

Riverside Energy Park

Oral Summaries for the Issue Specific Hearing on draft Development Consent Order

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RIVERSIDE ENERGY PARK ("REP")

WRITTEN SUMMARY OF THE APPLICANT'S ORAL CASE PUT AT THE ISSUE SPECIFIC HEARING ON THE DRAFT DEVELOPMENT CONSENT ORDER

THURSDAY 6 JUNE 2019 at 10:00am

1. BACKGROUND

- 1.1 The Issue Specific Hearing ("**ISH**") on the draft Development Consent Order ("**dDCO**") was held on 6 June 2019 at 10:00am at Slade Green Community Centre, Chrome Road, Erith, DA8 2EL.
- 1.2 The ISH followed the agenda published by the Examining Authority ("**ExA**") on 28 May 2019 ("**the Agenda**"). The dDCO referred to in the ISH was the dDCO submitted at Deadline 2 (**3.1, REP2-006**). The Applicant confirmed that an updated Explanatory Memorandum will be submitted at Deadline 3 taking into account all the changes made since the submission version.

2. AGENDA ITEM 1 – INTRODUCTION

- 2.1 The ExA: Jonathan Green.
- 2.2 The attendees on behalf of the Applicant:
 - 2.2.1 Speaking on behalf of the Applicant: Richard Griffiths (Partner, Pinsent Masons LLP), Alexander Booth QC (Counsel, Francis Taylor Building), Andy Pike (Director, the Applicant) and Richard Wilkinson (Head of Planning and Development, the Applicant).
 - 2.2.2 Present from the Applicant: Emma Harling-Phillips (Partner, Pinsent Masons LLP), Thomas Edwards (Senior Associate, Pinsent Masons LLP), Tamara Al-Khayat (Solicitor, Pinsent Masons LLP), Claire Sorrin (Senior Environmental Planner, PBA), Natalie Maletras (Senior Associate, PBA), Ryan Barker (Associate Senior

Consultant, Fichtner Consulting Engineers Limited), Rob Gully (Associate, PBA) and Steven Othen (Technical Director, Fichtner Consulting Engineers Limited).

2.3 The following parties participated in the ISH:

2.3.1 London Borough of Bexley ("**LBB**") – Caroline Daly (Counsel, Francis Taylor Building), Ben Stansfield (Ricardo) and Mike Kiley (planning consultant);

2.3.2 Greater London Authority ("**GLA**") and Transport for London ("**TfL**") – Andrew Tait QC and Michael Fry (Counsel, Francis Taylor Building), Douglas Simpson, Peter North and Steven Inch; and

2.3.3 Thames Water ("**TW**") – Georiga Warren (Solicitor, Eversheds Sutherland LLP).

3. **AGENDA ITEM 2 – UPDATE ON CHANGES TO THE DRAFT DCO**

| Ref | Issue raised by the ExA (Rev 1 of the dDCO) | Applicant's Response | |
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| 1 | General changes to the dDCO | 1.1 | Mr Griffiths stated that the only general point to make on the changes in Schedule 3 onwards of the dDCO is that the changes are, on the whole, due to the refinement of the Electrical Connection route and the relocation of the Main Temporary Construction Compound. |
| | | 1.2 | Other changes to the main body of dDCO are in response to discussions with LBB and following various representations made by Interested Parties. |

4. **AGENDA ITEM 3 – SCHEDULE 1 – DEFINITION OF THE AUTHORISED DEVELOPMENT**

| Ref | Issue raised by the ExA (Rev 1 of the dDCO) | Applicant's Response |
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| 2 | Description and Work No. 1 | <p>2.1 The ExA asked the Applicant to confirm why specifying operational parameters is not necessary in the dDCO. The original Explanatory Memorandum specifies a nominal rated electrical output of 96 megawatts ("MW") and the Environmental Statement ("ES") has taken this maximum output as the worst case scenario.</p> <p>2.2 Mr Griffiths explained that the Proposed Development as currently designed, together with the efficiencies inherently built into that design, would give rise to 96 MW output of electricity. Through the maintenance regime throughout the lifetime of REP, efficiencies may improve, which may increase the megawatt capacity. This has been seen in section 36 consents where capacity has had to increase because turbines have become more efficient and can produce more electricity. More importantly, the MW output does not itself give rise to environmental effects, rather the dDCO should control identified adverse impacts. Therefore, the Applicant does not see a need for an output restriction to be inserted into Schedule 1 of the dDCO.</p> <p>2.3 The dDCO restricts environmental topics (e.g. Requirement 14, transport movements), but the actual output does not give rise to any effects. The same principle applies to why the dDCO does not restrict throughput volumes. National Policy Statement ("NPS") EN-3 at paragraph 2.5.13 makes it clear that throughput volume in itself is not a factor in decision making as there are no specific minimum or maximum fuel throughput limits for different technologies or levels of electricity</p> |

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| | | <p>generation. Paragraph 2.5.13 then goes on to say that the increase in traffic or any changes in air quality should be considered by the Secretary of State, which goes to the Applicant's point that the environmental topics need to be managed or constrained, rather than through a requirement restricting electrical output or waste throughput.</p> <p>2.4 Mr Griffiths also explained that the throughput of both the Energy Recovery Facility ("ERF") and Anaerobic Digestion elements of REP will be conditioned in the Environmental Permit ("EP"). The Environmental Permit and Air Quality note (8.02.06, REP2-057) submitted at Deadline 2 at Section 5 explains how the Environment Agency ("EA") will consider throughput during the determination of the EP application and that the EA will review the capacity of both the ERF and Anaerobic Digestion plants and constrain them accordingly. Therefore, there is a separate regime that will cap the throughput, and the NPS is clear that throughput is not a matter for the planning regime.</p> <p>2.5 The ExA questioned if this is a point that is generally applicable or specific to this type of plant and stated that traditionally a megawatt capacity has been specified in generating station consents.</p> <p>2.6 Mr Griffiths explained that whilst that was traditionally the case, it does not mean that that was the right approach. A development consent order should manage the specific environmental effects of a generating station, not its fuel and/or MW output. A development consent order that constrains the fuel throughput and/or MW output <u>and</u> specific environmental effects does not provide greater environmental control over a development consent order that simply contains</p> |

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| | | <p>requirements on specific environmental effects. Indeed, a development consent order that contains requirements on fuel throughput and/or MW output and specific environmental effects would actually stifle technological improvements, which cannot be the purpose of the Planning Act 2008.</p> <p>2.7 The ExA sought clarification that the 96 MW output is for all elements and not just the ERF element of REP. Mr Griffiths confirmed this, and that all elements have been assessed in the ES.</p> <p>2.8 The ExA sought confirmation that the transport restrictions in Requirement 14 of the dDCO do not include a limit on river movements. Mr Griffiths confirmed this, that Requirement 14 only covers road transport movements by Heavy Commercial Vehicles delivering waste to the ERF. Therefore, there could be 100% movements delivering waste to the ERF and to the Anaerobic Digestion by river.</p> <p>2.9 For a robust ES, the Applicant assessed 100% of movements by road for both the ERF and the Anaerobic Digestion which concludes that there would be no significant effects. Despite this, the Applicant recognises the concerns of the GLA, TfL and LBB and other stakeholders and has put forward a requirement restricting road movements for the ERF. At the Hearing, the Applicant asserted that given the conclusions of the ES there was no justification for Requirement 14 to also apply to the Anaerobic Digestion. Despite this position which the Applicant maintains, the Applicant has decided to amend Requirement 14 so that it includes the Anaerobic Digestion plant in the restriction on Heavy Commercial Vehicles alongside the ERF in order to deal with the concerns raised by GLA and LBB. This</p> |

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| | | <p>is updated in the dDCO (3.1, Rev 2, submitted at Deadline 3).</p> <p>2.10 Mr Stansfield for LBB raised that there should be a cap on waste throughput on both the ERF and the Anaerobic Digestion plants. This would be in line with the existing Riverside Resource Recovery Facility ("RRRF"), where condition 4 of the extant consent (ref 16/02167/FUL) has the reason for this condition being to ensure that the development operates within the ES assessed in supporting documents. Mr Stansfield stated that LBB feels that not limiting throughput could lead to the effects being greater than those assessed in the ES. In paragraph 1.2.10 of the Applicant's Response to the ExA's First Written Questions (8.02.04, REP2-055), the Applicant suggests that only air quality and transport are issues for the planning regime to consider. However, LBB puts on record that there are more issues of importance to the planning regime as identified in the scope of the Environmental Impact Assessment undertaken. Mr Stansfield also stated that any future change to capacity sought by the Applicant should not be achieved through a change to the EP only, but that instead the Applicant should be subjected to further EIA and consideration through the planning process.</p> <p>2.11 Mr Griffiths explained that the Applicant recognises that there are impacts in addition to transport and air quality for the planning process to consider; that is why the Applicant's response at paragraph 1.2.10 of the Applicant's Response to the ExA's First Written Questions (8.02.04, REP2-055) refers to "primarily". This recognises that transport and air quality have been important issues raised during the consultation of the Proposed Development (and are also two topics referred to in NPS EN-3, paragraph 2.5.13), but that there are also other</p> |

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| | | <p>environmental areas that need to be considered too.</p> <p>2.12 Regarding the EP, should the EP be changed in the future, the Applicant would need to submit a variation application to the EA together with an environmental assessment. The EA would then have to consult on the variation, which both the public and LBB can respond.</p> <p>2.13 The ExA stated that as the EP could be changed, the Proposed Development could be different to what is being examined now. Mr Griffiths said that was not so, as those environmental topics that require requirements, such as transport, would be constrained by the DCO. Therefore, should throughput volumes be increased via the EP, the DCO's restriction on Heavy Commercial Vehicles delivering waste to the ERF would remain, so the impact on the road network would be the same as assessed in the ES. The requirements in the dDCO are there to control the environmental impacts and what the Applicant is saying is that the throughput is a matter for the EP.</p> <p>2.14 The ExA stated that he understands that the Applicant does not see any reason for changing the description of the Proposed Development in Schedule 1 in terms of introducing capacity restrictions. Mr Griffiths confirmed that this is the Applicant's position at this stage.</p> <p>2.15 The ExA questioned a point of technical detail, as to whether it is normal for solar panels to be flat. Mr Griffiths explained that the key point is that the solar panels will not be seen, as they will be hidden by the lip of the building, and therefore there will be no visual effects. Paragraph 2.6.5 of the Design Principles (7.4, APP-</p> |

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| | | <p>105) states that both the orientation and architecture of the building will ensure optimisation of solar generation. The Applicant is working through the detailed design and therefore the number of solar panels cannot be confirmed at this stage, but in terms of the impact, the solar panels will not be seen and there will be no visual effects. This is secured in the Design Principles (7.4, APP-105), with the detailed design being approved by LBB under Requirement 2.</p> <p>2.16 The ExA asked how the issue of input/output might be defined.</p> <p>2.17 Mr Pike for the Applicant explained that the biggest variable is in relation to the battery storage. It is not unfeasible that during the life of the Proposed Development, the power and MW size of the batteries will change over time to influence the maximum output of REP. The 96 MW capacity factors in a margin to deal with future changes, but that is still only an assumption based on today's knowledge.</p> <p>2.18 The ExA asked if the batteries will store power generated within REP. Mr Pike confirmed that when the ERF is generating at full capacity it would provide power to the batteries for storage and so export from REP to the grid at that stage would be lower than 96 MW. Mr Pike confirmed that the 96 MW output is in relation to the combined electrical output from the ERF, Anaerobic Digestion plant, solar and battery storage.</p> <p>2.19 The ExA asked what the proposed capacity of the battery storage is. Mr Pike confirmed that the battery storage capacity is circa 20 MW and the ERF capacity is</p> |

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| | | <p>circa 70 MW.</p> <p>2.20 Mr Griffiths explained that evidence shows that battery storage is being submitted alongside generation stations, for example the Drax Power (Generating Stations) Order which contains a 100 MW battery storage capability. With the improvement in technology, solar generation has gone from below 50 MW to between 300-500 MW. As the lifespan of REP is 25-30 years, technology for this project is likely to develop and outputs improve.</p> <p>2.21 The ExA raised whether it would be necessary to specify that it would be less than 300 MW to confirm that Carbon Capture and Storage was not triggered. Mr Griffiths confirmed that the Applicant would include such a restriction in Rev 2 of the dDCO at Deadline 3 (3.1, Rev 2).</p> <p>2.22 Mr Stansfield, on behalf of LBB, explained that at the current RRRF, there is dedicated bottom ash storage area to ensure ash can always be taken by river. That area looks to be overtaken by REP. LBB wants to ensure that all bottom ash material is taken by river and therefore LBB wants the storage space to help facilitate that.</p> <p>2.23 Mr Griffiths explained that the current ash storage area has never been used by RRRF, with the bottom ash going straight to barges, to the river and to storage at the Port of Tilbury. The Applicant has inserted in Requirement 14 of the dDCO a requirement that all bottom ash is transported by the river. The operational model of REP and RRRF does not need an on site ash storage area, and the area at</p> |

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| | | <p>RRRF has never been used for that purpose.</p> <p>2.24 Mr Kiely, on behalf of LBB, asked what would happen during a jetty outage and confirmed that LBB wants 100% bottom ash to be transferred by river and hence the need for storage.</p> <p>2.25 Mr Pike, on behalf of the Applicant, stated that bottom ash comes off the boiler line and goes into a bunker where it is stored. Generally, there is a week's capacity of storage in that bunker. Waste from the bunker is then put into containers and the containers go directly on the barge and jetty to transfer to the Port of Tilbury. The week's storage within the bunker is generally more than capable of storing ash should there be a jetty outage and therefore the Applicant's proposal is sufficient. The proposal put forward in the original RRRF application was that bottom ash would be immediately moved to a storage area and then transported. However, RRRF does not operate in that way.</p> <p>2.26 Mr Kiely questioned why provision is made for a jetty outage if there is enough storage. The ExA stated that the jetty is both inbound and outbound and therefore it is the inbound that would be the main issue for the Applicant if there is a jetty outage and hence the requirement. Mr Griffiths confirmed this. Mr Griffiths added that even if there is a storage area and a jetty outage occurs, the storage area may not be enough and therefore the Applicant will always request a jetty outage exception.</p> <p>2.27 Mr Kiely stated that LBB wants the DCO to be clear that this would be in the event of a jetty outage of more than a certain period of time. Ms Daly, on behalf of LBB,</p> |

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| | | <p>added that LBB put forward a definition of "jetty outage" that is consistent with the terms of the RRRF planning permission, where it is only if the period is more than 4 days. The current draft definition put forward by the Applicant does not place a restriction on the period of time on which the jetty outage is said to occur.</p> <p>2.28 Mr Griffiths explained that the definition of jetty outage in the dDCO is as per the RRRF planning permission except for the number of days. This is because the Applicant does not understand how the 4 days were originally calculated. If there were a jetty outage and the Applicant could not receive waste via the jetty then that would cause operational issues at the Waste Transfer Stations. Mr Griffiths confirmed, though, that the Applicant would look at the storage capacity of REP in respect of the bunker for ash and also what is possible for waste delays to the ERF. It may be that there would need to be two different definitions of "jetty outage", one for the ERF and one for the bottom ash. Following the hearing, the Applicant reviewed the storage capacities at the REP site as well as considered the implications of both RRRF and REP hitting the road network simultaneously for all waste deliveries and export of ash. Following this review, the Applicant proposes that the jetty outage exception is triggered after a period of 48 hours. This is updated in the dDCO (3.1, Rev 2) submitted at Deadline 3.</p> |
| 3 | Work No. 7 | <p>3.1 The ExA questioned what work No. 7 covered. Mr Griffiths confirmed that the main Combined Heat and Power (CHP) infrastructure is contained in Work No. 3. Work No. 6 is the black line around the REP site, which takes heat from Work No. 3 and various pipe networks for the CHP. Work No. 6 also includes other infrastructure,</p> |

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| | | <p>such as drainage. Work No. 7 then takes the CHP down Norman Road to the Data Centre site to provide heat to the facility as and when it is constructed.</p> <p>3.2 Mr Barker, on behalf of the Applicant, explained that Work No. 7 also includes cables. This is for two reasons. First, the Applicant may be able provide a private wire connection to the proposed Data Centres via which the Applicant will supply electricity directly to the Data Centre when it is brought forward, should commercial agreement be reached. Second, the district heating pipes will require integrated leak detection cables.</p> <p>3.3 Work Numbers 3 and 7 will provide CHP infrastructure to the REP site boundary, whilst Work No. 7 takes CHP outside the REP site boundary and into a potential customer. Mr Pike confirmed that there is potential to take heat to the Data Centre where it can go through absorption chillers to turn it into air conditioning. This is all part of the 'CHP Enabled' definition discussed at the Issue Specific Hearing on Environmental Matters held on 5 June 2019 and is detailed in the Combined Heat and Power Assessment (5.4, APP-035).</p> |
| 4 | Work no. 9 | <p>4.1 The ExA asked about the cable trough option inserted into Work No. 9.</p> <p>4.2 Mr Griffiths confirmed that the Electrical Connection route is predominately an underground route. However, given the location of the Electrical Connection route, there was always the likely possibility for the connection to come above ground, run alongside existing structures (such as bridges) or in its own structure (trough), before heading back into the ground. The Applicant has amended Work No. 9 to incorporate this, although it has always been the case and this has been assessed</p> |

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| | | <p>in the ES.</p> <p>4.3 The Environmental Statement Supplementary Report (6.6, REP2-044) shows images of what these above ground structures might look like.</p> |
| 5 | Commitment to works | <p>5.1 Mr Tait, on behalf of the GLA/TfL, raised that the dDCO does not contain a requirement on the implementation of Work No. 1B and Work No. 1C. Similarly, in relation to the CHP enabling works (being Work No. 3, Work No. 6 and partially Work No. 7) there is nothing that requires the enabling works to be carried out. Mr Tait stated that nothing in Requirement 20 (the CHP requirement) provides any form of commitment. This is further picked up in GLA's Local Impact Report (REP2-075).</p> <p>5.2 Mr Griffiths confirmed that the Applicant will consider this and revert. Given the integrated nature of REP, the Applicant would need to speak to the technical designers.</p> |

5. **AGENDA ITEM 4 – ARTICLES – CHANGES PROPOSED BY THE APPLICANT AND BY INTERESTED PARTIES**

| Ref | Issue raised by the ExA (Rev 1 of the dDCO) | Applicant's Response |
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| 6 | Article 2 | <p>6.1 The ExA thanked the Applicant for changing "<i>are unlikely to</i>" to "<i>do not</i>" and then noted that the Applicant had inserted the words "<i>which are worse than</i>" in the definition.</p> <p>6.2 Mr Griffiths explained that the words "<i>do not give rise to any materially new or materially different environmental effects which are worse than those identified in the environmental statement</i>", would enable the Applicant to carry out maintenance works that would make the plant more efficient and environmentally better, otherwise the Applicant would have to go back to the Secretary of State and apply for an amendment. Such a restriction would be unduly burdensome, deter improvements and cannot be the purpose behind the definition of "maintain".</p> |
| 7 | Article 6(2) | <p>7.1 Mr Griffiths confirmed that Article 6(1)(a) was deleted following discussions with the EA and has this has been agreed with the EA.</p> <p>7.2 In relation to the Flood Risk Activity Permit Area (FRAPA), this is principally agreed with the EA subject to the Protective Provisions (PPs) in Schedule 10, Part 4 of the dDCO, where the EA has a few outstanding points. As discussed at the ISH on Environmental Matters held on 5 June 2019, an additional requirement is being inserted into the dDCO in relation to FRAPA and the exact wording of this requirement is being discussed between the Applicant and the EA.</p> <p>7.3 The Applicant is hoping to submit an agreed (and signed) SoCG with the EA by</p> |

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| | | Deadline 3 or shortly after. |
| 8 | Article 6(3) | <p>8.1 The ExA raised that the powers in Article 6(3) are wide ranging and questioned whether there is scope for narrowing it down.</p> <p>8.2 Mr Griffiths explained that the purpose of this provision is that where there is an inconsistency between the DCO and the extant consent for RRRF, the DCO takes precedence and RRRF will not be in breach of its section 36 consent or section 106 agreement. The key area is the Open Mosaic Habitat provided by RRRF as mitigation which, as a result of REP, will be lost. The Open Mosaic Habitat will be included in the off-setting metric in Requirement 5 of the dDCO, so will be re-provided through the mitigation measures contained in the DCO for REP. The aim of this Article is to ensure clarity that there is no breach of RRRF's consent.</p> <p>8.3 Ms Daly, on behalf of LBB, expressed that LBB is concerned by the breadth of this provision.</p> <p>8.4 Mr Griffiths explained that the intention of the Article is to provide clarity that where this is an inconsistency between the consent for RRRF and REP, that the consent for REP takes precedence. Mr Griffiths acknowledged the breadth of the wording, and agreed that the Applicant would review the extant consent for RRRF and the s106 agreement, and seek to identify those provisions where the inconsistency is likely to occur. This is updated in the dDCO (3.1, Rev 2) submitted at Deadline 3 and the Applicant will seek to agree this list with LBB.</p> <p>8.5 The ExA asked the Applicant to clarify which powers it is relying on. Mr Griffiths</p> |

| Ref | Issue raised by the ExA (Rev 1 of the dDCO) | Applicant's Response |
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| | | confirmed that section 120 of the Planning Act 2008 provided the necessary power for the Secretary of State to include such an Article and that this will be set out in the Explanatory Memorandum (3.2, Rev 1) submitted at Deadline 3. |
| 9 | Article 6(4) | <p>9.1 Mr Griffiths explained that at the time of submission of the DCO Application, the Applicant expected the Data Centre to be under construction before the Order for REP was made. This was the reason for the original location for the Main Temporary Construction Compound. However, following submission of the DCO Application, the timeframe for the Data Centre has been delayed, which has enabled the Applicant to move the Main Temporary Construction Compound to Plots 02/43, 02/44, 02/48 and 02/49.</p> <p>9.2 Article 6(4) simply follows the provisions of the Town and Country Planning Act 1990 of the right to revert, making it clear that the use of Plots 02/43, 02/44, 02/48 and 02/49 can revert to the Data Centre use once their use as a temporary construction compound is no longer required.</p> |
| 10 | Article 6(5) | <p>10.1 The ExA noted that the draft Wylfa Newydd (Nuclear Generating Station) Order includes a three-month notification period required under the Neighbourhood and Planning Act 2017 in Article 35(2). The Secretary of State has not yet granted the DCO but this may potentially become the standard for treating this issue.</p> <p>10.2 Mr Griffiths explained that the Applicant will look at the final draft Wylfa Newydd (Nuclear Generating Station) Order and will look at the reasoning, if there is any, as to why the applicant in that case has not followed all previous made generating stations on this issue. Mr Griffiths noted that the last generating station orders to</p> |

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| | | <p>be granted, Eggborough Gas Fired Generation Station Order 2018 and the Millbrook Gas Fired Generating Station Order 2019, both disapplied the Neighbourhood Planning Act 2017. In addition, the draft Drax Power (Generating Stations) Order also disapplies the Neighbourhood Planning Act 2017.</p> |
| 11 | Article 13 | <p>11.1 Ms Daly, on behalf of LBB, suggested that Article 13(3) should include a provision that the undertaker must provide reasonable access for statutory undertakers to access their apparatus.</p> <p>11.2 Mr Griffiths explained that this amendment is unnecessary as Article 34 provides that statutory undertakers will retain the same powers in respect of streets affected by Articles 11, 12 and 13 in respect of their access as if the DCO had not been made. This provides the necessary protections to statutory undertakers and therefore there is no need to amend Article 13.</p> |
| 12 | Article 21 | <p>12.1 Mr Griffiths explained that LBB's suggested amendments in Article 21 are not accepted by the Applicant. In the Applicant's view the need to consult is an unnecessary constraint on the delivery of the Proposed Development. The DCO Application has been widely consulted on pursuant to the Planning Act 2008 and is now in the Examination.</p> <p>12.2 Mr Griffiths stated that the Applicant does not accept the amendments suggested by LBB in relation to the Applicant having regard to the function and quality of the tree and shrub. This is because the Applicant has to do "<i>no unnecessary damage</i>" and should any trees or shrubs be lost as a result of carrying out the Electrical Connection (Work Number 9), Requirement 6 will require the Applicant to replace</p> |

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| | | any lost trees or shrubs. Therefore, the current DCO wording is adequate. |
| 13 | Article 27 | <p>13.1 Mr Griffiths explained that the reason for the re-draft of Article 27 was in response to LBB's comments received during early discussions. The drafting has been revised to make it clear that where an activity is taking place in the Order limits as authorised by the DCO, then that is an authorised activity for the purposes of interfering with third party rights or restrictions and that compensation will be paid. Ms Daly confirmed LBB will review the amended wording.</p> <p>13.2 The ExA asked what significance is attached to "<i>authorised activity</i>" as opposed to "<i>authorised development</i>" as in the previous draft. Mr Griffiths explained that the "<i>authorised development</i>" is set out in Schedule 1 of the dDCO. However, this article is dealing with an activity permitted under the DCO which is more than just carrying out the authorised development. The Applicant will set out further explanation in the updated dDCO Explanatory Memorandum (3.2, Rev 1) submitted at Deadline 3.</p> |
| 14 | Article 44 | Mr Griffiths confirmed that this article is to be deleted as there is no special category land within the Order limits. |

6. AGENDA ITEM 5 – SCHEDULE 2 REQUIREMENTS – CHANGES PROPOSED BY THE APPLICANT AND BY INTERESTED PARTIES

| Ref | Issue raised by the ExA (Rev 1 of the dDCO) | Applicant's Response |
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| 15 | Table 1 - Parameters | Ms Daly, on behalf of LBB, confirmed that LBB will review the parameters set out in Table 1 of Schedule 2 of the dDCO and, if necessary, will discuss with the Applicant. |
| 16 | Requirement 3 | <p>16.1 The ExA raised the change in the headings of Table 1 of minimum height, where it was originally AOD and is now "above surrounding ground level". The ExA asked the Applicant to explain the significance of the change.</p> <p>16.2 Mr Griffiths confirmed that in anticipation of this question, a technical note is being prepared by the Applicant to explain the change. Mr Griffiths explained in high level terms that the made ground level will vary between 1 – 3 metres (m) across the REP site. The methodologies for the various technical disciplines for the Environmental Impact Assessment (EIA) vary between the ES chapters, for example how landscape and visual approaches maximum height is different to how the air quality chapter models maximum height. The technical note will be provided for at Deadline 3.</p> <p>16.3 The ExA also asked how the 4 m above surrounding ground level figure for the Anaerobic Digestion emission stack and gas flare relate to the 1-3 m in Requirement 3(2). Mr Griffiths confirmed that this would be explained in the technical note. The technical note will also confirm how the figures in Table 1 align</p> |

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| | | with the ES assessment. |
| 17 | Table 1 – Work No. 1(b) | <p>17.1 The ExA highlighted a typographical error in Table 1 where it should state “Work No. 1B(vii)”.</p> <p>17.2 Mr Griffiths confirmed that the Applicant would make this amendment. This is updated in the dDCO (3.1, Rev 2) submitted at Deadline 3.</p> |
| 18 | Requirement 4(2) | <p>18.1 Mr Griffiths explained that Requirement 4 is the pre-commencement biodiversity and landscape mitigation strategy. The Applicant has carved out certain works from the definition of "commencement" and these carved out works align with Requirement 4(3). As these works would not trigger the requirement for a biodiversity and landscape mitigation strategy under Requirement 5, the Applicant has inserted a requirement for a pre-commencement biodiversity and landscape mitigation strategy. Requirement 4(2) sets out what the strategy is to contain. First, details of measures to protect habitats and species during the pre-commencement works are to be provided (Requirement 4(2)(a) mirrors Requirement 5(1)(a)). Second, the value of the habitats that would be lost as a result of the pre-commencement works would be assessed, so that that value can be added to the value in the biodiversity metric which would be calculated under Requirement 5. Third, in the unlikely event that the Applicant does not "commence" the Proposed Development and therefore trigger Requirement 5, Requirement 4(2)(c) requires the Applicant to set out a restoration plan – this latter requirement addresses a particular concern of LBB.</p> |

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| | | <p>18.2 Ms Daly, on behalf of LBB, confirmed that LBB were content with Requirement 4.</p> <p>18.3 The ExA asked if the Applicant could ensure that the terms used in Requirement 4 and Requirement 5 could align and also give some thought as to whether any terms should be defined. The Applicant agreed that it would re-visit the terms used.</p> |
| 19 | Requirement 7 | <p>19.1 The ExA asked if the inclusion of geoarchaeological works adds anything to the dDCO. Mr Griffiths explained that this was added at the request of Kent County Council ("KCC") and although it does not add much, the Applicant is happy to assist KCC in order to reach agreement.</p> <p>19.2 The ExA asked why Work Numbers 1, 2, 3, 4, 5 and 9 are referred to in the Requirement. Mr Griffiths explained that Work Number 6 is the whole REP site. Works Numbers 1 to 5 are within Work Number 6, so the majority of the area covered by Work Number 6 is subject to this Requirement. The only area within Work Number 6 that is not covered by Work Numbers 1 to 5 is the area to the east of the existing RRRF, which has already been subject to development. Work Number 9 is the Electrical Connection route, which starts at the REP site and goes all the way to the Littlebrook substation. Work Number 7 partly overlaps Work Number 9, with the remainder of Work Number 7 and Work Number 8 being on the Main Temporary Construction Compound, where intrusive works will not take place, so Requirement 7 is not relevant. Work Number 10 is work within the Littlebrook Substation, so again Requirement 7 is not relevant.</p> |

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| 20 | Requirement 8(3) | <p>20.1 The ExA questioned if the amendment at Requirement 8(3) is to address LBB's concerns at Norman Road. Mr Griffiths explained that 8(3) was inserted as a result of LBB's concern about the design of the turning head. This was therefore inserted to prevent exercising the powers in Article 14 until a design is approved by LBB. Mr Griffiths confirmed that the Applicant is happy to include additional wording in 8(3) that relates to the turning head if it is helpful to LBB. This is updated in the dDCO (3.1, Rev 2) submitted at Deadline 3.</p> <p>20.2 Ms Daly confirmed that additional wording would be welcomed and that LBB is happy with the wording being inserted into the Requirement rather than Article 14.</p> |
| 21 | Requirement 10 | <p>Ms Daly, on behalf of LBB, confirmed that the amendments made by the Applicant at Deadline 2 satisfy LBB's concerns.</p> |
| 22 | Requirement 11 | <p>22.1 The ExA asked whether the Applicant had resolved the request from LBB for air quality funding.</p> <p>22.2 Mr Griffiths stated that the Applicant's position is that there is no justification for funding in respect of air quality in operation. This is disproportionate given the output in the ES; there is no justification in the conclusions of the ES to warrant a contribution or funding to air quality monitoring as suggested by LBB.</p> <p>22.3 Mr Tait, on behalf of the GLA and TfL, requested that the CoCP (Requirement 11) and the CTMP (Requirement 13) should apply to the pre-commencement works given the description of the works that are carved out of "commencement". Following the Hearing, the Applicant has amended the dDCO and both the CoCP</p> |

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| | | <p>and CTMP requirements relate to the pre-commencement works as well as commencement of the authorised development. This is updated in the dDCO (3.1, Rev 2) submitted at Deadline 3.</p> <p>22.4 Mr Tait also raised that the CoCP should include a commitment to the Non-Road Mobile Machinery (NRMM) Low Emission Zone, which is a requirement in both the draft and adopted London Plan and which includes matters in relation to dust and air quality. Mr Griffiths, on behalf of the Applicant, confirmed that the Applicant is content with this and noted that the Supplementary Planning Guidance (SPG) on the control of dust and emissions during construction, which contains the NRMM, is already referenced in paragraph 4.3.2 in the Outline CoCP (REP2-046, Rev 2).</p> |
| 23 | Requirement 13(1)(h) | <p>23.1 The ExA noted that reference to Work No. 9(c) should be reference to Work No. 9(d) as this is the cable trough. The Applicant will amend this accordingly. This is updated in the dDCO (3.1, Rev 2) submitted at Deadline 3.</p> |
| 24 | Requirement 14 | <p>24.1 Mr Griffiths stated that the Applicant is proposing to amend Requirement 14 to remove the ability for REP to utilise any surplus from RRRF. This is updated in the dDCO (3.1, Rev 2) submitted at Deadline 3.</p> <p>24.2 Mr Tait, on behalf of the GLA and TfL, explained that 90 vehicle movements is too generous if it is in addition to the jetty outage, especially as it does not include the traffic generation from the Anaerobic Digestion facility. This is bearing in mind that the NPS EN-3 at paragraph 2.5.25 states that the Secretary of State should expect materials to be transported by water where possible so therefore this requirement does not go far enough. Mr Griffiths stated that the Applicant would consider this</p> |

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| | | <p>further in discussions with the GLA and TfL. Following the hearing the Applicant is content to include the Anaerobic Digestion plant in the restriction on Heavy Commercial Vehicles alongside the ERF in order to deal with the concerns raised by GLA and LBB. This is updated in the dDCO (3.1, Rev 2) submitted at Deadline 3.</p> <p>24.3 Mr Stansfield, on behalf of LBB, stated that in the event of a jetty outage in Requirement 14(3), the reference to 300 in and 300 out is doubling the existing requirement for RRRF. Mr Griffiths confirmed that was wrong, and the numbers in Requirement 14 match those in the extant consent for RRRF.</p> <p>24.4 The ExA questioned whether the Applicant had assessed a jetty outage at both RRRF and REP - i.e. there would be 600 movements between the two facilities. Mr Griffiths stated that the Applicant would provide a technical note that confirmed the ES assumptions on transport in the context of a jetty outage. The Temporary Jetty Outage Review (Simultaneous Operations -Riverside Resource Recovery Facility and Riverside Energy Park) (8.02.31) is submitted at Deadline 3.</p> <p>24.5 Mr Stansfield, on behalf of LBB, requested that transport movement records kept by the Applicant should be made available on request to LBB. Mr Griffiths confirmed that this is acceptable and will amend the Requirement accordingly. This is updated in the dDCO (3.1, REP2-007).</p> <p>24.6 Mr Stansfield requested that the Requirement be amended to ensure it covers the commissioning period for the ERF and Anaerobic Digestion. Mr Griffiths</p> |

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| | | confirmed the Applicant will review the wording and ensure that there is no gap. |
| 25 | Requirement 15 | 25.1 Mr Tait, on behalf of the GLA, requested that in Requirement 15 TfL should be a consultee. Mr Griffiths confirmed that the Applicant would make this amendment at Deadline 3. This is updated in the dDCO (3.1, Rev 2) submitted at Deadline 3. |
| 26 | Requirement 17 | <p>26.1 Ms Daly, on behalf of LBB, raised a query on why the remedial measures are carried out within 5 years in Requirement 17(3) and that LBB would prefer a shorter period of time.</p> <p>26.2 Mr Griffiths explained that the Applicant was in discussions with the EA over the wording of this Requirement and is hopeful of reaching agreement soon. Mr Griffiths also confirmed that the approving authority for this Requirement should be the EA. This is updated in the dDCO (3.1, Rev 2) submitted at Deadline 3.</p> |
| 27 | Requirement 18 | 27.1 Ms Daly, on behalf of LBB, confirmed that LBB is content with the wording. Mr Griffiths confirmed that the draft employment and skills plan has been sent to LBB for approval. Shared facilities are not possible at REP as it does not have dedicated visitor/lecture theatre facilities to share with anyone. |
| | Requirement 20(2)(b) | <p>28.1 Mr Tait, on behalf of the GLA and TfL, stated that paragraphs 10.14 - 10.18 of the GLA Local Impact Report (REP2-075) set out further strengthening of this Requirement that should be at least considered.</p> <p>28.2 Mr Griffiths stated that the Applicant will review the CHP requirement, particularly with reference to Requirement 20(2)(b). The intention is to install what is set out in</p> |

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| | | <p>Schedule 1 to the site boundary, but this cannot be done until the Applicant knows what it is connecting into – for example size and diameter of the necessary pipework. Notwithstanding this, the Applicant will insert a requirement that the Applicant will install the pipework to the site boundary once certain details are known.</p> <p>28.3 Mr Griffiths explained that the Applicant has gone over and above the NPS requirements on CHP, by providing a plant which is 'CHP Enabled' rather than 'CHP Ready', but will look at where extra comfort can be provided. Regarding the timing, the study for the original Bexley Energy Master Plan took 24 months to undertake and therefore a 2 year rolling review would not be justified, especially as the reviews are horizon watching. The Applicant is content to look at the Eggborough Gas Fired Generation Stated Order 2018 in relation to a review on a 4 year basis.</p> |
| 29 | Additional requirements requested by interested parties | <p>29.1 The ExA questioned whether the suggestion of a delivery and servicing plan raised by LBB was addressed by the Applicant. Mr Griffiths confirmed that the Applicant is in on-going discussions on the delivery and servicing plan with LBB.</p> <p>29.2 The ExA raised that LBB looked for a requirement setting a limit on operational noise. Mr Griffiths explained that the Applicant has seen the request in LBB's Written Representation (REP2-080) and will discuss this with LBB. The Applicant does not see a need for a requirement for noise based on the conclusions of the ES and does not see a justification in the Written Representation (REP2-080) or the Local Impact Report (REP2-082), but the Applicant is willing to continue</p> |

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| | | <p>discussions with LBB.</p> <p>29.3 The ExA raised the concern of discharge of water on the site, with particular reference on the Crossness Local Nature Reserve (LNR). Mr Griffiths explained that this is covered by the CoCP and therefore an express requirement is not required. LBB confirmed they are content with the response from the Applicant.</p> <p>29.4 Mr Tait, on behalf of the GLA, referred to its additional requirements requested in the GLA's Local Impact Report (REP2-075). Mr Griffiths stated that the Applicant would be responding to those in its response to the Local Impact Report at Deadline 3.</p> |
| 30 | Thames Water | <p>Ms Warren, on behalf of TW, confirmed that TW does not have comments on specific requirements but stated that an overarching comment was that TW may be seeking amendments to the requirements to include mitigation measures to address impacts on Crossness LNR as set out in the TW Written Representation (REP2-092). TW is in ongoing discussions with Applicant. Mr Griffiths confirmed the Applicant will respond to the TW Written Representation (REP2-092) at Deadline 3.</p> |

7. AGENDA ITEM 6 – SCHEDULE 10 PROTECTIVE PROVISIONS – UPDATE ON DISCUSSIONS WITH STATUTORY UNDERTAKERS

| Ref | Issue raised by the ExA | Applicant's Response |
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| 31 | General | Mr Griffiths explained that the Applicant is in discussions with various bodies in relation to the PPs. Some bodies have not responded but the Applicant will keep the ExA updated throughout the process. |
| 32 | Thames Water | <p>32.1 Mr Griffiths explained that the Applicant has provided draft PPs to TW's land agents and understand that they have been passed to their lawyers. The Applicant is awaiting comments from TW's lawyers.</p> <p>32.2 Ms Warren, on behalf of TW, confirmed that TW will be seeking PPs that go above what is currently provided in the draft PPs, but that TW is in discussions with the Applicant and does not envisage any issues in reaching agreement by the end of the Examination.</p> |
| 33 | Network Rail | Mr Griffiths explained that the Applicant is in active discussions with Network Rail's legal team and PPs are being progressed. The Applicant is hoping to achieve agreement by the end of the Examination. |
| 34 | National Grid | Mr Griffiths explained that the Applicant is in active discussions on the PPs with National Grid and is hoping to achieve agreement by the end of the Examination. |
| 35 | Riverside Resource Recovery Limited | Mr Griffiths explained that Part 1 of Schedule 10 of the dDCO contains PPs for RRRL (the operator of the adjacent facility). These have been in the dDCO since submission and the Applicant has provided them to Western Riverside Waste Authority (WRWA), as |

| Ref | Issue raised by the ExA | Applicant's Response |
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| | (RRRL) | they are interested in the operation of RRRF. No comments have been received yet from WRWA, despite WRWA having them since February 2019. |

8. **AGENDA ITEM 7 – SCHEDULE 11 – DOCUMENTS AND PLANS TO BE CERTIFIED – UPDATE**

| Ref | Issue raised by the ExA | Applicant's Response |
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| 36 | Schedule 11 | 36.1 The ExA noted that this is an important Schedule and asked the Applicant to keep the Schedule under review to ensure it was clear. The Applicant agreed to do so. |