



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

The Planning Act 2008

**Riverside Energy Park**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for  
Business, Energy and Industrial Strategy

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Examining Authority

**Jonathan Green**

**9 January 2020**

# OVERVIEW

File Ref: EN010093

The application, dated 15 November 2018, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 16 November 2018.

The Applicant is Cory Environmental Holdings Limited.

The application was accepted for examination on 14 December 2018.

The examination of the application began on 10 April 2019 and was completed on 9 October 2019.

The Proposed Development comprises energy generating capacity including an energy recovery facility to provide thermal treatment of residual (non-recyclable) waste, an anaerobic digestion facility to process food and green waste, a roof top solar photovoltaic installation and battery storage. The generating capacity would be in excess of 50MW and constitutes a Nationally Significant Infrastructure Project under s14 and s15 of the Planning Act 2008. It also includes on site combined heat and power infrastructure and a 132 kV underground electrical connection.

The Proposed Development would be located in the London Borough of Bexley on a riverside site with road access from Norman Road in Belvedere. It would be adjacent to an existing energy from waste facility. The underground electrical connection would run from the generation site to the National Grid sub-station at Littlebrook in Dartford, Kent.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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# **1. INTRODUCTION**

## **1.1. INTRODUCTION TO THE EXAMINATION**

1.1.1. The application for a Development Consent Order (DCO) for the Riverside Energy Park [APP-001 – APP-107]<sup>1</sup> was submitted to the Planning Inspectorate by Cory Environmental Holdings Limited (CEHL trading as Cory Riverside Energy) (the Applicant) under s31 of the Planning Act 2008 (PA2008) and received on 16 November 2018. It was accepted for Examination under s55 of PA2008 on 14 December 2018 [PD-001].

1.1.2. The Proposed Development is made up of three main elements:

- The Riverside Energy Park (REP);
- The Main Temporary Construction Compound;
- The electrical connection;

1.1.3. The REP which would comprise an integrated range of technologies including: waste energy recovery, anaerobic digestion (AD), solar panels and battery storage would be constructed on land immediately adjacent to the Applicant's existing Riverside Resource Recovery Facility (RRRF), within the London Borough of Bexley (LBB). The main elements of the REP, which together are classified as an NSIP, would be:

- An energy recovery facility (ERF): to provide thermal treatment of commercial and industrial (C&I) residual (non-recyclable) waste with the potential for treatment of non-recyclable municipal solid waste (MSW);
- An AD facility: to process food and green waste. Outputs from the AD facility would be transferred off-site for use in the agricultural sector as fertilizer or, as an alternative where appropriate, used as a fuel to generate electricity;
- A solar photovoltaic (PV) installation: to generate electricity. This would be installed across a wide extent of the roof of the main REP building;
- Battery storage: to store and supply additional power to the local distribution network at times of peak electrical demand. This facility would be integrated into the main REP building; and
- On site combined heat and power (CHP) infrastructure: to provide an opportunity for local district heating for nearby residential developments and businesses. REP would be CHP enabled with necessary onsite infrastructure included within the REP site.

1.1.4. The REP would be connected to the electricity distribution network via a new 132 kilovolt (kV) underground electricity cable connection (the electrical connection). This is classified as associated development. At the time of the application alternative route options for the electrical

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<sup>1</sup> Individual document references to the Examination Library (Appendix A) in this report are enclosed in square brackets []. Whilst the I have read and had regard to all the representations made, the references should be viewed as being representative of where particular points have been made or where information can be found to assist the reader in accessing source material. The referencing is not intended to refer to the entirety of the representation.

connection from a new substation proposed to be constructed within the REP site to the existing National Grid Littlebrook substation located south east of the REP site, in Dartford were under consideration. These routes are shown in the Works Plans submitted with the Application [APP-008]. Following consultation with UK Power Networks (UKPN), which would be responsible for the construction of the electrical connection, the Applicant settled on a single route for the connection. This route is shown in the revised Works Plans [REP2-004].

- 1.1.5. The application also included provision for the temporary use of land adjacent to the REP site and along the line of the electrical connection which would be used during the construction of the Proposed Development. This was also classified as associated development. Changes were made to the requirement for this land during the course of the Examination, reducing the land over which temporary possession powers were sought. The final requirements for land for the Proposed Development are shown in the revised Land Plans [REP2-003] submitted at Deadline 2.
- 1.1.6. The Proposed Development has a generating capacity in excess of 50MW and is located wholly in England. As such it meets the definition of an NSIP set out in s14(1)(a) and s15(2) of PA2008 and requires development consent in accordance with s31 of PA2008

## **1.2. THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.2.1. On 31 January 2019, I was appointed as the Examining Authority (ExA) for the application under s78 and s79 of PA2008 [PD-004].
- 1.2.2. The persons involved in the Examination were:
- Persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP;
  - Affected Persons (APs) who were affected by a compulsory acquisition (CA) or temporary possession (TP) proposal made as part of the application and objected to it at any stage in the Examination;
  - Other Persons, whom I accepted as participants in the Examination because they were affected but had not submitted a RR.
- 1.2.3. The Examination began on 10 April 2019 and concluded on 9 October 2019.
- 1.2.4. The principal components of the Examination are summarised below.

### **The Preliminary Meeting**

- 1.2.5. On 13 March 2019, I wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) [PD-005].

- 1.2.6. The PM took place on 10 April 2019 at the Slade Green and Howbury Community Centre, Chrome Road, Erith, DA8 2EL. A note of the meeting [EV-001] and an audio recording [EV-001a] were published on the Planning Inspectorate National Infrastructure website.<sup>2</sup>
- 1.2.7. My Procedural Decisions and the revised Examination Timetable taking into account matters raised at the PM were provided in my Rule 8 Letter, dated 17 April 2019 [PD-006].

### **Key Procedural Decisions**

- 1.2.8. The Procedural Decisions set out in my Rule 8 Letter related to matters that were confined to the procedure of the Examination and did not bear on my consideration of the planning merits of the Proposed Development.
- 1.2.9. Following the changes to the application that the Applicant submitted at Deadline 2, I sent a Rule 17 request [PD-008] to IPs on 1 July 2019 providing an opportunity to comment on the impacts of these changes before I decided whether or not they were material and if so whether I should accept the changes into the Examination. This is considered further in Chapter 4 of this report.

### **Site Inspections**

- 1.2.10. I carried out an accompanied site inspection [EV-002] on 4 June 2019 during which I was shown the operation of the RRRF as an example of an ERF, visited plots of land subject to applications for CA or TP, and walked through the Crossness Nature Reserve (CNR) which adjoins the site of the Proposed Development. I was also driven to the National Grid Littlebrook substation along the line proposed for the electrical connection.
- 1.2.11. I carried out an unaccompanied site inspection on 18 September 2019 during which I viewed the site from public footpaths and from Norman Road [EV-012]. I have had regard to the information and impressions obtained during these site inspections in all relevant sections of this Report.

### **Hearings**

- 1.2.12. An Open Floor Hearing was requested and was held on 4 June 2019 at the Belvedere Community Centre, Mitchell Close, Belvedere, DA17 6AA close to the main site for the Proposed Development [EV-004]. This was attended by approximately 50 local residents and Councillors. One participant representing the organisation London First spoke in favour of the Proposed Development, but all other speakers were opposed. Concerns were expressed about dust and odours from the operation of the plant and the effects on air quality, particularly in those areas downwind from the site. Increased traffic both during construction and

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<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/London/Riverside-Energy-Park/>

operation was a major concern. Concern was expressed about possible adverse impact on the CNR. It was argued that more attention should be paid to recycling rather than incineration.

- 1.2.13. My first Issue Specific Hearing (ISH1) on environmental matters [EV-005] was held on 5 June 2019 at the Slade Green and Howbury Community Centre. This location lies midway between the main area for the Proposed Development at Belvedere and the end of the electrical connection at Littlebrook and is easily reached by car and public transport. The main topics discussed at this ISH were issues relating to waste management, air quality, biodiversity, transport and flood risk.
- 1.2.14. My second ISH (ISH2) to consider the draft DCO [EV-008] was held on the morning of 6 June 2019. I raised questions concerning the definition of the Authorised Development, proposed changes to the articles in the draft DCO, proposed changes to the Requirements in Schedule 2 and the drafting of Protective Provisions.
- 1.2.15. A further ISH to consider the draft DCO (ISH3) [EV-011] was held on 19 September 2019 at which changes to the draft DCO proposed by the Applicant and by IPs were discussed.
- 1.2.16. My first Compulsory Acquisition Hearing (CAH1) was held on the afternoon of 6 June 2019 and continued on the morning of 7 June [EV-006, EV-007]. At this hearing I heard representations from the Western Riverside Waste Authority (WRWA) concerning the proposed CA of land in which it held a leasehold interest.
- 1.2.17. A further CAH was held on 18 September 2019 (CAH2) [EV-010] at which it was reported that all of the objections to CA, including the objections by WRWA, had been withdrawn. LBB and Kent County Council (KCC) did not object to the CA proposed along the route of the electrical connection but discussions were continuing about the application of street works provisions in the DCO to certain parcels of land along the route [EV-009]. This is considered further in Chapter 7 of this Report.

## **Written Processes**

- 1.2.18. Examination under PA2008 is primarily a written process, in which I have regard to written material forming the Application and arising from the Examination. All submissions made into the Examination are listed in the Examination Library at Appendix A and have been published on the National Infrastructure website.

## **Relevant Representations, Written Representations and Other Examination Documents**

- 1.2.19. 87 RRs were received by the Planning Inspectorate [RR-001 to RR-087] prior to the start of the Examination. All makers of RRs received the Rule 6 letter and were provided with an opportunity to become involved in the Examination as IPs. I have fully considered the RRs submitted. I received a further 20 submissions after the close of the RR period which I accepted into the Examination. [AS-001 to AS-015]. I also accepted a

number of further submissions which were not submitted at specific deadlines [AS-016 to AS-045].

- 1.2.20. The Applicant and IPs were provided with opportunities to submit written representations (WRs), comment on WRs made by the Applicant and other IPs, summarise their oral submissions at hearings in writing and make other written submissions requested during the Examination.

### **Local Impact Reports**

- 1.2.21. A Local Impact Report (LIR) is a report made by a relevant Local Authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area). LIRs were submitted at Deadline 2 by the Greater London Authority (GLA), [REP2-075] including a summary of the LIR [REP-076], LBB, [REP2-082], the London Borough of Havering (LBH), [REP2-083] including a summary of the LIR [REP-084] and a joint LIR [REP2-079] by KCC and Dartford Borough Council (DBC).

- 1.2.22. The LIRs have been fully taken into account in all relevant chapters of this Report.

### **Statements of Common Ground**

- 1.2.23. A Statement of Common Ground (SoCG) is a statement between an applicant and one or more IPs, which outlines the progress on matters agreed or disputed between the parties.

- 1.2.24. By the end of the Examination, the Applicant had submitted signed SoCGs with the following bodies:

- Historic England [AS-013];
- Natural England [REP2-051];
- The Environment Agency REP5-013];
- Port of London Authority [REP3-016];
- Dartford Borough Council [REP3-018];
- The Greater London Authority and Transport for London [AS-038];
- Kent County Council [REP8-014 and REP8b-010];
- London Borough of Barking and Dagenham [REP3-017];
- London Borough of Bexley [REP8b-009]

- 1.2.25. The SoCGs have been fully taken into account in all relevant Chapters of this Report.

### **Written Questions**

- 1.2.26. I asked written questions or requested further information on five occasions during the Examination.

- My first Written Questions (ExQ1) [PD-007] and Procedural Decisions were set out in my Rule 8 letter [PD-006], dated 17 April 2019.
- My further Written Questions were issued on 1 August 2019 [PD-012].
- I requested comment on changes to the application on 1 July 2019 [PD-008].

- I issued a Procedural Decision and requested further information on changes to the application on 1 August 2019 [PD-011].
- I issued a further request for information addressed to the Applicant and LBB on 30 August 2019 [PD-015].

1.2.27. All responses to my written questions and requests for further information have been fully considered and taken into account in all relevant Chapters of this Report.

## **Requests to Join and Leave the Examination**

1.2.28. Submissions were received after the close of the RRs period from Brentwood Borough Council [AS-003], the London Borough of Newham [AS-010], and the Marine Management Organisation [AS-011]. These did not raise any objections to the Proposed Development but reserved the right to make further comments during the course of the Examination. Representations were also received during the pre-Examination stage from ES Pipelines Limited [AS-001], Cheryl Osborne [AS-020] and Harlaxton Engineering Services [AS-007]. I accepted all these representation into the Examination as representations from Other Persons.

1.2.29. During the Examination, following discussions with the Applicant the following APs or IPs reached agreement with the Applicant on CA and other aspects of the Proposed Development affecting their interests and withdrew their objections and no longer wished to be an IP in the Examination.

- APs whose objections were withdrawn
  - Creekside Developments (Kent) Limited [AS-026];
  - Landsul Limited [REP8b-029];
  - Mas Mohammed [AS-027];
  - Munster Joinery (UK) Limited [REP8b-029];
  - SAS Depot [AS-025];
  - S Wernick and Sons (Holdings) Limited and Wernick Event Hire Limited [OD-004 to OD-006]; and
  - Western Riverside Waste Authority (WRWA) [AS-024];
- Protective Provisions agreed and objections withdrawn
  - National Grid Electricity Transmission PLC [AS-043];
  - Network Rail [AS-045];
  - Port of London Authority [REP8b-025];
  - Southern Gas Networks plc [AS-044]; and
  - Thames Water Utilities Ltd [REP8b-029].

## **1.3. ENVIRONMENTAL IMPACT ASSESSMENT**

1.3.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required.

1.3.2. On 24 November 2017 the Applicant submitted a Scoping Report to the Secretary of State (SoS) under Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2263) (as amended) (the EIA Regulations) in order to request an opinion

about the scope of the Environmental Statement (ES) to be prepared (a Scoping Opinion) [APP-062]. It follows that the Applicant is deemed to have notified the Secretary of State under Regulation 6(1)(b) of the EIA Regulations that it proposed to provide an ES in respect of the Project.

- 1.3.3. In January 2018 the Planning Inspectorate provided a Scoping Opinion.<sup>3</sup> Therefore, in accordance with Regulation 4(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development. The application accompanied by an ES was received on 16 November 2018.
- 1.3.4. On 13 February 2019 the Applicant provided the Planning Inspectorate with certificates of compliance confirming that s56 and s59 of PA2008 and Regulation 13 of the EIA Regulations had been complied with [OD-002].
- 1.3.5. Consideration is given to the adequacy of the ES and matters arising from it in Chapter 5 of this Report.

## **1.4. HABITATS REGULATIONS ASSESSMENT**

- 1.4.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report has been provided. A Habitats Regulations No Significant Effects Report was provided as part of the application documentation [APP-101]. It was revised during the Examination [REP2-043] following amendment to modelled emission/deposition rates. Both the original and revised HRA Reports concluded that no likely significant effects to a European site had been identified and the Proposed Development did not require further consideration through an Appropriate Assessment. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 6 of this Report.

## **1.5. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS**

- 1.5.1. Towards the end of the Examination, the Applicant submitted a draft s106 agreement with LBB under which provision is made for the owner or developer of the REP to pay a contribution to LBB for ambient air quality monitoring which would continue for 25 years. It also provided for the owner or developer to provide a financial guarantee to cover the costs of decommissioning from the earlier of 32 years from the start of commissioning or three years prior to the permanent cessation of the operation of the REP. I consider the relevance of this unsigned agreement in my consideration of the draft DCO in Chapter 8.

## **1.6. OTHER CONSENTS**

- 1.6.1. The Application included a statement of other consents and licences that would be required in addition to the DCO [APP-036]. The principal requirements are:

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<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010093/EN010093-000010-Scoping%20Opinion.pdf>

- exemption, as a generating station with a capacity of less than 100MW, from the need to hold an electricity generation licence under the Electricity Act 1989;
- Building Regulation approval under the Building Regulations 2010;
- A bilateral connection agreement with UKPN;
- An Environmental Permit (EP) under the Environmental Permitting (England and Wales) Regulations 2016;
- Health and Safety related consents under the Health and Safety at Work Act 1974 and subsidiary legislation; and
- River Works licence under section s66 of the Port of London Act 1968 (as amended)

1.6.2. Without prejudice to the exercise of discretion by future decision-makers I am not aware of any reason why these consents should not be granted. A number of other consents which might be required were listed in the ES on a precautionary basis.

1.6.3. The application for an EP was submitted to the Environment Agency (EA) on 17 December 2018 and was under consideration by the EA during the course of the Examination. A Design Stage R1 application was submitted to the EA on 7 February 2019 [REP5-013].

1.6.4. The application for a River Works licence was under discussion with the Port of London Authority (PLA) during the course of the Examination. The Applicant proposed that the existing River Works licence held by Riverside Resource Recovery Limited (RRRL), for the operation of RRRF should be reissued on a joint and several bases to apply both to RRRL and the Applicant. The PLA agreed in principle to this approach in its signed SoCG with the Applicant [REP3-016] and subsequently withdrew its objection to the Proposed Development [REP8b-025].

## 1.7. STRUCTURE OF THIS REPORT

1.7.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and make this Report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoS' decision.
- **Chapter 4** sets out the planning issues that arose from the Application and during the Examination.
- **Chapter 5** sets out my detailed consideration of the planning issues and the planning balance.
- **Chapter 6** considers effects on European Sites and HRA.
- **Chapter 7** sets out my examination of CA and TP proposals.
- **Chapter 8** considers the implications of the matters arising from the preceding chapters for the draft DCO.
- **Chapter 9** summarises all relevant considerations and sets out my recommendation to the SoS.

1.7.2. This report is supported by the following Appendices:

- **Appendix A** – The Examination Library.
- **Appendix B**– List of Abbreviations.
- **Appendix C** – The Recommended DCO

## **2. THE SITE AND THE PROPOSED DEVELOPMENT**

### **2.1. SITE LOCATION**

2.1.1. The location of the Proposed Development is described in Chapter 3 of the Environmental Statement [APP-040] and shown in Figure 1.1 in the site location plan [APP-056].

#### **REP Site and Main Temporary Construction Compound**

2.1.2. The Riverside Energy Park (REP) site is in Belvedere, in the London Borough of Bexley, in an area bounded to the north by the adjacent Thames Path long distance trail and the River Thames. It is bounded to the east by a boundary fence onto a public footpath linking Norman Road with the Thames Path, and to the west by a boundary fence onto the adjacent Crossness Nature Reserve (CNR,) between the REP site and Thames Water Utilities Limited's (TWUL) Crossness Sewage Treatment Works (CSTW) site, approximately 200m away. Within this area a public footpath links the CNR with the Thames Path. A number of ditches and small watercourses surround the REP Site.

2.1.3. In the application the REP site included the existing jetty extending out into the River Thames but excluded the existing Riverside Resource Recovery Facility (RRRF) main building itself. The jetty was subsequently excluded from the application. The majority of the REP site is currently used for private vehicle circulation areas, the jetty access ramp, staff and visitor parking, open container storage, contractor maintenance, an electrical substation and associated landscape/habitat areas.

2.1.4. The REP site is accessed by river via the existing jetty and by pedestrians and vehicles from Norman Road, a single carriageway road linking to the dual carriageway A2016 Picardy Manor Way.

2.1.5. The River Thames is to the immediate north of the REP site. Further north, on the opposite bank of the river is an area characterised by manufacturing, including the Ford Motor Company works, and associated car and lorry parking. To the east of the REP site and Norman Road is a large strategic industrial area, accessed via a junction at the southern end of Norman Road. This includes two distribution centres and a document storage facility. East of these are further warehouse, distribution and similar commercial developments.

2.1.6. West of the REP site is the CSTW, which is approximately 1km in width from east to west and approximately 200m from the REP site boundary. The CSTW includes settlement and sludge tanks, as well as a sludge powered generator where sludge could be thermally treated and used to generate electricity. At the time of the Examination this generator was no longer in operation. The Grade I listed Crossness Pumping Station, built by Sir Joseph Bazalgette, is located at the western end of the CSTW.

Further to the west is the Thamesview Golf Centre, beyond which is the Thamesmead residential area.

- 2.1.7. To the south and west of the REP site and Norman Road is the CNR, a 25.5ha Local Nature Reserve which is part of the Erith Marshes Site of Metropolitan Importance for Nature Conservation, containing a number of ditches, watercourses and ponds. The site is owned and managed by Thames Water. To the east of the CNR, adjacent to Norman Road, is a site owned by the Applicant, with planning permission for a data centre (Local Planning Authority reference: 15/02926/OUTM). Power for the data centre is expected to be provided via a connection along Norman Road from the RRRF and REP site. South of the data centre site is the area identified in the application as the Main Temporary Construction Compound.
- 2.1.8. South of Norman Road is the A2016, formed by the dual carriageway Picardy Manor Way at its junction with Norman Road (North), and by the dual carriageway Eastern Way, south of the CNR. South of Picardy Manor Way is a recent development consisting of a pub and a hotel, along with five residential blocks. South of this is a residential area centred on North Road and Norman Road (South). Further south is the main area of Belvedere comprising residential dwellings, Belvedere railway station and retail outlets. South of Eastern Way there are areas of undeveloped marshland, containing a number of ponds and watercourses, interspersed with commercial storage and distribution and education development, bounded to the south and southwest by Yarnton Way, a dual carriageway.
- 2.1.9. The Main Temporary Construction Compound as set out in the application would be located in an area of previously developed land (a former National Grid substation site) adjacent to the west side of Norman Road, immediately north of its junction with A2016 Picardy Manor Way. The northern extent of this area most recently received planning permission for the erection of three industrial units for mixed use within Class B1 (business), Class B2 (general industrial) and B8 (storage/distribution), with associated ancillary works (Local Planning Authority reference: 13/00918/FULM). Part of the southern portion comprises an existing joinery business. As discussed in section 2.3 of this Report the proposed location for the Main Temporary Construction Compound was changed during the course of the Examination.

## **Electrical Connection**

- 2.1.10. The proposed electrical connection route would run southwards from the REP site towards the existing Littlebrook substation, in Dartford. A number of alternative route options were identified through studies undertaken by UK Power Networks (UKPN), the local distribution network operator. These are shown in Figure 1.2 Application Boundary and Assessment Areas [APP-056] and were assessed in the ES. However, only one overall route would be required to connect from the REP site to the electrical connection point.

- 2.1.11. The electrical connection routes considered are generally located on the highway (comprising highway, verges and railway/watercourse crossings on highway structures) and are predominantly through urban areas. Some route lengths run outside the public highway and include the CNR adjacent areas of the River Cray and Dartford Creek valleys and through The Bridge development. In developed areas the site surroundings for the Electrical Connection are generally residential, but with significant industrial and commercial areas.
- 2.1.12. The Electrical Connection route would cross the River Darent, a tributary which feed into the River Thames. The Dartford Marshes Local Wildlife Site is a large area of marshland and wetland habitat along the River Darent and on the Darent floodplain.
- 2.1.13. The preferred route is Route 1 as shown in Figure 1.2 but following variant 1A along Norman Road and variant 2B through The Bridge development. The choice of this route was confirmed during the course of the Examination [REP2-004]. The changes made to the application reflecting the choice of this route are considered in section 2.3 of this Report.

## **2.2. THE PROPOSED DEVELOPMENT**

### **The REP**

- 2.2.1. The primary components of REP as set out in the Environmental Statement (ES) [APP-040] are summarised here.

#### **Energy Recovery Facility**

- 2.2.2. Energy recovery facilities (ERF) are industrial facilities which utilise thermal treatment technology (combustion) to process various types of waste. The treatment process is combined with boiler and steam turbine technology to enable the generation of electricity. The combined processes produce further outputs including heat, ash from the combustion process known as incinerator bottom ash (IBA), and residues from integral processing of emissions to control air pollution, known as Air Pollution Control Residues (APCR). Electricity generated is normally exported to either local distribution or national electricity networks, after utilising electricity that is used to run the plant itself.
- 2.2.3. In the ES it is stated [APP-040] that the ERF would normally treat commercial and industrial waste, with the potential to accept municipal solid waste. Both categories of waste would be non-recyclable waste remaining after prior processing offsite. The facility was expected to be 'two stream', meaning that two separate lines of waste treatment would operate, allowing for maintenance to be undertaken on one line whilst the other continues to operate fully.
- 2.2.4. Each line would consist of separate waste combustion grates, boiler and steam systems, combustion air systems, flue gas treatment facilities and ancillary equipment. The two lines would share a waste reception tipping hall, waste storage bunker, ash collection and storage system, emissions

control system, steam turbine, electrical generator and transformer, air cooled condensers, as well as a common process control system. Each line requires a stack.

- 2.2.5. In total the ERF would be able to treat up to 805,920 tonnes per annum (tpa) of waste, whilst the nominal design throughput was likely to be lower at 655,000 tpa. The higher throughput of 805,920 tpa was assumed in the Environmental Impact Assessment (EIA) on a precautionary basis and represents the reasonable worst case.
- 2.2.6. To facilitate access for river and road deliveries and to offer the most advantageous logistics for the accommodation of the various components of REP, the main REP building would be orientated with the waste reception/tipping hall and bunker sited towards the southern boundary of the REP site and the stack towards the northern boundary. Chapter 3 of the ES – The Project and Site Description [APP-040] shows an indicative schematic through one line of an ERF showing the principal components of the treatment process [APP-040 Plate 3.1]. Figures 1.3 a, b and c show Illustrative Site Layouts and Elevations [APP-056].

#### **Tipping Hall and Shredder**

- 2.2.7. A single waste reception area, comprising a tipping hall and shredder, with a ramp to access the tipping hall, would be a shared facility between the ERF and Anaerobic Digestion (AD) facility, integrated into the main REP Building. The tipping hall would be elevated to c.3m Above Ordnance Datum (AOD) to meet the requirements of the Flood Risk Assessment (FRA) [APP-033] and would be accessed by a purpose-built ramp.
- 2.2.8. Waste delivery vehicles (whether arriving by road or with waste unloaded at the jetty) would reverse into an assigned tipping bay and unload their waste into the bunker. The tipping hall would be ventilated by drawing in air and supplying it into the ERF combustion process. The resulting negative pressure within the tipping hall would ensure that dust and odour are prevented from leaving the interior. By integrating the AD and ERF waste tipping in the same facility, the negative pressure arrangement can be used to control and combust odours from both processes.
- 2.2.9. The tipping hall would be provided with sufficient safe areas for the inspection of waste deliveries and for the potential quarantine of any non-compliant waste. Any non-compliant, or unacceptable waste (for example engine blocks, gas canisters) would be identified and removed wherever practicable.

#### **Waste Bunker and Cranes**

- 2.2.10. A single waste storage bunker would be used for both lines and would be up to 8m deep below Ordnance Datum.

#### **Feed Hopper and Ram Feeder**

- 2.2.11. Waste would be deposited into a vertical feed chute from which the ram feeder would discharge waste continuously onto the grate for

combustion. Waste would not be introduced onto the grate until the minimum combustion temperature of 850°C is achieved in the combustion chamber in accordance with the Industrial Emissions Directive (2010/75/EU) (IED).

### **Grate and Primary/Secondary Air**

- 2.2.12. An air-cooled moving grate system would facilitate thermal treatment of the waste through combustion at temperatures in excess of 850°C. Air would be taken from the waste bunker and tipping hall and used as primary air in the combustion process ensuring that any odour is eliminated through combustion within the facility. The combustion process is controlled to ensure the combustion gases are within emissions limits set by the IED.

### **Boiler, Economiser and Ammonia Injection**

- 2.2.13. Hot combustion gases would be passed through the boiler and economiser to produce steam. In the economiser system, the water supplied from the feed water tank is heated up to a temperature close to boiling. High pressure steam is produced in the boiler during normal thermal operation. Intermediate and low-pressure steam would also be available for export following partial expansion through the steam turbine. This increases the thermal cycle efficiency.
- 2.2.14. A water system would prepare and supply water to the feed water tank of the boiler and cover the losses of boiler feed water due to steam, condensate and blow down. Typically, the only input to the boilers would be on the first fill, as water remains in a closed loop. Ammonia (NH<sub>3</sub>) would be added, as required operationally at various positions in the first and second stage passes to work through a chemical reaction to ensure that the gases from the process are within environmental limits. Ammonia would be provided only at a dose which is sufficient to support abatement of oxides of Nitrogen (NO<sub>x</sub>). The Applicant stated that this would not contribute to NH<sub>3</sub> entering the atmosphere at the discharge point of flue gases.

### **Flue Gas Treatment**

- 2.2.15. To ensure that the combustion gases from the ERF meet the requirements of the IED, they would be treated prior to emission to atmosphere via the stack. Combustion gases would first be maintained at a minimum temperature of 850°C for at least two seconds in the combustion chamber to ensure that dioxins and furans are destroyed in accordance with the IED.
- 2.2.16. The furnace would be configured and designed for staged combustion to minimise the formation of NO<sub>x</sub>. Further flue gas treatment processes would achieve abatement of NO<sub>x</sub> and other emissions to meet the IED and the requirements of the Environmental Permit (EP).
- 2.2.17. After combustion, flue gases would be rapidly cooled in the boiler to minimise the risk of dioxin reformation. Flue gases would then be discharged to the flue gas treatment facility for further treatment using

lime and powdered activated carbon (PAC), to reduce the levels of acid gases, dioxides, volatile organic compounds, mercury and other trace metals.

- 2.2.18. Bag filters would be used to remove particulate matter including fly ash and other residues from the flue gas treatment process. Solids from the process would be collected in filter hoppers and discharged to collecting silos. A small proportion of these solids would be recirculated into the process, but the remainder would be collected as APCR and recycled.
- 2.2.19. The APCR would be transferred into sealed silos for storage ready for collection and removal

### **Stack**

- 2.2.20. One flue per line would be used to discharge the cleaned flue gases to the atmosphere. Emissions would be monitored continuously, 24 hours per day, 365 days per year, to ensure that emissions are within permitted environmental limits. Emission levels would be regularly reported at a frequency determined by the EA, in line with the EP. Underneath the flue gas inlet to the stack, condensed water vapour and rain water would be collected and discharged via a condensate pipe.

### **Turbine & Turbine Building**

- 2.2.21. The steam generated in the boiler would be transferred to the turbine. The turbine would transform the thermal energy of the high-pressure steam into a rotary motion, driving a generator to produce electrical power.

### **Air Cooled Condensers**

- 2.2.22. After generating electricity, the turbine exhaust steam would be condensed in air cooled condensers and collected as condensate for re-use within the facility. The turbine exhaust would be maintained below atmospheric pressure to maximise efficiency and power generation. A quantity of intermediate and low-pressure steam would be extracted from the turbine for low grade heat uses (as described in the Boiler, Economiser and NH<sub>3</sub> Injection section) to maximise thermal cycle efficiency.

### **Transformer**

- 2.2.23. The transformer would be located with the onsite substation and increase the electrical voltage for efficient distribution onwards within the local network.

### **Bottom Ash Conveyor, Bunker and Crane**

- 2.2.24. Incinerator bottom ash (IBA) created from the combustion of waste would be collected on a conveyor system and transferred to an ash bunker ready for collection and removal. IBA would be temporarily stored in the ash bunker and loaded into purpose-built sealed ash containers. These would be transported to the existing jetty ready for loading onto

barques for transport to the existing ash processing facility which is located at the Port of Tilbury. Typical re-use of IBA is as secondary aggregate including as a road construction filling material.

- 2.2.25. Lime, aqueous NH<sub>3</sub> and PAC are three key consumables in the ERF process. They would be stored in tanks or silos with new supplies delivered as required in lorries.

### **Anaerobic Digestion**

- 2.2.26. The AD facility processes food and green waste in the absence of oxygen. Through the degradation of waste by natural organisms, biogas is generated as a useful by-product, along with a digestate. The AD element of REP would be capable of processing up to a maximum 40,000 tonnes per annum (tpa) of food and green waste. The biogas resulting from the AD process would be passed through a gas-upgrading system (biogas to biomethane) integrating a buffer gas storage tank based on membrane technology, suitable for compressed natural gas (CNG) production and/or for injection into a local gas network. CNG can be used as a fuel for vehicles, including through conversion of onsite vehicles (which shuttle waste containers within the site). CNG would be the preferred option if feasible and viable. If a CNG option is not progressed then REP would incorporate a CHP engine which would use the biogas to generate electricity and heat, which could be used to support the AD process or added to energy export from the REP.
- 2.2.27. The digestate (up to 17,200 tpa), would be handled in line with the waste hierarchy, being transported off-site for use in the agricultural sector for use as a fertiliser. Should this not be possible, it would be used as a fuel for REP to generate electricity. REP would incorporate a digestate drying, storage and loading room to process suitable solid digestate to meet the standards required for agricultural use. Rejected material from the AD process (kitchen caddy liners etc.) would, where appropriate, be subject to energy recovery within the ERF.
- 2.2.28. The AD facility would run continuously 24 hours per day, 365 days per year and would convert organic waste into a constant and high-quality stream of biogas for subsequent gas upgrading to natural gas.

### **Biogas Storage, CHP Engine and Flare**

- 2.2.29. Where gas is not processed to produce CNG, the pre-treated biogas would be fed to a CHP unit. The generated electrical power would be added into the site network while the excess heat could be used for digester heating and for drying of the digestate, or as additional heat available for local use.
- 2.2.30. An external gas flaring system would ensure that any excess biogas is combusted (e.g. when biogas utilisation is stopped or in case of an emergency). This is expected to occur approximately 10 times a year while the gas upgrading engine is out of service for maintenance and repairs. This ignition would occur automatically as part of a three-tier pressure protection system. The biogas engine would operate for up to

approximately 8,000 hours per year. The flame of the flare would not be visible outside the associated stack. This is a separate stack to that required for the ERF and would be no taller than 14m.

### **Solar Photovoltaic**

- 2.2.31. Solar panels would be located on the Main REP Building roof areas. Initial studies demonstrate that high specification photovoltaic (PV) modules would be capable of generating up to 1.0MW from the proposed stepped building form. Inclusion of solar PV generation would increase renewable energy generated from REP and could also be used to off-set power required to run the facility as a whole. A mounting system would ensure that the PV modules are securely attached to the roof at a tilt angle optimised to maximise power generation.
- 2.2.32. Inverters would be required to convert the direct current (DC) output from the PV panels into alternating current (AC) for connection to the distribution A step-up transformer would transform the output from the inverters to the required distribution voltage.

### **Battery Storage**

- 2.2.33. The battery storage facility of REP, which forms part of the NSIP, would supply additional power to the offsite distribution network at times of peak electrical demand. This facility would be integrated into the Main REP Building. The battery storage system would increase the operational performance and reliability of REP and provide an enhanced balance of supply and demand. The battery storage facility would also provide a stand-by generation capability during times when the ERF is not operating (e.g. during routine shut down periods).
- 2.2.34. The battery storage facility would be charged during low power demand periods directly from the energy produced from the ERF, solar PV panels and the AD CHP engine (if that option was selected) and stored for supply into the electricity distribution network.
- 2.2.35. It is expected that the REP system would be a modular battery system consisting of a suitable number of (typically 1MW capacity) containers connected to AC/DC converters and electrical transformers. This approach would minimise the use of space and reduce installation time. Batteries, controls, protection cabinets and transformers would all be contained in a single module. The converters and transformers would be located at ground floor level, but above maximum flood risk level.
- 2.2.36. The batteries would be designed to allow for multiple cycles of charge and discharge per day. The charging, discharging and monitoring systems would be fully integrated into the overall REP control and management systems. The storage capacity of the battery unit would be around 20MW [REP3-028].

### **CHP Infrastructure**

- 2.2.37. The EA's CHP-Ready Guidance refers to a plant which is initially configured to generate electrical power only, but which is designed to be

ready, with minimum modification, to supply heat in the future to a DH network. In the ES the Applicant stated [APP-040] that the REP would be constructed to a level of greater 'readiness' on-site where the plant is fully capable of exporting heat, with all required infrastructure in place, and is synonymous with being 'CHP from the outset', which the Applicant referred to as being 'CHP-Enabled'. REP would include all the necessary infrastructure within the REP site (heat exchangers, pumps, pressurisation system). A dedicated and integrated heat supply system would also be provided to support the AD process. The heat supply system would be included to potentially export up to 30MW<sub>t</sub> of heat to offsite consumers.<sup>4</sup>

2.2.38. Typically, a DH network transfers steam heat to a closed hot water circuit via a series of heat exchangers. This would supply hot water to offsite consumers through a pre-insulated buried pipeline, before being returned to REP for reheating. The REP proposal would include the CHP-enabling infrastructure and the export/return pipes to be installed to the site boundary so that the infrastructure is ready should a future end user be identified, such as the developer of a new housing development

2.2.39. The DH pipes for REP would be approximately 500-600 mm in external diameter including high performance insulation to minimise heat losses. Subject to verifying offsite heat demands and location(s), one pipe would be for the export of water at a temperature of around 90°C, and one would be for the return water at a temperature of around 60°C, after heat has been extracted. The pipes would be buried close together below ground, with around 600 mm cover.

### **Main REP Building**

2.2.40. The shared tipping hall, the majority of the ERF, battery storage and PV installation would be contained within, or in the case of the PV panels supported on, the main REP building. The building would also accommodate all the key welfare, storage, admin and control facilities necessary to operate REP.

2.2.41. The final design of the Main REP Building would be subject to a Design Principles process secured through a Requirement in the DCO. As part of the Design Principles, the Applicant has determined that the Building would be a 'stepped' form. In the Applicant's view this form would minimise the massing and maximum height of the building, whilst providing the opportunity for significant and accessible PV generation

### **REP Site Ground Levels and Site Clearance**

2.2.42. Existing ground levels on the REP site vary in the order of 1.7m to 2.5m AOD and therefore the 'average' ground level is in the order of 2m to 2.2m AOD. Ground levels would be modified where appropriate to accommodate the development. For the purposes of the assessment in the ES, finished exterior ground levels on the REP site would be between

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<sup>4</sup> In this report power (electrical) output from the ERF, solar panels and battery storage is generally referred to as MW rather than MW<sub>e</sub>. Heat (thermal) input or output is referred to MW<sub>t</sub>.

1m and 3m AOD. No significant changes in ground level from existing would be expected on the REP site, other than as localised ramping to achieve the lower and upper limits set out above. The minimum level of flood sensitive and key components of REP would be set to at least 2.97m AOD, including the main REP building finished floor level, as proposed and consulted upon with the EA [REP5-013].

### **Jetty**

- 2.2.43. The existing jetty has sufficient capacity without modification to support the proposed throughput to REP and continued use by RRRF. The parameters for consideration within the ES are a nominal case for 75% of waste delivered by river and 25% by road. This is considered by the Applicant to be a reasonable worst case scenario under normal operating conditions. However, the assessment includes parameters for a sensitivity test of a river/road split of up to 100% of imported waste using road-based refuse collection vehicles or by river.
- 2.2.44. Deliveries and exports from the jetty would be made using standard International Organisation for Standards (ISO) containers lifted off/on barges by the existing cranes. Containers are sealed until they enter the tipping hall and on exiting the ash collection area so that no incoming waste or outgoing IBA would escape into the local surrounding environment. No river works would be required or proposed to facilitate the increased throughput of the jetty during the construction or operation of REP.
- 2.2.45. The jetty currently receives waste from four upriver Waste Transfer Stations (WTS) which are located in Central London. IBA is exported downstream to the Port of Tilbury. The Applicant anticipates that future contracts will continue to use the same river network. During construction the Applicant would seek to make use of the existing jetty and ISO containers to deliver construction materials, where practicable, to reduce the number of deliveries by road at peak times.

### **Construction and Commissioning**

- 2.2.46. If consent for the Proposed Development is granted, the Applicant anticipates that construction of the REP would be carried out over 36 months with commissioning taking place over a further 12 to 15 months. Core working hours for the construction period would 7am to 7pm Monday to Friday and 7am to 1pm on Saturday. Some activities such as extended concrete pouring would require 24/7 working for temporary periods.
- 2.2.47. The Main Temporary Construction Compound for the construction of the REP would be located on the western side of Norman Road and would be used as a delivery, reception and consolidation point for construction materials, for equipment and for assembly/fabrication. During the course of the Examination the Applicant changed its preferred location for this Compound. This and other changes to the application are considered in section 2.3 of this Report.

## **Maintenance, Start-up and Shutdown**

- 2.2.48. The ERF would be designed to operate for approximately 8,000 hours per year. Typically, each boiler line would undergo one planned minor outage (approximately 7 days in duration) and one planned major outage (approximately 14 days in duration) per year, which can be conducted without taking the entire plant offline. Statutory inspections on common plant (necessitating a full shut down for approximately 3 days) are required at least every two years. Additionally, the turbine and generator would typically be taken out of service for up to 8 days per year for inspections and maintenance.
- 2.2.49. The waste bunker would be sized to accommodate approximately 7 days storage capacity when operating at nominal throughput. This is sufficient to allow waste to be stockpiled in a controlled manner for anticipated maintenance periods. In the very rare event of an extended outage, waste volumes would be managed through the logistics network and, if required, temporarily diverted to other waste disposal/treatment facilities.
- 2.2.50. The AD facility would remain in operation for the entirety of its design life once commissioned. All components requiring maintenance would be accessible from outside of the digester. All ancillary systems (material handling, ventilation, gas upgrading etc) are designed to be capable of being maintained without disrupting the AD process.
- 2.2.51. Battery storage would remain in operation for the entirety of its design life, operating intermittently but frequently to suit generation output and peak demand.
- 2.2.52. The roof mounted PV panels would remain in operation for the entirety of their design life and would only require occasional cleaning and maintenance.

## **Rochdale Envelope**

- 2.2.53. Detailed design of the REP would be determined once consent has been granted and a contractor appointed. For the purposes of the ES and the application a 'Rochdale Envelope' approach has been adopted with maximum parameters specified for the key elements in the development. This sets the maximum dimensions for the REP buildings, providing a worst case for assessment in the ES. These are set out in Table 3.1 in the ES and are included in the draft DCO submitted with application [APP-014].

## **The electrical connection**

- 2.2.54. REP would be connected to the existing electricity distribution network via a new 132kV distribution connection provided by UKPN (or potentially an independent connection provider for contestable works). The electrical connection would comprise a new part of the electricity distribution network to be owned and operated by UKPN. A substation would also be

required within the REP site into which the electrical connection would connect.

- 2.2.55. It is proposed that the electrical connection would be routed predominantly underground via the existing road network from a new 132kV substation located at REP to the Littlebrook National Grid substation. The connection at Littlebrook would be installed in an existing substation building with no external alteration required.
- 2.2.56. The electrical connection would comprise a trefoil of cables (3 cables laid together to comprise a single 3-phase circuit), buried in a cable trench typically 450mm wide and with 900mm cover (except where there is potential for trenchless installation or a localised deeper trench to be required to pass below a specific constraint) when laid under highway footways and carriageways, with jointing pits approximately every 500m along the route. To provide 900mm typical cover, with 160mm diameter ducts and 50mm duct bedding, the excavation required would typically be 1.2m deep. The preferred cable route (and alternatives) generally follow existing carriageway routes.
- 2.2.57. Options for and the preferred route of the route of the electrical connection have been described in paragraphs 2.1.10 to 2.1.13.

### **Construction and Commissioning**

- 2.2.58. Work on the electrical connection is expected to take 18 to 24 months and would be completed before the first generation of electricity. Where works are undertaken along footpaths and verges, a 3m wide working corridor would normally be required and this would generally cause some encroachment of the works area onto the highway, typically resulting in a lane closure. Depending on specific local constraints, road closures may be required in certain circumstances. Due to the relatively limited working width required, public rights of way (PRoW) closures are considered unlikely, since temporary short diversions (approximately one week at a given location) would ordinarily be possible. Some highway footways may require temporary diversion or closure whilst works are being undertaken.
- 2.2.59. When trenching works are being undertaken it is expected that a length of up to 200m would typically be excavated to facilitate duct laying. Longer lengths of excavation would be avoided by the commitment from UKPN to use a ducted cable system. This allows relatively short lengths of ducting to be installed and long cable lengths to be pulled through later between jointing pits.
- 2.2.60. A limited number of locations may require a solution other than open trenching. This would include trenchless installation techniques such as localised horizontal directional drilling, boring or the installation of cables under or over an existing structure. This is most likely to occur at railway crossings, waterways or similar structures where trenching is not possible. These locations, such as at the crossing of the River Darent, have been considered in the ES. Wherever practicable, a trenched installation approach is preferred by the Applicant, but trenchless

solutions provide an alternative that is, based on UKPN's engineering studies, considered achievable in all cases where trenched installation would not be undertaken.

## **2.3. CHANGES TO THE APPLICATION**

- 2.3.1. During the course of the Examination the Applicant submitted a number of changes to the application. The red line boundary for the Proposed Development was reduced so that it no longer extended over the River Thames. Other changes were set out in two documents submitted at Deadline 2 (D2):
- Environmental Statement Supplementary Report [REP2-044]; and
  - Electrical Connection Progress Report [REP2-058].
- 2.3.2. The Environmental Statement Supplementary Report set out two changes to the application and provided an assessment of the environmental effects of the revisions:
- The removal of plots 02/53 and 02/55 (shown on the original Land Plans [APP-007]) from the Main Temporary Construction Compound and the use of plots 02/43, 02/44, 02/48 and 02/49 as part of the Main Temporary Construction Compound. Revised Land Plans and associated drawing were submitted [REP2-003 to REP2-005]. The use of plots 02/43, 02/44, 02/48 and 02/49 had been included in the original application and assessed in the ES for works associated with its development as the site for a Data Centre.
  - The use of cable troughs to cross a watercourse at Norman Road and a strategic sewer at Joyce Green Lane.
- 2.3.3. The Applicant concluded that the changes proposed to the Main Temporary Construction Compound did not give rise to any new or different likely significant effects, new impacts or cumulative effects, when compared to those reported in the submitted ES. The assessment of the construction and operational phases of the cable troughs had not identified any new or different likely significant effects, new impacts or cumulative effects, when compared to those reported in the submitted ES.
- 2.3.4. The Electrical Connection Progress Report set out changes to the route proposed for the electrical connection. These included the removal of alternative routes set out in the original application and the narrowing of the redline boundary for the works at certain points along the preferred route. These are shown in the revised Land Plans and associated drawings. [REP2-003 to REP2-005]
- 2.3.5. The Applicant concluded that refinements to the route had not altered any of the assessment findings reported in the ES and would bring potential benefits in respect of reduced interactions with different environmental receptors.
- 2.3.6. I sought the views of Interested Parties (IPs) on these changes by way of a Rule 17 request for comment [PD-008]. Concerns about the impact on

the CNR were raised on behalf of the Friends of Crossness Nature Reserve (FOCNR) [REP4-034] and TWUL [REP4-038]. It was argued that use of the Data Centre site would result in prolonged disruption from work at this site over a 3 to 5-year period compared to the 3 years considered in the original application and ES. This would have an adverse effect on wildlife, deter visitors and affect their enjoyment of the Nature Reserve. TWUL was also concerned about the proposed shared access to the Data Centre site and the CNR. There were no objections to the other changes to the application.

- 2.3.7. In the light of the concerns that had been raised, I informed the Applicant that, while the changes proposed were not such that they resulted in a different project for which a new application would be required, in my view, they did constitute a material change. I accepted the changes into the Examination and asked the Applicant and IPs to provide further comment on the concerns that had been raised about the impact of the changes to the application on the CNR and about access to the Main Temporary Construction Compound from Norman Road [PD-011]. I agree with the Applicant's assessment that the changes did not result in any significant effects which had not been assessed in the ES and I did not consider it necessary for the Applicant to carry out further non-statutory consultation.
- 2.3.8. In its response, [REP6-003] the Applicant referred to its previous responses to the FoCNR [REP5-019] and TWUL [REP5-021]. The Applicant did not accept that there would be significant adverse effects from the revised location of the Main Temporary Construction Compound. It agreed that the access road to the CNR was not included in the application boundary and confirmed that it did not intend to utilise this route for access from the public highway to the compound areas. Separate access would be created from Norman Road. Crossing between the Data Centre sites was not included in the application. References to crossing points had been deleted from the Environmental Statement Supplementary Report [REP2-044].
- 2.3.9. The Applicant also proposed further mitigation measures which it considered were over and above those required to mitigate the effects of the Proposed Development. Printed hoardings showing vegetation and/or trees would be erected around the perimeter of the Data Centre site. These would provide visual screening, noise reduction and dust control. Temporary noise attenuating barriers would be erected around the perimeter of the Data Centre site closest to the CNR where any noisy works were to be undertaken providing further noise reduction. These measures were included in a revised version of the Outline Code of Construction Practice [REP5-010].

## **2.4. RELEVANT PLANNING HISTORY**

- 2.4.1. Access to the REP from Norman Road and from the jetty on the River Thames would be shared with RRRF. The RRRF is an Energy from Waste facility which received consent under s36 of the Electricity Act in 2006 for an energy from waste generating station of up to 72MW capacity

receiving not more than 670,000 tonnes of mixed municipal waste a year [REP2-098]. In 2014 application was successfully made to increase the maximum annual throughput of the facility to 795,000 tonnes and in 2016 restrictions on operating hours were removed to allow operation on a 24/7 basis [REP2-082].

2.4.2. Pursuant to a s106 agreement in relation to an application for a sludge powered generator at the neighbouring CSTW, TWUL is obliged to maintain and enhance the CNR which lies to the south and west of the site of the Proposed Development. TWUL owns and operates this site [REP2-092].

2.4.3. To the east of the CNR is the site owned by the Applicant with planning permission for a data centre (Local Planning Authority reference 15/02926/OUTM) [APP-040]. Power for the data centre would be provided with a connection along Norman Road from the RRRF and REP sites. As noted at paragraph 2.3.2 above, the application was changed during the Examination to include the use of this site as part of the Main Temporary Construction Compound.

## **3. LEGAL AND POLICY CONTEXT**

### **3.1. LEGISLATION AND GUIDANCE**

- 3.1.1. The application includes a Planning Statement which sets out the Applicant's view of the policy context for the Proposed Development [APP-102]. Additional information on local planning policies was provided in Local Impact Reports (LIRs) by the Greater London Authority (GLA), [REP2-075], London Borough of Bexley (LBB) [REP2-082], Kent County Council (KCC) jointly with Dartford Borough Council [REP2-079] and the London Borough of Havering [REP2-083].

#### **Planning Act 2008 as amended**

- 3.1.2. The Proposed Development of a gas fired plant with a capacity of over 50MW is a Nationally Significant Infrastructure Project (NSIP) as defined s14(1)a and s15(2) of the Planning Act 2008 (PA2008). National Policy Statements (NPS) in respect of this type of development have been designated and the Secretary of State (SoS) must therefore, subject to certain exceptions, decide the application in accordance with the relevant NPS as specified in s104(3) of PA2008. Under s104(2) the SoS must have regard to any relevant NPS, any LIR and any prescribed matters.

#### **National Policy Statements**

- 3.1.3. The Overarching NPS for Energy (EN-1) published in July 2011 sets out the Government's policy for delivery of major energy infrastructure. It was accompanied by five technology-specific NPSs for the energy sector. The NPS for Renewable Energy Infrastructure (EN-3) and Electricity Networks Infrastructure (EN-5) are relevant to this application.<sup>5</sup>
- 3.1.4. EN-1 states that the UK "needs all the types of energy infrastructure covered by the NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions." That includes energy from waste plants such as the Proposed Development. It also states that applications for development consent should be assessed "on the basis that the Government has demonstrated that there is a need for those types of infrastructure."
- 3.1.5. EN-1 sets out assessment principles and generic impacts to be taken into account in considering applications for energy NSIPs. The assessment

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<sup>5</sup>Overarching National Policy Statement for Energy (EN-1).

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/47854/1938-overarching-nps-for-energy-en1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf)

National Policy Statement for Renewable Energy Infrastructure (EN-3).

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/37048/1940-nps-renewable-energy-en3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/37048/1940-nps-renewable-energy-en3.pdf)

National Policy Statement for Electricity Networks Infrastructure (EN-5).

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/37050/19\\_42-national-policy-statement-electricity-networks.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/37050/19_42-national-policy-statement-electricity-networks.pdf)

principles include the requirement to take into account the effects of climate change. Applicants should have taken into account the potential impacts of climate change using the latest UK Climate Projections available at the time the Environmental Statement (ES) was prepared to ensure that they have identified appropriate mitigation or adaptation measures over the lifetime of the Proposed Development.

- 3.1.6. Generic impacts of particular relevance to this application include impacts on air quality and emissions, biodiversity, landscape and visual impact, traffic and transport. Environmental, social and economic benefits and adverse impacts at national, regional and local levels should be considered. In considering the Proposed Development account should be taken of:
- *its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long term or wider benefits; and*
  - *its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as measures to avoid, reduce or compensate for any adverse impacts.*
- 3.1.7. EN-3 states that the recovery of energy from waste, where in accordance with the waste hierarchy, (as set out in Article 16 of the Waste Framework Directive 2008), will play an increasingly important role in meeting the UK's energy needs. EN-3 covers generating stations using waste (possibly including non-renewable sources of waste) and/or biomass as a fuel and which generate more than 50MW of electricity. EN-3 also acknowledges that anaerobic digestion (AD) of biodegradable waste when injected into the gas grid may also be used as a renewable fuel resource. But since AD plant is not anticipated to have a generating capacity greater than 50MW it is not separately described in the NPS. Generation of electricity from solar panels and the use of battery storage are not specifically covered in the NPS.
- 3.1.8. EN-3 notes that a range of combustion technologies can be used for waste combustion and advises that type of technology should not be a consideration in considering an application. Throughput volumes are a matter for the Applicant and not a consideration in decision taking. However, impacts on traffic volumes, air quality and other impacts resulting from an increase in throughput should be taken into account.
- 3.1.9. EN-1 and EN-3 both recognise the contribution that combined heat and power (CHP) can make to reducing emissions. EN-3 states that development consent should not be given unless the Applicant has provided appropriate evidence that CHP is included or that the opportunities for CHP have been fully explored. Developers of non-CHP stations may be required to ensure that their plant is configured to allow heat supply at a later date.
- 3.1.10. The NPSs also identify the contribution that good design can make to producing sustainable infrastructure and to mitigating adverse impacts of projects.

- 3.1.11. Additional specific considerations for the associated development of electricity infrastructure are set out in EN-5. Of particular relevance to this application are effects on biodiversity.

## **3.2. EUROPEAN LAW AND RELATED UK REGULATIONS**

- 3.2.1. The UK is due to leave the European Union on 31<sup>st</sup> January 2020. The European Union Withdrawal Act 2018 retains EU law at the date of exit and EU case law will continue to apply until superseded by new UK legislation or case law. This Report has been prepared on the basis of the retained law. It will be a matter for the SoS to satisfy themselves as to the position at the time of the decision.

### **The Air Quality Directive (Council Directive 2008/50/EU)**

- 3.2.2. The Air Quality Directive on ambient air quality and cleaner air for Europe entered into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values are exceeded for ambient air quality with respect to sulphur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>) and mono-nitrogen oxides (NO<sub>x</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), lead, benzene and carbon monoxide. The Air Quality Standards Regulations 2010 give statutory effect to the Directive. The most recent Air Quality Policy was published in October 2018 to give effect to the regulations.

### **The EIA Directive (Council Directive 2011/92/EU)**

- 3.2.3. The EIA Directive defines the procedure by which information about the environmental effects of a project is collected and taken into account by the relevant decision-making body before consent is granted for a development. It sets thresholds for projects that require an Environmental Impact Assessment (EIA) and outlines the impacts on the environment that need to be assessed. The Directive was amended in 2014 and is now implemented through the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

### **Habitats Directive (Council Directive 92/43/EEC) and Wild Birds Directive (Council Directive 2009/147/EC) The Conservation of Habitats and Species Regulations 2017**

- 3.2.4. The Habitats Directive and the Wild Birds Directive form the cornerstone of Europe's nature conservation policy. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are the principal means by which the Habitats Directive is transposed in England and Wales.
- 3.2.5. The Habitats Regulations came into force on 30 November 2017. They consolidated the Conservation of Habitats and Species Regulations 2010 (the 2010 Habitats Regulations) with subsequent amending instruments, and made minor modifications reflecting changes to related legislation.

3.2.6. The Applicant provided a report under the 2010 Habitats Regulations [REP2-042], which concluded that there would be no significant effects from the Proposed Development. This is considered further in Chapter 6 of this Report.

3.2.7. Other legislation referred to during the course of the Examination included:

- The Waste Framework Directive (2008/98/EC)
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2016 (as amended)
- The Wildlife and Countryside Act 1981 (as amended)
- The Natural Environment and Rural Communities Act 2006 (as amended)

### **3.3. THE NATIONAL PLANNING POLICY FRAMEWORK**

3.3.1. The National Planning Policy Framework (2018) (NPPF) does not contain specific policies for NSIPs or waste management but emphasises the importance of the NPSs while recognising that the NPPF may be a relevant matter to be considered by the SoS in decision taking. Planning Practice Guidance (PPG) provides detailed guidance on implementing the NPPF.

### **3.4. LOCAL IMPACT REPORTS**

3.4.1. LIRs were submitted by the GLA [REP2-075], LBB [REP2-082], LBH [REP2-083], Dartford Borough Council (DBC) and KCC (jointly) [REP2-079]. The principal impacts identified are summarised in Chapter 4 and under the individual topic headings in Chapter 5 of this Report.

#### **Greater London Authority**

3.4.2. The GLA's LIR assessed the impact of the Proposed Development against three principal policy documents, the London Plan (2016), the Draft London Plan (published in 2017 and subsequently amended in August 2018) and the London Environment Strategy 2018. The GLA noted that the draft London Plan (2018) is a material consideration in planning decisions in London. Examination in Public on this draft plan concluded on 22 May 2019.

#### **London Borough of Bexley**

3.4.3. LBB's LIR took into account LBB's Saved Unitary Development Plan Policies, the Bexley Core Strategy (February 2012) and other relevant local policy and guidance

#### **London Borough of Havering**

3.4.4. LBH's LIR took into account the Havering Local Development Plan, the Havering Local Implementation Plan, The Havering Air Quality Plan and the Rainham and Beam Park Planning Framework.

## **Kent County Council and Dartford Borough Council**

- 3.4.5. The joint LIR from KCC and DBC was only concerned with impacts linked to the electrical connection route. Policies taken into account included the Kent Minerals and Waste Local Plan, the KCC Rights of Way Improvements Plan, the Kent Local Transport Plan 4: Delivering Growth without Gridlock, DBC's Development Plan Core Strategy and relevant Development Policies.

### **The Secretary of State's power to make a DCO**

- 3.4.6. As outlined in section 2.3 of this Report changes were made to the application during the Examination. These were
- the removal of plots 02/53 and 02/55 (shown on the original Land Plans [APP-007]) from the Main Temporary Construction Compound and the use of plots 02/43, 02/44, 02/48 and 02/49 as part of the Main Temporary Construction Compound. The use of plots 02/43, 02/44, 02/48 and 02/49 had been included in the original application and assessed in the Environmental Statement for works associated with its development as the site for a Data Centre;
  - the use of cable troughs to cross a watercourse at Norman Road and a strategic sewer at Joyce Green Lane;
  - changes to the route proposed for the electrical connection. These included the removal of alternative routes set out in the original application and the narrowing of the redline boundary for the works at certain points along the preferred route.
- 3.4.7. I have considered whether these changes to the application meant that the application had changed to the point where it was a different project and whether the SoS would therefore have power under s114 of PA2008 to make a DCO having regard to the development consent applied for. In exercising this power the SoS may wish to take into account my views on the proposed changes to the application:
- 3.4.8. The changes proposed all fall within the original Order Limits and reduce the extent of land subject to Compulsory Acquisition (CA). I sought views on the changes [PD-008] and issued a procedural decision [PD-011] that the proposed changes concerning the use of cable troughs and the changes to the route for the electrical connection were accepted into the examination as non-material changes. The changes concerning the Main Temporary Construction Compound and Data Centre site were the subject of objections from a number of IPs. In my view the changes proposed for the use of the Data Centre site are not such that they result in a different project for which a new application would be required and, as such, I accepted these changes into the Examination. But, in the light of the objections submitted, I took the view that they constituted a material change on which I sought further comment from the Applicant and IPs. The comments received are considered in the relevant sections of Chapter 5 of this Report.

- 3.4.9. I do not consider that accepting these changes would result in any person being deprived of the opportunity to be consulted on the impact of the development.
- 3.4.10. Given this and having regard to the fact that information on the changes was made available to IPs, I recommend that the SoS should accept the changes for consideration in the Examination as part of the Proposed Development.

## **4. THE PLANNING ISSUES**

### **4.1. MAIN ISSUES IN THE EXAMINATION**

4.1.1. My initial assessment of the Principal Issues arising from the application documents and Relevant Representations (RRs) received was published in advance of the Preliminary Meeting (PM) [PD-005]. The Principal Issues are set out here in alphabetical order and this should not be taken to imply an order of importance.

**Air quality** including issues related to:

- Emissions from the Energy from Waste (EfW) plant
- Cumulative effects on air quality in combination with other existing and proposed developments
- Stack height assessment

**Compulsory Acquisition**, including issues related to:

- The need for the land to be subject to compulsory acquisition
- The need to establish a compelling case in the public interest
- Inclusion of alternative routes for underground cables
- Financial arrangements

**Design, Layout and Visibility**, including issues related to:

- The design of the energy recovery facility, anaerobic digester and solar panels
- Capacity of the Proposed Development
- Provision for Combined Heat and Power (CHP)
- Landscaping

**Development Consent Order (DCO)**, including issues related to:

- Description of the Authorised Development
- Powers acquired through the DCO
- Requirements
- Protective Provisions
- Inclusion of land within the River Thames

**Economic and Social Impacts**, including issues related to:

- The impact on the local economy
- The impact on local services and facilities
- The impact on housing and employment

**Habitats, Ecology and Nature Conservation**, including issues related to:

- Impacts on European and other protected sites and species
- Impacts on habitats and biodiversity, in particular Crossness Nature Reserve
- Biodiversity off-setting

- Habitat created within Riverside Energy Park (REP) site to be lost to the development

**Historic Environment**, including issues related to:

- Impacts on heritage assets and historic landscapes

**Landscape and visual impact**, including issues related to:

- Visual impact during construction and operation on designated and other local sites including Crossness Conservation Area, Crossness Nature Reserve, Erith Marshes and the Thames Path

**Noise, lighting, dust and vibration**, including issues related to:

- Impacts during construction
- Impacts during operation
- Impacts of lighting on designated sites and protected species

**Transport and Traffic**, including issues related to:

- Construction traffic movement and routeing, including abnormal roads
- Operational traffic
- Split between road and river transport for delivery of waste
- Impact on traffic during installation of underground cabling
- Road safety

**Water quality and flood protection**

- Impact on water quality at Crossness Nature Reserve
- Flood protection

- 4.1.2. At the PM a number of requests were made for issues to be added to this list. These are set out in the note of that meeting [EV-001] and I considered these to be elaborations of issues that I had already identified. One IP mentioned the need for the Proposed Development as a relevant consideration. The Applicant pointed out that the role of EfW facilities in meeting energy demand had been accepted in the relevant NPS. I noted that while the need for an EfW facility may be outside the scope of the Examination, conformity with the Waste hierarchy was an issue that I would need to consider.

## **4.2. ISSUES ARISING IN LOCAL IMPACT REPORTS**

### **The Greater London Authority**

- 4.2.1. The Greater London Authority's (GLA) Local Impact report (LIR) assessed the impact of the Proposed Development under five headings – energy, carbon, waste, transport and air quality [REP2-075].

#### **Energy**

- 4.2.2. The London Plan (2016) sets out the Mayor's target of achieving an overall reduction in London's carbon dioxide emissions of 60 per cent below 1990 levels by 2025. It recognises the value of localised

decentralised energy (DE) heat and power networks to help achieve this target and prioritises the development of decentralised heating and cooling networks at both development and area wide levels, including larger scale heat transmission networks. The London Plan (2016) makes clear that renewable energy DE opportunities including the use of energy from waste and biomass schemes are also supported as part of a network of supply supported by planned development. Whilst the DCO application appears to conform with the principles of DE set out in the London Plan (2016), it does not, in the view of the GLA, provide any evidence that the proposed Energy Recovery facility (ERF) would be supported by planned development as required by the London Plan (2016). Furthermore, the application does not provide evidence to demonstrate that there would be sufficient foreseeable heat demand in the local area for the proposed ERF to operate as an effective CHP plant.

- 4.2.3. The GLA accepted that the proposed anaerobic digestion (AD) facility and solar photovoltaic (PV) panels would provide renewable energy and were consistent with the GLA policy to increase the proportion of energy generated from renewable sources. But the GLA did not consider that the ERF was consistent with this policy since the waste feed-stock that fuels the ERF was only partially renewable.
- 4.2.4. The draft London Plan (2018) addresses sustainable infrastructure, including energy, and includes a requirement for all major development to be net zero carbon in line with the energy hierarchy in which the priority is to minimise energy demand, and then address how energy will be supplied and renewable technologies incorporated. It encourages all developments to maximise opportunities for on-site electricity and heat production, including solar technologies. The draft London Plan (2018) is supportive of opportunities for energy generation, energy storage and heating and cooling networks.
- 4.2.5. The provision of solar PV power as proposed in the application and the proposed energy storage element of the REP is supported by draft London Plan (2018) policies and by the policies in the London Environment Strategy (LES).

### **Carbon**

- 4.2.6. The London Plan (2016) is concerned with London's response to climate change, and the reduction in carbon dioxide is a key objective for the Mayor in line with his statutory remit. The London Plan (2016) policy sets a detailed performance standard for development of new waste capacity in London known as the carbon intensity floor (CIF). Proposals for waste management should be evaluated against a number of criteria, including achieving a positive carbon outcome of waste treatment methods and technologies resulting in greenhouse gas savings. Facilities generating energy from waste will need to meet, or demonstrate that steps are in place to meet, a minimum CO<sub>2eq</sub> performance of 400 grams of CO<sub>2eq</sub> per

kWh of electricity produced.<sup>6</sup> Achieving this performance will ensure that energy generated from waste activities is no more polluting in carbon terms than the energy source it replaces. This approach is supported in the draft London Plan (2018). The LES expects all EfW facilities to manage truly non-recyclable waste and operate in CHP mode to meet the CIF.

## **Waste**

- 4.2.7. The London Plan (2016) establishes that London should manage as much of the capital's waste within its boundaries as practicable, enabling London and Londoners to receive environmental and economic benefits from its management. The London Plan (2016) supports the need to increase waste processing capacity in London and sets out criteria for evaluating proposals for waste management. These include:
- minimising waste and achieving high reuse and recycling performance;
  - achieving a positive carbon outcome of waste treatment methods and technologies. Facilities generating energy from waste will need to meet, or demonstrate that steps are in place to meet the CIF;
  - the environmental impact on surrounding areas, particularly noise emissions, odour, air quality and visual impact and impact on water resources;
  - the full transport and environmental impact of all collection, transfer and disposal movements and, in particular, the scope to maximise the use of rail and water transport using the Blue Ribbon Network.
- 4.2.8. The GLA considers that the location of the proposed REP meets its criteria with regard to the proposed AD facility, which is expected to contribute a positive carbon outcome. However, insufficient evidence has been provided that the proposed location is suitable for the proposed ERF which would not provide CHP benefits to the local area and therefore does not meet the requirement regarding CIF performance. The addition of further EfW capacity in this location would over-develop the location with resultant adverse cumulative effects particularly with regard to air quality.
- 4.2.9. The draft London Plan (2018) sets out a target for recycling/composting 65% of municipal waste by 2030 which the Mayor is committed to meeting or exceeding. The GLA's modelling suggests that if London achieves its reduction and recycling set targets it will have sufficient EfW capacity to manage London's non-recyclable municipal waste, once the new Edmonton and Beddington Lane facilities are operational.
- 4.2.10. The LES sets out the principles of the circular economy, in which as much value as possible is extracted from resources, through their use and reuse, before they become waste. The LES states that "Achieving the Mayor's reduction and recycling targets will mean that no new energy

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<sup>6</sup> CO<sub>2eq</sub> and CO<sub>2e</sub> are terms that describe, for a given mixture and amount of greenhouse gas, the amount of CO<sub>2</sub> that would have the same global warming potential when measured over a specified timescale (typically 100 years).

from waste facilities in London will be needed, with an expected 153,000 tonnes surplus EfW capacity by 2030". If capacity outside London is taken into account, the LIR states that there would be surplus EfW capacity of 365,000 tonnes.

### **Transport**

- 4.2.11. The London Plan (2016) states that the Mayor will encourage the increased use of the Blue Ribbon Network, (London's strategic network of waterspaces), for freight transport. The GLA acknowledges that all deliveries of waste to the AD facility are proposed to take place by road, and this is considered to be unavoidable given the putrescible nature of the waste, which is unsuitable for the slower delivery afforded by river. But 100% delivery of other waste by road, is considered unacceptable and contrary to the London Plan (2016). The GLA and Transport for London (TfL) would wish to see, as a minimum, a commitment for at least 75% of waste inputs to the ERF to be delivered by river.
- 4.2.12. The draft London Plan (2018) expects proposals for new waste infrastructure to take account of transport and environmental impacts of all vehicle movements related to the proposal. A key aim of the LES is "for London to be a zero-carbon city by 2050, with energy efficient buildings, clean transport and clean energy". This includes London's entire transport system (including private vehicles) to be zero emission by 2050. The GLA would not wish to see development consent granted without a requirement for all deliveries of waste to the REP to use zero carbon methods.

### **Air quality**

- 4.2.13. Air quality is a key focus of the London Plan (2016) with regard to improving quality of life for Londoners and is a fundamental theme that runs throughout the Plan. Developments should minimise increased exposure to existing poor air quality and make provision to address local problems of air quality (particularly within Air Quality Management Areas (AQMAs) and where development is likely to be used by large numbers of those particularly vulnerable to poor air quality, such as children or older people. Design solutions, buffer zones or steps to promote greater use of sustainable transport modes through travel plans should be considered. Developments should be at least 'air quality neutral' and not lead to further deterioration of existing poor air quality.
- 4.2.14. The draft London Plan (2018) states that London's air quality should be significantly improved and exposure to poor air quality, especially for vulnerable people, should be reduced.
- 4.2.15. It states that development proposals should not:
- lead to further deterioration of existing poor air quality;
  - create any new areas that exceed air quality limits, or delay the date at which compliance will be achieved in areas that are currently in exceedance of legal limits;

- reduce air quality benefits that result from the Mayor's or boroughs' activities to improve air quality; and
- create unacceptable risk of high levels of exposure to poor air quality.

4.2.16. The GLA is concerned that the ES does not consider all of the worst case traffic situations and does not assess the effects of waste delivery to the riparian WTSs, which are assumed to be required for both river and road delivery to the ERF.

### **London Borough of Bexley**

4.2.17. The positive, negative and neutral impacts of the Proposed Development identified by London Borough of Bexley (LBB) in its LIR [REP2-082] are set out in Table 1.

**Table 1: Impacts of the Proposed Development identified by LBB**

|                 | <b>Positive impact</b>  | <b>Negative impact</b>   | <b>Neutral impact</b>   |
|-----------------|---|--|---|
| Waste           | <p>Diversion of wastes from landfill to thermal treatment and composting in accordance with the waste hierarchy.</p> <p>Generation of renewable energy from the PV, AD and EfW plants.</p> <p>Potential to generate heat via CHP.</p> <p>The potential for the delivery of waste by river, which will remove waste vehicles from the road.</p> <p>Employment opportunities during the construction and operational phases of the development.</p> | None identified.   | <p>The EfW plant is not necessary to meet local need.</p> <p>The applicant provides an assessment of wider need based on 655,000 tpa.</p> <p>This need should be confirmed.</p> |
| Socio-economics | Net additional jobs during the construction and operational phases  | Transportation issues linking to congestion and associated economic impacts caused.                                      | Impact on tourism not assessed but likely to be negligible.   |
| Air quality     | None identified   | The application has not fully considered the potential for combined impacts due to emissions from the existing Riverside | None identified   |

|              |  |   |   |
|--------------|--|---|---|
|              |  | <p>Resource recovery facility (RRRF) and proposed REP not fully considered.</p> <p>Study results for dioxins and furans, nickel, arsenic and short-term nitrogen dioxide and sulphur dioxide levels under-reported in the Environmental Statement (ES.).</p>  |   |
| Biodiversity | <p>Agreement with the Environment Bank to provide off-site compensation to achieve biodiversity net gain.</p> <p>Possible ecological enhancements close to or within the Proposed Development site and the Crossness Nature Reserve.</p> <p>Surface water run-off from the REP site will be managed in a sustainable manner and deliver 'betterment' of water quality.</p> | <p>Significant residual ecological effects to reptiles of Local conservation importance from construction impacts of the Electrical Connection Route to a site at Joyce Green.</p> <p>The Electrical Connection route through Crossness Nature Reserve has a significant negative impact to biodiversity, but the Applicant is expected to confirm that this route will not be chosen.</p> <p>Disturbance of locally-significant birds that use the Crossness Nature Reserve and surrounding habitat during the construction phase.</p> <p>The total loss of the open-mosaic habitat area in the centre of the proposed REP site that was created as requirement of the RRRF development and doubts about the effectiveness of the compensation measure.</p> <p>The residual effects of the proposed AD emissions during operation in the immediate</p> | <p>Dependent on the successful implementation of mitigation and local compensation as outlined in the Applicant's Outline Biodiversity and Landscape Mitigation Strategy (OBLMS).</p> |

|                      |   |   |                  |
|----------------------|---|---|------------------|
|                      |   | vicinity of the REP site could result in changes to the habitats through an increase in dominant grass species with a subsequent reduction in broadleaved herbaceous species.   |                  |
| Historic environment | None identified   | <p>Lesnes Abbey (Scheduled Monument, and Grade II Listed Building) –minor adverse effect.</p> <p>The Crossness group of industrial heritage assets (Crossness Conservation Area; Crossness Pumping Station, Grade I Listed Building; Crossness Pumping Station workshops, Grade II Listed Building; Crossness engine house, Locally Listed Building) – negligible-minor adverse effect.</p> | None identified. |
| Transport            | Potential to transport waste by river reducing generated traffic on the road network. | <p>Impact of construction traffic on the local network.</p> <p>Impact of the electrical connection works.</p> <p>The cumulative impacts of the REP construction and electrical connection have not been assessed.</p> <p>Daily traffic movements during the operational period, especially Medium Goods Vehicles, will have an impact on the road network.</p>                              | None identified. |

|                      |  |   |  |
|----------------------|--|---|--|
|                      |  | <p>Localised impact on Norman Road on pedestrians, cyclists and public transport users travelling to and from these nearby developments.</p> <p>The lack of right turning provision at the access junction leads to additional distances being travelled along Picardy Manorway and the undertaking of U-turns at the adjacent roundabouts which would be a negative impact.</p> <p>Poor management of deliveries may lead to backing up of traffic onto Norman Road.</p> |  |
| Ground conditions    | None identified  | <p>Major and moderate negative effects associated with ground gases and asbestos in soils during the construction and operational phases of the development, potentially affecting site users, construction workers and buildings.</p> <p>Proposed mitigation measures are stated by the Applicant to reduce impacts to negligible.</p>   | None identified.   |
| Townscape and visual | Long term effects on character and visual amenity resulting from the creation of a new building and focal point of skyline interest in a location currently defined by car | <p>Temporary during the construction period.</p> <p>Loss of landscape character experienced by walkers on the Thames Path to the east of the site as a result of a reduction in visual links between the marshland and the river, and users of the public rights of way across</p>  | Neutral impacts on mid-distance views where the Proposed Development will be in keeping with the |

|                                |  |  |  |
|--------------------------------|--|--|--|
|                                | <p>parking, waste ground, scrubland, roads, and sheds.</p> <p>This positive change will be experienced by people walking on the Thames Path National Trail and on Public Rights of Way in the area.</p>  | <p>the Crossness Nature Reserve due to the large scale of the buildings as seen from this location.</p>  | <p>existing industrial elements of the view</p>  |
| Noise and vibration            | <p>None identified</p>   | <p>Potential for noise from the Proposed Development affecting the nearest residents, particularly as this is a 24-hour operation.</p> <p>Potential for additional road traffic, generated by the development during construction and operations, to cause negative impact on local access routes.</p> <p>Temporary negative impacts may also occur during construction of the Proposed Development.</p> | <p>Overall neutral impact on the local area achieved through effective mitigation measures employed during the design of the plant and during the construction process.</p>  |
| Flood risk and water resources | <p>Remediation work to the assets that form the northern perimeter of the site would serve as a positive impact to the flood risk resilience of the immediate area.</p> <p>Consideration of the requirements for the potential future works/maintenance to</p> | <p>Crossness Nature Reserve is an important habitat for flora and fauna and there are concerns for this wetland from the construction and operational phase of the Proposed Development.</p> <p>Contaminated discharge from construction activities or roads on the site could have a negative impact to the water quality of the</p>  | <p>Foul waste water generated from the welfare facilities is expected to undergo treatment and is therefore not likely to impact the underlying Thames groundwater body.</p> |

|  |   |  |  |
|--|---|--|--|
|  | <p>raise the tidal flood defence crest levels should be taken into account.</p> <p>The drainage plan is currently in an indicative form, but the surface water strategy indicates that this has been undertaken to a greenfield rate of 35.3l/s which is a recognised betterment.</p> | <p>marsh dyke system and the fauna that depends on it.</p> | <p>The outline drainage strategy indicates that runoff from the vehicle routes and circulation areas shall pass through full retention separators, therefore undergoing treatment and thereby removing pollutants.</p> <p>The proposals are compliant with the Water Framework Directive and therefore the Proposed Development should not cause deterioration of water bodies within vicinity of the site, nor compromise their objectives.</p> |
|--|---|--|--|

## **London Borough of Havering**

- 4.2.18. The LIR submitted by the London Borough of Havering (LBH) [REP2-083] set out principal housing developments planned in the Borough on the north side of the Thames facing the site of the Proposed Development. 3,000 new homes are planned for the Rainham and Beam Park Housing Zone with associated road and rail development. Havering's Air Quality Action Plan (AQAP), published in June 2018, is a 5-year plan that helps towards tackling poor air quality around the Borough. Since September 2006 the entire LBH has been designated an AQMA for NO<sub>2</sub> and PM10.
- 4.2.19. The LIR identified concerns about the potential health impacts of the stack emissions during the operational phase of the proposed Scheme. LBH accepted that annual average concentration of nickel in the Borough identified in the ES was less than 75% of the relevant limit value but considered that given the large number of individuals who could be affected this should be classified as a moderate effect with potential significant impacts on the health of residents of the affected properties. LBH also considered that the number of people who would be exposed to small increases in chromium VI was also potentially significant.

LBH also raised concerns about the impacts of ammonia, acid deposition and Nitrogen Oxides (NO<sub>x</sub>) on the Inner Thames Marshes/Rainham Marshes and Ingrebourne Marshes, due to the fact that the Process Contribution (PC) was greater than 1% of the long-term environmental standards for these pollutants. Despite the Applicant's proposal to use improved abatement techniques LBH remained concerned that updated PCs and Predicted Environmental Concentrations (PECs) were still above the NO<sub>x</sub> thresholds for Inner Thames Marshes / Rainham Marshes and Ingrebourne Marshes. LBH did not agree with the assessment of the impacts as 'not significant' and considered that further controls should be taken, to reduce the NO<sub>x</sub> emissions and minimise the impacts on the terrestrial biodiversity receptors

## **Kent County Council and Dartford Borough Council**

- 4.2.20. Part of the electrical connection route and the Littlebrook sub-station lies within the areas of responsibility of Kent County Council (KCC) and Dartford Borough Council (DBC) who submitted a joint LIR [REP2-079]. KCC as the Highways Authority stated that the local highway network in the area was extremely sensitive; incidents at the Dartford Crossing were frequent and led to severe congestion within and around the Dartford area as drivers were delayed and sought alternative routes. As well as being located at the junction of two major strategic roads (the A2 and M25), the Borough of Dartford also straddles the M25/A282 as traffic converges for the Dartford Crossing. It stated that the highway network in this area was unusual in that the strategic road network had a number of closely spaced and inter-connected junctions. An incident on any part of the strategic network would therefore create an impact over a wide area of the local networks as traffic diverted onto local roads to avoid the incident, including through Dartford Town Centre. This was exacerbated by the fact that there were very few east-west routes through the

Borough and so the A2, in particular, was used for short trip local movements. An incident on the strategic network could result in congestion on the local road network that could take several hours to clear, disrupting lives and the local economy.

- 4.2.21. The impact of the development on the Dartford highway network would be mainly caused during the 45-month construction phase. A Construction Traffic Management Plan (CTMP) would need to be secured as part of a DCO Requirement in order to ensure the impacts of the construction traffic on the local highway network were minimised. The CTMP would need to include contingency procedure systems through which the operator sought to manage the movement of lorries when incidents occurred on the network.
- 4.2.22. KCC also expressed concern about the impact of the electrical connection work on Public Rights of Way (PRoWs). Details of temporary path closures, diversions and mitigation works should be discussed with the County Council PRoW and Access Service at the earliest opportunity and included within a CTMP.
- 4.2.23. KCC considered that the proposed groundworks were unlikely to have high impact on buried archaeology in view of the scheme being focused within disturbed ground and not very deep. Wherever deeper excavations were proposed, the archaeological programme of works and the programme of geoarchaeological works should ensure suitable assessment and recording of such remains. All archaeological and geoarchaeological works should be undertaken in accordance with written schemes of investigation agreed with the County Archaeologist and be flexible to adjust to the scheme's impact on any archaeological resource. Wherever deeper excavations are proposed, the archaeological programme of works and the programme of geoarchaeological works should ensure suitable assessment and recording of such remains.

### **4.3. ISSUES ARISING IN WRITTEN SUBMISSIONS**

- 4.3.1. The issues identified in the LIRs were elaborated on in Written Representations (WRs) from the respective planning authorities at Deadline 2 (GLA, [REP2-071 to REP2-074]; LBB, [REP2-080 and REP2-081] and KCC, [REP2-078]). In addition, WRs were submitted by a wide range of Interested Parties (IPs).
- 4.3.2. The London Borough of Tower Hamlets (LBTH) expressed concern about possible effects of air quality in the Borough [REP2-085]. It accepted that air quality effects from the use of tugs and barges would not be significant. But in the 100% by road scenario air quality at the northern approach to the Blackwall Tunnel would be affected. NO<sub>x</sub> levels in this area were already above the National Air Quality Objective levels and, in LBTH's view, any increase above these levels should be resisted.
- 4.3.3. LBTH considered that it would be beneficial to secure the use of river transport within any given consent, which would avoid use of the 100% by road scenario under normal operating conditions.

- 4.3.4. The East London Waste Authority raised concerns about the additional concentration of waste management facilities on one site [REP2-066]. It argued that that local authority residual waste streams from the likely 'catchment area' of the new facility were already being managed by existing facilities through other arrangements. Accepting waste from further afield was likely to cause greater impacts of transportation. The East London Waste Authority also questioned the existence of additional district heating demand in the vicinity. It argued that concentrating heat sources in the manner that was proposed at Belvedere would significantly increase the capital costs of new district energy networks because of the need for longer-distance connections to distribute the heat to other neighbourhoods. These concerns were reiterated in a later submission. [REP7-026]. It was argued that this location did not appear to be logical for placing another energy-from-waste facility. The site had a natural boundary to the north and east (the River Thames) which limited the potential for heat and power offtake within an economically viable distance. The transportation options for waste to be treated at the facility were also limited because of the likely required need to use the river to satisfy planning conditions.
- 4.3.5. The Environment Agency raised three areas of concern - the Thames Tidal Flood Defence, the proposed mosaic habitat on the flood defence embankment and the works to be excluded from the Flood Risk Activities Permit Area (FRAPA) [REP2-069]. These were the subject of ongoing discussion between the EA and the Applicant and are considered further in Chapter 5 of this Report.
- 4.3.6. The Greenwich - Bexley Environment Alliance set out concerns about the effect of incineration of waste on health, particularly amongst children which could lead to premature deaths [REP2-077]. Evidence indicated that incineration was detrimental to good health especially among children and could lead to premature deaths. Incineration greatly contributed to global warming. The Alliance also objected to the inequitable siting of incinerators and other waste disposal sites in this part of South East London adjacent to an important nature reserve and among green walks.
- 4.3.7. Thames Water Utilities Limited (TWUL) set out its role in maintaining and enhancing the Crossness Nature Reserve (CNR) [REP2-092]. It considered that the environmental impacts of the Proposed Development were likely to interfere with its ability to comply with its obligations and statutory duties. It was concerned about the visual impact of the development which would create a fragmented, hemmed in feeling and contribute further to the erosion of the CNR and the Erith Marshes Site of Metropolitan Importance for Nature Conservation (SMINC). This, taken with the cumulative impact of other developments, would have a detrimental impact on the openness of the CNR. Impacts from dust, noise and plant movement and effects on air quality would deter visitors to the CNR. TWUL also objected to the stepped roof design which had been chosen in preference to a curved roof which TWUL considered would be better suited to the local environment.

- 4.3.8. TWUL was particularly concerned about the proximity of the Proposed Development to the ecologically sensitive West Paddock and the impact this would have on breeding lapwings. There would be negative impacts on other wildlife from noise and lighting. The Proposed Development would create shading on the CNR which could reduce species diversity of plant and invertebrate communities. Mitigation measures should be considered which would enhance existing habitats on the CNR
- 4.3.9. The Friends of Crossness Nature Reserve (FoCNR) had been set up following the creation of the CNR managed by TWUL [REP2-070]. The Nature Reserve had undergone significant improvements over the years through financial investment from TWUL, LBB and, in the early 2000's, the Office of the Deputy Prime Minister. Habitat enhancements had seen an increase in biodiversity, increased population of water voles, arrival of shrill carder bees, and breeding birds including little ringed plover, Cetti's warbler, pochard, gadwall and, most recently, lapwing.
- 4.3.10. FoCNR objected to the REP proposal based on the extreme close proximity to, and impacts on terrestrial and, potentially, aquatic, biodiversity on the CNR and Erith Marshes SMINC The Proposed Development would see further severance of the connectivity between the River Thames and adjacent CNR, creating a hemmed-in nature reserve and further reducing the open landscape character of the marshes.
- 4.3.11. FoCNR set out specific objections concerning the proposed cable route through the CNR, the design of the building and the use of the roof for solar panels. FoCNR were concerned about the effect of noise, lighting and shading from the development on wildlife and vegetation on the CNR with particular concern about impacts on individual species. More generally FoCNR were concerned about the visual impact of the development on the enjoyment of visitors to the CNR and on their health and well-being.
- 4.3.12. RRs and WRs were received from local MPs and Counsellors and from individuals. John Cruddas, MP for Dagenham and Rainham, was opposed to the Proposed Development [REP2-104]. He was concerned about the adverse health impacts of NO<sub>x</sub> and particulates from the EfW plant. He was also concerned about the possible link between emissions from incineration plants and infant mortality. The operation of the plant would add to CO<sub>2</sub> emissions and would have an adverse effect on biodiversity in the area. It would be counter-productive to recycling. More generally there was a high cost to society from the negative health outcomes resulting from the operation of EfW plant such as the one proposed. Over 1,000 constituents had signed a petition opposing the development [REP2-105].
- 4.3.13. Teresa Pearce, MP for Erith and Thamesmead, recognised the employment opportunities that might result from the Proposed Development but was concerned about negative impacts of dust odour and deterioration in air quality [REP2-106]. Further scrutiny was needed of the effects on air quality and of the proposals for CHP. She was

concerned about the disturbance of the CNR and the disruption of traffic on major roads in the area from the grid connection works. More should be done to encourage recycling. In her view there was already adequate waste incineration capacity in her constituency and the surrounding areas of South East London.

- 4.3.14. Sir David Evennett, MP for Bexleyheath and Crayford stated [RR-052] that he was strongly opposed to the existing Riverside Resource Recovery Facility on environmental grounds, as he was unconvinced by the need to incinerate waste so close to heavily populated areas given the effect on the environment and particularly on air quality. He was concerned that the additional facility may negatively impact the environment for his constituents, as well as the residents of Bexley Borough in general.
- 4.3.15. Dave Putson, LBB Counsellor for Belvedere, submitted a list of questions he wished to see addressed by the Applicant [REP2-108 and REP2-109]. These were principally focused on his concern about the effects of the Proposed Development on air quality, including increased emissions of particulates and dioxins. He also raised questions about contingency plans for deliveries of waste in the case of the jetty being unavailable.
- 4.3.16. A local resident who had seen the closure of the earlier coal fired generating station with a subsequent improvement in air quality [REP2-110] was concerned about the increased emissions from developments in the vicinity and the impact on the local community. This would also affect wildlife on the adjacent nature reserve. In her view more incineration capacity would discourage recycling and contribute to global warming.
- 4.3.17. Another local resident argued that the existing RRRF was not operating at full capacity and that there was no need for a new plant [REP2-111]. A new plant would go against the Mayor's commitment to reducing air pollution. She was concerned about fire risk and the lack of local emergency services to deal with the major incident. There was risk of flooding and a new plant could be a target for terrorist activity. She raised concerns about the adverse effect on public health from emissions of particles and chemicals, including nickel and arsenic. The area had a higher than average proportion of young and elderly vulnerable groups who would be adversely affected. Increased traffic associated with the development would also add to pollution and create additional congestion on local roads.
- 4.3.18. National Grid Electricity Transmission (National Grid) objected to the Proposed Development unless satisfactory Protective Provisions could be agreed [REP2-086]. National Grid's concerns related to overhead lines and underground cables in the vicinity of the proposed development and the Littlebrook 132kV sub-station. Protective Provisions for National Grid are considered further in Chapter 8 of this Report.
- 4.3.19. Network Rail did not object in principle to the construction of the proposed works through the airspace of the railway, but it required Protective Provisions [REP2-087]. Permanent acquisition of land and

rights in the form proposed would not contain the necessary rights and reservations to enable Network Rail to comply with its Network Licence. Powers sought over specific plots of land would prevent the passage of trains. Network Rail was also concerned about the proposed article on limits of deviation in the draft DCO. Protective Provisions for Network Rail are considered further in Chapter 8 of this Report.

4.3.20. The Port of London Authority (PLA) did not object to the proposals in principle but had detailed concerns which called for amendments in the proposed DCO and plans [REP2-089]. As originally submitted the Order limits as shown on sheet one of the Works Plans [APP-008] extended into the river Thames to include a significant river area drawn wide round the existing landing stage and extending to the borough boundary forming the centre line of the river. These plans were subsequently amended to remove all but an insignificant part of the River Thames from the area within the Order limits. The PLA confirmed [REP2-089] that the revised plans removed the river areas from the scope of the draft DCO and so met the PLA's concerns about the plans.

4.3.21. Since the Applicant had indicated that it might need to carry out activities in the river, The Applicant and the PLA had agreed a new Article for insertion in the DCO making clear that the DCO did not remove any obligation to obtain the PLA's licence under the Port of London Act 1968 for the carrying out of works or operations within the river Thames. A SoCG between the PLA and the Applicant was submitted covering these issues [REP3-016]. The PLA subsequently withdrew its objection to the Proposed Development [REP8b-025].

## **4.4. THE PRINCIPLE OF THE DEVELOPMENT**

4.4.1. As noted earlier the Proposed Development qualifies as an NSIP and consideration of the proposal is subject to the general guidance on Energy Projects in EN-1 and the specific guidance on Renewable Energy Infrastructure in EN-3, and Electricity Network Infrastructure in EN-5.

4.4.2. The Applicant has provided an ES [APP-038 to APP-100] which I am satisfied meets the requirements of PA2008 and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 572) (EIA Regulations) in terms both of scope and methodology. It also covers specific issues and mitigation measures to address adverse effects as identified in the NPS.

4.4.3. The Applicant submitted a Planning Statement [APP-102] and a separate report on The Project and its Benefits [APP-103]. This report focussed on:

*...how REP delivers the demonstrated need for major energy generating infrastructure, at the right level of the waste hierarchy, making clear the numerous and inter-connected benefits, and how these are achieved through the Proposed Development.*

*[It] clearly outlines the societal benefits of REP that include: renewable/low carbon energy supply, capturing both waste and solar*

*power; providing the necessary waste management assets for London; delivering realistic connection prospects for heat distribution ... creating construction and operation employment opportunities; taking waste lorries off the road through using river transport; providing environmental mitigation and enhancements; and enabling the delivery and growth of battery storage.*

#### **Consideration of alternatives**

- 4.4.4. EN-1 and EN-3 do not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option, but applicants are required to include in their ES information about the main alternatives they have studied. In the ES [APP-042] the Applicant set out 'numerous reasons' why the REP site was considered highly advantageous and consideration of alternative sites was not deemed necessary. It had considered alternative layouts and designs for the main REP building and alternative locations for the temporary construction compounds. Alternative routes had been considered for the electrical connection. These were set out in the ES.

#### **Design evolution**

- 4.4.5. A Design and Access Statement for the preferred alternative was provided as part of the application [APP-104]. This set out the context for the development in terms of its location, site history, road and river access. General design and access principles were set out alternative orientations for the main buildings were considered setting out advantages and disadvantages. Indicative designs were considered with alternative building forms taking into account the potential for solar panels. This led to the choice of a stepped building form.

#### **Conclusions on the principle of the development**

- 4.4.6. I am satisfied that the proposed NSIP comprising EfW generation capacity, AD facility, solar panels and battery storage plant with associated development for construction purposes and to provide an electrical connection to the Littlebrook sub-station would contribute to meeting the need for new generation capacity identified in EN-1 and that the capacity of the Proposed Development as defined in the draft DCO is below the threshold at which it should be designed to be Carbon Capture Ready. I am also satisfied that consideration has been given to design and to alternatives to the development as required by EN-1. The requirements in EN-1 and EN-3 for compliance with the waste hierarchy and for full exploration of the potential for CHP are considered in the following chapter.

## **5. FINDINGS AND CONCLUSIONS IN RELATION TO PLANNING ISSUES**

### **5.1. INTRODUCTION**

5.1.1. In this chapter I review the planning issues that have been addressed in the application documents and considered during the Examination. I start by addressing three issues which were not separately covered in the Environmental Statement (ES) but were reviewed in The Project and its Benefits Report (PBR) submitted with the application [APP-103] and were the subject of submissions during the Examination and discussion at the first Issue Specific Hearing (ISH). These are:

- The volume of waste that would be available for incineration in the Energy Recovery Facility (ERF) and by implication the need for the plant;
- The carbon emissions from the ERF and whether these conform with national policies and policies adopted or being developed by the Greater London Authority (GLA); and
- The potential for the provision of combined heat and power (CHP)

5.1.2. I then consider the principal issues as they were addressed in the ES:

- Alternatives considered;
- Transport;
- Air quality;
- Noise and vibration;
- Townscape and visual impact;
- Historic environment;
- Terrestrial biodiversity;
- Hydrology, flood risk and water resources;
- Ground conditions; and
- Socio-economics.

### **5.2. THE NEED FOR ADDITIONAL WASTE INCINERATION CAPACITY**

5.2.1. The Proposed Development as set out in the application documents and assessed in the ES is for an ERF with an upper throughput of waste of 805,920 tonnes per annum (tpa) and a nominal design throughput of 655,000 tpa [APP-040]. The higher throughput of 805,920 tpa was assumed in the ES as a reasonable worst case. The need for additional waste incineration capacity was challenged by the GLA and others.

#### **National Policy Statements**

5.2.2. Overarching National Policy Statement (NPS) for Energy EN-1 (section 5.14) sets out that sustainable waste management is implemented

through the 'waste hierarchy'<sup>7</sup> the priorities applied when managing waste are:

- prevention;
- preparing for reuse;
- recycling;
- other recovery, including energy recovery; and
- disposal.

5.2.3. EN1 also states (at paragraph 3.4.3) that:

- *... the principal purpose of the combustion of waste, or similar processes (for example pyrolysis or gasification) is to reduce the amount of waste going to landfill in accordance with the Waste hierarchy and to recover energy from that waste as electricity or heat. Only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be used for energy recovery*

5.2.4. NPS for Renewable Energy Infrastructure EN-3 (paragraph 2.5.64 to 2.5.70) states that waste combustion generating stations need not disadvantage reuse or recycling initiatives where the proposed development accords with the waste hierarchy. It states that:

- *An assessment of the proposed waste combustion generating station should be undertaken that examines the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plan or plans where a proposal is likely to involve more than one local authority.*
- *The application should set out the extent to which the generating station and capacity proposed contributes to the recovery targets set out in relevant strategies and plans, taking into account existing capacity.*

5.2.5. EN-3 also states that the decision taker should be satisfied:

- *...with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England ...*

5.2.6. In December 2018 the Government published 'Our Waste, our Resources: A Strategy for England' (the 'Resources and Waste Strategy' RWS).<sup>8</sup> This does not take precedence over the NPSs but is an important and relevant matter for the Secretary of State to have regard to in their decision taking.

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<sup>7</sup> The Waste hierarchy is set out in Article 16 of the Waste Framework Directive 2008 and the Waste (England and Wales) Regulations 2011.

<sup>8</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/765914/resources-waste-strategy-dec-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765914/resources-waste-strategy-dec-2018.pdf)

- 5.2.7. The key objectives in the RWS are to maximise the value of resource use and minimise waste and its impact on the environment. The RWS emphasises the importance of increasing recycling both by households and business but also recognises that growth in energy from waste infrastructure will divert waste from landfill and off-set the use of virgin fuels. The Government will ensure that all future EfW plants achieve 'recovery' status.<sup>9</sup>

## **London Planning Policies**

- 5.2.8. Relevant waste management policies for Greater London as set out in the GLA's Local Impact Report (LIR) [REP2-075] have been summarised at paragraphs 4.2.7 to 4.2.10 above.

## **The Applicant's assessment**

- 5.2.9. In its London Waste Strategy Assessment (LWSA) which was submitted as an annex to the PBR [APP-103] the Applicant set out its assessment of the need for new residual waste management capacity within London. The LWSA focused on the ERF but the Applicant noted that the Anaerobic Digestion (AD) facility would also contribute to London's recycling and recovery targets.
- 5.2.10. Taking into account existing and consented plant the Applicant estimated that there was 2,248,000 tpa of EfW capacity in London with a further 390,000 tpa of capacity outside London with contracts to manage London's residual waste, giving a total capacity of 2,638,000 tpa. The Applicant then assessed projections of the levels of waste that would be available for incineration in the Riverside ERF taking into account the different scenarios for re-use and recycling set out in the GLA policy documents.
- 5.2.11. This analysis concluded that:
- *Even in the most conservative assessment, using the lowest waste arisings and the aspirational policy expectations regarding waste management, at least one third of the nominal throughput of the ERF is required to sustainably manage London's waste.*
  - *A more realistic need, calculated through applying recycling objectives of the LES, is for all, if not more, of that nominal throughput. Incorporating a reasonable expectation that some existing capacity will be lost over the period to 2031, results in a need of over 1.1 Mt of recovery capacity to ensure London's waste can be managed within the capital and achieving sustainability priorities.*
- 5.2.12. The different scenarios considered in reaching these conclusions are set out in section 6 of the LWSA.

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<sup>9</sup> As defined in the RWS, recovery status acts as a proxy for the energy-generating efficiency of facilities. Facilities which achieve the status are classed as a recovery operation for the purposes of the waste hierarchy and so are a level up from the bottom rung of 'disposal'.

- 5.2.13. In a Supplementary Report to the Project and its Benefits Report [REP2-045] the Applicant acknowledged that the RWS as the most recent national policy document addressing waste and resource management for England was an important and relevant matter for the Secretary of State to consider. The Applicant considered that through energy recovery and reduced waste disposal in landfill the ERF would maximise the value of residual waste and minimise its impact on the environment. This was in line with the RWS statement that "Growth in energy from waste and alternative residual waste treatment infrastructure will divert further waste from landfill." The Applicant noted that the ERF had been granted preliminary R1 (recovery) status by the EA [REP2-057].
- 5.2.14. The Applicant acknowledged that in the annex to the RWS the Government's internal analysis indicated that significant additional residual waste energy recovery capacity would not necessarily be needed and that a Report by Tolvik Consulting – UK Residual Waste: 2030 Market Review - concluded that there would not be a gap in incineration capacity by 2030. The Applicant submitted a further Assessment of DEFRA Waste Strategy by Tolvik Consulting as an annex to the Supplementary Report to the Project and its Benefits Report [REP2-045].
- 5.2.15. In this Assessment Tolvik Consulting concluded that:
- *Rather than, as the WRS 2018 asserts, no new EfW being needed if the Government's recycling target of 65% by 2035 is met, the CE Target scenario in the Tolvik Study effectively asserts that with such a recycling rate that at least 3.0Mt (2.5Mt of additional EfW capacity plus 0.5Mt adjustment for 2035 target date) and, allowing for exports, potentially up to 5.5Mt of additional EfW capacity could be needed in the UK.*
  - *Furthermore, if, as expected, the 65% municipal waste recycling rate in the CE Target scenario in the Tolvik Study is not achieved and instead the municipal waste recycling rate in 2035 is 60% as set out in the 55% Household scenario, then the Tolvik Study suggests an additional 3.5Mt of EfW capacity could be needed over and above that in the CE Target scenario – i.e. 6.5Mt potentially up to 9.0Mt.*<sup>10</sup>
- 5.2.16. The Applicant concluded that there remained a substantial need for new waste treatment infrastructure for residual wastes and that the Riverside Energy Park (REP) would make an appropriate contribution to meeting this need. It also noted that NPS EN-1 was clear that it was not the role of the planning system to deliver specific amounts of generating capacity for each technology type or to arbitrarily limit capacity.

## **Views of Interested Parties**

### **Greater London Authority**

- 5.2.17. In its Written Representation (WR) [REP2-071] the GLA submitted its own analysis of expected EfW capacity in 2031 and 2036 and provided a

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<sup>10</sup> In these quotes: 'WRS 2018' is the RWS; the 'Tolvik Study' is UK Residual Waste: 2030 Market Review; 'CE' stands for Circular Economy.

comparison between its own estimates and those submitted by the Applicant. It argued that, taking the Applicant's projections of EfW waste, there was a need for less than 300,000 tonnes of additional capacity by 2035 over and above capacity already in place or under construction. On the GLA's own estimates, which assumed that only 80% of commercial and industrial (C & I) waste was suitable for energy recovery, there would be a surplus of 300,000 tonnes of capacity in 2036.

- 5.2.18. The GLA argued that oversupply of EfW capacity in London could have unacceptable consequences for its development plan and the London Environmental Strategy (LES). Approving the Proposed Development would leave London with a stranded asset that either would have to compete with other waste streams that could be managed further up the waste hierarchy (such as recycling) or would have to draw in waste from outside of London. Both of these alternatives were considered by the GLA to be unsustainable, especially if there was long distance movement of waste which did not use river transport.
- 5.2.19. The different estimates of waste available for incineration were the subject of discussion at the ISH on environmental matters held on 5 June 2019 and both the Applicant and the GLA provided their own notes of statements made at that hearing [REP3-028 and REP3-038].
- 5.2.20. The GLA submitted a further statement following that hearing in which it provided a comparison between its forecasts of waste arisings and those put forward by the Applicant [REP3-039]. Both sets of forecasts assume identical volumes of waste arisings in 2026 and 2036 consistent with the projections in the Draft London Plan (2018). The principal difference between the two forecasts identified in this submission is that the GLA excludes a proportion of C & I waste which it contends requires specialist treatment and is considered unsuitable for processing in municipal waste management facilities including conventional mass burn incinerators. This removes just over 1m tonnes of waste from the GLA's forecast of municipal waste before recycling. The GLA and the Applicant use broadly similar assumptions about the proportions of waste that will be recycled but the GLA assumes a further element of recycling through pre-treatment of waste before it is sent for incineration.
- 5.2.21. Based on these assumptions the GLA's projections show a 'capacity gap' in London (EfW waste less existing and consented EfW capacity in London) of 420,000 tonnes in 2026 reducing to 90,000 tonnes in 2036. This is compared with the Applicant's estimates of the 'capacity gap' of 870,000 tonnes in 2026 and 660,000 tonnes in 2036. If existing contracts to export waste to EfW facilities outside London are taken into account, then the GLA projects a surplus of 300,000 tonnes capacity in 2036.

### **London Borough of Bexley**

- 5.2.22. London Borough of Bexley (LBB) in its WR [REP2-080] stated that it was supportive of moving the management of wastes up the waste hierarchy and requested that this be considered during the Examination. It noted that the proposed capacity of the EfW plant was 805,920 tons per annum

(tpa) but that the assessment of need in the LWSA was based on a throughput of 655,000 tpa. It considered that, as the ExA, I would need to be satisfied as to the need for and, thus, the capacity of any consented development.

### **United Kingdom Without Incineration Network – UKWIN**

- 5.2.23. UKWIN in its Relevant Representation (RR) [RR-006] quoted the Government's December 2018 Resources and Waste Strategy which set out the goal "... to move to a more circular economy which keeps resources in use for longer – for that to happen we must all reduce, reuse or recycle more than we do now." It provided quotations from Government Ministers and advisers suggesting that increased recycling would result in there being no requirement for new incineration capacity. It presented figures to show how, with increased rates of recycling in line with the Mayor's policies, there would be excess incineration capacity, based on existing and consented plant by 2031. Development of additional incineration capacity would discourage further recycling.

### **Other representations**

- 5.2.24. A wide range of representations were received from individuals and representatives of the local community expressing opposition to the Proposed Development on the grounds that additional incineration capacity was not needed, would discourage recycling and was contrary to the Mayor's plans for the development of the circular economy in London. [RR-006, RR-010, RR-012, RR-016, RR-017, RR-022, RR-024, RR-025, RR-031, RR-033, RR-034, RR-044, RR-048, RR-057, RR-062, RR-069, RR-071, RR-077]

### **Further comment by the Applicant**

- 5.2.25. In response to the GLA's assessment in its WR, the Applicant stated that the models used by the GLA had not been made available and it had not been able to replicate the GLA's analysis. [REP3-022] Although many of the assumptions used by the GLA were also used in the LWSA, the LWSA came to a very different conclusion. The GLA had focused on the most extreme outcome considered in the LWSA. The Applicant considered that it was reasonable to consider the range of scenarios assessed in the LWSA which demonstrated that in the order of 900,000 tpa of new, additional waste treatment capacity was required in London to meet policy priorities.
- 5.2.26. The Applicant responded to the further analysis from the GLA following the ISH stating that it disagreed with the GLA on the volume of residual waste available for incineration. [REP4-014] It was not possible for the Applicant to determine the source of the divergence between the two sets of forecasts, but it restated that its projections used GLA data and applied the policy priorities of the adopted and draft London Plans and the LES. Its projections incorporated the Mayor's aim to reduce waste arisings by 5% over time to 2031 and the policy priority to achieve 65% municipal waste recycling by 2030. Even when these policy priorities are met in full the Applicant's assessment was that there was a remaining

need for additional residual waste treatment capacity of around 900,000 tpa in London even before consideration was given to waste from the South East and surrounding area.

- 5.2.27. In the revised draft Development Consent Order (draft DCO) submitted by the Applicant at Deadline 5 [REP5-004], the Applicant introduced a new Requirement providing for a Waste Hierarchy Scheme. This would provide for a scheme setting out arrangements for maintenance of the waste hierarchy in priority order, aiming to minimise recyclable and reusable waste being delivered to the Authorised Development. This was discussed at the second ISH on the draft DCO at which the Applicant explained that the purpose of this Requirement was to give the GLA and LBB confidence about the existing processes on the Waste hierarchy [REP8-018]. This Requirement committed the Applicant to providing information to LBB on how the waste it was sourcing had gone through the waste hierarchy process.
- 5.2.28. The Applicant responded to UKWIN's assessment that there was already sufficient incineration capacity [REP2-054]. It considered that statements from Ministers and officials had been presented without context and did not take into account current policy in relation to modern, efficient waste ERF facilities. In the Applicant's view, government policy was wholly supportive of facilities such as the Proposed Development. No evidence had been provided to substantiate the claim that the Proposed Development would prejudice the achievement of further recycling. Higher rates of recycling had been explicitly considered in the application.
- 5.2.29. The Applicant did not accept the available waste incineration capacity assumed by UKWIN which included capacity outside London and capacity that was not yet operational and which might never become operational. In its response the Applicant presented its analysis of capacity and expected volumes of waste which showed that there remained a need for new EfW capacity in London.

## **Statements of Common Ground**

- 5.2.30. In the agreed Statement of Common Ground (SoCG) between the Applicant and the GLA [AS-038], the GLA agreed in principle with the Requirement for a Waste Hierarchy Scheme but sought the inclusion of contractual measures to secure maximum limits on recyclable material content with a baseline of at least 65% recycling and a bi-annual composition analysis of waste to ensure that the Waste Hierarchy Scheme effectively delivers on its purpose.
- 5.2.31. The Applicant did not accept the GLA's proposal. The REP would be just one element of the overall waste management infrastructure network in London and it was not reasonable or appropriate to place the burden of increased recycling activities on facilities such as the REP. The Applicant argued that this was a regulatory issue for the EA as the regulator and not something that the Applicant could be expected to monitor.

- 5.2.32. The agreed SoCG between the Applicant and LBB [REP8b-009] stated that REP would lead to a diversion of waste from landfill in accordance with the waste hierarchy. In accordance with the waste hierarchy the ERF element of REP should only treat residual wastes. This would be achieved particularly by the Waste Hierarchy Scheme in the draft DCO which the Applicant had agreed to amend to include provision for an annual review of waste composition.

### **Conclusions on the need for additional waste incineration capacity**

- 5.2.33. The Applicant and the GLA were in agreement on the volume of waste that could be processed at existing and consented EfW facilities in London and on the volume of waste which was contracted to be processed at EfW facilities outside London. But they did not agree on projections of the volume of waste that would be available for processing in the additional capacity which would be provided by the REP during its lifetime.
- 5.2.34. Projections are in their nature subject to uncertainty and, in my view, it is prudent to consider a range of outcomes as the Applicant has done. This range includes an outcome under which, as the GLA has suggested, the volume of waste available for processing would be less than the capacity of the Proposed Development. But it also includes outcomes where there would be more than enough waste to take up all of the capacity proposed for the REP. In that outcome, if this additional capacity was not available, alternative methods of disposal, including landfill, would need to be found. The Applicant's projections took into account the Mayor's policies on reducing waste arisings and increasing reuse and recycling.
- 5.2.35. The GLA and UKWIN expressed concern that if additional EfW capacity was approved and its lower projections of EfW proved to be correct then the new facility would compete for waste with other processors and this would result in waste that could be reused or recycled being sent for incineration. This would be contrary to the requirements in the waste hierarchy. The requirement proposed by the Applicant for a Waste Hierarchy Scheme with provision for an annual review of waste composition addresses this concern. Failure to follow this scheme would put the Applicant in breach of the DCO should that be consented.
- 5.2.36. EN-1 and EN-3 state that there is a need for new generation capacity, including the sort to be provided by the Proposed Development and, as required by EN-1, I give substantial weight to the contribution that the Proposed Development would make to satisfying that need.
- 5.2.37. Whether the volume of waste available for processing will be at the level anticipated by the Applicant allowing it to make full use of the planned capacity of the REP or at the lower levels projected by the GLA is, in this context, primarily a commercial matter for the Applicant. My concern in considering this aspect of the application is that the level of future waste arising should not result in the operation of the Proposed Development

breaching the principles of the waste hierarchy. I consider that this is adequately protected against by the provisions of the Waste Hierarchy Scheme as set out in the final draft DCO.

## **5.3. CARBON EMISSIONS**

- 5.3.1. The GLA submitted [REP2-071] that the ERF was unlikely to meet the Mayor's Carbon Intensity Floor (CIF) emissions level, which all new incineration facilities in London are required to meet through generating both heat and power from truly non-recyclable waste to support transition to a low carbon economy.

### **National Policy**

- 5.3.2. NPS EN-1 notes that the EU Emissions Trading Scheme (EU ETS) forms the cornerstone of UK action to reduce greenhouse gas emissions from the power sector. The UK intention is to go beyond the EU ETS and ensure that developers deliver the required levels of investment in low carbon generation to decarbonise the way in which we produce electricity and reinforce our security of supply, whilst retaining efficiency and competitiveness. EN-3 acknowledges that the combustion of biomass for electricity generation is likely to play an increasingly important role in meeting the UK's renewable energy targets. The National Planning Policy Framework (NPPF) states that the planning system should support the transition to a low carbon future.

### **London Planning Policies**

- 5.3.3. Relevant policies for Greater London in respect of carbon reduction as set out in the GLA's LIR [REP2-075] have been summarised at paragraphs 4.2.6. These were further explained in the GLA's WR [REP2-071]. The Mayor has a statutory duty to address climate change and the LIR sets out the importance of carbon reduction. London has a target to be zero carbon by 2050.
- 5.3.4. To deliver a low carbon future the GLA expects all of London's EfW facilities to manage only truly non-recyclable waste and maximise the use of both the heat and power generated. To achieve this a minimum carbon emissions level for energy generated from waste has been set, known as the CIF. This was introduced in 2011 when the marginal generation technology produced 400 grams of CO<sub>2eq</sub> per kWh of electricity produced.<sup>11</sup> The CIF will be reduced in 2025 or earlier in line with the target for London to deliver greater greenhouse gas savings. Achievement of London's target for greenhouse gas savings has been modelled assuming that all of London's EfW facilities achieve an overall CIF target of 300 grams of CO<sub>2eq</sub> per kWh of electricity.

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<sup>11</sup> See footnote 6

## **The Applicant's assessment**

- 5.3.5. In The Project and its Benefits Report [APP-103], the Applicant stated that through the recovery of renewable/low carbon energy REP was inherently making a positive contribution to reducing carbon emissions and the policy priorities of the NPS were met. The London Plan (2016) requirement for new energy from waste plant to "meet a minimum performance of 400g of CO<sub>2e</sub> per kilowatt hour of electricity produced would be achieved or exceeded"; 400g is the level currently set by the GLA as the CIF.
- 5.3.6. The Applicant's CHP assessment [APP-035] includes an assessment of the carbon impact of the proposed ERF. Using the GLA approved methodology this assessment shows that with the plant operating with a throughput of 655,000 tonnes a year and with no heat export it would produce 393 grams of CO<sub>2e</sub>/kWh on a net calorific value basis. This would be reduced further depending on the level of heat export achieved. Even without heat export the level would be below the CIF set by the GLA.

## **Views of Interested parties**

### **Greater London Authority**

- 5.3.7. The GLA in its WR [REP2-071] considered that the Applicant had not provided sufficient evidence to demonstrate how the Proposed Development would meet the CIF in order to comply with the London Plan (2016) policy. The Applicant had shown the Proposed Development meeting the 400 grams of CO<sub>2e</sub> but failing to meet to tighter target of 300 grams of CO<sub>2e</sub> due to be tightened, as set out in the LES, in order to accelerate the transition to low carbon and renewable energy generation. Even if the plant was operated in full CHP mode it would still fail to meet the lower target in the LES.
- 5.3.8. The GLA considered that the gross electrical efficiency of 34% assumed for the Proposed Development was exceptionally high and should be treated with caution unless evidenced by data from commercially operational plant.
- 5.3.9. In its post-hearing written submission [REP3-038] the GLA drew attention to recent projections from the Department for Business, Energy and Industrial Strategy (BEIS) which indicated that the emissions from the marginal generating plant were expected to decline from 0.357kg CO<sub>2</sub> per kWh of electricity generated in 2010 to 0.030kg CO<sub>2</sub> per kWh. In the GLA's view applying these projections for the marginal source of electricity demonstrates that the proposed ERF would be a significant carbon producer, emitting between 0.3 and 0.4kg of CO<sub>2</sub> per kWh of electricity generated. The GLA did not accept that credit should be given for the reduction of emissions from landfill sites. The GLA considered that carbon performance of the proposed ERF against landfill was not the proper comparator for compliance with the NPS. Performance should be compared with alternative energy generation options to fully understand the impacts both on energy generation output and carbon.

- 5.3.10. In a subsequent submission [REP4-024] the GLA stated that it considered that a power station that would not be in operation until 2025, with a 40 year life, *"should seek to ensure that its contribution to the low carbon and renewable economy is ahead of the curve; otherwise it would be outdated technology ... and would become increasingly out of step with the UK's generation mix."* In its written comments on the revised draft DCO [REP7a-005] and at the third ISH [EV-011 and REP8-029] the GLA proposed that there should be a cap on the throughput of the ERF of 655,000 tpa in order to ensure that the facility does not exceed the basis of the Applicant's Carbon Assessment [REP2-059].

## **UKWIN**

- 5.3.11. In its RR [RR-006] UKWIN set out its view that the Proposed Development would have a net adverse climate change impact compared with sending the same waste to landfill. It argued that the incineration of waste at the Proposed Development would result in between 7 million and 10 million tonnes of CO<sub>2e</sub> being released over a 30-year period compared to sending that same waste to landfill even when the release of methane was taken into account.
- 5.3.12. UKWIN argued that, if the Proposed Development had a similar level of carbon intensity to the existing Riverside Resource Recovery Facility (RRRF) plant, it would be generating electricity at nearly twice the "fossil CO<sub>2</sub> cost" of a Combined Cycle Gas Turbine (CCGT). This would hamper efforts to decarbonise the electricity supply. The carbon performance of the plant should be seen as a disbenefit rather than a benefit of the scheme as the fossil fuel intensity would hamper efforts to decarbonise the electricity supply.
- 5.3.13. UKWIN challenged the assumptions underlying the Applicant's carbon calculations arguing that a lower marginal emissions factor taken from BEIS 2017 data tables should be used rather than an outdated emissions factor for a CCGT and that a higher methane capture rate for landfill gas should be used derived from Department for the Environment, Food and Rural Affairs (DEFRA) 2014 guidance – 'Energy recovery for residual waste: a carbon based modelling approach'.

## **Further comment by the Applicant**

- 5.3.14. The Applicant submitted a Carbon Assessment at Deadline 2 [REP2-059]. This provided a detailed analysis of the CO<sub>2</sub> emissions from the proposed ERF and the assumed off-setting reductions in CO<sub>2e</sub> emissions as a result of waste being diverted from landfill. The Assessment cited the DEFRA report 'Energy from Waste – A guide to the debate 2014' in support of the use of a CCGT plant as the comparator for electricity generated from the combustion of waste.<sup>12</sup> It considered that electricity from the ERF was most likely to displace generation from CCGTs, gas engines and diesel engines and that this meant that CCGT was the correct

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comparator. BEIS fuel mix tables published in August 2018 were used to identify the CO<sub>2</sub> emissions from a CCGT as 357g CO<sub>2</sub>/kWh. This was taken as the level of CO<sub>2</sub> emissions that would be displaced by the ERF. If the ERF exported heat, there would be a further displacement of emissions from natural gas boilers. Analysis was carried out for different mixes of waste ranging from the existing mix at the RRRF to a future scenario where 50% of plastics, 50% of food and 20% of metals were removed as a result of a significant increase in source segregation.

- 5.3.15. Sensitivity analysis was carried out to assess the impact on the findings of different grid displacement and landfill gas capture assumptions. This included using the lower grid displacement factor proposed by UKWIN (which the Applicant did not consider correct) and UKWIN's higher landfill gas capture rate. On all of the scenarios considered the analysis showed a reduction in tonnes of CO<sub>2e</sub> compared to the landfill option.
- 5.3.16. In its Combined Heat and Power Supplementary Report [REP2-012] the Applicant updated its assessment of CO<sub>2e</sub> emissions using different versions of the GLA's Ready Reckoner. These showed the proposed ERF meeting the CIF level of 400gCO<sub>2e</sub> in electricity only mode and operating below the CIF level if heat was exported.
- 5.3.17. During the course of the Examination the Applicant provided a series of responses to the GLA. In its response to WRs [REP3-022] it did not accept the GLA's view that it had not provided sufficient evidence to demonstrate that the proposed ERF would meet or take "demonstrable steps" to meet the CIF and comply with the London Plan (2016) policy. The Applicant reiterated its statement in the CHP Assessment that there were demonstrable steps, which it had set out, that would be taken to achieve or more than achieve the CIF level.
- 5.3.18. In its response to the GLA Deadline 3 submission [REP4-014] the Applicant rejected the GLA's contention that the proposed ERF could not operate at an efficiency of 34.1%. It clarified that this was a gross efficiency measure. The GLA and the Applicant agreed that net efficiency was the appropriate basis for comparison. The net efficiency of the plant based on exported power would be 31.25%. This could be compared with the net efficiency of the Ferrybridge FM2 plant of 29.8%. The draft Waste Incineration Best Available Techniques (BAT) reference documents (BREF) based on data collected in 2015 showed a number of plants operating at a gross efficiency of 32–33% but that would not include the newest plants which incorporate further technological advances. The Applicant confirmed that the improved efficiency of the plant proposed for the ERF was achievable.
- 5.3.19. The Applicant submitted the Maximum Throughput Carbon Assessment Note towards the end of the Examination. [REP8-026]. This was in response to the GLA's assertion that the Applicant's assessment of the carbon impact had been based on annual throughput of 655,000 tonnes of waste and that this should be set as a limit in the draft DCO. This note set out the Applicant's view that a higher throughput, up to the full annual capacity of the plant of 805,920 tonnes, would have a lower

carbon impact than 655,000 tonnes when account was taken of the net carbon benefit of diverting waste from landfill.

## **Conclusions on carbon emissions.**

- 5.3.20. The Applicant and the GLA were not able to agree on the impact of the Proposed Development on carbon emissions.
- 5.3.21. The GLA challenged the high level of energy efficiency being assumed for the ERF. The Applicant asserted that these levels, while above those reached by other plants, were achievable with the latest technology. I have not received any evidence indicating that this level of energy efficiency cannot be achieved by the Proposed Development. My assessment of the evidence presented is that if the high levels of energy efficiency are achieved then the ERF would meet the CIF level of 400gCO<sub>2e</sub>/kWh in electricity only mode and would operate below this level with heat export. I consider the potential for heat export in the following section.
- 5.3.22. The GLA also highlighted the intention set out in the LES to tighten the CIF level to around 300 grams/kWh when this is reviewed in 2025. I recognise that this forms part of the GLA's forward plans but I consider that the CIF level of 400g of CO<sub>2e</sub>/kWh in place at the time of the Examination is the relevant yardstick against which the Proposed Development should be judged. On this basis I accept that the CIF can be met by a high efficiency plant of the sort proposed.
- 5.3.23. The second area of disagreement is on the counterfactual assumed for electricity generation. The Applicant has assumed that the ERF, as a new generator, will displace electricity generated by an existing CCGT plant, in line with DEFRA advice. CCGT is taken as the marginal generating technology with CO<sub>2</sub> emissions of 357g of CO<sub>2</sub>/kWh. The GLA argued that the counterfactual for CO<sub>2</sub> emissions should be taken as the long run marginal emissions rate from new plant which is shown in BEIS projections to decline significantly in coming years.
- 5.3.24. Although CO<sub>2</sub> emissions from plant built in coming years may be lower than CO<sub>2</sub> emissions from the ERF, that plant is not, in my view, the plant that will be displaced from generating if the ERF comes into operation. The plant displaced would be plant which has a higher marginal operating cost than the ERF and which is flexible enough for its output to be ramped up or down in response to market conditions. I consider that CCGTs are currently the plant meeting those conditions and are therefore the appropriate counterfactual against which to compare the ERF in making calculations of CO<sub>2</sub> emissions.
- 5.3.25. The GLA challenged the Applicant's assumption that incineration of waste in the ERF would displace that waste being sent to landfill. In the GLA's view waste sent for incineration would be waste which would otherwise be reused or recycled. I have considered compliance with the waste hierarchy in the previous section and concluded that the proposed Waste

Hierarchy Scheme would provide adequate protection against the Proposed Development breaching the waste hierarchy.

- 5.3.26. The Waste Hierarchy Scheme introduced through a requirement in the draft DCO provides for arrangements to ensure that as much reusable and recyclable waste as is reasonably possible is removed from waste to be delivered to the ERF. In my view this is adequate to ensure compliance with the waste hierarchy. With this provision in place, it is reasonable to assume that the alternative to waste being sent to the ERF is that it is sent to landfill. Credit can therefore be taken for the CO<sub>2e</sub> emissions from landfill avoided when waste is incinerated. On this basis there is a net credit in CO<sub>2e</sub> terms from the diversion of waste from landfill to the ERF. Although the main analysis was carried out on a throughput of 655,000 tonnes a year, I accept the Applicant's analysis that this benefit would be higher if the maximum throughput of 805,920 tpa was assumed.
- 5.3.27. I conclude that the plant proposed for the ERF, which is the subject of the application for an EP, operating at its design efficiency and burning waste which conforms with the Waste Hierarchy Scheme, would meet the CO<sub>2e</sub> emissions targets in place at the time of the Examination.

## **5.4. COMBINED HEAT AND POWER**

### **National policy**

- 5.4.1. NPS EN-1 sets out the requirements for the consideration of CHP. The Government is committed to promoting Good Quality CHP that has been certified as highly efficient under the CHP Quality Assurance programme. As set out in EN-1, Government guidelines issued in 2005 required any application to develop a thermal generating station to either include CHP or contain evidence that the possibilities of CHP had been fully explored. These principles apply to any application for development consent for a thermal generating station under PA2008.
- 5.4.2. EN-1 sets out the steps that applicants should take to consider the opportunities for CHP including wide consultation. Substantial additional positive consideration should be given to applications incorporating CHP. If the proposal is for thermal generation without CHP, the Applicant should:
- *explain why CHP is not economically or practically feasible ...;*
  - *Provide details of any potential future heat requirements in the area that the station could meet;*
  - *Detail the provisions in the proposed scheme for ensuring any potential heat demand in the future can be exploited.*
- 5.4.3. EN-3 reiterates the policy position set out in EN-1 stating that development consent should not be given unless the applicant has provided appropriate evidence that CHP is included or that opportunities for CHP have been fully explored.

- 5.4.4. In 2013 the EA published CHP Ready Guidance for Combustion and Energy from Waste Plants which applies to plant such as the proposed ERF.<sup>13</sup> New plants are required to demonstrate that they are adopting best available technology (BAT) for a number of criteria including energy efficiency. One way of improving energy efficiency is through the use of CHP. The BAT tests set by the EA involve considering and identifying opportunities for the immediate use of heat offsite. If this is not technically or economically possible then the plant should be constructed to be CHP ready. Periodic reviews should be carried out to see if the situation on opportunities for heat use offsite have changed. Since 2015 there is a requirement under the Energy Efficiency Directive 2012/27/EU to carry out a cost benefit analysis (CBA) of opportunities for CHP.

### **London planning policies**

- 5.4.5. The London Plan (2016) policy on Decentralised Energy Networks prioritises the development of decentralised heating and cooling networks at both development and area wide levels, including larger scale heat transmission networks [REP2-075]. The draft London Plan (2018) is supportive of opportunities for energy generation, energy storage and heating and cooling networks. This policy sets out a heat hierarchy within which low emission CHP is one option but only where there is a case for CHP to enable the delivery of an area-wide heat network.
- 5.4.6. LBBs Core Strategy 2012 supports investigation into decentralised heat networks as part of its sustainable development strategy [REP2-082]. LBB policy also recognises the contribution that CHP can make to mitigating the effects of climate change.

### **The Applicant's assessment**

- 5.4.7. In its CHP assessment submitted as part of the original application [APP-035] the Applicant included a Heat Demand Assessment. The plant would be constructed as 'CHP enabled', fully capable of exporting heat with all required on-site infrastructure in place. The Applicant considered that this exceeded the EA requirement to be 'CHP ready'.
- 5.4.8. The CHP assessment reviewed the potential heat demand within a 10 mile radius of the site of the Proposed Development in order to identify known or consented future developments that may require heat and to identify existing major heat customers. This assessment was carried out in accordance with the EA's CHP Ready Guidance. The viability of connecting potential heat users was considered on the basis of maximising carbon savings and delivering energy savings while minimising heat losses through pipe route optimisation.
- 5.4.9. The anaerobic digestion (AD) facility forming part of the REP will utilise a thermophilic chemical reaction to breakdown the feedstock into biogas. In order to sustain the process, the AD facility will require a source of

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heat. Subject to detailed design this could be supplied as 3MW<sub>t</sub> of low pressure steam extracted from the ERF turbine via the low pressure header to supply up to 12 dryer units. This is seen by the Applicant as a secure, although relatively modest, heat demand. In the outline design this heat would be supplied in the form of steam and not through the district heating (DH) network.

- 5.4.10. In the area surrounding the REP site the heat demand comes principally from the residential, transport, industrial and retail sectors. In most cases existing domestic buildings are not suitable for inclusion in a DH network because of the high costs of conversion. The Applicant identified seven potential residential and commercial developments to the west of the REP in Thamesmead. The Applicant had engaged with the developer and the local planning authorities to explore the feasibility of connecting up to 20,000 new residential dwellings and commercial premises.
- 5.4.11. Four existing large heat customers were identified but only one, a rapeseed oil refinery, was on the south bank of the Thames and could present a connection option. The technical and economic difficulties with supplying high grade steam to such a user were considered likely to present major barriers. Developing a DH network initially to serve new-build consumers in Thamesmead was considered to be the most favourable option and was the subject of further modelling with an assumed level of export of 30MW<sub>t</sub> of low pressure steam
- 5.4.12. The Applicant developed a heat demand profile based on publicly available development proposals. Annual heat demand of 114,385MWh was projected equating to an average and peak demand of 10.9MW<sub>t</sub> and 30.9MW<sub>t</sub>. It was considered that additional capacity could be added to the network by connecting existing developments in Woolwich and West Thamesmead.
- 5.4.13. The heat demand profile (including heat supplied to the AD facility) could be met by the REP operating independently but a back-up system would be required for periods of downtime. Peak loads were projected to exceed the maximum heat export so that some additional support in the form of peak lopping plant or heat accumulators would be necessary. Alternatively, the RRRF plant, which is configured as 'CHP ready' could be used to meet peak demand and cover downtime.
- 5.4.14. A CBA was carried out using the EA's template. This analysis showed that the capital investment required for the heat network would not be off-set by heat sales revenue alone resulting in a negative internal rate of return. It was possible that funding might be available under the Heat Network Investment Project to improve the economic case. In the Applicant's view the economic feasibility of the scheme should be reassessed in future when there is more certainty over heat loads and the availability of subsidies. A Requirement had been included in the draft DCO requiring the Applicant to monitor and review the potential for CHP and report its findings to LBB.

## **Views of Interested Parties**

### **Greater London Authority**

- 5.4.15. In its LIR [REP2-075] and WR [REP2-071] the GLA argued that there was insufficient heat demand in the local area for the ERF to operate as an effective CHP plant and that the Applicant had overstated the CHP opportunities.
- 5.4.16. A study had been carried out by LBB, with funding from the GLA to study the feasibility of supplying heat from the existing RRRF. This concluded that the RRRF could meet all of the identified local need with only 70% of its heat capacity. There was still considerable uncertainty as to when the RRRF would be able to export heat for use in a local heat network.
- 5.4.17. The GLA considered that the proposals for CHP in the application had not progressed to the level necessary to demonstrate that CHP was feasible and would be delivered in line with the London Plan policy requirements. The GLA's experience of developing CHP infrastructure at other incinerators in London had shown that genuine engagement and commitment to establishing heat offtake was essential. In the GLA's view the DCO application had demonstrated no evidence of such engagement or commitment.
- 5.4.18. The GLA considered that the Applicant had not provided sufficient detail on the offtake provision from the REP. Technical details should be provided to demonstrate that:
- The steam turbine will be procured with tappings, stating steam pressures and temperatures with suitable isolation valves for a steam off-take;
  - There is sufficient space for the necessary pipework and equipment to be installed within the site boundary; and
  - A route for the district heating pipework is safe-guarded to the site boundary.
- 5.4.19. The GLA also did not accept the Applicant's assertion that the Proposed Development would provide synergistic benefits to the existing RRRF increasing the resilience of the heat supply system.

### **London Borough of Bexley**

- 5.4.20. In its WR LBB stated that it was supportive of the Proposed Development in principle [REP2-080]. It noted that the Applicant had confirmed that the development would be 'CHP ready' and had proposed further provision of heat studies. This was the same approach that was required for the existing RRRF although no export of heat had been achieved to date. LBB promotes export of heat from EfW plants in line with policy guidance.

## **Further comment by the Applicant and Interested Parties**

- 5.4.21. In its Combined Heat and Power Supplementary Report [REP2-012], the Applicant reiterated its commitment to the configuration of the ERF as a CHP facility to facilitate the export of heat. It had put in place demonstrable steps to realise the export of this heat. The plant would be fully CHP enabled from the outset and the Applicant was making significant steps, at its own cost, in establishing and maintaining momentum in the heat network development process via the Bexley District Heating Partnership which included representatives from local authorities, the GLA and housing developers. The Applicant was also meeting with LBB's consultants to discuss the results of phase 1 of the feasibility study into the supply of heat in the Thamesmead and Belvedere areas. It had drawn attention to additional potential demand for heat in the area.
- 5.4.22. In its response to the GLA's WR [REP3-022] the Applicant drew attention to the recently published Phase 2 of the feasibility study carried out by consultants for LBB which had been included as an appendix to the GLA's WR. This had stated that if more aggressive build out scenarios for new housing were considered it was likely that heat sources beyond the existing RRRF were likely to be required. It was the Applicant's view that this report supported its own assessment of CHP demand in the area. Two key heat network options had been identified. The Thamesmead regeneration programme with around 20,000 dwellings and associated commercial premises offered the most favourable option minimising heat losses, supporting economic growth and regeneration and providing social benefits. To satisfy this demand the Applicant considered that heat supply from both REP and RRRF would be required.
- 5.4.23. At the ISH on environmental matters [REP3-038] the GLA disagreed with the Applicant's assertion that there were an additional 20,000 homes which could be supplied with heat from the REP. These homes had already been included in the consultant's report for LBB. That report had identified internal rates of return which were below the levels that would be sought for a commercial project. Public sector involvement had not been investigated by the Applicant and it remained unclear whether a REP heat network could be implemented. The GLA considered that the Applicant was overestimating the heat demand that the REP could supply. Without CHP the GLA considered that the ERF would be a carbon producer and slow the transition to a low carbon economy.
- 5.4.24. In a further response to comments from the Applicant [REP5-031], the GLA stated that the consultant's study it had submitted was an industry standard feasibility study that followed a Department for Business and Industrial Strategy methodology and used data and analysis to provide robust evidence-based conclusions and recommendations to inform decisions regarding the further development of district heating network opportunity. It considered that the Applicant's responses on heat demand were deductions which could not be relied on to make comparable levels of informed decisions as those of the consultant's report.

- 5.4.25. The GLA acknowledged the steps that the Applicant had taken to realise the heat export from the ERF but did not consider that it had gone far enough. The Applicant should lead an initiative to form a working group to coordinate the effective development of a district heating network. The GLA proposed the addition of a Requirement in the draft DCO setting out the activities for such a working group. It also proposed that the potential for 30MW<sub>t</sub> of heat off take should be included in the description of the Authorised Development. The Applicant amended the draft DCO to incorporate these changes.
- 5.4.26. In response to LBB's WR [REP3-022] the Applicant responded that while RRRF was 'CHP ready', the REP would be 'CHP enabled' as such it would be in a more advanced state of readiness and would meet the objectives set out in the relevant LBB policies.

### **Conclusions on Combined Heat and Power**

- 5.4.27. The application for the Proposed Development includes assessment of the potential for up to 30MW<sub>t</sub> of heat export from the ERF and provision for this level of heat off-take is included in the Works Plans in the draft DCO. Offtake of 3MW<sub>t</sub> is expected for drying residue from the AD and CHP plant for this purpose is also included in the Works Plans. The Applicant has set out its assessment of the potential for DH in the vicinity which would take up the heat output from both the REP and the exiting RRRF whose heat output is at present unused. The Applicant has provided a CBA which shows that the capital cost of the development of a heat network would not be off-set from the revenues that could be expected. Some additional form of financial support would be necessary to make the development of a heat network viable. The draft DCO submitted with the application included a Requirement to update its CHP review on a regular basis and to identify actions to increase the potential for the export of heat.
- 5.4.28. The GLA disagreed with the Applicant's assessment of DH potential which it considered did not exceed the heat output available from the RRRF. It also questioned the Applicant's commitment to establishing heat off-take. Without heat off-take the ERF would not be able to meet a tightening of the CIF.
- 5.4.29. In my view the analysis that the Applicant has presented broadly addresses the three issues set out in EN-1 and listed at paragraph 5.4.2. It has provided a CBA to show that DH is not economic without further financial support and has identified a potential source of additional funding. It has provided its own assessment of potential heat requirements. It has included provision for regular review of potential demand and its plans to make the ERF 'CHP enabled' would mean that it would be able to move quickly to meet demand when that is identified.
- 5.4.30. I am not able to reconcile the different projections of future heat requirements presented by the GLA and the Applicant but, as I have commented in respect of forecasts of waste incineration capacity at paragraph 5.2.34, projections are uncertain and it is prudent to consider

a range of outcomes. If the Applicant's higher projections of demand for DH are realised then the CHP potential of the ERF may be realised if other financial requirements are met thereby reducing the CO<sub>2e</sub>/kWh emissions from the plant. But it is also possible that, even with this higher level of demand, the development of DH may still not be viable. If the GLA's lower projections prove to be correct, then the CHP potential of the ERF is likely to remain unexploited resulting in a higher level of CO<sub>2e</sub>/kWh. In the circumstance where the CHP potential of the ERF is not developed the current CIF can be met at the levels of energy efficiency for the plant that the Applicant expects to achieve.

- 5.4.31. I attach some weight to the GLA's concern about the uncertainty surrounding the successful development of the CHP potential in line with GLA policies. The Applicant's commitment to developing the ERF as 'CHP enabled' is evidence of its confidence in its ability to take the DH option forward but does not guarantee any particular outcome beyond the boundary of the Proposed Development. The GLA's concerns are, in part, addressed by its proposals, which have been accepted by the Applicant, for a specific reference to 30MW<sub>t</sub> potential for heat export in the description of the Authorised Development and the Requirement in the draft DCO for a working group to coordinate the effective development of a district heating network which provides for more detailed investigation and involvement of interested parties. This should improve the likelihood of a DH scheme being successfully developed through cooperative action. In my view these provisions are consistent with national and London policies. The Applicant's commitments go beyond those specified in EN-1 and are acceptable.

## **5.5. ALTERNATIVES CONSIDERED**

### **National Policy**

- 5.5.1. EN-1 states that the NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. But applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied.
- 5.5.2. EN-3 states that it is for energy companies to decide which applications to bring forward. The Government does not seek to direct applicants to particular sites for renewable energy infrastructure.
- 5.5.3. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations 2017) require that the ES include a description of the reasonable alternatives studied by the applicant, which are relevant to the Proposed Development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment.
- 5.5.4. PINS Advice Note 7 states that a good ES should explain the reasonable alternatives considered and the reasons for the chosen option, taking

into account the effects of the Proposed Development on the environment.<sup>14</sup>

## **The Applicant's assessment**

- 5.5.5. In its ES [APP-042] the Applicant explained that it had adopted a staged process, firstly considering the suitability of the REP site followed by an options appraisal of alternative layouts for the REP building and key components on the REP site. This was followed by consideration of options for the marine environment, the electrical connection route and the temporary construction compounds.

### **The REP site**

- 5.5.6. The Applicant stated that given that it owned the majority of the REP site and taking into account the proximity of associated road and jetty links with the River Thames, the location was considered ideally suited for the Proposed Development. For numerous reasons the REP site was considered highly advantageous and consideration of alternative sites was not deemed necessary. The reasons cited included:

- Location adjacent to the RRRF with access to the existing jetty which had the capacity to accommodate REP deliveries and removals;
- Existing access to the road network via Norman Road;
- Existing mains water and foul sewage connections;
- An adequate footprint to accommodate the REP plant and equipment;
- Feasibility of connection to the electricity distribution network;
- At a sufficient distance from residential receptors to limit impacts such as noise;
- Not directly in conflict with any statutory environmental designations;
- Located within an existing urban/industrialised environment with a precedent for tall structures on the banks of the River Thames; and
- Proximity to proposed developments to be served by a local district heating network to which REP could contribute alongside RRRF.

- 5.5.7. Four layout options were considered

- North to south orientation with the stack at the south and the tipping hall at the north;
- North to south orientation with the stack at the north and the tipping hall at the south;
- East to west orientation with the stack at the west and the tipping hall to the east; and
- East to west orientation with the stack at the east and the tipping hall to the west.

- 5.5.8. The east to west orientations were rejected because they would result in more vehicle congestion and complex routing on site. An east west

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<sup>14</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2017/12/Advice-note-7.pdf>

orientation would also potentially create a 'wall' of buildings and block more views to and from the River Thames.

- 5.5.9. A north to south orientation was considered to be more in keeping with the existing surrounding infrastructure and provide a more efficient routing system within the REP site for deliveries from the jetty and Norman Road. This orientation would reduce the blocking of views to and from the River Thames. Further analysis of these options identified the north to south option with the stack at the north end as more favourable with less potential for giving rise to effects on the environment as well as maximising the opportunity for solar voltaic renewable energy generation.

#### **Electrical connection**

- 5.5.10. Two options for the electrical connection were considered at the scoping stage:

- Connection to the National Grid substation at Renwick Road, Barking using the existing electricity cable tunnel under the River Thames; and
- Connection to the National Grid substation at Littlebrook in Dartford routing along the existing road network.

- 5.5.11. During early feasibility studies it was found that there was no capacity for additional cables in the cable tunnel under the river and that it was not possible to uprate the existing cables because of overheating problems. The use of the existing utilities tunnel was therefore discounted. Construction of a new utilities tunnel was not considered to be viable taking into account UKPN's licence obligations. Connection to the substation at Littlebrook was taken forward as the preferred solution.

- 5.5.12. Four main options were considered for the route of the electrical connection from the REP to the Littlebrook substation. These considered routing the connection along the public highways A2016 and A206 and variations using both these public highways and deviations along local roads. The Applicant's preferred options were shown on the Works Plans submitted with the application. [APP-008]

#### **Main temporary construction compounds**

- 5.5.13. The REP site is not large enough to accommodate all of the construction laydown, fabrication, welfare and parking provision. Nine sites were identified which met requirements in terms of size and proximity. The site on land to the west of Norman Road, immediately south of the REP site was considered to be the most suitable.

#### **Do nothing alternative**

- 5.5.14. The Applicant did not consider a 'do nothing' scenario was appropriate given the established need for new energy generation and waste treatment in London, including a need for low carbon and renewable energy generation, and policy support for increased use of the river.

## **Conclusion on alternatives**

- 5.5.15. The Applicant has set out the reasons why the REP is so attractive as the site for the Proposed Development that it does not consider it is necessary to consider an alternative location. Based on that view it has then considered alternative configurations for the REP, for the temporary construction compounds and for the routing of the electrical connection.
- 5.5.16. EN-1 does not require alternatives to be considered but applicants are expected to provide information on the alternatives that have been examined. In my view, the Applicant has provided adequate information on a range of alternative configurations and locations for the REP and associated works which meets the requirements set out in EN-1, EN-3 and the EIA Regulations 2017 and has followed the guidance in PINS Advice Note 7.

## **5.6. TRANSPORT**

### **National policy**

- 5.6.1. EN-1 recognises that the consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development. The ES should include a transport assessment and, where appropriate, a travel plan including demand management measures to mitigate transport impacts. Details should be provided of measures to improve access by public transport, walking and cycling to reduce the need for parking and mitigate transport impacts.
- 5.6.2. A new energy NSIP may give rise to substantial impacts on the surrounding transport infrastructure. Steps by an applicant to mitigate these impacts, including during the construction phase should be considered. Where mitigation is insufficient to reduce the impact on the transport infrastructure to acceptable levels requirements and planning obligations to mitigate adverse impacts should be considered. EN-1 states that, provided that the applicant is willing to enter into planning obligations or requirements, then development consent should not be withheld and appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure. EN-1 also notes that water-borne or rail transport is to be preferred over road transport at all stages of the project, where cost-effective. This point is reinforced in the section of EN-3 dealing with biomass and waste combustion which sets out the expectation that materials (fuel and residues) would be transported by water or rail routes where possible.

### **London planning policies**

#### **Greater London Authority**

- 5.6.3. The GLA in its LIR set out relevant GLA policies [REP2-075]. The London Plan (2016) states that the Mayor will encourage the increased use of the Blue Ribbon Network (London's strategic network of waterspaces) for freight transport. The draft London Plan (2018) expects proposals for new waste infrastructure to take account of transport and environmental

impacts of all vehicle movements related to the proposal. It also supports use of river transport. The draft policy states that development proposals should reduce the dominance of vehicles on London streets whether stationary or moving.

- 5.6.4. A key aim in the LES is for London to be a zero carbon city by 2050 with energy efficient buildings, clean transport and clean energy. The aim is to reduce emissions from freight through encouraging a switch to low emission vehicles, adopting smarter practices and reducing freight movements. There should be increased use of waterways for freight and passenger services. The LES requires all local authority waste deliveries to transition their waste fleets to low or zero carbon.

#### **London Borough of Bexley**

- 5.6.5. LBB in its LIR set relevant LBB policies [REP2-082]. The Saved Unitary Development Plan (UDP) sets out policies to limit car parking spaces to no more than is justified in a Transport Assessment and sets specific standards for provision of spaces. Provision should be made for cycle infrastructure and parking.
- 5.6.6. LBB's Core Strategy (2012) sets out policies for sustainable development including supporting sustainable transport. The Strategy notes the importance of workplace travel plans. The LBB Local Implementation Plan (2019) sets out strategies for improvement of the local transport network to meet the Mayor's Transport Strategy goals. These include increasing the share in total trips of walking, cycling and public transport, a reduction in vehicle kilometres travelled and reduction in CO<sub>2</sub>, NO<sub>x</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> emissions from road traffic. The Plan also requires Construction Management Plans and Delivery and Service Plans to be provided for major developments.

#### **Kent County Council and Dartford Borough Council**

- 5.6.7. KCC and DBC submitted a joint LIR in respect of the electrical connection route options which lay within their areas [REP2-079]. KCC as the highway authority had a local transport plan – Delivering Growth Without Gridlock (2016-2031). It also had a Rights of Way Improvement Plan. DBC's Development Plan included policies on managing transport demand, transport impacts of development and transport access and design. The LIR drew attention to the extreme sensitivity of the local highway network. Incidents at the Dartford Crossing were frequent and lead to severe congestion in and around the Dartford area.

#### **The Applicant's assessment**

- 5.6.8. In the Transport section of the ES [APP-043] the Applicant set out the expected traffic that would be generated by the REP during the construction and operational phases in relation to existing and projected road and river traffic using 2014 WebTAG methodology.
- 5.6.9. For the REP construction phase, which would last up to 36 months, the Applicant estimated traffic flows based on the peak construction period

(month 13) when there would be a total of 1097 construction workers. Only 552 parking places would be provided which would set a limit on the number of car or van movements. There would be liaison with LBB to monitor and manage off-site parking to protect the effective operation of the local road network. Workers would be encouraged to travel by non-car modes wherever possible. Construction materials would potentially be transported by road and river. It was assumed that there would be 22 construction material arrivals per day although this would vary over the construction period. These assumptions were used to estimate additional trips generated on local roads. The maximum number of additional daily vehicle movements would be 1148 movements occurring on Norman Road and the neighbouring section of the A2016 Picardy Manorway.

- 5.6.10. The electrical connection work would take place over a 15–24 month period and would generate temporary impacts on the highway network during the construction phase. In the worst case scenario (the 15 month construction period) it was expected the construction activity would involve up to 76 vehicles resulting in 152 daily vehicle movements.
- 5.6.11. For the operational phase three scenarios were considered. Under the nominal scenario 75% of waste would be transported to the ERF from Waste Transfer Stations (WTS) on the River Thames and 25% of waste transported in refuse collection vehicles (RCVs) from the local area. Incinerator bottom ash (IBA) would be transported by river to Tilbury in Essex and Air Pollution Control Residue (APCR) would be transported by road to Brandon in Essex. For the AD facility 70% of green waste was assumed to arrive by road in LBB RCVs and 35% in articulated vehicles from Central London and the M25. By-products would be transported by road to various locations.
- 5.6.12. Two worst case scenarios were considered with 100% of waste delivered to the ERF transported by road, 65% from central London and 35% from Tilbury or 100% waste transported by river from riverside WTS. In these two cases other parameters were taken to be the same as in the nominal scenario. The ERF was assumed to operate 24 hours a day 365 days a year. These assumptions were used to model trip generation under the different scenarios.
- 5.6.13. Under the nominal scenario the peak level of traffic movements associated with the Proposed Development would be 319 daily movements (arrivals and departures) on Norman Road with 279 daily movements on the neighbouring Picardy Manorway and lower levels on other roads reflecting the assumed pattern of vehicle movements. In the 100% by road scenario there would be 792 daily movements on Norman Road and 753 daily movements on Picardy Manorway.
- 5.6.14. A baseline of traffic flows on the roads that would be affected by the different phases of Proposed Development was established and augmented by assumptions about future growth and the completion of other known developments in the area including the REP. Impacts on drivers and pedestrians, accidents and road safety and other impacts were assessed using traffic modelling.

- 5.6.15. On the basis of this modelling the impact of the construction and decommissioning of the REP on severance, pedestrian fear and intimidation was considered to be negligible and non-significant. There could be significant driver delays at one junction between the A206 and A2016 which were classified as moderately adverse and significant if workers arrived during the morning peak period. This could be addressed through provisions in the Construction Traffic Management Plan (CTMP). Overall the assessment for driver delays was a minor adverse effect which was classified as not significant. There could be a minor adverse effect on pedestrian delays at one crossing on the A206 but taking into account that the additional traffic generated would not result in a doubling of traffic flows along any part of the construction routes the overall impact was considered to be negligible and not significant.
- 5.6.16. For the operational period the ES reviewed the traffic flows associated with both the nominal scenario and the 100% by road option. Even in the 100% by road analysis the maximum daily average traffic flows of 1,100 movements was considered by the Applicant to be low when compared with all other assessed links where daily traffic flows were in the region of 10,000 to 35,000 vehicle movements in 2018. The impacts on driver delay, pedestrian delay and amenity and, access and road safety were all considered to be negligible and not significant. The effect on pedestrian fear and intimidation was considered to be negligible and not significant on all of the routes assessed apart from Norman Road where there would be a moderate adverse effect during operations. Overall this was assessed to be not significant.
- 5.6.17. Construction of the electrical connection could have minor adverse effects on bus services where short lane closures and alternate way traffic signals were used and a major adverse effect if temporary road closures were required. The Applicant considered that traffic management measures to be included in the CTMP would reduce the level of delay to buses such that the effect on delays and severance would be negligible and not significant. Overall the effects of the electrical connection work on driver delay, pedestrian delay and amenity, pedestrian fear and intimidation, accidents and road safety would be negligible and not significant.

## **Views of Interested Parties**

### **Greater London Authority and Transport for London**

- 5.6.18. In its LIR [REP2-075] the GLA considered that 100% delivery of waste to the ERF by road was unacceptable and contrary to the London Plan (2016). It wished to see, as a minimum, a commitment in the DCO for at least 75% of waste inputs to be delivered by river. In its WR [REP2-071] the GLA set out its concern that the environmental effects of waste delivery had not been properly assessed. The draft London Plan (2018) required proposals for new or extended waste sites to be assessed in terms of the "transport and environmental impacts of all vehicle movements related to the proposal – the use of renewable fuels from waste sources and the use of rail and waterway networks to transport waste should be supported." The absence of any commitment to the

majority of waste feedstock being transported by river was considered to be sufficient justification for the application to be refused.

- 5.6.19. The application had indicated that existing WTSs in central London would be used for transfer of waste onto the river. The GLA considered this unlikely because sources of waste may not be close to the existing WTSs and there may be insufficient capacity at the existing WTSs. The transport of waste to the riverside transfer stations and concentration of traffic in the vicinity of the transfer stations would result in environmental impacts that had not been assessed by the Applicant. It was a major flaw in the EIA process that insufficient assessment had been undertaken of the environmental effects of the transfer of waste to the WTSs. Waste from London boroughs that do not have access to the existing riverside WTS would involve a longer road journey the effects of which had not been assessed in the application.
- 5.6.20. Transport for London in its RR [RR-087] stated the importance it attached to securing river transport of waste in the DCO with appropriate requirements to deal with Heavy Goods Vehicle (HGV) traffic in the event of a jetty outage. TfL considered that traffic during the operational period would be unlikely to result in a detrimental impact on the strategic route network (SRN) but the traffic impact during the construction period was expected to be significant. It considered that insufficient assessment had been undertaken to provide a realistic estimate of the impact of construction on the junctions along the SRN and therefore on bus services and objected to the proposals. The impact of the construction of the electrical connection had also not been sufficiently assessed. The impact of lane closures had not been assessed and TfL was not able to determine the impact. TfL would prefer the electrical connection to be constructed away from the SRN.
- 5.6.21. At the ISH on environmental matters and its subsequent written submission [REP3-038], the GLA proposed that in order to ensure that a high proportion of waste was delivered by river, there should be a daily limit on the number of HGVs delivering waste by road. With the support of TfL, it proposed a cap of 80 vehicles delivering waste which would deliver approximately 25% of the ERF's maximum waste throughput and 32% of the nominal throughput of 655,000 tonnes a year. In recognition of possible difference in the size of HGV being used, this should be backed up by a volume limit of 201,850 tonnes a year which is 25% of the ERF maximum throughput and 31% of the nominal throughput.
- 5.6.22. The GLA reiterated TfL's concern that delays to buses had not been considered in sufficient detail. The CTMP did not provide adequate assurance. This should be strengthened to state that the likely disruption to bus services would be assessed to show the likely delays to bus routes, the level of mitigation required through bus frequency increases and any diversions to minimise impact.
- 5.6.23. In its submission following the first ISH on environmental matters [REP4-024] the GLA stated that TfL considered that the Applicant should be required to enter into a planning obligation to mitigate the impact of the

Proposed Development. TfL considered that a financial contribution to cover the cost of additional services and diversions necessary as a result of the construction of the electrical connection was appropriate.

### **London Borough of Bexley**

- 5.6.24. LBB set out its concerns on the transport issues raised by the Proposed Development in its WR [REP2-080]. It considered it imperative that the development was designed, implemented and operated in a way that minimises the amount of traffic using local roads and maximises the amount of traffic that comes to and departs from the site via the River Thames. This should be secured through a DCO requirement. The use of river transport during the construction period needed to be fully explored.
- 5.6.25. Further details on construction workforce numbers and work patterns, parking provision, a refined construction programme and associated peak period should be provided, as agreed by the Applicant, through the CTMP. A Delivery and Service Plan should be provided in order to ensure that non-waste vehicles were managed in an efficient manner.
- 5.6.26. Further information was required on the electrical connection route and associated works and on the cumulative impact of the REP construction traffic and the electrical connection traffic.
- 5.6.27. The stopping up of the northern end of Norman Road was accepted in principle but details needed to be refined to provide an adequate turning head at the point the highway terminated.
- 5.6.28. At the ISHs on Environmental Matters and the draft DCO and in its written submission on matters raised at these hearings [REP3-047], LBB set out its view that it was essential that the number of HGV movements to the ERF and AD facility should be capped and that this should be secured through the DCO with fixed maximum HGV limits for both plants.
- 5.6.29. LBB supported the principle of EfW but considered that the proposed new plant must make use of the site's existing river infrastructure and, in accordance with the London Plan and LBB planning policies, maximise the use of the river. It proposed limiting the amount of waste that could be brought to the EfW plant by road to 10% of the nominal throughput or 65,500 tonnes a year. All bottom ash should be transported from the plant by river. LBB also sought a dedicated area to be maintained for storage of bottom ash as was the case for the RRRF to be used in the case of a jetty outage. LBB proposed that a separate cap should be included to cover deliveries of waste to the AD. This should be limited to 18 HGVs a day.
- 5.6.30. LBB sought clarification on the number of vehicle movements that would be allowed at both the REP and RRRF in the event of a jetty outage. It was unclear whether the Applicant had taken account of the vehicle movements that would take place at the RRRF as well as the REP in the event of a jetty outage.

## **Kent County Council and Dartford Borough Council**

- 5.6.31. KCC as the local highway authority noted that the impact of the development on the Dartford highway network would mainly occur during the construction period [REP2-079]. A CTMP would need to be secured as part of a DCO requirement to ensure that impacts of construction traffic on the local highway network were minimised. Construction of the electrical connection along the Fastrack dedicated bus route was not ideal but was preferable to construction along the A206 Bob Dunn Way which was a key transport corridor to the Dartford Crossing. Other major road developments – the A2 Bean and Ebbsfleet Junction improvements and the Lower Thames Crossing -were in prospect and the Applicant should work with KCC to ensure that any road closures or impacts were coordinated appropriately.
- 5.6.32. The electrical connection work could cause significant disruption for users of the Kent Public Rights of Way (PRoW) network. The draft DCO includes a list of PRoW that would be stopped up in connection with the project. These closures would be temporary but KCC was concerned that they would be an inconvenience for path users and cause disruption. To reduce the impact a 'hierarchy of intervention' was proposed keeping routes open as far as possible with temporary closures and short diversions where there was no other option. Details of temporary closures, diversions and mitigation works should be discussed with KCC at the earliest opportunity and included in a separate chapter of the CTMP. On completion of construction works PRoWs must be restored to their original condition (or better) before being reopened to the public.

## **Port of London Authority**

- 5.6.33. The PLA submitted a RR [RR-083] stating that it did not object to the proposals in principle but raising concerns about the possibility of works or operations in the River Thames. In its WR [REP2-089], the PLA acknowledged that the Applicant had agreed to remove the river areas from its Works Plans and to include an article in the draft DCO making clear that the DCO did not remove any obligation to obtain a licence from the PLA for carrying out any works or operations within the river Thames. A SoCG was agreed between the PLA and the Applicant [REP3-016] and the PLA withdrew its original objection to the Proposed Development [REP8b-025]

## **Other Interested Parties**

- 5.6.34. Teresa Pearce, MP for Erith and Thamesmead raised concerns about traffic disruption from the works to install the electrical connection [REP2-107]. She did not consider that the Applicant had ensured that there was a viable grid connection. The only connection put forward was dependent on a good deal of construction to lay cable along an important and busy transport corridor. This would cause driver delays and consequently increase air pollution during the 15 to 24 month construction period.

- 5.6.35. In its RR [RR-086], Thames Water Utilities Limited (TWUL) which owns and operates the Crossness Nature Reserve (CNR) expressed its concern that site traffic during the operation of the Proposed Development would be directed along the southern boundary next to the CNR's West Paddock. It was likely to disturb the wildlife interest. Adequate screening should be provided but this should not be in the form of trees which would provide perches for avian predators. At the ISH on Environmental Matters and its subsequent submission [REP3-049] TWUL submitted that impacts arising from noise, dust and plant movement during construction, as well as increased vehicle movement, and adverse air quality during operation, would deter visitors.
- 5.6.36. JMW Planning Solutions on behalf of Prologis UK Ltd expressed concern about traffic disruption during the construction of the electrical connection in the location known as The Bridge on Bob Dunn Way [RR-066]. Its preference was to use Bob Dunn Way and Rennie Drive rather than the UTC sports field and the Fastrack road.
- 5.6.37. Arriva London operates bus services which would be affected by the electrical connection works. In its RR [RR-055] it stated that it considered that the proposed works would cause severe traffic disruption along the highway and surrounding area where its services operated. It had considered two scenarios of 10 minute and 20 minute delays. For a 10 minute delay it would require an additional six buses to maintain the current level of service at an annual cost of £1.7m. There would also be loss of ticket revenue estimated at £0.34m a year. It would be seeking payment of any costs associated with the disruption from the developer.
- 5.6.38. The Bexley Natural Environment Forum stated in its RR [RR-033] that it was against heavier lorry traffic, not only in this area, but across the Borough generally, where it will have an adverse effect on air quality.
- 5.6.39. A number of individuals expressed concern about the environmental impacts on local residents of construction traffic and the transport of waste taking into account existing congestion in the area [RR-048, RR-057, RR-069, RR-070, RR-077, RR-085, REP2-111, REP8b-028].

### **Applicant's response**

- 5.6.40. The Applicant provided responses to RRs and WRs on transport issues [REP2-054 and REP3-022]. In its response to the GLA's WR it stated that it proposed to reduce the car parking space at the main temporary construction compound from 552 spaces to 275 spaces. This would significantly reduce the movement of cars/vans to the REP site during the peak construction period. This change was included in the revised outline CTMP [REP3-010]. In addition, the working day set out in the outline Code of Construction Practice (CoCP) would be from 07:00 to 19:00 to avoid commuting to and from the site occurring during the peak period, as had been assumed in the ES. Construction workers travelling by road to the REP would largely be on-site before the road network starts to become congested and were therefore unlikely to add to congestion. In its response to RRs the Applicant had submitted evidence in appendices

to show that there was sufficient spare capacity within the road network outside peak periods for further assessment work not be required. This had been confirmed to the Applicant by TfL in correspondence. The Applicant maintained its assessment that the effects of the temporary peak construction period and the construction of the electrical connection on the road network would not be significant.

- 5.6.41. The Applicant submitted two papers analysing the additional traffic associated with a temporary jetty outage during which all of the waste material for both the REP and RRRF would be brought in by road [REP3-036 and REP8-027]. This analysis concluded that, with restrictions on the number of vehicle arrivals and departures during morning and evening peak periods, all of the road junctions closest to the site would operate below their maximum capacity. This included allowance for export by road of IBA and other ancillary transport movements. The vehicle movements allowed during a jetty outage would be governed by a Requirement in the DCO.
- 5.6.42. Construction of the electrical connection along the A2016/A206 corridor would temporarily affect the operation of the road network through the reduction of lanes and temporary traffic management at junctions. The work would advance through the area in 200-300m sections and would be managed in the manner of typical road works. TfL had confirmed that the timing of traffic signals could be adjusted at junctions to allow for the roadworks.
- 5.6.43. The Applicant had carried out a detailed review of the interface between the electrical connection works and local bus services which was included in its response to TfL's RR [REP2-054 appendices F, G and H]. It considered that the construction period for REP and the electrical connection should not require the diversion or rescheduling of bus services. Where the electrical connection crosses side roads or local bus services temporary traffic management arrangements which minimise impacts on bus services would be agreed with LBB/DBC in consultation with TfL. Mitigation could include managed peak period working, off-peak working and the use of temporary traffic signals. It was not anticipated that roads would be closed. The interfaces between the construction works and local bus services would be set out in detail in the final CTMP.
- 5.6.44. The Applicant noted that there was no entitlement to compensation if a business, including bus services, is affected by roadworks undertaken by statutory undertakers or the highway authority. There could be no claim for compensation against the Applicant or UKPN.
- 5.6.45. In its response to LBB the Applicant agreed to a limit of 90 HGVs a day delivering waste to the ERF and AD facility secured through a Requirement in the draft DCO. This was included as a provision in the draft DCO submitted at Deadline 2 [REP2-007]. It considered that this showed that maximum use of the River Thames had been demonstrated
- 5.6.46. The Applicant had considered the use of the river for delivery of construction materials, but this was constrained by the ability of the

existing jetty only to handle ISO standard containers and the need to maintain the operation of the RRRF. A new jetty or walkway across the inter-tidal area was discounted for environmental reasons after discussion with the PLA.

- 5.6.47. The Applicant had considered the inclusion of a Delivery and Service Plan as suggested by LBB but, given the restriction agreed on waste deliveries by road and the limited nature of other deliveries, it did not consider this was justified.
- 5.6.48. The Applicant had agreed to the inclusion of a provision in the draft DCO submitted at Deadline 2 [REP2-007] for the agreement of the highway authority to any plan for stopping up of streets. It considered that this addressed LBB's concerns about the layout at the north end of Norman Road.
- 5.6.49. LBB continued to make the case for lower limits on road deliveries with separate limits for waste and material for the AD facility at the first ISH on the draft DCO [REP3-047] and at the second ISH on the DCO the Applicant agreed lower limits for both plants. The final draft DCO included a Requirement imposing a limit of 75 two way movements a day on vehicles delivering waste to the ERF and the AD facility and limits on the tonnage delivered to each facility. The Applicant also agreed to the inclusion of a Requirement for a Delivery and Servicing Plan in line with LBB's standard policy [REP8-018].
- 5.6.50. A signed SoCG between the Applicant and LBB was submitted [REP8b-009]. The parties had agreed on Requirements to be included in the final draft DCO on the CTMP, covering highway access, heavy commercial vehicle movements, operational worker travel plan and delivery and servicing plan.
- 5.6.51. In the signed SoCG between the Applicant and KCC [REP8-014] it was agreed that a specific section should be added to the outline CTMP concerning the protection of Public Rights of Way (PRoW). The CoCP also included provisions for the protection of users of PRoWs during the construction period.

## **Conclusions on transport**

- 5.6.52. The possibility of the Proposed Development operating on the basis of 100% of waste being delivered by road was considered in the ES and the Applicant concluded that this option would not have significant adverse effects. The main or nominal scenario considered in the ES was based on 75% of waste being delivered by river.
- 5.6.53. EN-1 notes that water-borne or rail transport is to be preferred over road transport at all stages of the project, where cost-effective, and the London Plan also supports the use of river transport. Both the GLA and LBB argued strongly in favour of a limit to be set on the amount of waste to be delivered to the ERF and the AD facility by road. The Applicant has accepted that limits on waste deliveries by road should be included as a

requirement in the draft DCO and I consider it is consistent with both national and regional policies for such limits to be set.

- 5.6.54. Traffic generated during the construction of the REP was assessed in the ES and considered not to have a significant adverse effect. The Applicant subsequently halved the number of proposed car parking places for construction workers so that any impact would be further reduced. This is consistent with LBB policies to encourage non-car modes of transport. Construction traffic would be controlled through the provisions of the CTMP provided for as a Requirement in the draft DCO. On this basis I consider that there should not be any significant adverse effects from traffic generated during the construction of the REP.
- 5.6.55. Construction of the electrical connection would take place over a 15 to 24 month period, part, at least, of the work taking place on or alongside major roads and on bus routes. This work is essential for the connection of the REP to the electricity distribution network and would be regulated through the provisions in the CTMP.
- 5.6.56. There would be disruption and traffic delays caused by these works but I am satisfied that, under the provisions of the CTMP, the Applicant and its contractor for this work will liaise with the highways authorities and TfL to minimise the delays to individuals and bus services. Arrangements will also be in place to protect users of PRowS. On this basis I am satisfied that the disruption from this essential electrical connection will be kept to a minimum level.
- 5.6.57. TfL and Arriva have sought payment of the additional costs that they may incur in providing additional vehicles to maintain service standards in the face of delays resulting from the electrical connection works. I agree with the Applicant that reimbursement of costs is not required where this work is carried out (as it will be in this case) by a statutory undertaker. Through the provisions in the CTMP, secured in the draft DCO, the Applicant will work with the service providers to minimise delays to public transport. Given this commitment, I do not consider that a case has been made for an exceptional payment to be made in this case.
- 5.6.58. In summary and subject to my consideration of the details of Requirements in the draft DCO in Chapter 8 of this Report, I do not consider that there would be adverse effects on road or river transport from the construction and operation of the REP. There will be some disruption to traffic from the construction of the electrical connection. Although measures would be in place to minimise this disruption, nonetheless I consider it to be an adverse effect.

## **5.7. AIR QUALITY**

### **Legislation and National policy**

- 5.7.1. Air quality is regulated through the Air Quality Directive 2008/50/EC which is implemented through the Air Quality Standards Regulations 2010 which set limit values for air pollutants. Industrial emissions are

controlled through the Industrial Emissions Directive (IED) which is implemented through the Environmental Permitting (England and Wales) (Amendment) Regulations 2013. The draft Waste Incineration Directive BAT Reference Document (BREF) was published in 2017. This sets out best available technology (BAT) for reducing pollution from waste incineration plants and includes air emission limits (AEL) for the principal emissions (BAT-AELs). The Applicant expected the BREF to be in place prior to the ERF coming into operation. It had therefore based its assessment of emissions on BAT-AELs where these were lower than the levels set in the IED.

- 5.7.2. Emissions from the AD facility would be limited by the Medium Combustion Plant Directive 2015/2193/EU implemented by the Environmental Permitting (England and Wales) (Amendment) Regulations 2018. This sets emission limits for SO<sub>2</sub> and NO<sub>x</sub>.
- 5.7.3. NPS EN-1 states that consideration of an application for development consent –
- *... should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. ...should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes ... will be properly applied and enforced by the relevant regulator.*
- 5.7.4. EN-1 also states that before consenting any potentially polluting development the decision taker should be satisfied that
- *the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and*
  - *the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits.*
- 5.7.5. In its specific consideration of air quality and emissions, EN-1 states that air quality considerations should generally be given substantial weight where there would be a deterioration in air quality in an area or new breaches of national air quality limits. Air quality considerations will also be important where substantial changes are expected even if these do not breach national limits. Account must be taken of statutory air quality limits. If a project will lead to non-compliance with a statutory limit, consent should be refused.
- 5.7.6. EN-3 notes that in addition to air quality legislation the Waste Incineration Directive (WID)<sup>15</sup> is also relevant to waste combustion plants. Compliance with the WID is enforced through the environmental permitting regime regulated by the EA.

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<sup>15</sup> Now incorporated into the Industrial Emissions Directive.

- *The pollutants of concern arising from the combustion of waste and biomass include NO<sub>x</sub>, SO<sub>x</sub> particulates and CO<sub>2</sub>. In addition emissions of heavy metals, dioxins and furans are a consideration for waste combustion generating stations but limited by the WID and regulated by the EA.*
- *Where a proposed waste combustion generating station meets the requirements of the WID and will not exceed the local air quality standards, the [decision taker] should not regard the proposed waste generating station as having adverse impacts on health.*

## **London planning policies**

5.7.7. The London Plan (2016) sets out the Mayor's policies for improving air quality. The GLA stated that air quality was a key focus of the London Plan with regard to improving quality of life for Londoners and was a fundamental theme that ran throughout the Plan [REP2-075]. Its policy on Improving Air Quality sought to achieve reductions in pollutant emissions and minimise public exposure to pollution. Policy for development proposals set out to:

- *a. minimise increased exposure to existing poor air quality and make provision to address local problems of air quality (particularly within Air Quality Management Areas (AQMAs) and where development is likely to be used by large numbers of those particularly vulnerable to poor air quality, such as children or older people) such as by design solutions, buffer zones or steps to promote greater use of sustainable transport modes through travel plans. ...*
- *b. promote sustainable design and construction to reduce emissions from the demolition and construction of buildings following the best practice guidance in the GLA and London Councils' 'The control of dust and emissions from construction and demolition'*
- *c. be at least 'air quality neutral' and not lead to further deterioration of existing poor air quality (such as areas designated as Air Quality Management Areas (AQMAs)).*
- *d. ensure that where provision needs to be made to reduce emissions from a development, this is usually made on-site. Where it can be demonstrated that on-site provision is impractical or inappropriate, and that it is possible to put in place measures having clearly demonstrated equivalent air quality benefits, planning obligations or planning conditions should be used as appropriate to ensure this, whether on a scheme by scheme basis or through joint area-based approaches*
- *e. where the development requires a detailed air quality assessment and biomass boilers are included, the assessment should forecast pollutant concentrations. Permission should only be granted if no adverse air quality impacts from the biomass boiler are identified.*

5.7.8. The draft London Plan (2018) contained provisions that London's air quality should be significantly improved and exposure to poor air quality should be reduced:

*Development proposals should not:*

- a) lead to further deterioration of existing poor air*
- b) create any new areas that exceed air quality limits, or delay the date at which compliance will be achieved in areas that are currently in exceedance of legal limits*
- c) reduce air quality benefits that result from the Mayor's or boroughs activities to improve air quality*
- d) create unacceptable risk of high levels of exposure to poor air quality.*

- 5.7.9. LBB's saved Unitary Development Plan policies require an air quality assessment to be produced for relevant development proposals with the use of conditions to avoid adverse effects on air quality in the Borough [REP2-082]. LBB's Core Strategy requires air quality to be addressed to ensure that sustainable development contributes to the health and well-being of the community and the environment.
- 5.7.10. LBH's Air Quality Action Plan (AQAP) 2018 is a 5 year plan for tackling poor air quality in the Borough [REP2-083]. The priority is reducing NO<sub>2</sub> and Particulate Matters, PM<sub>10</sub> and PM<sub>2.5</sub>. In the Borough these are primarily produced by road traffic but there are also contributions from construction, domestic gas use and industry. Since 2006 the entire LBH has been designated as an AQMA for NO<sub>2</sub> and PM<sub>10</sub>.

### **The Applicant's assessment**

- 5.7.11. The Applicant initially submitted an air quality assessment as part of the ES (Chapter 7) [APP-044]. At Deadline 2, the Applicant submitted a revised ES Air quality chapter [REP2-020] and relevant Appendices to correct errors in the modelling conducted, principally in the predicted nitrogen deposition rates. This did not change the significance of the identified effects.
- 5.7.12. In the revised ES chapter [REP2-020] the potential construction, operation and decommissioning effects of the Proposed Development on air quality were modelled on a worst-case basis. Separate assessments were carried out for the 100% by road and 100% by river transport options. For the operational period it was assumed that the ERF was emitting at full load at BAT maximum emissions value for 100% of the time without shut-down periods. Modelling was based on a throughput of 805,920 tonnes a year rather than the nominal throughput of 655,000 tonnes a year. This was considered to represent the worst-case scenario.
- 5.7.13. Emissions from the AD facility were modelled on the basis that biogas from the facility was burned in a gas engine rather than being used to power vehicles on the site replacing diesel or petrol powered vehicles. This provided a worst case scenario. During the course of the Examination the Applicant made a commitment to invest in enhanced NO<sub>x</sub> abatement equipment using SCR on the CHP gas engine [REP4-021]. This went beyond the EA best available technique requirement and reduce emissions below the levels required by the Medium Combustion Plant Directive which had been assessed in the ES. The minimum height for the CHP engine stack would also be increased to 8m. The Applicant's

assessment of the emissions from this revised proposal for the CHP engine was that the impacts on human health would be negligible and the impacts on terrestrial biodiversity would be insignificant. These lower levels of emissions would be secured through a Requirement in the draft DCO.

- 5.7.14. Buildings were modelled using the maximum parameters in the Rochdale envelope provided for in the draft DCO. This was considered likely to overestimate the effects of buildings on dispersion, leading to higher maximum pollutant concentrations. A minimum stack height of 90m was assumed in the modelling. This minimum height is included in the table of parameters included in the draft DCO.
- 5.7.15. For the construction and decommissioning periods likely effects from vehicle emissions were modelled using the screening criteria set out in Institute of Air Quality Management (IAQM) Guidance.<sup>16</sup> The impact of dust on human health and terrestrial biodiversity receptors was also assessed in line with IAQM Guidance. A qualitative assessment of effects on air quality from vessel movements was carried out.
- 5.7.16. For the assessment of the operational period the study of effects from road and river traffic followed the same IAQM Guidance. The study area for combustion emissions from the ERF was defined by the distances over which significant effects might occur:
- *For human health receptors an initial area of 10km from the REP was considered*
  - *Internationally designated terrestrial biodiversity sites (SAC, SPA, and Ramsar sites) and nationally designated biodiversity sites (SSSI) within 15km of the site; and*
  - *Locally designated nature sites (ancient woodland, local wildlife sites, Sites of Importance for Nature Conservation (SINC) and national and local nature reserves (LNR)) within 2km of the site*
- 5.7.17. Emissions from the stack were estimated on the basis of the maximum daily levels allowed under the BAT limits and the designed emissions rate for the ERF stack. Details of pollutant emissions rates were provided for gases, particulates and Groups 1, 2 and 3 metals [Table 7.17 in REP2-020]. Conversion of NO to NO<sub>2</sub> was estimated using worst case assumptions set out in EA Guidance.<sup>17</sup>
- 5.7.18. The potential effects on air quality from the operation of the electrical connection were scoped out of the assessment as being unlikely to lead to significant emissions to air.

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<sup>16</sup> Moorcroft and Barrowcliffe. et al. (2017). 'Land-use Planning & Development Control: Planning for Air Quality. v1.2. Institute of Air Quality Management, London. Available at <http://www.iaqm.co.uk/text/guidance/air-qualityplanning-guidance.pdf>

<sup>17</sup> Conversion Ratios for NO<sub>x</sub> and NO<sub>2</sub>, Air Quality Modelling and Assessment Unit, Environment Agency.

- 5.7.19. Background concentrations of the range of pollutants considered were set out using data from local monitoring stations for the principal pollutants and DEFRA's interactive mapping facility for other pollutants.<sup>18</sup> Human receptors within the study area were represented by 27 locations both North and South of the River Thames. Internationally and nationally designated sites within the 15km study zone were identified along with locally designated sites close to the REP site. Baseline concentrations and deposition rates were identified.
- 5.7.20. The risks from dust during the construction period were assessed and were generally considered to be low. Track-out dust from vehicles was classed as high, as was dust from demolition during decommissioning. The area was considered to be one of low sensitivity to dust and the overall risk during construction and decommissioning was classified as low.
- 5.7.21. The impact of emissions from additional road traffic associated with the Proposed Development was assessed for 27 locations and was considered to be negligible. Emissions from additional vessel movements on the River Thames were assessed. There would be very small increases in NO<sub>x</sub> which would be imperceptible and classified as negligible at all locations.
- 5.7.22. Stack emissions were analysed and the maximum ground level concentrations within the receptor grid were presented. The process contribution (PC) was shown as a percentage of the Air Quality Assessment Level (AQAL). The PCs were mostly less than 1% of the annual AQAL. The highest increases shown were for nickel (50.4%), arsenic (38.2%) and Cadmium (18.3%). None of the predicted maximum ground level concentrations exceeded the assessment levels. For nearly all of the pollutants considered the impact of emissions was considered to be negligible. For arsenic a minor impact was identified at two receptors (both in a business park) and minor impacts from emissions of nickel at seven receptors in Rainham but as the Predicted Environmental Concentration (PEC) was well below the assessment level, the impacts from nickel concentrations was not considered to be significant.
- 5.7.23. The effect on human health from emissions of dioxins, furans and other compounds was considered using international standards. It was concluded that there would be no significant effects in relation to long term exposure to dioxins and metals.
- 5.7.24. Modelling was carried out to predict the PCs and PECs of relevant pollutants at 21 terrestrial biodiversity receptors. For the internationally and nationally designated sites all the PCs were less than 1% of the critical level or the PECs did not exceed the critical level apart from two locations. At Inner Thames Marshes/Rainham Marshes and Ingrebourne Marshes the critical level for NO<sub>x</sub> concentrations was exceeded. The Applicant considered that, while the PC was above the threshold for significance, this reflected the annual mean NO<sub>x</sub> concentrations whereas the determining factor which could potentially affect habitats was the

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<sup>18</sup> <https://uk-air.defra.gov.uk/data/gis-mapping>

nutrient nitrogen deposition. In all cases the nutrient nitrogen deposition PC was less than 1% of the critical load and it was unlikely that there would be a significant effect on the habitats. At the Locally Designated sites all the PCs were less than 100% of the assessment level and, therefore, not considered significant.

- 5.7.25. The effect of emissions from the AD facility were limited to the impact of NO<sub>x</sub> on the CNR. Concentration of NO<sub>2</sub> would be above 10% of the assessment level and therefore potentially significant for human health receptors. However, the area affected was not an area where members of the public would regularly be present and therefore not an area relevant for air quality strategy objectives. Predicted NO<sub>x</sub> concentrations were potentially significant for terrestrial biodiversity receptors on the CNR but this was limited to the immediate vicinity of the REP site. This is considered further in the section on Terrestrial Biodiversity.
- 5.7.26. The area in which the electrical connection works would take place was considered to be of high sensitivity to dust with more than 100 dwellings within 20m of the works but the dust that was likely to result from demolition, earthworks, construction and traffic was considered to be small.
- 5.7.27. Cumulative assessment of the impact on air quality from the construction, operation and decommissioning of the REP, including any emissions from the RRRF and the Crossness Sewage Sludge Incinerator (CSSI), concluded that there were unlikely to be any significant adverse effects. No significant interaction was expected between the emissions from the AD facility CHP engine and the ERF because of differences in the stack heights of the two facilities.

## **Views of Interested Parties**

### **Greater London Authority**

- 5.7.28. In its WR [REP2-071] the GLA objected to the application on the grounds that the assessment of air quality effects was inadequate in some areas and, where it was adequate, indicated that there would be unacceptable effects on residents and other sensitive receptors in London. It did not agree with the Applicant's assessment that the air quality impacts of the scheme were 'not significant'.
- 5.7.29. The GLA stated that it was evident from the emissions shown in the ES that the ERF would emit over four times as much NO<sub>x</sub> as currently emitted by the RRRF and the CSSI combined. Emissions of arsenic would double, while emissions of other pollutants would increase by 10% to 80%. The GLA was also concerned that emissions had been modelled using the draft BREF limits which were tighter than the current IED levels. If the BREF limits were not implemented the IED limits would apply to the operating permit. This meant that emissions could be significantly higher than those assumed in the modelling.
- 5.7.30. The GLA noted that EN-1 sets out the circumstances in which air quality considerations should be given substantial weight or considered of

importance (see paragraph 5.7.5). The ES showed that emissions from the Proposed Development would make exceedances of legal limits for NO<sub>2</sub> worse in Rainham town centre and potentially delay compliance with legal limits in Rainham. This might also affect the successful implementation of the Government's plan for reducing NO<sub>2</sub> concentrations. The ES also showed large increases in concentrations of NO<sub>2</sub> and some metals across a number of areas affected by the Proposed Development. These were considered by the GLA to be substantial even where they do not breach legal limits.

- 5.7.31. The GLA criticised the results of the air quality assessment on receptors affected by road traffic which showed negligible impact at all receptors. Two receptors on the A206 where concentrations were amongst the highest were not the worst receptors on this section of the road. The assessment had not considered the impact at the residential property on the east side of the A206 at its junction with James Watt Way where emissions would be higher as it was a busy junction with stop-start traffic. It was unclear whether the scheme would be consistent with the London Plan (2016).
- 5.7.32. The Proposed Development lies within the Bexley Riverside Opportunity Area, near to the Thamesmead and Abbey Wood OA and across the river from the London Riverside OA. The ES addressed the potential impact on annual mean concentrations at ground level but failed to address potential impacts at new high buildings with regard to the short term (1 hour mean) criteria which can be substantially higher at elevated receptors when emissions are released from a tall stack. The scheme was therefore potentially in conflict with the draft London Plan (2018).
- 5.7.33. The Proposed Development lies within the Bexley AQMA and will have impacts in the Havering AQMA. AQMAs are designated where it has formally been assessed that air quality is actually or at risk of being in breach of existing legal limits. The Proposed Development would make exceedances of legal limits for NO<sub>2</sub> worse in Rainham town centre and potentially delay compliance with AQMA limits in Havering.
- 5.7.34. The GLA challenged the Applicant's assertion (see paragraph 5.7.24) that in the assessment of NO<sub>x</sub> levels at the Inner Thames Marshes and Ingrebourne Marshes the determining factor was the nutrient nitrogen deposition. The GLA argued that it was wrong to dismiss critical levels as exposure to NO<sub>x</sub> concentrations can give rise to effects separate from those of nitrogen deposition and an assessment of the impacts of additional NO<sub>x</sub> concentrations should be provided.
- 5.7.35. In its comments on the use of biogas from the AD facility, the GLA considered that the use of biogas for electricity would significantly reduce the conversion efficiency of the renewable energy and would result in avoidable air emissions. It considered that only direct use of the gas through injection into the grid or in vehicles was appropriate and that necessary infrastructure should be provided to support this use.

- 5.7.36. The GLA considered that the modelled impacts on air quality meant that many local residents would be affected by emissions from the plant. Given the extent of the impacts (even when mitigation measures were taken into account) the GLA believed that the negative effects were significant enough to outweigh any predicted benefits of the development.
- 5.7.37. At the ISH on Environmental Matters, the GLA reiterated its concerns that only a small number of receptors had been explicitly modelled and that this was not sufficient to provide a full analysis of the environmental effects of the REP as larger numbers of residential and other sensitive receptors would be captured within the plume [REP3-038]. The Applicant should be required to provide some assessment of the extent and number of sensitive receptors exposed to non-negligible impacts in order to properly describe the impact of the development. It was also concerned about the impact on the residential development at Beam Park in LBH which is within the London Riverside Opportunity Area. Beam Park would be 16 stories high at its tallest point. Pollutants would be greater at higher levels and this had not been considered in the ES. There were also other residential developments planned in this area. Significant new development both permitted and emerging would suffer from identified levels of adverse air quality.

#### **London Borough of Bexley**

- 5.7.38. In its initial representation [AS-002] LBB identified six key air quality and related issues and set out proposed mitigation measures. The key issues were:
- *Public concern with regard to the health impacts of EfW facilities. These concerns are often unfounded but mean that particular attention will need to be paid to fully dealing with the air quality issues. LB Bexley will also wish to reassure its residents by seeking confirmation on some issues which would ordinarily form part of the permitting process. These may include the following issues: a. Basis for determining the proposed stack height; and b. The assessment of potential risks to health due to emissions of substances which are not covered under Local Air Quality Management, including metals, polycyclic aromatic hydrocarbons (PAHs), dioxins and furans, and dioxin-like polycyclic biphenyls (PCBs).*
  - *Fully addressing combined and cumulative impacts: a. combined effect of stack emissions from the existing RRRF plant, proposed REP waste to energy facility and biogas combustion emissions; b. combined effect of transportation and process emissions; and c. cumulative impacts with other permitted development.*
  - *Determination of appropriate stack height;*
  - *Potential impacts on air quality and health of emissions of oxides of nitrogen, metals and dioxins and furans;*
  - *Potential impacts of released substances on international, nationally and locally designated nature conservation sites; and*
  - *Compliance with national and draft Greater London Authority policy on air quality.*

- 5.7.39. Although there was substantial embedded mitigation of air quality impacts, it was important for the Applicant to demonstrate that the process design and abatement was sufficient to ensure that the proposed emissions limits can be achieved in practice. Funding was required to continue with, and potentially expand, the existing air quality monitoring programme. LBB was concerned to ensure that the pre-commencement activities involved in site clearance which could give rise to dust and emissions were included in the CoCP.
- 5.7.40. In its subsequent WR [REP2-080], LBB stated that three areas of contention outlined in its RR remained relevant. It remained concerned that the application had not fully considered the potential of combined impacts due to the emissions from the existing RRRF and the proposed REP. It sought further details on the proposed stack height and required further details. It remained concerned that the study results for dioxins, furans and short term NO<sub>2</sub> and SO<sub>2</sub> had been under-reported in the ES.
- 5.7.41. LBB continued to seek mitigation measures in respect of pre-commencement works and the provision of funding for air quality monitoring in Bexley. These should be included as requirements in the draft DCO. The need for funding for air quality monitoring was also raised by LBB at the ISH on environmental matters [REP3-047].

### **London Borough of Havering**

- 5.7.42. In its LIR [REP2-083] LBH raised concerns about air quality impacts. It highlighted that there was only one air monitoring site in Rainham that had been used for verification of the air quality model. This fell short of the recommendation in DEFRA's Local Air Quality Management Technical Guidance. This increased the amount of uncertainty of the modelled results and prevented LBH from making a confident and accurate assessment as to the impact of the emissions during the operational phase of the Proposed Development. LBH considered that the model verification should be revisited using multiple sites to establish confidence in the results.
- 5.7.43. LBH was concerned about the potential health impacts of the stack emissions, in particular nickel and chromium VI. Modelling had identified a 'large' increase (i.e. greater than 5.5%) in nickel concentrations at a number of receptors located in residential areas in Havering. An increase of 5.36% had been identified at Rainham Village Children's Centre. These had been classified as 'minor' and 'not significant' in the ES. LBH agreed that the impacts could be classified as 'minor' but did not consider that the impacts could be considered not significant. LBH considered that a sufficiently high number of residential properties would be exposed to the impacts of nickel emissions and had concerns about the potential significant impacts on the health of residents of the affected properties.
- 5.7.44. Following my request for further information [PD-012], in which I asked LBH to comment on the Applicant's assessment of the significance of the predicted impacts from air emissions at identified receptors in Rainham, LBH stated that taking into account the location and type (residential) of the modelled receptors, it considered that hundreds of residential

properties would be exposed to Minor impacts from Nickel emissions, and therefore, the extent of population exposure to these impacts was sufficiently high, to assess the impacts as significant.

- 5.7.45. The ES had identified an 'imperceptible' increase in chromium VI concentrations and described the impact as negligible and not significant. A number of sensitive locations would be affected by increases in chromium VI in the range from 0.32 to 0.36%. The chromium VI background concentration in these areas already exceeds the limit value at over 160% of the AQAL. LBH considered that, taking into account the extent to which the chromium VI limit value is exceeded, even a small increase in concentration can have impact which could be classified as 'minor' rather than 'negligible'. It was LBH's judgement that a sufficiently high number of properties would be exposed to 'minor' impacts and that these impacts were potentially significant.
- 5.7.46. LBH was also concerned about the potential impacts of NO<sub>x</sub> emissions on the Inner Thames Marshes/Rainham Marshes and Ingrebourne Marshes. Even taking into account the Applicant's improved abatement techniques which had been included in its application for an EP, the updated PCs and PECs were still above the NO<sub>x</sub> thresholds for these two areas. LBH did not agree that the impacts were 'not significant' and considered that further controls were necessary.
- 5.7.47. LBB supported the submission from the London Borough of Havering that hundreds of residential properties would be exposed to impacts from nickel emissions and asked the Applicant to provide further information [REP7-023].

#### **Other London Boroughs**

- 5.7.48. The London Borough of Barking and Dagenham in its RR [RR-059] stated that the Council's Environmental Health Officer had been consulted and had concluded that the Borough air quality impacts associated with operation of the Proposed Development would be negligible; this included residents of the yet to be constructed Beam Park development who would be most exposed to emissions from the facility.
- 5.7.49. The Royal Borough of Greenwich in its RR [RR-084] noted the information on air quality that had been provided in the ES. The Council was satisfied that, as far as its interests were concerned, air quality impacts associated with the operation of the Proposed Development would be negligible subject to satisfactory mitigation measures being put in place.
- 5.7.50. In its RR [RR-047], the London Borough of Tower Hamlets raised concerns about the effect on air quality from arising from the increased use of river freight vehicles. In its subsequent WR [REP2-085] it accepted that the effects on air quality from barges and tugs would not be significant. It was concerned that in the 100% by road scenario there would be adverse effects on air quality in the area of the Blackwall Tunnel. It would be beneficial to secure the use of river transport within

the consent and avoid the 100% by road scenario in normal operating conditions.

### **Other Interested Parties**

- 5.7.51. In its RR [RR-067] Public Health England (PHE) noted that there were public health benefits in reducing public exposures to non-threshold pollutants (such as particulate matter and nitrogen dioxide) below air quality standards. PH recommended consideration of mitigation measures that reduce public exposures to pollutant levels as low as reasonably practicable, and that the Applicant's proposed air quality management plan should recognise this important principle.
- 5.7.52. In the SoCG between the Applicant and Natural England (NE) [REP2-051] it was agreed that the assessment of likely effects on air quality during construction, operation and decommissioning of the Proposed Development and the assessment of cumulative effects were appropriate.
- 5.7.53. In his RR [RR-036] and WR [REP2-104] Jon Cruddas, MP for Dagenham and Rainham, set out his opposition to the Proposed Development and what it would mean for air quality, human health and biodiversity in his constituency. He drew attention to a GLA report which highlighted that "incineration of solid waste can lead to emissions of toxic heavy metals, dioxins and other substances that are detrimental to human health and biodiversity" and that "these impacts would be widespread across Rainham". He noted that European directives outline that a single facility cannot exceed emissions of 200mg/Nm<sup>3</sup> per day. The existing RRRF emits 170mg/Nm<sup>3</sup> per day with the proposed REP set to produce 120mg/Nm<sup>3</sup> per day. Under the European directives this is considered acceptable because each facility would be evaluated on their individual output. In reality the geographical site would be producing combined nitrous oxide emissions of 290mg/Nm<sup>3</sup> which is above the approved maximum. He considered that it was disingenuous to suggest that emissions would be under set levels and he noted that the prevailing wind direction was from the REP site towards his constituency.
- 5.7.54. He drew attention to research by UKWIN on emissions of NO<sub>x</sub> and particulates (PM<sub>10</sub> and PM<sub>2.5</sub>) which have a range of adverse effects on human health. If the application was approved, it would result in the Cory site in Belvedere emitting more harmful particulate matter than anywhere else in the country with serious implications on human health in the area.
- 5.7.55. He also drew attention to a report from the British Lung Foundation which highlighted that the London Borough of Barking and Dagenham had the highest annual rate of lung disease related deaths in London. Havering had the fourth highest rate. This report showed that his constituency was disproportionately affected by poor air quality. He also drew attention to studies which suggested a link between incineration and infant mortality.
- 5.7.56. As MP for Dagenham and Rainham he had contacted every household in the ward of Rainham and Wennington regarding the application.

Residents had expressed an overwhelming strength of feeling against the REP proposal and he submitted a petition for constituents opposing the proposals. This had been signed by over 1,000 residents [REP2-105].

- 5.7.57. Teresa Pearce MP for Erith and Thamesmead in a WR [REP2-106] noted the Applicant had stated in its consultation response that the proposal complied with draft London Plan policies on air quality. She was not clear how the proposed plant would not lead to some deterioration of the existing poor air quality, particularly when taking into account the cumulative emissions and additional traffic during construction and operational phases. She considered that the Examination should examine these claims.
- 5.7.58. The majority of RRs received from Local Councillors, local amenity groups and individuals cited air quality and associated health effects as one of their concerns about the Proposed Development [RR-007, RR-009, RR-010, RR-012, RR-020, RR-022 to RR-024, RR-030 to RR-033, RR-035, RR-037 to RR-040, RR-046, RR-051, RR-056 to RR-058, RR-062, RR-070, RR-071, RR-078, RR-085].

## **The Applicants response**

### **Response to Greater London Authority**

- 5.7.59. In response to the GLA's WR [REP3-022] the Applicant stated that it considered that the evidence presented in the ES demonstrated that a robust assessment of the potential effects on air quality from the Proposed Development had been undertaken and that the conclusions of no significant effects were correct.
- 5.7.60. The assessment in the ES had adopted a worst case approach. It had assumed 14.3 g/s emissions of NO<sub>x</sub> from the ERF stack operating at 100% capacity all year with an emission concentration of 120mg/m<sup>3</sup>. The Environmental Permit (EP) had been applied for on the basis of a NO<sub>x</sub> emission limit of 75 mg/m<sup>3</sup>. The resulting NO<sub>x</sub> rate from the ERF would be 8.94 g/s, approximately 37% lower than modelled in the ES [REP2-019].
- 5.7.61. The Applicant did not accept the GLAs assertion that the ERF would emit over four times as much nitrogen dioxide as currently emitted by the RRRF and CSSI combined. Emissions of NO<sub>x</sub> from RRRF and CSSI were 21.4 g/s and 3.2 g/s respectively [REP2-038]; emissions from the ERF would therefore be approximately 36% of the combined levels from RRRF and CSSI.
- 5.7.62. The Applicant did not agree with the GLA's statement that emissions from the Proposed Development would make exceedances of legal limits for NO<sub>2</sub> worse in Rainham town centre and potentially delay compliance with legal limits in Rainham. The modelling results show no exceedances of the NO<sub>2</sub> objective or the EU limit value. The maximum predicted PEC was 81.3% based on emissions of 120mg/m<sup>3</sup> and legal limits would not be exceeded, or compliance delayed. Actual emissions as set out in the EP application would be lower.

- 5.7.63. The GLA had stated that the ES showed large increases in concentrations of NO<sub>2</sub> and some metals across a number of areas affected by the proposed ERF, which were considered by the GLA to be substantial even where they did not lead to breaches of legal limits. The Applicant did not accept this statement. Its assessment of significance was in accordance with the IAQM criteria and, in accordance with these assessment criteria, the effects were not significant.
- 5.7.64. The GLA had expressed concern about exposure to arsenic and nickel which had been dismissed in the ES as not significant. The Applicant stated that it had not dismissed the changes in pollutant concentrations. The assessment of significance was undertaken in accordance with IAQM guidance where the increase in concentration was put into context with the background concentrations and the level of significance determined. For arsenic, the two local receptors with predicted minor impacts were not residential areas and therefore not representative for relevant exposure for annual mean impacts. For nickel, whilst there were minor impacts at a number of receptors, none of the PECs were above the assessment level for health effects and therefore, overall, were judged to be not significant. The Applicant referred to the RR from Public Health England [RR-067] which confirmed that Public Health England was satisfied with the methodology used to undertake the assessment.
- 5.7.65. The Applicant also drew attention to the provisions of EN-3 which referred to limits on emissions set under the WID. The ERF would go beyond the requirements of the WID as it will meet the requirements of the draft BREF which introduces tighter emission limit values. There were no exceedances of local air quality standards. Therefore, pursuant to the NPS, REP should be regarded as not having an impact on health. The assessments carried out were consistent with the requirements of EN-1.
- 5.7.66. The Applicant responded [REP3-022] to detailed points raised by GLA on its assessment.
- NO<sub>2</sub> emissions at receptors R24 and R25 were below the assessment level in the 100% by road scenario giving rise to imperceptible changes in annual mean concentration. The receptor location cited by the GLA may experience higher pollutant concentrations because of its proximity to the junction of the A206 and James Watts Way but it was highly unlikely that the Proposed Development would lead to a breach of the objective at this location or that a significant effect would result. With a cap on HGV movements, the actual impact at the receptors would be lower than that assessed.
  - Additional information on the increase in pollutant concentrations with building height had been provided for three receptors [REP2-038]. While the impact of emissions from the stack will increase with height, the baseline concentrations would reduce as one moves away from ground level pollution sources such as roads. Modelling showed that the increase in emission concentration at higher floors was less than the reduction in baseline concentrations from reducing traffic impacts. It was therefore unlikely that the ERF would impact on potential new buildings in the area.

- The Applicant's Response to ExQ1 [REP2-055] had provided further information on the significance of NO<sub>x</sub> concentrations on the Inner Thames Marshes/Rainham Marshes Site of Special Scientific Interest (SSSI) and Ingrebourne Marshes SSSI. This confirmed that the effect was not significant. This had been confirmed by Natural England (NE) in a SoCG [REP2-051].

### **Response to London Borough of Bexley**

- 5.7.67. In response to concerns about cumulative effects, the Applicant confirmed that the potential cumulative effects to the REP, RRRF and the CSSI had been modelled in the ES. The potential effects of biogas combustion from the AD facility had been considered separately [REP2-055], showing no significant effects.
- 5.7.68. A stack height of 90m had been assumed as the worst case. All pollutant impacts at human health receptors were not significant. The EP application had been submitted with a stack height of 90m and lower emissions limits than had been assumed in the ES worst case. The predicted impacts of NO<sub>x</sub> and NO<sub>2</sub> concentrations would be proportionally lower.
- 5.7.69. In respect of LBB's concerns about exposure to dioxins and furans, the Applicant stated that the standard methodology was to undertake an extreme worst case assessment and provided the Tolerable Daily Intake was not exceeded, which it was not for the Proposed Development, the results were acceptable.
- 5.7.70. In its Response to Air Quality Matters [REP7a-002] the Applicant stated that in undertaking the analysis of the significance of the effects, and in relation to the impacts of nickel, the predicted concentrations with and without the Proposed Development were shown in earlier submissions (Table C2.2.8 of Appendix C.2 in the ES, [REP2-038]), and that the ERF contribution was assessed as large. The significance of the impact was considered minor adverse as all PECs were less than 75% of the assessment level. In terms of the number of properties that this represented; the exposure for existing residential properties that gives rise to a large change in nickel concentration (0.0011µg/m<sup>3</sup>) is many hundreds (397 properties in Havering with consent for a further development of 394 residential properties) which could, within the IAQM guidance, be considered significant if the other elements of the assessment approach were not applied.
- 5.7.71. However, the Applicant reported that the assessment included in the revised chapter of the ES [REP2-020] adopted a conservative approach and the predicted development impact was likely to be overstated. The impacts had been reported for the year that gave the highest predicted concentrations and assuming that the emissions were at the assessed highest predicted concentration all year round. The professional judgement of the report's author was that the likely nickel impacts would be negligible and there would be no significant effects from the emissions from the ERF.

- 5.7.72. For emissions of arsenic the two receptors with predicted minor impacts were not residential areas.
- 5.7.73. Short term NO<sub>2</sub> and SO<sub>2</sub> had been modelled assuming that these higher levels occurred all year round in order to determine if any assessment level would be breached. In practice the IED only allows higher short term emissions to occur over a half hour period with the lower daily limit being met by lower emissions during the rest of the day. The PEC for NO<sub>2</sub> and SO<sub>2</sub> would be less than 50% of the assessment level and not significant.
- 5.7.74. At Deadline 8 LBB submitted [REP8-033] a response to the additional information provided by the Applicant at Deadline 7 [REP7a-002]. LBB reviewed the IAQM guidance in light of the Applicant clarifications and, taking these considerations into account, LBB did not propose to pursue the issue of the predicted impact of nickel emissions further.
- 5.7.75. The Applicant and LBB subsequently agreed an SoCG [REP8b-009]. On air quality it was agreed that:
- In respect of effects during construction and decommissioning, the assessment of effects was considered appropriate, provided the full range of mitigation measures specified in the guidance used as the basis for the assessment were adopted in the CoCP;
  - In respect of effects during operation, the assessment of effects was considered appropriate although LBB considered that the assessment of dioxin and furan emissions could have been improved by more fully accounting for background sources of exposure to dioxins and furans.;
  - The cumulative effects presented were considered appropriate;
  - The CoCP would be extended to include the implementation of all relevant measures specified in the Supplementary Planning Guidance and Institute of Air Quality Management (IAQM) guidance associated with the control of dust at low risk construction sites;
  - The summary of residual effects and monitoring set out in the ES was appropriate on the basis that the Applicant and LBB enter into a s106 agreement that provides for the contribution of funds for ambient air quality monitoring in Bexley.
- 5.7.76. A final unsigned draft of a s106 agreement containing the provision for funding air quality monitoring was submitted towards the close of the examination [REP8b-012].

### **London Borough of Havering**

- 5.7.77. Responding to LBH's concern set out in its LIR that only one air monitoring site in Rainham had been used for verification of the air quality model, the Applicant stated [REP3-026] that while it was preferable, where possible, to use more than one monitoring point for model verification, it was not essential.

*Any additional uncertainty introduced into the model assessment process must be judged in relation to the model verification factor obtained, and the degree to which the predicted modelling results approach assessment*

*levels. Reducing the level of uncertainty where the predicted concentrations approach or exceed the relevant assessment level is important, but where the predicted concentrations are significantly lower than the objectives, an increased level of uncertainty is acceptable.*

- 5.7.78. The Applicant had considered the use of other monitoring points data but capture rates were lower or were not suitable for other reasons such as location. It did not consider that the model verification needed to be repeated.
- 5.7.79. The Applicant welcomed LBH's interpretation that the impact of nickel emissions was minor but disagreed that this constituted a significant impact. None of the PECs for nickel were above the assessment levels for health effects. Taking account of baseline concentrations, the maximum PEC was 23.6% of the assessment level at receptor locations in Rainham closest to the ERF in the prevailing downwind direction. The Applicant stated [REP7a-002] in its Response to Air Quality Matters that the results of the modelling were conservative and a worst case prediction. The actual concentrations from the ERF would be lower than predicted. Therefore, even if hundreds of properties in Rainham were predicted to experience a minor adverse impact, this was not significant as explained at paragraphs 5.7.69- 5.7.70.
- 5.7.80. The Applicant disagreed with LBH's assertion that there would be minor impacts from chromium VI emissions. In accordance with the assessment criteria the impacts were minor at each receptor location. Even if one considered that a large number of negligible impacts could be equated to minor impacts, these would not correspond to a significant effect.

#### **Other Interested Parties**

- 5.7.81. The Applicant provided detailed responses to the submissions from other IPs setting out how their points had been addressed in the application documents or giving reasons for disagreement [REP2-054 and REP3-022].

#### **Conclusions on air quality**

- 5.7.82. I am satisfied that the Applicant has carried out its assessment of potential impacts on air quality following the methodology recommended in standard professional guidance. This assessment has shown that where there are increases in emissions affecting specific locations these do not exceed the PEC assessment levels for health effects. The technology proposed for the ERF in the application for an EP would produce lower levels of emissions than those assessed.
- 5.7.83. The GLA, LBH and other IPs have expressed concerns about the Applicant's analysis and considered that even if assessment levels are not breached there would be adverse effects on residents, including resident in new high-rise developments, which should be taken into account. I have considered the submissions made on these issues in respect of NO<sub>x</sub> metals and other pollutants. I am satisfied that the Applicant has responded to these concerns, as noted above, and I do not

consider that any additional analysis is necessary. I accept the Applicants conclusion that the impacts of the Proposed Development on air quality as it affects human health will not be significant. Effects of changes in air quality on terrestrial biodiversity are considered in section 5.11 below.

- 5.7.84. I note that the Applicant has submitted an unsigned s106 agreement with LBB which includes provision to fund air quality monitoring. This monitoring would provide assurance for the local community in addition to the plant monitoring that will required as part of the EP. I consider the status of this agreement in my final conclusions on the dDCO.

## **5.8. NOISE AND VIBRATION**

### **National Policy**

- 5.8.1. EN-1 states that a noise impact assessment should include:

- *a description of the noise generating aspects of the development proposal leading to noise impacts, including the identification of any distinctive tonal, impulsive or low frequency characteristics of the noise;*
- *identification of noise sensitive premises and noise sensitive areas that may be affected;*
- *the characteristics of the existing noise environment;*
- *a prediction of how the noise environment will change with the proposed development;*
- *in the shorter term such as during the construction period;*
- *in the longer term during the operating life of the infrastructure;*
- *at particular times of the day, evening and night as appropriate.*
- *an assessment of the effect of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas; and*
- *measures to be employed in mitigating noise.*

- 5.8.2. EN-3 identifies specific sources of noise and vibration which may be relevant to biomass and EfW generating stations. These include

- *Delivery and movements of fuel and materials;*
- *Processing waste for fuel at EfW generating stations;*
- *The gas and steam turbines that operate continuously during normal operation; and*
- *External noise sources such as externally-sited air-cooled condensers that operate continuously during normal operation.*

### **London Planning Policies**

- 5.8.3. In its LIR [REP2-075] the GLA set out the criteria in the London Plan (2016) against which proposals for waste management would be evaluated. Noise emissions is one of the criteria listed for assessment as part of the environmental impact.

- 5.8.4. In its LIR [REP2-082], LBB set out that, as part of its policy which aims to protect and enhance the quality of the built environment by ensuring

new developments are of a high standard of design, the Council will consider the extent to which proposals have any unreasonable effect on the surrounding area by reason of emissions, including noise. The Council's Core Strategy states that sustainable development will be achieved by maximising the effective and efficient use of natural and physical resources whilst addressing pollution issues, including noise. LBB guidance on operational noise from fixed plant requires a rating level of no higher than 5dB below the LA<sub>90</sub> background level at the nearest receptor.<sup>19</sup>

## **The Applicant's assessment**

- 5.8.5. For the construction phase a conservative scenario had been assessed under which all construction activities, including percussive piling, occurred simultaneously [APP-045]. For the operational period, continuous 24 hour operation at maximum capacity had been assessed. The two scenarios of 100% delivery of waste by road and 100% by river had been assessed.
- 5.8.6. For the assessment of construction noise and vibration, sensitive receptors within 500m of the REP site had been considered based on assessment criteria agreed with LBB. The assessment of noise from the construction of the electrical connection had considered noise and vibration sensitive receptors up to 50m from the connection works.
- 5.8.7. For the operational period noise sensitive receptors within a study area up to 1 km from the REP site were considered. Three noise monitoring locations were agreed with LBB. For off-site traffic impacts the assessment considered noise sensitive receptors along routes to be used by traffic associated with the development. Operational noise associated with the operation of the electrical connection was scoped out of the analysis at an earlier stage. Baseline data on noise levels were collected for sites close to the REP. Operational data on noise levels for the main elements of the plant on the REP site were provided by a qualified contractor with experience of operating that type of plant. Noise resulting from construction traffic was assessed using established assessment procedures.
- 5.8.8. For the construction period noise associated with construction traffic was assessed as unlikely to result in an increase in noise levels of more than 1dB. Using standard guidance this would result in a negligible increase in noise levels and was not significant. For construction activities it was assumed, conservatively, that these activities would take place at the boundary of the site closest to each of the noise receptors. At a distance of 500m noise levels from construction were below the lowest observed adverse effect level (LOAEL) and were considered to be negligible. The nearest dwelling to the REP was more than 500m from the site. Work to be carried out at the main temporary construction compound was considered to be unlikely to be significant at the nearest receptor which

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<sup>19</sup> LA<sub>90, T</sub> is the noise level exceeded for over 90% of the time over period T. It is often used to define the background noise.

was 150m away. Vibration impacts from piling were considered. Cosmetic damage was most likely to occur within 20m of the work. Since the nearest residential receptors were over 500m away the predicted impact was assessed as negligible and not significant.

- 5.8.9. The assessment of operational noise was based on the worst case scenario of the REP site operating continuously over 24 hours. Daytime and night-time noise levels at the three nearest noise receptors were estimated. In all cases the noise levels from the REP were below the background noise levels and were considered to have a low impact. The resulting noise impact was within the limit that the Applicant had agreed with LBB and the impact was considered to be negligible and not significant.
- 5.8.10. Noise associated with additional traffic during the operational period was assessed at 12 locations on the local road network. In all these locations the increase in noise was less than 1dB which was considered to be negligible and not significant. Noise levels from vessel movements on the river were also assessed as being negligible and not significant.
- 5.8.11. Noise during the construction of the electrical connection had the potential to give rise to an adverse effect on noise sensitive receptors. Noise levels were estimated for a typical location along the route of the connection. At distances of more than 20m noise levels were likely to be below the significant observed adverse effect level (SOAEL) and at distances of more than 30m below LOAEL. Receptors along the A2106 and A206 were approximately 20m – 30m away from construction activities.<sup>20</sup>
- 5.8.12. Cumulative effects with other known potential developments which might take place at the same time as the REP were considered. No significant effects were identified.

## **Views of Interested Parties**

- 5.8.13. In its WR [REP2-071] the GLA raised a concern that there was not adequate capacity at the Waste Transfer Stations (WTS) to manage the volume of waste proposed for delivery to the REP. Insufficient capacity to manage and transport this waste could lead to adverse environmental effects such as air pollution and noise caused by vehicles queuing at the entrance to the WTS.
- 5.8.14. In its WR [REP2-080] LBB set out its concern that the Proposed Development might not meet LBB's standard guidance for operational noise from fixed plant of a rating no higher than 5dB below the LA<sub>90</sub> background level at the nearest receptor. It suggested that the predicted operational noise impact be assessed in more detail. LBB proposed draft

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<sup>20</sup> For some receptors along route 2A the electrical connection route was approximately 10m – 15m away from construction activities. This route option was taken out of the Application during the course of the Examination as shown in the revised Works Plans [REP2-004].

DCO Requirements setting out details of operational noise levels and monitoring.

- 5.8.15. Following discussions between LBB and the Applicant, a Requirement on control of operational noise was agreed for inclusion in the final draft DCO. In a SoCG with the Applicant, LBB agreed that while there was some uncertainty in the assessment of likely noise effects due to the limited duration of baseline noise measurements, the inclusion of a Requirement on control of operational noise, would overcome its concerns on this matter [REP8b-009].
- 5.8.16. TWUL in its WR [REP2-092] identified noise during construction as one factor that would deter visitors to the CNR. Noise during construction (e.g. from piling rigs) was not conducive to the relative peace and tranquillity that visitors expect when visiting a nature reserve. TWUL stated that many people visit for enrichment of their health and well-being.
- 5.8.17. A number of individual IPs cited noise from the Proposed Development as one of their concerns [RR-007, RR-009, RR-016, RR-019, RR-020, RR-024, RR-025, RR-058, RR-070, RR-085.]

## **Conclusions on noise and vibration**

- 5.8.18. I am satisfied that the Applicant has carried out the assessment of the noise impacts of the Proposed Development as set out in EN-1. I recognise the concerns raised by individuals about noise from the REP but I accept the Applicant's assessment that noise from the Proposed Development at the nearest receptors, will be below the background level and not significant during both the construction and operational period and will be controlled by the provisions of Requirement 19 in the final draft DCO.
- 5.8.19. There is the potential for some disturbance from noise during the construction of the electrical connection. This is likely to be below the SOAEL threshold and will be of limited duration in any one location as the connection work moves along its route. I do not consider this to be a significant adverse effect.
- 5.8.20. I conclude that, subject to the proposed Requirement on control of operational noise which I consider further in Chapter 8, there should not be any significant adverse effects from noise.

## **5.9. TOWNSCAPE AND VISUAL IMPACT**

### **National policy**

- 5.9.1. In EN-1 the assessment of landscape and visual impacts of energy projects is taken to include effects on townscape. It acknowledges that virtually all nationally significant energy infrastructure projects will have effects on the landscape. The aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate. In decision taking account should be taken of any local

landscape designations and the impact of the development on landscape. Consideration should be given to whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by reasonable mitigation.

- 5.9.2. EN-3 states that proposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity. The design of biomass/waste combustion generating stations should be of appropriate quality and minimise adverse effects on the landscape character and quality. Development proposals should consider the design of the generating station including the materials to be used in the context of the local landscape. Mitigation can be achieved primarily through aesthetic aspects of the site layout and building design including external finish and colour to minimise intrusive appearance in the landscape.

### **London planning policies**

- 5.9.3. In its LIR [REP2-075], the GLA cited visual impact as one of the criteria to be considered in evaluation of the proposals for waste management.
- 5.9.4. In its LIR [REP2-082], LBB set out its saved UDP policies on townscape and visual impact of new developments. These were concerned with:
- The protection and long term retention of trees of amenity, nature or landscape conservation value, as well as new tree and hedge planting as part of a landscaping scheme for development proposals where 'appropriate';
  - Protecting and enhancing the quality of the built environment by ensuring new developments are of a high standard of design and compatible with the character of the surrounding area (with respect to scale, massing, height, layout, elevational treatment, materials and/or intensity of development). The same policy also requires that new developments are appropriately landscaped (including the retention of appropriate trees and shrubs), and takes into consideration important local and strategic views, particularly where the Proposed Development is one which significantly exceeds the height of its surroundings;
  - The Thames Policy Area, in which the proposal lies, seeks to protect and enhance the character of the area through good quality design appropriate to its context, the protection of views and skylines and the creation of new focal points, spaces, vistas and viewpoints as opportunities arise, and providing an attractive, safe and interesting riverside walk alongside the Thames.
- 5.9.5. LBB's Core Strategy focuses on the Belvedere geographic region and seeks to ensure that all new development is built to high design standards and enhances the public realm. Policies aim to protect, enhance and promote green infrastructure and seek to provide new open space as part of new developments, increase connectivity between the network of green spaces and habitats, restore waterways and protect and enhance biodiversity.

## **The Applicant's assessment**

- 5.9.6. The Applicant's townscape and visual impact assessment (TVIA) included in the ES [APP-046] acknowledged that the Proposed Development had the potential to affect townscape and visual receptors due to the processes involved in construction and decommissioning and during operation through the introduction of new large structures into the townscape.
- 5.9.7. The worst case scenario which had been considered in the TVIA was for a maximum stack height of 113m above ordnance datum (AOD) and a maximum building height of 65m AOD. This allows the widest field of view to be taken into account. A zone of theoretical visibility (ZTV) with radius of 2.5km from the REP site was taken to define the area for study of townscape features and townscape/landscape character. A study area with radius of 0.5km was taken for considering local townscape character. The winter period was taken for baseline photography when vegetation provided less screening. Viewpoints were selected to include consideration of visual effects of the Proposed Development on the Crossness Conservation Area and listed buildings and their settings. Local authorities were consulted on the selection of viewpoints. 16 viewpoints were selected to represent location specific views. Two sequential views were selected to represent the effects on the sequence of views when travelling east and west along the Thames Path National Trail within 1km of the REP site.
- 5.9.8. Embedded mitigation to limit townscape and visual impact effects during the construction stage would be included in the CoCP following standard construction and operational management practices. These would cover protection of vegetation and other vulnerable features, storage of soils, controls on lighting, hoardings to create visual barriers and, as far as possible, replacement of trees, shrubs and hedgerows removed for the installation of the electrical connection.
- 5.9.9. For the operational stage embedded mitigation was provided through the orientation of the REP building which would allow for visual permeability through the REP site from Belvedere to the River Thames. Design principles had been set out [APP-105]. The aim was to reduce the physical envelope of the main REP building and its perception of scale through the progression of a design that accords with a stepped building form.

### **Construction stage**

- 5.9.10. The main activities during the construction phase which would have townscape and visual impact effects were identified as site clearance, earthworks, construction of internal roads, traffic to and from the site and general construction activity including tower cranes, batching plants, drilling rigs and site compounds and construction lighting. The construction stage would last approximately three years.
- 5.9.11. Minor adverse effects which were not considered to be significant were identified for the Crossness Conservation Area, local open spaces, long

distance paths and PRowS and for four of the visual receptor sites where cranes would be visible. Moderate adverse effects from cranes and construction activity, considered to be significant were identified at the RRRF and from seven visual receptors and the sequential views.

- 5.9.12. The visual impact of the construction activity for the electrical connection was considered to be minor or negligible and not significant.

### **Operational stage**

- 5.9.13. The likely significant townscape and visual effects arising from the REP were considered to be from the height and scale of the main REP building and the stack. The maximum parameters of the REP are greater than the adjacent existing developments and there would be a change to the skyline and the scale of development. The REP site was in an existing industrial area with a character of industrial development based around the river.
- 5.9.14. The assessment concluded that there would be no change or negligible effects at eight of the visual receptors and a minor adverse effect which was not significant at one further location. There would be moderate adverse effects from the large scale industrial development which were significant at the Crossness Conservation Area and other open spaces. The development would reduce connectivity between marshland areas and the river and change the character and views in the area. There would also be a moderate adverse effect from the industrial scale buildings which was significant on the views to the east from the Thames Path.
- 5.9.15. The Applicant considered that there would moderate beneficial effects from the creation of a new focal point and skyline interest which were significant from two viewpoints and the Thames Path west.
- 5.9.16. The Applicant did not propose any further mitigation beyond the approach set out in the Design Principles [APP-105]. This set out 35 design principles which would be applied to the design of the REP. The detailed design of the Proposed Development would be submitted to the local planning authority for approval under a Requirement in the draft DCO. Both the beneficial and adverse effects from the Proposed Development would need to be weighed against its wider benefits such as delivering the urgent and substantial need for new renewable/low carbon electricity supply and storage as established in EN-1.
- 5.9.17. A summary of the townscape and visual effects for townscape receptors and each of the visual receptors is set out in Table 9.8 in the ES [APP-046].

### **Views of Interested Parties**

- 5.9.18. In its initial submission [AS-002] and its WR [REP2-080], LBB accepted that the judgements on townscape and visual impact from construction and operation of the REP appeared appropriate (based on the method employed and scale of development). It identified areas where it

considered that cumulative effects were significant due to other committed developments. These were at the CNR, Lesnes Abbey and the Thames Path. LBB agreed that there was no potential for further mitigation measures.

- 5.9.19. The London Borough of Barking and Dagenham in its RR [RR-059] acknowledged that the proposed building would be significantly larger and taller in comparison with the existing facility. It would be clearly visible from the other side of the Thames. It considered that an industrial building fronting the River Thames was appropriate to its character and the development would not cause harm to the landscape or visual amenity.
- 5.9.20. TWUL in its WR [REP2-092] explained its role in respect of the CNR
- *TWUL is obliged to maintain and enhance the Crossness Nature Reserve pursuant to a section 106 agreement ("S106") dated 21 July 1994. The S106 was entered into in relation to an application for the purposes of a sludge powered generator at the Crossness Sewage Treatment Works to be constructed on the Site, defined in the S106 as the land shown edged red on Plan A to the S106. The S106 binds the Site, the Crossness Nature Reserve and Operational Land, defined as the then operational land at Crossness Sewage Treatment Works shown edged in green on Plan D to the S106. As such, TWUL owns and operates the Crossness Nature Reserve in connection with and as a requirement of its statutory operational activities at the Crossness Sewage Treatment Works, and believes that the impacts of the Project on the Crossness Nature Reserve could prevent it from complying with its obligations in the S106.*
- 5.9.21. It was concerned that with so much development proposed on all boundaries of the CNR this would create a fragmented, hemmed-in feeling and contribute to the erosion of the CNR and the Erith Marshes SINC. It considered that the visual impacts of the Proposed Development on the CNR could potentially conflict with its obligations secured by the s106 and its statutory duties.
- 5.9.22. TWUL was also concerned about the proposed stepped roof design for the main REP building. TWUL considered that the Applicant's earlier proposal for a curved roof building was better suited to the local environment and would feel less imposing. There were already curved roof buildings which form distinctive landmarks in the immediate vicinity of the CNR. A curved roof structure would aid the Proposed Development to appear visually smaller in mass and scale.
- 5.9.23. TWUL considered that the application could not be viewed in isolation. Consent had already been given for a four-storey data centre on land within the Order limits and there would be additional cumulative visual effects on the open marshland around the CNR.
- 5.9.24. FoCNR submitted a WR [REP2-070] setting out a range of specific concerns about the Proposed Development. A major objection and concern was:

- *"the cumulative visual impact of this (and other approved developments) on our day to day enjoyment of the nature reserve and the impacts of habitats and wildlife. The distant views eastwards from the CNR had increasingly been dominated by an ever advancing array of huge logistic units. The gradual (more recently speedy) encroachment along the perimeter of the nature reserve had elicited dismay and anger from Friends/visitors."*

5.9.25. A number of RRs from local individuals and organisations raised the visual intrusion of the Proposed Development, particularly on the CNR, as one of their objections [RR-009, RR-012, RR-019, RR-022, RR-024, RR-025, RR-033, RR-071, RR-077, RR-078].

### **The Applicant's response**

5.9.26. The Applicant responded to RR and WR submissions from IPs on TVIA issues [REP2-054 and REP3-022]. It acknowledged the concerns that had been raised but stood by its assessment that the potential benefits and adverse effects from the Proposed Development would need to be weighed against its wider benefits, such as meeting the national need for new renewable/low carbon electricity supply and storage as set out in EN-1.

5.9.27. In response to TWUL's concerns about visual impact at the CNR, the Applicant acknowledged that there would be moderate, significant adverse visual effects but noted that the REP site is within an existing industrial area with a character of industrial development based around the river. Embedded mitigation would seek to take account of adjacent land uses and existing townscape character. The building and stack(s) would be seen as a new feature in the context of other industrial buildings. The Design Principles document [APP-105] would ensure that the benefit from the stepped design was further enhanced by a commitment to minimise massing and locate the main REP building as far from the western boundary of the CNR as practicable. A Requirement was included in the draft DCO to ensure that the Design Principles were adhered to.

5.9.28. In response to TWUL's proposal for a curved roof design the Applicant stated that this would introduce a greater building height, greater building mass and greater shadowing effects. The Design and Access Statement [APP-104] described the design evolution. A stepped roof design was selected which would seek to ensure that the visual impact of the main REP building was minimised. The stepped design allowed the maximum height of the main building to be reduced to the lowest level reasonably practicable.

### **Conclusions on townscape and visual impact**

5.9.29. I am satisfied that the Applicant has carried out a thorough assessment of the potential townscape and visual impacts of the Proposed Development in line with the guidance in EN-1 and EN-3.

- 5.9.30. It has identified a number of locations at which the visual impact would have a moderate adverse effect, even after taking into account embedded mitigation and it has not identified any further steps that can be taken in mitigation.
- 5.9.31. Visual impact is one of the grounds on which local resident and organisations have objected to the Proposed Development. These are valid concerns which are not all addressed by mitigation measures.
- 5.9.32. EN-1 acknowledges that virtually all nationally significant energy infrastructure projects will have effects on the landscape. The aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate. I am satisfied that the Applicant has sought to mitigate this harm where possible and this is incorporated into the draft DCO through the Requirement for detailed design approval in line with the principles of good design which have been adopted. But there would be some remaining adverse visual impacts which cannot be avoided with a large scale NSIP of this sort. These have to be balanced against the national need for new electricity generation including renewable generation set out in EN-1 and EN-3. I take this into account in my overall assessment at the end of this chapter.

## **5.10. HISTORIC ENVIRONMENT**

### **National policy**

- 5.10.1. NPS EN-1 acknowledges that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment. Consideration of applications should identify and assess the particular significance of any heritage asset that may be affected by the proposed development. It should take account of:
- *The particular nature of the significance of the heritage assets and the value they hold for future generations;*
  - *The desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution they can make to sustainable communities and economic vitality;*
  - *The scale, height, massing, alignment, materials and use.*
- 5.10.2. There should be a presumption in favour of the conservation of designated heritage assets. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development.
- 5.10.3. EN-3 adds that in addition to this judgement of the planning balance account should be taken of the positive role that large-scale renewable projects play in the mitigation of climate change, the delivery of energy security and the urgency of meeting the national targets for renewable energy supply and emissions reductions.

## **London planning policies**

- 5.10.4. In its LIR [REP2-075] the GLA noted that the London Plan (2016) states that all renewable energy systems should be located and designed to minimise any potential adverse impacts on biodiversity, the natural environment and historical assets.
- 5.10.5. LBB in its LIR [REP2-082] identified negative impacts at Lesnes Abbey, a Scheduled Monument and Grade II listed building and at the Crossness group of industrial heritage sites. These included the Crossness Conservation Area, Crossness Pumping Station (Grade I listed), Crossness Pumping Station workshops (Grade II listed) and Crossness engine house (locally listed).
- 5.10.6. The impact on these assets had not been held to be significant in the EIA but nevertheless would give rise to a degree of harm to the assets' historical significance. This needed to be considered in line with national and local planning policy, statutory provisions and recent case law.

## **The Applicant's assessment**

- 5.10.7. In order to inform its assessment of impacts on the historic environment [APP-047], the Applicant carried out a desk-based assessment to locate designated and non-designated heritage assets and assess the potential for previously unrecorded finds or features.
- 5.10.8. The potential for previously unrecorded archaeological remains within the REP site and the main construction compound was considered to be low. The area lies within the Erith Marshes which were not reclaimed until the mid-20<sup>th</sup> century. There was no evidence that significant occupation was possible prior to this. There was the potential for foundations and footings from 19<sup>th</sup>/20<sup>th</sup> century industrial development at the REP site.
- 5.10.9. There were no designated heritage assets within the REP site and the main construction compound. No listed buildings are located within the route of the electrical connection, but a number of Conservation Areas were located along its route. As the electrical connection would be below ground there were no anticipated effects to the setting of designated and non-designated heritage assets.
- 5.10.10. Seven designated and built heritage assets within 2.5km of the Proposed Development were identified. These were:
- Crossness Conservation Area
  - Crossness Pumping Station – Grade I listed
  - Workshops at Crossness Pumping Station – Grade II listed
  - Workshop at Crossness Pumping Station – Grade II
  - Lesnes Abbey – Scheduled
  - Engine House at Crossness Sewage Treatment Works – Locally listed
  - Jetty at Dagenham Docks – Grade II listed

- 5.10.11. The REP site was considered to make a minor contribution to the significance and setting of these sites. Other listed buildings within 2.5km were scoped out of the study as not being visible in the ZTV.
- 5.10.12. It was recognised that during the construction period there would be an increase in crane and construction activity visible in views of the Crossness Conservation Area and associated listed buildings, Lesnes Abbey and the jetty at Dagenham Docks. The effects would be temporary and were considered to be negligible or minor and not significant.
- 5.10.13. The operation of REP would potentially have indirect impacts on the setting of the designated assets. The REP would form part of the wider setting of these assets. The REP and stack would result in a change in skyline behind the Conservation Area and listed assets. These assets were located in a highly industrialised landscape which includes other stacks in the immediate vicinity and wind turbines to the north of the River Thames. In heritage terms the development of the REP was considered to form a slight change in the wider skyline and was of negligible or minor significance.
- 5.10.14. Cumulative effects of construction of the REP simultaneously with other projects in the vicinity were also considered and assessed to be minor or negligible.

### **Views of interested parties**

- 5.10.15. In its RR [RR-079] KCC raised concerns about the electrical connection trench depth which, at 1.2m, was greater than had been assessed in discussion with KCC Heritage. KCC expected the scheme to be subject to an appropriate programme of geoarchaeological works and a Written Scheme of Investigation (WSI) for such works in Kent should be provided. In its subsequent WR [REP2-078], KCC noted that agreement had been reached between the Applicant and the Council regarding the approach to archaeological assessment and fieldwork and the processes involved. A WSI had been agreed with KCC and this is secured through a Requirement in the draft DCO.
- 5.10.16. A signed SoCG between KCC and the Applicant was submitted [REP8-014]. The assessments in the ES of the effects on the historic environment in the area of KCC were considered to be appropriate. The inclusion of a Requirement in the draft DCO to prepare a WSI which would include, where necessary, a phased programme of geoarchaeological and archaeological works in KCC's area was considered to be appropriate mitigation.
- 5.10.17. A signed SoCG between LBB and the Applicant was submitted [REP8b-009]. The assessments in the ES of the effects on the historic environment in the LBB were considered to be appropriate. It was agreed that embedded mitigation which is an inherent part of the Proposed Development had been set out in the ES and no further mitigation was necessary. A signed SoCG between Historic England and the Applicant

was also submitted which stated that no significant effects on the historic environment had been identified [AS-013].

## **Conclusions on the historic environment**

- 5.10.18. I am satisfied that the Applicant has carried out the assessments of the impact of the Proposed Development on historic assets set out in EN-1.
- 5.10.19. There would be some impact both during construction and operation on the setting of listed buildings and a scheduled monument which are in line of sight of the REP. But, taking into account the existence of other industrial buildings, including stacks at the neighbouring RRRF and CSTW, I agree with the Applicant's assessment that the impacts would not be significant. I have taken into account the concern raised by KCC that there should be provision for archaeological investigation before the start of work on the electrical connection. I consider that this has been addressed by the Requirement which the Applicant has proposed in the draft DCO which would also cover work on the main REP site.

## **5.11. TERRESTRIAL BIODIVERSITY**

### **Legislation and National policy**

- 5.11.1. The Conservation of Habitats and Species Regulations 2017 transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) into law. Amongst its provisions is the designation and protection of European Sites including the need for 'Appropriate Assessment' of plans and proposals likely to affect those sites. The Habitats Regulation Assessment is considered in Chapter 6 of this Report.
- 5.11.2. The Wildlife and Countryside Act 1981(as amended) implements the Convention of European Wildlife and Natural Habitats and Directive 2009/147/EC 'The Birds Directive'. Schedules to the Act identify species of birds and other animals for which the Act makes killing, injury, taking and disturbance an offence. It also lists species of plants which it is an offence to pick, uproot or destroy.
- 5.11.3. The Natural Environment and Rural Communities Act 2006 (NERC) sets a duty on public bodies (including government departments) to have due regard to habitats and Species of Principal Importance for biodiversity in England when carrying out their duties. The Act provides for the publication of a list (the S41 list) of habitats and species which are of principal importance for the conservation of biodiversity in England. The S41 list includes 56 habitats and almost 1,000 species of Principal Importance in England. These habitats and species are identified as conservation priorities under the UK Post-2010 Biodiversity Framework.
- 5.11.4. NPS EN-1 sets out the requirement for the Applicant to:
- *... ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and*

*other species identified as being of principal importance for the conservation of biodiversity.*

- *The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.*
- *... development should aim to avoid significant harm to biodiversity and geological conservation interests including through mitigation and consideration of reasonable alternatives ... where significant harm cannot be avoided, then appropriate compensation measures should be sought.*

5.11.5. In respect of mitigation measures, these should be included as an integral part of the proposed development and the applicant should demonstrate that:

- *During construction they will seek to ensure that activities will be confined to the minimum areas required for the works;*
- *During construction and operation best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements;*
- *Habitats will, where practicable, be restored after construction works have finished; and*
- *Opportunities will be taken to enhance existing habitats of value within the site landscaping proposals.*

5.11.6. EN-3 includes the provision that proposals for renewable energy infrastructure should demonstrate good design of the project to mitigate impacts such as noise and effects on ecology.

### **London planning policies**

5.11.7. In its LIR [REP2-075], the GLA noted that while the policy in the London Plan (2016) seeks to increase the proportion of energy from renewable sources it also states that "all renewable energy systems should be located and designed to minimise potential adverse impacts on biodiversity, the natural environment and historical assets, and to avoid any adverse impacts on air quality".

5.11.8. In its LIR [REP2-082] LBB identifies policies of relevance to biodiversity. The UDP includes policies that protect LNRs and SSSIs, trees of amenity nature or landscape conservation value and wildlife of the river and habitats on Thames-side. Its Core Strategy seeks to ensure that development does not adversely affect any European site, SSSI and SINC and to resist development that will have a significant impact on protected species and species identified in the UK, London and Bexley Biodiversity Action Plans (BAPs). It aims to protect and enhance natural habitat as far as practicable, seeking enhancements through new developments, with preference given to delivering London Plan and Bexley BAP targets.

## **The Applicant's assessment**

- 5.11.9. The Applicant's assessment of the impact of the Proposed Development on terrestrial biodiversity is set out in the ES [APP-048]. This assessment had followed best practice guidance for ecological impact assessment set out by the Chartered Institute for Ecology and Ecological Management (CIEEM).

### **Baseline**

- 5.11.10. To establish the baseline a desk study of available data was supplemented by a habitat survey of the application site, later extended to cover part of the CNR. Separate surveys were carried in respect of badgers, bats, wintering birds, terrestrial invertebrates, breeding birds, reptiles, water voles and botanical features. There were no records of Great Crested Newts (GCN) within 2km of the REP site and the presence of GCN at the REP site, the Main Temporary Construction Compound and the data centre site was scoped out of the study.
- 5.11.11. One internationally designated site, Epping Forest SAC, was identified within 15km of the Proposed Development. Two nationally designated SSSIs, Inner Thames Marshes SSSI and Ingrebourne Marshes SSSI were identified within 2km of the site. 38 SINCs, two Local Wildlife Sites (LWS) and one roadside nature reserve were also identified in the 2km zone.
- 5.11.12. The footprint of the REP site, Main Temporary Construction Compound and the Data Centre site did not directly affect any designated site but there was the potential for indirect effects on designated areas through noise and visual disturbance, dust generation and pollution during construction and decommissioning. Indirect effects were most likely to be relevant for those designated areas adjacent to the REP site – Crossness LNR, Belvedere Dykes SINC, River Thames and Tidal Tributaries SINC and Erith Marshes SMINC. Protection and appropriate working methods would be required during construction and decommissioning to protect the habitats and species in these designated areas from significant indirect adverse effects. These were provided for in the Outline Biodiversity and Landscape Mitigation Strategy (OBLMS) [APP-107, final version REP8-012] and the effects on these designated areas was considered not to be significant.

### **Construction of the REP**

- 5.11.13. Construction work would result in the loss of some existing habitats within the REP site, the Main Temporary Construction Compound and the Data Centre site. This included open mosaic habitat on previously developed sites and temporary disturbance of semi-improved grassland, land which had been identified for mitigation measures as a condition in the consent for RRRF. There could also be temporary loss or disturbance of semi-improved grassland, reedbed and standing water and species which it supports.
- 5.11.14. The construction of the REP would affect areas of local conservation importance and locally important habitats including the CNR. Initially the

Applicant proposed that these areas would be compensated for through the provision of an area of open mosaic habitat on the flood bank and a financial contribution to the Environment Bank (EB) with a legal agreement for a contribution towards the enhancement of habitats outside the application boundary. In the light of these compensation measures it was considered that the effect on habitats of local conservation importance would not be significant.

- 5.11.15. No bat roosts had been identified in the areas affected by construction works and loss of habitats used by foraging bats was not considered to be significant. Disturbance of bats from lighting would be managed through provisions in the OBLMS.
- 5.11.16. There could be temporary or permanent loss of habitats used by breeding birds and reptiles. Increased daytime noise levels during construction might also cause displacement of breeding birds. It was considered that suitable alternative breeding habitat was present in adjacent areas. Measures to avoid impacts to breeding birds and reptiles would be included in the OBLMS.
- 5.11.17. The River Thames shoreline near the Proposed Development were identified as important to local waterbird populations. This area was 300m from the REP site and the retaining wall along the Thames Path provided some screening. Use of cranes and other lifting equipment and the REP structure itself would be visible from the shoreline. Disturbance of wintering birds during some periods of construction could not be ruled out. Construction noise levels had been modelled and compared with baseline readings for the River Thames foreshore with a highest daytime level during construction of 68dB<sub>Aeq</sub>. It was considered that noise impacts below 70dB had low or moderate effects on estuarine birds with moderate effects from irregular noises. Overall the impact on wintering birds was assessed as not significant.

### **Operation of the REP**

- 5.11.18. The assessment for the operational period of the REP considered emissions from the ERF and AD stacks which could lead to deposition of compounds with the potential to adversely affect designated areas. Modelling had been carried out to predict the PC and PEC of relevant pollutants from the stack on the 14 International and National designated areas within 15km of the stack and seven non-statutory designated areas within 2km of the REP and predicted deposition compared with the relevant critical loads for sensitive habitats. Where the critical load was already exceeded in the baseline then the additional contribution from the process should be less than 1% for SACs and SSSIs or less than 100% for local sites, otherwise the additional contribution was potentially significant.<sup>21</sup> Two sites were identified where the PC exceeded these

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<sup>21</sup>AQTAG 06, Technical Guidance on Detailed Modelling Approach for an Appropriate Assessment for Emissions to Air, Ji Ping Shi, Environment Agency Air Quality Monitoring and Assessment Unit, 2014

thresholds. These were Inner Thames Marshes SSSI with PC of 2.8% and Ingrebourne Marshes SSSI with PC of 2.1%.

5.11.19. The Applicant submitted a revised version of the ES chapter on Terrestrial Biodiversity at Deadline 2 [REP2-024] with amended text on the impact of emissions on these two SSSIs. This followed the revision to the Air Quality assessment [REP2-020] which included updated PC and PECs for the two SSSIs. In the case of Inner Thames Marshes/Rainham Marshes it was argued that whilst the nutrient nitrogen deposition PC of 2.2% was over the 1% threshold, the PEC did not exceed the critical load therefore the effects on the conservation objectives of this area would not be significant.

5.11.20. The updated PC for nitrogen deposition at Ingrebourne Marshes SSSI was 2.3% of the critical load. This SSSI already exceeded the annual targets for NO<sub>x</sub> and nitrogen deposition. The predicted PCs from REP would not be the cause of this exceedance and would only form a small component of the total baseline concentrations. The Applicant considered that while the NO<sub>x</sub> PC was above the threshold for potential significance this reflected annual NO<sub>x</sub> concentrations in the air, the determining factor which could potentially affect habitats was the nutrient nitrogen deposition.

5.11.21. The Applicant cited guidance from the IAQM

- *that the use of the 1% threshold in the context of habitats should be used only to screen out impacts that will have an insignificant effect, and it should not be used as a threshold above which damage is implied ...this requires evaluation by a qualified ecologist and with full consideration of the habitat's circumstances*

The Applicant stated [REP2-024] that during consultation prior to submission of the application Natural England had indicated that it considered a 10% threshold as appropriate for identifying potentially significant impacts to a SSSI.

5.11.22. The Applicant noted that excessive nitrogen can have negative impacts on plants and habitats by altering the biochemistry of plants or stimulating the growth of competitive plant species and reducing diversity within a habitat. The condition assessment for the Ingrebourne Marshes SSSI had concluded that the majority of the SSSI was in 'favourable condition'. The classification of the area in 'unfavourable condition' was largely due to the presence of invasive species and inappropriate management. The assessment did not state that the unfavourable condition was due to eutrophication or the prevalence of nutrient loving plants. This suggested that:

- *... the conservation status of the habitats for which the SSSI is designated is not being adversely affected by the elevated levels of nitrogen which it receives at present.*
- *Freshwater systems are typically 'phosphorous limited' meaning that phosphorous is generally scarce and will inhibit the growth of plants even in the presence of abundant nitrogen. Therefore provided*

*phosphorous concentrations remain low, the predicted minor increase in nitrogen deposition at Ingrebourne Marshes SSSI as a result of the operation of the REP is unlikely to give rise to effects. This is supported by APIS which suggests that 'grazing marshes may be less sensitive to atmospheric deposition [of nitrogen]' than other wetland systems.*

- 5.11.23. The Applicant concluded that total acid deposition from the ERF would be less than 1% (or less than 100% for LNRs and SINCs) or that the PECs do not exceed the critical load at all of the designated area receptors. This approach had been agreed with Natural England in the final SoCG [REP2-051].
- 5.11.24. Separate analysis of emissions from the AD facility CHP engine indicated that these would be limited to the immediate vicinity of the REP site and were not cumulative with emissions from the ERF. A small area of the Crossness LNR and Erith Marshes SMINC could experience hourly mean NO<sub>2</sub> concentrations above 10% of the assessment level. Resulting from AD stack emissions. This could result in an increase in dominant grass species with a subsequent reduction in broad leaved species. However older marsh lands were considered to be less sensitive to nitrogen deposition than new or evolving habitats and the areas affected were marginal habitats in the immediate vicinity of the REP site. The predicted effects were assessed as not significant. As noted at paragraph 5.7.13 the Applicant made a commitment [REP4-021] during the Examination to adopt SCR technology for the AD facility CHP engine with lower NO<sub>x</sub> emissions than had been assumed in the ES. Revised figures showing predicted NO<sub>x</sub> concentration in the vicinity of the AD facility show a reduction in concentrations of NO<sub>x</sub> on the neighbouring CNR compared to the equivalent figures in the ES. This would be secured through a requirement in the draft DCO.
- 5.11.25. Shading of designated areas from the REP building was modelled and showed that the neighbouring LNR and SINC would be subject to some shading during the period March to September. The areas affected were small and would only be affected for short periods as the sun moved through the sky. Botanical changes as a result of this shading were thought to be unlikely. Other effects on the designated areas from lighting and drainage on the REP site would be managed through lighting and drainage strategies which would be set as Requirements in the draft DCO. Outside the designated areas the impacts on wintering birds and other species from light spillage and noise were assessed as minor and not significant.

### **Construction of the electrical connection**

- 5.11.26. The construction of the electrical connection included some land outside the highway where it crosses the Rivers Cray and Darent. This included land in the River Cray SINC and the Dartford Marshes LWS. This would result in short temporary impacts through habitat loss and disturbance which would re-establish following installation and reinstatement. Mitigation measures were included in the OBLMS. The effect was assessed as not significant.

- 5.11.27. Impacts to habitats along the remainder of the electrical connection route were assessed as short term and temporary and not significant. Measures to minimise impacts were set out in the OBLMS. Effects to habitats of local importance within the electrical connection route would be compensated through a financial contribution to the EB.
- 5.11.28. The OBLMS would set out the approach to mitigation for potential impacts on species, including breeding birds and Great Crested Newts (GCN). The impacts were considered to be not significant apart from a possible significant local impact on reptiles at one site. This was categorised as a minor effect in EIA term and not significant.

### **Biodiversity off-setting**

- 5.11.29. The OBLMS [APP-107] set out the Applicant's initial proposals for biodiversity off-setting. Due to the limited area of the REP site it was not possible to avoid or mitigate all impacts from the temporary or permanent loss of habitats on-site. Compensation in the form of biodiversity off-setting would be provided to off-set residual effects from the loss of habitats. This would be delivered through a financial contribution to the EB, a company which specialises in biodiversity accounting, with a legal agreement for contribution towards the enhancement of habitats outside the Application Boundary.
- 5.11.30. The Applicant proposed use of the biodiversity metric developed by DEFRA to quantify the potential habitat losses and gains as a result of the Proposed Development in order to determine the extent of off-site compensatory measures and the financial sum required to achieve the aim of a net biodiversity gain in accordance with national and local policy.
- 5.11.31. The Applicant set out the general principles which should apply to biodiversity off-setting as set out in National Biodiversity Strategies and Action Plans (BBOP 2012). Principles applicable to REP included: landscape context; no net loss; Additional conservation outcomes; Long term outcomes; Transparency; and science and traditional knowledge. The final BLMS would include a report on the planned measures including long-term management and management commitments.

### **View of Interested Parties**

- 5.11.32. The EA in its RR [RR-074], expressed concern that the application had not fully assessed the potential impacts on the adjacent LNR. There should be a more robust assessment of possible impacts on the LNR and clearer proposals for how measures could be put in place to prevent long term damage. The proposal that 25% of the flood banks should be converted to open mosaic habitat to compensate for the loss of this habitat was not compatible with the maintenance requirements of the embankments if they serve a flood defence function. This was unlikely to be acceptable to the EA and all the open mosaic habitat would have to be compensated for offsite.
- 5.11.33. In a signed SoCG between the EA and the Applicant [REP5-013], it was agreed that whilst advice on biodiversity issues had been presented by

the EA to the Applicant, the EA did not intend to object to the application on these issues. In respect of the creation of open mosaic habitat on the flood embankment, the Applicant confirmed that it would not be utilising the flood embankment for the creation of open mosaic habitat.

- 5.11.34. In a signed SoCG between NE and the Applicant [REP2-051] it was agreed that the assessment of likely effects on terrestrial biodiversity during the construction and decommissioning phases set out in the ES was appropriate. Taking into account the revised information on predicted nitrogen deposition (as set out at paragraphs 5.11.19 to 5.11.23) it was agreed that the predicted effects on internationally and nationally important sites from nitrogen deposition during the operation of the ERF were not significant and the assessment was considered appropriate.
- 5.11.35. In its WR [REP2-071] the GLA criticised the Applicant's reliance on nutrient nitrogen levels rather than NO<sub>x</sub> concentrations in its analysis of SSSIs. This seemed to allow the exceedances of the critical level to be ignored. Exposure to NO<sub>x</sub> concentrations could give rise to effects separate to those of nitrogen deposition.
- 5.11.36. In its WR [REP2-080], LBB raised concerns about the adequacy of the surveys that had been carried out into the presence of GCN, otters and water voles. It also challenged the Applicant's interpretation of the CIEEM approach to assessing significance of specific effects. The assessment that 'moderate' effects at County level were "not likely to be key decision-making issues" seemed to set a very high bar and could lead to fairly significant ecological effects being under-considered and under-mitigated/compensated. It was LBB's view that the CIEEM guidance had been misinterpreted. It also considered that cumulative impacts had been under stated.
- 5.11.37. LBB was concerned that details of the biodiversity off-setting mechanism had not been provided. There was no information on the draft biodiversity metric and no information on how much or where replacement or enhanced habitat would be provided. Such details should not be left to the final BLMS.
- 5.11.38. It was not clear to LBB how far the proposed habitat creation on the flood embankment would compensate for any loss or damage to the area in the centre of the REP site that was created as a requirement of the RRRF development. LBB also raised concerns about the provisions in the draft DCO relating to pre-commencement activities and to felling and lopping of trees and about mitigation measures in respect of adverse effects at the CNR and on reptiles from the electrical connection work.
- 5.11.39. LBH in its LIR [REP2-083] was concerned about the potential significant impacts of NO<sub>x</sub> at Inner Thames Marshes/Rainham Marshes and Ingrebourne Marshes. It noted that the Applicant had proposed improved abatement techniques, but the updated PCs and PECs provided were still above the NO<sub>x</sub> thresholds for these locations. The Council could not agree that the impacts were not significant and considered that further controls

should be taken to minimise the impacts on these terrestrial biodiversity receptors.

- 5.11.40. KCC in its RR [RR-079] stated that consideration should be given to both national and local policy in particular the designation of the Dartford Marshes Local Wildlife Site and its adjacent habitats. It considered that there would be limited impact due to the electrical connection route being located in existing roads but there was the potential for works to encroach on roadside verges. Only a small area might be impacted but a precautionary mitigation strategy should be adopted.
- 5.11.41. TWUL in its WR [REP2-092] and at the ISH on environmental matters [REP3-049] set out its concerns that mean hourly concentration of NO<sub>x</sub> from the AD facility would be above 10% of the assessment level and could affect terrestrial biodiversity receptors in the CNR. It was concerned about the project's proximity to the ecologically sensitive West Paddock which was the only area in the CNR which provided the water levels and vegetation structure for lapwings – a UK red list species of conservation priority – to breed. The potential loss of breeding lapwings should be considered as a significant effect. TWUL would also like to see the impact of lighting on this area reduced. Lighting during construction and operation could also disturb barn owls, other birds and bats. TWUL set out a number of measures that could be taken on the CNR which would off-set some of the impacts on biodiversity.
- 5.11.42. TWUL was concerned about the effect of shading from the REP on the CNR. Shading of drainage ditches could reduce species diversity of plant and invertebrate communities and have a negative impact on water voles and insectivorous bird species. Shading would affect parts of the CNR year-round but particularly from March to September. Enhancement of existing habitats could be a way of mitigating the effects of shading.
- 5.11.43. In response to the changes which the Applicant made during the Examination to the location for the Main Temporary Construction Compound including the use of the Data Centre site for this purpose (described at paragraph 2.3.2 above), TWUL set out its concern that the Data Centre site was an open mosaic habitat which supported a number of rare and scarce breeding birds and regionally important invertebrate fauna. The closer proximity and the increased construction period of the Proposed Development and the Data Centre would have an increased risk to terrestrial biodiversity [REP4-039].
- 5.11.44. In its WR [REP2-070] FoCNR objected to the REP proposal based on the close proximity to, and impacts on, terrestrial and, potentially, aquatic, biodiversity on the CNR and the Erith Marshes SMINC. Its principal concerns were:
- Construction/operational noise, particularly in the West Paddock area which was one of the most important habitats for breeding birds and wintering high tide roosts;
  - Lighting, with adverse effects on bats and barn owls;
  - Shading, the impact on ditches, vegetation and invertebrates.

- 5.11.45. Low scrub nesting birds were subject to avian predators. The new buildings would provide additional perches for avian predators. The construction works would have a direct impact on nesting boxes used by barn owls and kestrels.
- 5.11.46. FoCNR also objected to the changes to the application involving the use of the Data Centre site as part of the Main Construction Compound. This change meant that this would lengthen the period of time over which work on the Data Centre site would take place. This could extend over five years which meant that what remained of valuable wildlife (e.g. skylark) would almost certainly have deserted the site. It also objected to the possible use of the access road to the nature reserve during the construction period.
- 5.11.47. In a separate submission [REP8-036] FoCNR expressed concern about the use of the DEFRA metrics approach to biodiversity off-setting. There was widespread concern about the use of this approach in the wider conservation movement. The sites proposed for off-setting by LBB were already designated sites for biodiversity that just needed some decent management by the landowner. The key to off-setting should be to find a new site that could be managed to compensate for the loss of habitat or species. Wider consultation was needed with interested parties from the local community. FoCNR put forward six sites which it considered might be suitable for biodiversity off-setting.
- 5.11.48. FoCNR's concerns about biodiversity off-setting was supported by the Bexley Natural Environment Forum [REP8-037]. It welcomed LBB's commitment to off-setting taking place within the Borough but considered that quality baseline and monitoring data for relevant sites was needed. It shared FoCNR's concerns about the environment banking approach to avoiding biodiversity loss and supposedly delivering gains. New habitats should be created on near-biodiversity-free or very poor areas of land, not changing habitats at existing SINCS.

### **The Applicant's response**

- 5.11.49. In responding to WRs [REP3-022] the Applicant maintained its assessment that the effects of the Proposed Development on terrestrial biodiversity were negligible or minor and were not significant. It confirmed (as noted at paragraph 5.11.33) that it would not be utilising the flood embankment for the creation of open mosaic habitat. In response to specific points raised by LBB, the Applicant agreed to LBB's suggested changes to the Requirement in the draft DCO for a pre-commencement biodiversity mitigation strategy. It also agreed with LBB's revisions to the Article in the draft DCO on felling and lopping of trees.
- 5.11.50. At the ISH on environmental matters the Applicant provided further information on how its proposals for biodiversity off-setting would be taken forward. Details of this had been provided in a separate Biodiversity Accounting Report [REP2-060]. A Biodiversity Accounting Assessment had been carried out by the EB to calculate the value of any

habitat losses and gains associated with the Proposed Development and calculate the value of the required off-set and net gain requirements in terms of Biodiversity Units (BU). This used the 'Defra Metric' designed by NE to define the biodiversity impacts and compensation requirements associated with development proposals.

5.11.51. The Biodiversity Accounting Report stated that:

- *The biodiversity Metric is a simple, powerful and transparent tool. The system allows evaluation of both biodiversity loss through development and biodiversity gain through avoidance, mitigation and, where necessary, compensation (e.g. through a biodiversity off-set scheme). This system gives predictable, accountable and coherent outcomes for biodiversity and contributes to sustainable development as set out within the National Planning Policy Framework.*

5.11.52. The EB's assessment of the 'realistic best case' scenario was that there would be a residual loss of habitat value equivalent to 30.46 BU and a residual linear loss of 3.11 linear BU. At the ISH on environmental matters the Applicant had committed to provide an additional 10% biodiversity gain [REP3-027]. With the addition of this commitment it was estimated that off-set sites in the region of 5.47ha–8.25ha would be required.

5.11.53. The Applicant and the EB held further discussions with LBB and other organisations to refine the biodiversity off-set metrics and to identify sites in the vicinity of the REP which might be suitable locations to provide the required level of off-set. A final report on Environment Bank Site Selection for Biodiversity Off-setting was submitted towards the close of the Examination [REP7-019]. This provided revised estimates of a compensation requirement, following the addition of the Data Centre site to the baseline, of 50BU–54 BU (including a 10% net gain) for the main development. This would require a minimum biodiversity off-set scheme of 8.2ha–11.3ha.

5.11.54. Discussions had been held with LBB and other local authorities, TWUL and a number of landowners. Fourteen sites providing potential off-setting opportunities had been shortlisted. Nine of these were wholly or in part within LBB, three were in the neighbouring London Borough of Bromley and two were on the north side of the River Thames in the London Borough of Barking and Dagenham. The total area of these sites was 114.62ha and it was considered that the extent of suitable land was likely to significantly exceed the estimated off-set requirement. Further work was required to confirm the suitability of individual sites and confirm the habitat baseline and conservation options. A final off-set package formed of one or several sites would be identified and agreed with LBB.

5.11.55. The EB, working with landowners and land managers would prepare long term conservation management and monitoring plans and delivery costs would be agreed. Prior to commencement of development the final off-set package would be submitted for formal approval by LBB under the provisions of the Requirement in the draft DCO relating to Biodiversity

and Landscape Management. Delivery would be secured through the Applicant signing a Conservation Credit Purchase Agreement with the EB and make complete payment for the off-set scheme prior to the commencement of development. A certified copy of this agreement must be submitted as part of the BLMS. Concurrently the EB would enter into a Conservation Bank Agreement with the landowners of the final off-set package setting out the terms of the 25 year off-set delivery.

- 5.11.56. I put further questions to the Applicant on its biodiversity off-setting plans during the course of the Examination [PD-012 and PD-015]. In its responses [REP6-002 and REP7a-004] the Applicant provided further details on how its proposals for off-setting would be developed, as summarised above. The OBLMS was updated [REP7-007] to provide clarity on the site selection process "so as to maximise the opportunity for there being no loss of biodiversity in LBB". The OBLMS also included the extent of the off-setting requirement measured in biodiversity units. In the SoCG between the Applicant and LBB [REP8b-009]. LBB agreed that, with the changes agreed in the final draft DCO, the biodiversity off-setting could be adequately secured and that there appeared to be sites that could deliver that off-setting.
- 5.11.57. The Applicant considered [REP7a-004] that the ExA and the Secretary of State could have confidence that the off-setting was robustly secured through the Requirement in the draft DCO. This requires a strategy to be submitted for approval by LBB prior to commencement. This would set out the biodiversity units and linear units required to compensate for biodiversity loss, temporal loss and the minimum of 10% net gain. It would also include the mechanism for delivering the land that equates to the biodiversity and linear units required. This would involve:
- *confirmation of the final site or sites and confirmation of how the final site or sites has/have been chosen in accordance with the prioritisation set out in the OBLMS;*
  - *production of conservation management plans for the final site or sites; and delivery timetable.*
  - *production of the signed contracts with the landowners for 25 years of conservation management of the final site or sites; and*
  - *confirmation that the sum to deliver and manage and monitor the compensation and minimum 10% net gain on the final site of sites is to be paid within 10 days of the London Borough of Bexley approving the biodiversity and landscape mitigation strategy to enable the conservation management plan approved under the OBLMS to be implemented.*
- 5.11.58. It was the Applicant's view that:
- *With this mechanism in place, together with the evidence submitted by the Applicant, there is certainty in delivery of appropriate compensation and no significant effects on habitats, taking into account the compensation, as stated in the ES.*

## **Conclusions on terrestrial biodiversity**

### **Emissions**

- 5.11.59. I am satisfied that the assessment of impacts on terrestrial biodiversity set out in the ES and associated documents meets the requirements of relevant legislation and the NPSs EN-1 and EN-3.
- 5.11.60. The assessment of deposition of NO<sub>x</sub> from the operation of the ERF has shown that threshold levels would be exceeded at two SSSIs to the north of the River Thames and at the CNR adjacent to the Proposed Development. The Applicant has argued that although the increase in NO<sub>x</sub> at the SSSIs is above the threshold level further assessment of the potential impact at one SSSI had shown that the PEC threshold would not be exceeded and at the other SSSI further review suggested that the predicted minor increase in nitrogen deposition as a result of the operation of the REP was unlikely to give rise to adverse effects. NE agreed with that assessment in its SoCG and I accept that there are unlikely to be adverse effects from these emissions from the ERF.
- 5.11.61. The deposition of NO<sub>x</sub> at the CNR from the AD facility CHP engine is likely to have some effect on the grassland in the immediate vicinity but this would be reduced by the Applicant's commitment to use SCR technology for the CHP engine with emissions controlled through a Requirement in the draft DCO and I do not consider that deposition of NO<sub>x</sub> will have a significant effect across the CNR as a whole.
- 5.11.62. Subject to my consideration of the Requirements in the draft DCO in Chapter 8 of this Report, I am satisfied that there should not be adverse effects on terrestrial biodiversity from emissions from the REP.

### **Biodiversity**

- 5.11.63. There will be losses of biodiversity at the REP site and along the route of the electrical connection for which the Applicant has proposed compensation measures. The proposals for biodiversity off-setting developed significantly during the Examination and were extended both with the inclusion of the Data Centre site in the baseline and the Applicant's agreement to include a 10% net gain. Objections were raised to the principle of the biodiversity off-setting approach.
- 5.11.64. Biodiversity off-setting is an approach which has been developed as an element of public policy using metrics set out by DEFRA. The off-setting is intended to cover biodiversity losses both at the REP site and along the route of the electrical connection and it is unlikely that exact like for like off-setting will be possible. This includes the loss of open mosaic habitat on the REP site which formed part of the mitigation measures for the development of the RRRF and is habitat of local value but not subject to any statutory protection. The DEFRA metric provides a means of quantifying these losses which can then be used to identify an equivalent off-set site or sites.

- 5.11.65. A number of possible off-setting sites were identified but the Applicant was not able to finalise its choice of sites before the close of the Examination. The majority of the sites identified were in the LBB and all of the sites together would provide more than enough land area to meet the off-setting requirement. Because specific sites had not been chosen by the close of the Examination there remains some uncertainty as to whether the off-setting can be achieved in full. To safeguard against that the BLMS, which is secured through a Requirement in the draft DCO, must include details of the site or sites on which the off-setting requirement will be provided. No part of the Authorised Development may commence until the BLMS has been approved by the relevant planning authority. In effect development work on the Proposed Development cannot start until this uncertainty over off-setting sites has been addressed to the satisfaction of LBB. The Requirement for the BLMS also includes provisions for mitigation measures to protect habitats and species.
- 5.11.66. Implementation of the off-setting measures would be secured through the Conservation Credit Purchase Agreement between the Applicant and the EB. The EB would then enter into Conservation Bank Agreements with individual landowners. Certified copies of the completed legal agreements with the EB would be included as part of the BLMS prior to its approval by LBB. Details of those legal agreement were not submitted as part of the Examination and the onus would be on LBB to be satisfied that the final agreements, including identification of off-setting sites that met the requirement of the BLMS. LBB accepted this responsibility in its SoCG. Delivery of the off-setting measures would be the responsibility of the EB under its agreement with the Applicant. If the EB were not able to meet its responsibilities, then it is my understanding that the Applicant's obligations to implement these measures which form part of the BLMS Requirement would remain in place.
- 5.11.67. Subject to my consideration of the detailed provisions of the Requirement for the BLMS in Chapter 8 of this Report, I am satisfied that:
- the use of the DEFRA biodiversity off-setting metric is an appropriate means of off-setting biodiversity losses resulting from the Proposed Development;
  - a number of suitable sites for off-setting purposes are available;
  - development work cannot commence until specific sites have been identified;
  - a legal agreement must be in place between the Applicant and the EB securing the off-setting sites; and
  - these arrangements must be agreed by the relevant planning authority before commencement of the Authorised Development.
- 5.11.68. With these provisions in place I consider that the arrangements for off-setting the loss of biodiversity from the Proposed Development are acceptable.

## **5.12. HYDROLOGY, FLOOD RISK AND WATER RESOURCES**

### **Legislation and National policy**

- 5.12.1. The Flood Risk Regulations 2009 transpose the EC Floods Directive (2007/60/EC) into domestic law. The regulations require the EA and local authorities to prepare Preliminary Flood Risk Assessments that identify areas at significant potential risk of flooding.
- 5.12.2. The Flood and Water Management Act 2010 and Sustainable Drainage Systems: Written statement HCWS161 give the EA a strategic overview of flood risk and give local authorities responsibility for putting in place strategies for managing flood risks.
- 5.12.3. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 consolidated earlier regulations which transpose the EU Water Framework Directive into national law. This establishes a legal framework to:
- Promote sustainable water use;
  - Contribute to the mitigation of floods and droughts;
  - Prevent deterioration and enhance status of aquatic ecosystems, including groundwater; and
  - Reduce pollution.
- 5.12.4. The Water Resources Act 1991 sets out the responsibility of the EA in relation to water pollution, resource management, flood defence, fisheries and, in some areas, navigation.
- 5.12.5. NPS EN-1 sets out the requirements for a flood risk assessment (FRA) to be carried out and specifies the minimum requirements for the coverage of the FRA. Consultation should be carried out with the EA and the Applicant should take all reasonable steps to agree amendments to a proposal which would satisfy the EA's concerns.
- 5.12.6. EN-3 requires applicants to set out how proposals would be resilient to rising sea levels and increased risk of flooding.

### **London Planning Policies**

- 5.12.7. The LIR from the GLA [REP2-075] did not identify specific GLA policies related to flooding or flood protection but did state that a Requirement to address risk from flooding should be included in the draft DCO.
- 5.12.8. A number of GLA policies were cited by LBB as set out below.
- The LIR from LBB [REP2-082] listed policies from its UDP and Core Strategy relevant to consideration of flood risk and water resources. These included encouraging developments to reduce the effects of flooding and adapting to and mitigating the effects of climate change, including flood risk.
  - LBB cited a wide range of policies from the London Plan (2016) and the draft London Plan (2018). These included policies on Flood risk

management, sustainable drainage and water quality and waste water infrastructure.

## **The Applicant's assessment**

5.12.9. The Applicant submitted an FRA [APP-033]. This assessment considered both the REP site and the electrical connection point at Littlebrook substation. The principal findings from that assessment were:

- According to the EA's Flood Map for Planning and EA Product 4 data, both the REP site and Littlebrook substation lie within Flood Zone 3 - High Probability (land having a 1 in 200 or greater annual probability of tidal flooding). However, the flood map also indicates that the REP site and Littlebrook substation fall within an area that benefits from flood defences. In this instance, the standard of protection afforded by the defences is 1 in 1,000 years.
- The REP site lies within designated growth areas allocated in development plans through the sequential test such that, in accordance with Paragraph 162 of the revised NPPF (July 2018), it is not necessary to apply the Sequential Test again. The Exception Test has been applied and the assessment concluded that the proposals accord with the requirements of the NPPF.
- Although the REP site benefits from flood defences, such that the actual risk of tidal flooding is low, there is a residual risk of flooding associated with the failure/breaching of the tidal flood defences. Littlebrook Power Station substation is also potentially at risk of flooding following a defence breach.
- Finished floor levels of infrastructure within the REP site will be set above the 0.5% (1 in 200 year) Annual Exceedance Probability flood level, including an allowance for climate change, associated with a breach of the flood defences. In accordance with EA requirements, the finished floor level includes a freeboard above the breach flood level. In addition, in the north-western part of the site, where breach flood levels may exceed the finished floor level, flood sensitive equipment is to be located a minimum of 400 mm above the finished floor level.
- Works at Littlebrook substation will be limited to the installation and connection of 132 kV cables (below ground) to existing substation infrastructure. No new infrastructure is proposed to be installed other than the below ground cable and works within the existing substation building, and works will be undertaken in accordance with UKPN Engineering Design Standard EDS 07-0106 (Substation Flood Protection).

5.12.10. The FRA concluded that:

- *The development will be safe for its lifetime without increasing flood risk elsewhere, thus meeting the requirements of National Policy Statements EN-1, EN-3 and EN-5 and the revised National Planning Policy Framework (NPPF). On this basis, it is concluded that flood risk considerations have been adequately addressed as part of the application for a Development Consent Order (DCO) for REP.*

- 5.12.11. An assessment of the effects of the Proposed Development on hydrology, flood risk and water resources was included in the ES [APP-049]. This assessment noted that measures to prevent, reduce and off-set significant adverse effects on these issues had been 'built-in' to the proposals from the outset. The assessment of the significance of effects included consideration of embedded mitigation measures.
- 5.12.12. For the construction period mitigation measures would be secured through implementation of measures in the CoCP which is provided for by a Requirement in the draft DCO. For the operational period compliance with industry standard/best practice for mitigating flood risk would be inherently secured through the granting of the DCO based on the FRA.
- 5.12.13. Construction activities had the potential to increase surface water run-off into nearby watercourse and contamination of surface water and groundwater from spilled hydrocarbons/petrochemicals and mobilisation of silts and contaminants during soil stripping and earthworks operations. These would be controlled through measures in the CoCP and were considered likely to have a negligible effect. Construction works in close proximity to the River Thames had the potential to affect the stability of the embankment and, therefore, the structural integrity of the defences. The Applicant considered that the embedded mitigation provided through the CoCP and other measures which may be required by the relevant authority under the Protective Provisions for works in close proximity to flood defences would control the potential impacts of construction works. The potential effects of construction activities on flood defences were considered to be not significant.
- 5.12.14. The REP would result in an increase in the impermeable area within the catchment area of the Great Breach Dyke which, in the absence of mitigation, has the potential to increase the surface water run-off to the dyke and associated drains/tributaries with the potential to increase flood risk in the vicinity and downstream of the REP site. There is also the risk of surface water resulting from the flushing of silts and hydrocarbons from areas of hardstanding. The details of the surface water management strategy were set out in the FRA.
- 5.12.15. Construction of the electrical connection, both underground and above ground, has the potential to impact on surface water drainage and water quality. This would be controlled using measures in the CoCP. As a result, the impact is expected to be negligible.
- 5.12.16. It was considered unlikely that there would be any significant adverse cumulative effects during construction or operation of the REP.

### **Views of Interested Parties**

- 5.12.17. In its RR [RR-074], the EA referred to the Thames Estuary Plan 2100 which sets out how the EA is planning to manage tidal flood risk in the Thames estuary over the next 100 years. The Plan has 3 phases of activity:

- Until 2035 – maintain and improve current defences, safeguard areas required for future improvements, and monitor climate change indicators.
- 2035-2050 – raise existing walls, defences and smaller barriers whilst reshaping the riverside environment.
- 2050-2100 – determine and implement an option for the future of the Thames Barrier, and adapt other defences as required to work alongside this to protect the estuary.

5.12.18. The EA considered that the Applicant needed to demonstrate that the flood defence could be raised from its current level of 7.1m AOD to the level of 7.7m AOD which the EA required by 2070. The EA considered that remedial work was needed on the existing flood defence wall the condition of which was graded as 'fair' or 'poor' by the EA. Remedial work to bring the flood defences up to good condition and future maintenance plans should for part of the scheme. A 16m exclusion zone between the landward extent of the flood defences and the built development should remain clear for operational access

5.12.19. In its WR [REP2-069] the EA reported that following further discussions with the Applicant supported by drawings, the EA was satisfied that future raisings in line with the Thames Estuary 2100 Plan were possible once the REP had been constructed. It remained concerned that the mosaic habitat which the Applicant proposed to create on the flood defence embankment would increase the risk of erosion and thus reduce the durability of the structure. It proposed the inclusion of Requirements in the draft DCO which addressed a number of flood protection issues.

5.12.20. A signed SoCG between the Applicant and the EA was submitted [REP5-013] in which it was agreed that:

- It had been demonstrated that the Proposed Development did not preclude the raising of the flood defence wall to the second stage level (of 7.7m AOD expected in 2070) proposed in the Thames Estuary 2100 Plan and did not significantly restrict future defence raising options;
- The remedial works identified in the FRA Appendix E should be completed post consent but prior to operation. Provisions for survey and remedial work would be included as a Requirement in the draft DCO;
- The FRAPA was defined in plans attached to the SoCG. The necessity to apply for a FRAP would be disapplied in the DCO with all necessary controls being provided for in the Protective Provisions for the benefit of the EA to be included in Schedule 10 of the draft DCO. A Requirement would be included in the draft DCO to ensure that no buildings would be erected in a defined part of the FRAPA. No material would be stored in this area which could create a risk of damage to the integrity of the flood defence structure in this area.
- The EA's concern that finished floor levels in the main building should be no lower than 2.97m AOD would be included in a Requirement.

5.12.21. Protective Provisions for the benefit of the EA had been agreed for inclusion in Schedule 10 of the draft DCO.

- 5.12.22. In its WR [REP2-080], LBB identified three areas of contention:
- The CNR was designated as Metropolitan Open Land which required it to be protected by the strictest standards. The Applicant should have this in mind for the design and development of the REP in relation to water resources due to the sensitivity of the nature reserve.
  - All surface water drainage should be discharged into nearby watercourses only with the consent from the EA and should be of an agreed water quality standard.
  - The need to maintain the standards of the Thames flood defences should be secured in the DCO in agreement with relevant stakeholders including the EA.
- 5.12.23. In the signed SoCG between LBB and the Applicant [REP8b-009], the parties agreed that the descriptions and assessments of hydrology, flood risk and water resources were appropriate and that the mitigation and enhancement measures included in the final draft DCO were also appropriate.

### **Conclusions on hydrology, flood risk and water resources**

- 5.12.24. The Applicant has carried out an FRA and I am satisfied that this meets the requirements of EN-1. It has entered into discussions with the EA and I consider that it has taken all reasonable steps to agree amendments which satisfy the EA's concerns. This is evidenced in the agreement reached with the EA on changes and additions to the draft DCO and the SoCG between the parties. Agreement has also been reached on the concerns raised by LBB. The CoCP will contain methods to prevent water pollution and adverse impacts on surface water drainage and measures to deal with contamination.
- 5.12.25. I conclude that issues relating to hydrology, flood risk and water resources have been adequately addressed in the ES and subsequent discussions during the Examination and that there are no outstanding issues. Subject to the inclusion of the agreed provisions in the draft DCO, which I consider in detail in Chapter 8, there should be no adverse effects on hydrology, flood risk and water resources.

## **5.13. GROUND CONDITIONS**

### **Legislation and national policy**

- 5.13.1. The Environmental Protection Act 1990 introduced a risk-based approach to the identification and remediation of land where contamination poses an unacceptable risk to human health or the environment. Part 2A of this Act should be applied to the determination of planning applications.
- 5.13.2. NPS EN-1, EN-3 and EN-5 do not contain specific reference to assessment of ground conditions but EN-1 states that the decision takers;

- ... should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use. rather than the control of processes, emissions or discharges themselves. [The decision taker] should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by the relevant regulator. [The decision taker] should act to complement but not seek to duplicate them

## **London planning policies**

- 5.13.3. In its LIR [REP2-075], the GLA did not draw attention to any specific provisions in respect of ground conditions.
- 5.13.4. LBB in its LIR [REP2-082] cited UDP policies under which the Council would oppose development which would give rise to unacceptable levels of pollution or land contamination or put occupiers at risk from hazardous substances. The Council would require applicants to survey potentially contaminated land and determine remedial measures to prevent hazards. The Bexley Core Strategy supported the decontamination and redevelopment of brownfield sites to support new housing and employment growth.

## **The Applicant's assessment**

- 5.13.5. Ground condition assessments to establish the baseline for consideration of effects on ground conditions were carried out providing qualitative and quantitative assessments [APP-050]. A 'source-pathway-receptor' methodology had been adopted to evaluate whether the presence of a source of contamination could potentially lead to harmful consequences.
- 5.13.6. Previous uses of the REP site and immediately adjacent land which were relevant in considering ground conditions include a manure works, a fish guano works and a borax refinery. Investigations and reports carried out for the development of the RRRF that partly, or entirely, covered the REP site indicate that some remediation had previously taken place on some parts of the site.
- 5.13.7. Ground investigations confirmed that there was a high potential for contamination hazard from asbestos in the made ground on the REP site. Contamination hazard from hydrocarbons and metals/heavy metals at the REP site were assessed to be low. Natural sources of ground gas were identified and were considered to constitute a moderate hazard potential. At the main temporary construction compound and data centre site there was considered to be a high level of contamination hazard from both asbestos and ground gases. A range of potential receptors were identified including human health, ground and surface water and ecological systems. The REP site and the main temporary construction compound were not located within any part of a Groundwater Source Protection Zone.
- 5.13.8. For the electrical connection route, works which would take place within existing highways had been scoped out of the study at an earlier stage.

Four locations where works would take place outside of the highway were identified. It was considered that there was a low potential for significant contamination hazard except where landfill material was present when the risk would be high. There was a high potential risk associated with ground gases.

- 5.13.9. Embedded mitigation would be provided through measures included in the outline CoCP including requirements for working within best practice guidelines, preventing the release of contamination. A materials management plan would be included as part of the CoCP covering the handling of contaminated materials and a foundation works risk assessment would be provided for in the CoCP to reduce exposure to dust and ground gases. There would also be protocols for working in confined spaces.
- 5.13.10. The Applicant concluded that:
- *Following appropriate additional specific ground investigation, monitoring and assessment work, undertaken prior to commencement of construction, appropriate mitigation measures will be included in the construction of the Proposed Development where necessary. These combined with protocols and specific personal protection measures to be included in the CoCP, will result in the anticipated potential effects on all sensitive receptors to be Negligible/no effect.*

## **Views of Interested Parties**

- 5.13.11. LBB in its WR [REP2-080] identified two areas of concern in respect of ground conditions. Contamination associated with borax wastes may be present in the data centre/construction compound site. This had been investigated under the planning permission for the data centre but further investigation of asbestos in the soils, installation of ground gas protection measures and a remediation strategy were outstanding. Site investigations had indicated that groundwater and surface water were impacted by a range of contaminants. Both of these issues had been addressed in the planning permission for the data centre and by the provisions for investigation included in the Requirement on ground conditions and ground stability included in the draft DCO.
- 5.13.12. LBB proposed an amendment to the Requirement on ground conditions and ground stability to include a remediation verification plan. It also proposed additional issues that should be addressed in the CoCP and that these should be included in the draft DCO
- 5.13.13. In its response to WRs [REP3-022] commenting on LBB's proposed changes to the draft DCO, the Applicant confirmed that changes had been made to the Requirement on ground conditions and ground stability to include a remediation verification plan and that this had been agreed by LBB. The Applicant did not consider that most of the changes proposed by LBB to the Requirement for the CoCP were required. They were either covered by the existing wording or not necessary. The Applicant accepted the inclusion of a provision for a procedure to deal with unexploded ordnance.

- 5.13.14. In the signed SoCG between the Applicant and LBB [REP8b-009] it was agreed that the assessment of ground conditions that had been carried out and the mitigation and enhancement measures that had been included as Requirements in the final draft DCO were appropriate

### **Conclusions on ground conditions**

- 5.13.15. I am satisfied that the Applicant has carried out an investigation of potential effects of the Proposed Development resulting from ground conditions. Where adverse effects have been identified mitigation measures have been identified and these are secured through the Requirements on ground conditions and ground stability and the CoCP in the draft DCO. These also address concerns raised by LBB as the relevant planning authority. With these Requirements in place I am satisfied that there would not be adverse effects relating to ground conditions from the Proposed Development.

## **5.14. SOCIO-ECONOMICS**

### **National policy**

- 5.14.1. EN-1 states that the ES should cover the environmental, social and economic effects arising from pre-construction, construction, operation and decommissioning of the project and provides a listing of socio-economic impacts that the Applicant's assessment might include. The decision taker should have regard to the potential; socio-economic impacts of new energy infrastructure identified by the applicant and from any other relevant sources. Limited weight may be given to assertions of socio-economic impacts not supported by evidence. Consideration should be given to any relevant positive provisions to mitigate impacts and any legacy benefits.

### **London planning policies**

- 5.14.2. In its LIR [REP2-075] the GLA did not draw attention to any specific provisions in respect of socio-economic impacts of the Proposed Development.
- 5.14.3. LBB in its LIR [REP2-082] identified relevant policies in its UDP. It noted that the emphasis of local economic development policy was on retaining employment, sustaining the local economy and the provision of additional, good quality local job opportunities, which provide an attractive alternative to long distance commuting. LBB's Core Strategy supports the development of opportunities that generate economic opportunities as long as they meet sustainable development criteria and meet the ambitions of the Mayor of London's Municipal Waste Management Strategy. LBB's Growth Strategy 2017 outlines the council's ambition for economic development including using growth to secure economic development and creating a broader, more resilient and higher quality economic base.

## **The Applicant's assessment**

- 5.14.4. In its assessment of socio-economic impacts [APP-051] the Applicant considered effects on employment and labour supply, key business sectors and accommodation and community infrastructure. During the construction phase it considered that there would be a slight/moderate beneficial effect on short term employment, with 837 temporary jobs, and a slight beneficial effect for construction businesses. There would be a negligible adverse effect on demand for local schools and other community infrastructure and a slight/moderate beneficial effect on demand for local accommodation.
- 5.14.5. During the operational period there would 75 full time equivalent permanent jobs with further jobs associated with operations in the wider area. Overall there would be a slight beneficial long term employment effect in the local area and a slight/moderate beneficial short term employment effect in the wider area. As a new entrant in the waste management sector this would contribute additional value added and was considered to have a moderate beneficial sectoral effect. Given the relatively small number of operational jobs and the good public transport links allowing workers to travel from outside the immediate area, it was considered that there would be a negligible adverse effect on community infrastructure. There was expected to be a small temporary beneficial effect on employment from work on the construction of the electrical connection.

## **Views of Interested Parties**

- 5.14.6. In its comments at the first ISH on the draft DCO [REP3-038], the GLA commented that it had not been provided with sufficient detail for it to assess whether the proposed Employment and Skills Plan would be acceptable. It would expect to be consulted on this Plan when submitted. The GLA would expect there to be a commitment to paying the London Living wage. In a signed SoCG between the GLA and the Applicant the Requirement on Community Benefit, which included an Employment and Skills Plan, was agreed except that the Applicant did not accept the GLA's proposal for a commitment to the London Living Wage which it did not consider was a planning matter [AS-038].
- 5.14.7. In its LIR, LBB noted the positive employment impacts of the Proposed Development. There could be negative impacts on transport linking to congestion and associated economic impacts. In the signed SoCG between LBB and the Applicant [REP8b-009], it was agreed that the assessment in the ES of socio-economic effects was appropriate. LBB had requested that an Employment and Skills Plan should be included through a Requirement in the draft DCO in order to help to maximise the social economic benefits within the local area and this was agreed to by the Applicant. The Applicant had also agreed to the provision of a decommissioning fund to be secured through a s106 agreement with LBB. This was included in the unsigned s106 agreement submitted before the close of the Examination [REP8b-012].

- 5.14.8. In its RR [RR-079] KCC noted that as the additional jobs created during the construction period would be temporary, their impact on KCC services and facilities would be minimal. During the operational period the demand on KCC services and facilities such as schools and other services could be met within existing capacity.

### **Conclusions on socio-economics**

- 5.14.9. I am satisfied that the Applicant has carried out an assessment of the socio-economic impacts of the Proposed Development which has addressed the key issues identified in EN-1. This assessment shows that there would be negligible adverse effects of the development and some positive effects from the creation of new employment. The Applicant has agreed to the inclusion of a Requirement in the DCO, as suggested by LBB, for an Employment and Skills Plan to be prepared which will help to ensure that benefits are maximised in the local area.
- 5.14.10. I conclude that there should be no significant adverse socio-economic effects from the and that it would deliver positive employment benefits.

## **5.15. THE PLANNING BALANCE**

- 5.15.1. In Chapters 3 and 4, I considered the principal issues to be taken into account in assessing the application for the Proposed Development. I reviewed the need for the development, the consideration of alternatives and the development of the design. I concluded that the Proposed Development as outlined in the application would contribute to meeting the need for electricity generation identified in EN-1 and EN-3 and that adequate consideration has been given to design and to alternatives to the development as required by EN-1. There is a case in principle in favour of granting a DCO for the Proposed Development.
- 5.15.2. In this Chapter I have considered the details of the Proposed Development and its possible impact on a wide range of considerations. I have taken into account the mitigation measures proposed in the original application and the additional measures that have been agreed during the course of the Examination.
- 5.15.3. I have concluded that, after taking into account the agreed mitigation measures, there should be no significant adverse effects which would weigh against granting the DCO from the following aspects of the Proposed Development:
- The provision of additional waste incineration capacity;
  - Carbon emissions;
  - Proposals for CHP;
  - Consideration of alternatives;
  - Air quality;
  - Noise and vibration;
  - Historic environment;
  - Terrestrial biodiversity;
  - Hydrology, flood risk and water resources;
  - Ground conditions;

- Socio-economics.

5.15.4. I have concluded that there would be some adverse effects to:

- Transport as a result of delay and disruption during the construction of the electrical connection; and
- Townscape and visual impact which, despite mitigation measures, cannot be avoided with a large scale NSIP in this location.

5.15.5. The assessment principles in EN-1 "start with a presumption in favour of granting consent for energy NSIPs ... unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused." Drawing on this guidance on the assessment of individual aspects of the development, I consider that a high weighting should be given to the established need for the development of electricity generation facilities.

5.15.6. The Proposed Development delivers a positive contribution to meeting the national need for additional electricity generation capacity identified in EN-1. It will have an adverse effect on traffic and transport during the construction of the electrical connection and have a visual impact through the life of the REP. These adverse effects cannot be fully addressed by the proposed mitigation measures. But I do not consider that these localised adverse effects outweigh the benefits of new generation identified in EN-1. I therefore conclude that the case for development consent has been made and that, development consent should be given with the inclusion of the mitigation measures in the draft DCO which are considered in Chapter 8 of this Report.

## **6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

### **6.1. INTRODUCTION**

- 6.1.1. The Secretary of State (SoS) for Business, Energy and Industrial Strategy is the competent authority for the purposes of the Habitats Directive and the Habitats Regulations for energy applications submitted under PA2008.<sup>22</sup>
- 6.1.2. Regulation 63 of the Habitats Regulations 2017 states that if a Proposed Development is likely to have a significant effect on a European site (either alone or in-combination with other plans and projects) and is not directly connected with or necessary to the management of the European site; then the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives. Consent for the Proposed Development can only be granted if, having assessed the effects the project would have on European sites, the competent authority's appropriate assessment concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).
- 6.1.3. This chapter of the report sets out the analysis, findings and conclusions relevant to assessment under the Habitats Regulations and will assist the SoS as the competent authority.

### **6.2. PROJECT LOCATION**

- 6.2.1. The Proposed Development is split in two parts: the main REP site is located within LBB, located to the north of Belvedere off Norman Road and adjacent to the River Thames while the Electrical Connection runs predominantly underground between the REP site and the Electrical Connection Point at Littlebrook substation, connecting into an existing National Grid substation building in Dartford.
- 6.2.2. For the purpose of the Habitat Regulation Assessment, an area of 15 Km radius is considered, centred at the ERF stack at the main REP site, in accordance with the Environment Agency guidance to assess air quality impacts to protected conservation areas<sup>23</sup>. One European site is located within 12 Km to the North West of the Site:
- Epping Forest Special Area of Conservation (SAC).

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<sup>22</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the 'Habitats Directive').

The Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations').

<sup>23</sup> [www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit#screening-for-protected-conservation-areas](http://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit#screening-for-protected-conservation-areas)

6.2.3. There are no European sites within 2 Km of the Electrical Connection, which is considered an appropriate Zone of Influence to be considered in connection with this element of the Proposed Development.

### **6.3. HRA IMPLICATIONS OF THE PROJECT**

6.3.1. In accordance with Regulation 5(2)(g) of the APFP Regulations, the Applicant provided a Habitats Regulations screening assessment as part of the DCO application in its Habitats Regulations No Significant Effects Report (NSER) [APP-101]. The SoS considered that the information provided in the NSER was sufficient to accept the application for Examination on August 2018 [PD-001]. The assessment was updated during the Examination [REP2-042].

6.3.2. The Proposed Development is not connected with or necessary to the management for nature conservation of any of the European designated sites considered within the Applicant's NSER assessment.

6.3.3. The only site identified by the Applicant in the NSER is Epping Forest SAC, which is notified for the presence of *Atlantic acidophilous* beech forests. Also present as a qualifying feature of the SAC (but not a primary reason for selection) are wet and dry heathlands and stag beetle.

6.3.4. The Conservation Objectives of Epping Forest SAC are reported in Appendix A of the NSER [REP2-042]. These are:

- *To ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;*
- *The extent and distribution of qualifying natural habitats and habitats of qualifying species;*
- *The structure and function (including typical species) of qualifying natural habitats;*
- *The structure and function of the habitats of qualifying species;*
- *The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;*
- *The populations of qualifying species, and,*
- *The distribution of qualifying species within the site*

6.3.5. No additional European sites or features were identified by any IPs during examination.

6.3.6. The NSER set out the results of the screening assessment as required under the Habitats Regulations in order to identify likely effects on any European sites. This was presented in tabular form. Matrices in the form set out in Planning Inspectorate Advice Note 10 were also submitted as part of the NSER.

6.3.7. The NSER approach has been agreed with Natural England and the agreement is documented within a Statement of Common Ground (SoCG) [REP2-051]. The SoCG also confirms an agreed position that the

NSER includes appropriate evidence to determine the effects of the Proposed Development on European sites alone and in combination with other plans and projects.

- 6.3.8. The NSER identifies and addresses the potential impact pathways from the Proposed Development to the European site. The impact pathways identified include:
- Dust emitted during construction;
  - Emissions from the ERF stack leading to deposition of pollutants with the potential of adversely affect the habitats designated at Epping Forest SAC.
- 6.3.9. These impacts were assessed alone and in-combination with the other known plans and projects. Emissions of dusts during construction and decommissioning have been assessed as likely to extend only approximately 50 m from REP, extended to 500 m from the site entrance along routes used by construction vehicles. As there would be no effect to Epping Forest SAC at over 12km from REP, there is no potential for cumulative effects with other developments.
- 6.3.10. Epping Forest SAC exceeds the critical level for NO<sub>x</sub> and the critical load for Nitrogen deposition. NO<sub>x</sub> are among the pollutants emitted by the ERF stack during operations
- 6.3.11. Therefore, these are the only pollutants with potential for in-combination effects. The Applicant model shows that the ERF contribution for NO<sub>x</sub> and Nitrogen Deposition from the Proposed Development to Epping Forest SAC are indistinguishable from background variations meaning there would be no appreciable effects to the SAC from the Proposed Development. Therefore, there are no in-combination effects with other plans or projects in proximity to Epping Forest SAC which may also emit NO<sub>x</sub> and contribute to Nitrogen Deposition.
- 6.3.12. No concerns were raised by IPs during the Examination about the approach and scope of the Applicant's in-combination assessment.

## **6.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS**

- 6.4.1. The Applicant's NSER concluded that the Proposed Development would have no likely significant effect, either alone or in-combination with other plans or projects, on the qualifying features of the European site listed at Appendix A of the NSER.
- 6.4.2. The Applicant modelled the average Process Contributions (PC) and Predicted Environmental Concentration (PECs) of relevant pollutants from the ERF Stack location to Epping Forest SAC for NO<sub>x</sub> (annual and daily), SO<sub>2</sub>, ammonia and hydrogen fluoride (HF) concentrations from the REP and presented the results in the ES Air Quality chapter [REP2-019].
- 6.4.3. The maximum annual mean concentrations of NO<sub>x</sub> is 151% of the PEC but the modelled PC for annual mean NO<sub>x</sub> was only 0.08% indicating that the contribution from REP was not significant to Epping Forest SAC NO<sub>x</sub>

background concentrations. The Applicant's assessment also shows that the other emissions PECs were below the critical level and there was no significant effect from the Proposed Development.

- 6.4.4. For predicted levels of nitrogen deposition, the PEC was above the critical load level due to existing background rates of nitrogen deposition but the PC at 0.05% was negligible indicating no likely significant effect from the Proposed Development. The contribution of the REP to predicted total acid deposition was also negligible with a PC of 0.29% indicating no likely significant effect from the REP. The low levels of contributions to emissions were considered by the Applicant to be nugatory and indistinguishable from background variations. There was, therefore, no mechanism for in-combination effects with other plants in proximity to Epping Forest SAC which may also emit NO<sub>x</sub> and contribute to nitrogen deposition.
- 6.4.5. The Applicant's model has been prepared assuming the ERF minimum stack height will be 90m AOD as secured by Requirement 3 – Parameters of the Authorised Development – in the draft DCO [REP8b-005].
- 6.4.6. The assessment in the NSER has been undertaken without reference to any mitigation measures being in place and the conclusions reached have been agreed by NE [REP2-051]. No evidence has been submitted to the Examination which would contradict those findings.

## **6.5. HRA CONCLUSIONS**

- 6.5.1. I have been mindful throughout the Examination of the need to ensure that the Secretary of State has such information as may reasonably be required to carry out their duties as the competent authority. I have reviewed the evidence presented during the Examination concerning likely effects on European sites potentially affected by the Proposed Development both alone and in-combination with other plans or projects, with specific reference to the ES and the NSER. I have taken into account information received during the examination including the SoCG with NE [REP2-051]. I am content that the SoS has sufficient information available to discharge their obligations under the Habitat Regulations.
- 6.5.2. I am content that the evidence demonstrates that the Proposed Development would not result in any likely significant effects on Epping Forest SAC, even when the precautionary principle is applied and, on the basis that there is no reasonable remaining scientific doubt. I therefore consider that the Proposed Development would not generate any likely significant effects to European sites and that there is no requirement under the HRA for an Appropriate Assessment to be carried out and that there are no HRA matters which would prevent the Secretary of State from making the DCO. I have reached that conclusion with due regard to the judgement made by the Court of Justice of the European Union (CJEU) in the case of People Over Wind and Sweetman v Coillte Teoranta (C-323/17).

## **7. COMPULSORY ACQUISITION AND RELATED MATTERS**

### **7.1. THE REQUEST FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS**

- 7.1.1. The application includes provision for Compulsory Acquisition (CA) of freehold interests and private rights. It also contains provisions for Temporary Possession (TP) of land. CA of freehold is required for the Riverside Energy Park (REP) site with CA of rights and TP for the adjoining locations on Norman Road. A number of alternative routes for the electrical connection were identified in the application with CA of rights required for carrying out this work. These are shown in the Land Plans [APP-007]. A Statement of Reasons (SoR) [APP-016], Funding Statement [APP-017] and Book of Reference (BoR) [APP-018] were provided with the application.
- 7.1.2. As has been described at paragraphs 2.3.1 to 2.3.4, the application was amended at Deadline 2. The Environmental Statement Supplementary Report [REP2-044] removed plots 02/35 and 02/55 which had been identified in the original Land Plans for use during the construction of the REP as subject to TP. Plots 02/43, 02/44, 02/48 and 02/49 had been included in the original application for CA of rights for works associated with the development of the site as a data centre. The Applicant now proposed to use these plots as part of the Main Temporary Construction Compound. This would involve TP of these plots in addition to the original CA of rights. The Electrical Connection Progress Report [REP2-058] set out changes to the route proposed for the electrical connection. A single route had been identified and the redline boundary had been narrowed at certain points along the preferred route. These changes are shown in the revised Land Plans [REP2-003] and associated Works Plans [REP2-004] and Access and Rights of Way Plans [REP2-005]. Revised SoR [REP2-009] and BoR [REP2-011] were submitted.
- 7.1.3. As set out in section 2.3 of this Report, I accepted these changes into the application and my consideration of the request for CA and TP addresses the proposals within this revised and reduced redline boundary.
- 7.1.4. A further minor change to the Land Plans [REP4-003] was submitted later in the Examination with an updated BoR [REP4-005]. Three plots included in the revised Land Plans were subdivided. At the second Compulsory Acquisition Hearing (CAH), the Applicant explained that the new plots were created to refer to subsoil rights within the adopted highway and to allow for a scenario whereby the Proposed Development needed to be located below the extent of the highway. They do not include any additional land not previously included in the Order limits and were wholly within the Order limits as defined at the point of the Application. I accept these as non-material changes.

## **7.2. THE PURPOSES FOR WHICH LAND IS REQUIRED**

- 7.2.1. The nature and scope of the Proposed Development has been described in Chapter 2 of this Report. The Order limits for the project are shown by the red line boundary on the key plan of the revised Land Plans. The Order land, (which includes all of the land within the Order limits apart from small sections adjoining the River Thames) covers the land required for the construction and operation of the REP and for the electrical connection.
- 7.2.2. CA powers are sought in respect of the freehold of land shown in pink on the Land Plans (the REP site) and in respect of acquisition of rights over land shown in blue on the Land Plans [REP4-003]. In both cases it is proposed to extinguish easements, servitudes and other private rights. CA powers are provided through articles 22 to 30 in the final draft Development Consent Order (draft DCO) [REP8b-004]. Appendix B to the revised SoR [REP2-009] sets out for each plot the purpose for which it is required, the relevant Work No and DCO article.
- 7.2.3. The width of the Order limits for the electrical connection works have been determined by the width of the highway in which it would be installed. In some places they are wider where the Applicant requires a degree of flexibility. This includes situations where it may not be possible to accommodate the electrical connection within the highway, to accommodate crossings, temporary construction compounds and access points. The revised SoR stated that alternative routes had been considered. There were no reasonable alternatives to installing the electrical connection along the final proposed route and the powers sought and the extent of land affected was proportionate and no more than reasonably necessary.
- 7.2.4. The Applicant is also seeking power to impose restrictive covenants on the land subject to CA. The restrictions are required to protect the apparatus from becoming exposed, damaged or built over; to prevent works which may interfere with or damage the relevant works or interfere with or obstruct access from and to the work. The power is necessary to enable the Applicant to impose restrictive covenants to secure protection of the electrical connection from potentially damaging land use taking place above.
- 7.2.5. Temporary use of land is also sought for the land shown in yellow on the Land Plans. This does not constitute CA and is authorised through articles 31 and 32 in the draft DCO. The plots of land subject to TP are set out in schedule 9 in the final draft DCO and are principally for laydown, construction compound and construction use. Article 31 of the final draft DCO also enables the Applicant to take TP of other land within the Order limits to which powers of CA or powers to acquire rights apply provided the Applicant has not already made a declaration to vest the land in itself or to enter the land following a notice of entry in advance of acquisition. The SoR indicated, by way of example, that this would allow the Applicant to take TP of the whole width of a section of the electrical connection corridor for the purpose of constructing the works and

subsequently acquire permanent rights over a more limited width of the land within which the connection had been installed. Article 32 of the final draft DCO provides for temporary use of land for maintenance purposes.

- 7.2.6. Article 26 provides for extinguishment of private rights over land in specified circumstances where CA or TP is exercisable.
- 7.2.7. Article 33 provides for the compulsory acquisition of land, extinguishment or suspension of existing rights or restrictions and creation of new rights and restrictions over land belonging to statutory undertakers within the Order land, subject to the Protective Provisions in Schedule 10.
- 7.2.8. Riverside Resource Recovery Limited (RRRL), Network Rail, National Grid (as electricity undertaker), UK Power Networks, (UKPN), London Power Networks, (LPN), South East Power Networks, (SEPN), Thames Water Utilities Limited (TWUL) and Southern Gas Networks are statutory undertakers with rights to keep or access apparatus within the Order limits. Following representations were agreed with each of these organisations and are included in Schedule 10 of the draft DCO. Letters of withdrawal of objections were received from National Grid [AS-043], Network Rail [AS-045], Southern Gas Networks [AS-044]. TWUL confirmed that it had no outstanding objections under s127 and s138 of PA2008 [REP8b-026]. UKPN did not formally object to the proposals for CA affecting its interests.
- 7.2.9. Although objections from LPN and SEPN were not formally withdrawn, I consider that the Secretary of State can be satisfied that the Protective Provisions agreed with these organisations [REP8a-016] will ensure that the land identified can be acquired without serious detriment as provided for in s127(3) of PA2008
- 7.2.10. There are no Crown interests in the Order land. In the original application one plot of land (plot 12/02) was identified as open space for the purposes of s19 of the Acquisition of Land Act 1981. This plot was excluded from the revised Land Plans and deleted from the BoR. The revised SoR states that there is no open space within the Order land.
- 7.2.11. The Applicant is relying on articles 8, 9, 10, 11, 12, 14 and 27 of the draft DCO in order to enter onto streets and to lay and maintain apparatus in them, to construct means of access and to create temporary prohibitions and restrictions on the use of streets to carry out works.

### **7.3. LEGISLATIVE REQUIREMENTS**

- 7.3.1. Sections 122 and 123 of PA2008 allow for the inclusion in the DCO of a provision authorising CA if the Secretary of State is satisfied that certain conditions are met. Section 122 (2) states that the land must be:
- required for the development to which the development consent relates;
  - required to facilitate or be incidental to it; or
  - be exchange land.

- 7.3.2. Guidance related to procedures for the compulsory acquisition of land under PA2008 states that the land to be taken must be no more than is reasonably required and that what is proposed is proportionate.<sup>24</sup>
- 7.3.3. Section 122(3) requires that there must be a compelling case in the public interest for compulsory acquisition. The Guidance states that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is acquired.
- 7.3.4. Section 123 requires that one of three conditions is met by the proposal. I am satisfied that the condition in s.123(2) is met because the application for the draft DCO included a request for compulsory acquisition of the land to be authorised.
- 7.3.5. A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:
- all reasonable alternatives to compulsory acquisition must be explored;
  - the Applicant must have a clear idea of how it intends to use the land and to demonstrate that funds are available; and
  - the decision maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

## **7.4. THE CASE FOR COMPULSORY ACQUISITION AND OTHER POWERS**

### **Compulsory Acquisition**

- 7.4.1. The Applicant's justification for the use of CA and other powers is set out in the revised SoR [REP2-008]. It considers that:

*The acquisition of lands and rights and temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension and extinguishment of private rights, is no more than is reasonably required to facilitate or is incidental to the Proposed Development.*

- 7.4.2. The revised SoR sets out the alternative locations that have been considered for the electrical connection and Appendix A to the SoR sets out the case that the REP site, with established river infrastructure, established waste management use and limited neighbouring receptors is unique both in London and the South East.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236454/Planning\\_Act\\_2008\\_-\\_Guidance\\_related\\_to\\_procedures\\_for\\_the\\_compulsory\\_acquisition\\_of\\_land.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf)

- 7.4.3. Appendix B to the revised SoR sets out in detail how each of the plots of land over which CA or TP is sought would be used as part of the Proposed Development.
- 7.4.4. The Funding Statement [APP-017] set out how funding for the Proposed Development would be provided at various stages. The costs for the initial phase, including compensation payable in respect of CA were estimated at £20m. The Applicant was able finance these costs from its own resources. In addition to the Funding Statement the Applicant included an article in the draft DCO requiring the Applicant to put in place a guarantee or alternative form of security in respect of the liabilities to pay compensation for CA. At my suggestion this was amended to include provision for the amount of any guarantee or security to be approved by the Secretary of State.
- 7.4.5. In the revised SoR the Applicant considered whether there would be any infringement of human rights as set out in the European Convention on Human Rights. In respect of Article 1 of the First Protocol to the Convention, there was the potential to infringe the rights of persons with an interest in land. The Applicant concluded that on balance the significant public benefit from granting the DCO outweighed the effects on persons owning property within the Order land and that compensation was payable. In respect of Article 6 entitling those affected to a fair hearing, the Applicant considered that it had consulted affected parties and there was also the opportunity for representations to be made during the Examination. The Applicant considered that any infringement of Convention rights was proportionate and legitimate and in accordance with national and European law.

### **Representations on compulsory acquisition**

- 7.4.6. I received representations on CA in respect of a number of plots of land and these are summarised here by reference to the plot numbers shown on the relevant Land Plans.

#### **Riverside Resource Recovery Limited**

- 7.4.7. Riverside Resource Recovery Limited (RRRL) set out its interests in land that would be subject to CA in its RR [RR-068]. It listed the plots of land that were in RRRL ownership at and in the vicinity of the REP site. RRRL had no objection to the CA powers being sought in the draft DCO in respect of plots 02/01, 02/02, 02/03, 02/07, 02/08, 02/09, 02/10, 02/11, 02/12, 02/13, 02/14, 02/15, 02/16, 02/17, 02/18, 02/19, 02/20, 02/21, 02/23, 02/24, 02/25, 02/26, 02/27, 02/28, 02/29, 02/30, 02/31, 02/32, 02/34, 02/35, 02/36s, 02/37s, 02/43, 02/44, 02/47, 02/48, 02/49, 02/51, 02/56, and 03/10.

#### **Cory Environmental Limited**

- 7.4.8. Cory Environmental Limited (CEL) is an indirect subsidiary of the Applicant and owns several plots of land that would be subject to CA. It had no objection to the powers of CA sought in the application in respect of plots 02/04, 02/20, 02/22 which were in its ownership. Towards the close of the Examination the Applicant reported that CEL and RRRF were

shortly to enter an understanding with the Applicant and REP concerning their willingness to sell their freehold interests. Terms for an agreement had been drawn up [REP8-015].

### **London Borough of Bexley**

- 7.4.9. London Borough of Bexley (LBB) is the freehold owner of a series of plots of land as shown in the final revised BoR [REP8-004]. It is also the highway authority in Bexley. Nearly all of the plots shown are public highway. In its WR LBB raised concerns about the proposed CA of plots 06/05, 12/02, 12/05, 12/08 and 12/16. Plot 06/05 was removed from the BoR at the first revision [REP2-011] and plot 12/16 was reduced in size and divided into 12/16 and 12/16a. Parcels 12/05 and 12/08 were also reduced in size. With the exception of the plots identified by LBB all the remaining LBB plots comprise public highway at surface level for which LBB is the highway authority. Agreement between the Applicant and LBB on the treatment of these plots of land was set out in a signed Position Statement in respect of land acquisition [REP8b-017].
- 7.4.10. In the Position Statement it was agreed that LBB believed that plots 12/05 and 12/08 were adopted and dedicated public highway and LBB was in the process of updating its highway plans. LBB intended to adopt most of plot 06/02 into the public highway and was considering whether to dedicate and adopt plots 12/16 and 12/16a into the public highway.
- 7.4.11. At a number of points along the route of the electrical connection it was possible that the depth of the work at LBB owned plots might extend below 1.2m from the surface level of the highway. In these locations LBB agreed that it would treat with the Applicant on the basis that the extent of the works was wholly within the public highway.
- 7.4.12. On the basis that plots 12/05 and 12/08 are formally confirmed by LBB as dedicated and adopted as public highway and that plots 12/16 and 12/16a are dedicated and adopted as public highway, the Applicant agreed to rely on the street works provisions in the draft DCO to install the electrical connection. On the basis that part of plot 06/02 is dedicated and adopted as public highway, the Applicant agreed to rely on the street works provisions in the draft DCO to install the electrical connection in respect of that part only. In respect of plot 06/02, LBB confirmed that its preference was for the electrical connection works to be in the soft landscaped parts of the plot.
- 7.4.13. In the event, (considered unlikely), that these plots remained unadopted LBB and the Applicant agreed that it would be their intention to enter into an option agreement. If they were unable to agree an option agreement, then it was agreed that the Applicant would exercise its powers under the DCO if made.

### **Kent County Council**

- 7.4.14. Kent County Council (KCC) is the freehold owner of a series of plots listed in the BoR along the route of the electrical connection and is the highway authority for Bob Dunn Way in Dartford. These are plots 12/19, 13/01,

13/02, 13/03, 13/04, 13/05, 13/06, 13/07, 13/08, 13/09, 13/11, 13/12, 13/13, 13/14, 13/15, 13/18, 14/01, 14/02, 14/04, 14/04a, 14/04b, 14/08, 15/01, 15/02, 14/05, 16/01 and 16/02. Apart from plots 13/07, 15/15, 14/04 and 14/04b these plots comprise public highway at surface level for which KCC is the highway authority. Agreement between the Applicant and KCC on the treatment of works in these plots of land is set out in a signed Statement of Common Ground (SoCG) in respect of land acquisition between the Applicant and KCC [REP8b-010].

- 7.4.15. For the public highway elements of the route the Applicant proposed to use the street works provisions in the DCO to install the electrical connection. It was possible that in these sections the depth of the work might extend below 1.2m from the surface of the highway. The Applicant expected KCC to treat on the basis that the extent of the works was wholly within the public highway.
- 7.4.16. Plots 13/07, 15/15, 14/04 and 14/04b all predominantly contain sections of dedicated and public highway and are dedicated and adopted as public highways. The Applicant agreed to rely on street works provisions in the DCO to install the electrical connection in these plots. For the small parts of these plots which are not adopted the Applicant and KCC each agreed that it was their intention to enter into an option agreement. In the event, (considered unlikely), that these plots remained unadopted and the Applicant and KCC were unable to finalise an option agreement, it was agreed that the Applicant would exercise its powers under the DCO, if made.

#### **Landsul Limited and Munster Joinery (UK) Limited**

- 7.4.17. Objections were received before the start of the Examination on behalf of Landsul Limited which was the freehold owner of plots 02/53 and 03/07 and held rights over a number of adjacent or nearby plots [RR-063]. Objections were also received before the start of the Examination on behalf of Munster Joinery (UK) Limited as the occupier of plots 02/53 and 03/07 with rights over a number of nearby plots. As a result of the changes to the application at deadline 2 plots 02/53 and 03/07 were removed from the redline boundary. A letter of withdrawal was submitted on behalf of both of these companies indicating that they withdrew their objections and did not wish to participate further in the Examination [REP8b-029].

#### **Western Riverside Waste Authority**

- 7.4.18. Western Riverside Waste Authority (WRWA) submitted an objection to the CA of plots 02/02, 02/09, 02,12, 02/16, 02/17, 02/30/ 02/56 in which it held a leasehold interest [REP2-093 to REP2-103]. The draft DCO would also grants new rights over plots 02/01, 02/03, 02/13, 02/14, 02/15, 02/18, 02/19, 02/25, 02/29, 02/31 and 02/32 and authorise temporary use of plot 02/10 in all of which WRWA had a leasehold interest. WRWA objected to this CA. At the first CAH [REP3-051] and in a Note on Impact [REP2-097], WRWA outlined how this leasehold interest formed a crucial part of the balance of commercial interests in the funding arrangements for the RRRF and how this would

be affected by CA. Following discussions with the Applicant a commercial agreement was reached. WRWA confirmed that it no longer wished to participate in the Examination and withdrew all of its representations, submissions and objections [AS-024].

### **Wernick**

- 7.4.19. Submissions were received on behalf of S Wernick and Sons (Holdings) (WERNI) Limited [RR-041] and Wernick Event Hire Limited (WEHL) [RR-042] (jointly Wernick). Wernick objected to the proposed CA of plot 02/05 which was owned by WERNI and used by WEHL for commercial purposes. Following discussions agreement was reached for the Applicant to acquire Wernick's property interests that were affected by the application. Wernick withdrew its objections and no longer wished to participate in the Examination [OD-006].

### **SAS Depot Limited**

- 7.4.20. A submission was received on behalf of SAS Depot Limited (SAS) objecting to the proposed CA of plot 02/06 [RR-028]. SAS owned the freehold of this land which it held as a commercial asset from which it received rent. Following discussions, agreement was reached for the Applicant to acquire the property interests owned by SAS which were affected by the application. SAS withdrew its objections, representations and submissions made before and during the Examination and no longer wished to participate or be an IP in the Examination [AS-025].

### **Creekside Developments**

- 7.4.21. A submission was received on behalf of Creekside Development (Kent) Limited (Creekside) objecting to the proposed CA of plot 02/52, a site which Creekside was buying and which had planning permission for Class B1 development [RR-061]. Creekside completed the purchase of this plot in June 2019 and subsequently reached agreement for the Applicant to acquire a lease over Creekside's property interests in plot 02/52. Creekside withdrew its objection and no longer wished to participate in the Examination [AS-026].

### **National Grid**

- 7.4.22. National Grid is identified in the BoR as having apparatus or rights on plots 02/52, 03/05, 03/06, 03/10, 03/12, 12/17, 12/17a, 12/17b, 12/18, 12/19, 14/04, 14/04a, 14/04b, 16/02. National Grid holds a freehold interest in plots 16/03 and 16/04 at the Littlebrook electricity substation. In its RR, National Grid indicated that it would require Protective Provisions to be included in the DCO to ensure that its interests were adequately protected. Protective Provisions were agreed and National Grid withdrew its objection [AS-043].

### **National Rail**

- 7.4.23. National Rail is identified in the BoR [APP-018] as freehold owner of plots 06/03, 06/04, 07/03, 07/06, 07/07, 07/08, 11/02, 12/06, 12/06b, 12/10, 12/11, 12/12, 12/13, and 12/17a along the line of the electrical

connection. In its RR, National Rail objected to any proposed CA of its land or any rights in, over or under its land or extinguishment of its rights in third party land. Following discussions National Rail reached agreement with the Applicant on and related agreements and withdrew its objection to the application [AS-045].

#### **London Power Networks plc**

- 7.4.24. In its RR [RR-004] London Power Networks (LPN) submitted an objection to the Proposed Development in respect of the effect on its existing assets. In the BoR it is identified as having interests in plots 02/03, 02/04, 02/07, 02/08, 02/09, 02/10, 02/11, 02/12, 02/13, 02/14, 12/15, 12/16, 12/17, 12/18, 02/19, 02/20, 02/21, 02/22, 02/23, 02/24, 12/25 02/26 03/03, 03/04, and 03/06 at or near the RRRF. LPN also had interests in plots 14/09, 15/01, 15/03, 16/03 along the line of the electrical connection. Protective Provisions were agreed with LPN for inclusion in the DCO [REP8-015]. Although LPN did not withdraw its objection I consider that the Secretary of State can be satisfied that the Protective Provisions agreed with LPN will ensure that the land identified can be acquired without serious detriment as provided for in s127 of PA2008

#### **South Eastern Power Networks plc**

- 7.4.25. In its RR [RR-005] South Eastern Power Networks (SEPN) submitted an objection to the Proposed Development in respect of the effect on its existing assets. In the BoR it is identified as having interests in plots 14/09, 15/01, 15/03, 16/03, and 16/04 at the Littlebrook electricity substation. Protective Provisions were agreed with SEPN for inclusion in the DCO [REP8-015]. Although SEPN did not withdraw its objection I consider that the Secretary of State can be satisfied that the Protective Provisions agreed with SEPN will ensure that the land identified can be acquired without serious detriment as provided for in s127 of PA2008.

#### **Southern Gas Networks**

- 7.4.26. Southern Gas Networks plc (SGN) has apparatus on a number of plots along the route of the electrical connection where there would be CA of rights. SGN objected to the interference with and the extinguishment or suspension of land rights relating to its apparatus [AS-032]. Protective Provisions were agreed for inclusion in the DCO and SGN withdrew its objections [AS-044].

#### **UK Power Networks**

- 7.4.27. UK Power Networks (Operations) Limited (UKPN) has apparatus on a number of plots on the REP site, the Main Temporary Construction Compound and along the route of the electrical connection where there would be CA of land and of rights. UKPN had not objected to CA. Protective Provisions were agreed [REP8-015].

### **Thames Water Utilities Limited**

- 7.4.28. TWUL submitted objections to CA in its RR [RR-086]. It objected to the inclusion in the application of the option to route the electrical connection through the CNR with CA of rights over plots 02/39, 02/40, 02/41, 02/42 and 03/01. These plots were removed from the revised Land Plans submitted after the start of the Examination [REP2-003]. TWUL welcomed that revision [REP3-049].
- 7.4.29. TWUL also identified plots 13/02, 13/04, 13/05, 13/08, 13/09, 13/12, 13/13 as TWUL operational land. It would need to be satisfied that any works to be carried out would not prejudice its undertaking and that measures were included in the draft DCO to address its concern. It would also need to review the Protective Provisions in respect of street works in streets where it had existing apparatus. Protective Provisions for inclusion in the draft DCO were agreed [REP8-015]. TWUL confirmed that it had no outstanding objections under s127 and s138 of PA2008 [REP8b-026].

### **BT Group plc**

- 7.4.30. BT Group plc (BT) had apparatus installed in a large number of plots in all parts of the Proposed Development. BT did not make any representations. General Protective Provisions for operators of electronic communications code networks were included in the draft DCO.

### **Environment Agency**

- 7.4.31. The EA held interests in land, principally grassland and watercourse, to the south of the RRRF, west of Norman Road and on the Main Temporary Construction Compound. The Applicant had agreed Protective Provisions with the EA [REP5-013] which were included in the draft DCO. An option agreement was being negotiated as an alternative to using DCO powers but this had not been agreed by the close of the Examination.

### **Ingrebourne Valley Limited**

- 7.4.32. In its RR [RR-053] Ingrebourne Valley Limited (IVL) objected to the CA of land which it owned at Joyce Green Quarry. As part of the development of the quarry a mitigation strategy was in place for this site. This consisted of the construction of receptor sites for water voles and reptiles. The Order Land intersected approximately 80% of the permitted reptile receptor area and the southern part of the water vole receptor site. The Proposed Development might compromise the habitat restoration in this area. The area concerned was shown as plots 13/06, 13/07/ 14/02 and 14/04a on the Land Plans.
- 7.4.33. The Applicant held discussions with IVL and revised the area of land required for installation of the electrical connection at this location. This was reduced from 34,245sq m to 21,806sq m. and is shown in the revised Land Plans [REP2-003]. The revised Order limits retain several smaller areas of land within the area of concern but the Applicant proposed to use trenchless installation methods and horizontal directional drilling in respect of the ecological receptor areas, in particular the fenced

water vole receptor area near the River Darent. These commitments would be secured through inclusion in the revised OBLMS [REP3-015]. A revised draft option agreement was put to IVL [REP3-035]. The Applicant reported that IVL had confirmed on 18 September 2019 that it was happy with the option agreement [REP8-015].

#### **Tilfen Land Limited**

- 7.4.34. The Applicant is seeking CA of rights over one plot of land – 03/04 - owned by Tilfen Land Limited (Tilfen) near the junction between Norman Road and Yarnton Way. Tilfen did not submit any representations to the Examination. The Applicant reported that Tilfen’s preference was to use the compulsory powers rather than enter into an option agreement with the Applicant [REP8-015]. This had not been resolved at the close of the Examination.

#### **Peabody Land Limited**

- 7.4.35. The Applicant is seeking CA of rights over one plot of land – 03/03 adjacent to plot 03/04. Peabody Land did not submit any representations to the Examination. The Applicant reported that Peabody Land’s preference was to use the compulsory powers rather than enter into an option agreement with the Applicant [REP8-015]. This had not been resolved at the close of the Examination.

#### **Hanson Quarry Products Limited**

- 7.4.36. The Applicant is seeking CA of rights over land which is owned by Hanson Quarry Products Limited (Hanson) (plot 12/09) or over which it has rights (plot 12/08) or restrictive covenants (plots 13/06, 13/07, 13/14, 13/15 and 14/01). Hanson did not submit any representations to the Examination. The Applicant reported that Hanson’s preference was to enter into an option agreement, but this had not been concluded at the close of the Examination [REP8-015].

#### **Albert Dravins and Eamonn Scanlon**

- 7.4.37. The Applicant is seeking CA of rights over plot 16/02 which is land adjoining Littlebrook substation. The freeholders did not submit any representations to the Examination. The Applicant had provided the freeholders with a draft option agreement which they had confirmed they would be happy to agree but this had not been concluded at the close of the Examination [REP8-015].

#### **Florence French and Gerald Copeland**

- 7.4.38. The Applicant is seeking CA of rights over plot 12/18 which is open land. The freeholders did not submit any representations to the Examination. The Applicant had provided the freeholders with a draft option agreement which was being considered but this had not been concluded at the close of the Examination [REP8-015].

### **Mazhar Mohammad**

- 7.4.39. The Applicant originally sought CA of rights over plots 13/13, 13/14, 13/16 and 14/05 which is open land adjacent to the River Darent and Bob Dunn Way. Mr Mohammed, as freeholder, submitted a RR [RR-001] stating that there was no real reason to compulsorily acquire this land. Following discussions plots 13/16 and 14/05 were withdrawn from the application [REP2-003]. Towards the end of the Examination Mr Mohammed reported he was in discussion with the Applicant and had agreed heads of terms for an option agreement and withdrew his original objections [AS-027].

### **Frank Smith, Frances Powell, Rose Lee and Queeney Powell**

- 7.4.40. The Applicant is seeking CA of rights over plot 12/14 which is a traveller site with trees and hard-standing. The freeholders did not submit any representations to the Examination. The Applicant reported that the representative for the APs were happy with its proposed option agreement but this had not been concluded at the close of the Examination [REP8-015].

### **Brian Francis Thomsett**

- 7.4.41. The Applicant is seeking CA of rights over plot 14/03 which is farmland. The freeholder did not submit any representations to the Examination. The Applicant had provided the freeholder with a draft option agreement which was being reviewed but this had not been concluded at the close of the Examination [REP8-015].
- 7.4.42. I have considered whether there are any issues arising in respect of the Public Sector Equalities duty in respect of the proposed CA of rights over plots of land owned by individuals but there is no evidence to suggest that this will have a disproportionate impact any of those affected. I have also considered Human Rights Act implications for these and the other CA sites and conclude on that below.

## **Temporary Possession**

- 7.4.43. With the submission of the revised Land Plans at deadline 2 [REP2-003], TP was sought in respect of seven plots of land. Plots 02/43, 02/44, 02/48, 02/49, 02/52 and 03/05 are land required at the Main Temporary Construction Compound for temporary laydown, construction compound, construction use and accesses for Work No 8 (construction of temporary construction compounds). Plot 13/12 is required for temporary use as laydown, construction compound and construction use for Work No 9c (construction and installation of the electrical connection).

## **7.5. CONCLUSIONS**

- 7.5.1. I have reviewed the application for CA, the objections and other comments submitted and the amendments to the CA requirements which have been made during the Examination.

- 7.5.2. I am satisfied that the Order land, as identified in the revised Land Plans [REP4-003] meets the requirement in s122(2)(a) of PA2008 that it is required for the development to which the development consent relates.
- 7.5.3. At paragraph 5.15.6 above I concluded that the Proposed Development would deliver a positive contribution to meeting the national need for additional electricity generation capacity identified in National Policy Statement (NPS) EN-1 and that the localised adverse effects I had identified did not outweigh these benefits. I consider that this constitutes a compelling case in the public interest for the land to be acquired compulsorily thus meeting the condition in s122(3) of PA2008. The requirements of s122 for the inclusion of provisions authorising CA of land are met. As noted at paragraph 7.3.4 above a request for compulsory acquisition has been made and the condition in s123(2) has been met.
- 7.5.4. Agreement has been, or is likely to be, reached with many of the parties affected by the proposed CA provisions but I am satisfied that the Proposed Development can only be achieved with certainty and expeditiously with the exercise of the proposed CA and temporary possession powers over all of the plots of land identified in the final draft DCO [REP8b-004].
- 7.5.5. The Applicant would rely on street works powers in the DCO for most of the installation of the electrical connection in land held by LBB and KCC as highway authorities. I am satisfied that work in the land identified by LBB and KCC as not covered by these powers can be carried out by agreement with the parties or, if not agreed, with the use of CA powers
- 7.5.6. A Funding Statement has been provided and there is provision in the draft DCO for a guarantee or alternative form of security to be provided by the undertaker, the guarantee or security and amount to be approved by the Secretary of State before the exercise of CA or TP powers. I am satisfied that this provides adequate assurance that compensation for CA and TP can be provided.
- 7.5.7. Rights of statutory undertakers would be affected by the proposals for CA. I am satisfied that adequate attention has been given to the protection of these rights in the Protective Provisions in Schedule 10 of the draft DCO as provided for in s127 of PA2008. I also consider that the Secretary of State can be satisfied under the provisions of s138 of PA2008 that the extinguishment of rights or removal of relevant apparatus is necessary for the purpose of carrying out the Proposed Development.
- 7.5.8. I have considered whether there would be any infringement of the articles of the Human Rights Convention for each case in terms of right to property and rights to family life. I have concluded that, given my conclusion on the need for the Proposed Development, any infringement of Convention rights is proportionate and legitimate and in accordance with national and European law.

- 7.5.9. I am satisfied therefore that all of the Order land which is the subject of the request for CA of freehold or rights as listed in the revised BoR and shown on the Land Plans meets the requirements of s122 of PA2008 as either being required for the development or required to facilitate that development and that there is a compelling case in the public interest for CA as requested by the Applicant.
- 7.5.10. I also conclude that the case has been made for the inclusion of temporary possession powers in the DCO which can be exercised over the land identified in the revised BoR, the revised Land Plans and in Schedule 9 of the draft DCO and that any infringement of Human Rights in respect of this is necessary and proportionate in accordance with the Convention.

## **8. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **8.1. INTRODUCTION**

- 8.1.1. A draft Development Consent Order (draft DCO) (the application DCO) [APP-014] and Explanatory Memorandum (EM) [APP-015] were submitted with the application. A first revision (rev1) of the draft DCO was submitted at deadline 2 in clean and track change versions [REP2-006, REP2-007]. This incorporated changes to the application described in paragraphs 2.3.1 to 2.3.4 and made in response to comments in relevant representations (RR).
- 8.1.2. A second revision (rev2) of the draft DCO was submitted at deadline 3, following questions and discussions at the first Issue Specific Hearing (ISH) on the draft DCO [REP3-003, REP3-004] with a revised EM [REP3-005, REP3-006]. A schedule of changes was submitted at deadline 3 which set out the changes both to rev 1 and rev2 of the draft DCO [REP3-007].
- 8.1.3. A third revision of the draft DCO (rev3) was submitted at deadline 5 [REP5-003, REP5-004] following negotiations with Interested Parties (IPs) and consideration of submissions to the Examination with a revised EM [REP5-005, REP5-006]. A schedule of changes was also submitted [REP5-007].
- 8.1.4. A fourth revision (rev4) [REP8a-004, REP8a-005] was submitted following further questions and discussions at the second ISH on the draft DCO with a revised EM [REP8a-006, REP8a-007]. This reflected further negotiations, discussions with IPs and the latest position on Protective Provisions for statutory undertakers. A schedule of the changes between rev 3 and rev 4 was provided [REP8a-008, REP8a-009].
- 8.1.5. A final version of the draft DCO was submitted at deadline 8b [REP8b-004, REP8b-005] together with a revised EM [REP8b-006, REP8b-007] and a further schedule of changes [REP8b-008]. The principal change in this version was the inclusion of the final version of Protective Provisions for statutory undertakers. This version of the DCO is referred to in the remainder of this report as the final draft DCO.

### **8.2. CHANGES TO THE DRAFT DEVELOPMENT CONSENT ORDER**

- 8.2.1. The articles and schedules set out in the application DCO either followed the Model Provisions<sup>25</sup> (which have been withdrawn) or, where different, this was shown in the EM. As noted above there were changes made to the draft DCO during the Examination. The purpose and acceptability of these changes and of the final draft DCO as a whole are considered here. Where articles are in standard form for which there is precedent in other

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<sup>25</sup> Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

DCOs and were not challenged during the Examination I have accepted this drafting and not commented further. A number of changes to articles were made in order to clarify the drafting. I have not commented on these unless issues of principal or precedent are involved. Where changes went through a number of iterations my references are to the final draft unless indicated otherwise.

## Articles

### Article 2

8.2.2. Article 2 provides definitions which I accept as necessary for the interpretation of subsequent parts of the draft DCO. A number of substantive changes were made to article 2 during the course of the Examination either for clarification or to introduce new definitions used in later parts of the draft DCO.

- Definitions of 'biodiversity units', 'biodiversity off-setting', 'DEFRA biodiversity off-setting metric' and 'off-setting value' were added in rev 2 and refined in rev 3 when a definition of 'Environment Bank' was also added. These terms are all relevant to the Requirement for biodiversity off-setting.
- The definitions of 'commence' and 'pre-commencement works' were changed in rev2 in order to provide a clear distinction between these two activities which are covered in Requirements.
- A definition of 'FRAPA drawing' was added in rev2 in line with the use of this term in a new Requirement.
- The definition of 'maintain' was strengthened in rev2 by changing the words 'are unlikely to' to 'do not'. It was also changed to make clear that it only applied to effects that were worse than those identified in the Environmental Statement (ES). The Applicant argued [REP3-028] that it would be perverse to prevent maintenance works which would give rise to an improvement in environmental effects from those identified in the ES.
- A definition of 'operational period' was introduced in rev2 to ensure that both the commissioning and operational period could be identified in Requirements.
- A definition of Metropolitan Open Land (MOL) was added in rev 3, being land on which no buildings would be erected as specified in a Requirement.
- Definitions were added in rev 3 for 'pre-commencement land', 'pre-commencement plan' and 'pre-commencement works'. These relate to activities covered in a Requirement.
- Definitions were added in rev3 for 'REP and RRRF Application Boundaries Plan', 'RRRF', 'RRF condition', 'RRRF planning permission' and 'section 36 consent'. These are all required for use in article 6 and schedule 13.

8.2.3. The changes principally relate to terms which are used in Requirements later in the draft DCO. I accept that these changes are necessary to define the scope of specific Requirements. The revised definition of 'maintain' strengthens the original wording. I agree with the Applicant's assessment [REP2-055] that it would be perverse for the wording here to

rule out improvements in environmental effects and I accept the Applicant's amended wording in that respect.

## **Article 6**

- 8.2.4. This article provides for the disapplication of legislative provisions. Paragraphs (1) and (2) provide for the disapplication of consents required from the Environment Agency (EA) in respect of flood risk and flood defences for works which may be necessary for constructing the Proposed Development. This disapplies the requirement for a separate consent to be obtained from the EA and is replaced by Protective Provisions agreed with the EA included in schedule 10 of the draft DCO.
- 8.2.5. Article 6 was amended during the course of the Examination to take into account interaction between the provisions in the draft DCO and the existing consent and planning permission for the Riverside Resource Recovery Facility (RRRF) under s36 of the Electricity Act 1989 and between the temporary use of plots 02/44 and 02/49 and the existing planning permission for a data centre on these plots.
- 8.2.6. Article 6(3) authorises the RRRF s36 consent and planning permission to be modified to remove the reference to a storage area for ash containers, with bottom ash to be stored in bunkers and the RRRF planning permission to be amended to allow both RRRF and Riverside Energy Park (REP) to use the jetty. The Applicant argued that the ash storage area had never been used operationally by RRRF and that there was adequate storage capacity in the bunkers [REP8-021].
- 8.2.7. The London Borough of Bexley (LBB) maintained that the ash storage area should be retained in order to facilitate ash being transported by river and to minimise road traffic in the event of a jetty outage [REP2-080, REP7-023].but at the second ISH on the draft DCO, LBB agreed that it could accept that the ash storage area should not be retained provided that the Applicant provided evidence of the provision of at least five days storage with the Energy Recovery Facility (ERF) operating at full capacity [REP8-034]. The Applicant confirmed that there would be an ash storage bunker in Work 1A with a capacity of 1,900m<sup>3</sup> which represented a minimum of five days storage [REP8a-018]. I am satisfied that LBB's concerns have been addressed and that adequate capacity for ash storage in the case of a jetty outage would be available in the bunkers without the need for a dedicated storage area. I accept the proposed modifications to the s36 consent and planning permission for RRRF as set out in article 6(3) which would put this into effect.
- 8.2.8. Article 6(4) addresses possible inconsistencies between the draft DCO and conditions in the RRRF s36 consent and planning permission in respect of the area of land on which the REP buildings would be located. This was narrowed down during the course of the Examination to focus on three conditions in the planning permission.
- 8.2.9. Condition 22 of the RRRF permission requires an ecological and management plan to be implemented during the operation of the RRRF. REP would be located on part of the area designated for this purpose

which could give rise to a conflict with the ecological and management plan. The condition in paragraph 4 provides for this not to be deemed to be a breach of condition 22 and no enforcement action could be taken. The area of land covered by this provision is shown in brown on the REP and RRRF Application Boundaries Plan [REP5-027]. The use of the land shown in brown forms part of the ecological management plan for the area. The loss of this land for this purpose has been taken into account in the biodiversity off-setting proposals included in the BLMS included as a Requirement.

- 8.2.10. If condition 22 is breached this could also result in a breach of condition 1 of the permission which requires RRRF to be operated in accordance with details in its application of 29 September 1999 as varied. Article 4(6) provides for this to be deemed not to be a breach in respect of this inconsistency. Condition 32 of the RRRF permission requires details of a scheme of restoration and aftercare for the RRRF site to be submitted at or towards the end of the operational life of the RRRF. Given the overlap between the RRRF and REP sites this condition is also included in article 6(4) so that there is deemed to be no breach of the condition and no enforcement action can be taken.
- 8.2.11. I accept that the provisions of article 6(4) are necessary to prevent inconsistencies between the draft DCO and the RRRF planning permission.
- 8.2.12. Article 6(5) was introduced following the revisions to the Application at deadline 2 which included temporary use of land for which planning permission has been granted for a Data Centre as part of the Main Construction Compound. This provision means that a new planning permission for the Data Centre is not required once the temporary use for the Proposed Development has come to an end. The article applies the right to revert as granted by s57 of the Town and Country Planning Act 1990. I agree with the inclusion of this provision which facilitates the changes to the application which I have accepted.
- 8.2.13. Article 6(6) disapplies the temporary possession provisions of the Neighbourhood Planning Act 2017 (NPA). In ExQ1 [PD-007] I asked the Applicant to justify why, despite precedents in other DCOs, the current Temporary Possession (TP) regime should not be modified to more closely reflect the statutory regime in the NPA which provides greater protection of parties affected by TP. The Applicant responded [REP2-055] that since the provisions relating to TP in the NPA had not yet come into force it was not possible to understand or reflect them accurately in respect of DCOs. It considered it more appropriate to apply the 'tried and tested' TP regime which had been applied in the recently (2018) approved DCOs for Silvertown Tunnel, Eggborough Gas Fired Generating Station and A19/A184 Testo's Junction Alteration. It would be inappropriate to pre-empt, pre-determine or fetter Government's intended regulation, especially in the absence of draft proposals or consultation. No arguments were presented in other representations for moving away from the recent precedents and I agree that the Applicant's proposed approach is appropriate for this application

- 8.2.14. In the EM the Applicant argued that s120(5) of PA2008 is wide enough to:
- *exclude statutory provisions under an Act and Regulations, as is being sought under Articles 6(1), (2) and (6);*
  - *apply a statutory provision under an Act, as is being sought under Article 6(5) (applying the right to revert under section 57(2) of the Town and Country Planning Act 1990); and*
  - *modify conditions contained on a consent granted under the Electricity Act 1989 and a planning permission granted under the Town and Country Planning Act 1990, as is being sought under Articles 6(3) and 6(4).*
- 8.2.15. In respect of the changes to the RRRF consents and permissions proposed in article 6(3) and 6(4) the Applicant argues that these are changes to 'statutory provisions' which can be promoted under s120(5)(a). But the changes could also be promoted (if the Secretary of State considered it more appropriate) under s120(5)(b) or 120(5)(c). If the latter approach was adopted it would be necessary for the Secretary of State to be satisfied that the changes were necessary or expedient. The Applicant argued that the changes to articles 6(3) and 6(4) were necessary to ensure that the RRRF was not placed in breach of its planning permission due to consistencies with the Authorised Development. In the Applicant's view this would provide clarity (to the extent that there is inconsistency) in terms of enforcement and which consent has effect.
- 8.2.16. The Greater London Authority (GLA) objected to the use of s120(5)(c) to amend a planning permission [REP8-029]. It argued that removing or editing conditions should require proper assessment of the implication of that modification or removal in circumstances where the condition was deemed necessary to mitigate environmental harm and to make another development acceptable. The Applicant responded [REP8a-017] that 'statutory provision' was defined in s120(6) of PA2088 as 'a provision of an Act or of an instrument made under an Act' and therefore s120(5) was wide enough to cover modification to both a s36 consent and a planning permission under the Town and Country Planning Act 1990.
- 8.2.17. I agree with the Applicant's assessment that the powers in s120(5) are wide enough to cover the disapplication provisions in Article 6. In my view all of the changes can be carried out under the provisions of s120(5)(a) but if the Secretary of State considered it appropriate to use their powers under s120(5)(b) or 120(5)(c) I am satisfied that the changes proposed meet the test of being necessary or expedient.

## **Article 7**

- 8.2.18. This article was added in response to comments from the Port of London Authority (PLA). This article makes it clear that none of the powers in the draft DCO overrides the obligation to obtain any permit or licence under the Port of London Act 1968 for work carried out within the Thames. This wording was agreed with the PLA as set out in the SoCG between the PLA and the Applicant [REP3-016]. Although the original Order limits were

revised to remove any major works in the River Thames, I accept that this article is required to provide assurance that the PLA's powers will continue to apply where necessary.

### **Article 10**

- 8.2.19. As noted at paragraph 7.4.4 above, this article provides for a guarantee or other form of security to be provided in respect of payment of compensation and for this to be approved by the Secretary of State. I am satisfied that this article provides adequate assurance that funding for compensation for Compulsory Acquisition (CA) will be available.

### **Article 21**

- 8.2.20. In the application DCO this article provided the power to lop or fell any tree or shrub "near any part of the Authorised Development". In its Written Representation (WR) [REP2-080], LBB sought further conditions for work on trees not on land owned or leased by the Applicant. The Applicant subsequently amended the article so that it only applied to trees or shrubs "within, or overhanging, land within the Order limits". LBB did not comment further and I am satisfied with this narrower scope for article 21.

### **Article 24**

- 8.2.21. This article was amended at the suggestion of LBB to make it clear that the powers were restricted to the acquisition of rights only. I accept this clarification.

### **Article 26**

- 8.2.22. Article 26(9) was added to this article which is concerned with private rights to align with wording in other recent DCOs such as the Port of Tilbury Expansion Order (2019). I accept this addition as clarification on the scope of the article.

### **Article 27**

- 8.2.23. This article concerning the power to override easements and other rights was revised during the Examination to align with precedents in the Thames Tideway Tunnel and Silvertown Tunnel Orders. The revised text clarifies the meaning of 'authorised activity' and sets out provisions for compensation to be paid. I accept the clarification provided in the revised article.

## **Schedule 1**

- 8.2.24. Schedule 1 sets out the Works which together make up the Authorised Development. In the EM it is stated that Work Nos 1 and 2 (the Energy Recovery Facility (ERF), Anaerobic Digestion (AD) facility, solar photovoltaic (PV) installation, the REP building and the associated cooling system) constitute the Nationally Significant Infrastructure Project (NSIP) with Works Nos 3 – 10 being associated development. The Applicant noted that there was no requirement for a DCO to distinguish between

these two categories and it had chosen not to differentiate between the NSIP and associated development in Schedule 1.

8.2.25. A number of changes were made to Schedule 1 during the course of the Examination:

- Wording was added to state that the NSIP was a generating station with a capacity of more than 50MW and less than 300MW (the latter limit being added to ensure that the Proposed Development did not trigger requirements to be constructed as carbon capture ready as required under EN-1). In response to ExQ1 [REP2-055], the Applicant argued against setting a specific MW limit on the REP which was made up of four different generation or storage elements. The output from these elements could change over time as technology becomes more efficient. The draft DCO should not prevent the Applicant from maintaining REP by replacing parts that resulted in increased output or efficiency. The Applicant also referred to the potential for improvement in battery technology which could result in increased output from that element of the REP [REP3-028]. This position is also reflected in the change which the Applicant proposed to the definition of 'maintain' considered at paragraph 8.2.2 above which I have accepted. I accept that there is no need to specify a MW limit for the Proposed Development within the range of 50MW to 300MW. Any improvements in output that may be achievable in future will still be subject to the requirements of the EP and will not exceed the worst case impacts evaluated in the ES.
- Work No 9 was amended at deadline 2 to include 'above ground cable trough structures which are either freestanding or attached to highway structures'. This accommodated the change to the application described in the Environment Statement Supplementary Report [REP2-044] to include the use of cable troughs to cross a watercourse at Norman Road and a strategic sewer at Joyce Green Lane. As noted at paragraph 2.3.6, I accepted this change to the application on which I carried out further consultation.
- Works No 1(a)(v) and 2(b) were amended to add the words 'incorporating at least 30 megawatts heat off-take for district heating'. This change was made following extensive discussion of the potential for combined heat and power (CHP) as discussed in section 5.4 above. The Applicant had, throughout the Examination, made clear its commitment to constructing the Proposed Development as 'CHP enabled'. In its CHP Supplementary Report [REP2-012], it stated that REP would be designed to export up to 30MW of heat to offsite customers. In its response to the GLA's proposed amendments [REP8a-017] the Applicant agreed that it would commit to at least 30MW of heat off-take. I accept this change as a further positive commitment to developing the CHP potential of the Proposed Development in line with the guidance in EN-1. Further Requirements relating to CHP are considered below in schedule 2.

8.2.26. In ExQ1 [PD-007] and at both the first and second ISH on the draft DCO I raised the question as to whether there should be a limit, specified in Schedule 1, on the volume of waste delivered to the ERF. This was

supported by LBB and GLA [REP2-080, REP8-029]. LBB also sought a specific limit on the volume of waste delivered to the AD facility.

- 8.2.27. In response to ExQ1 [REP2-055], the Applicant stated that it was not appropriate to have a limit on the maximum tonnes of waste throughput. Actual waste throughput would vary over time depending on the calorific value of the waste itself and the operational availability of the ERF. At the first ISH on the draft DCO the Applicant cited paragraph 2.5.13 of NPS EN-3 which states that throughput volumes are not, in themselves a factor in decision making. Throughput, it argued, would be considered during the determination of the EP application. The EA would review the capacity of the ERF and the AD facility and constrain them accordingly. The applicant argued that this was not a matter for the planning regime.
- 8.2.28. At the second ISH on the draft DCO I again raised the question of the inclusion of an overall limit on tonnage of waste delivered to the ERF. Although a limit on tonnage delivered by road had been accepted, there was no overall limit on total deliveries. This appeared to leave the potential for the total amount of waste delivered to be above the worst case considered in the ES. At this hearing the Applicant agreed to overall limits on the tonnage of waste delivered to the ERF and the AD facility. These are included as Requirements rather than in the description of the Authorised Development and are considered further below.

## **Schedule 2**

### **Requirement 2 – Detailed design approval**

- 8.2.29. Under this requirement the details of the layout, scale and external appearance of Works No 1 – 6 (the works for the REP) must be submitted to, and approved by, the relevant planning authority before commencement. Details must be in accordance with the design principles and the Authorised Development must be constructed in accordance with the approved details. This requirement was amended to include the provision that Work No 1A and Work No 3 may not commence until a plan has been submitted to and approved by the relevant planning authority demonstrating that there is room within these works for a heat export system capable of providing at least 30MW of heat off-take. I accept this change as a further reinforcement of the commitment to making the REP CHP enabled which I have accepted at paragraph 5.4.31 above.

### **Requirement 3 – Parameters of Authorised Development**

- 8.2.30. The table of design parameters in Requirement 3(1) was altered following my ExQ1 to include maximum and minimum heights for the emissions stack and gas flare which form part of the AD facility. In its response [REP2-055], the Applicant stated that these heights had been used in the assessment in the ES and would now be secured through the addition of the parameters in Requirement 3. Emissions from the stacks would be controlled through the EP. I accept that this clarification of the stack parameters is in line with the assessment in the ES.

- 8.2.31. In the application draft DCO the heights of elements in the Proposed Development were expressed in Above Ordnance Datum (AOD) terms. In the final draft DCO the AOD is used for maximum heights and minimum depths of specified elements but height above surrounding ground level is specified for minimum heights. This change was explained in a technical note [REP3-032]. For the main REP building, solid fuel storage bunker and AD facility the effects of height are primarily visual and the surrounding land is of limited consequence. The Townscape and Visual Impact (TVIA) assessment [APP-046] was carried out using AOD levels. AOD is also used for maximum height of the stacks and gas flare because these have been derived from the flight envelope associated with London City Airport. This provides certainty to the airport operator and the Civil Aviation Authority that the stacks will not interfere with the flight envelope. TVIA for these elements were carried out using AOD. The minimum heights set for the stacks and gas flares affect the modelling of the dispersion of emissions and, in order to ensure the minimum stack height constraint is not breached by variations in finished ground levels, the level above surrounding ground levels has been specified. This approach accords with the approach adopted in the EP application.
- 8.2.32. Existing ground levels at the REP site varied between 1.7m to 2.5m AOD. To provide flexibility the Applicant confirmed that finished ground levels at the site would vary between 1m and 3m AOD. This was included in Requirement 3(2).
- 8.2.33. I am satisfied that these technical changes to R3 are within the parameters used for assessment of effects in the ES and are acceptable.

**Requirement 4 – Pre-commencement biodiversity mitigation strategy**

- 8.2.34. This Requirement provides for a biodiversity mitigation strategy to be prepared and approved before pre-commencement work, such as land clearance and environmental surveys can take place. The Requirement allows these works to be undertaken before commencement of the development as defined in Article 2. LBB in its WR [REP2-080] sought greater clarity on the scope of the pre-commencement work covered by R4. The Applicant amended the Requirement so that the scope of pre-commencement works is specified in Article 2 and the works are limited to the area shown on the pre-commencement plan which is a certified document listed in schedule 11. This limits pre-commencement works to a defined part of the REP site which is currently hard-standing. LBB welcomed this revised definition [REP7-023]. I am satisfied that the scope and location of pre-commencement works for which a mitigation strategy must be prepared are now adequately defined.

**Requirement 5 – Biodiversity and landscape mitigation strategy**

- 8.2.35. This Requirement provides for a BLMS to be put in place before commencement of the Proposed Development. This must be substantially in accordance with the Outline BLMS which has been considered during the Examination. R5 sets out the mitigation measures that must be

included in the BLMS. This includes the provisions for biodiversity off-setting.

8.2.36. I considered the assessment of the impacts of the Proposed Development on biodiversity and landscape in section 5.11 of this report together with the proposals for biodiversity off-setting. I concluded that there should not be adverse effects on terrestrial biodiversity from emissions from the REP and that losses to biodiversity at the REP site and along the route of the electrical connection can be compensated for through the proposed biodiversity off-setting. R5(1)(c), 5(1)(d) and R5(1)(e) include wording to address concerns raised by LBB [REP7-023] that the Requirement should clearly set out how the compensation value had been calculated, how sites had been chosen and that there should be no time lag between approval of the biodiversity off-setting plan and its implementation. This wording was agreed by LBB [REP8b-009]. R5(1)(e) refers to 'the biodiversity off-setting management and monitoring plan'. This is not a term defined in the draft DCO. My understanding of the intention of this section is that it provides for the implementation of the biodiversity off-setting scheme as defined in article 2. In order to ensure clarity on this point I recommend that R5(1)(e) be amended to include reference to the biodiversity off-setting scheme. As revised R5(1)(e) would read:

- *(e) certified copies of the completed legal agreements with the Environment Bank securing the site or sites identified in (d) and which demonstrate that the off-setting value will be paid to the Environment Bank within 10 days of approval of the biodiversity and landscape mitigation strategy to enable enactment of the biodiversity off-setting scheme and the biodiversity off-setting management and monitoring plan as approved in the biodiversity and landscape mitigation strategy;*

8.2.37. I am satisfied that the wording of R5, amended as I have proposed, puts into effect the mitigation measures for the effects of the Proposed Development on biodiversity that I have considered and accepted in paragraphs 5.11.67–5.11.68.

### **Requirement 7 – Archaeology**

8.2.38. This Requirement provides for a written scheme of archaeological investigation in order to identify and, if appropriate, protect or preserve archaeological features which might be affected by Works No 1 – 9. It was amended following discussions with Kent County Council to include reference to identifying drilling and boring locations where phased programmes of geoarchaeological and archaeological works are required [REP3-022]. I accept this addition. I accept that R7 as amended will provide necessary protection for archaeological features.

### **Requirement 8 – Highway access**

8.2.39. This Requirement requires details of changes to highway access to be submitted to the relevant planning authority (in consultation with the relevant highway authority) for approval. It was amended at the request of LBB in its WR [REP2-080] to provide for a plan to be submitted

showing the turning head at the end of Norman Road which is to be stopped up. This is to ensure that vehicles can turn safely when they reach this closed end of the highway. Details of the location are provided in schedule 6. I accept R8 as amended as necessary addition road safety reasons.

### **Requirement 10 – Ground conditions and ground stability**

- 8.2.40. This Requirement provides for an investigation and assessment report to identify ground conditions and stability to be prepared and submitted to the relevant planning authority covering all of the works areas apart from the electrical connection and sub-station connection. This should identify the extent of any contamination and remedial measures to be taken. At the suggestion of LBB [REP2-080] an additional provision was added for a remediation verification plan to be approved before work on those parts of the Proposed Development could commence. I accept that this Requirement will provide assurance that, where any contamination has been identified, the land has been made fit for purpose with long term management of any remaining contaminants.

### **Requirement 11 – Code of construction practice (CoCP)**

- 8.2.41. The CoCP specified in this Requirement must be substantially in accordance with the Outline CoCP which was submitted with the application [APP-106]. This was amended during the Examination at the suggestion of GLA and LBB. GLA expressed concern about the impact of construction traffic during the pre-commencement period. The Applicant agreed to extend the scope of the Requirement to include that phase of work. The GLA also requested the inclusion of references to a minimum 95% target for recycling of construction, demolition and excavation waste management [REP3-038] and a statement demonstrating how the development will deliver circular economy outcomes and aim to be net-zero waste [REP7a-005]. The GLA considered these changes were necessary to comply with provisions in the London Plan (2016) and the draft London Plan (2018). These changes were accepted by the Applicant [REP8a-017]. R11 was also amended, at the suggestion of LBB, to include procedures to deal with unexploded ordnance. I accept R11 as amended as including necessary mitigation measures for the environmental impacts during the construction of the Proposed Development.

### **Requirement 13 – Construction traffic management plan (CTMP)**

- 8.2.42. As with R11, this Requirement which provides for the approval of a CTMP was extended to cover the pre-commencement period. A number of changes were made at the request of GLA and LBB. These covered the inclusion of a procedure for reviewing and updating the CTMP, the addition of junction appraisals and a condition survey for Norman Road. It was also amended at the suggestion of GLA and LBB to include specific references to items such as the vehicle booking management system which were included in the outline CTMP. I accept these changes as responses to concerns raised. I accept R13 as amended as including

necessary mitigation measures for the impacts on traffic and transport during of the construction of the Proposed Development

#### **Requirement 14 – Heavy commercial vehicle movements delivering waste**

- 8.2.43. Following concerns raised by LBB in its Relevant Representation (RR) [AS-002], the Applicant proposed a new Requirement covering Heavy Commercial Vehicle (HCV) movements. The Applicant initially proposed a limit of 90 two-way HCV movements a day delivering waste to Work No 1A (the ERF) and provision that any unused movements allowed for the RRRF under its planning permission could be used for deliveries to the ERF in addition to the 90 movement a day limit [REP2-054]. Provisions were included for a maximum of 300 HCV movements a day delivering waste to the ERF to be allowed in the case of a temporary jetty outage, with peak hour restriction. Except in the case of a temporary jetty outage, incinerator bottom ash must be removed by river.
- 8.2.44. This Requirement was the subject of discussion at both of the ISHs on the draft DCO (as summarised by the Applicant in [REP3-028, REP8-018]). In response the Applicant agreed to a number of changes:
- Coverage of the requirement was extended to include the commissioning period for the ERF and the AD facility;
  - The daily limit on vehicle movements was reduced from 90 to 75 two-way HCV movements;
  - The daily limit applied to deliveries to both the ERF and the AD facility;
  - Separate annual limits on tonnage to be delivered by road were set for the ERF (130,000 tonnes) and the AD facility (40,000 tonnes);
  - The daily limit of 300 two-way HCV movements delivering waste to the ERF in the case of a temporary jetty outage was retained but the sharing of any unused vehicle movement allowance between the RRRF and ERF was dropped;
  - The definition of a temporary jetty outage was refined to be a period in excess of four consecutive days;
  - Clarification that, save in the event of a temporary jetty outage; 100% of incinerator bottom ash must be transported by river to a riparian facility.
  - Provision for quarterly reporting of HCV movements delivering waste to the ERF and the AD facility
- 8.2.45. These changes were made in response to concerns raised by both LBB and GLA throughout the Examination about the need to minimise the amount of traffic using local roads and maximise use of the river consistent with LBB and GLA policies. The revised draft was accepted by LBB in its SoCG [REP8b-009] and, in part, by GLA [AS-038]. GLA also sought the inclusion in R14 of a provision for deliveries to the REP to use vehicles which are Euro VI compliant or to commit to future procurement of vehicles which meet this standard. The Applicant rejected this proposal on the grounds that it was not a planning matter and it had no control over the procurement of vehicles by waste suppliers.

- 8.2.46. As set out at paragraph 5.6.41, the Applicant provided further information about vehicle movements in the case of a temporary jetty outage [REP3-036, REP8-027]. This concluded that, with a jetty outage affecting deliveries to both REP and RRRF, the three highway junctions closest to the REP and RRRF would continue to operate during the morning and evening peak periods and at other times at least 5% below the accepted optimum maximum of 85% - 90%. This took account of waste HCV movements, incinerator bottom ash and ancillary HCV movements.
- 8.2.47. The combination of limits on HCV numbers and tonnage delivered by road provides certainty that waste delivered to the ERF will, apart from the case of a temporary jetty outage, predominantly be delivered by river with a cap on the number of road deliveries and be subject to regular monitoring. I consider that the Requirement in its final form addresses the concerns raised by LBB and the GLA and is acceptable. The provisions for a temporary jetty outage have been modified so that they only apply to an outage of more than four days. I am satisfied that this is an appropriate arrangement for an emergency situation and that the combined vehicle movements at both the REP and RRRF can be accommodated on the local road network.

#### **Requirement 15 -Emissions limits – Work No 1B**

- 8.2.48. In response to comments from GLA [REP4-024], new Requirements were introduced in rev3 of the draft DCO setting emissions limits for Work No 1A (the ERF) and Work No 1B (the AD facility) setting daily and annual emissions limits for each facility based on the levels assessed in the ES.
- 8.2.49. Subsequently the Requirement relating to Work No 1A was withdrawn by the Applicant [REP8-018] on the grounds that the levels specified in the Requirement were adopted into law through the Environmental Permitting (England and Wales) Regulations 2016. The GLA pressed for this Requirement to cover a wider range of emissions but the Applicant considered that this would be an inappropriate overlap between the DCO and the EP. I agree that emissions from the ERF will be fully covered in the EP and that there should not be a duplication of provisions in the DCO.
- 8.2.50. The Applicant explained that the Requirement restricting emissions at the AD facility was appropriate because, although emissions from the AD facility had been assessed in the ES at the levels set in the Medium Combustion Plant Directive, it had agreed to reduce emissions further by installing selective catalytic reduction technology [REP4-021 and REP7-010]. Requirement 15 secures this commitment to the lower emissions levels. I accept the addition of the Requirement which secures a reduction in the NO<sub>x</sub> emissions from the AD facility which may affect the CNR.
- 8.2.51. A new Requirement was also introduced relating to air quality monitoring, in response to discussions with LBB but this was withdrawn following agreement between the Applicant and LBB on the provision of funding for ambient air quality monitoring included in a s106 agreement.

A final unsigned version of this agreement was submitted towards the close of the Examination [REP8b-012]. I consider the status of this agreement in my final conclusions on the dDCO.

#### **Requirement 16 – Waste Hierarchy Scheme**

- 8.2.52. This Requirement was introduced by the Applicant following the ISH on environmental matters and in response to concerns raised by the GLA in its post hearing submissions [REP3-038, REP3-045]. The issues around whether the Proposed Development was consistent with the waste hierarchy have been considered in Chapter 5.2 where I concluded (at paragraph 5.2.37) that the Proposed Development was adequately protected against breaching the principles of the waste hierarchy by the provisions of the proposed Waste Hierarchy Scheme. I am satisfied that R16 provides for the implementation of this Scheme.

#### **Requirement 19 – Control of operational noise**

- 8.2.53. This Requirement was added at the request of LBB [REP4-042] and accepted by the Applicant following on from LBB's earlier concerns about uncertainty in the assessment of likely noise effects due to the limited duration of baseline noise measurements [AS-002]. I consider that R18 is adequate to address LBB's concerns.

#### **Requirement 20 – River wall**

- 8.2.54. This Requirement was added by the Applicant following discussion with the EA. The need for repairs to the River Thames wall had been identified by the EA in a survey included in the Applicant's Flood Risk assessment [APP-033]. Following discussion with the EA the Applicant added this Requirement to the draft DCO. This has been agreed with the EA [REP5-013]. I accept this Requirement as being necessary for maintaining the flood defences.

#### **Requirement 21- Community benefit**

- 8.2.55. This Requirement was added at the request of LBB and accepted by the Applicant in order to optimise local employment, skills and economic development benefits from the Proposed Development [REP2-080]. I accept this addition which is consistent with LBB's published Growth Strategy.

#### **Requirement 22 – Notice of start of commissioning and notice of date of final commissioning**

- 8.2.56. This requirement was amended to provide for separate notification for Works No 1A and Work No 1B. I accept this as useful clarification.

#### **Requirement 23 – Phasing of construction and commissioning of Work No1**

- 8.2.57. At the first ISH on the draft DCO the GLA expressed concern that there was nothing in the DCO that required the Applicant to provide the AD facility, battery storage and solar panels. It asked for a Requirement which included a commitment to delivery of these elements of the

Proposed Development [REP3-038]. The Applicant responded by introducing a new Requirement [REP5-004]. This was refined following discussion at the second ISH on the draft DCO [REP8a004]. R23 ensures that a phasing programme is submitted for each of the elements of the REP, that construction of Work No1A and Work No 1B commence in the same phase of work and that the steam turbine incorporating at least 30 megawatts of heat-offtake must be completed at the date of final commissioning of Work No 1A (and, if applicable, Work No 2(b)). The SoCG between the Applicant and the GLA indicated that there was agreement on the final wording of this Requirement [AS-038]. I accept this Requirement as ensuring that, as far as possible, each of the developments of the REP and the CHP connection are carried out expeditiously and that the ERF and AD facility are developed in the same phase of work.

### **Requirement 24 - Combined heat and power**

- 8.2.58. This Requirement was included in the application draft DCO but was substantially amended following discussion at the first ISH on environmental matters and representation from LBB and GLA [REP5-031, REP5-033, REP7-023, REP7a-005, REP8b-020]. The revised R24 requires the relevant parts of the Proposed Development to be constructed to provide for CHP with the provision of steam pass-outs and the preservation of space for associated enabling equipment. It also provides for a working group to be set up, with terms of reference and participants (including the GLA) to be agreed by the relevant planning authority. Work No 1A must not start commissioning until this working group is set up. The terms of reference must include agreeing the scope of each regular CHP review and a list of potential consultants; engagement with Government to identify possible funding; and identification of connection points at the site boundary for district heating.
- 8.2.59. R24 also provides for the undertaker to take such as actions (which are technically and commercially viable) as are included in an approved CHP review and, where a connection point for district heating is identified at the site boundary to safeguard a pipework route within the Order limits for that work. GLA considered that the amendments it had proposed for the setting up and operation of the working group were necessary to ensure that CHP opportunities were fully explored and delivered to maximise carbon saving benefits effectively complying with NPS EN-1 and to meet the Mayor's London Plan carbon intensity floor and energy policies.
- 8.2.60. GLA requested [REP8b-020] that, given the speed with which the London housing market changed, CHP reviews should take place every two years rather than the four years proposed by the Applicant. The Applicant agreed to three yearly reviews. This was accepted by LBB [REP8b-009].
- 8.2.61. As noted at paragraph 5.4.7, the Applicant's commitment to construct the REP as CHP enabled goes beyond the requirements of the EA. The changes made to R24 provide a more detailed specification of the steps that must be taken to explore and, where technically and commercially

viable, implement opportunities for CHP. I consider that these provisions are consistent with the encouragement for the proper consideration of CHP set out in EN-1 and with the provisions of the London Plan (2016) and are acceptable.

### **Requirement 25-Use of compost material and gas from Work No1B**

- 8.2.62. This Requirement was added to the draft DCO by the Applicant following comments by the GLA at the first ISH on the draft DCO [REP3-038]. The purpose of R25 is to ensure that, as far as possible, beneficial off-site uses are found for the compost and gas from the AD facility. It provides for a review of the potential beneficial use of compost and gas from the AD facility prior to commissioning of the facility and for regular reviews of the potential for use of compost thereafter. The review of the use of gas would be limited to the first review. The Applicant explained that the choice of export of gas or use in the AD facility CHP engine was a once-off choice which would need to be made when investment was put in place prior to commissioning. The GLA agreed in principle to this Requirement but sought a one year rather two yearly review [AS-038]. It also objected to the limiting of the review of technical and commercial feasibility of gas export to the first review. I accept this additional Requirement which provides for investigation into off-site uses for compost which might otherwise have to be disposed of as waste and for the potentially higher efficiency use of gas exported to the gas grid. I agree with the Applicant's view that the use of gas should only be reviewed prior to commencement taking into account the investment decisions that would need to be taken. I also agree that the Applicant's proposals for the timing of the reviews for the use of compost are reasonable.

### **Requirement 26 – Decommissioning**

- 8.2.63. I consider this provision for a decommissioning plan to be an essential part of the Proposed Development. Linked to this Requirement, LBB sought a fund to cover the cost of decommissioning. This was included in the s106 agreement between the Applicant and LBB [REP8b-012] which had not been signed at the close of the Examination. A final unsigned version of this agreement was submitted towards the close of the Examination [REP8b-012]. I consider the status of this agreement in my final conclusions on the dDCO.

### **Requirement 28 – Flood risk activity permit area**

- 8.2.64. The requirement for a Flood Risk Activity Permit is provided for in the Protective Provisions for the EA, considered further under Schedule 10. R 28 ensures that no buildings are erected in the designated area with an associated restriction on the storage of materials in this area. It has been agreed by the EA [REP5-013] and I accept this as being necessary for flood protection reasons.

### **Requirement 29 – Finished floor levels**

- 8.2.65. In its WR [REP2-069] the EA requested that a minimum floor level be set for the main REP building of no lower than 2.97m AOD to ensure that the Proposed Development is resilient to the risk of flooding and does not impact the stability of the Thames tidal flood defences or prevent future raising of those defences. I accept this Requirement as being necessary for flood protection reasons.

### **Requirement 30 – Metropolitan Open Land**

- 8.2.66. This Requirement was added by the Applicant following questions at the first ISH on environmental matters about the impact of the Proposed Development on MOL. The Applicant provided an assessment of the extent to which MOL would be affected by the Proposed Development [REP4-020]. A plan showing the extent of MOL within the Order limits was provided [REP5-029]. The only works within the MOL would be a small part of the buried electrical connection and the above ground cable trough. There would be no impact on the openness of the MOL.
- 8.2.67. The Applicant stated that there was no policy protection for MOL in the Energy NPSs but acknowledged that in the London Plan (2016) and the Draft London Plan (2018) MOL was treated as Green Belt and that EN-1 did give protection to Green Belt. The Applicant argued that the types of work which it proposed within the areas identified as MOL did not involve new buildings and constituted engineering works which were not considered inappropriate development in Green Belt land as assessed in the NPPF. As such the work which would take place in MOL was not inappropriate development and was not expected to be harmful to the MOL.
- 8.2.68. I accept the Applicant's assessment that the limited work proposed to take place in MOL would not be harmful and that this Requirement ensures that more extensive building work, which could be harmful, is excluded.

### **Requirement 31 – Delivery and servicing plan**

- 8.2.69. In its WR [REP2-080] and subsequent submissions the Requirement for a Delivery and Servicing Plan was requested by LBB in addition to the provisions for HCV deliveries included in Requirement 14. This was necessary to ensure that all deliveries to the site are managed and planned and do not increase large vehicle movements [REP7-023]. Following discussion, the Applicant agreed to the inclusion of this provision. I agree to the inclusion of this provision which provides further assurance on the planning of vehicle movements related to the Proposed Development on local roads.

### **Requirement 31 – Tonnage cap**

- 8.2.70. Discussions on whether there should be a cap on the tonnage of waste delivered to the ERF and the AD facility has been summarised at paragraphs 8.2.26 to 8.2.28. Following discussion, the Applicant agreed [REP8-018] to the inclusion of separate limits for each facility but preferred this to be in a separate Requirement rather than included in

the description of the Works. R31 sets the cap of 805,920 tonnes per calendar year for the ERF and 40,000 tonnes per calendar year for the AD facility. These are the maximum throughput levels assessed in the ES. This Requirement addresses the need for limits which I and IPs had raised during the Examination.

## **Schedules 3 to 9**

- 8.2.71. These Schedules were updated as necessary to take into account the selection of the preferred route for the electrical connection and changes to the Book of Reference. I am satisfied that the revised Schedules identify the streets and land to which the relevant article in the draft DCO apply.

## **Schedule 10 - Protective provisions**

### **Part 1 - Riverside Resource Recovery Limited**

- 8.2.72. The REP will share part of the site, including the access point, with RRRL (the operator of the RRRF). These Protective Provisions address the interactions between the two facilities in respect of access, installation of new equipment, moving of apparatus and responsibilities for costs incurred. These provisions have been agreed by RRRL [REP8a-016].

### **Parts 2 and Part 3**

- 8.2.73. Parts 2 and 3 provide general Protective Provisions for electricity, gas, water and sewerage undertakers and operators of electronic communications code networks. No representations were received from these undertakers or operators apart from those for whom separate Protective Provisions have been negotiated as set out below.

### **Part 4 – The Environment Agency**

- 8.2.74. The Applicant and the EA have agreed Protective Provisions [REP8a-016]. These provisions cover specified work on or close to rivers. The EA must approve plans of commencement of such work and may require the construction of protective works to safeguard drainage and ensure that the efficiency of flood defences is not impaired and the risk of flooding is not increased. Other detailed provisions relating to the protection of drainage and flood defences are also included along with provisions to indemnify the EA in respect of specified costs, charges and expenses incurred.

### **Part 5 – For the protection of railway interests**

- 8.2.75. These provisions have been prepared in consultation with Network Rail and are agreed. Network Rail formally withdrew its objections to the application [AS-045].

### **Part 6 – For the protection of National Grid as electricity undertaker**

- 8.2.76. These provisions have been prepared in consultation with National Grid and are agreed. National Grid formally withdrew its objections to the application [AS-043].

**Part 7 – For the protection of UK Power Networks Limited, London Power Networks PLC and South East Power Networks PLC**

- 8.2.77. These provisions have been prepared in consultation with UK PN, LPN and SEPN and are agreed [REP8a-016]. The objections submitted by London Power Networks and South East Power Networks [RR-004, RR-005] were not formally withdrawn. Although LPN and SEPN did not withdraw their objections I consider that the Secretary of State can be satisfied that the Protective Provisions agreed with both parties will ensure that the land identified can be acquired without serious detriment as provided for in s127(3) of PA2008. No objections were received from UKPN.

**Part 8 – For the protection of Thames Water Utilities Limited**

- 8.2.78. These provisions have been prepared in consultation with TWUL. In addition to protection for TWUL assets this includes provision for TWUL to be provided with copies of submissions of any plan, scheme or strategy under Requirements 5 (BLMS), 11 (CoCP), 13 (CTMP), 20 (Operational lighting strategy) and 21 (Control of operational noise). This is included to allow for TWUL's responsibility for the Crossness Nature Reserve which may be affected by these aspects of the Proposed Development. The numbering of these Requirements does not correspond with the final draft DCO. The references should be to '18 (Operational lighting strategy) and 19(Control of operational noise)'. Following submission of rev 4 of the draft DCO TWUL indicated that it had no outstanding objection to the Proposed Development under s 127 and 138 of PA2008 [REP8b-026].

**Part 9 – For the protection of Southern Gas Networks PLC as gas undertaker**

- 8.2.79. These provisions have been prepared in consultation with Southern Gas Networks PLC and are agreed. Southern Gas Networks formally withdrew its objections to the application [AS-044].

**Conclusion on schedule 10**

- 8.2.80. I am satisfied that Schedule 10 as included in the final draft DCO provides necessary protection for RRRL, the EA and statutory undertakers. and meets the requirements of s127. I also consider that the Secretary of State can be satisfied under the provisions of s138 of PA2008 that the extinguishment of rights or removal of relevant apparatus is necessary for the purpose of carrying out the Proposed Development.

**Schedule 11 – Documents and plans to be certified**

- 8.2.81. This schedule sets out the plans and documents to be certified under the provisions of article 40. This identifies the latest version of each document submitted as part of the application or during the Examination.

An annotated version of schedule 11 is set out below in Table 2 which include the Examination Library reference for each document. This annotated schedule 11 is not intended for inclusion in any final DCO.

**Table 2: Schedule 11 annotated with Exam Library Reference**

| <i>Document name</i>                  | <i>Applicant's Document reference</i>   | <i>Revision number</i> | <i>Date</i>    | <i>Examination Library Ref</i>   |
|---------------------------------------|---|------------------------|----------------|--|
| access and public rights of way plans | 2.3 (key plan and sheets 1 to 16)   | Rev. 1                 | May 2019       | REP2-005   |
| book of reference                     | 4.3   | Rev. 3                 | September 2019 | REP8-004   |
| CHP statement                         | 5.4   | Rev. 0                 | November 2018  | APP-035  |
|                                       | 5.4.1 (CHP supplementary report)  | Rev. 0                 | May 2019       | REP2-012   |
| design principles                     | 7.4   | Rev. 0                 | November 2018  | APP-105  |
| environmental statement               | environmental statement 6.1 (excluding chapters 3, 5, 6, 7, 9, 11, 12, 13, 14 and 18) | Rev. 0                 | November 2018  | APP-038, APP-039, APP-041, APP-045, APP-047, APP-052, APP-053, APP-054   |
|                                       | environmental statement 6.1 (chapters 3, 5, 6, 7, 9, 11, 12, 13, 14 and 18)           | Rev. 1                 | May 2019       | REP2-013<br>REP2-015<br>REP2-017<br>REP2-019<br>REP2-021<br>REP2-023<br>REP2-025<br>REP2-027<br>REP2-029<br>REP2-031 |
|                                       | environmental statement 6.2 (excluding Figure 7.5, 7.8, 7.9 and 7.10)                 | Rev. 0                 | November 2018  | APP-056<br>excl Figures 7.5, 7.8, 7.9<br>APP-057<br>excl Figure 7.10<br>APP-058<br>APP-059<br>APP-060<br>APP-061     |
|                                       | environmental statement 6.2 (Figure 7.5)  | Rev. 2                 | June 2019      | REP3-008   |
|                                       | environmental statement 6.2 (Figure 7.8)  | Rev. 2                 | September 2019 | REP7-004   |
|                                       | environmental statement 6.2 (Figure 7.9)  | Rev. 2                 | September 2019 | REP7-005   |

|  |   |        |                |   |
|--|---|--------|----------------|---|
|  | environmental statement (Figure 7.10)   | Rev. 2 | September 2019 | REP7-006  |
|  | environmental statement 6.3 (excluding appendix J (network traffic flows and distribution) to appendix B.1, appendix L (outline construction traffic management plan) to appendix B1, appendix C.1 (traffic modelling), C.2 (stack modelling), appendix C.3 (human health risk assessment)) | Rev. 0 | November 2018  | APP-063<br>APP-064<br>APP-065<br>APP-066<br>excl<br>appendix J<br>and<br>appendix L<br>APP-067<br>APP-071<br>APP-072<br>APP-073<br>APP-074<br>APP-075<br>APP-076<br>APP-077<br>APP-078<br>APP-079<br>APP-080<br>APP-081<br>APP-082<br>APP-083<br>APP-084<br>APP-085<br>APP-086<br>APP-087<br>APP-088<br>APP-089<br>APP-090<br>APP-091<br>APP-092<br>APP-093<br>APP-094<br>APP-095<br>APP-096<br>APP-097<br>APP-098<br>APP-099 |
|  | environmental statement 6.3 (appendix J (network traffic flows and distribution) to appendix B.1, appendix C.1 (traffic modelling), C.2 (stack modelling), appendix C.3 (human health risk assessment))   | Rev. 1 | May 2019       | REP2-034<br>REP2-036<br>REP2-038<br>REP2-040  |
|  | environmental statement 6.3   | Rev. 6 | September 2019 | REP8a-011   |

|  |  |        |                |                                 |
|--|--|--------|----------------|---------------------------------|
|  | (appendix L (outline construction traffic management plan) to appendix B.1 |        |                |                                 |
|  | environmental statement 6.4  | Rev. 0 | November 2018  | APP-100                         |
|  | environmental statement 6.5  | Rev. 1 | May 2019       | REP2-042                        |
|  | environmental statement supplemental report 6.6                            | Rev. 0 | May 2019       | REP2-044                        |
| flood risk assessment                                  | 5.2  | Rev. 0 | November 2018  | APP-033                         |
| FRAPA drawings   | appendix B of 8.01.03  | Rev. 0 | 13 May 2019    | REP2-049 appendix B             |
| land plans   | 2.1  | Rev. 2 | July 2019      | REP4-003                        |
| MOL plan   | 8.02.58  | Rev. 0 | 9 August 2019  | REP5-029                        |
| outline biodiversity and landscape mitigation strategy | 7.6  | Rev. 4 | September 2019 | REP8-012                        |
| outline code of construction practice                  | 7.5  | Rev. 5 | September 2019 | REP8a-015                       |
| outline lighting strategy                              | appendix K.3 of 6.3  | Rev. 0 | November 2018  | APP-096                         |
| pre-commencement plan                                  | 8.02.55  | Rev. 0 | August 2019    | REP5-026                        |
| REP and RRRF Application Boundaries Plan               | 8.02.56  | Rev. 1 | September 2019 | REP8-016                        |
| transport assessment                                   | appendix B.1 of 6.3 (excluding appendix J and appendix L)                  | Rev. 0 | November 2018  | APP-066 excl appendices J and L |
|  | appendix J to appendix B.1 of 6.3  | Rev. 1 | May 2019       | REP2-034                        |
|  | appendix L to appendix B.1 of 6.3  | Rev. 6 | September 2019 | REP8a-011                       |
|  | jetty outage review  | Rev. 0 | June 2019      | REP3-036                        |
|  | supplementary note to the temporary jetty outage review                    | Rev. 0 | September 2019 | REP8-027                        |
| works plans  | 2.2  | Rev. 1 | May 2019       | REP2-004                        |

## Schedules 12 and 13

8.2.82. Schedule 12 sets out the procedure to be followed in respect of approvals that are covered by article 42 of the draft DCO.

8.2.83. Schedule 13 sets out the specific modifications to the s36 consent and RRRF planning permission which I have considered and accepted in paragraphs 8.2.5 to 8.2.11.

### **8.3. CONCLUSIONS**

8.3.1. I consider that the provisions set out in the final draft DCO adequately address the issues raised during the Examination subject to one substantive and one drafting change.

- Requirement 5 on Biodiversity and Landscape Mitigation Strategy should be strengthened by the addition of reference to the biodiversity off-setting scheme in R5(e) (paragraph 8.2.36).
- Changes should also be made to cross-references in s103 of schedule 10 (paragraph 8.2.78).

8.3.2. A s106 agreement between the Applicant and LBB providing for funding for air quality monitoring by LBB and for the setting up of a decommissioning fund was agreed but not signed by the parties at the close of the Examination. The Applicant indicated [REP8b-001] that it would write to the Secretary of State as soon as the s106 agreement was completed so that they are aware that the matters in the s106 agreement are secured at the point they makes their decision. This agreement would provide important assurance on air quality and decommissioning for the local community and I recommend that the Secretary of State should be satisfied that this agreement has been signed before taking a decision on the application.

8.3.3. I recommend that, subject to being satisfied that the s106 agreement has been signed, development consent be granted in the form of the DCO attached at Appendix C which incorporates the two changes set out above.

## **9. SUMMARY OF FINDINGS AND CONCLUSIONS**

### **9.1. INTRODUCTION**

- 9.1.1. The application is for a Development Consent Order (DCO) for the construction operation and maintenance of the Riverside Energy Park which is made up of three main elements (together 'the Proposed Development'):
- The Riverside Energy Park (REP);
  - The Main Temporary Construction Compound;
  - The electrical connection;
- 9.1.2. The REP would be constructed on land at Belvedere in the London Borough of Bexley (LBB) and would comprise an integrated range of technologies including:
- an energy recovery facility with output greater than 50MW and less than 300MW providing thermal treatment of non-recyclable solid waste;
  - an anaerobic digestion (AD) facility to process food and green waste;
  - solar photovoltaic panels;
  - on site combined heat and power (CHP) infrastructure and
  - battery storage.
- 9.1.3. The REP has a generating capacity in excess of 50MW and is located wholly in England. As such it meets the definition of a Nationally Significant Infrastructure Project (NSIP) set out in s14(1)(a) and s15(2) of the Planning Act 2008 (as amended) (PA2008) and requires development consent in accordance with s31 of PA2008.
- 9.1.4. The REP would be connected to the electricity distribution network via a new 132 kilovolt (kV) underground electricity cable running from the REP site to the Littlebrook sub-station in the Borough of Dartford. This work was classified in the application as associated development. The application also included provision for the temporary use of land for the Main Temporary Construction Compound adjacent to the REP site and along the line of the electrical connection which would be used during the construction of the Proposed Development. This was also classified as associated development. In the Examination and in the draft DCO the Applicant did not make a distinction between the NSIP and associated development elements of the Proposed Development.
- 9.1.5. I have carried out this Examination of the application in accordance with the provisions of PA2008 and the general principles and specific guidance set out in EN-1, EN-3 and EN-5. I have had regard to the Local Impact Reports (LIRs) submitted by the Greater London Authority, LBB, Kent County Council and Dartford Borough Council (jointly) and the London Borough of Havering and to representations received from interested parties, affected persons (in respect of compulsory acquisition) and other parties accepted into the Examination.

## **9.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS**

- 9.2.1. My findings and conclusions on the principle of the Proposed Development have been set out in Chapter 4 of this report. I am satisfied that the proposed NSIP comprising energy from waste generation with capacity greater than 50MW, AD facility, solar photovoltaic panels and battery storage plant with associated development for construction purposes and to provide an electrical connection to the Littlebrook sub-station would contribute to meeting the need for new generation capacity identified in EN-1 and EN-3 and that the capacity of the Proposed Development as defined in the draft DCO is below the threshold at which it should be designed to be Carbon Capture Ready. I am also satisfied that consideration has been given to design and to alternatives to the development as required by EN-1. There is a case in principle in favour of granting a DCO for the Proposed Development.
- 9.2.2. My findings and conclusions on the case for the development taking individual issues into account are set out in Chapter 5. I have concluded that, after taking into account the mitigation measures, there should be no significant adverse effects which would weigh against granting the DCO from the following aspects of the Proposed Development:
- The provision of additional waste incineration capacity
  - Carbon emissions
  - Proposals for CHP
  - Consideration of alternatives
  - Air quality
  - Noise and vibration
  - Historic environment
  - Terrestrial biodiversity
  - Hydrology, flood risk and water resources
  - Ground conditions
  - Socio-economics.
- 9.2.3. I have concluded that there would be some adverse effects to:
- Transport as a result of delay and disruption during the construction of the electrical connection; and
  - Townscape and visual impact which, despite mitigation measures, cannot be avoided with a large scale NSIP in this location.
- 9.2.4. The assessment principles in EN-1 "start with a presumption in favour of granting consent for energy NSIPs ... unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused." Drawing on this guidance on the assessment of individual aspects of the development I consider that a high weighting should be given to the established need for the development of electricity generation facilities.
- 9.2.5. The Proposed Development delivers a positive contribution to meeting the national need for additional electricity generation capacity identified in EN-1. It will have an adverse effect on traffic and transport during the construction of the electrical connection and have a visual impact

through the life of the REP. These adverse effects cannot be fully addressed by the proposed mitigation measures. But I do not consider that these localised adverse effects outweigh the benefits of new generation identified in EN-1. I therefore conclude that the case for development consent has been made.

- 9.2.6. I consider that the provisions set out in the final draft DCO adequately address the issues raised during the Examination subject to one substantive and one drafting change.
- Requirement 5 on Biodiversity and Landscape Mitigation Strategy should be strengthened by the addition of reference to the biodiversity off-setting scheme in R5(e).
  - Changes should also be made to cross-references in s103 of schedule 10.
- 9.2.7. As required by s104(2) of PA2008, I have had regard to the LIRs submitted during the Examination. I received no evidence that acceptance of the development would be in conflict with international obligations as set out in s104(4) of PA2008
- 9.2.8. I am satisfied that all of the Order land which is the subject of the request for compulsory acquisition of freehold or rights as listed in the final Book of Reference (BoR) [REP8-005] and shown on the final Land Plans [REP4-003] meets the requirements of section 122(2) as either being required for the development or required to facilitate that development and that there is a compelling case in the public interest for CA.
- 9.2.9. I have also concluded that the case has been made for the inclusion of temporary possession powers in the DCO which can be exercised over the land identified in the final BoR, the final Land Plans and in Schedule 9 of the final draft DCO.
- 9.2.10. I have given consideration to the Public Sector Equalities Duty and conclude that there is no evidence that would suggest any disproportionate adverse impact on any persons having a protected characteristic. I have also considered the impact on Affected Persons under the Human Rights Act and consider that any interference in their rights are necessary and proportionate.
- 9.2.11. At the close of the Examination a s106 agreement between the Applicant and LBB had been agreed but not signed. I consider that this would provide important assurance on air quality and decommissioning for the local community and I recommend that the Secretary of State should be satisfied that this agreement has been signed before taking a decision on the application

### **9.3. RECOMMENDATION**

For all of the above reasons and in the light of my findings and conclusions on important and relevant matters set out in the report, I conclude that the case for the development has been made and that

development consent should, subject to the signing of the s106 agreement, be given through a DCO in the form attached at Appendix C. This includes the changes to the final draft DCO as set out in para 9.2.6.

## **APPENDICES**

|   |          |
|---|----------|
| APPENDIX A: EXAMINATION LIBRARY .....   | CLXXXII  |
| APPENDIX B: LIST OF ABBREVIATIONS ..... | CLXXXIII |
| APPENDIX C: THE RECOMMENDED DCO .....   | CLXXXIV  |

## **APPENDIX A: EXAMINATION LIBRARY**

## **Riverside Energy Park Examination Library Updated – 16/10/19**

This Examination Library relates to the **Riverside Energy Park** application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

**EN010093 - Riverside Energy Park  
Examination Library**

**Index**

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| <a href="#">Application Documents</a><br><br>As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received   | APP-xxx          |
| <a href="#">Adequacy of Consultation responses</a>  | AoC-xxx          |
| <a href="#">Relevant Representations</a>  | RR-xxx           |
| <a href="#">Procedural Decisions and Notifications from the Examining Authority</a><br><br>Includes Examining Authority’s questions, s55, and post acceptance s51   | PD-xxx           |
| <a href="#">Additional Submissions</a><br><br>Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination   | AS-xxx           |
| <a href="#">Events and Hearings</a><br><br>Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant’s hearing notices, and responses to Rule 6 and Rule 8 letters  | EV-xxx           |
| <a href="#"><b>Representations – by Deadline</b></a>  |                  |
| <a href="#">Deadline 1:</a><br><u>Deadline 1 for the receipt of:</u> <ul style="list-style-type: none"> <li>- Notification of wish to speak at a Compulsory Acquisition Hearing</li> <li>- Notification of wish to speak at an Issue Specific Hearing</li> <li>- Notification of wish to speak at an Open Floor Hearing</li> <li>- Notification of wish to attend an Accompanied Site Inspection (ASI), suggested locations and justifications</li> <li>- Notification by statutory parties of wish to be considered as an Interested Party</li> <li>- Notification of wish to have future correspondence electronically</li> <li>- Provision by the Applicant of a draft itinerary for the ASI</li> <li>- Responses to any further information requested by the Examining Authority for this Deadline</li> </ul> | REP1-xxx         |
| <a href="#">Deadline 2:</a><br><u>Deadline 2 for receipt of:</u> <ul style="list-style-type: none"> <li>- Comments on Relevant Representations (RRs)</li> </ul>   | REP2-xxx         |

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| <ul style="list-style-type: none"> <li>- Written Representations (WRs)</li> <li>- Summaries of all WRs exceeding 1500 words</li> <li>- Local Impact Reports (LIR) from any local authorities</li> <li>- Statements of Common Ground(s) (SoCGs) requested by the Examining Authority</li> <li>- Responses to the Examining Authority's Written Questions</li> <li>- Provision by the Applicant of final itinerary for ASI</li> <li>- Comments on any additional information/submissions received by previous deadline</li> <li>- Responses to any further information requested by the Examining Authority for this Deadline</li> </ul>   |          |
| <p><u>Deadline 3:</u><br/> <u>Deadline 3 for receipt by the Examining Authority of:</u></p> <ul style="list-style-type: none"> <li>- Comments on WRs and responses to comments on RRs</li> <li>- Comments on LIRs</li> <li>- Comments on responses to the Examining Authority's First Written Questions</li> <li>- Any revised Statement of Common Ground (SoCGs)</li> <li>- Revised draft DCO from Applicant</li> <li>- Post hearing submissions including written submissions of oral case</li> <li>- Responses to any further information requested by the Examining Authority</li> <li>- Comments on any additional information/submissions received by previous deadline</li> </ul> | REP3-xxx |
| <p><u>Deadline 4:</u><br/> <u>Deadline 4 for receipt of:</u></p> <ul style="list-style-type: none"> <li>- Responses to the Examining Authority's Further Written Questions (if required)</li> <li>- Comments on Applicant's revised draft DCO (if required)</li> <li>- Comments on Post hearing submissions including written submissions of oral case</li> <li>- Any revised Statement of Common Ground (SoCG)</li> <li>- Responses to any further information requested by the Examining Authority</li> <li>- Comments on any additional information/submissions received by previous deadline</li> </ul>  | REP4-xxx |
| <p><u>Deadline 5:</u><br/> <u>Deadline 5 for receipt of:</u></p> <ul style="list-style-type: none"> <li>- Applicant's revised draft DCO</li> <li>- Responses to further information requested by the Examining Authority</li> <li>- Any revised Statement of Common Ground</li> <li>- Post hearing submissions including written submissions of oral case</li> <li>- Responses to any further information requested by the Examining Authority</li> <li>- Comments on any additional information/submissions received by previous deadline</li> </ul>  | REP5-xxx |
| <p><u>Deadline 6:</u><br/> <u>Deadline 6 for receipt of:</u></p>   | REP6-xxx |

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| <ul style="list-style-type: none"> <li>- Responses to the Examining Authority's further written questions and request for comments on changes to the application issued on 1 August 2019</li> </ul>   |           |
| <p><a href="#">Deadline 7:</a><br/>Deadline 7 for receipt of:</p> <ul style="list-style-type: none"> <li>- Comments on the draft DCO (if required)</li> <li>- Any revised SoCG</li> <li>- Responses to any further information requested by the ExA</li> <li>- Comments on any additional information/submissions received by previous deadline</li> </ul>  | REP7-xxx  |
| <p><a href="#">Deadline 7a:</a><br/>Deadline 7a for receipt of:</p> <ul style="list-style-type: none"> <li>- Responses to any further information requested by the ExA</li> <li>- Comments on any additional information/submissions received by previous deadlines</li> </ul>  | REP7a-xxx |
| <p><a href="#">Deadline 8:</a><br/>Deadline 8 for receipt of:</p> <ul style="list-style-type: none"> <li>- Responses to comments on the draft DCO (if required)</li> <li>- Responses to any further information requested by the ExA</li> <li>- Final SoCGs</li> <li>- Comments on any additional information/submissions received by previous deadline</li> <li>- Final draft DCO to be submitted by the Applicant in the statutory instrument (SI) template with the SI template validation report</li> </ul>   | REP8-xxx  |
| <p><a href="#">Deadline 8a:</a><br/>Deadline 8a for receipt of:</p> <ul style="list-style-type: none"> <li>- Responses to any further information requested by the ExA</li> <li>- Comments on any additional information/submissions received by previous deadline</li> <li>- Final SoCGs</li> <li>- Final draft DCO to be submitted by the Applicant in the statutory instrument (SI) template with the SI template validation report</li> <li>- Final Explanatory Memorandum and final schedule of changes to the DCO to be submitted by the Applicant</li> </ul> | REP8a-xxx |
| <p><a href="#">Deadline 8b:</a></p> <ul style="list-style-type: none"> <li>- Comments on the Applicants Final draft DCO, Explanatory Memorandum and schedule of changes</li> <li>- Response to any further information requested by the ExA</li> <li>- Comments on any additional information/submissions received by the previous deadline</li> </ul>  | REP8b-xxx |
| <p><a href="#">Other Documents</a><br/>Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents</p>  | OD-xxx    |

**EN010093 - Riverside Energy Park****Examination Library****Application Documents**

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|---------|---|
| APP-001 | <a href="#">Cory Riverside Energy</a><br>1.1 Covering Letter                                  |
| APP-002 | <a href="#">Cory Riverside Energy</a><br>1.2 The Applicant's Section 55 Checklist             |
| APP-003 | <a href="#">Cory Riverside Energy</a><br>1.3 Guide to the Application                         |
| APP-004 | <a href="#">Cory Riverside Energy</a><br>1.4 Application Form                                 |
| APP-005 | <a href="#">Cory Riverside Energy</a><br>1.5 Notices for Statutory Publicity                  |
| APP-006 | <a href="#">Cory Riverside Energy</a><br>1.6 Project Glossary                                 |
| APP-007 | <a href="#">Cory Riverside Energy</a><br>2.1 Land Plans                                       |
| APP-008 | <a href="#">Cory Riverside Energy</a><br>2.2 Works Plans                                      |
| APP-009 | <a href="#">Cory Riverside Energy</a><br>2.3 Access and Public Rights of Way Plans            |
| APP-010 | <a href="#">Cory Riverside Energy</a><br>2.4 Illustrative Site Layout Plan                    |
| APP-011 | <a href="#">Cory Riverside Energy</a><br>2.5 Illustrative South and West Elevations           |
| APP-012 | <a href="#">Cory Riverside Energy</a><br>2.5 Illustrative North and East Elevations           |
| APP-013 | <a href="#">Cory Riverside Energy</a><br>2.6 Illustrative Circulation Plan                    |
| APP-014 | <a href="#">Cory Riverside Energy</a><br>3.1 Draft Development Consent Order                  |
| APP-015 | <a href="#">Cory Riverside Energy</a><br>3.2 Explanatory Memorandum                           |
| APP-016 | <a href="#">Cory Riverside Energy</a><br>4.1 Statement of Reasons                             |
| APP-017 | <a href="#">Cory Riverside Energy</a><br>4.2 Funding Statement                                |
| APP-018 | <a href="#">Cory Riverside Energy</a><br>4.3 Book of Reference                                |
| APP-019 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report                              |
| APP-020 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - A (Part 1 of 2) |
| APP-021 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - A (Part 2 of 2) |

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| APP-022 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - B                                   |
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| APP-024 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - D                                   |
| APP-025 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - E                                   |
| APP-026 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - F                                   |
| APP-027 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - G                                   |
| APP-028 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - H                                   |
| APP-029 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - I                                   |
| APP-030 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - J                                   |
| APP-031 | <a href="#">Cory Riverside Energy</a><br>5.1 Consultation Report Appendices - K                                   |
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| APP-033 | <a href="#">Cory Riverside Energy</a><br>5.2 Flood Risk Assessment  |
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| APP-046 | <a href="#">Cory Riverside Energy</a><br>6.1 Environmental Statement Chapter 9 - Townscape and Visual   |
| APP-047 | <a href="#">Cory Riverside Energy</a><br>6.1 Environmental Statement Chapter 10: Historic Environment   |
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| APP-098                                   | <a href="#">Cory Riverside Energy</a><br>6.3 Environmental Statement Technical Appendices K.5<br>Statement on Aviation                 |
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| APP-106                                   | <a href="#">Cory Riverside Energy</a><br>7.5 Outline Code of Construction Practice   |
| APP-107                                   | <a href="#">Cory Riverside Energy</a><br>7.6 Outline Biodiversity and Landscape Mitigation Strategy                                    |
| <b>Adequacy of Consultation Responses</b> |  |
| AoC-001                                   | <a href="#">Gravesham Borough Council</a><br>Adequacy of Consultation Representation   |
| AoC-002                                   | <a href="#">Tower Hamlets</a><br>Adequacy of Consultation Representation   |
| AoC-003                                   | <a href="#">East Sussex County Council</a><br>Adequacy of Consultation Representation  |
| AoC-004                                   | <a href="#">London Borough of Lewisham</a><br>Adequacy of Consultation Representation  |
| AoC-005                                   | <b>DOCUMENT NOW LOCATED AT – REF: OD-004</b>   |
| AoC-006                                   | <a href="#">Brentwood Borough Council</a><br>Adequacy of Consultation Representation   |
| AoC-007                                   | <a href="#">Kent County Council</a><br>Adequacy of Consultation Representation   |
| AoC-008                                   | <a href="#">Greater London Authority</a><br>Adequacy of Consultation Representation  |
| AoC-009                                   | <a href="#">Dartford Borough Council</a><br>Adequacy of Consultation Representation  |
| AoC-010                                   | <a href="#">Thurrock Council</a><br>Adequacy of Consultation Representation  |
| AoC-011                                   | <a href="#">Royal borough of Greenwich</a><br>Adequacy of Consultation Representation  |
| AoC-012                                   | <a href="#">Be First</a><br>Adequacy of Consultation Representation  |
| AoC-013                                   | <a href="#">London Borough of Bexley</a><br>Adequacy of Consultation Representation  |

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| AoC-014                         | <a href="#">Medway Council</a><br><i>Acceptance &gt; Adequacy of Consultation Representation</i>   |
| AoC-015                         | <a href="#">London Borough of Newham</a><br>Adequacy of Consultation Representation  |
| AoC-016                         | <a href="#">Epping Forest DC</a><br>Adequacy of Consultation Representation  |
| <b>Relevant Representations</b> |  |
| RR-001                          | <a href="#">Maz Mohammad</a> – <b>Letter of Withdrawal</b> 17 September 2019 [AS-027]  |
| RR-002                          | <a href="#">Dartford and Crayford Creek Restoration Trust</a>  |
| RR-003                          | <a href="#">The Coal Authority</a>   |
| RR-004                          | <a href="#">London Power Networks plc</a>  |
| RR-005                          | <a href="#">South Eastern Power Networks plc</a>   |
| RR-006                          | <a href="#">United Kingdom Without Incineration Network (UKWIN)</a>  |
| RR-007                          | <a href="#">Ethna Cooke</a>  |
| RR-008                          | <a href="#">(Eversheds Sutherland (International) LLP)</a> on behalf of National Grid Electricity Transmission Plc                         |
| RR-009                          | <a href="#">Friends of Crossness Nature Reserve</a>  |
| RR-010                          | <a href="#">Barry Roffey</a>   |
| RR-011                          | <a href="#">Christopher Smith</a>  |
| RR-012                          | <a href="#">Donna Zimmer</a>   |
| RR-013                          | <a href="#">Martin Watts</a>   |
| RR-014                          | <a href="#">Robert Davies</a>  |
| RR-015                          | <a href="#">Dr Lesley Catchpole</a>  |
| RR-016                          | <a href="#">Ruth Wild</a>  |
| RR-017                          | <a href="#">David Sorrell</a>  |
| RR-018                          | <a href="#">Graeme Mitchell</a>  |
| RR-019                          | <a href="#">Laurence Pinturault Ep Tuft</a>  |
| RR-020                          | <a href="#">Mr T. J. Minns</a>   |
| RR-021                          | <a href="#">Richard P Winston</a>  |
| RR-022                          | <a href="#">Daniel Bell</a>  |
| RR-023                          | <a href="#">Barbara Fairbairn</a>  |
| RR-024                          | <a href="#">Dr Susan Mitchell</a>  |
| RR-025                          | <a href="#">Ralph Todd</a>   |
| RR-026                          | <a href="#">Ann Turvey</a>   |
| RR-027                          | <a href="#">Maritime &amp; Coastguard Agency</a>   |
| RR-028                          | <a href="#">Knights Solicitors</a> on behalf of <a href="#">SAS Depot Limited</a> – <b>Letter of Withdrawal</b> 17 September 2019 [AS-025] |
| RR-029                          | <a href="#">Western Riverside Waste Authority</a> – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]                                 |
| RR-030                          | <a href="#">Andrew Thompson</a>  |
| RR-031                          | <a href="#">Dave Putson</a>  |
| RR-032                          | <a href="#">Richard Hamblin</a>  |
| RR-033                          | <a href="#">Bexley Natural Environment Forum</a>   |
| RR-034                          | <a href="#">East London Waste Authority</a>  |
| RR-035                          | <a href="#">Graham William Parry</a>   |
| RR-036                          | <a href="#">Jon Cruddas MP</a>   |
| RR-037                          | <a href="#">Linda Farnsworth</a>   |
| RR-038                          | <a href="#">Mrs D Khoti</a>  |

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| RR-039 | <a href="#">Natasha Agius</a>  |
| RR-040 | <a href="#">Ricky Schembri MBE</a>   |
| RR-041 | <a href="#">Knights Solicitors on behalf of S Wernick &amp; Sons (Holdings) Limited</a> - <b>Letter of Withdrawal</b> 14 June 2019 [OD-005]                                      |
| RR-042 | <a href="#">Knights Solicitors on behalf of Wernick Event Hire Limited</a> - <b>Letter of Withdrawal</b> 14 June 2019 [OD-006]   |
| RR-043 | <a href="#">Belvedere Community Forum</a>  |
| RR-044 | <a href="#">Bernard Leahy</a>  |
| RR-045 | <a href="#">Essex Wildlife Trust</a>   |
| RR-046 | <a href="#">Gaynor Hillier</a>   |
| RR-047 | <a href="#">London Borough of Tower Hamlets</a>  |
| RR-048 | <a href="#">Jonathan Rooks</a>   |
| RR-049 | <a href="#">NATS LTD</a>   |
| RR-050 | <a href="#">Bexley-Greenwich Environment Alliance</a>  |
| RR-051 | <a href="#">Michael Hill</a>   |
| RR-052 | <a href="#">Rt Hon Sir David Evennett MP</a>   |
| RR-053 | <a href="#">Ingrebourne Valley Limited</a>   |
| RR-054 | <a href="#">Teresa Pearce</a>  |
| RR-055 | <a href="#">Newell Projects Ltd on behalf of ARRIVA London Ltd</a>   |
| RR-056 | <a href="#">Gill Coombs</a>  |
| RR-057 | <a href="#">Mrs Margaret J White</a>   |
| RR-058 | <a href="#">Heidi Barnes</a>   |
| RR-059 | <a href="#">Be First on behalf of London Borough of Barking and Dagenham</a>   |
| RR-060 | <a href="#">Cory Environmental Limited</a>   |
| RR-061 | <a href="#">SPRING LAW on behalf of CREEK SIDE DEVELOPMENTS (KENT) LIMITED (CREEK SIDE DEVELOPMENTS (KENT) LIMITED)</a> - <b>Letter of Withdrawal</b> 18 September 2019 [AS-026] |
| RR-062 | <a href="#">Francesca Sanna</a>  |
| RR-063 | <a href="#">Tozers LLP on behalf of Landsul Limited</a> - <b>Letter of Withdrawal</b> 4 October 2019 [REP8b-029]   |
| RR-064 | <a href="#">London Borough of Havering</a>   |
| RR-065 | <a href="#">Tozers LLP on behalf of Munster Joinery (U.K.) Limited (Munster Joinery (U.K.) Limited)</a> - <b>Letter of Withdrawal</b> 4 October 2019 [REP8b-029]                 |
| RR-066 | <a href="#">JMW Planning Solutions Ltd on behalf of Prologis UK Ltd</a>  |
| RR-067 | <a href="#">Public Health England</a>  |
| RR-068 | <a href="#">Riverside Resource Recovery Limited</a>  |
| RR-069 | <a href="#">Anthony Sims</a>   |
| RR-070 | <a href="#">Catherine Bradshaw</a>   |
| RR-071 | <a href="#">Chris Rose</a>   |
| RR-072 | <a href="#">Dartford Borough Council</a>   |
| RR-073 | <a href="#">Derek Key</a>  |
| RR-074 | <a href="#">Environment Agency</a>   |
| RR-075 | <a href="#">Greater London Authority</a>   |
| RR-076 | <a href="#">James Butler</a>   |
| RR-077 | <a href="#">Karen Goldsmith</a>  |
| RR-078 | <a href="#">Karen Sutton</a>   |
| RR-079 | <a href="#">Kent County Council</a>  |
| RR-080 | <a href="#">London First</a>   |
| RR-081 | <a href="#">Mark Appleby</a>   |

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| RR-082   | <a href="#">Womble Bond Dickinson (UK) LLP on behalf of Network Rail Infrastructure Limited</a> – <b>Letter of Withdrawal</b> - [AS-045]          |
| RR-083   | <a href="#">Winckworth Sherwood LLP on behalf of Port of London Authority</a> – <b>Letter of Withdrawal</b> - [REP8b-025]                         |
| RR-084   | <a href="#">Royal Borough of Greenwich</a>  |
| RR-085   | <a href="#">Tara Lucas</a>  |
| RR-086   | <a href="#">Eversheds Sutherland (International) LLP on behalf of Thames Water Utilities Limited</a>  |
| RR-087   | <a href="#">Transport for London</a>  |
| <b>Procedural Decisions and Notifications from the Examining Authority</b> |   |
| PD-001   | <a href="#">Notification of Decision to Accept Application</a>  |
| PD-002   | <a href="#">Section 51 advice to the Applicant</a>  |
| PD-003   | <a href="#">Section 55 Checklist</a>  |
| PD-004   | <a href="#">Appointment of the Examining Authority</a>  |
| PD-005   | <a href="#">Rule 6 letter - Notification of the preliminary meeting and matters to be discussed</a>   |
| PD-006   | <a href="#">Rule 8 - notification of timetable for the examination</a>  |
| PD-007   | <a href="#">Written Questions</a>   |
| PD-008   | <a href="#">Rule 17 - Changes to the Application - requests for comments</a>  |
| PD-009   | <a href="#">Rule 13 and Rule 16 - Notification of hearings and Accompanied Site Inspection 1</a>  |
| PD-010   | <a href="#">Rule 13 - Notification of July Hearing</a>  |
| PD-011   | <a href="#">Changes to the Application - Rule 17</a>  |
| PD-012   | <a href="#">Request for Further Information - Rule 17</a>   |
| PD-013   | <a href="#">Rule 8 (3) letter - notification of variation of timetable for the examination</a>  |
| PD-014   | <a href="#">Rule 13 - Notification of Hearings</a><br>Notification of Issue Specific Hearing 3 (ISH3) and Compulsory Acquisition Hearing 2 (CAH2) |
| PD-015   | <a href="#">Request for Further Information – Rule 17</a>   |
| PD-016   | <a href="#">Rule 8(3) letter – notification of variation of timetable for the examination</a>   |
| <b>Additional Submissions</b>  |   |
| AS-001   | <a href="#">ES Pipelines Limited</a><br>Additional Submission – Accepted at the discretion of the Examining Authority                             |
| AS-002   | <a href="#">London Borough of Bexley</a><br>Additional Submission – Accepted at the discretion of the Examining Authority                         |
| AS-003   | <a href="#">Brentwood Borough Council</a><br>Additional Submission – Accepted at the discretion of the Examining Authority                        |
| AS-004   | <a href="#">Brentwood Borough Council</a><br>Additional Submission - Accepted at the discretion of the Examining Authority                        |

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| AS-005 | <a href="#">Medway Council</a><br>Additional Submission - Accepted at the discretion of the Examining Authority   |
| AS-006 | <a href="#">Canal River Trust</a><br>Additional Submissions - Accepted at the discretion of the Examining Authority   |
| AS-007 | <a href="#">Harlaxton Engineering Services Limited</a><br>Additional Submission - Accepted at the discretion of the Examining Authority   |
| AS-008 | <a href="#">Peter Brett Associates on behalf of Cory Riverside Energy</a><br>Additional Submission - Accepted at the discretion of the Examining Authority  |
| AS-009 | <a href="#">Natural England</a><br>Additional Submissions - Accepted at the discretion of the Examining Authority   |
| AS-010 | <a href="#">London Borough of Newham</a><br>Additional Submission - Accepted at the discretion of the Examining Authority   |
| AS-011 | <a href="#">Marine Management Organisation</a><br>Additional Submission - Accepted at the discretion of the Examining Authority   |
| AS-012 | <a href="#">Maritime and Coastguard Agency</a><br>Additional Submissions - Accepted at the discretion of the Examining Authority  |
| AS-013 | <a href="#">Cory Riverside Energy</a><br>Additional submission – Accepted at the discretion of the Examining Authority. Doc 8.1.1 Statement of Common Ground (SoCG) with Historic England (signed)  |
| AS-014 | <a href="#">Epping Forest District Council</a><br>Additional Submission - Accepted at the discretion of the Examining Authority   |
| AS-015 | <a href="#">Thurrock Borough Council</a><br>Additional submission – Accepted at the discretion of the Examining Authority - Response to s56 - Dated: 07/02/2019   |
| AS-016 | <a href="#">Western Riverside Waste Authority</a><br>Additional submission – Accepted at the discretion of the Examining Authority - Western Riverside Waste Authority - Legal Submissions – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| AS-017 | <a href="#">Western Riverside Waste Authority</a><br>Additional Submission - Accepted at the discretion of the Examining Authority - Preliminary Submissions on Protective Provisions – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]      |
| AS-018 | <a href="#">Western Riverside Waste Authority</a><br>Additional Submission - Accepted at the discretion of the Examining Authority - Preliminary Submissions Annex - Wood Technical Note – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]   |
| AS-019 | <a href="#">Western Riverside Waste Authority</a><br>Additional Submission - Accepted at the discretion of the Examining Authority - Correspondence - WRWA to Cory Environmental 04.06.19 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]  |

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| AS-020 | <a href="#">Cheryl Osborne</a><br>Additional Submission - Accepted at the discretion of the Examining Authority   |
| AS-021 | <a href="#">Mrs Margaret J White</a><br>Additional submission – Accepted at the discretion of the Examining Authority   |
| AS-022 | <a href="#">Cory Riverside Energy</a><br>Additional Submission – Accepted at the discretion of the Examining Authority. Summary of Consultation and Update on Statement of Common Ground between the Applicant and Greater London Authority |
| AS-023 | <a href="#">London Borough of Bromley</a><br>Additional Submission – Accepted at the discretion of the Examining Authority  |
| AS-024 | <a href="#">Western Riverside Waste Authority</a><br>Additional Submission – Withdrawal Letter - Accepted at the discretion of the Examining Authority  |
| AS-025 | <a href="#">SAS Depot Limited</a><br>Additional Submission – Letter of withdrawal - Accepted at the discretion of the Examining Authority   |
| AS-026 | <a href="#">Creeside Developments (Kent) Limited</a><br>Additional Submission – Letter of withdrawal - Accepted at the discretion of the Examining Authority  |
| AS-027 | <a href="#">Maz Mohammad</a><br>Additional Submission – Acceptance of Option Agreement and Withdrawal of Relevant Representation letter - Accepted at the discretion of the Examining Authority   |
| AS-028 | <a href="#">Friends of Crossness Nature Reserve</a><br>Additional Submission - Accepted at the discretion of the Examining Authority. Comments on the draft Development Consent Order (DCO)   |
| AS-029 | <a href="#">Thames Water Utilities Limited</a><br>Additional Submission – Accepted at the discretion of the Examining Authority. Letter to the Examining Authority concerning attendance at Issue Specific Hearing 3 (ISH3)                 |
| AS-030 | <a href="#">Thames Water Utilities Limited</a><br>Additional Submission – Accepted at the discretion of the Examining Authority. Annex A Protective Provisions  |
| AS-031 | <a href="#">Cory Riverside Energy</a><br>Additional Submission – Accepted at the discretion of the Examining Authority – Joint statement between the Applicant and SAS Depot Limited  |
| AS-032 | <a href="#">Southern Gas Networks plc (SGN)</a><br>Additional Submission – Accepted at the discretion of the Examining Authority – SGNs preferred protective provisions   |
| AS-033 | <a href="#">SAS Depot Limited</a><br>Additional Submission – Accepted at the discretion of the Examining Authority – Confirmation of agreement with joint statement between the Applicant and SAS Depot Limited                             |
| AS-034 | <a href="#">Greater London Authority</a>  |

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|   | Additional Submission – Accepted at the discretion of the Examining Authority. Appendix B to GLA’s Deadline 7 Submission. DEFRA carbon modelling report   |
| AS-035                                      | <a href="#">Cory Riverside Energy</a><br>Additional Submission – Accepted at the discretion of the Examining Authority 8.02.99 Cover Letter   |
| AS-036                                      | <a href="#">Cory Riverside Energy</a><br>Additional Submission - Accepted at the discretion of the Examining Authority 1.3 Guide to the Application (Revision 10)   |
| AS-037                                      | <a href="#">Cory Riverside Energy</a><br>Additional Submission – Accepted at the discretion of the Examining Authority 1.3 Guide to the Application (Revision 10) (with track changes)                                    |
| AS-038                                      | <a href="#">Cory Riverside Energy</a><br>Additional Submission – Accepted at the discretion of the Examining Authority 8.01.16 Statement of Common Ground: Greater London authority                                       |
| AS-039                                      | <a href="#">Cory Riverside Energy</a><br>Additional Submission – Accepted at the discretion of the Examining Authority 8.02.100 Applicant's response to Greater London Authority's Deadline 8b Submission                 |
| AS-040                                      | <a href="#">Cory Riverside Energy</a><br>Additional Submission – Accepted at the discretion of the Examining Authority 8.02.101 Applicant's response to Greenwich-Bexley Environment Alliance Deadline 8b Submission      |
| AS-041                                      | <a href="#">Cory Riverside Energy</a><br>Additional Submission – Accepted at the discretion of the Examining Authority 8.02.102 Applicant's response to Mrs Margaret J White's Deadline 8b Submission                     |
| AS-042                                      | <a href="#">Cory Riverside Energy</a><br>Additional Submission – Accepted at the discretion of the Examining Authority 8.02.103 Applicant's response to London Borough of Bexley's Deadline 8b Submission                 |
| AS-043                                      | <a href="#">Eversheds Sutherland (International) LLP on behalf of National Grid Electricity Transmission Plc</a><br>Additional Submission – Accepted at the discretion of the Examining Authority Withdrawal of objection |
| AS-044                                      | <a href="#">Southern Gas Networks plc (SGN)</a><br>Additional Submission – Accepted at the discretion of the Examining Authority Withdrawal of objection letter   |
| AS-045                                      | <a href="#">Network Rail</a><br>Additional Submission - Accepted at the discretion of the Examining Authority - Withdrawal of objection letter - <b>WITHDRAWN</b>   |
| <b>Events and Hearings</b>                  |   |
| <b>Preliminary Meeting</b>                  |   |
| EV-001                                      | <a href="#">Preliminary Meeting Note</a>  |
| EV-001a                                     | <a href="#">Recording of preliminary meeting - 10 April 2019</a>  |
| <b>Accompanied Site Visits and Hearings</b> |   |

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| EV-001   | <b>DOCUMENT NOW AT REFERENCE - EV-001a</b>  |
| EV-002   | <a href="#">Accompanied Site Inspection Itinerary</a>   |
| EV-003   | <a href="#">Agenda for Open Floor Hearing 1, Issue Specific Hearing 1, Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1</a>  |
| EV-003A  | <a href="#">Compulsory Acquisition Hearing Agenda</a>   |
| EV-004   | <a href="#">Recording of Open Floor Hearing 1 (OFH1) - 4 June 2019</a>  |
| EV-005   | <a href="#">Recording of Issue Specific Hearing 1 (ISH) - 5th June 2019</a>   |
| EV-006   | <a href="#">Compulsory Acquisition Hearing 1 (first session) – 6 June 2019</a>  |
| EV-007   | <a href="#">Compulsory Acquisition Hearing 2 (second session) – 7 June 2019</a>   |
| EV-008   | <a href="#">Recording of Issue Specific Hearing 2 (ISH2) – 6 June</a>   |
| EV-009   | <a href="#">Agenda for Compulsory Acquisition Hearing 2 (CAH2) and Issue Specific Hearing 3 (ISH3)</a>  |
| EV-010   | <a href="#">Recording of Compulsory Acquisition Hearing 2 (CAH2) - 18th September 2019</a>  |
| EV-011   | <a href="#">Recording of Issue Specific Hearing 3 (ISH3) - 19th September 2019</a>  |
| <b>Unaccompanied Site Inspection</b>   |   |
| EV-012   | <a href="#">Note of Unaccompanied Site Inspection - 18 September 2019</a>   |
| <b>Representations</b>   |   |
| <b><u>Deadline 1 – 30 April 2019</u></b>   |   |
| <b>Deadline 1 for the receipt of:</b>  |   |
| <ul style="list-style-type: none"> <li>- Notification of wish to speak at a Compulsory Acquisition Hearing</li> <li>- Notification of wish to speak at an Issue Specific Hearing</li> <li>- Notification of wish to speak at an Open Floor Hearing</li> <li>- Notification of wish to attend an Accompanied Site Inspection (ASI), suggested locations and justifications</li> <li>- Notification by statutory parties of wish to be considered as an Interested Party</li> <li>- Notification of wish to have future correspondence electronically</li> <li>- Provision by the Applicant of a draft itinerary for the ASI</li> <li>- Responses to any further information requested by the ExA for this Deadline</li> </ul> |   |
| REP1-001   | <a href="#">Cory Riverside Energy</a><br>Deadline 1 Submission - Doc 8.02.01 Suggested Itinerary for the Accompanied Site Inspection  |
| REP1-002   | <a href="#">Knights Solicitors on behalf of SAS Depot Ltd, S.Wernick &amp; Sons (Holdings) Limited and Wernick Event Hire Limited</a><br>Deadline 1 Submission - Notification of wish to attend an Accompanied Site Inspection (ASI), suggested locations and justifications – <b>Letter of Withdrawals</b> [AS-025, OD-005 & OD-006] |
| <b><u>Deadline 2 – 20 May 2019</u></b>   |   |
| <b>Deadline 2 for receipt of:</b>  |   |
| <ul style="list-style-type: none"> <li>- Comments on Relevant Representations (RRs)</li> <li>- Written Representations (WRs)</li> </ul>  |   |

- **Summaries of all WRs exceeding 1500 words**
- **Local Impact Reports (LIR) from any local authorities**
- **Statements of Common Ground(s) (SoCGs) requested by the ExA**
- **Responses to the ExA's Written Questions**
- **Provision by the Applicant of final itinerary for ASI**
- **Comments on any additional information/submissions received by previous deadline**
- **Responses to any further information requested by the ExA for this Deadline**

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| REP2-001 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 1.3 Guide to the Application (Rev 1)   |
| REP2-002 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 1.3 Guide to the Application (Rev 1)<br>(with Track Changes)                 |
| REP2-003 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - Land Plans   |
| REP2-004 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 2.2 Work Plans (Rev 1)   |
| REP2-005 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 2.3 Access and Rights of Way Plans (Rev 1)                                   |
| REP2-006 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 3.1 Draft Development Consent Order<br>(Rev 1)                               |
| REP2-007 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 3.1 Draft Development Consent Order<br>(Rev 1) (with track changes)          |
| REP2-008 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 4.1 Statement of Reasons (Rev 1)   |
| REP2-009 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 4.1 Statement of Reasons (Rev 1) (track changes)                             |
| REP2-010 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 4.3 Book of Reference (Rev 1)  |
| REP2-011 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 4.3 Book of Reference (Rev 1) (with track changes)                           |
| REP2-012 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 5.4.1 Combined Heat and Power<br>Supplementary Report                        |
| REP2-013 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 3 Project and Site<br>Description (Rev 1)                     |
| REP2-014 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 3 Project and Site<br>Description (Rev 1)(with track changes) |
| REP2-015 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 5 Alternatives<br>Considered (Rev 1)                          |
| REP2-016 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a>   |

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|          | Deadline 2 Submission - 6.1 ES Chapter 5 Alternatives Considered (Rev 1)(with track changes)  |
| REP2-017 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter Transport (Rev 1)   |
| REP2-018 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 6 Transport (Rev 1)(with track changes)                               |
| REP2-019 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 7 Air Quality (Rev 1)   |
| REP2-020 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 7 Air Quality (Rev 1)(with track changes)                             |
| REP2-021 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 9 TIVA (Rev 1)  |
| REP2-022 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 9 TVIA (Rev 1)(with track changes)                                    |
| REP2-023 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 11 Terrestrial Biodiversity (Rev 1)                                   |
| REP2-024 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 11 Terrestrial Biodiversity (Rev 1) (with track changes)              |
| REP2-025 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 12 Hydrology, Flood Risk Water Resources (Rev 1)                      |
| REP2-026 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 12 Hydrology, Flood Risk Water Resources (Rev 1) (with track changes) |
| REP2-027 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter Ground Conditions (Rev 1)   |
| REP2-028 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 13 Ground Conditions (Rev 1)(with track changes)                      |
| REP2-029 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 14 Socio-economics (Rev 1)  |
| REP2-030 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 14 Socio-economics (Rev 1)(with track changes)                        |
| REP2-031 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 18 Glossary (Rev 1)   |
| REP2-032 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.1 ES Chapter 18 Glossary (Rev 1)(with track changes)                               |
| REP2-033 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.2 Figure 7.5 Contour Nickel (Rev 1)(with track changes)                            |
| REP2-034 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.3 ES Appendix J to B.1 (Rev 1)   |

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| REP2-035 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.3 ES Appendix J to B.1 (Rev 1)(with track changes)                    |
| REP2-036 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.3 ES Appendix C.1 Traffic Modelling (Rev 1)                           |
| REP2-037 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.3 ES Appendix C.1 Traffic Modelling (Rev 1)(with track changes)       |
| REP2-038 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.3 ES Appendix C.2 Stack Modelling (Rev 1)                             |
| REP2-039 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission -6.3 ES Appendix C.2 Stack Modelling (Rev 1)(with track changes)          |
| REP2-040 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.3 ES Appendix C.3 Human Health Risk Assessment (Rev 1)                |
| REP2-041 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.3 ES Appendix C.3 Human Health Risk Assessment (Rev 1)(track changes) |
| REP2-042 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.5 Habitats Regulations Assessment (Rev 1)                             |
| REP2-043 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.5 Habitats Regulations Assessment (Rev 1)(with track changes)         |
| REP2-044 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 6.6 Environmental Statement Supplementary Report                        |
| REP2-045 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 7.2.1 Supplementary Report to the Project and its Benefits Report       |
| REP2-046 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 7.5 Outline Code of Construction Practice (Rev 1)                       |
| REP2-047 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 7.5 Outline Code of Construction Practice (Rev 1)(with track changes)   |
| REP2-048 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 8.01.02 SoCG with Dartford Borough Council                              |
| REP2-049 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 8.01.03 SoCG with Environment Agency                                    |
| REP2-050 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 8.01.04 SoCG with Kent County Council                                   |
| REP2-051 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - 8.01.05 SoCG with Natural England                                       |
| REP2-052 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a>  |

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|          | Deadline 2 Submission – 8.01.06 SoCG with Port of London Authority  |
| REP2-053 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.02 Deadline 2 Submission Letter                               |
| REP2-054 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.03 Applicant responses to Relevant Representations            |
| REP2-055 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.04 Applicant responses to ExA First Written Questions         |
| REP2-056 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.05 Clarifications and Corrections Report                      |
| REP2-057 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.06 Environmental Permit and Air Quality Note                  |
| REP2-058 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.07 Electrical Connection Progress Report                      |
| REP2-059 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.08 Carbon Assessment  |
| REP2-060 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.09 Biodiversity Accounting Report                             |
| REP2-061 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.10 Report on Shading Effects to Crossness                     |
| REP2-062 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.11 Great Crested Newt HSI and eDNA Survey 2019                |
| REP2-063 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission – 8.02.12 Night-time Construction Noise Impact Validation Assessment |
| REP2-064 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - Appendix L - Outline CTMP - (Rev 1)                                |
| REP2-065 | <a href="#">Pinsent Masons LLP on behalf of Cory Riverside Energy</a><br>Deadline 2 Submission - Appendix L - Outline CTMP - (Rev 1 ) (with track changes)          |
| REP2-066 | <a href="#">East London Waste Authority</a><br>Deadline 2 Submission - Written Representation   |
| REP2-067 | <a href="#">East London Waste Authority</a><br>Deadline 2 Submission - Written Representation - Appendix 1  |
| REP2-068 | <a href="#">East London Waste Authority</a><br>Deadline 2 Submission - Written Representation - Appendix 2  |
| REP2-069 | <a href="#">Environment Agency</a><br>Deadline 2 Submission - Written Representation  |
| REP2-070 | <a href="#">Friends of Crossness Nature Reserve</a><br>Deadline 2 Submission - Written Submission   |
| REP2-071 | <a href="#">Greater London Authority</a><br>Deadline 2 Submission - Written Representation  |
| REP2-072 | <a href="#">Greater London Authority</a><br>Deadline 2 Submission - Appendix 1 to Written Representation  |

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| REP2-073 | <a href="#">Greater London Authority</a><br>Deadline 2 Submission - Appendix 2 - Written Representation  |
| REP2-074 | <a href="#">Greater London Authority</a><br>Deadline 2 Submission - Summary of Written Representation  |
| REP2-075 | <a href="#">Greater London Authority</a><br>Deadline 2 Submission - Local Impact Report  |
| REP2-076 | <a href="#">Greater Local Authority</a><br>Deadline 2 Submission - Summary Local Impact Report   |
| REP2-077 | <a href="#">Greenwich-Bexley Environment Alliance</a><br>Deadline 2 Submission - Written Representation  |
| REP2-078 | <a href="#">Kent County Council</a><br>Deadline 2 Submission - Written Representation  |
| REP2-079 | <a href="#">Kent County Council and Dartford Borough Council</a><br>Deadline 2 Submission - Local Impact Report  |
| REP2-080 | <a href="#">London Borough of Bexley</a><br>Deadline 2 Submission - Written Representation   |
| REP2-081 | <a href="#">London Borough of Bexley</a><br>Deadline 2 Submission - Appendix 1 to Written Representation<br>(track changed DCO)  |
| REP2-082 | <a href="#">London Borough of Bexley</a><br>Deadline 2 Submission - Local Impact Report  |
| REP2-083 | <a href="#">London Borough of Havering</a><br>Deadline 2 Submission - Local Impact Report  |
| REP2-084 | <a href="#">London Borough of Havering</a><br>Deadline 2 Submission - Summary of Local Impact Report   |
| REP2-085 | <a href="#">London Borough of Tower Hamlets</a><br>Deadline 2 Submission - Written Representation  |
| REP2-086 | <a href="#">Eversheds Sutherland on behalf of National Grid Electricity Transmission Plc</a><br>Deadline 2 Submission - Written Representation   |
| REP2-087 | <a href="#">Womble Bond Dickinson (UK) LLP on behalf of Network Rail</a><br>Deadline 2 Submission - Written Representation   |
| REP2-088 | <a href="#">Womble Bond Dickinson (UK) LLP on behalf of Network Rail</a><br>Deadline 2 Submission - Summary Written Representation   |
| REP2-089 | <a href="#">Winckworth Sherwood LLP on behalf of Port of London Authority</a><br>Deadline 2 Submission - Written Representation  |
| REP2-090 | <a href="#">Knights Solicitors on behalf of SAS Depot Limited</a><br>Deadline 2 Submission - Written Representation – <b>Letter of Withdrawal</b> 17 September 2019 [AS-025]   |
| REP2-091 | <a href="#">Knights Solicitors on behalf of S Wernick and Son (Holdings) Ltd and Wernick Event Hire Ltd</a><br>Deadline 2 Submission - Email to the Examining Authority (ExA) – <b>Letter of Withdrawal</b> 14 June 2019 [OD-005 and OD-006] |
| REP2-092 | <a href="#">Eversheds Sutherland (International) LLP on behalf of Thames Water Utilities Limited</a><br>Deadline 2 Submission - Written Representation   |
| REP2-093 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Written Representation – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]  |

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| REP2-094 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Summary Written Representation – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]   |
| REP2-095 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Written Representation - Annex 1 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| REP2-096 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Written Representation - Annex 2 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| REP2-097 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Written Representation - Annex 3 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| REP2-098 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Written Representation - Annex 4 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| REP2-099 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Written Representation - Annex 5 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| REP2-100 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Written Representation - Annex 6 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| REP2-101 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Written Representation - Annex 7 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| REP2-102 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Written Representation - Annex 8 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| REP2-103 | <a href="#">Shakespeare Martineau on behalf of Western Riverside Waste Authority</a><br>Deadline 2 Submission - Written Representation - Annex 9 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| REP2-104 | <a href="#">Rt Hon Jon Cruddas MP</a><br>Deadline 2 Submissions - Written Representation  |
| REP2-105 | <a href="#">Rt Hon Jon Cruddas MP</a><br>Deadline 2 Submission - Petition   |
| REP2-106 | <a href="#">RT Hon Teresa Pearce MP</a><br>Deadline 2 Submission - Written Representation   |
| REP2-107 | <a href="#">RT Hon Teresa Pearce MP</a><br>Deadline 2 Submission - Written Representation Summary   |
| REP2-108 | <a href="#">Dave Putson Councillor Belvedere Ward (Labour)</a><br>Deadline 2 Submission - Written Representation  |
| REP2-109 | <a href="#">Dave Putson Councillor Belvedere Ward (Labour)</a><br>Deadline 2 Submission - Email Submission  |

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| REP2-110  | <a href="#">Barbara Fairbairn</a><br>Deadline 7 Submission - Written Representation   |
| REP2-111  | <a href="#">Mrs Margaret J White</a><br>Deadline 2 Submission - Written Representation  |
| <b><u>Deadline 3 – 18 June 2019</u></b>   |   |
| <b>Deadline 3 for receipt by the ExA of:</b>  |   |
| <ul style="list-style-type: none"> <li>- <b>Comments on WRs and responses to comments on RRs</b></li> <li>- <b>Comments on LIRs</b></li> <li>- <b>Comments on responses to the ExA’s First Written Questions</b></li> <li>- <b>Any revised SoCGs</b></li> <li>- <b>Revised draft DCO from Applicant</b></li> <li>- <b>Post hearing submissions including written submissions of oral case</b></li> <li>- <b>Responses to any further information requested by the ExA</b></li> <li>- <b>Comments on any additional information/submissions received by previous deadline</b></li> </ul> |   |
| REP3-001  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 1.3 Guide to Application (Rev 2).  |
| REP3-002  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 1.3 Guide to Application (Rev 2) (with track changes).   |
| REP3-003  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 3.1 Draft Riverside Energy Park Development Consent Order (Rev 2)                              |
| REP3-004  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 3.1 Draft Development Consent Order (Rev 2) (with track changes).                              |
| REP3-005  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 3.2 Explanatory Memorandum (Rev 1).  |
| REP3-006  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 3.2 Explanatory Memorandum (Rev 1) (with track changes).                                       |
| REP3-007  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 3.3 Draft Development Consent Order Schedule of Changes  |
| REP3-008  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 6.2 Figure 7.5 Contour Nickel (Rev 2).   |
| REP3-009  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 6.2 Figure 7.5 Contour Nickel (Rev 2) (with track changes).                                    |
| REP3-010  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 6.3 Appendix L to B.1 Outline Construction Traffic Management Plan                             |
| REP3-011  | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 6.3 Appendix L to B1 Outline Construction Traffic Management Plan (Rev 2) (with track changes) |
| REP3-012  | <a href="#">Cory Riverside Energy</a>   |

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|          | Deadline 3 Submission - 7.5 Outline Code of Construction Practice (Rev 2).  |
| REP3-013 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 7.5 Outline Code of Construction Practice (Rev 2) (with track changes).                                    |
| REP3-014 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 7.6 Outline Biodiversity Landscape Mitigation Strategy (Rev 1).  |
| REP3-015 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 7.6 Outline Biodiversity Landscape Mitigation Strategy (Rev 1) (with track changes).                       |
| REP3-016 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.01.07: Statement of Common Ground between the Applicant and Port of London Authority                     |
| REP3-017 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.01.08 Statement of Common Ground with London Borough of Barking and Dagenham                             |
| REP3-018 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.01.09 Statement of Common Ground with Dartford Borough Council.  |
| REP3-019 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.10 Report on Shading Effects to Crossness Local Nature Reserve (Rev 1).                               |
| REP3-020 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.10 Report on Shading Effects to Crossness Local Nature Reserve (Rev 1) (with track changes).          |
| REP3-021 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.13 Deadline 3 Submission Letter   |
| REP3-022 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.14 Applicants responses to Written Representations  |
| REP3-023 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.15 Applicants response to the Local Impact Report by Greater London Authority                         |
| REP3-024 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.16 Applicants response to the Local Impact Report by Kent County Council and Dartford Borough Council |
| REP3-025 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.17 Applicants response to the Local Impact Report by London Borough Bexley                            |
| REP3-026 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.18 Applicants response to the Local Impact Report by London Borough Havering                          |
| REP3-027 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.19 Oral summary from the Issue Specific Hearing on Environmental Matters                              |
| REP3-028 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.20 Oral summary from the Issue Specific Hearing on the draft Development Consent Order                |
| REP3-029 | <a href="#">Cory Riverside Energy</a>   |

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|          | Deadline 3 Submission - 8.02.21 Oral summary from the Compulsory Acquisition Hearing  |
| REP3-030 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.22 Land Negotiations Summary  |
| REP3-031 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.25 Biodiversity Offset Delivery Framework   |
| REP3-032 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.26 Clarification on Above Ordnance Datum and Above Ground Level.  |
| REP3-033 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.27 Post Hearing Note on Public Health and Evidence  |
| REP3-034 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.29 Middleton Jetty Ops Review Workshop Note   |
| REP3-035 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.30 Letter to Ingrebourne  |
| REP3-036 | <a href="#">Cory Riverside Energy</a><br>Deadline 3 Submission - 8.02.31 Temporary Jetty Outage Review.   |
| REP3-037 | <a href="#">Creek Side Developments (Kent) Limited</a><br>Deadline 3 Submission - Response to comments on Relevant Representations – <b>Letter of Withdrawal</b> 18 September 2019 [AS-026]                           |
| REP3-038 | <a href="#">Greater London Authority</a><br>Deadline 3 Submission - Post Hearing Written Submission of Oral Case  |
| REP3-039 | <a href="#">Greater London Authority</a><br>Deadline 3 Submission - Appendix 2a   |
| REP3-040 | <a href="#">Greater London Authority</a><br>Deadline 3 Submission - Appendix 2b   |
| REP3-041 | <a href="#">Greater London Authority</a><br>Deadline 3 Submission - Appendix 3  |
| REP3-042 | <a href="#">Greater London Authority</a><br>Deadline 3 Submission - GLA's comments on other documents Prepared by the Applicant   |
| REP3-043 | <a href="#">Greater London Authority</a><br>Deadline 3 Submission - GLA's comments on Applicant's Response to Examining Authority's Written Questions   |
| REP3-044 | <a href="#">Greater London Authority</a><br>Deadline 3 Submission - GLA's comments on Relevant Local Impact Report and Written Representations  |
| REP3-045 | <a href="#">Greater London Authority</a><br>Deadline 3 Submission - GLA's comments on Applicants' response to GLA's Relevant Representations (RR)   |
| REP3-046 | <a href="#">Landsul Limited and Munster Joinery (U.K) Limited</a><br>Deadline 3 Submission - Letter to Examining Authority  |
| REP3-047 | <a href="#">London Borough of Bexley</a><br>Deadline 3 Submission - Comments on any additional information/submissions received by Deadline 2 and post-hearing submissions including written submissions of oral case |

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| REP3-048  | <a href="#">Port of London Authority</a><br>Deadline 3 Submission - Update on Statement of Common Ground negotiations  |
| REP3-049  | <a href="#">Thames Water Utilities Limited</a><br>Deadline 3 Submission - Post hearing submissions including written submissions of oral case – 5 June 2019  |
| REP3-050  | <a href="#">Thames Water Utilities Limited</a><br>Deadline 3 Submission - Post hearing submissions including written submissions of oral case – 6 June 2019  |
| REP3-051  | <a href="#">Western Riverside Waste Authority</a><br>Deadline 3 Submission - 1. Written Summary of Oral Submissions made at the Compulsory Acquisition Hearing on 6 and 7 June 2019 – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]           |
| REP3-052  | <a href="#">Western Riverside Waste Authority</a><br>Deadline 3 Submission - Comments on the Applicant's response to Relevant Representations and the Examining Authority's Written Questions – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024] |
| REP3-053  | <a href="#">Western Riverside Waste Authority</a><br>Deadline 3 Submission - RRRL Protective Provisions - WRWA Proposed Amendments - Tracked Changes – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]  |
| REP3-054  | <a href="#">Cllr Dave Putson</a><br>Deadline 3 Submission - Post Hearing Submission  |
| <p><b><u>Deadline 4 – 19 July 2019:</u></b></p> <p><b><u>Deadline 4 for receipt of:</u></b></p> <ul style="list-style-type: none"> <li>- Responses to the ExA’s Further Written Questions (if required)</li> <li>- Comments on Applicant’s revised draft DCO (if required)</li> <li>- Comments on Post hearing submissions including written submissions of oral case</li> <li>- Any revised SoCG</li> <li>- Responses to any further information requested by the ExA</li> <li>- Comments on any additional information/submissions received by previous deadline</li> </ul> |  |
| REP4-001  | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 1.3 Guide to the Application (Rev 3)  |
| REP4-002  | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 1.3 Guide to the Application (Rev 3) (with track changes)   |
| REP4-003  | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 2.1 Land Plans (Rev 2)  |
| REP4-004  | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 4.3 Book of Reference (Rev 2)   |
| REP4-005  | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 4.3 Book of Reference (Rev 2) (with track changes)  |
| REP4-006  | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 5.3 Grid Connection Statement (Rev 1)   |

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| REP4-007 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 5.3 Grid Connection Statement (Rev 1) (with track changes)  |
| REP4-008 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 6.3 Appendix L to B1 Outline CTMP (Rev 3) (Clean)   |
| REP4-009 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 6.3 Appendix L to B1 Outline Construction Traffic Management Plan (CTMP) (Rev 3) (with track changes) |
| REP4-010 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.22 Land Negotiations Summary (Rev 1)   |
| REP4-011 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.32 Deadline 4 Submission Letter  |
| REP4-012 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.33 Applicants response to Creek Side Developments Deadline 3 Submission                          |
| REP4-013 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.34 Applicants response to Cllr Dave Putson Deadline 3 Submission                                 |
| REP4-014 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.35 Applicants response to Greater London Authority Deadline 3 Submission                         |
| REP4-015 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.36 Applicant's response to London Borough of Bexley Deadline 3 Submission                        |
| REP4-016 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.37 Applicants response to Western Riverside Waste Authority Deadline 3 Submission                |
| REP4-017 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.38 Applicant's response to Landsul and Munster Joinery Deadline 3 Submission                     |
| REP4-018 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.39 Applicant's response to Thames Water's Written Summary of Oral Submissions Made at Hearings   |
| REP4-019 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.40 Effect of Interconnectors on Riverside Energy Park (REP) Carbon Assessment                    |
| REP4-020 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.41 Analysis of Metropolitan Open Land (MOL) in respect of the Proposed Development               |
| REP4-021 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.42 Anaerobic Digestion Facility Emissions Mitigation Note  |
| REP4-022 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - 8.02.43 Applicants response to Cheryl Osborne Deadline 3 Submission                                   |
| REP4-023 | <a href="#">Cory Riverside Energy</a><br>Deadline 4 Submission - Joint Statement between the Applicant and Western Riverside Waste Authority                           |

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| REP4-024 | <a href="#">Greater London Authority</a><br>Deadline 4 Submission - Deadline 4 Final Report   |
| REP4-025 | <a href="#">Greater London Authority</a><br>Deadline 4 Submission - Appendix 1 - GLA Correspondence with Peabody  |
| REP4-026 | <a href="#">Greater London Authority</a><br>Deadline 4 Submission - Appendix 2 - Climate Change and Energy Policy since 2008  |
| REP4-027 | <a href="#">Greater London Authority</a><br>Deadline 4 Submission - Appendix 3 - Climate Change Act (2008)  |
| REP4-028 | <a href="#">Greater London Authority</a><br>Deadline 4 Submission - Appendix 4 - RRRF Development Consent Order   |
| REP4-029 | <a href="#">Greater London Authority</a><br>Deadline 4 Submission - Appendix 5 - Congenital Anomalies paper within Environment International Journal (2019)   |
| REP4-030 | <a href="#">Port of London Authority</a><br>Deadline 4 Submission - Update on position in regards to the application  |
| REP4-031 | <a href="#">Port of London Authority</a><br>Deadline 4 Submission - Clarification of position in regards to the application   |
| REP4-032 | <a href="#">Environment Agency</a><br>Deadline 4 Submission - Response to further information requested by the Examining Authority  |
| REP4-033 | <a href="#">Ralph Todd on behalf of Friends of Crossness Nature Reserve</a><br>Deadline 4 Submission - Response to Applicant's Written Representations  |
| REP4-034 | <a href="#">Ralph Todd on behalf of Friends of Crossness Nature Reserve</a><br>Deadline 4 Submission - Response to further information requested by the Examining Authority   |
| REP4-035 | <a href="#">Govia Thameslink Railway</a><br>Deadline 4 Submission - No comments on scheme   |
| REP4-036 | <a href="#">London Borough of Bexley</a><br>Deadline 4 Submission - Comments on revised draft DCO submitted at Deadline 3 and any additional information/submissions received by Deadline 3   |
| REP4-037 | <a href="#">Marine Management Response</a><br>Deadline 4 Submission - Response to further information requested by the Examining Authority  |
| REP4-038 | <a href="#">Eversheds Sutherland on behalf of <b>Thames Water Utilities Limited</b></a><br>Deadline 4 Submission - Response to further information requested by the Examining Authority   |
| REP4-039 | <a href="#">Eversheds Sutherland on behalf of <b>Thames Water Utilities Limited</b></a><br>Deadline 4 Submission - Comments on revised draft DCO submitted at Deadline 3 and any additional information/submissions received by previous deadline |
| REP4-040 | <a href="#">Western Riverside Waste Authority</a>   |

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|  | Deadline 4 Submission - Joint statement between the applicant and Western Riverside Waste Authority – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]                                |
| REP4-041   | <a href="#">Chris Rose</a><br>Deadline 4 Submission - Response to further information requested by the Examining Authority  |
| REP4-042   | <a href="#">London Borough of Bexley</a><br>Deadline 4 Submission - Comments on revised draft DCO submitted at Deadline 3 and any additional information/submissions received by Deadline 3 |
| <b><u>Deadline 5 – 13 August 2019</u></b>  |   |
| <b><u>Deadline 5 for receipt of:</u></b>   |   |
| <ul style="list-style-type: none"> <li>- Applicant’s revised draft DCO</li> <li>- Responses to further information requested by the ExA</li> <li>- Any revised SoCG</li> <li>- Post hearing submissions including written submissions of oral case</li> <li>- Responses to any further information requested by the ExA</li> <li>- Comments on any additional information/submissions received by previous deadline</li> </ul> |   |
| REP5-001   | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 1.3 Guide to the Application (Rev 4)   |
| REP5-002   | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 1.3 Guide to the Application (Rev 4) (with track changes)  |
| REP5-003   | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 3.1 Draft DCO (Rev 3)  |
| REP5-004   | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 3.1 Draft DCO (Rev 3) (with track changes)   |
| REP5-005   | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 3.2 Draft DCO Explanatory Memorandum (Rev 2)   |
| REP5-006   | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 3.2 Draft DCO Explanatory Memorandum (Rev 2) (with track changes)  |
| REP5-007   | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 3.3 Draft DCO Schedule of Changes (Rev 1)  |
| REP5-008   | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 6.3 Appendix L to B1 Outline Construction Traffic Management Plan (Rev 4)  |
| REP5-009   | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 6.3 Appendix L to B1 Outline Construction Traffic Management Plan (Rev 4) (with track changes)                             |
| REP5-010   | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 7.5 Outline Code of Construction Practice (Rev 3)  |
| REP5-011   | <a href="#">Cory Riverside Energy</a>   |

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|          | Deadline 5 Submission - 7.5 Outline Code of Construction Practice (Rev 3) (with track changes).  |
| REP5-012 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.01.10 Statement of Common Ground Transport for London (Draft).                  |
| REP5-013 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.01.11 Statement of Common Ground Environment Agency                             |
| REP5-014 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.22 Land Negotiations Summary (Rev 2)   |
| REP5-015 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.44 Deadline 5 Submission Letter  |
| REP5-016 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.45 Protective Provisions Summary   |
| REP5-017 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.46 Applicants response to GLA<br>Deadline 4 Submission                       |
| REP5-018 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.47 Applicant's response to Chris Rose<br>Deadline 4 Submission               |
| REP5-019 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.48 Applicant's response to Friends of Crossness<br>Deadline 4 Submission     |
| REP5-020 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.49 Applicant's response to Ralph Todd<br>Deadline 4 Submission               |
| REP5-021 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.50 Applicant's response to Thames Water<br>Deadline 4 Submission             |
| REP5-022 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.51 Applicant's response to London Borough of Bexley<br>Deadline 4 Submission |
| REP5-023 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.52 Applicant's response to Environment Agency<br>Deadline 4 Submission       |
| REP5-024 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.53 Update on Environment Bank Site Selection Progress                        |
| REP5-025 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.54 Applicants response to comments on the draft DCO                          |
| REP5-026 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.55 Pre-Commencement Plan   |
| REP5-027 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.56 REP and RRRF Application Boundaries Plan                                  |
| REP5-028 | <a href="#">Cory Riverside Energy</a><br>Deadline 5 Submission - 8.02.57 Applicant's response to Southern Gas Networks<br>Deadline 4 Submission    |
| REP5-029 | <a href="#">Cory Riverside Energy</a>  |

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|   | Deadline 5 Submission - 8.02.58 Metropolitan Open Land Plan   |
| REP5-030  | <a href="#">Greater London Authority</a><br>Deadline 5 Submission - Cover Note  |
| REP5-031  | <a href="#">Greater London Authority</a><br>Deadline 5 Submission - Schedule 1 - response to Applicant document 8.02.35, "Applicant Response to the GLA's Deadline 3 Submissions"   |
| REP5-032  | <a href="#">Greater London Authority</a><br>Deadline 5 Submission - Schedule 2 - GLA comments on document 8.02.36, "Applicant's response to London Borough of Bexley Deadline 3 Submission"   |
| REP5-033  | <a href="#">Greater London Authority</a><br>Deadline 5 Submission - Schedule 3 - GLA's comments on London Borough of Bexley comments on the Applicant's revised draft DCO submitted at Deadline 3                                     |
| REP5-034  | <a href="#">Greater London Authority</a><br>Deadline 5 Submission - Schedule 4 - GLA comments on new relevant documents submitted by the Applicant  |
| REP5-035  | <a href="#">Countryside Properties (UK) Ltd</a><br>Deadline 5 Submission from non-IP – accepted at the discretion of the Examining Authority. Response to further information requested by the Examining Authority                    |
| REP5-036  | <a href="#">Friends of Crossness Nature Reserve</a><br>Deadline 5 Submission - Comments on additional information received by the previous deadline   |
| REP5-037  | <a href="#">LB Bexley</a><br>Deadline 5 Submission - Deadline 5 Submissions   |
| REP5-038  | <a href="#">LB Bexley</a><br>Deadline 5 Submission - Appendix A   |
| REP5-039  | <a href="#">Thames Water Utilities Limited</a><br>Deadline 5 Submission - Any additional information / submissions received by previous deadline and notification of a wish to speak at and attend the Compulsory Acquisition Hearing |
| REP5-040  | <a href="#">Western Riverside Waste Authority</a><br>Deadline 5 Submission - Responses to any further information requested by the Examining Authority – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]                       |
| REP5-041  | <a href="#">Arriva London</a><br>Deadline 5 Submission - Comments on any additional information/submissions received by previous deadline   |
| <b>Deadline 6:</b><br><b>Deadline 6 for receipt of:</b><br><b>- Responses to the Examining Authority's further written questions and request for comments on changes to the application issued on 1 August 2019</b> |   |
| REP6-001  | <a href="#">Cory Riverside Energy</a><br>Deadline 6 Submission - 8.02.59 Submission Letter  |
| REP6-002  | <a href="#">Cory Riverside Energy</a><br>Deadline 6 Submission - 8.02.60 Applicant's Response to the Examining Authority's Further Written Questions  |
| REP6-003  | <a href="#">Cory Riverside Energy</a>   |

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|  | Deadline 6 Submission - 8.02.61 Applicant's Response to the Examining Authority's Rule 17 letter on Changes to the Application                            |
| REP6-004   | <a href="#">Cory Riverside Energy</a><br>Deadline 6 Submission - 1.3 Guide to the Application (Rev 5)   |
| REP6-005   | <a href="#">Cory Riverside Energy</a><br>Deadline 6 Submission - 1.3 Guide to the Application (Rev 5) - Tracked Changes                                   |
| REP6-006   | <a href="#">Cory Riverside Energy</a><br>Deadline 6 Submission - Outline Biodiversity Landscape Mitigation Strategy (OBLEMS) (Rev2)                       |
| REP6-007   | <a href="#">Cory Riverside Energy</a><br>Deadline 6 Submission - Outline Biodiversity Landscape Mitigation Strategy (OBLEMS) (Rev 2) - with Track Changes |
| REP6-008   | <a href="#">Greater London Authority</a><br>Deadline 6 Submission - Response to Examining Authority's Further Written Questions                           |
| REP6-009   | <a href="#">London Borough of Havering</a><br>Deadline 6 Submission - Response to Examining Authority's Further Written Questions                         |
| <b><u>Deadline 7</u></b><br><b><u>Deadline 7 for receipt of:</u></b><br>- <b>Comments on the draft DCO (if required)</b><br>- <b>Any revised SoCG</b><br>- <b>Responses to any further information requested by the ExA</b><br>- <b>Comments on any additional information/submissions received by previous deadline</b> |   |
| REP7-001   | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.63 Deadline 7 Submission Letter   |
| REP7-002   | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 1.3 Guide to the Application (Rev 6)   |
| REP7-003   | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 1.3 Guide to the Application (Rev 6) (with track changes)                                |
| REP7-004   | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 6.2 ES Figure 7.8 Predicted Hourly NO2 Concentrations (Rev 2)                            |
| REP7-005   | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 6.2 ES Figure 7.9 Predicted Annual Mean NOx Concentrations (Rev 2)                       |
| REP7-006   | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 6.2 ES Figure 7.10 Predicted Daily NOx Concentrations (Rev 2)                            |
| REP7-007   | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 7.6 Outline Biodiversity Landscape Mitigation Strategy (Rev 3)                           |
| REP7-008   | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 7.6 Outline Biodiversity Landscape Mitigation Strategy (Rev 3) (with track changes)      |
| REP7-009   | <a href="#">Cory Riverside Energy</a>   |

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|          | Deadline 7 Submission - 8.01.12 Statement of Common Ground Kent County Council (Rev 2)  |
| REP7-010 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.42 Anaerobic Digestion Facility Emissions Mitigation Note (Rev 1)                         |
| REP7-011 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.42 Anaerobic Digestion Facility Emissions Mitigation Note (Rev 1) (with track changes)    |
| REP7-012 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.64 Applicant's response to Mrs Margaret J White Additional Submission (09 August 2019)    |
| REP7-013 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.65 Applicant's response to Thames Water Utilities Limited Deadline 5 Submission           |
| REP7-014 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.66 Applicant's response to London Borough of Bexley Deadline 5 Submission                 |
| REP7-015 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.67 Applicant's response to Greater London Authority Deadline 5 and 6 Submissions          |
| REP7-016 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.68 Applicant's response to Countryside Properties and L&Q New Homes Deadline 5 Submission |
| REP7-017 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.69 Applicant's response to Arriva London Deadline 5 Submission                            |
| REP7-018 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.70 Applicant's response to Air Quality Matters  |
| REP7-019 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.71 Environment Bank Site Selection for Biodiversity Offsetting Report                     |
| REP7-020 | <a href="#">Cory Riverside Energy</a><br>Deadline 7 Submission - 8.02.72 Applicant's response to London Borough of Bromley Deadline 5 Submission                |
| REP7-021 | <a href="#">Greater London Authority</a><br>Deadline 7 Submission - Deadline 7 Covering Letter  |
| REP7-022 | <a href="#">Greater London Authority</a><br>Deadline 7 Submission - Appendix A: Schedule 1 GLA response to Applicant's submissions at Deadline 5                |
| REP7-023 | <a href="#">London Borough of Bexley</a><br>Deadline 7 Submission - Comments on additional information/submissions received at Deadline 5 and 6                 |
| REP7-024 | <a href="#">London Borough of Bexley</a><br>Deadline 7 Submission - Appendix A Draft DCO (Rev 3 with LBB track changes)   |
| REP7-025 | <a href="#">London Borough of Bexley</a><br>Deadline 7 Submission - Appendix B Draft DCO Explanatory Memorandum (Rev 2 with LBB comments)                       |
| REP7-026 | <a href="#">East London Waste Authority</a>   |

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|  | Deadline 7 Submission - Responses to any further information requested by the Examining Authority   |
| REP7-027   | <a href="#">Mrs Margaret J White</a><br>Deadline 7 Submission - Comments on any additional information/submissions received by previous deadline  |
| REP7-028   | <a href="#">Thames Water Utilities Limited</a><br>Deadline 7 Submission - Submission of Comments on behalf of Interested Party Thames Water Utilities Limited   |
| REP7-029   | <a href="#">Thames Water Utilities Limited</a><br>Deadline 7 Submission - Annex A - Protective Provisions   |
| REP7-030   | <a href="#">Western Riverside Waste Authority</a><br>Deadline 7 Submission - Responses to any further information requested by the Examining Authority – <b>Letter of Withdrawal</b> 16 September 2019 [AS-024]               |
| <p><b><u>Deadline 7a -13 September 2019</u></b><br/> <b><u>Deadline 7a for receipt of:</u></b><br/> - Responses to any further information requested by the ExA<br/> - Comments on any additional information/submissions received by previous deadlines</p>   |   |
| REP7a-001  | <a href="#">Cory Riverside Energy</a><br>Deadline 7a Submission - Cover Letter  |
| REP7a-002  | <a href="#">Cory Riverside Energy</a><br>Deadline 7a Submission - 8.02.70 Applicant's response to Air Quality Matters (this document supersedes the document submitted for Deadline 7 Submission REP7-018)                    |
| REP7a-003  | <a href="#">Cory Riverside Energy</a><br>Deadline 7a Submission - 8.02.70 Applicant's response to Air Quality Matters with track changes (this document supersedes the document submitted for Deadline 7 Submission REP7-018) |
| REP7a-004  | <a href="#">Cory Riverside Energy</a><br>Deadline 7a Submission - 8.2.74 Applicant's response to the Examining Authority's rule 17 Letter on 30 August 2019   |
| REP7a-005  | <a href="#">Greater London Authority</a><br>Deadline 7a Submission - Comments on any additional information/submissions received by previous deadline   |
| REP7a-006  | <a href="#">London Borough of Bexley</a><br>Deadline 7a Submission - Responses to any further information requested by the Examining Authority  |
| <p><b><u>Deadline 8 – 23 September 2019</u></b><br/> <b><u>Deadline 8 for receipt of:</u></b><br/> - Responses to comments on the draft DCO (if required)<br/> - Responses to any further information requested by the ExA<br/> - Final SoCGs<br/> - Comments on any additional information/submissions received by previous deadline<br/> - Final draft DCO to be submitted by the Applicant in the statutory instrument (SI) template with the SI template validation report</p> |   |
| REP8-001   | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.75 Deadline 8 Submission Letter   |
| REP8-002   | <a href="#">Cory Riverside Energy</a>   |

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|          | Deadline 8 Submission - 1.3 Guide to the Application (Rev 7)  |
| REP8-003 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 1.3 Guide to the Application (Rev 7) - (Tracked Changes)   |
| REP8-004 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 4.3 Book of Reference (Rev 3)  |
| REP8-005 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 4.3 Book of Reference (Rev 3) (with track changes)   |
| REP8-006 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 5.3 Grid Connection Statement (Rev 2)  |
| REP8-007 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 5.3 Grid Connection Statement (Rev 2) (with track changes)   |
| REP8-008 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 6.3 ES Appendix L to B.1 Outline Construction Traffic Management Plan (CTMP (Rev 5)                      |
| REP8-009 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 6.3 ES Appendix L to B.1 Outline Construction Traffic Management Plan (CTMP (Rev 5) (with track changes) |
| REP8-010 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 7.5 Outline Code of Construction Practice (Rev 4)  |
| REP8-011 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 7.5 Outline Code of Construction Practice (Rev 4) (with track changes)                                   |
| REP8-012 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 7.6 Outline Biodiversity Landscape Mitigation Strategy (Rev 4)   |
| REP8-013 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 7.6 Outline Biodiversity Landscape Mitigation Strategy (Rev 4) (with track changes)                      |
| REP8-014 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.01.13 Statement of Common Ground (SoCG) Kent County Council (Rev 2)                                    |
| REP8-015 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.22 Land Negotiations Summary (Rev 3)  |
| REP8-016 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.56 REP and RRRF Application Boundaries Plan (Rev 1)   |
| REP8-017 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.76 Oral Summaries for the Compulsory Acquisition Hearing CAH2 (18 September 2019)                   |
| REP8-018 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.77 Oral Summaries for the Issue Specific Hearing on draft DCO ISH3 (19 September 2019)              |
| REP8-019 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.78 Applicant's response to Greater London Authority's Deadline 7 and 7A Submissions                 |

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| REP8-020 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.79 Applicant's response to East London Waste Authority Deadline 7 Submission  |
| REP8-021 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.80 Applicant's response to London Borough of Bexley Deadline 7 Submission   |
| REP8-022 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.81 Applicant's response to Thames Water Utilities Ltd Deadline 7 Submission   |
| REP8-023 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.82 Applicant's response to Mrs Margaret J White Deadline 7 Submission   |
| REP8-024 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.83 Applicant's update on Environmental Permit Determination   |
| REP8-025 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.84 Applicant's response to London Borough of Bexley Deadline 7A Submission  |
| REP8-026 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.85 Maximum Throughput Carbon Assessment Note  |
| REP8-027 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.86 Supplementary Note to the Temporary Jetty Outage Review  |
| REP8-028 | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 8.02.87 Applicant's response to Friends of Crossness Nature Reserve Submission   |
| REP8-029 | <a href="#">Greater London Authority</a><br>Deadline 8 Submission - Post Hearing Submission   |
| REP8-030 | <a href="#">Greater London Authority</a><br>Deadline 8 Submission - Appendix 2 - Secretary of State (SoS) RRRF Decision Letter  |
| REP8-031 | <a href="#">Greater London Authority</a><br>Deadline 8 Submission - Appendix 3 - DECC Approval Explanatory Memorandum   |
| REP8-032 | <a href="#">Greater London Authority</a><br>Deadline 8 Submission - Appendix 4 - Planning permission conditions   |
| REP8-033 | <a href="#">London Borough of Bexley</a><br>Deadline 8 Submission - Comments on any additional information/submissions received by the previous deadline                                  |
| REP8-034 | <a href="#">London Borough of Bexley</a><br>Deadline 8 Submission - Written summary of oral submissions from Issue Specific Hearing 3 (ISH3) on the draft Development Consent Order (DCO) |
| REP8-035 | <a href="#">Eversheds Sutherland LLP on behalf of National Grid</a><br>Deadline 8 Submission - Response to Deadline 8 – Comments on Applicant's draft Development Consent Order (DCO)     |
| REP8-036 | <a href="#">Friends of Crossness Nature Reserve</a><br>Deadline 8 Submission - Comments on any additional information/submissions received by previous deadline                           |

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| REP8-037  | <a href="#">Bexley Natural Environment Forum</a><br>Deadline 8 Submission - Comments on Doc 8.02.71 Environment Bank Site Selection for Biodiversity Offsetting Report   |
| REP8-038  | <a href="#">Thames Water Utilities Limited</a><br>Deadline 8 Submission - Submission of comments on the draft Development Consent Order (DCO) and comments on any additional information/submissions received by previous deadline |
| REP8-039  | <a href="#">Thames Water Utilities Limited</a><br>Deadline 8 Submission - Annex A - Agreed Protective provisions   |
| REP8-040  | <a href="#">Port of London Authority</a><br>Deadline 8 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on any additional information/submissions received by previous deadline       |
| <p><b><u>Deadline 8a 30 September 2019:</u></b><br/> <b><u>Deadline 8a for receipt of:</u></b><br/> - Responses to any further information requested by the ExA<br/> - Comments on any additional information/submissions received by previous deadline<br/> - Final SoCGs<br/> - Final draft DCO to be submitted by the Applicant in the statutory instrument (SI) template with the SI template validation report<br/> - Final Explanatory Memorandum and final schedule of changes to the DCO to be submitted by the Applicant</p> |  |
| REP8a-001   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - Deadline 8a Submission Letter  |
| REP8a-002   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 1.3 Guide to the Application (Rev 8) - (Tracked Changes)   |
| REP8a-003   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 1.3 Guide to the Application (Rev 8)   |
| REP8a-004   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 3.1 Draft Development Consent Order (DCO) (Rev4) (with track changes)  |
| REP8a-005   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 3.1 Draft Development Consent Order (DCO) (Rev 4)  |
| REP8a-006   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 3.2 Draft Development Consent Order (DCO) Explanatory Memorandum (Rev 3) (with tracked changes)  |
| REP8a-007   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 3.2 Draft Development Consent Order (DCO) Explanatory Memorandum (Rev 3)   |
| REP8a-008   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 3.3 Draft Development Consent Order (DCO) Schedule of Changes (Rev 2) (with tracked changes)   |
| REP8a-009   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 3.3 Draft Development Consent Order (DCO) Schedule of Changes (Rev 2)  |
| REP8a-010   | <a href="#">Cory Riverside Energy</a>  |

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|   | Deadline 8a Submission - 6.3 Appendix L to B1 Outline Construction Traffic Management Plan (CTMP) (Rev 6) (with track changes)  |
| REP8a-011   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 6.3 Appendix L to B1 Outline Construction Traffic Management Plan (CTMP) (Rev 6)  |
| REP8a-012   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 6.3 Appendix M to B1 Outline Operational Worker Travel Plan (OWTP) (Rev 1) (with track changes)   |
| REP8a-013   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 6.3 Appendix M to B1 Outline Operational Worker Travel Plan (OWTP) (Rev 1)  |
| REP8a-014   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 7.5 Outline Code of Construction Practice (Rev 5) (with track changes)  |
| REP8a-015   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 7.5 Outline Code of Construction Practice (Rev 5)   |
| REP8a-016   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 8.02.45 Protective Provisions Summary (Rev 1)   |
| REP8a-017   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 8.02.89 Applicant's response to GLA's comments on the draft Development Consent Order (DCO) from Deadline 7 and 7a                                    |
| REP8a-018   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - 8.02.90 Applicant's response to LBB's comments on the draft Development Consent Order (DCO) from Deadline 7   |
| REP8a-019   | <a href="#">Cory Riverside Energy</a><br>Deadline 8a Submission - Validation Report 01.10.19  |
| REP8a-020   | <a href="#">Greater London Authority</a><br>Deadline 8a Submission - Response to any further information requested by the ExA   |
| REP8a-021   | <a href="#">Greater London Authority</a><br>Deadline 8a Submission - Comments on any additional information/submissions received by the previous deadline   |
| REP8a-022   | <a href="#">Greater London Authority</a><br>Deadline 8a Submission - Appendix B - Response to Applicant's proposed removal of suggested Development Consent Order (DCO) Requirements 15: Emission Limits Work Number 1A |
| REP8a-023   | <a href="#">London Borough of Bexley</a><br>Deadline 8a Submission - Comments on any additional information/submissions received by the previous deadline   |
| <b><u>Deadline 8b 4 October 2019</u></b><br><b><u>Deadline 8b for receipt of:</u></b><br>- Comments on the Applicants Final draft DCO, Explanatory Memorandum and schedule of changes<br>- Response to any further information requested by the ExA |   |

| <b>- Comments on any additional information/submissions received by the previous deadline</b> |  |
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| REP8b-001   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 8.02.91 Cover Letter   |
| REP8b-002   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 1.3 Guide to the Application (Rev 9)   |
| REP8b-003   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 1.3 Guide to the Application (Rev 9)<br>(with track changes)   |
| REP8b-004   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 3.1 Draft Development Consent Order (DCO)  |
| REP8b-005   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 3.1 Draft Development Consent Order (DCO) (with track changes)   |
| REP8b-006   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 3.2 Draft DCO Explanatory Memorandum (Rev 4)   |
| REP8b-007   | <a href="#">Cory Riverside Energy</a><br>Deadline 8 Submission - 3.2 Draft DCO Explanatory Memorandum (Rev 4) (with track changes)   |
| REP8b-008   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 3.3 Schedule of Changes (Rev 3)  |
| REP8b-009   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 8.01.14 Statement of Common Ground (SoCG) between the Applicant and London Borough of Bexley                           |
| REP8b-010   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 8.01.15 Statement of Common Ground (SoCG) in respect of land acquisition between the Applicant and Kent County Council |
| REP8b-011   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 8.02.92 Applicant's Closing Statement  |
| REP8b-012   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 8.02.93 S.106 Agreement (Final draft, not signed)  |
| REP8b-013   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 8.02.94 Applicant's response to Bexley Natural Environment Forum's Deadline 8 Submission                               |
| REP8b-014   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 8.02.95 Applicant's response to London Borough of Bexley's Deadline 8 and Deadline 8A Submissions                      |
| REP8b-015   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 8.02.96 Applicant's response to Friends of Crossness Nature Reserve's Deadline 8 Submission                            |
| REP8b-016   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 8.02.97 Applicant's response to Greater London Authority's Deadline 8 and Deadline 8A Submissions                      |
| REP8b-017   | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - 8.02.98 Position Statement in respect of land acquisition between the Applicant and London Borough of Bexley           |

|                        |  |
|------------------------|--|
| REP8b-018              | <a href="#">Cory Riverside Energy</a><br>Deadline 8b Submission - Draft Development Consent Order (DCO) Validation Report  |
| REP8b-019              | <a href="#">Greater London Authority</a><br>Deadline 8b Submission - Comments on the Applicants Final draft Development Consent Order (DCO)  |
| REP8b-020              | <a href="#">Greater London Authority</a><br>Deadline 8b Submission - App A DCO mark-up   |
| REP8b-021              | <a href="#">Greater London Authority</a><br>Deadline 8b Submission - App B BC DCO  |
| REP8b-022              | <a href="#">Greater London Authority</a><br>Deadline 8b Submission - App C TFL Bus mitigation process  |
| REP8b-023              | <a href="#">Greater London Authority</a><br>Deadline 8b Submission - App D Silvertown Tunnel DCO   |
| REP8b-024              | <a href="#">London Borough of Bexley</a><br>Deadline 8b Submission - Comments on any additional information/submissions received by the previous deadline  |
| REP8b-025              | <a href="#">Winckworth Sherwood LLP on behalf of Port of London Authority</a><br>Deadline 8b Submission - Comments on the Applicants Final draft Development Consent Order (DCO)                                       |
| REP8b-026              | <a href="#">Eversheds Sutherland (International) LLP on behalf of Thames Water Utilities Limited</a><br>Deadline 8b Submission - Comments on the Applicants Final draft DCO  |
| REP8b-027              | <a href="#">Greenwich-Bexley Environment Alliance</a><br>Deadline 8b Submission - Comments on any additional information/submissions received by the previous deadline   |
| REP8b-028              | <a href="#">Mrs Margaret J White</a><br>Deadline 8b Submission - Comments on any additional information/submissions received by the previous deadline  |
| REP8b-029              | <a href="#">Tozers Solicitors LLP on behalf of Landsul Limited and Munster Joinery (U.K) Limited</a><br>Deadline 8b Submission - Withdrawal letter   |
| REP8b-030              | <a href="#">Network Rail</a><br>Late Deadline 8b submission - Accepted at the discretion of the Examining Authority. Comments on the Applicants draft Development Consent Order (DCO) submitted at deadline 8a         |
| <b>Other Documents</b> |  |
| OD-001                 | <a href="#">Cory Riverside Energy</a><br>Certificate of compliance with s56 of the Planning Act 2008. The date provided within the notice for the opening of Relevant Representations should read as 19 December 2018. |
| OD-002                 | <a href="#">Peter Brett Associates LLP on behalf of Cory Riverside Energy</a><br>s56 compliance cover letter   |
| OD-003                 | <a href="#">Peter Brett Associates LLP on behalf of Cory Riverside Energy</a><br>Certificate of compliance s56 and Regulation 16   |
| OD-004                 | <a href="#">Knights Solicitors on behalf of SAS Depot Limited, S Wernick &amp; Sons Limited and Wernick Event Hire Limited</a> - <b>Letter of Withdrawal</b> 17 September 2019 [AS-025]                                |
| OD-005                 | <a href="#">Knights Solicitors on behalf of Wernick &amp; Sons (Holdings) Limited</a>  |

|        |  |
|--------|--|
|        | Withdrawal of Wernick & Sons (Holdings) Limited Relevant Representation [ <b>RR-041</b> ]  |
| OD-006 | <a href="#">Knights Solicitors on behalf of Wernick Event Hire Limited</a><br>Withdrawal of Wernick Event Hire Limited Relevant Representation [ <b>RR-042</b> ] |

## **APPENDIX B: LIST OF ABBREVIATIONS**

| <b>Abbreviation or Usage</b> | <b>Reference</b>  |
|------------------------------|---|
| AD                           | Anaerobic Digestion                                       |
| AEL                          | Air Emission Limits                                       |
| AOD                          | Above Ordnance Datum                                      |
| AP                           | Affected Person   |
| APCR                         | Air Pollution Control Residues                            |
| AQAL                         | Air Quality Assessment Level                              |
| AQMA                         | Air Quality Management Area                               |
| BAT                          | Best Available Technology                                 |
| BoR                          | Book of Reference   |
| BREF                         | Draft Waste Incineration Directive BAT Ref Doc (BREF)     |
| BU                           | Biodiversity Units  |
| C&I                          | Commercial and Industrial                                 |
| CA                           | Compulsory Acquisition                                    |
| CAH                          | Compulsory Acquisition Hearing                            |
| CBA                          | Cost-Benefit Analysis                                     |
| CHP                          | Combined heat and power                                   |
| CIEEM                        | Chartered Institute for Ecology and Ecological Management |
| CIF                          | Carbon Intensity Floor                                    |
| CNG                          | Compressed Natural Gas                                    |
| CNR                          | Crossness Nature Reserve                                  |
| CoCP                         | Code of Construction Practice                             |
| Creekside                    | Creekside Development (Kent) Limited                      |
| CSSI                         | Crossness Sewage Sludge Incinerator                       |
| CSTW                         | Crossness Sewage Treatment Works                          |
| CTMP                         | Construction Traffic Management Plan                      |
| DBC                          | Dartford Borough Council                                  |
| DC                           | Direct Current  |
| DCO                          | Development Consent Order                                 |
| DE                           | Decentralised Energy                                      |
| DEFRA                        | Department for the Environment, Food and Rural Affairs    |
| DH                           | District Heating  |
| EA                           | Environment Agency  |
| EB                           | Environment Bank  |
| EfW                          | Energy from Waste   |
| EIA                          | Environmental Impact Assessment                           |
| EM                           | Explanatory memorandum                                    |
| EN-1                         | Overarching NPS Energy                                    |
| EN-3                         | NPS for Renewable Energy Infrastructure                   |
| EN-5                         | NPS Electricity Networks Infrastructure                   |
| EP                           | Environmental Permit                                      |
| ERF                          | Energy Recovery Facility                                  |
| ES                           | Environmental Statement                                   |
| ExA                          | Examining Authority                                       |
| ExQ1                         | First Written Questions                                   |
| FoCNR                        | Friends of Crossness Nature Reserve                       |
| FRA                          | Flood Risk Assessment                                     |

|                 |  |
|-----------------|--|
| FRAPA           | Flood Risk Permit Area                                 |
| GCN             | Great Crested Newts                                    |
| GLA             | Greater London Authority                               |
| HGV             | Heavy Good Vehicle                                     |
| HRA             | Habitats Regulations Assessment                        |
| IAQM            | Institute of Air Quality Management                    |
| IBA             | Incinerator Bottom Ash                                 |
| ICP             | Independent Connection Provider                        |
| IED             | Industrial Emissions Directive                         |
| IP              | Interested Party                                       |
| ISH             | Issue Specific Hearing                                 |
| IVL             | Ingrebourne Valley Limited                             |
| KCC             | Kent County Council                                    |
| kV              | Kilovolt   |
| LBB             | London Borough of Bexley                               |
| LBH             | London Borough of Havering                             |
| LBTH            | London Borough of Tower Hamlets                        |
| LES             | London Environment Strategy                            |
| LIR             | Local Impact Report                                    |
| LNR             | Local Nature Reserve                                   |
| LOAEL           | Lowest observed adverse effect level                   |
| LPN             | London Power Networks                                  |
| LWSA            | London Waste Strategy Assessment                       |
| MCHLG           | Ministry of Housing, Community and Local Government    |
| MOL             | Metropolitan open land                                 |
| MSW             | Municipal solid waste                                  |
| MW              | Megawatt   |
| National Grid   | National Grid Electricity Transmission PLC             |
| NE              | Natural England  |
| NG              | National Grid  |
| NH <sub>3</sub> | Ammonia  |
| NO <sub>x</sub> | Oxides of Nitrogen                                     |
| NPPF            | National Planning Policy Framework                     |
| NPS             | National Policy Statement                              |
| NR              | National Rail  |
| NSIP            | Nationally Significant Infrastructure Project          |
| OBLMS           | Outline Biodiversity and Landscape Mitigation Strategy |
| OFH             | Open Floor Hearing                                     |
| PA2008          | Planning Act 2008 (as amended)                         |
| PAC             | Powdered Activated Carbon                              |
| PBR             | The Project and its Benefits Report                    |
| PC              | Process Contribution                                   |
| PEC             | Predicted Environmental Contributions                  |
| PLA             | Port of London Authority                               |
| PM              | Preliminary Meeting                                    |
| PPG             | Planning Practice Guidance                             |
| PRoW            | Public Rights of Way                                   |
| PV              | Photovoltaics  |

|                     |  |
|---------------------|--|
| RCV                 | Refuse Collection Vehicles   |
| REP                 | Riverside Energy Park  |
| RR                  | Relevant Representation  |
| RRRF                | Riverside Resource Recovery Facility   |
| RRRL                | Riverside Resource Recovery Limited  |
| RWS                 | Resources and Waste Strategy   |
| s                   | section  |
| SAC                 | Special Area of Conservation   |
| SAS                 | SAS Depot Limited  |
| SGN                 | Southern Gas Networks plc  |
| SINC                | Site of Importance for Nature Conservation   |
| SMINC               | Site of Metropolitan Importance for Nature Conservation  |
| SOAEL               | Significant observed adverse effect level  |
| SoCG                | Statement of Common Ground   |
| SoR                 | Statement of Reasons   |
| SoS                 | Secretary of State   |
| SRN                 | Strategic Road Network   |
| SSSI                | Site of Special Scientific Interest  |
| TfL                 | Transport for London   |
| The Birds Directive | Convention of European Wildlife and Natural Habitats and Directive 2009/147/EC                       |
| The EIA Regulations | Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2263) (as amended)    |
| The s41 list        | List of which The Natural Environment and Rural Communities Act 2006 (NERC) provides the publication |
| TP                  | Temporary Possession   |
| tpa                 | Tonnes per annum   |
| TVIA                | Townscape and visual impact assessment   |
| TWUL                | Thames Water Utilities Limited   |
| UDP                 | The Saved Unitary Development Plan   |
| UKPN                | UK Power Networks  |
| UKWIN               | UK Without Incineration Network  |
| Wernick             | S Wernick and Sons (Holdings) Limited and Wernick Event Hire Limited                                 |
| WID                 | Waste Incineration Directive   |
| WR                  | Written Representation   |
| WRWA                | Western Riverside Waste Authority  |
| WSI                 | Written Scheme of Investigation  |
| WTS                 | Waste Transfer Station   |
| ZTV                 | Zone of theoretical visibility   |

## **APPENDIX C: THE RECOMMENDED DCO**

**202[\*] No.**

**INFRASTRUCTURE PLANNING**

**Riverside Energy Park Order 202[ ]**

*Made* - - - - \*\*\*

*Coming into force* - - \*\*\*

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An application under section 37(a) of the Planning Act 2008 (the “2008 Act”) has been made to the Secretary of State for an order granting development consent.

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(b). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83(c) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

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(a) 2008 c.29. The relevant provisions of the 2008 Act are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20) and by sections 22-27 of the Growth and Infrastructure Act 2013 (c.27). Transitional provisions are contained in S.I. 2013/1124.

(b) S.I. 2010/103, amended by S.I. 2012/635.

(c) 2008 c.29. Section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of section 25(20) to the Localism Act 2011 (c.20).

(d) S.I. 2017/572.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

In accordance with section 127(a) of the 2008 Act, the Secretary of State has applied the relevant tests and is satisfied that they have been met.

In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied, having considered the report and recommendation of the Examining Authority, that the parcels of open space comprised within the Order land, when burdened with a new right created under this Order, will be no less advantageous than they were before the making of this Order to the following persons: (a) the persons in whom it is vested; (b) other persons, if any, entitled to rights of common or other rights; and (c) the public.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Riverside Energy Park Order 202[\*] and comes into force on [\*] 202[\*].

#### **Interpretation**

2.—(1) In this Order, unless otherwise stated—

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1965 Act” means the Compulsory Purchase Act 1965(c);

“the 1980 Act” means the Highways Act 1980(d);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(e);

“the 1984 Act” means the Road Traffic Regulation Act 1984(f);

“the 1990 Act” means the Town and Country Planning Act 1990(g);

“the 1991 Act” means the New Roads and Street Works Act 1991(h);

“the 2008 Act” means the Planning Act 2008(i);

“access and public rights of way plans” means the plans of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the access and public rights of way plans for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

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(a) 2008 c.29. Section 127 was amended by sections 23, (2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013 (c.27) and by paragraphs 64(1) and (2) of Schedule 13(1) and paragraph 1 of Schedule 25 to the Localism Act 2011 (c.20).

(b) 1961 c.33.

(c) 1965 c.56.

(d) 1980 c.66.

(e) 1981 c.66.

(f) 1984 c.27.

(g) 1990 c.8.

(h) 1991 c.22.

(i) 2008 c.29.

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks; electricity cables; telecommunications equipment and electricity cabinets;

“authorised development” means the development described in Schedule 1 (authorised development) which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the book of reference for the purposes of this Order;

“biodiversity units” means the product of the size of an area, and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value (as assessed using the Defra biodiversity off-setting metric);

“biodiversity off-setting scheme” means a scheme which will deliver biodiversity enhancements which must not be less than the off-setting value;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“CHP statement” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the CHP statement for the purposes of this Order;

“commence” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than the pre-commencement works and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of assuring that all systems and components of the authorised development or part of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions are to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 (notice of authorisation of compulsory acquisition) of the 2008 Act;

“date of final commissioning” means the date on which the commissioning of the authorised development (or any part of the authorised development as the context requires) is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 23 of Schedule 2 (requirements);

“Defra biodiversity off-setting metric” means the mechanism published by the Department for Environment, Food and Rural Affairs in 2012 to quantify impacts on biodiversity that allows biodiversity losses and gains affecting different habitats to be compared and ensures offsets are sufficient to compensate for residual losses of biodiversity;

“design principles” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the design principles for the purposes of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in an electronic form;

“Environment Bank” means the Environment Bank Limited (company number 05944540) whose registered office is at Low Bramley Grange Farm, Bramley Grange Grewelthorpe, Ripon, North Yorkshire, HG4 3DN together with its successors;

“environmental statement” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the environmental statement for the purposes of this Order;

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016(a);

“flood risk assessment” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“FRAPA drawings” means the drawings of that description referred to in Schedule 11 certified by the Secretary of State as the FRAPA drawings for the purposes of this Order;

“Greater London Authority” means the Greater London Authority, City Hall, The Queen’s Walk, More London, London, SE1 2AA;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“land plans” means the plans of that description referred to in Schedule 11 certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation shown for each numbered work on the works plans;

“London Power Networks” means London Power Networks PLC (company number 03929195) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP or a subsidiary of London Power Networks PLC;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not replace the whole of, the authorised development, but only insofar as such activities do not give rise to any materially new or materially different environmental effects which are worse than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“MOL plan” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the MOL plan for the purposes of this Order;

“off-setting value” means the net biodiversity impact of the authorised development, calculated using the Defra biodiversity off-setting metric, measured in biodiversity units;

“operational period” means the period from the date of final commissioning to the permanent cessation of the operation of Work No. 1;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development as shown on the land plans;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“outline biodiversity and landscape mitigation strategy” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline biodiversity and landscape strategy for the purposes of this Order;

“outline code of construction practice” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline code of construction practice for the purposes of this Order;

“outline construction traffic management plan” means Appendix L of the transport assessment;

“outline drainage design strategy” means Appendix G of the flood risk assessment;

“outline lighting strategy” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline lighting strategy for the purposes of this Order;

“outline operational worker travel plan” means Appendix M of the transport assessment;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

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(a) S.I. 2016/1154.

“pre-commencement land” means the land shown on the pre-commencement plan;

“pre-commencement plan” means the plan of that description referred to in Schedule 11 certified by the Secretary of State as the pre-commencement plan for the purposes of this Order;

“pre-commencement works” means operations on the pre-commencement land only consisting of land preparation, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, erection of construction welfare facilities, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and any other works that do not give rise to any likely significant adverse environmental effects as assessed in the environmental statement;

“relevant planning authority” means the London Borough of Bexley and any successor to its functions in relation to land in its area, and Dartford Borough Council and any successor to its functions in relation to land in its area;

“REP and RRRF Application Boundaries Plan” means the plan of that description referred to in Schedule 11 certified by the Secretary of State as the REP and RRRF Application Boundaries Plan for the purposes of this Order;

“requirements” means those matters set out in Schedule 2;

“RRRF” means the Riverside Energy from Waste Facility known as Riverside Resource Recovery Facility located at Norman Road, Belvedere, Kent;

“RRRF condition” means a condition to the RRRF planning permission and where a condition is referred to by a number, that reference is to the corresponding numbered condition on the RRRF planning permission;

“RRRF planning permission” means the planning permission granted under the 1990 Act by the relevant planning authority for the RRRF and given reference number 16/02167/FUL;

“RRRL” means Riverside Resource Recovery Limited (company number 03723386) whose registered office is at 2 Coldbath Square, London, EC1R 5HL together with its successors in title of that part of the Order land identified in the book of reference;

“section 36 consent” means the consent granted by the Secretary of State pursuant to section 36 (consent required for construction of etc. generating stations) of the Electricity Act 1989<sup>(b)</sup> in respect of the RRRF as varied by the Secretary of State on 13 March 2015 under Section 36C (variation of consents under section 36) of that Act and given reference number GDBC/003/00001C-06;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of Chapter I) of the Communications Act 2003<sup>(c)</sup>;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“transport assessment” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the transport assessment for the purposes of this Order;

“Transport for London” means the body corporate established under section 154 (establishment) of the Greater London Authority Act 1999 of 55 Broadway, London, SW1H 0BL and any successor to its functions in relation to streets within the London Borough of Bexley;

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(a) 1981. c.67. Section 7 was amended by paragraph 9 of Schedule 15(I) to the Planning and Compensation Act 1991 (c.34). There are other amendments to this section which are not relevant to this Order.  
b) 1989 c.29  
c) 2003 c.21

“undertaker” means Cory Environmental Holdings Limited (company number 05360864) or Riverside Energy Park Limited (company number 11536739) as notified to the relevant planning authority pursuant to requirement 33 or any other person who for the time being has the benefit of this Order in accordance with articles 8 and 9 of this Order;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“works plans” means the plans of that description referred to in Schedule 11 certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works numbered in Schedule 1.

(6) References to “Schedule” are, unless otherwise stated, references to Schedules to this Order.

(7) The expression “includes” is to be construed without limitation.

(8) References to any statutory body include any body’s successor in respect of functions which are relevant to this Order.

(9) References in this Order to “part of the authorised development” means all or part of any numbered work.

## PART 2

### WORK PROVISIONS

#### *Principal powers*

#### **Development consent granted by the Order**

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

(3) In constructing and maintaining the authorised development the undertaker may deviate vertically from the levels of the authorised development to any extent downwards not exceeding two metres.

#### **Maintenance of authorised development**

4.—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

## **Operation of the authorised development**

5.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) Other than as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of an electricity generating station.

## **Disapplication of legislative provisions and modifications to section 36 consent and RRRF planning permission**

6.—(1) The provisions of any bylaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw – making powers of the authority) to the Water Resources Act 1991(a) do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) Regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 does not apply in respect of any flood risk activity carried out under the powers conferred by this Order.

(3) The section 36 consent and the RRRF planning permission are to be amended for the purposes of this Order only as set out in Schedule 13 (modifications to the section 36 consent and RRRF planning permission).

(4) To the extent that there is an inconsistency on the land coloured brown identified on the REP and RRRF Applications Boundaries Plan between any provision of this Order and all or any of RRRF condition 1, RRRF condition 22 or RRRF condition 32 then, in respect of such inconsistency only, there is deemed to be no breach of all or any of RRRF condition 1, RRRF condition 22 or RRRF condition 32 (as applicable) and no enforcement action can be taken following the carrying out of the pre-commencement works, commencement or operation of the authorised development.

(5) In the event that planning permission 15/02926/OUTM is implemented and the use of the land the subject of that planning permission is subsequently used for the temporary uses as authorised under this Order, a new planning permission is not required for the resumption, following the end of the temporary uses, of the land's development and use for which planning permission 15/02926/OUTM grants consent.

(6) The provisions of the Neighbourhood Planning Act 2017(b) in so far as they relate to temporary possession of land under articles 31 (temporary use of land for carrying out the authorised development) and 32 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

## **Port of London Act 1968**

7.—(1) Nothing in this Order relieves the undertaker of any obligation to obtain any permit or licence under the Port of London Act 1968(c) in respect of works or operations carried out within the Thames under the powers of this Order.

(2) In this article “the Thames” means that part of the river Thames within the Order limits and within the limits of the Port of London Authority, as described in Schedule 1 (description of port limits) to the Port of London Act 1968.

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(a) 1991 c.57

(b) 2017 c.20

(c) 1968 (c.xxxii).

## **Benefit of this Order**

8.—(1) Subject to paragraph (2) and article 9 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to works falling within the description of paragraph (a) of Work No. 6 (but only in so far as such works relate to Work No. 9) and Work Nos. 9 and 10 for which consent is granted by this Order for the benefit of the undertaker and London Power Networks.

## **Consent to transfer benefit of the Order**

9.—(1) Except where paragraph (4) applies, the undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) all or any part of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”), for a period agreed between the undertaker and the lessee, all or any part of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1)(a) or (1)(b) references in this Order to the undertaker, except paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) This paragraph applies where—

- (a) the transferee or lessee holds a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989; or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of any claims made;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where paragraph (4) applies the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (5) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

### **Guarantees in respect of payment of compensation**

**10.**—(1) The undertaker must not begin to exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security and the amount of that security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 22 (compulsory acquisition of land);
- (b) article 24 (compulsory acquisition of rights);
- (c) article 26 (private rights);
- (d) article 31 (temporary use of land for carrying out the authorised development);
- (e) article 32 (temporary use of land for maintaining the authorised development); and
- (f) article 33 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

(5) The guarantee or alternative form of security to be provided pursuant to paragraph (1) does not apply to the exercise of the provisions referred to in paragraph (2) in, on or under any street.

### *Streets*

### **Street works**

**11.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraph (a), (b), (c) or (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### **Power to alter layout, etc., of streets**

12.—(1) The undertaker may for the purposes of the authorised development alter the layout of or construct any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) of that Part of that Schedule and in the case of temporary works as specified in column (2) of Part 2 of Schedule 4 in the manner specified in relation to that street in column (3) of that Part of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development alter the layout of any street and, without limiting the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Temporary prohibition or restriction of use of streets and public rights of way**

13.—(1) The undertaker may, during and for the purposes of constructing the authorised development, temporarily alter, divert, prohibit the use of or restrict the use of any street or public right of way and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) and vehicles going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition or restriction of a street or public right of way under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets or public rights of way specified in columns (1) and (2) of Schedule 5 (temporary prohibition or restriction of the use of streets or public rights of way) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Permanent stopping up of streets**

14.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up the street specified in columns (1) and (2) of

Schedule 6 (permanent stopping up of streets) to the extent specified and as described in column (3) of that Schedule.

(2) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(3) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

**15.** The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access in the location specified in Part 1 of Schedule 4;
- (b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 4; and
- (c) with the approval of the relevant planning authorities after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Agreements with street authorities**

**16.—**(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of any street or the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (d) any alteration diversion, prohibition or restriction in the use of a street authorised by this Order;
- (e) the construction in the street of any of the authorised development; or
- (f) any such works as the parties may agree.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Traffic regulation measures**

**17.—**(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks’ notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker’s intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary prohibition or restriction of use of streets and public rights of way) or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act (road traffic contraventions subject to civil enforcement) 2004(a).

(4) In this article—

- (a) subject to sub-paragraph (b), expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

#### *Supplementary powers*

### **Discharge of water**

**18.**—(1) Subject to sub-paragraphs (3) and (4), the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(b).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs, whose consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld or delayed; and

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(a) 2004 c.18. There are amendments to this Act not relevant to this Order.

(b) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c.37).

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964<sup>(a)</sup>, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(b)</sup> the same meaning as in that Act.

### **Authority to survey and investigate the land**

**19.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or enter on any land which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act<sup>(c)</sup>.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the

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(a) 1964 c.40.

(b) 1991 c.57 as amended by S.I. 2009/3104.

(c) The functions of the Lands Tribunal under the 1961 Act are transferred to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 (c.15).

compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

### **Protective work to buildings**

**20.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building or structure lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building or structure; or
- (b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of 5 years beginning with the date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised the undertaker may enter and survey any building or structure falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building or structure the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building or structure and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits.

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works under this article to a building or structure;
- (b) a power under paragraph (3) to enter a building or structure and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building or structure and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter and take possession of land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building, structure or land not less than 14 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a), (c) or (d) specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building, structure or land concerned may, by serving a counter-notice within the period of 7 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building, structure or land to be referred to arbitration under article 42(3) (procedures in relation to certain approvals etc.).

(7) The undertaker must compensate the owners and occupiers of any building, structure or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out to a building or structure under this article; and
- (b) within 5 years beginning with the date of final commissioning for that part of the authorised development in the vicinity of the building or structure it appears that the protective works are inadequate to protect the building or structure against damage caused by the construction, on operation or maintenance of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building or structure for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building or structure by the construction, operation or maintenance of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation or maintenance of the authorised development.

### **Felling or lopping of trees**

**21.—**(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

## **PART 3**

### **POWERS OF ACQUISITION AND POSSESSION OF LAND**

#### *Powers of acquisition*

#### **Compulsory acquisition of land**

**22.—**(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) As from the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents (including restrictive covenants) to which it was previously subject.

(3) This article is subject to article 24, article 25 (acquisition of subsoil only) and article 31.

#### **Time limit for exercise of authority to acquire land compulsorily**

**23.—**(1) After the end of the period of five years beginning on the day on which this Order comes into force—

- (a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 as applied by article 28 (application of the 1981 Act).

(2) The authority conferred by article 31 must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**24.**—(1) Subject to paragraph (2) the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 22, by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and the benefit of restrictive covenants over land and the creation and acquisition of such new rights and the imposition of such new restrictive covenants as are specified in column (2) of the table in that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, schedule 2A (counter-notice requiring purchase of land not in notice to treat) (as substituted by paragraph 5(8) of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights)) and section 12 (divided land) of the 1981 Act, where the undertaker creates or acquires a right over land or the benefit of a restrictive covenant, under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenant) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictive covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 8 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restrictive covenant as they apply to the compulsory purchase of land and interests in land.

### **Acquisition of subsoil only**

**25.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 22 and paragraphs (1) and (2) of article 24 as may be required for any purpose for which that land or rights over land may be created or acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

### **Private rights**

**26.**—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker whether compulsorily or by agreement;
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act; or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are suspended and unenforceable or, where the owner of such rights or the person have the benefit of such restrictive covenants is notified by the undertaker, extinguished, in so far the continuance of the right or the burden of the restrictive covenant would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) as from the date of acquisition of the right or imposition of the restriction by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights and restrictive covenants over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or the imposition of a restrictive covenant under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 33 applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition or creation of rights over land or the imposition of restrictive covenants over or affecting the land;

- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

stating that any or all of those paragraphs do not apply to any right specified in the notice; and

- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Power to override easements and other rights**

27.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

## **Application of the 1981 Act**

- 28.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act) for subsection (2) substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(a) (time limit for general vesting declaration).
- (6) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 202\*”.
- (7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(c) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 25 (acquisition of subsoil only) of the Riverside Energy Park Order 202\*, which excludes the acquisition of subsoil only from this Schedule.”.
- (10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 29 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

## **Modification of Part 1 of the 1965 Act**

- 29.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.
- (2) In section 4A(1)(d) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 202\*”.
- (3) In section 11A(e) (powers of entry: further notices of entry)—
- (a) in subsection (1)(a) after “land” insert “under that provision”; and
- (b) in subsection (2) after “land” insert “under that provision”.
- (4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article

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(a) Inserted by section 182(2) of The Housing and Planning Act 2016  
(b) Inserted by section 202(2) of The Housing and Planning Act 2016  
(c) Inserted by paragraph 6 of Schedule 18 of The Housing and Planning Act 2016  
(d) Inserted by section 202(1) of the Housing and Planning Act 2016  
(e) Inserted by section 186(3) of the Housing and Planning Act 2016

23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 202\*”.

(5) In Schedule 2A(a) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 25(3) (acquisition of subsoil only) of the Riverside Energy Park Order 202\*, which excludes the acquisition of subsoil only from this Schedule.”; and

(b) after paragraph 29 insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 20 (protective work to buildings) or article 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the Riverside Energy Park Order 202\*.”.

#### **Rights under or over streets**

**30.**—(1) The undertaker may enter upon, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) is not to apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is to be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

#### *Temporary possession of land*

#### **Temporary use of land for carrying out the authorised development**

**31.**—(1) The undertaker may, in connection with the construction of the authorised development—

(a) enter on and take temporary possession of—

(i) so much of the land specified in columns (1) and (2) of the table in Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of the table in that Schedule;

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(a) Inserted by schedule 17(1) paragraph 3 of the Housing and Planning Act 2016

- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
  - (b) remove any buildings, fences, debris and vegetation from that land;
  - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
  - (d) construct any works (including mitigation works) specified in relation to that land.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
  - (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.
- (4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article.
- (5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).
- (9) Nothing in this article precludes the undertaker from—
- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 7 under article 24; or
  - (b) acquiring any right in the subsoil of any part of the Order land under article 25 or article 30 (rights under or over streets).
- (10) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.
- (11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9.

## **Temporary use of land for maintaining the authorised development**

**32.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning.

### *Supplementary*

## **Statutory undertakers**

**33.** Subject to the provisions of article 24(2) and Schedule 10 (protective provisions), the undertaker may—

- (a) exercise the powers conferred by article 22 and article 25 in relation to so much of the Order land as belongs to statutory undertakers;
- (b) extinguish or suspend the rights of or restrictive covenants for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land.

### **Apparatus and rights of statutory undertakers in stopped up streets**

**34.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 11, article 12, or article 13 any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 10, as if this Order had not been made.

### **Recovery of costs of new connections**

**35.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33 any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 34 or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

#### **Application of landlord and tenant law**

**36.—(1)** This article applies to any agreement entered into by the undertaker under article 9 so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which sub-paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

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(a) 2003 c.21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations 2011/1210.

- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for the purposes of the 1990 Act**

37. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

### **Defence to proceedings in respect of statutory nuisance**

38.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g) or (h) of section 79(1) (statutory nuisances and inspections therefor) of that Act (statutory nuisances and inspections therefor) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (prior consent for work on construction sites) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protective provisions**

39. Schedule 10 has effect.

### **Certification of plans etc.**

40.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans referred to in Schedule 11 to this Order for certification that they are true copies of those documents.

(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

41.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

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(a) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.  
 (b) 1974 c.40.

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and,
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

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(a) 1978 c.30.

**Procedures in relation to certain approvals etc.**

42.—(1) Subject to paragraph (2), Schedule 12 (procedure in relation to certain approvals etc.) is to have effect in relation to all consents, agreements or approvals contemplated by any provisions of this Order.

(2) Schedule 12 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 10 or any dispute under article 20(6) (protective work to buildings) to which the following paragraphs apply.

(3) Subject to any other provision in this Order, any difference or dispute arising under any provision of Schedule 10 or article 20(6) must, unless otherwise agreed in writing between the undertaker and the party in question, be referred to and settled in arbitration, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(4) If the Secretary of State fails to appoint an arbitrator under paragraph (3) within 14 days of the application, the referring party may refer to the Centre of Effective Dispute Resolution for appointment of an arbitrator.

**No double recovery**

43. Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

Signed by the authority of the Secretary of State for Business, Energy and Industrial Strategy

|         |   |
|---------|---|
| Address | <i>Name</i>   |
| Date    | Title   |
|         | Department for Business, Energy and Industrial Strategy |

# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in section 14(1)(a) (nationally significant infrastructure projects: general) and section 15 (generating stations) of the 2008 Act being a generating station with a capacity of over 50 megawatts but below 300 megawatts and associated development under section 115(1) (development for which development consent may be granted) of the 2008 Act comprising all or part of—

In the London Borough of Bexley

Work No. 1 — Works to construct an integrated energy park—

- (a) Work No. 1A — an energy recovery facility including—
  - (i) fuel reception and storage facilities consisting of a tipping hall and vehicle ramp(s), shredder, solid fuel storage bunker, cranes and handling equipment;
  - (ii) waste processing lines, each line including a feed hopper, ram feed, air cooled moving grates, a boiler and steam systems, combustion air systems and flue gas treatment facilities including residue and reagent storage silos and tanks;
  - (iii) associated induced fans and emissions control monitoring systems;
  - (iv) up to two emission stacks;
  - (v) a steam turbine incorporating at least 30 megawatts heat off-take for district heating and electrical generator (if not constructed and installed as part of Work No. 2);
  - (vi) an integrated protection system and uninterruptable power supplies; and
  - (vii) bottom ash conveyors, including storage bunker, crane and ash collection bay.
- (b) Work No. 1B — an anaerobic digestion system including—
  - (i) fuel reception and storage facilities as constructed for Work No. 1A;
  - (ii) conveyor and feed system;
  - (iii) anaerobic digester, dryers and integrated heating system;
  - (iv) solid digestate treatment equipment, handling and storage;
  - (v) ventilation and air collection system;
  - (vi) emission stack;
  - (vii) gas flare;
  - (viii) combined heat and power plant, including combined heat and power engine;
  - (ix) an electrical switchyard, including switchgear and transformer;
  - (x) gas storage and upgrading equipment; and
  - (xi) associated gas and process heat pipes.
- (c) Work No. 1C — solar photovoltaic panels on all or part of Work No. 1E and, should a steam turbine building be constructed as part of Work No. 2, on all or part of the steam turbine building forming part of Work No. 2, switchgear, inverters, transformers and permanent equipment for maintenance.
- (d) Work No. 1D — a battery storage facility including—
  - (i) battery energy storage cells;
  - (ii) transformers;

- (iii) protection cabinets; and
- (iv) switch gear and ancillary equipment.
- (e) Work No. 1E — a building with roof enclosing and/or supporting all or part of Work Nos. 1A, 1B, 1C and 1D.

Work No. 2 — Works to construct—

- (a) a cooling system comprising air-cooled condensers; and
- (b) if not constructed and installed as part of Work No. 1A, a steam turbine incorporating at least 30 megawatts heat off-take for district heating and electrical generator and a steam turbine building to house all or part of the same.

Work No. 3 — Works to construct and install combined heat and power equipment including heat exchangers, pipework (including flow/return pipework, valving, pumps, pressurisation and water treatment systems).

Work No.4 — Works to construct an electrical substation including switchgear, and transformer, busbar sections, integrated protection scheme and uninterruptable power supplies.

Work No. 5 — Works to construct or install supporting buildings and facilities, including—

- (a) diesel storage tanks;
- (b) a process effluent storage tank;
- (c) a demineralised water treatment plant;
- (d) fire water tank, pump room(s) and fire protection facilities;
- (e) a control room;
- (f) administration block(s);
- (g) a fully integrated distributed control system;
- (h) workshop(s) and associated stores;
- (i) spare parts storage facilities;
- (j) security gatehouses and barriers;
- (k) weighbridges;
- (l) a heavy goods vehicle holding area;
- (m) an external fuel container storage area;
- (n) emergency stand-by generator(s);
- (o) infrastructure for the transmission and/or storage of compressed natural gas;
- (p) an outage contractor compound; and
- (q) a permanent contractor laydown area.

Work No. 6 — Works to construct and install supporting infrastructure, including—

- (a) pipework (including flow/return pipework), cables, telecommunications, other services and associated infrastructure;
- (b) site drainage, waste management, water, wastewater, other services and associated infrastructure;
- (c) new or alteration to accesses, a vehicular access road and internal vehicular access road, vehicle turning, waiting and parking areas; and
- (d) vehicle parking.

Work No. 7 — Works to construct and install from Work No. 6 pipes and cables.

Work No. 8 — Works to construct temporary construction compounds including—

- (a) hard standing;
- (b) vehicle parking;

- (c) accommodation block(s);
- (d) new or alteration to accesses; and
- (e) construction fabrication areas.

In the London Borough of Bexley and the Borough of Dartford

Work No. 9 — Works to construct and install an electrical connection including—

- (a) 132kV electrical underground and overground cables and associated telemetry and electrical cabling;
- (b) cable trenches, ducting and jointing pits;
- (c) above ground cable trough structures which are either freestanding or attached to highway structures;
- (d) temporary construction compounds; and
- (e) new or alteration to accesses.

In the Borough of Dartford

Work No. 10 — Works to connect the electrical connection (Work No. 9) to the Littlebrook substation and associated improvements.

In connection with and in addition to Work Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 and, to the extent that it does not otherwise form part of those Work Nos., further associated development within the Order limits including—

- (a) external lighting infrastructure, including perimeter lighting columns;
- (b) fencing, boundary treatment and other means of enclosure;
- (c) demolition of existing buildings and structures;
- (d) signage;
- (e) CCTV and other security measures;
- (f) surface and foul water drainage facilities;
- (g) potable water supply;
- (h) new telecommunications and utilities apparatus and connections;
- (i) hard and soft landscaping;
- (j) biodiversity enhancement measures and environmental mitigation measures;
- (k) works permanently to alter the position of existing telecommunications and utilities apparatus and connections;
- (l) works for the protection of buildings and land; and
- (m) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections,

and such other buildings, structures, works or operations and modifications to, or demolition of, any existing buildings, structures or works as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1, but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2

### REQUIREMENTS

Article 3

#### Time limits

1. The authorised development must not commence after the expiry of five years of the date on which this Order comes into force.

#### Detailed design approval

2.—(1) No part of Work No. 1A(iv), Work No. 1B(iv), Work No. 1C, Work No. 1E, Work No.2, Work No.3, Work No. 4, Work No. 5 and Work No. 6 may commence until details of the layout, scale and external appearance for that Work No. have been submitted to and approved by the relevant planning authority.

(2) No part of Work No. 1A and Work No. 3 may commence until a plan has been submitted to and approved by the relevant planning authority demonstrating that within Work No. 1A and Work No. 3 there is sufficient space to support a heat export system capable of providing at least 30 megawatts heat off-take for district heating.

(3) The details submitted for approval under sub-paragraph (2) must be submitted alongside the details submitted for approval under sub-paragraph (1).

(4) The details submitted for approval under sub-paragraph (1) must be in accordance with the design principles.

(5) The authorised development must be carried out in accordance with the approved details.

#### Parameters of authorised development

3.—(1) The elements of the authorised development listed in column (1) of the table below (design parameters) must not exceed the maximum dimensions and levels and, where applicable, the minimum dimensions, set out in relation to that element in columns (3) to (7) of that table.

**Table 1**

| <i>(1)</i><br><i>Element of authorised development</i> | <i>(2)</i><br><i>Work No.</i>                       | <i>(3)</i><br><i>Maximum length (metres)</i> | <i>(4)</i><br><i>Maximum width (metres)</i> | <i>(5)</i><br><i>Maximum height (metres) AOD</i> | <i>(6)</i><br><i>Minimum height (metres) above surrounding ground level</i> | <i>(7)</i><br><i>Maximum depth (metres) below AOD</i> |
|--|---|--|---|--|---|---|
| Main Riverside Energy Park Building                    | 1A (excluding Work No.1A(iv), 1C and 1E)            | 200  | 102   | 65   | —   | —   |
| Solid fuel storage bunker                              | Part of Work No. 1A(i)                              | —  | —   | —  | —   | 8   |
| Anaerobic digestion system                             | 1B (excluding Work No. 1B(vi) and Work No. 1B(vii)) | 87   | 68  | 43   | —   | —   |
| Other integral   | 1D, 2(b), 3, 4, 5, 6 and                            | 111  | 116   | 38   | —   | —   |

|                                  |         |   |    |     |    |   |
|----------------------------------|---------|---|----|-----|----|---|
| process buildings and structures | 7       |   |    |     |    |   |
| Emissions stacks(s)              | 1A(iv)  | – | 46 | 113 | 90 | – |
| Emission stack                   | 1B(vi)  |   |    | 11  | 8  |   |
| Gas Flare                        | 1B(vii) |   |    | 17  | 4  |   |

(2) The above surrounding ground level in respect of Work No. 1 must comply with the following parameters: a minimum level of one metre AOD and maximum level of three metres AOD.

#### **Pre-commencement biodiversity mitigation strategy**

4.—(1) No part of the pre-commencement works may be carried out until a pre-commencement biodiversity mitigation strategy has been submitted to and approved by the relevant planning authority.

(2) The pre-commencement biodiversity mitigation strategy submitted pursuant to sub-paragraph (1) must contain details of mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the pre-commencement works.

(3) The pre-commencement biodiversity mitigation strategy must be implemented as approved under sub-paragraph (1).

#### **Biodiversity and landscape mitigation strategy**

5.—(1) No part of the authorised development may commence until a biodiversity and landscape mitigation strategy for that part has been submitted to and approved by the relevant planning authority. The biodiversity and landscape mitigation strategy must be substantially in accordance with the outline biodiversity and landscape mitigation strategy and include details of—

- (a) mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the construction of the authorised development;
- (b) mitigation measures required to protect protected habitats and species, non-statutory designated sites and other habitats and species of principal importance during the operation of the authorised development;
- (c) the results 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 including temporal lag, long term management and monitoring (25 years) and a minimum of 10% net gain;
- (d) the site or sites on which the compensation off-setting required pursuant to (c) will be provided together with evidence demonstrating that the site or sites has/have been chosen in accordance with the prioritisation set out in the outline biodiversity and landscape mitigation strategy;
- (e) certified copies of the completed legal agreements with the Environment Bank securing the site or sites identified in (d) and which demonstrate that the off-setting value will be paid to the Environment Bank within 10 days of approval of the biodiversity and landscape mitigation strategy to enable enactment of the biodiversity off-setting scheme and the biodiversity off-setting management and monitoring plan as approved in the biodiversity and landscape mitigation strategy;

- (f) any hard and soft landscaping to be incorporated within Work Nos. 1, 2, 3, 4, 5 and 6 including location, number, species, size of any planting and the management and maintenance regime for such landscaping.

(2) The biodiversity and landscape mitigation strategy must be implemented as approved under sub-paragraph (1).

### **Replacement planting for Work No. 9**

6.—(1) No part of Work No. 9 may commence until details—

- (a) of any trees, shrubs and hedgerows to be removed during the construction of Work No. 9; and
- (b) of planting to replace any such identified trees, shrubs and hedgerows,

have been submitted to and approved by the relevant planning authority.

(2) The replacement planting must be carried out in accordance with the approved details and maintained for a period of 12 months.

(3) Any tree, shrub or hedgerow planted as part of the approved details that, within the 12 month maintenance period, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

### **Archaeology**

7.—(1) No part of Work Nos. 1, 2, 3, 4, 5 and 9 may commence until a written scheme of archaeological investigation for that part has been submitted to and approved by the relevant planning authority.

(2) The scheme must—

- (a) identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in situ any archaeological features that are identified;
- (b) provide details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found; and
- (c) identify any drilling or boring locations where a phased programme of geoarchaeological works and a phased programme of archaeological works are required.

(3) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation.

### **Highway access**

8.—(1) No part of Work Nos. 6, 8, 9 and 10 may commence until written details of the siting, design and layout of any new permanent or temporary means of access to a highway in that part, or any alteration to an existing means of access to a highway in that part has been submitted to and approved by the relevant planning authority (in consultation with the relevant highway authority).

(2) The highway accesses must be constructed or altered in accordance with the approved details.

(3) The undertaker must not exercise the power in article 14(1) (permanent stopping up of streets) unless and until a plan showing the layout for the termination of the street (as specified in columns (1) and (2) of Schedule 6) has been submitted to and approved by the relevant planning authority, such plan to show the replacement turning head to facilitate a forward side-turn manoeuvre in forward and reverse gears by vehicles.

### **Surface and foul water drainage**

9.—(1) No part of Work Nos. 1, 2, 3, 4, 5, and 6 may commence until written details of the surface and foul water drainage strategy for that part have been submitted to and approved by the relevant planning authority. The written details submitted for approval must be substantially in accordance with the outline drainage strategy.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details.

### **Ground conditions and ground stability**

10.—(1) No part of Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8 may commence until an investigation and assessment report to identify ground conditions and ground stability has been submitted to and approved by the relevant planning authority.

(2) The report submitted pursuant to sub-paragraph (1) must identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) In the event that the report submitted pursuant to sub-paragraph (1) identifies necessary remedial measures, no part of Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8 may commence until a remediation verification plan for that part has been submitted to and approved by the relevant planning authority.

(4) The authorised development must be carried out in accordance with the approved report.

### **Code of construction practice**

11.—(1) No part of the pre-commencement works may be carried out and no part of the authorised development may commence until a code of construction practice for that part has been submitted to and approved by the relevant planning authority. The code of construction practice submitted for approval must be substantially in accordance with the outline code of construction practice to the extent that it is applicable to that part and must include the following—

- (a) the construction and phasing programme;
- (b) liaison procedures;
- (c) complaints procedures;
- (d) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, wheel washing, damping of stockpiles, sheeting materials, lighting, noise and vibration);
- (e) reference to undertaking construction activities in accordance with the recommendations of BS 5228 'Noise and Vibration Control on Construction Open Sites' Part 1 Noise and Part 2 Vibration;
- (f) construction, demolition and excavation waste management effectively meeting 95% reuse or recycling rates as a minimum;
- (g) statement demonstrating how the development will deliver circular economy outcomes and aim to be net-zero waste. This includes measures for the maintenance of construction equipment and other measures in the development design and construction that improves resource efficiency and innovation to keep products and materials at their highest use for as long as possible;
- (h) temporary storage of soils and other material of value to be in accordance with best practice;
- (i) installation of hoardings and/or fencing;
- (j) safe storage of polluting materials;
- (k) protocol for flood warning and a flood incident management plan;

- (l) methods to prevent water pollution and adverse impacts upon surface water drainage;
- (m) restoration of site following completion of construction;
- (n) measures to deal with contamination which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment; and
- (o) appropriate procedures to address any unexploded ordnance that may be encountered.

(2) All construction works must be undertaken in accordance with the approved code of construction practice.

### **Construction Hours**

**12.**—(1) Construction works relating to Work Nos. 1, 2, 3, 4, 5 and 6 must not take place on Sundays, bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0700 to 1300 hours on a Saturday.

(2) The restrictions in sub-paragraph (1) do not apply to construction works where these—

- (a) are carried out within existing buildings or buildings constructed as part of the authorised development;
- (b) are carried out with the prior approval of the relevant planning authority;
- (c) are associated with an emergency; or
- (d) are associated with slip form working.

(3) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individual classes or generally as the case may be) of taking that action.

### **Construction traffic management plan(s)**

**13.**—(1) No part of the pre-commencement works may be carried out and no part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority (in consultation with the relevant highway authority and Transport for London). A construction traffic management plan(s) must be substantially in accordance with the outline construction traffic management plan and must include the following (as applicable for the part of the authorised development to which the construction traffic management plan relates)—

- (a) construction vehicle routing plans in respect of both workers and deliveries;
- (b) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads;
- (c) site access plans;
- (d) where practicable, temporary diversions of any public rights of way;
- (e) measures to ensure the protection of users of any footpath within the Order limits which may be affected by the construction of the authorised development;
- (f) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (g) a construction logistics plan;
- (h) a procedure for reviewing and updating the construction traffic management plan(s);
- (i) a construction worker travel plan, including details of the temporal distribution of workers at Work Nos. 5(q), 8 and 9(d), the likely number of worker vehicle movements and the management of workforce parking; and
- (j) appropriate procedures to provide for a vehicle booking management system.

(2) The construction traffic management plan submitted pursuant to sub-paragraph (1) must be accompanied by a statement and associated junction appraisals (as defined in the outline construction traffic management plan) demonstrating how the likely construction traffic impacts identified in the environmental statement are addressed through the measures contained in the construction traffic management plan(s).

(3) The construction traffic management plan(s) submitted pursuant to sub-paragraph (1) that relate to Work Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 must be accompanied by a highways base condition survey (as defined in the outline construction traffic management plan).

(4) The construction traffic management plan(s) and any updated construction traffic management plan(s) submitted following any review must be implemented as approved by the relevant planning authority.

### **Heavy commercial vehicle movements delivering waste**

14.—(1) Subject to sub-paragraph (4) the number of two-way vehicle movements made by heavy commercial vehicles delivering waste to Work Nos. 1A and 1B during commissioning and the operational period must not exceed a maximum of 75 two-way vehicle movements per day (75 vehicles in and 75 vehicles out).

(2) Save in the event of a jetty outage, the volume of waste delivered by road to Work No. 1A during commissioning and the operational period must not exceed 130,000 tonnes per calendar year.

(3) The volume of waste delivered by road to Work No. 1B during commissioning and the operational period must not exceed 40,000 tonnes per calendar year.

(4) In the event of a jetty outage, the number of two-way vehicle movements made by heavy commercial vehicles delivering waste to Works Nos. 1A and 1B during commissioning and the operational period must not exceed a maximum of 300 two-way vehicle movements per day (300 vehicles in and 300 vehicles out) and must not exceed—

- (a) between the hours of 0730–0900, a maximum of 30 two-way Heavy Commercial Vehicle movements (30 vehicles in and 30 vehicles out); and
- (b) between the hours of 1630–1800, a maximum of 30 two-way Heavy Commercial Vehicle movements (30 vehicles in and 30 vehicles out).

(5) Save in the event of a jetty outage, 100% of incinerator bottom ash produced by the operation of Work No. 1A must be transported from it by river to a riparian facility.

(6) On a quarterly basis during commissioning and the operational period, and following any reasonable request by the relevant planning authority, the undertaker must provide the relevant planning authority with a record of the following for the preceding period—

- (a) confirmation whether or not a jetty outage occurred; and
- (b) the number of two-way vehicle movements made by heavy commercial vehicles delivering waste as well as the tonnages of waste delivered both to Work No. 1A and Work No. 1B in that period, such number to be split out clearly so that the number of movements and waste tonnages to the authorised development during any jetty outage can be ascertained.

(7) In this article—

“heavy commercial vehicle” has the meaning given by section 138 (meaning of “heavy commercial vehicle”) of the Road Traffic Regulation Act 1984;

“jetty outage” means circumstances caused by factors beyond the undertaker’s control in which waste has not or could not be received at the jetty or ash containers have not been or could not be despatched from the jetty for a period in excess of four consecutive days; and

“two-way vehicle movements” means a movement to and a movement from the authorised development.

### **Emission limits – Work No. 1B**

**15.—**(1) In the event that gas is utilised in the CHP engine, during the operational period of Work No. 1B, the average emission limit value for oxides of nitrogen (nitric oxide and nitrogen dioxide expressed as nitrogen dioxide) of the combustion emissions discharged through Work No. 1B must not exceed 125mg/Nm<sup>3</sup> (expressed at 5% oxygen, dry flue gas, 273.15K).

(2) In the event that gas is utilised in the CHP engine, during the operational period of Work No. 1B, the annual mass emissions for oxides of nitrogen (nitric oxide and nitrogen dioxide expressed as nitrogen dioxide) of the combustion emissions discharged through Work No. 1B must not exceed three tonnes per calendar year.

### **Waste hierarchy scheme**

**16.—**(1) Prior to commissioning, the undertaker must submit to the relevant planning authority for approval a scheme setting out arrangements for maintenance of the waste hierarchy in priority order, which aims to minimise recyclable and reusable waste received at the authorised development during the commissioning and operational period of the authorised development (the “waste hierarchy scheme”).

(2) The waste hierarchy scheme must include details of—

- (a) the type of information that must be collected and retained on the sources of the residual waste after recyclable and reusable waste has been removed;
- (b) the arrangements that must be put in place for ensuring that as much reusable and recyclable waste as is reasonably possible is removed from waste to be received at the authorised development, including contractual measures to encourage as much reusable and recyclable waste being removed as far as possible;
- (c) the arrangements that must be put in place for ensuring that commercial suppliers of residual waste operate a written environmental management system which includes establishing a baseline for recyclable and reusable waste removed from residual waste and specific targets for improving the percentage of such removed reusable and recyclable waste;
- (d) the arrangements that must be put in place for suspending and/or discontinuing supply arrangements from commercial suppliers who fail to retain or comply with any environmental management systems;
- (e) the provision of an annual waste composition analysis undertaken by the undertaker, with the findings submitted to the relevant planning authority within one month of the sampling being undertaken; and
- (f) the form of records that must be kept for the purpose of demonstrating compliance with (a) to (e) and the arrangements in place for allowing inspection of such records by the relevant planning authority.

(3) The waste hierarchy scheme must be implemented as approved.

### **Operational worker travel plan**

**17.—**(1) Prior to commissioning of any part of Work Nos. 1, 2, 3, 4 and 5, an operational worker travel plan for those working at the authorised development must be submitted to and approved by the relevant planning authority (in consultation with the relevant highway authority and, for streets within the London Borough of Bexley, Transport for London). The operational worker travel plan must be in substantial accordance with the outline operational worker travel plan and set out measures to encourage staff working at Work Nos. 1, 2, 3, 4 and 5 to use sustainable modes of transport.

(2) The operational worker travel plan must be implemented as approved.

### **Operational lighting strategy**

**18.**—(1) No part of Work Nos. 1, 2, 3, 4, 5 and 6 may commence until a written scheme for the management and mitigation of operational external artificial light emissions for that part has been submitted to and approved by the relevant planning authority. The written scheme must be substantially in accordance with the outline lighting strategy.

(2) The approved scheme for the management and mitigation of operational external artificial light emissions must be implemented as approved.

### **Control of operational noise**

**19.**—(1) Prior to commissioning of any part of Work No. 1, a written noise monitoring scheme must be submitted to and approved by the relevant planning authority, such scheme must specify—

- (a) each location from which noise is to be measured;
- (b) the method of noise measurement, which must be in accordance with British Standard 4142:2014;
- (c) the maximum permitted levels of noise at each monitoring location must not exceed 5dB below the background LA90; and
- (d) provision requiring the undertaker to take noise measurements as soon as possible following a reasonable request by the relevant planning authority and to submit the measurements to the relevant planning authority as soon as they are available.

(2) The level of noise at each monitoring location must not exceed the maximum permitted level specified for that location in the scheme, except—

- (a) in the case of an emergency (as defined in the noise monitoring scheme);
- (b) with the prior approval of the relevant planning authority; or
- (c) as a result of steam purging or the operation of emergency pressure relief valves or similar equipment of which the undertaker has given notice in accordance with subparagraph (3).

(3) Except in the case of an emergency, the undertaker must give the relevant planning authority 48 hours' notice of any proposed steam purging or operation of emergency pressure relief valves or similar equipment.

(4) So far as reasonably practicable, steam purging and the operation of emergency pressure relief valves or similar equipment may only take place:

- (a) between 0900 and 1700 hours on weekdays (excluding bank holidays); and
- (b) between 0900 and 1300 hours on Saturdays (excluding bank holidays).

(5) Where the level of noise at a monitoring location exceeds the maximum permitted level specified for that location in the approved scheme because of an emergency—

- (a) the undertaker must, as soon as possible and in any event within two business days of the beginning of the emergency, submit to the relevant planning authority a statement detailing—
  - (i) the nature of the emergency;
  - (ii) why it is necessary for the level of noise to have exceeded the maximum permitted level;
- (b) if the undertaker expects the emergency to last for more than 24 hours, it must inform local residents and businesses affected by the level of noise at that location of—
  - (i) the reasons for the emergency; and
  - (ii) how long it expects the emergency to last.

## **River wall**

20.—(1) No part of Work No. 1 may commence until a river wall condition survey on those parts of the river wall within the order limits has been submitted to and approved by the Environment Agency (in consultation with the relevant planning authority).

(2) The river wall condition survey submitted pursuant to sub-paragraph (1) must, where appropriate, identify any remedial works required to bring the tidal flood defence up to a good standard considering a design life of 100 years.

(3) The remedial works required to bring the defence up to a good standard identified pursuant to sub-paragraph (2) must be carried out within two years of the date that the condition survey is approved under sub-paragraph (1).

## **Community benefits**

21.—(1) No part of the authorised development may commence until an employment and skills plan has been submitted to and approved by the relevant planning authority.

(2) The employment and skills plan must be implemented as approved by the relevant planning authority.

## **Notice of start of commissioning and notice of date of final commissioning**

22.—(1) Notice of the intended start of commissioning of Work No. 1A must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commissioning is started.

(2) Notice of the intended start of commissioning of Work No. 1B must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commissioning is started.

(3) Within seven days of completing final commissioning of each of Work Nos. 1A and 1B, the undertaker must provide the relevant planning authority with notice of the date upon which such commissioning was duly completed.

## **Phasing of construction and commissioning of Work No. 1**

23.—(1) Subject to sub-paragraph (2), no part of the authorised development may commence until a phasing programme setting out the commencement of construction and the anticipated start of commissioning and the anticipated date of final commissioning for each of Work Nos. 1A, 1B, 1C, 1D and (if applicable) 2(b) has been submitted to and approved by the relevant planning authority. The phasing programme must provide for the anticipated date of final commissioning of Work No. 1C and Work No. 1D as soon as reasonably practicable. The phasing programme must be implemented as approved.

(2) Work No. 1B must commence construction in the same phase as Work No. 1A.

(3) The steam turbine incorporating at least 30 megawatts heat off-take for district heating forming part of the authorised development must be completed at the anticipated date of final commissioning of Work No. 1A and, if applicable, Work No. 2(b).

## **Combined heat and power**

24.—(1) Work No. 1A (and, if applicable, Work No. 2(b)) and Work No. 3 must be constructed to produce combined heat and power through the provision of steam pass-outs and the preservation of space for the future provision of water pressurisation, heating and pumping systems. Prior to the date of final commissioning of Work No. 1A the undertaker must submit to the relevant planning authority for its approval a report (“the CHP review”) updating the CHP statement.

(2) Prior to establishing the working group pursuant to sub-paragraph (3), the undertaker must submit to the relevant planning authority for approval the terms of reference for the working group

together with a list of the organisations, to be invited (such list to include the Greater London Authority) to attend the working group, such terms of reference to include—

- (a) agree the scope of each CHP review;
- (b) agree a list of CHP consultants put forward by the undertaker;
- (c) engage with the Department for Business, Energy & Industrial Strategy (or such successor government department with responsibility for energy) and the Heat Network Investment Programme (or any such equivalent government funding programme) to identify funding for any financial shortfall identified by any CHP review;
- (d) progress the actions in each approved CHP review and to monitor and report on the progress of those actions to the relevant planning authority;
- (e) identify the likely connection point at the site boundary for any district heating;
- (f) identify working practices of the working group; and
- (g) confirmation that any approvals and agreements of the working group must not be unreasonably withheld or delayed.

(3) Work No. 1A must not start commissioning until the undertaker has established a working group pursuant to the approved terms of reference under sub-paragraph (2), that may combine with the working group established in respect of combined heat and power opportunities from RRRF.

(4) The CHP review under sub-paragraph (1) must be undertaken by a competent CHP consultant appointed by the undertaker from the approved list agreed by the working group in sub-paragraph (2)(b) and must be in accordance with the scope agreed by the working group established under sub-paragraph (3) and—

- (a) assess potential commercial opportunities that reasonably exist within a 10 kilometre radius for the export of heat from Work No. 1 as at the time of submission of the CHP review;
- (b) assess how the opportunities in (a) meet the Combined Heat and Power Quality Assurance requirements;
- (c) state whether or not there is sufficient certainty about the likely district heat network to enable the undertaker to install the necessary combined heat and power pipework (Work No. 6(a)) to the boundary of Work No. 6 as shown on the works plans and, if so, the undertaker must install such pipework to the boundary of Work No. 6 in the timeframe agreed in the CHP review or any revised CHP review; and
- (d) include a list of actions (if any and in addition to (b)) that the undertaker is required to take to increase the potential for the export of heat from Work No. 1 and which are technically and commercially viable.

(5) The undertaker must take such actions (which are technically and commercially viable) as are included within the timescales specified in the approved CHP review and where the working group identifies the likely connection point at the site boundary for any district heating to safeguard a pipework route from Work No. 3 to that point.

(6) Subject to sub-paragraph (8), on each date during the operational period of Work No. 1A that is three years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (1).

(8) In the event that the export of heat from the authorised development is provided pursuant to any CHP review, the undertaker is only required to carry out and submit any further CHP reviews every five years.

## **Use of compost material and gas from Work No. 1B**

25.—(1) Prior to the date of final commissioning, the undertaker must submit to the relevant planning authority for its approval a report (“the Anaerobic Digestion review”) on the potential use of the compost material and gas produced from Work No. 1B.

(2) The Anaerobic Digestion review must—

- (a) consider the opportunities that reasonably exist for the export of the compost material produced from Work No. 1B for use as a fertiliser;
- (b) consider the opportunities that reasonably exist for the export of the gas produced from Work No. 1B to the gas grid network; and
- (c) identify any technically and commercially viable actions that the undertaker can reasonably carry out in order to progress the identified opportunities together with the timescales of such actions, including measures to ensure that the quality of the compost material and gas is optimised to the prevailing technical standards to allow beneficial use.

(3) The undertaker must carry out any identified technically and commercially viable actions within the timescales specified in the approved Anaerobic Digestion review.

(4) Subject to sub-paragraphs (6) and (7), on each date during the operational period of Work No. 1B that is two years after the date on which it last submitted the Anaerobic Digestion review or a revised Anaerobic Digestion review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised Anaerobic Digestion review.

(5) Subject to sub-paragraphs (6) and (7), sub-paragraphs (2) and (3) apply in relation to a revised Anaerobic Digestion review submitted under sub-paragraph (4) in the same way as they apply in relation to the Anaerobic Digestion review submitted under sub-paragraph (1).

(6) The undertaker is only required to consider the technically and commercially viable opportunities that reasonably exist for the export of the gas produced from Work No. 1B to the gas grid network in the first Anaerobic Digestion review submitted on the date that is 12 months after the date of final commissioning of Work No. 1B.

(7) In the event that the export of compost material produced from Work No. 1B is provided pursuant to any Anaerobic Digestion review or any revised Anaerobic Digestion review, the undertaker is only required to carry out and submit any further Anaerobic Digestion reviews every three years.

(8) Compost material produced from Work No. 1B must be used for compost where it meets the necessary quality standards and where a technically and commercially viable market exists.

(9) Gas produced from Work No. 1B must be used for electricity generation, heating or as a vehicle fuel (save in the case of emergency) where it meets the necessary quality standards and where a technically and commercially viable market exists.

## **Decommissioning**

26.—(1) Within 24 months of the permanent cessation of the operation of Work No. 1, details of a scheme for the restoration and aftercare of the land for Work Nos. 1, 2, 3, 4 and 5 must be submitted to and approved by the relevant planning authority. The scheme must include details of structures and buildings to be demolished or retained, details of the means of removal of materials following demolition, phasing of demolition and removal, details of restoration works and phasing thereof.

(2) The scheme as approved must be implemented in accordance with the phasing set out therein.

## **Amendments to approved details**

27.—(1) With respect to the documents certified under article 40 (certification of plans etc) the parameters specified in the table in requirement 3 and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together “Approved Documents, Plans, Parameters, Details or Schemes”), the undertaker may submit to the

relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### **Flood Risk Activity Permit Area**

**28.** No building will be erected within the area defined by the red dotted line annotated as ‘16m FRAP Line’ on the FRAPA drawings and no material will be stored, within the area defined by the red dotted line annotated as ‘16m FRAP Line’ on the FRAPA drawings, which could create a risk of damage to the integrity of the flood defence structure within this area.

### **Finished Floor Levels**

**29.** The finished floor levels of Work Nos 1, 2, 3, 4, 5 and 6 must be set a minimum of 2.97 metres AOD.

### **Metropolitan Open Land**

**30.** No building will be erected on any part of the land hatched orange on the MOL plan.

### **Delivery and Servicing Plan**

**31.**—(1) No part of the authorised development may be commissioned until a delivery and servicing plan (relating to all deliveries to the authorised development other than for deliveries within requirement 14 (Heavy commercial vehicle movements delivering waste)) has been submitted to and approved by the relevant planning authority. The delivery and servicing plan must include the following—

- (a) measures to ensure efficiency of the site and reduction in vehicle numbers as far as possible; and
- (b) an assessment of how the authorised development accords with the best practice guidance published by Transport for London.

(2) The delivery and servicing plan must be implemented as approved.

### **Tonnage cap**

**32.**—(1) The total amount of waste to be received at Work No. 1A must not exceed 805,920 tonnes per calendar year.

(2) The total amount of waste to be received at Work No. 1B must not exceed 40,000 tonnes per calendar year.

### **Notification from the undertaker**

**33.** Prior to the pre-commencement works, Cory Environmental Holdings Limited or Riverside Energy Park Limited (as applicable) must notify the relevant planning authority that they are the undertaker for the purposes of this Order and as the undertaker has the benefit of the provisions of this order pursuant to article 8 as well as the liabilities and obligations under this Order.

SCHEDULE 3

Article 11

STREETS SUBJECT TO STREET WORKS

| <i>(1)</i><br><i>Area</i>       | <i>(2)</i><br><i>Streets subject to street works</i> | <i>(3)</i><br><i>Description of the street works</i>  |
|---------------------------------|--|---|
| In the London Borough of Bexley | Norman Road  | Works for the provision of a new permanent access and works to alter an existing access (works forming part of Work No. 6) between the points marked C and D on sheet 2 of the access and public rights of way plan   |
| In the London Borough of Bexley | Norman Road  | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BS and BT on sheet 2 of the access and public rights of way plan |
| In the London Borough of Bexley | Norman Road  | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BU and BV on sheet 2 of the access and public rights of way plan |
| In the London Borough of Bexley | Norman Road  | Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BK and BL on sheet 2 of the access and public rights of way plan  |
| In the London Borough of Bexley | Norman Road  | Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BO and BP on sheet 3 of the access and public rights of way plan  |
| In the London Borough of Bexley | Norman Road  | Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BQ and BR on sheet 3 of the access and public rights of way plan  |
| In the London Borough of Bexley | Norman Road  | Works for the installation and maintenance of Work Nos. 6 and 9 in the street between the points marked C and D on sheet 2 of the access and public rights of way plan  |
| In the London Borough of Bexley | Norman Road  | Works for the installation and maintenance of Work Nos. 7 and 9 in the street between the points marked D and   |

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|---------------------------------|--|--|
|                                 |  | H on sheets 2 and 3 of the access and public rights of way plan  |
| In the London Borough of Bexley | FP2  | Works for the installation and maintenance of Work No. 9 in the public right of way between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan  |
| In the London Borough of Bexley | FP2  | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan                |
| In the London Borough of Bexley | FP4  | Works for the installation and maintenance of Work No. 7 and Work No. 9 in the public right of way between the eastern edge of the order limits and Norman Road on sheet 2 of the access and public rights of way plan   |
| In the London Borough of Bexley | FP4  | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 7 and Work No. 9) between the eastern edge of the order limits and Norman Road on sheet 2 of the access and public rights of way plan |
| In the London Borough of Bexley | Picardy Manorway / Anderson Way / Bronze Age Way | Works for the installation and maintenance of Work No. 9 in the street between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan   |
| In the London Borough of Bexley | Picardy Manorway / Anderson Way / Bronze Age Way | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan                                |
| In the London Borough of Bexley | Bronze Age Way / Queen's Road                    | Works for the installation and maintenance of Work No. 9 in the street between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan  |
| In the London Borough of Bexley | Bronze Age Way / Queen's Road                    | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan                                 |
| In the London Borough of Bexley | Queen's Road / Northend Road                     | Works for the installation and maintenance of Work No. 9 in the street between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan   |
| In the London                   | Queen's Road / Northend                          | Works for the provision of temporary   |

|                                 |                             |   |
|---------------------------------|-----------------------------|---|
| Borough of Bexley               | Road                        | accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan  |
| In the London Borough of Bexley | Northend Road / Thames Road | Works for the installation and maintenance of Work No. 9 in the street between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan  |
| In the London Borough of Bexley | Northend Road / Thames Road | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan |
| In the London Borough of Bexley | Thames Road                 | Works for the installation and maintenance of Work No. 9 in the street between the points marked L, AX and M on sheet 11 of the access and public rights of way plan  |
| In the London Borough of Bexley | Thames Road                 | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked L, AX and M on sheet 11 of the access and public rights of way plan       |
| In the London Borough of Bexley | Thames Road                 | Works for the installation and maintenance of Work No. 9 in the street between the points marked M and P on sheets 11 and 12 of the access and public rights of way plan  |
| In the London Borough of Bexley | Thames Road                 | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points M and P on sheets 11 and 12 of the access and public rights of way plan          |
| In the London Borough of Bexley | FP29                        | Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked N and O on sheet 11 of the access and public rights of way plan   |
| In the London Borough of Bexley | FP29                        | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked N and O on sheet 11 of the access and public rights of way plan           |
| In the London Borough of Bexley | Thames Road                 | Works for the installation and maintenance of Work No. 9 in the street between the points marked P and Q on sheet 12 of the access and public rights of way plan  |
| In the London Borough of Bexley | Thames Road                 | Works for the provision of temporary accesses and works to temporarily alter  |

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|                                 |                            | existing accesses (works forming part of Work No. 9) between the points marked P and Q on sheet 12 of the access and public rights of way plan  |
| In the London Borough of Bexley | Thames Road                | Works for the installation and maintenance of Work No. 9 in the street between the points marked Q and X on sheet 12 of the access and public rights of way plan  |
| In the London Borough of Bexley | Thames Road                | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked Q and X on sheet 12 of the access and public rights of way plan |
| In the London Borough of Bexley | FP249                      | Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked T and U on sheet 12 of the access and public rights of way plan   |
| In the London Borough of Bexley | FP249                      | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked T and U on sheet 12 of the access and public rights of way plan |
| In the London Borough of Bexley | BY105                      | Works for the installation and maintenance of Work No. 9 in the public right of way at the point marked R on sheet 12 of the access and public rights of way plan   |
| In the London Borough of Bexley | BY105                      | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) at the point marked R on sheet 12 of the access and public rights of way plan             |
| In the London Borough of Bexley | BY104                      | Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked V and W on sheet 12 of the access and public rights of way plan   |
| In the London Borough of Bexley | BY104                      | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked V and W on sheet 12 of the access and public rights of way plan |
| In the Borough of Dartford      | Thames Road / Bob Dunn Way | Works for the installation and maintenance of Work No. 9 in the street between the points marked X and Y on sheets 12 and 13 of the access and public rights of way plan  |
| In the Borough of Dartford      | Thames Road / Bob Dunn Way | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of   |

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|----------------------------|----------------------------|--|
|                            |                            | Work No. 9) between the points marked X and Y on sheets 12 and 13 of the access and public rights of way plan  |
| In the Borough of Dartford | Thames Road / Bob Dunn Way | Works for the installation and maintenance of Work No. 9 in the street between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan  |
| In the Borough of Dartford | Thames Road / Bob Dunn Way | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan |
| In the Borough of Dartford | DB5                        | Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AB and AC on sheet 13 of the access and public rights of way plan  |
| In the Borough of Dartford | DB5                        | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AB and AC on sheet 13 of the access and public rights of way plan        |
| In the Borough of Dartford | DB5                        | Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AA and Z on sheet 13 of the access and public rights of way plan   |
| In the Borough of Dartford | DB5                        | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AA and Z on sheet 13 of the access and public rights of way plan         |
| In the Borough of Dartford | DB5                        | Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AC and Z on sheet 13 of the access and public rights of way plan   |
| In the Borough of Dartford | DB5                        | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AC and Z on sheet 13 of the access and public rights of way plan         |
| In the Borough of Dartford | DB1                        | Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AD and AE on sheet 13 of the access and public rights of way plan  |
| In the Borough of Dartford | DB1                        | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked  |

|                            |   |   |
|----------------------------|---|---|
|                            |   | AD and AE on sheet 13 of the access and public rights of way plan   |
| In the Borough of Dartford | DB1   | Works for the installation and maintenance of Work No. 9 in the public right of way between the points marked AD and AF on sheet 13 of the access and public rights of way plan   |
| In the Borough of Dartford | DB1   | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AD and AF on sheet 13 of the access and public rights of way plan |
| In the Borough of Dartford | Bob Dunn Way / Joyce Green Lane                         | Works for the installation and maintenance of Work No. 9 in the street between the points marked AG and BS on sheet 14 of the access and public rights of way plan  |
| In the Borough of Dartford | Bob Dunn Way / Joyce Green Lane                         | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked AG and BS on sheet 14 of the access and public rights of way plan |
| In the Borough of Dartford | Joyce Green Lane / private road                         | Works for the installation and maintenance of Work No. 9 in the street between the points marked BS and AZ on sheet 14 of the access and public rights of way plan  |
| In the Borough of Dartford | Unnamed path between private road / un-named minor road | Works for the installation and maintenance of Work No. 9 in the area between the points marked AZ and BT on sheet 14 of the access and public rights of way plan  |
| In the Borough of Dartford | un-named minor road / private road                      | Works for the installation and maintenance of Work No. 9 in the street between the points marked BT and BB on sheet 14 of the access and public rights of way plan  |
| In the Borough of Dartford | un-named minor road / private road                      | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked BT and BB on sheet 14 of the access and public rights of way plan |
| In the Borough of Dartford | private road  | Works for the installation and maintenance of Work No. 9 in the street between the points marked BC and AX on sheets 14 and 15 of the access and public rights of way plan  |
| In the Borough of Dartford | private road  | Works for the installation and maintenance of Work No. 9 in the street between the points marked AX and AZ on sheet 15 of the access and public rights of way plan  |
| In the Borough of          | Marsh Street North                                      | Works for the installation and  |

|                            |                                     |   |
|----------------------------|-------------------------------------|---|
| Dartford                   |                                     | maintenance of Work No. 9 in the street between the points marked AY and BA on sheet 15 of the access and public rights of way plan   |
| In the Borough of Dartford | DB3                                 | Works for the installation and maintenance of Work No. 9 in the street between the points marked BE and BD on sheet 15 of the access and public rights of way plan  |
| In the Borough of Dartford | private road / Littlebrook Manorway | Works for the installation and maintenance of Work No. 9 in the street between the points marked AZ and BF on sheet 15 of the access and public rights of way plan  |
| In the Borough of Dartford | Littlebrook Manorway / private road | Works for the installation and maintenance of Work No. 9 in the street between the points marked BF, BG and BI on sheets 15 and 16 of the access and public rights of way plan  |
| In the Borough of Dartford | Littlebrook Manorway / private road | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked BF, BG and BI on sheets 15 and 16 of the access and public rights of way plan |
| In the Borough of Dartford | private road                        | Works for the installation and maintenance of Work No. 9 in the street between the points marked BI and BJ on sheet 16 of the access and public rights of way plan  |

SCHEDULE 4

Articles 12 and 15

STREETS SUBJECT TO PERMANENT AND TEMPORARY  
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

| <i>(1)</i><br><i>Area</i>       | <i>(2)</i><br><i>Street subject to alteration of layout</i> | <i>(3)</i><br><i>Description of alteration</i>  |
|---------------------------------|---|---|
| In the London Borough of Bexley | Norman Road   | Works for the provision of a new permanent access and works to alter an existing access (works forming part of Work No. 6) between the points marked C and D on sheet 2 of the access and public rights of way plan |
| In the London Borough of Bexley | Norman Road   | Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BK and BL on sheet 2 of the access and public rights of way plan                  |
| In the London Borough of Bexley | Norman Road   | Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BO and BP on sheet 3 of the access and public rights of way plan                  |
| In the London Borough of Bexley | Norman Road   | Works to alter an existing access (works forming part of Work No. 8) on the western side of Norman Road between the points marked BQ and BR on sheet 3 of the access and public rights of way plan                  |

**PART 2**  
**TEMPORARY ALTERATION OF LAYOUT**

| <i>(1)</i><br><i>Area</i>       | <i>(2)</i><br><i>Street subject to alteration of layout</i> | <i>(3)</i><br><i>Description of alteration</i>  |
|---------------------------------|---|---|
| In the London Borough of Bexley | Norman Road   | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BS and BT on sheet 2 of the access and public rights of way plan |
| In the London Borough of Bexley | Norman Road   | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 8) on the western side of Norman Road between the points marked BU and BV on sheet 2 of the access and public rights of way plan |
| In the London Borough of Bexley | FP2   | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan                       |
| In the London Borough of Bexley | FP4   | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 7 and Work No. 9) between the eastern edge of the order limits and Norman Road on sheet 2 of the access and public rights of way plan        |
| In the London Borough of Bexley | Picardy Manorway / Anderson Way / Bronze Age Way            | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan                           |
| In the London Borough of Bexley | Bronze Age Way / Queen's Road                               | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan  |
| In the London Borough of Bexley | Queen's Road / Northend Road                                | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan   |
| In the London                   | Northend Road / Thames                                      | Works for the provision of temporary  |

|                                 |                            |   |
|---------------------------------|----------------------------|---|
| Borough of Bexley               | Road                       | accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan  |
| In the London Borough of Bexley | Thames Road                | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked L, AX and M on sheet 11 of the access and public rights of way plan         |
| In the London Borough of Bexley | Thames Road                | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points M and P on sheets 11 and 12 of the access and public rights of way plan            |
| In the London Borough of Bexley | FP29                       | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) between the points marked N and O on sheet 11 of the access and public rights of way plan |
| In the London Borough of Bexley | Thames Road                | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked P and Q on sheet 12 of the access and public rights of way plan             |
| In the London Borough of Bexley | Thames Road                | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked Q and X on sheet 12 of the access and public rights of way plan             |
| In the London Borough of Bexley | FP249                      | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked T and U on sheet 12 of the access and public rights of way plan             |
| In the London Borough of Bexley | BY105                      | Works for the provision of temporary accesses and works to temporarily alter existing accesses (works forming part of Work No. 9) at the point marked R on sheet 12 of the access and public rights of way plan             |
| In the London Borough of Bexley | BY104                      | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked V and W on sheet 12 of the access and public rights of way plan             |
| In the Borough of Dartford      | Thames Road / Bob Dunn Way | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work  |

|                            |                                     |  |
|----------------------------|-------------------------------------|--|
|                            |                                     | No. 9) between the points marked X and Y on sheets 12 and 13 of the access and public rights of way plan   |
| In the Borough of Dartford | Thames Road / Bob Dunn Way          | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan |
| In the Borough of Dartford | DB5                                 | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AB and AC on sheet 13 of the access and public rights of way plan        |
| In the Borough of Dartford | DB5                                 | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AA and Z on sheet 13 of the access and public rights of way plan         |
| In the Borough of Dartford | DB5                                 | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AC and Z on sheet 13 of the access and public rights of way plan         |
| In the Borough of Dartford | DB1                                 | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AD and AE on sheet 13 of the access and public rights of way plan        |
| In the Borough of Dartford | DB1                                 | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AD and AF on sheet 13 of the access and public rights of way plan        |
| In the Borough of Dartford | Bob Dunn Way / Joyce Green Lane     | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked AG and BS on sheet 14 of the access and public rights of way plan        |
| In the Borough of Dartford | un-named minor road / private road  | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked BT and BB on sheet 14 of the access and public rights of way plan        |
| In the Borough of Dartford | Littlebrook Manorway / private road | Works for the provision of temporary accesses and works to alter existing accesses (works forming part of Work No. 9) between the points marked BG and BI on sheets 15 and 16 of the access                              |

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|--|--|-------------------------------|
|  |  | and public rights of way plan |
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SCHEDULE 5

Article 13

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF  
STREETS OR PUBLIC RIGHTS OF WAY

| <i>(1)</i><br><i>Area</i>       | <i>(2)</i><br><i>Street subject to temporary prohibition or restriction of use</i> | <i>(3)</i><br><i>Extent of temporary prohibition or restriction of use of streets</i>   |
|---------------------------------|--|---|
| In the London Borough of Bexley | FP3  | Temporary closure of that part of the public right of way shown between the points marked A and B on sheet 2 of the access and public rights of way plan to install and facilitate the construction of Work No. 6   |
| In the London Borough of Bexley | access road  | Temporary closure of that part of the street hatched blue between the points marked C and D on sheet 2 of the access and public rights of way plan to install and facilitate the construction of Work Nos. 6 and 9  |
| In the London Borough of Bexley | Norman Road  | Temporary closure of that part of the street shown between the points marked D and H on sheets 2 and 3 of the access and public rights of way plan to install and facilitate the construction of Work Nos. 7 and 9  |
| In the London Borough of Bexley | FP2  | Temporary closure of that part of the public right of way shown between the western edge of the order limits and Norman Road on sheet 3 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                |
| In the London Borough of Bexley | FP4  | Temporary closure of that part of the public right of way shown between the eastern edge of the order limits and Norman Road on sheet 2 of the access and public rights of way plan to install and facilitate the construction of Work No. 7 and Work No. 9 |
| In the London Borough of Bexley | Picardy Manorway / Anderson Way / Bronze Age Way                                   | Temporary closure of that part of the street shown between the points marked H, H1 and I on sheets 3 and 4 of the access and public rights of way plan to install and facilitate the construction of Work No. 9   |
| In the London Borough of Bexley | Bronze Age Way / Queen's Road  | Temporary closure of that part of the street (up to half the width) shown between the points marked I and J on sheets 4, 5 and 6 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                       |

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|---------------------------------|------------------------------|--|
| In the London Borough of Bexley | Queen's Road / Northend Road | Temporary closure of that part of the street (up to half the width) shown between the points marked J and K on sheets 6 and 7 of the access and public rights of way plan to install and facilitate the construction of Work No. 9     |
| In the London Borough of Bexley | Northend Road / Thames Road  | Temporary closure of that part of the street (up to half the width) shown between the points marked K and L on sheets 7, 9 and 11 of the access and public rights of way plan to install and facilitate the construction of Work No. 9 |
| In the London Borough of Bexley | Thames Road                  | Temporary closure of that part of the street (up to half the width) shown between the points marked L, AX and M on sheet 11 of the access and public rights of way plan to install and facilitate the construction of Work No. 9       |
| In the London Borough of Bexley | Thames Road                  | Temporary closure of that part of the street (up to half the width) shown between the points marked M and P on sheets 11 and 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9   |
| In the London Borough of Bexley | FP29                         | Temporary closure of that part of the public right of way shown between the points marked N and O on sheet 11 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                     |
| In the London Borough of Bexley | Thames Road                  | Temporary closure of that part of the street (up to half the width) shown between the points marked P and Q on Sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9           |
| In the London Borough of Bexley | Thames Road                  | Temporary closure of that part of the street (up to half the width) shown between the points marked Q and X on sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9           |
| In the London Borough of Bexley | FP249                        | Temporary closure of that part of the public right of way shown between the points marked T and U on sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                     |
| In the London Borough of Bexley | BY105                        | Temporary closure of that part of the public right of way shown at the point marked R on sheet 12 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                                 |
| In the London Borough of Bexley | BY104                        | Temporary closure of that part of the public right of way shown between the points marked V and W on sheet 12 of   |

|                            |                                 |   |
|----------------------------|---------------------------------|---|
|                            |                                 | the access and public rights of way plan to install and facilitate the construction of Work No. 9   |
| In the Borough of Dartford | Thames Road / Bob Dunn Way      | Temporary closure of that part of the street (up to half the width) shown between the points marked X and Y on sheets 12 and 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9  |
| In the Borough of Dartford | Thames Road / Bob Dunn Way      | Temporary closure of that part of the street (up to half the width) shown between the points marked Y and AG on sheets 13 and 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9 |
| In the Borough of Dartford | DB5                             | Temporary closure of that part of the public right of way shown between the points marked AB and AC on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                  |
| In the Borough of Dartford | DB5                             | Temporary closure of that part of the public right of way shown between the points marked AA and Z on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                   |
| In the Borough of Dartford | DB5                             | Temporary closure of that part of the public right of way shown between the points marked AC and Z on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                   |
| In the Borough of Dartford | DB1                             | Temporary closure of that part of the public right of way shown between the points marked AD and AE on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                  |
| In the Borough of Dartford | DB1                             | Temporary closure of that part of the public right of way shown between the points marked AD and AF on sheet 13 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                  |
| In the Borough of Dartford | Bob Dunn Way / Joyce Green Lane | Temporary closure of that part of the street (up to half the width) shown between the points marked AG and BS on sheet 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9        |
| In the Borough of Dartford | Joyce Green Lane / private road | Temporary closure of that part of the street (up to half the width) shown between the points marked BS and AZ on sheet 14 of the access and public rights of way plan to install and facilitate the                                   |

|                            |   |  |
|----------------------------|---|--|
|                            |   | construction of Work No. 9   |
| In the Borough of Dartford | unnamed path between private road / un-named minor road | Temporary closure of that part of the unnamed path shown between the points marked AZ and BT on sheet 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                              |
| In the Borough of Dartford | un-named minor road / private road                      | Temporary closure of that part of the street shown between the points marked BT and BB on sheet 14 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                                    |
| In the Borough of Dartford | private road  | Temporary closure of that part of the street shown between the points marked BC and AX on sheets 14 and 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                            |
| In the Borough of Dartford | private road  | Temporary closure of that part of the street shown between the points marked AX and AZ on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                                    |
| In the Borough of Dartford | Marsh Street North                                      | Temporary closure of that part of the street shown between the points marked AY and BA on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                                    |
| In the Borough of Dartford | DB3   | Temporary closure of that part of the public right of way shown between the points marked BE and BD on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9                       |
| In the Borough of Dartford | private road / Littlebrook Manorway                     | Temporary closure of that part of the street (up to half the width) shown between the points marked AZ and BF on sheet 15 of the access and public rights of way plan to install and facilitate the construction of Work No. 9             |
| In the Borough of Dartford | Littlebrook Manorway / private road                     | Temporary closure of that part of the street (up to half the width) shown between the points marked BF, BG and BI on sheets 15 and 16 of the access and public rights of way plan to install and facilitate the construction of Work No. 9 |
| In the Borough of Dartford | private road  | Temporary closure of that part of the street (up to half the width) shown between the points marked BI and BJ on sheet 16 of the access and public rights of way plan to install and facilitate the construction of Work No. 9             |

SCHEDULE 6

Article 14

PERMANENT STOPPING UP OF STREETS

| <i>(1)</i><br><i>Area</i>          | <i>(2)</i><br><i>Highway to be stopped up</i> | <i>(3)</i><br><i>Extent of stopping up</i>   |
|------------------------------------|---|--|
| In the London<br>Borough of Bexley | Norman Road                                   | That part of the street coloured green<br>between the points marked C and D on<br>sheet 2 of the access and public rights of<br>way plan |

## SCHEDULE 7

Article 24

### LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

#### Interpretation

1. In this Schedule—

“Work No. 6 infrastructure” means any works or development comprised within Work No. 6 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans;

“Work No. 7 infrastructure” means any works or development comprised within Work No. 7 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 7 on the works plans;

“Work No. 8 infrastructure” means any works or development comprised within Work No. 8 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8 on the works plans;

“Work No. 9 infrastructure” means any works or development comprised within Work No. 9 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9 on the works plans;

“Work No. 9(a) and (b) infrastructure” means any works or development comprised within Work No. 9(a) and Work No. 9(b) only in Schedule 1; and

“Work No. 10 infrastructure” means any works or development comprised within Work No. 10 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 10 on the works plans.

| <i>(1)</i><br><i>Number of plot shown on the land plans</i>                               | <i>(2)</i><br><i>Rights etc. which may be acquired</i>  |
|---|---|
| 02/01, 02/03, 02/10, 02/13, 02/14, 02/15, 02/18, 02/19, 02/25, 02/29, 02/31, 02/32, 02/38 | For and in connection with the Work No. 6 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to protect the Work No. 6 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land. |
| 02/33, 02/34, 02/45, 02/46, 02/47, 02/50  | For and in connection with the Work No. 7 infrastructure and Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant  |

|   |  |
|---|--|
|   | <p>and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure and Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure and Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure and Work No. 9 infrastructure, including the right to protect the Work No. 7 infrastructure and Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>  |
| <p>02/43, 02/44, 02/48, 02/49, 02/51</p>  | <p>For and in connection with the Work No. 7 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to protect the Work No. 7 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> |
| <p>02/33, 02/54, 02/57</p> <p>03/03, 03/04, 03/11, 03/12, 03/13</p> <p>04/01, 04/02</p> <p>05/01</p> <p>06/01, 06/02, 06/03, 06/04</p> <p>07/02, 07/09, 07/10</p> <p>09/01</p> <p>11/01, 11/03</p> <p>12/01, 12/03, 12/04, 12/05, 12/06, 12/06(a), 12/06(b), 12/08, 12/09, 12/11, 12/13, 12/14,</p> | <p>For and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or</p>                          |

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|---|--|
| <p>12/15, 12/16, 12/16(a), 12/17, 12/17(a),<br/>12/17(b) 12/18, 12/19</p> <p>13/01, 13/02, 13/03, 13/04, 13/05, 13/06, 13/07,<br/>13/08, 13/09, 13/11, 13/13, 13/14, 13/15, 13/18</p> <p>14/01, 14/02, 14/03, 14/04, 14/04(a), 14/04(b),<br/>14/06, 14/07, 14/08, 14/09</p> <p>15/01, 15/02, 15/03, 15/05</p> <p>16/01, 16/02</p> | <p>composition of the land.</p>  |
| <p>03/06, 03/10</p>   | <p>For and in connection with the Work No. 8 infrastructure and Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure and Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 infrastructure and Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 8 infrastructure and Work No. 9 infrastructure, including the right to protect the Work No. 8 infrastructure and Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> |
| <p>07/03, 07/04, 07/05</p>  | <p>At footbridge level only: for and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>   |
| <p>07/06, 07/08</p>   | <p>At road level only: for and in connection with the Work No. 9 infrastructure, the right for the</p>   |

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|                            | <p>undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>   |
| 11/02, 12/10, 12/12        | <p>At road level (and below) only: for and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to protect the Work No. 9 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> |
| 07/03, 07/06, 07/07, 07/08 | <p>At railway level only: for and in connection with the Work No. 9 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the maintenance of the Work No. 9 infrastructure along with the right to prevent interference with or obstruct access from and to the Work No. 9 infrastructure.</p>   |
| 16/03                      | <p>For and in connection with the Work No. 9 infrastructure and Work No. 10 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure and Work No. 10 infrastructure, and a right of</p>  |

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|       | <p>support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure and Work No. 10 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure and Work No. 10 infrastructure, including the right to protect the Work No. 9 infrastructure and Work No. 10 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>  |
| 16/04 | <p>For and in connection with the Work No. 10 infrastructure, the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 10 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 10 infrastructure, or interfere with or obstruct access from and to the Work No. 10 infrastructure, including the right to protect the Work No. 10 infrastructure, the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> |

**MODIFICATION OF COMPENSATION AND COMPULSORY  
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS  
AND IMPOSITION OF NEW RESTRICTIVE COVENANTS**

**Compensation enactments**

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in paragraph 2(2).

(2) For section 5A (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Riverside Energy Park Order 202\*);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the Riverside Energy Park Order 202\*) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

**Application of Part 1 of the 1965 Act**

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29) to the acquisition of land under article 22, applies to the compulsory acquisition of a right by the creation of a new right under article 24—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

---

(a) 1973 c.26.

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(powers of entry) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 22), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20 (protection for interests of tenants at will, etc of the 1965 Act.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 29(3) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

## “SCHEDULE 2A

### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

#### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4

(execution of declaration) of the 1981 Act as applied by article 28 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Riverside Energy Park Order 202\* in respect of the land to which the notice to treat relates.

(2) But see article 25 (acquisition of subsoil only) of the Riverside Energy Park Order 202\* which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 9

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

| <i>(1)</i><br><i>Location</i>   | <i>(2)</i><br><i>Number of plot shown on land plans</i> | <i>(3)</i><br><i>Purpose for which temporary possession may be taken</i>                                      |
|---------------------------------|---|---|
| In the London Borough of Bexley | 2/43, 2/44, 2/48, 2/49, 02/52, 03/05                    | Temporary use as laydown, construction compound, construction use and accesses for as described in Work No. 8 |
| In the Borough of Dartford      | 13/12   | Temporary use as laydown, construction compound and construction use as described in Work No. 9c              |

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF RRRL

1. For the protection of RRRL as referred to in this part of this Schedule the following provisions have effect unless otherwise agreed in writing between the undertaker and RRRL.

2. In this part of this Schedule

“access road” means that part of the access road known as Norman Road between points C and D on the access and public rights of way plan;

“alternative apparatus” means alternative apparatus adequate to enable RRRL to fulfil its functions in a manner no less efficient than previously;

“apparatus” means any electric cables, electrical plant, drains, mains, sewers, pipes, conduits or any other apparatus belonging to or maintained by RRRL and used for, or for purposes connected with, waste treatment and disposal and the generation, transmission, distribution or supply of electricity and/or heat generated at the RRRL facility and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 of this Order;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“internal street” means any roads that service the RRRL facility and which are located within the RRRL facility perimeter;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“RRRL facility” means the energy from waste facility and associated infrastructure at Norman Road, Belvedere, Bexley, Kent;

“RRRL facility perimeter” means that part of the Order land identified as plots 02/01, 02/03, 02/10, 02/13, 02/14, 02/15, 02/18, 02/19, 02/25, 02/29, 02/31 and 02/32 on the land plans;

“RRRL land” means that part of the Order land in the freehold ownership of RRRL which, as at the date upon which this Order comes into force pursuant to Article 1, are those plots identified as being in the freehold ownership of RRRL in the book of reference but always excluding plots 02/43, 02/44, 02/47, 02/48, 02/49, and 02/51;

3. Upon the permanent stopping up of the access road pursuant to article 14 (permanent stopping up of streets), the undertaker must afford to RRRL the rights for RRRL and all persons authorised on its behalf to enter and pass and re-pass, on foot and/or with or without vehicles, plant and machinery, for all purposes in connection with its occupation and use of the RRRL facility.

4. The undertaker must not install pipes for the offtake of waste heat from the authorised development without first giving RRRL the option to combine its pipes with any pipes for the offtake of waste heat from the authorised development. The undertaker must have regard to any consultation responses received from RRRL when finalising the location of pipes for the offtake of waste heat from the authorised development.

5. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary prohibition or restriction of use of streets and public rights of

way), RRRL is at liberty at all times to take all necessary access across any street used to access the RRRL facility and which has been temporarily stopped up under article 13 and/or any internal street and to execute and do all such works and things in, upon or under any such street used to access the RRRL facility that has been temporarily stopped up under article 13 and/or internal street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction is in that street used to access the RRRL facility and has been temporarily stopped up under article 13 or internal street.

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus within the RRRL land otherwise than by agreement.

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker:—

(a) acquires any interest in the RRRL land in which any apparatus is placed or over which access to any apparatus is enjoyed; or

(b) requires that RRRL's apparatus within the RRRL land is relocated, diverted or removed, any right of RRRL to any part of the RRRL land and/or to maintain that apparatus in that land and to gain access to it must not be extinguished, and that apparatus must not be relocated, diverted or removed, until equivalent rights have been granted to RRRL for alternative apparatus and equivalent alternative apparatus has vested in RRRL and (in relation to apparatus) has been constructed and is in operation, and access to it has been provided. The location of equivalent alternative apparatus and rights for the equivalent alternative apparatus must in each case be agreed between the undertaker and RRRL before any step is taken to extinguish, relocate, divert or remove as aforesaid.

(2) If, for the purpose of executing any works in, on or under the RRRL land, the undertaker requires the relocation, diversion or removal of any apparatus placed in the RRRL land, the undertaker must give to RRRL for approval written notice of that requirement, a plan and section of the work proposed and of the proposed position of the alternative apparatus together with a timetable for when the alternative apparatus is to be provided or constructed by the undertaker.

(3) The approval of RRRL under sub-paragraph (2) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which the notice, plan, section and timetable have been supplied to RRRL, RRRL has not intimated approval or disapproval of such notice, plan, section and timetable and the grounds of disapproval, RRRL is deemed to have approved the said notice, plan, section and timetable as submitted.

(4) When giving its approval under sub-paragraph (2), RRRL may specify such reasonable requirements that are necessary in the provision or construction of the alternative apparatus.

(5) In the event that RRRL issues a disapproval to the notice, plan, section and timetable within the 28 day period referred to in sub-paragraph (3), the undertaker may refer the matter to arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(6) Subject to sub-paragraph (8), any alternative apparatus to be provided or constructed pursuant to this paragraph must be provided or constructed by the undertaker within a timescale, to a standard and in such manner and in such line or situation as is agreed with RRRL or in default of agreement settled by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(7) Where the alternative apparatus is to be provided or constructed on land of the undertaker and once the undertaker has provided or constructed the alternative apparatus, the undertaker must grant RRRL the necessary rights to access and maintain the alternative apparatus on that land.

(8) If in the approval to the notice, plan, section and timetable under sub-paragraph (2) or by the end of the period of 28 days beginning with the date on which the arbitrator settles the alternative apparatus to be provided or constructed, RRRL gives notice to the undertaker that it desires to provide or construct the alternative apparatus and this is agreed to by the undertaker, (acting reasonably) RRRL, after the grant to RRRL of the rights as are referred to in sub-paragraph (9), must proceed without unnecessary delay to provide and construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(9) Where RRRL is to provide or construct the alternative apparatus, and the alternative apparatus is to be provided or constructed on land of the undertaker, the undertaker must grant RRRL the necessary rights to provide or construct the alternative apparatus on that land and grant RRRL the necessary rights to access and maintain the alternative apparatus on that land.

**8.**—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to RRRL rights in land of the undertaker for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those rights must be granted upon such terms and conditions as may be agreed between the undertaker and RRRL or in default of agreement settled by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(2) If the rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those rights are to be granted, are in the opinion of the arbitrator materially less favourable on the whole to RRRL than the rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to RRRL as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**9.**—(1) Not less than 28 days before starting the execution of any works in, on or under the RRRL land that may materially affect the operation of the RRRL facility, the undertaker must submit to RRRL for approval a plan, section and description of the works to be executed and a timetable for when such works are to be carried out.

(2) The approval of RRRL under sub-paragraph (1) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which the plan, section, description and timetable have been supplied to RRRL, RRRL has not intimated disapproval of such plan, section, description and timetable and the grounds of disapproval, RRRL is deemed to have approved the said plan, section description and timetable as submitted.

(3) When giving its approval under sub-paragraph (1), RRRL may specify such reasonable requirements which in RRRL's opinion are necessary in the execution of the works.

(4) The works described in sub-paragraph (1) must be executed only in accordance with the plan, section, description and timetable submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be given in accordance with sub-paragraph (3) by RRRL. Where RRRL reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to RRRL's reasonable satisfaction prior to the works described in sub-paragraph (1).

(5) In the event that RRRL issues a disapproval to the plan, section, description and timetable within the 28 day period referred to in sub-paragraph (1), the undertaker may refer the matter to arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works (as defined in the 1991 Act) but in that case it must give to RRRL notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraphs (3) and (4) in so far as is reasonably practicable in the circumstances.

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to RRRL the reasonable expenses incurred by RRRL in, or in connection with, the inspection, removal, alteration or protection of any apparatus within the RRRL land or the provision or

construction of any alternative apparatus which RRRL elects to carry out itself as referred to in paragraph 7(8).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule:—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to RRRL by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3):—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 7(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to RRRL in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on RRRL any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**11.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and RRRL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**12.** Where in consequence of the proposed construction or maintenance of any part of the authorised development, the undertaker or RRRL requires the removal of apparatus or RRRL makes requirements for the protection or alteration of apparatus, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution and maintenance of the authorised development and taking into account the need to ensure the safe and efficient operation of RRRL's undertaking and RRRL shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

**13.** If in consequence of any agreement reached or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable RRRL to maintain or use the apparatus no less effectively than was possible before such obstruction.

**14.—(1)** Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any part of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, use or maintenance, including without limitation works carried out by the undertaker under this Part of this Schedule or

any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of RRRL, or there is any interruption in any service provided, or in the supply of any goods, by RRRL, or RRRL becomes liable to pay any amount to any third party, the undertaker will:–

- (a) bear and pay on demand the cost reasonably incurred by RRRL in making good such damage or restoring the supply; and
- (b) indemnify RRRL for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from RRRL, by reason or in consequence of any such damage or interruption or RRRL becoming liable to any third party as aforesaid other than arising from any default of RRRL.

(2) The fact that any act or thing may have been done by RRRL on behalf of the undertaker or in accordance with a plan approved by RRRL or in accordance with any requirement of RRRL or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless RRRL fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and RRRL.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of:–

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of RRRL, its officers, servants, contractors or agents; and
- (b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by RRRL as an assignee, transferee or lessee of a person with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus, any part of the authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 14.

(4) RRRL must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) RRRL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 14 applies. If requested to do so by the undertaker, RRRL shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 14 for claims reasonably incurred by RRRL.

**15.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of any works carried out by RRRL pursuant to this Part of this Schedule or in consequence of the use, maintenance or failure of any part of the RRRL facility by or on behalf of RRRL or in consequence of any act or default of RRRL (or any person employed or authorised by him) in the course of carrying out such works, use or maintenance, including without limitation works carried out by RRRL under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any part of the authorised development or property of the undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the undertaker, or the undertaker becomes liable to pay any amount to any third party, RRRL will:–

- (a) bear and pay on demand the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and
- (b) indemnify the undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid other than arising from any default of the undertaker.

(2) The fact that any act or thing may have been done by the undertaker on behalf of RRRL or in accordance with a plan approved by the undertaker or in accordance with any requirement of the undertaker or under its supervision will not (unless sub-paragraph (3) applies), excuse RRRL from liability under the provisions of this sub-paragraph (1) unless the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and RRRL.

(3) Nothing in sub-paragraph (1) shall impose any liability on RRRL in respect of any damage or interruption to the extent that it is attributable to the neglect or default of the undertaker, its officers, servants, contractors or agents.

(4) The undertaker must give RRRL reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting RRRL and considering their representations.

(5) The undertaker must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 15 applies. If requested to do so by RRRL, the undertaker shall provide an explanation of how the claim has been minimised. RRRL shall only be liable under this paragraph 15 for claims reasonably incurred by the undertaker.

## PART 2

### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

**16.** The provisions of this Part have effect for the protection of utility undertaker unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

**17.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by the utility undertaker for the purposes of electricity supply;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
  - (i) mains, pipes or other water apparatus belonging to or maintained by the utility undertaker for the purposes of water supply; and
  - (ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991; and
- (d) in the case of a sewerage undertaker within paragraph (d) of the definition of that term—
  - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991(b); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act(a) or an

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(a) 1989 c.29.

(b) 1991 c.56.

agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986<sup>(b)</sup>;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

**18.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by Part 3 (water supply) of the 1991 Act.

**19.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13, a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**20.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**21.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

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(a) 1991 c.56. Section 102 was amended by sections 96(1)(a), 96(1)(b), 96(1)(c), 96(1)(d) and 96(1)(e) of the Water Act 2003 c.37 and paragraph 90 of Schedule 7 to the Water Act 2014 c.21.

(b) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42(3) (procedures in relation to certain approvals etc.).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42(3), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay in accordance with plans approved by the utility undertaker (such approval not to be unreasonably withheld or delayed and may be subject to such reasonable conditions as the utility undertaker deems necessary), under the superintendence (if given) of the utility undertaker and to the reasonable satisfaction of the utility undertaker.

**22.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42(3).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**23.—**(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 17, the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 12 to 18 apply as if the removal of the apparatus had been required by the undertaker under paragraph 17(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**24.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 17(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42(3) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 17(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**25.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 17(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph 17(2) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**26.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### PART 3

#### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**27.—**(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

**28.** The exercise of the powers of article 33 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

**29.—**(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

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(a) 2003 c.21.

(b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 42(3) (procedures in relation to certain approvals etc.).

**30.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**31.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 4

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**32.—(1)** The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“building” includes any structure or erection or any part of a building, structure or erection;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” shall be construed accordingly;

“damage” includes (but is not limited to) scouring, erosion, loss of structural integrity and environmental damage to any drainage work or any flora or fauna dependent on the aquatic environment, and “damaged” is to be construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for flood defence or tidal monitoring;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

“non-tidal main river” means any part of a main river that is not a tidal main river;

“tidal main river” means that part of a main river downstream of the normal tidal limit;

“plans” includes sections, drawings, specifications, calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work on a Tidal Main River, 8 metres of a drainage work on a non-tidal main rivers or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality in any main river;
- (c) affect the conservation, distribution or use of water resources; or
- (d) affect the conservation value of the main river and habitats in its immediate vicinity;

“undertaker” means Cory Environmental Holdings Limited (company number 05360864) or Riverside Energy Park Limited (company number 11536739) as notified to the relevant planning authority pursuant to requirement 33 or any other person who for the time being has the benefit of this Order in accordance with article 8 (benefit of this Order) and 9 (consent to the transfer benefit of the Order) of this Order; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

**33.** The provisions within this Part shall not apply where a matter would fall within the remit of the Lead Local Flood Authority under the Land Drainage Act 1991.

**34.—(1)** Before beginning to construct any specified work, the undertaker must submit to the Agency for its approval plans of the specified work together with the details of the positioning of any structure within the main river and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably require.

(2) Any submission made by the undertaker under sub-paragraph (1), and any approval given by the Agency under this sub-paragraph, may be in respect of all or part of a specified work.

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency under sub-paragraph (1) or settled in accordance with paragraph 43 where applicable, and in accordance with any reasonable conditions or requirements specified under this paragraph.

(4) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within two months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(5) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4)(b).

**35.** Without limiting paragraph 34, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

**36.** No buildings will be erected within the area defined by the red dotted line annotated as ‘16m FRAP Line’ on the FRAPA drawings and no material will be stored, within the area defined by

the red dotted line annotated as '16m FRAP Line' on the FRAPA drawings, which could create a risk of damage to the integrity of the flood defence structure within this area.

**37.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 35, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 41, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 43.

**38.**—(1) Subject to sub-paragraph (6), the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) and paragraph 41, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) is received by the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain a necessary consent or comply with conditions imposed by the Agency in accordance with this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the

undertaker must upon receipt of the notice cease the specified works or part thereof until it has obtained the necessary consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 43.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so.

**39.** Subject to paragraph 41, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in so doing from the undertaker.

**40.** If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within three days of the undertaker becoming aware of such obstruction, unless otherwise agreed with the Agency.

**41.** The undertaker must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**42.—(1)** The undertaker is responsible for and must indemnify the Agency against all costs and losses not otherwise provided for in this Part of this Schedule which may be incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised works or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised works or dealing with any failure of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads; and
- (c) legal costs;

“losses” includes physical damage.

(3) The undertaker must indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraphs (1)(a) and (1)(b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand; and

(b) any interest element of sums claimed or demanded;

“liabilities” includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty; and

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker, such agreement not to be unreasonably withheld or delayed.

(6) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

43. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 42(3) (arbitration), but otherwise must be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

## PART 5

### FOR THE PROTECTION OF RAILWAY INTERESTS

44. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 58, any other person on whom rights or obligations are conferred by that paragraph.

45. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 (licenses) of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 0204587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc) of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“protective works” means any works specified by the engineer under paragraph 48(4);

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(a) 1993 c.43.

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for or connected with the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

**46.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

**47.—**(1) The undertaker must not exercise the powers conferred by—

- (a) articles 3 (development consent granted by the Order), 4 (maintenance of authorised development), 13 (temporary prohibition or restriction of use of streets and public rights of way), 14 (permanent stopping up of streets), 15 (access to works), 17 (traffic regulation), 18 (discharge of water), 19 (authority to survey and investigate land), 20 (protective works to buildings), 21 (felling or lopping of trees), 22 (compulsory acquisition of land), 24 (compulsory acquisition of rights), 25 (acquisition of subsoil only), 26 (private rights), 27 (power to override easements and other rights), 30 (rights under or over streets), 31 (temporary use of land for carrying out the authorised development), 32 (temporary use of land for maintaining the authorised development), 33 (statutory undertakers), 34 (apparatus and rights of statutory undertakers in stopped up streets), 35 (recovery of costs of new connections); or
- (b) section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code operators: preliminary notices) of the 1990 Act or article 33 in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

**48.—**(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer

and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate the engineer's approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is to be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2) Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using those railways (including any relocation, decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**49.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 47(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 48;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**50.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and

- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

**51.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**52.—(1)** If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or protective work is to be constructed, Network Rail must assume construction of that part of the specified work or the protective work and the undertaker must, regardless of any such approval of a specified work or the protective work under paragraph 48(2) pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 53(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**53.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 48(4) or in constructing any protective works under the provisions of paragraph 48(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

54.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 48 for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 48) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified under to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified under to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 48(1) have effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail’s apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail’s apparatus under sub-paragraph (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 48.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 58 applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 53(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 42(3) (procedures in relation to certain approvals etc.) to the Secretary of State is to be read as a reference to the Institution of Engineering and Technology.

**55.** If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or that protective work in such state of maintenance as not adversely to affect railway property.

**56.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**57.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or a protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**58.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure thereof or;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision must not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand must be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include sums equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or protective work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**59.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 57) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this this Schedule (including any claim relating to those relevant costs).

**60.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**61.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans and the land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**62.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I (the provision of railway services) of the Railways Act 1993.

**63.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 9 of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**64.** The undertaker must no later than 28 days from the date that the documents submitted to and certified by the Secretary of State in accordance with article 40 are certified by the Secretary of State, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.

65. In relation to any dispute arising under this Part of this Schedule that is referred to arbitration in accordance with article 42(3) (arbitration), the process referred to in article 42(3) must be varied by the arbitrator where Network Rail demonstrates to the arbitrator's reasonable satisfaction that Network Rail is unable (acting reasonably) to comply with the process due to timing constraints that may arise for Network Rail in—

- (a) obtaining clearance conditions;
- (b) obtaining any engineering, regulatory or stakeholder (internal or external) consent; or
- (c) assessing any matter of concern with regard to the safe operation of Network Rail's railway,

the variation being to the extent reasonably necessary so that Network Rail is able (acting reasonably) to comply with that process.

## PART 6

### FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

66. For the protection of National Grid referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

#### **Interpretation**

67. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule only the term commence and commencement shall include any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH and its successors and assignees;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“undertaker” has the same meaning as in article 2 of this Order; and

“specified works” means any of the works authorised by this Order or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 72(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 72(2) or otherwise; and/or
- (c) include any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

### **On Street Apparatus**

**68.** Except for paragraphs 69 (apparatus of National Grid in stopped up streets), 74 (retained apparatus), 75 (expenses) and 76 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **Apparatus of National Grid in stopped up streets**

**69.—**(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 72.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary prohibition or restriction of use of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

### **Protective works to buildings**

**70.—**(1) The undertaker, in the case of the powers conferred by article 20 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid (not to be unreasonably withheld or delayed) and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by

National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

71.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between the undertaker and National Grid) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it must be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such part of the authorised development.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 74 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) For the avoidance of doubt, regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire National Grid's freehold interest (or any other interest) in plots 16/03 and 16/04 otherwise than by agreement.

### **Removal of apparatus**

72.—(1) If, in the exercise of the agreement reached in accordance with paragraph 71 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of

National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid no less than 56 days advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 73(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**73.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 80 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 42(3) (arbitration) of the Order must apply.

### **Retained apparatus**

**74.—**(1) Not less than 56 days before the commencement of any specified works, the removal of which has not been required by the undertaker under paragraph (72(2)) or otherwise and to which

sub-paragraphs (2)(a) or (2)(b) applies the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of its electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within—

- (a) 15 metres measured in any direction of any apparatus; or
- (b) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within ten metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraph (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by

National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any part of the authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 66 to 68 and 71 to 73 apply as if the removal of the apparatus had been required by the undertaker under paragraph 72(2)).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act, but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with paragraph 77 at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with the National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

**75.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any part of the authorised development as referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 72(3); and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

76.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any part of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and National Grid (in writing).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of a person with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 or article 9 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any part of the authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

77. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

78.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 68(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 74, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt where National Grid’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

### **Access**

79. If in consequence of the agreement reached in accordance with paragraph 71(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## Arbitration

**80.** Save for differences or disputes arising under paragraphs 72(2), 72(4), 73(1) and 74 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

## Notices

**81.** The plans submitted to National Grid by the undertaker pursuant to paragraph 74(1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker.

## PART 7

### FOR THE PROTECTION OF UK POWER NETWORKS LIMITED, LONDON POWER NETWORKS PLC AND SOUTH EAST POWER NETWORKS PLC

**82.** For the protection of the utility undertakers referred to in this part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

**83.** In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) UK Power Networks Limited, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;
- (b) London Power Networks plc, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;
- (c) South Eastern Power Networks plc, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

**84.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

**85.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13, a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

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(a) 1989 c.29.

**86.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than with the prior written agreement of the utility undertaker.

**87.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42(3) (procedures in relation to certain approvals etc.).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42(3), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the removal of apparatus or construction of alternative apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay and only in accordance with plans approved by the utility undertaker, such approval may be subject to such reasonable conditions including but not limited to the undertaker entering into an assets protection agreement with the utility undertaker as the utility undertaker deems necessary. The undertaker must carry out the works under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker subject to the utility undertaker's reasonable specification.

**88.—(1)** Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42(3).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**89.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 87, the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 82 to 88 apply as if the removal of the apparatus had been required by the undertaker under paragraph 87(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**90.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 87(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42(3) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule

exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 87(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**91.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 87(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph 87(2) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**92.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 87(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 89, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

**93.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**PART 8**  
**FOR THE PROTECTION OF THAMES WATER UTILITIES LIMITED**

**Application**

94. The provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and Thames Water, have effect.

**Interpretation**

95. In this Part of this Schedule—

“Thames Water” means Thames Water Utilities Limited, company number 02366661, whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire, RG1 8DB and any successor in statutory function;

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Thames Water for the purposes of water supply and sewerage, including sewerage pumping stations, together with—

- (a) any drain or works vested in Thames Water under the Water Industry Act 1991; and
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of the Water Industry Act 1991 or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works) of that Act, and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer or drain (within the meaning in section 219 (general interpretation) of the Water Industry Act 1991) or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Thames Water to fulfil its statutory functions in no less efficient a manner than previously;

“authorised development” means the development as described in Schedule 1 (authorised development) of this Order;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes sections, drawings, specifications and method statements; and

“the standard protection strips” means the strips of land falling within the following distances to either side of the medial line of any relevant apparatus—

- (a) 2.25 metres where the diameter of the apparatus is less than 150 millimetres;
- (b) 3 metres where the diameter of the apparatus is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the apparatus is between 451 and 750 millimetres; and
- (d) 6 metres where the diameter of the apparatus exceeds 750 millimetres; and

“the Order” means the Riverside Energy Park Order 202[\*] as defined in article 1 of this Order

“the relevant planning authority” means the authority as defined in article 2 of this Order

“the WIA 1991” means the Water Industry Act 1991

**Apparatus**

96.—(1) The undertaker must not within the standard protection strips—

- (a) interfere with any apparatus or construct any part of the authorised development; or

- (b) execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus; or
- (c) execute any filling around any apparatus (where the apparatus is laid in a trench) within the standard protection strips  
 unless otherwise agreed in writing with Thames Water, such agreement not to be unreasonably withheld or delayed and, in any event, shall be deemed to be given if not otherwise stated within 28 days.

(2) The undertaker must bring the requirements in sub-paragraph (1) to the attention of any agent or contractor responsible for carrying out any of the authorised development on behalf of the undertaker.

**97.** The alteration, extension, removal or relocation of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained, and any approval or agreement required from Thames Water on alternative outfall locations as a result of such re-location are approved, such approvals from Thames Water not to be unreasonably withheld or delayed and, in any event, shall be deemed to be given if not otherwise stated within 28 days; and
- (b) the undertaker has made the appropriate applications required under the Water Industry Act 1991 and the undertaker has supplied to Thames Water a plan and section of the works proposed and Thames Water has given the necessary consents and approvals, such consent and approval not to be unreasonably withheld or delayed and, in any event shall be deemed to be given if not otherwise stated within 28 days, and such works must be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Thames Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**98.** In the situation where in exercise of the powers under this Order the undertaker acquires any interest in any land in which apparatus is located and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension can take place until Thames Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

**99.** Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Thames Water to use, keep, inspect, renew and maintain its apparatus within the Order limits, the undertaker must, with the agreement of Thames Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Thames Water, such agreement not to be unreasonably withheld or delayed and, in any event, shall be deemed to be given within 28 days, and to be subject to arbitration under article 42(3) (procedures in relation to certain approvals etc.).

**100.** If in consequence of the exercise of the powers under this Order the access to any apparatus is materially obstructed the undertaker must provide such reasonable alternative means of access to such apparatus as will enable Thames Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

**101.** If in consequence of the exercise of the powers under this Order, previously unmapped sewers, lateral drains or other apparatus belonging to or maintained by, or suspected to belong to or maintained by, Thames Water, are identified by the undertaker, notification of the location of such assets will as soon as reasonably practicable be given to Thames Water and afforded the same protection as other Thames Water apparatus.

**102.** If for any reason or in consequence of the construction of any of the works referred to in paragraphs 97 to 99 and 101 any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of

those works) or property of Thames Water, or there is any interruption in any service provided by Thames Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Thames Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Thames Water for any other expenses, loss, damages, penalty or costs reasonably incurred by Thames Water, by reason or in consequence of any such damage or interruption.

### **Consultation**

**103.** Upon submission of any plan, scheme or strategy under Requirements 5 (Biodiversity and landscape mitigation strategy), 11 (Code of construction practice), 13, (Construction traffic management plan(s)), 18 (Operational lighting strategy) and 19 (Control of operational noise) of the Order to the relevant planning authority, the undertaker shall submit the same at the same time to Thames Water care of Linda Rushton at Clearwater Court, Vastern Road, Reading RG1 8DB and Michael Swain at Bazalgette Way, Abbey Wood, London SE2 9AQ.

## **PART 9**

### **FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER**

### **Application**

**104.** For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

### **Interpretation**

**105.** In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of SGN to enable SGN to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by SGN for the purposes of gas distribution together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 and commencement is to be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include the pre-commencement works;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SGN (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for SGN’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to SGN and which shall have been approved by SGN acting reasonably;

“rights” includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and/or any successor as a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986.

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 110(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 110(2) or otherwise;

“undertaker” means the undertaker as defined in article 2 (interpretation) of this Order.

## **On Street Apparatus**

**106.**—(1) Except for paragraphs 107 (apparatus in stopped up streets), 110 (removal of apparatus) in so far as sub-paragraph 107(2) applies, 111 (facilities and rights for alternative apparatus) in so far as sub-paragraph 107(2) below applies, 112 (retained apparatus: protection), 113 (expenses) and 114 (indemnity) of this part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SGN, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) Paragraph 110 and 111 of this Agreement shall apply to diversions even where carried out under the 1991 Act, in circumstances where any Apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

### **Apparatus of SGN in stopped up streets**

**107.**—(1) Without prejudice to the generality of any other protection afforded to SGN elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of streets) if SGN has any apparatus in the street or accessed via that street SGN will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to SGN, or will procure the granting to SGN of, legal easements reasonably satisfactory to SGN in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph affects any right of the undertaker or of SGN to require the removal of that apparatus under paragraph 110.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary prohibition or restriction of use of streets and public rights of way), SGN will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Protective works to buildings**

**108.**—(1) The undertaker, in the case of the powers conferred by article 20 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SGN or any interruption in the supply of gas by SGN, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to SGN for any loss sustained by it; and
- (b) indemnify SGN against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SGN, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SGN or its contractors or workmen; and SGN will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by SGN, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

**109.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of SGN otherwise than by agreement.

(2) The undertaker and SGN agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SGN and/or other enactments relied upon by SGN as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(3) Any agreement or consent granted by SGN under paragraph 112 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph 106(1).

(4) As a condition of an agreement between the parties in sub-paragraph (1) that involves decommissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of SGN in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release SGN from all liabilities in respect of such decommissioned apparatus from the date of such surrender.

(5) Where an undertaker acquires land which is subject to any SGN right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 110 do not apply, the undertaker must:

- (a) retain any notice of SGN's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of SGN's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of SGN's easement, right or other interest in relation to such acquired land; and
- (c) provide up to date official entry copies to SGN within 20 working days of receipt of such up to date official entry copies.

### **Removal of apparatus**

**110.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 104 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation to the reasonable satisfaction of SGN and in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SGN advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SGN reasonably needs to move or remove any of its apparatus) the undertaker must afford to SGN to its satisfaction (taking into account sub-paragraph 111(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SGN may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for SGN to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between SGN and the undertaker.

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SGN of such facilities and rights as are referred to in sub-paragraph

(2) or (3) have been afforded to SGN to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**111.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SGN facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SGN and must be no less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SGN.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed then the terms and conditions to which those facilities and rights are subject in the matter are referred to arbitration in accordance with paragraph 118 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of SGN**

**112.**—(1) Not less than 56 days before the commencement of any specified works, the undertaker must where reasonably required by SGN submit to SGN a plan and, a ground monitoring scheme in respect of those works.

(2) In relation to works which will or may be situated on, over, under or within (a) ten metres measured in any direction of any apparatus, or (b) involve embankment works within ten metres of any apparatus, the plan to be submitted where reasonably required to SGN under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until SGN has given written approval of the plan so submitted.

(4) Any approval of SGN required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as

amended from time to time by agreement between the undertaker and SGN and in accordance with all conditions imposed under sub-paragraph (4)(a), and SGN will be entitled to watch and inspect the execution of those works.

(7) Where SGN requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SGN's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and SGN must give 45 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If SGN, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 104 to 106 and 109 to 111 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 110(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act, but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) As soon as reasonably practicable after any ground subsidence event which is known to or may have affected apparatus attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that SGN retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 113.

## **Expenses**

**113.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN on demand all charges, costs and expenses reasonably anticipated or incurred by SGN in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by SGN as a consequence of SGN -
  - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 110(3) if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 112(6).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42(3) (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

## **Indemnity**

**114.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of SGN, or there is any interruption in any service provided, or in the supply of any goods, by SGN, or SGN becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply; and
- (b) indemnify SGN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from SGN, by reason or in consequence of any such damage or interruption or SGN becoming liable to any third party as aforesaid other than arising from any default of SGN.

(2) The fact that any act or thing may have been done by SGN on behalf of the undertaker or in accordance with a plan approved by SGN or in accordance with any requirement of SGN or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless SGN fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and SGN.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of SGN, its officers, servants, contractors or agents; and
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by SGN as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the Planning Act 2008 or article 9 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 114.

(4) SGN must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) SGN must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 114 applies. If requested to do so by the undertaker, SGN must provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 114 for claims reasonably incurred by SGN.

### **Enactments and agreements**

**115.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and SGN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**116.**—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under sub-paragraph 110(2) or SGN makes requirements for the protection or alteration of apparatus under paragraph 112, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SGN’s undertaking and SGN must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SGN’s consent, agreement or approval is required in relation to plans, documents or other information submitted by SGN or the taking of action by SGN, it must not be unreasonably withheld or delayed.

### **Access**

**117.** If in consequence of the agreement reached in accordance with sub-paragraph 109(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access

to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**118.** Save for differences or disputes arising under sub-paragraphs 110(2), 110(4) and 111(1) and paragraph 109 any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 42 (procedures in relation to certain approvals etc.).

### **Notices**

**119.** The plans submitted to SGN by the undertaker pursuant to sub-paragraph 112(1) must be sent to SGN at 1 Forbury Place, 43 Forbury Road, Reading, Berkshire RG1 3JH or such other address as SGN may from time to time appoint instead for that purpose and notify to the undertaker.

SCHEDULE 11

Article 40

DOCUMENTS AND PLANS TO BE CERTIFIED

| <i>(1)</i><br><i>Document name</i>    | <i>(2)</i><br><i>Document reference</i>  | <i>(3)</i><br><i>Revision number</i> | <i>(4)</i><br><i>Date</i> |
|---------------------------------------|--|--------------------------------------|---------------------------|
| access and public rights of way plans | 2.3<br>(key plan and sheets 1 to 16)   | Rev. 1                               | May 2019                  |
| book of reference                     | 4.3  | Rev. 3                               | September 2019            |
| CHP statement                         | 5.4  | Rev. 0                               | November 2018             |
|                                       | 5.4.1 (CHP supplementary report)   | Rev. 0                               | May 2019                  |
| design principles                     | 7.4  | Rev. 0                               | November 2018             |
| environmental statement               | environmental statement 6.1<br>(excluding chapters 3, 5, 6, 7, 9, 11, 12, 13, 14 and 18)   | Rev. 0                               | November 2018             |
|                                       | environmental statement 6.1<br>(chapters 3, 5, 6, 7, 9, 11, 12, 13, 14 and 18)   | Rev. 1                               | May 2019                  |
|                                       | environmental statement 6.2<br>(excluding Figure 7.5, 7.8, 7.9 and 7.10)   | Rev. 0                               | November 2018             |
|                                       | environmental statement 6.2 (Figure 7.5)   | Rev. 2                               | June 2019                 |
|                                       | environmental statement 6.2 (Figure 7.8)   | Rev. 2                               | September 2019            |
|                                       | environmental statement 6.2 (Figure 7.9)   | Rev. 2                               | September 2019            |
|                                       | environmental statement (Figure 7.10)  | Rev. 2                               | September 2019            |
|                                       | environmental statement 6.3<br>(excluding appendix J (network traffic flows and distribution) to appendix B.1, appendix L (outline construction traffic management plan) to appendix B1, appendix C.1 (traffic modelling), C.2 (stack modelling), appendix C.3 (human health | Rev. 0                               | November 2018             |

|  |   |        |                |
|--|---|--------|----------------|
|  | risk assessment)  |        |                |
|  | environmental statement 6.3 (appendix J (network traffic flows and distribution) to appendix B.1, appendix C.1 (traffic modelling), C.2 (stack modelling), appendix C.3 (human health risk assessment)) | Rev. 1 | May 2019       |
|  | environmental statement 6.3 (appendix L (outline construction traffic management plan) to appendix B.1  | Rev. 6 | September 2019 |
|  | environmental statement 6.4   | Rev. 0 | November 2018  |
|  | environmental statement 6.5   | Rev. 1 | May 2019       |
|  | environmental statement supplemental report 6.6   | Rev. 0 | May 2019       |
| flood risk assessment                                  | 5.2   | Rev. 0 | November 2018  |
| FRAPA drawings   | appendix B of 8.01.03   | Rev. 0 | 13 May 2019    |
| land plans   | 2.1   | Rev. 2 | July 2019      |
| MOL plan   | 8.02.58   | Rev. 0 | 9 August 2019  |
| outline biodiversity and landscape mitigation strategy | 7.6   | Rev. 4 | September 2019 |
| outline code of construction practice                  | 7.5   | Rev. 5 | September 2019 |
| outline lighting strategy                              | appendix K.3 of 6.3   | Rev. 0 | November 2018  |
| pre-commencement plan                                  | 8.02.55   | Rev. 0 | August 2019    |
| REP and RRRF Application Boundaries Plan               | 8.02.56   | Rev. 1 | September 2019 |
| transport assessment                                   | appendix B.1 of 6.3 (excluding appendix J and appendix L)   | Rev. 0 | November 2018  |
|  | appendix J to appendix B.1 of 6.3   | Rev. 1 | May 2019       |
|  | appendix L to appendix B.1 of 6.3   | Rev. 6 | September 2019 |
|  | jetty outage review   | Rev. 0 | June 2019      |
|  | supplementary note to the temporary jetty outage review   | Rev. 0 | September 2019 |
| works plans  | 2.2   | Rev. 1 | May 2019       |

## PROCEDURE IN RELATION TO CERTAIN APPROVALS ETC.

**Interpretation****1.** In this Schedule—

“the appeal parties” means the relevant authority, the undertaker and any requirement consultees;

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

“relevant authority” means the relevant planning authority, relevant highway authority, relevant traffic authority, relevant street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought; and

“requirement consultee” means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

**Applications made under requirements**

**2.**—(1) Subject to article 42(2) (procedures in relation to certain approvals etc), where an application has been made to the relevant authority for any consent, agreement or approval required or contemplated by any provisions of this Order (including consent, agreement or approval in respect of part of a requirement) the relevant authority must give notice to the undertaker of its decision on the application within a period of nine weeks beginning with—

- (a) the day immediately following that on which the application is received by the relevant authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under sub-paragraph (2); or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant authority.

(2) Subject to sub-paragraph (3), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

the application is to be taken to have been refused by the relevant authority at the end of that period.

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(a) 1971 c.80

### **Further information and consultation**

3.—(1) In relation to any application to which this Schedule applies, the relevant authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant authority considers such further information to be necessary and the provision of the Order governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision of the Order governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within ten business days of receipt of the application.

(4) In the event that the relevant authority does not give notification as specified in subparagraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph 3 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2(1)(b), paragraph 2(3) and paragraph 3.

### **Appeals**

4.—(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(3)) an application for any consent, agreement or approval required or contemplated by any of the provisions of this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where paragraph 2(3) applies) expiry of the decision period as determined under paragraph 2(1);
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the appeal parties;
- (c) as soon as is practicable following receipt of the appeal documentation, the Secretary of State is to appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention must be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (d) the relevant authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

- (e) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d); and
- (f) the appointed person must decide the appeal and notify the appeal parties of the decision, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e).

(3) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required, the appeal part from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) is to be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(d) to (2)(f).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person, under this paragraph.

(8) The appointed person may proceed to a decision even though no written representations have been made within the prescribed time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval required under the Order or for the purpose of Schedule 2 as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(11) The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten years’ experience.

(12) Save where a direction is given pursuant to sub-paragraph (13) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

**Application to protective provisions**

5. Nothing in this Schedule applies to any consent, agreement or approval required or contemplated by Schedule 10 or article 20(6) (protective work to buildings).

## SCHEDULE 13

Article 6

### MODIFICATIONS TO THE SECTION 36 CONSENT AND RRRF PLANNING PERMISSION

#### PART 1

##### SECTION 36 CONSENT

1. Delete the words “associated open storage areas for ash container storage,” in paragraph 2(f).
2. Delete “and” at the end of paragraph 3(1)(i).
3. For the words “25 September 2014.” at the end of paragraph 3(1)(ii) substitute “25 September 2014; and”.
4. After paragraph 3(1)(ii) insert new paragraph 3(1)(iii) as follows, “(iii) the Riverside Energy Park Order 202\*”.

#### PART 2

##### RRRF PLANNING PERMISSION

5. After RRRF condition 1(iii), insert new condition 1(iv) as follows, “(iv) the Riverside Energy Park Order 202\*”.
6. In RRRF condition 7, insert the words “(except for the development authorised by the Riverside Energy Park Order 202\*)” after “and for no other purpose”.
7. For RRRF condition 23, substitute new condition 23 as follows “23. Bottom ash shall only be stored in the bunkers to the development hereby approved”.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Cory Environmental Holdings Limited or Riverside Energy Park Limited as notified to the relevant planning authority pursuant to the provisions of this Order (referred to in this Order as the undertaker) to construct, operate and maintain a generating station with a capacity of over 50 megawatts but below 300 megawatts.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 40 of this Order (certification of plans etc.) may be inspected free of charge during working hours at London Borough of Bexley, Civic Offices, 2 Watling Street, Bexleyheath, Kent DA6 7AT.