Riverside Energy Park

Oral Summaries for the Issue Specific Hearing on draft Development Consent Order (19 September 2019)

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RIVERSIDE ENERGY

RIVERSIDE ENERGY PARK ("REP")

WRITTEN SUMMARY OF THE APPLICANT'S ORAL CASE PUT AT ISSUE SPECIFIC HEARING 3 ON THE DRAFT DEVELOPMENT CONSENT ORDER

THURSDAY 19 SEPTEMBER 2019 at 10:00am

1. BACKGROUND

1.1 Issue Specific Hearing 3 ("**ISH**") on the draft Development Consent Order ("**dDCO**") was held on 19 September 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 9 September 2019 ("**the Agenda**"). The dDCO referred to in the ISH was the dDCO submitted at Deadline 5 (3.1, REP5-003).

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).

2.2.2 Present from the Applicant: Andy Pike (Director of the Applicant); Richard Wilkinson (Head of Planning at the Applicant); Devon Alexander (Planning Manager at the Applicant); Louise Martland (Environment Bank); Stephen Othen (Fichtner Consulting Engineers Limited); Ryan Barker (Fichtner Consulting Engineers Limited); Thomas Edwards (Senior Associate, Pinsent Masons LLP); Tamara Al-Khayat (Solicitor, Pinsent Masons LLP); Natalie Maletras (PBA); Rob Gully (PBA); and Emma-Mai Eshelby (PBA).

2.3 The following parties participated in the ISH:

2.3.1 London Borough of Bexley ("**LBB**") – Angus Walker (BDB Pitmans); Jessica Graham (BDB Pitmans); and Ben Stansfield (Ricardo);

2.3.2 Greater London Authority ("**GLA**") and Transport for London ("**TfL**") – Andrew Tait QC (Counsel, Francis Taylor Building); Douglas Simpson (Programme Officer at GLA); Steven Inch (Policy Officer on Air Quality); Peter North and Fred Raphael (TfL); and

2.3.3 Mrs Jennie White – local resident.

3. NOTIFICATION FOR HEARING

3.1 The ExA asked the Applicant to introduce a procedural issue that the Applicant had drawn to the ExA's attention. Mr Griffiths, on behalf of the Applicant, explained that the notices required under Rule 13(6)(a) and Rule 13(6)(c) of the Infrastructure Planning (Examination Procedure) Rules 2010 ("**Examination Rules**") were placed in accordance with the ExA's Direction dated 19 August 2019 authorising the notices to be placed 20 days before the Hearings. Unfortunately the notice under Rule 13(6)(b) of the Examination Rules was placed 13 days before the Hearings. However, once the notice was put in place, it was placed at seven locations rather than the minimum of one as required under Rule 13(6)(b).

3.2 Mr Griffiths also highlighted that the Planning Inspectorate itself had notified all Interested and Affected Parties (those who had not opted out of receiving notifications) on 19 August 2019 of the 18 and 19 September Hearing dates and that on 3 September 2019 the Planning Inspectorate issued the revised Examination timetable (which contained the Hearings dates) to all Interested Parties, Statutory Parties and Other Persons who had been invited to the Preliminary Meeting.

3.3 Mr Griffiths observed that the ISH on 19 September 2019 was a specific ISH on the drafting of the dDCO, on which comments to date had been received from the LBB, GLA/TfL and Thames Water. Both the LBB and GLA/TfL were in attendance at today's Hearing. Regarding Thames Water, their comments on the dDCO related to Protective Provisions, which have now been agreed. Thames Water confirmed this agreed position to the ExA by letter dated 19 September 2019 stating that "*it no longer intends on attending ISH 3. Further to discussions between Thames Water and the Applicant, Thames Water's bespoke protective provisions are now agreed and Thames Water is content that sufficient protection is secured in relation to mitigation measures relating to the Crossness Nature Reserve and its statutory apparatus*."

3.4 On this basis, Mr Griffiths invited the ExA to conclude that the unfortunate administrative error in placing the Rule 13(6)(b) notice 13 days before the Hearings had resulted in no prejudice and that no one had been disadvantaged.

3.5 The ExA agreed that at this late stage in the Examination, it is unlikely a third party would be prejudiced by the shortened time that the Rule 13(6)(b) notice was put up, particularly when taking into account the other provisions of notification having been fully complied with. No comments were made by the other parties in attendance. The ExA decided to proceed on the basis that no prejudice appears to have taken place.

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

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
1	General points from the Applicant	The Applicant made no general updates under this agenda item. The matters to be considered in this ISH included the mark up made to the dDCO by the LBB at Deadline 7 and the GLA/TfL at Deadline 7 and 7a, both of which commented upon the dDCO submitted by the Applicant at Deadline 5. The dDCO that would

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		be followed in the ISH, would be the dDCO submitted at Deadline 5 (3.1, REP5-003).

5. **AGENDA ITEM 3 – ARTICLES – CHANGES PROPOSED BY THE APPLICANT AND BY INTERESTED PARTIES**

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
2	**Article 2 (Interpretation)** DEFRA biodiversity off-setting metric	2.1 The ExA was not clear on the definition provided and how it should be interpreted. 2.2 Mr Griffiths stated that there are a suite of documents that form the DEFRA biodiversity off-setting metric and invited Ms Martland from the Environment Bank to further explain the metric. Ms Martland explained that the suite of documents were published in 2012 as part of the DEFRA biodiversity off-setting pilots and these documents have now become the national standard for biodiversity impact quantification across England. In July 2019, Natural England published an updated version to this metric (biodiversity metric 2.0). It is based on the same parameters as the 2012 metric, but expands on guidance and introduces new connectivity factors to the assessment; however, these additional factors do not yet have a finalised methodology which means that the biodiversity metric 2.0 was published as a beta test version to gather wider feedback. For this reason, the appropriate version to refer to in the definition is the 2012 suite of documents. 2.3 The ExA agreed that the current and future biodiversity metric calculations with respect to the Proposed Development should be completed utilising the 2012 metric. 2.4 The Applicant agreed to amend the dDCO (3.1, Rev 4) to tie the definition back to the 2012 metric.
3	**Article 2 (Interpretation)** Date of final commissioning	Mr Griffiths explained that the words "*as the context requires*" are necessary. This is because the words make it clear that the term "date of final commissioning" needs to be read in context as to whether the date of final commissioning relates to the whole of the authorised development or to a named part of the authorised development. Mr Walker, on behalf of the LBB, confirmed that the LBB did not need the deletion

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
		of this wording. The ExA confirmed that the wording can be retained.
4	**Article 2 (Interpretation)** RRRF planning permission section 36 consent	4.1 Mr Walker, on behalf of the LBB, confirmed that the reference number in the definition of "RRRF planning permission" is correct. 4.2 Mr Griffiths explained the section 36 consent reference GDBC/003/00001C-06 is the reference number that was given to both the section 36 consent granted on 15 June 2006 and to the variation granted on 13 March 2015. The Applicant has checked this post the ISH, and confirms in this submission that the reference number applies to both the original and the varied section 36 consent.
5	**Article 2 (Interpretation)** REP and RRRF Application Boundaries Plan **Article 6(4) (modifications to section 36 consent and RRRF planning permission)**	5.1 Mr Griffiths explained that the Applicant cannot accept LBB's request of narrowing down the land over which there may be an inconsistency between the existing RRRF plant and the Proposed Development to only the open mosaic habitat. This is because there is the potential for an inconsistency not only on the open mosaic habitat, but also on the RRRF ash container storage area, amenity landscaping area of RRRF and internal access roads. 5.2 Therefore, the land coloured brown on the REP and RRRF Application Boundaries Plan will remain the same and the definition in article 2 will not change. However, the updated dDCO (3.1, Rev 4) to be submitted at Deadline 8a will clarify, in article 6(4), that any inconsistency is limited to the land coloured brown on the REP and RRRF Application Boundaries Plan and to three conditions on the RRRF planning permission, being RRRF condition 1 (approved plans), RRRF condition 22 (ecological protection and management plan) and RRRF condition 32 (scheme of restoration). RRRF Condition 32 will be incorporated into article 6(4) as clearly the scheme of restoration cannot apply to the area of inconsistency, which instead will be covered by the decommissioning plan for the Proposed Development. 5.3 In addition, Mr Griffiths confirmed that the Applicant would accept LBB's request that no land be removed from the RRRF planning permission or the RRRF section 36 consent and as such paragraph 1 of Schedule 14 of the dDCO will be deleted. 5.4 Mr Walker, on behalf of the LBB, stated that he will await the updated dDCO but that the

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		explanations provided by the Applicant sounded acceptable.
6	**Article 2 (Interpretation)** RRRF condition	Mr Griffiths confirmed that the Applicant is content with the deletion of *"or the equivalent condition on any varied RRRF planning permission whether granted by the Secretary of State or the relevant planning authority"* in the definition of RRRF condition, as requested by LBB.
7	**Article 6** Disapplication of legislative provisions and modifications to section 36 consent and RRRF planning permission	7.1 The ExA raised that section 3.2.9 of the Explanatory Memorandum states that article 6 of the dDCO relies on section 120(5)(a) of the Planning Act 2008 for the disapplication of certain consents and that this is also extended to apply to the section 36 consent and the RRRF planning permission. 7.2 Mr Griffiths explained that section 120(5)(a) provides that an order granting development consent may "*apply, modify or exclude a statutory provision....*" The term "statutory provision" is defined in section 120(6) of the Planning Act 2008 as meaning "*a provision of an Act or of an instrument made under an Act*." The RRRF original section 36 consent and the variation to the original section 36 consent are both instruments made under section 36 and section 36C of the Electricity Act 1989 respectively. Indeed, both consents expressly refer to the originating power in the preamble to the consent. Equally, the RRRF planning permission is an instrument made under section 73 of the Town and Country Planning Act 1990 and again the preamble to the permission expressly refers to the originating power. The Applicant submits, as set out in the Explanatory Memorandum, that section 120(5)(a) applies. Similarly, section 120(5)(b) of the Planning Act 2008 could also be exercised by the Secretary of State, which enables the Order to "*make such amendments, repeals or revocations of statutory provisions….as appear to the Secretary of State to be necessary or expedient….*". The Applicant would submit that both section 120(5)(a) and (b) are available to the Secretary of State given the wide definition of "statutory provision". 7.3 In the alternative, the Applicant would agree with the ExA that section 120(5)(c) could be exercised by the Secretary of State, which provides that that the order may "*include any provision that appears to the Secretary of State to be necessary or expedient...".* Mr Griffiths stated that the Applicant would review the Explanatory Memorandum to update as necessary. 7.4 Mr Griffiths stated that article 6(4) was no different to the equivalent provision in the Millbrook Gas

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		Fired Generating Station Order 2019 which modified the Rookery South (Resource Recovery Facility) Order 2011. Following the ISH, the Applicant reviewed the Secretary of State's decision letter, in which the Secretary of State stated that he *"agrees with the ExA and the Applicant that section 120(5) does provide an appropriate mechanism for a new Development Consent Order to amend an existing Development Consent Order and that the provisions in article 38 and Schedule 11 are necessary and expedient...."* 7.5 Commenting on a query regarding Schedule 14 (modifications to the section 36 consent and RRRF planning permission), Mr Griffiths explained that Schedule 14 is split into two parts. The first part of schedule 14 deals with the section 36 consent where (i) the words "*associated open storage areas for ash container storage*" are to be deleted as the Proposed Development is being constructed on RRRF's current open storage areas and (ii) to refer to the Riverside DCO in the list of documents which the RRRF is to be constructed and operated in accordance with (given article 6(4)). 7.6 The second part of Schedule 14 deals with the RRRF planning permission where (i) reference is added in condition 1(iii) to the Riverside DCO in the list of documents which the RRRF is to be constructed and operated in accordance with (given article 6(4)) and, (ii) RRRF condition 23 is substituted for a new condition so bottom ash is only stored in the bunkers (given the Proposed Development removes RRRF's storage area). Mr Griffiths explained that should the Proposed Development receive consent, then RRRF's bottom ash storage area will be built upon and therefore there the amendment of RRRF condition 23 is required. Mr Griffiths also confirmed that the storage are is a contingency for a contingency - the bunker in the RRRF facility itself is the primary storage area, which can hold, conservatively, a minimum of 5 days capacity of bottom ash. Mr Griffiths also stated that, as far as the Applicant is aware, there are no other energy from waste plants that have two contingencies for bottom ash storage and Mr Griffiths also noted that RRRF has not had a jetty outage to date since commencing operations in 2011. 7.7 Mr Walker, on behalf of the LBB, confirmed that the LBB are prepared to agree that there is no need for bottom ash storage provided it had been demonstrated through the supplied Supplementary Temporary Jetty Outage Note that there are no undue impacts on the road network. Mr Griffiths responded that that is a different point, which relates to the need for a bottom ash storage area for the Proposed Development rather than the amendments necessary on the

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		RRRF planning permission and section 36 consent, which must be made for the reasons expressed above. On this basis, Mr Walker, on behalf of the LBB, confirmed agreement on article 6.
8	**Article 42(3)** Procedures in relation to certain approval etc.	Mr Griffiths explained that Network Rail expressly requested the addition of "*Subject to any other provision of this Order*" at the beginning of article 42(3). This is because Network Rail requires a different process to be undertaken in the event of arbitration as set out in the protective provisions that are now agreed with Network Rail. Given the protective provisions are agreed with Network Rail, the Applicant does not propose to change article 42(3).

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

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
9	Overall tonnage cap	9.1 The ExA explained that there is no overall limit on the input of the plant, which leaves a potential for the total amount of waste delivered to the plant to be above the worst case scenario assessed in the Environmental Statement ("**ES**"). 9.2 Mr Griffiths confirmed that the Applicant maintains all its original arguments but recognises LBB's and GLA's concerns (although not GLA's Deadline 7a position). Accordingly, the Applicant is prepared to accept a cap of 805,920 tonnes per calendar year for Work No. 1A and 40,000 tonnes per calendar year for Work No. 1B. However, the Applicant does not agree that these caps should be inserted into Schedule 1. The Applicant did not apply for an energy from waste facility with a capacity of 805,920 tonnes or an anaerobic digestion plant with a capacity of 40,000 tonnes. Rather these figures were used in the ES as the basis of assessment parameters. For this reason, the Applicant proposes that a new requirement is inserted in the dDCO restricting tonnage throughput to those levels.

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
		9.3 Mr Walker, on behalf of the LBB, and Mr Tait, on behalf of the GLA, confirmed that they are content with the tonnage limit being set out as a requirement rather than in Schedule 1. 9.4 Mr Tait, whilst welcoming the cap, explained that the GLA considers that the cap should be limited to 655,000 tonnes per calendar year to reflect the carbon assessment which the GLA asserted was only based on that level. Mr Simpson, for the GLA, added that a lower cap would mitigate against further surplus capacity. 9.5 Mr Griffiths, on behalf of the Applicant, strongly rejected the lower limit proposed by GLA. Mr Othen, from Fichtner Consulting Engineers Limited on behalf of the Applicant, explained that the carbon benefit of REP would improve if it processed the maximum throughput rather than the nominal throughput of 655,000 tonnes. This is because moving to the maximum throughput scenario involves two variables. The first is that the operating hours would increase from 8,000 to 8,760. As a result, REP would divert more waste from landfill and generate more power, both of which would lead to further carbon benefits. In simple terms, if REP gives a carbon benefit when running for 8,000 hours, it will give more of a benefit if it runs for more hours. The second variable is that the net calorific value (NCV) of the waste would need to decrease in order for the maximum throughput scenario to come into effect. The nominal throughput is based on a NCV of 9 MJ/kg. If the waste has a lower NCV (i.e. less heat available per tonne), then REP can process more waste. The maximum throughput is based on a NCV of 8 MJ/kg. For waste to have a lower NCV, there must be less of the waste fractions with higher NCV, which are mainly plastics and paper, and more of the waste fractions with lower NCV. This means that the biogenic content of waste at a NCV of 8 MJ/kg is generally higher than the biogenic content of waste at a NCV of 9 MJ/kg. Waste with a higher biogenic content will produce more methane in a landfill site than waste with a lower biogenic content. Therefore, the carbon benefit of displacing landfill will be higher with waste with a NCV of 8 MJ/kg (a prerequisite of the maximum throughput scenario) compared to a NCV of 9 MJ/kg (a prerequisite of the nominal throughput scenario). This is further explained in the Maximum Waste Throughput Carbon Note (8.02.85), to be submitted at Deadline 8. Given the carbon benefit of the Proposed Development would increase with 805,920 tonnes per calendar year, had the Applicant only assessed this figure then it is likely that the GLA would have raised a question whether the Applicant was overstating the carbon benefits of the facility. The Applicant, in its Carbon Assessment, was presenting a conservative assessment which still showed a carbon

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		benefit. 9.6 Mr Griffiths concluded by stating that given there is no justification for the lower cap based on carbon, the only argument left for the GLA is the GLA's assertion over surplus capacity. This is equally untenable, as the Applicant has presented considerable evidence to the Examination in respect of the need for the Proposed Development, notably in The Project and its Benefits Report (7.2, APP-103) and the Supplementary Report to the Project and its Benefits Report (7.2.1, REP2-045). In addition, the Applicant would note that National Policy Statement EN-3 at paragraph 2.5.13 states that throughput limits are a matter for the Applicant. This is especially the case here, where the Proposed Development is privately funded and the ES has demonstrated that there are no significant adverse effects arising from the Proposed Development at 805,920 tonnes per calendar year with the mitigation secured through the dDCO. There is, therefore, no justification for the GLA's position.
10	Work No. 1A and Work No. 2B	10.1 Mr North, on behalf of the GLA, explained that the dDCO referred to a steam turbine without any reference to the heat off-take and therefore the GLA suggests the inclusion of a minimum capacity of heat off-take of 30 megawatts in Schedule 1 in relation to Work No. 1A and Work No. 2B, which is the basis for any district heating. 10.2 Mr Griffiths confirmed that the Applicant is happy to accept the amendment, but explained a drafting tweak to state "*at least 30 megawatts*" rather than precisely 30 megawatts. GLA agreed with this wording. 10.3 The ExA raised that the LBB propose to add a dedicated bottom ash storage area into Work No. 1A. Mr Walker, on behalf of the LBB, explained that the LBB are content not to insist on its inclusion provided that the Applicant submitted a jetty outage note demonstrating that there would be no significant adverse effects on the road network in the event of a jetty outage with both the Proposed Development and RRRF operating. Mr Griffiths confirmed that the Applicant will be submitting a Supplementary Temporary Jetty Outage Note (8.02.86) into the Examination at Deadline 8 (alongside this Oral Summary) which would confirm that position. However, Mr Griffiths made the point that the Applicant cannot, in any event, amend Schedule 1 to include a dedicated bottom ash storage area as the Applicant has not applied for one or indeed assessed in its

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		Environmental Statement an external storage area. Instead, the Proposed Development's bottom ash storage area is within the bunker which will have a capacity of 1,900m3 and will provide for, conservatively, a minimum of 5 days capacity. In addition, the dDCO contains a restriction that bottom ash must be transported by river, save where there is a jetty outage which has been agreed can only commence after four days (this is a considerable restriction which no other EfW plant has, and again emphasises the commitment from the Applicant to utilise the River in the operations of REP). There is no justification for the Proposed Development to have a contingency for a contingency.

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

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
11	**Requirement 4** Pre-commencement biodiversity mitigation strategy	Mr Griffiths explained that "pre-commencement works" means "*operations on the pre-commencement land*", with the "pre-commencement land" identified on the "pre-commencement plan". The pre-commencement works are limited to existing areas of hard standing within the main REP site and therefore former Requirements 4(2)(b) and 4(2)(c) are not applicable. However, the Applicant agrees to LBB's Deadline 7 amendment to include the wording *"non-statutory designated sites and other habitats and species of principal importance"* into Requirement 4(2). This will be included in the next revision of the DCO (3.1, Rev 4) to be submitted at Deadline 8a.
12	**Requirement 5** Biodiversity and landscape mitigation strategy	12.1 The ExA raised that the issue he has to report on, is how far one can get down the route of certainty about what can be done as compensation. Mr Griffiths explained, as set out in the Applicant's response to the ExA's rule 17 Letter (8.02.70, REP7a-004), that the Environment Bank Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019) submitted at Deadline 7 identifies 14 sites, most of which are in the London Borough of Bexley. Following submission of that Report, the Applicant and the LBB have identified a further site, bringing the total sites that could provide the biodiversity off-setting to 15. Mr Griffiths confirmed that the sites identified have

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		more than enough land to provide for the compensation identified in the "worst case" scenario in the Environment Bank Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019) – the 14 sites identified in the Report could provide 78.22ha (see paragraph 5.1.2 of that Report) whereas the worst case land requirement is only 12.5ha (as set out in paragraph 1.3.5 of the Applicant's response to the ExA's rule 17 Letter (8.02.70, REP7a-004). The Environment Bank Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019) therefore provides the ExA and the Secretary of State with certainty that the likely maximum land area required can be accommodated. 12.2 In addition, through discussions with the LBB, the Applicant has agreed a priority order of how to assess those sites and any further sites that may come forward as discussions with stakeholders continue. The priority list will be placed in the outline biodiversity and landscape mitigation strategy ("**OBLMS**") at Deadline 8. 12.3 The Applicant also proposes to update Requirement 5 to cover the points raised by the LBB in its Deadline 7a response as follows: 12.3.1 the final biodiversity and landscape mitigation strategy ("**BLMS**") must include details of the Defra biodiversity off-setting metric together with the off-setting value required, the nature of such off-setting and evidence that the off-setting value provides for the required biodiversity compensation, risk factors such as temporal lag, long term management and monitoring of 25 years and a minimum of 10% net gain; and 12.3.2 the BLMS must identify the final site or sites together with evidence demonstrating that the site or sites has/have been chosen in accordance with the prioritisation set out in the OBLMS; and 12.3.3 the BLMS must provide certified copies of the completed legal agreements with the Environment Bank that secures payment of the value, which is to be paid within 10 days of the LBB approving the BLMS. 12.4 Mr Griffiths also highlighted that Requirement 5 prevents commencement of any part of the

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		Proposed Development until the BLMS has been approved, thereby providing the "lock" on ensuring the biodiversity off-setting is provided. 12.5 Mr Walker, on behalf of the LBB, stated that the LBB are agreed in principle with Requirement 5 based on the summary provide by Mr Griffiths, but that the drafting will be reviewed before sign off is given. Mr Stansfield raised that the LBB want to understand further how the metric was derived from the temporal aspect. Mr Griffiths stated that this information was provided to the LBB on 18 September 2019 and will also be submitted into the Examination at Deadline 8. 12.6 Mrs White raised that there are no other sites that would replicate the habitat on the foreshore and that she had a concern over the Shrill Carder Bee. Mr Griffiths confirmed there would be no development on the foreshore and that the Applicant had assessed the Shrill Carder Bee in its Environmental Statement. 12.7 Mrs White raised a concern that the construction of the Data Centres will cause disturbance to the species before the Proposed Development. Mr Griffiths explained that the Data Centres are subject to their own planning permission and controls and as such are not a matter for the Examination. In addition, Mr Griffiths explained that the Data Centre site is the Main Temporary Construction Compound for the Proposed Development and that the Applicant has assessed the Data Centre site and any potential cumulative impacts arising from the construction of the Data Centres and the Proposed Development in the Environmental Statement Supplementary Report (6.6, REP2-044). 12.8 Mr Griffiths summarised by stating that the Environment Bank Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019) identifies an extensive number of sites that vastly exceed the land area that is required for even the likely worst case biodiversity offsetting (including temporal lag and a minimum net gain of 10%). The Requirement then states that no part of the Proposed Development can commence until the final BLMS has been approved by LBB. That BLMS must clearly set out the calculation process as referred to above. In addition to the Requirement itself, the Applicant is working with the LBB to secure one or more sites identified in the Environment Bank Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019) as soon as practicable and hopefully before the end of 2019, following which that legal agreement will

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		be submitted to the Secretary of State. 12.9 Mr Tait, on behalf of the GLA, explained that matters have moved on since Deadline 7a and GLA have nothing to add in relation to this Requirement.
13	**Requirement 11** Code of construction practice ("**CoCP**")	13.1 Mr Simpson, for the GLA, explained that the GLA required the additions made in their Deadline 7a mark up of the dDCO being: 13.1.1 (1)(f) - the additional wording is necessary to secure the reuse and recycling rates required by the London Plan and the draft London Plan; and 13.1.2 (1)(g) – the additional wording is necessary to comply with the draft London Planning Policy requiring delivery of a circular economy to keep material assets at the highest use and value for as long as possible. 13.2 Mr Inch, for the GLA, explained that the inclusion of new Requirement 11(3) in relation to Non-Road Mobile Machinery (NRMM) refers to construction machinery during construction required under the Mayor's SPG. 13.3 Mr Griffiths, on behalf of the Applicant, confirmed that the Applicant accepts the amendments to Requirements 11(1)(f) and 11(1)(g). Regarding new Requirement 11(3), the Applicant considers that the outline CoCP already makes provisions for NRMM by referring to the SPG. However, the Applicant will expressly refer to NRMM, including the register, in an updated version of the outline CoCP to be submitted at Deadline 8 and as a result there would be no need to include the GLA's proposed Requirements 11(3) and (4). 13.4 Mr Tait, on behalf of the GLA/TfL, confirmed that it is acceptable to the GLA for NRMM to be included in the CoCP rather than as an express Requirement. 13.5 Mr Tait raised the insertion by the LBB of Requirement 11(1)(p) – vehicle booking system - is supported by GLA. Mr Griffiths confirmed the Applicant is content to include this, but as it is already included in the outline CTMP, express reference to the booking system will be inserted into

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		Requirement 134(1) (construction traffic management plan). Mr Walker, on behalf of the LBB, confirmed this is acceptable.
14	**Requirement 13** Construction traffic management plan ("**CTMP**")	14.1 Mr Stansfield, on behalf of the LBB, stated that a junction impact appraisal is necessary to ensure that the capacity of junctions is appropriate at the time a full CTMP is submitted. Mr Griffiths confirmed that the Applicant is content for the statement that must accompany a CTMP under Requirement 13(2) to be accompanied by a junction appraisal. However, it is unreasonable to expect the Applicant to carry out such an appraisal on every potential junction, and so the Applicant proposes that the targeted appraisals be confined to the junctions at Bexley Road and James Watt Way, Perry Street and Howbury Lane, and Crayford Way. The Applicant proposes that the detail as to what a junction appraisal will consider is set out in the outline CTMP, which the Applicant will update for Deadline 8. 14.2 Mr Griffiths also confirmed that the Applicant is content to carry out a road condition survey, as requested by the LBB, but that it cannot be expected to survey across the whole road network. Therefore, the Applicant has proposed to limit the condition survey to Norman Road. The Requirement will be updated to refer to where damage is caused to Norman Road as a direct result of excessive weight or other extraordinary traffic (as per section 59 of the Highways Act 1980) from the construction of Work Numbers 1, 2, 3, 4 and 5, then the Applicant is to repair such damage to its pre-construction condition. 14.3 Mr Walker, on behalf of the LBB, confirmed that the LBB accepts the limit to Norman Road. 14.4 Mr Tait, on behalf of the GLA/TfL, requested the removal of reference to "*streets within the London Borough of Bexley*" in Requirement 13(1). Mr Griffiths confirmed that the Applicant is prepared to accept this amendment. 14.5 Mr Raphael, for TfL, stated that TfL requires the CTMP to set out measures to ensure maximum use of the river for transportation of materials used and waste arising in the construction process. Mr Griffiths, on behalf of the Applicant, explained that the Applicant cannot accept this. The jetty is a working jetty, so the priority is to allow movements of waste to, and bottom ash from, that jetty for RRRF. The wording suggested by TfL would conflict with this. The final CTMP must be approved

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
		by the LBB and must set out the feasibility of transporting materials by the river during construction, as required by paragraphs 10.3.1 to 10.3.3 of the outline CTMP. Mr Tait, for TfL, stated that the outline CTMP does not appear to be strong enough, for example it refers to it being considered where practicable, and therefore urges further consideration. Mr Griffiths stated that the Applicant has made a commitment to the LBB to include in the outline CTMP that the Applicant will carry out a written assessment of opportunities during construction for when and how the Applicant will be utilising the river. This assessment will be submitted to the LBB along with the outline CTMP. The Applicant will review the wording in paragraphs 10.3.1 to 10.3.3 for Deadline 8. 14.6 Mr Raphael, for TfL, stated that TfL requires a reviewing mechanism for the CTMP, given the potential for the Electrical Connection to interact with buses. Mr Griffiths confirmed that the Applicant is content to accept an amendment for reviewing and updating the CTMP and that Requirement 13(4) will be amended accordingly to refer to any updated CTMP submitted following any review being carried out. 14.7 Mr Tait, on behalf of TfL, expressed that the GLA raised in paragraph 3.4 in the Deadline 7 submission the impact on bus services and financial compensation. Mr Griffiths explained that the Applicant's position has not changed and the Applicant refers back to previous submissions – the Applicant is not under a duty to provide financial compensation to TfL or to Arriva. Furthermore, the Electrical Connection works will be carried out by UKPN, a statutory undertaker.
15	**Requirement 13A [in the LBB's mark up of the dDCO submitted at Deadline 7]** Delivery and service plan	15.1 Mr Griffiths, on behalf of the Applicant, stated that the Applicant accepts the inclusion of a Delivery and Servicing Plan but not the inclusion of a cap on vehicle movements. Mr Walker, on behalf of the LBB, confirmed that the LBB is content that it does not need to include this cap. 15.2 Mr Stansfield, on behalf of the LBB, stated that the reason for the Delivery and Servicing Plan is for LBB to be comfortable that non-waste vehicles (i.e. vehicles not covered by Requirement 14) will be managed in an efficient manner. 15.3 A Delivery and Servicing Plan will be included in a new Requirement 31 in the dDCO (3.1, Rev 4) to be submitted at Deadline 8a.

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
16	**Requirement 14** Heavy commercial vehicle movements delivering waste	16.1 Mr Griffiths explained that the Applicant and the LBB have agreed various amendments to this Requirement as follows: 16.1.1 14(1) - the cap on daily two way vehicle movements for both Work No. 1A and Work No 1B is reduced from 90 (90 in/ 90 out) to 75 (75 in/ 75 out). Mr Simpson, for the GLA/TfL, welcomed this reduction and noted it was lower than the 80 movements (80 in/ 80 out) requested previously by the GLA. 16.1.2 14(2) – the tonnage restriction by road will be split out between Work No. 1A and Work No. 1B. The cap will be 130,000 tonnes per calendar year for Work No. 1A and 40,000 tonnes per calendar year for Work No. 1B. Mr Simpson, for the GLA/TfL, confirmed the cap of 130,000 tonnes for Work No. 1A and 40,000 tonnes for Work No. 1B is supported. 16.1.3 14(4) – the wording on bottom ash will state "*Save in the event of a jetty outage, 100% of bottom ash produced by the operation of Work No. 1A must be transported from it by river to a riparian facility*." 16.1.4 14(5) – the Applicant will provide quarterly reporting. Mr Simpson, for the GLA/TfL, stated that the GLA/TfL will need to consider this further. 16.1.5 14(5)(b) – the Applicant will insert "*as well as the volumes of waste delivered to both....*" in this sub-paragraph as LBB have requested. 16.2 The ExA asked if there are any concerns with the jetty outage being four consecutive days. Mr Walker, on behalf of the LBB, explained that the LBB accepts all the points made by the Applicant in respect of Requirement 14. However, in relation to bottom ash the LBB requires the figures to demonstrate that there would be no significant adverse effects on the road network in the event of a jetty outage with both the Proposed Development and RRRF operating. Mr Griffiths confirmed that the Applicant will be submitting a Supplementary Temporary Jetty Outage Note(8.02.86) into the Examination at Deadline 8 (alongside this Oral Summary) which would confirm that position.

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
		16.3 Mr Tait, on behalf of the GLA/TfL, explained that the GLA will consider the revised wording to Requirement 14, but that the GLA has additionally raised at earlier submissions the question of commitment to Euro 6 standards in relation to heavy goods vehicles. Mr Griffiths, on behalf of the Applicant, responded that the Applicant does not collect waste, rather it receives waste. If a waste collection authority has already procured its vehicles and they do not comply with Euro 6 standards, then the Applicant should not be prevented from contracting with that waste collection authority. Whilst the Mayor of London now requires all waste authorities procuring new contracts to comply with London Emission Zones to meet Euro 6 as a minimum, that does not prevent waste authorities still operating vehicles that do not meet that standard and as a result the Applicant should not be prevented from contracting with them. Mr Griffiths stated that if such an onerous requirement was placed on the Applicant, then it could have two effects. First, waste that could have gone to the Proposed Development would go to landfill and second, it could affect the bankability of any DCO should it be granted.
17	**Requirements 15, 16 and 17** Emission limits and ambient air quality monitoring	17.1 Requirement 15: Mr Griffiths, on behalf of the Applicant, explained that because there is now a tonnage cap within the dDCO, it has been agreed with the LBB that Requirement 15 can be deleted. Mr Barker, Fichtner Consulting Engineers Limited on behalf of the Applicant, explained that Requirement 15 is not required on the basis that the ES assessed NOx emissions from the energy recovery facility (Work No. 1A) ("**ERF**") at the maximum limit permitted under the Waste Incineration BREF, as will be adopted into law through the Environmental Permitting (England and Wales) Regulations 2016. This establishes a maximum NOx emission limit of 120 mg/Nm3 (expressed at 11% oxygen, dry flue gas, 273.15K). Therefore by law, the Applicant cannot exceed 120 mg/Nm3. As has previously been stated, the impacts in respect of NOx emissions from the ERF are likely to be lower than modelled in the ES on the basis that the Applicant has proposed, via its application for an Environmental Permit for REP, a lower NOx emission limit of 75 mg/Nm3. Regarding the GLA's request to expand this requirement to encompass wider emissions, this would represent an inappropriate overlap between the DCO and the permitting mechanisms, therefore this approach is not appropriate and has not been applied in other DCOs. 17.2 Requirement 16: Mr Barker, Fichtner Consulting Engineers Limited on behalf of the Applicant,

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		explained that this requirement applies to the CHP engine for Work No. 1B which may be installed to utilise biogas produced in the Anaerobic Digestion facility. The relevant permitting legislation for this technology is the Medium Combustion Plant Directive (MCPD), as adopted into law through the Environmental Permitting (England and Wales) Regulations 2016. This establishes a maximum NOx emission limit of 500 mg/Nm3 (expressed at 5% oxygen, dry flue gas, 273.15K). The ES originally assessed NOx emissions from the CHP engine at this maximum level. However, in order to reduce impacts to Negligible and biodiversity impacts to insignificant, as set out in the Anaerobic Digestion Facility Emissions Mitigation Note (Rev 1) (8.02.42, REP7-010), the Applicant has committed to installing, at significant cost, selective catalytic reduction (SCR) technology to abate NOx emissions significantly below the maximum NOx emission limit established in legislation. On this basis, Requirement 16 is necessary to secure, through the DCO, a commitment to abate NOx emissions to 125 mg/Nm3 (expressed at 5% oxygen, dry flue gas, 273.15K) or below. 17.3 Mr Griffiths confirmed that the Applicant accepts the GLA's mark-up in its Deadline 7a submission in relation to the deletion of "bio" from "biogas" and the changes to the terminology of the regulated emission. Following the hearing, the Applicant has reviewed the terminology which would be adopted within the Environmental Permit for REP. The exact wording will be "*oxides of nitrogen (nitric oxide and nitrogen dioxide expressed as nitrogen dioxide)*", which the Applicant would propose to utilise in the dDCO so as to avoid any inconsistency between the dDCO and the Environmental Permit during the operational phase of REP. The Applicant considers that this minor but necessary revision would deliver the clarity which the GLA is seeking. 17.4 The ExA asked where the 2,000 hours figure came from in the GLA's Deadline 7 response. Mr Barker, Fichtner Consulting Engineers Limited on behalf of the Applicant, clarified that the Applicant does not intend to curtail the operational hours of the Anaerobic Digestion facility. Rather, the Applicant seeks to maximise the benefits associated with generating renewable and low carbon energy to the full extent proposed. It appears that the GLA has assumed an emissions release rate from the CHP engine based on the maximum NOx emission limit permitted under the MCPD, rather than the lower limit proposed by the Applicant. On the basis that the lower limit is secured through Requirement 16(1), the Applicant is satisfied that the tonnage limit stipulated in Requirement 16(2) will not result in curtailment of CHP engine operational hours. The GLA

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
		confirmed that it had most likely used the wrong figure and accepted the Applicant's explanation. 17.5 Requirement 17: Mr Griffiths confirmed that Requirement 17 would be deleted as the Applicant and the LBB have agreed a section 106 obligation to contribute towards ambient air quality monitoring in the LBB. Mr Walker, on behalf of the LBB, confirmed that the figure and time-period had been agreed between the LBB and the Applicant and as a result this satisfies the LBB in respect of all Air Quality matters.
18	**Requirement 18** Waste hierarchy scheme	18.1 Mr Griffiths, on behalf of the Applicant, explained that the Applicant is aware that the GLA and the LBB are concerned about the waste hierarchy. The Applicant set out in Deadline 4 how the duty of care operates (the Applicants response to Greater London Authority Deadline 3 Submission, 8.02.35, REP4-014). The purpose of this Requirement is to give the GLA and the LBB confidence about the existing processes on the waste hierarchy. A balance must be struck between the Applicant demonstrating that the waste being managed at the Proposed Development is residual, and expecting the Applicant to police waste suppliers, which is the role of the regulator, the Environment Agency. In addition, Mr Griffiths stated that Requirement 18 is one of the most detailed requirements to date on waste hierarchy in a DCO or a planning permission for an energy from waste facility. Mr Griffiths also informed the ExA that a letter of "no impediment" had been received from the Environment Agency in respect of the Environmental Permit for the Proposed Development, which will be submitted into the Examination at Deadline 8. 18.2 Mr Griffiths explained that Requirement 18(2) commits the Applicant to providing information to the LBB on how the waste it is sourcing has gone through the waste hierarchy process. The Applicant should not be asked to do more than demonstrate how through its contract it has asked suppliers to demonstrate their processes. For example, if a local authority is undertaking separate kerbside collections of recyclables and then passing the residual waste through a MRF before supplying the remaining residual waste to the Applicant, this should be sufficient to demonstrate that the waste is residual. 18.3 Mr Griffiths confirmed that the Applicant is content to carry out an annual waste composition analysis and for this to be included into the Requirement. Other than this wording, the Applicant rejects the additional wording suggested by the GLA as the GLA is effectively seeking that the

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		Applicant police the waste suppliers, which is for the Environment Agency to monitor rather than the Applicant. 18.4 Mr Simpson, for the GLA, stated that the GLA welcomes the waste hierarchy scheme in principle. However, on the suggested amendments from the Applicant, the GLA is looking for a quarterly review of waste composition rather than an annual review to ensure it gets the necessary assurance that material going to the ERF is truly non-recyclable. On Requirement 18(1), the GLA have asked to be involved in the Scheme as the Mayor has a strategic role and wants assurance that material is truly non recyclable. Mr Griffiths explained that the LBB should approve the Scheme. Whether the LBB chooses to consult the GLA is, of course, a decision for the LBB and the Applicant does not seek to fetter the LBB's decision. 18.5 Mr Walker, on behalf of the LBB, confirmed that the LBB are generally content with the proposed requirement. 18.6 Mr Griffiths also explained that the GLA had misread Requirement 18(2)(c). The Requirement applies to all suppliers whereas Requirement 18(2)(c) expressly applies to commercial suppliers as they are more likely to have an environmental management system in place. If this applied to all suppliers, then there could be some local authorities who could not contract with the Applicant, which could result in waste going to landfill rather than higher up the waste hierarchy. 18.7 Mr Simpson, for the GLA, stated that the GLA still asserts that the changes it applied in its Deadline 7a mark up remain necessary. Regarding Requirement 18(2)(c), the GLA is seeking a commitment for the baseline for environmental management performance to be 65%. Mr Griffiths stated that this is a target in the London Environment Strategy and Draft London Plan for 2030 and does not take into account the separation that may have already taken place before the waste supplier has received the waste – placing such a requirement is unworkable. Mr Griffiths confirmed that the Requirement, as amended with the additional wording referred to above, is as far as the Applicant can be expected to go in monitoring its waste suppliers.
19	**Requirement 20**	The ExA questioned how travel of workers during the commissioning phase would be controlled. Mr Griffiths, on behalf of the Applicant, explained that as the commissioning phase is part of the construction

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	Operational worker travel plan	phase, the workers involved in that period would be covered within the CTMP. The CTMP has been updated at Deadline 8 to make it clear that during the commissioning phase there will be travel plans for those workers. Mr Walker, on behalf of the LBB, confirmed that this addresses LBB's concerns.
20	**Requirement 21** Control of operational noise	Mr Griffiths, on behalf of the Applicant, confirmed that the Applicant is content to accept that the scheme be a "written" scheme and to include reference to the LBB's standard guidance on operational noise, both as requested by the LBB. However, the Applicant and the LBB have both agreed that there is no need to include reference to 5dB in the Requirement.
21	**Requirement 23** Community benefits	Mr Griffiths, on behalf of the Applicant, stated that the Applicant rejects the insertion of the London Living Wage in Requirement 23 as it is not a planning policy position and would apply to the whole company, not just the Proposed Development. Mr Griffiths explained that generally the majority of workers are skilled workers and will be paid more than the London Living Wage due to the technical nature of these plants. However, the Applicant cannot accept this wording in the DCO.
22	**Requirement 25** Phasing of construction and commissioning of Work No. 1	22.1 Mr Walker, on behalf of the LBB, confirmed that the LBB is content with the wording in this Requirement given that a separate cap has now been agreed for the ERF and the Anaerobic Digestion facility. 22.2 Mr Tait, on behalf of the GLA, stated that to ensure that each aspect of the development is brought forward and that the benefits attributed in totality are achieved, the GLA has suggested wording in Requirement 25 that deals with commencing operations in the same phase. 22.3 Mr Griffiths, on behalf of the Applicant, explained that the Applicant is content to refer to Work No. 2(b) in the Requirement but only if it is applicable as Work No. 2(b) is an option (as the steam turbine could be part of Work No. 1A). The Applicant will also include in the Requirement that the phasing programme is to provide for the anticipated date of final commissioning of Work No 1C and Work No 1D as soon as reasonably practicable. However, the Applicant confirm that they will be commissioning at the same time as Work No. 1A. This is primarily due to the fast moving developments in battery technology. 22.4 Regarding the GLA's amendments requiring Work No. 1B to be commissioned in the same phase

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		as Work No. 1A, Mr Griffiths, on behalf of the Applicant, explained that the Applicant has to secure contracts for Work No. 1A and Work No. 1B and therefore the Applicant needs the ability to stagger the commissioning and operation of those elements of the Proposed Development. If the Applicant goes through the expense of constructing Work No. 1B, it will want to realise the value from it, but the Applicant cannot commit to commencing operation in the same phase because this depends on when the waste contracts are secured and commence. It would be perverse for one facility to be dependent on the commencement of a waste contract in respect of the other. Mr Griffiths made the point that the Applicant is being reasonable and is accepting the GLA's amendments where it can, but where it cannot it is because the amendment would make the consent unworkable and therefore impede funding. 22.5 Mr Griffiths confirmed that the Applicant is content to accept the wording suggested by GLA at Deadline 7a in relation to the steam turbine with district heating off-take being completed at the anticipated date of final commissioning (new Requirement 25(3)).
23	**Requirement 26** Combined heat and power	27.1 Mr Griffiths ran through the amendments that the Applicant has agreed to make following the comments received on the dDCO: 27.1.1 the Requirement will commence with the words proposed by the GLA in its Deadline 7a mark up. However, reference to "and hot water" is not accurate and therefore these words will be deleted. In addition, the CHP review will need to be submitted prior to the date of final commissioning, rather than prior to the operation. 27.1.2 the Requirement will require the Applicant to submit to the LBB for approval the terms of reference for the working group together with a list of organisations that will be invited to the working group. The terms of reference are to include the points in 26(2)(a)-(c) as in the original drafting, but will also include the identification of the likely connection point, agree a list of CHP consultants, identify working practices of the working group, and confirmation that approvals and agreements must not be unreasonably withheld or delayed. 27.1.3 the Applicant must not start commissioning Work No. 1A until the working group has

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		been established, which may be combined with the existing working group for RRRF. 27.1.4 the CHP review must be undertaken by a CHP consultant appointed by the Applicant, who must be from the approved list of the working group. The CHP review is to cover the points as originally set out, but with the following amendments: (i) the assessment of potential commercial opportunities that reasonably exist is to take place within a 10km radius; (ii) an assessment of the identified opportunities is to be against the Combined Heat and Power Quality Assurance requirements; and (ii) the Applicant agrees with the GLA that the list of actions should only be those that are technically and commercially viable. On this basis the Applicant agrees to delete the words "*without material additional cost to the undertaker*." 27.1.5 where the working group identifies the likely connection point, the Applicant is to safeguard that route. 27.1.6 the CHP review is to take place every three years, as agreed with the LBB. 27.1.7 where the export of heat is provided, the CHP review will be every five years. 27.2 Mr Tait, on behalf of the GLA, raised two points: 27.2.1 the GLA should be written in to the working group given its expertise and experience in the field of CHP. 27.2.2 the GLA requires a two year review period rather than three. 27.3 Mr North, for the GLA, stated that GLA are looking for more certainty around the sizing of the CHP

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		plant and equipment on site as it will not be installed until after construction is complete. 27.4 Mr Griffiths responded on each point: 27.4.1 the Applicant will consider inserting express reference to the GLA as being invited to the working group. 27.4.2 three years is more than sufficient given the detail that the Applicant has to go through to produce each CHP review. 27.4.3 Regarding the sizing of the CHP plant and equipment on site, Mr Griffiths added that a new Requirement 2(2) will be inserted requiring the submission of a plan showing that there is sufficient space for the heat export system within Work No. 1A. 27.5 The Applicant maintains that through the working group, the commitments made in Requirements 2 and 26 and other demonstrated steps, it is fully committed to bringing forward heat export and the associated benefits from the commencement of operation of Work No. 1A.
24	**Requirement 27** Use of compost material and gas from Work No. 1B	28.1 Mr Griffiths, on behalf of the Applicant, stated that the Applicant accepts the GLA's mark up in Requirement 27(1), 27(2)(c) and 27(3). Mr Griffiths explained that as the Requirement is currently drafted, the Applicant is only required to undertake the review of export of gas once and then no further review is required. This position remains, as it is a binary investment decision that the Applicant will need to make prior to commissioning as to whether it is operated as gas to grid or, if gas to grid is not technically and commercially viable, deploy the CHP engine to generate renewable heat and power. There is no policy justification for preventing the Applicant from operating CHP given the ES concludes that with SCR, there are no significant adverse effects. Regarding the compost material, the Applicant recognises that in the event that a particular contract ceases then the Applicant should be placed under a duty to review other commercially viable markets that may exist. 28.2 Mr Barker, Fichtner Consulting Engineers Limited on behalf of the Applicant, explained that in respect of the gas to grid scenario specifically, there is no gas injection location on the REP site or

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
		Norman Road. There would therefore be a need to install a gas export pipeline to a suitable connection point on the local gas network. The local gas network operator will require certain gas quality and calorific value standards to be achieved, and for these standards to be verified through metering at a network entry facility. Local gas network operators also retain the right to reject the gas if it does not comply with these standards, such that a gas return pipeline is typically installed. In addition to the civil works associated with the pipeline installation, and the clean-up technologies required, the capital outlay associated with the gas to grid scenario is significant. On this basis, once a biogas utilisation option has been realised, the continued review of biogas utilisation is superfluous. 28.3 Mr Simpson, for the GLA, requested the Applicant makes it clear that the compost material in Work No. 1B must be used for compost where it meets the necessary quality standards and where a viable market exists. Mr Griffiths confirmed that the Applicant would be content to accept this. 28.4 Mr Simpson, for the GLA, also requested that its proposed sub-paragraph (9) in its Deadline 7a mark up be accepted. Mr Griffiths stated that the Applicant cannot accept the wording as it prevents the Applicant from deploying the CHP engine and therefore is not acceptable to the Applicant, particularly with the inclusion of Requirement 16 and the SCR investment. Mr Simpson clarified that sub-paragraph (9) should read "*gas electricity generation, heat…*" so that it is not just for heating. Mr Griffiths stated that the Applicant will consider sub-paragraph (9) in light of the clarification.
25	**Requirement 28** Decommissioning fund	Mr Griffiths explained that the Applicant and the LBB have agreed a section 106 obligation along the lines of the provisions for the existing decommissioning fund for RRRF. Mr Walker, on behalf of the LBB, confirmed Mr Griffiths' position.
26	**Requirement 32** Metropolitan Open Land	The ExA asked if the Proposed Development was within the Metropolitan Open Land ("**MOL**"). Mr Griffiths explained that the work number for the Temporary Construction Compound (Work Number 8) overlaps with the very edge of the MOL. However, the Applicant is not proposing to do anything on that land and the requirement makes it clear that this is the case, as per the MOL note (8.02.41, REP4-020). Mr Tait confirmed that this is not raised by GLA as an issue.

Ref	Issue raised by the ExA (Rev 3 of the dDCO)	Applicant's Response
27	**New suggested requirement by GLA at Deadline 7a** Waste tonnage cap	27.1 The ExA asked if the GLA's proposed wording in Requirement 33 is additional or alternative wording to the tonnage limits. Mr Tait explained that this is the alternative to defining Work No. 1A and Work No. 1B with a cap. Therefore, a requirement setting out the tonnage cap is agreed by GLA, subject to the figures. 27.2 Mr Tait explained that Requirement 33(2) in the GLA's Deadline 7a mark up is a London specific cap replicating the RRRF planning permission. Mr Griffiths explained that the Applicant does not agree with this additional requirement. As set out in The Project and its Benefits Report (7.2, APP-103) and the Supplementary Report to the Project and its Benefits Report (7.2.1, REP2-045) there is a need for the Proposed Development in London and the regions surrounding London. In addition, this assessment took into account the recycling targets and still identified a need within London for the Proposed Development over and above its 805,920 cap. Given the strategic location of the plant and in light of the cap proposed in Requirement 14, there is a clear emphasis on the river which justifies why there should not be regional cap. The cap on the RRRF planning permission in condition 6 only states that no more than 115,000 tonnes of waste arising from outside Greater London shall be delivered to the plant from the Port of Tilbury. This is a restriction on the Port of Tilbury, not a general restriction on waste delivered to the plant.

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

Ref	Issue raised by the ExA	Applicant's Response
28	RRRL – Part 1	The protective provisions are currently going through an internal approval process. The final version of the dDCO will have the agreed protective provisions.
29	Environment Agency – Part 4	The Applicant has accepted the EA's amendments to the protective provisions and is awaiting confirmation from the EA that these are agreed. The agreed protective provisions will be submitted in the final version of the DCO.

Ref	Issue raised by the ExA	Applicant's Response
30	Network Rail – Part 5	These protective provisions are agreed and will be submitted in the final version of the DCO. However, Network Rail has now requested a framework agreement be agreed prior to withdrawal of their objection. The Applicant is querying this given the lateness of the request and the fact that the protective provisions prevent the Applicant from acquiring or using or acquiring new rights over any railway property.
31	National Grid Electricity Transmission – Part 6	These protective provisions are close to agreement. It is anticipated that agreement will be reached prior to the submission of the final version of the DCO.
32	UK Power Networks - Part 7	These protective provisions are agreed and will be submitted in the final version of the DCO. The withdrawal letter will be submitted upon signing of the agreed side agreement.
33	Thames Water – Part 8	These protective provisions are agreed and will be submitted in the final version of the DCO. Thames Water have confirmed their approval to the protective provisions by letter to the ExA dated 19 September 2019
34	Southern Gas Networks – Part 9	The Applicant is in discussions on the protective provisions and these should be agreed before Deadline 8B or prior to the close of examination.
35	ES Pipelines – Part 10	ES Pipelines is not affected after the revision of the redline boundary at Deadline 2, therefore no bespoke protective provisions are required.

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

Ref	Issue raised by the ExA	Applicant's Response
36	Schedule 11	The ExA raised that the date of the FRAPA drawings should be 13 May 2019. The Applicant will make the required changes.

11. AGENDA ITEM 8 – NEXT STEPS

Ref	Issue raised by the ExA	Applicant's Response
37	Timing of deadline	37.1 The ExA raised that if any statements of common ground could be submitted by Deadline 8, it would be helpful to the Examination. 37.2 Mr Griffiths proposed that the Deadline 8 submissions are to include the written summary of oral hearings, technical notes, the updated OBLMS, CoCP and CTMP and responses to general points raised by parties at Deadline 7. The dDCO, the Applicant's responses to comments on the dDCO, Explanatory Memorandum, schedule of changes and statements of common ground are to be submitted at Deadline 8a on Monday 30 September to enable discussions with GLA and LBB to try to reach agreement. Mr Griffiths also proposed that Deadline 8b be set on Friday 4 October.