline 3 – 17 May 2018



Contents

1	Summary	1
2	REP2-038 Jeremy Ramsden	2
3	REP2-037 Network Rail Infrastructure Ltd.....	4
4	REP2-023 Central Bedfordshire Council.....	7
5	REP2-036 John Moran	10
6	REP2-020 Anglian Water	11
7	REP2-030 National Grid	12
8	REP2-034 Forest of Marston Vale.....	13
9	REP2-031 Ministry of Defence	15
10	REP2-018 and REP2-019 Covanta	16
11	REP2-033 Environment Agency.....	17

This page is intentionally blank

1 Summary

- 1.1.1 The Applicant, Millbrook Power Limited, 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) together with associated development of a gas connection and electrical connection (the Millbrook Power Project).
- 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.
- 1.1.3 This document contains the Applicant's responses to Written Representations (WR), submitted to the Examining Authority (ExA) by interested parties at Deadline 2 on 17th April 2018.
- 1.1.4 Where the Applicant has not commented on a WR, or a section of a WR, submitted by an interested party, this is because the Applicant considers that it has already responded to the point(s) made in the documents that the Applicant submitted to the ExA on 17th April 2018 in respect of its Deadline 2 submissions.
- 1.1.5 This document, therefore, only focuses on the points made by interested parties that the Applicant considers to be new or different to those raised in any Relevant Representations (RR) and/or those which are factually incorrect. In addition, where agreement has now been reached on a matter (or is being actively progressed) then the Applicant may comment on this.

2 REP2-038 Jeremy Ramsden

Summary of Issues in the Written Representations

- 2.1.1 The respondent notes that there should be some rationale behind the reasons for the Project's proposed capacity of 299MW and to include plans for the Project to be "carbon capture ready" (CCR) when it is built, in case it exceeds the threshold. The respondent also queries the long-term positioning of national energy target requirements and planning policy.
- 2.1.2 The respondent has made several comments about the effect of the Project on the adjacent Forest of Marston Vale and Millennium County Park (the County Park) and the new residential developments along the Cambridge-Milton Keynes-Oxford Corridor. In particular, the respondent has referred to the impacts on the landscape and the local amenities. The respondent also questions why the quality-of-life index, or a similar method, has not been included in the draft DCO documents.
- 2.1.3 The respondent notes that the Environmental Statement does not include substantial information about the main alternatives that the Applicant has studied and that Section 5.2 of the ES contains "a few superficial" matters. The respondent states that the ES is particularly weak regarding the social and economic effects in respect of the Applicant's reasoning behind the main alternatives.
- 2.1.4 The respondent has also queried why the Project does not incorporate electrical storage battery technologies into the proposals and states that consideration for this decision should inform the planning decision.

Applicant's Comments

CCR

- 2.1.5 The Applicant refers to Section 17 of its Comments on Relevant Representation, [REP2-014].

Changing and Emerging National Policy and rapid alternative technology development

- 2.1.6 The Applicant refers to Section 6 of its Comments on Relevant Representation [REP2-014] which responds to comments relating to the need for the Project.
- 2.1.7 The Application must be prepared and examined in accordance with the current planning policy, which is set out in NPS EN-1 and NPS EN-2.
- 2.1.8 The Planning Statement [APP- 056] sets out the planning balance of the Project weighed against its benefits. The benefits for the Project in terms of national need are described in section 1.2 and in greater detail in Chapter 4.
- 2.1.9 The Applicant disagrees with the suggestion that the Project will be obsolete before the end of its engineered lifetime.

Effects on local amenities

- 2.1.10 The likely significant effects of the Project on local amenities are fully described and assessed in the ES [APP-033].
- 2.1.11 This includes a comprehensive assessment of air quality effects (Chapter 6) and landscape and visual impacts (Chapter 11), which take into consideration effects on the Forest of Marston Vale and the Millennium Country Park. The methodology and findings of these assessments have been agreed with statutory consultees, including the Environment Agency, CBC and BBC.

- 2.1.12 Whilst it is agreed that there is no assessment in the ES which explicitly follows the Quality of Life index, a full and thorough assessment of potential Socio-economic effects has been undertaken and presented in Chapter 14 of the ES. The methodology is based on current best practice guidance and has been agreed with consultees including CBC and BBC.
- 2.1.13 Furthermore, Chapter 15 of the ES considers potential effects on residential amenity and public health and no likely significant effects are predicted.
- 2.1.14 The Planning Statement [APP- 056] sets out the planning balance of the Project weighed against its benefits. The benefits for the Project in terms of national need are described in section 1.2 and in greater detail in Chapter 4.

Future development plans

- 2.1.15 Whilst it is recognised that there are potential future development plans for the wider area in which the Project would be sited, these are, at present, only high level.
- 2.1.16 Where proposed developments have been identified which have the potential to give rise to cumulative effects, these have been listed in section 4.10 of the ES [APP-033] and have been taken forward for assessment in topic chapters. These lists have been agreed with both CBC and BBC.
- 2.1.17 The Applicant also refers to its response to First Written Question 1.0.1 [APP-016] which recognises that the Rookery South Pit is designated for waste management activities. Whilst the Project is not directly associated with waste management, 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.
- 2.1.18 Additionally, the Applicant refers to CBC's response to First Written Question 1.0.1, [REP2-025], which states that: "*although the proposed use of part of the site for electricity generation is not consistent with the MWLP:SSP, the Council considers that there are other material considerations which should be taken into account*". The response then goes on to list those considerations and concludes by recognising that the site allocation is likely to be reviewed in 2019 in light of less need for waste management, whilst still recognising the need for energy development.

3 REP2-037 Network Rail Infrastructure Ltd

Summary of Issues in the Written Representations

- 3.1.1 The respondent states that it does not object in principle to the Order. However, Network Rail objects to the Order on two principal grounds:
- The grant of powers to enable works on land adjoining the operational railway; and
 - The impact of the Project on the Green Lane Level Crossing without the following being in place:
 - Appropriate protective provisions (PP) in the Order that protect and safeguard Network Rail's statutory undertaking; and
 - An agreement with the Applicant that regulates the exercise of powers under the Order insofar as they affect Network Rail.
- 3.1.2 The respondent notes a number of issues in the written representations which are summarised below.

Rookery South Resource Recovery Facility – Access Road

- 3.1.3 The respondent notes that the Project adjoins the site of the proposed Rookery South Resource Recovery Facility. Powers for the Resource Recovery Scheme were granted by the Rookery South (Resource Recovery Facility) Development Consent Order 2011 (Covanta DCO). The respondent notes that the Covanta DCO granted powers for the construction of an access road parallel to the eastern side of the Bedford Line. The Millbrook Order also seeks powers to construct the Access Road.
- 3.1.4 The respondent states that Covanta Rookery South Limited (Covanta) have had discussions with Network Rail to agree the terms of an asset protection agreement (APA) to enable works for the construction of the Access Road to proceed. However, the agreement has not yet been concluded. Despite previous discussions between the respondent and the Applicant, there is no guarantee that the Access Road Works will be completed by Covanta and as the Millbrook Order seeks powers to construct the Access Road, Network Rail requires an APA to be agreed with the Applicant.

Applicants Response

- 3.1.5 The Applicant notes that there is no land, rights over land or apparatus owned or operated by Network Rail within the Order limits. The Applicant refers to Section 15 of its Comments on Relevant Representations [REP2-014] in respect of the discussions that have taken place between the Applicant and Network Rail.
- 3.1.6 Covanta has confirmed that works to construct the Access Road commenced in January 2018 and are due to be completed by the end of June 2018 [REP2-018]. The Applicant understands that discussions have taken place between Network Rail and Covanta relating to the Access Road but an APA was **not** required in order for the Access Road to be constructed. As the Access Road is currently under construction and due to be completed soon, the Applicant does not consider that there is a requirement for the Applicant to enter into an APA in respect of the Access Road Works. However, the Applicant is currently in the process of organising a meeting with Network Rail to explore these issues in more detail.

Access Road Works

- 3.1.7 The respondent notes concern over the impact of works for the construction of the Access Road on the safe operation of the Bedford Line. Network Rail states that carrying out construction activity on land adjoining any operational railway line must only be carried out in accordance with the terms of an APA between the Applicant and Network Rail.
- 3.1.8 The respondent also questions whether the presence of vehicles on the Access Road during construction and once the Access Road is operational will have an adverse impact on rail traffic. The respondent is concerned that lights present on vehicles and other plant and equipment on the Access Road could be confused for signals by train drivers and that users of the Access Road may become frustrated by queues, traffic lights and barriers.
- 3.1.9 The respondent would like the Applicant to include new Requirements at Schedule 2 to address National Rail's concerns over the Access Road Works within the draft Order (17th May 2018). Network Rail will provide further details as necessary at Deadline 4.

Applicant's Response

- 3.1.10 As stated above, the Access Road is currently under construction and being used by vehicles without an APA in place with Covanta. The Applicant understands that discussions have taken place between Network Rail and Covanta relating to the fencing to be erected adjacent to the railway and there is currently no need to install solid fencing (even though vehicles with their headlights on have been using the Access Road).
- 3.1.11 The Applicant's proposed usage of the Access Road during construction and operation is significantly less than the proposed usage for the Covanta DCO. The Applicant does not accept that there is a need for the Applicant to install full barriers given Network Rail's position with Covanta.
- 3.1.12 In the event that the Access Road to be constructed by Covanta has not been completed prior to the end of the Examination, the Applicant proposes to amend Requirement 6 of Schedule 2 of the draft DCO to include a requirement to submit written details of the permanent fencing for numbered work 2A to CBC for approval (in consultation with Network Rail).

Green Lane Level Crossing

- 3.1.13 The respondent refers to the proposed upgrade works to the Green Lane Level Crossing to be carried out by Covanta pursuant to the Covanta DCO.
- 3.1.14 The respondent requests that a provision is included in the Protective Provisions that requires the Applicant to secure the approval of such a construction traffic management plan (CTMP) in the same way as the Covanta DCO and to implement the approved scheme.
- 3.1.15 The respondent notes that the Applicant indicated that such a Protective Provision is not necessary and has referred Network Rail to Requirement 11 of the Order. Network Rail notes that Requirement 11 requires a construction management plan to be agreed but it doesn't relate specifically to the Green Lane Level Crossing upgrade works.

Applicant's Response

- 3.1.16 The Applicant refers to its written summary of the oral submissions relating to potential impacts of the Project on Green Lane Level Crossing made at the Environmental Issue Specific Hearing on 01 May 2018 submitted for Deadline 3. The Applicant's position is that Appendix 5.2 of the TA [APP-046] contains an appropriate and proportional traffic management system at the Green Lane Level Crossing in order to mitigate any potential impacts of construction traffic queueing over the level crossing. As stated in the Applicant's Comments on Relevant Representations [REP2-014] this has been agreed with Network Rail

on several occasions. The TA concludes that the impacts of the Project do not require the Applicant to carry out any upgrade works to the level crossing either in isolation or cumulatively with the Covanta DCO.

- 3.1.17 Furthermore, the Applicant understands that the construction works for the Covanta DCO are currently being carried out without any need for traffic management or intervention at the Green Lane Level Crossing. The Applicant therefore questions why this requirement is necessary for the Project and not the Covanta DCO. In terms of operation, the Project has a very different operational traffic profile compared with the Rookery South EfW, with the latter involving approximately 22 vehicles movements per day during normal operation. Quite simply, the operation of the Project does not justify any form of upgrade works to the Level Crossing.
- 3.1.18 Requirement 11 of Schedule 2 of the draft DCO [REP2-015] requires the CTMP to be submitted for approval to be substantially in accordance with the outline construction traffic management measures. These measures specifically refer to the Green Lane Level Crossing. However, the Applicant has amended Requirement 11 of Schedule 2 of the draft DCO (Revision 2) submitted for Deadline 3 to make it clear that the CTMP must include measures relating to the Green Lane Level Crossing and that the relevant planning authorities must consult with Network Rail.
- 3.1.19 The Applicant notes that the Covanta DCO authorises works to be carried out to the Green Lane Level Crossing and the installation of a cable beneath the railway. It was therefore entirely appropriate for the Covanta DCO to include protective provisions for the benefit of Network Rail. However, as the Project does not include any works to Network Rail apparatus or any Network Rail land or rights, the Applicant does not consider that there is a requirement for protective provisions to be included in the DCO in order to safeguard Network Rail's statutory undertaking.
- 3.1.20 The Applicant is in the process of organising a meeting with Network Rail to understand their concerns in more detail. In the event that protective provisions are required, the Applicant will submit its comments on the draft protective provisions submitted by Network Rail.

4 REP2-023 Central Bedfordshire Council

Summary of Issues in the Written Representations

- 4.1.1 The respondent has noted several topics of concern. The key concerns and discussions in relation to each of the issues raised in the respondent's written representations are summarised below.
- 4.1.2 The Applicant notes that a Statement on Common Ground (SoCG) was agreed between the Applicant and CBC (dated April 2018). A copy was submitted to the ExA on 19th April 2018 [REP2-039]. Many of the concerns raised in the Written Representation have now been addressed and are set out in the SoCG.

Traffic, Highway and Access

- 4.1.3 The respondent notes that the initial concerns relating to the highway network outlined in Central Bedfordshire Council's (CBC) Relevant Representations, can be dealt with through a requirement covering the submission of details for the relevant works. CBC states that a revised requirement submitted as part of an updated DCO will be acceptable.

Applicant's Response

- 4.1.4 The Applicant acknowledges CBC's comments and confirms that Requirement 11 of Schedule 2 was amended in the draft DCO (Revision 1) [REP2-015]. The wording of the Requirement 11 was agreed with CBC and this was confirmed in paragraph 5.274 of the SoCG [REP2-039].

Landscape and Visual Impact

- 4.1.5 The respondent notes that the Landscape and Visual Impact Assessment (LVIA) has been undertaken to an acceptable standard and the mitigation strategy is detailed. However, the respondent has raised some issues regarding the judgement of effects made within the LVIA. These include:
- The additional development arising from the Project will extend the built form in Rookery Pit and therefore the visual impact is likely to have a greater significance at Viewpoint 14 (Footpath 7 at Millbrook) and Viewpoint 15 (View from Country Park near Railway Crossing) than what is reported in the LVIA;
 - The LVIA judges the 'Value of Views to be Low' from the viewpoints (including Viewpoints 14 and 15), however the respondent states that in both cases the overall sensitivity of the views are classed as Medium;
 - Views from the Millennium Country Park should be rated higher than 'Low' Sensitivity; and
 - Views from Greensand Ridge over an area designated as a Community Forest have greater significance than the views across a farmland vale without designation.
- 4.1.6 The current landscape setting is of productive farmland within a Community Forest and the Millennium Country Park. The respondent notes that it is essential that an off-site effective planting scheme is secured and understands that it is under discussion with the Forest of Marston Vale. The respondent notes that the initial issues relating to the detailed landscape outlined in CBC's Relevant Representations, can be resolved by way of a requirement covering the submission of these details.

Applicant's Response

- 4.1.7 The Applicant considers that the judgements made in LVIA are appropriate. The Applicant refers to the SoCG signed with CBC [REP2-039]. Paragraph 5.162 states that:

“The Parties agree that variance regarding the findings of LVIA is not uncommon. In this case, the Parties agree that the LVIA has been prepared in accordance with the Guidelines for Landscape and Visual Impact Assessment (3rd Edition) and the Parties agree that the overall assessment is considered to be comprehensive and the scale of the visual impacts are acceptable”.

- 4.1.8 The Applicant confirms that it is currently finalising a S106 agreement to provide adequate planting required by the Forest of Marston Vale Trust and refers to its response to REP2-034 below.
- 4.1.9 Requirement 3 of Schedule 2 of the draft DCO states that a landscape and ecological mitigation and management strategy must be submitted to and agreed with CBC prior to commencement of construction of the Project.

Noise

- 4.1.10 The respondent initially raised concerns over night time noise limits. However, following discussions between CBC’s Environmental Health Officer and MPL, it has been agreed that the remaining noise related concerns will be dealt with by means of a requirement.
- 4.1.11 The respondent also raised the issue of construction noise not being adequately addressed within the requirements. However, CBC notes that an additional requirement will now be included in the revised DCO.

Applicant’s Response

- 4.1.12 The Applicant confirms that Requirements 12 and 13 of Schedule 2 of the draft DCO [REP2-015] which deal with operational and construction noise respectively have been discussed and agreed with CBC and this was confirmed in paragraph 5.274 of the SoCG [REP2-039].
- 4.1.13 The Applicant has made minor revisions to Requirement 13 of Schedule 2 of the draft DCO (Revision 2) submitted for Deadline 3 in light of discussions at the DCO Issue Specific Hearing on 03 May 2018.

Land Contamination

- 4.1.14 In terms of land contamination, the respondent welcomes the requirement for a Phase 2 survey to be secured by a requirement in the DCO.

Applicant’s Response

- 4.1.15 The Applicant acknowledges the comment from CBC and confirms that Requirement 8 of Schedule 2 of the draft DCO [REP2-015] includes provision for a Phase 2 survey to be undertaken prior to commencement of the Project. This wording has been agreed with CBC and this was confirmed in paragraph 5.274 of the SoCG [REP2-039]

Draft DCO and Requirements

- 4.1.16 The respondent set out a number of issues in relation to the draft DCO including the requirements, procedure for discharge of requirements and heads of terms. Such issues have been discussed with the respondent and where necessary changes were either included in the draft DCO (Revision 1) [REP2-015] or have been made to Revision 2 of the draft DCO submitted at Deadline 3. The Applicant and the respondent are in the final stages of agreeing the terms of a Planning Performance Agreement (PPA) which will provide for remuneration to the respondent for costs associated with the discharge of requirements.

- 4.1.17 The Applicant also notes CBC's confirmation that it would be unreasonable to continue to insist upon a requirement to provide for a BREEAM scheme given the operational buildings will have a low water usage.
- 4.1.18 The respondent asks that within Schedule 12 of the DCO, the time limit within which the Council can ask for further information with respect to discharging a requirement should be extended to 28 days. The Applicant has made this change to the draft DCO (Revision 2) submitted at Deadline 3.
- 4.1.19 The Applicant and respondent are in the final stages of agreeing a Section 106 Agreement. In accordance with the respondent's comments, additional detail has been added to the provisions relating to a Local Employment Scheme, which are based on the provisions included within the Covanta Section 106 Agreement.

5 REP2-036 John Moran

Summary of Issues in the Written Representations

- 5.1.1 The respondent states that as the owner of the land on which the pylon adjacent to Millbrook Station is located and a short access route to the pylon, he has no intention of having this land disturbed by the Project and is disappointed with the offer that has been made. As the land is for sale, he is concerned about “upsetting” potential buyers who have “clear plans for it” and is therefore objecting to the Applicant’ DCO application.
- 5.1.2 The respondent also states that he offered to sell the land to the Applicant and alleges that the Applicant has failed to respond to him .

Applicant’s Comments

- 5.1.3 The respondent is the owner of plots 1_EC and 2_EC shown on the land plans [APP-009] and described in the Book of Reference [AS-005]. The Applicant is seeking powers of temporary use over these plots in order to carry out the temporary diversion of the existing 400kV transmission line in order to facilitate the construction of the Electrical Connection. The Statement of Reasons sets out the reasons why powers of temporary use are being sought over these plots and why there is a compelling case in the public interest for such powers to be granted [APP-014].
- 5.1.4 As the Applicant has no permanent requirement for these plots, it would not be appropriate for the Applicant to purchase the land.
- 5.1.5 The Applicant has been in discussions with Mr Moran since September 2017 and strongly disagrees with Mr Moran’s assertion that the offers made were “*insulting*”, that it has “*ignored every reply*” or that it has tried to “*bully*” the landowner.
- 5.1.6 On 30 April 2018, Mr Moran accepted a revised offer made by the Applicant and. solicitors have been instructed to negotiate the documentation. The Applicant is therefore very hopeful that the temporary use will be obtained by voluntary agreement (although the Applicant will maintain the temporary use powers in the DCO over this land in the event that any voluntary agreement is breached).

6 REP2-020 Anglian Water

Summary of Issues in the Written Representations

- 6.1.1 The respondent notes a number of issues in the written representations in relation to their existing assets affected by the Project and the wording within the draft DCO. These issues are summarised below.

Existing Assets

- 6.1.2 The respondent requires the standard protected easement widths for the water assets within the boundary of the Order and for any requests for alteration or removal to be conducted in accordance with the Water Industry Act 1991 and the Protective Provisions sought by the respondent.
- 6.1.3 The respondent states that if it is not possible to avoid any water supply assets and the water supply asset needs to be diverted, this will need to be done in accordance with Section 185 of the Water Industry Act 1981. The respondent is, pursuant to Section 185, under a duty to divert water mains if requested to do so unless it is unreasonable to do so. A formal application will need to be submitted to the respondent for a diversion to be considered.

Draft DCO

- 6.1.4 The respondent confirms that it has been in dialogue with the Applicant regarding the wording of protective provisions specifically for the benefit of Anglian Water to be included in the DCO and the DCO as currently drafted includes protective provisions specifically for the benefit of the respondent (Schedule 10, Part 5) as previously requested.
- 6.1.5 The respondent notes that it has also been in dialogue with the Applicant over Paragraph 3 of Schedule 10, Part 1 of the draft DCO and it has been agreed as of 4th December 2017, that the following amendment is made to the wording of the DCO:

“3. This part of the schedule does not apply to apparatus ~~in respect of which the~~ to the extent that relations between the undertake and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act”.

- 6.1.6 The respondent’s understanding is that the Applicant will make the above change to the wording of the draft DCO in the next version of this document to be submitted into the Examination.

Applicant’s Comments

- 6.1.7 The Applicant confirms that the requested amendment was included in the draft DCO (Revision 1) [REP2-015].

7 REP2-030 National Grid

Summary of Issues in the Written Representations

- 7.1.1 The respondent states that it has agreed protective provisions with the Applicant to be included within the draft DCO to ensure its interests are protected, ensure access to apparatus is maintained and to ensure compliance with its statutory obligations.
- 7.1.2 The respondent notes that this agreement will be completed in due course which will allow National Grid to withdraw its representations. However, should the agreement not be concluded, National Grid reserves the right to make further representations as part of the examination process.

Applicant's Comments

- 7.1.3 Side Agreements were entered into between National Grid Gas plc and the Applicant and National Grid Electricity Transmission plc and the Applicant on 17 April 2018 and National Grid withdrew its representations on the same day.
- 7.1.4 The Applicant confirms that the agreed protective provisions have been included in the draft DCO (Revision 1) [REP2-015].

8 REP2-034 Forest of Marston Vale

Summary of Issues in the Written Representations

- 8.1.1 The respondent states that the Project is located within the Forest of Marston Vale and therefore is required to comply with CBC's planning policy CS61 and CS17, regarding the 30% woodland cover target. The representation summarises the relevant parts of the Forest Plan and sets out the requirement for new developments to deliver 39% of the gross development area as woodland or provide for an equivalent area to be planted elsewhere in the Marston Vale.
- 8.1.2 A meeting was held between the respondent and the Applicant on 4th April 2018, where the following discussions were noted:
- The Project will contribute towards the 39% woodland creation target, through a mixture of planting new trees within the application site and making a financial contribution for further woodland planting within the Forest Area;
 - The exact area of tree planting within the application site cannot be confirmed until the detailed design stage. The remaining area of woodland that cannot be planted within the site will be provided via a financial contribution based on the respondent's established and longstanding 'woodland creation model'; and
 - Any existing or proposed tree planting associated with third party contributions towards the Forest Plan objectives or landscape mitigations will not be used as part of the 39% Forest Contribution for the Project. The Project must clearly provide its own contribution and any boundary planting within the Millennium Country Park, required to help screen the proposed development will also be delivered by the Applicant and will be additional to their Forest creation contribution.
- 8.1.3 The respondent notes that based on the above information, it is satisfied that the Project can meet the 39% woodland creation requirement.
- 8.1.4 The contribution is to be based on the gross development area (i.e. the red line) and any financial contribution is to have a spend period of 25 years.

Applicant's Comments

- 8.1.5 The Applicant refers to its response to written question 1.0.2 [REP2-016].
- 8.1.6 As stated at the Issue Specific Hearing on Environmental Matters on 1 May 2018, the Applicant is in discussions with the Forest of Marston Vale Trust and CBC as to the suitable terms to be included in a S106 agreement. The terms of the S106 agreement will commit the Applicant to providing the requisite 39% Forest Contribution (either through planting or a financial contribution or both).
- 8.1.7 The Applicant agrees that any planting provided by other third parties (such as Covanta Rookery South Limited) should not be included in the contribution.
- 8.1.8 The Applicant agrees that any financial contribution is to have a spend period of 25 years.
- 8.1.9 The Applicant notes that the Forest of Marston Vale Trust has referred to the "red line" as being the gross development area. However, the Order limits include land that will be used for landscaping, temporary construction activities and land that is already authorised to be built on pursuant to the Rookery South (Resource Recovery Facility) Order 2011. The Applicant therefore considers that the reference to the "red line" is not appropriate. The Applicant proposes to base the gross development area on the area of land where there will be

permanent above ground development and the size of that area will be calculated at the detailed design stage.

9 REP2-031 Ministry of Defence

Summary of Issues in the Written Representations

- 9.1.1 The representation received from the Ministry of Defence (MOD) confirms that there are no safeguarding objections. The representation then requests the following:
- Any proposed structures which are 50m or greater in height are fitted with aviation warning lighting;
 - Any such structures should be fitted with a minimum intensity 25 candela omni-directional flashing red light or equivalent infra-red light fitted at the highest practicable point of the structure; and
 - To notify UK DVOF & Powerlines at the Defence Geographic Centre with the following information prior to development commencing:
 - a. Precise location of the development;
 - b. Date of commencement of construction;
 - c. Date of completion of construction;
 - d. The height above ground level of the tallest structure;
 - e. The maximum extension height of any construction equipment; and
 - f. Details of any aviation warning lighting fitted to the structure(s).

Applicant's Comments

- 9.1.2 The Applicant confirms that the maximum height of the exhaust emission flue stack (numbered work 1A(b)) is less than 50m and therefore aviation warning lighting is not required.
- 9.1.3 The Applicant understands that there is no requirement to fit aviation warning lighting to the temporary transmission tower.
- 9.1.4 The Applicant has included Requirement 21 in the dDCO [REP2-015] which requires the Applicant to provide the Defence Geographic Centre with the requested details prior to the commencement of numbered work 1A(b).

10 REP2-018 and REP2-019 Covanta

Summary of Issues in the Written Representations

- 10.1.1 The representation submitted by Hogan Lovells on behalf of Covanta Rookery South Limited (Covanta) states that it disagrees with the written opinion of Michael Humphries QC submitted on behalf of the Applicant. The representation states that the written opinion does not deal with the issue of why there is a need for the power in section 120(5)(b) of the PA 2008 if the scope of section 120(5)(a) is as wide as the Applicant contends.
- 10.1.2 The representation states that Covanta will liaise with the Applicant in relation to the protective provisions in the draft DCO and that the protections in Part 6 of Schedule 10 and Schedule 11 (relating to the amendment of the Rookery South (Resource Recovery Facility) Order 2011 (RRF DCO) should be reciprocal.
- 10.1.3 The representation provides an update on the construction of the Access Road. Covanta confirms that construction of the Access Road commenced in January 2018 and is due to be completed by the end of June 2018. The "as constructed" route of the Access Road will follow substantially the alignment shown on the plan attached to the written representation.
- 10.1.4 Covanta reiterates its position that the appropriate means to regulate the interface between the two developments is by way of a contractual agreement. Covanta asserts that the agreement would not need to be tied to the DCO in order to be robust. Covanta refers to the Secretary of State's decision letter in respect of the North London Heat and Power Generating Station Order 2017.

Applicant's Comments

- 10.1.5 The Applicant notes that Covanta does not agree with the legal opinion of Michael Humphries QC. The Applicant refers to paragraph 19b of the written opinion of Michael Humphries QC (Appendix H of the Applicant's Responses to the Examining Authorities Written Questions [REP2-016]) which clearly explains why there is a need for the power in section 120(5)(b) of the PA 2008 despite the wideness of the power in 120(5)(a). Paragraph 19b gives an example of when it would be appropriate to use the power in section 120(5)(b) instead of the power in section 120(5)(a) of the PA 2008. No other comments from Covanta were received in respect of the legal opinion of Michael Humphries QC.
- 10.1.6 The Applicant has received some amendments to the protective provisions from Covanta's solicitors and has included these in the draft DCO (Revision 2) submitted for Deadline 3. The Applicant hopes that the wording of the protective provisions will be in an agreed form by the end of the Examination.
- 10.1.7 The Applicant refers to its response to written question 1.12.2 [REP2-016] in respect of the Access Road. However, the Applicant notes that the construction of the Access Road is due to be completed by the end of June 2018. Once the Access Road has been substantially completed and the Applicant has certainty that the Access Road cannot be relocated, the Applicant will update the land plans [APP-009], works plans [APP-010] and Schedule 1 and Part 6 of Schedule 10 of the draft DCO to reflect the "as built" position.
- 10.1.8 The Applicant's response to written question 1.12.9 [REP2-016] sets out the reasons why the Applicant considers that a contractual interface agreement is not acceptable and that it is more appropriate to have protective provisions inserted into the RRF DCO.

11 REP2-033 Environment Agency

Summary of Issues in the Written Representations

- 11.1.1 The representation submitted by the Environment Agency (EA) provides some additional information relating to the granting of an Environmental Permit for the Project and the conditions that will be imposed
- 11.1.2 The EA states that the Applicant's application for an Environmental Permit is one of the first applications to go through the IED BATc permitting approach for a 1500hr balancing Open Cycle Gas Turbine.
- 11.1.3 The EA confirms that its approach will be for permitting operating hours to be limited to 2250 hours in any one year subject to a five year rolling average of 1500 hours. This approach reflects the EA's likely permit conditions that will apply to an Open Cycle Gas Turbine based on the IED BATc for Large Combustion Plant.
- 11.1.4 The Environmental Permit conditions will set out the how the operational hours should be calculated on an annual and five year rolling average basis following the EA's own assessment of its environmental modelling.

Applicant's Comments

- 11.1.5 The Applicant assumes that the reference to the permit application providing a "*worst case scenario of 2500 hours*" is a typo and the reference should be to 2250 hours.
- 11.1.6 The Applicant notes that the EA will stipulate how the operational hours should be calculated on an annual and five year rolling average basis in the conditions to be attached to the Environmental Permit.
- 11.1.7 To avoid any conflict between the DCO and the Environmental Permit, the Applicant proposes to delete Requirement 17 of the draft DCO (Revision 2) submitted for Deadline 3.