REPORT

Boston Alternative Energy Facility

The Applicant's Response to UKWIN's Deadline 6 Submission

Client:	Alternative Use Boston Projects Ltd
Planning Inspectorate Reference:	EN010095
Document Reference:	9.79
Pursuant to:	APFP Regulation: N/A
Reference:	PB6934-RHD-ZZ-XX-NT-Z-4105
Status:	Final/0.0
Date:	01 March 2022

Royal HaskoningDHV
Enhancing Society Together

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Boston Alternative Energy Facility

Note / Memo

HaskoningDHV UK Ltd.
Industry & Buildings

To:	National Infrastructure Planning
From:	Alternative Use Boston Projects Limited
Date:	01 March 2022
Our reference:	PB6934-RHD-ZZ-XX-NT-Z-4079
Document reference:	9.79
Planning Inspectorate Reference:	EN010095
Classification:	Project related
Checked by:	Abbie Garry
Approved by:	Paul Salmon

Subject: **Boston Alternative Energy Facility: Deadline 7 – The Applicant's Response to UKWIN D6 Submission**

1 Introduction

1.1.1 This submission sets out the Applicant's response to the UK Without Incineration Network (UKWIN) Deadline 6 Submission "Comments on responses to Second Written Questions (ExQ2)" (REP6-042). This response covers the waste hierarchy / proximity principle and the Greenhouse Gas / Climate Change aspects of the submission. In general, the Applicant has already provided detailed responses to UKWIN's comments within "The Applicant's Response to United Kingdom Without Incineration Network's (UKWIN) Comments" (document reference 9.64, REP5-009)" and the Applicant stands by these responses. Where additional points have been raised by UKWIN at Deadline 6 these have been addressed within this note. The comments raised by UKWIN in their comments on Table 1-3 Response to REP3-036 raise no new matters that require a further response from the Applicant.

2 Waste (outstanding points within Comments on the Applicant's Table 1-2 Response to REP2-058)

2.1.1 The Applicant has previously provided responses setting out the reasons for defining a 2-hour travel time to ports to be able to define a waste catchment area. These responses are detailed in *The Applicant's Response to United Kingdom Without Incineration Network's (UKWIN) Oral Submission at Issue Specific Hearing 2 (ISH2) on Environmental Matters* (Part 1) (document reference 9.55, REP4-020) and *The Applicant's Response to UKWIN's Comments* (document reference 9.64, REP5-009).

2.1.2 The Applicant recognises that some new EfW facilities may not have been running at full capacity when the fuel assessment was updated, based on the information in the

Tolvik report. A small number of additional EfW facilities have been approved within the last few months, so the future UK capacity will be increased assuming all facilities are built, and existing facilities continue to operate. The Applicant has previously highlighted the paucity of data relating to commercial and industrial (C&I) waste. In UKWIN's calculations it is not clear what the existing recycling rate is for total C&I wastes for the 50% and 33% calculations to be made. The Applicant has referenced Government-provided waste data and statistics in its calculations, based on current recycling rates and future targets that will be met in line with the transition to the circular economy.

3 Responses to Specific UKWIN points regarding Waste Plans (Comments on the Applicant's Table 1-2 Response to REP2-058)

3.1.1 UKWINS' critique focuses upon the Applicant's review of waste plans at 50 to 60 (page 12). With respect to the methodology applied to the review of waste plans forming part of the Addendum to the Fuel Availability and Waste Hierarchy Assessment (Document reference 9.5, REP1-018), the Applicant has circulated to the Examination the equivalent study undertaken for the now consented Multifuels MF2 DCO scheme (Document reference 9.55, REP4-020, Appendix A). The Applicant's review adopted MF2 DCO methodology.

3.1.2 Noting UKWIN's critique, the proposed development will be a merchant facility for which contracts for feedstock have yet to be agreed therefore actual source of refuse derived fuel and quantities associated with individual authority areas is yet to be established. The methodology applied and outcomes reported are considered by the Applicant to be sufficient and proportionate.

4 Climate Change

4.1 Summary of Approach

4.1.1 In its most recent response UKWIN has selectively taken quotes from the Applicant's response (UKWIN's D6 Comments on Applicant Response to UKWIN's Comments, REP6-042) and these are presented without context of the wider comments being made, as well as without reference to the assessments that were undertaken. Therefore, a summary of the approach undertaken by the Applicant to obtain an understanding of potential greenhouse gas (GHG) emissions of the proposed Facility, as well as a comparison with alternative 'Do Nothing' scenarios is presented for clarity below.

4.1.2 A GHG assessment for the proposed Facility was undertaken as part of Chapter 21 of the ES (Climate Change, document reference 6.2.21, APP-059). The assessment quantified emissions associated with activities at the Facility, including the release of

GHGs from the three main stacks, transportation of Refuse Derived Fuel (RDF) waste, road vehicle movements and the combustion of fuel from on-site plant. GHG emissions associated with the processing of RDF waste at the proposed Facility were determined from the design case calorific value of the waste, which is 10.1 MJ / kg.

4.1.3 In addition, the Facility will include the connection of carbon dioxide (CO_2) recovery plants to the flue-gas system from two thermal treatment plant lines. These will recover CO_2 (to food-grade) for off-site reuse in various industries, and will recover 80,000 tonnes of CO_2 per year.

4.1.4 The assessment also accounted for the 'net effect' of the provision of electricity to the national grid, by displacing GHG emissions arising from Combined Cycle Gas Turbine (CCGT) electricity generation.

4.1.5 Emissions from the Facility were compared to two other scenarios which represent 'existing' disposal routes, including landfill within the UK, and export to similar facilities in Europe.

4.1.6 The composition of the RDF waste that will be processed at the Facility is difficult to predict (as it would be for any energy from waste facility treating RDF), and will be influenced by a range of factors including Government policy and legislation, market trends and individual behaviours and types of waste sources and streams. In recognition of this, a sensitively analysis was carried out in the document submitted at Deadline 1 'Climate Change – Further Greenhouse Gas Emissions Analysis and Consideration of Waste Composition Scenarios' (document reference 9.6, REP1-019). It should be noted that the sensitivity analysis was undertaken to test the effect of potential changes of waste compositions to emissions from the Thermal Treatment Process and from landfill, and therefore did not account for the effects of the CO_2 recovery plants as detailed in Paragraph 4.1.3 of this document.

4.1.7 This analysis accounted for waste with different carbon and fossil carbon contents, adopting a methodology from approaches detailed in Defra guidance[1]. As noted, a detailed breakdown of likely waste composition was unavailable, therefore accounting for a wide range of carbon contents to predict potential GHG emissions from processing the waste at the proposed Facility, and at landfill.

4.1.8 The results of the additional assessment show that the carbon composition of the waste does have an impact on GHG emissions arising from both the thermal treatment process and landfilled waste. However, the scenarios presented in the ES sit within the range of GHG emissions presented in this additional analysis. Furthermore, the outcomes of the Climate Change assessment, which are summarised in the ES, states it is "*likely that GHG emissions from the Facility would be lower or similar when compared to landfilled waste streams*" remain valid. The applicant acknowledges the uncertainties inherent in

[1] *Defra 2014, Energy recovery for residual waste, A carbon based modelling approach, February 2014*

conducting such an assessment and has, accordingly, carried out such sensitivity tests as it considers are reasonable to provide context for the assessment outcomes.

4.2 Responses to Specific UKWIN points (Comments on Table 1-2 Response to REP2-057)

4.2.1 On pages 15 and 16 of UKWIN's D6 submission, UKWIN shares an example from a recent assessment in December 2021, whereby the assessment assumed a 35% carbon content for RDF waste. It is acknowledged that this carbon composition is higher than the range considered in 'Climate Change – Further Greenhouse Gas Emissions Analysis and Consideration of Waste Composition Scenarios' (document reference 9.6, REP1-019). However, the input data within Table 5 of the assessment for the Reading Quarry Energy Recovery Centre by Air Quality Consultants (Appendix 10.1 of the Environmental Statement) shows that the assumed fossil / biogenic carbon ratio was 50:50, whereby one of the assumptions within document reference 9.6, REP1-019 assumed a 60:40 fossil / biogenic carbon ratio. Paragraph 6.25 of Appendix 10.1 of the Environmental Statement for the Reading Quarry Energy Recovery Centre states with reference to the sensitivity analysis carried out that "*UK waste policy is driving a reduction in plastics in residual waste streams. It can therefore be anticipated that future RDF will have lower plastics content. The reduction in plastic content of the RDF will have the effect of reducing the NCV, and will reduce the fossil carbon content and overall carbon content of the RDF*." Therefore, it can be concluded that the range of scenarios presented in 'Climate Change – Further Greenhouse Gas Emissions Analysis and Consideration of Waste Composition Scenarios' (document reference 9.6, REP1-019) is still reasonable.

4.2.2 On page 16, UKWIN states "*Based on a 35% carbon content burning 1 tonne of waste would result in the production of 1.283 tonnes of CO2 (0.35 x 3.6667 = 1.283)*". This calculation, whilst being correct, is stated without context, namely that only the fossil carbon content (in this scenario assumed to be 50%) is considered to be a net contributor to the global system, and does not account for the electrical offset as a result of the processing of 1 tonne of RDF waste.

4.3 Responses to Specific UKWIN points (Comments on Table 1-3 Response to REP3-037)

4.3.1 The Applicant has not criticised UKWIN's Good Practice Guidance, however the Applicant emphasises that the document has not been adopted by organisations such as Defra, the Environment Agency, Environmental Services Association or the Chartered Institution of Waste Management. The assessments adopted in Chapter 21 of the ES (Climate Change, document reference 6.2.21, APP-059) and 'Climate Change – Further Greenhouse Gas Emissions Analysis and Consideration of Waste Composition Scenarios' (document reference 9.6, REP1-019) used design information specific to the scheme or accepted methodologies such as those provided by Defra[1].

4.3.2 UKWIN has stated that the Applicant has ignored the fact that some of the biogenic carbon is sequestered in landfill. This is incorrect, Section 2.4 of document 'Climate Change – Further Greenhouse Gas Emissions Analysis and Consideration of Waste Composition Scenarios' (document reference 9.6, REP1-019) provides the methodology for the sensitivity analysis to consider emissions from landfill. It states that a sequestration rate of 50% was adopted, which is considered to be a conservative assumption. The high sequestration used in the assessment (50%), combined with the use of high landfill gas capture rates (assumed to be 68% capture) was considered to be conservative. Therefore, it was not considered appropriate to give additional credit for sequestered carbon as this would result in an overly-conservative assessment.

4.3.3 As stated in Paragraph 4.1.6 of this document, the sensitivity analysis in document 'Climate Change – Further Greenhouse Gas Emissions Analysis and Consideration of Waste Composition Scenarios' (document reference 9.6, REP1-019) also did not consider the effects of the recovery of 80,000 tonnes of CO_2 from the two Recovery plants. Therefore, the outcomes in that document are an underestimation of the potential climate benefits associated with the Proposed Facility.

5 Alternatives Assessment (Comments on Table 1-3 Response to REP3-038)

5.1.1 The Applicant stands by the responses within “The Applicant’s Response to United Kingdom Without Incineration Network's (UKWIN) Comments” (document reference 9.64, REP5-009) with regard to the objectives set out within the Assessment of Alternative Solutions (document reference 9.28, REP2-011). In order to respond to UKWIN’s response on alternative locations (including local plan allocations), the Applicant is preparing a without prejudice ‘in-principle’ assessment of alternative locations which will be submitted at Deadline 8. However, it is considered alternatives in scale, size, design, method and timing are included, where relevant, in the Assessment of Alternative Solutions (document reference 9.28, REP2-011) with a specific focus on the elements of the proposed development which may affect The Wash Special Protection Area (SPA), Ramsar and The Wash and North Norfolk Coast Special Area of Conservation (SAC).

5.1.2 The Applicant is continuing to liaise with the Environment Agency with regards to the Lightweight Aggregate Facility and has provided further details on this within the Responses to Third Written Questions (document reference 9.75).

5.1.3 For clarity, the Applicant’s response with regards UKWIN’s point that the RDF required for the Facility could be used in other incinerators which could be expected to be more efficient (including using Combined Heat and Power), was simply to say that assuming high efficiency of other facilities may not be appropriate as the efficiencies of other facilities could vary significantly.

6 Responses to Specific UKWIN points (Comments on the Applicant's Table 1-2 Response to REP2-058) regarding the Proximity Principle

6.1.1 UKWIN at paragraph 36 (page 11 and 12) comment that with respect to the proximity principle 'This is not about accepting non-local waste; it is about local waste being exported to a distant facility when it might otherwise be treated more locally in line with the proximity principle'.

6.2 Response

6.2.1 Article 16 Directive 2008/98/EC states:

' *'Member States shall ….. establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers, taking into account best available techniques'.*

The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal as well as in the recovery of waste referred to in paragraph 1, and to enable Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

The network shall enable waste to be disposed of or waste referred to in paragraph 1 to be recovered in one of the nearest appropriate installations (NAI), by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.'

6.2.2 Recent guidance[2] highlights it is important that the proximity principle should not be over interpreted and carriage of waste from other regions may be the best economic and environmental solution and/or be the outcome most consistent with the proximity principle.

6.2.3 This approach is consistent with a number decisions made with respect to National Policy Statement (NPS) EN1 and NPS EN3.

6.2.4 The proposed development will be a merchant facility. In the case of the proposed development, RDF will only be transported from locations where it is economic to do so. RDF moved by sea going vessel has advantages over that transported by less sustainable means including by road as set out in the comparable cases identified in section 6.3, where consideration of the proximity principle is expressed.

[2] *Energy from Waste, A Guide to the Debate DECC February 2014 (revised edition) page 4, paragraphs 3 to 5*

6.3 Examples (provided in full in Appendix A)

Lostock

Application for Consent to Construct and operate an 60MWe energy from waste fuelled generating station at land formerly occupied by the Lostock Power Station, Lostock Northwich - Planning Inspectorate Report DPI/A0665/11/10 LI A0665 5th March 2012

6.3.1 An application by Tata Chemicals Europe Limited and E.ON Energy from Waste UK Ltd under S36 of the Electricity Act 1989, also an application for deemed planning permission under s90(2) of the Town and Country Planning Act 1990. for a 60MW Generating Station at Lostock, Northwich, Cheshire. The Secretary of State's granted consent under section 36 of the Electricity Act 1989 and a direction under section 90(2) of the Town and Country Planning Act 1990 on 2nd December 2012.

6.3.2 Relevant policy considerations included Overarching National Policy Statement on Energy (2011) (EN-1), National Policy Statement on Renewable Energy Infrastructure (2011) (EN-3) These were designated by Parliament in July 2011 and had full weight by the time of the planning inquiry **(paragraph 1.10 pp. 7**.).

6.3.3 Cheshire West and Chester Council (the Council) objected to the proposal for a number of reasons including following reasons (**paragraph 1.6 pp.5**):

6.3.4 '*i) the application has not demonstrated that the proposal will maximise opportunities for waste to be managed in accordance with the waste hierarchy,* ***demonstrate that the waste would be disposed of at one of the nearest appropriate installations,*** *and does not ensure that the waste management facility is sited in such a way as to avoid the unnecessary carriage of waste over long distances;*'

6.3.5 The Inspector commented: *The Council had four points of which one (the waste hierarchy, see below) has been overcome,* ***the second (—Nearest Appropriate Installation (NAI) and third (long distance carriage of waste) are two sides of the same coin*** *and warrant some discussion in terms of the applicable legal provisions* (**paragraph 7.26 pp17**).

6.3.6 The Inspector commented '*The EfW plants that have been permitted in and near Cheshire, just like those permitted elsewhere (e.g. Rookery South & Ferrybridge) are —****merchant facilities i.e. schemes which do not have committed waste contracts in place at the time of the grant of consent; any condition concerning the source of waste*** *(e.g. to tie Cheshire plants to processing —Cheshire waste)* ***would defeat the whole purpose of such schemes and would be anti-competitive****. Therefore EfW schemes are often approved without conditions of this nature.*' (**paragraph 7.32 pp19**).

6.3.7 The Inspector commented '*Schedule 1 (4) of the WR2011 also requires mixed municipal waste collected from private households to be recovered in one of the NAIs.* ***It does not require it to go to the NAI and therefore there is some degree of flexibility for operators. The cost of the transportation of waste is a significant factor in the choice of destination for treatment and this also effectively limits the distance travelled. As already mentioned, as a merchant facility, it would be expected that the transportation costs would be a significant factor in contracts.*** ' (**paragraph 16.23 pp96**).

6.3.8 The Inspector commented *'The SEP* [i.e. the proposed development] *would be capable of* ***meeting both this local and a wider need as part of a network of facilities*****. *The site already has rail transport which would be a significant advantage in preventing unsustainable movements of waste, which, it has been acknowledged, is part of this same issue. However, it is only over longer distances that sustainable rail transport becomes economic*.**

6.3.9 *The Council's research shows that some waste authorities currently without contracts for MSW are some distance away and it is not known whether rail transport would be feasible. However,* ***these are commercial matters relating to individual future contracts, which EN-3 says are not a matter for decisionmakers****.'* (**paragraph 16.25 page 96**).

6.3.10 The Inspector commented '***In this case, although the waste to be used as a fuel arises everywhere****, the need for the plant in terms of energy supply is in a specific location. Whilst not negating the requirement on NAI, the revised carbon assessment shows that the recovery of value from the waste would counterbalance any disbenefits from transport emissions, as required in para 2.5.13 of EN-3*,' (**paragraph 16.27, page 96**).

6.3.11 The Inspector commented '*Market forces and the costs of transport would help to ensure that there would not be unsustainable movements of waste and would help to ensure that the proposal would be is one of the NAIs for the recovery of waste close to its source*' (**paragraph 16.28**).

6.3.12 The Inspector commented '*As a merchant facility, no contracts for the waste have been let. The letting of contracts, and hence the source of the waste, would be largely a commercial matter for the operators. This has been the view taken in recent decisions, which have not sought to constrain such processes.* ……

6.3.13 EN-3, in paragraph 2.5.17, states that commercial matters should not be an important matter in the decision. Given the cost of transport, it is likely that market forces would ensure that the SEP would be one of the NAIs, consistent with Government policy.' **(Paragraph 18.4 page 110**)

6.4 Rookery South Resource Recovery Facility

Application for a Development Consent Order for a resource recovery facility that comprises an energy from waste electricity generating station with a gross electricity output of 65 MWe together with associated development including a materials recovery facility and other elements at Rookery South Pit, near Stewartby, Bedfordshire. A File Ref EN0100011

6.4.1 The application, dated 4 August 2010, was made under s37 of the Planning Act 2008. The Applicant is Covanta Rookery South Limited. The examination of the application began on 18 January 2011 and was completed on 15 July 2011. The DCO was issued in October 2011.

6.4.2 Within the Legal and Policy Context of the Panel's decision and Statement of Reasons "*The Revised Waste Framework Directive (rWFD) formally codifies the principles of the waste hierarchy,* ***proximity ('nearest appropriate installations')****, self-sufficiency, and recovery.*" (**paragraph 4.11 page 14**)(highlights for emphasis).

6.4.3 The Panel commented *'At least 1.368 mtpa of residual waste would be available in the light of this reassessment and, with a nominal capacity of 585,000 tpa, the proposal would only deal with about 43% of this. Notwithstanding this, the Applicant resisted a restriction on the sourcing of waste from beyond the waste catchment area, citing NPS EN-3* ***in support of the contention that this is a commercial matter for the Applicant****.*' (**Paragraph 5.20 page 22**)'

6.4.4 The Panel concluded, *'Given this and the advice in NPS EN-3, paragraph 2.5.17 that '****Commercial matters are not likely to be an important matter for IPC decision making****', and having taken into account the intentions of the rWFD, we conclude that there is no reason to refuse the application for a DCO on the grounds that granting it would be likely to undermine the waste hierarchy, result in an excess of waste treatment capacity in the area, and/or displace alternative (preferable) proposals for waste treatment in the area. We further conclude that it should not prejudice the achievement of local or national waste management targets.'*(**paragraph 5.37 pp26**).

6.4.5 The Panel concluded, '*Given the advice in NPS EN-1 regarding the urgency of need for new renewable energy generating projects (see para 6.3 above) and the further advice in NPS EN-3 regarding how the IPC* ***should view commercial matters****, we conclude that there is no reason to refuse to grant the DCO on the grounds that the proposed development would be likely to undermine the waste hierarchy, result in an excess of waste treatment capacity in the area, and/or displace alternative (preferable) proposals for waste treatment*' (**paragraph 6.7 . pp56**

6.4.6 At the compulsory acquisition hearing BBC and CBC gave evidence as follows: '*The Councils Importing such a quantity of waste would undermine the principles of self-sufficiency* ***and proximity*** *which are promoted at all levels of waste policy* **Bullet 2 of**

paragraph 7.41, then the Panel at Chapter 6 reaches the conclusion that '*in development terms consent should be granted. That being said, all the issues which arose in considering the case for development have also been considered in the case for the grant of compulsory acquisition powers.'* **paragraph 7.87**.

6.5 MultiFuels 2 Ferrybridge

A multifuel power station (referred to as the 'power station') that will be capable of generating up to 90MWe (Megawatts electrical) gross of electricity from the combustion of waste derived fuel from various sources of processed municipal waste, commercial and industrial waste and waste wood. File Ref: EN010061

6.5.1 The application, dated 30 July 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 31 July 2014.

6.5.2 The Applicant is Multifuel Energy Limited. The application was accepted for examination on 20 August 2014. The examination of the application began on 5 December 2014 and was completed on 29 April 2015. The development is approved and operational.

6.5.3 Multifuel Energy Limited (the Applicant), proposed to develop a new 'multifuel' power generating station with a gross electrical output of up to 90 megawatts electrical (MWe), together with associated development at the Ferrybridge Power Station site, Knottingley, West Yorkshire.

6.5.4 FM2 would produce electricity through the use of fuels derived from waste products from various sources including municipal, commercial and industrial waste, including waste wood. The Proposed Development is a Nationally Significant Infrastructure Project (NSIP) as it would be an onshore generating station with an average gross electrical output in excess of 50MW **(Paragraph 2.03 to 2.04 pp8**). The Facility located adjacent to MF1 is served by a rail head.

6.5.5 The Examiners report notes *'The Waste Regulations introduce the waste hierarchy, waste management plans and waste prevention programmes into statute, as well as the proximity principle/ nearest appropriate installation* (NAI)'. (**Paragraph 3.4.19 pp15**).

6.5.6 The examination addressed:

(b) Transport and Traffic:

- Means and effects of transporting construction materials and personnel to site
- Means and effects of transporting power station fuel materials to site and waste materials away from site
- Fuel sources, availability and locations

- Implications for the highway, rail, river and canal network.

  (Paragraph 4.0.3 page 20).

6.5.7 The Examiner's report states: 'The Applicant also stated that it was unable to disclose discussions with fuel suppliers, due to their commercial nature, but discussions were underway' (**paragraph 4.32.33 page 77**).

6.5.8 The Examiner's report states: 'The Applicant has addressed waste management in its ES Non-Technical Summary Chapter 13 Waste and Resource Management, its ES Volume 1 (Main Report) Chapter 16 Waste and Resource Management, together with ES Appendix 16A Site Waste Management Plan and Appendix 17B WRATE (Waste and Resources Assessment Tool) Assessment. The Applicant has also supplemented the ES with its report **5.9 Fuel Availability and Waste Hierarchy Assessment'** (**paragraph 4.33.3 pp80**).

6.5.9 'The Applicant has addressed the conformity of the Proposed Development with the waste hierarchy and the effect of the Development on the relevant waste plans in its Fuel Availability and Waste Hierarchy Assessment.' **Paragraph 4.33.16 pp 82.**

6.5.10 'The 'ExA believes that the Proposed Development complies with the waste hierarchy in that it is driving waste up the hierarchy from landfill to recovery of energy, and that the Proposed Development complies with NPS EN-3 Section 2.5. Plans for residue storage and disposal are also sound.' **Paragraph 4.33.29 pp 84.**

6.5.11 The Examiner's Conclusion 'Waste Management. The Proposed Development would make appropriate arrangements for waste management at the construction, operational and decommissioning stages. It complies with NPS EN-3 in providing sustainable waste management, moving waste up the hierarchy and contributing to a network of installations to deal with waste in the north of England.' **Paragraph (9) pp 94**.

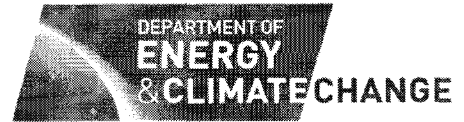
6.5.12 Fuel Availability and Waste Hierarchy Assessment

6.5.13 Fuel Sourcing Report refers to the Lostock Decision (**paragraphs 2.31 to 2.33 pp9-10**). This was not challenged by Examining Authority in granting Development Order Consent for the Multifuels 2 development.

6.6 Conclusion

6.6.1 The Applicant highlights that consideration of choice of appropriate installation for the management of waste is influenced by the commercial nature of the Facility and the means by which the RDF is transported. In the case of the proposed development, RDF will only be transported from locations where it is economic to do so. The proposed development will be a merchant facility. RDF moved by sea going vessels has clear advantages over transport by road as identified in the cases identified above, which also set out the application of the proximity principle in these comparable circumstances.

Appendix A Example Decision and Recommendation Reports



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Your ref:
Our ref: 12.04.09.04/35C

2 October 2012

Dear Mr LeCointe

ELECTRICITY ACT 1989 ("the Act")
TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE AN ENERGY FROM WASTE-FUELLED GENERATING STATION AT LAND FORMERLY OCCUPIED BY THE LOSTOCK POWER STATION, LOSTOCK, NORTHWICH, CHESHIRE

I. THE APPLICATION

1.1 I am directed by the Secretary of State for Energy and Climate Change ("the Secretary of State") to refer to the application dated 24 February 2010 ("the application") on behalf of Tata Chemicals Europe (formerly Brunner Mond) and E.ON Energy from Waste Limited ("the Company") for both the consent of the Secretary of State under section 36 of the Act ("section 36 consent") to construct and operate a 60MW energy from waste fuelled electricity generating station on land formerly occupied by the Lostock Power Station, Lostock, Northwich, Cheshire, and a direction under section 90(2) of the Town and Country Planning Act 1990 ("section 90 direction") that planning permission for that generating station and ancillary development (together referred to as "the Development") be deemed to be granted.

1.2 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (as amended) ("the EIA Regulations") the Company also submitted on 24 February 2010 documents entitled "Environmental Statement". The Company submitted a supplement to the Environmental Statement in September 2010 including minor changes to the design and a carbon assessment report and a report on the response to representations. Additionally they submitted a Consolidated Environmental Statement in July 2011 which incorporated all information

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from previous documents. The documents describe the proposed Development and give an analysis of its environmental effects. The documents are collectively hereafter referred to in this letter as the “Environmental Statement”. The Environmental Statement was advertised and placed in the public domain and an opportunity given to those who wished to comment to do so.

1.3 Cheshire West and Chester Council (“the relevant planning authority”) formally objected to the application triggering a mandatory public inquiry (see section III below) which was duly held from 11 October 2011 until 10 November 2011 at Northwich Victoria Football Club, Wincham Lane, Northwich.

1.4 As part of the inquiry process the Inspector prepared a set of planning conditions. All the main parties to the Inquiry were given the opportunity to comment on and feed into these conditions. These conditions form the basis of the conditions of deemed planning permission attached to this decision letter at Annex 1.

II. SECRETARY OF STATE'S CONSIDERATION OF THE PLANNING CONDITIONS

2.1 The Secretary of State has considered the planning conditions recommended by the Inspector carefully. He agrees that they form a suitable basis for any section 90 direction which he may give. However, he has made a number of changes, as follows:

(a) a further condition has been added requiring the Company to keep opportunities to use non-road modes of transport for fuel under review in accordance with a scheme to be approved by the Council (see Condition 11). This reflects the concerns of objectors to the scheme that delivery of fuel over very long distances by road would be unsustainable, and the Company's representations about the suitability of rail transport over distances of more than 70 miles;

(b) the fuel sustainability condition (Condition 32) has been re-drafted so as to remove the need to cross-refer to EN-3;

(c) additional details have been added to clarify some conditions (for example on ecology and nature conservation, in relation to bats and owls);

(d) drafting changes have been made or additional conditions inserted to reflect the Secretary of State's normal practice in relation to generating station consents.

III. THE PUBLIC INQUIRY

3.1 The Secretary of State received a formal objection to the proposed Development from Cheshire West and Chester Council, the relevant planning authority (RPA), on 3 March 2011. Under Schedule 8 of the Electricity Act 1989, a

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maintained objection to a section 36 development consent application by the RPA automatically triggers a public inquiry.

3.2 When the Public Inquiry was announced the Secretary of State issued a statement of matters which he believed should be considered at the Inquiry as follows:

1) the extent to which the proposed development would be in accordance with the relevant development plan(s) for the area, and in particular policies 1, 2, 3 & 34A of the Cheshire Replacement Waste Local Plan (2007);

2) the extent to which the proposed Development will maximise the opportunities for waste to be managed in accordance with the waste hierarchy, minimise avoidable carriage of waste over long distances, and take advantage, where practicable, of opportunities to transport waste by rail and water;

3) the extent to which a need for the proposed Development as a means of managing waste has been demonstrated, in particular by reference to the capacity of existing waste management facilities in the sub-region;

4) the extent to which the proposed Development is consistent with the objectives of the Government's policy on the energy mix and maintaining a secure and reliable supply of electricity as the UK makes the transition to a low carbon economy, and achieving climate change goals;

5) concerns about perceived health impacts of the proposed Development;

6) the impact of construction and operational traffic associated with the proposed Development on the local highways, including users and safety;

7) the visual impact of the proposed Development;

8) the cumulative impact of the proposed Development with other proposed and operational developments of a similar nature within the region;

9) the proximity of the proposed Development to residential dwellings and other non-industrial units;

10) any other matter that the Inspector considers relevant.

3.3 Accordingly, under matter 10, at the pre-inquiry meeting, the Inspector informed attendees that an additional four issues would be considered at the inquiry:

1) the weight to be given to the Regional Spatial Strategy (RSS), given the Government's intention to revoke them under the (then) Localism Bill;

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2) the weight to be given to the consultation draft National Planning Policy Framework;

3) any policy changes as a result of the publication of the Government Review of Waste Policy in England 2011 and its Action Plan;

4) the effect on the setting of the Trent and Mersey Canal Conservation Area (CA), adjacent to the site.

3.4 The Public Inquiry was held from 11 October to 10 November 2011 at Northwich Victoria Football Club. The Secretary of State appointed E. Hill, an Inspector in the Planning Inspectorate, to hear the Public Inquiry. A pre-inquiry meeting was also held on 26 July 2011. During the inquiry, the Inspector heard evidence from the applicants, the RPA, Cheshire Anti-Incinerator Network (CHAIN) and a number of other interested parties. Six people or parties requested "Rule 6" status at the inquiry.

3.5 During the Inquiry, a signed Statement of Common Ground was submitted. It covered a description of the site and the proposal, the background to the application, relevant planning history, national energy and waste policy, the development plan and other matters agreed between the applicants and the RPA, including matters to be covered by planning conditions and obligations. An Agreed Statement on Highway Matters was signed by the Company and the RPA and submitted during the inquiry. It covered agreed facts, forecasts, assessments and mitigation measures in relation to highways issues and those matters which could be dealt with through planning conditions and obligations. A signed unilateral undertaking was submitted by the Company, dated 30 November 2011 which covered highway works, local community liaison, maintenance contributions, traffic management and local employment.

IV. SECRETARY OF STATE'S CONSIDERATION OF THE INSPECTOR'S REPORT

4.1 In her report to the Secretary of State, the Inspector considered the nine substantive issues recommended by the Secretary of State in the statement of matters issued prior to the Public Inquiry plus four additional issues (see section 3.2 and 3.3 above for full details).

4.2 In making her report to the Secretary of State, the Inspector's final recommendation was as follows:

> *I recommend that consent is granted for a 60MW generating station at Lostock Works, Lostock, Northwich, Cheshire under section 36 of the Electricity Act 1989 and deemed planning permission under section 90(2) of the Town and Country Planning Act 1990, subject to the conditions set out in Annex 2* [to the Inspector's report].

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4.3 Except as indicated otherwise in this letter and the attached documents, the Secretary of State accepts the full content of the Inspector's report, including her findings on matters of fact, conclusions and recommendation (including the reasons given for that recommendation). A full copy of the Inspector's report can be found at Annex 2 to this letter.

V. SECRETARY OF STATE'S DECISION ON REOPENING THE PUBLIC INQUIRY

5.1 Rule 21 of the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 ("the Inquiry Rules") allows –and in certain circumstances requires – the Secretary of State to re-open the Public Inquiry. The Secretary of State does not consider that he is obliged to re-open the Public Inquiry in the present case, nor does he believe there to be any reason to use this discretion do so.

VI. SECRETARY OF STATE'S CONSIDERATION OF THE STATUTORY REQUIREMENTS

6.1 In the Secretary of State's view, the statutory requirements relating to the proper consideration of a section 36 application and the relevant consultation and advertising requirements have been met.

VII. SECRETARY OF STATE'S CONSIDERATION OF ISSUES RAISED FOLLOWING THE CLOSE OF THE PUBLIC INQUIRY

7.1 Following the close of the Public Inquiry, a number of representations have been received by DECC (other than those mentioned below in paragraph 7.2 regarding the National Policy Planning Framework). These largely rehearse arguments raised before or during the Public Inquiry and to the extent that the Secretary of State considers that they have already been addressed by the Inspector in her consideration of the Inquiry and subsequent report they are not further addressed in this letter.

National Planning Policy Framework

7.2 Following the close of the Public Inquiry the Department of Communities and Local Government (DCLG) published the National Planning Policy Framework (NPPF), which came into force on 27 March 2012. In line with the approach taken by DCLG and the Planning Inspectorate, DECC asked the main parties to the Public Inquiry for their views on the relevance, if any, of the NPPF to the case which they presented at the Inquiry. Responses were received from the Company and all Rule 6 parties (including Cheshire West & Chester Council and CHAIN), which were then re-circulated on 14 May 2012, inviting further comment.

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7.3 The representations received from the Rule 6 parties emphasised the need for the Secretary of State to take full account of the terms of the NPPF in considering the application and in particular to assess whether corresponding (additional) weight should be given to certain issues considered by the Inspector in light of the importance placed on those within the NPPF. The main themes highlighted by the Rule 6 parties were the emphasis in the NPPF on sustainable development, sustainable transport and community involvement in local planning decisions. However, their submissions also covered a number of other matters.

7.4 The Secretary of State has considered these further representations carefully. His overall conclusion is that they do not raise any points of evidence or argument which cause him to take the view that materially different weight should be given to any particular matter relevant to his decision on the application and, whilst he departs from the reasoning applied by the Inspector on certain questions of resolving policy conflicts, the analysis and conclusions contained in the Inspector's report address all relevant matters of substance relating to the application and are an appropriate basis for his own decision in this case. His views on points made in the further representations, in particular of those opposed to the proposed Development, are set out below.

Sustainability – sustainable development and sustainable transport

7.5 A primary theme of the representations from the Rule 6 parties was the question of whether the incineration of waste is in principle compatible with the NPPF's focus on sustainable development. It should be noted that the emphasis on sustainable development is not unique to the NPPF among Government statements of planning policy (it was also a primary consideration in the formulation of the National Policy Statements (NPSs) - see Planning Act 2008, section 10); that it is apparent from the NPSs that the Government does not consider energy from waste projects above 50MW (either generally, or of particular types) unsustainable *per se*; and that in the Secretary of State's view, the NPPF does not set out to take a different position from the NPSs on this point.

7.6 Against this background, the Secretary of State notes with agreement the Inspector's analysis of relevant energy policy (and nearest appropriate installation/minimising transport distances) including her general conclusions at sections 16.3 – 16.12 (and at 16.22 – 16.28) of her report. The Secretary of State acknowledges in particular the NPSs' articulation of the urgent national need for an increase in renewable energy and the role of waste combustion in meeting that need (see for example EN-1 paragraphs 3.1.4 and 4.1.2 and EN-3 paragraph 2.5.1-2). Accordingly, he does not consider that the emphasis placed on sustainability in the NPPF invalidates or makes it inappropriate for him to adopt the conclusions of the Inspector.

Sustainable transport

7.7 The Rule 6 parties also highlighted the emphasis within the NPPF on the need to promote sustainable transport, raising the question of whether transportation

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of waste over long distances for incineration is compatible with the NPPF. Whilst the Secretary of State acknowledges the emphasis placed on sustainable development in the NPPF, and the need to have regard to the NPPF in the decision-making process, he does not reach materially different conclusions, as regards the implications for his decision of questions of sustainability, than were reached by the Inspector, having regard to the NPSs. However, he also notes the emphasis placed in EN-3 (paragraph 2.5.25) on the environmental advantages of non-road modes of transport for delivery of waste as fuel to generating stations, and the evidence and views submitted both by the Company and those opposed to the Development during and after the Inquiry about the prospects for the delivery of fuel by rail and the undesirability of delivering waste to the proposed Development over very long distances by road. It would not be appropriate, given the need to preserve the operator's commercial freedom to process waste from different sources (as noted by the Inspector – see, for example, sections 16.25/16.26 of her report), to impose restrictions on how much waste should be delivered in particular ways. However, the Secretary of State does consider, given both the possibility of supply of waste of long distances and the Company's evidence that for distances of over 70 miles "*it is reasonable to assume that the fuel is more likely to be transported by rail*" that it would be appropriate to impose a condition requiring the Company to keep under review, in accordance with an approved scheme, the opportunities for using non-road modes of transport for fuel deliveries, particularly over distances greater than 70 miles.

Sustainability – waste hierarchy

7.8 Representations were also made by Cheshire West & Chester Council, CHAIN and two other Rule 6 parties concerning interference with the waste hierarchy caused by incineration, in particular that the "demand for waste" from the proposed Development will act as a disincentive to the locality to reduce, re-use and recycle. The Secretary of State considers that this objection has already been adequately addressed by the Inspector's recommendation to make planning approval conditional on various measures designed to ensure that the proposed Development does not operate in such a way as to undermine the waste hierarchy.

Sustainability – low carbon and alternative technologies

7.9 A number of representations have been made concerning the emphasis in the NPPF on transition to a low carbon economy. One of the core principles at paragraph 17 of the NPPF refers to supporting "*the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy)*". It is apparent from the NPSs, however, that the kind of technology to be used by the proposed Development is not to be ruled out as contrary to the objectives of developing low carbon energy sources. Whilst it may be true that there are other technologies that may be superior from a purely low carbon point of view, it should be noted in response to this and a number of other representations made by objectors that the role of the section 36 process is not to ask whether there is a better way to generate the electricity a proposed generating

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station will generate, or a possible better use of the proposed Development site, but to consider whether the impacts of the Company's proposal would be (or can be made) acceptable in planning terms. From a carbon emissions point of view, the Secretary of State sees no reason to depart from the analysis and conclusions of the Inspector.

Importance of local plans

7.10 Cheshire West & Chester Council, CHAIN and two other Rule 6 parties each highlighted the emphasis in the NPPF on local plans and for the planning system to be "plan-led". The first of the 12 core planning principles (at paragraph 17 of the NPPF) provides that planning should: "*be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co‐operation to address larger than local issues..*." The parties submit that the emphasis in the NPPF on decision making being plan-led requires, among other things, greater weight to be attributed to the local development plan (i.e. the Cheshire Replacement Waste Local Plan 2007 (the CRWLP)) than might have been attributed before the coming into force of the NPPF (i.e. during the Public Inquiry and the period when the Inspector's report was made). Cheshire West & Chester Council's letter of 9 May 2012 refers in particular to the implications for the additional weight that should be given to policy 3 of the CRWLP which seeks to restrict Energy from Waste facilities unless there is a capacity shortfall in the locality. The Secretary of State acknowledges the emphasis on local plans in the NPPF, including at paragraph 215, which allows greater weight to be given to local plans according to their degree of consistency with the NPPF (Cheshire West & Chester Council submit in their letter of 9 May 2012 that policy 3 of the CRWLP shows consistency with the first of the core planning principles at paragraph 17 of the NPPF). The Inspector's ultimate conclusion on this point is set out at 16.21 of her report and states: "*The proposal would be contrary to policy 3 of the CRWLP, which is a saved policy with full weight, based on its definition of capacity. However, this policy is out-of-step with more recent national policy, particularly in EN-3, with which the proposal would be in accordance on this matter, and recent decisions. In such cases para 4.1.5 of EN-1 says that the NPS should prevail. One of the concerns of policy 3 of CRWLP, that any overcapacity would deter recycling, would be overcome through the acceptance criteria condition that would ensure that only residual waste was accepted. The other concern, about the distance waste would travel, would be likely to be limited by the costs of transporting the waste, which would be a significant element in the waste contracts accepted. The proposal would also be in accordance with policy 2 in establishing a need, since a lack of operational capacity has been shown*."

7.11 Notwithstanding the emphasis within the NPPF on "plan-led" decision making, the Secretary of State broadly accepts the conclusions of the Inspector with regard to the proper assessment of capacity need in the locality and the weight to be given to the NPSs when considered against the terms of the CRWLP. The Secretary of State notes that arguments have been made on both sides of the question whether the Development is consistent with the CRWLP; whether the CRWLP is up to date;

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and whether it is consistent with the NPPF. While he broadly agrees with the Inspector's analysis of these points, even if they were all resolved in favour of the objectors, the Secretary of State would be entitled to, and does in any event, give greater weight, in the light of the national importance of the Development (as measured by its capacity), to the policies in the NPSs to the extent, if any, that they may be thought to be at variance with other material considerations such as the CRWLP or the NPPF. In the Secretary of State's view, the differences between the relevant policies in the NPPF and the NPSs have been overstated by objectors to the proposed Development, while the differences between the CRWLP and the NPSs turn on the inherent merits of this type of EfW plant: a matter on which he prefers to follow his own policy as represented by the NPSs (which were formulated with plant of more than 50MW capacity in mind) to the extent that it points in a different direction from the CRWLP (without necessarily taking the view that, in section 36 cases, NPS policies will invariably prevail over those in a local development plan: see section 18.3 of the Inspector's report).

Community involvement in decision making

7.12 In addition to the emphasis on local plans, Cheshire West & Chester Council, CHAIN and two other Rule 6 parties have highlighted the provisions within the NPPF on the need for proper involvement of local communities in planning decision making. The Secretary of State acknowledges the need for the involvement of local communities in planning decision making and the representations made by the Rule 6 parties with regard to local objections to the proposal (which note, for example, the large number of written objections the proposal). Whilst the Secretary of State wholly accepts the need for community involvement in planning decisions, he does not consider there is any reason to suggest the Inspector's report did not take into adequate account the views of those in the locality i.e. by way of the full Public Inquiry. It is in fact acknowledged by a Rule 6 party per a letter of 4 May 2012 that a high attendance was recorded at public meetings and Inquiry sessions and the fact of the Rule 6 party submission process in relation to the NPPF is further evidence that there is no reason why the Inspector's recommendations should be reconsidered in this regard in light of the NPPF.

Other representations concerning the NPPF

7.13 As mentioned, in addition to the broad issues of sustainability and community involvement in decision making, a number of wider representations were received in relation to the NPPF. These emphasise, for example, the importance placed in the NPPF on ensuring the vitality of town centres, supporting a prosperous rural economy and requiring good design. The Secretary of State has carefully considered all of the wider representations received and considers that they either relate to matters to which little weight should be given for planning purposes, are contradicted by the Inspector's assessment of the impacts of the Development, or result from a misguided interpretation of the NPPF. By way of example one of the Rule 6 parties raises that the NPPF highlights that planning policies should promote development and diversification of agriculture and claims that "*The EfW will directly result in the closure of at least two of the local organic farmers that are within a mile of the*

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proposed plant, due to the impact the permitted emissions will have on their produce. This proposed EfW directly contradicts the overarching support afforded to diversifying and supporting agriculture as by its very nature emissions and dioxins will adversely affect local produce particularly organic farming." Whilst perceived health impact was not a formal objection of the RPA, the Secretary of State is aware that considerable representations have been made during the Public Inquiry and further representations were received subsequently (see paragraph 7.20 below). The Secretary of State does not consider that the Inspector's report failed to take adequate consideration of the various inputs and wholly accepts the conclusions of the Inspector with regard to the proper distinction between the planning process and the pollution control process. Moreover, like other planning policy documents, the NPPF recognises the need to strike a balance between competing aspects of the public interest, and as the Company has pointed out, it contains strong positive messages about energy developments, as well as agriculture. Even in the absence of the further policy emphasis in favour of energy infrastructure supplied by the NPSs, a planning decision-maker is entitled to give greater weight to one aspect of the public interest mentioned in a policy document over another.

Middlewich

7.14 Further representations were received from the Rule 6 parties, the Chairman of Rudheath Parish Council and Burial Authority and a number of local residents following a decision by the Secretary of State for Communities and Local Government on 20 July this year to turn down on appeal a Town and Country Planning Act application by Covanta Energy for a smaller (370,000 tonnes) Energy from Waste facility at Middlewich, some four miles from Lostock. The Secretary of State CLG accepted the Middlewich Inspector's recommendation to dismiss Covanta's appeal against the local planning authority's (Cheshire East Council) decision to refuse consent for the project. Whilst the Middlewich proposal fell entirely outside those sites allocated for thermal waste plants within the development plan, Planning Policy Statement 10 (PPS) supports approval where it would be consistent with local planning strategy and with the PPSs themselves. The Secretary of State CLG agreed with the Inspector's finding that the project would create overcapacity locally and thus would conflict with the policy in the CRWLP requiring proposals to demonstrate that existing waste treatment capacity is inadequate to meet needs identified in the Regional Spatial Strategy. He also considered that the proposal would conflict with the policy aims of Annex E of PPS 10 in terms of visual intrusion, nature conservation, traffic and access, and air emissions (as they apply to traffic). The extent of conflict with the CRWLP and the PPS, among other things, was not sufficiently outweighed by the potential benefits of the proposal (the economic benefits of the application were also considered to be overstated). Many of these issues, together with references to the Company's short listing for the West London Waste Authority (WLWA) municipal waste recycling contract (see paragraph 7.18 below), the proximity principle for waste management as expressed in PPS10 and the localism agenda, were also covered in a motion unanimously adopted in respect of the Development by Cheshire West and Chester Council at a full Council meeting on 26 July. However, with the possible exception of the short listing for the WLWA waste recycling contract, which is considered at paragraph 7.18 below, the Secretary

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of State does not consider that the representations received in this further round of representations raised any issues which were both substantively new and to which he considers that material weight should be given in forming a planning judgment on the proposed Development, so that, having considered the further representations carefully, he is satisfied that the analysis and conclusions contained in the Inspector's report address all relevant matters of substance and are an appropriate basis for his own decision in this case.

7.15 Having given careful consideration to all relevant matters, the Secretary of State considers that the Inspector for Lostock reached different conclusions to the Inspector for Middlewich and the Secretary of State CLG principally because, unlike the Middlewich application, the Lostock application, although made under section 36, is for a proposed Development that would be a nationally significant infrastructure project (NSIP) as defined in Section 15(2) of the Planning Act 2008, i.e. an onshore electricity generating project with an output capacity in excess of 50MW. The Secretary of State therefore considers it was appropriate that the Lostock Inspector, in considering the matters before her and in making her recommendation to the Secretary of State, gave substantial weight to the Overarching NPS (EN-1) and the NPS on Renewable Energy Infrastructure (EN-3), which were designated by Parliament in July 2011 under the Planning Act and which represent the most recent expression of Government policy on the national need and urgency for such infrastructure. The Inspector concluded that the proposal would be in accordance not only with EN-1 and EN-3, but also with a number of relevant regional and local policies as set out in the Regional Spatial Strategy and the CRWLP, and would "*comply with national policies on energy mix and maintaining a secure reliable and flexible supply of electricity as the UK makes the transition to a low carbon economy, and achieving climate change goals*"(see section 16.12 of the Inspector's report).

7.16 The Inspector also considered the relevance of, and weight that should be attached to, local waste policies, and especially those set out in various sections of the CRWLP in determining the application. Her conclusions on these matters are set out in detail in sections 16.12 - 16.28 of her report, but in summary she concluded that:

(a) subject to the addition of a suitably-worded condition (see condition 31), the waste to be used as fuel would be managed in accordance with the waste hierarchy, paragraph 2.5.70 of EN-3, policy EM11 of the Regional Spatial Strategy and policies 1 and 34A of the CRWLP (see section 16.15 of the Inspector's report);

(b) the proposal would be contrary to policy 3 of the CRWLP, i.e. that based on the definition of capacity in the CRWLP, it would create overcapacity in Cheshire, but that this policy is out of step with more recent national policy, particularly in EN3, and recent decisions on other nationally significant Energy from Waste projects. In such cases paragraph 4.1.5 of EN-1 clearly states that the relevant NPS should prevail (see sections 16.6 – 16.21 of the Inspector's conclusions and 18.2 – 18.4 of her consideration of policy balance: although the present application is not governed by the Planning Act, the Secretary of State is nevertheless entitled to follow the NPS policy given the scale of the proposed Development); and

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(c) the proposal would meet national waste policy in terms of national self-sufficiency through the establishment of a network of facilities which move waste up through the hierarchy, i.e. diverting it from landfill, as set out in the Waste (England and Wales) Regulations 2011. Market forces and the costs of transport would help to ensure that there would not be unsustainable movements of waste.

7.17 By contrast, the Middlewich scheme was designed to deal with "Cheshire waste". It also appears to have had the potential to give rise to a number of significant adverse effects (for example in relation to nature conservation) which are not found in the case of the proposed Development. Ultimately each planning decision must be considered and assessed on its own merits; however, in so far as they are material for the purposes of his decision, the representations received in respect of the Secretary of State CLG's Middlewich decision do not lead the Secretary of State to take a different position in respect of the present application from that recommended in the Lostock Inspector's report.

The West London Waste Authority (WLWA) municipal waste contract

7.18 While the Company's intention to bid for the WLWA municipal waste recycling contract, and subsequent short listing for that contract, was not known during the Inquiry, the Inspector nonetheless considered the issue of where waste could be sourced from and concluded that "*the energy from waste plants that have been permitted in and near Cheshire, just like those permitted elsewhere (e.g. Rookery South and Ferrybridge) are "merchant" facilities, i.e. schemes which do not have committed waste contracts in place at the time of the grant of consent; any condition concerning the source of waste (e.g. to tie Cheshire plants to processing "Cheshire waste") would defeat the whole purpose of such schemes and would be anti-competitive. Therefore EfW schemes are often approved without conditions of this nature. Accordingly, there is no guarantee or even proven likelihood that the permitted EfW plants in Cheshire, if built, would process any "Cheshire waste" at all*" (see section 7.32 of the Inspector's report). On the basis that the Inspector did not assume that any given degree of waste would be sourced from Cheshire, the Secretary of State considers that adequate account was taken by the Inspector in her report to the prospective impact of waste being transported from outside Cheshire.

Other additional representations

7.19 A further representation has been received from CHAIN with reference to data published by DEFRA on 3 August 2012 titled 'Local Authority collected waste for England – quarterly statistics', which shows that the proportion of waste sent for recycling, composting or reuse in England increased from 41.5% in 2010 to 42.9% in 2011. CHAIN claim that this, together with improvements in the waste recycling performance of the Borough of Cheshire West and Chester, which has now increased to 70% following the recent introduction of a new waste recycling facility in Northwich and Winsford, undermine the case for the proposed Development. However, given the Inspector's assumptions (or lack of them) referred to above as regards local sourcing of fuel for the proposed Development, the Secretary of State

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does not consider that this information, or other data contained in the Defra publication, raise any issues that would justify refusing consent to the application.

7.20 Local residents, supported by CHAIN, have made representations regarding a recent dioxin leak at an Energy from Waste plant in Dumfries where the Regulator has suspended operation of the plant while a problem that resulted in dioxin emissions being 2.5 times over the permitted limit is addressed. Although it is understandable that this incident has given cause for concern, the Secretary of State is satisfied that a robust regulatory framework exists under the UK's pollution prevention regime, which is separate and distinct from the consenting/planning regime, for dealing promptly and effectively with such incidents, as the Dumfries case to some extent demonstrates. In sections 16.34 - 16.49 of her report, the Inspector provides her conclusions on perceived health impact of the proposal, stating in section 16.44 that there are "*well established processes for dealing with emissions and the release of pollutants in abnormal operating conditions*" (through the environmental permitting process). It is also noted in section 14.2 of her report that the Environment Agency has not raised objections to the proposal and that compliance will be required with the Waste Incineration Directive and the revised Waste Framework Directive when determining the Environmental Permit. Furthermore, national policy, as set out for example in paragraph 4.10.3 of EN-1 and the relevant sections of the Waste Strategy for England 2007, clearly state that decision makers should work on the assumption that the appropriate pollution control regimes will be properly applied and enforced by the regulator.

7.21 A Rule 6 party has made additional representations considering the adequacy of consideration of visual impacts during the Inquiry, claiming that, as in the Middlewich Inquiry, visual impacts of the proposed Development on views up to some 30km from the site should have been taken into account. The Secretary of State notes that it was agreed by the correspondent and the applicant during the Inquiry that the Zone of Theoretical Visibility (ZTV) for the main building/ash handling facility stretched for over 21km, and that the Inspector concluded in section 16.63 of her report that "*the impact in landscape terms diminishes quickly with distance, limiting any adverse impacts*." The Inspector also states in section 16.63 that "*the indicative height of the SEP's twin stacks at 90 metres would tend to make them more visible over a wide area but their slim design and proposed colour scheme would decrease the impact with distance*." The Secretary of State does not consider that there was any inadequacy in the Inspector's consideration with regard to the visual impact of the proposed Development and therefore agrees with the Inspector's conclusions as set out in sections 16.59 – 16.67 of her report. The Secretary of State also notes that the RPA raised no objections to the proposal in terms of landscape, design or visual impact.

7.22 Further representations have been received from one of the Rule 6 parties (by email of 15 August 2012) and from CHAIN by letters dated 20 August 2012, 29 August 2012 and 30 August 2012. In their email, the Rule 6 party requested that, if the Secretary of State is minded to approve the proposal, planning conditions be included to require compliance with Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) (Recast) of 24 November 2010. The

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Secretary of State notes however that the operative terms of the Directive relate to pollution control rather than planning or consenting. Incineration plants will be subject to its requirements according to the regulations transposing the Directive in England and Wales (as they are already in respect of the directives which it will replace) in due course; they are not for the Secretary of State to implement by way of planning conditions.

7.23 The representations received from CHAIN by letter dated 20 August 2012 concerned a separate letter from the Health Protection Agency (HPA) addressed to another Rule 6 party in response to a Freedom of Information request. The HPA's letter responds to certain queries of the other Rule 6 party regarding in particular its views on traffic impacts related to the proposed Development. CHAIN submit that the reason the HPA's letter is important: "*is that it provides new expert information about the risk of road traffic accidents on the Griffiths Road/King Street stretch of the A530 which would be caused by increased numbers of HGVs if you give your approval to the above application...*" CHAIN go on to say that it is notable that the HPA describe "*road traffic accidents as 'important health hazards'.*" The Secretary of State does not consider that the HPA's letter, which refers to information submitted as part of the HPA/Primary Care Trust (PCT) consultation process (including information about the work done by the HPA and a comment on the Health Impact Assessment), raises issues that have not already been addressed by the Inspector in the inquiry process (referred to for example in the Inspector's report at sections 7.72 (for the applicants), at 9.30 (for CHAIN) and 16.52 (Inspector's conclusions)). With reference to the recommendation of HPA/PCT submitted by letter of 3 February 2011 (referred to in the letters of CHAIN and the HPA) the Secretary of State also notes his proposed inclusion of a new condition (Condition 11 in the deemed planning consent) requiring review of non-road modes of fuel delivery.

7.24 The second letter from CHAIN (dated 29 August 2012) draws attention to the North Wales Waste Treatment Project (NWRWTP), a proposal to treat residual waste from Flintshire, the Isle of Anglesey, Conwy, Denbighshire and Gwynedd (see [redacted]). The letter notes that both preferred bidders in the competition to provide this service are proposing to build a new waste incinerator in Deeside ("*approximately 10 miles from the huge Covanta plant now under construction at Ince Marches in Cheshire West and about 5 miles from the city of Chester*"). This Project is not discussed in the Inspector's report. However, the Secretary of State does not consider that this is a matter to which any significant weight should be given in the context of the present decision. In so far as the existence of other waste treatment capacity is a relevant matter, he agrees with the Inspector's focus on consideration of existing capacity, which (as referred to at sections 16.17 of the report) took assessments of *operational* rather than permitted or merely proposed capacity as the proper basis. Moreover, as noted above, the case for the Development does not rely on presumed supplies of waste from any particular area. As regards any cumulative impacts which may be thought to arise from the potential proximity of the North Wales Project and plants in Cheshire, that would be an issue for consideration if and when the successful bidder for the North Wales project submits a planning application for it, not as part of the Company's application in respect of Lostock (at this stage, planning permission for the North

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Wales Project has not been granted or applied for: see page 27 of the "NWRWTP Information Pack – Summer 2012" available on the website above).

7.25 The third letter from CHAIN (dated 30 August 2012) brings attention to a recent settlement between E.On, one of the applicants, and Gazprom of Russia, concerning long-term contracts for the export of natural gas to European markets (see for example: [redacted]. CHAIN submit that the significant reduction in the cost to E.On of exporting gas resulting from the settlement ("*estimated by expert commentators to be about 10%*") increases the probability that TATA will close its chemical manufacturing plant in the UK (resulting in a loss of jobs in Northwich). In the Secretary of State's view, CHAIN's arguments in this regard are similar to representations made by another Rule 6 party at the inquiry and considered by the Inspector at sections 16.8-16.9 of her report: in so far as they could be considered material considerations in the context of his decision and the policies which he is applying, they are matters of too much speculation and too little direct connection with the planning impacts of the proposed development to be given any significant weight.

Conclusion

7.26 The Secretary of State has carefully considered the views of the Inspector, relevant planning authorities, consultees and others, the matters set out above and all other material considerations. For the reasons given above, he does not consider that any of the objections responded to above raise any additional issues and he does not consider that they raise concerns that justify refusing consent to the application.

VIII. SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

8.1 The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (as amended) ("the EIA Regulations") prohibit the Secretary of State from granting section 36 consent unless he has first taken into consideration the environmental information, as defined in those Regulations.

8.2 The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination on the application and that the Company has followed the applicable procedures in the EIA Regulations.

8.3 The Secretary of State has considered the environmental information carefully; in addition to the Environmental Statement he has considered the comments made by the Council, those designated as statutory consultees under regulation 2 of the EIA Regulations and comments by others.

8.4 Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Company has agreed to take or will be

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required to take either under the conditions attached to the section 36 consent or the Planning Conditions or by regulatory authorities including the Environment Agency, the Secretary of State believes that any remaining adverse environmental effects will not be such that it would be appropriate to refuse section 36 consent for the proposed Development or the deemed planning permission.

IX. SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON NATURE CONSERVATION INTERESTS

9.1 Pursuant to the Conservation of Habitats and Species Regulations 2010 ("the 2010 Regulations") the Secretary of State is required to consider whether the Development would be likely to have a significant effect on a Natura 2000 site (i.e. Special Protection Area (SPA), Special Area of Conservation (SAC), or Ramsar site). The nearest Natura 2000 sites to the Development are understood to be components of the Midlands Meres and Mosses Ramsar site (nearest site approximately 8km distant), Rostherne Mere Ramsar site (at approximately 11km) and Oak Mere SAC (approximately 12km distant). No direct impacts from the proposed Development on these sites are predicted by the Company. Following a review of the Supplementary Environmental Information provided by the Company in September 2010, in particular the information on predicted air emissions (Consolidated Environmental Statement Appendix 9.8) Natural England advised DECC that it does not consider that this project will have a significant effect either alone or in combination with other plans or projects on the International sites. The Secretary of State agrees with the advice that the proposed Development will not have a significant effect on Natura 2000 sites and consequently there is no requirement for an appropriate assessment under the 2010 Regulations.

9.2 There are 32 SSSI sites within 15km of the proposed Development. Some of these sites have bog/moss vegetation as interest features of the designation and following discussions with the Company's consultant Natural England has concluded that the information on air emissions provided by the Company is sufficient to conclude that there will be no significant individual or cumulative effect on these nationally important sites.

9.3 The Inspector's report notes that the local planning authority raised no objection to the proposed Development on ecology matters, nor was the impact on designated sites or notable flora and fauna notified by the Secretary of State as a matter for consideration at the Inquiry. The Company has identified the presence of protected species on the Development site (notably signs of a bat roost in the old power station building) and has proposed that prior to any demolition of this structure (should planning consent be granted for this activity) an application will be made to Natural England for the necessary European Protected Species licence.

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9.4 The Inspector concludes (see section 16.80 of her report) that, taking account of Natural England's advice and the habitat and species mitigation and enhancements identified by the Company in the Environmental Statement and to be implemented under a suitable planning condition (see Condition 24 in the deemed planning consent), there will be no harm to nature conservation interests from the proposed Development.

X. SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER

10.1 The Application is covered by the Departmental published guidance[1] for all combustion power station proposals, requiring developers to demonstrate that opportunities for CHP have been seriously explored before section 36 consent can be granted. The Secretary of State is satisfied that the Company has complied with those requirements.

10.2 The Secretary of State notes the Company has provided a Heat User Assessment considering the potential to export heat beyond its own demands to local users and included within the ES an investigation of the potential to export heat to local users and has been advised that the Company were unable to identify any major heat loads within 5km of the site. Analysis of distributed loads indicated a total heat demand of $155MW_{th}$ within 5km of the site with the two largest contributors being the small-scale industrial (66%) and domestic (31%) sectors. It is thought that the Company's own operations represent a substantial component of this small-scale industrial demand. While there remains unutilised heat capacity from the scheme, we would expect the Company to regularly review the economic potential to supply more of its own heat demand from the plant and the availability of further local, external heat demands.

10.3 Furthermore the Secretary of State noted that if the Company recovers the quantities of heat stated as being required for their own operations, and the identified heat customers in the area, should it become economically viable to do so, a large proportion of the plant's installed capacity is likely to qualify as Good Quality CHP.

XI. SECRETARY OF STATE'S DECISION ON THE APPLICATION

11.1 The Secretary of State has carefully considered the views of the Inspector, relevant planning authorities, consultees and others, the matters set out above and all other material considerations. In particular, the Secretary of State considers the following issues material to the merits of the section 36 consent application:

[1] Guidance on background information to accompany notifications under section 14(1) of the Energy Act 1976 and applications under section 36 of the Electricity Act 1989: December 2006 - http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/development%20consents%20and%20planning%20reform/guidance/file35728.pdf

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i) adequate environmental information has been provided for him to judge its impact;
ii) the Company has identified what can be done to mitigate any potentially adverse impacts of the proposed Development;

iii) the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the Environmental Statement and he has judged that the likely environmental impacts are acceptable;

iv) the fact that legal procedures for considering a generating station application have been properly followed;

v) the views of the Inspector, relevant planning authorities, the views of others under the Electricity (Applications for Consent) Regulations 1990, the views of statutory consultees under the EIA Regulations and the 2010 Regulations, the environmental information and all other relevant matters have been considered;

vi) that, in his view, and taking particular account of the Inspector's report, none of the objections raised to the proposed Development is such as to justify refusal of consent or a section 90 direction, given the imposition of Planning Conditions and the matters referred to in sections 7.2 - 7.25 above; and

vii) his policies on the need for and development of new electricity generating infrastructure, including energy from waste generating stations, as set out in the Overarching NPS for Energy (EN-1 and in particular, sections 3.3 and 3.4) and the National Policy Statement for Renewable Energy Infrastructure (EN-3 and in particular section 2.5), designated by him on 19 July 2011 under the Planning Act 2008 following their approval by Parliament, and the reasons given for those policies in those national policy statements[2].

11.2 The Secretary of State, having regard to the matters specified in paragraph 11.1 above, has decided to grant consent for the proposed Development pursuant to section 36 subject to: (i) a condition that the proposed Development shall be in accordance with the particulars submitted with the application, and (ii) a condition as to time within which the proposed Development must commence.

11.3 The Secretary of State believes the Planning Conditions will ensure that the Development proceeds in a form and manner that is acceptable in planning policy terms, and therefore he has decided to issue a section 90(2) direction that planning permission be deemed to be granted subject to the Planning Conditions.

11.4 I accordingly enclose the Secretary of State's consent under section 36 of the Electricity Act 1989 and a direction under section 90(2) of the Town and Country Planning Act 1990.

[2] See http://www.decc.gov.uk/en/content/cms/meeting_energy/consents_planning/nps_en_infra/nps_en_infra.aspx

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XII. GENERAL GUIDANCE

12.1 The validity of the Secretary of State's decision may be challenged by making an application to the High Court for permission to seek a judicial review. Such application must be made as soon as possible and in any event not later than three months after the date of the decision. Parties seeking further information as to how to proceed should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2A 2LL (General Enquiries 020 7947 6025/6655).

12.2 This decision does not convey any approval or consent or waiver that may be required under any enactment, by-law, order or regulation other than section 36 and Schedule 8 of the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours faithfully

Giles Scott
Head of National Infrastructure Consents

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ANNEX A

Our ref: 12.04.09.04/35C

DEPARTMENT OF ENERGY AND CLIMATE CHANGE
ELECTRICITY ACT 1989
CONSTRUCTION AND OPERATION OF AN ENERGY FROM WASTE GENERATING STATION AT LOSTOCK, NORTHWICH, CHESHIRE

1. Pursuant to section 36 of the Electricity Act 1989 the Secretary of State for Energy and Climate Change ("the Secretary of State") hereby consents to the construction, on the area of land delineated by a solid red line on Figure 1, annexed hereto and duly endorsed on behalf of the Secretary of State, of an energy from waste electricity generating station at land known as the Lostock Works Site, Griffiths Road, Northwich, Cheshire ("the Development"), and to the operation of that generating station. This consent is granted to Tata Chemicals Europe Limited and E.ON Energy from Waste UK Limited and its assigns and successors ("the Company").

2. Subject to paragraph 3(1), the Development shall be up to 60 MW capacity and comprise:

(a) a steam turbine generator;

(b) a fuel reception hall;

(c) boiler house and switchgear building;

(d) flue gas treatment building;

(e) emissions stacks;

(f) air cooled condenser;

(g) ash handling facility;

(h) associated infrastructure including onsite pipelines for the collection and distribution of steam, transformer compound, internal roads, parking, gatehouse, weighbridge, rail connection, water treatment, fuel store, fencing, landscaping and offices; coke fuel storage area; and

(i) demolition of existing power station buildings on the Site.

3. This consent is granted subject to the following conditions:

(1) The Development shall be constructed and operated in accordance with the details contained in paragraph 2 of this consent and the application of the Company in respect of the Development dated 24 February 2010, as amended

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on 21 September 2010 and 1 July 2011, subject to any minor changes which may be approved by the Council pursuant to the requirements of deemed planning permission.

(2) The commencement of the Development shall not be later than five years from the date of this consent, or such longer period as the Secretary of State may hereafter direct in writing.

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DIRECTION TO DEEM PLANNING PERMISSION TO BE GRANTED UNDER SECTION 90 OF THE TOWN AND COUNTRY PLANNING ACT 1990

CONSTRUCTION AND OPERATION OF A 60 MW ENERGY FROM WASTE ELECTRICITY GENERATING STATION AT LOSTOCK, NORTHWICH, CHESHIRE

4. The Secretary of State in exercise of the powers conferred on him by section 90(2) of the Town and Country Planning Act 1990 hereby directs that planning permission for the Development be deemed to be granted subject to the following conditions:

Definitions

In these Conditions unless the context otherwise requires:

“BS 4142:1997" means British Standard 4142:1997 - Method for rating industrial noise affecting mixed residential and industrial areas;

"Bank Holiday" means a day that is, or is to be observed as, a Bank Holiday or a holiday under the Banking and Financial Dealings Act 1971;

“Public Holiday” means a day that is, or is to be observed as a public holiday;

“CHPQA Standard issue 3” means the CHPQA Standard document issued in January 2009 which sets out the definitions, criteria and methodologies for the operation of the UK’s CHP Quality Assurance (CHPQA) programme;
"the commencement of the Development" means the date on which the Development shall be taken to be initiated by the carrying out of material operations in accordance with section 56 of the Town and Country Planning Act 1990 (as amended);

"the commissioning of the Development" means the date on which, following completion of the testing of the Development, the Development first supplies electricity on a commercial basis;

"the Company" means Tata Chemicals Europe Limited and E.ON Energy from Waste UK Limited and its assigns and successors;

“the Council” means Cheshire West and Chester Council and its successors;

"the Development" means the energy from waste electricity generating station proposed to be constructed on land known as the Lostock Works Site, Griffiths Road, Northwich, Cheshire;

"emergency" means circumstances in which there is reasonable cause for apprehending imminent injury to persons, serious damage to property or danger of serious pollution to the environment;

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"Environment Agency" means the Environment Agency and its successors;

“Highways Agency” means the Highways Agency and its assigns and successors;

"Natural England" means Natural England and its assigns and successors;

"the Site" means the area of land outlined red on the map annexed hereto.

The Site

(1) The construction of the Development shall only take place within the boundary of the Site.

Reason: To ensure that no construction takes place beyond the boundary of the area that is the subject of this planning permission.

Time limits

(2) The commencement of the Development shall not be later than the expiry of five years from the date of this permission.

Reason: To limit the consent to reflect the time it may reasonably take to put in place the necessary pre-construction measures required, for example tendering, obtaining the necessary financing and detailed design of the proposal.

Demolition Method Statement

(3) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a Demolition Method Statement and Management scheme. No Development shall take place except in accordance with the approved Demolition Methodology Statement and Management Scheme. The scheme shall include:

i) measures to control dust, noise, vibration, light and odour and appropriate mitigation techniques that prevent unnecessary disturbance to neighbouring properties;

ii) details of the environmental management of the demolition of the existing buildings on the Site including the mitigation measures necessary for any protected species;

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iii) provision to restrict the hours of demolition to 07.00 – 19.00 Monday - Friday; 07:00 – 13:00 Saturdays, with no demolition work at all on Sundays and Bank/Public Holidays; and,

iv) a waste audit, setting out the steps to be taken to ensure that the maximum amount of waste arising from the demolition process is incorporated within the Development so far as is reasonably practicable, and the steps to be taken to reuse and recycle the waste that cannot be incorporated within the Development.

Reason: To ensure the proper control of dust, noise vibration, light and odour, to ensure the welfare of protected species during the Site clearance period, and to ensure proper management of clearance waste.

Construction Environmental Management Plan

(4) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a Construction Environmental Management Plan (CEMP). No construction of the Development shall take place except in accordance with the approved CEMP subject to any variation which has the prior written approval of the Council. The Plan shall include:

i) measures to control dust, noise, vibration, light and odour from construction activities and appropriate mitigation techniques that prevent unnecessary disturbance to neighbouring properties;

ii) details of the environmental management of the construction of the Development;

iii) provision to ensure that, with the exception of:

a) construction activities using the concrete slip-forming method;

b) construction activities requiring constant pouring concrete; and

c) process works within the Site boundary relating to mechanical and/or electrical equipment installation, no noise and vibration from the construction works will be audible at noise sensitive premises outside the hours of 07.00 – 19.00 Monday - Friday; 07:00 – 13:00 Saturdays and not at all on Sundays and Bank Holidays;

iv) details of parking of site operatives' and visitors' vehicles;

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v) loading and unloading of plant and materials and their storage;

vi) a scheme for recycling/disposing of waste from construction works.

Reason: To ensure the proper control of dust, noise vibration, light and odour during the Site construction period.

Construction Traffic Management Plan

(5) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council, in consultation with the Highways Agency, a Construction Traffic Management Plan which shall include provisions for addressing any abnormal wear and tear to the highway. The Construction Traffic Management Plan shall be complied with for the duration of the construction of the Development subject to any variation which has the prior written approval of the Council in consultation with the Highways Agency.

(6) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council details of wheel-cleaning facilities to be provided during the demolition and construction phases of the Development. The approved details shall include the type, location and layout of the facilities together with measures to ensure use by all construction vehicles leaving the Site. All areas used for the washing of vehicles shall be contained to prevent the discharge of wastewater to underground strata or controlled waters. This shall apply to all areas of the Site including the construction lay-down areas. The demolition and construction phases of the Development shall be carried out in accordance with the approved scheme.

Reason: To reduce the impact of construction traffic movements on the locality.

Prevention of contamination of watercourses

(7) The commissioning of the Development shall not take place until all areas of the Site including natural habitat, drains and watercourses that are to be retained as part of the Development hereby approved, have been fenced off or otherwise delineated to avoid incursion and disturbance by construction activity. This protection shall be maintained for the duration of the construction period and no construction materials, machinery or equipment are to be stored within these areas.

Reason: To ensure the prevention of contamination of drains and watercourses on the Development Site during construction.

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Road deliveries of fuel

(8) No waste delivery HGVs shall enter or leave the Site by road outside the hours of 07:00 and 19:00 on weekdays and the hours of 07:00 and 13:00 on Saturdays. No HGVs shall enter or leave the Site outside these times or at any time on Sundays or Bank/Public Holidays.

(9) HGV movements to and from the Development once operational shall not exceed 262 round trips (131 movements in, 131 movements out) Monday to Friday on more than 3 days in a continuous 30 day monitoring period and shall not exceed 276 round trips (138 movements in, 138 movements out) on any one day, Monday to Friday. HGV movements to and from the Development once operational shall not exceed 132 round trips (66 movements in, 66 movements out) on Saturdays.

(10)Records shall be kept of waste delivery HGVs entering and leaving the Site each day, and shall include numbers, origins and times of arrival and departure and these records will be made available to the Council on written request.

(11)The Company shall keep under review opportunities to use, and/or make further use of, non-road modes of transport for the delivery of fuel to and from the Site (particularly over distances of more than 70 miles) where such modes may reasonably be considered both commercially feasible and more sustainable than road transport. The commissioning of the Development shall not commence until there has been submitted to, approved in writing by, and deposited with the Council, a scheme for evaluating and responding to such opportunities, which shall be adhered to.

Reason: To reduce the impact of fuel delivery traffic movements on the locality and to ensure that opportunities for non-road transport of fuel, particularly over long distances, are kept under review where these may reasonably be considered commercially feasible and more sustainable than road transport of fuel.

Rail deliveries of fuel

(12)Fuel deliveries by train shall not be made to the Site outside the hours of 07:00 and 23:00.

(13)Fuel deliveries by train shall not be unloaded at the Site outside the hours of 07:00 and 23:00. Vehicles used to load and unload the trains, that are permanently based on the Site for this purpose, shall be fitted with reversing

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alarms of a type to be agreed in writing with the Council, before commissioning of the Development.

Reason: In the interests of amenity.

Sustainable travel plan and parking

(15)The commissioning of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a scheme for proposed staff and visitor vehicular parking. The parking provision shall be completed as agreed prior to operation of the Development and thereafter retained.

(16)The commissioning of the Development shall not take place until the following measures to encourage staff to travel via sustainable modes are introduced at the Site:

i) Covered and secure storage for 10 bicycles, with additional space for the storage of 7 additional bicycles should they be required in the future;

ii) Walking and cycling routes will be identified and communicated to staff;

iii) Shower and changing facilities;

iv) Car sharing databases and information will be communicated to staff; and

v) Information display boards in foyer areas detailing public transport timetables and frequencies.

Reason: To establish measures to encourage more use of sustainable non-car modes of transport during the construction and operation of the Development.

Site layout and design etc

(17)_The commencement of the main Development shall not take place until there has been submitted to, approved in writing by, and deposited with the Council, a scheme for the construction of the Development which shall include provisions for the:

a) details of the siting, design and external appearance of all buildings, structures to be erected and retained following the commissioning of the Development;

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b) details of the colour, materials and surface finish in respect of those buildings and structures referred to in (i) above;

c) details of ground levels and dimensions of all permanent buildings and structures together with cross-sections through the Site showing existing and proposed ground levels;

d) details of fire suppression measures and access of fire appliances to all major buildings, structures and storage areas;

e) details of permanent fencing or other enclosure; and

f) phasing of works included in the scheme.

In addition, prior to commencement of construction of any building within the Development, samples of all materials to be used on the exterior of that building shall be submitted to and approved in writing by the Council. All buildings and structures shall be constructed in accordance with the approved scheme.

(18)The commencement of the Development shall not take place until there have been submitted to, approved in writing by and deposited with the Council details of vehicular circulation roads, parking, hardstanding, loading and unloading facilities and turning facilities on site, including in particular details of the two-way internal road and access details between the Ash Handling Facility and the main Sustainable Energy Plant building. The approved details shall be implemented prior to commissioning of the Development.

(19)The commencement of the Development shall not take place until there have been submitted to, approved in writing by and deposited with the Council details of the access to the southern construction lay-down area. The access shall be implemented in accordance with those approved details.

(20)The commencement of the Development shall not take place until there have been submitted to, approved in writing by and deposited with the Council details of measures to mitigate the effects of emergencies arising from loads carried by rail and details to ensure access for emergency vehicles along the rail track. The agreed measures shall be implemented prior to the commissioning of the Development.

Reason: To enable the Council to exercise reasonable and proper control over the design and appearance of the Development and to ensure adequate fire prevention measures are in place.

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Landscaping

(21)The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a landscape management plan for soft landscaping works (such as planting and maintenance of plants and shrubs etc). The landscape management plan shall include: a timetable for implementation, details of vegetation to be retained and its means of protection, proposed earthwork materials, finished levels or contours, proposed plant species locations and mixes and details of its long-term management. The soft landscape works shall thereafter be implemented in accordance with the approved scheme unless otherwise agreed in writing with the Council.

(22)If within a period of five years from the date of the planting of any tree or shrub within the Development, that tree/shrub, or any tree/shrub planted in replacement for it, is removed, uprooted, destroyed or dies, another tree of the same species and size as that originally planted shall be planted at the same place unless the Council gives its written consent for any variation.

(23)Prior to commencement of any phase of the Development, full details of hard landscaping works (such as earthmoving, erection of fences etc) relating to that phase shall have been submitted to and approved in writing by the Council and the works shall be carried out in accordance with the approved plans. These details shall include proposed finished levels or contours, means of enclosure, street furniture, hard surfacing materials and a programme of implementation and maintenance. The landscaping works shall include the installation of a footpath (fenced with a buffer of hedgerow shrubs) within the proposed coke store site of the Development.

Reason: To ensure proper landscaping for the Development.

Ecology and Nature Conservation

(24)Prior to the commencement of any phases of the Development a scheme detailing the ecological mitigation and enhancement measures identified in the Environmental Statement shall be submitted to and approved in writing by and deposited with the Council in consultation with Natural England. The scheme shall include the following: details of the measures to be taken to protect the barn owl nest site from disturbance; details of the measures to be taken to mitigate any impact on bat populations using the Site; and the other ecological measures referred to in Chapter 9 and Figure 8.21 of the Environmental

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Statement. The Development shall be carried out in accordance with the approved scheme.

Reason: To mitigate the impact of the Development on protected species and safeguard ecology and nature conservation.

Prevention of contamination of watercourses - drainage

(25)The commissioning of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council, in consultation with the Environment Agency a scheme for the management of surface water (including a surface water regulation system) and foul water, based on Appendix 10.2 of the Environmental Statement. The scheme shall thereafter be fully implemented and operated as approved.

Reason: To ensure proper drainage of the Site and to ensure that contamination is controlled and not allowed to cause harm to the health of human beings nor impact on the integrity of environmentally sensitive areas.

Prevention of contamination of land

(26)The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a scheme to deal with the risks associated with any contamination of the Site. Any measures identified as being necessary shall be carried out to a timetable to be agreed in writing with the Council. That scheme shall include the following elements unless any are specifically excluded in writing by the Council:

a) a desk study identifying:

i) all previous uses;

ii) potential contaminants associated with those uses;

iii) a conceptual model of the Site indicating sources, pathways and receptors;

iv) potential unacceptable risks arising from contamination at the Site;

b) a Site investigation scheme based on a) above to provide information for an assessment of risk to any receptors that may be affected on and off the Site;

c) a method statement based on results of the Site investigation and risk assessment, giving details of any remediation measures required and details of how these measures are to be undertaken;

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d) a verification report on any remediation measures that have been undertaken; and

e) a timescale for implementation.

Reason: To ensure that contamination is controlled and not allowed to cause harm to the health of human beings nor impact on the integrity of environmentally sensitive areas.

Fuel Storage

(27) All fuels, oils and other liquids with the potential to contaminate the Site shall be stored in a secure bunded area at the Site. The storage area shall not drain to any surface water system.

Reason: To provide adequate long-term protection to the water environment at the Site.

Operational Noise

(28)The commissioning of the Development shall not take place until there has been submitted to, approved in writing by, and deposited with the Council a programme for the monitoring and control of noise generated by the normal commercial operation of the Development. The programme shall specify the locations from which noise will be monitored, the method of noise measurement (which shall be in accordance with BS 4142 1997) and the maximum permissible levels of noise at each such monitoring location. At the approved measurement locations noise levels during the operation of the Development shall not exceed the levels specified in the approved programme, except in so far as any variation has been approved in writing by the Council or in an emergency.

Reason: To ensure the proper control of noise during the operation of the Development.

Control of Odour

(29)The commissioning of the Development shall not take place until a scheme for the management of odour generated from the operation of the Development has been submitted to, approved in writing by and deposited with the Council. The scheme shall thereafter be implemented and operated as approved throughout the life of the Development.

Reason: In the interests of local amenity.

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Lighting

(30)The commissioning of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a scheme of lighting of the Development hereby permitted for both its construction and operational phases. The Development shall be illuminated in accordance with the approved scheme.

Waste Hierarchy

(31)The commissioning of the Development shall not take place until a scheme setting out arrangements for the maintenance of the waste hierarchy in priority order by minimising recyclable and reusable waste received as a fuel feedstock during the operational life of the Development has been submitted to and approved in writing by and deposited with the Council. The scheme shall include details of:

a) the type of information that shall be collected and retained on the sources of the residual waste after the recyclable and reusable waste has been removed;

b) the arrangements that shall be put in place for ensuring that as much reusable and recyclable waste as is reasonably possible is removed from the waste to be supplied for use as a fuel feedstock in the Development; so that the feedstock is as far as practicable only residual waste that is from a waste stream that has been comprehensively recycled;

c) the arrangements that shall be put in place for ensuring the 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 shall be put in place for discontinuing supply arrangements from suppliers who fail to remove as much reusable and recyclable waste as is reasonably possible from residual waste or who fail to retain Environmental Management Systems;

e) the arrangements that shall be put in place for regularly monitoring the waste delivered to the facility to ensure that it is residual waste; and

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f) the form of records that shall be kept for the purpose of demonstrating compliance with the above details and the arrangements in place for allowing inspection of such records by the Council.

The records referred to in paragraph (f) of this condition shall be made available for inspection by the Council at all reasonable times.

Incineration of waste shall not take place except in accordance with the approved scheme, which shall be adhered to at all times that the Development is operational.

Reason: To ensure the proposed facility accords with national, regional and local waste strategies.

Fuel Sustainability

(32)The Development shall not accept as a feedstock:

(a) any material directly produced by conventional forestry management (including thinning, felling and coppicing of trees from any green space);

(b) tree-derived residues directly produced by the processing of material directly produced from conventional forestry management by sawmills or the wood processing or timber industry;

(c) plant material from crops grown primarily for use in energy generation, including 'woody' energy crops such as short rotation coppice (SRC) and miscanthus grass;

(d) agricultural residues such as straw, husks and kernels.

Reason: to ensure the plant remains an energy from waste plant and does not change its purpose or designation.

Air pollution monitoring

(33)The commissioning of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council in consultation with the Environment Agency a scheme for the monitoring of air pollution in the vicinity of the Site. The approved scheme shall include the measurement location or locations within the relevant area from which air pollution will be monitored, the equipment and methods to be used and the frequency of measurement. The scheme shall provide for the first measurement to be taken not less than 12 months prior to the commissioning of the

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Development and for the final measurement to be taken not more than 24 months after commissioning of the Development. The scheme shall be implemented in accordance with its terms and shall supply full details of the measurements obtained in accordance with the scheme to the Council as soon as possible after they become available.

(34)Should the Council require continued monitoring of air pollution the scheme approved pursuant to Condition 33 above shall be extended for a period of up to 36 months from the date of the last measurement taken pursuant to Condition 33 above. Full details of the measurements obtained during the extended period shall be provided to the Council as soon as possible after they become available.

Reason: To ensure the Council are kept informed on a regular and programme basis about any changes in the level of air pollution at locations within its area.

Archaeology

(35)The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a scheme of archaeological investigation and an associated implementation programme. Development shall be in accordance with the approved scheme and implementation programme.

Reason: To allow the surveying of the Site for archaeological artefacts and the recovery of any important archaeological discoveries prior to the commencement of the Development.

Demolition

(36)Within 18 months of the permanent cessation of the commissioning of the Development, a scheme shall be submitted to the Council, for approval in writing, for the demolition and removal of the Development from the Site. The approved scheme shall include:

a) details of all structures and buildings which are to be demolished or retained;

b) details of the means of removal of materials resulting from the demolition;

c) the phasing of the demolition and removal;

d) details of the restoration works; and

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e) the phasing of the restoration works.

The demolition of the Development shall be implemented in accordance with the approved scheme.

Date: 2 October 2012

Giles Scott
Head of National Infrastructure Consents
Department of Energy and Climate Change

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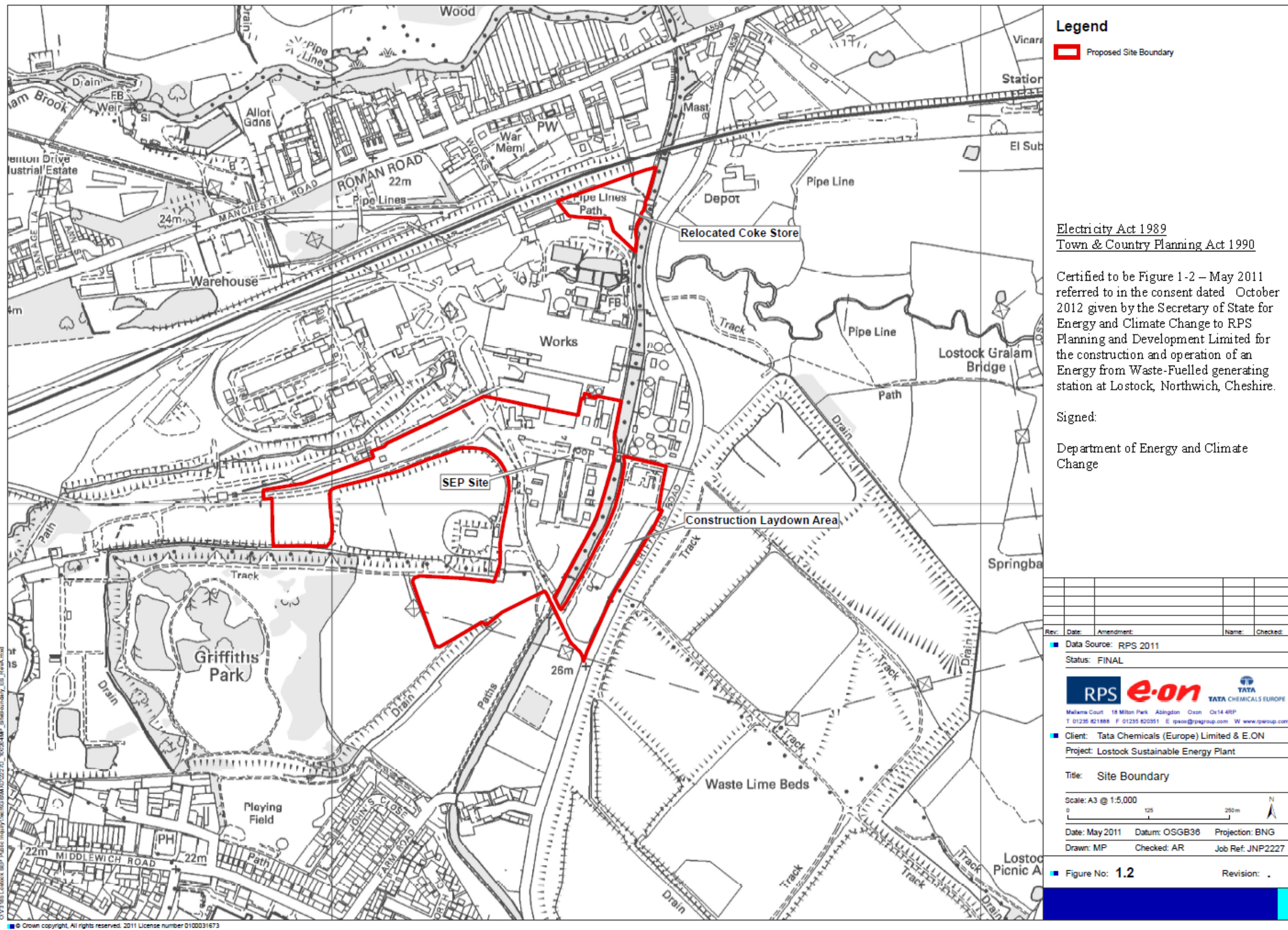

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The Planning Inspectorate

Report to the Secretary of State for Energy and Climate Change

by Elizabeth Hill BSc(Hons), BPhil, MRTPI

an Inspector appointed by the Secretary of State for Energy and Climate Change

Date: 5 March 2012

APPLICATION BY TATA CHEMICALS EUROPE LTD AND E.ON ENERGY FROM WASTE UK LTD UNDER S36 OF THE ELECTRICITY ACT 1989 FOR A 60MW GENERATING STATION AT LOSTOCK, NORTHWICH, CHESHIRE

Inquiry commenced on 11 October 2011
File Ref DPI/A0665/11/10

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File Ref: DPI/A0665/11/10
Lostock Works, Lostock, Northwich, Cheshire

- The application was made under s36 of the Electricity Act 1989 and is also an application for deemed planning permission under s90(2) of the Town and Country Planning Act 1990.
- The application was made by Brunner Mond Ltd and E.ON Energy from Waste UK Ltd to the Secretary of State for Energy and Climate Change.
- The application, File Ref DPI/A0665/11/10, was submitted with a covering letter dated 24 February 2010.
- The development proposed is a 60MW generating station.

Summary of Recommendation: Consent should be granted, subject to the conditions set out in Annex 2.

1. Procedural Matters

1.1 The inquiry opened on 11 October 2011 and sat for 19 days, on 11-14, 18-21, 25-28 October and 1-4 and 8-10 November 2011 at Northwich Victoria Football Club, Wincham Lane, Northwich. An evening session was held on 3 November 2011.

1.2 Amendments to the original proposal accompanied covering letters dated 21 September 2010 and 1 July 2011. The first amendments included minor changes to the design together with supplementary information including a carbon assessment report and a report on the response to representations, on which there was formal consultation. Further minor amendments to the scheme were submitted on 1 July 2011, on which there was further publicity.

1.3 An Environmental Statement (ES) was submitted with the original application in February 2010. A supplement to the ES was submitted in September 2010 to cover the first set of amendments to the proposal as well as additional information on transport and ecology. A consolidated ES was submitted with the second set of minor amendments in July 2011 and incorporates all the material in the previous ESs. Local residents have been concerned that insufficient material was included in the ES to be able to assess the environmental effects of the proposal and sent in comments on this matter prior to the inquiry. My assessment as to whether these matters needed to be addressed by additional information under Regulation 13 of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (EIA Regs) is set out in a note [**ID/2**]. The adequacy of the ES and the consultation undertaken on it and the application is discussed further below.

1.4 In April 2011 Brunner Mond Ltd's name changed, following an earlier takeover, to Tata Chemicals Europe Ltd (Tata). The applicants in this case are therefore: Tata Chemicals Europe Ltd and E.ON Energy from Waste UK Ltd (E.ON).

1.5 An accompanied site visit to the Lostock Works, including the site of the proposed development and some of the nearest viewpoints of it from the surrounding area, was carried out on the afternoon of 3 November 2011. A further accompanied visit was carried out to Winnington Combined Heat and Power (CHP) plant on the morning of 11 November 2011. During those visits I was accompanied by representatives of the applicants, Cheshire West and

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Chester Council (the Council) and local residents. I also carried out a number of unaccompanied visits both during and after the inquiry to examine the highway aspects of the case and viewpoints of the development site from both the immediate and the wider surrounding areas.

1.6 The Secretary of State for Energy and Climate Change (SoSECC) called the public inquiry following the Council's objections to the proposal, after their meeting on 10 February 2011. The objections relate mainly to waste policy but the Council also requested that the perceived health impacts of the proposal should be considered, although there was no formal objection on that issue. There was also significant public concern about the proposal. The Council objected to the proposal for the following reasons:

> "The proposal is contrary to Policy EM12 of the North West of England Plan (2008); and policies 1, 2, 3 and 34A of the Cheshire Replacement Waste Local Plan (2007). In particular:

i) the application has not demonstrated that the proposal will maximise opportunities for waste to be managed in accordance with the waste hierarchy, demonstrate that the waste would be disposed of at one of the nearest appropriate installations, and does not ensure that the waste management facility is sited in such a way as to avoid the unnecessary carriage of waste over long distances;

ii) no overriding need for the development in waste management terms has been demonstrated to outweigh the other planning policy objections to the proposal;

iii) the application has not demonstrated to the satisfaction of the Waste Planning Authority that existing capacity is inadequate to meet the waste management needs of the sub-region; and,

iv) the application does not adequately confirm that the waste stream to be used has already been subject to suitable measures of source separation of recyclate and/or treatment and recovery of recyclables prior to thermal treatment.

v) The Secretary of State be requested to ensure the perceived fear of health impacts is fully considered".

1.7 A pre-inquiry meeting was held on 26 July 2011 at Northwich Victoria Football Club, at which procedures for the inquiry, dates for the submission of proofs and other documents, and other issues were discussed. One of the issues raised was the location of the venue, which was some distance from Northwich Town Centre and away from bus routes. Although the use of an alternative venue was explored, in the light of the number of potential attendees, it was decided to stay with the original venue. The applicants offered to provide transport for those who needed it from the town centre to the venue and it was agreed that the inquiry could be filmed and streamed via the internet to be shown on the Council's website, which also helped with the inclusiveness of the proceedings.

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1.8 A number of registered participants at the inquiry indicated that they wished to play a major role in the inquiry under Rule 6(4)(b)(iv) of the Electricity Generating Stations and Overhead Lines (Inquiries Procedure)(England and Wales) Rules 2007. These were Cheshire Anti-Incinerator Network (CHAIN) (Mr Brian Cartwright and Mr Liam Byrne), Mr David Wright, Mrs Tracy Manfredi and Mrs Dorothy Gamble.

1.9 Rule 4(1)(c) of the above Inquiry Rules requires the SoSECC to set out those matters which, in his view should be considered at the inquiry. On the information available prior to the inquiry, the following matters, are set out as relevant to his consideration of the proposed development, to be considered at the inquiry:

1) the extent to which the proposed development would be in accordance with the relevant development plan(s) for the area, and in particular policies 1, 2, 3 & 34A of the Cheshire Replacement Waste Local Plan (2007);

2) the extent to which the proposed development will maximise the opportunities for waste to be managed in accordance with the waste hierarchy, minimise avoidable carriage of waste over long distances, and take advantage, where practicable, of opportunities to transport waste by rail and water;

3) the extent to which a need for the proposed development as a means of managing waste has been demonstrated, in particular by reference to the capacity of existing waste management facilities in the sub-region;

4) the extent to which the proposed development is consistent with the objectives of the Government's policy on the energy mix and maintaining a secure and reliable supply of electricity as the UK makes the transition to a low carbon economy, and achieving climate change goals;

5) concerns about perceived health impacts of the proposed development;

6) the impact of construction and operational traffic associated with the proposed development on the local highways, including users and safety;

7) the visual impact of the proposed development;

8) the cumulative impact of the proposed development with other proposed and operational developments of a similar nature within the region;

9) the proximity of the proposed development to residential dwellings and other non-industrial units; and,

10) any other matter that the Inspector considers relevant.

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1.10 At the pre-inquiry meeting, I informed the attendees that I also wished to be addressed on:

1) the weight to be given to the Regional Spatial Strategy (RSS), given the Government's intention to revoke them under the (then) Localism Bill;

2) the weight to be given to the consultation draft National Planning Policy Framework (dNPPF);

3) any policy changes as a result of the publication of the Government Review of Waste Policy in England 2011 (WPR2011) and its Action Plan [**CD/4.4**]; and,

4) (at the inquiry) the effect on the setting of the Trent and Mersey Canal Conservation Area (CA), adjacent to the site.

I also asked about the weight to be given to the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement on Renewable Energy Infrastructure (EN-3). These were designated by Parliament in July 2011 and had full weight by the time of the inquiry.

1.11 A Statement of Common Ground (SoCG) was submitted at the inquiry, having been signed on 7 September 2011. It covers a description of the site and the proposal, the background to the application, relevant planning history, national energy and waste policy, the development plan and other matters agreed between the applicants and the Council, including matters to be covered by planning conditions and obligations.

1.12 An Agreed Statement on Highway Matters, which is effectively a supplementary SoCG, was signed by the applicants and the Council and submitted during the inquiry. It covers: agreed facts, forecasts, assessments and mitigation measures in relation to highways issues and those matters which will be dealt with through planning conditions and obligations.

1.13 A signed unilateral undertaking was submitted by the applicants, dated 30 November 2011. This covers: highway works, local community liaison, maintenance contributions, traffic management and local employment.

1.14 At the time of the inquiry an environmental permit (EP) for the proposal had not been applied for from the Environment Agency (EA).

1.15 In his closings, Mr Wright complained that he was not given sufficient time to consider Tata's response to an element of his evidence on the disposal of bottom ash [**TATA/64**]. Had the need for further time for Mr Wright to consider the document been drawn to my attention earlier, then it could have been given. Mr Wright's written response to the paper was subsequently accepted [**WRI/15**].

1.16 This report includes a description of the site and its surroundings, the proposal, energy and planning policy, the main points of the cases for the parties and my conclusions and recommendation. I have listed the documents submitted including proofs of evidence. They are as originally submitted and do not take account of how evidence may have been affected by questioning. Opening and

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closing submissions are also included and are annotated in pen to reflect their delivered content. Conditions to be imposed, if the SoSEEC is minded to grant consent, are annexed to the report with my comments. A list of the abbreviations used in the report is at Annex 3.

1.17 I would like to record my thanks to the Programme Officers, Helen Wilson and Yvonne Parker, for help in the smooth and efficient running of the inquiry, particularly organising the programme and keeping records of the documents. Many of the participants expressed their appreciation to the programme officers in assisting them in a courteous manner in answering questions on procedure and documentation.

2. Consultation matters

2.1 A number of complaints were made by local objectors about the consultation process. The process includes both the statutory requirements for the publicity of the application and the ES and the advice given about consultation with the local community.

2.2 The Guidance Note to s36 of the Electricity Act 1989 sets out good practice tips for the pre-application stage which says that applicants should consult widely and at an early stage with relevant planning authorities and statutory and non-statutory groups like parish councils, and local interest groups. It also recommends in paragraph (para) 3.11 that members of the local community should also be consulted to gauge reaction to proposals and identify any particular issues which could be addressed in the ES.

Statutory requirements

2.3 In terms of these, the applicants served the appropriate notice on the relevant Local Planning Authority when the application was made to DECC and provided them with a copy of the application and ES, in accordance with the relevant Regulations. The necessary advertisements were also placed in local and national newspapers. Although objectors have criticised the size of the advertisement in the newspaper, the size is similar to normal legal notices. Objectors also criticised the choice of the Guardian newspaper for the advertisement, since its local circulation is likely to be limited. However, notice was also made in a locally circulating newspaper. DECC has confirmed that the statutory publicity requirements had been met.

Public consultation

2.4 The consultation statement [CD/1.9] sets out the consultation methods used with the general public used prior to the submission of the application. These were in addition to liaison with parish councils, other community groups, the Council and other organisations. Other evidence on consultation and engagement was submitted at the inquiry, including TATA/13, CHAIN/11, CHAIN/102 and CHAIN/5b, App17. The public consultation and engagement process included the distribution of a leaflet and two newsletters to up to 25,000 households, two 2-day community exhibitions and a community meeting. In addition, a website was set up by (then) Brunner Mond allowing access to the application, ES and other material. Information was also displayed at the local library.

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2.5 There were a number of specific complaints about the area covered by leaflet distribution, with some families claiming not to have received leaflets. However, I consider that the general area covered was appropriate and there has been a good response to the proposal. There seems to have been some technical problems with the Brunner Mond website, for example, with documents not opening but these were rectified once the company was made aware of the problems. There also appears to have been some confusion by the library service about the currency of the documents which they displayed for the consultation, which had to be corrected by objectors. In addition, CHAIN complained that the material supplied by the applicants did not adequately show the size of the main building and they had to provide a model, with lorries etc shown for comparative purposes, so that local people could understand the proposal. I agree that the illustrative visualisations do not show other objects for comparisons of scale, which might have been helpful for lay people, although the submitted plans were adequate for consideration of the proposal. Deeper concern seemed to be reflected about the way in which public meetings were handled and the chance to ask and get responses to questions at the meetings, at exhibitions and through written information requests. It was clear at the inquiry that, despite the public consultation, local residents/groups were still actively seeking some more detailed information about the proposal through the inquiry process.

2.6 CHAIN expressed concerns at the inquiry that the public responses on the application were only available at the Council's offices in Chester, over 20 miles away, not locally or on-line. Although the Council's offices are in Chester, this is the centre for the administrative area. The Council felt that they had complied with the advice in having the material available locally with the application and the ES being made available at the local library, as the advice on local availability did not extend to the responses. Prior to the inquiry these responses (over 4,000) were sorted alphabetically and they were made available at the inquiry. The responses reflect the issues put forward by the main parties and other objectors and their content has been covered in evidence to the inquiry.

2.7 In addition, CHAIN also complained that the most recent PCT/HPA consultation response, dated 3 February 2011, which stated concerns about the engagement of local people in the consultation process, was not made available to the public by DECC until late on in the process. Nevertheless, this document was referred to extensively by CHAIN and others in their evidence and it is clear that there was sufficient time for objectors to comment on its contents. The applicants' response to these comments is in **TATA/15**.

2.8 I am satisfied that the company has complied with its statutory publicity and consultation duties, as set out in the regulations which cover both the application and environmental information. However, there remained at the inquiry a mistrust in the motives of the applicants, particularly in respect of the need for the SEP, their longer-term plans for the plant and the perception of health risk. This mistrust might have been less if there had been greater openness and transparency within the wider public consultation process. That would also have been more in accordance with the moves by Government towards localism. Although the applicants propose future engagement through

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community liaison, as set out in the unilateral undertaking [**TATA/83**], such engagement would be after the decision-making process.

3. The Site and Surroundings

3.1 The site lies within the area of the Lostock Works, originally all within the ownership of ICI but now split between a number of independent businesses. Tata Chemicals Europe Ltd, which manufactures soda ash and sodium bicarbonate at Lostock, remains the largest landowner on the works site. In addition to road access from Griffiths Road/King Street and then to A class roads and motorways, the site has its own rail link off the Manchester to Chester line, which currently brings limestone to the works. The application site is about 10.3ha, including the main site (SEP, ash handling facility and rail reception facility), the temporary construction laydown areas and the relocated coke store. Most of the area for the SEP is currently occupied by a redundant power station.

3.2 The site is bounded on one side by the Trent and Mersey Canal, the corridor of which is a Conservation Area (CA). The canal has no commercial use due to its narrow width and low bridges, although it is important for leisure use and the towpath is a public right of way. To the south is open land, including Griffiths Park (former landfill and lime beds), and some of the nearest houses at Cottage Close and Farm Road/St John's Close. The area to the north contains the Lostock Works and other commercial areas, with farm land and lime beds to the east. Northwich Town centre lies some 2km to the west with generally more open countryside to the east.

4. Planning History

4.1 The site forms part of a network of industrial chemical manufacture sites, based on salt extraction, which have existed in and around Northwich since the 1800s. The site produced soda ash and bleaching powder from that time onwards and much of the surrounding land has been used for lime waste disposal associated with these products. During the First and Second World Wars, the site was used for the manufacture of explosives and other chemical products. The SEP site had been used for lime waste disposal before its development for a coal-fired power station between 1940 and 1950. The power station is still on the site but was made redundant by the Winnington CHP plant, which came on line in 2000.

5. Planning Policy

5.1 Documents reflecting current national energy policy include: Meeting the Energy Challenge – Energy White Paper (2007) [**CD/4.1**], UK Low Carbon Transition Plan (2009) [**CD/4.8**], Overarching National Policy Statement on Energy (2011) (EN-1) [**CD/4.21**], National Policy Statement on Renewable Energy Infrastructure (2011) (EN-3) [**CD/4.22**], Annual Energy Statement 2010 [**CD/4.7**], Planning Policy Statement 1: Delivering Sustainable Development (2005) (PPS1) [**CD/4.10**], Supplement to PPS1: Planning and Climate Change (2007) [**CD/4.11**], Planning Policy Statement 22: Renewable Energy (2004) (PPS22) [**CD/4.17**] and its Companion Guide (CG) [**CD/4.18**].

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5.2 Documents reflecting current national waste policy include: the Waste Strategy for England (2007) (WS2007) [**CD/4.3**], Planning Policy Statement 10: Planning for Sustainable Waste Management (2011) (PPS10) [**CD/4.14**] and its Companion Guide (2006) [**CD/4.15**] and the Government Review of Waste Policy in England (WPR2011) and its Action Plan (2011) [**CD/4.4**]. Other relevant policy for EfW is set out in EN-1 and EN-3.

5.3 The draft National Planning Policy Framework (dNPPF) [**CD/4.9**] was published for consultation in July 2011, with consultation ending during October 2011. Although it does not contain specific waste and energy policies, there are policies which are of relevance to the proposal, including the presumption in favour of sustainable development, although it was agreed at the time of the inquiry that these policies had only limited weight at this stage. In addition, the Localism Bill was enacted in November 2011.

5.4 The development plan for the area comprises: the North West of England Plan to 2021 (2008) (RSS) [**CD/3.1**]; the Cheshire Replacement Waste Local Plan (2007) (CRWLP)[**CD/3.2**]; and, the saved policies of the Vale Royal Borough Local Plan First Review Alteration (2006) (VRLP)[**CD/3.5**]. Although the Localism Act 2011 contains the provisions for the revocation of the RSSs, at the time of writing, they were still extant and continue to form part of the development plan.

5.5 Policies DP4, DP7, DP9 and EM1 of the RSS are general policies covering the best use of existing resources and infrastructure, the promotion of environmental quality, the reductions of emissions and adaptation to climate change and the enhancement and protection of the region's environmental assets. Policies EM10, EM11, EM12 and EM13 of the RSS cover waste management. Policy EM10 sets out a regional approach to waste management and policy EM11 sets out waste management principles for the region. Policy EM12 sets out the locational principles for waste management facilities, with policy EM13 providing policy for the provision of nationally, regionally and sub-regionally significant waste management facilities. Policies EM15, EM16, EM17 and EM18 of the RSS cover sustainable energy for the region. Policy EM15 covers the framework for sustainable energy and policy EM16 encourages energy conservation and efficiency. Policy EM17 specifically covers renewable energy, especially through CHP, and policy EM18 covers decentralised energy supply.

5.6 The CRWLP contains saved policies on waste for the former administrative area of Cheshire. The most relevant polices are: policy 1, which covers sustainable waste management; policy 2 which covers the need for waste management facilities; policy 3 which covers the phasing of sites for landfill/landraise and/or thermal treatment; policy 4 which covers the preferred sites for waste management facilities; and, policy 34A which covers thermal treatment. Other policies in the plan are also relevant including: policy 6 (built waste management facilities of a national/regional scale), policy 10 (minimising waste during construction and development), policy 12 (impact of development proposals), policy 14 (landscape), policy 16 (historic environment), policy 17 (natural environment), policy 18 (water resource protection and flood risk), policy 20 (public rights of way), policy 23 (noise), policy 24 (air pollution, air emissions including dust), policy 25 (litter), policy 26 (air pollution, odour),

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policy 27 (sustainable transport of waste and waste derived materials), policy 28 (highways), policy 29 (hours of operation), policy 33 (liaison committees), and, policy 36 (design).

5.7 The most relevant saved policy in VRLP is BE21 which encourages renewable energy developments. Other policies relevant to the development include: GS2 (new development in the Borough), BE1 (safeguarding and improving the quality of the environment), E3 (the development of employment land for employment purposes), E5 (employment land allocations), E7 (Northwich and Winsford Town), T1 (general requirements for transport), T2 (transport assessments), P1 (air pollution), P3 (noise pollution), P4 (light pollution), P5 (groundwater), and, P8 (contaminated and derelict land).

6. The Proposals

6.1 The proposed development is an energy from waste (EfW) plant on the site of the former coal-fired power station at Lostock Works. The proposal would have a total gross maximum electricity generating capacity of up to 60MWe (53MWe net) and would be capable of producing 100 tonnes of steam per hour to serve the Tata Chemicals soda ash plant. The proposal would be fuelled by approximately 600,000 tonnes per annum (tpa) of waste derived fuel, treated before arriving at the site. The waste sources would be residual Municipal Solid Waste (MSW) and Commercial and Industrial (C&I) Waste, waste Biomass as set out in **TATA/23**, as well as the potential for Solid Recovered Fuel (SRF).

6.2 The dimensions of the main buildings (height, length and width in metres) are: the fuel reception hall (17x39x45); fuel storage building (36x32x54); boiler house and switching gear (48 (with adjacent stairwell 50)x51x45); flue gas treatment building (43 (with adjacent stairwell 45)x56x35); steam turbine (24x35x22); and, air cooled condenser (22x131x12). The proposed development would also require two co-located emissions stacks, at a height of approximately 90m, the exact height to be determined through the EP. The Ash Handling Facility (25x82x48) would be located separately, close to the rail facility.

6.3 The following associated infrastructure would also be provided as part of the scheme: on-site pipelines for the collection and distribution of steam; ancillary development including, internal roads, parking, gatehouse, weighbridge, rail connection, water treatment, fuel store, fencing, landscaping and offices; site for electricity grid connection infrastructure; relocated coke store (to the north of the proposed development) and temporary additional laydown areas for the construction phase.

6.4 A full list of the application drawings, as amended, is attached at Annex 1.

7. The Case for the Applicants

Introduction

The material points are:

7.1 The case for granting consent is both compelling and urgent. The Secretary of State's matters [**ID/1**] pick up on the objections of the Council and others and are responded to, along with the matters identified by the Inspector, although

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they are ordered in a way which will provide a cogent framework for considering the application.

The site and the application

7.2 The proposal has been described above but this section provides further details of the development. The proposal provides for both road and rail delivery with an anticipated approximately 1/3rd delivered by road and 2/3rds delivered by rail, as set out in **TATA/7**, at paragraph 8.7.1.

7.3 The Tata chemical operation at Northwich is split into two linked sites: Lostock and Winnington [**CD/1.109**]. The manufacture of soda ash and bicarbonate of soda are processes which require high amounts of energy, principally in the form of steam, with a lesser amount of electricity, at a ratio of 10:1 [**TATA/3**, sections 2-4, especially 4.1.1 and 4.1.3]. Together, the two sites require some 350-400 tph of steam and 22 MW of electricity. The application site [**CD/1.110**] includes the site of the former coal-fired power station, which was one of three, with two others at Winnington, linked to provide power (steam and electricity) to Tata's (then ICI's) chemical operations. All three power stations were rendered obsolete by the building of the gas-fired CHP plant at Winnington, commissioned by Tata (then Brunner Mond) from E.ON in 2000 [**TATA/3** at para 4.1.7] and linked to Lostock by steam mains.

7.4 The gas-fired CHP plant at Winnington would be retained, but the provision of the SEP would supplement this supply and provide 170tph of steam to Lostock and 9MW of electricity [**TATA/3** at para 6.1 and Section 6]. This would allow the Winnington CHP to retain its Good Quality CHP efficiency rating, keep the steam main operating [**TATA/3**, section 5] and allow the supply of electricity to the Grid.

7.5 The provision of the SEP would allow Tata to move away from its reliance on gas, which is a fossil fuel and one subject to price increases and fluctuations. The most recent projections show less predicted price volatility than previous projections [**TATA/3c** Appendix C, updated by **TATA/30**] but it cannot be assumed that that this will continue and the overall trend is upward, rather than remaining the same [**TATA/19**]. This is also borne out by the House of Commons Energy and Climate Change Committee (HC 1065) on "Energy Supply: Security or Independence?", which states that "the UK has..experienced high and volatile ..gas prices" [**MAN/55**, page 3, 1st para].

7.6 The proposed move away from a fossil fuel (gas) not only makes good commercial sense but also accords with European and national environmental policies. The commercial imperative is shown by the fact that every penny per therm increase in the price of gas equates to an additional £1m per annum to the energy bill to Tata [**TATA/3**, para 3.27]. Tata's view, in answer to the Council, is that it would be "extremely difficult" for Tata to absorb future gas price increases and in answer to Mr. Wright, Tata explained that it would be "extremely tough" to do so. Tata explained, in answer to CHAIN, that the SEP is "vital to the business' survival." In addition, EU and Government carbon emission targets are reflected in the structure of taxation and levies which encourage energy intensive industries to reduce reliance on fossil fuels and generate their energy requirements from renewable sources; Tata has its own

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corporate sustainability objectives, aligned with this [**TATA/3**, para 3.2.8 and 3.2.2 and **TATA/3a**, Appendix A and B].

7.7 Most of the proposed development would be located on Site WM12B on Inset Map WM12 and subject to policy 4 of the adopted Cheshire Replacement Waste Local Plan [**CD3.2**, saved by letter dated 10 March 2010, CD/3.7] for waste management purposes, including thermal treatment [**TATA/13a**, Fig1]. It forms part of the existing industrial development at Lostock, and is well served by the strategic highways and railway network. [**TATA/13**, para 3.7 and **TATA/7**]. Its proximity to the Tata chemical operations is a function of the purpose the SEP is intended to serve; its precise location is an obvious, logical choice, and one supported by the site allocation in the saved development plan policy.

Policy context

7.8 The purpose of the proposal is to generate energy, and specifically to generate energy in the form of steam from a CHP for use by Tata. As has been made clear by both Tata and E.ON,[**TATA/3** and **TATA/4**] without Tata's need for this energy, the SEP would not be being promoted. Consent is being sought for a 60 MW energy generating plant, within s.36 of the Electricity Act 1989, to be determined by the SoSECC. The SEP should, therefore, be recognised as first and foremost an energy scheme. Its fuel is waste and the technology is direct combustion, but they are merely the source and the method of achieving the purpose, which is to generate energy.

7.9 A similar approach was taken by the Infrastructure Planning Commission (IPC) in the Rookery South decision which was published during the course of the inquiry [**TATA/34**]. That scheme was for an EfW proposal, burning an expected 585,000 tonnes of residual waste per annum with an average gross generation output of approximately 65MWe [**TATA/34**, para 3.8]. The Rookery scheme is "CHP enabled" but without a commercially viable CHP customer [**TATA/34**, para 5.148-5.151].

7.10 At paragraph 4.2 of the Rookery decision [**TATA/34**, para 6.1], the IPC recorded the controversy as to whether the proposal before it should be considered a waste incinerator rather than an energy generation scheme and concluded that it was an energy scheme. As such, EN-1 [**CD/4.21**] and EN-3, [**CD/4.22**], as designated in July 2011, were 'the primary basis' for making the decision [**TATA/34**, para 4.3 and EN-1 para 1.1.1]. A similar approach can be seen in the even more recent decision of the SoSECC to consent the Ferrybridge EfW proposal [**CWAC/100**, para 6]. The applicants' view is that this approach should be followed in this case as well.

7.11 However, waste planning policies are also material to the case. The applicants' case is that energy planning policies provide the "best fit" when it comes to considering an EfW proposal. They should, in the words of the EN-1, provide "the primary basis" for making the decision [**CD/4.21**, page 1] and, in doing so, the SoSECC should have regard to (rather than be led by) waste planning policies. As was submitted in our Opening [**TATA/16**], given that it is common ground between the applicants and the Council that energy policies are met, it

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would be very odd if there is anything in waste planning policies to countermand this.

Compliance with Energy Policies (Secretary of State's Matter 4):

7.12 It is common ground between the applicants and the Council that the scheme accords with and gains significant support from national energy policies [**CD/15.1**, 6.12—6.15 and **CD/1.149**, 5.14] and that consistency with energy policies is a significant factor in favour of the SEP. The extent and range of compliance is summarised in the proof of evidence for the applicants [**TATA/6**, sections 5 and 6]. The approach advocated is contained in the SoSECC's decision to consent the Ferrybridge EfW scheme [**CWAC/100**] and the IPC's decision to consent the Rookery South EfW scheme [**TATA/34**].

7.13 These recent decisions reflect Government policy in EN-1, which makes it clear that decisions on such development should be made on the basis that the need for energy generating proposals has already been established [**CD/4.21**, para 3.1.3] and is urgent – in the words of EN-1:[**CD/4.21**, para 4.1.2] "Given the level and urgency of need for infrastructure of the types covered by the energy NPSs... the IPC in this case, the Secretary of State, should start with a presumption in favour of granting consent to applications for energy Nationally Strategic Infrastructure Projects (NSIPs)." (The proposal is of a size which makes it an NSIP, which would have been considered by the IPC if not for its timing). The reach of this statement in EN-1 explicitly includes EfW [**CD/4.21**, p47] which, as with the other types of energy generating schemes covered by EN-1, has no cap or limit placed upon the overall scale of provision [**CD/4.21**, para 3.2.1]. EfW is seen by the Government as "increasingly important" [**CD/4.22**, para 2.5.2].

7.14 In these circumstances, there is no obligation placed upon the applicants to demonstrate either a generic or a specific, commercial need for their proposals. As a matter of Government policy, the proposals are to be taken as needed and urgently so. Nevertheless, the applicants have demonstrated the need for their proposals. The scheme addresses a site or location-specific commercial need in that it would provide energy in the form of steam, and electricity, for the adjacent Tata Lostock chemical works, enabling Tata to reduce its reliance on gas (fossil) fuelled CHP with attendant cost savings and insulation against the volatility and upward trend of gas prices. This is a case in which what would be good commercially would also bring with it the obvious wider sustainability benefits of switching from fossil fuel, in compliance with national energy policies.

7.15 The applicants have demonstrated that the SEP would be regarded as a Recovery Operation under the Waste Framework Directive [**TATA/5**, section 3 and **TATA/53**, para 2.9] (the R1 calculation); would provide low carbon energy [**TATA/6**, p41] and that the CHP would be defined as Good Quality CHP under the relevant Index (CHPQI calculation) [**TATA/5**, section 4 and **TATA/39**, 3.1-3.3 and **TATA/53**, 2.6-2.8]. CHP is a very important point [**TATA/24**]. As EN-1 states: [**CD/4.21**, 4.6.8] "To encourage proper consideration of CHP, substantial additional positive weight should therefore be given by the IPC [here, the Secretary of State] to applications incorporating CHP." The NPS makes the point that: "To be economically viable as a CHP plant, a generating

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station needs to be located close to industrial ...customers with heat demands.... For industrial purposes, customers are likely to be intensive heat users such as chemical plants..."[**CD/4.21**, 4.6.5]. Even before these more recent policy statements, the Secretary of State has given significant weight to the necessity to locate CHP close to the industrial customer e.g. in the Ineos Chlor Runcorn decision [**CD/13.2**, para 3.5(e)].

7.16 As such, the SEP has the benefit of a "double presumption" in its favour, the first derived from paragraph 4.1.2 of EN-1 and the second from paragraph 4.6.8.

7.17 The CRWLP has a bespoke EfW policy (Policy 34A) [**CD/3.2**, p52] which, as the Council's witness confirmed in answer to the applicants, the SEP accords with. Most of the site is allocated as a preferred site for (amongst other potential uses) EfW. Although the site also needs to be compliant with other policies under the plan as set out in policy 4, the Council's witness answered, when questioned, that the weight to be given to such policies depended on whether they were consistent with more up-to-date Government policy. Policy BE21 of the VRLP [**CD/3.5**] recognises the wider benefits of renewable energy, which includes EfW, and considers that this is a matter of significant weight. The CRWLP makes a single mention of CHP [**CD/3.2**, p51] and the Council's witness confirmed that the proposals are consistent with this. These compliances provide further support for the proposals.

7.18 The RSS contains a policy which sets a specific (minimum) target for the delivery of Renewable Energy [**CD/3.1**, Table 9.6] which the SEP would help to deliver not least in circumstances where actual provision to date has fallen short (just over half) of even this minimum target [**TATA/26** at Table 3], as explained by the applicants and confirmed in questioning by the Council.

7.19 A similar position applies to the RSS and CHP. The RSS has a specific CHP policy (EM15) [**CD/3.1**, p113] which the SEP would help to deliver not least in circumstances where again actual provision to date has fallen well short (some half) of even this minimum target [**TATA/24**], as explained by the applicants and confirmed in questioning by the Council. These compliances with the RSS provide further significant support for the proposals.

7.20The Government's policy position on alternative technologies is set out in EN-3 [**CD/4.22** at paras 2.5.11, 2.5.13 and 2.5.45], which explains that the choice of technology is for the market and individual applicants; thus where EfW in the form of combustion (as here) is put forward it is not for the decision-maker to consider the potential alternatives e.g. gasification or pyrolysis. In addition, the EP process will consider the issue of Best Available Techniques (BAT) and is not necessary as part of this decision [**CD/4.22** at paras 2.5.11-13 and 2.5.45]. Therefore large amounts of the evidence put forward by some objectors (e.g. CHAIN & Mrs Manfredi) are not relevant and have no bearing on whether the SEP should be consented. The applicants however have presented evidence to substantiate their choice of technology [**TATA/5**, section 2 & **TATA/22**] but this is not a matter on which a decision is needed by the SoSECC.

7.21 A similar situation exists in respect of the carbon assessment. The applicants have substantiated the positive carbon benefits of their proposals [**TATA/5**,

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Section 5 and **TATA/39**, Section 2] but Government policy is clear that there is no requirement for any such case to be demonstrated as a prerequisite to the grant of consent [**CD/4.21**, 5.2.2 and **CD/4.22**, 2.2.38] and objectors' criticisms of our analysis is not relevant to the decision.

7.22 In brief conclusion, the SEP is an energy proposal; it complies with national, regional and local energy policies; such compliance (especially compliance with the Government's recent energy policies in EN-1 and EN-3) should carry decisive, favourable weight when it comes to making the decision. The SEP benefits from a double presumption in its favour.

7.23 It is especially important that the SEP would provide heat energy in the form of steam to Tata at Lostock and so, it can only be located at or in close proximity to Lostock. As DEFRA explained in its letter of support for the proposals [**TATA/6b**, Annex C], finding existing operators for CHP is a big challenge and the SEP is a "rare" opportunity. Recent decisions bear this out. Although "CHP enabled," there was no known customer for CHP in either the Rookery South [**TATA/34**, 5.148-5.151] or the Ferrybridge [**CWAC/100**, 6.2] consents. As emphasised earlier on, the Government attaches great importance to CHP and this case here, with a known industrial customer to supply, is significantly stronger than in either of these recent decisions.

Compliance with Waste Policies (Secretary of State Matters 1, 2 and 3):

7.24 The evidence for the applicants in **TATA/6**, sections 10 and 11, summarises the compliance of the proposals with key waste planning policies.

7.25 The Council's case against the proposals hinges upon waste planning policies. As the Council agreed, when questioned, that their case is that both energy and waste policies are relevant; the proposals accord with and gain support from energy policies but the Council says there are "significant" breaches of waste policies which outweigh the accordance with energy policies and justify refusal. So, whereas when applying energy policies one would grant consent, applying waste policies one should refuse. In order to analyse this view, it is necessary to consider the nature of the claimed breaches of waste planning policies.

7.26 The Council had four points of which one (the waste hierarchy, see below) has been overcome, the second ("Nearest Appropriate Installation (NAI)") and third (long distance carriage of waste) are two sides of the same coin and warrant some discussion in terms of the applicable legal provisions, and the fourth ("over capacity in Cheshire") is rooted in the CRWLP but this is out of step with current Government policies and more recent decisions by the Secretary of State and the IPC.

7.27 The Council's originally stated concern was that the waste stream which would be combusted might not have been subjected to sufficient separation for recycling (and similar). As such, it might not be properly characterised as "residual waste" in which case the proposals would (or could) prejudice the delivery of the waste hierarchy.

7.28 The Government considers that "a vigorous energy from waste policy is compatible with high recycling rates" in the Waste Strategy for England 2007 (WS2007) [**CD/4.3**, para 23] and most recently, in EN-3, that: "Waste

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combustion generating stations need not disadvantage reuse or recycling initiatives where the proposed development accords with the waste hierarchy" [**CD/4.22**, 2.5.64 and **CD/4.4**, para 214]. Even before recent developments, logically the Council's concern could not have amounted to a fundamental issue, as the applicants explained in evidence and in answer to questions. During the course of the inquiry the IPC's decision to consent the Rookery South EfW scheme was issued [**TATA/34**] as was the SoSECC's decision to consent the Ferrybridge EfW scheme [**CWAC/100**]. In both cases a waste acceptance scheme was secured via a condition [**TATA/33** and Condition 65 of **CWAC/101**] so as to ensure that the waste fuel is "residual" and to secure the proper implementation of the waste hierarchy. The applicants have accepted that such a condition would be appropriate here as well. The Council has indicated that provided that such a condition is imposed their objection based upon the waste hierarchy would be overcome. This was also accepted by Mrs Manfredi. The wording of such a condition is discussed in **TATA/67**.

7.29 Despite the Rookery South and Ferrybridge decisions and the Council's satisfaction that the point can be dealt with in a similar manner here, CHAIN maintained a waste hierarchy objection, as CHAIN explained in answer to the applicants and the Inspector, but this appears to be based upon their root and branch, in principle objection to any incineration of waste, whatever the circumstances.

7.30 The Council's objection concerning over-capacity of EfW consents in Cheshire does not reflect the contemporary state of play of Government policy on the issue. The Council's argument is rooted in Policy 3 of the CRWLP [**CD/3.2**, p25] which seeks to restrict EfW facilities by including them in with landfill, such that they should only be permitted if there is a capacity shortfall "as described by the waste management strategy of the RSS confirmed by the Secretary of State." The supporting text to the policy explains that "the reference to "capacity" means the maximum throughput of thermal treatment plants with planning permission." Therefore, the Council argues that one should add up the permitted EfW capacity in Cheshire, which comprises the Ince Marshes facility (650,000 tpa with a currently undetermined EP application to increase this to 850,000 tpa) and the Bedminster (Lostock) bio-energy plant (150,000 tpa) [**CWAC/3**, para 5.47] and compare this to the range of estimates of how much EfW capacity would be "required" in Cheshire to deal with "Cheshire waste". As the permitted capacity exceeds that required on this basis, the Council argues that consent for the SEP should be refused.

7.31 The Council's line of argument and similar ones put forward by other objectors is incorrect for a number of reasons. First, even if it is right to count permitted rather than operational capacity, neither of the Cheshire EfW permissions are tied by condition to the use of "Cheshire waste" either as the only source of fuel or even as part of the feedstock, as acknowledged by the Council in questioning. The same is true of the consent for the Ineos Chlor EfW facility [**CD/13.2**, para 3.5(d)], which is located in Runcorn and not covered by CRWLP. This EfW plant was originally consented with a condition (No. 57 which ensures that 90% of the waste feedstock comes by rail), although the inquiry was informed that this condition was under consideration for removal/variation). It follows that it must have been envisaged at consent stage that waste would

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have been brought in from considerable distances (given that rail is, in the main, only economic over longer distances).

7.32 The EfW plants that have been permitted in and near Cheshire, just like those permitted elsewhere (e.g. Rookery South & Ferrybridge) are "merchant" facilities i.e. schemes which do not have committed waste contracts in place at the time of the grant of consent; any condition concerning the source of waste (e.g. to tie Cheshire plants to processing "Cheshire waste") would defeat the whole purpose of such schemes and would be anti-competitive. Therefore EfW schemes are often approved without conditions of this nature. Accordingly, there is no guarantee or even proven likelihood that the permitted EfW plants in Cheshire, if built, would process any "Cheshire waste" at all.

7.33 The second point in the Council's case is that it is incorrect that recent Government policy and decisions since the CRWLP was formulated has counted only operational ("existing") EfW capacity, for the reason that until a facility is brought on stream there is no guarantee that it ever will be. Contemporary Government policy on this issue is found in EN-3 [**CD/4.22**, 2.5.67] which refers to "taking into account existing capacity" and EN-1 [**CD/4.21**, footnote 36, page 22], which elaborates the point. Even before these recent policy statements, decisions made by the Secretary of State took a similar tack eg Ineos Chlor [**CD/13.2**, 3.5(d)] and Ince [**CD/13.1**, 6.4]. The IPC's decision in the Rookery South case, which postdates these NPSs, also applies the approach set out in them [**TATA/34**, 5.15]. In these circumstances the approach taken in the CRWLP is out of step with more recent Government policy and should not be followed. Cheshire should not steer a course contrary to the approach adopted nationally by the Government. Neither the Ince Marshes nor the Bedminster (Lostock) facility is operational. Neither of them is actively under construction, although the Council responded in questioning that works to implement the Bedminster facility had been undertaken to keep the permission alive.

7.34 Thirdly, Policy 3 of the CRWLP cross-refers to the (then emerging) RSS and appears to have assumed that RSS would set out some form of capped allocation of EfW for the various component areas (such as Cheshire) in the Region. However, as was seen in the cross-examination of the Council's witness, the subsequently adopted RSS does not set out any such approach and explicitly treats its targets as minima, indicative figures and that meeting or exceeding them is not a reason for refusal [**CD/3.1**, policies EM10, EM13 and EM17]. Accordingly, the earlier CRWLP is out of step with the subsequently adopted RSS and appears to be incorrectly based on an approach not subsequently taken within it.

7.35 Fourthly, the Council's approach that the SEP should be refused because of "over capacity" is not only out of step with the RSS, see above, but also with Government policy in EN-1 which makes it clear that decisions such as this should be made on the basis that the need for energy generating proposals such as the SEP has been established [**CD/4.21**, 3.1.3] and is urgent [**CD/4.21**, 4.1.2]; the reach of this statement explicitly includes EfW [**CD/4.21**, p27] which, as with the other types of energy generating schemes covered by EN-1, has no cap or limit placed upon the overall scale of provision

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CD/4.21, p27]. Government policy does not contemplate that there is any such thing as "over capacity" in relation to EfW.

7.36 In contrast to policy 3 of the CRWLP, modern Government policy does not require the applicants to prove any form of "need" for the SEP in order to gain consent but the applicants have demonstrated that there is a very significant unmet requirement for EfW facilities such as the SEP [**TATA/6**, Section 10.3]. As put to the Council, the constant allowance made year on year for landfill in both the CRWLP [**CD/3.2**, Tables A13/ A14] and the RSS [**CD/3.1**, Table 9.3] has the effect of depressing the extent of EfW which is required. This is out of step with the recent extended definition of Biodegradable Municipal Waste (BMW) to include what was regarded previously as Commercial and Industrial (C&I) waste [**TATA/37**] as well as the targets in WS2007 [**CD/4.3**, e.g. at page 11, item xiv], both of which mean that the CRWLP and RSS allowances for landfill are too high and that these allowances should be reducing year on year rather than remaining constant, which indicates that the current approach by Government is correct.

7.37 The last two of the Council's points which are one in the same or at least very closely related, namely Nearest Appropriate Installation (NAI) and distance. The Council's argument is that given that the SEP is a "merchant" facility without a contractually committed (and local) source of waste fuel, the applicants necessarily cannot demonstrate that the site would be "the nearest appropriate installation" for energy recovery from the waste that would be combusted. Therefore, the applicants necessarily cannot demonstrate that the waste would not be transported over unduly long distances to the plant. It was confirmed during questioning that these arguments stand or fall together. It must be the case that if the SEP complies with the legal framework in relation to NAI (see below), then by definition it could not be found unacceptable on the basis of distance from source of waste to the plant.

7.38 The Council and others' argument concerning NAI appears to be based upon a misunderstanding of the concept, which might well stem from Policy 1 of the CRWLP [**CD/3.2**, p24, policy 1(b)] which refers to the then current concept of disposal in one of the nearest appropriate installations. EfW is not disposal and so this policy does not apply. Exactly the same applies to Policy EM12 of the RSS [**CD/3.1**, p106], which similarly refers to disposal.

7.39 The applicable legal framework is found in Paragraph 4 in Part 1 of Schedule 1 to the Waste (England and Wales) Regulations 2011 (WR2011). This does apply to EfW installations in cases where "the recovery of mixed municipal waste collected from private households" is involved [**CD/2.3**, pp31-32, Schedule 1, para 4 (1), (2), and (3)].

7.40 It is important to understand the legal requirements in such cases. They do not require an applicant for an individual proposal to demonstrate that it would be the, or even one of the NAIs to the source of waste. It would be surprising to find any such requirement, as it would rule out "merchant" facilities (which by their very nature mean that at the time of consideration being given to whether to grant consent the applicant cannot say where the source of the waste would be). As the applicants explained in answer to the Council, until consent has

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been granted E.ON would not be able to go to waste planning authorities and say that this amount of waste is required for a given year.

7.41 The Waste Regulations require that "an integrated and adequate network" of recovery installations is to be established [**CD/2.3**, pp31-32, Schedule 1, para 4 (1)]; that: "The network..." must enable the EU as a whole to become self-sufficient "and to enable the UK to move towards that aim" [**CD/2.3**, pp31-32, Schedule 1, para 4 (2), as qualified by (4)]; and finally that: "The network must enable" recovery "in one of the nearest appropriate installations." [**CD/2.3**, pp31-32, Schedule 1, para 4 (3)]. Thus it is the overall network which must enable recovery in one of the NAI – not that each and every proposal for an EfW facility must demonstrate that it is the (or one of the) NAIs to the eventual source of waste for the plant [**TATA/6**, para 10.4].

7.42 A similar approach was adopted by the IPC in the Rookery South decision [**TATA/34**, 5.29-5.32]. (In similar vein, as the Waste Policy Review 2011 (WRP2011) states: "There is no requirement for individual authorities to be self sufficient in terms of waste infrastructure..." [**CD/4.4**, para 263]). In due course, if as and when a network of EfW plants has been put in place, the SEP at Lostock would be able to play its role as part of this overall network. Accordingly, the SEP is consistent with this concept of NAI.

7.43 The logical consequence of applying the Council's argument concerning NAI / distance is that "merchant" facilities could not be consented. The Council's Committee report refers to "a facility which in waste terms could most likely be located closer to the sources of waste" [**CD/1.149**, 5.20] illustrates the point. However, merchant facilities have been consented habitually (e.g. at Ineos Chlor Runcorn [**CD/13.2**], Ince [**CD/13.1**], Rookery South [**TATA/34**] and Ferrybridge [**CWAC/100**]), which suggests that the Council's argument is not well founded. The approach adopted consistently in these decisions is that the source of the waste feedstock is a matter for the commercial market. If there are delays then more waste ends up in landfill, as DEFRA explained in its letter of support. In the absence of the SEP the waste in question is likely to end up in landfill [**TATA/6b**, Annex C].

7.44 In this case the CHP is needed in a location close to Tata's Lostock works. In order for the SoSECC to agree with the Council's approach it would be necessary for him to adopt an approach which (a) neither he nor the IPC has taken to date, and (b) which would be the opposite of and inconsistent with the approach taken by him and the IPC to date. Unless there is some circumstance of real significance that is present in this case, but was not present in any of the several cases in which merchant facilities have been consented, which justifies taking a wholly different approach here, it would be wrong as a matter of first principles for the Secretary of State to do so. Consistency in making decisions such as these is important in its own right. The Council's suggestion that the proposal would result in "over capacity" but, as discussed above, this is inconsistent with modern Government policy and recent decisions of the Secretary of State and the IPC. There is no Government policy statement or decision that supports the Council's approach to NAI/ distance.

7.45 In addition, although the applicants cannot guarantee the use of rail, since the source is not yet known, the likelihood is that rail would be used extensively

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[**TATA/25** & **TATA/31**] and, as Mr. Sutcliffe agreed on questioning, the opportunity to utilise rail here is a significant consideration in favour of granting consent [**CD/4.21**, 5.13.10].

7.46 In overall conclusion, the SEP complies with national, regional and local waste planning policies. In any event, if and to the extent that there are any inconsistencies with these policies, there is nothing in modern Government policy to suggest that any such policies can conceivably outweigh compliance with and the strong support gained from national energy policies in a case such as this.

Environmental Permitting

7.47 It is also important to consider the separate roles and responsibilities of the consenting regime under s36 of the Electricity Act 1989/s90 of the TCPA 1990 and the EP system. This is because, while the applicants are sure that the SoSECC understands the division, much of the inquiry has been taken up with objections grounded, it appears, on a misunderstanding of what properly lies before the Secretary of State for consideration and determination on this application.

7.48 The applicants' evidence sets out the topic areas covered by the EP [**TATA/8**, 4.1-4.19]. These embrace: use of BAT (Best Available Techniques); management and competency of the operator; accident management; condition of the site; energy efficiency and carbon assessment; use of raw materials and water; avoidance, recovery and disposal of wastes produced; emissions, limits and monitoring; potential emissions to air, water and land, including fugitive emissions, odour and dust, noise and vibration; and, the effect of all emissions on ecological, environmental and human health.

7.49 The aim of the regime is to: protect the environment to achieve statutory and policy targets; effectively and efficiently deliver permitting and compliance procedures; encourage promotion of best practice in the operation of these facilities; and, implement fully the requirements of European legislation, including the protection of human health. In addition, there is a duty to review the permits periodically in order to take account of changes in circumstances such as: new pollution control techniques; better techniques for evaluating environmental risk; and, changes in the ability of the environment to absorb or mitigate pollution.

7.50 EN-1 [**CD/4.21**, 4.10.3] says that it should be assumed that the EP system will operate properly and that the EA will diligently discharge the duties upon it. This approach has been held by the High Court to be entirely lawful [**CD/13.8**, paras 81 and 82 of judgment]. As such, objections founded on assumptions and assertions of the EP being abused or ignored, or the Waste Incineration Directive (WID) limits being regularly exceeded either deliberately or by incompetence are not pertinent to the decision of whether to grant consent. In addition, the assessments of emissions and the operation of the installation similarly and necessarily assume the proper application of and compliance with the EP regime. They also, however, build in degrees of conservatism.

7.51 Thus, for example, the air quality emission models take account of failures and shut downs; they also assume that the emissions are at permitted levels,

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whereas the operation of the EP regime and the approach to BAT means that, in practice, emissions are likely to be somewhere round 10 – 30% of the permitted levels, as in the applicants' response to Mrs Manfredi's questions.

7.52 The expert evidence on air quality has applied tried and tested and accepted methodologies. A great many queries were raised concerning the work, all of which were answered, either when questioned by objectors or in an extensive series of written responses [**TATA/28, TATA/29, TATA/55, TATA/63** & **TATA/81**]. Furthermore, the Council's environmental health officers take no issue with the applicants' case on any of these matters.

7.53 The conclusion on these matters is that very few of the local objectors' points are either relevant or, if relevant, of any weight in the determination of this application.

Government policy and the role of the public inquiry

7.54 Similarly it should be borne in mind what is and what is not within the role of the public inquiry to consider in relation to Government policy. Again, this is because it appears to have been the burden of much of the questioning taken at the inquiry to persuade the Inspector to recommend that published Government policy should be doubted, re-written or set aside. The role of the public inquiry is not to question Government policy, but to judge schemes against it. This is made clear by the House of Lords in Bushell v. SSE [1981] AC 75, [**TATA/49**] per Lord Diplock at page 103:

'*a local inquiry does not provide a suitable forum in which to debate what is in a relevant sense a matter of government policy.*'

7.55 Therefore objectors should not come to an inquiry in an attempt to persuade the Inspector and Secretary of State that the Government is mistaken as to its policy, that the Government should change its policy or that the Secretary of State should disapply the relevant policy as being of dubious wisdom. Further, as is made clear in Bushell, Lord Diplock's observation applies as much to the established assessment methodology advocated by policy as the policy itself. At page 100, he reviewed the attempted challenge to the methodology adopted by the Government for establishing the need for new stretches of motorways:

'*whether the uniform adoption of particular methods of assessment is described as policy or methodology, the merits of the methods adopted are, in my view, clearly not appropriate for investigation at individual local inquiries by an inspector whose consideration of the matter is necessarily limited by the material which happens to be presented to him at the particular inquiry which he is holding. It would be a rash inspector who based on that kind of material a positive recommendation to the minister that the method of predicting traffic needs throughout the country should be changed and it would be an unwise minister who acted in reliance on it*.'

Perceived health effects (Secretary of State's Matter 5)

7.56 Although the applicants recognise the strength of feeling and the genuine nature of many of the concerns expressed, the issue of potential health impacts from the SEP, which has taken up so much of the inquiry, should be recognised for

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what it is - namely an objection based upon a misunderstanding or misapprehension of the proper role of this consenting process. Whether such matters are heartfelt and genuine (e.g. on Mrs. Manfredi's or Mrs. Gamble's part) or driven by CHAIN's campaign against incineration which claims that the SEP "would end up causing damage to ...the health of the people of Cheshire for generations" [**TATA/45**, leaflet dated 15/11/10] and that it would be "potentially lethal" [**TATA/45**, leaflet dated 5/3/10], is not important. The Government and the public health agencies have repeatedly stated that WID-compliant installations (like the SEP) do not endanger public health.

7.57 WS2007 explains that: "Concern over health effects is most frequently cited in connection with incinerators. Research carried out to date shows no credible evidence of adverse health outcomes for those living near incinerators. ..." [**CD/4.2**, 22]

7.58 The recent NPS for Renewable Energy Infrastructure, EN-3, states that [**CD/4.22**, 2.5.43]: "Where a proposed waste combustion generating station meets the requirements of WID [as the SEP would and would have to in order to gain an EP] and will not exceed the local air quality standards [as the evidence in **TATA/8** series and **TATA/55** demonstrates] the IPC [and in this case, obviously, the Inspector and the Secretary of State] should not regard the proposed waste generating [sic] station as having adverse impacts on health."

7.59 The HPA's position in relation to modern well managed municipal waste incinerators is that [**CD/9.9**, summary]: "...any possible health effects are likely to be very small, if detectable..."

7.60 Given statements of this nature, the Secretary of State has concluded consistently that concerns regarding health impacts do not constitute a reason to refuse EfW proposals: for example, the Ince decision [**CD/13.1**, 6.3]. Similarly, the IPC has applied the same approach in the Rookery South decision [**TATA/34**].

7.61 The local PCT has advised in relation to the SEP that [**CHAIN/6b**, Appendix 1]: "... this installation does not present any obvious cause for concern providing it is well managed and maintained." (Inspector's Note: A number of recommendations were made by the PCT, responded to in **TATA/15**. CHAIN requested that these be included as conditions to any approval and they are discussed under the conditions section of this report.) The PCT has maintained their position [eg **MAN/37**] despite repeated efforts being made by objectors to persuade it otherwise. The Council was advised, correctly, by their officers that: "It is ...not considered there is any evidence ...to justify raising objections on health impact grounds.[**CD/1.149**, 5.38]"

7.62 The Secretary of State has consistently concluded that it is the role of the EP regime to ensure the protection of human health [**CD/13.2**, 3.5a], most recently in the Ferrybridge decision [**CWAC/100**, 3.4(a), similar conditions to numbers 68 and 69 in **CWAC/101** on air quality monitoring could be imposed in this case]. The IPC made a similar conclusion in their decision in the Rookery South case [**TATA/34**, 5.97-5.107]. These decisions are consistent with the Government's policy statement in EN-1 [**CD/4.21**, 4.10.3] that decision-makers: "...should work on the assumption that the relevant pollution control

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regime and other environmental regulatory regimes ...will be properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate them."

7.63 Having regard to these statements of Government policy, there is no requirement for the applicants to prove that the SEP would not endanger health The nature of the concerns of the objectors (other than the Council) that the SEP would endanger health is completely contrary to Government policy on the issue, as well as the advice of the HPA and the local PCT. The Secretary of State could not bend to the opposition's case here without disregarding Government policy.

7.64 The Council "requested" the Secretary of State "to ensure the perceived fear of health impacts is fully considered."[**CWAC/3,** p5 item (v)]. This request has been met many times over at the inquiry [**TATA/9** series, **TATA/50**, **TATA/51** & **TATA/65**]. In addition, the applicants have sought to provide reassurance to concerned members of the public by calling an eminent, highly and internationally respected scientist to provide evidence on health issues on the subject backed by other evidence provided by other witnesses who are experts in their respective fields.

7.65 On the other hand the evidence of Mrs Manfredi's medical witness has far less credibility. In his evidence in chief he amended his claim that, like all incinerators, the SEP would cause death on a huge scale (750 people a year [**MAN/8.1**, 1st page of summary] to an even more extreme claim that 2,500 people would die each year as a result of the SEP. There are some 446 of these plants in Europe [**TATA/8c**, Table p4] and if that witness is right they would between them be responsible for well over 1,000,000 deaths a year (1,115,000) and yet there is not a single piece of credible evidence that modern, well run, WID-compliant facilities have caused any serious ill health, let alone a death. The closest one gets is the British Society for Ecological Medicine (BSEM) report which has been comprehensively criticised by the HPA [**TATA/43**] including a clear statement by the HPA that: "...there are no grounds for adopting the "precautionary principle" to restrict the introduction of new incinerators." [**TATA/43**, last para, 1st page]. It was explained to Mrs. Manfredi, that the health claims made are "not biologically plausible."

7.66 The answer to these claims (and to those like Mrs. Manfredi & Mrs. Gamble who have expressed concerns about health impacts) is that there is not a single peer-reviewed research report published in any scientific or medical journal which attributes any cases of serious ill health let alone deaths to modern, WID-compliant, EfW facilities. Mrs Manfredi's witness said, in answer to questions, that he had such reports at home and would provide them to the inquiry. However, they have not been submitted and do not form part of his case.

7.67 Objectors claim that local people perceive that the SEP would endanger their health and are deeply concerned and worried about this. Weight can only be given legitimately to such perceptions, concerns and worries if they are founded upon substantive, rational and credible evidence. No such evidence was submitted to the inquiry. The Government's policy position could not have been stated more clearly and emphatically. The applicants are left with the firm impression that no amount of expert, persuasive, convincing and credible

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evidence would have led objectors to feel reassured. An example of this was shown by Mrs. Manfredi telling the inquiry that she considered the evidence of her medical witness to be more credible than the applicants' health witness. In such circumstances, it is important it is for the Government to take the lead on issues of this nature which is exactly what has happened in the NPS, as discussed earlier.

7.68 The Government's position on such issues is clearly stated. The applicants ask the SoSECC to apply this here just as he has consistently done so over time, most recently in the Ferrybridge decision [**CWAC/100**].

Highways impact (Secretary of State's Matter 6):

7.69 Evidence on this matter for the applicants is in **TATA/7** and **7b**. Although the ES and Combined Environmental Statement (CES) has indicated an expected 2/3rds to 1/3rd split between rail and road deliveries, the traffic impact was assessed on a 'worst case' assuming 100% would come by road [**CD/1.4** (Text) and **1.106 vol1**, both Ch6].

7.70 The traffic generation and distribution have been agreed with the local highway authority and, with appropriate highway improvements secured by the s.106 obligation, it has been agreed that there will be no unacceptable highways impact [**CD15.2**]. As the Council is a unitary body it is also the local highway authority and no objection has been made in terms of highways impact.

7.71 No other expert highways evidence was led at the inquiry. Although doubts were raised by CHAIN, for example, [**CHAIN/6b**, App 7] as to the conclusions reached on road safety, these confused the exercise of comparing the 2016 baseline figures ie 2009 observed plus growth plus committed development [**CD/1.106 vol. 1** 6.81-6.85] to the 2016 'with development' figures ie the above plus the development [**CD/1.106 vol 1**, 6.106-6.110] and the exercise of comparing 2009 observed figures with 2016 with development figures. The applicants explained that the relevant exercise was to compare 'with' and 'without' figures in the agreed assessment year. This is what is done in the ES, the CES and the submitted evidence.

7.72 CHAIN's claims of '100s of HGVs an hour' is incorrect [**TATA/75**]. The development traffic shows hourly figures from (worst case) 22 HGVs in the peak hour to (most likely) 10-12 HGVs in the peak hour [**CD/1.106 vol** 1, Tables 6.11 and 6.12]. In terms of total daily traffic flows at 2016, the increase as a result of traffic from the development are from (worst case) 3.1% to (most likely) 1.7% [**CD/1.106 vol 1**, Tables 6.13 and 6.14]. In that context, with a number of local highway improvements, the highway authority concludes that there is no highways objection.

7.73 The SoSECC should also accept that conclusion.

Visual impact (Secretary of State's Matter 7)

7.74 There is no objection from the local planning authority on the grounds of landscape and visual impact [**CD/15.**1, 6.22-6.32]. The evidence in **TATA/11** and **11b**, draws on the ES/CES assessments done [**CD/1.4 Text**, **CD/106 vol 1**, both Ch 8]. These assessments all accorded with the Guidelines for

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Landscape and Visual Impact Assessment (GLVIA) [**CD/11.5**], the relevant guidance published by the Landscape Institute to provide a structured and objective assessment of potential landscape and visual impacts. The methodology is shown in **TATA/11b**, Appendix 2.

7.75 There are two separate exercises at play: a landscape impact assessment and a visual impact assessment. Both require an assessment of the sensitivity of the 'receptor' (be it the landscape in question, or the visual receptor point) and an assessment of the magnitude of change as a result of the proposal. A matrix then takes those two inputs and identifies the significance of the impact, positive or negative. The definitions of the categories used are set out in the methodology; the judgements made are then tabulated and reported in the appendices [TATA/11b, appendices 4, 6 and 7].

7.76 The existing landscape character is given in the Cheshire Landscape Character Area Assessment [**CD/11.3**] as 'urban' and 'industry' [**TATA/11b**, Fig 8]. Within the Vale Royal Landscape Character Area Assessment [**CD/11.4]** it is down as 'Lostock Plain' [**TATA/11b**, Fig 9].

7.77 The proposal is for an industrial installation on land already used for industry, occupied by and adjacent to existing industrial installations and buildings. As such, though large, it is not out of character or incongruous with the prevailing character of the area and the magnitude of the change it brings about is, against the GLVIA criteria, 'small'. The sensitivity of the landscape is judged against the criteria to be 'low' and so the 'small' magnitude of change gives the resultant effect or impact as neutral [**TATA/11b**, Appendix 4]. If the site and surroundings are viewed, what impresses itself as the character of the area is the dominance of the industrial buildings and installations. These define the character experienced and the main part of the proposal, whilst a big new building, does not alter the essential character of the area.

7.78 There are similar issues with the visual impact assessment, which seeks to identify the magnitude of change to the essential elements and character of the view being experienced by the visual receptor in question. It is not a test of whether the proposal can be seen, or readily seen, but rather, the extent to which the intervention in the view affects the nature of that view and its essential character and elements. The criteria for assessment are set out in **TATA/11b**, Table 8.2 of Appendix 2. Against these magnitudes of change, the visual sensitivity of the receptor is compared and the significance of the changes then derived.

7.79 In addition to taking a range of viewpoints within the theoretical zone of visibility (TZV) [**TATA/11b**, Fig 6], a number of photomontages have been produced to show 'with' and 'without' scenes. The representative nature of the photomontages chosen is a matter of agreement with the local planning authority [**CD/15.1**, para 6.32]. Mrs Green's concerns about the accuracy of the photomontages are addressed in **TATA/71**. In the proof, each of the ES viewpoints (with or without photomontages) have been reviewed and assessed, along with a number of additional viewpoints identified for the purposes of the inquiry and by objectors [**TATA/11b**, Appendix 7, **TATA/38** and **TATA/61**].

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7.80 These show a neutral, a minor adverse or a minor beneficial effect, depending on the location of the viewer [**TATA/11b**, Appendices 6 and 7, **TATA/11**, 10.14-10.45]. In no case, therefore, is there a visual impact which would justify the withholding of the consent sought, and the SoSECC can conclude, with the local planning authority, that this is not a matter which weighs against the proposal. As the SoCG observes: [**CD/15.1**, 6.28] "The area surrounding the application site is characterised by heavy industry, consisting of large buildings, structures and ancillary development including elevated pipework, lagoons and storage areas, and the proposed development should be considered in this context." As the Council's proof of evidence explains [**CWAC/3**, 6.21]: "...it is not considered that the character of the location would be significantly altered to the detriment of the area."

7.81 Any adverse impact does not begin to outweigh the scheme's compliance with energy and waste policies.

Cumulative impact (Secretary of State's Matter 8)

7.82 Within each Chapter of the ES [**CD/1.4 Text**] and CES [**CD/1.106 vol 1**], as relevant to each topic covered, the cumulative effects of the SEP proposal together with the effects of those developments which have the ability to interact with it are assessed as appropriate. In response to the local residents' air quality concerns over a "cluster" of incinerators within this part of Cheshire, these have been specifically assessed [**CD/1.106 vol 2B**, Appendix 7.2]. There are no cumulative effects which justify withholding consent.

Residential amenity (Secretary of State's Matter 9):

7.83 No specific amenity objection has been made by the local planning authority. Objections from local residents which touch upon residential amenity embrace the issues of visual impact (see above), noise and air quality.

7.84 Residential visual receptors were assessed in the ES [**CD/1.4 Text**, Ch 8] and CES [**CD/1.106 vol 1**, Ch8] and the predicted effect was presented in evidence by Miss Betts [**TATA/11** and **11b**, Appendix 6]. This followed the accepted 'GLVIA' methodology, set out above [**CD/11.5**]. The highest impact recorded for residential properties is one of minor adverse/neutral. The nearest residential visual receptor location (Cottage Close; for which the canal footpath at Viewpoint 8 is used as a (nearer) proxy) records a 'neutral to minor beneficial' visual impact [**TATA/11b**, VP8 and Fig 20] due to the replacement of the redundant and degraded 1950's building with an appropriate piece of modern architecture in scale with the surrounding industrial development [**TATA/11**, 10.31].

7.85 Residential noise receptors were assessed in the ES [**CD/1.4 Text**, Ch 12] and the CES [**CD/1.106 vol 1**, Ch 12] and the predicted effect was presented in evidence [**TATA/10** and **10b**]. Receptor locations at Cottage Close, St. Johns Close, James Street and Bowden Drive [**TATA/10b**, Appendix A] were considered on two options: (1) 2/3rd rail; 1/3rd road delivery; and (2) an all road delivery basis. Option 1 records an operational noise exceeding background daytime noise by 1-3 dB ('minor adverse'). Option 2 records daytime operational noise increase of 1-2 dB for Cottage Close and St. John's Close ('minor adverse'), with no daytime operational noise over background at

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Bowden Drive and James Street ('not significant'). Both Option 1 and Option 2 showed no operational noise exceeding background at night for any of the residential receptors ('not significant'). (**TATA/10**, paras 5.24 and 5.33-34 and Tables 4.6-4.7 assumed a =5dB correction adopted as a "worst case for ES purposes but is not expected to be necessary in practice; proposed condition 12 [**TATA/68**] sets the limit at background level.) As BS 4142 considers an operational noise 5dB in excess of the background as being the threshold of 'marginal significance', the SoSECC can be satisfied, as was the local planning authority's Environmental Health Officer (EHO), that these daytime levels of 1-3 dB are not an objectionable impact on residential amenity. In addition, road traffic noise from deliveries by HGV (worst case 100%) has been assessed using the published Calculation of Road Traffic Noise (CTRN) methodology. In all cases this shows results of at least 2dB below the threshold for significance of change [**CD/1.106 vol 2B**, Appendix 12.5].

7.86 Although Mrs Manfredi verbally complained about vibration from the trains on the existing railway link to the works, general vibration from the proposal was able to be screened out entirely [**CD/1.106, vol 1**, para 12.23].

7.87 For air quality, residential receptors in the vicinity of the SEP were identified and assessed. This is shown in the ES and the CES [**CD/1.4 Text** and **CD/1.106 vol 1**, both Ch7] and was given in evidence [**TATA/8** and **8b**]. The receptor locations are shown on Fig 1 of TATA/8b and the final results for each are tabulated at Appendix 7.1 to the CES [**CD/1.106, vol** 1]. In all cases, the predicted environmental concentration (the 'PEC' i.e. background plus process contribution) is less than the relevant Environmental Quality Standard [**CD/1.106 vol 2B**, Table 7.5].

7.88 In addition, the results for both stack and traffic contributions from the development, together with the background levels for both nitrogen dioxide (NO_2) and particulate matter with a diameter of up to 10 μm (PM_{10}) have been assessed for each of the residential receptors. These are tabulated in **TATA/8**, para 6.18, Tables 6.6 and 6.7 and in every case they remain significantly below the 40 µg.m-3 Air Quality Standard objective. As explained in answer to the Inspector, the traffic contribution would have to be increased x5 of that assessed in order for the need on the authority's part to consider an AQMA to be triggered.

7.89 None of this modelling has been credibly challenged and the SoSECC can be confident that, as found by the local planning authority, there will be no material diminution of residential amenity by virtue of air quality impacts, either from the operation of the plant, including its stacks, or from the road traffic associated with the development.

Other matters: (i) Nature Conservation

7.90 The local planning authority has not objected on the grounds of nature conservation interests [**CD/15.**1, para 6.42]. Natural England and the local Wildlife Trusts similarly have no objection. The ES and the CES respectively cover the topic and conclude no significant effect; indeed, both record a 'neutral' effect [**CD/1.4** and **CD/1.106**]. The evidence in the written report [**TATA/12** and **12b**] brought the inquiry up to date in respect of the position of

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the statutory consultees. They have concluded that there are no outstanding ecological matters which need to be considered [**TATA/12b**, Section 6].

7.91 It is submitted that the SoSECC can conclude that there are no nature conservation impacts which weigh against the grant of consent.

Other matters: (ii) Historic Environment:

7.92 The local planning authority has not objected on the grounds of impact on the historic environment. The ES and CES [**CD/1.4 Text** and **CD/1.106 Vol 1**, both Ch13] consider the potential impact on heritage matters and conclude that there will be no significant effects, indeed all are recorded as 'neutral'.

7.93 The only relevant designated heritage asset in the terms of Planning Policy Statement 5: Planning for the Historic Environment (PPS5) is the Trent and Mersey Canal CA. The application site sits in the setting of this. The SoCG [**CD/15.1**, 6.44] records that there would be no substantive change to the setting of the CA, since the setting is already dominated by existing industry.

7.94 At the request of the Inspector, the references are pulled together in **TATA/40**, together with the references to the assessments on the setting of the CA. This also contains the most recent position of British Waterways (BW), which expresses itself as being satisfied that the proposed canal-side treatment is acceptable.

7.95 The overall impact on the CA is considered to be neutral and not to weigh against the grant of consent.

Other matters: (iii) Human Rights

7.96 Mrs Manfredi (and others) took an objection in respect of alleged impact on a variety of Human Rights [**MAN/4 series**]. Mrs Manfredi alleged contravention of Article 1 (obligation to respect human rights), Article 2 (right to life), Article 3 (prohibition of torture), Article 6 (right to fair trial), Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination) and 2nd Article to the First Protocol (right to education). However, Articles 1, 3 and 6 were not individually pursued in evidence [**MAN/4.2**].

7.97 These alleged impacts all stemmed ultimately from the alleged health impact. They must similarly fall with it.

7.98 To the extent that the alleged impacts are said to stem from alleged environmental pollution falling short of endangering health, although it is not clear that this lesser claim was formally made, there is useful analysis of the approach taken by the ECtHR, in many of the cases set out in **MAN/4**, conveniently set out in 'Environmental Judicial Review' [R. Moules, 1st Edn, 2011, Hart Publishing] [**TATA/74**] at pp. 280-286. The emphasis of the ECtHR is on severe environmental pollution, and emissions 'well above' safe levels identified in the relevant standards. That is very different from the WID-compliant/EP-controlled operation under consideration here.

7.99 If the objection is more properly characterised as one on Government policy in respect of how to consider the health implications of EfW combustion installations, not only do the applicants rely on the Bushell case, supra, but

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there is also useful dicta in the ECtHR Grand Chamber Hatton case concerning the width of the margin of appreciation available to the State in policy questions such as the protection of public health [**TATA/59**]. It should be noted that the 2001 Hatton judgment of the Chamber of the ECtHR, cited at **MAN/4**, 4.3.2, was overturned by the ECtHR Grand Chamber judgement of 2003, where it was found that that there was no breach of Article 8 (right to private life) and the breach of Article 13 (effective remedy) was the pre-enactment of the Human Rights Act, in contrast to **TATA/58** and **TATA/59**.

7.100 There can be no doubt that the Government has properly turned its mind to the question of potential health impacts and has concluded that the evidence points to there being no material health implications for a WID-compliant incinerator, for example, **CD/4.22**, 2.5.43.

7.101 In short, there is no separate Human Rights issue in play and the SoSECC can record that there is no reason, by reference to alleged breaches of Human Rights, for consent to be withheld.

Other Matters: (iv) Broadthorn and Edelchemie

7.102 Both of these objections arise from concerns over private law rights of access. The rights originate in the transfer deeds by which Broadthorn and Edelchemie acquired their land. The covenants allow for equally commodious diversions provided adequate access is maintained.

7.103 As a private law matter, Tata had always intended to ensure the requisite access during and after construction. It may be that these two objectors have not fully appreciated the level of detail in the planning drawings compared to those used at construction stage.

7.104 The concerns have been responded to in **TATA/54**, which sets out the terms of the rights of way and the transfer plan and illustrative plans showing how, in practice, access can be maintained. Indeed, the provision of a two-way access road is in excess of the private law rights available to Edelchemie and was introduced specifically following discussions with Edelchemie concerning the additional vehicles proposed to use that route and examined during the questioning of their witness during the inquiry. The applicants are willing to have imposed the two conditions set out in **TATA/54**, para 5. These provide for details to be submitted to and approved by the local planning authority.

7.105 Following receipt of **TATA/54**, Broadthorn withdrew its objection [**BROAD/3**]. Further, Edelchemie, in questions to their witness on Day 16 of the inquiry, confirmed that it had no objection as to the provision of the access road with the imposition of the conditions proposed in **TATA/54**,. As to the maintenance of access during construction, the applicants do not consider that a planning condition is necessary, as the matter is adequately secured by the private law rights. However, Edelchemie proposed a further condition which it indicated would satisfy its objection [**EDEL/3**, 2.5].

7.106 Edelchemie also originally objected on the basis that it thought the train trucks would oversail its land. This was at a point outside the proposed works (i.e. it is the current track layout used by the current rail deliveries to Tata), but in any event, Edelchemie have subsequently withdrawn that objection following receipt

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of **TATA/47** which shows the distances measured and diagrammatically, following questions to their witness on Day 16. Instead, concern is raised over possible derailment and explosions.

7.107 It must be recalled that the Government promotes the transport of waste by rail and there is no evidence that such events are in any sense likely or in need of further control. As such, applicants do not consider that any further conditions are necessary, but Edelchemie has put forward an additional condition which would overcome its objection [**EDEL/3**, 3.11-3.12] by providing for emergency access routes. The applicants are content with such a condition, if judged necessary, provided it is confined to the application land and said so during the Conditions session of the inquiry.

Other Matters: (v) Miscellaneous

7.108 Conditions (largely agreed between the applicants and the Council) and the planning obligation (with the wording agreed by the Council) have been discussed in the usual manner at a session towards the end of the inquiry.

7.109 Throughout the course of the inquiry, both during cross-examination of the applicants' witnesses and outside that process, numerous issues have been raised by local people/ groups, often of a technical nature, on which they have needed further information or clarification on the matters under consideration.

7.110 The applicants have answered or at least responded to this flow of additional material. This has resulted in a considerable number of TATA series documents responding to objectors' documents and queries. Where relevant, we have tried to tie these loose ends into the submissions above, but **TATA/77** is a more comprehensive 'ready reckoner' to link these disparate documents together. Local issues, including investment and employment, are covered in **TATA/13**, paras 9.24-9.25 and conclude that the plant is a significant investment in the local area, which would allow Tata to remain competitive, as a significant employer in the local area.

7.111 All this can be set in context by recalling that the Council confirmed during questioning that any and all additional points raised by local objectors either individually or cumulatively do not amount to a sound basis upon which to refuse consent.

Striking the balance:

7.112 EfW schemes like the SEP attract a significant amount of local opposition, especially when there are well-organised campaigns, which focus on health issues. Complaints about lack of adequate consultation, as made repeatedly in this case, are regarded by the applicants as ill-founded [**CD/1.9** and in questioning]. The five week inquiry allowed ample time to examine and challenge the applicants' case and to present a counter view.

7.113 As the Energy White Paper explains schemes like the SEP "may not always appear to convey any particular local benefit, but they provide crucial national benefits.....the benefits to society and the wider economy as a whole are significant and this must be reflected in the weight given to these considerations by decision makers in reaching their decisions." [**CD/4.1**, pp157-8, box 5.3.3]

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Since then, the Government has stated its position in even more emphatic terms in EN-1 & EN-3 such that, as discussed earlier on, the SEP benefits from a double presumption in its favour.

7.114 The point put shortly is that compliance with national energy policies is the single most important consideration in this case and is of decisive significance.

7.115 The applicants commend the proposals and ask the SoSECC to grant consent.

8. The case for Cheshire West and Chester Council

Introduction

The material points are:

8.1 The Council resolved via its Strategic Planning Committee on 10 February 2011 to object to the proposal which is before this inquiry. The particular grounds of objection are set out above and also included the need to consider the perceived fear of health impacts, which did not amount to an objection by the Council.

8.2 The Council's objections were rooted in waste management policy, specifically, as breaches of policy EM12 of the RSS [**CD/3.1**] and policies 1, 2, 3 and 34A of the CRWLP [**CD/3.2**]. The Council recognised that the proposal is in accordance with energy policy, as set out in the Committee Report [**CD/1.149**, para 5.14]: "it is considered that the proposal would be beneficial both locally for the applicant and nationally in terms of providing an additional source of energy. The proposal appears to accord with energy policy requirements. As such this is a significant factor weighing in favour of the proposal." However, the overall balance which was struck in the report was that the conflict with waste planning policies was determinative. That remains the Council's case.

8.3 The Council has not objected on any specific impact grounds. It raises no issue in respect of air quality, noise, landscape and visual impact, ecology and highway capacity/safety (subject to appropriate conditions [**TATA/68**] and the provision of the section 106 obligation [**TATA/60**]). Ultimately, the area of disagreement between the Council and the applicants may be summarised as the conformity of the proposal with waste management policy and the weight to be attached to any lack of conformity in the overall balance taking account of the proposal's conformity with energy policy.

The waste hierarchy

8.4 One aspect of the Council's first ground of objection, drawing on policy 1 of the CRWLP, was that the application had not demonstrated that the proposal would maximise opportunities for waste to be managed in accordance with the waste hierarchy. The fourth ground of objection also focused on the waste hierarchy and drew on policy 34A of the CRWLP in contending that the application did not adequately confirm that the waste stream to be used had already been subject to suitable measures of source separation of recyclate and/or treatment and recovery of recyclables prior to thermal treatment. The importance of ensuring that EfW schemes accord with the waste hierarchy is not just a requirement of the CRWLP but is a matter of fundamental concern in national policy documents as well [**CD/4.22,** paras 2.5.2, 2.5.64, 2.5.66 and 2.5.70] and is included in he

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WPR2011 [**CD/4.4**, para 22 of the executive summary] which explains that the Government's "aim is to get the most energy out of genuinely residual waste, not to get the most waste into energy."

8.5 The Council's concern in relation to the waste hierarchy has now been satisfied if, and to the extent that, a condition providing for a residual waste acceptance scheme to ensure the achievement and maintenance of the waste hierarchy is imposed. Whilst the applicants had originally resisted the imposition of any such control [**TATA/6**] a residual waste acceptance scheme condition is now proposed and a form of condition acceptable to the Council has been agreed [**TATA/67**].

8.6 The applicants' change of stance in relation to the imposition of such a condition was founded on the Rookery South decision of the IPC [**TATA/34,** para 5.27]. It is to be noted that the IPC concluded that only with the residual waste acceptance requirement in place could it be "satisfactorily assured that the proposal would conform to the waste hierarchy". In addition, the imposition of such a control has now become a consistent feature of recent decision-making in EfW cases as reflected not just in the Rookery South decision but also in the Severnside decision [**CD/13.7**] and the Ferrybridge decision, [**CWAC/100**] and [**CWAC/101**]. The condition used in the last-mentioned case has now provided the model for the condition proposed in this case [**TATA/67**] in replacement of the earlier suggested condition [**TATA/44**] based on the residual waste acceptance requirement imposed in the Rookery South case.

8.7 In the Severnside decision the Inspector recorded [**CD/13.7,** report para 259] that (in relation to a scheme which was primarily to deal with C & I waste) "in order to encourage as much movement up the waste hierarchy as is reasonably practicable, SITA (the applicant) have agreed to operate a waste acceptance scheme that is designed to ensure that recyclable material would be separated out before delivery." The Inspector considered such a condition against the guidance in circular 11/95 and regarded it as appropriate [**ibid**, report, paras 255 & 256] and for his part the Secretary of State for Communities and Local Government (SoSCLG) considered that the condition was reasonable and necessary and met the tests of the circular [**ibid,** decision, para 22].

8.8 Likewise in the Ferrybridge decision [**CWAC/100 & CWAC/101**], the SoSECC endorsed as a condition attaching to a deemed grant of planning permission under section 90(2) of the Town and Country Planning Act 1990 a similar type of condition. The condition in question (No. 65) provided for a "scheme setting out arrangements for the maintenance of the waste hierarchy in priority order by minimising recyclable and reusable waste received as a fuel feedstock". The decision letter stated (in paragraph 3.4(d)) that the condition would "ensure that the amount of recyclable and reusable waste received as a fuel feedstock during the operational life of the Development is minimised, in line with the waste hierarchy."

8.9 It is submitted that these recent cases illustrate that none of the points originally raised by the applicants [**TATA/6**] against the imposition of such a condition has held particular sway with recent decision-makers. The view that achievement of the waste hierarchy is sufficiently secured by existing regulation of MSW and present commercial incentives to recycle C & I waste has not

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prevented the imposition of the condition in question in recent decisions. It is also right to note that these decisions have not voiced concern that the principle of non-duplication would be infringed because the EA has the ability to control the waste feed with the objective of ensuring achievement of the waste hierarchy via the EP process. The consistent trend of the more recent decisions should be preferred to the other decisions referred to in **TATA/6** (such as Ardley [**CD/13.6**] or Eastcroft [**TATA/6b**, appendix G]). It is submitted, therefore, that there need be no concern about the appropriateness of the imposition of a residual waste acceptance scheme condition in this case.

Nearest appropriate installations and unnecessary carriage of waste over long distances

8.10 The Council's first ground of objection included the contention that the application had not demonstrated that waste would be disposed of at one of the nearest appropriate installations (in breach of policy 1 of the CRWLP and policy EM12 of the RSS) and that the application did not ensure that the waste management facility was sited in such a way as to avoid the unnecessary carriage of waste over long distances (in breach of policy EM12 of the RSS). The reference to waste not being "disposed of" at one of the nearest appropriate installations should, of course, be treated as a reference to waste not being "recovered" at one of the nearest appropriate installations. The Council does not dispute that the proposed SEP would be a recovery and not a disposal operation.

8.11 The questions of whether the development under consideration represents one of the nearest appropriate installations for the recovery of waste and whether it would avoid the unnecessary carriage of waste over long distances are conveniently dealt with together. As the Council's witness recognised in questions, *if* the proposed SEP were to represent one of the nearest appropriate installations for the recovery of waste, then it could not be said that its siting was such that it would give rise to *unnecessary* carriage of waste over long distances and refusal of consent could not, therefore, be justified on that latter ground. To that extent the 2 questions represent opposite sides of the same coin and may thus be said to stand or fall together.

8.12 The Council's case is that the fact that the waste for the proposed SEP may be sourced from all over the country leads inevitably to the conclusion that it simply has not been demonstrated either that the waste would be recovered at one of the nearest appropriate installations or that the unnecessary carriage of waste over long distances would be avoided (and/or that the distance for transporting waste is minimised in accordance with policy 27 of the CRWLP). The potential prospect of some two-thirds of the waste being imported from a distance in excess of 70 miles does little to alleviate the Council's concern.

8.13 The requirement that waste be recovered in one of the nearest appropriate installations is founded on article 16(3) of the rWFD. This provides that the integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households required by article 16(1) "shall enable waste to be disposed of or waste referred to in paragraph 1 to be recovered in one of the nearest appropriate installations". This requirement is reflected in paragraph 4(3) of

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Part 1 of Schedule 1 to the WR2011, which similarly provides that the "network must enable waste to be disposed of and mixed municipal waste collected from private households to be recovered in one of the nearest appropriate installations".

8.14 The applicants' first claim in relation to this matter [**TATA/6**, paras 10.4.1, 10.4.4 and 11.4.3ii] is that the principle embodied in article 16(3) and paragraph 4(3), be it described as self-sufficiency or proximity, is to be applied at a national level. This is not accepted by the Council. If by application of the principle at the national level it is meant that waste will be recovered at one of the nearest appropriate installations provided that the source of the waste and the location of its recovery each fall within the same member state, the principle seems to be devoid of substantive meaning. It is also not easy to see why, given that the application of the principle that waste should be disposed of at one of the nearest appropriate installations has been a facet of local policy (in policy 1 of the CRWLP [**CD/3.2**]), any different approach should be applied in respect of waste recovery. Moreover, the contention that the principle should be applied at the national level appears to pay little regard to the fact that, as the Council points out, MSW and C & I waste arise all over the country so that the question of what is one of the nearest appropriate installations for their disposal or recovery has every claim to be approached on a more local level. That is to be contrasted with more specialised waste streams which might arise in fewer and with more distance in between them with correspondingly greater scope for a facility to be considered one of the nearest appropriate installations on a wider or national basis.

8.15 The Rookery South decision [**TATA/34**] supplies valuable clarification of the view of the IPC on this matter. In para 5.32, the IPC stated that it seemed to them "that policies which promote waste disposal self-sufficiency within one administrative area (be it a region, a county or a smaller area) have their place, but it should not be applied to prevent the transfer of waste for treatment across administrative boundaries. Indeed, where treatment facilities are located close to an administrative boundary, preventing waste from crossing that boundary could work to prevent its treatment at one of the nearest appropriate installations. Such an outcome would be in conflict with the Waste Regulations. With a location such as that offered by Rookery South it would not make sense to allow the proposed plant to accept waste from, say, Luton (a distance of some 33km but within the area covered by the Bedfordshire and Luton Minerals and Waste Local Plan) while precluding it being accepted from parts of Milton Keynes, which is nearer, but outside the local plan area."

8.16 In this passage the IPC clearly rejected the view that the principle that waste was to be recovered in one of the nearest appropriate installations was to be applied at a national level. Their concern was that the principle, when invoked at a more local level, should not be applied rigidly by slavish adherence to administrative boundaries in a way which would defeat its purpose. There is no question of any such application of the principle in the present case by the Council. The IPC's approach to the matter fits comfortably with the statement in WPR2011 [**CD/4.4**, para 263] which advises that there is "no requirement for individual authorities to be self-sufficient in terms of waste infrastructure and transporting waste to deliver the best environmental solution should not be

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considered a barrier." This is far from saying that the principle can only be applied at a national level.

8.17 By way of a variation on the theme of application of the principle at the national level it was put in questions to the Council's witness that paragraph 4(3) of the WR2011 related to the network, the implication apparently being that the objective sought to be achieved applied at that level alone and not at the level of individual proposals. It is, however, difficult to understand why that should be the case as the achievement of the requisite integrated and adequate network of installations will necessarily be the product of both plans for such installations and individual proposals for the same.

8.18 Another general point taken on behalf of the applicants relates not to the question of the proper reach of the nearest appropriate installation principle but to the question of the match of that principle with the commercial realities of the case. It is argued that, as the proposal is for a "merchant" facility, it is necessarily the case that contracts to provide waste for the proposed SEP are not in place so the source of waste to feed the plant and the distance it will travel cannot be identified. It is said that there is no decision in relation to a merchant facility, whether with or without CHP, which has been refused on the grounds that the proposal was not able to prove that it represented the recovery of waste at one of the nearest appropriate installations. The high water mark of this type of approach may be seen in the Inspector's report for the Ince Marshes decision **[CD/13.1**, para 11.125] which dismissed the concerns of local objectors and the borough councils in relation to the long distance movement of waste with the declaration that "as a merchant facility responding to the market it is clear that it would not be appropriate to seek to control the origins of waste by condition or legal obligation."

8.19 However, there is a clear need for a note of caution in relation to this argument. If the logic of the argument is to claim that merchant facilities escape the need for the application of accepted waste principles because of the market model they embody, that would, as the Council's witness responded during questions, amount to putting to one side a whole swathe of planning policy in its effect. It is also instructive to have regard to the Rookery South decision [**TATA/34**, para 5.26] where the IPC expressed concern that, in the absence of any secure contracts from the municipal waste sector, the result could be that the plant would operate with a very high proportion of C & I waste. This concern was expressed in the context of the waste hierarchy rather than in relation to any issue bearing on the question of nearest appropriate installation but does demonstrate that the absence of contracts may, indeed, generate legitimate concerns of principle.

8.20 The applicants also naturally placed reliance on the fact that the role of the proposed SEP is to supply steam to Tata's Lostock works and so must be located there because that is where the energy demand arises. That proposition as such is not to be doubted and is clearly a material consideration to be placed in the overall balance. However, it is not to be equated with a demonstration of the proposal being one of the nearest appropriate installations. The servicing of Tata's energy needs goes to the appropriateness of the installation. It does not go the question of whether it is one of the nearest such installations. The relationship expressed in that requirement is one between the recovery facility

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and the source of the waste, not between the recovery facility and the source of the energy demand.

8.21 One other general point in relation to the issue of nearest appropriate installation is that a demonstration of a positive carbon balance should not be viewed as a substitute for a demonstration that the requirement that waste is recovered at one of the nearest appropriate installations is met.

8.22 Turning to a more specific matter, one of the main arguments raised against the Council on behalf of the applicants, in questions to our witness, was that, if the point taken by the Council were a good one, then it would have found expression in the Ineos, Ince and Rookery South decisions in the form of some kind of restriction tying down the waste sources in those cases but no such restriction was ever imposed. It is said that this is so because the same sort of point raised by the Council in the present case was raised in various ways in the Ineos, Ince Marshes and Rookery South cases. It is true that the same sort of point raised by the Council in the present case was raised by way of objection in each of the Ineos, Ince Marshes and Rookery South cases but it is submitted that each of those cases is clearly distinguishable and that they provide no sure guide to the present case.

8.23 In respect of the Ineos decision [**CD/13.2**], 3 points should be noted. First, the decision did not involve the holding of a public inquiry so matters were not argued out. Secondly, the decision is dated 16 September 2008 and thus pre-dates the rWFD of 19th November 2008 which specifically extended the principle of dealing with waste at one of the nearest appropriate installations from waste disposal alone to waste disposal and waste recovery. The decision was not, therefore, required in terms to grapple with the issue of waste recovery at one of the nearest appropriate installations. Thirdly, whilst it plainly appears from the decision letter (at paragraph 3.5(d)) that concerns were raised that the size of the proposal could lead to waste coming from outside the north west region, it is equally plain (ibid) that the Secretary of State, notwithstanding his statement that sourcing of fuel was a commercial matter for the applicant, placed at least some weight on the fact that the applicant's stated intention in the ES in that case was to source waste from the north west region and that it would be tendering for local contracts only. As the Council's witness pointed out during questions, the key customer was Greater Manchester. The present case is clearly different because the stated intention here is to source from whatever market opportunities present themselves.

8.24 In respect of the Ince Marshes [**CD/13.1**] decision it is noteworthy that the inspector's report is dated 3rd October 2008. Again, therefore, the Inspector's consideration of the matter pre-dated the rWFD's application of the principle of dealing with waste at one of the nearest appropriate installations to waste recovery operations.

8.25 Turning to the Rookery South decision [**TATA/34**, para 5.17], the waste catchment area put forward in that case embraced (as appears from paragraph 5.16 of the decision letter) part of the South East and East Midlands regions as well as that part of the East of England region in which the proposal was located, although the proposal was undoubtedly intended to serve the waste disposal needs of the Bedfordshire and Luton areas in the first instance. The

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waste catchment area that the IPC was faced with in that case was, therefore, considerably more restricted than the potential national reach of the proposal before this inquiry.

8.26 Whilst the Council recognises [**CWAC/3**] that the use of rail to transport waste could make the proposal less unacceptable (rather than make it acceptable) it does not consider that the ability to move waste to the SEP by rail has been sufficiently demonstrated to attach significant weight to this mode of transport as a mitigating factor. The economics of moving waste may well favour rail for longer distance transport. However, in terms of the availability of rail terminals to load waste, the Victa Railfreight Limited study [**TATA/31**] (relied on by Mr Hutchings for part of his analysis) is a relatively slight piece of work which was purely desktop in nature, had not been discussed in any detail with terminal operators and had involved only limited research into any planning, environmental or commercial reasons which might prevent the handling of waste traffic. Moreover, the Council's witness also demonstrated that there is a limited pool of waste disposal authorities who might actually be able to provide inputs for the SEP. The applicants' note on the movement of waste by rail [**TATA/25**] does not engage with this point. Our witness also pointed out that the shorter term nature of contracts which are a feature of C & I waste management (see cf. EN-3 [**CD/4.22,** para 2.5.19] which refers to contracts to manage private sector waste generally being shorter) may make the use of rail less likely for this waste stream.

Failure to demonstrate inadequacy of existing capacity to meet waste management needs of the sub-region

8.27 The Council's third ground of objection was that the application had not demonstrated that existing capacity was inadequate to meet the waste management needs of the sub-region. It is common ground between the main parties that the administrative area of the former Cheshire County Council represents the sub-region for these purposes.

8.28 This objection is rooted in policy 3 of the CRWLP [**CD/3.2**] which, so far as relevant, provides that an application for a new thermal treatment facility must demonstrate to the satisfaction of the waste planning authority that the existing capacity is inadequate to meet the waste management needs as described by the waste management strategy of the RSS confirmed by the Secretary of State. The explanatory text to the policy makes it clear that the reference to "capacity" means the maximum throughput of thermal treatment plants with planning permission. This text also explains the rationale of the policy which is that an oversupply of thermal treatment capacity may act as a disincentive to recycling and other forms of sustainable waste management whilst a local surplus of capacity, which exceeds that required to meet local needs, also has the potential to generate unsustainable movements of waste contrary to the management of waste at the nearest appropriate facility.

8.29 The CRWLP and the policies within it, including policy 3 and its accompanying explanatory text, were subject to the normal process of independent examination applied to the making of development plans. Moreover, the local plan Inspector dealt specifically with the plan's choice of thermal treatment plants with planning permission as the benchmark of capacity and

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recommended in his report that, as that was so, the text should say so [**CD/3.3,** paras 5.35 and 5.37]. It is also relevant to note that, in the Ince Marshes decision, while the focus was on policy 6 of the CRWLP, the Inspector stated in his report, after noting that the adoption of the CRWLP post-dated publication of PPS10, that he did not construe policy 6 "*or any other policies of that plan* [emphasis added] as putting forward policies that run counter to the national policy as set out in PPS10." [**CD/13.1**, para 11.89**]**

8.30 There can be no doubt that, in the terms of policy 3 of the CRWLP itself, the present proposal is contrary to that policy. The applicants' waste policy witness eventually appeared to accept as much. The evidence in **CWAC/3** shows that thermal treatment capacity with planning permission in the relevant area (the former Cheshire County Council area) amounts to 750,000 tpa, comprising 600,000 tpa of consented capacity at Ince Marshes and 150,000 tpa of consented capacity at the Bedminster facility. On the Council's approach, the waste treatment needs of Cheshire are 385,000 tpa (including C&I waste and further treatment needs for MSW) when using the RSS figures and the energy recovery requirement derived from the CRWLP is a very similar figure of 387,401 tpa. Adding the capacity of the proposed SEP at 600,000 tpa to the existing consented capacity of 750,000 tpa produces a capacity of 1,350,000 tpa. Therefore, as the Council point out, with need in the region of 385,000 to 387,000 tpa, the result of consenting the SEP would be to produce in the broad region of 3½ times the required capacity. No material difference is made to this outcome by the use of the applicants' figure of 392,689 tpa of waste arisings in Cheshire requiring to be diverted from landfill.

8.31 The applicants' need figures, derived from a road based study area or a national study area, have no development plan basis and any assessment of need on a national basis would suffer from the flaw of being capable of justifying provision anywhere in the country. Moreover, in the light of the scale of the divergence between Cheshire's requirements and Cheshire's capacity, the applicants' point that the RSS figures for waste management requirements are "indicative" carries no force at all. In similar vein, the fact that the CRWLP (and RSS) contains a static rather than (as post-plan developments would suggest) a reducing requirement for landfill capacity in respect of C&I waste has no material bearing on the scale of the surplus capacity which arises in this case or to any other point of principle.

8.32 The applicants seek to diminish the significance of the conflict with policy 3 of the CRWLP on a number of grounds. One line of attack seeks to claim that the Council, through the application of policy 3 to this case, is acting in conflict with the CG to PPS10 [**CD/4.15,** para 7.27] which indicates that the requirement in PPS10 for there to be sufficient provision of waste management facilities is not intended as a rigid cap on the development of waste management capacity. However, it is simply not right to characterise the Council's objection in relation to excess thermal treatment capacity in this case as the application of a rigid cap. As our witness pointed out, when questioned, it would be poor planning, if capacity was capped at 100 units, to refuse consent on the basis that a proposal brought forward 110 units. To act in that way would be to impose a rigid cap. That hypothetical case is, however, not this case. Here the over-provision is in the order of 3½ times the required capacity.

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8.33 No particular attempt has been made to question the consistency of policy 3 with national waste planning policy in PPS10 itself. That is as it should be. The CRWLP was adopted after the publication of PPS10 and its policies, including policy 3, were the subject of proper independent scrutiny. There is no reason to think that such scrutiny would not have extended to consistency with PPS10.

8.34 It is not surprising, therefore, that the applicants have concentrated their attack on policy 3 by drawing attention to energy policy formulated after the CRWLP was adopted and to recent EfW decisions. The main line of this attack appears at times not to have been directed at the principle of a policy seeking to restrict capacity but on policy 3's use of consented rather than operational provision as a measure of present capacity. However, the principle of seeking to restrict capacity at all also seems to be questioned and, therefore, it is necessary, before turning to the issue of consented versus operational capacity, to address the principle of a policy which seeks to restrict thermal treatment provision for waste in order to avoid over-capacity. In this connection the applicants have more than once drawn attention to paragraph 3.1.3 of EN-1 [**CD/4.21**] which states that "the Government has demonstrated that there is a need for those types of infrastructure [sc., those covered by the energy NPSs, including EfW] and that the scale and urgency of that need is as described for each of them in this Part." However, the absence of a requirement for a demonstration of energy need is not the same as condemning a waste policy which seeks to avoid over-capacity of waste management provision.

8.35 Moreover, when account is taken of EN-3 [**CD/4.22**] it is abundantly clear that assessment of the impact of waste combustion generating stations on local waste plans, including issues of capacity, is an integral part of the decision-maker's evaluation. Thus paragraph 2.5.66 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"* [emphasis added]. Paragraph 2.5.67 states that "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"* [emphasis added]. Paragraph 2.5.70 indicates that "the IPC 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 scale and type so as not to prejudice the achievement of local or national waste management targets in England"* [emphasis added]. EN-3 thus directs the decision-maker to local waste policy but does not seek to prescribe the content of the latter. It also makes it clear that capacity issues are relevant in principle. The issue of what is meant by "existing" capacity in paragraph 2.5.67 is a separate question dealt with below.

8.36 Paragraph 3.1.2 of EN-1 [**CD/4.21**] has also featured in the debate. That paragraph states that the "Government does not consider it appropriate for planning policy to set targets for or limits on different technologies." Similarly, paragraph 3.3.24 states that it "is not the Government's intention … to set targets or limits on any new generating infrastructure to be consented in accordance with energy NPSs." It is submitted that these expressions of policy must also be read with the specific guidance in EN-3 **[CD/4.22]** set out above

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very much in mind. Whilst it may not be the Government's intention to set targets or limits on new generating infrastructure, it is plain from EN-3 that it is equally the Government's position that locally set waste management targets must be considered.

8.37 It is also submitted that neither policy EM10 of the RSS [**CD/3.1**] (regional waste targets to be exceeded where practicable) nor EM17 (meeting renewable energy targets not a reason to refuse otherwise acceptable development proposals) should be read as in some way under-cutting policy 3 of the CRWLP.

8.38 Turning to the question of consented versus operational capacity, the applicants place reliance on 2 matters in the EN series to argue that the approach of national policy to the issue of existing capacity is to have regard only to operational capacity and not consented capacity. The first matter relied on is footnote 36 in EN-1 [**CD/4.21**] which states that "the Government is aware that there are also a number of energy projects (approximately 9 GW in total as of April 2010) that have obtained planning permission, but have not as yet started to be built. As we cannot be certain that these projects will become operational, the Government considers that it would not be prudent to consider these numbers for the purposes of determining the planning policy in this NPS." As the Council's witness pointed out when questioned, this footnote refers to energy capacity not waste capacity and it is possible for a local waste plan to take a different approach to waste treatment capacity. Moreover, it can hardly be said to be the role of this footnote to advise on the approach to be taken by waste local plans to the question of what should count as existing waste treatment capacity.

8.39 The second matter relied on is the reference to "existing" capacity in paragraph 2.5.67 of EN-3 [**CD/4.22**]. One might agree that the reference to "existing" capacity is more naturally read as a reference to operational rather than consented capacity but, as the Council's witness pointed out when questioned, no definition is proffered and "existing" could mean "permitted". Moreover, it might be doubted to what extent the issue of consented versus operational capacity was in the minds of the authors of this part of the NPS and, again, the document is not seeking to offer guidance on the content of local waste plans. Whilst it was accepted that, on a strict reading of the NPSs, the capacity issue was treated differently in policy 3 of the CRWLP, it is submitted that the weight attached to that policy should not on that account be downgraded when it was not the task of the passages relied on in the NPSs to provide guidance on the contents of local waste plans. It is also to be remembered that the underlying merits of the debate are far from lying entirely on the side of the applicants. It is true that the downside of relying on consented capacity is that there is no guarantee that such facilities would be built so under-provision might occur. However, as the Council's witness pointed out during questions and re-examination, if consented capacity is ignored and the exercise is restricted to operational capacity alone, a facility which is well on its way to completion is left out of account. In consequence over-provision may occur. So far as concerns the principle of the matter, it is nothing to the point that neither Ince Marshes nor Bedminster is actually on its way to construction (although the permission has been implemented in the latter case to keep it alive). It is the principle which is at stake here, not the specifics.

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8.40 Our witness was also taken in questions to the decisions in the Ineos, Ince Marshes and Rookery South cases. It is true that in the Ineos and Ince Marshes decisions the Secretary of State looked to operational capacity only. In respect of the former decision the Secretary of State stated [**CD/13.2**, para 3.5(d) of the decision letter] that there could be no guarantee that other prospective EfW facilities would be approved and/or constructed. In the latter decision the Secretary of State stated in similar terms [**CD/13.1**, para 6.4 of the decision letter] that "while the Ineos Chlor energy from waste proposal at Runcorn, referred to at the inquiry, was granted consent by the Secretary of State on 16 September 2008, there can be no guarantee that the waste facility will be constructed or that other prospective energy from waste facilities will be approved and constructed."

8.41 It is also true that in the Rookery South decision the IPC looked to only operational capacity when resolving an issue as to consented versus operational capacity. Thus at paragraph 5.15 of the decision [**TATA/34**] the IPC stated that significant differences between the parties "centred largely on whether facilities with permission but not commenced together with those planned should be included in the analysis, or whether the analysis should be limited to only those facilities which are built and operational. In our view, having regard to the advice in EN-3 [**CD/4.22**, para 2.5.67], the correct approach to this is to take into account only existing operational capacity."

8.42 However, it is one thing to say that the Secretary of State and the IPC took the approach that they did in those decisions but another to say that the same approach should follow in a case where a PPS10 compliant waste local plan takes a different approach. The CRWLP [**CD/3.2**] was not relevant to the Ineos decision (as the proposal lay outside the administrative area covered by the plan, in Runcorn) and policy 3 of the CRWLP did not arise as an issue in the Ince Marshes decision because this proposal was the first of the EfW facilities to be considered within the plan area. Likewise, it does not appear to have been the case that in the Rookery South decision the IPC was obliged to evaluate the issue of consented versus operational capacity in the context of a waste local plan which approached matters on the basis of consented capacity. The decisions, consistent as they are, should not, therefore, be viewed as a factor reducing the weight to be given to policy 3 of the CRWLP. Accordingly, there need be nothing odd about a different approach within the CRWLP area to that which might be taken elsewhere when that different approach is allowed by the development plan.

8.43 It is submitted, therefore, that it was right to identify the over-capacity within CRWLP area as a key issue differentiating this case from others which have gone before.

Other issues in relation to the CRWLP

8.44 There are 3 other matters which need to be mentioned in relation to the CRWLP.

8.45 The first matter relates to the Council's second ground of objection which was that no overriding need for the development in waste management terms had been demonstrated to outweigh the other planning policy objections to the

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proposal. This objection was based on policy 2 of the CRWLP. The Council's witness rightly agreed when questioned that, if the Council were wrong in relation to its other grounds of objection, this particular ground of objection would not sustain a refusal. On that hypothesis, there would not be other planning objections which would require to be overcome by demonstration of an overriding need. As it is, the Council considers that there are other planning objections in that the proposal has not been shown to be one of the nearest appropriate installations for the recovery of waste or to avoid the unnecessary carriage of waste over long distances while it would give rise to significant over-provision of thermal treatment capacity in the CRWLP area. The latter issue also defeats the argument that there is an overriding need for the development in waste management terms (which is what the policy is concerned with). There is thus conflict with policy 2 of the CRWLP.

8.46 The second matter relates to policy 4 of the CRWLP which provides that an application for a waste management facility (other than landfill/landraise) on an identified preferred site will be permitted subject to the application being for a use specified on the proposals map and its compliance with the other policies of the plan. The applicants point to the fact that the site of the proposed SEP corresponds in large part with site WM12B of the proposals map which specifies thermal treatment as one of the potential uses. However, this allocation does not assist the case for the development because the proposal does not comply with the other policies of the CRWLP.

8.47 The third matter relates to the general issue of the weight to be attached to the CRWLP. It is submitted that the CRWLP should be given full weight in the decision. The Council submits that the CRWLP is compliant with PPS10 and that it contains a specific policy in relation to EfW in the form of policy 34A which is compliant with national energy policy. It has been explained why the approach of policy 3 of the CRWLP is not undermined by more recent developments post-dating the CRWLP. The fact that the CRWLP contains a static rather than a reducing requirement for landfill capacity in respect of C&I waste has no material bearing on the scale of the surplus capacity which arises in this case.

The relationship between energy policy and waste policy and the overall balance

8.48 The Council makes the following submissions in respect of the relationship between energy and waste policy and the overall balance.

8.49 First, both energy and waste policy are, and are agreed by both the Council and the applicants to be, relevant. Both are also important.

8.50 Secondly, there is nothing to indicate that energy policy should enjoy pre-eminent status in this case. Contrary to the applicants' view, such an approach cannot legitimately be derived from the DECC Guidance Note on the Consenting Process [**CD/2.8**]. It is true that EN-1 [**CD/4.21**] provides, unsurprisingly, in paragraph 1.1.1 that the relevant NPSs are the primary basis for decisions by the IPC on applications for energy developments which fall within the scope of the NPSs. However, EN-3 [**CD/4.22**] shows that local waste planning policy is an integral part of the assessment of waste combustion generating stations and does not indicate that such policy is subservient to national energy policy.

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8.51 Thirdly, and again contrary to the applicants' view, the development should not be approached on the basis that it is a waste management facility only by default or that that role is no more than an incidental feature of the proposal. There is no sanction for such an approach to an EfW scheme anywhere in policy. Paragraph 2.5.18 of EN-3 states that "waste combustion plants are unlike other electricity generating power stations in that they have two roles: treatment of waste and recovery of energy." There is no suggestion that the waste treatment role is to be regarded as a subsidiary one. Paragraphs 2.5.64 to 2.5.70 put waste management issues at the forefront of the necessary impact assessment of waste combustion generation stations.

8.52 Fourthly, it is plainly correct that accordance with energy policy must command significant or substantial weight. For instance, box 5.3.3 of the Energy White Paper [**CD/4.1**] provides that the reduced emissions and more diverse supplies of energy provided by new renewable projects is a material consideration to which all participants in the planning system should give significant weight. Paragraph 3.14 of EN-1 [**CD/4.21**] provides that the IPC should give substantial weight to the contribution which projects would make to satisfying the demonstrated need for the types of energy infrastructure covered by the energy NPSs. At no stage has the Council failed to do this as is apparent from the quote from the Strategic Planning Committee report [**CD/1.149**, para 5.14] where accordance with energy policy was described as "a significant factor weighing in favour of the proposal". It is also recognised that the CHP aspect of the proposal is a positive factor in its favour as is the contribution that the proposal would make to (lagging) renewable energy targets and reduction in use of fossil fuels.

8.53 Fifthly, however, there is no reason why waste policy cannot also command significant or substantial weight in the decision-making process and be capable in an appropriate case of outweighing energy policy. The significant breaches of waste policy described above make this such an appropriate case.

8.54 Sixthly, it is accepted that the outcome contended for here by the Council differs from that which has been the outcome of recent decisions, such as Ineos, Ince Marshes and Rookery South. In those circumstances it is legitimate to ask why that should be so. As was explained, the key issue of over-capacity is different here and, even if the "proximity" issues raised in this case are not unique, they present themselves here in a way which is factually distinct and/or distinct in terms of the application of the rWFD.

Secretary of State's issues

8.55 The Council's formulation of its objections in its own terms is as set out above. On the assumption that a condition is imposed which provides for a residual waste acceptance scheme, the Council's objections formulated in the terms of the Secretary of State's issues are as follows:

- the proposal is in conflict with policies 1, 2 and 3 of the CRWLP (but is not in conflict with policy 34A if the residual waste acceptance scheme condition is imposed);

- the proposal will not minimise the avoidable carriage of waste over long distances and will enjoy limited opportunities for the transport of waste by rail;

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- the need for the proposed development as a means of managing waste has not been demonstrated and there is significant over-capacity in the sub-region.

Overall conclusion

8.56 The proposal's conformity with energy policy is outweighed by significant breaches of waste policy. It is respectfully submitted that the recommendation to the Secretary of State should be that consent is refused.

9. The Case for CHAIN

The material points are:

9.1 Prior to its comments on the nine issues that the Secretary of State has asked to be informed on in respect of Tata/E.ON's application to build a SEP at the Lostock, Northwich site, CHAIN would like to make some general observations which have become apparent during the inquiry.

9.2 Communication with the general public on this application has been poor. CHAIN and the Rule 6(4) parties have repeatedly drawn the Inspector's attention to lack of information available to local residents [**CHAIN/102 & CHAIN/107**], inadequate discussions with local Parish Councils and tardiness in replying to requests for information from local inhabitants. Even the Central and Eastern Cheshire NHS and Cheshire and Merseyside HPA have commented adversely on communications, especially on health perceptions and fears, which have taken place between Tata/E.ON and the general public on this application [**CHAIN/5b**, App17]. It is not good enough to do the minimum required by the rules and regulations on a matter of prime concern to the people of Northwich on such a major and fundamental development as the SEP [**CHAIN/113**].

9.3 A great deal of emphasis, throughout the inquiry, has been placed on factual and proven evidence, especially on human health matters. Clearly this is important, but not to the extent whereby evidence on adverse health matters is entirely dismissed if it is not peer reviewed and proven, beyond doubt, by the respective health advisory bodies. There is a place for, and some weight should be given to, both sides of the argument on health considerations and when doubt exists, the "Precautionary Principle" would be a wise way forward. On too many occasions in the past, we have proceeded in situations where there was some doubt on adverse health effects, only to our detriment and regret (for example, asbestos, thalidomide, many manufactured chemicals now known to be carcinogenic). Either way, the public's fears and perceived impact on adverse health matters of this development are important, and we suggest that due note should be taken of the feelings of the people of Northwich on this matter.

9.4 CHAIN fully supports the concept of EfW but believes that there are cleaner, greener, modern technologies which are more environmentally friendly and achieve the same goals. Throughout the inquiry, Tata/E.ON and its expert witnesses have put energy first and waste processing in second place. The plethora of new guidelines and papers on the subject appear, at first sight, to promote this concept. There should, it appears, be a "dash for renewable energy" policy, overriding all other considerations and at any cost. CHAIN believes that the latest policies, WPR2011, EN-1 and EN-3 [**CD/4.4, CD/4.21**

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and **CD/4.22**] give due weight to other factors and that SEP developments, such as the Tata/E.ON application, should pay due attention to where they are sited with regards the resource and in accordance with local and regional waste policies, including taking into account existing waste treatment capacity. Furthermore, commercial considerations should not be a prime consideration when planning is determined and all costs, desirable and undesirable, are important factors to be taken into account.

9.5 It became clear during the inquiry that the Tata/E.ON presentation on alternative technologies for the SEP application had not been thoroughly researched. Recent developments in Plasma Arc Technology [**CHAIN/100**] are at the stage where plants of a similar size to that of the SEP are about to be installed in the UK. This type of technology would alleviate many concerns that CHAIN has on unacceptable emissions from waste treatment plants. In addition, a recycling/composting/pyrolysis project, the Bedminster proposal [**CHAIN/103**], has already gained planning permission on the Lostock site. It is clear that Tata/E.ON has never looked at the possibility of producing steam and electricity from this type of technology whereas steam/electricity could be a product of this already permitted project. It was also apparent that Tata/E.ON's expert witness on this subject was unaware of the plants in various parts of the world that have used the Bedminster technology, processing in excess of one million tonnes/annum of waste arisings [**CHAIN/105**]. It is unfortunate that the alternative technology research, carried out by Tata/E.ON's expert witness, was not an exhaustive submission on the subject.

9.6 At this inquiry, the main parties, Tata/E.ON and the Council, have had sound legal advice and impressive advocate representation. It should be clearly understood that the extent and degree of third party representation in opposing this application, without the benefit of legal advice, is a clear indication of the adverse reaction of the residents of Mid-Cheshire to this SEP. Whilst these third party objectors have not had the representation or resources to research and present their case in the manner they would have ideally chosen, CHAIN's principal objections are, in the main, over and above those put forward by the Council. In particular, the perceived unsatisfactory aspects of health, transport, landscape, socio-economic matters and sustainability would not have been brought to the attention of the Secretary of State, if it were not for third party representations. The efforts made by these third parties are a clear indication of the depth of feeling existing, in and around the town of Northwich, to this SEP development.

9.7 Turning now to the nine issues that the Secretary of State has specifically drawn to this inquiry's attention, in order.

The policies of the CRWLP

9.8 Policy 1 in the CRWLP [**CD/3.2**] deals with sustainable waste management and states that a development must meet 5 criteria (a-e). This development (SEP) would not satisfy the objective of enabling waste to be disposed of in one of the nearest appropriate installations (criterion b). If, as is the case here, waste would be travelling long distances (from virtually any location in the UK), it could not be construed that the nearest appropriate installation would be used. Clearly criterion (c) would not be satisfied since, despite the PCT/HPA

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recommendation [**CHAIN/5b,** App17], the opportunity for maximising rail transport for transporting waste has not been pursued. The last criterion (e), to optimise the use of previously developed or used land or buildings, can only be satisfied if the search for optimum alternative technologies for this SEP had been fully researched. In CHAIN's opinion, it has not and therefore the optimum use of land/buildings has not been carried out. Since 3 criteria (b, c, and e) have not been met, it is concluded that Policy 1 has not been satisfied.

9.9 Policy 2 in the CRWLP deals with the need for waste management facilities. There is clearly no need for this development to treat waste arisings in Cheshire. It would be a purely commercial matter to satisfy Tata/E.ON's ongoing manufacture of certain products. This theme is further developed below but the development does not satisfy Policy 2 regarding overall need for waste management facilities.

9.10 Policy 3 in the CRWLP deals with the phasing of sites for landfill/landraise and/or thermal treatment. The proposed site is a designated site in the Cheshire Replacement Waste Local Plan (2007) for thermal treatment and hence this policy is satisfied.

9.11 Policy 34A deals with the need for an application to satisfy 2 criteria:-

a. It makes provision for energy recovery.

b. It uses a waste stream that has already been subject to source separation of recyclate and/or treatment and recovery of recyclables prior to thermal treatment.

9.12 The application satisfies the first criterion, a condition has been agreed to go part way to satisfying the second criterion but CHAIN is not fully convinced that efficient and substantial source separation will be carried out on all waste fed to this SEP.

9.13 Overall, this application does not fully satisfy the policies 1, 2, 3 & 34A of the CRWLP.

Waste hierarchy and the transport of waste

9.14 The overall trend in the volume of waste produced in England is in decline [**CD/4.4,** pages 5, 10 & 17]. All areas of the UK are increasingly re-using and re-cycling material from waste. The management of waste is thus in an upward direction as far as the waste hierarchy is concerned. Incineration with energy recovery is towards the bottom of the waste hierarchy and likely to remain on the last but one level of the waste hierarchy. It must surely follow that the emphasis must be placed on continually moving waste in an upward direction and this would be compromised if large quantities of waste are required over the next 25-30 years (the lifespan of the new SEPs in the UK) for the increasing number of scheduled and planned waste incinerators in the UK. One has to conclude that this SEP would not maximize the opportunities for waste to be managed in accordance with the waste hierarchy.

9.15 This development would not minimize the avoidable carriage of waste over long distances since it is stated in the application that waste would be transported considerable distances; 200 miles has been indicated. Regarding the

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opportunities to transport waste by rail, the PCT/HPA letter of 3 February 2011 [**CHAIN/5b,** App17] recommendation that "planning conditions include measures to ensure that the bulk of fuel deliveries come by rail" has not been accepted by defining the quantities which will be transported in this way. It is concluded that this issue has not been satisfied.

Need for the waste facility

9.16 CHAIN believes it has demonstrated, in **CHAIN/3**, that the capacity of existing and secure planned facilities for waste treatment in Cheshire is far in excess of the decreasing waste arisings in Cheshire. The so-called areas of doubt in the above statement, which have arisen during the inquiry, appear to be centred around whether secure planned capacity should be considered and what exactly is meant by sub-region.

9.17 Common sense should surely prevail when considering the waste treatment capacity that would become available well before this SEP is in operation. CHAIN believes that it is a fallacious argument to only bank on those waste treatment facilities that are actually processing waste at this moment in time. How can one not take account of a waste treatment facility, such as Ineos Chlor, Runcorn, which is half-way through construction. It is clearly more sensible, irrespective of what the new guidelines dictate, to make an honest estimation of the certain projects that will come to fruition (especially when half-way through construction) over the next few years. Taking this constructive approach, CHAIN has demonstrated that there is no need for this SEP from a waste management point of view.

9.18 The sub-region argument is rather nebulous. The above rationale includes Cheshire, but even if one includes the whole of the North West, there is good evidence to suggest that the area already has sufficient planned waste treatment capacity to deal with waste from a much wider geographical area.

9.19 CHAIN thus concludes that this issue is clear on planned waste management capacity and concludes that self sufficiency will be satisfied, without this SEP, in the next few years.

Consistency with energy policy

9.20 Overall, CHAIN is of the opinion that this issue is mainly pertinent to large power stations producing only electricity. The SEP would be a commercial venture to deal with Tata/E.ON's need for steam and small amounts of electrical energy (small in comparison with overall public consumption figures) for its chemical production capability at the Lostock site.

9.21 CHAIN has pointed out that Tata/E.ON already have a "state of the art" CHP gas fired plant at its Winnington site which has more than sufficient energy capacity to service both Winnington and Lostock sites. Since gas is a relatively clean fuel, it features large in the Government's future policy on energy mix [**CD/4.21**, 3.8.19 & 3.3.4]. The Winnington plant has many years of useful life left in it and CHAIN would cast great doubt on the need to build a further energy plant (the SEP) with its attendant undesirable features. In particular, the need to transfer waste large distances to fuel the SEP would be a carbon emitting exercise.

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9.22 The applicants compare the carbon footprint of the SEP only to that of landfill, as though that will be the only alternative solution for the next 25 years, instead of comparing to other newer technologies. Irrespective of the carbon footprint calculations portrayed for this SEP, which CHAIN think are not all embracing enough to be meaningful comparisons with the alternatives, waste burning plants emit large quantities of CO_2 (a greenhouse gas) into the atmosphere. It was agreed at the inquiry (and CHAIN has presented proof in its references – **CHAIN/4b**, App 6) that for every tonne of waste burned, up to one tonne of CO_2 would be emitted from the exhaust stack. The argument of inherent carbon composition is not relevant here. This carbon is actually emitted into the atmosphere in the form of CO_2 gas. For this SEP, therefore, we would have up to 600,000 tonnes per annum of CO_2 emitted into the atmosphere around Northwich. As CHAIN indicated in its evidence in chief, this quantity of CO_2 is equivalent to that which would be emitted along a 50 mile stretch of a typical motorway [**ibid**].

9.23 Would this SEP make a step towards the transition to a low carbon economy and contribute to achieving better climate change goals? CHAIN, on the evidence above, doubts this and thus concludes on this matter that this objective is not satisfied.

Perceived health impacts

9.24 Since this issue concerns itself with "perceived health impacts", CHAIN does not intend repeating its concerns about possible direct health impacts of this proposed development. During its evidence in chief, CHAIN developed the theme of perception of risk [**CHAIN/5 &5b**]. Community or peoples' fear/anxiety on health impacts is concerned with the perception of risk. It was pointed out that it was not surprising that people are fearful of this development when a letter from the PCT/HPA [**CHAIN/5b**, App17] was far from convincing regarding the current state of knowledge on health matters pertaining to this SEP. Perception of risk is an important factor which the public either knowingly or unknowingly have at the back of their minds relating to the siting and presence of facilities that might be construed as posing a threat to health.

9.25 There is little doubt that liaison with the public on health matters has not been good [PCT/HPA letter, **ibid**]. The PCT/HPA actually say in this letter: "It is disappointing that there was no engagement with organizations, beyond district, town and parish councils, who represent particular sections of the community. Perceptions and fears can have important psychological effects on health and should not be under estimated. Addressing perceptions and fears needs more than the presentation of facts. We recommend that further work be done to engage the community, not just inform them, but respond to their perceptions and fears".

9.26 CHAIN is not aware that any further constructive discussions have taken place with the general public on perceived health impacts of this development by Tata/E.ON following the implied criticism by the PCT/HPA above. Clearly, there is an overriding fear from the people living in and around Lostock on the possible adverse effects which might ensue from the siting of this SEP. An analysis carried out by DECC [**CHAIN/5b,** App18] on the 4,000 letters of

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objection raised against the SEP indicated that health, 33.7% on the bar chart, is a major concern to the local populace.

9.27 It is concluded that there is much concern about perceived health impacts of the proposed development.

Traffic impact

9.28 The impact of construction and operational traffic associated with this proposed development received much attention during the inquiry proceedings and reflected the scale of genuine public fears and concerns. This was supported by the number of written objections to DECC on the topic [**CHAIN/6b**, App19 – 47.4%] and the contributions by members of the community at the evening meeting of the inquiry.

9.29 Adverse impacts of construction and operational traffic would arise because the applicants propose to site what would be one of the largest waste incinerators in Europe in a small industrial estate almost entirely surrounded by densely-populated relatively small-scale houses, typically terraced or semi detached. Furthermore, the applicant intends to use a narrow, minor road which is already extensively used by passenger cars and commercial vehicles, to transport materials to and from the incinerator plant. The road is also prone to frequent periods when it is covered in dense fog-like steam vapour which comes from the existing chemical complex [**MAN/34**]. Despite being repeatedly challenged by CHAIN to produce evidence of a similar development elsewhere operated by E.ON, no convincing example has been produced. The sole attempt in their document, **TATA/32**, failed for a number of reasons, including the fact that the incinerator was separated from the relatively sparse housing in the area by a long stretch of dual carriageway which is obviously used to service the incinerator.

9.30 CHAIN would like to highlight the traffic situation on the A530 King Street south from Middlewich Road to the roundabout on the A556, known locally as Morrison's roundabout. This is a single lane minor road, 7m to 5.8m wide, with residential development on both sides, a service station and retail store and a number of intersections. It is bordered by narrow pavements, there are no yellow lines to restrict parking and it forms part of a recognised and recommended national cycle route into the centre of Northwich. The cab width of a typical modern HGV tractor unit, such as a DAF XF series, as illustrated in **CHAIN/115** is 3.20m, including wing mirrors. This means that as far as HGVs are concerned, the road can accommodate only two vehicles across its width and even then it is a tight and hazardous squeeze. Clearly, this represents a serious danger to cyclists when being overtaken by HGVs and to other vehicle users when overtaking parked or immobilised vehicles. There can be no doubt that the road is not wide enough to safely cope with any increases in road traffic and particularly planned future traffic movements.

9.31 The applicants have provided traffic flow statistics to justify their intentions, some of which were debated and challenged by CHAIN and others during the inquiry. However, in CHAIN's opinion, the key set of core numbers which emerge are the following:

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- In 2016, assuming the applicants' SEP and the other committed developments are operational, the average traffic flow on King Street between 7.00am and 7.00pm would be one HGV every 40 seconds and one car every 2.4 seconds [**CHAIN/6b**, App 4&8]. These figures are astounding and help explain and justify the fears expressed by residents about the impact such traffic would have on their health, their personal safety and quality of their lives. Many have said, "it would simply make life unbearable".

9.32 CHAIN offers no apology for taking the effects of other committed developments into account. The arguments put forward by the applicants during the Inquiry that, because of the guidelines, future traffic flow developments are not relevant, is unreasonable and does not represent the real future situation. We note that they are 'guidelines' only and should not prevent the SoSECC looking at the reality, and that reality would be one large juggernaut lorry driving on a narrow road through a residential area on average every 40 seconds. Furthermore, CHAIN has discovered a significant error in the data provided by the applicants which understate the total number of HGVs which would be using King Street in 2016. This is addressed in **CHAIN/117**.

9.33 The evident danger to pedestrians walking on the pavement along the A530 of passing large HGVs was demonstrated using the photographs included in CHAIN's evidence [**CHAIN/6b,** App7]. When it was pointed out to the applicants that the mother who was guiding her two young children on the pavement had no alternative to protruding her shoulder and arm over the road way and in the path of an oncoming HGV, the response was unacceptable. In effect it was 'pedestrians beware' even if they are going about their lawful business walking on a pavement looking after their children. This comment was not considered to be satisfactory by CHAIN on purely safety considerations.

9.34 The applicants have argued that the remedial measures they have proposed would solve the problems that we describe here. CHAIN disputes this, as do the local community, as shown at the evening meeting of the inquiry. The provision of traffic lights and a pedestrian crossing would be far more likely to make a bad situation worse by causing long traffic queues and creating higher levels of polluting emissions by engines idling as they slow down, halt and accelerate again as pointed out in CHAIN's evidence [**CHAIN/6 & 6b**].

9.35 Prospective health problems, including physical and mental health, associated with the increased traffic due to the SEP have been addressed by the authorities who have extensive medical expertise in the field and detailed knowledge of the health profiles of the local population. CHAIN refers to the PCT and local HPA. The recommendations contained in their letter [**CHAIN/6b**, App1] include: 'planning conditions to take account of the worst case increase in road traffic and include measures to ensure that the bulk of fuel deliveries come by rail'. It is CHAIN's strong contention that the fears about the health impacts of this development, particularly relating to road traffic [**CHAIN/109**], would, at the very least, be partially allayed if the applicants fully implemented their recommendations.

9.36 It is also appropriate to take a look at the situation on the southern leg of the Morrison's roundabout, particularly the stretch of the A530 leading up to the entrance to Morrison's distribution centre. This length of road was rebuilt as

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dual carriageway to service the many vehicles which access Morrison's premises and it certainly meets that objective. The vastly increased number of HGVs that would use King Street and Griffiths Road justify a similar solution but that is not feasible. Hence, the suggested solution being proposed is unconvincing and takes unwarranted risks with people's safety.

9.37 In summary, there would be the large number of HGVs constantly moving on King Street and Griffiths Road between 7.00am and 7.00pm, much of which would be in darkness in winter months. The average number is one HGV every 40 seconds on a single lane road but there would be many occasions when, logically, the flow would be at a higher rate than this. CHAIN contends that the worries the community has about the implications of increased traffic on the local network are well founded and realistic. If the SEP becomes operational, in CHAIN's view, it would only be a matter of time before somebody was killed or seriously injured whether they be pedestrians or cyclists or vehicle users. On transport and traffic grounds alone, the SoSECC owes it to the people of Northwich to refuse the application.

Visual impact

9.38 The SEP would be a combination of very large buildings (highest 48 metres) with two extremely high exhaust chimney stacks (90 metres). The enormity of these structures, irrespective of the industrial nature of adjacent chemical plant buildings, would stand out and the exhaust stacks would be visible for many miles. Landscape and photomontages, at best, give an idea of the visual impact on the surrounding area but invariably do not portray the development at its worst with respect to adverse visual effects on those who have to live and work in this vicinity.

9.39 Landscape and visual impact are two crucial assessment factors since their effect is felt on an everyday basis, especially to local inhabitants. During the inquiry, CHAIN drew attention to the basic guidelines on landscape matters [**CD/11.6**] and pointed out that certain stakeholders had not been given adequate discussion time on the issue of visual impact. The guideline is quite clear on this particular design pointer [**ibid**] ie that stakeholders (people who would be in the immediate vicinity of this development) should have an involvement on this aspect of the development if the judgments made are to command wide support. CHAIN maintains that whilst consultation of a kind has taken place, the net outcome is that the majority of people living in the immediate area, whose lives would be affected by the development, believe that it would have an adverse effect on the landscape and visual amenity. On visual impact, the percentage marking of adverse effect in the analysis carried out by DECC [**CHAIN/5b,** App18] in the 4,000 letters of objection raised against the SEP was 18%.

9.40 Visual impact is largely subjective but on this development, there is clearly strong feeling amongst local people that it would have an unsatisfactory visual impact and have an adverse effect on the landscape.

Cumulative impact

9.41 There is little doubt that numerous other developments of a similar nature are planned in the immediate future within the region [**CHAIN/3**, table on page 1].

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9.42 In its evidence in chief, CHAIN drew attention to the lack of actual health statistics on the effect of operating multiple incinerators in relatively close proximity. The applicants have provided modelling studies only in their attempt to negate this aspect and risk. CHAIN wishes to draw attention again to two important facts on the aspect of operating multiple waste incinerators in relatively close proximity:-

1) Health Protection Scotland, the Scottish Environment Protection Agency and NHS Scotland clearly have concerns on this issue since they recommend in their recent report "Incineration of Waste and Reported Human Health Effect" [**CHAIN/5b,** App15], that "Planning controls should prevent new incinerators being sited within the locality of existing facilities".

2) The PCT/HPA in their letter [**CHAIN/5b,** App17] say:- "Given that the impact of multiple sites is both controversial and under-researched, the presentation of zones of maximum deposition as points on a small scale map with a statement of "no-risk" is not the best way to test the cumulative impact of such sites. We recommend that a condition of planning is that the applicant is required to undertake further work to examine the possible impact of multiple sites on health".

9.43 Owing to the possible risks to human health, it is concluded that the cumulative impact of the proposed development with other proposed and operational developments of a similar nature within the region, requires further investigative work, preferably before this development receives planning permission.

Proximity to residential development and other non-industrial units.

9.44 The applicants have repeatedly referred to the Lostock site as being predominantly an industrial area. This is not strictly correct. The nearest residential dwellings are approximately 300 metres away with a direct view of this development. Furthermore, the urban village of Rudheath lies along one side of the current works and the houses in Lostock Gralam are not much further away. The site may be industrial, but this area is a mixed urban/industrial complex. Within half a mile of this proposed development there are 2 children's playgrounds, over 200 residential homes with planning consent for a further 200, a sheep rearing farm and the Trent and Mersey Canal together with its footpath which runs alongside the plant. The town of Northwich lies within 2km of the site as do several major retail outlets including Tesco, Sainsburys, B&Q and Argos and several schools and nurseries. If this application is granted, over 10,000 people within the Northwich area will live within 2 kilometres of this development.

9.45 Northwich is undergoing major regeneration. There are well advanced plans for major housing development within a short distance of the current site and the "Northwich Vision" concept is still a reality. For years, ICI and latterly Brunner Mond, now Tata, and other chemical manufacturing companies have occupied the area in question. Over the last decade, chemical manufacturing operations have notably diminished whilst new housing development has increased in the area. There is a groundswell among local people who believe that heavy

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chemical industry on this site has had its day. The general feeling is that after many, many years of chemical manufacture in the area, it is time for a change.

9.46 In the DECC analysis **[CHAIN/5b,** App18] fears that this development was too close to housing scored 18.2%. It is concluded that the nearness of this development to housing and other amenities is a cause for concern among local people.

Conclusions

9.47 Finally, decisions on projects of this nature depend on looking at the benefits and disadvantages of the proposal. CHAIN and the majority of the people in Northwich honestly believe that, in the case of this development, the disadvantages far outweigh the few benefits that would accrue to Northwich. Therefore we urge the SoSECC to refuse consent for the application.

10. The case for Mrs Tracy Manfredi

The material points are:

Introduction

10.1 The main concern is for children and parents in Northwich and the worries about children's health, especially asthma. Families should not feel forced to move away from the community in which they now live because of the proposal, which has been designed only to improve the profitability of the applicants' companies. Research on documents including health reports, reports on the benefits and adverse impacts of incinerators, and reports and policy on waste management, energy and climate change, have led to this objection which is based on the evidence about air quality, health, based on potential air emissions, and the BAT of abatement. Even if plants are well managed there can still be fugitive emissions and catastrophes like at Seveso in Italy or Sint Niklaas [**GAM/6**, App10].

10.2 Northwich residents are striving for a better town and this is an opportunity to prevent another large dominant polluting legacy for generations to come. 4000 residents object to the proposal, a number of whom stood up and spoke at the evening session because they felt so passionately. 25000 signed a petition organised by CHAIN, our local development campaign group.

Adequacy of the ES

10.3 The ES [**CD/1.106 (Vol 1, 2a and 2b)**] contains insufficient detail from which to draw reasonable conclusions on the following grounds:

(i) Modelling

10.4 Much of the material is derived from modelling. This is subject to manipulation depending on the underlying assumptions made and the reliability and accuracy of the source data used. Moreover two very different, but clearly professional answers can be derived depending on assumptions made and baseline data used. The BSEM [**GAM/6**, App9] explicitly states that modelling is only about 30% accurate and my medical witness shows that modelling is often not

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reflective of the actual medical data provided by both the Office for National Statistics (ONS) and the local PCT.

(ii) Inadequacy and limitation of air quality dispersion modelling

10.5 The air quality and dispersion models are highly compromised, some of the reasons for which are contained below, yet it is this air quality and dispersion model that underpins the validity of the entire environmental statement, particularly the health impact assessment, the human health risk assessment and the traffic assessment. More importantly it determines whether the dispersion model impacts on an AQMA, which EN-1 [**CD/4.21**] says could materially affect the outcome of the planning decision. The ES has failed to consider some of the nearer AQMAs at Cranage, Knutsford and Mere [**MAN/42, 54A & 54B**]. Some examples of the flaws and limitations in the modelling assumptions are:

1) The choice of windrose. It is clear from **TATA/55** that the dispersion model would be very different if Ringway windrose were used rather than the actual windrose used from Woodford. The spread of the Ringway windrose is wider than the narrow south westerly basis of Woodford and the velocity is higher [**MAN/33**].

2) The choice of the receptor chosen. Baseline receptor 2 was chosen rather than receptor 1 [**CD/1.06 Vol 2b,** Appendix 7.1 table 4.4]. The receptor chosen by the applicants had NO_2 readings of 29.2ugm3. Those of receptor 1 were 38.8ugm3. This could mean that the baseline data is understated and any potential increase in NO_2 levels from the SEP (stack and traffic) might result in an area being only marginally compliant to AQS, becoming an area breaching AQMA standards. Under EN-1 [**CD/4.21**], that would become a material factor weighing against the proposal. The air quality modelling undertaken does not represent a conservative assessment as the applicants claim.

3) No current levels of dioxins and furans have been sampled, nor polyaromatic hydrocarbons (PAH), polychlorinated biphenyl (PCBs) etc, despite centuries of exposure to these toxins, but has simply been modelled. There is no certainty that the values input and geographical source chosen is reflective of the type and level of dioxins that residents have already been exposed to and are present in surrounding arable land or sensitive receptors chosen. No sensitivity analysis has been performed on the data comparing actual sample levels with modelled results to justify the conclusions drawn.

(iii) No suitable consideration of alternatives (BAT)

10.6 There was no useful discussion of comparable alternatives to incineration until the inquiry, despite recommendations by DECC in their letter of 19 January 2010 [**CD/1.155**] that alternatives should be considered and reasons for rejection discussed within the ES, presumably in line with best practice [**MAN/48**], in 2008/98/EC [**CD/2.7**] and 2008/1/EC in Europe and their successors, which specify that BAT should be applied to proposals. The only discussion of BAT was use of non-comparable techniques like solar and wind power that wouldn't generate the steam and power needed and the only alternative location of the proposed SEP was at Winnington. No alternative thermal treatments [**MAN/49**] were discussed despite these being

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requirements in the IPPC Directive 1996/61/EC, embedded within 2008/98/EC and 2008/1/98.

(iv) Waste input streams

10.7 The waste input streams as identified in the ES were not sufficiently detailed to determine the output emissions that may arise from the SEP. The fact that the outputs are directly attributable to the waste source input does not give sufficient detail to ensure that the waste accepted has been subject to further processing.

(v) Out-of-date socio-economic data

10.8 The Human Health Risk Assessment (HHRA) [**CD/1.7**] is based on out-of-date data (e.g. 2001 Census data). More recent and relevant information is available in the Index of Multiple Deprivation (IMD) 2010, for example, the population of Northwich and Rural North (Council data 2007) shows the population as 68,300 compared with 19,000 in the 2001 Census. The 2007 health data highlights that the ward in which the SEP will be placed is an NHS spearhead ward where residents, both male and female, have a reduced life expectancy, within the lowest 10% of the nation. As such, they would be more susceptible to the presence and emissions, direct and indirect, of the proposed SEP.

Equally the data and analysis of employment sectors overstates reliance on industry as this too is based on the 2001 census. Basically all the detailed information relied upon from a statistical and socio-economic point of view is out of date. This makes the application appear more favourable than if the more current 2010 IMD data is relied upon.

(vi) Incomplete pathways of exposure

10.9 The HHRA [**ibid**] is limited in a number of areas, in addition to its reliance on the flawed air quality model.

1) It fails to consider skin exposure and or absorption of substances and emissions on health. This has been flagged as an area of omission in the HPA letter [**MAN/3.2**, Appendix 13].

2) It also fails to consider the exposure via localised natural drinking water sources where the applicants do not consider it to be a potable source. (For example, the local ground water extraction source was not considered by the applicants to be at significant risk. This was unsatisfactory and leaves significant doubt with the public as to the assurance provided by the applicants' witnesses).

10.10 Given the above shortcomings, I request that the application should be rejected, since the ES is insufficiently detailed to draw conclusions on the application.

Public consultation

10.11 The public consultation has been called into doubt as literature claimed to have been distributed within the given radius of the proposal did not reach local people. This was evident from the responses in questions to the applicants.

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Evidence was also submitted that the applicants avoided opportunities to have open public debates with CHAIN so that the public could listen to a balance of views. Some of the public consultation sessions provided by the applicants were more presentations rather than a process of engagement eg the first meeting in Rudheath.

10.12 At a meeting on 18 Jan 2011 at the Memorial Hall the applicants allowed only one question each, whereas the only two evident supporters were allowed to speak at length several times. This does not instil confidence in the claims of the applicants that there would not be any adverse health issues from the SEP, particularly when their members of their management team do not live within the immediate vicinity and those that did so have moved. In addition, at the meeting the applicants' air quality witness was unable to substantiate claims that the work of Michael Ryan and Dr Van Steenis had been discredited and I find no evidence to support his view.

10.13 The SoSECC should place significant weight on the limited public engagement with the community and the lack of information on the perceived health implications which was not addressed prior to the inquiry despite requests, including those from the HPA/PCT [**MAN/3.3**, Appendix 13]. It should not have been left to the time of the inquiry, which not everyone can attend.

Need

10.14 Nowhere is it stated that energy policy takes precedence over waste policy. The waste management requirements in EC2008/98 [**CD/2.7**], CRWLP [**CD/3.2**] and RSS [**CD/3.1**] should be considered with equal weight to energy policy requirements expressed in EN-1 [**CD/4.21**] and EN-3 [**CD/4.22**], despite the claims of the applicants that waste management is incidental to energy creation. Equal weight should be given to energy and waste policy and both should be fulfilled if consent is to be granted.

(i) Waste Management

10.15 The Council area has one of the highest rates for recycling and composting locally, having achieved a rate of 61% in 2010 and it should now be moving to a zero waste strategy. **CWAC/3**, para 5.53, indicates that there is sufficient thermal treatment capacity in the CRWLP area (750,000tpa) compared to that required of 387,000tpa. It is accepted that should the SEP be approved the waste hierarchy would be maintained through the waste acceptance scheme which is detailed in **TATA/67**. However, this might still mean the acceptance of waste from areas where there is a poor performance on recycling, which could give rise to higher levels of contamination from items such as batteries which should have been excluded through the recycling process.

10.16 In Europe, where there has been successful recycling and composting, countries now face an overcapacity of thermal treatment plants, particularly EfW, which are heavily dependent on the importation of waste from neighbouring countries and further afield. There is a real possibility that by moving towards waste prevention and further recycling we would have no choice but to import waste into the UK for EfW plants approved. This would either contravene the revised Waste Framework Directive (2008/98/EC Article 16 (3)) [**CD/2.7**] on recovering waste at one of the nearest appropriate

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installations or recyclable/ reusable material will have to be burnt in contravention of the waste hierarchy 2008/98/EC Article 4(1) [**ibid**]. Therefore the proposed SEP would be an unsustainable proposition over its proposed life span of 25-30 years minimum.

10.17 If waste is sourced from 70-400 miles away (ie from anywhere in the UK), then the SEP would be handling waste transported over a considerable distance. This would contravene PPS10 [**CD/4.14**]**,** the CRWLP [**CD/3.2**] and policy EM12 of the RSS [**CD/3.1**]**,** as well as the principles of self-sufficiency and proximity set out in 2008/98/EC Article 16(2) & (3). These policies would be further contravened should long-term the waste feed have to be imported, as in the Netherlands and Germany, and would lead to the long-term unsustainability of the project [**MAN/24 & 26**].

10.18 In conclusion, the waste management needs of sustainability and treatment at the nearest appropriate installation are not met. This should be given material weight when deciding whether to grant consent for the application.

(ii) Energy need

10.19 Whilst EN-1 [**CD/3.21**] highlights the national need for energy based on the decommissioning of coal, oil and nuclear generating capacity before 2020 and prescribes no maxima limits, it is not within the spirit of this document to replace perfectly adequate reliable gas CHP with EfW, particularly when EfW is unsustainable in the medium term when compared to gas. EN-1 seeks to address the replacement of the lost energy in the long-term by moving to a basis of more renewable energy, with less dependence on fossil fuels as part of the transition to a low carbon economy (via increased use of renewable energy and significant reduction in greenhouse gases).

10.20 EN-1, in para 3.1.1, highlights the UK's need for *all the types* of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions. The evidence provided in **MAN/56** (analysis of the carbon footprint of the proposed SEP) shows that once the full carbon assessment of the SEP is taken into account, the marginal benefit could be a net adverse impact. This would not achieve the objective in para 3.1.1 of EN-1 of developing infrastructure which reduces greenhouse gas emissions.

10.21 In para 3.1.3 of EN-1, the IPC are directed to assess applications for energy infrastructure on the basis that need has been demonstrated, but this is in respect of the fundamental need outlined in para 3.1.1, the principles of which have been set out above. The proposed SEP would achieve neither of the principles in 3.1.1 (security, reduced greenhouse gases or carbon emissions) when the complete carbon footprint and emissions are taken into account from cradle to grave, as given in **MAN/56**. In addition, the gas CHP plant is already contributing to the security of supply. Gas is seen as important in maintaining a secure energy supply nationally [**MAN/20, MAN/25, MAN/27,** para 14&16 and **MAN/55**]. EN-1 highlights that all types of energy are required to obtain the security of supply and that both gas and EfW are just types of the diversity of energy that satisfies that need.

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10.22 In para 3.1.2 of EN-1, it is for industry to propose new energy infrastructure projects within the strategic framework set by Government. However, the spirit of the policy would not be to create further instability of supply by replacing a relatively dependable supply with one that will conceivably become unsustainable in the medium term. The IPC is only required in para 3.1.4 of EN-1 to give substantial weight to the contribution which projects would make towards satisfying this need (highlighted in 3.1.1) when considering applications for consent.

10.23 There is no fundamental national need for the SEP within the spirit of EN-1 or in accordance with para 3.1.1 of EN-1. Gas is deemed an integral part of the security of supply of electricity as set out in the Electricity Market Reform White Paper 2011, particularly in the transitional period to 2020, when so many generating plants are being decommissioned. Gas will assist not only with reserve capacity, but will also ensure diversity of the nation's supply so that the UK is not overly dependent on renewables, particularly solar and wind power which can be intermittent and EfW which is unsustainable in the long-term. Northwich (and Cheshire) has already contributed to national energy needs through EfW plants, and also gas storage [**MAN/5.3**, App14].

10.24 I would therefore request that the SoSECC places little weight on EN-1 and EN-3 given that the proposed SEP is not within the spirit of need as identified in these documents.

(iii) Corporate need

10.25 The proposed SEP would enable E.ON to diversify into an emerging UK market and reduce their over-reliance on the gas market which is dwindling over the medium term (next 20 years). It would also enable E.ON to pursue EfW, which is a saturated market within Europe, and pursue opportunities in the UK, rather than national energy need. Tata do not necessarily have a commercial need for the SEP as they have a reliable and stable source of energy from the state of the art gas CHP plant at Winnington. As indicated in **MAN/55**, gas prices should fall and become less volatile, so the need to replace it with cheap energy is not essential, contrary to what has been stressed in the applicants' case.

10.26 Tata is struggling in a cash-consuming, shrinking synthetic soda ash manufacturing market. Despite claims that cheaper energy is needed for this plant, it is evident that, despite cheap energy for the Delfzjil synthetic soda ash plant in the Netherlands, the company decided to cease operations there due to a 20-25% fall in demand for their products [**MAN/16a, 16b**]. This was due mainly to increased competition from high quality, low cost trona supplies from Turkey [**MAN/51**], resulting in large scale investment by Tata in Magadi in Kenya and Wyoming, USA, both of which are large trona producers where higher profitability and a larger market share can be attained. There is little evidence of the need for additional energy on this site. In such a high cost, cash-consuming business Tata might well be maximising their assets in preparation for the divestment from this failing industry/product sector.

10.27 I conclude that significant weight should be placed on the fact that Tata do not have a commercial need for the proposed energy and steam production and the proposal to build an EfW facility on the Lostock site is to maximise the value of

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the assets (land and shareholding in a lucrative EfW plant) prior to divestment from the core synthetic soda ash business and subsequent sale of the interest in the EfW plant to E.ON.

Fear from a health perspective

10.28 There is a high level of fear within the community regarding the health issues and air quality issues. 33% of objectors are concerned with health implications and 37% of objectors are concerned about the perceived air quality implications and how they will impact on health in respect of the proposed SEP.

10.29 There is a considerable amount of information available on the internet regarding advantages and disadvantages of EfW facilities and incinerators and epidemiological data regarding the health implications that have arisen around incinerators in the past, for example, the Sint Niklaas Study [**GAM/6,** App10], on which evidence was presented in **MAN/8.2**. This study essentially highlighted the high levels of toxins that the public were exposed to and the host and range of illnesses reported by the residents who lived in Mispelstraat, the street in the prevailing wind direction where dioxins were measured to be highest.

10.30 The submissions from Dr van Steenis focus on the issue that increased exposure to $PM_{2.5}$ sources of emissions is shortening people's lives, albeit from cardiovascular disease, respiratory disease or all-cause mortality. The House of Commons Environmental Audit Committee 5th report [**MAN/3.3,** App1] concurs that poor air quality within the UK could be giving rise to 50,000 deaths pa (para 9). A reduction in mortality of 7-8 months would be the equivalent to a gain of 39 million life years for England and Wales between 2005-2110, if there were to be a 10ugm3 reduction in $PM_{2.5}$s (**Ibid,** Table 1, page 8). In para 10 of the same report, it is stated that for individuals who are particularly sensitive and exposed to the poorest air quality, the reduction in life expectancy could be as high as 9 years. Many children around Northwich are very susceptible to asthma and are highly sensitive to pollution as are many of the people living in the ward where this SEP would be situated. This area is an NHS spearhead ward with the 10% highest Standard Mortality Rate (SMR) in the country and whose health is already compromised by socio-economic effects and deprivation. Many Northwich residents have genuine fears about their health.

10.31 Dr van Steenis has provided detailed maps and other material, set out in **MAN/3.2** section 7 and **MAN/3.3,** App17, relating to studies undertaken by himself and Michael Ryan, which report on health data on the ground. These show that point sources of $PM_{2.5}$ polluters (28 of which are incinerators, but other studies have been done at oil refineries etc.) are contributing significantly to the number of premature age-standardised mortality rates within wards downwind of $PM_{2.5}$ sources of pollution compared to upwind. Similar mapping around the country of incidences of disease, asthma, infant mortality, congenital birth defects, low birth weight, depression, suicide, cardiovascular disease, diabetes etc. are all showing as significantly elevated downwind, compared to upwind of incinerators. Moreover, it was shown in **MAN/3.3,** App17 pg 8 (2nd and last paras) that the drivers of the high death rates are clearly not due to economic deprivation, as the wards of Chingford Green and Fryent are some of

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the least deprived wards, yet they have high infant mortality rates and cardiovascular hospital admissions.

10.32 Much of the more recently published epidemiology (from about 2004 onwards) (**MAN/3.2**, para 8.6) (Franchini et al, Zambon et al, Comba et al, Obi-osius et al, Viel et al and Tango et al) all highlighted a variety of sarcomas, birth defects, twinning, renal dysplasia and facial clefts etc. within the vicinity of waste incinerators. All of which support the work of my medical witness and illustrate that some of the illnesses found can be causally related to the distance (in some cases downwind v upwind of incinerators or within a radius of the incinerator) from an incinerator. All of these documents have been peer reviewed. The Scottish Environment Protection Agency (SEPA) in their 2009 report on Incineration of Waste and Reported Human Health Effects [**MAN/3.3,** App 7] states that, whilst the overall body of research into incineration is conflicting and inconsistent, these additional papers provide a balance towards finding a positive association between incineration and adverse health effects, albeit that the reports are not considered absolutely conclusive.

10.33 Epidemiological evidence in **MAN/3.3,** Apps 29-37, highlight how $PM_{2.5}$s and NO_2 can impact on health, both of which are potential pollutants that come out of incinerator stacks or would be increased by increased road traffic, particularly diesel HGVs, as stressed by the applicants when questioned. This lends a high degree of credibility to the actual health data and actual number of premature deaths, as reported and gathered by the PCT and ONS.

10.34 Furthermore, residents are being asked to trust the operators and regulators and to trust the HPA, but when you read the HPA report it is clearly highly qualified. The qualifications to their statement that: *"Modern, well-managed incinerators make only a small contribution to local concentrations of air pollutants. It is possible that such small additions could have an impact on health, but such effects, if they exist are likely to be very small and not detectible……."* are reviewed in **MAN/3.2**, section 11.

10.35 The report and conclusion are very heavily qualified and so too is the SEPA document [**MAN/3.3,** App7]. The EA have stated that they cannot comment on health, that is the responsibility of the HPA and PCT. On the other hand our HPA are stating they are unable to comment on health impacts on the interactions of secondary particulates and rely instead on the EA. This does not instil confidence in the system.

10.36 In Scotland, SEPA is applying a more cautious approach, with regard to positioning of incinerators in close proximity to each other (in relation to planning), see **MAN/3.3,** App7 para 5.1.5. They are essentially warning that new modern style incinerators are not tried and tested. SEPA also apply far more stringent rules than the EA in relation to the targets for the reduction of $PM_{2.5}$s ie 12ugm3 by 2015, compared to the EA which only require 20ugm3.

10.37 As highlighted in the Human Rights section, examples were given that the HPA and the State were not doing everything they could to protect residents' public health. They could commission studies on mapping work already carried out to prove or disprove them. Instead the mapping work has been dismissed on the basis that it hasn't been peer reviewed, which in itself is not sufficient

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justification or proof that the work is invalid [**MAN/3.2,** para 7.10 -7.21 and para 7.6].

10.38 Furthermore, the HPA could have commissioned studies into the health effects occurring around new modern incinerators, given that asthmas and the results of acute exposure like infant mortality rates should now be evident and cardio-vascular disease should be starting to show. The applicants highlighted that the majority of EfW facilities became WID compliant by 2000, so given the time lag of 5-10 years cardio-vascular diseases should be able to be mapped in accordance with WHO 1997 mapping guidance [**MAN/8.11**]. Cancers would be more difficult as they would only just be starting to show, presumably in very low concentrations, but had the HPA been so minded they would have undertaken the studies to allay public fear. The opportunity to map health data in Halton for that incinerator during the closure/new build period was also missed.

10.39 My evidence examines a sample of 10 incinerators and looks at the emissions and breaches that arose from 2004 to the present [**MAN/17 & MAN/32**]. These show a range of pollutants that are emitted from these facilities and makes it harder still to be assured that they will be safe, especially when it is evident that PMs, nitrogen oxides (NOx) and sulphur oxides (SOx) are released, all of which can transform into compounds that directly trigger asthma.

10.40 The reason that the HPA states there is only a small contribution to local air pollutants is because the incinerators are located in areas that already suffer from poorer air quality. Therefore increments in pollution from new incinerators will appear smaller than in areas where the air quality was better. Without studies and health mapping, the HPA cannot claim that the precautionary approach should not be taken under PPS23 [**CD/4.19**, para 6] nor can the public be confident in their highly-caveated claims that these modern incinerators will be safe and should any health effects occur they are likely to be undetectable. Furthermore, we have no proof and no studies on which to place reliance on the claims about modern incinerators, given that in the past incinerators are more than likely to have caused adverse health effects. No doubt Government and operators were claiming how safe those facilities were at the time.

10.41 One of the main concerns is about air quality. **MAN/3.3**, App1 para 44, states that "Harmonisation of air quality and climate change policy exposes a lack of joined up thinking…. Reductions in greenhouse gas emissions and improvements in air quality can be achieved by lower energy demand and efficiency. But some technologies that lower carbon dioxide emissions can increase NOx and PMs to the detriment of air quality." EfW is one of those technologies. The applicants claim it reduces CO_2 emissions but, as indicated in **MAN/17**, there are other emissions, like NOx and PM, which need to be taken into account. The EA [**MAN/30**] state that 35% of $PM_{2.5}$s escape the filtration abatement system, which exacerbates my concerns about asthma.

10.42 There is real fear that existing levels of dioxins/furans are already high in the area due to the legacy ICI works. Any further increment would be one toxic burden too many, and there has been no sampling to give reassurance on such matters [**MAN/3.2**, section 8 & 9].

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10.43 The statements made by the applicants played down the dangers of dioxins. Comparisons to fires, fireworks and barbeques does not allay public fear, particularly when the European Environment Agency state that such sources are not the principal generators of dioxins in our environment, but that the principal source is power stations. The SEP would be one such power station and the comments by the applicants on the sources of pollutants are not comparable or justifiable. Not only does that undermine the credibility of the evidence presented, it also leaves doubt as to what other points have been played down. It also assumes that local residents have not done much research on the subject. Statements, such as **GAM/14**, that low levels of dioxins may be good for you, do not overcome local concerns and throw doubt on the credibility of other evidence.

10.44 People are naturally cautious, especially when there have been high levels of availability of information on, and publicity about, past scandals, breaches, malfunctions etc. regarding incinerators or EfW facilities (**MAN/3.2**, 3.115-3.120., **MAN/22** & **MAN/45**). Reports are readily available on the internet and some even cast doubt on the regulatory system eg the Edmonton incinerator scandal [**MAN/3.2** para 3.118]. Other reasons seem to be related to the past experiences of varying yet persistent levels of pollution from the nearby chemical works, a sample of which is contained within **MAN/5.3** App10, 16 and 17 (a)-(j). Local residents feel they cannot trust Tata or E.ON [**MAN/3.2,** 3.125]. Moreover, other statements by residents in **MAN/3.2**, 3.133 – 3.142, **MAN/3.3** App23 and **MAN/36** highlight the level of their perceived health concerns, in addition to the 4000 separate objection letters received by the DECC.

10.45 Mrs Bailey’s evidence and newspaper cuttings in **MAN/36 & 38** and written statement **BAILE/1/WR** highlight the alloprene disaster that made national news headlines, where residents were exposed to alloprene (a known carcinogen) from a plant in Wincham in 1992. We also heard from the Wincham Parish Councillor [**WPC/2**] who highlighted a worrying number of cancers amongst young mums and children within the school community in Wincham, which was downwind of the plant. The time lag for cancers to show is generally between 10-15 years after exposure. Not all residents were notified of the alloprene leak, so people are naturally fearful of anything that might further increase their potential exposure to hazardous and toxic emissions, irrespective of how safe the operators or Government tell us they are. ICI were deemed to be a very safe neighbour and had numerous awards, yet it didn’t prevent that leak occurring.

10.46 We live only 12 miles from Weston (**MAN/3.2**, para 1.2.25) where there was another large disaster from an ICI plant**. MAN/3.2** para 3.127 and **MAN/3.3,** App19 describe that toxic Hexachlorobutadiene (HCBD) was found to be seeping from a nearby quarry, which was an industrial landfill in the past, and the stress caused from living with the knowledge of exposure. Residents had to be relocated and houses had to be bought by ICI. Residents had to be counselled and those that had been exposed had to live with the knowledge their children had been affected and those who hadn’t been exposed and relocated had to live with the stress, worry and guilt of residing there in the knowledge that the nearby landfill was hazardous to health.

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10.47 Neither of these incidents occurred far from here and residents remember only too well the concern that these disasters and stress they have caused. Potential community contamination and pollution exposure will always be a social issue and the health of the people living within 3 miles of the proposed SEP and possibly further away would be directly affected by the stress, worry, guilt and uncertainty, upheaval and loss of control. This would have direct health effects on these residents, irrespective of the actual damaged caused [**MAN/3.2** paras 3.127 & 3.130].

10.48 Recently we have experienced large carbon monoxide (CO) leaks from the Lostock Tata chemical works [**MAN/3.3**, App 25(a) & (b)], which the applicant rebutted. However, following discussions with the EA, it was shown that when the Orsat measuring technique was used, as opposed to the ESG measuring equipment, the levels were still shown to be elevated. At a meeting with the EA on 26 January 2010, it was agreed the Orsat method would be used in future, but it was noted that the levels were indeed elevated for CO and PMs during the trialling of anthracite as a fuel. In this case Tata had used anthracite, due to the high cost of coal, and this contains higher levels of mercury which, when burnt, is emitted into the air, putting our health at risk, simply to improve profitability.

10.49 The majority of the general public are concerned about the presence of the current chemical and industrial works throughout the town, due to the worry of effects of pollution and its regular nuisance effects, like smells, dust, throat irritation, and the local belief that the works contribute to sinusitis, chest problems and respiratory illnesses in the area. Children playing outdoors can have their asthma triggered. The proposed SEP might increase levels of NO_2 and PM, which children might inhale, triggering an asthma attack. The results of direct or indirect increases in NO_2 are shown in the St Mary’s Hospital Study in Portsmouth [**MAN/3.3**, App36a-c]. Children’s asthma medication should not have to be increased just because of additional air pollution.

10.50 The Government and medical advice has been fallible in the past, for example, asbestos, CFCs and Thalidomide. The only way to avoid the perceived hazards and risks associated with the SEP is to refuse consent for it [**MAN/3.2**, para 3.123].

10.51 Whatever the underlying reason for the local residents health fears, they are genuine fears, based on evidence provided by bodies like the EAC, WHO, EEA, PINCHE [**GAM/6**, documents 1-7], eminent scientists, together with much epidemiological evidence and evidence from specialists like Dr van Steenis, who not only comprehend the toxicology and epidemiology but also understand the mechanics of how the pollution interacts and causes stress on our bodily systems. Even the PCT in their letter of 4 Nov 2010 [**MAN/3.3**, App12] highlighted that there was considerable public anxiety around this application and concerns regarding the health implications of the proposed SEP.

10.52 Material weight should be given to the level of perceived health issues with regard to the incinerator proposal, particularly in light of the decision in Newport BC v SSW & Browning Ferris Environmental Services Ltd (1998), where the High Court found that fear of the waste transfer plant alone was a material consideration which could have been capable of being a reason for the refusal of

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planning permission. It recognised that stress induced illnesses can be damaging, irrespective as to whether objectively there is evidence to support such a fear. However, the proposed SEP would worsen local air quality and would contribute to an exacerbation of illnesses in the region for up to 21 miles as shown by the map in **MAN/8.3,** which indicates the point sources of $PM_{2.5}$ exposures. This is based on a stack height of about 300 feet and a dispersion of roughly 7 miles for every 100ft of height [**MAN/3.3,** App17, p4].

Best Available Techniques (BAT)

10.53 Perceived health impacts cannot be considered in full without considering the best available thermal technologies and also best available abatement schemes. Consideration should be given to the fact that there are alternatives which might be BAT, would be readily available and would better protect public health compared to those proposed. This should be considered in accordance with the revised Waste Framework Directive [**CD/2.7**].

10.54 Ideally plasma arc is the best technology as it minimises public exposure [**MAN/49**] to health risk. However, should incineration be the preferred route then the EA should be recommended to give full consideration of BAT, in the light of the public perception of health risks from the SEP, which is one of the main matters for the inquiry. In addition to **MAN/49**, consideration should also be given to **MAN/48** which sets out the most robust systems for incineration for the reasons stated in the papers and **MAN/8.3**, which rebuts **TATA/41**.

10.55 It is not immediately evident either that the technology described in **TATA/32** would be that used at the SEP. This includes an electrostatic precipitator in the abatement system but the diagram of the grate incinerator proposed in the ES [**CD1.106 Vol 2b**, Fig3.4] does not.

Human Rights

10.56 My claims are made on behalf of myself and my family, including my son who has asthma. They are made under Article 8 (right to respect for private and family life), Article 2 (right to life), Article 14 (prohibition of discrimination) and 2nd Article to the First Protocol (right to education) [**MAN/4.2**]. The case of Hatton & Others vs UK 2001 ECtHR [**TATA/58 and 59**] highlighted the need for the State to strike a fair balance between economic needs of the company and the individual (or local community). The State is given a wide margin of appreciation in terms of national security but it can be narrow when the rights of the individual are concerned.

10.57 In my son's case the margin is narrow as his rights are being violated by the fact that he will need more medication if the SEP is allowed. This leads to a narrow margin of appreciation for the determination of national policy and in any event is overridden by Article 2 which is absolute and means that a person's health should be protected. None of the exclusions apply. In addition, allowing the proposal would discriminate against local residents by giving the area a disproportionate amount of waste to treat. Moreover, putting the SEP in a location where there are already industrial uses, poor air quality and poor health (Spearhead ward) would mean that it is discriminatory in terms of the location, under Articles 2, 8 and Protocol 1, when read with Article 14. Increased ill health would interfere with my son's education, contrary to the 2nd Article to the

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first Protocol. Finally, the area could be subject to catastrophes like Soveso and there is human rights case law on this – Lopez Ostra v Spain 16798/90 (1994) and Guerra v Italy 116/1996/735/932 (1998), both ECtHR [**MAN/4.2**].

10.58 I should not have to move house to protect my child, the State should adequately protect him for me. As evidenced in **MAN/3.3,** Appendix 11 (a-c), the study of children exposed to NO_2 just after having had a simple cold caused susceptible children i.e. asthmatics, to have a more severe asthma attack than the baseline sample. The report identified that the attacks were at levels lower than the AQS hourly permitted rates of $NO_{2,}$ indicating that for susceptible people (including my child) the standards are not stringent enough to protect their health. Permitted hourly breaches of the substance may very conceivably trigger a severe attack. Rapid treatment is necessary with asthma otherwise the outcome can be fatal. My son will not always be with me and I am powerless to react at times when he is not. I therefore look to the authorities and the State to protect my child by having AQS that are stringent enough to protect even the most vulnerable members of our society. The AQS for NO_2 are not currently of the required standard. Many other AQS might be equally deficient with regard to children. The NO_2 standard will have to be lowered from current levels to deal with that uncertainty. Other standards might also prove to be at too high a level for children, as new studies and evidence emerge. These are unknown factors, even for the authorities.

10.59 In conclusion, if consent for the SEP is given, it would be in contravention of the Human Rights of my son (and others) under Article 8, Article 2, Article 14 and 2nd Article to the First Protocol.

Precautionary principle

10.60 As NO_2 AQS are not sufficiently stringent enough to protect the most vulnerable members of our society (or there is enough uncertainty to call this into doubt) and given the results of such asthma attacks can be fatal, material weight should be given to using the precautionary principle in respect of the proposal, as in PPS23 [**CD/4.19**, para 6], and not granting it consent.

10.61 Families living close to a range of industries in Northwich which emit pollutants to air on a fairly regular basis experience adverse health effects already. The pollutants that can be loaded onto $PM_{2.5}$s are heavy metals, pollen and other allergens and carried on the particles they get inhaled into the lungs and/or blood stream triggering an attack. These seem to occur more often when children play outside. Other families are also affected as the region has asthma rates which are above the national average, [**MAN/3.2**, 5.1-5.8 and figs 6 & 7].

Landscape and visual impact

10.62 The applicants' visual impact assessment [**TATA/11, 11a, 11b**] is mainly a desk-top exercise removed from the experience of local residents who would have to live with the new SEP building in their daily lives. The selected views are from close up the building would also be seen from some distance. The study has not taken into account a wide range of leisure activities and neglects views from the SEP.

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10.63 The redundant brick power station on the site is unobtrusive and blends in with the existing works buildings of varying heights and forms and is well-hidden from views in many directions which is illustrated in **MAN/44**. It is relatively tidy and neither oppressive nor obtrusive. In contrast, the proposal would be a solid mass on the skyline, blocking out areas of light which currently draw the eye beyond the existing works. The new building would direct attention to the works and the landscape of the area would be even more industrial in nature. The scale of the building would make it oppressive and draw attention to the health risks and any emissions from the two tall stacks in views from the neighbouring area. Therefore the scale and dominance of the proposed building would add to the perceived health risks of the SEP.

Highways

10.64 There would be logistical issues during the construction phase of the development as roads which are currently operating over their capacities would not be improved until the plant is operational. The improvements should be made before construction commences. Even in its operational phase, there would be problems. The ES [**CD/1.106**] does not consider the impacts of motorists re-routing when there are queues at nearby junctions. The transport assessment [**CD/1.10**] has not properly considered these matters, which means that it is of limited scope and usefulness, in terms of reassurance on the effects of traffic on the daily lives of local people.

Northwich as a Dumping Ground

10.65 The report **MAN/5.2** highlights that Northwich will be perceived as a dumping ground, due to the various sources of pollution and waste management. In effect 1m tpa of rubbish might be processed on the larger Lostock site. In addition, we have several hazardous historic landfill sites, the Minosis hazardous landfill permitted to take fly ash and the former salt mines filled with pulverised fly ash.

10.66 Above all we have various statements from residents on the high level of pollution we suffer on a persistent basis. This proposal would just seal the perception that Northwich is everyone else's dumping ground given that waste would be transported into the facility from up to 400 miles away, which would be disproportionate to the waste we generate. We would become the waste treatment centre of the UK particularly as we have two of the nations' strategic hazardous waste treatment facilities and also the hazardous storage of gas in 6-8 sites in and around Northwich.

10.67 All this would have a depressing effect on the town and might seriously detract from much needed inward investment to regenerate it. Significant weight should be given to the fact that this proposal would make a bad situation worse as in the appeal decision in the Derby Sifin Case (Ref APP/C1055/A/10/2124772). Whilst the decision was challenged in the High Court, this was not one of the points raised in the challenge [**CD/13.10**].

11. The Case for Mrs Dorothy Gamble

The material points are:

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11.1 Because Tata's EfW plant would produce 60MW of electricity the application comes under Section 36 of the Electricity Act 1989 and that appears to take precedence over the rules governing waste disposal. As a result and because the 'Proximity Principle' has been watered down it looks extremely likely that Northwich would be forced to accept waste from places like London. We would be forced to take it in from wherever Tata can get it, if they are successful in their application. It would give those areas no incentive to look after their own waste. This intention has been proven by other objectors to be unsustainable as shown by the questioning of the applicants' transport witness by the Council, CHAIN, and Mrs Manfredi.

11.2 The local area does well with our own waste and has a high recycling rate but it is not rewarded for being efficient. The other problem is that waste is declining and the trend suggests that it will continue to do so. This begs the question of where Tata would source their waste. They would, in all probability, have to search further afield.

11.3 Private Finance Initiative money was retracted by the Government who stated that Cheshire did not need any more incinerators because there were enough to be able to deal with the waste arisings in the area. The Tata/E.ON application suggests that this is a purely commercial venture to satisfy the financial demands of their companies without due regard for the health effects on the local population, especially children.

11.4 Northwich is like a shadow of its former self. It could be a beautiful town but it isn't. Northwich Vision was promised but, if Tata/E.ON were to be successful in their application for this incinerator, it might actually inhibit inward investment. The huge incinerator would burn other people's waste, being brought in by 264 HGV's per day which would cause congestion, with the skyline being dominated by two huge chimney stacks. The town could still be brought to life and become vibrant but the proposal would prevent this from happening.

11.5 The applicants have said that air quality would not be compromised by the EfW plant and that there would be no cumulative effects from other incinerators because there are no other incinerators in close proximity. However, it is only about 15 miles to the 850,000 tpa incinerator at Weston Point (Ineos Chlor) and to the 450,000t pa incinerator at Ince Marshes, Frodsham. Both of these incinerators have been given planning permission and the building of Weston Point has begun. As neither plant is operational, they are being discounted in terms of the cumulative effects of air pollution and the effects of both the stack emissions and the diesel exhaust emissions from the many HGV's that would be required daily. The decision on the Middlewich application by Covanta for a 450,000 tpa incinerator is awaited and this application represents another 600,000 tpa year incinerator in Lostock. Geographically, they would be in close proximity to each other. In relation to ESs, EN-1 [**CD/4.21**] makes it clear that the cumulative effects of multiple incinerators in close proximity to each other needs to be considered.

11.6 There will be capacity to burn over one and a quarter million tpa of residual household waste when Weston Point and Ince Marshes are operational. If the incinerators at Middlewich and Lostock are granted planning permission then there would be the capacity to burn another 1 million and fifty thousand tpa of

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residual household waste. In total that would be two million three hundred and fifty thousand tpa of household waste, all within an approximate 15 mile radius of one another. That would require an approximate 1056 HGV's per day on roads within that area. These are estimates but so is the modelling for air quality, transport and so on, on which the applicants rely.

11.7 In the air quality evidence (rebuttal proof [**TATA/8c]**) it was stated that a modelling exercise was undertaken, using modelling techniques that were approved by the EA, DEFRA and the Council, to assess cumulative impacts. According to the applicants it is clear that cumulative effects would be unlikely even where facilities would be quite close. Beyond a separation of 2-3 km, significant cumulative effects would be very unlikely.

11.8 Some of the pollutants [**GAM/8**] which would be emitted, not just from the incinerator stack, but also from the exhaust emissions from the 264 or more HGVs that Tata will require, would be Persistent Organic Pollutants (POPs), which are bioaccumulative and transboundary. They can travel hundreds of miles which is why the Stockholm Convention, which was agreed to by over 100 countries including Britain in 2001, commits to eliminating POPs, including PCBs, dioxins and furans. They call for countries to not only prevent the release of these pollutants but also to prevent their formation. As part of the combustion process incinerators inevitably produce these pollutants not only in the stack emissions but also in the fly ash. Incineration is a flagrant violation of the Stockholm Convention, the Environmental Protection Act of 1990 which states that the UK must prevent emissions from harming human health and the Convention on the Rights of the Child (UNICEF). The 2 -3 km that the applicants state is a separation distance, beyond which any significant cumulative effects would be very unlikely, appears unrealistic. Therefore it would not be ethical to allow an incinerator which contravenes and violates the Stockholm Convention by producing such pollutants.

11.9 On transport issues, the applicants state that the 264 extra HGV's per day would not compromise local residents' health because it would not add significantly to the air pollution in the local area. The applicants appeared to be unaware of the unique hazard of copious amounts of steam from the existing Tata Chemical Plant that we all face many times during the year and should have been taken into account in the transport assessment. Therefore it does not reflect the actual traffic flow problems and uniquely local hazards that exist on Griffiths Road.

11.10 Most of the applicants' evidence was based on desk top studies and modelling and so they did not contain a true base line. As a result, the evidence did not consider the pollution that already exists in the air, soil and water in the locality from Tata Chemicals, other industry and HGV movements currently occurring on the Griffiths Road site.

11.11 **GAM/6**, App9 demonstrates that present modelling methods are not only inaccurate in estimating ground level pollutant concentrations once emitted, but they also underestimate the quantities of pollutants emitted. In particular, modelling almost never takes into account secondary particulates formed as the products of combustion. These secondary particulates can double the total volume of particulates. Dispersion models use an estimation of exposure data,

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rather than actual exposure data, to assess the impacts of pollutants and their likely distribution. Modelling produces the illusion of a scientific knowledge and a certainty that is entirely unjustified. This was summed up by the head of the EPA Carcinogen Assessment Group, Roy Albert, when he said *'Individuals with very different institutional loyalties can produce very different risk assessments from the same materials where large uncertainties exist'.*

11.12 As a consequence, before Tata and E.ON's application for consent is even considered, in-depth, locality specific studies on the existing air quality are required, together with testing by the EA of soil and water samples taken from within the site and from areas around the site for existing pollution. The existing health of the local people should also be taken into account because only by doing that will there be a true starting point instead of assuming that everyone is healthy to begin with which does not give a true account. Local people can then be told the exact state of existing pollution and body burdens of toxins already being borne by local residents.

11.13 It is unfair and unjust to ask local people, including children, who will be living with the consequences of this decision for decades to come, to accept this incinerator. It would emit pollutants, along with all the attendant diesel HGV's and their exhaust emissions, and there is only estimates and expert opinions, (some of which have been shown to be flawed) as evidence of its safety.

11.14 Mr Hallwood's evidence [**HALL/1**] at the evening session of the inquiry concerned the previous studies carried out by the applicants' scientific advisor and he questioned the user of models, which can be flawed. A 'You Tube' item showing an exhibition at which the applicants' technical witness was speaking. It seemed to imply that small risks with such plants are admitted, rather than saying that there are greater risks. Such risks should not be taken with local residents' health. It is not accepted that, for example, low levels of dioxins might be good for you [**GAM/12** and **GAM/14**]. Residents' trust has also been undermined by the fines imposed on Tata for breaching permitted dioxin levels and on E.ON for breaking an inspection seal [**GAM/18** & **GAM/6**, App 16]

11.15 Despite the applicants' evidence, it would be wrong to allow the SEP to be built. The applicants say that there is a need for the EfW plant in order to continue production of soda ash. As a result the applicants have attempted to fit national policy around that need and it is that need that is driving this application.

11.16 About 4000 people have written letters of objection and 25,000 more have put their signatures to a petition of objection, all of which have been sent to DECC but if consent is granted local residents would have to accept an EfW plant, even in the face of all that objection.

11.17 It has been shown by other objectors that if there is a national need for electricity then there are cleaner ways of obtaining it from waste, such as Plasma Arc Gasification. The Energy and Climate Change Select Committee has published a report on the 25 October 2011, 'UK Energy Supply: Security or Independence?' [**MAN/27**]. In discussing 'Primary Energy Supply Resilience' the Committee reports that with the right investment oil and gas from the UK Continental Shelf could still be producing and contributing to security of supply

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into the 2040s (para 34). It also reports that the UK is not necessarily at risk because domestic resources are in decline. The necessary input infrastructure is being built and the UK has the most diversified gas supply in Western Europe (para 36). Most of our gas supplies are from Norway and the Netherlands. Only 2% is from Russia where the situation might become volatile. E.ON might be better building more storage so we match Germany rather than investing in incinerators. There is also the potential shale gas field in Lancashire.

11.18 It has also been proven that Tata do not need the incinerator for their energy needs as their 'State of the Art' CHP at Winnington is not running to capacity and uses a cleaner fuel (gas) than the incinerator would use i.e. waste. The CHP plant still has at least 10 years of operational 'life' left. The fact that the energy will cost them more would only reduce their profits and the profits of their shareholders. There is no contest when this is weighed against the health of our children and our local people.

11.19 The capacity for incinerating waste in Cheshire far outweighs the amount of waste produced in Cheshire. The SEP would be sited in a residential area (approximately 400 yards from the nearest homes where children live); the only access road is a narrow, single lane country road which would necessitate much idling of HGV's because of inevitable gridlock (which happens now at peak times). Tata state there would be 264 two way HGV movements per day which would substantially add to the airborne pollution of exhaust emissions when added to the stack emissions. At the 'Conditions' session of the inquiry it became clear that 'the worst case scenario' of bringing the waste in by road would be virtually guaranteed to happen, even though it would be cheaper to bring it in by rail.

11.20 Northwich is in the top 20% most deprived areas in England and in the top 10% most deprived areas in Cheshire West and Chester according to the Income Deprivation Affecting Children Index (IDACI) 2010, [**GAM/6a**] and this type of installation is mainly built in deprived areas. This creates enough confounding causes and effects that it is extremely problematic to apportion blame and gain justice for any adverse health outcomes that some people living near them might suffer.

11.21 There is, however, proof that states that traffic exhaust emissions, particularly diesel emissions which contain, amongst other toxins, ultrafine and nanoparticles, are detrimental to health [**GAM/41**]. It is not just emissions which emit PMs and other toxins but also the pollutants which are produced from brakes and tyres, which are also harmful to health. Some pollutants in EfW stack emissions don't have a safety threshold. The National Research Council concluded in 1992 that the assumption of thresholds for neurotoxicity was biologically indefensible. New emerging evidence suggests that nanoparticles, which cross the blood/brain barrier, may be even more dangerous than $PM_{2.5}$s but they are not being monitored or the effects being researched. This is a completely new unexplored area of toxicology which is causing eminent scientists, including Paul Connett and Vyvyan Howard, concern. There is little or no data on the effects on health of nanoparticles, which is suspected by scientists as being one of the most dangerous chemicals known, and which are not being monitored [**GAM/6**, App10].

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11.22 In a recent review of health effects involving incinerators it was found that two thirds of studies showed a positive exposure-disease association with cancer and some studies pointed to a positive association with congenital malformations. The scientists do not have an exact knowledge of what pollutants are produced by incinerators, their quantities, their environmental fate or their health effects. As a result it is impossible to assure their safety. The BSEM [**GAM/6,** App 9] states that it is clear that building municipal waste incinerators violates the Precautionary Principle and perhaps European Law. The results of the PINCHE work [**GAM/6**, Apps 1-7 and **GAM/41**] show that there is reason to be concerned about the effects on children's health of living in an unhealthy environment.

11.23 The Aarhus Convention explicitly links human and environmental rights, furthers the concept of intergenerational justice, and establishes that sustainable development can only be achieved through the engagement of all stakeholders. Therefore it is not only an environmental agreement, but it is also a convention about government accountability, transparency and responsiveness. The Preamble states that *every person has the right to live in an environment adequate to his or her health and well-being and the duty, both individually and in association with others to protect and improve the environment for the benefit of present and future generations.*

11.24 From reviewing some of the literature and epidemiology on incineration, the balanced view is that there is not enough evidence to unequivocally state that incinerators are safe. Given the level of uncertainty it is reasonable to request, as do the scientists involved in the PINCHE, that the Precautionary Principle be invoked.

11.25 Other objectors, such as Mr Kenton Barker, Chairman of Wincham Parish Council [**WPC/2**] state that there had been unexplained deaths from clusters of cancers in their village over several years. There was also concern regarding clusters of unusual child cancers in Leftwich some years back and in my small close of 22 houses that there are three cases of cancer (one person died last year).

11.26 This case is concerned with the effects of the proposal on children The World Health Organisation, President John F. Kennedy and the people of Sint Niklaas in Belgium **[GAM/6**, App10] have all stressed the need for children to be protected as our future resource.

11.27 it is concluded that that consent to build this EfW plant should be refused by the SoSECC.

12. The case for Mr David Wright

The material points are:

12.1 Tata requires a large amount of heat and a smaller amount of electricity to operate its plants at Winnington and Lostock. This requirement is currently met from a highly efficient and relatively clean CHP plant at Winnington operated by E.ON. This CHP plant is not yet half way through its design life.

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12.2 The applicants indicated in their evidence [**TATA/3**] that, although Tata has a dominant position in the UK market, its Northwich plants are under severe competitive pressure from overseas players with lower energy costs and less stringent regimes. The two issues particularly identified are:

- the European Union Emissions Trading Scheme (EU-ETS); and,

- the forecast increase in gas prices.

Business justification

12.3 The imposition of the EU-ETS is outside the scope of this inquiry. However, it is driving the applicants to switch from a clean, efficient energy source where the fuel is delivered by pipeline to a dirty energy source that uses fossil fuel to trundle its fuel over long distances. As Mr Coultas [**COU/1**] pointed out, energy generation by incineration of waste produces far more CO_2 per megawatt than energy from gas powered stations. However, EfW is officially designated renewable for that element that is derived from short-cycle biogenic carbon. It should be noted that the cycle for turning CO_2 from burning wood back into mature trees ready for harvesting is of the order of 40 years. Therefore, any climate change benefit from this could be a long time in the future. It is perhaps an unintended consequence of the EU-ETS that it will make the situation worse long before there is any chance of it getting better.

12.4 The gas price forecast that the applicants have used in their business case is included in **TATA/3b,** Appendix C. DECC's current forecast [**TATA/30**] is very different from the one that was in place when Tata decided to embark on the process to put in place the SEP [**WRI/11**] and new resources are coming forward [**WRI/12**].

12.5 Tata and E.ON's business cases are based on a number of revenue streams to reduce the cost of the energy to Tata including:

- Renewables Obligation Certificates (ROCs)

- Gate fees for the residual waste used for fuel.

Recent proposals from DECC indicate that ROCs for EFW and CHP will be reduced from 2013 and suggest removal altogether.

12.6 There has been confusion as to the nature of the fuel to be used. In their oral evidence, the applicants had committed to use only fuel that had been pre-processed – SRF or RDF. However, in **TATA/6**, it is stated that the applicant is unlikely to use SRF or RDF. The reasoning is that supply and demand for SRF and RDF is at the point where the market is going to dictate a change from attracting a gate fee to commanding a price. The applicants also presented evidence [**CD/1.101**] that Veolia, whilst identified as a potential supplier of fuel, recognises the strength of its position to negotiate a good deal.

12.7 In coming to the decision to withdraw PFI finance from Viridor's planned Lostock plant and other schemes, the Government formed the view that sufficient waste processing capacity is in the pipeline. The capacity calculation in the Severnside case applies a weighting to existing, planned and proposed plants according to their progress through the process (paragraph 109 (sic) onwards in **CD/13.7**).

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This adds weight to the argument that the market balance is likely to change from favouring processors such as E.ON to favouring organisations with residual waste to process.

12.8 All the above points tend to suggest that the business case for Tata and E.ON may be compromised. This may not be a planning issue but it does suggest that Tata and E.ON might struggle to obtain the finance to progress the proposal.

12.9 In the past, local authorities have entered into long-term contracts with incinerator operators. Councils, such as Stoke-on-Trent, have encountered problems with long-term contracts to provide waste to incinerators. These contracts later proved to be inflexible. In the light of the increasing capacity and reducing available residual waste, it would seem commercially inept for any local authority or commercial organisation to commit to supply for more than a few years. When an incinerator is built, it creates an appetite that must be fed for 30 years or more. It is likely that, in future years, incinerator operators will be paying for waste if they wish to keep the fire going, not charging for burning it.

Renewable Energy

12.10 The Carbon Assessment [**CD/1.53**] indicates 55.5% Dismissible Degradable Organic Carbon in the assumed composition. Of this, 12% relates to "putrescibles". The applicants' assumed composition of the waste is 35.8% food waste and 7.01% garden waste. According to the WPR2011 [**CD/4.4**], the preferred approaches for this waste are Anaerobic Digestion (AD) or composting. If capacity for AD and composting increases in coming years as the Government expects, then the proportion of biogenic carbon in the incinerator's waste stream would be likely to fall below 50%. So the SEP would become a predominantly fossil fuel energy source, not renewable.

Calculations

12.11 The applicants set out evidence and calculations on:

- Dioxin balance
- Carbon Balance
- R1
- CHP QI.

12.12 In cross-examination, some flaws were exposed in these calculations. These are set out in more detail in **WRI/7**. CHAIN also disputed the methodology for the Carbon Assessment. A response was made in **TATA/39** and **TATA/53**, which concede that there were some errors and omissions in this work. This seems to me to be a shaky basis for the application.

12.13 E.ON gave evidence [**TATA/4**] about the Kelmsley EfW plant that they propose to build. Like the Lostock proposal, Kelmsley has the expectation that much of the waste will be imported by rail. The transport evidence [**TATA/7**] demonstrated that a minimum distance of 100 miles would be required for rail

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transport to be viable. The applicants' carbon assessment indicates that fuel transported by rail would actually travel 400 kilometres (250 miles). On this basis, it would be likely the trains coming north to Lostock would pass trains going the opposite way, south to Kelmsley.

Procedural issues

12.14 The applicants spread their evidence around eleven experts. This tactic caused some difficulty for objectors, creating arbitrary demarcations. Often, multifaceted points could be sidestepped by referring on to another witness.

12.15 I also had little time to examine one of the rebuttal documents, [**TATA/64**]**,** before giving my evidence in chief. I understand that this is not good practice. The **TATA/64** rebuttal related to my proof of evidence [**WRI/3** and **WRI/3b**] and not to any document or topic that had arisen in the course of the previous four weeks and should have been available prior to the start of the Inquiry.

Need

12.16 Through the course of the inquiry, the Council and the other objectors have successfully demonstrated that there is no local need for the waste processing capacity the SEP would create. The applicants' witnesses were at pains to redefine the meaning of "enable waste to be disposed of in one of the nearest appropriate installations" in a way that it is not normally defined. It seems highly unlikely that the applicants would find a local waste stream to feed the incinerator. The local community has demonstrated that it strongly objects to Northwich becoming the dumping ground for other people's rubbish. Our quality of life should not suffer because other people are not dealing with their own waste.

Conclusion

12.17 In conclusion, I therefore request that the SoSECC rejects this application.

13. Cases for interested persons

13.1 **Edelchemie (UK) Ltd and Broadthorn Construction Ltd.** The separate objections from these two companies, whose plant adjoins the land included in the application, relate to the need for continued, safe, rights of access both during the construction and operational phase. More specifically, Edelchemie [**EDEL/2**] objected on the grounds of the width of, and traffic levels on, the access road to the rail head and ash handling facility, in respect of maintaining access to their premises and the safety of other highway users, including pedestrians. It was also claimed that rail wagons would oversail land in their ownership. Broadthorn's [**BROAD/2**] concerns related to a lack of information on how access would be retained to Broadthorn's premises during both the constructional and operational phases of the proposal.

13.2 Both of these objections were responded to in **TATA/54,** para 5, which set out proposed conditions, discussed in more detail in the conditions section, and illustrative plans, to show how access will be maintained. **TATA/47** indicated the distance from the rail track to Edelchemie's land. Discussions also took place about the objectors' private law rights of access, which are separate from the concerns of the public inquiry. Both Edelchemie and Broadthorn have

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withdrawn their original objections, subject to conditions in **BROAD/3** and **EDEL/3.** However, Edelchemie have continuing concerns about the proximity of the rail track transporting the waste to their premises, if an emergency such as a fire in the waste, were to arise. **EDEL/3,** paras 3.11-3.12, suggests a condition that would provide for an emergency access route.

13.3 **Mr M Coultas** [**COU/1**] objected to the proposed development on the grounds that energy from waste is not "green" with low CO_2 emissions and has low calorific value, the adverse impact of the transportation of waste to Northwich and Northwich and Cheshire becoming "the waste capital" of Britain.

13.4 **Mrs Julie-Anne Green** [**GRE/1 &1A**] objected to the proposed development on the grounds that the existing works is dirty, noisy, smelly, greedy in terms of use of finite resources and not considerate and respectful of local people's views. The proposal would make matters worse in terms of its adverse effects on health, tourism and the regeneration of the town. A need has not been proved for the energy, there might be a risk to the nearby Ineos Chlor Ethylene plant and the photomontage of the SEP, including the stack height, produced by the applicants was misleading.

13.5 **Marbury Ward Councillors** (Cllrs M Byram, N Wright & D Hammond) objected [**MAR/2**]**,** with Cllr Byram producing supplementary material [**BYRAM/1**]**.** The objections were based on the traffic impact of the plant, the lack of justification for the energy need, the adverse effects on the environment, including the landscape, the perceived health risks, proximity to Northwich town centre, noise and light pollution and conflict with local and national planning policy.

13.6 **Cllr Ms H Weltman,** Davenham and Moulton ward, [**WEL/2**] objected on the grounds of her constituents' health fears about the proposal, whether there is a genuine need for the energy and the implications, including traffic, of bringing waste in from long distances when there are adequate waste plants in the surrounding area.

13.7 **Lostock Gralam Parish Council**, objected [**LGPC/2**] on the grounds that it would be contrary to the CWRLP [**CD/3.2**] as it would represent an over-concentration of waste facilities in the local area, with Bedminster, a construction waste recycling plant, Viridor and Edelchemie. It would also undermine the waste hierarchy as it would prevent recycling further up the hierarchy. They said that there is no proven need for two power stations in Northwich and the air quality problems which would result. Burning waste is not a low carbon or a sustainable solution. Local people have concerns about the impact on their health despite Government assurances and there would be a cumulative impact from the surrounding plants. The road access is poor and committed development has not been built into the traffic figures and the increased traffic levels would increase air pollution. There would also be increased noise from steam and maintenance work. The SEP would be of a scale out of keeping with its surroundings which would dominate the local area and be too close to sensitive receptors, like houses, schools and farms.

13.8 **Stop Incineration in Disguise** (SID) (Mr G Eden [**SID/2**] & Dr T Boardman [**BOA/2**]). Mr Eden objected on the grounds of potential emissions from the plant, especially concerns about dioxins and furans, given the large scale of the

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plant and previous problems with the Isle of Wight incinerator, the methods of emission management, the increased risk from lower grade waste, the non-standard design of the incinerator and the risk of not being able to re-use potentially toxic ash from the incinerator in road projects. SID also objected to the cumulative effect of existing and proposed waste plants in Lostock, which would amount to 1 million tpa of waste being processed in the area. In addition, the applicants seem to have moved away from the concept of moving the incoming waste and outgoing ash by rail, which would place an undue burden on local roads. Similar points were made by Dr Boardman, with additional matters being raised about the place of incineration in the waste hierarchy, the need for waste to be dealt with locally, in a sustainable way, the fact that alternative technologies have not been examined and the overall justification for the energy need has not been made.

13.9 **Speakers at the Evening Session**. **Mr G Evans MP** [**EVA/2**] recognised Tata as a vital local employer but that the views of local people particularly concerning perceived health risks of clustering plants together should be taken into account, as it outweighs the benefits of diverting waste from landfill. The waste would be likely to originate outside Cheshire, requiring an increase in HGVs and its attendant problems for the local road network and pollution, acknowledged to be a problem by the EA. **Ann McEllin** [**MCE/2**], local resident and member of the Lostock Gralam Parish Council, was concerned that the plant would be unsustainable as it would destroy recyclables and would have an adverse effect on health of the local people, both the healthy and the more sensitive, with houses, schools, farms and playgrounds nearby. The CRWLP [**CD/3.2**] allocates the Lostock site as a waste treatment area but there is already consent for the site to process 400,000 tpa and it would be inappropriate to consent further capacity. There are cleaner ways to generate energy and the proposal would generate the bringing of large amounts of waste into Cheshire, when there are already many waste plants in the area and local people support a zero waste strategy. There is no need for another power station in the town. The existing one in Winnington created problems with PM_{10}s and there would be in increase in air pollution from traffic and the new plant in an area which already has health problems. The fog and steam from the plant in winter would hold the emissions close to the ground making it more of a hazard. The plant would not be a low carbon solution and would have a significant impact on local traffic, including committed development, and visually. Previously, there has been pollution from the Lostock plant and steam noise. All of these matters inhibit investment in Northwich and prevent regeneration.

13.10 **Cllr Tony Lawrenson**'s evidence [**LAW/2**] was mainly concerned with transport issues, with residential areas and schools off King Street/Griffiths Road being adversely affected by traffic, noise and pollution from HGV traffic, additional to that already allowed for the Bedminster plant. It would give major health problems to local people and devalue their properties. **Cllr Paul Dolan** [**DOL/1**] was principally concerned with the potential health risks to the local and neighbouring population, especially those with chronic obstructive pulmonary disease. Prevailing winds could spread emissions from the stacks eastwards into heavily populated areas. **Cllr Mark Stocks**' (Shackerley Ward) evidence [**STO/2**] was submitted in objection to the proposal to reflect the

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views put to him by constituents on a number of issues. The waste would be brought in from a wide area and would not be locally sourced but there is no guarantee that rail would be used to transport it. Processing the waste would bring no gains for the town. The promised highway improvements would not help with the volume of traffic likely to use local roads. Cllr Stocks had tried to organise an open forum meeting about the proposal but it had proved difficult to get (then) Brunner Mond to share a platform with CHAIN. A number of dates had been arranged but in the end the event had to be held without the applicants in attendance, which was unsatisfactory. The application should be refused on the grounds put forward by the Council and the letter put forward by the PCT/HPA [**CHAIN/5b,** App 17] should be fully considered in the decision.

13.11 **Wincham Parish Council** [**WPC/2**]**.** Mr Kenton Barker stressed concerns over health risks, including the high incidence of cancers in Wincham, with a group of young mothers having recently been affected. He questioned whether it could be relied upon that the SEP would be well-regulated and risks to health limited, which has led to the perceived fears of local people about the proposal. These need to be taken account in the decision. The volume of traffic through the local area would be increased. Waste ought to be disposed of near to where it is produced in accordance with PPS10 [**CD/4.14**]. There is already capacity in Cheshire and Northwich itself to deal with locally-produced waste and waste for feedstock is reducing. The development of the SEP would represent overprovision of capacity and reduce recycling.

13.12 **Rudheath Parish Council** [**RPC/2**]**.** Mr Bob Richmond set out the concerns of the Parish Council in terms of the likely increases in traffic volumes particularly on King Street. He was critical of the Transport Assessment [**CD/1.10**] in showing the data in an advantageous manner, which understated the effects of the volume of traffic on a minor road and on pollution from HGVs, increased by the proposed traffic signals. Local people are concerned about the health implications of the proposal, which would be close to 2 schools. The SEP would release toxic chemicals like dioxins and furans and the air quality modelling on which the risk has been assessed is very generic and is based on the unsubstantiated use of weather data from Woodford airfield. Better information for local residents on the risks from exposure is needed, as set out in the PCT/HPA letter [**CHAIN/5b,** App 17] but this would be after the development had taken place. The cumulative impact of similar plants within the general area and locally has not been taken into account. The Government should impose region or authority based mass discharge limits, reflecting the amount of residual waste produced in that area and plants would have to share these limits between themselves. The plant would not be sustainable as it would prevent recycling and the loss of resources. The plant is not wanted or needed in the town, which has been adversely affected by the legacy of the chemical industry and would have negative effects on proposed improvements and inward investment to Northwich.

13.13 **Mr Dave Foddy** [**FOD/2**], a local resident, was opposed to the proposal development on the grounds that it would not be required to manage locally-arising waste but come from a much wider area, contrary to the CRWLP

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[**CD/3.2**] and having a disproportionate effect on Northwich. The high stacks would be an unwelcome focus in views from many parts of the town and further away. The content of the waste is unknown and the vague assurances on the health risk are inappropriate. There would be a large amount of material emitted and in the rebuttal documents increases in harmful substances are shown. There would be additional vehicles on the junction of the A556/A533 to the west, which is already congested, and King Street/Griffiths Road is narrow and parked vehicles can have a significant effect on traffic flow. The proposals for rail transport are vague and there is no assurance that there will be capacity, so road is likely to be the main means of transport. The SEP is not for the benefit of Cheshire and the people living here and should be rejected.

13.14 **Ms Sue Statham** [**STA/2**] is a local resident and was pleased when the previous proposal for an incinerator was withdrawn. However, with this proposal the waste would be brought from anywhere in the UK to be burnt in Lostock, when locally recycling rates are good. Concerns were raised about the findings of HHRA, given the emissions both from the large quantity of waste to be burnt and from the large numbers of trips generated by the incoming waste and the outgoing toxic fly ash to hazardous waste landfill. Many reports show concerns about increased pollutants and levels of asthma and other respiratory diseases near these plants. The report produced by DEFRA [**CD/9.6**] in 2004 was compiled by people who had a vested interest in the incinerator industry and the report has since been criticised by the Royal Society's Review of it. Criticisms include a misrepresentation of the robustness of the results and there are omissions like local environmental and health sensitivity to pollutants and the impact on emissions of specific waste management activities. Given the Royal Society's comments, it is of concern that the report is still used by the EA and health agencies. There is information on breaches of emission levels from incinerators and of particular concern are those at Eastcroft, Nottingham, where in 2007 and 2008 toxic fly ash was sprayed over the surrounding area. This could also happen at Lostock. People want to move away from the old polluting industries in the area to greener ones which are safe for local communities and would not cause them constant worry about the emissions from the stacks. The proposal would be a threat to the health and wellbeing of everyone and that is why the proposal should be rejected.

13.15 **Mr Chris Howarth** [**HOW/2**] was concerned about health issues, the visibility of the proposal and traffic. Although not claiming to be a health expert, there seem to be little reliable research on the risks from such facilities and the 10 years in which the WID-compliant plants have been operating is not long enough to assess the risks, which have mostly been done on desk-top studies. The applicants have not addressed the health concerns of residents. In addition, the SEP would be a huge industrial monolith, visible for miles around and incompatible with the town moving forward with new investment and a new future. The presence of the structure would also affect mood, adversely affecting emotional health. Traffic levels would have a high impact on roads in the town, including the junctions at Broken Cross and Gadbrook Park, which would be made worse by traffic from committed development or groups of HGVs arriving together on roads that are already congested**.** **Mr John Hallwood** [**HALL/1**] commented mainly on the ways in which the evidence had been

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presented by the applicants, which largely played down the risk to local residents.

13.16 **Mr David Lee** [**LEE/2**] objected to the applicants' overstating the lack of health risks from the proposal. There had been a lack of consideration for local people and property values were likely to suffer if the proposal were to be built. WHO's guidelines for the siting of such facilities were that they should be away from populated areas, not close to housing and schools. The proposal would be unwelcome and should be resisted on the grounds put forward by the Council.

13.17 **Mr Gordon Fulton** [**FUL/2**] objected to the proposal on the grounds of the import of waste from outside the county, the quantity of emissions and the limited research carried out on the health hazards from it. There is already sufficient capacity to process the waste from the Council area and the proposal would mean importing waste, rather than communities dealing with their own waste. 75% of the waste will go out as emissions from the stacks to be dispersed into the surrounding area, which includes housing, schools, play areas and the town centre. There are food manufacturers, including a bakery, and a food distribution warehouse close by. The site location is not suitable for an incinerator. The ES is not reassuring in terms of health impacts. There would be a cluster of incinerators in the local area and the waste feedstock could include metals, paints and plastic laminates. There has not been sufficient research into the effects of PMs on health and the PCT/HPA [**CHAIN/5b,** App 17] have recommended that further work be done on cumulative impact which should be done before any decision is made. There is insufficient evidence that the plant would be safe and therefore the application should be rejected.

13.18 A written representation from **Rt Hon George Osborne MP** [**OSB/1**] supporting the views of CHAIN, SID and local people objecting to the proposal was read out at the evening session by Mr Cartwright of CHAIN, at Mr Osborne's request.

13.19 One supporter, **Mr Andrew Needham** [**NEE/1/S**], a former councillor who had responsibility for the CWRLP, spoke for the proposal at the Council's Strategic Planning Committee. His view was that the proposal is essentially an energy proposal, in accordance with Counsel's Opinion from Landmark Chambers, which is needed to support local business. Waste policies are inapt for examining the scheme which should be determined positively on energy policy. RSS policy EM12 is a broad locational policy for waste facilities. The RSS is to be revoked and this reduces the weight that should be given to it.

14. Written Representations

14.1 **DEFRA** wrote in support of the proposal, as there is a shortfall of capacity to burn waste-derived fuels, which might otherwise end up in landfill. It would be a CHP plant which would support the Government's climate change and carbon emissions agenda. It makes the point that finding operational heat users is a challenge in delivering CHP and the use of the energy by Tata would represent a rare opportunity. The application supports wider waste policy objectives in having the potential for rail use, would comply with WID, has the correct ash disposal routes and would be on an allocated waste site. It is likely to qualify as a renewable energy resource, would reduce dependency on fossil fuel and

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create 50 new jobs. **DECC Distributed Energy and Heat Team** also supports the proposal. It confirms that the generating station is likely to qualify as Good Quality CHP, with the existing works taking most of the energy but with other potential heat-users nearby. **Northwest Regional Development Agency** states that the proposal has a number of potential benefits including: operational benefits to the company, economic benefits to Northwich and the wider Cheshire area, reducing dependency on fossil fuels and contributing to national and regional objectives for CO_2 and landfill waste reduction. **Cheshire and Warrington Economic Alliance** supported the proposal as it would reduce dependency on fossil fuels, and contribute to national and regional objectives for CO_2 and landfill waste reduction. In addition, it would create employment opportunities and support an existing major employer in the area.

14.2 **The Environment Agency (EA)** had no objection to the proposal. They comment that the proposal needs to meet the provisions of the CRWLP [CD/3.2], particularly policy 2, and the need for the development should be justified, having regard to the impact on waste minimisation, re-use and recycling and the impact on the waste hierarchy. The comments draw attention to the rWFD and WID, in determining any EP. The comments include suggested conditions for surface water drainage and contaminated land, discussed below, and environmental regulation in respect of construction and operation of the plant. **Natural England** (21/10/11) comment that, following the supply of supplementary information, including air quality data, the proposal would not have a detrimental effect on internationally and nationally important sites or their interests, including national trails, access land and areas of search for national landscape designations and encourages sustainable design. The comments include information on licences required for protected species and recommends a condition be used to ensure a mitigation strategy is put in place for barn owls, discussed below.

14.3 **British Waterways** (BW) initially had concerns about the boundary treatment to the site alongside the Trent and Mersey Canal. **TATA/40** sets out the matters agreed with BW prior to the inquiry, including boundary treatment and native tree planting. BW also requested conditions on contamination and pollution prevention. **The Civil Aviation Authority, NERL Safeguarding and Defence Estates Safeguarding** have no objections, although the Civil Aviation Authority require the checking of safeguarding maps held by the local authority, in respect of the chimney heights, given the proximity of Manchester airport.

14.4 **Central and Eastern Cheshire PCT and (HPA) Cheshire and Merseyside Health Protection Unit** (most recent letter 3/2/11) has been referred to by a number of objectors. The letter states that the installation does not present any obvious cause for concern, provided that it is well-managed and maintained. This is based on the national HPA's advice on the impact on the health effects of emissions to air from municipal waste incinerators. It goes on to make various recommendations. These include: on-going monitoring of emissions; the implementation of an environmental management system to ISO 14001; further work to be undertaken to engage the community to respond to their perceptions and fears; a planning condition to ensure the study of the possible impact of multiples sites on health; the support of the PCT in public health surveillance to

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identify any possible health anomalies that might arise; and, a planning condition to ensure that the bulk of the fuel deliveries is by rail. A number of objectors have requested that these matters be considered for coverage by planning conditions, which is discussed below.

14.5 Both **Biffa** and **Veolia** support the facility. Biffa has over 250,000 tonnes of residual C&I waste in the NW region and so a significant share of the plant's capacity could be underwritten. Veolia has a number of facilities in Cheshire, the Midlands and North Wales, which could serve the plant.

14.6 **Written representations submitted to the inquiry**. Roy Bailey [**BAIL/1/WR**] wrote concerning the potential health risks to local people from the proposal, given existing lung and heart problems in the community, which would be made worse by the proposal, especially with the cumulative effect of other existing and proposed incinerators. Provision has already been made for waste in the CRWLP. The area has had problems with leaks in the past, including a serious one in the 1990s and unexplained health problems. The main attraction is the money from the electricity to be generated but this will be at the expense of regeneration and inward investment in the town. Elizabeth Bailey [**BAILE/1/WR**] made similar points on health to the previous objector, also including points about the visual impact of the proposal and the negative impact on house prices. Patricia Battisson [**BAT/1/WR**] is concerned about the potential worsening health effects of the incinerator on her son and others like him with lung and other problems. Enough capacity has already been granted planning permission and the area has already contributed to addressing waste disposal. The health of local children should be the primary concern in this case. Peter Boyde [**BOY/1/WR**] stated that the inquiry had shown that there is already overcapacity in Cheshire for waste. He was also concerned about the health impacts of emissions and that local weather conditions in winter could cause rapid cooling of emissions, concentrating them in the local area. Roads in the local area are already busy and bringing in waste by road would not be sustainable.

14.7 Liz and John Griffith [**GRI/1/WR**] listed the improvements which had been made to Northwich over recent years in terms of regeneration, education, tourism and recreation. They had concerns that there would be aesthetic and health and safety issues from the plant as well as increases in traffic and that many people who had the choice would move away if the plant was allowed to be built. Rhona Martin [**MART/1&1a/WR**] submitted material on nanoparticles and their measurement and monitoring. She also comments on health issues, reflecting the matters already set out above. Further evidence was submitted on the choice of the windrose at Woodford and the effect on air quality modelling. She also comments on the difficulty of obtaining information during the consultation stages. Graham Walker [**WAL/1/WR**] submitted written questions on the Transport Assessment included in **CD/1.106**, including the Arcady 6 model. This was addressed by the applicants in **TATA/42** and is discussed under highways matters. Frances Williams [**WILL/1/WR**] objected on the grounds of the proximity of the proposed development to residential areas and the impact that it would have on health and traffic and its visual impact.

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14.8 **Supporting written representations**. David Parks-Smith [**PARK/1/WR/S**] supported the proposal on the grounds that it would provide a long-term benefit in terms of economic development for the town and is confident that any problems can be managed. Derek Bowden [**BOW/1/S**] has supported the proposal on the grounds that the proposal would generate renewable energy and would support employment for local people, which would be beneficial, provided that it was to be properly regulated.

14.9 In addition, over 4,000 other written representations were submitted, raising similar issues to those covered above. Over 280 representations were made in support of the proposal, in the Council's estimate. A petition of over 25,000 names was mentioned in evidence but not submitted to the inquiry. This is believed to be against incineration projects in Cheshire more generally.

15. Conditions and Obligations

15.1 The suggested conditions and submitted planning obligation are reported on in the event that the SoSECC decides to grant consent for the application. Although Circular 11/95 : The Use of Conditions in Planning Permissions relates to planning permissions rather than consents under the Electricity Act 1989, the Circular sets out more general guidance on attaching conditions to consents.

15.2 The standard time limit for the commencement of development under S36 of the Electricity Act is five years. The Council initially requested a shorter period for commencement, but the 5-year period was accepted as being in accordance with this Act and is the same for other recent decisions, such as Ferrybridge. A condition setting out the relevant plans would be necessary for the avoidance of doubt and in the interests of proper planning.

15.3 Prior to the construction of the proposal the former power station and associated structures would need to be demolished. A condition would be necessary to ensure control over potential environmental risks, hours of working (which would be normal hours imposed on construction/demolition activities) and the management of waste from the demolition, in order to protect the environment and the living conditions of local occupiers. In addition, a Construction Environmental Management Plan (CEMP) would be required for the same reasons. A Construction Traffic Management Plan would be necessary to control traffic and protect local highways during the construction period, in the interests of protecting the local highway network. A condition to ensure wheel-cleaning facilities for vehicles during the construction period would be necessary to protect local roads and for highway safety reasons. A condition for fencing or other protection of retained natural habitat, drains and watercourses would be necessary to protect them from construction activity and pollution.

15.4 A condition would be necessary restricting the hours of delivery of waste by road to protect the living conditions of local occupiers. Although there was debate at the inquiry as to whether Saturday morning deliveries should be allowed, the times included in the condition are normal commercial working times. The proposed condition would give control over the numbers of HGVs entering and leaving the site, which would be necessary to control the amount of traffic on local roads, in the interests of highway safety and the living conditions of neighbouring occupiers. Although some objectors have suggested

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a condition limiting the numbers through the gate in any one hour [**MAN/65**], this might lead to parking or queuing outside areas under the applicants' control. A condition would be necessary to ensure the recording of number of waste delivery vehicles, their origin and times of entering and leaving the site are recorded to ensure compliance with delivery times and vehicle numbers set in other conditions. A suggestion has been made that such records are submitted monthly but the current wording of the condition gives the Council flexibility in monitoring and enforcing the conditions.

15.5 A condition to limit the hours during which deliveries can be made by rail would be necessary to prevent night time deliveries in the interest of protecting the living conditions of neighbouring occupiers. A similar condition would be needed to control the unloading of such deliveries. The suggested conditions do not prevent delivery and unloading at the week-end or on Bank/Public holidays, which was of concern to local residents. However, in the light of both local **[CD/3.2,** policy 27] and national policies [**CD/4.22,** para 2.5.25] which encourage the use of transport other than road, it is important that the potential for the use of rail for transport is maximised. During discussion of the unloading condition, it was suggested that the condition should cover reversing warning devices on unloading vehicles to prevent disturbance to neighbouring occupiers. This has been incorporated into the condition.

15.6 Having regard to the above policies to encourage transport other than road (and also the comments of the PCT/HPA [**CHAIN/5b**, App17] and local residents), the Council suggested that a condition should be imposed to encourage sustainable transport [**CWAC/103**]. A similar condition was imposed on the consent for the multi-fuel generating station at Ferrybridge "C" Power Station granted on 31 October 2011 [**CWAC/101**, condition 61], but was not a requirement at Rookery South. There are differences between this case and that at Ferrybridge since water transport is also potentially available at Ferrybridge [**CWAC/100**, para 3.4 (c)] but in the Lostock case only rail and road are viable alternatives. Mr Hutchings, for the applicants, in **TATA/7**, section 9.4, sets out a comparison of road compared to rail costs. Rail becomes more competitive at around 70 miles, although it can be so from 30 miles upwards. The mode of transport would largely be a practical and commercial consideration and rail transport would be likely to become the preferred transport mode as distance rose, in any event. As such, the condition might not be necessary, when the market would achieve the desired result. A condition attempting to set the assumed split of two-thirds rail to one-third road would not be reasonable or achievable if the waste was sourced from nearby. However, the source of the available waste is, as yet, unknown and would need to be managed as part of the contracts to be sought.

15.7 Staff and visitor parking would be required prior to the commencement of the operation of the plant and retained, in order to prevent parking on the internal access roads and to ensure highway safety. In order to reduce the demand for parking and the use of sustainable transport means for workers and visitors, a condition would be required for a staff travel plan and associated measures.

15.8 Conditions would be necessary to ensure that rights of access were maintained to both Broadthorn and Edelchemie, adjacent landowners, with the details of access to the southern construction laydown area and two-way internal road

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access being required. Broadthorn have confirmed in **BROAD/3** that this would overcome their objection. Edelchemie accept these conditions in **EDEL/3** but have continuing concerns about emergency access, including fires. The applicants would have no objection to the further condition suggested by Edelchemie being included in the scheme, which would overcome concerns about emergencies occurring on loads being carried by rail and access to the rail track. This has been included in the schedule of conditions.

15.9 Conditions would be necessary for soft and hard landscaping schemes, together with the maintenance of the landscaping for a five year period, in the interests of maintaining/improving the character and appearance of the area. For the same reason, a condition requiring samples of external materials to be submitted and approved would be necessary. A condition would also be necessary to ensure that all the ecological mitigation and enhancement work and its timing, as identified in the ES, is carried out in order to protect the ecology of the site.

15.10 A scheme for the management of surface water and foul drainage, as set out in the ES would be necessary to prevent flooding and pollution. Although the surface water drainage condition suggested by the EA specifically included overland flows, these were not anticipated to be an issue in the FRA [**CD/1.106, vol 2B**, App 10.1, para 3.3] and in any event are covered by the wording of the condition. A condition would be necessary to ensure that any contamination of the site was investigated, remediated and any measures taken verfied, to prevent potential pollution from contaminants. The condition would be in accordance with that suggested by the EA and would overcome the concerns of BW about potential pollution of the nearby canal. Although Mrs Manfredi discusses more detailed matters to be included in any condition to prevent contaminants affecting air quality [**MAN/65**], such matters would be covered by any scheme for investigation and, where necessary, remediation. Also to prevent pollution, all fuels, oils and liquids need to be stored in a securely bunded area on the site.

15.11 A condition would be necessary to restrict operational noise levels to those of the background noise at sensitive receptors to protect the living conditions of neighbouring occupiers. Although more detailed measures to control odour might be required by the EP, a general scheme for odour management would be required to protect the living conditions of neighbouring occupiers. A condition to control lighting during the construction and operational phases would be necessary to control light pollution.

15.12 During the course of the inquiry, two other decisions on energy from waste plants were issued, the proposed Rookery South plant in Bedfordshire [**TATA/34**] and the Ferrybridge decision in West Yorkshire [**CWAC/100 & 101**]. Both applications were consented, with conditions including one for a waste acceptance scheme. Although such matters are normally dealt with as part of the EP and Circular 11/95 requires conditions not to duplicate matters dealt with by other regimes, in this case a condition would be required to overcome fundamental objections to the scheme, both by the Council and Mrs Manfredi. Both of these objectors have concerns that the proposal would undermine the waste hierarchy but both have also accepted that such a condition would overcome this particular objection, as was the case in the

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previously-mentioned decisions. Other objectors, including CHAIN, have not withdrawn their objections. Also during the course of the inquiry the applicants introduced a suggested condition preventing biomass sourced from conventional forestry management and agricultural crops being used as feedstock [**TATA/23**]. This would help to overcome some of objectors' concerns about potential emissions from such feedstock and is defined in para 2.5.5 of EN-3. More detailed matters concerning waste input and BAT by Mrs Manfredi in **MAN/65** and Mr Wright in **WRI/13** would be more appropriately dealt with through the EP.

15.13 A condition requiring air quality monitoring, and a continuation of the scheme should it be required by the Council, would be necessary in the interests of providing information on air quality issues in the area around the proposal on a regular and programmed basis, to assess the initial impact of the SEP. Similar conditions were imposed on the consent for the Ferrybridge proposal, although a detailed scheme of monitoring of emissions would also be required as part of the EP. Whilst Mrs Manfredi [**MAN/65**] and Mrs Gamble in **GAM/35** have suggested that the air quality assessment needs to be re-examined prior to consent being granted, this would not be possible in the context of this application and therefore her comments have been addressed as part of her objection to the air quality section of the ES. When the operations at the plant cease, a condition would be necessary to ensure the demolition of the structures and buildings and the restoration of the site so that the site does not become derelict. A condition would also be required to give a default provision for the Secretary of State to be able to determine any matter to be agreed with or approved by the Council, in the event that there is a dispute. This would be in accordance with para. 3.51 of the Guidance Note to the Consenting Process, dated October 2007 [**CD/2.8**].

15.14 A number of objectors requested conditions requiring air quality monitoring to be undertaken and one of the PCT/HPA's recommendations was that ongoing monitoring of emissions should be undertaken and published on a website. This and many of the requirements sought by Mrs Gamble (in **GAM/35** and **GAM/35a**) would need to be mainly achieved through the EP process, following on from the initial air quality monitoring required by the conditions already discussed. The community liaison process, established through the planning obligation, would also have a role providing and interpreting such information on emissions collected as part of the EP process, as requested by local objectors.

15.15 The Council have suggested that a condition requiring a scheme for the archaeological investigation of the site, to which the applicants object. The historical maps in the ES [**CD/1.106 vol 2b,** App 11.2] show the development of the Lostock Works from 1898 onwards and it is possible that there are features of interest in terms of industrial archaeology. The preparation of a scheme would not be unduly onerous and would be beneficial for future generations wishing to understand the industrial past of the area.

15.16 The second bullet point of the PCT/HPA letter concerns the environmental management system and the compliance with the environmental permit. This would not be necessary under the planning process since compliance with a permit would be a matter for the EP regime, regulated and enforced by the EA.

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Circular 11/95, para 22, says that other controls, like environmental management, should not be duplicated by planning conditions. The issue of public consultation and engagement has been discussed above and measures for engagement, including local liaison, form part of the planning obligation. The PCT/HPA also requested a condition which required further work on the impact of multiple sites on health and this concern is echoed by objectors, some of whom want the study completed before consent is granted. The ES contains an AQA and an HIA, both of which address the issue of potential cumulative risk from other EfW plants in the area. Since any further studies could not be completed prior to the determination of this application and influence its outcome, these matters have been treated as objections to the scheme and discussed in the conclusions.

15.17 The PCT/HPA already undertakes research on health anomalies locally and they have requested support from the applicants for further monitoring. Any support would be likely to need a financial contribution, which could not be made by condition, as set out in para 83 of Circular 11/95, but would require a planning obligation, which has not been requested by the PCT/HPA.

15.18 Mrs Manfredi, in **MAN/65,** suggested that a condition be imposed that should Tata or its successors curtail soda ash production, then the capacity of the SEP should reduce to reflect the change, since the need for the SEP has been based on the requirements of the soda ash plant, rather than any other firms being supplied with energy. It was stated at the inquiry that there are other potential customers in the local area both for the steam and the electricity. It would be likely that any such changes would need new connections requiring consent and the sustainability of any such schemes would be examined at that stage.

15.19 Some of the conditions have been modified slightly in the interests of precision and enforceability. Reference has been made by objectors to the need to mention in the conditions what should happen in the event of a breach of them. There would be no need for this provision since the Council could enforce against any breach.

Planning obligation

15.20 The submitted signed unilateral undertaking [**TATA/83**] covers five main areas: highway works; local liaison committee and a community liaison officer; maintenance contributions; traffic management; and, employment. The highway works include a signalised junction at Middlewich Road/ King Street /Pennys Lane/ Griffiths Road; resurfacing works of sections of the A530; widening the eastern arms of the roundabout at A556/A530; provision of a controlled pedestrian crossing on King Street; and an extension of the 40mph speed limit on Griffiths Road, together with maintenance contributions for the works at the Broken Cross junction and controlled pedestrian crossing on King Street. These measures would be necessary to ensure highway safety. The proposed improvements and objections to them have been discussed under the section on highway safety.

15.21 A local liaison committee would be established and community liaison officer appointed to ensure that the local community remained informed and engaged about the plant and its operation. HGV routing has been shown to be achieved

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most effectively using reasonable endeavours, through contractual arrangements with hauliers. The obligation relates to the use of the designated Heavy Commercial Vehicle Routes and sets out the main routes to be used on defined Relevant Journeys. These would be required to ensure that HGV traffic travelled on suitable routes, in terms of traffic management. The undertaking also covers local employment and training which would help to ensure local people benefit in employment terms from the development.

15.22 All of the matters covered in the unilateral undertaking are necessary and reasonable. As such, it would meet the provisions of Circular 05/2005: Planning Obligations and Regulation 122 of the Community Infrastructure Levy Regulations 2010.

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16. Conclusions

Introduction

16.1 From the previous submissions and representations, the main considerations in this case are:

1) whether the proposed development would be in accordance with national and local policies on energy mix and maintaining a secure and reliable supply of electricity as the UK makes the transition to a low carbon economy, and achieving climate change goals;

2) whether the proposed development would be in accordance with national and local waste policies, especially policies 1, 2, 3 & 34A of the Cheshire Replacement Waste Local Plan (2007), in terms of:

a) whether the proposed development would maximise the opportunities for waste to be managed in accordance with the waste hierarchy;

b) whether the proposed development would be one of the "nearest appropriate installations" for the management of the waste stream and minimise the avoidable carriage of waste over long distances, taking advantage, where practicable, of opportunities to transport waste by rail and water; and,

c) whether a need for the proposed development as a means of managing waste has been demonstrated, in particular by reference to the capacity of existing waste management facilities in the sub-region;

3) the cumulative impact of the proposed development with other proposed and operational developments of a similar nature within the region;

4) the perceived health impacts of the proposed development;

5) the impact of construction and operational traffic associated with the proposed development on the local highways, including users and safety;

6) the visual impact of the proposed development, including whether it would preserve or enhance the character or appearance of the Trent and Mersey Canal Conservation Area (CA); and,

7) the proximity of the proposed development to residential dwellings and other non-industrial units.

16.2 Energy policy will be considered first in this report as the application was made under the Electricity Act 1989. The Secretary of State's main matters have been reflected in the main considerations. In the following paragraphs the figures in brackets (n) refer to earlier paragraphs of my report which contain material on which I have based my conclusions.

Energy policy

16.3 The proposed development would be an EfW facility which would generate 60MW energy. It would be a generation station of a size that would be considered as a nationally significant infrastructure project (NSIP), as defined in S15(2) of the Planning Act 2008. As EN-1 and EN-3 are the most recent policy

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documents covering this type of development and so, although this proposal has been submitted under the Electricity Act 1989 rather than the Planning Act 2008, it is considered that these documents have substantial weight in the determination of this decision. As with the Rookery South application, which was an EfW plant of similar size (65MW in that case), EN-1 and EN-3 are the primary basis for the decision, although regard has to be had to other relevant national and regional/local policy on energy and other matters, including waste. Although CHAIN disputes the relevance of EN-1 and EN-3, which they say apply to large power stations which produce only electricity, the proposal is of a size and function to be an EfW NSIP. (7.8-7.10)

16.4 The proposal would provide steam and electrical power for Tata for their works at Lostock, which produces soda ash and bicarbonate of soda. Any surplus energy in the form of electricity would be exported to the national grid. National policy, both in the Energy White Paper and EN-1 (para 3.1.3), demonstrates the importance that Government attaches to new generating capacity and the urgent need for that new capacity. EN-1 (para 3.1.4) goes on to say that substantial weight should be given to the contribution which projects would make to capacity and (para 3.4.5) that the Government is committed to an urgent increase in renewable energy, which includes EfW. EN-3 (paras 2.5.1-2) sees the combustion of waste as playing an increasingly important role in meeting the UK's energy needs. (5.1, 6.1, 7.3, 7.12-14)

16.5 The applicants' calculations of the R1 figure, which is a calculation required by the rWFD to demonstrate that the plant would be classified as a waste recovery plant, show that the SEP would meet those requirements. The SEP would also qualify as providing renewable energy. As a thermal treatment providing renewable energy it would be in accordance with criterion 1) of policy 34A of the CRWLP. Given the level and the urgency of the need for new energy supplies, EN-1 (para 4.1.2) says that the start should be a presumption in favour of granting consent for energy NSIPs. The RSS and VRLP also support the development of renewable energy, CHP and decentralised energy supply. The RSS provides targets for renewable energy and CHP and there is currently a significant shortfall against each of these targets. (5.1, 5.5, 5.7, 7.15, 7.17-18)

16.6 As a CHP proposal for a specific end-user, the proposal has gained support from DEFRA, which describes the proposal as a "rare opportunity". It also has support from DECC Distributed Energy and Heat Team and NWRDA. The SEP would be likely to provide Good Quality CHP, despite concerns about the CHPQI calculation, which was subsequently corrected at the inquiry. The proposed scheme would also allow for the retention of the Good Quality CHP gas-fired generating station at Winnington, which currently provides steam and electricity for the Lostock works, running at a reduced level and the retention of the steam mains between the two works sites. These latter provisions would allow for the back-up of existing energy supplies to both the Lostock and Winnington works. EN-1 (para 4.6.8) states that substantial additional positive weight should be given to applications incorporating CHP. The Council confirmed in their evidence that the proposal is in accordance with energy policy and they have no objection to it on that particular issue. (7.4, 7.15, 7.19, 7.22-23, 8.2, 10.25)

16.7 Despite EN-1 saying at para 3.1.3 that the need and urgency for new energy infrastructure has already been established by the Government, a number of

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objectors have questioned the need for the new plant, when the Winnington CHP plant still has at least 15 years' life. The gas-fired Winnington plant was commissioned in 2000 and, over the operating period, there have only been a limited number of times when, despite its back-up capacity, it has been unable to maintain the continuous energy supplies required for the Lostock works. (7.3, 9.20-21, 10.19-23, 11.19, 12.1)

16.8 The applicants wish to move away from reliance on gas, which is a fossil fuel rather than a renewable resource, which is subject to volatility and increases of price. At the time of the application gas prices were volatile and rising but DECC's more recent projections show this trend levelling off. However, there is no guarantee that such volatility and/or price rises will not happen again, even if further gas supplies, for example from shale, are found to be viable. In contrast to fossil fuel, whilst amounts of residual waste would continue to decline nationally and locally within the lifetime of the SEP, there would also continue to be waste which cannot be recycled and which would need to be treated. Although gas continues to be an important fuel in the future energy mix, Government policy, reinforced by financial measures, is to reduce reliance on fossil fuels and increase energy supplies from renewable resources. (7.6, 10.26, 11.18, 12.4)

16.9 Objectors, including Mrs Manfredi, have questioned some of the commercial aspects of Tata's case. However, matters such as the firm's investment in trona reserves elsewhere in the world, their actions in the closure of the Delfzjil plant in the Netherlands and residents' views on their future commitment to the Northwich works have little weight in determining this application, as set out in EN-3, para 2.5.17. (10.26)

16.10 There is no need for carbon emissions to be assessed against carbon budgets by decision-makers in order to satisfy energy policy, as set out in EN-1 (para 5.2.2) and EN-3 (para 2.5.38). Mrs Manfredi's view was that the proposal's contribution to energy security and the reduction of greenhouse gas emissions should be set out before the need in EN-1 (para. 3.1.3) can be demonstrated. However, 3.1.1 of the same document indicates that the development of the energy infrastructure covered by the NPS will achieve energy security at the same time as dramatically reducing greenhouse gas emissions. Therefore these matters do no need to be proven before need is established. (7.21, 10.19-10.24)

16.11 Nevertheless, the applicants have submitted a carbon assessment as part of the application, revised during the inquiry. It has been criticised by CHAIN and others, both in respect of the amount of CO_2 released, when they claim a need for the SEP has not been established, and the method and assumptions used in comparing the SEP to landfill disposal. The efficiency of waste combustion, compared with bituminous coal, and the effect on CO_2 emissions of the proposal was also questioned by Mr Coultas. Whilst comparison with landfill disposal in the assessment has been criticised, diversion of waste away from landfill remains a national policy objective in WPR2011 and there is still a national excess of waste needing to be landfilled even after recycling has taken place. (7.21, 9.22, 12.3, 12.10-12, 13.3)

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16.12 The conclusion is that the proposal would comply with national policies on energy mix and maintaining a secure, reliable and flexible supply of electricity as the UK makes the transition to a low carbon economy, and achieving climate change goals. The proposal would be in accordance with EN-1, EN-3, RSS policies EM15, EM17 and EM18, policy 34A 1) of the CRWLP and policy BE21 of VRLP. Para 4.1.2 of EN-1 sets a presumption in favour of granting consent and there is substantial weight in favour of the development, both in terms of meeting energy need and CHP objectives. Substantial weight also has to be given to the need for the proposal to be developed close to the end user of the steam which would be produced by the SEP.

Waste matters

i) <u>Waste hierarchy</u>

16.12 The proposal is for the incineration of waste with energy recovery and therefore is only just above disposal in the waste hierarchy. Both the Council and other objectors had concerns that the waste streams to be provided to the SEP would not have been the subject of sufficient separation of recyclates, so that it could be genuinely considered to be residual waste. Local residents have objected on the grounds that the provision of the SEP would deter recycling and lead to waste being disposed of further down the waste hierarchy. No sorting or Mechanical Biological Treatment (MBT) is proposed as part of the plant but the applicants say that this could have been a disbenefit to local people in terms of the size of the plant that would be required to generate the same amount of waste fuel and the commensurate increased traffic flows. (7.27, 8.4)

16.13 During the inquiry, the decisions at both Rookery South and Ferrybridge were issued. Both of these developments had similar objections based on the potential harm to the waste hierarchy. These have been overcome by the imposition of a suitably-worded condition which ensured that a waste acceptance scheme would be implemented, so that only residual waste was accepted for thermal treatment at the respective plants. This is important as the SEP would be a merchant facility with the exact nature of the fuel still to be determined at contract stage. A number of different types of waste were mentioned as fuel at the inquiry by different witnesses. The use of such a condition would give the Council control over the types of waste accepted. Checks would also be carried out on the waste before thermal treatment to ensure compliance with the acceptance criteria. Although acceptance criteria are normally a matter for the EP, and Circular 11/95: The Use of Conditions in Planning Permissions, says that controls in other regimes should not be duplicated, in these cases such a condition ensures that the development would be in accordance with waste policy in terms of the hierarchy. (7.28, 8.6-9, 12.6)

16.14 The Council and Mrs Manfredi have withdrawn their objections to the proposal on the basis of the waste hierarchy, subject to such a condition being imposed. However, CHAIN in particular, have continued to object on the basis of the harm to the waste hierarchy, since there is a decreasing amount of waste in the country to be processed and continuing to allow more incinerators, which would need fuel, would tend to drive waste down the hierarchy. Nevertheless, national policy continues to allow a role for waste combustion and EN-3 (para.

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2.2.2) states that where a proposal complies with the waste hierarchy, then the recovery of energy from waste combustion would play an increasingly important part in meeting energy needs. The proposal would also comply with the WPR2011, para 22, in helping to get the most energy out of genuinely residual waste. (7.29, 8.5, 9.12)

16.15 The waste to be used as fuel would be managed in accordance with the waste hierarchy, provided that the proposed condition is in place. Therefore the proposal would be in accordance with EN-3 para 2.5.70, policy EM11 of the RSS and policies 1 and 34A of the CRWLP, in so far as they relate to the waste hierarchy.

ii) Waste capacity

16.16 Although referring to the need and urgency for renewable energy, EN-1 (paras 2.5.66, 67 & 70) says that such projects should take into account the relevant waste plan, the extent to which it would contribute to recovery targets, taking into account existing capacity, and be of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets. Policy 3 of the CRWLP deals with the phasing of sites and capacity issues within the plan area. In assessing applications, the policy requires an assessment to be made that shows existing capacity to be inadequate in terms of the RSS waste apportionment (para 98 onwards). (7.30, 7.36, 8.27-28, 9.4, 10.15)

16.17 The explanatory text to Policy 3 of the CRWLP states that the reference to "capacity" means the maximum throughput of thermal treatment plants with planning permission. EN-3 (para 2.5.67), referring specifically to EfW, says that existing capacity should be taken into account. The SoSECC's matters also refer to existing capacity. There is also a footnote 36 on page 22 in EN-1, which makes reference to Government's view that those projects which have permission but have not started to be built should not be taken into account in planning further energy capacity. However, this footnote relates to the potential for generating capacity to come forward, rather than relating specifically to waste capacity, although the Ince Marshes EfW proposal is of a size to be considered as a NSIP generating station under EN-1. (7.30, 7.33, 8.35)

16.18 The issue of existing capacity has been fully explored in the Rookery South decision (para 5.15), where it is taken to mean operational capacity, rather than permitted capacity. Other recent decisions at Ineos Chlor and Ince Marshes, despite being taken in slightly different contexts, have also interpreted capacity in terms of operational, rather than permitted capacity. Given the national and European imperatives to divert waste from landfill, there is a need to ensure that this does not result in the underprovision of waste treatment further up the hierarchy, since there is no certainty that permissions would lead to operational development. Therefore, it is considered that operational capacity should also be used in this case. (7.33)

16.19 Within the CRWLP area the only operational plant is Veolia, which is a specialist facility and which the Council considers should not count towards capacity. In addition, the Council say that there is permission for Ince Marshes for 600,000 tpa with a potential additional 250,000tpa for which consent is

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likely to be sought through the EP process. As no decision has been taken on this latter element, the Council agrees that only the 600,000 tpa should count. A further permission exists at the Bedminster plant for 150,000tpa. This gives a total permitted capacity of 750,000tpa. Operational capacity exists at the Ineos Chlor plant of 800,000 tpa, which CHAIN say is under construction, but this is outside the CRWLP boundary. There is a further EfW proposal at Middlewich but this has only just been to inquiry and there is no decision on it. The operators of the Bedminster plant have carried out works to keep the planning permission alive but the Council says that no other construction works have been carried out on the consented plants and there is no certainty that any of these plants would progress to operational status. Any shortfall in capacity would conflict with the national and local objectives to divert waste away from landfill. Even if these consented plants within the CRWLP area did become operational, they have not been limited, by condition, to accepting only waste from Cheshire and there is no certainty that waste generated locally would be processed in them, despite there being an overcapacity against the levels set in the CRWLP . (7.33, 8.30, 9.9, 11.6, 11.20, 12.7, 13.8, 14.1, 14.2)

16.20 The applicants have shown, and the Council agree, that there is no operational provision within the CRWLP area. However, there is permitted capacity of 750,000tpa. The Council estimate is that about 385,000 tpa capacity is needed, close to the figure of about 392,689tpa of waste available in the same area, as calculated by the applicants. If operational capacity were taken rather than permitted capacity, there would still be a need to source waste from outside the CRWLP area, as only about two-thirds of the SEP's capacity could be sourced from that area. Cross-boundary movements of waste would be required but such movements are not uncommon and the CG to PPS10 in para 6.46 says that such movement should not be restricted where it meets other objectives for example, moving waste up the hierarchy or is otherwise considered appropriate in planning terms. (7.30, 8.30, 9.17)

16.21 The proposal would be contrary to policy 3 of the CRWLP, which is a saved policy with full weight, based on its definition of capacity. However, this policy is out-of-step with more recent national policy, particularly in EN-3, with which the proposal would be in accordance on this matter, and recent decisions. In such cases para 4.1.5 of EN-1 says that the NPS should prevail. One of the concerns of policy 3 of CRWLP, that any overcapacity would deter recycling, would be overcome through the acceptance criteria condition that would ensure that only residual waste was accepted. The other concern, about the distance waste would travel, would be likely to be limited by the costs of transporting the waste, which would be a significant element in the waste contracts accepted. The proposal would also be in accordance with policy 2 in establishing a need, since a lack of operational capacity has been shown.

iii) Nearest Appropriate Installation/ Minimising Transport Distances

16.22 The most recent requirements in policy for the "nearest appropriate installation (NAI)" are set out in Article 16 of the rWFD. This is translated into the WR2011 (Schedule 1 (4)) which requires the establishment of "an integrated and adequate network of …installations for the recovery of mixed municipal waste collected from private households". The network is to be designed to enable the EU as a whole to become self-sufficient in waste disposal and the recovery of

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mixed municipal waste collected from private households, including some C&I waste. DEFRA has confirmed that the self-sufficiency principle should apply at a national level and the applicants' calculations include national amounts of waste (23 million tpa in England and Wales) for which diversion from landfill is required. (7.37-41, 8.13, 9.8, 12.16)

16.23 Schedule 1 (4) of the WR2011 also requires mixed municipal waste collected from private households to be recovered in *one of* the NAIs. It does not require it to go to *the* NAI and therefore there is some degree of flexibility for operators. The cost of the transportation of waste is a significant factor in the choice of destination for treatment and this also effectively limits the distance travelled. As already mentioned, as a merchant facility, it would be expected that the transportation costs would be a significant factor in contracts. (7.41, 12.13)

16.24 The SEP has the potential to be part of an integrated network of waste management facilities, in accordance with WR2011. In addition, if operating capacity is taken for existing plants rather than permitted capacity, then a capacity gap remains both within the CRWLP area and in the North West more generally. The applicants have calculated that there is an unmet need to divert over 5.5million tpa of MSW and C&I waste from landfill within a 70-mile radius of the plant, although there is no development plan basis for this area. There is also support from operators in the region seeking waste treatment for their collected waste. Even when recycling rates are increased to 70% for municipal waste and 85% for C&I waste, there is only a small reduction in these figures. (7.43, 8.31-34, 14.5)

16.25 The SEP would be capable of meeting both this local and a wider need as part of a network of facilities. The site already has rail transport which would be a significant advantage in preventing unsustainable movements of waste, which, it has been acknowledged, is part of this same issue. However, it is only over longer distances that sustainable rail transport becomes economic. The Council's research shows that some waste authorities currently without contracts for MSW are some distance away and it is not known whether rail transport would be feasible. However, these are commercial matters relating to individual future contracts, which EN-3 says are not a matter for decision-makers. (7.42, 7.45, 8.26, 10.17)

16.26 EN-1 states, in para 2.2.19, that it is Government's established view that the development of energy infrastructure is market-based. It continues that it is a matter for the market to decide how and where to build, as market mechanisms will deliver the required infrastructure most efficiently. The Rookery South decision, at para 7.90, says that it is the role of the planning system to facilitate private investment in the provision of new infrastructure. A number of merchant facilities have been consented without contracts in place, for example, Ferrybridge. The Rookery South application declared a catchment area, which was discussed in the decision, but there is no condition on the consent which ties its operation to this area. (7.43, 8.15-16, 8.18, 8.25)

16.27 In this case, although the waste to be used as a fuel arises everywhere, the need for the plant in terms of energy supply is in a specific location. Whilst not negating the requirement on NAI, the revised carbon assessment shows that

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the recovery of value from the waste would counterbalance any disbenefits from transport emissions, as required in para 2.5.13 of EN-3. (7.44, 8.14, 8.20-21)

16.28 RSS policy EM12 requires waste to be disposed of one of the NAIs and policy 1 of the CRWLP requires applicants to demonstrate disposal at one of the NAIs. Without contracts in place, no pattern of movements can be shown. Both documents refer to the principle of NAI in terms of disposal rather than recovery, reflecting the earlier form of the WFD. Although these policies do not apply on a strict reading, the proposal would still need to comply with national waste policy on NAI. The proposal would meet national waste policy in terms of national self-sufficiency through the establishment of a network of facilities which move waste up through the hierarchy, as set out in the WR2011. Market forces and the costs of transport would help to ensure that there would not be unsustainable movements of waste and would help to ensure that the proposal would be is one of the NAIs for the recovery of waste close to its source.

iv) Consideration of alternative technology

16.29 The current guidance in EN-3 (para 2.5.11) states that in decisions on combustion plants such as that proposed, the decision-maker should not be concerned about the type of technology used. Waste policy does not require the consideration of alternative technologies at either national or development plan level and the consideration of alternatives does not form part of the Council's case. The EA, through the EP process, will determine which technologies represent BAT, particularly in respect of abatement technologies, as set out in para 2.5.45 of EN-3. (7.20, 7.48, 10.6, 10.54-56, 11.8)

16.30 The choice of technology is ultimately a commercial decision for the operator and economic and reliability factors are likely to figure heavily in that choice as with this proposal. Whilst some of the alternative technologies have advantages in terms of lower emissions and residual ash, like plasma gasification, it has been demonstrated that generally at this time they have greater problems with efficiency and reliability. Disposal and/or re-use of bottom ash and disposal of APC residue are operational maters which would be covered by the EP. (9.5)

16.31 The technology which has been chosen after consideration of alternatives, including other sources of energy, is tried and tested but could not be said to be outdated. As such, there can be confidence in its reliability and ability to be effectively regulated.

v) Other locational factors

16.32 The proposal would be mainly situated on Site WM12B, allocated in the CRWLP for waste uses including thermal treatment. The Council's view is that this does not assist the case for development since the proposal does not comply with the other policies of the plan, as required by Policy 4 of the CRWLP. However, those concerns have been overcome. Alternative locations for the SEP were considered by the applicants but, because of the requirements for steam which only travels over a short distance, the site selected is the most practical alternative and is a site allocated for thermal treatment in CRWLP. (8.45)

16.33 The site is previously-developed land and it would comply with the location criteria in para 2.5.36 of EN-3, para 5.10.3 of EN-1 and Annex E to PPS10.

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CHAIN has expressed the view that, since the technology to be used is not the best available, the optimum use of the site is not achieved. However, such policies normally only require optimisation in terms of concentrating development on the site, rather than use of technology. The proposal would not be in a central area of the town, in accordance with the locational guidance in paragraph 45 of PPG13: Transport on sustainable freight transport. Conditions controlling the hours of HGV deliveries would protect the living conditions of the occupiers of residential properties along King Street and the lower part of Griffiths Road/Cottage Close. The proposal would also comply with the criteria in para 24 of PPS22, for grid connection and CHP which, it says, may influence the most suitable locations for such projects. (5.5-6, 9.8, 9.29, 9.44)

Perceived health impact, including air quality

16.34 The perceived health impact was not one of the Council's objections to the development although it has requested that the SoSECC fully considers this issue in the decision on the SEP. However, health is a significant issue to local groups and residents, with many of the 4,000 written representations on the proposal expressing their concerns about it. (7.56)

16.35 It is important in cases such as this to draw a distinction between the regimes which cover the process: the consenting/planning system and the pollution prevention regime. The consenting/planning system controls the use of land in the public interest. The pollution control regime is concerned with the operation of a plant/development and seeks to control emissions to air, soil and water pollution to a level which ensures that human health and the environment are protected. In particular, the plant would need to be WID-compliant and the EA would control emissions to air, with the primary aims of safeguarding human health and the environment. (7.62)

16.36 EN-1 (para 4.10.3) states that decision–makers "...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." This position has been accepted by the relevant SoS in recent decisions and by the IPC in the Rookery South case. EN-3 (para 2.5.43) states that where a proposed waste combustion generating station meets the requirements of WID and will not exceed the local air quality standards (the decision–maker) should not regard the proposed waste generating station as having adverse impacts on health." Government's position is also set out in para 30 of PPS10 and para 22 of WS2007. (7.58)

16.37 The HPA have stated that, for any modern, well-managed municipal waste incinerators, " any possible health effects are likely to be very small, if detectable…" The local PCT/HPA have no objections to the proposal and comment that the applicants' Health Impact Assessment shows an almost unmeasurable effect of the proposal on health in the community. Whilst there is a proposal for a new national HPA study on the health effects of incinerators, there has been no change in the HPA's current advice. (7.59, 10.34-36, 14.4)

16.38 Nevertheless, public perceptions about the health risk from the proposal are capable of being material planning considerations. However, these cannot be considered to be objective on their own and to have any weight, these

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perceptions need to be justified by objective evidence. The health evidence submitted to the inquiry rests to a large extent on the air quality modelling carried out, although air quality and the emissions from the SEP would also be examined as part of the EP process. The Council's Environmental Health Department had no objections to the modelling. (10.4)

16.39 Criticisms of the modelling were made by local objectors. Firstly, it was claimed by Mrs Manfredi and others that the meteorological data, in the choice of windroses from Woodford, as opposed to Manchester Ringway, was unrepresentative of site conditions. However, the Council have approved the choice of Woodford for the modelling and the Meteorological Office, as suppliers of the data, have confirmed in writing, on 21 October 2011, that at the time of the inquiry data from Manchester Ringway was only available for the period prior to 2003. The earlier Manchester Ringway windroses subsequently show a more southerly direction, with the Woodford ones showing a more south westerly bias. This would mean that areas to the north might be slightly underrepresented in the current model and there would be a reduction in effects in areas to the north east if the Manchester Ringway windrose was used. (10.5)

16.40 The distance from the stack for dispersion has been disputed. Based on the indicative height of the stack (the final height to be determined through the EP process), Mrs Manfredi and her health witness say that this would stretch up to 21 miles (over 33km), rather than the 3-4km in the applicants' model. The map put forward by Mrs Manfredi in terms of cumulative effect shows a uniform distance and spread of dispersion, which because of the distance used shows more overlapping, cumulative effects. However, such approaches are unlikely to represent the complexities of dispersion from all the facilities involved and are likely to overestimate the effect of the SEP. The SEPA document, the Incineration of Waste and Reported Human Health Effects, para 5.1.5, says that planning controls *should* prevent new incinerators being sited within the locality of existing facilities. This statement is open to interpretation and could be a statement of fact rather than an imperative. In any event, in this case any other similar facilities would be some distance away from each other. Any further applications for similar facilities would require the cumulative impact to be assessed as part of their EIA process. (10.6)

16.41 A number of comments were made about air quality monitoring data. A number of diffusion tubes had been set up around Northwich, with two on Griffiths Road and one on Middlewich Road. The No 1 tube on Griffiths Road had high levels of NO_2 with a value close to the AQS objective of 40 $\mu g,m^{-3}$. Due to the proximity of this tube to a junction with idling traffic, the values at the No 2 tube on Griffiths Road were taken as being more representative of general conditions close to the Lostock works. This choice was criticised by Mrs Manfredi as not being the worst case scenario but a conservative assessment has been taken in the analysis of the air quality data. The traffic data on the A530 south of Middlewich Road used for the air quality analysis differed between the transport section and air quality section of the ES, as pointed out by objectors. This is explained in part by the differing daily averages and the classes of vehicles (HDV rather than HGV for the air quality model) used. A point was made about the high NO_2 reading at Middlewich Road (M6) but this

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was regarded as "not relevant exposure" since it is not a location in which AQS objectives apply. (10.5, 11.13)

16.42 Mrs Manfredi also said that a proper baseline had not been established in terms of existing water quality and land contamination. The EA has not raised any issues around water quality in commenting on the ES and any effects on groundwater, which is the principal source of drinking water in the area, are shown in the ES as being neutral. The issue of land potentially affected by contamination on the site is capable of being dealt with through the imposition of a suitably-worded condition to ensure that land is restored by suitable methods to an agreed standard. (10.9, 11.10)

16.43 The ADMS model used by the applicants is approved by DEFRA and is widely used to provide information for the EP process. In this case the output from the modelling was also checked by the Environmental Health department of the Council. The modelling has also been interpreted in a conservative way, to WID limits, to provide confidence in the findings. EN-1 (para 5.2.9) states that air quality should be given substantial weight where a project would lead to deterioration in air quality, would lead to a new area where air quality would breach national limits or would result in a substantial change in air quality. There are AQMAs at Knutsford, Cranage and Mere and also ones further distant from the site, in Ellesmere Port and near Chester. With the relevant pollution prevention controls in place, through the limits set by the EP, the evidence presented by the applicants shows that there would not be an adverse effect on air quality. It was stated by CHAIN that the health risk assessments have not taken into account traffic emissions but these have been examined in the air quality analysis and levels at the nearest receptors to housing do not exceed or start to approach the levels for AQS objectives. (11.1)

16.44 There were many representations on potential pollution by POPs, including dioxins. The applicants' analysis of the dioxin balance shows the SEP as a potential sink for dioxins. Largely, dioxins would be likely to be destroyed through the combustion process, although some would reform. Nevertheless, a number of objectors were concerned about existing plants exceeding the dioxin limits set on their EPs. Mrs Manfredi produced a number of examples, including the Wolverhampton incinerator and SID the example of the Isle of Wight plant, of significant breaches of EP conditions. However, through the EP process, monitoring and regulation, there are well-established processes for dealing with emissions and the release of pollutants in abnormal operating conditions. These include the shut down of the plant, where necessary, as in the Isle of Wight case, though this is now operating successfully again. With EP controls on the combustion process in place, there is no significant risk from POPs and no firm basis on which to claim that the proposal would violate the Stockholm Convention or the Environment Protection Act 1990. (10.5, 10.31-33, 10.38-39, 10.43, 11.8, 13.8)

16.45 Mrs Manfredi's health witness was concerned about PM being emitted from the SEP, especially the smaller nanoparticles, below $PM_{2.5}$, with statistics and maps being produced of mortality rates up and downwind of incinerators and power stations elsewhere. However, no reliable causal link has been proved through peer-reviewed research and the applicants' health evidence has shown that a number of confounding factors often exist in these cases. Although disputed by

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objectors, peer review is important in establishing the scientific credentials of any research. Mostly, although there are a limited number of exceptions, confounding factors concern the socio-economic status of the areas claimed to be adversely affected, which is closely linked to morbidity and mortality. The area of Rudheath, which is close to the site, is one of the most deprived areas both locally and nationally and has been given NHS spearhead status in terms of healthcare needs. The disparities in health within Northwich itself in PCT data serve to reinforce this point. Pre-existing local health problems might predispose residents in these areas to other health risks but the EP regime and its monitoring are designed to prevent human health risk from installations such as the proposed SEP. There was also anecdotal evidence given of the incidence of cancers and other disease in the local area as a result of leaks from existing industry. More detailed epidemiological studies, which it was claimed would be necessary to further understand these issues, would be a matter for the local PCT/HPA to carry out. (7.65, 9.3, 10.33, 11.21-22, 14.6)

16.46 Mrs Manfredi and her health witness also questioned whether the filters which would prevent pollutants being discharged to air would be BAT. This would be dealt with by the EP. Material was submitted about an incinerator at Newhaven which indicated that the EA thought that only up to about 30% of the PMs below $PM_{2.5}$ in size would be captured. However, the applicants have demonstrated that the technology likely to be used in this case, which is regularly used in WID-compliant combustion plants, would be effective in capturing such nanoparticles. EN-3 (para 2.5.45) says that the decision-maker does not need to consider equipment selection, since the EP process will determine if the equipment is considered to be BAT. There is nothing in the evidence submitted by Mrs Manfredi and her health witness on other studies from Mexico, Japan or on early European incinerators to suggest that they operated on the standards now imposed through the EP process, which would apply to the proposed SEP. Therefore there is no reason to take any different view from that of the HPA or other national policy on this matter. (10.30-32)

16.47 A significant amount of evidence was submitted on health issues, including traffic emissions, and it is clear that local people have concerns about the proposal in terms of their perception of its impact on their health. There were also concerns that the plant might not be properly monitored and regulated and there was distrust of the scientific opinions of the applicants' expert witnesses on the safety of the plant, its technology and its potential effect on health. Many objectors, including Mrs Gamble, put forward the view that the uncertainty on this matter meant that the precautionary principle should be invoked and that the consent should be recommended for refusal on this basis. However, the evidence is not such that further information is required, when the energy need is stated in national policy to be urgent. (9.24-26, 9.35, 10.28, 10.61-2, 11.1, 11.23-25)

16.48 Health issues in a number of other cases were mentioned, notably at Sinfin Lane, Derby (Ref APP/C1055/A/10/2124772) and The Straight, Southall (Ref APP/A5270/A/09/2114021). In the latter case, the proposal would have led to an air quality standard being exceeded, in a densely populated area of north west London. However, it is not the case here that any air quality standards would be breached, with levels well below that required for an AQMA. In the

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former case, the Inspector gave some weight to local residents' health fears. Although unfounded fears are capable of being a material consideration, the decision in the Newport BC v the Secretary of State for Wales and Browning Ferris Environmental Services Ltd case says that they will rarely be a reason to justify withholding planning permission. The recent decisions at Rookery South and Ferrybridge both concurred with national policy in that the EA would assess air quality and emissions against accepted standards through the EP process, having regard to the health concerns of local people. (7.67, 10.53, 10.68)

16.49 Given the industrial history of the area, local residents' perceptions about health risks are understandable. However, national policy in para 4.10.3 of EN-1, PPS10 and WS2007 all say that decision-makers should work on the assumption that the appropriate pollution control regimes will be properly applied and enforced by the regulator. Para 2.5.43 of EN-3 states that where the waste combustion generating station meets the requirements of WID and would not exceed local air quality standards, which have both been shown to be the case in this proposal, then it should not be regarded as having an adverse impact on health. Therefore little weight should be given to this matter. (10.45-48)

Highway matters

16.50 The Council, as highway authority, have no objections to the scheme, subject to their suggested conditions being imposed and the highway improvements set out in the planning obligation being implemented. (7.69-70)

16.51 The ES worked on the basis of a split of one third road and two thirds rail but the worse case scenario (100% road) was also examined for the traffic impact. Water transport by the Trent and Mersey Canal had already been ruled out due to restrictions in the width of the canal and the clearance at bridges. Whilst local residents have suggested that the 100% road scenario reflects the applicants' real intentions for transport, there is nothing in the evidence to suggest that this is the case and their transport evidence shows that rail transport can be a cheaper option once distance increases. Access to rail transport is a significant advantage of the scheme. Construction traffic levels would be high and improvements to the highway would not be completed until the SEP was commissioned. However, it was the level of operational traffic to which most local opposition was directed and was a significant cause of objection. (9.28-29)

16.52 Road access to the plant would be via the HGV routing plan set out in the planning obligation, a good part of which would be on motorway and dual carriageway. The approach to the SEP access would be via King Street and Griffiths Road. Whilst CHAIN describes these two roads as "minor", they are part of an A class road, the A530, but in this location the roads could not be made up to dual carriageway standard, due to the development along their edges. Whilst it might be preferable to have dual carriageway access right up to the plant, as shown in E.ON's photograph example from Germany, it would not be possible in this case. (9.36-37)

16.53 CHAIN dispute the HGV traffic increases over the period from 2009 to 2016 set out in the ES. The figures with, and without, the development in place in the

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assessment year, in this case 2016, when operations might commence, need to be considered. The ES takes into account committed development traffic flows and "growthed" traffic levels in the baseline assessment for 2016, against which the effects of the proposed development, that is, an additional 264 HGV movements per day need to be assessed. As such, the worst case scenario has been taken into account. It is also intended that the number of HGV deliveries of waste could be limited by the imposition of a suitably-worded condition which would act as a cap on movements. Mr Walker asked a number of technical questions about the highways data analysis, including the use of the Arcady and Picardy programmes. Information was provided by the applicants on these matters which provided further explanation on their use within the ES and Transport Assessment. (7.71-72, 9.31-32, 11.9, 11.20)

16.54 Mrs Manfredi criticised the ES for not taking into account drivers re-routing as a result of delays at junctions, due to increased traffic as a result of the SEP. The ES shows there to be an increase in existing waiting time at the Broken Cross junction for vehicles exiting Middlewich Road as a result of the development. Although it was claimed waiting times are already excessive and results in vehicles re-routing, there would only be a marginal increase in waiting times at peak times and this would be largely offset by the provision of a signalised junction, which would also improve on the likely increases in pedestrian delay in crossing the road. Therefore the proposed mitigation measures help to deal with driver delay and would not result in undue re-routing of vehicles which might need further measures. (10.65)

16.55 Both pedestrian and cycle safety on King Street and Griffiths Road has been taken into account in proposing increased HGV traffic on those roads, despite CHAIN's criticisms. The applicants say that footway widths average 1.7m, although they appear to narrow in places. Whilst it would be expected that within most new housing developments a footway width of 2m would be required, 1.7m would be more than sufficient, for example, for 2 people with a pushchair to walk side-by-side, as set out in the Manual for Streets (MfS), page 68, and would meet most pedestrian needs. (9.33)

16.56 The applicants' Transport Assessment shows the A530 to have an approximate width of about 7m, although it notes that Griffiths Road narrows to about 5.8m for a short stretch about 240m south of the railway bridge. However, this is beyond the site access and not on the HGV routing plan. There is also a garage/small shop which generates turning movements off King Street. The MfS (page 74) shows approximate lorry widths, with mirrors, as being about 3m, although CHAIN's submitted example was 3.2m. There would not be sufficient space for a lorry to pass a cycle, or a parked vehicle, if traffic was approaching from the opposite direction. This would result in waiting times to pass any obstruction. King Street forms part of a national cycle route, although there is little evidence that it attracts significant numbers of cycles and waiting times to pass should not be excessive. Any problems caused by on-street parking, especially around the shop, would be a matter for review by the highway authority. (9.29, 9.34)

16.57 Finally, evidence was submitted on the conditions on Griffiths Road which show steam emissions from the chemical works. Local residents say that this can have an adverse effect on visibility along the road during certain atmospheric

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conditions. The average number of days on which such problems might occur has not been quantified by either the applicants or objectors. Concern was raised that increased traffic and the introduction of traffic signals, with the potential for stationary vehicles, would create more dangerous driving conditions. However, the new signals are not on the parts of the road most affected by steam and the planning obligation proposes a decrease in the speed limit on Griffiths Road to 40mph, which would improve safety in the area affected by steam. Accidents with injuries are currently low and are not predicted to increase as a result of the proposal with the mitigation measures in place.

16.58 Therefore the proposal would not have a harmful effect on highway safety. It would be in accordance with RSS policy EM12, in respect of the potential to provide rail transport, and policies 27 and 28 of the CWRLP, which require alternatives to road transport to be demonstrated and set criteria on traffic generation, highway safety, access and on-site movement, mitigation in terms of routing controls and highway improvements and protection of the landscape/townscape. In addition, paragraph 86 of the dNPPF states that development should not be prevented or refused on transport grounds unless the residual impacts of development are severe.

Landscape and visual impact

16.59 The Council have no objection to the proposal in terms of landscape, design, or visual impact. The national landscape character areas put the site within the Shropshire, Cheshire and Staffordshire Plain and the Cheshire landscape character areas show the site as being within one of the urban and industrial areas of the county. The more local Vale Royal character assessment puts the site in the Lostock Plain area, which has a lower value and would be less sensitive to change. The adjacent areas of the Stublach Plain and Northwich Salt Heritage Landscape are noted as being influenced by the current industry in the area. (7.74, 7.76)

16.60 The main development area would be on the site of the disused former power station, which is within the existing industrial complex at Lostock. This part of the site is adjacent to the linear Trent and Mersey Canal CA. The other industrial buildings at the works are of varying heights and sizes and the SEP building would be larger and bulkier than anything on the site at present, including the former power station, reflecting its function as a significant industrial plant. The bulk of the main building might be broken up by the use of different materials and finishes and this would be the subject of a suitably-worded condition. Whilst neither the materials nor the landscaping proposed for the immediate environment would effectively screen or significantly lessen the impact of such a large building, it would be seen within the context of the existing works. (7.77, 10.64)

16.61 The applicants have carried out a GLVIA assessment of the visual impact of the proposal. Whilst there have been criticisms of the use of the method, the lack of stakeholder participation and the photomontages produced, the guidelines produced by the Landscape Institute have been generally followed and the approach has also been agreed with the Council. In close views, most of the new building would be seen from on and around the canal towpath, Cottage

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Close, Griffiths Road, Farm Road/St John's Close, a small part of Middlewich Road and the elevated former lime beds at Griffiths Park. Some of these areas have recreational uses, which are categorised as sensitive receptors. It was conceded at the inquiry that a new large industrial building would have an adverse effect on such receptors. However, any adverse effect would be minor, since the main SEP building would be part of an existing industrial landscape. (7.78-79, 9.39, 10.63)

16.62 From slightly further out, the main building would be visible as part of the general mass of industrial buildings on the site. There would be middle distance views from footpaths to the east of the site around Birches Lane to Lostock Hollow and the Lostock Triangle site but from this direction the proposal would be mostly seen aalongside the mass of the existing plant, which would diminish its significance to being minor to negligible. The higher parts of the building would be also visible from parts of the town centre and retail park but this partial view would be less obtrusive than views of the whole building.

16.63 Mrs Manfredi and applicants agree that the Zone of Theoretical Visibility (ZTV) for the main building/ash handling facility stretches for over 21km reflecting the site's position on the Cheshire Plain. However, the impact in landscape terms diminishes quickly with distance, limiting any adverse effects. The large new buildings would be more visible in more open views from the east, for example, from Cheshire Showground, Tabley and from the north, for example, footpaths in Budworth, and from parts of such areas as Neuman's and Ashton Flashes. These areas were amongst those visited unaccompanied as part of the site visit programme. There are also partial views of the works site from Northwich Victoria Football Ground, which was the inquiry venue. The indicative height of the SEP's twin stacks at 90m would tend to make them more visible over a wide area but their slim design and proposed colour scheme would decrease the impact with distance and generally there would be some screening by vegetation at lower levels. (7.80, 9.38)

16.64 Concern was raised by local residents about the lighting of the proposed development. There would be additional lighting on the site during both the construction and operational phases of the development. During the construction phase this would be managed through the Construction Environmental Management Plan, which would be the subject of a suitably-worded condition and during the operational phase through a separate, suitably-worded condition.

16.65 BW originally objected to the scheme on the grounds that the design of the fencing between the site and the canal towpath needed to be agreed to improve the general environment of the canal corridor, which is also a CA. Agreement was reached with BW prior to the inquiry, including on boundary treatment and native tree planting, which would also be covered by a suitably-worded condition. (7.92-93, 14.3)

16.66 Therefore, the proposed development would not be harmful in terms of its effect on the character and appearance of the area, including the landscape, and would preserve the character and appearance of the Trent and Mersey Canal CA. As such it would be in accordance with EN-1 (paras 5.9.14-18, 20 and 22,and 5.8.13) and EN-3 (paras 2.5.50-52) in terms of landscape and

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visual impact, para 2.5.34 in terms of protection of the historic environment, policies 12, 14, 16 and 36 of CRWLP which relate to the impact of development, landscape and design respectively and Policy HE7.4 of PPS5, which requires decision-makers to take into account the desirability of sustaining and enhancing the significance of heritage assets.

Cumulative effects

16.67 The cumulative effects of the proposal have been discussed under other topic areas, including air quality and perceived effects on health, noise and highways. No significant adverse effect was found as a result of the cumulative studies. (7.82, 9.41-43, 11.5, 11.7)

Living conditions

Noise

16.68 Objections have been received from local residents on the grounds of potential noise from the development. There have been noise complaints in respect of the existing works from, for example, residents in Birches Lane. The noises complained of not only include general industrial noise but also that from sudden releases of steam. Noise was assessed at residential properties around the site for the ES, using the one third road/two thirds rail split for fuel delivery envisaged by the applicants as well as the worst case scenario of all fuel going by road. (7.85)

16.69 The evaluation of the results was undertaken in accordance with BS 4142, which is the appropriate standard for noise from industrial development, and works on the basis of the likelihood of complaints. The results of the monitoring for daytime noise show a general increase for the nearest residential properties over current background noise of 1-3 dB, for delivery split by rail and road. For the worst case scenario with all deliveries by road, there would be a 1-2dB increase for the occupiers of Cottage Close and St John's Close. For night time noise there was no operational noise exceeding background noise for any of the receptors, under either of the scenarios. BS4142 states that changes of up to 5dB can be considered as being of marginal significance and therefore the proposed noise levels would be at an acceptable level. (7.85)

16.70 Noise from HGVs and noise and vibration from the railway were specifically examined. Oral evidence was given at the inquiry by Mrs Manfredi that vibration was a problem for the occupiers of properties close to the branch rail line to the works. The CRTN showed that noise from the increase in HGVs was not significant. Similarly, although vibration is site specific and can relate to soil conditions, the assessed effects of the increase in rail traffic under the rail/road split option were found to be neutral. (7.86)

16.71 The results of the noise and vibration assessment have been accepted by the Council's Environmental Health Officers, subject to conditions. These include: control over construction times and noise through the Construction Environmental Management Plan, controls over hours for delivery by road and

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rail and unloading of rail deliveries and an overall noise limit for activities on the site. (7.83)

Visual impact on residential properties

16.72 There are some residential areas close to the site, notably Rudheath and Lostock Gralam. There would be changes to the views from residential properties, particularly in places such as Cottage Close, but homeowners' views are not protected by the planning system. The proposal would not be so close to any individual house that it would overshadow or dominate it. The removal of the derelict power station and the proposed landscaping scheme would be beneficial in closer views. (7.84, 13.4)

16.73 Mrs Manfredi had concerns that the scale of the SEP building and the presence which it would have might have an adverse psychological effect on surrounding residents, continually reminding them of the perceived health threat to them. However, once built, the SEP would be seen as part of the existing industrial area of the works, the design and visual impact of which are considered to be acceptable. The weight to be given to the perceived health concerns has been already been covered.

Air quality

16.74 Air quality has been assessed under the perceived health impacts above, in general terms, and shown not to exceed the AQS objective. Specific mention was made by objectors of the effect of traffic on air quality in King Street and the lower part of Griffiths Road, including Cottage Close, where there are residential properties. However, the air quality in terms of NO_2 and PM is significantly below any level which would require, for example, an AQMA. (7.87-88)

16.75 Objections were also made on the likelihood of odour from the plant. Local residents complained that, at times, there are issues of odour from existing industry in the area. The design of the plant is such that waste would be unloaded in a completely enclosed building under negative air pressure so that odour would not escape the building. A scheme for the management of odour would be the subject of a suitably-worded condition. (10.49)

16.76 Therefore the proposed development would not be harmful to the living conditions of local occupiers in terms of noise, visual impact and air quality. As such, the proposal would be in accordance with EN-1 (paras 5.11.8-11), EN-3 (paras 2.5.55-56), Policies 12 and 23 of the CRWLP, which seek to control impacts including noise from waste plants and the controls set in PPG24: Planning and Noise.

Impact on non-industrial units

16.77 The SoSECC has also asked to be informed on the effect on non-industrial units. Within the nearest residential area of Rudheath, there are a number of schools, nurseries and local shops. On the opposite side of the main railway line from the existing works lies part of the town centre. The highest parts of the proposed SEP would be likely to be visible from the retail park which includes B&Q, and from Tesco car park. Such premises are not classed as sensitive

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receptors in the Landscape Institute's GLVIA scheme, which largely, it was explained at the inquiry, relates to residential and recreational activity. There are also a number of farms near to the proposal. The effect on them has been assessed as part of the Human Health Risk Assessment, which found there to be no unacceptable risk to farmer receptors or their produce. (9.44)

Other matters

Nature conservation

16.78 Following the provision of further information, Natural England have confirmed that there would be no adverse impact of the proposed development on nationally and internationally important sites within 15km from air pollution, both alone and cumulatively. In terms of protected species, a licence would be required for the demolition of the power station building where there are bat roosts, with mitigation considered at that stage. Protection of the barn owl nest site would be required, together with a mitigation strategy. These matters are covered in the ES. Natural England has advised that a mitigation strategy for the barn owl should be the subject of a suitably-worded condition. The Council confirmed at their Committee meeting that this overcame any concerns, which in any event did not amount to an objection, on nature conservation issues. (7.90, 14.2)

16.79 A number of local residents have also objected on general grounds to the potential for wildlife to be damaged, mainly as a result of air pollution. Air quality has already been assessed in the ES. During operation, no significant impacts are predicted on locally designated sites, the only adverse effect being a minor impact on Wincham Brook Valley from the effects of acid deposition. Under normal operating conditions, which would have much lower contributions than the WID limit which was the basis of the model, impacts would be significantly lower and no mitigation for this impact would be required.

16.80 Therefore the conclusion is that, with mitigation covered by a suitably-worded condition, there would be no harm to nature conservation as result of the proposed development. The development would be in accordance with EN-1 (paras 5.3.13, 5.3.17-18), and policy 17 of the CWRLP, all concerning nature conservation.

Broadthorn and Edelchemie

16.81 Both Broadthorn and Edelchemie objected to the proposals on the grounds that their rights of access would be adversely affected by the proposal. The objections were subsequently withdrawn, subject to the imposition of suitably-worded conditions, as discussed in the Conditions section. Edelchemie have continuing concerns about the proximity of the on-site rail track transporting the waste to the SEP to their premises, if an emergency such as a fire in the waste, were to arise. Adequate precautions to prevent fire and other emergencies on the site and procedures for accidents would be part of the EP process and emergency access routes would be the subject of a suitably-worded condition. (7.102-107, 13.1-2)

Inward investment/employment and other local issues

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16.82 CHAIN, Mrs Manfredi, Mrs Gamble and a number of other local residents have objected to the proposal on the grounds that it would have an adverse effect on attempts to regenerate Northwich. They are also concerned that it would continue dependency on traditional heavy industries and discourage new, cleaner industries from moving to the area. It has also been argued that the adverse effects of the SEP would mean that far fewer jobs would be created locally, more than offsetting the benefit of the 50 or so jobs that would be created by the SEP. (7.110, 9.45, 10.66-67, 11.4, 13.4)

16.83 Although it has been argued that the presence of the SEP would be a disincentive to investment locally, it would be evident as new investment in the area. The provision of 50 new jobs would be an advantage of the proposal, particularly in the current economic climate. There is no substantive evidence that the proposed development would deter other new employers from locating in the town or that there would be an adverse effect on employment in the town. The supporting representations of business interests like the North West Regional Development Agency and Cheshire and Warrington Economic Alliance give weight to the view that the proposal would safeguard existing jobs and create new opportunities. (14.1, 14.8)

16.84 A number of local residents have said that there would be an adverse effect on house prices in the area if the SEP were to be built. However, the planning system does not exist to protect the private interests of individuals against the activities of another and in this case more weight has to be given to planning and other Government policy.

17. Adequacy of the ES

17.1 The main criticisms of the adequacy of the ES have been set out above. They include aspects of the general modelling carried out, as well as more specific concerns about air quality modelling, consideration of alternative technologies, including BAT, lack of information on waste input, the use of out-of–date socio-economic data and detail on pathways of exposure and traffic generation. These matters have all been covered in the conclusions. CHAIN's concerns about the lack of assessment of rail transfer stations and the impact of distributing heat to other users were found to be unnecessary as the applicants do not intend to use rail transfer stations or transfer the steam (heat) to other users. The impact of grid connection has been assessed in the ES. More specific criticisms of the consultation process on the ES and comments on that are set out in the section on consultation. The applicants' response to CHAIN's request for additional information under Regulation 13 is set out in **TATA/14**.

17.2 The ES provides adequate information on the likely main impacts of the proposed development and the mitigation measures that may be required. As such, the ES is adequate and meets the requirements of the relevant Regulations.

18. Policy balance

18.1 The proposed development would have a number of benefits. Firstly, it would provide new generating capacity, the need and urgency for which is set out in EN-1. Paragraph 3.1.4 of EN-1 states that substantial weight should be given to projects satisfying this energy need. The energy produced by the SEP would be

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classified as renewable, which the Government is committed to dramatically increase, and it would represent a move away from fossil fuel currently used as an energy source for the plant. EfW is seen as increasingly important in ensuring the security of UK supplies, in paragraph 3.4.4 of EN-1. The SEP would also be a CHP plant, providing steam and power to the adjacent Tata works. Paragraph 4.6.8 of EN-1 states that substantial additional positive weight should be given to applications incorporating CHP. The SEP is also required to be in this location since the steam produced cannot be transmitted over long distances.

18.2 In terms of waste policy, as an EfW plant, the SEP would serve a recovery purpose. With the proposed waste acceptance scheme, secured through a suitably-worded condition which would ensure that it would use only residual waste, the proposal would move waste up through the waste hierarchy and divert it from landfill. This would be a positive move and should have substantial weight.

18.3 Nevertheless, the proposal would be contrary to policy 3 of the CRWLP in providing excessive waste capacity, based on developments already permitted, rather than operational capacity. As a saved development plan policy, policy 3 has full weight. However, the more recent interpretation of existing waste capacity in EN-3, paragraph 2.5.67, and in the Rookery South decision, is that operational capacity should be the measure of waste capacity. Although referring to energy generation more generally, EN-1 states, at paragraph 3.1.2, that there are no limits or targets on different technologies and, at 3.1.3, that the basis for assessment for development covered by the NPSs is that there is already a need for those types of infrastructure. In cases where there is a conflict between a development plan and an NPS, EN-1 paragraph 4.1.5 states that the NPS prevails for the purposes of decision-making, given the national significance of the infrastructure. In this case, the conflict concerns the definition of capacity for EfW and the definition set out in EN-3 should prevail in this case.

18.4 The proposal would contribute to national self-sufficiency in waste treatment but in WPR2011 paragraph 263, there is no requirement for individual authorities to be self-sufficient. Policy 1 of the CRWLP requires that it is demonstrated in applications that waste is disposed of at one of the NAI, as it was written before the rWFD which also required recovery at one of the NAI. Although not specifically required by this policy, recovery at one of the NAIs is required by national policy. As a merchant facility, no contracts for the waste have been let. The letting of contracts, and hence the source of the waste, would be largely a commercial matter for the operators. This has been the view taken in recent decisions, which have not sought to constrain such processes. In addition, there is a know operational capacity gap, both in Cheshire and the wider north west. EN-3, in paragraph 2.5.17, states that commercial matters should not be an important matter in the decision. Given the cost of transport, it is likely that market forces would ensure that the SEP would be one of the NAIs, consistent with Government policy.

18.5 Paragraph 2.5.11 of EN-3 says that decision-makers should not be concerned about the type of technology used in the proposal. The EP process would determine BAT, as set out in para 2.5.45 of EN-3. The SEP would accord with

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policies in para 5.10.3 of EN-1, 2.5.36 of EN-3 and Annex E to PPS10 on siting. It would also be on an allocated site (mainly Site WM12B) in the CRWLP. Although policy 4 of this plan requires such development to also comply with other policies of the plan, in this case it has been concluded that the proposal would be in accordance with EN-1 and EN-3 and national policy which should prevail. Therefore, there is little weight against the proposal in terms of waste policy.

18.6 The protection of human health is a matter for the EP process and EN-1 states, in 4.10.3, that the decision-maker should assume that this process would be properly applied and enforced by the regulator. EN-3, paragraph 2.5.43, states that where the proposal would meet WID and local air quality standards then, the decision-maker should not regard the proposal as having an adverse effect on health. Perceived health fears about the proposal were a matter of significant concern for local residents at the inquiry. Nevertheless, the views expressed were based on research which had not been peer-reviewed and reflected a mistrust of operators and regulators. The views expressed also tended to underestimate the pollution control process in protecting human health and therefore can have only limited weight.

18.7 The site has the capability for rail to be used for transport and this has significant weight in allowing for sustainable transport. The worst case scenario for highways use has been tested and, with conditions and obligations in place, there would not be an adverse effect on highways safety. This is a neutral factor in the balance.

18.8 All of the other matters considered are neutral in terms of the balance, with the exception of employment. Some weight should be given to the additional 50 permanent jobs which would be created as a result of the proposal.

18.9 In final conclusion, there is substantial positive weight in terms of energy need and separately on CHP, and moving waste up the hierarchy, diverting it from landfill. There is also significant weight in favour of the proposal in terms of the potential for sustainable rail transport and some weight as a result of job creation. The need for the proposal has been established and it is likely that the SEP would be one of the NAIs for disposal of the waste. The waste policy issues should not weigh against the proposal. The perception of health risk has only limited weight and would not outweigh any of the benefits of the scheme. All other issues are neutral in the planning balance. As such, the application for consent should succeed.

19. Human Rights

19.1 Mrs Manfredi has objected to the proposal on the grounds that her human rights, and those of her family, would be adversely affected in terms of Article 1 (respect for human rights), Article 2 (right to life), Article 3 (prohibition of torture), Article 6 (right to fair trial), Article 8 (respect for private and family life), Article 14 (prohibition of discrimination), 1st Article to the First Protocol (property rights) and 2nd Article to the First Protocol (education). Although not described at the inquiry or fully in evidence, I have taken the case on Article 3 as also relating to alleged damage to health.

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19.2 The case advanced is that the proximity of the proposal, and the traffic from it, to housing, day care and education facilities, retail and leisure facilities would have an adverse effect on human health, specifically that of Mrs Manfredi's family. There was also concern that because of the economic strength of the applicants, which local objectors could not match and be represented at the same level, the right to a fair trial, that is to be heard at the inquiry, was be prejudiced. As such, it is claimed that the human rights set out in these Articles would be violated if the application were consented.

19.3 Mrs Manfredi quotes the cases of Lopez Ostra vs Spain Application No 16798/90 (1994) and Guerra vs Italy No 116/1996/735/932 (1998) in ECtHR, amongst others, which involved environmental pollution and information on the risk of accidents, respectively. Most of these cases involved plants from which there was a severe risk, with no modern form of regulation (eg WID). The current permitting regime in the UK has a specific objective of the safeguarding of human health. As already concluded, the plant would be WID-compliant and subject to the EP permitting and monitoring regimes. EN-1 states that decision-makers should assume that the EP system will be operated and monitored properly. Therefore, little weight can be attached to objectors' perceptions of health risk, which are not well founded.

19.4 In Bushell vs the Secretary of State for the Environment (1981) it was shown that it is not the role of the inquiry to seek to review Government policy but to evaluate schemes against it. The case of Hatton and others vs United Kingdom (2001) in ECtHR quoted by Mrs Manfredi was subsequently overturned in the European Grand Chamber decision of 2003, establishes a wide margin of appreciation to the State in policy concerning the protection of human health. Dr van Steenis and Mrs Manfredi's evidence both, in part, seek to review the effectiveness of the EP permitting and monitoring regime. Mrs Manfredi also criticises the HPA and the level of AQS set. However, none of these matters are before the inquiry.

19.5 Mrs Manfredi also cites Article 14 which relates to discrimination, in that the proposal would be sited in an area which already has a number of large heavy industrial works and where there are existing health problems within the local population. The need for the SEP to be located in this particular area has already been discussed, as have the perceived health fears of local residents. As a result, there would be no violation of Mrs Manfredi and her family's human rights under Article 14, by reason of the proposed SEP's geographical location.

19.6 It has also been suggested that because of the applicants' greater resources, there was no fair hearing of this case. Whilst none of the objectors appearing at the inquiry were legally represented, with the exception of the Council, all of those who wished to give evidence were able to do so. As the local planning authority, the Council can be considered to be representative of the local area and put the views forward for local people and these were addressed in evidence by the applicants.

19.7 Mrs Gamble has made reference to the UN Convention on the Rights of the Child (1989). Some of the rights given to children by the Convention are similar to those set out in the ECHR, including the right to life and healthy development and the right to education. It also requires adults to act in the best interests of

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the child. These matters are covered in the preceding paragraphs of this section. Other objectors made more general representations on human rights but only those relating to specific persons can be considered under the Human Rights Act.

19.8 Having regard to all of these matters, I have concluded that there would be no violation of Mrs Manfredi and her family's human rights in respect of Articles 1, 2, 3, 6, 8, 14 and the 1st and 2nd Articles to the First Protocol.

20. Recommendation

20.1 I recommend that consent is granted for a 60MW generating station at Lostock Works, Lostock, Northwich, Cheshire under s36 of the Electricity Act 1989 and deemed planning permission under s90(2) of the Town and Country Planning Act 1990, subject to the conditions set out in Annex 2.

E A Hill

INSPECTOR

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APPEARANCE LIST

FOR TATA CHEMICALS EUROPE LIMITED AND E.ON ENERGY FROM WASTE LIMITED

Mr Christopher Katkowski QC assisted by Mr Christopher Boyle, Counsel	Instructed by Addleshaw Goddard LLP, Milton Gate, 60 Chiswell Street, London, EC1Y 4AG

They called:

Fraser Ramsay BSc(Hons) CEng MIChemE	TATA Chemicals Europe Limited
Dr Nader Bahri-Esfahani BSc ChemEng PhD	E.ON Energy From Waste UK Limited
Stephen Othen MA MEng CEng MIChemE	Fichtner Consulting Engineers Limited
Kirsten Berry BA(Hons) DipTP MRTPI	Environmental Resources Management
Richard Hutchings Eur Ing BSc CEng MICE FCIHT MCILT MAPM	WSP Group
Dan Smyth MSc DIC BSc(Jt Hons)	RPS Planning and Development Limited
Professor Jim Bridges BSc PhD DSc HonDSC	University of Surrey
David Leversedge MSc MCIEH MIOA	RPS Planning and Development Limited
Jane Betts BA DipLA CMLI	RPS Planning and Development Limited
Christopher LeCointe BA(Hons) MRTPI	RPS Planning and Development Limited

FOR CHESHIRE WEST AND CHESTER COUNCIL

Mr Alan Evans, Counsel	Instructed by: The Solicitor, Cheshire West and Chester Council

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He called: Jonathan Sutcliffe BSc MRTPI	Area Planning Manager, Cheshire West and Chester Council

FOR CHESHIRE ANTI INCINERATOR NETWORK (CHAIN)

Brian Cartwright BSc, FIChemEngs, C.Eng, ALCM, AMCST	Chairman, CHAIN
Liam Byrne BSc (Hons), MCIPD	Public Relations Officer, CHAIN
Tracy Manfredi BA (Hons) ACA CTA	Local Resident
She called:	
Dr Dick Van Steenis MB, BS	Retired GP
Dorothy Gamble	Local Resident
David Wright BA (Hons)	Local Resident

FOR BROADTHORN CONSTRUCTION

Mr John Davies MSc FICE MCIB MCIW CEng CEnv	John Davies Associates
Mike Coultas	Local Resident and geologist
Julie-Ann Green	Local Resident

FOR THE MARBURY WARD COUNCILLORS
Councillor Don Hammond
Councillor Malcolm Byram

Councillor Helen Weltman	Davenham and Moulton Ward

FOR EDELCHEMIE (UK) LIMITED

Leo Nevels MSc ChemEng	Managing Director

FOR LOCKSTOCK GRALAM PARISH COUNCIL

Councillor Emma Guy	Vice-chair

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FOR STOP INCINERATION IN DISGUISE (SID)

Geoff Eden	Chair
Dr Terence Boardman	Local Resident

APPEARED AT EVENING SESSION

Graham Evans MP	Member of Parliament for Weaver Vale
Ann McEllin	Local Resident
Councillor Tony Lawrenson	Witton and Rudheath Ward
Councillor Paul Dolan	Winnington and Castle Ward
Councillor Mark Stocks	Shakerley Ward
Wincham Parish Council	Kenton Barker, Chairman
Rudheath Parish Council	Bob Richmond, Chairman
Dave Foddy	Local Resident
Sue Statham	Local Resident
Chris Howarth	Local Resident
John Hallwood	Local Resident
David Lee	Local Resident
Gordon Fulton	Local Resident
Andrew Needham (Supporter) BSc, CEng, MIChemE, MEnergyI	Local Resident

(Note: Those names in bold gave evidence in their own right)

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CORE DOCUMENTS LIST

Reference	Description of Document	Date
Application Documents, Committee Report and Consultation Responses		
Application Documents (February 2010)		
CD/1.1	Covering letter dated 24 February 2010	
CD/1.2	Form B	
CD/1.3	Planning Supporting Statement	
CD/1.4	Environmental Statement	
CD/1.5	Environmental Statement Non-technical Summary	
CD/1.6	Design and Access Statement	
CD/1.7	Health Impact Assessment	
CD/1.8	Human Health Risk Assessment	
CD/1.9	Consultation Statement	
CD/1.10	Transport Assessment	
CD/1.10A	Heat User Assessment	
CD/1.11	Existing Site Location Plan (16384/A1/P/0050 A)	
CD/1.12	Existing Main Building Site Layout (16384/A1/P/0055 A)	
CD/1.13	Existing Ash Handling (UEU) Site Layout Plan (16384/A2/P/0056 A)	
CD/1.14	Proposed Site Location Plan (16384/A1/P/0100 B)	
CD/1.15	Proposed Main Building Site Movements Drawing (16384/A1/P/0102 B)	
CD/1.16	Proposed Ash Handling Facility (UEU) Site Movements Layout (16384/A2/P/0103 A)	
CD/1.17	Proposed Main Building Site Layout (16384/A1/P/0105 Rev B)	
CD/1.18	Proposed Bottom Ash Handling Facility (UEU) Site Layout (16384/A2/P/0106 Rev A)	
CD/1.19	Proposed Main Building layout (16384/A0/P/0107 A)	
CD/1.20	Proposed Ash Handling Facility (UEU) Building Layout (16384/A1/P/0108 B)	
CD/1.21	Proposed Site Boundary Treatment Details (16384/A0/P/0109)	
CD/1.22	Proposed main Building North Elevation (16384/A1/P/0110 A)	
CD/1.23	Proposed main Building South Elevation (16384/A1/P/0111 A)	
CD/1.24	Proposed main Building East Elevation (16384/A0/P/0112 A)	
CD/1.25	Proposed main Building West Elevation (16384/A0/P/0113 A)	
CD/1.26	Proposed Ash Handling Facility (UEU) South Elevation (16384/A1/P/0116 A)	
CD/1.27	Proposed Ash Handling Facility (UEU) North Elevation (16384/A1/P/0115 A)	
CD/1.28	Proposed Ash Handling Facility (UEU) West Elevation (16384/A2/P/0118 A)	
CD/1.29	Proposed Ash Handling Facility (UEU) East Elevation (16384/A1/P/0117 A)	
CD/1.30	Proposed ACC (URC) Structure Elevation (16384/A0/P/0125 A)	
CD/1.31	Proposed Water Treatment Building Elevations (16384/A1/P/0126)	
CD/1.32	Proposed Switch Room Building elevations (16384/A1/P/0127)	

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Reference	Description of Document	Date
CD/1.33	Lostock Sustainable Energy Plant Illustrative Visualisations 1 of 10 (16384/P/0150)	
CD/1.34	Lostock Sustainable Energy Plant Illustrative Visualisations 2 of 10 (16384/P/0151)	
CD/1.35	Lostock Sustainable Energy Plant Illustrative Visualisations 3 of 10 (16384/P/0152)	
CD/1.36	Lostock Sustainable Energy Plant Illustrative Visualisations 4 of 10 (16384/P/0153)	
CD/1.37	Lostock Sustainable Energy Plant Illustrative Visualisations 5 of 10 (16384/P/0154)	
CD/1.38	Lostock Sustainable Energy Plant Illustrative Visualisations 6 of 10 (16384/P/0155)	
CD/1.39	Lostock Sustainable Energy Plant Illustrative Visualisations 7 of 10 (16384/P/0156)	
CD/1.40	Lostock Sustainable Energy Plant Illustrative Visualisations 8 of 10 (16384/P/0157)	
CD/1.41	Lostock Sustainable Energy Plant Illustrative Visualisations 9 of 10 (16384/P/0158)	
CD/1.42	Lostock Sustainable Energy Plant Illustrative Visualisations 10 of 10 (16384/P/0159)	
CD/1.43	Proposed SEP Main Office (UHD & UYA) Floor Plans (16384/A1/P/0170)	
CD/1.44	Proposed Gatehouse Floor Plan & Elevations (16384/A1/P/0172)	
CD/1.45	Contextual analysis (Sheet 1 of 2)(16384/P/0190)	
CD/1.46	Contextual Analysis (Sheet 2 of 2)(16384/P/0191)	
CD/1.47	Building Massing Comparison (16384/A1/P/0195)	
Application Documents (September 2010)		
CD/1.48	Covering letter dated 21 September 2010	
CD/1.49	Addendum to Environmental Statement	
CD/1.50	Revised ES Non-technical Summary	
CD/1.51	Revised Design and Access Statement	
CD/1.52	Supporting Statement	
CD/1.53	Carbon Assessment Report	
CD/1.54	Response to Representations Report	
CD/1.55	Location Plan (/P/5001)	
CD/1.56	Redline Application Boundary (P/5002)	
CD/1.57	Existing Site Location Plan (16384/A1/P/5050)	
CD/1.58	Existing Main Building Site Layout (16384/A1/P/0055)	
CD/1.59	Existing Ash Handling (UEU) Site Layout Plan (16384/A2/P/5056)	
CD/1.60	Proposed Site Location Plan (16384/A1/P/5100)	
CD/1.61	Proposed Main Building Site Movements Drawing (16384/A1/P/5102)	
CD/1.62	Proposed Ash Handling Facility (UEU) Site Movements Layout (16384/A2/P/5103 A)	
CD/1.63	Proposed Main Building Site Layout (16384/A1/P/5105)	
CD/1.64	Proposed Bottom Ash Handling Facility (UEU) Site Layout (16384/A2/P/5106)	
CD/1.65	Proposed Main Building layout (16384/A0/P/5107)	

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Reference	Description of Document	Date
CD/1.66	Proposed Ash Handling Facility (UEU) Building Layout (16384/A1/P/5108)	
CD/1.67	Proposed Site Boundary Treatment Details (16384/A0/P/5109)	
CD/1.68	Proposed main Building North Elevation (16384/A1/P/5110)	
CD/1.69	Proposed main Building South Elevation (16384/A1/P/5111)	
CD/1.70	Proposed main Building East Elevation (16384/A0/P/5112)	
CD/1.71	Proposed main Building West Elevation (16384/A0/P/5113)	
CD/1.72	Proposed Ash Handling Facility (UEU) South Elevation (16384/A1/P/5116)	
CD/1.73	Proposed Ash Handling Facility (UEU) North Elevation (16384/A1/P/5115)	
CD/1.74	Proposed Ash Handling Facility (UEU) West Elevation (16384/A2/P/5118)	
CD/1.75	Proposed Ash Handling Facility (UEU) East Elevation (16384/A2/P/5117)	
CD/1.76	Proposed ACC (URC) Structure Elevation (16384/A0/P/5125)	
CD/1.77	Proposed Water Treatment Building Elevations (16384/A1/P/5126)	
CD/1.78	Proposed Switch Room Building elevations (16384/A1/P/5127)	
CD/1.79	Lostock Sustainable Energy Plant Illustrative Visualisations 1 of 10 (16384/P/5150)	
CD/1.80	Lostock Sustainable Energy Plant Illustrative Visualisations 2 of 10 (16384/P/5151)	
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CD/1.88	Lostock Sustainable Energy Plant Illustrative Visualisations 10 of 10 (16384/P/5159)	
CD/1.89	Proposed SEP Main Office (UHD & UYA) Floor Plans (16384/A1/P/5170)	
CD/1.90	Proposed Gatehouse Floor Plan & Elevations (16384/A1/P/5172)	
CD/1.91	Contextual analysis (Sheet 1 of 2)(16384/P/5190)	
CD/1.92	Contextual Analysis (Sheet 2 of 2)(16384/P/5191)	
CD/1.93	Building Massing Comparison (16384/A1/P/5195)	
CD/1.94	Proposed Drainage Schematic Layout (16384/A0/P/5300)	
Application Documents (December 2010)		
CD/1.95	Covering Letter – dated 22 December 2010	

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Reference	Description of Document	Date
CD/1.96	Noise Memo 15th December 2010	
CD/1.97	Revised Transport Assessment (and appendices)	
CD/1.98	Need and Waste Sourcing Issue Paper 20th December 2010	
Application Documents (January 2011)		
CD/1.99	Covering Letter – 28th January 2011	28 Jan 2011
CD/1.100	Biffa Letter of Support	Dec 2010
CD/1.101	Veolia Letter of Support	Jan 2011
CD/1.102	Counsel Written Opinion – Energy/Waste	
CD/1.103	JNY6882-31 Possible Signals at Broken Cross Junction	
CD/1.104	JNY6882-37 King Street Resurfacing Areas	
CD/1.105	JNY6882-32 Rev B Possible A530-A556 Roundabout Modifications	
Application Documents (July 2011)		
CD/1.106	Consolidated Environmental Assessment (including Appendices, Figures, Plans and Non-technical Summary)	
CD/1.106A	Covering letter dated 1 July 2011	
CD/1.107	Revised Design and Access Statement	
CD/1.108	Revised Transport Statement	
CD/1.109	Location Plan (16384/A1/P/5001)	
CD/1.110	Redline Application Boundary (P/5002 Rev A)	
CD/1.111	Existing Site Location Plan (16384/A1/P/5050 A)	
CD/1.112	Existing Main Building Site Layout (16384/A1/P/0055 B)	
CD/1.113	Existing Ash Handling (UEU) Site Layout Plan (16384/A1/P/5056 B)	
CD/1.114	Proposed Site Location Plan (16384/A1/P/5100 G)	
CD/1.115	Proposed Main Building Site Movements Drawing (16384/A1/P/5102 D)	
CD/1.116	Proposed Ash Handling Facility (UEU) Site Movements Layout (16384/A1/P/5103 C)	
CD/1.117	Proposed Main Building Site Layout (16384/A1/P/5105 Rev D)	
CD/1.118	Proposed Ash Handling Facility (UEU) Site Layout (16384/A1/P/5106 Rev E)	
CD/1.119	Proposed Main Building layout (16384/A0/P/5107 D)	
CD/1.120	Proposed Ash Handling Facility (UEU) Building Layout (16384/A1/P/5108 D)	
CD/1.121	Proposed Site Boundary Treatment Details (16384/A0/P/5109 C)	
CD/1.122	Proposed main Building North Elevation (16384/A1/P/5110 C)	
CD/1.123	Proposed main Building South Elevation (16384/A1/P/5111 B)	
CD/1.124	Proposed main Building East Elevation (16384/A0/P/5112 C)	
CD/1.125	Proposed main Building West Elevation (16384/A0/P/5113 C)	
CD/1.126	Proposed Ash Handling Facility (UEU) South Elevation (16384/A1/P/5115 D)	
CD/1.127	Proposed Ash Handling Facility (UEU) North Elevation (16384/A1/P/5116 D)	

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Reference	Description of Document	Date
CD/1.128	Proposed Ash Handling Facility (UEU) West Elevation (16384/A2/P/5117 D)	
CD/1.129	Proposed Ash Handling Facility (UEU) East Elevation (16384/A1/P/5118 D)	
CD/1.130	Proposed ACC (URC) Structure Elevation (16384/A0/P/5125 B)	
CD/1.131	Proposed Water Treatment Building Elevations (16384/A1/P/5126 B)	
CD/1.132	Proposed Switch Room Building elevations (16384/A1/P/5127 B)	
CD/1.133	Lostock Sustainable Energy Plant Illustrative Visualisations 1 of 10 (16384/P/5150 B)	
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CD/1.142	Lostock Sustainable Energy Plant Illustrative Visualisations 10 of 10 (16384/P/5159 C)	
CD/1.143	Proposed SEP Main Office (UHD & UYA) Floor Plans (16384/P/5170 B)	
CD/1.144	Proposed Gatehouse Floor Plan & Elevations (16384/A1/P/5172 B)	
CD/1.145	Contextual analysis (Sheet 1 of 2)(16384/P/5190 A)	
CD/1.146	Contextual Analysis (Sheet 2 of 2)(16384/P/5191 A)	
CD/1.147	Building Massing Comparison (16384/A1/P/5195 C)	
CD/1.148	Proposed Drainage Schematic layout (16384/A0/P/5300 B)	
Other Documents		
CD1.149	Report to Strategic Planning Committee of Cheshire West and Chester Council (**CWACC**)	10 Feb 2011
CD/1.150	Minutes of Strategic Planning Committee meeting	10 Feb 2011
~~CD/1.151~~	~~RPS Memo on Noise~~ Duplication of CD/1.96	~~Dec 2010~~
~~CD/1.152~~	~~Letter to CWACC from RPS~~ – Duplicate of CD/1.95	~~22 Dec 2010~~
~~CD/1.153~~	~~Letter to CWACC from RPS~~ - Duplicate of CD/1.99	~~28 Jan 2011~~
CD/1.154	Letter to DECC from CWACC	22 Feb 2011

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Reference	Description of Document	Date
CD/1.155	Scoping Opinion, DECC	19 Jan 2010
CD/2	**Legislation and Guidance**	
CD/2.1	Planning and Compulsory Purchase Act 2004	2004
CD/2.2	Electricity Act 1989	1989
CD/2.3	Waste (England and Wales) Regulations 2011	March 2011
CD/2.4	EU Directive 2009/28/EC on the promotion of the use of energy from renewable sources	April 2009
CD/2.5	EU Directive 2003/54/EC concerning common rules for the internal market in electricity	June 2003
CD/2.6	EU Directive 1999/31/EC on the landfill of waste	April 1999
CD/2.7	EU Directive 2008/98/EC on waste (Revised Waste Framework Directive)	Nov 2008
CD/2.8	The Consenting Process for Onshore Generating Stations above 50MW in England and Wales 2007	Oct 2007
CD/2.9	Guidelines on the Interpretation of the R1 Energy Efficiency Formula for Incineration Facilities Dedicated to the Processing of Municipal Solid Waste According to Annex II of Directive 2008/98/EC on waste, European Commission	1 July 2011
CD/3 Development Plan Policy Documents		
CD/3.1	North West Regional Spatial Strategy (RSS)	Sep 2008
CD/3.2	Cheshire Replacement Waste Local Plan	July 2007
CD/3.3	Cheshire Replacement Waste Local Plan Inspector's Report	2007
CD/3.4	Cheshire West and Chester Council Local Development Scheme	March 2009
CD/3.5	The Vale Royal Borough Local Plan First Review Alteration	2006
CD/3.6	Vale Royal Borough Local Plan Inspector's Report	April 2006
CD/3.7	Secretary of State's direction on the saved Policies of the Vale Royal Local Plan	March 2009
CD/3.8	Cheshire West and Chester Council Local Development Framework Topic Paper on Waste	November 2009
CD/4 National Energy, Waste, Planning Policy Documents		
CD/4.1	Meeting the Energy Challenge - Energy White Paper	May 2007
CD/4.2	The National Waste Strategy, Waste Strategy 2000	May 2000
CD/4.3	Waste Strategy for England and Supporting Annexes	May 2007
CD/4.4	Government Review of Waste Policy 2011 and Action Plan	June 2011
CD/4.5	Anaerobic Digestion Strategy	June 2011
CD/4.6	UK Renewable Energy Strategy 2009	June 2009
CD/4.7	Annual Energy Statement 2010	July 2010

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Reference	Description of Document	Date
CD/4.8	UK Low Carbon Transition Plan 2009	July 2009
CD/4.9	Draft National Planning Policy Framework (NPPF)	July 2011
CD/4.10	Planning Policy Statement 1 - Delivering Sustainable Development	2005
CD/4.11	Planning Policy Statement 1 Supplement - Planning and Climate Change	Dec 2007
CD/4.12	Planning Policy Statement 4 - Planning for Sustainable Economic Growth	Dec 2009
CD/4.13	Planning Policy Statement 9 - Biodiversity and Geological Conservation	Aug 2005
CD/4.14	Planning Policy Statement 10 - Planning for Sustainable Waste Management	March 2011
CD/4.15	Planning Policy Statement 10 - Companion guide	June 2006
CD/4.16	Planning Policy Guidance 13 – Transport	Jan 2011
CD/4.17	Planning Policy Statement 22 - Renewable Energy	Aug 2004
CD/4.18	Planning Policy Statement 22 - Companion guide	Dec 2004
CD/4.19	[Planning Policy Statement 23 - Planning and Pollution Control]	Nov 2004
CD/4.20	Planning Policy Guidance 24 - Planning and Noise	Sep 1994
CD/4.21	Overarching National Policy Statement for Energy (EN-1) (designated version)	July 2011
CD/4.22	National Policy Statement Renewable Energy Infrastructure (EN-3) (designated version)	July 2011
CD/5 Environment Permit and Environment Agency Guidance		
CD/5.1	Environment Agency, IPPC S5.01 Guidance for the Incineration of Waste and Fuel Manufactured from or Including Waste	29 July 2004
CD/5.2	Environment Agency: EPR 1.00 How to comply with your environmental permit	April 2010
CD/5.3	Environment Agency Horizontal Guidance Note H1	April 2010
CD/5.3a	Missing pages from Environment Agency Horizontal Guidance Note H1	
CD/6 Alternatives, Carbon Assessment, R1 Coefficient Documents		
CD/6.1	Guidelines on best available techniques and guidance on best environmental practices under the Stockholm Convention	
CD/6.2	Community Implementation Plan for the Stockholm Convention on Persistent Organic Pollutants	March 2007
CD/6.3	Renewables Obligation Order 2009 (SI 2009/785)	2009
CD/6.4	Renewables Obligation (Amendment) Order 2010 (SI 2010/1107).	2010
CD/6.5	Combined Heat and Power Quality Assurance Standard, Issue 3	January 2009
CD/6.6	CHPQA Guidance Note 44	November 2008
CD/6.7	Environment Agency Guidance Note on R1 Recovery	
CD/7 Transportation Documents		

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Reference	Description of Document	Date
CD/7.1	Extract from Strategic Rail Freight Network: The Longer Term Vision	Sep 2009
CD/7.2	Extract from Delivering a Sustainable Railway	July 2007
CD/7.3	Extract from The Future for Rail	2004
CD/7.4	Extract from The Future of Transport: A Network for 2030	July 2004
CD/7.5	Extract from Towards a Sustainable Transport System	Oct 2007
CD/7.6	Extract from Delivering a Sustainable Transport System	Nov 2008
CD/7.7	A New Deal for Transport Better for Everyone	1998
CD/7.8	Regional Freight Strategy	2003
CD/7.9	Cheshire's Local Transport Plan 2006-2011	2006
CD/7.10	Cheshire's Local Transport Plan 2011-2026	May 2011
CD/8 Air Quality Documents		
CD/8.1	Directive 2008/1/EC on integrated pollution prevention and control (Codified Version)	Jan 2008
CD/8.2	OPSI (2010) The Environmental Permitting (England and Wales) Regulations 2010	March 2010
CD/8.3	Environment Agency (2010) Environmental Permitting Regulations (EPR) – H1 Environmental Risk Assessment	April 2010
CD/8.4	Directive 2000/76/EC on the incineration of waste	Dec 2000
CD/8.5	Directive 2006/12/EC on waste	April 2006
CD/8.6	EC Regulation No 850/2004 on Persistent Organic Pollutants and Amending Directive 79/117/EEC	April 2004
CD/8.7	Commission Regulation (EU) No 757/2010 amending Regulation (EC) 850/2004	Aug 2010
CD/8.8	OPSI (2007) The Persistent Organic Pollutants Regulations 2007	Dec 2007
CD/8.9	Directive 2008/50/EC on ambient air quality and cleaner air for Europe	May 2008
CD/8.10	Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air	Dec 2004
~~CD/8.11~~	DEFRA (2000). The Air Quality Strategy for England, Scotland, Wales and Northern Ireland: Working Together for Clean Air Superseded by CD/8.12	~~2000~~
CD/8.12	DEFRA (2007). The Air Quality Strategy for England, Scotland, Wales and Northern Ireland: Working Together for Clean Air. Volume 1	July 2007
CD/8.13	World Health Organisation Guidelines (http://www.who.int/en/)	
CD/8.14	Environment Agency (2003) Integrated Pollution Prevention and Control (IPPC) Environmental Assessment and Appraisal of BAT IPPC H1 Horizontal Guidance Note	2003
CD/8.15	DEFRA, 2009. Local Air Quality Management – Policy Guidance PG(09)	Feb 2009

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Reference	Description of Document	Date
CD/8.16	AEA (2010) UK Emissions of Air Pollutants 1970 to 2008	Aug 2010
CD/8.17	DEFRA 2008, Consultation on guidelines for metals and metalloids in ambient air for the protection of human health	May 2008
CD/8.18	AEAT, 2002, UK Particulate and Heavy Metal Emissions from Industrial Processes	Feb 2002
CD/8.19	NPL, 2010, Report to DEFRA: Annual Report for 2009 on the UK Heavy Metals Monitoring Network	March 2010
CD/8.20	Local Air Quality Management Helpdesk, September 2010 – available at the Defra website.	September 2010
CD/8.21	DEFRA, 2011, Trends in NOx and NO2 emissions and ambient measurements in the UK	March 2011
CD/8.22	Hyder Consulting 2005, Supplementary PM10 Detailed Assessment	March 2005
CD/9 Health Impacts and Perception of Health Documents		
CD/9.1	Buonanno G, Ficco G, Stabile L (2009(a)) 'Size distribution and number concentration of particles at the stack of a municipal waste incinerator' Waste Management, 29:749-755	Feb 2009
CD/9.2	CAFÉ (2004) Health Effects of Air Pollution, DG Environment, European Commission, Brussels	2004
CD/9.3	COC (2002) Incineration and Health, HMSO, London	2002
CD/9.4	COMEAP (Department of Health Committee on the Medical Effects of Air Pollutants) (1998) Quantification of the effects of air pollution on health in Great Britain. London: The Stationary Office	1998
CD/9.5	COMEAP (Department of Health Committee on the Medical Effects of Air Pollutants) (2008) (draft report)	2008
CD/9.6	DEFRA (2004) Review of environmental and health effects of waste management, HMSO: London	March 2004
CD/9.7	DEFRA (2010) Ambient Air Quality, HMSO: London	
CD/9.8	EA (2011) 'Interim guidance to applicants on metal impact assessment for waste incineration plant ' EA: London	June 2011
CD/9.9	HPA (Health Protection Agency) (2009) 'The impact on health of emissions to air from municipal waste incinerators' http://hpa.org.uk	Sep 2009
CD/9.10	National Academy of Sciences (USA) (2003) WASTE INCINERATION AND PUBLIC HEALTH, NATIONAL ACADEMY PRESS Washington, D.C. National Physical Laboratory (2010)	2010
CD/9.11	Van Caneghem J, Van Brecht A, Wauters G and Vandecasteele C (2010) Mass balance for POPs in hazardous and municipal solid waste incinerators' Chemosphere 78: 701-710	2010
CD/9.12	WHO (1987/1999/2000) Air Quality Guidelines for Europe, WHO, Geneva	1987/1999/ 2000

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Reference	Description of Document	Date
CD/10 Noise Documents		
CD/10.1	Department for Environment, Food and Rural Affairs. Noise Policy Statement for England.	March 2010
CD/10.2	British Standards Institution, British Standard 4142: Method for Rating industrial noise affecting mixed residential and industrial areas,	1997
CD/10.3	British Standards Institution, British Standard 7385: Evaluation and measurement for vibration in buildings – Part 1: Guide for measurement of vibration and evaluation of their effects on buildings,	1990
CD/10.4	British Standards Institution, British Standard 7385: Evaluation and measurement for vibration in buildings – Part 2: Guide for damage levels from groundborne vibration,	1993
CD/10.5	British Standards Institution, British Standard 7445: Description and measurement of environmental noise, Part 1 – Guide to Quantities and Procedures,	2003
CD/10.6	British Standards Institution, British Standard 7445: Description and measurement of environmental noise – Part 2: Guide to the acquisition of data pertinent to land use,	1991
CD/10.7	Directive 2002/49/EC relating to the assessment and management of environmental noise.	June 2002
CD/10.8	Department of Transport, Calculation of Road Traffic Noise, HMSO,	1988
CD/10.9	International Organization for Standardization 9613. Acoustics: Attenuation of sound during propagation outdoors. Part 2: General method of calculation.	1996
CD/10.10	British Standards Institution, British Standard 6472: Guide to evaluation of human exposure to vibration in buildings – Part 1: Vibration sources other than blasting,	2008
CD/10.11	Berglund, B. et al: Guidelines for Community Noise, World Health Organisation,	2000
CD/10.12	World Health Organization and European Commission: Burden of disease from environmental noise – Quantification of healthy life years lost in Europe, World Health Organization,.	2011
CD/10.13	ANV Consultants: Noise Assessment – Bio-Energy Plant at the Lostock Works, Griffiths Road, Northwich. Bedminster International,	Dec 2007
CD/10.14	John Davies Associates: Application for Planning Permission for a Precious and Semi-Precious Metal Recovery Plant On Land at Brunner-Mond Works Lostock By Edelchemie UK Ltd, Environmental Statement Chapter 17 Non-Technical Summary,	Dec 2007
CD/10.15	Wardell Armstrong LLP: Viridor – Proposed Development of a Waste Treatment Plant, Lostock Gralam. Appendix 12.1 Noise Impact Assessment,	Sep 2009

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Reference	Description of Document	Date
CD/10.16	Oaktree Environmental Ltd: Planning Application on Behalf of Broadthorn Construction Ltd – Change of Use to Inert and Non-Hazardous Household, Commercial & Industrial Waste Recycling Centre, with Ancillary Works and Retention of Existing Use. Planning Statement. Version 1.0.	14 Apr 2009
CD/10.17	British Standards Institution, British Standard 5228: Code of practice for noise and vibration control on construction and open sites – Part 1: Noise.	2009
CD/10.18	British Standards Institution, British Standard 5228: Code of practice for noise and vibration control on construction and open sites – Part 2: Vibration. .	2009
CD/10.19	The Stationery Office Limited: Committee on the problem of noise – Final report. Command paper 2056..	July 1963
CD/10.20	Department of the Environment, Advisory Leaflet 72: Noise Control on Building Sites, Department of the Environment.	1976
CD/10.21	British Standards Institution, British Standard 8233: Sound insulation and noise reduction for buildings – Code of practice..	1999
CD/10.22	Environment Agency, IPPC H3 Horizontal Guidance for Noise: Part 1 – Regulation and Permitting. Part 2 – Noise Assessment and Control. .	June 2004
~~CD/10.23~~	International Organization for Standardization, ISO 9613-2:1993: Acoustics – Attenuation of sound during propagation outdoors - Part 2: General method of calculation Duplication of CD10/9	~~1993~~
CD/10.24	Building and Buildings No. 1763, The Noise Insulation Regulations 1975: Amended 1998 No. 2000. The Noise Insulation (Amendment) Regulations 1988	October 1975
CD/10.25	"TRANSPORT and ROAD RESEARCH LABORATORY, Department of the Environment, Department of Transport. TRRL LABORATORY REPORT 1015. ENVIRONMENTAL EFFECTS OF TRAFFIC CHANGES. A M Mackie and C H Davies. 1981	1981
CD/10.26	Position Paper on Dose Response Relationships Between Transportation Noise and Annoyance, 2002 Night Noise Guidelines (NNGL) for Europe, 2007	2007
CD/10.27	Estimating Dose-Response Relationships between Noise Exposure and Human Health Impacts in the UK, 2009	2009
CD/10.28	Environmental Noise and Health in the UK, 2010	2010
CD/10.29	Noise and Health – Valuing the Human Health Impacts of Environmental Noise Exposure, 2010	2010
CD/10.30	The Environmental Noise (England) Regulations 2006	2006
CD/11 Landscape and Visual Documents		
CD/11.1	Cheshire West and Chester Council Local Development Framework - Core Strategy Issues and Options,	November 2009
CD/11.2	Countryside Agency Countryside Character Volume 2: The North West	1999

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Reference	Description of Document	Date
CD/11.3	Cheshire Landscape Character Assessment,	November 2008
CD/11.4	Vale Royal Landscape Character Supplementary Planning Document.	2007
CD/11.5	Guidelines for Landscape and Visual Impact Assessment, Second Edition (2002), The Landscape Institute and Institute of Environmental Management and Assessment	2002
CD/11.6	Landscape Character Assessment, Guidance for England and Scotland (2002), The Countryside Agency and Scottish Natural Heritage.	2002
CD/11.7	Photography and Photomontage in Landscape and Visual Impact Assessment, Landscape Institute Advice Note 01/11.	February 2011
CD/12 Ecology Documents		
CD/12.1	The Conservation of Habitats and Species Regulations 2010	March 2010
CD/12.2	British Standard BS 5837: 2005 (Trees in Relation to Construction - Recommendations)	2005
CD/12.3	ODPM/Defra Circular (ODPM 06/2005, Defra 01/2005): Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system	2005
CD/13 Relevant Planning Decisions		
CD/13.1	Inspector’s report and Secretary of State’s Decision Letter on the Ince Marshes Section 36 Application (Ref: APP/Z0645/A/07/2059609)	Oct 2008 Aug 2009
CD/13.2	Secretary of State's Decision Letter on the Ineos Chlor Section 36 Application	Sep 2008
CD/13.3	Decision Notice for the Winnington Combined Heat and Power Plant (April 1997)	April 1997
CD/13.4	R. (on the application of Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government [2011] EWCA Civ 639	May 2011
CD/13.5	Inspector’s report and Secretary of State’s Decision Letter on the Rufford Colliery Energy from Waste Facility Planning Application (Ref: APP/L3055/V/09/2102006)	17 March 2011 and 26 May 2011
CD/13.6	Inspector's Report and Secretary of State's Decision Letter in relation to the Ardley Energy from Waste Facility (Ref: APP/U3100/A/09/2119454)	14 October 2010 and 17 February 2011
CD13.7	Inspector's Report Conclusions (paragraphs 214 - 266) and Secretary of State's Decision Letter in relation to the Severnside Energy Recovery Facility (Ref: APP/P0119/A/10/2140199)	18 July 2011 and 15 Sept 2011

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Reference	Description of Document	Date
CD/13.8	Ardley Against Incineration v Secretary Of State For Communities And Local Government [2011] EWHC 2230 (Admin) - copy of judgment	8 July 2011
CD/13.9	R (on the application of Cheshire East Borough Council and another) v Secretary of State for Environment Food and Rural Affairs [2011] EWHC 1975 (Admin) - copy of judgment	26 July 2011
CD13.10	Resource Recovery Solutions (Derbyshire) Ltd v Secretary of State for Communities and Local Government and another [2011] EWHC 1726 (Admin) - copy of judgment	5 July 2011

CD/14 Other Public Inquiry Documents		
CD/14.1	Secretary of State's Statement of Matters	May 2011
CD/14.2	DCLG Letter to Chief Planning Officers	Nov 2009
CD/15 Statements of Common Ground between Parties		
CD/15.1	Planning Statement of Common Ground between the Applicant and the Council	7 Sept 2011
CD/15.2	Highways Statement of Common Ground between the Applicant and the Council	7 Oct 2011

INQUIRY DOCUMENTS

[italics denote documents submitted during the Inquiry]

ID/1	Notes of the Pre-Inquiry Meeting
ID/2	Inspector's note on the Environmental Statement
ID/3	Inspector's note on comments received to the PCT/HPU letter of 3 February 2011

E.ON ENERGY FROM WASTE UK LTD & TATA CHEMICALS EUROPE LTD	
TATA/1	Outline Statement
TATA/2	Statement of Case
TATA/3	Proof of Evidence on Company Matters (Tata) by Fraser Ramsay
TATA/3a	Summary Proof of Evidence on Company Matters (Tata) by Fraser Ramsay
TATA/3b	Appendices to Proof of Evidence on Company Matters (Tata) by Fraser Ramsay
TATA/3C	Rebuttal Proof of Evidence on Company Matters (Tata) by Fraser Ramsay
TATA4	Proof of Evidence on Company Matters (E.ON) by Dr Nader Bahri
TATA/4a	Summary Proof of Evidence on Company Matters (E.ON) by Dr Nader Bahri
TATA/4b	Appendices to Proof of Evidence on Company Matters (E.ON) by Dr Nader Bahri
TATA5	Proof of Evidence on Carbon, R1, Alternative Technologies by Stephen Othen
TATA/5a	Summary Proof of Evidence on Carbon, R1, Alternative Technologies

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	by Stephen Othen
TATA/5b	Appendices to Proof of Evidence on Carbon, R1, Alternative Technologies by Stephen Othen
TATA/5c	Rebuttal Proof of Evidence on Carbon, R1, Alternative Technologies by Stephen Othen
TATA6	Proof of Evidence on Energy and Waste by Kirsten Berry
TATA/6a	Summary Proof of Evidence on Energy and Waste by Kirsten Berry
TATA/6b	Appendices to Proof of Evidence on Energy and Waste by Kirsten Berry
TATA/6b.1	*Missing page from Appendix H to Proof of Evidence on Energy and Waste by Kirsten Berry*
TATA7	Proof of Evidence on Transportation: Highways and Rail by Richard Hutchings
TATA/7a	Summary Proof of Evidence on Transportation: Highways and Rail by Richard Hutchings
TATA/7b	Appendices to Proof of Evidence on Transportation: Highways and Rail by Richard Hutchings
TATA/8	Proof of Evidence on Air Quality by Daniel Smythe
TATA/8a	Summary Proof of Evidence on Air Quality by Daniel Smythe
TATA/8b	Appendices to Proof of Evidence on Air Quality by Daniel Smythe
TATA/8c	Rebuttal Proof of Evidence on Air Quality by Daniel Smythe
TATA/9	Proof of Evidence on Possible Health Impacts by Professor Jim Bridges
TATA/9a	Summary Proof of Evidence on Possible Health Impacts by Professor Jim Bridges
TATA/9b	Appendices to Proof of Evidence on Possible Health Impacts by Professor Jim Bridges
TATA/9c	Rebuttal Proof of Evidence on Possible Health Impacts by Professor Jim Bridges
TATA/10	Proof of Evidence on Noise and Vibration by David Leversedge
TATA/10a	Summary Proof of Evidence on Noise and Vibration by David Leversedge
TATA/10b	Appendices to Proof of Evidence on Noise and Vibration by David Leversedge
TATA/11	Proof of Evidence on Landscape and Visual by Jane Betts
TATA/11a	Summary Proof of Evidence on Landscape and Visual by Jane Betts
TATA/11b	Appendices to Proof of Evidence on Landscape and Visual by Jane Betts
TATA/12	Written Representation on Ecology and Nature Conservation by Keith Jones
TATA/12a	Summary Written Representation on Ecology and Nature Conservation by Keith Jones
TATA/12b	Appendices to Written Representation on Ecology and Nature Conservation by Keith Jones
TATA/13	Proof of Evidence on Town Planning by Christopher LeCointe
TATA/13a	Summary Proof of Evidence on Town Planning by Christopher LeCointe
TATA/13b	Appendices to Proof of Evidence on Town Planning by Christopher LeCointe
TATA/14	Response to CHAIN’s Regulation13 Application
TATA/15	Letter dated 13 September from Addleshaw Goddard to DECC

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	responding to the HPA/PCT letter of 3 February 2011
TATA/16	*Opening submissions*
TATA/17	*Energy for Waste Sites in Germany*
TATA/18	*Article - E.ON Denies Accusation of Broken Seal*
TATA/19	*Chart of Fuel Prices for Manufacturing Industry, Cash Terms, 1990-2010*
TATA/20	*Email regarding content of metallic sodium*
TATA/21	*Energy from Waste Facilities that Provide Heat*
TATA/22	*Plasma Gasification*
TATA/23	*Use of Biomass as a Fuel at the Lostock Sustainable Energy Plant*
TATA/24	*Combined Heat and Power in Scotland, Wales, Northern Ireland and the Regions of England in 2010, DECC September 2011*
TATA/25	*The Movement of Waste by Rail*
TATA/26	*Renewable Electricity Scotland, Wales, Northern Ireland and the Regions of England in 2010, DECC September 2011*
TATA/27	*Article on Municipal Waste Recycling across England, Wales, Scotland and Northern Ireland*
TATA/28	*Response to Rebuttal Proof of Evidence of Tracy Manfredi by Daniel Smyth*
TATA/29	*Briefing Note – Secondary Particulates and Ozone by Daniel Smyth*
TATA/30	*Response to question raised during cross-examination of Fraser Ramsay*
TATA/31	*Potential Loading Site Summary for Waste Destined to Lostock, May 2011*
TATA/32	*Information requested during cross-examination of Dr Bahri-Esfahani*
TATA/33	*Covanta Proposed Resource Facility, Rookery South – Residual Waste Acceptance Scheme*
TATA/34	*Rookery South Resource Recovery Facility Order, Panel's Decision and Statement of Reasons*
TATA/35	*Response to queries about involvement with industrial companies over the past 15 years, Professor Jim Bridges*
TATA/36	*Guidance on delivering the waste hierarchy and the pre treatment of waste*
TATA/37	*Environmental Protection, The Landfill (Maximum Landfill Amount) Regulations 2011*
TATA/38	*ZTV with Requested Viewpoint Locations – Overall*
TATA/39	*Response to issues raised during cross-examination*
TATA/40	*Note on the effect of development on the Trent and Mersey Canal Conservation Area*
TATA/41	*Response by Stephen Othen to Paper Submitted by Dr Van Steenis*
TATA/42	*Response to Mr G Walker – Questions relating to CD1.106 Transport Assessment*
TATA/43	*HPA response to the British Society for Ecological Medicine report*
TATA/44	*Supplementary Document: Proposed Condition – Residual Waste Acceptance Scheme*
TATA/45	*Copies of CHAIN News Releases*
TATA/46	*Signature page for Highways Statement of Common Ground between Tata Chemicals Europe and E.On Energy from Waste UK Ltd and Cheshire West and Chester Council*

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TATA/47	*Response to Edelchemie Statement dated 13/9/2011.*
TATA/48	*Response to issue raised during cross examination of Kirsten Berry*
TATA/49	**75 Bushell and Another Respondents v SoS for the Environment Appellant - Extract*
TATA/50	*Professor Jim Bridges analysis of two papers on rodent studies on air pollution*
TATA/51	*Science Direct – Human exposure to heavy metals in the vicinity of Portuguese solid waste incinerators.*
TATA/52	*Lostock Sustainable Energy Plant – Note on vehicle sizes and load capacity*
TATA/53	*Response to WRI/7*
TATA/54	*Note in relation to specific rights of way over the application site*
TATA/55	*Response to points raised by T Manfredi and L Byrne*
TATA/56	*CHAIN – News Release – 22 September 2011*
TATA/57	*Plan of the site*
TATA/58	*Hatton & Others v United Kingdom – 2 October 2001 - Judgement*
TATA/59	*Hatton & Others v United Kingdom 2 October 2001*
TATA/60	*Planning Obligation between TATA and EON Energy from Waste UK Ltd & Standard Chartered Bank in favour of Cheshire West and Chester Borough Council*
TATA/61	*Response from Jane Betts to MAN53*
TATA/62	*Stephen Othen's response to MAN/48 and MAN/49*
TATA/63	*Response by Dan Smyth to MAN/50*
TATA/64	*Note on Incinerator Bottom Ash*
TATA/65	*Response by Professor Jim Bridges to MAN/47 AND MAN/50*
TATA/66	*Review of Environmental & Health Effects of Waste Management – Defra 2004*
TATA/67	*Supplementary Document: Revised Residual Waste Acceptance Scheme – Condition following the Knottingley SoS decision*
TATA/68	*Draft Conditions (submitted 4/11/2011)*
TATA/69	*Response to GAM/21*
TATA/70	*Dan Smythe's note in response to evidence in chief of Tracy Manfredi.*
TATA/71	*Jane Bett's responses to GRE/1A*
TATA/72	*Email between Don Hammond and TATA dated 8 November*
TATA/73	*Response to questions omitted from questioning by proxy by Mrs Gamble*
TATA/74	*Environmental Judicial Review*
TATA/75	*Response to CHAIN/117*
TATA/76	*Revised Draft Conditions 2 and 19*
TATA/77	*Applicant documents submitted*
TATA/78	*Closing submissions*
TATA/79	*Revised draft conditions*
TATA/80	*S106 undertaking (draft)*
TATA/81	*Email from Daniel Smyth to Addleshaw Goddard dated 10 November 2011, regarding MAN/58*
TATA/82	*Powerpoint slides of Winnington CHP, shown on accompanied site visit 11 November 2011*
TATA/83	*Signed copy of S106 (final)*

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SUPPORTERS	
BOW/1/S	Outline Statement of Derek Bowden
NEED/1/S	*Statement for evening session of Andrew Needham*
PARK/1/WR/S	*Written representation by David Parks-Smith*

CHESHIRE WEST AND CHESTER COUNCIL	
CWAC/1	Outline Statement of Cheshire West and Chester Council
CWAC/2	Statement of Case
CWAC/3	Proof of Evidence of Jonathan Sutcliffe
CWAC/3a	Summary Proof of Evidence of Jonathan Sutcliffe
CWAC/3b	Appendices to Proof of Evidence of Jonathan Sutcliffe
CWAC/4	*Opening submissions*
CWAC/100	*Decision letter from DECC dated 31 October 2011 – To construct and operate a multi-fuel generating station at Ferrybridge 'C' Power Station, Stranglands Lane, Knottingley.*
CWAC/101	*Consent Order to CWAC/100*
CWAC/102	*Closing submissions*
CWAC/103	*Suggested condition on commissioning of the development*
CWAC/104	*Closing submissions*

CHESHIRE ANTI INCINERATOR NETWORK (CHAIN)	
CHAIN/1	Outline Statement of CHAIN
CHAIN/2	Statement of Case
CHAIN/3	Proof of Evidence on Need by Brian Cartwright
CHAIN/3b	Appendices to Proof of Evidence on Need by Brian Cartwright
CHAIN/4	Proof of Evidence on Sustainability by Brian Cartwright
CHAIN/4b	Appendices to Proof of Evidence on Sustainability by Brian Cartwright
CHAIN/5	Proof of Evidence on Health by Brian Cartwright
CHAIN/5b	Appendices to Proof of Evidence on Health by Brian Cartwright
CHAIN/5b app 9	*Appendix 9 to Proof of Evidence on Health by Brian Cartwright*
CHAIN/6	Proof of Evidence on Traffic by Liam Byrne
CHAIN/6b	Appendices to Proof of Evidence on Traffic by Liam Byrne
CHAIN/7	Proof of Evidence on Visual and Landscape by Brian Cartwright
CHAIN/7b	Appendices to Proof of Evidence on Visual and Landscape by Brian Cartwright
CHAIN/8	Proof of Evidence on Localism by Brian Cartwright
CHAIN/8b	Appendices to Proof of Evidence on Localism by Brian Cartwright
CHAIN/8b app 23	*Risks of Risk Decisions*
CHAIN/8b app 25	*The influence of risk perception on mental health: living near an incinerator*
CHAIN/8b app 26	*Risky perceptions, stigma and health policy*
CHAIN/8b app 27	*Stress, appraisal, and coping*
CHAIN/8b app	*Risk perception and coping*

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CHAIN/8b app 29	*Living on polluted soil*
CHAIN/9	Proof of Evidence on Socio-Economic by Liam Byrne
CHAIN/9b	Appendices to Proof of Evidence on Socio-Economic by Liam Byrne
CHAIN/10	Regulation 13 Application
CHAIN/11	Comments on the applicant's response to the HPA/PCT letter of 3 February 2011
CHAIN/12	*Opening submissions*
CHAIN/100	*Extract from The Chemical Engineer, September 2011*
CHAIN/101	*Information relating to comments by the PCT/HPA*
CHAIN/102	*News Release regarding Public Meeting held on 18 January 2011*
CHAIN/103	*Leaflet on Bedminster*
CHAIN/104	*Extract from a letter dated 24 May 2010 from the Environment Agency to DECC*
CHAIN/105	*Bedminster Reference Facilities*
CHAIN/106	*Largest French Waste Incinerator Unveiled in Paris, 16 June 2008*
CHAIN/107	*Emails from people who attended the Rudheath Parish Council Meeting on 8 February 2011*
CHAIN/108	*NOT USED*
CHAIN/109	*Newspaper articles dated 21 September 2011 - "Traffic fumes raise heart risks"*
CHAIN/110	*Press cuttings*
CHAIN/111	*Cheshire's Toxic Diamond*
CHAIN/112	*Submissions to SOS in relation to the Applicant's Environmental Statemetn and Ancillary Matters*
CHAIN/113	*CHAIN pleas to TATA Group not to build gigantic waste incinerator in Northwich*
CHAIN/114	*Decision letter on Southall Gas Pressure Reduction Station and adjsacent land, The Straight, Southall, London, UB1 1QX dated 289 June 2010*
CHAIN/115	*Width capacity of A530 (King Street) South of Middlewich Road*
CHAIN/116	*Actual number of HGV journeys – calculation details*
CHAIN/117	*Significant error in HGV Numbers provided by the Applicant*
CHAIN/118	*Response to Note on Vehicle sizes and load capacity*
CHAIN/119	*Response to TATA/55 – Response to points raised by T Manfredi and L Byrne*
CHAIN/120	*Planning Conditions on behalf of CHAIN*
CHAIN/121	*Waste Incinerator – Biomass Fuel Hazard*
CHAIN/122	*Closing submissions*

MRS DOROTHY GAMBLE	
GAM/1	Outline Statement of Dorothy Gamble
GAM/2	Comments on the Regulation 13 Application by CHAIN
GAM/3	Statement of Case
GAM/4	Summary Proof of Evidence of Dorothy Gamble
GAM/5	Proof of Evidence of Dorothy Gamble
GAM/6	Appendices to Proof of Evidence of Dorothy Gamble

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GAM/6a	Supplementary Appendix to Proof of Evidence of Dorothy Gamble
GAM/7	Comments on the applicant's response to the HPA/PCT letter of 3 February 2011
GAM/8	*Opening submissions*
GAM/9	*Extract from Greater Manchester Joint Waste Development Plan Document: Strategy June 2006*
GAM/10	*Birth defect review into Belvedere incinerator possible*
GAM/11	*Biography of Elaine Golds*
GAM/12	*Article from the Vancouver Sun, 5 October 2009 relating to Professor Bridges*
GAM/13	*Article from the British Columbia Local News,17 September 2009 relating to Professor Bridges*
GAM/14	*Article from the Chester Chronicle, 25 April 2008 relating to Professor Bridges*
GAM/15	*Waste disposal & incinerators: is this a green business solution? – article from the Vancouver Environmental News Examine, 18 December 2009*
GAM/16	*Email exchange with Dr Van den Hazel*
GAM/17	*Environmental and Social Review Summary, OOO Suntry*
GAM/18	*Article regarding fine imposed on Tata Steel at Ijmuiden,Holland for breaching dioxine emission levels*
GAM/19	*Note on 3rd Paris Appeal International Congress 12013 April 2011- Children's Health and the Environment*
GAM/20	*Note from Fifth Ministerial conference on Environment and Health*
GAM/21	*Questions to TATA (Mr Betts)*
GAM/22	*Questions which were omitted from cross-examination by proxy on 25 October*
GAM/23	*Email from Professor J Grigg – Queen Mary University of London – Paediatric Respiratory & Environmental Medicine – dated 8 October 2011*
GAM/24	*Parliament Today – Incinerators: Health Hazards*
GAM/25	*Review of Environmental and Health Effects of Waste Management: Municipal Solid Waste and Similar Wastes*
GAM/26	*Royal Society's review of DEFRA's report on the environmental and health effects of waste management*
GAM/27	*UK continues to undercount Air Pollution's Health-harm – dated 6 November 2011*
GAM/28	*In Harm's way – toxic threats to child development*
GAM/29	*Validation of the Harvard Six Cities Study of Particulate Air Pollution and Mortality – 8 January 2004*
GAM/30	*Abstract on Lung Cancer – Cardiopulmonary Mortality and long term exposure to fine particulate air pollution*
GAM/31	*Climate change and children – a human security challenge – Policy Review Paper*
GAM/32	*Review of the UK Air Quality Index – Report by the Committee on the Medical Effects of Air Pollutants*
GAM/33	*House of Commons Environmental Audit Committee – Air Quality – Fifth Report of session 2009-10*
GAM/34	*Development of a UK Children's Environment and Health*

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	Strategy
GAM/35	*Suggested conditions*
GAM/35a	*Note regarding Fly Ash*
GAM/36	*An Inter-comparison of the AERMOD,ADMS and ISC Dispersion Models for Regulatory Applications.R & D Technical Report P362*
GAM/37	*Waste Management:Public Health Considerations*
GAM/38	*Health and environmental impacts of nanoparticles: too early for a risk assessment framework – Prof Bridges*
GAM/39	*Extract from Mail on Line on air pollution*
GAM/40	*Late lessons from early warnings: the precautionary principle 1896 - 2000*
GAM/41	*Evidence in Chief of Dorothy Gamble*
GAM/42	*Closing submissions*

MRS TRACY MANFREDI	
MAN/1	Outline Statement of Tracy Manfredi
MAN/2	Statement of Case
MAN/3.1	Summary Proof of Evidence of Tracy Manfredi on Health and Air Quality
MAN/3.2	Proof of Evidence of Tracy Manfredi on Health and Air Quality
MAN/3.3	Appendices to Proof of Evidence of Tracy Manfredi on Health and Air Quality
MAN/4.1	Summary Proof of Evidence of Tracy Manfredi on Human Rights
MAN/4.2	Proof of Evidence of Tracy Manfredi on Human Rights
MAN/4.3	Appendices to Proof of Evidence of Tracy Manfredi on Human Rights
MAN/5.1	Summary Proof of Evidence of Tracy Manfredi on Northwich Becoming a Dumping Ground
MAN/5.2	Proof of Evidence of Tracy Manfredi on Northwich Becoming a Dumping Ground
MAN/5.3	Appendices to Proof of Evidence of Tracy Manfredi on Northwich Becoming a Dumping Ground
MAN/6.1	Summary Proof of Evidence of Tracy Manfredi on the Need for the Sustainable Energy Plant
MAN/6.2	Proof of Evidence of Tracy Manfredi on the Need for the Sustainable Energy Plant
MAN/6.3	Appendices to Proof of Evidence of Tracy Manfredi on the Need for the Sustainable Energy Plant
MAN/7.1	Summary Proof of Evidence of Tracy Manfredi on Traffic Implications
MAN/7.2	Proof of Evidence of Tracy Manfredi on Traffic Implications
MAN/7.3	Appendices to Proof of Evidence of Tracy Manfredi on Traffic Implications
MAN/8.1	Summary Proof of Evidence of Dr Dick Van Steenis on Should Regulators Pass Killing
MAN/8.2	Proof of Evidence of Dr Dick Van Steenis on Should Regulators Pass Killing
MAN/8.3	Appendices to Proof of Evidence of Dr Dick Van Steenis on

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	Should Regulators Pass Killing
MAN/8.4-MAN/8.6	NOT USED
MAN/8.7	*Fine Particle Emissions of Waste Incineration, 15 March 2007*
MAN/8.8	*SELCHP & 2002-2009 ONS data*
MAN/8.9	*Undated email regarding a letter in The Lancet by Dr Van Steenis, dated 8 April 1995*
MAN/8.10	*Letter in The Lancet by Dr Van Steenis, dated 8 April 1995*
MAN/8.11	*Disease Mapping and Risk Assessment for Public Health Decision-Making, Report on WHO Workshop 2-4 October 1997*
MAN/8.12	*PM2.5 – induced changes in cardiac function - abstract*
MAN/8.13	*Email from Dr Van Steenis to Michael Ryan Research regarding letter to the Lancet 8/4/1995*
MAN/8.14	*Extract from Emissions, Dispersion and concentration of particles – Figure 3.10*
MAN/8.15	*Science Daily "Tracking down the menace in Mexico City smog"*
MAN/8.16	*Note on elevated suicides in residential neighbourhoods (submitted as MAN/8.12)*
MAN/9.1	Summary Proof of Evidence of Tracy Manfredi on Alternatives to Incineration
MAN/9.2	Proof of Evidence of Tracy Manfredi on Alternatives to Incineration
MAN/9.3	Appendices to Proof of Evidence of Tracy Manfredi on Alternatives to Incineration
MAN/10	Comments on the Regulation 13 Application by CHAIN
MAN/11	Comments on the applicant's response to the HPA/PCT letter of 3 February 2011
MAN/12.1	Rebuttal Proof of Evidence of Tracy Manfredi on Health and Air Quality
MAN/12.2	Appendices to Rebuttal Proof of Evidence of Tracy Manfredi on Health and Air Quality
MAN/13	Email exchange and correspondence with Cheshire and Merseyside Health Protection Unit
MAN/14	NOT USED
MAN/15	*Opening submissions*
MAN/16a	*Delfzijl to close – extracts from web discussing Chernie Park, AkzoNobel and Brunner Mond BV and Tata*
MAN/16b	*History of AkzoNobel and Chernie Park*
MAN/16c	*Extracts from newspapers regarding job cuts and thundersprint*
MAN/16d	*UN Technical Guidance on POPS*
MAN/17	*Tyseley Breaches of Emissions*
MAN/18	*Wolverhampton Breach of Emissions*
MAN/19	*Breaches of Emissions at Wolverhampton and Dudley*
MAN/20	*Renewable Energy Installers Training Courses*
MAN/21	NOT USED
MAN/22	*E.ON Press Information dated 1 February 2011 on the Re-opening of Neuenkirchen Waste to Energy Incinerator*
MAN/23	*UK Achieves Ninth Best Recycling rate in Europe – Extract from Lets Recycle 10 March 2009*

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MAN/24	*Article from The Irish Times, dated 14 September 2011 – Dutch to Import and Destroy Refuse from Naples*
MAN/25	*Article from The Guardian - Shale Gas Fracking – Energy firm Cuadrilla discovers huge gas reserves under Lancashire*
MAN/26	*Final treatment of MSW and C&I waste in Germany and neighbouring countries. How to cope with emerging over-capacities.*
MAN/27	*House of Commons Select Committees – Energy and Climate Change – The UK's Energy Supply: security or independence*
MAN/28	*NOM Investing in Development E.ON steam production officially opened*
MAN/29	*2009 Vapor Explosion Report, Chemical Safety Board, July 2010*
MAN/30	*Response from the Environment Agency dated 25 May 2010 on Newhaven Incinerator Filters*
MAN/31	*Explosion at Incinerator Covered up by Oxyx, Sheffield Mayday News, 9 January 2002*
MAN/32	*Permit Variation number QP3736SD, Marchwood Industrial Estate, Hampshire*
MAN/33	*Information on Wind Rose*
MAN/34	*Photographs of steam coming off existing plant (to assist with fog issue and effect on traffic)*
MAN/35	*Mass balance for POPs in hazardous and municipal solid waste incinerators*
MAN/36	*Article on chemical leak from the Northwich Guardian, 19 October 2011*
MAN/37	*Correspondence relating to Freedom of Information request to the Cheshire and Merseyside Health Protection Unit*
MAN/38	*Additional individual representations from local residents*
MAN/39	*Pollution sediment on plants A530 near works*
MAN/40	*North West England & Isle of Man: climate, Met Office*
MAN/41	*Photographs of the site from various view points*
MAN/42	*AQMA – Mere*
MAN/43	*Correspondence from Cheshire, Warrington and Wirral PCT and Cheshire & Merseyside Protection Unit*
MAN/44	*Photographs where existing red brick building can be see from*
MAN/45	*Murphy's Law – and incinerator malfunctions*
MAN/46	*Email in relation to Professor Bridges Oral evidence on cross examination by Mrs Manfredi – subject UNC News release – study shows increased suicide rate with possible link to nearby industry chemicals in second N.C. Community*
MAN/47	*New Release – UNC News Release – November 7 2005*
MAN/48	*Paper in respect of Fine Particulate Emissions of Waste Incineration (The Finnish Report)*
MAN/49	*Paper on Plasma ARC*
MAN/50	*Health effects on NOx, Ammonia & Nitric Acid*
MAN/51	*TATA Chemicals & Soda ASH market reviews & extracts from industrial minerals publications*
MAN/52	*Planning, suitability of location, visibility & landscape*
MAN/53	*Photos of blimp*

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MAN/54A	*Knutsford AQMA*
MAN/54B	*M6 AQMA*
MAN/55	*House of Commons Energy and Climate Change Committee – UK Energy Supply: Security or Independence*
MAN/56	*Extract from document on Carbon*
MAN/57	*Photos of Cheshire Show – Clay Lane Farm – 1st field*
MAN/58	*CWAC 2011 AQ Progress Report, April 2011*
MAN/59-MAN/64	NOT USED
MAN/65	*Suggested conditions*
MAN/66	*Closing submissions*

RICHARD DAVID WRIGHT	
WRI/1	Outline Statement of R D Wright
WRI/2	Statement of Case
WRI/3	Proof of Evidence of R D Wright
WRI/3a	Summary Proof of Evidence of R D Wright
WRI/3b	Appendices to Proof of Evidence of R D Wright
WRI/4	Comments on the Regulation 19 Application by CHAIN
WRI/5	Comments on the applicant's response to the HPA/PCT letter of 3 February 2011
WRI/6	*Opening submissions*
WRI/7	*Issues in relation to Mr Othen's calculations*
WRI/8	*Article on foam concrete banned from construction jobs following explosion, Career Engineer, 11 November 2009*
WRI/9	*Information from the website of GS Foam Concrete*
WRI/10	*Interim Advice Note 127/09 The Use of Foamed Concrete, October 2009*
WRI/11	*Comparison of Gas Price Forecasts DECC Central*
WRI/12	*BBC News Lancashire – Shale Gas firm finds 'vast' gas resources in Lancashire*
WRI/13	*Suggested conditions*
WR1/14	*Closing submissions*
WR1/15	*Response to TATA/64*

OBJECTORS	
BAK/1	Outline Statement of R G Baker
BOA/1	Outline Statement of Dr Terence Boardman
BOA/2	Proof of Evidence of Dr Terence Boardman
BROAD/1	Outline Statement of Broadthorn Construction Ltd
BROAD/2	Proof of Evidence of John Davies for Broadthorn Construction Ltd
BROAD/3	*Revised Proof of Evidence of John Davies for Broadthorn Construction Ltd*
BYRAM/1	*Submission from Councillor Byram*
BYR/1	Outline Statement of Liam Byrne
BYR/2	Comments on the Regulation 13 Application by CHAIN
BW/1	Outline Statement of British Waterways
COU/1	Proof of evidence of Mike Coultas
DOL/1	*Statement for evening session of Councillor Paul Dolan*

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EDEL/1	Outline Statement of Edelchemie (UK) Limited
EDEL/2	Proof of Evidence of Leo Nevels for Edelchemie (UK) Limited
EDEL/2a	*Plan referred to in Proof of Evidence of Leo Nevels for Edelchemie (UK) Limited*
EDEL/3	*Updated statement*
EVA/1	Outline Statement of Graham Evans MP
EVA/2	Statement for evening session of Graham Evans MP
FOD/1	Outline Statement of Dave Foddy
FOD/2	*Statement for evening session of Dave Foddy*
FUL/1	Outline Statement of Gordon Fulton
FUL/2	Statement for the evening session of Gordon Fulton
GRE/1	*Proof of evidence of Julie-Ann Green*
GRE/1a	*Appendices to Proof of evidence of Julie-Ann Green*
HALL/1	*Statement for evening session of John Hallwood*
HOW/1	Outline Statement of Chris Howarth
HOW/2	*Statement for evening session of Chris Howarth*
LAW/1	Outline Statement of Tony Lawrenson
LAW/2	Statement for evening session of Tony Lawrenson
LEE/1	Outline Statement of David Lee
LEE/2	*Statement for evening session of David Lee*
LGPC/1	Outline Statement of Lostock Gralam Parish Council
LGPC/2	Proof of Evidence of Lostock Gralam Parish Council
MAR/1	Outline Statement of Councillors Hammond, Byram and Wright, representing Marlbury Ward
MAR/2	Proof of Evidence of Councillors Hammond, Byram and Wright, representing Marlbury Ward
MCE/1	Outline Statement of Ann McEllin
MCE/2	*Statement for evening session of Ann McEllin*
OSB/1	*Statement for evening session of Rt Hon George Osborne MP*
RPC/1	Outline Statement of Rudheath Parish Council
RPC/2	*Statement for evening session of Rudheath Parish Council*
SAN/1	Outline Statement of Christine Sandbach
SED/1	Outline Statement of Mr P A Sedgwick
SEDG/1	Outline Statement of Janet Sedgwick
SID/1	Outline Statement of Stop Incineration In Disguise (SID)
SID/2	Proof of evidence of Stop Incineration In Disguise (SID)
STA/1	Outline Statement of Mrs Susan Statham
STA/2	*Statement for evening session of Mrs Susan Statham*
STO/1	*Statement for evening session of Councillor Mark Stocks*
WEL/1	Outline Statement of Councillor Helen Weltman
WEL/2	Proof of Evidence of Councillor Helen Weltman
WPC/1	Outline Statement of Wincham Parish Council
WPC/2	*Statement for evening session of Wincham Parish Council*

WRITTEN REPRESENTATIONS	
BAIL/1/WR	Written representation by Roy Bailey
BAILE/1/WR	Written representation by Elizabeth Bailey
BAT/1/WR	*Written representation by Patricia Battisson*

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BOY/1/WR	*Written submission by Mr Peter Boyde*
GRI/1/WR	Written representation by John and Liz Griffith
MART/1/WR	*Written representation by Rhona Martin*
MART/1a/WR	*Further written representation by Rhona Martin*
WAL/1/WR	*Written questions on Transport Assessment by Graham Walker*
WILL/1/WR	*Written submission by Frances Williams*

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Annex 1 - List of application drawings, as amended

16384/A1/P/5001
P/5002 Rev A
16384/A1/P/5055 B
16384/A1/P/5056/B
16384/A1/P/5100 G
16384/A1/P/5105 Rev D
16384/A1/P/5106 Rev E
16384/A0/P/5107 D
16384/A1/P/5108 D
16384/A0/P/5109 C
16384/A1/P/5110 C
16384/A1/P/5111 B
16384/A0/P/5112 C
16384/A1/P/5127 B
16384/A0/P/5113 C
16384/A1/P/5115 D
16384/A1/P/5116 D
16384/A2/P/5117 D
16384/A2/P/5118 D
16384/A0/P/5125 B
16384/A1/P/5126 B
16384/A0/P/5112 C
16384/A1/P/5172 B
16384/A1/P/5170 B
Figure 8.21 Rev E of the Consolidated Environmental Assessment (July 2011)

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Annex 2 – Conditions

Definitions

"**Development**" The development on the Site shall comprise the following elements:

i) A steam turbine / electrical generator with a total gross maximum electricity capacity of up to 60MWe gross (53MWe net) capable of producing approximately 100 tonnes of steam per hour;

ii) a fuel reception hall;

iii) boiler house and switchgear building;

iv) flue gas treatment building;

v) emissions stacks;

vi) air cooled condenser;

vii) ash handling facility;

viii) associated infrastructure including onsite pipelines for the collection and distribution of steam; transformer compound; internal roads, parking, gatehouse, weighbridge, rail connection, water treatment fuel store, fencing, landscaping and offices; and coke fuel storage area; and

ix) demolition of the existing power station buildings on the Site;

"**Local Planning Authority**" means Cheshire West and Chester Council or its successor authority;

"**Operation**" means the generation of electricity and production of steam by the Development on a commercial basis and "Operated" and cognate terms shall be construed accordingly;

"**Site**" the land known as the Lostock Works Site, Griffiths Road, Northwich, Cheshire shown for identification purposes only edged red on the attached plan.

Conditions

1. The commencement of the Development shall not be later than five years from the date of this consent, or such longer period as the Secretary of State may hereafter direct in writing.

2. The Development shall be constructed in accordance with the following schedule of drawings:

16384/A1/P/5001

P/5002 Rev A

16384/A1/P/5055 B

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16384/A1/P/5056/B

16384/A1/P/5100 G

16384/A1/P/5105 Rev D

16384/A1/P/5106 Rev E

16384/A0/P/5107 D

16384/A1/P/5108 D

16384/A0/P/5109 C

16384/A1/P/5110 C

16384/A1/P/5111 B

16384/A0/P/5112 C

16384/A1/P/5127 B

16384/A0/P/5113 C

16384/A1/P/5115 D

16384/A1/P/5116 D

16384/A2/P/5117 D

16384/A2/P/5118 D

16384/A0/P/5125 B

16384/A1/P/5126 B

16384/A0/P/5112 C

16384/A1/P/5172 B

16384/A1/P/5170 B

Figure 8.21 Rev E of the Consolidated Environmental Assessment (July 2011)

3. The Development shall not commence until a Demolition Method Statement and Management scheme has been submitted to and approved in writing by the Local Planning Authority. No development shall take place except in accordance with the approved Demolition Methodology Statement. The scheme shall include:

a) measures to control dust, noise, vibration, light and odour and appropriate mitigation techniques that prevent unnecessary disturbance to neighbouring properties;

b) details of the environmental management of the demolition of the existing buildings on the Site;

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c) the hours of demolition shall not be outside 07.00 – 19.00 Monday - Friday; 07:00 – 13:00 Saturdays and not at all on Sundays and Bank/Public Holidays; and,

d) a waste audit, setting out the steps to be taken to ensure that the maximum amount of waste arising from the demolition process is incorporated within the Development so far as is reasonably practicable, and the steps to be taken to reuse and recycle the waste that cannot be incorporated within the Development.

4. The Development shall not commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. No construction of the Development shall take place except in accordance with the approved CEMP. The Plan shall include:

a) measures to control dust, noise, vibration, light and odour from construction activities and appropriate mitigation techniques that prevent unnecessary disturbance to neighbouring properties;

b) details of the environmental management of the construction of the Development;

c) With the exception of:

i) construction activities using the concrete slip-forming method;

ii) construction activities requiring constant pouring concrete; and

iii) process works within the Site boundary relating to mechanical and/or electrical equipment installation,

no noise and vibration from the construction works will be audible at noise sensitive premises outside the hours of 07.00 – 19.00 Monday - Friday; 07:00 – 13:00 Saturdays and not at all on Sundays and Bank/Public Holidays;

d) details of parking of site operatives' and visitors' vehicles; and

e) loading and unloading of plant and materials and their storage.

5. The Development shall not commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority which shall include provisions for addressing any abnormal wear and tear to the highway. The Construction Traffic Management Plan shall be complied with for the duration of the construction of the Development.

6. Prior to the commencement of the Development, details of wheel-cleaning facilities to be provided during the demolition and construction phases of the Development shall be submitted for the written approval of the Local Planning Authority. The approved details shall include the type, location and layout of the facilities together with measures to ensure use by all construction vehicles leaving the Site. All areas used for the washing of vehicles shall be contained to prevent the discharge of wastewater to underground strata or controlled waters. This shall apply to all areas of the Site including the construction lay-down areas. The demolition and construction phases of the Development shall be carried out in accordance with the approved scheme.

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7. No Development shall commence until all areas of the Site including natural habitat, drains and watercourses that are to be retained as part of the Development hereby approved, have been fenced off or otherwise delineated to avoid incursion and disturbance by construction activity. This protection shall be maintained for the duration of the construction period and no construction materials, machinery or equipment are to be stored within these areas.

8. No waste delivery HGVs shall enter or leave the Site by road outside the hours of 07:00 and 19:00 on weekdays and between 07:00 and 13:00 on Saturdays. No HGVs shall enter or leave the Site outside these times or at any time on Sundays or Bank/Public Holidays.

9. HGV movements to and from the Development once operational shall not exceed 262 two way trips (131 in, 131 out) Monday to Friday on more than 3 days in a continuous 30 day monitoring period and shall not exceed 276 two way trips (138 in, 138 out) on any one day, Monday to Friday. HGV movements to and from the Development once operational shall not exceed 132 two way trips (66 in, 66 out) on Saturdays.

10. Records shall be kept of waste delivery HGVs entering and leaving the Site each day, and shall include numbers, origins and times of arrival and departure and these records will be made available to the Local Planning Authority on written request.

11. Fuel deliveries by train shall not be made to the Site outside the hours of 07:00 and 23:00.

12. Fuel deliveries by train shall not be unloaded at the Site outside the hours of 07:00 and 23:00. Vehicles used to load and unload the trains, that are permanently based on the Site for this purpose, shall be fitted with reversing alarms of a type to be agreed in writing with the Local Planning Authority, before commencement of the Operation of the SEP.

13. The Development shall not be Operated until a scheme for proposed staff and visitor vehicular parking provision has been submitted to and approved in writing by the Local Planning Authority. The parking provision shall be completed as agreed prior to operation of the Development and thereafter retained.

14. The Development shall not be Operated until the following measures to encourage staff to travel via sustainable modes are introduced at the Site:

a) Covered and secure storage for 10 bicycles, with additional space for the storage of 7 additional bicycles should they be required in the future;

b) Walking and cycling routes will be identified and communicated to staff;

c) Shower and changing facilities;

d) Car sharing databases and information will be communicated to staff; and

e) Information display boards in foyer areas detailing public transport timetables and frequencies.

15. The Development shall not commence until details of the two-way internal road and access details between the Ash Handling Facility and the main

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Sustainable Energy Plant building of the Development have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to Operation of the Development.

16. The Development shall not commence until details of the access to the southern construction lay-down area have been submitted to and approved in writing by the Local Planning Authority. The access shall be implemented in accordance with those approved details.

17. The Development shall not commence until details of measures to mitigate the effects of emergencies arising from loads carried by rail and details to ensure access for emergency vehicles along the rail track have been submitted to and approved in writing by the Local Planning Authority. The agreed measures shall be implemented prior to the Operation of the Development.

18. Prior to commencement of the Development, a landscape management plan for soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall include: a timetable for implementation, details of vegetation to be retained and its means of protection, proposed earthwork materials, finished levels or contours, proposed plant species locations and mixes and details of its long-term management. The soft landscape works shall thereafter be implemented in accordance with the approved scheme unless otherwise agreed in writing with the Local Planning Authority.

19. If within a period of five years from the date of the planting of any tree or shrub within the Development, that tree/shrub, or any tree/shrub planted in replacement for it, is removed, uprooted, destroyed or dies, another tree of the same species and size as that originally planted shall be planted at the same place unless the Local Planning Authority gives its written consent for any variation.

20. Prior to commencement of any phase of the Development, full details of hard landscaping works relating to that phase shall have been submitted to and approved in writing by the Local Planning Authority and the works shall be carried out in accordance with the approved plans. These details shall include proposed finished levels or contours, means of enclosure, street furniture, hard surfacing materials and a programme of implementation and maintenance. The landscaping works include the installation of a footpath (fenced with a buffer of hedgerow shrubs) within the proposed coke store site of the Development.

21. Prior to commencement of construction of buildings within the Development, samples of all materials to be used on the exterior of that building shall be submitted to and approved in writing by the Local Planning Authority. All buildings shall be constructed in accordance with the approved details.

22. The ecological mitigation and enhancement measures identified in the Environmental Statement shall be carried out in accordance with the details set out in the Environmental Statement and to a timetable to be submitted to and approved in writing by the Local Planning Authority.

23. The Development shall not be Operated until a scheme for the management of surface water (including a surface water regulation system) and foul water,

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based on Appendix 10.2 of the Environmental Statement submitted with the application for the Development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be fully implemented and Operated as approved.

24. No Development shall commence until a scheme to deal with the risks associated with any contamination of the Site has been submitted to and approved in writing by the Local Planning Authority. Any measures identified as being necessary shall be carried out to a timetable to be agreed in writing with the local planning authority. That scheme shall include the following elements unless any are specifically excluded in writing by the Local Planning Authority:

a) A desk study identifying:

i) All previous uses;

ii) Potential contaminants associated with those uses;

iii) A conceptual model of the Site indicating sources, pathways and receptors;

iv) Potential unacceptable risks arising from contamination at the Site;

b) A site investigation scheme based on (a) above to provide information for an assessment of risk to any receptors that may be affected on and off the Site;

c) A method statement based on results of the site investigation and risk assessment, giving details of any remediation measures required and of how they are to be undertaken;

d) A verification report on any remediation measures that have been undertaken; and

e) A timescale for implementation.

25. All fuels, oils and other liquids with the potential to contaminate the Site received by the Development shall be stored in a secure bunded area at the Site. The storage area shall not drain to any surface water system.

26. The rating level of noise emitted from the Site shall not exceed the background noise level at noise sensitive receptors unless otherwise agreed in writing by the Local Planning Authority. The measurements shall be made according to BS 4142:1997 'Method for rating industrial noise affecting mixed residential and industrial areas'.

27. The Development shall not be Operated until a scheme for the management of odour has been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be implemented and Operated as approved.

28. Development shall not commence until there has been submitted to and approved in writing by the Local Planning Authority a scheme of lighting of the Development hereby permitted for both its construction and operational phases. The Development shall be illuminated in accordance with the approved scheme.

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29. The Development shall not be Operated until a scheme setting out arrangements for the maintenance of the waste hierarchy in priority order by minimising recyclable and reusable waste received as a fuel feedstock during the operational life of the Development has been submitted to and approved in writing by and deposited with the Local Planning Authority. The scheme shall include details of:

a) the type of information that shall be collected and retained on the sources of the residual waste after the recyclable and reusable waste has been removed;

b) the arrangements that shall be put in place for ensuring that as much reusable and recyclable waste as is reasonably possible is removed from waste to be supplied for use as a fuel feedstock in the Development; so that feedstock is only residual waste that is from a waste stream that has been comprehensively recycled as far as practicable;

c) the arrangements that shall be put in place for ensuring the suppliers of residual waste operate a written Environmental Management System which include 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 shall be put in place for discontinuing supply arrangements from suppliers who fail to remove as much reusable and recyclable waste as is reasonably possible from residual waste or who fail to retain Environmental Management Systems;

e) the arrangements that shall be put in place for regularly monitoring the waste delivered to the facility to ensure that it is residual waste; and,

f) the form of records that shall be kept for the purpose of demonstrating compliance with the above details and the arrangements in place for allowing inspection of such records by the Local Planning Authority.

g) The approved scheme shall be adhered to at all times that the Development is operational. The records referred to in Condition 29 (f) shall be made available for inspection by the Local Planning Authority at all reasonable times.

Incineration of waste shall not take place except in accordance with the approved scheme.

30. The Development shall not accept as a feedstock any biomass sourced from conventional forestry management or from agricultural crops and residues as defined at paragraph 2.5.5 of National Policy Statement for Renewable Energy and Infrastructure (EN-3) and dated July 2011.

31. The Development shall not be Operated until a scheme for the monitoring of air pollution in the vicinity of the Site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall include the measurement location or locations within the relevant area from which air pollution will be monitored, the equipment and methods to be used and the frequency of measurement. Initial air pollution measurement shall be taken not less than 12 months prior to the Development being first Operated and the scheme shall provide for the final measurement to be taken not more than 24

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months after the Development being first Operated. The scheme shall be implemented in accordance with its terms and shall supply full details of the measurements obtained in accordance with the scheme to the Local Planning Authority as soon as possible after they become available.

32. Should the Local Planning Authority require continued monitoring of air pollution the scheme approved pursuant to Condition 31 above shall be extended for a period of up to 36 months from the date of the last measurement taken pursuant to Condition 31 above. Full details of the measurements obtained during the extended period shall be provided to the Local Planning Authority as soon as possible after they become available.

33. The Development shall not commence until a scheme of archaeological investigation and an associated implementation programme has been submitted to and approved in writing by the Local Planning Authority. Development shall be in accordance with the approved scheme and implementation programme.

34. Within 18 months of the permanent cessation of the Operation of the Development, a scheme shall be submitted to the Local Planning Authority, for approval in writing, for the demolition and removal of the Development from the Site. The approved scheme shall include:

a) details of all structures and buildings which are to be demolished or retained;

b) details of the means of removal of materials resulting from the demolition;

c) the phasing of the demolition and removal;

d) details of the restoration works; and

e) the phasing of the restoration works.

The demolition of the Development shall be implemented in accordance with the approved scheme.

35. Where any matter is required to be agreed or approved by the Local Planning Authority under any of the foregoing Conditions that matter shall in default of agreement or approval, within a reasonable time, be determined by the Secretary of State for the Department of Energy and Climate Change (or such other successor department).

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Annex 3 - ABBREVIATIONS USED IN REPORT

ACT	Advanced Conversion Treatment
AD	Anaerobic Digestion
ADAS	Environmental consultancy formerly known as Agricultural Development Advisory Service
ADMS	Atmospheric Dispersion Model
Applicants	Tata Chemicals Europe Ltd and EON Energy from Waste Ltd
AQMA	Air Quality Management Area
AQS	Air Quality Standard
BAT	Best Available Technique(s)
BMW	Biodegradable municipal waste
BPEO	Best Practicable Environmental Option
BS 4142	British Standard for rating industrial noise affecting mixed residential and industrial areas
BSEM	British Society for Ecological Medicine
BW	British Waterways
CA	Conservation Area
C&I	Commercial and Industrial Waste
C&D	Construction and Demolition Waste
CEMP	Construction and Environmental Management Plan
CG	Companion Guide
CHAIN	Cheshire Anti Incineration Network
CHP	Combined Heat and Power
CHPQA	Combined heat and power quality assurance
CHPQI	Combined heat and power quality index
CLG	Department for Communities and Local Government
CMP	Construction Management Plan
CO_2	Carbon dioxide
Council	Cheshire West and Chester Council
CRWLP	Cheshire Replacement Waste Local Plan 2007
CTRN	Calculation of Road Traffic Noise
DECC	Department of Energy and Climate Change
DCO	Development Consent Order
DEFRA	Department of the Environment, Food and Rural Affairs
DPD	Development Plan Document
EA	Environment Agency
ECHR	European Commission on Human Rights
ECtHR	European Court of Human Rights
EfW	Energy from Waste
EIA Regs	Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000
EN-1	Overarching National Policy Statement for Energy
EN-3	National Policy Statement on Renewable Energy Infrastructure
EP	Environmental Permit
ERF	Energy Recovery Facility
(C)ES	(Combined) Environmental Statement
GLVIA	Guidelines for Landscape and Visual Impact Assessment
HGV	Heavy Goods Vehicle
HPA	Health Protection Agency

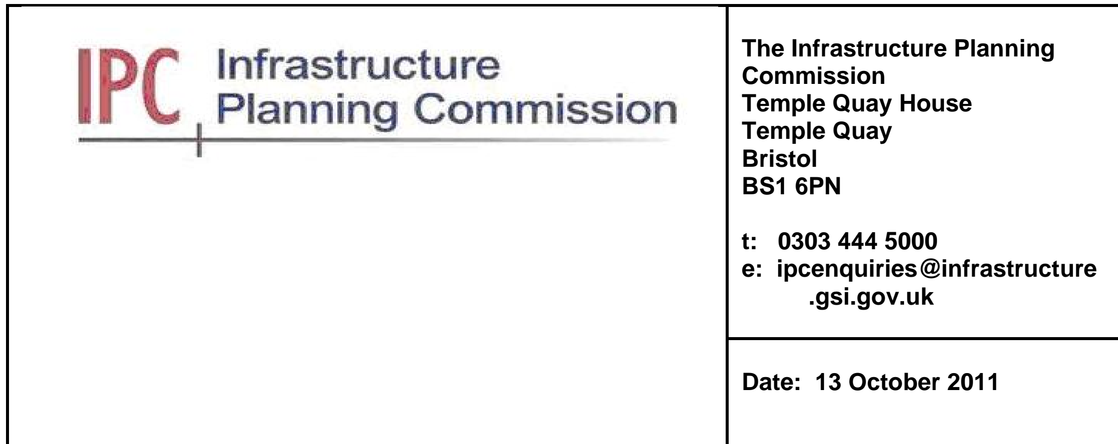
As downloaded from Government website 02.10.2012

(H)HRA	(Human) Health Risk Assessment
IMD	Index of Multiple Deprivation
IPC	Infrastructure Planning Commission
IPPC	Integrated Pollution Prevention and Control
LATS	Landfill Allowance Trading Scheme
MBT	Mechanical Biological Treatment
MRF	Material Recycling Facilities
MSOA	Middle Layer Super Output Area
MSW	Municipal Solid Waste
MW	Megawatt
MWe	Megawatt electrical
NAI	Nearest Appropriate Installation
NE	Natural England
NHS	National Health Service
NO_2	Nitrogen dioxide
NOx	Nitrogen oxides
NPSs	National Policy Statements
NSIP	Nationally Strategic Infrastructure Project
NWDA	North West England Development Agency
NWGLA	North West England Local Government Association
ONS	Office for National Statistics
PAH	Poly aromatic Hydrocarbons
PCB	Polychlorinated Biphenyl
PCT	Primary Care Trust
PEC	Predicted Environmental Concentration
PFI	Private Finance Initiative
PINCHE	Policy Implementation Network on Children's Health and Environment
PM	Particulate Matter (the figure after the letters represents particle size)
POPs	Persistent Organic Pollutants
PPS	Planning Policy Statement
R1	Figure derived from calculation in rWFD to show whether the energy can be considered to be renewable
RDF	Refuse derived fuel
ROC	Renewables Obligation Certificate
ROO2009	Renewable Obligation Order 2009
RSS	North West England Plan (Regional Spatial Strategy) to 2021 (2008)
RTAB	Regional Technical Advisory Body
SEP	Sustainable Energy Plant
SEPA	Scottish Environment Protection Agency
SMR	Standard Mortality Rate
SoCG	Statement of Common Ground
SoSCLG	Secretary of State for Communities and Local Government
SoSECC	Secretary of State for Energy and Climate Change
SOx	Sulphur oxides
SRF	Solid Recovered Fuel
SUDs	Sustainable Urban Drainage scheme
tpa	Tonnes per annum
tph	Tonnes per hour
rWFD	revised Waste Framework Directive
VRLP	Vale Royal Local Plan First Review Alteration (2006)

As downloaded from Government website 02.10.2012

WHO	World Health Organisation
WID	Waste Incineration Directive
WPA	Waste Planning Authority
WPR2011	Review of Waste Policy in England 2011
WR2011	Waste (England and Wales) Regulations 2011
WS2007	Waste Strategy for England 2007
WTF	Waste Treatment Facility
WTS	Waste Transfer Station
ZTV	Zone of Theoretical Visibility

As downloaded from Government website 02.10.2012



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Date: 13 October 2011

The Planning Act 2008

Rookery South Resource Recovery Facility Order

Panel's Decision and Statement of Reasons

Panel's decision and statement of reasons in respect of an application for a Development Consent Order for a resource recovery facility that comprises an energy from waste electricity generating station with a gross electricity output of 65 MWe together with associated development including a materials recovery facility and other elements at Rookery South Pit, near Stewartby, Bedfordshire.

IPC Reference EN0100011

File Ref EN0100011
Rookery South Resource Recovery Facility

- The application, dated 4 August 2010, was made under s37 of the Planning Act 2008.
- The Applicant is Covanta Rookery South Limited.
- The application was accepted for examination on 26 August 2010.
- The examination of the application began on 18 January 2011 and was completed on 15 July 2011.
- The development proposed is a resource recovery facility that comprises an energy from waste electricity generating station with a gross electricity output of 65 MWe together with associated development including a materials recovery facility and other elements.

Summary of Decision: The Panel as the decision maker under s103 of the Planning Act 2008 has decided that development consent should be granted, and therefore proposes to make an Order under s114(1) of the Planning Act 2008.

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1 INTRODUCTION

1.1 On 29 November 2010 a Panel of three Commissioners was appointed by the chair of the Infrastructure Planning Commission (IPC) to handle the application. The Panel comprised:

- Paul Hudson – lead member of the Panel;
- Andrew Phillipson – member of the Panel; and
- Emrys Parry – member of the Panel.

1.2 This document sets out in accordance with s116 of the Planning Act 2008 (the Act) the Panel's reasons for our decision to make an Order granting development consent for the proposal under s114 of the Act.

1.3 The proposed development for which consent is required under s31 of the Act comprises a generating station with a capacity of more than 50 megawatts (MW). It is within England and comprises a nationally significant infrastructure project (NSIP) as defined by s14 and s15 of the Act and associated development defined in s115 of the Act.

1.4 The application is EIA development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. It was accompanied by an environmental statement (ES) which in our view meets the definition given in Regulation 2(1) of these Regulations. Additional environmental information was supplied during the course of the examination. In reaching our decision, we have taken the environmental information as defined in Regulation 2(1) (including the ES and any other information on the environmental effects of the development) into consideration in accordance with Regulation 3(2) of these Regulations.

1.5 A preliminary meeting was held on 17 January 2011 at which the Applicant and all interested parties were able to make representations to the Panel about how the application should be examined. The Panel's procedural decision was issued on 21 January 2011. This set out our decision about how the application would be examined and the examination proceeded in line with this.

1.6 In addition to the consent required under the Act (which is the subject of this decision), the proposal is subject to the Environmental Permitting regime.[1] An application for an Environmental Permit (EP) for the energy from waste plant was submitted on the Applicant's behalf and accepted by the Environment Agency (EA) as duly made on 14 December 2010 (EA/3, Annex 2). Subsequently, a second application was submitted to the EA for an EP for the materials recovery facility. Both applications to the EA are separate from the application for development consent made to the IPC. At the time the

[1] Environmental Permitting (England and Wales) Regulations 2010.

examination closed on 15 July 2011, neither EP application had been determined.

Undertakings

1.7 During the course of the examination, a s106 Agreement under the Town and Country Planning Act 1990 was concluded between Covanta,[1] the owner of Rookery South Pit (O&H Q7 Ltd), Bedford Borough Council (BCC) and Central Bedfordshire Council (CBC).

1.8 A separate deed concluded on 8 July 2011 between Covanta and the Marston Vale Trust (MVT) repeats and adds more detail to Covanta's undertaking in the s106 Agreement to pay financial contributions to the MVT and sets out further undertakings made by the parties.

1.9 A unilateral undertaking dated 8 July 2011 in favour of the Stewartby Water Sports Club (SWSC) was also entered into by the Applicant. It commits the Applicant to erecting and maintaining two noise attenuation fences in the north-east corner of the SWSC site. It further commits the Applicant to use reasonable endeavours to maintain the existing access to the SWSC during the works and to not interfere with SWSC's use and enjoyment of the site during construction.

1.10 In this report 'resource recovery facility' ('RRF') is used to mean the proposal as a whole. 'Energy from waste' ('EfW') plant is used for the main plant, including the tipping hall, boiler house, turbine house, flue gas treatment area, stack and (external) cooling plant. 'Materials recycling facility' ('MRF') is used for the bottom ash storage and treatment area.

Structure of the Report

1.11 Chapter 2 summaries the main procedural steps taken during the examination. Chapter 3 sets out the main features of the proposed development. Chapter 4 summarises the policy context applicable to it. In Chapters 5 and 6, the Panel's findings and our conclusions in respect of each of the main considerations and on the development merits are set out. Chapter 7 deals with compulsory acquisition matters. Chapter 8 considers the representations made concerning the content of the proposed Order (including requirements). Chapter 9 sets out our overall conclusion that the Order should be made.

1.12 Appendix A summarises the contents of the obligations referred to in paras 1.7 to 1.9 above. The main 'events' occurring during the examination and the main procedural decisions taken by the Panel are listed in Appendix B. Appendix C lists the documents submitted

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[1] The s106 Agreement was entered into by Covanta Rookery South Limited ('the Applicant') and Covanta Energy Limited. Both are referred to subsequently in this report as 'Covanta' (individually or jointly as the context requires).

by the Applicant and others in connection with the examination, with the references used subsequently in this report. It also contains a list of those parties making written and oral representations to the Panel. For the avoidance of any doubt, all representations properly made were duly considered and taken into account by the Panel before coming to our decision.

1.13 Appendix D contains the Development Consent Order (DCO) in the form that the Panel has decided it should be made, subject to consideration by the Secretary of State under s121 of the Act (see para 8.20 below). Appendix E contains a list of the main abbreviations used in this report.

2 PROCEDURAL DECISIONS

2.1 This chapter provides an overview of the main procedural decisions made by the Panel during the examination of the application. This includes information on the participation of the public in the examination.[1] In all cases the lead member of the Panel wrote as appropriate on behalf of the Examining Authority (ExA). A full chronological breakdown of the examination process is set out in Appendix B.

2.2 Following the preliminary meeting, the lead member of the Panel wrote to all interested parties on 21 January 2011 setting out the Panel's 'procedural decision'. This established the timetable for the examination, including the deadlines for submitting written representations, local impact reports, statements of common ground (SoCGs) and responses to our first round of questions contained in an Annex to the letter.

2.3 Additionally, the letter confirmed that an issue specific hearing would be held on 13 May 2011 to consider the drafting aspects of the draft DCO and requirements, and the proposed agreement between the Covanta and the local planning authorities under s106 of the Town and Country Planning Act 1990.

2.4 Following the receipt of written representations, the local impact reports, responses to the first round of questions and subsequent comments on these documents, the lead member of the Panel wrote to all interested parties on 11 April 2011 setting out the Panel's second round of written questions.

2.5 On 13 May 2011 the lead member of the Panel confirmed that additional issue specific hearings would be held on the following matters:

- **13 June:** Drafting aspects of the draft DCO and requirements, and the proposed s106 Agreement.
- **17 June (am):** The effect of the proposed development on the waste hierarchy.
- **17 June (pm):** The noise impact of early morning operations on the living conditions of residents (including campers at the SWSC) living near to the access routes proposed for heavy goods vehicles (HGVs) between the A421 and the site.
- **21 June:** Landscape, visual impact and design matters, including specifically whether the viewpoints considered in the ES are representative and the identification of any additional viewpoints that interested parties wanted the Panel to include in their site visit.

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[1] Regulation 23 Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

- **22 June:** The impact of the development on the setting of heritage assets.

2.6 Following the receipt of several formal requests from interested parties wishing to be heard at an open floor hearing the lead member of the Panel formally confirmed in his letter of 7 June 2011 that such a hearing would be held, consisting of four sessions on 5 and 6 July 2011. Similarly, following the receipt of formal requests from affected persons, he confirmed in a separate letter dated 7 June 2011 that a hearing to consider the compulsory acquisition of land and interests would be held starting on 27 June 2011. The letter included a list of matters where cross-examination by the parties would be permitted.

2.7 In a third letter dated 7 June 2011, the Applicant was asked (i) to submit further documents to support the proposed parent company guarantee, and (ii) to provide further information in respect of four plots of land affected by a restrictive covenant.

2.8 Following the publication of the versions for approval of the suite of Energy National Policy Statements (NPSs), the lead member of the Panel wrote on 23 June 2011 to all interested parties. This was to give them the opportunity to submit written representations setting out any points made in their previous representations which they would have expressed differently had the finalised NPSs been available at the time. Comments on the representations made were invited through a further letter dated 8 July 2011.

2.9 The examination closed at 5.00pm on 15 July 2011.

3 THE APPLICATION

The Site and its Surroundings

3.1 The site for the proposed RRF is shown on the plans submitted as part of the application (principally DOC/2.4 and DOC/2.31). It comprises some 9.3 ha of land in the north-west quadrant of Rookery South Pit, near Stewartby, Bedfordshire, within the larger area of the Order land of approximately 130 ha shown on DOC/2.1.

3.2 This pit is one of two large former clay pits, Rookery North and Rookery South (together known as 'The Rookery'). They lie in the Marston Vale immediately to the south of Stewartby, between the Midland Main Line and the Marston Vale Branch Railway Line. An unexcavated area of clay separates the two pits. A further strip of unexcavated clay between the Rookery North Pit running alongside the eastern side of the Marston Vale Branch Railway Line currently provides the main access to the site.

3.3 The majority of Rookery South Pit, which has a total area of approximately 116 ha, lies some 10 to 20 m below the level of the surrounding land. It is bounded by steep clay banks and the base of the pit comprises a range of wetland habitats, including large areas of reed bed and several ephemeral pools. The central and western parts of Rookery North Pit (which lie outside the proposed development area) contain a large lake.

3.4 The nearest settlements to the site are Stewartby, which adjoins Rookery North, and Marston Moretaine, which lies some 1.4 km to the west of the site for the proposed RRF. Millbrook lies approximately 2.5 km to the south and the A421 trunk road, which links Bedford to the M1, runs approximately 2 km to the west. The Millennium Country Park occupies a site immediately to the west of the Marston Vale Branch Railway Line. Within the Country Park, the main administration and amenity buildings ('The Forest Centre') are situated some 800 m from the proposed RRF.

3.5 Planning permission for the restoration of Rookery South Pit to agriculture - the 'low level restoration scheme' (LLRS) – was granted in December 2010 (reference BC/CM/2000/08). The application for the DCO presumes that Phase 1 of the LLRS is completed before works to construct the RRF commence (DOC/6.1, Section 2.6), to be given effect by proposed Requirement 31, and it is on this basis that we have considered the application.

3.6 At the time of our site visit in July 2011 works to trap great crested newts and other reptiles on the site were underway, in accordance with a licence for these works granted by Natural England in connection with the LLRS (NE/3).

The Proposal

3.7 The application proposes the construction and operation of a RRF within the Rookery South Pit and includes several key elements. The main operations area (DOC/2.32) contains the EfW plant; a post treatment MRF; internal site roads and hard standing areas; parking; weighbridges; security gatehouse and boundary fencing. The EfW plant would be located in the western part of the main operations area, and the MRF in the eastern part.

3.8 The proposed EfW plant (Work No 1) is the NSIP itself and includes a tipping hall with access ramp, a refuse bunker, a boiler house, a flue gas treatment area and stack, administrative offices, a visitor centre/educational facility, a turbine hall, workshop and stores, air cooled condensers and a transformer compound. The nominal throughput of the proposed plant is expected to be 585,000 tonnes of residual waste per annum which would generate an average gross output of approximately 65 MWe (DOC/3.1, Section1).

3.9 The proposed MRF (Work No 2) would provide for the management of the incinerator bottom ash produced by the EfW plant. It would include an open ash/aggregate yard; buildings housing plant to separate co-mingled metals from the incinerator bottom ash and to grade the ash; a lagoon to collect and separate aqueous run-off from the area; an administration building; a weigh bridge; and a pump house.

3.10 The application also includes a number of other elements (Works Nos 3-9):

- transport infrastructure: comprising a new/improved access to the site from Green Lane (running approximately along the line of the existing access track) and improvements to Green Lane and the level crossing;
- utility connections: including cables to export (and import) electricity from the plant and the grid;
- landscaping: including woodland planting, earth bunding, a wetland area and green walls and brown roofs on the EfW buildings;
- improvements to public rights of way: including upgrading existing paths to permit their use by cyclists and creation of additional links between the paths and Green Lane;
- lighting: including lighting to the main operational area, additional lighting on Green Lane and aircraft warning lights on the stack; and
- facilities for handling and treating surface water run-off and effluent from the plant.

3.11 Having regard, amongst other matters, to the large area of the proposed MRF compared with the area needed for the EfW plant, we

considered at the DCO hearing held on 13 May the description of the authorised development in schedule 1 of the Order, and the distinction between the NSIP and the range of associated development. Our conclusion is that the balance between the NSIP (Work No 1) and the various elements of associated development (Works Nos 2 -9) together comprising the proposed authorised development in schedule 1 of the Order is appropriate. Bearing in mind the advice in guidance, we are further satisfied that the proposed MRF comprises associated development under the PA 2008 as it is necessary for the development and effective operation to its design capacity of the EfW and therefore can properly be included within the DCO.[1]

Stack height

3.12 The application as submitted on 4 August 2010 proposed a stack height of 105 m (see e.g. DOC/2.12 and DOC/3.1, table 3.1). Notwithstanding this, the air dispersion modelling in the ES assumed a stack height of 100 m (the ‘conservative worst case’). Subsequently the Applicant carried out dispersion modelling for a 105 m stack which was used to support its application for an EP.

3.13 In order to avoid confusion between the two sets of dispersion modelling results, and to bring the modelling results in the ES into line with the stack height shown on the drawings submitted as part of the application for the DCO, the Applicant prepared and issued additional supplementary documents (DOC/3.5, DOC/4.5, and DOC/4.6). These were formally submitted following an announcement at the preliminary meeting, published on the IPC’s project website, and made available for public inspection.

3.14 In the light of the reasons given in the submission, the Panel concluded that the updated documents should be accepted. Accordingly, the examination proceeded on the basis of the revised dispersion modelling.

Effluent disposal

3.15 The documents submitted with the application indicated that it was the Applicant’s expectation that all foul water from the plant, and any surplus contaminated run-off from the MRF, would be piped off site for treatment at Anglian Water Services Limited’s (Anglian’s), Stewartby sewage treatment plant (DOC/4.4, s16). In May 2011, the Applicant advised that this strategy had been revised and on 9 May 2011 issued an addendum to the Flood Risk Assessment previously submitted with application (APP/3.2, Appendix 2.5).

[1] Guidance on associated development, DCLG 2009, para 10

3.16 In summary, the revision proposes to treat effluent on site and discharge it to the surface water system, rather than to pump it to Anglian's sewers. The Applicant's addendum to the Flood Risk Assessment explained that the revision had been prepared in response to representations made by Anglian and in response to discussions with the EA in connection with the EP application (ibid). The submission was published on the IPC's project website and made available for public inspection.

3.17 Following this, a representative of the Applicant advised us at the hearing held on 13 June 2011 that no new above-ground structures other than those included in the application for the DCO would be required in connection with the proposed change. We were further advised that, with the on-site treatment proposed, the surface water quality in the receiving water bodies would not be detrimentally affected (APP/3.2, Appendix 2.5, para 5.3.1).

3.18 Regulation of all aqueous discharges from the site is a matter that the EA will need to address in due course through the consenting process for the EPs that would be required for the plant to operate. As part of that process, the EA will carefully scrutinise the proposed design for the water treatment plant. If a permit is granted, we would expect it to set limits on the quality and quantity of effluent that the plant would be permitted to discharge. We would further expect that these limits would be set having regard to the need to protect human health and the environment.

3.19 The Panel considered whether the proposed change to the application was a substantial one and, taking into account the above considerations and the opportunity for interested parties who might be concerned about the matter to make representations on the effect of the change, the Panel decided to accept the amendment proposed to the application as originally submitted and examine it accordingly.

4 LEGAL AND POLICY CONTEXT

4.1 The application documents (principally the Planning Statement DOC/5.1) contain a detailed description of the legislative and policy framework that the Applicant considers relevant to the proposal. Several representations, (for example, those made by CPRE Bedfordshire, and Waste Recycling Group Ltd (WRG), also contain views about the appropriate policy context for handling the application. We sought clarification of aspects of the policy context through the first round of questions concerning the 'CALA' judgements as they affect regional planning policy and the development plan. In our second round of questions, we asked for a SoCG on planning policy. This was not achieved between the parties, though a statement from the Applicant, CBC and BBC of what constitutes the development plan was provided on 9 May (SOCG/9). Our conclusions on the appropriate policy context for this application are set out below. In addition, we set out the context for consideration of the application with regard to European Directives and the planning history of relevance to the site.

National Policy Statements

4.2 S104(2) of the Act states that *'in deciding the application the Panel must have regard to any national policy statement which has effect in relation to development of the description to which the application relates.'* Several representations were made suggesting that the principal purpose of the proposed development is waste incineration rather than energy generation. However, we consider there is no doubt that the proposal is for a generating station with a capacity of more than 50 MW, within England, and thus falls within s15(2) of the Act.

4.3 S104(3) of the Act further requires that, with exceptions including whether the development would result in adverse impacts outweighing the benefits, *'the Panel must decide the application in accordance with any relevant national policy statement.'* The National Policy Statements (NPSs) most relevant to this application are EN-1 and EN-3 which were designated by the Secretary of State for Energy and Climate Change on 19 July 2011 in accordance with s5 of the Act. They therefore provide the primary basis for decisions by the IPC (NPS EN-1, para 1.1.1).

Overarching National Policy Statement for Energy (EN-1)

4.4 This NPS sets out national policy for energy infrastructure and the role of EfW in renewable electricity generation. Part 4 sets out the assessment principles to be applied in considering applications for development consent. Those which we regard as particularly important in relation to this application are:

- Development Plan Documents or other documents in the Local Development Framework. Notwithstanding this, NPS EN-1, paragraph 4.1.5, advises that, in the event of a conflict between these or any other documents and an NPS, the NPS prevails for the purposes of IPC decision-making given in the national significance of the infrastructure;
- from a policy perspective, there is no general requirement to consider alternatives or to establish whether the proposed project represents the best option (NPS EN-1, s4.4);
- 'good design' for energy infrastructure goes far beyond aesthetic considerations but is important for fitness for purpose and sustainability. It is acknowledged that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area (ibid, s4.5);
- substantial additional positive weight should be given by the IPC to applications incorporating CHP (ibid, para 4.6.8); and
- the planning and pollution control systems are separate, but complementary. In considering an application for development consent, the IPC 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 IPC 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. It should act to complement but not seek to duplicate them (ibid, s4.10).

4.5 Finally, the NPS sets out the range of generic impacts which are anticipated to arise most frequently in the assessment of energy infrastructure development proposals, and the way in which the IPC should take these into account in its decision making.

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

4.6 This NPS sets out additional policy specific to renewable energy applications including those using waste as a fuel and generating more than 50 MW of electricity.

4.7 Detailed assessment principles relevant to EfW applications include:

- air quality and emissions;
- odour, insects and vermin infestation;
- waste and management (i.e. accordance with the waste hierarchy);
- residue management; and
- water quality and resources.

European Legal Requirements

4.8 Guidance on the relevant European Directives and their transposition into UK law is given in the NPSs. The principal ones referred to by those making representations during the examination and which we have also taken into account as relevant are those dealing with renewable energy, waste and landfill.

Renewable Energy Directive 2009

4.9 The Renewable Energy Directive[1] sets out legally binding targets for Member States with the expectation that by year 2020, 20% of the European Union's energy mix and 10% of transport energy will be generated from renewable energy sources. The UK's contribution to the 2020 target is that by then 15% of energy will be from renewable sources.

4.10 This represents a seven-fold increase in UK renewable energy consumption from 2008 levels. The UK Renewable Energy Strategy 2009 sets out how the UK proposes to meet the targets.

Revised Waste Framework Directive 2008

4.11 The Revised Waste Framework Directive (rWFD)[2] formally codifies the principles of the waste hierarchy, proximity ('nearest appropriate installations'), self-sufficiency, and recovery.

4.12 Considerable discussion took place at the compulsory acquisition hearing about the interpretation of these principles, transposed into UK legislation through the Waste (England and Wales) Regulations 2011, and particularly whether self sufficiency applies at a local level or is satisfied at a Member State level.

Waste Incineration Directive 2000

4.13 Compliance with the Waste Incineration Directive (WID)[3] in England is enforced through the environmental permitting regime regulated by the EA. If an EP is not granted then the plant cannot operate (NPS EN-3, para 2.5.41).

The Development Plan

4.14 Paragraph 2.5.70 of NPS EN-3 advises that the assessment of an EfW plant should take into account relevant waste strategies and plans. This is in order to satisfy the requirement that the proposal should be in accordance with the waste hierarchy and of an

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[1] Directive 2009/28/EC.
[2] Directive 2008/98/EC.
[3] Directive 2000/76/EC.

appropriate type and scale so as not to prejudice the achievement of local or national waste management targets.

4.15 We therefore need to consider what constitutes the development plan relevant to the application.

4.16 The effect of the judgements following the challenges by CALA Homes is that Regional Spatial Strategies continue to form part of the development plan until this position is changed by legislation (as is intended by the Localism Bill currently before Parliament). Taking this into account together with the SoCG referred to in paragraph 4.1 above the development plan relevant to the application before us comprises the following:

- The East of England Plan 2001-2021 (EoEP), adopted May 2008;
- Milton Keynes and South Midlands Sub Regional Strategy (MKSM), adopted March 2005;
- Saved policies of the Bedfordshire and Luton Minerals and Waste Local Plan First Review (BLWMLP), adopted January 2005;
- Saved policies of the Mid-Bedfordshire Local Plan, adopted December 2005;
- Saved policies of the Bedford Borough Local Plan, adopted October 2002;
- Central Bedfordshire Core Strategy and Development Management Policies Development Plan Document (CBCS), adopted November 2009;
- Central Bedfordshire site allocations (North area) Development Plan Document, adopted April 2011; and
- Bedford Borough Core Strategy and Rural Issues Plan, adopted April 2008 (BBCS).

Other Policy Documents

National policy

4.17 Whilst the NPSs provide the primary framework for deciding this application, they have in turn taken account of planning policy statements, and other Government documents, to which we have therefore had regard. These include:

- Planning Policy Statement 5: Planning for the Historic Environment, March 2010 and Practice Guide;
- Planning Policy Statement 10: Planning for Sustainable Waste Management, July 2005; an update was issued in March 2011, incorporating the new waste hierarchy set out in Article 4 of the rWFD;
- Planning Policy Statement 23: Planning and Pollution Control, November 2004;

- Planning Policy Guidance Note 24: Planning and Noise, October 2004;
- Planning Policy Statement 25: Planning and Flood Risk, December 2006 and consequent updates;
- Energy White Paper: Meeting the Challenge, May 2007;
- UK Low Carbon Transition Plan, National Strategy for Climate and Energy, July 2009;
- UK Renewable Energy Strategy, July 2009;
- Planning our electric future: a White Paper for secure, affordable and low carbon electricity, July 2011;
- Waste Strategy for England, May 2007; and
- Government Review of Waste Policy in England, July 2011.

4.18 On 20 July 2011 the Government published a draft National Planning Policy Framework (NPPF) for consultation. This is intended to replace the current range of planning policy statements in their entirety, but with the exception of PPS 10. This will remain in force until it is revised and annexed to the National Waste Management Plan, intended to be published in the spring of 2012. The consultation on the NPPF runs until October 2011, following which the Government will have regard to the responses before finalising the Framework with the intention of adopting it in April 2012. This draft NPPF is therefore afforded very little weight in the assessment of this application.

Local policy

4.19 In addition to the development plan, other local policy documents we consider are relevant to this application include:

- Draft revision to the Regional Spatial Strategy for the East of England, March 2010;
- Central Bedfordshire, Bedford Borough and Luton Borough Council: Waste Core Strategy Preferred Options Consultation Document, 1 June – 12 July 2010;
- Bedford Borough Allocations and Designations Plan (consultation draft plan issues and options) May 2010; and
- Marston Vale Forest Plan, 1995 and Review, 2000.

Planning History and Development Context Relating to Rookery South Pit

4.20 The Rookery as a whole has a long history of clay working. The winning and working of clay was originally permitted in 1952, and under the review of old mineral permissions (ROMP) required by the Environment Act 1995, various proposals have been put forward for its restoration. The planning permission (reference BC/CM/2008) granted by Central Bedfordshire and Bedford Borough Councils in December 2010 covering The Rookery is subject to a number of conditions covering the hours of operation and noise. A s106 Agreement between the two local authorities, Covanta Energy Ltd,

and the landowners, O&H Q7 Ltd, dated 9 December 2010, provides for the ecological management of the pits in the longer term and the creation of footpaths across the site.

4.21 A remaining reserve of clay in the south-west corner of Rookery South Pit will be used to stabilise the slopes surrounding both the north and south pits; material will therefore be used on site and not transported off-site. Together with drainage, ecological mitigation and landscape measures, the scheme of works to be implemented is commonly known as the Low Level Restoration Scheme (LLRS). The overall purpose of the LLRS is to restore Rookery South Pit to a state that is suitable for low intensity agricultural use, while dedicating Rookery North Pit to nature conservation and amenity uses. The restoration of Rookery South Pit is to be achieved through four phases, and, as noted in paragraph 3.5 above, the DCO contains a proposed requirement that the development cannot proceed until the first phase of the LLRS has been implemented. This therefore forms the baseline for our consideration of the application for development consent.

4.22 In terms of the broader development context, Rookery South Pit falls within the Northern Marston Vale growth area, as set out in the EoEP, MKSM and CBCS. Mixed use developments have been proposed (and some are underway) at Marston Moretaine (approximately 500 houses), Stewartby Brickworks (including 1,200 houses, although this application has been undetermined for some time), Kempston (approximately 1,100 houses) and Wootton (approximately 1,100 houses). Other major development proposals near Rookery South Pit include expansion of The Wixams (including approximately 4,500 houses) to the south of Bedford, residential and mixed use developments at Ampthill, and further employment provision at Cranfield. The Bedford & Milton Keynes Waterway Trust is proposing to develop a canal through the area. South of the Northern Marston Vale Growth Area is located the new Warren Wood Centre Parc, consisting of 700 lodges, hotel and ancillary development, construction of which started in spring 2011.

4.23 Rookery South Pit has been put forward in the Waste Core Strategy Preferred Options Consultation Document 2010 for non-hazardous waste landfill and as a preferred strategic recovery site. The document defines a ‘strategic site’ as one which is essential to the delivery of the plan, and includes recovery facilities with a capacity of more than 75,000 tonnes per year. It also proposes that if landfill took place, this would be in the south eastern part of the site. The land could then be restored to grassland or other restoration compatible with the approved restoration of the remainder of the pit. If not, then the land would be available for agriculture.

4.24 Although Rookery South is former clay pit with a long history of substantial extraction, it is not allocated for development in the

adopted local plan. Neither are there any extant planning permissions for development on the site (except for development required in conjunction with the LLRS). Given this, our view is that the site should be regarded in policy terms as a greenfield site in a rural location.

5 THE MAIN MATTERS - FINDINGS AND CONCLUSIONS

5.1 Having regard to the various representations made during the examination, the legal obligations on us as decision-makers, the policy context set by the NPSs, the local impact reports, and all other relevant and important matters referred to, our findings and conclusions on the main matters raised are as set out below.

5.2 The order in which matters are considered in this section is not intended to reflect the relative importance attributed to them by the Panel in reaching our overall conclusion.

Waste Hierarchy

5.3 NPS EN-3 states at paragraph 2.5.66:

> *'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.'*

Waste plans

5.4 The Councils (CBC and BBC) strongly challenged the conformity of the application with the waste hierarchy. They pointed to the development plan, comprising the BLMWLP (policies W1, W2 and W3) and the EoEP (policies WM3 and WM 4), which requires localities to provide for disposal of waste generated in their areas and discourages import of waste from outside. They were supported in this by many representations against the proposal, claiming that it would mean the continuation of Bedfordshire's historic role as a recipient of imported waste particularly from London, objecting to the catchment area of the proposed plant, and its resulting size.

5.5 CPRE also argued that the application is in conflict with the development plan because it would undermine the waste hierarchy on account of its size, acting as a pull on all waste from a wide radius and therefore discouraging steps to reduce and recycle waste locally.

5.6 The BLMWLP seeks to restrict waste facilities to be 'primarily' for the treatment of waste arising from within its administrative areas. The Applicant argued in the Planning Statement (DOC/5.1) that there is no definition provided for 'primarily' in either the BLMWLP or the EoEP, and that in any event the proposal would provide for the waste management needs of the Bedfordshire and Luton subregion first and is therefore compliant. The Applicant also argued that the BLMWLP is now out of date in the light of national policy directives. The WRATE Report (DOC/5.4) demonstrates the economies of scale with the resulting environmental benefits.

5.7 The Councils' joint Waste Core Strategy Preferred Options Consultation Document seeks to limit waste recovery and disposal capacity to wastes arising from within the plan area. It also identifies Rookery South Pit as a strategic recovery site for such locally arising wastes only. However, this document has several stages to pass through before adoption and the Councils' representative at the compulsory acquisition hearing indicated that the future timetable is uncertain. Because of this, we accord this document only limited weight.

5.8 In our view, the proposal does conflict with the development plan, represented by the BLMWLP and the EoEP. However, NPS EN-1 states at paragraph 4.1.5 that in the event of a conflict between the development plan and an NPS, the NPS prevails for the purposes of IPC decision-making given the national significance of the infrastructure.

Impact on the waste hierarchy

5.9 As to the effect on the waste hierarchy,[1] incineration of waste with energy recovery is within the *'other recovery'* band. As such it is above *'disposal'* (which includes landfill) but below 'recycling', *'preparing for re-use'* and *'prevention'*. The proposed plant's effect on the hierarchy was a matter of considerable concern during the examination, with several parties (including CBC, BCC and the consortium of 25 Town and Parish Councils or Meetings (25TPCs)) sharing CPRE's argument that building an EfW facility of the size proposed would reduce the incentive and/or propensity for people to recycle.

5.10 We recognised this as a principal issue at the outset of the examination and asked a question in our first round about waste being sourced from outside the waste catchment area, and whether recycling initiatives would be prejudiced by the project. We also held an issue specific hearing on 17 June 2011 to consider the extent to which the proposal would compromise the achievement of waste reduction, reuse and recycling.

5.11 Because there were widely differing views between the Applicant, the Councils and WRG about:

- the definition of residual waste;
- the volume of municipal solid waste (MSW) and commercial / industrial (C&I) waste arisings;
- the contractual position regarding MSW and therefore how much of this waste would be available for treatment; and

[1] For a full description of the waste hierarchy see Article 4 of the revised Waste Framework Directive (2008/98/EC).

- the extent to which capacity at other planned disposal plants in the waste catchment area should be taken into account in assessing the 'need' for the proposed development,

we sought a statement of common ground to try to narrow these differences. This was provided on 11 May 2011, and set out each party's position.

5.12 Even with this, it remained difficult to reconcile the figures, given that the totals in the SoCG for MSW exclude Herts, whilst those for C&I waste exclude Windsor and Maidenhead. These matters were also explored in some depth at the compulsory acquisition hearing, at the conclusion of which the Councils and WRG broadly accepted the Applicant's assessment of the amount of MSW likely to be available.

5.13 It is the amount of C&I waste that WRG assert has been grossly overestimated by the Applicant, as a consequence of different methods used to calculate the estimates of C&I waste arisings. However, at the compulsory acquisition hearing, the Councils put forward a recalculation of the MSW and C&I waste arisings for the waste catchment area (but including Peterborough as well) which suggested the amount of C&I waste was broadly similar to that put forward by the Applicant.

5.14 As we see it, the difference between the parties is that the Applicant calculates the total amount of residual waste in the catchment area at about 2 million tonnes per annum (mtpa), with the Councils suggesting it could be slightly more, whilst WRG suggest it will be half that. Our assessment is that even if the outturn of residual waste were to be towards the bottom end of this range, this is a plausible basis to justify the size of the plant proposed (with a nominal capacity 585,000 tpa).

5.15 In terms of the waste management capacity available in the catchment area (which could be regarded as alternatives to the proposal when dealing with the compulsory acquisition issues) there were significant differences between the parties. These centred largely on whether facilities with permission but not commenced together with those planned should be included in the analysis, or whether the analysis should be limited to only those facilities which are built and operational. In our view, having regard to the advice in NPS EN-3, paragraph 2.5.67, the correct approach to this is to take into account only existing operational capacity. Accordingly we agree with the Applicant that proposed facilities should be discounted from the analysis.

The waste catchment area

5.16 The waste catchment area is one which the Applicant has defined rather than deriving it from the development plan at regional or local

level. It embraces part of the South East and East Midlands regions as well as that part of the East of England region in which the proposal is located. The Planning Statement (DOC/5.1) considers the effect of the proposal on the waste plans of Bedfordshire and Luton. The question raised by the Councils and WRG is whether this is sufficient to satisfy the requirements of paragraph 2.5.70 of NPS EN-3 or whether all the waste plans in the waste catchment area should have been considered.

5.17 In this regard, whilst we acknowledge that the size of the proposed plant is such that it would be likely to accept waste from beyond Bedfordshire and Luton, there is no doubt in our minds that the proposal is intended to serve the waste disposal needs of the Bedfordshire and Luton areas in the first instance. The emphasis in the NPS is on relevant waste plans and, whilst the Planning Statement would have benefited from an analysis of all the waste plans within the local authority areas comprising the waste catchment area as defined by the Applicant, the Need Assessment (DOC/5.3) does have a brief overview of the East of England Plan, the South East Plan, and the East Midlands Plan and the waste policy documents for each of the local authorities in the waste catchment area, in addition to the Bedfordshire and Luton sub region. It seems to us therefore that sufficient account has been taken of all the waste plans in the waste catchment area.

Catchment area restriction

5.18 The Need Assessment (DOC/5.3) assumes 65% recycling of MSW (compared with 55% by CBC and 36.5% by BBC in 2009 /10) and together with C&I waste this leads to an estimate of 1.65 mtpa of residual waste from the waste catchment area.

5.19 The Need Assessment Addendum (APP/1.2, Appendix 2.6) reviews the situation in the light of:

- the latest position concerning municipal waste management contracts in the waste catchment area;
- a revised estimate of C&I waste arisings;
- an updated assessment of operational waste management capacity; and
- assuming 70% recycling of municipal waste.

5.20 At least 1.368 mtpa of residual waste would be available in the light of this reassessment (ibid, para 1.7.8) and, with a nominal capacity of 585,000 tpa, the proposal would only deal with about 43% of this. Notwithstanding this, the Applicant resisted a restriction on the sourcing of waste from beyond the waste catchment area, citing NPS EN-3 in support of the contention that this is a commercial matter for the Applicant.

5.21 The final position of the Councils was to continue to request a waste catchment area restriction to limit material to the Applicant's defined waste catchment area (not just Bedfordshire and Luton). This request was supported by the 25TPCs, who also continued to argue for a definition of residual waste.

5.22 In response to the concerns raised, the Applicant argued, in summary, that the incinerator was intended only to take 'residual waste' i.e. that remaining after all practicable measures to remove material suitable for recycling had taken place. The proposal would therefore accord with the waste hierarchy in that waste that would otherwise have been landfilled would be burnt at the plant, and energy recovered.

5.23 We considered this matter at some length. Information supplied with the application (in the Planning Statement at sections 7.3 and 7.4 and reflecting the Waste Strategy 2007) showed that experience from other European countries is that very high recycling rates are compatible with energy from waste.

Definition of residual waste

5.24 The Applicant also argued that the regulatory system governing MSW was such as to effectively ensure that only residual waste would be delivered to the plant. Further they argued that non residual C&I waste would be effectively prevented from coming to the plant by economic drivers. In short they put it that, for C&I waste, the combination of economic incentives to recover materials (especially metals) for recycling and the requirement to pay gate fees for each tonne of waste delivered to the plant for incineration would be such as ensure that as much recyclable and other material as practicable would be recovered from this waste stream prior to treatment as residual waste. To send recyclable materials to a residual waste management facility would simply be poor business and financial management.

5.25 For our part, we find the argument attractive for MSW and, on balance, we conclude that the risk of local authorities delivering waste to the plant that could practically be recycled is low.[1] For C&I waste, however, we found the argument less convincing.

5.26 Our concerns in this regard were increased:

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[1] In reaching this conclusion we accept that the 'residual' waste stream (essentially the 'black bin' waste) will inevitably contain <u>some</u> plastics, paper and other materials that could <u>theoretically</u> be recycled. These materials are, however, mixed with other, non-recyclable waste and, once mixed, separation is not generally practical.

- because of the absence of any secure contracts from the municipal waste sector, which could result in the plant operating with a very high proportion of C&I waste; and
- because of the length of time for which the plant is expected to remain operational. During this time it seems to us that there is not only potential for legislation in the waste sector to move on, but also for the economic drivers for recycling to change.

5.27 Although the Applicant argued this is unnecessary, in order to meet these concerns, a requirement was 'offered' (Requirement 42)[1], the effect of which would be to put in place a residual waste acceptance scheme for the plant, to be reviewed and approved annually by CBC. The express purpose of the requirement is to 'ensure that the scheme continues to address changes in waste management, and that [the plant] is used only for the incineration of residual waste'. To some degree the requirement would duplicate Requirement 2. However, we foresee potential long-term difficulties in enforcing Requirement 2 without the additional Requirement 42. With the additional requirement in place, the Council (CBC) would be in a position to ensure on an ongoing basis that only residual waste is accepted at the plant. Such a requirement would ensure compliance with the advice in NPS EN-1 which states that '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'.[2] To our minds, only with the requirement in place, can we be satisfactorily assured that the proposal would conform to the waste hierarchy.

5.28 In reaching this conclusion we have had regard to those representations that called for a definition of 'residual waste' to accompany the requirement, particularly those made by the 25TPCs. We take the view, however, that this is not necessary given that the term is generally well understood and that it is used in its 'everyday' sense in the requirement. Equally, we have had regard to the suggestion that if CBC were to contract with the Applicant to handle the authority's residual waste, then it might elect, for commercial reasons, not to enforce the condition. There is no evidence to support the view that this would be so, however, and in our opinion, any such move would be improper and can be safely disregarded.

The proximity principle

5.29 Also of concern to us was a claim by several objectors to the proposal that the plant would, on account of its size, be in conflict with the proximity principle set out in PPS 10 as issued in 2005 and the BLMWLP. The Applicant robustly argued otherwise, putting it that

[1] At the time the Requirement was 'offered' it was numbered 42. However, it was subsequently renumbered (see para 8.18 below) as Requirement 41.
[2] See NPS EN-1, para 3.4.3, 4th bullet point headed 'Energy from Waste'.

applying the proximity principle at a local level was, in their view, contrary to the intent of PPS 10.

5.30 Waste planning policy has continued to evolve with the publication of the Waste Strategy for England 2007, and the rWFD which, amongst other matters, seeks to prevent the unnecessary transfer of waste for treatment between member states of the EU. The rWFD has been transposed into UK legislation by the Waste Regulations 2011 and the amended waste hierarchy contained in the rWFD has been reflected in an updated version of PPS 10, issued in March 2011. The Waste Regulations 2011 state that *'the network must enable waste to be disposed of and mixed municipal waste collected from private households to be recovered in one of the nearest appropriate installations, by means of the most appropriate technologies.'*

5.31 Plainly, it is not logical for every administrative area to be self sufficient in recovery capacity given the very wide differences in population between often adjacent local authority areas, and the economies of scale in the size of recovery plants. The Review of Waste Policy in England 2011 states at paragraph 263 *'there is no requirement for individual authorities to be self-sufficient in terms of waste infrastructure …..'*

5.32 In essence, it seems to us that policies which promote waste disposal self sufficiency within one administrative area (be it a region, a county or a smaller area) have their place, but should not be applied to prevent the transfer of waste for treatment across administrative boundaries. Indeed, where treatment facilities are located close to an administrative boundary, preventing waste from crossing that boundary could work to prevent its treatment at one of the nearest appropriate installations. Such an outcome would be in conflict with the Waste Regulations. With a location such as that offered by Rookery South Pit it would not make sense to allow the proposed plant to accept waste from, say, Luton (a distance of some 33 km but within the area covered by the BLMWLP) while precluding it being accepted from parts of Milton Keynes, which is nearer, but outside the local plan area.

Size and capacity

5.33 Further allied to this matter, several parties argued that the size of the proposed plant was excessive, and there were alternative ways of handling waste through a network of smaller plants. Obviously, if only waste from (the former) Bedfordshire and Luton area is to be accepted that would be the case.[1] The Applicant's intent, however, is

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[1] The quantity of MSW arisings in Bedfordshire and Luton (only) are estimated to be 145,000 tpa (CBC/BCC) and 170,000 tpa (Covanta). The corresponding C&I waste arisings are estimated to be 162,000 tpa (CBC/BCC) and 206,000 tpa (Covanta). Total arisings are thus

to accept waste from a wider area and the evidence of the WRATE Report submitted with the application is that the benefits in sustainability terms of having a single plant such as that proposed, would be significant as compared to the option of developing a number of smaller plants positioned more closely to the source of the waste (DOC/5.4). We agree.

5.34 In this regard, there can be no doubt that, if a plant of the size proposed were to be developed, fewer other plants would be required to deal with a given volume of waste. Indeed, some plants that might have otherwise come forward, including ones on sites close to the Rookery, may not do so. However, whilst several schemes were put forward during the examination as 'alternatives' to the Applicant's proposal, the evidence is that most are at an early stage of development and there is no certainty that they will progress (see para 7.92 et seq below).

5.35 In any event the Government's policy on capacity is clear. NPS EN-1, paragraph 3.1.2 advises that *'The Government does not consider it appropriate for planning policy to set targets for or limits on different technologies'*. In the following paragraph it states '*The IPC should therefore assess all applications for development consent for the types of infrastructure covered by the NPSs on the basis ….that there is a need for those types of infrastructure…'*. Paragraph 3.4.5 of the document records that *'The need for generation projects is therefore urgent.'*

Conclusion on the waste hierarchy

5.36 In our view, even taking into account higher levels of recycling and the consequent reduction in the volumes of residual waste arisings, there will still be a requirement for handling substantial volumes of residual waste in the waste catchment area. In a broader context, the Review of Waste Policy in England 2011 says at paragraph 214 *'our horizon scanning work up to 2020, and beyond 2030 and 2050 indicates that even with the expected improvements in prevention, reuse and recycling, sufficient residual waste feedstock will be available through diversion from landfill to support significant growth in this area [of renewable energy from waste] without conflicting with the drive to move waste further up the hierarchy.'*

5.37 Given this and the advice in NPS EN-3, paragraph 2.5.17 that *'Commercial matters are not likely to be an important matter for IPC decision making',* and having taken into account the intentions of the rWFD, we conclude that there is no reason to refuse the application for a DCO on the grounds that granting it would be likely to undermine

estimated to be 307,000 tpa (CBC/BCC) and 376,000 tpa (Covanta). This compares to the nominal throughput for the proposed plant of 585,000 tpa (SOCG/10).

the waste hierarchy,[1] result in an excess of waste treatment capacity in the area, and/or displace alternative (preferable) proposals for waste treatment in the area. We further conclude that it should not prejudice the achievement of local or national waste management targets.

Landscape, Visual Impacts and Design

5.38 The impact of the proposal on the landscape of Marston Vale and the extent to which it would alter the visual appearance of the locality was the subject of a large number of representations. We identified landscape and visual impacts as one of the principal issues, and held an issue specific hearing on 21 June 2011 in order to pursue the matter further, together with the related concerns around the design of the plant.

5.39 The local impact reports submitted by the Councils (CBC/4; BBC/4) set out the site description, history of brick making and current permitted development proposals, and we used these as a context for considering the impact of the application on Marston Vale.

The character of Marston Vale

5.40 The present appearance of Marston Vale, particularly as seen from the Greensand Ridge, and from Cranfield, is generally rural and open. The view of the Applicant is that this is a transitional position between a landscape dominated by the heavy clay extraction and brick making of the past 100 years and the current proposals for major growth in this part of the Vale. The EoEP sets a requirement of 19,500 dwellings between 2001 and 2021, with a further 9750 dwellings for the period 2021 to 2031 as an indication of the likely scale of future development in the northern Marston Vale.

5.41 As noted in paragraph 4.22 above, substantial new development is envisaged around Kempston and Wootton. A new community is being built at the Wixams to the south of Bedford, and various other residential and mixed use schemes are planned or under construction at Marston Moretaine and Stewartby. The Applicant argues that what is seen now is therefore a snapshot, unrepresentative of the heavy industrial processes experienced until quite recently, and the landscape changes which will take place over the next few years as new development occurs.

5.42 By contrast, local people, the 25TPCs and the Councils point to the major improvements which have taken place to the appearance of Marston Vale since brick making ceased, the achievements of the Marston Vale Forest, and the Millennium Country Park. Marston Vale

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[1] With Requirement 42 (subsequently renumbered as Requirement 41), discussed in para 5.27 above.

is an area which is now changing its function and turning away from its historic role as an area where clay is extracted, in turn leaving large holes in the ground to be filled with waste from other parts of the country. Rather, it is now a rural, peaceful landscape, deserving to be left that way. The intrusion of the proposed EfW development would mean a return to the past.

5.43 The 25TPCs argue that the physical legacy of the industrial past has now largely disappeared and, as a result, the landscape character assessments presented in the ES are out of date and inaccurate.

5.44 Chapter 10 of the ES (DOC/3.1) systematically sets out in detail the landscape characteristics of the area in the Landscape and Visual Impact Assessment (LVIA). It starts with the national landscape character assessment carried out by the Countryside Agency and English Nature in 1999. This covered the Bedfordshire and Cambridgeshire clay vales, a time when brick making was still very much in evidence in Marston Vale. At the next level down, the mid-Bedfordshire landscape character assessment (2007) is the most recent comprehensive analysis of the features of the locality in which the application is set. It identifies an agricultural landscape with an open and exposed character offering long-distance views, but fragmented by current and former industrial activity including brickworks, opencast clay pits, landfill, distribution centres and industrial estates. The open nature of the Marston Vale contrasts dramatically with the Greensand Ridge and the elevated Cranfield to Stagsden ridge. To provide an up-to-date detailed site assessment of the Rookery Pit and the countryside and settlements immediately surrounding it, a site scale landscape character assessment was carried by consultants.

5.45 Statements of common ground were agreed between the Applicant, CBC (SOCG/4) and BBC (SOCG/7). Both Councils agree that ‘the planning policy for the area and resulting development will result in significant change in the landscape of the Marston Vale over time’ (ibid, paras 2.5.16).

5.46 In our view, this is an area where major change has taken place recently and further development is envisaged. The landscape surrounding The Rookery includes major new distribution warehouses on the edge of Bedford, the upgraded A 421, and several lines of electricity pylons. A variety of new developments are proposed in the vicinity, including the NIRAH scheme granted planning permission in September 2009, but not yet implemented, whose main building would be about 48 m high. And the Forest of Marston Vale itself will be a source of continuing change to the appearance of the landscape.

5.47 Whilst local planning policies could well see Rookery South Pit being simply restored for agricultural use, emerging waste planning policies

also contemplate the site being used for waste recovery analogous to the current application, albeit on a smaller scale, as well as landfill (see para 4.23 above).

5.48 This is not an area subject to any formal landscape protection policies in the development plan. But the overriding impression from vantage points on the Greensand Ridge looking across the Vale is currently one of openness and limited built development. Many elements of infrastructure have blended well into the landscape, for example the railway lines and Millbrook proving ground. In our view, it is not a scarred heavy industrial landscape into which a major new built development can easily be inserted.

Visual impact

5.49 The size and scale of the proposed development is therefore an important and relevant matter in assessing its acceptability. Visual impact is clearly, and in our view fairly, represented in the application documents. It is not a question of the development being unnoticed in the landscape if it proceeds - that is just not possible. Where representations simply point to the development being visible from various viewpoints in the near, medium and long distances as a major disadvantage without further explanation, they fail, in our view, to show how the visibility detracts from the appreciation and enjoyment of the landscape.

5.50 The largest building (the boiler house) would be 43 m high, but because the plant would be set in the floor of the clay pit it would be some 33 m above the surrounding (unexcavated) ground level, and with local variations in topography it would appear to be lower, especially from the south and east. The planting strategy seeks to screen the lower level buildings and activity from all viewpoints. The views from the west would be the most apparent as this is where there is the least natural screening, and therefore the planting arrangements would be particularly important to ensure that the views from the Forest Centre are not dominated by the size and scale of the building.

5.51 Given that the size and scale of the proposed development as a whole means that it would not be possible to avoid it in the landscape, the issue is whether it has particular characteristics that are so damaging as to render it unacceptable. We found the photomontages, and the indicative heights represented by the balloons flying on the day of our second site visit, particularly helpful in conveying the visual impact of the development in the locality. At 105 m the stack would be particularly visible from long distance viewpoints, but would be seen in the context of the four listed chimneys at Stewartby brickworks, albeit that these are all lower and of different appearance, reflecting their historic purpose.

5.52 In our view, the visual impact of the development would be most marked in short distance views, for example, from the Millennium Country Park and the Stewartby Water Sports Club (SWSC) site. The closest building to the Country Park would be the tipping hall which would be 25 m above the surrounding level. In our opinion the scale of this facade and the taller section of the plant building beyond it would be overbearing as seen from the footpath and cycleway running alongside the railway track on the eastern side of Park.

5.53 As to the proposed mitigation, the bunding and landscaping proposed around the margins of Rookery South Pit would soften the impact of the proposed development from middle and long views. However, this planting would not screen the upper levels of the buildings, since they are simply too substantial. From more distant and elevated viewpoints some mitigation would be achieved by using recessive colours for the cladding, but this would not be effective in short distance views where the plant would be seen against the sky.

5.54 Requirement 8 of the Order (see Appendix D, schedule1, part 2) provides for the detailed landscaping proposals to be submitted to the local planning authorities for approval. Pursuant to this requirement, in our view, they will need to consider particularly carefully the efficacy of the proposed green wall on the western face of the building in terms of its actual contribution to mitigating short distance visual impacts from the Millennium Country Park.

5.55 At the open floor hearing held on 5/6 July 2011, the Councils' representative confirmed that there is not an issue in principle in relation to a waste management facility at Rookery South Pit; rather the main overriding issue is its size. Several people who spoke at the open floor hearing, for example the CPRE representative, nonetheless objected to the principle of the proposal on landscape impact grounds.

5.56 The relationship between the throughput of waste and the size of the plant is therefore worth exploring. The Engineering Design Statement (DOC/6.2) states that after adjusting the building heights for capacity, the height of the proposed Rookery South EfW plant would be at the lower end of the range when compared with other similar plants in the UK. Also, a single stream plant of 200,000 tpa would require a building of the same height as a three stream plant of 600,000 tpa. This suggests that reducing the capacity of the proposed Rookery South EfW plant would not necessarily lead to a reduction in the height of the buildings. We agree.

5.57 Several representations expressed concern about the plume in addition to the height of the stack. Appearance of the plume would not be a regular or necessarily frequent occurrence, and its impact is therefore difficult to judge. That said, we accept that at those times

when the plume is visible it would tend to draw the eye to the plant and thereby increase the apparent visual impact.

5.58 Our conclusion therefore is that the size and scale of the proposed development at Rockery South Pit is a major disbenefit, given that it would be clearly visible from many parts of the Vale. Notwithstanding that it would be set some 10 m below the surrounding ground level in the base of the pit it would appear as a solitary heavy industrial scale plant in an otherwise rural location. Whilst, over time, its impact would be reduced, both by the associated landscaping and by other new development in the area, its scale and appearance would nonetheless remain dominating, in our opinion. We therefore attach substantial weight to the adverse impact of the plant in its landscape setting.

Design

5.59 Plainly, the design of the proposed development has a major bearing on how successfully it can be assimilated in the landscape, and the impacts mitigated. Noting the advice in paragraph 4.5.1 of NPS EN-1 that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area, we looked particularly carefully at the design solution adopted. We accept that the function of the proposed development as an EfW plant means that large boxlike structures are the most efficient way of handling the requirements of waste input, processing, electricity generation and residue disposal. In this case the ES says the majority of the buildings would be constructed of steel frames on pre-cast concrete plinths and finished in steel cladding.

5.60 Some representations considered the design to be flawed and drew attention to alternative design solutions, for example, wave roof forms such as recently built at Colnbrook or even dome structures, such as built at Marchwood. But it was unclear to us whether these were being advocated as preferable to the design put forward in the application, or just demonstrating that alternatives were possible. The Councils' representative at the issue specific hearing held on 21 June 2011 considering landscape appeared to accept that a horizontal roofline would be the most appropriate design solution.

5.61 The Design and Access Statement (DOC/6.1) records that CABE were consulted by the Applicant on two occasions (December 2009 and March 2010) and generally endorsed the Applicant's design approach. However, the evidence is that this view was reached without the benefit of a site visit by CABE.

5.62 From our own experience of visiting the site and the locality, it is difficult to gain a full appreciation of how the proposal sits in the landscape and its design considerations without a site visit, and for

this reason we conclude that the reliance by the Applicant on views expressed by CABE needs to be treated with some caution.

5.63 In the light of the views put forward by the Councils, the 25TPCs, Our Marston Vale (OMV) and others, we acknowledge that a curved roof form might provide a better design solution in the landscape even though the Design and Access Statement explains that such a building would need to be even higher than that proposed. However, we were not convinced that a radically different design would have less visual impact. We conclude therefore that the proposed design is acceptable in the context of the function the development is intended to perform, and in the light of the design process carried out in the preparation of the application.

Heritage Assets

5.64 The Infrastructure Planning (Decisions) Regulations 2010 oblige the IPC when deciding an application to consider the setting of heritage assets such as listed buildings and scheduled monuments, and the desirability of preserving or enhancing the character or appearance of conservation areas in assessing the development. Paragraph 5.8.18 of NPS EN-1 provides that where development does not preserve the setting, the harm should be weighed against the benefits.

5.65 The proposed development would not directly affect any heritage assets, as there are none on the site itself. The nearest heritage asset is South Pillinge Farm, a Grade 2 listed building, to the south of Rookery South Pit.

5.66 Statements of common ground were agreed between the Applicant and English Heritage (EH) (SOCG/8) and the Applicant and the Councils (SOCG/5 and SOCG/6). In the SoCGs, the Councils agreed with the Applicant that impacts on heritage assets would not be significant, except in the case of Ampthill Park House, where the impact would be of minor significance. Notwithstanding this, BBC subsequently stated that harm would be caused by the proposal to the listed chimneys at Stewartby.[1]

5.67 A major point of difference between the Applicant and EH concerned the impact the proposed development would have on the setting of several heritage assets in the wider locality. EH's position, although at odds with the Councils, was supported by several others, including the 25TPCs (who suggested additionally that not all the viewpoints in the photomontages included in the ES were representative).

5.68 The methodology for the assessment of impacts on the setting of heritage assets and their significance was not agreed between the Applicant and EH. The Practice Guide accompanying PPS 5 does not

[1] At the issue specific hearing held on 22June 2011.

seek to prescribe a single methodology or particular data sources, and states that alternative approaches may be equally acceptable. This is provided they are compliant with national policies and objectives, are clearly justified, transparently presented and robustly evidenced.

5.69 The assessment of impacts on setting requires professional judgement, and in this regard, EH considers that the proposed development would cause substantial harm to the settings of Ampthill Castle (Scheduled Monument), Ampthill Park House (listed Grade 2*), Ampthill Park (Registered Park, Grade 2) and Houghton House (Scheduled Monument and listed Grade 1). The impact on the Ampthill and Millbrook conservation areas would be harmful.

5.70 The position of EH is, in essence, that these heritage assets are intimately connected to the local landscape and that appreciation of them would be severely compromised by the size and scale of the proposed development. A green agrarian view is an essential element of the setting of the heritage assets surrounding the Rookery South site, with wide open panoramas and extensive views across the Vale. EH consider that the landscape of Marston Vale is now closer to its original appearance than at any time over the past 100 years.

5.71 We took these concerns very seriously and decided to hold an issue specific hearing on 22 June 2011 to enable the respective views of the parties to be thoroughly explored. We also had these views very much before us when carrying out our site visit on 12 July 2011. At our request, the two Councils and the 25TPCs identified 13 viewpoints they wished us to visit. We added six additional locations to ensure we had visited as many as possible of the viewpoints identified during the examination.

5.72 Having considered the evidence and concluded our site visit we were not persuaded that the setting of heritage assets would be fundamentally damaged. There would be no avoiding the presence of the development in the landscape. However, the proposal would occupy only a small portion of the panoramic view from the heritage assets in question and, to our minds, the impact on their setting would not be such as to amount to substantial harm. The main impact from the ridges surrounding the site would be from the stack which would break the skyline. But other existing features do so already, and indeed the proposed wind turbine in the Marston Vale Country Park would be taller than the stack at 120 m.

5.73 The changing nature of Marston Vale over the past century coupled with:

- the likelihood of future development in the Vale;
- the absence of formal landscape policy protection to this area; and

- the fact that the landscape on and surrounding the site is not one which has been explicitly designed or designated for its historic or other quality,

suggests to us that views from Ampthill Park House, Ampthill Park and Houghton House are likely to continue to change in the future.

Traffic and Transport

5.74 Given that the proposed EfW plant would be operational 24 hours a day for 365 days a year, many interested parties expressed concerns that traffic, and particularly HGV traffic, coming to and leaving the proposed RRF would do so using unsuitable routes, thereby resulting in disturbance to nearby residents and inconvenience and danger to other road users.

5.75 We acknowledge these concerns and agree that, relative to the volume of HGV traffic currently using the roads, the proposal would result in a large increase in HGV movements, particularly on the section of Green Lane between the proposed site entrance and the C94 (the 'old'A421).[1] However, the s106 Agreement would oblige Covanta to only operate the plant in accordance with the agreed Access and Routing Strategy. This would preclude HGVs (other than local refuse collection vehicles) from coming to or leaving the site except via Green Lane and the C94. Further, given that there is a low bridge and a 7.5 tonne weight limit on the only road linking Stewartby village to the B530, it seems to us that those fears expressed regarding the propensity for HGV traffic to use this route are unfounded.[2] Accordingly, we see no reason to refuse the DCO on this account.

5.76 As to the possibility of traffic proceeding to the M1 via the C94 through Brogborough (as opposed to via the 'new' A421 which bypasses the village), plainly this is a risk. The route is not one of those permitted by the Access and Routeing Strategy contained in the s106 Agreement, however, and, having driven the route, it seems to us that any benefit that HGV drivers would gain by using it would be marginal at best. Given the 'penalties' for using it contained in the s106 Agreement we take the view that few, if any, HGV drivers coming to or leaving the plant would be likely to follow this route. We conclude that this concern should attract minimal weight in our decision as to whether or not to make the DCO.

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[1] Technical Notes appended to the SOCGs concluded with CBC and BCC predict a total of 356 HGV movements/day at 'nominal throughput' scenario, and 594 movements/day for the 'maximum throughput' scenario (Technical Note appended to SOCGs 15 and 16, table following para 2.8).

[2] To our minds this is the only sensible alternative route to the site from the main road network (whilst it would be technically possible to access the C94 via Broadmead Road, this route would offer no advantage compared to the more direct route via Green Lane).

5.77 With regard to the fears expressed that traffic coming to and leaving the site would cause congestion at the M1/A421 junction or other junctions on or leading to the A421, we note that the responsible highway authorities are content that this would not be the case. To our minds their professional views should be afforded significant weight in such matters. Accordingly, we see no reason to refuse the DCO on this account, nor on the grounds that the proposal would materially increase congestion in the area at times when the M1 is badly congested due to an accident or other incident.

5.78 The impact of the proposals on roads near to transfer stations or other sites that may be used to supply the plant, or on the roads between these and the plant is not, as we see it, a matter we can take into account. We have no evidence on how the proposed development would directly impact on each of these sites and we would not expect such evidence to be provided in connection with assessing this application. Rather, it is a matter that, in due course, will need to be considered by those responsible for the sites in question.

5.79 In reaching these conclusions we have had regard to the statement of common ground concluded with the Highways Agency (SOCG/3) and the statements of common ground on traffic matters concluded between the Applicant and the local highway authorities (SOCGs 11, 12, 15 and 16).

5.80 Turning to the adequacy of the designated routes for HGV traffic, we are satisfied that the width and alignment of Green Lane between the site and the C94 is in all respects capable of accommodating the increased HGV traffic that the development would impose on it without significant harm to the safety and convenience of those who currently use the road, including members of the SWSC entering and leaving the SWSC site. Notwithstanding this, the structural condition of Green Lane is plainly a cause for concern. The s106 Agreement provides for this to be monitored, however, and for Covanta to make good any damage caused by construction traffic coming to or leaving the proposed development. Visibility to the south at the C94/Green Lane junction is also agreed to be substandard. This matter would be addressed by Requirement 37 in the DCO (see Appendix D, schedule 1, part 2). Requirement 39 would satisfactorily address the requirement for a travel plan (ibid).

5.81 With regard to the arrangements at the proposed site entrance, the DCO provides for Green Lane to be locally widened and a new ghost island junction constructed with enhanced lighting. New footpaths would also be provided, linking into nearby existing paths (DOC/2.26 and DOC/2.27). Requirement 10(1) would secure completion of these works and the associated pedestrian crossings before construction of the main plant commences. No concerns regarding this element of the proposals were raised by the affected highway authorities and we

satisfied that the arrangement would be appropriate for the development proposed.

5.82 On a more fundamental matter, several representations were received suggesting that waste should be transported to the plant by rail, as opposed to by road, using one of the adjacent railway lines. Doing so would accord with the preference expressed in NPS EN-1 at paragraph 5.13.10. This is qualified, however, in that rail transport is only preferred over road 'where cost effective'. In this case, the evidence shows that this would not currently be the case (DOC/6.4). The s106 Agreement moreover imposes obligations on Covanta; it:

- requires the situation to be monitored, and
- reserves an area of land near the MRF to be used to construct rail sidings should it be concluded at some future date that waste should be brought to the site using the Marston Vale Branch Railway Line (APP/6.1.4, schedule 1, s15 and s16).[1]

To our minds, these provisions are a fair and reasonable response to the policy context set by the NPS.

Noise

5.83 Whilst many local residents making representations took the view that noise from the RRF would adversely affect their living conditions, the analysis in the Applicant's ES does not bear this out.[2] The Councils' position is more complex. In essence, the wording of a series of requirements to control operational noise from the site was agreed with the Applicant (Requirements 17 to 24). Prior to settling the text of the requirements, a statement of common ground was signed by representatives of the Applicant, CBC and BCC. This confirms:

- that the baseline (ambient) noise surveys undertaken by the Applicant's consultant were carried out in an appropriate manner;
- that the method presented in BS5228 is appropriate for calculating construction noise;
- that operational noise should be assessed using the methodology presented in ISO 9613 and SoundPlan software; and
- that noise levels due to movements of vehicles on the access road should be calculated in terms of L_{Aeq} and L_{Amax} and those on the wider road network calculated using the methodology set down in 'Calculation of Road Traffic Noise' (SOCG/1).

[1] In this regard it is our understanding that bringing waste to the site via the alternative main line would not be technically feasible (DOC/6.4, section 5.2).
[2] Chapter 9 of the ES (DOC/3.1) concludes that noise during construction and operation of the plant and from traffic going to and from the plant is not likely to be significant.

5.84 It was further agreed that the noise assessments should have regard to the general advice in PPG 24, together with the specific advice in BS5228 for construction noise and BS4142 for industrial noise. With regard to the latter, it was agreed that the noise from the air cooled condensers, which would be the major source of noise outside the EfW building, should not attract the +5 dB rating correction for tonality.

5.85 At the close of the examination, the points remaining at issue between the Applicant and the Councils concerned (CBC/10; BCC/10):

- what the rating noise level for night-time operational noise specified in Requirement 18 should be;[1]
- what the daytime construction noise level specified in Requirement 17 should be;
- at what hours construction should be permitted to take place (Requirement 24); and
- whether HGVs should be permitted to enter and leave the site on weekday evenings and Saturday afternoons (Requirement 26).

5.86 Early in the examination, concerns were also expressed by the Councils and many others regarding the potential for HGVs travelling to and from the site between 05.00 and 07.00 in the morning to disturb residents and campers at the SWSC. However, this concern was removed when the need for deliveries in that period was reconsidered and the Applicant proposed that the requirement governing delivery hours and traffic management should be amended to prevent HGVs entering or leaving the site before 07.00 (APP/4.1, s18.3).

5.87 The concerns expressed by other interested parties broadly matched those of the Councils. In addition, the 25TPCs argued strongly that any requirement that left agreement on the noise monitoring scheme as a matter for the Applicant to settle with CBC at a later date would be unsatisfactory. In their view (and without prejudice to their contention that the DCO should be refused) the need for effective noise monitoring is a matter of such importance that it should be resolved before the examination closed and a detailed scheme set down in the requirements.

5.88 For their part, the SWSC expressed concerns regarding the affect that noise from the facility, and particularly noise from traffic going to and from the plant, would have on their activities, including camping and water ski instruction.

[1] For definition of rating noise level see BS4142:1997.

5.89 As to the points of disagreement, with regard to the first issue there is no dispute that ambient noise levels in the areas surrounding the site at night are low.[1] The Councils' proposed noise limit for night-time operations at the nearest sensitive receptors (25 dB $L_{Aeq,5\ minutes}$) (BBC/10 and CBC/10, Requirement 18) reflects this and there is no doubt that, were this to be imposed, the current ambient noise levels would not materially rise (in contrast to the situation which could occur with the Applicant's proposed limit of 35 dB $L_{Aeq,5\ minutes}$ (APP/6.1, Requirement 18)).

5.90 But is the lower limit proposed by the Councils necessary? In our opinion, it is not. The reason for this conclusion is that the primary purpose of the condition is to protect residents' living conditions. At night these residents are generally sleeping indoors. With a maximum level of 35 dB $L_{Aeq,5\ minutes}$ measured outside, as proposed by the Applicant, the internal noise levels in the bedrooms would be materially less than those at which sleep disturbance is likely; and setting a lower limit, as suggested by the Councils, would serve no practical purpose. We conclude that the free field night-time rating noise limit laid down in Requirement 18 should be 35 dB $L_{Aeq,5\ minutes}$ at all locations specified.

5.91 Turning to the second matter, Requirement 17 as proposed by the Applicant in the draft DCO (APP/6.1.1) would operate to restrict construction noise at any residential location to a maximum of 65 dB $L_{Aeq,1hour}$. The Councils suggest that, following the advice in BS 5228:1 Annex E, and having regard to the likely duration of the works, the limit should be 55 dB $L_{Aeq,1hour}$ (BBC/1, s6.2; CBC/1, s7.2). Having regard also to the current ambient noise levels in the area, we agree.

5.92 Notwithstanding this, it is clear from the information contained in the ES (DOC/3.1, Drg 2926_9.2) that, if construction is not to be unreasonably constrained, the limit for South Pillinge Farm would need to be up to 5 dB higher whilst piling is in progress and whilst concreting works and construction of the tipping hall and its associated ramps are underway. At Stewartby, some flexibility would also be necessary for relatively short periods during works near the site entrance. This could be achieved by altering Requirement 17 to set a lower limit for general application, but allowing the Council to agree higher limits in specific circumstances where they are satisfied that the need to do so is justified.

5.93 As to the matter of the hours at which construction can take place, we take the view that, having regard to the limits on construction noise that would be imposed by Requirement 17, there is no valid reason to preclude construction taking place between 07.00 and 08.00 as requested by the Councils. In our opinion, a requirement restricting

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[1] See the ES (APP/3.1, table 9.6).

the permitted hours for any noisy construction works to 07.00 to 19.00 on weekdays and 07.00 to 13.00 on Saturdays would be satisfactory to protect the living conditions of residents living near the site. In reaching this conclusion we further take the view that these limits should apply to all (noisy) construction activity. We therefore do not support the Applicant's proposal that, in addition to the permitted hours, 'start-up' and 'shut down' periods of a further half an hour at each end of the working day should also be permitted.[1]

5.94 Turning to the matter of the hours at which HGVs should be permitted to enter and leave the site, we note the Councils' position and accept that the statement of common ground on noise indicates that HGVs are not expected to enter or leave the site after 18.00 on a weekday (Appendices to SOCG/13 and SOCG/14). This may be so; however, the ES makes it clear that, whilst the majority of HGV movements are expected to occur in the daytime, flexibility is required to allow vehicles to return to the site for overnight storage in the evening (DOC/3.1, para 3.3.14). Critically also, there is no evidence that if HGVs were to enter or leave the site during the evening hours or on Saturday afternoons material harm to the living conditions of those living near the roads leading to the site, or other harm, would result. Accordingly, we cannot support the Councils' contention that the hours suggested by the Applicant's draft Requirement 26 should be amended.

5.95 With regard to other matters raised, we appreciate the concerns expressed by the 25TPCs regarding the form of the noise requirements. We agree that monitoring compliance with the requirements is important. However, we do not agree that the detail of the monitoring scheme is a matter that should not be left to CBC. Under the terms of the requirements, CBC is the body primarily responsible for monitoring compliance and, in our view, it is appropriate that the same body should agree, on an ongoing basis, the details of the scheme to be used. The requirements themselves are clear as to the standards that would have to be met.

5.96 As to the SWSC, whilst we note their concerns, it was clear from our site visit and the representations made that their use of the site for camping is only occasional. The site is also currently subject to noise both from traffic on Green Lane and from passing trains. In our view, the Applicant's undertaking to erect and maintain noise barriers around the north-east corner of the site (see para 1.9 above) is a fair response to any additional noise that the Club might suffer if the proposal proceeds.

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[1] In reaching this conclusion we are mindful that the requirement as drafted does not bite on 'non-intrusive' construction activities. As we see it such activities would include workers arriving at the site in normal road going vehicles before 07.00 and leaving after 19.00.

Air Quality and Health

5.97 In their representations many local residents, their representatives, OMV and others expressed concerns regarding the potential for emissions from the plant to adversely impact on air quality in the area and on the health of the local population. These issues are explored in the ES (DOC/3.1, Chapter 8) and the Health Impact Assessment (DOC/5.6) which conclude that any impact would be very small. We asked a question at the outset of the examination in order to explore this issue. The Health Protection Agency (HPA), whilst not objecting to the proposed development, recommended that several matters should further investigated or clarified (HPA/2).

5.98 We understand these concerns and appreciate that the problems local people encountered with the emissions from the brickworks that were until relatively recently working in the Vale were significant, particularly during temperature inversions. We can well appreciate that many residents are fearful that emissions from the proposed plant would result in similar problems in the future. We also appreciate that reports of Covanta failing to comply with emissions standards set for some of their plants in the USA have exacerbated these concerns.

5.99 Notwithstanding this, we are mindful that emissions from all large incinerators in this country are regulated through standards originally set by the European Union in the WID and subsequently transposed into UK legislation. As we understand it these standards were set with the express objective of ensuring that emissions from incinerators do not harm human health or the environment and the ES notes that the WID sets the most stringent emission controls for any thermal process regulated in the EU (DOC/3.1, para 3.13.13).

5.100 As to the standards, NPS EN-3 reminds us it is the environmental permitting regime through which compliance with the WID is enforced. In order to operate there is no doubt that the proposed EfW plant will require an EP issued by the EA.

5.101 The application for an EP[1] has been submitted, accepted, and advertised and the evidence is that, in determining the application, the EA will fully assess matters relating to air quality and emissions against accepted standards, taking into account the representations made to them by local residents and others regarding the potential for emissions from the plant to adversely affect the health of the local population (EA/5).

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[1] We here refer to the application for the EP for the EfW plant. At the time the examination closed, a separate application had been made, but not accepted as complete, for an EP for the MRF.

5.102 At the close of the examination the EA had not completed their assessment and had therefore not yet determined the EP application. Notwithstanding this, their advice to us in May 2011 was that they had *'not so far identified any points of principle which would prevent an environmental permit being issued for the proposal'* (EA/5).

5.103 Given this, and the clear advice in NPS EN-1 at paragraph 4.10.13 that *'the IPC should work on the assumption that the relevant pollution control regimes …will be properly applied and enforced by the relevant regulator. It should act to complement, but not seek to duplicate them'*, we are satisfied that the measures necessary to ensure that the plant operates safely within appropriate air quality standards, including the requirements for monitoring, are matters for the EA to consider and regulate through the EP. We are further satisfied that the EP process is designed to prevent a breach of legal obligations in respect of the impact of waste management on human health, and that operating the plant in compliance with the WID would not result in any local air quality standards being breached.

5.104 As to emissions exceeding the standards that we would expect to be set in any EP that might be granted for the plant, or for harmful emissions of matter not specifically regulated or monitored to occur, we acknowledge that many local residents are fearful that this could be the case. We accept that such fears could, in themselves, be detrimental to their health and wellbeing and, as such, we accept that this is a matter that bears on our decision.

5.105 However, we found no evidence to support the view expressed by several local residents that any permit issued by the EA would fail in its objective of protecting human health or people with characteristics[1] protected under the Equality Act 2010. We equally found no evidence to support the view that the EA would be unable or unwilling to monitor and, if necessary, enforce compliance with the terms of any such permit.

5.106 Further comfort in this regard is given by the obligation imposed on Covanta by the s106 Agreement to display emissions data for the plant, and the corresponding limits in the EP, within the visitor centre, on the website and at other agreed public buildings (APP/6.1.4, schedule 1, s7).

5.107 Accordingly, we conclude that there is no evidence that any adverse consequences of the RRF on air quality and human health cannot be properly controlled within the applicable standards applied and enforced by the EA.

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[1] Such as age, disability, pregnancy or maternity.

Lighting

5.108 Several interested parties expressed concerns during the examination that light pollution would result from the proposed development if it were to proceed.

5.109 Given that the site is currently ‘dark’, with no artificial light sources normally present on it, and that the proposed development would operate 24/7 with external lighting in the hours of darkness we understand their concerns. Notwithstanding this, there are numerous existing light sources in the surrounding area, including street lights in both Stewartby and Marston Moretaine.

5.110 As to the proposals for the development, a preliminary lighting strategy has been drawn up (DOC/2.30). This shows the intention is to light the main operational areas, but not the access road that would link the plant to Green Lane. During the course of the examination it was further agreed that a requirement should be attached to any DCO granted obliging the Applicant to obtain CBC’s approval of a detailed lighting strategy before commencing work (Requirement 35 - see Appendix D, schedule 1, part 2). Thereafter, the approved lights would have to be provided before the plant commences operation. Other controls would operate to preclude external lights other than those approved being installed.

5.111 With regard to the stack, this would be lit with three medium intensity red obstruction lights (including one high-level light positioned within 1 m of the top of the stack and two mid-level lights facing west) in compliance with regulations and in agreement with Cranfield airport.

5.112 Given the safeguards that the requirement would achieve, our conclusion is that the impact of lighting is not a matter which should attract significant weight in our decision as to whether to make the proposed DCO.

The Materials Recycling Facility (MRF)

5.113 The proposed MRF would be located adjacent to the EfW plant. It would comprise a paved open area for the storage of processed incinerator bottom ash (IBA) prior to its removal from site, together with buildings for storing untreated IBA, and containing screens and other plant for processing the ash and foul water pumps. Retained metals would be stored in skips adjacent to the processing building. A small administration building is also proposed (APP/3.1, s3.6). The total area of land occupied by the MRF would be approximately 4 ha and broadly equal to that of the proposed EfW plant.

5.114 Rainwater and other run-off from the area would be collected and routed via a catch pit to a dedicated storage lagoon where it would be held for treatment (DOC/3.1, para 3.12.6).

5.115 Incinerator bottom ash from the EfW plant would be moved to the open storage area of the MRF by tipper truck. Within the yard it would be handled by mobile plant. Requirement 26 would restrict the hours at which the processed ash could be collected from the site to 07.00 to 18.00 on weekdays and 07.00 to 14.00 on Saturdays. Requirements 32 and 33 would prevent ash (but not necessarily any other inert material) from off-site being imported for processing at the plant and would ensure that stockpiles are not more than 10 m high. Requirement 34 requires that a scheme to control dust from the area is approved by CBC and implemented for so long as the development is operational (see Appendix D, schedule 1, part 2).

5.116 NPS EN-3 at paragraph 2.5.62 states under the heading *'mitigation'* that *'reception, storage and handling of waste and residues should be carried out within defined areas, for example bunkers or silos, within enclosed buildings at EfW generating stations'*. Plainly, this would not be the case with the proposed MRF, and both the Councils and the 25TPCs, suggested in their representations that the MRF's failure to comply with the statement should lead the decision maker to refuse to make the DCO (BBC/9; CBC/9 and 25TPC/9).

5.117 We disagree for the following reasons. Firstly, the section in which the paragraph appears is headed – *'Biomass/Waste Impacts - Odour, insect and vermin infestation'.* It is clear from this heading and the other paragraphs in the section that the main concern to which the mitigation advice is directed is the potential for biodegradable waste to attract insects and vermin and to emit unpleasant odours. This concern is addressed in the application by the proposal to deposit all incoming waste in a reception bunker as part of the EfW plant inside a building with slight negative air pressure to assist in containing odours (APP/7.2). Also, residues from the flue gas treatment plant (which constitute hazardous waste) would be collected in a silo within a building (APP/3.1, para 3.13.34).

5.118 As to the incinerator bottom ash, clearly this is a *'residue'* and whilst it is proposed to place it initially in an (open-sided) building, after screening the IBA aggregate and metals would be stored in the open, outside any building (APP/3.1, s3.6). There is no suggestion, however, that doing so would cause odours or attract insects or vermin and, whilst open air storage could result in dust being emitted, this would be controlled by the scheme submitted and approved in accordance with Requirement 34. Further, noise emitted by plant handling the bottom ash would be controlled, along with other noise from the proposed facility, by Requirement 18 et seq.

5.119 It is also worth noting that the MRF would be some 300 m from the site boundary and 1000 m from the nearest residential property in Stewartby.

5.120 In our opinion, given these distances and the various controls imposed by the requirements referred to above, there is minimal potential for the 'open' storage of ash to cause material harm to the nearby environment. In particular, there is no evidence that the arrangement proposed would increase the risk of odour, insect or vermin infestation. Accordingly, whilst we acknowledge the conflict with paragraph 2.5.62 of EN-3, we conclude that this conflict is not a matter that should attract significant weight in our overall decision.

Impact on the Millennium Country Park

5.121 The Forest of Marston Vale was established by the Countryside Agency and the Forestry Commission in 1995. It stretches on either side of the A421 from the M1 to the southern outskirts of Bedford, and wraps around the eastern side of the town. The implementation of the forest is guided by the Marston Vale Trust's Forest Plan, the aim of which is to deliver environmental regeneration, whilst providing major recreation, landscape, biodiversity, cultural heritage and quality of life benefits.

5.122 The Marston Vale Millennium Country Park is near the centre of the Marston Vale Forest and immediately adjacent to the Rookery South Pit, being separated from it by the Marston Vale railway line. The Country Park is located on restored clay workings and characterised by large bodies of open water and significant areas of woodland planting. The Forest Centre building within the Country Park faces east, and therefore has its principal views directly towards the Rookery South Pit and the proposed development.

5.123 The Country Park and Forest Centre are owned and operated by the Marston Vale Trust. While regretting the adverse impact that the proposed RRF development would have on the landscape of the Vale and the attractiveness of the Park and Forest Centre, the Trust stated in its submission (MVT/2) that it was neutral on the application, provided that the Applicant agreed to fund mitigation to compensate for the impact on visitors and the impact on the Forest Centre businesses, and to contribute adequately to the creation of the Forest of Marston Vale.

5.124 Many representations drew attention to the adverse impact the proposal would have on the enjoyment of large numbers of visitors to the Country Park, suggesting that because of the physical presence and operation of the RRF, the DCO should be refused on this account.

5.125 This strength of feeling is perhaps surprising given the position of neutrality expressed by the Trust who consider that the design has been developed taking into account the landscape and key views from the Forest Centre. This has resulted in the stack being lowered by 10 m, the maximum building height being reduced by 7 m and a

green wall being introduced to the west facing end of the main building.

5.126 The Trust's submission (MVT/2) records the Applicant's agreement to provide a financial contribution towards the objectives of the Forest of Marston Vale Plan consisting of £250,000 for the first year of operation and £50,000 each year thereafter. It was further noted that a second formal access to the Country Park would be provided from Green Lane. Woodland planting would be provided around the perimeter of the application site and within the Country Park itself to assist screening the development. The planting and financial contributions would be secured through a deed of undertaking between the Trust and Covanta (mirroring the provision in the s106 Agreement between Covanta and the Councils), which would also provide for Covanta to contribute £10,000 each year from the first year of operation towards the Trust's electricity costs (see para 1.8 above).

5.127 Notwithstanding these measures, it was clear to us from our study of the photomontage in the ES (DOC/3.2, view 2) and our site visit that the planting proposed would only screen the lower levels of the RRF and, in time, serve to block some views of the plant from within the Country Park. From many parts of the Country Park, however, it seems to us that clear views of the development would remain and for those visitors walking the paths on the eastern side of the Country Park, near the railway, the plant would be a dominant feature that, for some, would materially detract from their enjoyment of their visit. In our judgement, the impact would inevitably be major and adverse. Accordingly, it is a matter that we conclude should attract significant weight in our decision as to whether or not to grant development consent for the proposal.

Impact on Stewartby Water Sports Club

5.128 Several matters of particular concern to the Club were raised in their various representations to us including:

- the effect the proposal might have on water quality in the Stewartby Lake;
- how noise, dust and odour associated with the plant would affect their facilities;
- the visual impact of the plant; and
- the effect the buildings would have on wind patterns on the lake and its use for sailing.

5.129 As to the first of these matters, the drainage proposals for the site are considered below (see para 5.158 et seq below). In essence, any foul or process water from the plant that would be discharged to the Mill Brook, and thence to Stewartby Lake, would be treated before discharge. Moreover, the design of the treatment plant proposed, and

the risks associated with its operation, are matters that will be scrutinised in due course by the EA in conjunction with the applications for EPs for the RRF. Any permit to discharge water to the Mill Brook would set both quantitative and qualitative limits for the effluent and these would be determined by the EA having regard to, amongst other matters, the quality and use of the receiving waters. Plainly, this would include the use the SWSC make of the lake. Accordingly, and having regard to the advice in EN-1, paragraph 4.10.3, we take the view that the need to regulate aqueous discharges from the facility in order to protect the interests of the SWSC is a matter that should properly be left to the EA.

5.130 As to noise, we were at one stage during the examination concerned regarding the potential for HGVs travelling to and from the RRF between 05.00 and 07.00 to cause disturbance to campers on the SWSC site. Subsequently, however, the Applicant proposed a change to the draft requirements, the effect of which would be to prevent HGVs coming to the site before 07.00 (see para 5.86 above). This should avoid campers being disturbed by noise from the HGVs when sleeping.[1] The Applicant further entered into an undertaking to erect and maintain two noise fences at the north-east corner of the SWSC site near to Green Lane and to maintain access to the site during construction (see para 1.8 above). Having considered the evidence submitted on the matter, our conclusion is that this is a fair response to the various concerns expressed by the Club and would prevent significant harm to their amenities of on account of noise from HGVs entering or leaving the plant or passing the site on Green Lane or the access road.

5.131 With regard to dust and odour, whilst we appreciate the Club's concerns, no evidence was provided to substantiate the fears expressed. Given the precautions to prevent such nuisance outlined in the application documents, and having regard to the consideration that the EA will give such matters when examining the EP applications, we conclude that these are not matters that should weigh significantly against the proposal in our decision as to whether or not to grant development consent for the proposal.

5.132 Visual impact, including the impact of the proposal on the SWSC, is a matter that is considered in paragraphs 5.49 et seq above.

5.133 Turning to the effect the building would have on wind patterns across the lake, the main plant buildings would be some 500 m from the edge of the section of the lake used for sailing. Whilst the EfW building would be large, the only potential for it to adversely affect

[1] In reaching this conclusion we recognise that some campers are likely to wish to remain asleep after 07.00. The camping areas on the SWSC site are, however, close to the railway. Hence there is significant potential for disturbance by trains which we understand are timetabled to pass the site before 07.00.

wind conditions on the lake would be at those times when the wind is blowing from the south-east quadrant.[1] Even then, the evidence is that the distance between the building and the main sailing area is such that any adverse effects would only be minor (APP/2.1, para 19.9). Accordingly, we conclude that this too is a matter that should not weigh significantly against the proposal in our decision as to whether or not to grant development consent for the proposal.

Rail Safety

5.134 Initially, Network Rail Infrastructure Limited (Network Rail) made representations regarding the need to include protective provisions in any DCO that might be granted in order to ensure the safety of the railway would not be compromised by the Applicant's proposed works (NR/1). These were subsequently agreed with the Applicant (APP/6.1) such that Network Rail were able to withdraw their objection (see para 7.111 below).

5.135 The main concern is the level crossing on Green Lane. This is situated some 70 m west of the proposed site entrance and would be crossed by virtually all HGVs and the majority of other vehicles going to and from the RRF. Currently, the crossing is controlled by an automatic half barrier and the DCO proposes that it should be upgraded to full barriers (see Appendix D, s1, part 1, Work No 9). This upgrade has not, however, been agreed with Network Rail who, at the time the examination closed, had still to complete their GRIP Stage 3 study (NR/3). Their advice is that they would only be in a position to confirm the appropriateness or otherwise of the full barrier crossing when the study is complete (ibid).

5.136 At the time of writing this report, we do not know the results of the study and it is possible that it may conclude that an alternative design to that proposed by the Applicant and included in the draft DCO should be adopted. Should this be the case, any such different arrangement would not be authorised by the DCO, and a separate permission for the upgrade to the crossing would have to be sought by the Applicant in order for the development to proceed.[2]

5.137 As to the various representations made regarding the adequacy of the Applicant's upgrade proposals, plainly it would be unwise for us to consider this matter without seeing the results of the GRIP Stage 3 study. Notwithstanding this, we found no evidence to suggest that the proposals would cause dangerous queuing across the railway, or be otherwise inherently unsafe. Equally, we found no evidence to support the argument that delays to road traffic at the crossing would

[1] Wind is estimated to blow from this direction for 11.6% of the time (APP/2.1, para 19.11).
[2] It should be noted that the Applicant would be unable to proceed with the development without upgrading the crossing to a programme agreed with Network Rail by clause 4(5) of the protective provisions for Network Rail (included as schedule 7 to the Order).

become unacceptable. Accordingly, we see no reason for these considerations to prevent the grant of development consent for the proposal.

The Bedford to Milton Keynes Waterway (BMKW)

5.138 The BMKW is a proposed new waterway, designed to link the Grand Union Canal at Milton Keynes to the River Great Ouse at Bedford. Work on the project is being led by the BMKW Consortium, members of which include, amongst others, CBC and BBC. The proposal is supported by the development plans of both authorities, but the route is not formally safeguarded (APP/2.1, paras 9.207 and 15.6). The extent to which design and construction of the waterway has been completed is variable. However, the point at which the route would pass under Green Lane and the Copart Access Road is constrained both by the local topography and nearby development. For practical purposes we are advised that the route in this area may be regarded as effectively 'fixed' (BBC/4, para 4.3.6; CBC/4, para 4.4.5 and RB/2, Appendix 9). The Applicant's proposed grid connections are buried cables from the RRF to the substations alongside the A421 which would cross the line of the waterway where it crosses Green Lane and the Copart Access Road.

5.139 The s106 Agreement provides, in summary, that Covanta will meet the costs of diverting or altering these grid connections if and when required to enable the construction and operation of the BMKW (APP/6.1.4, schedule 1, s13). The Councils argue, however, that more should be provided and seek a requirement that Covanta should construct or fund the construction of the culverts under Green Lane and the Copart Access Road and the section of waterway between them. (BCC/10; CBC/10).

5.140 As to the reasonableness of this suggestion, we appreciate the Councils' desire to further construction of the waterway and acknowledge that it has some policy support. However, this policy support is for 'green infrastructure' in general and it requires developers to make a contribution towards this, rather than fully funding individual projects (MBCS, policy DM16 and BBCS, policy CP22). Whilst green infrastructure includes the BMKW, the policies are of wider application. Given the contributions that the Applicant would make to the work of the Forest Plan (see para 5.126 above), the question is thus whether they should be required to fund construction of part of the BMKW in addition.

5.141 In essence, no works are proposed in the application for the DCO which would materially alter either Green Lane or the Copart Access Road at the points where the waterway is expected to cross. Whilst construction costs for the culverts might be increased on account of the presence of the proposed grid connections, the s106 Agreement

provides for Covanta to meet any such additional costs incurred by the BMKW consortium in diverting or protecting them.

5.142 Accordingly, we do not support the additional requirement sought by the Councils.

Rights of Way

5.143 The rights of way strategy for the proposal (DOC/ 2.11) proposes:

- upgrading the existing ‘circular’ right of way around Rookery North Pit to include cycle rights;
- upgrading the length of FP72 that runs parallel to Green Lane between the level crossing and a point near the Copart Access Road, again to include cycle rights;
- the creation of two short footpath/cycle links between Green Lane and the right of way around Rookery North; and
- the creation of a further short footpath/cycle link between Green Lane and FP72, close to the level crossing.

5.144 Two short lengths of footpath crossing the railway into Rookery South Pit from the Millennium Country Park are proposed to be extinguished. Both routes, whilst shown on the definitive map, are effectively short stubs and do not lead anywhere. Under the terms of the s106 Agreement, Covanta are required to agree proposals for upgrading and maintaining the rights of way, before undertaking the work. We are satisfied therefore that alternatives would be provided to enable these public rights of way to be extinguished.

The Grid Connection

5.145 NPS EN-1 (section 4.9) advises that it is for the applicant to ensure that there will be a connection to the grid. The proposed RRF would be connected to the grid via underground cables (Work No 6). These would run in ducts along the access road to a point near Green Lane before turning to pass under the Marston Vale railway line and across the entrance to the SWSC. Thereafter, they would run in ducts along Green Lane to EDF’s substations located either side of the A421. Two cables would be provided; a 33 kv main connector and an 11 kv standby power supply for the EfW facility (APP/3/1, Section 3.9).

5.146 The protective provisions agreed with Network Rail would ensure that the cables are installed and maintained having due regard to the need to avoid disruption to the railway (see para 5.134 above). Disruption to SWSC’s access from cable installation works would be mitigated by the undertaking entered into by the Applicant in favour of the Club (see para 1.8 above).

5.147 Given the arrangements noted above we are satisfied about the proposed grid connections.

Readiness for Combined Heat and Power (CHP)

5.148 NPS EN-3 states at paragraph 2.5.26:

> *'The Government's strategy for CHP is described in Section 4.6 of EN-1, which sets out the requirements on applicants either to include CHP or present evidence in the application that the possibilities for CHP have been fully explored.'*

5.149 At paragraph 2.5.27 it continues:

> *'Given the importance which Government attaches to CHP, for the reasons set out in EN-1, if an application does not demonstrate that CHP has been considered the IPC should seek further information from the applicant. The IPC should not give development consent unless it is satisfied that the applicant has provided appropriate evidence that CHP is included or that the opportunities for CHP have been fully explored. For non-CHP stations, the IPC may also require that developers ensure that their stations are configured to allow heat supply at a later date as described in paragraph 4.6.8 of EN-1 and the guidance on CHP issued by BIS in 2006.'*

5.150 The application was accompanied by a report setting out the proposals for development of CHP at the site (DOC/6.3). The report demonstrates that the potential for CHP to be delivered as part of the development has been explored. Potential users of heat are identified and discussions with them have been initiated. Whilst it appears that the timetable for working up a detailed CHP proposal set out in the report has already slipped significantly, the evidence is that the Applicant remains committed to developing a CHP facility at the plant when commercially viable. To this end:

- Requirement 25 would oblige the Applicant to build and maintain the EfW facility with steam and hot water pass-outs in place and space reserved in the building for the other plant and connections necessary to facilitate delivery of CHP (i.e. the plant would have to be 'CHP enabled'); and
- The s106 Agreement requires the Applicant to use reasonable endeavours to obtain customers for heat from the plant and to provide evidence of this to the Councils on an ongoing basis.

5.151 On the evidence, we are satisfied that the potential for CHP has been fully explored as part of the preparation of the application. We are further satisfied that, should the development proceed, appropriate arrangements would be put in place to ensure (i) that the plant is CHP enabled and (ii) that marketing of CHP continues with a view to developing a CHP facility at the plant when commercially viable. We conclude therefore that, having regard to the advice in NPSs EN-1 and EN-3, the proposed development's readiness for CHP is not a

matter that should lead us to refuse to grant development consent for the proposal.

Ecology and Biodiversity

5.152 Natural England advised in their relevant representation that they had *'no objection to the proposals'* given that there are *'no European sites…… within the vicinity of the proposals that could be significantly affected.'* Consequently no appropriate assessment is required.[1] Further, Natural England were satisfied, based on the air quality assessment carried out by consultants for the Applicant, that the proposals would be *'unlikely to have a significant impact on any Sites of Special Scientific Interest'* (NE/1).

5.153 As to the more local nature conservation and biodiversity interests, the site itself comprises part of The Rookery which is designated as a County Wildlife Site (CWS). Features of particular interest include great crested newts, stoneworts and invertebrates. The site is also used by a range of breeding and wintering birds and reptiles. Bats forage and/or commute in and around the site.

5.154 With regard to the impact of the proposal on the site, this has to be viewed in the context of the approved LLRS. This will inevitably result in major disturbance of existing species and habitat in Rookery South Pit and, at the time of our second site visit, ecologists were on site attending to traps set to catch reptiles and great created newts (which we understand were being transferred to reception areas in Rookery North Pit and elsewhere). Given this disturbance, and the limited size of the proposed RRF relative to that of the CWS, the potential for the RRF to harm to the biodiversity interests of the site would be small, both during construction and operation.

5.155 Notwithstanding this, it is important that the landscaping and other features associated with plant are designed and subsequently maintained having regard to the desirability of maximising their habitat potential, and that appropriate precautions are taken both during construction and subsequent operation of the plant to avoid any unnecessary harm to nature conservation interests. This would be secured by Requirement 40.

5.156 Whilst no CWS other than The Rookery would be directly impacted by the proposal, there are a total of around 20 CWSs within 10 km of the site that could potentially be adversely affected by acid, nitrogen or other depositions from the EfW facility. The ES concludes, however, that the operation of the plant would have no significant impact on the habitats present in any of these sites (DOC/3.5, para 12.9.13). This conclusion was not contested by the authorities responsible for the sites.

[1] NPS EN-1, paragraph 4.3.1.

5.157 We accordingly conclude that there is no reason to refuse to grant development consent for the proposal on ecological grounds.

Flooding and Surface Water Drainage

5.158 Several representations were received, for example from Woburn Sands and District Society, arguing that the proposal would increase the risk of flooding. The application was accompanied by a Flood Risk Assessment (DOC/4.4) prepared in response to the requirement for such an assessment laid down by NPS EN-1, paragraph 5.7.4.

5.159 As noted above, Rookery South is a former brick pit. It is subject to shallow seasonal flooding. It is crossed by a small watercourse (the Mill Brook) which drains a predominantly rural catchment of 4.5 km^2. The Mill Brook passes through a culvert under the Marston Vale branch railway line before discharging into the Stewartby Lake.

5.160 In its current condition, parts of the Rookery South Pit are subject to flooding, and a hydraulic model developed in conjunction with preparing the LLRS showed that floodwater from the Mill Brook may discharge into the Pit during a 1 in 100 year flood event (DOC/4.4 para 10.4.2). With the LLRS in place, any overflow from the stream would be 'managed' and channelled to a new attenuation pond from which it would be pumped into the Mill Brook at a maximum rate of 23 l/s (2,000 m^3 per day) in accordance with the terms of an existing discharge consent. A second pump would allow it to be pumped for storage in the Rookery North Pit. This strategy was agreed with the EA and the River Ivel Internal Drainage Board (ibid, paras 7.3.2 and 10.4.3).

5.161 Further modelling was undertaken to support the present application for a DCO. This showed that, whilst floodwater would discharge into Rookery South Pit during a 1 in 100 year event, the site for the RRF (which it is proposed to raise as part of the LLRS) would be approximately 3 m above the predicted flood level (ibid, para10.11.2) . During a 1 in 1000 year 'extreme' event, floodwater is predicted to discharge immediately upstream of the railway and to flow along the highway and across the car park towards the attenuation pond. The predicted depth and speed of flow are modest, however, and would not compromise access by either vehicles or pedestrians (ibid, para 10.10.3 et seq).

5.162 Having regard to the above, the Applicant agreed with the EA that the platform on which the RRF would sit should be classified as Flood Zone 2 (ibid, para 10.11.2).[1] Given that the development would be located outside of the floodplain, it was further agreed that the proposals would not give rise to any loss of floodplain storage or

[1] For definition of Flood Zone 2 see PPS 25, Annex D.

interrupt the flood routing process (ibid, para 10.12.1). We therefore see no reason to refuse a DCO on flooding grounds.

5.163 As to the proposals for surface water drainage, modelling showed that it would be possible to drain the impermeable surfaces associated with the RRF to the LLRS attenuation pond without the pond overflowing during an extreme flood event (ibid, s11).[1]

5.164 Water running off from the MRF is expected to be contaminated. It is therefore proposed to discharge it to a catch pit and collection lagoon within the MRF from which it would be treated and pumped back to the EfW plant for use as process water. Domestic foul water flows (from toilets, showers and the like) would also be (separately) treated and pumped to the EfW plant for use as process water. Should at any time the combined volume of treated water from these sources exceed the available storage capacity in the EfW plant, then it is proposed to discharge the surplus to the attenuation pond (APP/3.2, Appendix 2.5).[2]

5.165 We agree that there is potential for pollution from the plant to enter the watercourse in this way and this potential was a source of concern to SWSC and others (SWSC/4). However, the treatment plant design and operation would be scrutinised by the EA in conjunction with the EP applications and any permit granted would set standards for effluent quality designed to protect the receiving watercourse (including proposals for monitoring discharge water quality). Given this, we see no reason to refuse development consent for the proposal on account of the foul water drainage strategy proposed.

Socio-Economic Effects

5.166 The immediate area in which the plant is proposed to be located is one where the average quality of life is among the best in the country as measured by the Index of Multiple Deprivation (DOC/3.1, para 15.6.12 et seq). The area has a lower unemployment rate than the national average, albeit that the trend has been upwards as the recession has affected the economy (ibid, para15.6.37).

5.167 In terms of the effect that the plant would have on the socio-economic well-being of the area, an average workforce of around 320 persons

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[1] It should be noted that whilst re-profiling of the southern bank of the attenuation pond is proposed, any resultant increase in the pond's storage volume is not required for flood attenuation purposes. Similarly, whilst a water feature is proposed as part of the development, this is not required to attenuate surface water run-off.

[2] It should be noted that when the application was made it was anticipated that all domestic foul water and surplus run-off from the MRF would be pumped off-site to Anglian Water's Stewartby Sewage Treatment Works STW). The strategy was revised, however, following Anglian Water's advice in November 2010 that the Stewartby STW does not have capacity available to accommodate the additional flows from the RRF (see para 3.15 et seq above).

is predicted to be required during the 39 month construction period. When operational the plant is expected to employ 80 full time permanent staff. Salary levels for these staff are likely to be above the average for the area. In both phases the majority of the jobs are likely to be suitable for local residents. However, it is likely that some of the jobs requiring a specific and rare skill set would go to people currently resident outside the area. In both phases the employment available on the site is expected to increase the demand for locally sourced goods and services, leading to modest indirect/induced benefits and increased employment in the supply chain.

5.168 Overall our conclusion is that the jobs the plant would offer would be beneficial for the local economy.

5.169 As to other socio-economic effects, the proposal to provide a visitor centre/educational facility within the plant is likely to be of some benefit and further limited benefits would arise from the improvements proposed to the public rights of way near the site. The Applicant's proposal to set up and contribute to a Community Trust Fund and to provide a modest subsidy to existing residents in the area by way of a contribution towards the cost of their electricity bills would also offer positive benefits. These matters would be secured by the s106 Agreement. The s106 Agreement would also secure initial and annual payments to be used to further the work of the Forest of Marston Vale (ibid). Collectively we expect these proposals to be moderately beneficial to the local community and, whilst some representations (for example the 25TPCs) suggested that more should have been offered (or the benefits should have been made more widely available), we found very little by way of evidence to support this contention.

5.170 Turning to the possible disadvantages, the areas of greatest concern locally centred on the effect the proposal would have on local house prices and the area's attractiveness for tourism and as a place to set up or expand a business.

5.171 Paragraph 5.12 7 of EN-1 advises that limited weight should be given to assertions of socio-economic impacts that are not supported by evidence. In this regard, such studies that have been undertaken on the effects plants such as that proposed have had on house prices have tended to be inconclusive (DOC/5.5, s3.3). On the latter, whilst we can appreciate people's concerns, we found nothing to substantiate the view that the area's potential as a tourist destination or attractiveness as a place to do business would be significantly harmed were the proposal to go ahead. Accordingly, we take the view that these concerns should not attract significant weight in the overall balance.

6 THE PANEL'S CONCLUSION ON THE CASE FOR DEVELOPMENT

6.1 As noted above at paragraph 4.3, the suite of Energy NPSs was formally designated on 19 July 2011. They provide the primary basis for decisions made by the IPC. Our conclusions on the case for development contained in the application before us are therefore underpinned by the advice therein.

6.2 The importance that Government attaches to the provision of new energy generating capacity is clearly set out in NPS EN-1. Paragraph 3.13 in that document requires the IPC to assess all applications for development consent *'on the basis that the Government has demonstrated that there is a need for [the types of infrastructure covered by the NPSs] and that the scale and urgency of that need is as described for each of them…'*. Paragraph 3.14 states that *'the IPC should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008.'* Paragraph 3.3.24 states that *'it is not the Government's intention to set targets or limits on any new generating infrastructure to be consented in accordance with the energy NPSs*.'

6.3 As to renewable energy, paragraph 3.3.10 of EN-1 advises that '*the Government is committed to increasing dramatically the amount of renewable energy capacity*' and that increasingly this capacity *'may include plant powered by the combustion of biomass and waste….'.* Paragraphs 3.4.3 and 3.4.4 say the principal purpose of the combustion of waste is *'to reduce the amount of waste going to landfill in accordance with the waste hierarchy and to recover energy from the waste as electricity or heat. Only waste that cannot be reused or recycled, with less environmental impact and would otherwise go to landfill should be used for energy recovery.'* The ability of EfW *'to deliver predictable, controllable electricity is increasingly important in ensuring the security of UK supplies.'*

6.4 Paragraph 3.3.15 of EN-1 emphasises the urgency of the need for new energy NSIPs to be brought forward *'as soon as possible'.* More specifically, paragraph 3.4.5 advises that *'it is necessary to bring forward new renewable energy generating projects as soon as possible. The need for new renewable energy generation projects is therefore urgent*.'

6.5 Paragraph 2.1.2 of NPS EN -3 reaffirms the principle that '*the IPC should act on the basis that the need for infrastructure covered by this NPS has been demonstrated.'* Paragraphs 2.5.11 and 2.5.13 state that 'the *IPC should not be concerned about the type of technology used' and 'throughput volumes are not, in themselves, a factor in IPC decision-making as there are no specific minimum or maximum fuel throughput limits for different technologies or levels of electricity*

generation.' Paragraph 2.5.18 states that '*waste combustion plants are unlike other electricity generating power stations in that they have two roles: treatment of waste and recovery of energy.'*

Assessing the Impacts

6.6 Turning to the range of potential impacts that would arise in the case of the proposed development (see Chapter 5 above), we find that, the plant would be significantly larger than required to serve the (former) Bedfordshire and Luton area (see para 5.33 et seq above), and as such in conflict with the development plan (see para 5.8 above). Notwithstanding this we conclude that the benefits in sustainability terms of having a single large plant such as that proposed would be significant as compared to the alternative of developing a number of smaller plants positioned more closely to the source of the waste (ibid).

6.7 Given the advice in NPS EN-1 regarding the urgency of need for new renewable energy generating projects (see para 6.3 above) and the further advice in NPS EN-3 regarding how the IPC should view commercial matters, we conclude that there is no reason to refuse to grant the DCO on the grounds that the proposed development would be likely to undermine the waste hierarchy, result in an excess of waste treatment capacity in the area, and/or displace alternative (preferable) proposals for waste treatment (see para 5.37 above).

6.8 We further conclude that, with the various safeguards that could be secured by the requirements and the s106 Agreement, there is no reason to refuse grant development consent on account of the widespread concerns expressed regarding the impact the proposal would have on the local highway network and those using it (see para 5.74 et seq). Similarly, whilst the form of the improvements required at the Green Lane level crossing had not been finalised by the time the examination closed, we see no reason for the grant of development consent to be frustrated on this account (see para 5.137 above). We are satisfied also about the proposals for amending rights of way (see para 5.144 above).

6.9 With regard to noise, our view is that the safeguards that would be provided by the requirements and the undertaking the Applicant entered into in favour of the SWSC are critical (see para 1.9 above). With this mitigation in place, coupled with our modification to Requirement 17, we conclude that there is no reason to refuse to grant development consent on account of the impact the proposal would have on the living conditions of those potentially affected by noise from the plant (see para 5.83 et seq above).

6.10 Any adverse effect that emissions from the plant would have on local air quality, including considerations relating to the effect on the health of local residents, are matters that we are satisfied should not attract

significant weight in our decision, having regard to the scrutiny that the EA would give these matters when considering the applications for EPs for the development (see para 5.100 et seq above). We are satisfied that, given the safeguards that the agreed requirements would achieve, the impact of lighting is not a matter which should attract significant weight in our decision (see para 5.112 above).

6.11 As to the MRF, the proposal is to store incinerator bottom ash in an open storage yard. This would not accord with the advice in paragraph 2.5.62 of NPS EN-3 which calls for reception, storage and handling of residues from EfW generating stations to be carried out within enclosed buildings. We nonetheless take the view that it would not be reasonable to refuse to grant development consent on this account having regard to the minimal potential for ash stored in the way proposed to cause material harm to the nearby environment (see para 5.120 above).

6.12 On other matters we find no reason to refuse the DCO on flooding grounds (see para 5.162 above) or on account of the foul water drainage strategy proposed (see para 5.165 above). With regard to harm to ecological and biodiversity interests we note that Natural England *'had no objection to the proposals'* (see para 5.152 above) and that the potential for the RRF to harm the biodiversity interests of The Rookery CWS would be limited having regard to the works already approved in conjunction with the LLRS (see para 5.154 above). Overall we conclude therefore that there is no reason to refuse to grant development consent for the proposal on account of its impact on features of ecological or biodiversity interest (see para 5.157 above).

6.13 We are satisfied about the proposed grid connection arrangements (see para 5.147 above), the inter-relationship with the BMKW (see para 5.142 above), and the application for CHP reinforced by Requirement 25 and the s106 Agreement (see para 5.151 above).

6.14 With regard to socio-economic matters, we conclude that the jobs and the various benefits to the local community that would be secured by the s106 Agreement would be moderately beneficial (see paras 5.168 and 5.169 above). Also, whilst several interested parties expressed fears that the proposed development would adversely affect house prices in the nearby settlements, evidence on this was inconclusive. We accordingly take the view that these matters should not attract significant weight in the overall balance (see para 5.171 above).

6.15 As to the effect on the immediate neighbours we conclude that the concerns expressed by the SWSC regarding dust, odour and the effect the proposed development would have on wind patterns across their sailing lake should not weigh significantly against the proposal (see paras 5.131 and 5.133 above). Similarly, we conclude that the Applicant's undertaking to erect and maintain noise barriers around

the corner of the SWSC site would prevent significant harm to their amenities on account of noise (see para 5.130 above).

6.16 With regard to the impact on the Millennium Country Park, the declared position of the Marston Vale Trust is one of neutrality, given the mitigation that would be secured through their Agreement with Covanta. Notwithstanding this it was clear from the photomontages provided that the mitigation planting would not effectively screen the upper parts of the building as it would be seen from the Forest Centre. Also, there is no doubt in our minds that the size and scale of the building would tend to appear 'overwhelming' to walkers on the paths closest to the edge of the site and the railway line. This to our minds would be a significant disadvantage of the proposal to be weighed in the balance (see para 5.127 above).

6.17 Turning to visual impact, the area surrounding the proposed plant, whilst formerly scarred by the brickworks, their associated clay workings and subsequent landfill operations, is now predominantly rural in character. The site is within the Marston Vale growth area and it is common ground that the area is one subject to change (see para 5.45 above). The evidence is that for the most part, large scale changes will occur around the fringes of Bedford and that, with some exceptions[1], new built development in the part of the Vale near to The Rookery, will be at a much smaller scale than the proposed RRF.

6.18 Given this, the evidence presented and our observations during the site visit, there is no doubt in our minds that the proposed RRF would be widely visible in the landscape. This visibility would not be materially reduced should the plant throughput be smaller (see para 5.56 above). And, whilst screening bunds and planting could soften the appearance of the plant and hide much of the ground level activity from sight, as it matures, it would do nothing to screen the upper levels of the building and the stack. Inevitably, the plant would be seen from many of the more distant viewpoints in the surrounding landscape as an essentially industrial plant in a rural location (see para 5.58 above). From close quarters our conclusion is that its presence would be 'overwhelming'. This weighs substantially against the proposal.

6.19 As to design, we note CABE's endorsement of the 'functional' design approach proposed by the Applicant, but give this endorsement limited weight for the reasons given in paragraph 5.62. Notwithstanding this there is no evidence to suggest that any alternative design approach with, for example, a curved roof, would materially reduce the visual impact of the plant and we see no reason to refuse the DCO on design grounds.

[1] Particularly NIRAH.

6.20 With regard to the impact on heritage assets we acknowledge the EH view that the settings of several nearby Scheduled Monuments or listed buildings would be harmed if the development were to proceed. However, we were not persuaded that the settings would be fundamentally damaged or the heritage values of the assets in question reduced to such an extent as to be unacceptable (see para 5.72 above).

Overall Conclusion on the Case for Development

6.21 NPS EN -1 (para 4.1.2) advises that, subject to the provisions of s104 of the Act[1], the starting point of our determination is a presumption in favour of granting consent to applications for energy NSIPs.

6.22 In reaching our conclusions on the case for the proposed development we have had regard to the relevant NPSs, the local impact reports submitted by the Councils, and all other matters which we consider are both important and relevant to our decision. We have further considered whether determining this application in accordance with the relevant NPSs would lead the UK to be in breach of any of its international obligations where relevant, including the objective in the rWFD to minimise the negative effects of waste management on the environment. We have also considered our own and the Infrastructure Planning Commission's legal duties such as under the Human Rights Act 1998 and the Equality Act 2010. We have concluded that in respect of the case for development we and the Commission in whose name the Order will be made have complied with such duties.

6.23 Bringing the above together, we find no reason to refuse development consent for the proposal on the grounds of the impact it would have on the waste hierarchy or on the grounds that it would displace alternative (preferable) proposals for waste treatment in the area. With the safeguards that would be secured by the requirements and the s106 Agreement, we further conclude that there is no reason to refuse development consent on account of the concerns expressed regarding the impact the proposal would have on traffic in the locality or highways safety or rights of way. We also conclude that noise and lighting associated with the plant would not adversely affect the living conditions of those living nearby or the amenities enjoyed by visitors to the Millennium Country Park or the SWSC to an extent sufficient to justify refusal of the application. And, whilst widespread concerns were expressed regarding the impact that emissions from the plant would have on air quality and the health of those living locally, this is not a matter that, in our view, would justify us not granting consent for the development, given the scrutiny that these matters will receive from the EA as they consider the EP applications for consent for the proposed development to operate.

[1] Including adverse impacts from the development not outweighing the benefits.

6.24 In a similar vein we conclude that there is no reason to refuse the DCO on the grounds of the impact the proposed development would have on features of ecological and biodiversity interest or on flooding and drainage grounds. We are satisfied with the grid connection arrangements, inter-relationship with the BMKW, and arrangements for CHP. Socio-economic impacts would be beneficial overall, to the extent that they can be accurately assessed.

6.25 Conversely, we conclude that the proposal would appear as an essentially industrial plant in a rural location and that when viewed from close quarters its presence would be 'overwhelming'. There is no doubt in our minds that its presence would be seen by many local residents as a 'step backwards' towards re-industrialisation of the Vale, in conflict with those policies aimed at restoring and 'greening' the area following the closure of the brickworks and the subsequent landfilling of the former clay pits. This consideration weighs heavily against the proposal.

6.26 Alongside this we note the Government's strong support for energy generating plants, including those fuelled by waste. The need for such plants is stated to be *'urgent'* and, in our opinion, the benefits of meeting this need outweigh the adverse impacts of the development in visual terms and all other matters considered by us during the course of the examination.

6.27 Accordingly, we conclude that, in development terms[1], the case for granting development consent for the plant proposed should succeed.

[1] As opposed to considerations relating to the compulsory acquisition of land and rights.

7 COMPULSORY ACQUISITION MATTERS

The Request for Compulsory Acquisition Powers

7.1 The application for the DCO seeks compulsory acquisition powers both to acquire land and to acquire rights over land. The Order Land covers an area of approximately 130 ha. A brief description of the site and the surrounding area is included in Chapter 3 of this report.

7.2 The application also seeks powers including various matters set out below the details of which are included in the articles and schedules of the Order as follows:

- Street Works, article 9, schedule 2;
- Public rights of way, article 10, schedule 3;
- Temporary stopping up of streets, article 11, schedule 4;
- Access to works, article 12, schedule 5; and
- Temporary possession, articles 24 and 25, schedule 6.

7.3 The application was accompanied by a Statement of Reasons, a Funding Statement, a plan showing land which would be acquired or over which rights would be acquired and a Book of Reference.

7.4 The Book of Reference (DOC/1.8) identifies 93 plots of land (the Compulsory Acquisition (CA) Land)[1] and these are shown on the Land Plan included with the application (DOC/2.5). With regard to 30 plots shown coloured pink on the Land Plan the power is sought to acquire the land and with regard to a further 63 plots shown coloured blue on the Land Plan the power is sought to acquire rights over the land to enable the proposed development to take place.

7.5 The Statement of Reasons (DOC/1.6) states that certain plots are affected by a restrictive covenant included in a transfer dated 17 March 1988 between (i) London Brick Property Limited; (ii) British Agricultural Services Limited; (iii) Hanson Brick Limited; and (iv) London Brick Company Limited which provide that these plots may not be used for any ‘Protected Business’. ‘Protected Business’ is defined in paragraphs 5.4.2 and 5.4.3 of the Statement of Reasons and includes the use of the land for the purposes for which the DCO application is made.

7.6 The restrictive covenant affects all the plots shown coloured pink on the Land Plan.[2] Those who are entitled to the benefit of the covenants are listed in the schedule enclosed at page 95 of the Book

[1] Whilst the Book of Reference refers to 93 plots, plot 66 has not been allocated and is thus not shown on the Land Plan but an additional plot 29/1is included.
[2] Also shown coloured green on the plan accompanying the Applicant’s representations dated 9 May 2011 (APP/3.2, Appendix 3.1).

of Reference under the heading 'Land benefiting from Covenants Listed in Part 2'.

7.7 Further, it is proposed to override an easement in favour of Hanson Building Products Limited over plots 31, 68, 70 and 79, the extent of which is shown on the Land Plan coloured pink and cross hatched blue.

7.8 A number of the plots comprise land in respect of which some protection against compulsory acquisition (including the compulsory acquisition of rights) is given (Special Land) by requiring that the land in question may be subject to Special Parliamentary Procedure. Special Land comprises interests in 9 plots which are statutory undertakers' land, 35 plots which are local authority land and 11 plots which are open space land. These plots are listed in Parts 1 and 5 of the Book of Reference. Also included are 15 plots in which the Crown has an interest (Crown Land) listed in Part 4 of the Book of Reference.

7.9 The DCO seeks to incorporate the provisions of The Compulsory Purchase (General Vesting Declarations) Act 1981 and also a provision relating to the overriding of restrictive covenants in similar terms to those set out in s237 of The Town and Country Planning Act 1990. SI20(5)(a) of the Planning Act 2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO, and under s117(4) if a DCO includes such provisions it must be in the form of a Statutory Instrument.

What the Planning Act 2008 Requires

7.10 Compulsory acquisition powers can only be granted if the conditions set out in s122 and s123 of the Act are complied with. S122(2) requires that the land must be required for the development to which the DCO relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and must be proportionate.[1]

7.11 With regard to s123 we are satisfied that s123(2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.

7.12 S122(3) requires that there must be a compelling case in the public interest and the public benefits derived from the compulsory acquisition must outweigh the private loss which would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right.

[1]Guidance related to procedures for compulsory acquisition,DCLG February 2010.

But this does not mean that the compulsory acquisition proposals can be considered in isolation from the wider consideration of the merits of the project: there will be some overlap. There must be a need for the project to be carried out and there must be consistency and coherency in the decision making process.

7.13 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 us as 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 funds are available; and
- the Panel 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.

The Approach of the Panel

7.14 We recognised the significance of the request for compulsory acquisition powers in our first round of questions, particularly seeking assurances about the adequacy of financial resources provided by the Applicant to fund any compensation payments. We pursued this matter further in our letter of 11 April 2011 concerning a parent company guarantee to cover the estimated compensation liabilities, and again in a letter of 7 June 2011.[1]

7.15 We held a compulsory acquisition hearing commencing on 27 June 2011 to explore issues raised by affected parties, principally Waste Recycling Group (WRG) and the Councils. The main matters covered were:

- **Scale and need** - the justification for a development of the scale proposed;
- **Alternative sites** - whether the need could be met on an alternative site or in an alternative way (not requiring the grant of compulsory acquisition powers) having regard to NPS EN -1; and
- **Policy** - the policy context that should be applied when considering compulsory acquisition matters for a development in this location.

7.16 A final submission was made to us by the Applicant on 8 July 2011 containing, amongst other matters, a signed parent company guarantee and a planning obligation by undertaking given by Covanta

[1] Sent pursuant to Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010.

in favour of the Councils. These matters are considered in detail later in this chapter.

The Applicant's Case

7.17 The Applicant's case for the grant of compulsory acquisition powers is set out in the Statement of Reasons together with the Funding Statement and Alternative Site Assessment Report. Additional information relating to Crown Land, open space land, statutory undertakers land, local authority land and the Funding Statement was submitted in response to the Panel's questions and in Further Representations submitted by the Applicant.

Requirement for the compulsory acquisition of CA Land

7.18 Much of the CA Land is already under the control of Covanta under contractual arrangements with the freehold owner. Notwithstanding this, compulsory acquisition powers are needed in order to ensure that the land is available to the Applicant to construct and operate the development. Table 1, following paragraph 6.2.7 of the Statement of Reasons, sets out the purpose for which each plot is required.

Need for power to override rights and easements

7.19 The Applicant considers that the justification for the acquisition of the plots as set out in Table 1 demonstrates that the overriding of the restrictive covenant is for a legitimate purpose. Further, the Applicant considers that, given the availability of compensation, it is both necessary and appropriate for the powers to be given expressly authorising the benefit of the restrictive covenant to be overridden.

Alternatives to compulsory acquisition

7.20 Guidance requires that in relation to the compulsory acquisition of land it is appropriate to consider whether an alternative exists which does not require the use of powers of compulsory acquisition.

7.21 The Applicant sets out at paragraphs 6.4.1 to 6.4.19 of the Statement of Reasons (DOC/1.6) its approach and conclusion with regard to alternative sites. The Alternative Site Assessment Report (DOC/5.2) deals with its consideration of alternative sites and, it argues, demonstrates that Rookery South is an appropriate location for the development. The reasons for this are set out in paragraph 6.4.12 of the Statement of Reasons.

7.22 The Applicant further considered the deliverability of other sites within its defined waste catchment area but concluded only four sites (Rookery South, Calvert Landfill, Brogborough Landfill and Corby South-East) were capable of being delivered (without considering matters of ownership) (DOC/1.6, para 6.4.17). Notwithstanding this,

the Applicant argued that where sites were not in their control they were not true alternatives (DOC/1.6, para 6.4.3).

7.23 They also argued that even if an alternative site did exist and could be advanced in addition to the proposed development at Rookery South, the need for a number of generating and waste management projects means that Rookery South can be justified as well in its own right. Critically, Rookery South is available to develop now (DOC/1.6 paras 6.4.18 and 6.4.19).

Availability of funds for compensation

7.24 Accompanying the Statement of Reasons was a Funding Statement (DOC/1.7) in which the Applicant states that through its holding companies it has the ability to procure the financial resources required for the development, including the cost of acquiring any land and the payment of compensation (DOC/1.7, para 1.4). It also states that the capital resources of the Applicant or its holding companies would be used to meet any claims for blight (DOC/1.7, para 2.1).

7.25 In a subsequent submission in response to questions posed by the Panel, the Applicant, Covanta Energy Limited and Covanta Holdings Corporation, confirmed that they had obtained specialist compensation advice as to the amount of compensation they are likely to be liable to pay if the DCO is made and implemented and that the funds for compensation can be provided from Covanta Holdings Corporation's resources (APP/3.2, Appendix 2.19). Copies of Covanta Holdings Corporation's financial statements for the year ending 31st December 2010 were enclosed (APP/ 3.2, Appendix 2.9).

7.26 In response to a letter from the lead member of the Panel dated 7June 2011[1], the Applicant confirmed that a parent company guarantee would be given by Covanta Holdings Corporation to meet compensation liabilities secured by a Unilateral Undertaking under s106 of the Town and Country Planning Act 1990. This would be in place by the close of the examination and replaced or refreshed prior to the commencement of development or the exercise of compulsory acquisition powers.

Compelling case

7.27 Paragraphs 6.6.1 to 6.6.24 of the Statement of Reasons set out how the Planning Statement (DOC/5.1) supports the Applicant's argument for there being a compelling case in the public interest for the compulsory acquisition powers to be granted. Paragraphs 6.6.3 to 6.6.23 conclude that the development would be in conformity with the NPSs. It would:

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[1] Sent pursuant to Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010.

- not conflict with any important or relevant policies of the development plan;
- deliver important and relevant benefits (in addition to the supply of renewable energy and provision of a key part of the waste hierarchy) which would significantly outweigh the adverse effects and environmental burdens associated with the proposed development;
- contribute to the regeneration of Marston Vale;
- provide of a range of employment opportunities;
- provide visitor facilities;
- establish trust funds to serve the local community and Forest of Marston Vale;
- provide additional landscaping; and
- improve public access around the site to enhance the existing public rights of way network.

7.28 The Applicant considers that the project is financially viable and deliverable within a reasonable period and that it would be:

- in accordance with emerging national policy in relation to NSIPs contained in NPS EN-1 and NPS EN-3;
- required to meet a pressing national need for generating capacity;
- required to meet a national and regional need for waste management facilities;
- in accordance with regional and local planning policy both current and emerging; and
- entirely necessary and proportionate to the extent that interference with private rights is required.

7.29 On this basis the Applicant considers there is a compelling case in the public interest for the DCO to be made including compulsory acquisition powers.

Special considerations

Crown Land

7.30 Crown Land, which comprises plots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 15,37,38,39 and 40 is land vested in the Secretary of State for Transport (Highways Agency) pursuant to a compulsory purchase order associated with the construction of a new alignment of the A421.

7.31 The Applicant seeks the right to occupy the Crown Land in order to install cables and thereafter to maintain them and is seeking to conclude private treaty arrangements with the Crown for the necessary rights.

Open Space Land

7.32 The CA Land includes provision for the right to use open space land – plots 43, 44, 45, 47, 52, 72, 73, 74, 75, 76 and 77 – for the purpose of installing and keeping maintained electricity cables to connect to the electricity grid, and for the purpose of establishing and maintaining landscape and ecological improvements. In its first representations the Applicant advised that it was in the process of applying to the Secretary of State for a Certificate in accordance with s132(2) of the Act.

Statutory Undertakers Land

7.33 The CA Land interfaces with two substations owned by EDF to enable the connection of the development to the National Grid. It also includes land owned by Network Rail required to lay cables and to improve the Green Lane level crossing at Stewartby. The Applicant entered into discussions with both parties with a view to reaching agreements with them.

Local Authority Land

7.34 The Applicant's proposals include areas of public highway and other land where the Applicant requires powers to lay, retain and maintain cables for the purpose of connection to the National Grid.

Human rights

7.35 The Statement of Reasons acknowledges that as a consequence of the grant of compulsory acquisition powers there would be an infringement of rights under the Human Rights Act 1998, in particular Article 1 of the First Protocol, Article 6 and Article 8.

7.36 The Applicant states that it has weighed the potential infringement of the Convention rights against the potential public benefits and considers there would be sufficient public benefit arising from the grant of development consent but that public benefit can only be realised by the grant of the compulsory acquisition powers it seeks. In considering the impact of the use of the compulsory acquisition powers, the Applicant was mindful of the statutory rights to compensation for those affected to make representations to require a compulsory acquisition hearing to be held and the rights of challenge under s118 of the Act.

7.37 Against this background the Applicant considered that the interference was both legitimate and proportionate in the public interest.

The Objectors' Cases

7.38 Objections to the application for the grant of compulsory acquisition powers were received from BBC, CBC, Waste Recycling Group Limited (WRG), Network Rail Infrastructure Ltd (Network Rail), Eastern Power Networks Plc (EPN), the Highways Agency, the SWSC, Hanson Building Products Limited and Gardenvale Properties Limited.

The local authorities: BBC and CBC

7.39 Together BBC and CBC have legal interests in 35 plots but their interests are essentially as local highway authorities. Both Councils acknowledge the need for facilities to treat and dispose of residual waste arising within their area. Their concerns relate to the size of the facility proposed and the extent of the catchment area identified, which extends well beyond the boundaries of the Bedfordshire and Luton authorities. Additionally, they are concerned that the Applicant does not intend to limit the sourcing of waste from this extended area, because the proposed plant would operate as a merchant facility (i.e. available for use generally and not restricted to a specific contracting party).

7.40 For essentially the same reasons set out in their representations opposing the DCO, the Councils oppose the inclusion in the DCO of the powers of compulsory acquisition. They do so on the basis that if their representations were successful and development consent was not granted there would be no case for compulsory acquisition of rights over their land.

7.41 At the compulsory acquisition hearing BBC and CBC gave evidence as follows:

- **Policy** - NPS EN-1 states that the starting presumption in favour of NSIPs applies unless more specific and relevant policies set out in the relevant NPS clearly indicates that consent should be refused.[1] At Rookery South Pit the relevant NPS is EN-3 which makes it clear that (i) the object of generating energy is subservient to the need to comply with the waste hierarchy and (ii) that the type and scale of a proposed energy from waste facility should not prejudice the achievement of local or national waste management targets.[2]

- If all residual MSW and C&I waste in Bedfordshire and Luton were taken to Rookery South Pit, between 209,000 (the Applicant's figures) and 338,000 tonnes (the Council's figures) of residual waste would be imported every year to fuel the

[1] EN-1 Part 4 para 4.1.2.
[2] EN-3 para 2.5.70.

facility. Importing such a quantity of waste would undermine the principles of self-sufficiency and proximity which are promoted at all levels of waste policy (DOC BBCBC/5).

- **Scale and need** - Whilst the Councils accept the need for additional generating capacity in the UK, they do not accept the need for a facility on the scale of Rookery South and consider the need would be better met by a number of more local facilities. The widely ranging estimates of waste management capacity between the Applicant, the Councils and WRG was exacerbated because the Applicant only included existing operational capacity, though it did acknowledge some future capacity could be taken into account.

- In this case, and bearing in mind that the plant would not be operational until at least 2015 (assuming the timely grant of all consents required), the proposal should be assessed against the likely changes in capacity by that time. The Councils argued that in view of the increased pressure to avoid sending waste to landfill, it is expected proposals for other facilities will come forward so that there should be a significantly increased waste management capacity in the area. If Rookery South were to be permitted it would act as a disincentive to the development of waste management facilities of a scale that respected the self-sufficiency and proximity principles.

- **Alternatives** - Only if one assumes there is a need for energy from waste facility with a nominal capacity of 585,000 tonnes in the middle of the Applicant's own defined catchment area is there no alternative to the Rookery South proposal. If one does not, the Applicant's Alternative Site Assessment can be disregarded.

7.42 In summary, NPSs EN-1 and EN-3 do not seek to override waste planning policy and, if there is to be an exception to those policies, evidence must be produced showing why a deviation from the strategies is appropriate. Rookery South conflicts with national, regional and local waste planning policy and prejudices both the self-sufficiency and proximity elements of these policies. As such the Councils concluded there can be no compelling case in the public interest for the authorisation of compulsory acquisition powers.

Waste Recycling Group Ltd

7.43 WRG submitted in February 2011 a written representation objecting to the compulsory purchase of its interests. The submission was supported by detailed evidence on policy, need and alternatives.

7.44 WRG enjoys the benefits of the restrictive covenant described in paragraphs 7.5 and 7.6 which affect all the plots which it is proposed

to acquire by compulsory acquisition. It owns the subsoil of plots 22 and 23 and land interests which benefit from the restrictive covenants namely freehold land marked G on the Extinguishment of Rights Plan (DOC/ 2.7) and a Caution against First Registration of the freehold of Grog Plant Stewartby marked S on the same plan.

7.45 A number of preliminary issues of principle were raised by WRG. At paragraph 2.6 of its representation it points out that the only type of waste facility specifically listed as NSIPs are hazardous waste facilities and waste water plants and that the Act is only triggered in this case as a result of the generation of energy that would occur. At paragraph 2.7 it states that there is no policy support for the use of compulsory acquisition powers in the waste management context and therefore no policy justification for state intervention in the realm of waste management.

7.46 At paragraph 3 the point is made that the tests for granting planning powers differs from those for granting compulsory acquisition powers and this should be borne in mind when considering the tests set out in s122. At paragraph 4 it is suggested that the statutory tests set out in s122 are in the wrong order and that the test as to whether or not there is a compelling case should be considered first and the requirement for the land should be considered only in the event that the compelling case test has been met.

7.47 WRG sets out the conclusions drawn from its evidence at paragraph 7 of its representations arguing that the Panel should conclude that a compelling case in the public interest has not been made out by the Applicant for the following reasons:

- **Scale** - the scale of the project is not justified. Neither the purported 'economies of scale' nor the extensive catchment area is borne out by the facts.

- **Need** - the principal justification for the project is the national need for energy generation. However, this can be met by small scale installations as well as a large-scale installation. The project would provide waste management capacity not matched by local and regional needs and the Applicant has grossly overestimated the amount of C&I waste that would be available. The Applicant's case is further undermined when one factors in the facilities within the catchment area and on its periphery that are either operational or at various stages in the development process.

- **Alternatives** - Rookery South should only be promoted over and above alternative sites if it is manifestly a better site in environmental terms. The legitimacy and comprehensiveness of the exercise on alternatives undertaken by the Applicant is undermined because of (i) the retrospective nature of the

Alternative Site Assessment and (ii) the failure to justify discounting the three alternative sites it did identify as deliverable other than by reference to a catchment area, the extent of which is not substantiated. The Applicant's approach wrongly assumes that any option would have to consider Rookery South but it has failed to examine a fundamental alternative, namely a dispersed or local waste management solution which would have led to a conclusion that there were alternative proposals which offer advantages over the proposed site.

- **Timing and Sustainability** - the proposed development is subject to the same uncertainties as to timing and delivery as the other sites and in the case of Rookery South this is exacerbated by the presence of the restrictive covenant.

- **Policy** - the wide catchment area is not supported in policy terms either by existing or emerging policy.

- **Public Interest** - the authorisation of compulsory acquisition would raise significant public interest issues and particular attention is drawn to:

    - adverse effects of long distance waste transportation;
    - likely effect of oversupply of energy recovery capacity;
    - more likely CHP application where there are smaller dispersed facilities;
    - prematurity in the context of the LDF process;
    - competition would be undermined; and
    - market confidence would be undermined if enforceability of private contracts were seen to be at risk.

- **Proportionality** - compulsory acquisition of the restrictive covenant would not be proportionate: there are alternative sites where compulsory acquisition is not needed and an excessive burden would be suffered by WRG. Elstow South, which has the benefit of planning permission for mineral abstraction with restoration by backfill of waste, has significant advantages given its proximity to the MRF at Elstow North. WRG’s concerns regarding the removal of the restrictive covenant are legitimate land use concerns.

7.48 WRG contend that when one takes all these factors into account and also applies the principle of proportionality, a compelling case in the public interest is not made out.

7.49 Following the Applicant’s second and third representations which had responded to WRG’s representations and to questions raised by the Panel, WRG submitted in June 2011 further representations. These

emphasised the distinction between planning and compulsory purchase, responded to the Applicant's representations regarding the demonstration of need, identified issues relating to waste policy and addressed competition issues.

7.50 In summary, these further representations concluded that:

- there remained a paucity of compelling evidence to demonstrate that the tests for granting compulsory acquisition powers had been made out by the Applicant;
- because there is an interference with property rights a higher threshold has to be met;
- the test for the grant of compulsory acquisition powers is significantly higher than those imposed for the grant of planning permission; and
- the Applicant had failed to demonstrate a need for the facility or that other alternative sites are not either readily available or likely to come forward within similar time scales and that there were significant risks of material adverse consequences.

Network Rail

7.51 Network Rail submitted representations objecting to the use of compulsory acquisition powers on the grounds that operational railway land, being part of the Marston Vale railway line, would be adversely affected. With regard to the proposed installation of a full barrier crossing at Green Lane and a new access to Green Lane, Network Rail indicated that a new access off Green Lane, leading to an increased volume of traffic over the level crossing, could introduce unacceptable risks to the railway.

7.52 However, discussions were taking place with the Applicant to agree protective measures whereby the Applicant would fund mitigation works. An options study was being carried out by Network Rail to determine the extent of infrastructure works needed. Network Rail would therefore seek protection for operational land and for the protection of the railway during construction and otherwise to protect its land and interests. It was envisaged that such protection would be contained in protective measures to be included in the Order. The Applicant would be required to take into account the recommendations of the level crossing options study and works deemed necessary at the level crossing, as well as appropriate asset protection measures to protect the operational railway and Stewartby station.

Eastern Power Networks Plc (EPN)

7.53 EPN in its representations noted that an existing electric line/electrical plant may be affected, wished to reserve its position pending a more

detailed assessment, and indicated if compulsory acquisition powers were being sought it would require appropriate compensation.

The Highways Agency (HA)

7.54 In its representations HA expressed its concerns in relation to the works being undertaken to the new A421 trunk road.

Stewartby Water Sports Club Ltd

7.55 SWSC submitted representations in which it noted the compulsory acquisition of rights which was proposed by the Applicant over its land. SWSC sought assurances as to how it would access its land during the construction works, that it would be adequately compensated and suggested alternative options for the route of the cables. It acknowledged that the Applicant had met with SWSC to discuss the position. SWSC maintained its concerns at the open floor hearing on the issues of access, noise and noise attenuation fencing.

Hanson Building Products Ltd

7.56 In its representations, Hanson confirmed that it owned various wayleaves over the land and had other rights across the site. It indicated that there was no prospect of an agreement being reached for Hanson to surrender its rights given the current terms of the offer - rights which secured valuable corridors needed by Hanson as its own development proposals emerged in the future.

Gardenvale Properties Ltd (Gardenvale)

7.57 Mr Gallagher is the sole shareholder of Gardenvale and also owns/controls Wixham First Ltd and Gallagher Elstow Ltd, the land owning and developing companies of the Wixhams development at Elstow. This adjoins the land owned by Gardenvale which benefits from the same restrictions in the 1998 transfer referred to at paragraphs 7.5 and 7.6.

7.58 Essentially Gardenvale's case was that:

- in its current form the DCO would constitute a breach of the Human Rights Act because it effectively deprives Gardenvale of its property rights and the Panel cannot be satisfied on the material before it that it would receive compensation;
- the Applicant has underestimated the compensation liability: for example the likely 'stigma' effect on the Wixhams and the apparent differing approaches of Gardenvale and the Applicant to a compensation valuation under article 16[1] would significantly increase the compensation payable and have a knock on effect

[1] Article 17 in the final form of the DCO at Appendix D.

on viability. Its application for draconian powers appears doomed to fail for want for example of bonded financial guarantees to cover all its costs; and

- the Funding Statement is defective; the Applicant is a man of straw with no guarantee of funds being available and there is uncertainty because funding is subject to final Board approval.

7.59 Further Gardenvale raised a number of other issues:

- since the works required by the Review of Old Mineral Permissions (ROMP) are outside the DCO they are not protected by restrictions in the 1998 transfer. The Statement of Reasons assumes the ROMP as a baseline and contemplates the implementation of the ROMP works, but such works would, it is argued, be injunctable by the beneficiaries of the restrictive covenant;
- two requirements in the DCO were challengeable. Requirement 3[1] relating to the type of waste would appear to be in conflict with the Environmental Permitting Regime of the EA, and Requirement 14[2] concerning land stability issues does not appear to have been factored into the Applicant's financial considerations;
- the MRF is part of the NSIP itself and not associated development as determined by the Applicant and by being treated as associated development there may be unassessed environmental consequences;
- the Applicant has failed to consider Circular 06/04 and to address the issue of a private sector company seeking effectively to step into the shoes of a public acquiring authority;
- there appears to be no evidence of the Applicant considering the potential range of high sums payable as compensation in the event that article 16 powers of the DCO to override are used in relation to the restrictive covenant;
- article 6(1) [3] of the draft DCO contemplates transfer to others of any or all of the benefit of the DCO provisions without safeguards as to the ability of the transferees to meet the Applicant's liabilities including the liability to pay compensation.

The Applicant's Response to the Objections

The Local Authorities: BBC and CBC

7.60 The Councils' position with regard to compulsory acquisition is somewhat unsatisfactory since they have made no representation specific to compulsory purchase of their land interests but simply rely

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[1] Requirement 2 in the final form of the DCO at Appendix D.
[2] Requirement 13 in the final form of the DCO at Appendix D.
[3] Article 7(1) in the final form of the DCO at Appendix D.

on their planning representations. It is notable that the Councils have included the site in their Waste Core Strategy Preferred Options Consultation Document as an appropriate location for a strategic waste facility. Even being aware of the restrictive covenant did not alter their attitude about the suitability of Rookery South for a waste facility and they saw the restrictive covenant impediment as a commercial concern.

7.61 Against this background, the Applicant queried the basis on which the Councils maintain an objection to the compulsory acquisition other than on planning issues. It is inconceivable that if development consent were to be given that the Councils would seek to frustrate the delivery of nationally significant infrastructure on account of interference with their property interests amounting to no more than the laying of cables beneath the surface of the highway. In these circumstances there is no further response to be made in the compulsory acquisition context - planning issues are dealt with in the consideration of the case for the grant of development consent.

WRG

7.62 In response to WRG the Applicant stated that the planning case it has advanced has demonstrated a compelling public interest in a manner applicable to both planning and compulsory acquisition contexts. The Applicant's response to a number of other issues raised by WRG is as follows.

7.63 The application is for a waste generating station with a capacity greater than 50 MW and as such is an NSIP with compulsory acquisition powers available to it under the Act.

7.64 Whilst different tests apply to the grant of compulsory acquisition powers and development consent there is an overlap and the nature of the case advanced is such that it demonstrates a compelling case in the public interest in a manner applicable to both planning and compulsory purchase.

7.65 WRG misunderstands the statutory process which is twofold: firstly a judgement is made as to whether or not the land is required to implement the development and only then is the test of whether there is a compelling case in the public interest applied.

7.66 In regard to criticism of the catchment area, it is important to consider the policy context in which the proposals are being made namely s104(3) of the Act which requires the Panel to determine the application in accordance with the relevant national policy statements.

7.67 Contrary to WRG's view, statements on scale and urgency in generic policies and the current approach to need in the NPSs, the Energy White Paper and the Supplement to PPS 1 are of great significance.

7.68 With regard to giving waste policy supremacy over energy policy, the correct approach is to have regard to policy in both areas and apply such weight as deemed appropriate in the light of the NPSs.

7.69 In response to WRG's argument that there are alternative sites which could be used to meet existing need without using compulsory acquisition powers:

- in view of the urgent need for additional renewable energy generation and the scale of the current need, the sites should not be looked at as alternatives – all are needed. The Government has not sought to cap the volume of development coming forward: quite the opposite. Paragraph 3.3.24 of NPS EN-1 states '*it is not the Government's intention in presenting the above figures to set targets or limits on any new generation infrastructure to be considered in accordance with the NPSs*';
- none of the alternative sites put forward by WRG are as capable of meeting national policy objectives as Rookery South: apart from the fact that they could not process the same volume they have not reached the same stage in the development process and cannot be truly be regarded as alternatives;
- the presence of the restrictive covenant will not cause delay since the compulsory powers would override it;
- the planning position will not be uncertain because there will be a sequential approach by the Panel which will consider the grant of the compulsory acquisition powers only after it has formed a view on the planning issues;
- WRG's suggestion that compulsory acquisition could only be justified if the Panel considered Rookery South was 'manifestly a better site in environmental terms' is wrong in law.

7.70 The use of the compulsory acquisition powers to override the restrictive covenant would not be anti-competitive but rather would enable the market to operate freely without artificial constraint, and if WRG suffered loss it would be compensated.

7.71 Proposals for Elstow South are inchoate in nature and if losses are demonstrated they would be compensatable.

7.72 WRG's approach to proportionality does not accord with that adopted by the courts and the context of cases referred to by WRG is different to the compulsory acquisition context.

7.73 It would be proportionate to approve the use of compulsory acquisition powers since the benefit to the public would be significant and the national need to provide new sources of renewable energy is urgent and compelling. The need to direct large quantities of residual waste from landfill is immediate and pressing; the interests which WRG seek to set against those needs are commercial in nature and compensatable.

Network Rail

7.74 The Applicant sought to conclude with Network Rail protective provisions acceptable to it. By a letter dated 8 July 2011 Network Rail advised the Panel that protective provisions (as submitted to the Panel on 6 June 2011) were agreed. As a consequence, provided they are incorporated in the DCO. Network Rail will withdraw its objection to the application.

EPN

7.75 EPN confirmed on 1 July 2011 that it has no objection in principle to the DCO provided that if EPN owns or operates any electric lines or electric plant that is acquired or temporarily or permanently occupied pursuant to the DCO either the rights to retain maintain and access such equipment are retained following the grant of the DCO or suitable alternatives are provided and relocation costs are met (APP/6.1.7).

The Highways Agency

7.76 The HA confirmed (APP/6.1.8) that it had no objections in principle to the Applicant's proposals and the installation of the grid connection beneath the new A421.

Stewartby Water Sports Club

7.77 A Unilateral Deed of Undertaking in favour of SWSC was signed by the Applicant on 8 July 2011 (APP/6 1.6). The undertaking was given by the Applicant so as to provide comfort to SWSC and to address the noise concerns raised by SWSC, notwithstanding the fact that the entire representation of SWSC in opposition to the project continues to be maintained.

Hanson Building Products Limited

7.78 In its second representations, the Applicant pointed out that the advantages of Rookery South in the northern Marston Vale Growth Area were considered in detail in its Planning Statement, and that the planning application to redevelop the former Stewartby Brickworks, though submitted in 2008 and still undetermined, was nevertheless explicitly considered in the ES. With regard to the alleged adverse impact on Stewartby Brickworks and Hanson’s adjoining land, the Applicant is unclear from Hanson’s representation as to how this would occur.

Gardenvale Properties Limited

7.79 Notwithstanding the non-appearance of Gardenvale at the compulsory acquisition hearing, at the request of the Panel the Applicant did address some of the issues they had raised. It was no

part of the Applicant's case that land or rights should be acquired or overridden without compensation; the DCO and the compensation regime provide a mechanism whereby any party which suffers loss would be entitled to recover full and fair compensation.

7.80 At the outset, the Applicant assessed liabilities which might arise if compulsory acquisition powers were used and has kept those liabilities under review in the light of representations made. Mr Chilton (Managing Director, Covanta Energy Ltd) in his letter of 29 June 2011 (APP/8.10) indicated that there was nothing in the representations regarding compensation payments which would deter the Applicant from implementing the project.

7.81 The Applicant does not accept that Gardenvale is entitled to compensation for the amounts claimed. In any event, it is not necessary for the Panel to consider the statutory basis on which the claim would be made. This question is one of compensation and if no agreement is possible it would fall to the Upper Chamber (formerly the Lands Tribunal) to consider. There can be no reasonable concern that the Applicant would be unable to discharge its financial obligations even if WRG were entitled to recover in the sum currently claimed.

7.82 The Applicant is in the course of providing a parent company guarantee by a party possessing assets in the region of $2.6 billion (circa £1.7 billion). Further, the company has offered to provide an updated parent company guarantee at the point of implementation of the DCO, secured by a planning obligation which would prohibit implementation prior to the Applicant having obtained approval from the local planning authority (CBC). The point at which compensation would accrue as a matter of law is the date on which the RRF commences operations. This necessarily follows the wording of the restrictive covenant the effect of which is to prohibit the use of the servient tenement for a protected business.

7.83 There are various assertions as to the extent of the loss which Gardenvale would suffer, but quite apart from the dispute as to the legal basis of the claim, the Applicant does not accept the quantum of loss put forward. However, the examination is not an appropriate forum to consider the quantum of compensation. Indeed the Act expressly provides that the Panel may disregard objections relating to compensation.

7.84 In reality Gardenvale raises only one question with which the Panel should be concerned, namely 'will the Applicant be able to provide compensation to those parties whose rights and interests are acquired or overridden?' In the light of the parent company guarantee to be provided and the safeguards as to the operation of the DCO and the planning obligation the certainty that appropriate compensation would be forthcoming can no longer reasonably be questioned.

The Panel's Conclusions

7.85 Our approach to the consideration of the granting of compulsory acquisition powers has been to address the requirements of s122 and s123 of the Act, the Guidance[1] and Regulations [2] and consider in the light of representations received and evidence submitted to the compulsory acquisition hearing whether a compelling case in the public interest has been made.

7.86 We are, however, mindful that the DCO considers both the development and compulsory acquisition powers and that the case for the grant of compulsory acquisition powers cannot properly be considered until the position regarding the development matters has been determined. There must be consistency and coherency and accordingly we have adopted a two-stage approach: we have first formed a view on the case for development, and then in this Chapter have proceeded on the basis of that conclusion.

7.87 Chapter 6 reaches the conclusion that in development terms consent should be granted. That being said, all the issues which arose in considering the case for development have also been considered in the case for the grant of compulsory acquisition powers. Some issues relevant to the consideration of the grant of development consent were examined further in the context of compulsory acquisition. For that reason, the Panel suggested to the Applicant and affected persons a number of areas which should be tested by cross-examination at the compulsory acquisition hearing. The areas in question were scale and need, alternative sites, and policy. However, the list was not exhaustive, and all affected parties were invited to suggest other areas that might be so tested, but none did so.

7.88 Turning now to the Act, the effect of s122(1) and s122(2) is to insist that the land is required for the development to which the development consent relates; effectively that the land needs to be acquired, or rights over it acquired or impediments upon it removed, in order that the development can be carried out. To reach our judgement on this we examined the case for all the plots included in the CA Land and the justification for their inclusion set out in Table 1 at paragraph 6.2.7 of the Statement of Reasons (DOC/1.6). We are satisfied that in the event of the grant of development consent for the RRF there will be a need to acquire the interests and rights in the CA Land and the powers sought in the DCO would be required in order to implement the development.

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[1] Guidance related to procedures for compulsory acquisition, DCLG February 2010
[2] The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and The Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

7.89 With regard to s122(3), we consider there is a number of principal issues to be considered in making the judgement as to whether or not there is a compelling case in the public interest.

Scale and Need

7.90 Need embraces two aspects: firstly, the need for additional energy generation; and secondly the need for infrastructure capacity to divert residual waste from landfill. NPSs EN-1 and EN-3 place considerable emphasis on the need to bring forward energy infrastructure and in various places the need is described as urgent.[1] We place substantial weight on this policy guidance and in particular where the NPSs direct that where the IPC is considering whether or not to grant consent for a renewable energy facility it should regard the need case as already proven[2] and further the statement in EN-1 that there is a presumption in favour of such development.[3] So far as justifying scale, NPS EN-1 advises that the provision of NSIPs is market based/market led and that the role of the planning system is to facilitate private sector investment in the provision of new infrastructure.[4]

7.91 WRG suggest that the Applicant is not entitled to rely on generic policies and general need for energy and waste management. We refute this; statements in the NPSs relating to such matters are in our view of considerable relevance to our decision. Further, we consider this to be an area which provides a good example of where consideration of the development and compulsory acquisition issues overlap with these issues being relevant to both and consider this approach to be both consistent and coherent.

Alternatives

7.92 The Applicant suggests that because of the deficit in waste recovery capacity in the catchment area and the need for renewable energy infrastructure, there is a requirement for other projects to come forward in addition to that proposed, and therefore discussion of alternatives is inappropriate. We note and understand the reasoning behind this suggestion but we have considered the case for alternatives argued both by the Applicant and WRG and reached our conclusion having regard to the guidance in paragraph 4.4.3 of EN -1 namely that *'the IPC should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) within the same timescale'.*

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[1] NPS EN-1 Part 3 para 3.1.3.
[2] NPS EN-1 Part 3 para 3.1.3.
[3] NPS EN-1 Part 4 para 4.1.2.
[4] See for example NPS EN-1 paragraphs 2.2.19, 2.2.24 and 3.1.2.

7.93 A number of points were put to us in the course of the compulsory acquisition hearing including the following:

- none of the alternatives is capable of delivering the same capacity;
- none of the alternatives has the same prospect of delivering further carbon savings by CHP;
- none of the alternatives would deliver the same benefits in terms of climate change or energy security (para 4.4.3 of EN-1 expressly emphasises the significance of such benefits in the context of alternatives); and
- there is no material prospect of any comparatively sized facility coming online within the same timescale.

7.94 We are of the view that there are no alternative sites to Rookery South in terms of delivery and timescale. At the compulsory acquisition hearing the Applicant submitted a letter dated 29 June 2011 written by Mr Chilton (the Managing Director of Covanta Energy Limited) which confirmed the company's intention to progress the project with every urgency (APP/8.10). But owing to the timing of its submission, and the fact that the author was not present to respond to questioning on it, we afford limited weight to it.

Policy

7.95 Concerning objections relating to waste particularly, the Councils and WRG argued that the proposed development conflicts with existing policies. The Applicant gave evidence highlighting the limitations of these policies and, whilst it did not accept that the proposed development was necessarily in conflict with them, if there was a conflict, the NPSs would prevail. S104(3) directs the Panel to determine an application in accordance with the relevant NPSs. The relevant NPSs in this case are EN-1 and EN-3. Paragraph 4.1.5 of EN-1 states *'Other matters that the IPC may consider both important and relevant to its decision making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS the NPS prevails for the purposes of IPC decision making given the national significance of the infrastructure..*

7.96 We considered policy conflict concerns but concluded that none were of such importance and relevance to deter us from determining in accordance with the NPS and that the adverse effects that might result from such policy conflicts do not outweigh the benefits of the proposal.

Funding

7.97 We are required to make a judgement as to whether adequate funding would be available, and indeed in this context we considered

and addressed many of the concerns raised by Gardenvale through questions and requests to the Applicant. Gardenvale, though copied in to these exchanges, made no comments thereon whilst expressing a view in its representation that it would seek the opportunity to address their case in more detail at the compulsory acquisition hearing. Gardenvale did not in fact appear.

7.98 The Act provides for the situation whereby private companies can be the recipient of compulsory acquisition powers. We examined the Funding Statement against the requirements and restrictions of the Act and the observations of Gardenvale. S106(1)(c) expressly provides that the Panel may disregard objections relating to compensation and in so far as Gardenvale's representation relates to the quantum or likely quantum of compensation we have disregarded it. But we do accept Gardenvale's assertion that a misunderstanding of the likely quantum of compensation could lead the Applicant to underestimate the likely compensation payable, which in turn could impact on viability and thus affect the argument for a compelling case.

7.99 Having read the Applicant's Funding Statement we considered the position was inadequate in terms of ensuring that the resources of Covanta Holdings would in fact be available to the Applicant.

7.100 Following questions raised by us we received from the Applicant an indication that a parent company guarantee would be available. A letter from the Applicant dated 9 May 2011 confirmed that specialist compensation advice had been received as to the amount of compensation which it would be liable to pay if the DCO was made including the requested compulsory acquisition powers, and that intergroup arrangements would ensure that the Applicant would be in a position to make such payments.

7.101 Following further exchanges between ourselves and the Applicant, the position by the close of the examination was that by Unilateral Undertaking the Applicant undertook not to implement any part of the proposed development or use compulsory acquisition powers until a parent company guarantee from Covanta Holdings was in place in the form agreed. The benefit of that guarantee would be available specifically to successful claimants for compensation arising from the exercise of compulsory acquisition powers. Amendments were suggested to Articles 7 and 17 of the final draft DCO to ensure that these safeguards would be effective in the event of a transfer of the benefit of the proposed DCO to a third party (APP/6.1.1). We deal with this matter in more detail in Chapter 8 dealing with the form of the Order. On the basis that such funding guarantees are in place we consider the Funding Statement and subsequent documentation adequate to support the case for a compelling case for the grant of compulsory acquisition powers.

Human Rights

7.102 A key element in formulating a compelling case is a consideration of the interference with human rights which would occur if compulsory acquisition powers were granted and used. The Applicant in its Statement of Reasons at Chapter 8 (DOC/1.6) argues that interference with human rights is justified on the grounds of the particular public benefits which would occur in the event of the development proceeding; that those affected are able to claim and receive compensation; and that both in terms of processes under the Act and in relation to the determination of the quantum of compensation there are legal rights to challenge for those aggrieved by any such decisions.

7.103 Gardenvale considered that granting development consent would constitute a breach of the Human Rights Act 1998 because it would deprive Gardenvale of its property rights and there was doubt about the Applicant's ability to fund the compensation which would be payable. As indicated above there were subsequent exchanges with the Applicant which led both to a change in the form of the draft DCO and the commitments made by the Applicant's parent company. As we have noted earlier, Gardenvale did not attend the compulsory acquisition hearing or comment on the exchanges between the Panel and the Applicant, and we can therefore reach no conclusion as to whether in the changed circumstances Gardenvale might itself have changed its view. But in any event, as a consequence of the provision of a parent company guarantee we do not consider that with regard to the compulsory acquisition of Gardenvale's interests there would be any breach of the Human Rights Act 1998.

7.104 WRG argues in section 6 of its February 2011 representations that it would not be proportionate to deprive WRG of the benefit it derives from the restrictive covenant by overriding it. We are of the view, however, that taking into account the above issues and our conclusions, it would be proportionate and that the benefits to the public would outweigh the loss to WRG which are effectively commercial in nature and can adequately compensated.

The Panel's conclusions on other issues raised by objectors

Bedford Borough Council and Central Bedfordshire Council

7.105 The Councils' objections were based on the development issues and no specific property-based objections were raised. We have therefore proceeded on the basis that in connection with the compulsory acquisition of the local authorities' interests in land, our judgement on the merits of the development case would be highly important and relevant to whether compulsory acquisition of these land interests should be authorised. On that basis we consider that compulsory

acquisition of the local authorities' interests should be authorised in this case.

Waste Recycling Group

7.106 Our conclusions about the issues raised by WRG are:

- *The order in which the tests set out in s122 are considered:* our view is that the first test to be applied should be whether the proposed development 'needs' the land to be acquired – i.e. it is required, and only when this judgement has been made should the more substantive consideration of whether there is a compelling case be addressed;
- *The only waste facilities in the Act which are NSIPs are hazardous waste and wastewater plants and the Act is only triggered because of the energy generated:* our response is that it is unequivocally a renewable energy scheme and the Act is triggered accordingly;
- *No policy support in the waste management context for the use of compulsory acquisition powers:* our response is that it is because it is a renewable energy scheme that compulsory acquisition powers can be sought;
- *The public interest:* some matters are dealt with in our consideration of the principal issues relating to the compelling case referred to above; all other factors and issues referred to have been considered but do not in our view warrant any weight such as to affect our conclusion as set out above;
- *Proportionality:* this has been considered by us in our consideration of human rights and the provisions of the Human Rights Act, but the argument put forward by WRG is not accepted and our conclusion is as set out above; and
- *Competition and the restrictive covenant:* we have considered WRG's arguments regarding these matters and the response by the Applicant. We have not formed any view on the enforceability or otherwise of the covenant or the issues regarding competition and do not consider it appropriate that we should do so. The only relevance to us is the relationship, if any, between these issues and the grant of compulsory acquisition powers. We are satisfied that we can deal with the matter by relying on the fact that the Act contemplates the grant of compulsory acquisition powers including a power to override interests such as restrictive covenants, and providing a compelling case can be made it is lawful to interfere with such interests.

Gardenvale

7.107 The substantive case of Gardenvale concerned the financial strength of the Applicant. We consider below a number of other issues raised by Gardenvale.

- *The ROMP*: Whilst we note the point raised we do not consider it an issue for us to form a view on; if Gardenvale consider the legal position to be such as they argue then they have remedies available to them if the development proceeds;
- *Requirements 3 and 14[1]:* In the absence of further clarification which was unavailable to us, we cannot form a view as to whether or not the requirements are defective as argued but do not consider that these are matters which would affect our overall conclusions;
- *Scope of the excavation power:* A fuller explanation of the argument being put forward here would have assisted but in the event we do not consider that this is a matter that would have affected our overall conclusions;
- *Scope of associated development:* We are of the view that the MRF is correctly described as associated development as applied for by the Applicant (see para 3.11 above).
- *Failure to consider Circular 06/04*: To give any weight to this proposition we would have wished to test it at the compulsory acquisition hearing and, as we were unable to do so, no weight has been attached to it;
- *Scope of Article 16 (Article 17 in final form of draft DCO):* The drafting of Article 16 has moved through several iterations following discussions between ourselves and the Applicant. These have been made available to all affected persons as they took place. As we have indicated previously, no comments were forthcoming from affected persons except the Councils. We are satisfied as to the meaning, extent and effect of the relevant article;
- *The trigger for entitlement to compensation:* We see no difficulty here: the making of the DCO does not of itself give rise to any claim for compensation save in relation to blight. It is a breach of the covenant which does so and it is our understanding that it is at that moment when the breach occurs that the cause of action for a claim for compensation would arise;
- *Safeguards in the event of transfer of the DCO powers:* These were the subject of discussion and amendment to the draft DCO subsequent to the submission of Gardenvale's representations and we are satisfied that the issues raised have been addressed.

Stewartby Water Sports Club Ltd

7.108 We note that SWSC maintains its objection but we are satisfied that the Unilateral Undertaking given by the Applicant (see para 1.9 above) addresses the main concerns raised by SWSC and accordingly we consider the objection to have been dealt with in an acceptable manner.

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[1] Requirements 2 and 13 in the final form of the DCO at Appendix D.

Hanson

7.109 We consider that some of the assertions made in its representation required some clarification and justification and in other areas substantiation by the production of evidence, all of which would have been tested at the compulsory acquisition hearing. As Hanson did not appear at the compulsory acquisition hearing and offered no further representations in these circumstances we afford little weight to this objection.

Other outstanding matters

7.110 Whilst the objections of WRG, Gardenvale, SWSC and Hanson remained outstanding at the close of the examination, the position with regard to the other affected persons who had made objections was as follows:

Network Rail

7.111 This objection was withdrawn following agreement being reached with the Applicant regarding protective provisions and these being included in the draft DCO.

Eastern Power Networks

7.112 Whilst EPN's objection was not formally withdrawn, in an email to the Applicant's solicitors dated 1 July 2011 EPN confirmed that it had no objection in principle to the IPC granting a DCO providing that the requirements set out in paragraph 7.75 (effectively safeguarding their operational activities) were met by the Applicant.

The Highways Agency

7.113 The HA confirmed by letter to the Applicant dated 1 July 2011 that it had no objections in principle to the Applicant's proposals.

Open Space Land

7.114 On 28 June 2011, the Department for Communities and Local Government wrote to the Applicant confirming the Secretary of State's intention to give a certificate in accordance with the provisions of s132(3) of the Act and requiring the Applicant to give public notice of this intention.

25 Town and Parish Councils

7.115 At the open floor hearing on 6 July 2011 the 25TPCs made submissions on the financial credibility of the Applicant. The 25TPCs are not affected persons in terms of the Act and accordingly no weight is attached to their observations. But we would note that the issues

raised by them were in fact considered and addressed at paragraphs 7.100 & 7.101 in response to representations made by Gardenvale.

Lafarge

7.116 For the record a copy of a letter dated 10 June 2011 from Lafarge (UK) Services Ltd to Covanta Rookery South Ltd was copied to the lead member of the Panel (LSL/1). It was copied to him so that we were aware of the potential breach of the restrictive covenant referred to at paragraph 7.5 (which benefits land owned by Lafarge Aggregates Ltd at Elstow Railhead, Elstow) if the proposed development went ahead. No representation was received from Lafarge.

The Panel's Decision on the Request for Compulsory Acquisition Powers

7.117 With regard to s122(2) of the Act we are satisfied that the legal interests in all the plots described and set out in the Book of Reference and shown on the Land Plan are required in order to implement the development.

7.118 With regard to s122(3) we are satisfied that in relation to the application that:

- development consent for the development is to be granted;
- the NPSs are to be considered the pre-eminent policy;
- the NPSs require that the 'need 'case is to be considered as already proven;
- there are no sites which are an alternative to Rookery South in terms of delivery and timescale;
- funding is adequate and secure so far as may be achieved under the Act;
- the interference with human rights is considered lawful in the public interest and proportionate.

7.119 In these circumstances, we consider that there is a compelling case in the public interest for the grant of the compulsory acquisition powers sought by the Applicant in respect of the CA Land as shown on the Land Plan.

7.120 In addition to the compulsory acquisition powers set out in the DCO the specific powers referred to in articles 9, 10, 11, 12, 24 and 25, the details of which are set out in schedules 2, 3, 4, 5 and 6 respectively, should also be granted.

7.121 Lastly, with regard to the incorporation of other statutory powers pursuant to s120(5)(a) we are satisfied that as required by s117(4) the DCO has been drafted in the form of a Statutory Instrument and

further that no provision of the DCO contravenes the provisions of s126 which preclude the modification of compensation provisions.

8 THE PROPOSED ORDER AND THE S106 AGREEMENT

8.1 The proposed Development Consent Order (DCO) is the heart of the application, setting what the approval would cover, what is authorised, the compulsory acquisition of land and rights, and what is governed by way of requirements (analogous to planning conditions). The DCO submitted as part of the application enables the Panel and participants in the process to see what is envisaged and precisely how the project is intended to be authorised and controlled.

8.2 For that reason, we identified at an early stage in the examination of the application that we needed to consider the draft DCO in detail. The Councils had advocated at the preliminary meeting an issue specific hearing to consider drafting of the DCO, which was supported by the Applicant. Having considered these requests, we arranged two issue specific hearings on 13 May and 13 June 2011 to consider on an entirely without prejudice basis the drafting of the DCO. The 25TPCs were also active participants in these hearings, commenting on specific clauses of the DCO and how their concerns could be met by additional requirements.

8.3 In order to progress and refine the draft DCO, we required for each of the issue specific hearings a re-draft of the Order including the requirements, and the proposed s106 Agreement. Although the s106 Agreement is a matter between the parties and not specifically for decision by us, the relationship between the Agreement and the DCO is extremely important. For that reason, we asked for some matters which were proposed at one stage to be part of the Agreement to be framed as requirements as we felt they were central to the integrity of the Order itself. We also asked for a comparison of the draft Order with the Model Provisions[1] and a justification for each area where these had not been followed. We were satisfied with the explanation.

8.4 We requested from the Applicant by 8 July 2011 a final draft of the DCO. This Order (as submitted) is in the form of a Statutory Instrument with 33 articles and 7 schedules. The authorised development is described in schedule 1 in terms of 9 works covering the NSIP (the EfW, Work No 1) and associated development (the MRF, Work No 2 and related infrastructure such as access improvements and cable connections Works Nos 3 to 9). It is subject to 41 requirements. Schedule 7 contains the protective provisions for Network Rail.

8.5 Also supplied was a signed s106 Agreement dated 8 July 2011 between the owner of the land (O&H Q7 Ltd), Covanta and the Councils. The matters it covers are summarised in Appendix 1.

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[1] The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.

8.6 The Order contains a number of matters which are put forward by the Applicant expressly for determination by the Panel: enforceability of guarantees given in respect of liabilities of the undertaker (additional paragraphs to article 7), and the provision of a residual waste acceptance scheme (Requirement 42).[1]

8.7 We asked the Councils and the 25TPCs to provide a statement setting out any parts of the draft DCO with which they disagree, or conversely matters which they continue to wish to see included in it. These were duly supplied (APP/6.3).

8.8 The Councils set out the following concerns about the requirements as drafted in the Order:

- noise levels during construction and operations, a concern also shared by the 25TPCs;
- delivery hours, also shared by the 25TPCs; and
- a strategic residual waste scheme, also shared by the 25TPCs who argued in addition for a definition of residual waste.

8.9 The Councils also wished for additional requirements to cover a waste area restriction, and the construction of culverts under Green Lane and the Copart access road to facilitate the BMKW.

8.10 The 25TPCs argued that the parent company guarantee should cover all of the Applicant's obligations arising under the DCO, and highlighted the change to foul water treatment, noise monitoring, and the storage of IBA at the MRF. They also considered the HGV routing strategy should be a requirement and not just part of the s106 Agreement between Covanta and the Councils, and commented that provisions in the undertaking for the Community Trust Fund and the extent of the electricity subsidy area are inadequate.

The Order

8.11 We have considered the draft DCO in the light of our decision to grant development consent and the outstanding differences highlighted by the Councils and the 25TPCs. The final version of the Order in Appendix D has been amended by us to reflect our decisions in this regard, together with a considerable number of minor drafting and typographical corrections. Some of these simply place definitions in a more appropriate place. As the decision is one for us as the Panel in the light of designated National Policy Statements we have changed the references in the DCO from the Secretary of State where appropriate. We are satisfied that the drafting amendments we have made do not alter the substantive effect of the Order. The following

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[1] Draft Requirement 42 was subsequently renumbered as Requirement 41 (see para 8.18 below).

paragraphs provide a short explanation of the main changes made and the reasons for them.

8.12 Article 4, concerning the process that should be followed when further approvals are required under requirements, has been redrafted to ensure all powers are available in connection with applications and appeals that may be made under specific requirements in the Order. It also ensures that appeals will be determined by the appropriate Secretary of State in accordance with the law as it currently applies to statutory undertakers who benefit from a licence under s6 of the Electricity Act 1989.

8.13 Article 7A has been inserted as replacement wording for that suggested (see para 8.6 above) regarding the enforceability of guarantees for payment of compensation in the event of compulsory acquisition of land or relevant claims. The replacement wording ensures that the enforcement regime that applies to development consent orders applies to the provision of guarantees without altering the process by which the relevant planning authorities approve the terms of any guarantee. We are satisfied that this article provides the necessary level of certainty and clarity on this issue. These amendments in our view meet the representation of the 25TPCs that the parent company guarantee should meet all of the Applicant's obligations**.**

8.14 Requirement 41 has been deleted and replaced by Article 3 (5)(b) which has the same effect but it more appropriately located in the Order.

8.15 In terms of the requirements set out in part 2 of schedule 1, we do not consider a definition of residual waste or the waste catchment area to accompany Requirement 2 is needed for the reasons set out in paragraph 5.28 above. We agree with the Councils' request for a lower construction noise level in Requirement 17, but do not agree with the request for lower night time noise limits, so the levels as set out in Requirement 18 are confirmed as drafted for the reasons set out in paragraph 5.90 above. In terms of construction hours we do not agree the request by the Councils for shorter construction hours, neither those by the Applicant for additional 'start up' or 'shut down' hours at the beginning and end of each working day (see para 5.93 above). Requirement 24 is modified accordingly. We do not consider the need for an additional requirement to cover noise monitoring as requested by the 25TPCs, for the reasons given in paragraph 5.95 above.

8.16 We do not agree that amendments are needed to further restrict delivery hours and traffic management in Requirement 26, nor the need to amend Requirement 34 to provide for IBA being stored within a building rather than out of doors, for the reasons set out in paragraphs 5.116 et seq above.

8.17 We have considered carefully the representation from the 25TPCs that there should be an additional requirement to make failure to comply with the HGV routeing strategy subject to the sanctions imposed by the Act. Whilst we understand the concern of the 25TPCs about adequate enforcement of the HGV access and routeing plan, in our view the fact that this is the subject of an explicit undertaking directly between Covanta and the Councils through the s106 Agreement suggests that compliance is likely to be rigorously monitored. Accordingly, we do not consider that an additional requirement is necessary.

8.18 The additional Requirement 42 offered by the Applicant (see para 8.6 above) to provide a Residual Waste Acceptance Scheme to ensure that only residual waste is incinerated is agreed as submitted, and becomes Requirement 41 in the Order. This will help to provide the conformity of the proposal with the waste hierarchy as set out in paragraph 5.27 above.

8.19 Finally, we reject the request from the Councils for an additional requirement for the Applicant to fund the construction of culverts for the BMKW. We consider the s106 Agreement is sufficient for the reasons set out in paragraphs 5.139 et seq above. Similarly, we do not consider that the surface and foul drainage provisions (Requirement 12) are deficient as the 25TPCs believe and are capable of meeting the amended arrangements under discussion between Applicant, Anglian Water Services and the EA.

8.20 As the Order must be made as a Statutory Instrument because it includes legislative provisions, it requires consideration by the Secretary of State under the provisions of s121 of PA 2008 before it can be made.

The S106 Agreement

8.21 We have considered the scope of the completed s106 Agreement dated 8 July 2011 between the parties and conclude it is satisfactory in both the range of matters that covers, and the relationship with the requirements in the DCO (APP/6.1.4 and Appendix A). We note the comments made by the 25TPCs about the adequacy of the financial contributions to the Community Trust Fund and the electricity subsidy area, and whilst we have some sympathy that Brogborough should be brought into the area of benefit these are matters for the parties to consider and are not important and relevant matters that weigh in our decision.

9 OVERALL CONCLUSION AND DECISION

Overall Conclusion

9.1 We conclude for the reasons set out above that the proposal would accord with National Policy Statements EN-1 and EN-3. We have considered the application against the provisions of s104 of the Planning Act 2008, and conclude that for the reasons stated none of the adverse impacts of the proposed development that we have identified including the compulsory acquisition of land and rights, would either individually or taken together, outweigh its benefits.

9.2 Furthermore, we have considered whether the deciding the application in accordance with the National Policy Statements would either:

- lead to the United Kingdom being in breach of its international obligations;
- lead to the Panel or the Commission being in breach of any duty imposed on us by any enactment; or
- be unlawful by virtue of any enactment.

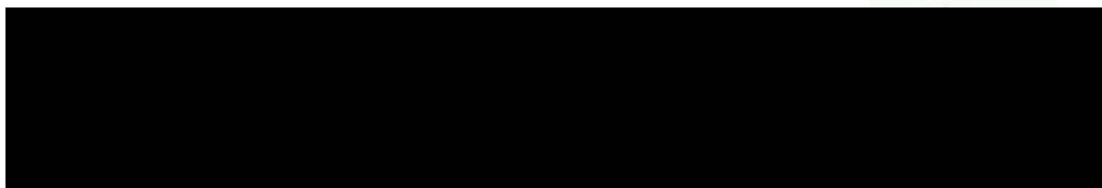
9.3 We have considered all representations made in respect of international and domestic legal obligations and are satisfied, as stated in relevant parts of this statement of reasons, that we are able to determine the application in accordance with the relevant National Policy Statements.

9.4 Given our conclusions on the merits of the Applicant's case for both the development proposed and the compulsory acquisition of land and rights, we conclude that an Order granting development consent should be made.

9.5 In reaching our conclusion that development consent should be granted we have taken into account all other matters raised in the representations. However, we found no relevant matters of such importance that they would individually or collectively lead us to a conclusion different to that above.

Decision

9.6 For the reasons set out above the Panel as the decision maker under s103 of the Planning Act 2008, has decided that development consent should be granted and therefore proposes to make an Order under s114(1) of the Planning Act 2008.



Paul Hudson   Andrew Phillipson   Emrys Parry

APPENDIX A – OBLIGATIONS

The S106 Agreement

Signatories

(a) Bedford Borough Council
(b) Central Bedfordshire Council
(c) O&H Q7 Limited
(d) Covanta Energy Limited
(e) Covanta Rookery South Limited

Summary of Provisions

(a) The routes used by heavy goods vehicles (HGVs) coming to and from the proposed plant to be restricted to agreed roads;
(b) planting to be carried out within the Millennium Country Park;
(c) Covanta to pay financial contributions to the Marston Vale Trust;
(d) Covanta to provide, upgrade and maintain certain footpaths and other public rights of way near the site;
(e) Covanta to disseminate information on the development to the Community Liaison Panel and to implement a procedure to assist members of the public wanting to make complaints about the operation or construction of the plant;
(f) Covanta to establish a Community Trust Fund and pay financial contributions thereto;
(g) Covanta to regularly publish data on airborne emissions from the plant;
(h) Covanta to provide a visitor centre within the main plant building;
(i) Covanta to implement a scheme to encourage the employment of local people to construct and operate the plant;
(j) Covanta to use reasonable endeavours to obtain customers for heat and power from the plant;
(k) Covanta to pay an electricity subsidy to qualifying local households;
(l) Covanta to meet the costs of diverting or altering the grid connections installed as part of the proposal, should this be required in connection with the construction of the Bedford to Milton Keynes Waterway where it crosses Green Lane and the Copart Access Road;
(m) Covanta to make good any damage to Green Lane occurring as a result of the construction of the plant;
(n) the feasibility of using rail to bring waste to the plant to be periodically reviewed and, if found to be feasible, for reasonable endeavours to be used to provide a rail facility on the site;

(o) the retention and ongoing maintenance of an area of woodland adjoining Stewartby in Rookery North; and
(p) Covanta to pay the Councils' costs incurred in discharging any provisions of the Agreement or requirements attached to any Development Consent Order (DCO) that might be granted that require the prior approval of the Councils.

Deed of Undertaking with the Marston Vale Trust (MVT)

Signatories

(a) Covanta Rookery South Limited
(b) The Marston Vale Trust
(c) Covanta Energy Limited

Summary of Provisions

(a) Covanta to pay initial and annual financial contributions to the Marston Vale Trust;
(b) Covanta to make a further annual financial contribution towards the electricity costs of the Forest Centre;
(c) Covanta to undertake tree, shrub and other planting within the Millennium Country Park;
(d) Covanta to make a financial contribution towards the cost of providing a bridge over the railway separating the Millennium Country Park from the Rookery;
(e) the MVT to not unreasonably delay or withhold consent for Covanta to erect noise fences on land leased by the Trust to the Stewartby Water Sports Club;
(f) Covanta to consult the MVT regarding the proposals for upgrading the level crossing on Green Lane;
(g) Covanta to not compulsorily acquire land belonging to the MVT pursuant to the DCO subject to the Trust granting Covanta any necessary easements over it; and
(h) MVT not to seek compensation from Covanta over and above that provided by the terms of the Deed.

Unilateral Undertaking with the Stewartby Water Sports Club (SWSC)

Signatory

(a) Covanta Rookery South Limited

Summary of Provisions

(a) Covanta to erect and maintain two noise attenuation fences in the north-east corner of the SWSC site;

(b) Covanta to use reasonable endeavours to maintain access to the site via the existing access from green lane and, if that is not possible, to provide a reasonable alternative access; and

(c) Covanta to use reasonable endeavours not to interfere with SWSC's use and enjoyment of the site during construction.

APPENDIX B – THE EXAMINATION

The table below lists the main 'events' occurring during the examination and the main procedural decisions taken by the Panel.

Date	Examination event
17 January 2011	Preliminary Meeting
21 January 2011	Notice of procedural decision including confirmation of the examination timetable and first round of written questions from the Examining authority (ExA)
4 February 2011	Accompanied site visit to the Rookery South pit
28 February 2011	Deadline for receipt of: • Written representations • Responses to written questions • Local impact report(s) • Statements of common ground
28 March 2011	Deadline for comments on: • Relevant and written representations • Responses to the ExA's questions • Local Impact Report(s)
11 April 2011	ExA issued its second round of written questions
9 May 2011	Deadline for responses to the ExA's second round of written questions
13 May 2011	Issue specific hearing to consider the drafting aspects of the draft Development Consent Order and requirements, and the proposed agreement between the applicant and local planning authorities under s106 of the Town and Country Planning Act 1990
13 May 2011	ExA notification of the programme for further issue specific hearings
26 May 2011	Letter from ExA setting out further details of the issue specific hearings including areas for discussion and parties asked to attend

6 June 2011	Deadline for the receipt of comments on responses to the ExA's second round of written questions
6 June 2011	Deadline for i) interested parties to notify the ExA of their intention to be heard at an open floor hearing and ii) affected persons to notify the ExA of their wish to be heard at a compulsory acquisition hearing
7 June 2011	Letter from the ExA confirming dates and arrangements for the open floor hearing
7 June 2011	Letter from ExA confirming dates and arrangements for the compulsory acquisition hearing
7 June 2011	Letter (Rule 17[54]) from ExA to the Applicant requesting further information regarding parent company guarantee and Statement of Reasons
13 June 2011	Issues specific hearing on drafting of DCO and requirements and proposed s106 agreement
17 June 2011	Letter (Rule 17) from ExA confirming their request (made at the issue specific hearing on 13 June) for a final version of the draft DCO and a completed s106 Agreement by 8 July 2011, together with statements from the Councils and 25TPCs setting out any parts of the DCO and requirements with which they disagree
17 June 2011 (am)	Issue specific hearing on the effect of the proposed development on the waste hierarchy
17 June 2011 (pm)	Issue specific hearing on the noise impact of early morning operations on the living conditions of residents (including campers at the Stewartby Water Sports Club) living near to the access routes proposed for HGVs between the A421 and the site
21 June 2011	Issue specific hearing on landscape, visual impact and design matters, including specifically whether the viewpoints considered in the Environmental Statement are representative and the identification of any additional viewpoints that interested parties want the ExA to include in their site visit
22 June 2011	Issue specific hearing on the impact of the development on the setting of the heritage assets.

[54] Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010

23 June 2011	Letter (Rule 17) from ExA inviting written representations in relation to the finalised NPSs (deadline of 6 July 2011).
27 June -1 July 2011	Compulsory acquisition hearing (four sessions held on the 27, 28, 29 June and 1 July)
5 - 6 July 2011	Open floor hearing (four sessions held over two days)
8 July 2011	Letter (Rule 17) from ExA inviting comments received in response to the ExA's previous letter of 23 June (deadline of 14 July 2011)
8 July 2011	Deadline for the submission of the final draft of the DCO and proposed s106 agreement
12 July 2011	Accompanied site visit to the application site and surrounding area.
15 July 2011	Notification from the ExA of the completion of the examination.

APPENDIX C – LIST OF DOCUMENTS AND THOSE MAKING REPRESENTATIONS

List of Documents and those Making Representations

A) Documents submitted with the application
B) Documents submitted by the Applicant during the examination
C) Representations submitted in writing to the IPC
D) Parties making oral representations at hearings
E) Members of the public registered as interested parties, and others

A) Documents Submitted with the Application

Category	Doc Ref	Title
Formalities	DOC/1.1	Letter
	DOC/1.2	Application Form
	DOC/1.3	Copies of Newspaper Notices
	DOC/1.4	Development Consent Order
	DOC/1.5	Explanatory Memorandum
	DOC/1.6	Statement of Reasons
	DOC/1.7	Funding Statement
	DOC/1.8	Book of Reference Parts 1-5
	DOC/1.9	Statement of Engagement
	DOC/1.10	Grid Connection Statement
	DOC/1.11	Heads of Terms
Plans	DOC/2.1	Application Site Plan / Order Limits Plan
	DOC/2.2	Works Plan – Key Plan
	DOC/2.3	Works Plan – 1 of 2
	DOC/2.4	Works Plan – 2 of 2
	DOC/2.5	Land Plan
	DOC/2.6	Land Plan: Extinguishment of Rights – Key Plan
	DOC/2.7	Land Plan: Extinguishment of Rights – 1 of 4
	DOC/2.8	Land Plan: Extinguishment of Rights – 2 of 4
	DOC/2.9	Land Plan: Extinguishment of Rights – 3 of 4
	DOC/2.10	Land Plan: Extinguishment of Rights – 4 of 4
	DOC/2.11	Rights of Way Plan
	D0C/2.12	EfW Facility South Elevation
	DOC/2.13	EfW Facility North Elevation
	DOC/2.14	EfW Facility East Elevation
	DOC/2.15	EfW Facility West Elevation
	DOC/2.16	EfW Facility East Section Elevation
	DOC/2.17	EfW Facility West Sectional Elevation
	DOC/2.18	Secondary Buildings Elevations – MRF
	DOC/2.19	RRF Tertiary Building Elevations
	DOC/2.20	RRF North and South Elevations

	DOC/2.21	RRF East and West Elevations
	DOC/2.22	RRF Site Section
	DOC/2.23	RRF Boundary Details
	DOC/2.24	RRF Elevation & Section Key Plan
	DOC/2.25	RRF Roof Plan
	DOC/2.26	Proposed Access Road Existing Footpath Width at Level Crossing
	DOC/2.27	Proposed Access Road with Proposed 2.5 m Footpath at Level Crossing
	DOC/2.28	Proposed Access to the Rookery Resource Facility. Proposed Cross Section
	DOC/2.29	Level Crossing – Ground Plan (Grip 3 Level of Detail)
	DOC/2.30	Lighting Layout & Strategy - Operations Area
	DOC/2.31	Landscape Strategy & Key Plan for Planting Details
	DOC/2.32	Operational Area and Green Lane Country Park & RRF Entrance
	DOC/2.33	Planting Strategy – Wider Site
	DOC/2.34	Planting Strategy: Operations Area and Indicative Scheme Layout for Green Lane Country Park & RRF Entrance
	DOC/2.35	Trees to be Removed and Retained
Environmental Statement	DOC/3.1	Environmental Statement Volume 1
	DOC/3.2	Environmental Statement Volume 2
	DOC/3.3	Environmental Statement Volume 3
	DOC/3.4	Non-Technical Summary
Reports	DOC/4.1	Report on Natural Features
	DOC/4.2	Report as to Effects on European Sites
	DOC/4.3	Historic Environment Report
	DOC/4.4	Flood Risk Assessment
Planning	DOC/5.1	Planning Statement
	DOC/5.2	Alternative Site Assessment Report
	DOC/5.3	Need Assessment
	DOC/5.4	WRATE Carbon and Efficiencies of Scale Report
	DOC/5.5	Economic Statement
	DOC/5.6	Health Impact Assessment
	DOC/5.7	Sustainability Assessment
Design	DOC/6.1	Design and Access Statement
	DOC/6.2	Engineering Design Statement
	DOC/6.3	Combined Heat and Power Development Strategy
	DOC/6.4	Rail Feasibility Report
	DOC/6.5	Transport Assessment
	DOC/6.6	Travel Plan

Consultation Report	DOC/7.1	Consultation Report
	DOC/7.2	Consultation Report - Appendices

B) Documents Submitted by the Applicant during the Examination

Written Representations

DOC/3.5	Environmental Statement Supplement and Non-Technical Summary
DOC/4.5	Report on Natural Features Supplement
DOC/4.6	Report on Effects on European Sites Supplement
DOC/7.3	Consultation Report Supplement
APP/1.1	Written Representation
APP/1.2	Appendix to Written Representation
APP/1.3	Summary of Written Representation

Comments on the Written Representations

APP/2.1	Second Written Representation
APP/2.2	Appendices Volume 1 to Second Written Representation
APP/2.3	Appendices Volume 2 to Second Written Representation
APP/2.4	Appendices Volume 3 to Second Written Representation

Response to the Second Round of Questions

APP/3.1	Third Written Representation
APP/3.2	Appendences to the Third Written Representation

Comments on the Responses to the Second Round of Questions

APP/4.1	Fourth Written Representation
APP/4.2	Appendices to the Fourth Representation

Other Documents

APP/6.1	Written Submission on 8 July 2011 including:
APP/6.1.1	Final draft DCO
APP/6.1.2	Parent Company Guarantee
APP/6.1.3	Planning Obligation in favour of BBC and CBC
APP/6.1.4	S106 Agreement
APP/6.1.5	Deed of Undertaking with Marston Vale Trust
APP/6.1.6	Deed of Unilateral Undertaking in favour of Stewartby Water Sports Club
APP/6.1.7	Email from Eastern Power Networks dated 1 July 2011
APP/6.1.8	Letter from Highways Agency dated 1 July 2011
APP/6.2	Residual Waste Acceptance Scheme
APP/6.3	Response to Rule 17 Letter dated 17 June 2011

Finalised National Policy Statements

APP/7.1 Representations on Finalised NPSs
APP/7.2 Comments on NPS Representations

Documents Submitted at Hearings

APP/8.1 Summary submitted at the Issue Specific Hearing on the Waste Hierarchy
APP/8.2 Summary of Case submitted at the Issue Specific Hearing on Noise
APP/8.3 Summary of Written Representation and Position of the Applicant submitted at the Issue Specific Hearing on Landscape etc
APP/8.4 Opening Statement of Richard Phillips QC submitted at the Compulsory Acquisition Hearing
APP/8.5 Summary in relation to alternatives by Environmental Resources Management submitted at the Compulsory Acquisition Hearing
APP/8.6 Summary in relation to Policy by Environmental Resources Management submitted at the Compulsory Acquisition Hearing
APP/8.7 Summary in relation to Scale and Need by Environmental Resources Management submitted at the Compulsory Acquisition Hearing
APP/8.8 Note on C&I Waste Arisings Method by Environmental Resources Management submitted at the Compulsory Acquisition Hearing
APP/8.9 Mr Aumônier's CV submitted at the Compulsory Acquisition Hearing
APP/8.10 Letter from Mr Chilton dated 29 June 2011 submitted at the Compulsory Acquisition Hearing
APP/8.11 Note with Responses to Oral Questions from ExA submitted at the Compulsory Acquisition Hearing
APP/8.12 Closing Submission submitted at the Compulsory Acquisition Hearing

C) Representations Submitted in Writing to the IPC

Local Authorities

Bedford Borough Council

BBC/1 Relevant Representation
BBC/2 Written Representation
BBC/3 Response to First Written Questions (Bound with document BBC/2)
BBC/4 Local Impact Report
BBC/5 Comments on Written and Relevant Representations
BBC/6 Comments on Responses to First Written Questions
BBC/7 Response to Second Written Questions
BBC/8 Comments on Responses to Second Written Questions

BBC/9 Comments on Finalised National Policy Statements
BBC/10 Comments on draft DCO
BBC/11 Summary of Representations submitted for the Issue Specific Hearing on the draft DCO
BBC/12 Summary of Representations submitted for the Issue Specific Hearing on Waste Hierarchy
BBC/13 Summary of Representations submitted for the Issue Specific Hearing on Landscape etc
BBC/14 Summary of Representations submitted for the Issue Specific Hearing on Heritage Assets

Central Bedfordshire Council

CBC/1 Relevant Representation
CBC/2 Written Representation
CBC/3 Response to First written Questions (Bound with document CBC/2)
CBC/4 Local Impact Report
CBC/5 Comments on the Written and Relevant Representations
CBC/6 Comments on Responses to First Written Questions
CBC/7 Response to Second Written Questions
CBC/8 Comments on Responses to Second Written Questions
CBC/9 Comments on Finalised National Policy Statements
CBC/10 Comments on draft DCO
CBC/11 Summary of Representations submitted at the Issue Specific Hearing on the draft DCO
CBC/12 Summary of Representations submitted at the Issue Specific Hearing on the Waste Hierarchy
CBC/13 Summary of Representations submitted at the Issue Specific Hearing on Landscape etc

Bedford Borough Council and Central Bedfordshire Council (Joint Submissions)

BBCBC/1 Approvals Pursuant to Requirements Cases by Mills and Reeve, submitted at the Issue Specific Hearing on the draft DCO (13th May 2011)
BBCBC/2 Agreed position on the draft DCO submitted at the Issue Specific Hearing on the draft DCO (13th June 2011)
BBCBC/3 Comparison draft DCO submitted at the Issue specific hearing on the draft DCO (13th June 2011)
BBCBC/4 Extract from the East of England Plan 2008 submitted at the Compulsory Acquisition Hearing
BBCBC/5 Closing submission submitted at the Compulsory Acquisition Hearing
BBCBC/6 Note of Oral Representations by David Brock at Open Floor Hearing

Aylesbury Vale District Council

AVDC/1 Relevant Representation
AVDC/2 Written Representation

Buckinghamshire County Council

BCC/1 Relevant Representation
BCC/2 Relevant Representation
BCC/3 Written Representation

Cambridgeshire County Council

CCC/1 Written Representation including Response to Second Written Questions

Hertsmere Borough Council

HBC/1 Relevant Representation

Luton Borough Council

LBC/1 Relevant Representation

Milton Keynes Council

MKC/1 Relevant Representation
MKC/2 Written Representation

Town and Parish Councils

The Consortium of 25 Town and Parish Councils

25TPC/1 Relevant Representation
25TPC/2 Written Representation
25TPC/3 Response to First Written Questions
25TPC/4 Comments on Local Impact Reports
25TPC/5 Comments on Written Representations
25TPC/6 Comments on Responses to First Written Questions
25TPC/7 Response to Second Written Questions
25TPC/8 Comments on Responses to Second Written Questions
25TPC/9 Comments on Finalised NPSs
25TPC/10 Comments on draft DCO
25TPC/11 Response to Comments on the Finalised NPSs
25TPC/12 Letter dated 13th June 2011 submitted at the Issue Specific Hearing on the draft DCO (13th May 2011)
25TPC/13 Summary Statement submitted at the Issue Specific Hearing on the Waste Hierarchy
25TPC/14 Note of Oral Representations at Session Four of the Open Floor Hearing

Ampthill Town Council

ATC/1 Relevant Representation
ATC/2 Written Representation

Aspley Guise Parish Council

AGPC/1 Relevant Representation

Aspley Heath Parish Council

AHPC/1 Relevant Representation

Bletchley & Fenny Stratford Town Council

BFSTC/1 Relevant Representation

Bow Brickhill Parish Council

BBPC/1 Relevant Representation

Brogborough Parish Council

BPC/1 Relevant Representation
BPC/2 Written Representation
BPC/3 Note of Oral Representation at Session One of the Open Floor Hearing,

Campton & Chicksands and Silsoe Parish Council

CCSPC/1 Relevant Representation

Cranfield Parish Council

CPC/1 Relevant Representation
CPC/2 Written Representation

Elstow Parish Council

EPC/1 Relevant Representation
EPC/2 Written Representation

Flitwick Town Council

FTC/1 Relevant Representation
FTC/2 Written Representation

Great Denham Parish Council

GDPC/1 Relevant Representation

Harlington Parish Council

HarPC/1 Relevant Representation

Haynes Parish Council

HayPC/1 Relevant Representation

Hockliffe Parish Council

HocPC/1 Relevant Representation

Houghton Conquest Parish Council

HCPC/1 Relevant Representation
HCPC/2 Written Representation

Hulcoate and Salford Parish Council
HSPC/1 Relevant Representation

Kempston Town Council
KTC/1 Written Representation

Lidlington Parish Council
LPC/1 Relevant Representation
LPC/2 Written Representation
LPC/3 Note of Oral Representation at Open Floor Hearing

Marston Moreteyne Parish Council
MMPC/1 Relevant Representation
MMPC/2 Note of Oral Representation at Open Floor Hearing

Marsworth Parish Council
MarPC/1 Relevant Representation

Maulden Parish Council
MauPC/1 Relevant Representation

Millbrook Parish Meeting
MPM/1 Relevant Representation

Renhold Parish Council
RenPC/1 Relevant Representation

Ridgemont Parish Council
RidPC/1 Relevant Representation

Steppingley Parish Council
StePC/1 Relevant Representation

Stewartby Parish Council
SPC/1 Relevant Representation

Wilshamstead Parish Council
WPC/1 Relevant Representation
WPC/2 Written Representations

Woburn Parish Council
WPC/1 Relevant Representation

Woburn Sands Town Council
WSTC/1 Relevant Representation
WSTC/2 Note of Oral Representation at Open Floor Hearing

Other Prescribed Statutory Consultees

Anglian Water Services Limited

AWS/1 Relevant Representation

British Waterways

BW/1 Relevant Representation
BW/2 Note of Oral Representations at Open Floor Hearing and subsequent emails

Civil Aviation Authority

CAA/1 Relevant Representation

East of England Development Agency

EDA/1 Relevant Representation

Eastern Power Networks Plc

EPN/1 Relevant Representation

English Heritage

EH/1 Relevant Representation
EH/2 Written Representation
EH/3 Response to Second Written Questions
EH/4 Summary of Written Representation submitted at the Issue Specific Hearing on Heritage Assets

Environment Agency

EA/1 Relevant Representation
EA/2 Written Representation
EA/3 Response to First Written Questions
EA/4 Response to Second Written Questions
EA/5 Note dated 13 May 2011 on Progress of Environmental Permit Applications
EA/6 Comments on Responses to the Second Written Questions
EA/7 Comments on draft DCO

Forestry Commission

FC/1 Relevant Representation

Health Protection Agency

HPA/1 Relevant Representation
HPA/2 Written Representation

Highways Agency

HA/1 Relevant Representation

National Grid

NG/1 Written Representation

National Air Traffic Service

NAT/1 Written Representation

Natural England

NE/1 Relevant Representation
NE/2 Written Representation
NE/3 Response to the First Written Questions

Network Rail Infrastructure Limited

NR/1 Relevant Representation
NR/2 Written Representation
NR/3 Second Written Representation
NR/4 Comments on draft DCO

NHS Bedfordshire

NHS/1 Relevant Representation
NHS/2 Written Representation

Office of Rail Regulation

ORR/1 Response to the Second Written Questions
ORR/2 Representation on Finalised NPSs

SSE Pipelines

SSE/1 Written Representation

The Water Services Regulation Authority

OFW/1 Written Representation
OFW/2 Response to the Second Written Questions

Affected Persons

AWG Landholdings Ltd

AWG/1 Relevant Representation
AWG/2 Written Representation

Copart UK Ltd

COP/1 Relevant Representation

Gallagher Estates

GAL/1 Relevant Representation
GAL/2 Response to the Second Written Questions
GAL/3 Comments on Responses to the Second Written Questions
GAL/4 Comments on the Finalised National Policy Statements

Gardenvale Properties Ltd

GAR/1 Relevant Representation

Hanson Building Products Ltd

HBP/1 Relevant Representation
HBP/2 Written Representation
HBP/3 Comments on Written Representations
HBP/4 Comments on Responses to the First Written Questions
HBP/5 Response to the Second Written Questions

Lafarge UK Services Ltd

LSL/1 Written Representation

O&H Q7 Ltd

O&H/1 Relevant Representation

Stewartby Water Sports Club Ltd

SWSC/1 Relevant Representation
SWSC/2 Written Representation
SWSC/3 Response to the Second Written Questions
SWSC/4 Comments on Responses to the Second Written Questions
SWSC/5 Note of oral representation submitted at Session Three of the Open Floor Hearing, 6th July

Waste Recycling Group Ltd

WRG/1 Relevant Representation
WRG/2 Written Representation
WRG/3 Jacobs/Defra report into Commercial and Industrial Waste Survey 2009 submitted at the Compulsory Acquisition Hearing
WRG/4 Defra Statistical Release 2010 submitted at the Compulsory Acquisition Hearing
WRG/5 Summary of Statements on Planning Policy, Needs and Alternatives by John Leeson (SLR) submitted at Compulsory Acquisition Hearing
WRG/6 Closing Submissions submitted at the Compulsory Acquisition Hearing

Non-Prescribed Groups and Organisations

Against Rookery Pit Incineration

ARPI/1 Relevant Representation

Ampthill and District Preservation Society

ADPS/1 Relevant Representation

Ampthill Development Action Group

ADAG/1 Relevant Representation

Bedford & Milton Keynes Waterway Trust

BMKWT/1 Relevant Representation
BKWT/2 Note of Oral Representation and Plans of Proposed Waterway Link submitted at Open Floor Hearing

Bedford Borough Local Access Forum

BBLAF/1 Relevant Representation

Bedford Commuters Association

BCA/1 Relevant Representation

Bedford Councils Planning Consortium

BCPC/1 Relevant Representation

CPRE Bedfordshire

CPREB/1 Relevant Representation
CPREB/2 Written Representation
CPREB/3 Comments on Written Representations

CPRE East of England Region

CPREE/1 Relevant Representation
CPREE/2 Written Representation
CPREE/3 Comments on the Written Representations
CPREE/4 Note of Oral Representation at Open Floor Hearing

Flitwick and District Heritage Group

FDHG/1 Relevant Representation

Flitwick at the Crossroads Residents Action Group

FCRAG/1 Relevant Representation
FCRAG/2 Written Representation

Kingmind Limited

KIN/1 Relevant Representation
KIN/2 Written Representation
KIN/3 Response to the First Written Questions

Marston Moreteyne Action Group

MMAG/1 Relevant Representation
MMAG/2 Written Representation
MMAG/3 Response to First Written Questions
MMAG/4 Note of Oral Representation at Open Floor Hearing

Marston Vale Trust

MVT/1 Relevant Representation

MVT/2 Written Representation
MVT/3 Deed of Undertaking with Covanta

Milton Keynes Friends of the Earth

MKFoE/1 Relevant Representation
MKFoE/1 Written Representations

Ministry of Defence

MoD/1 Relevant Representation

Our Marston Vale

OMV/1 Relevant Representation
OMV/2 Written Representation
OMV/3 Response to First Written Questions
OMV/4 Response to Second Written Questions
OMV/5 Note of Oral Representation at Open Floor Hearing

Railfuture (Freight Committee)

RFC/1 Relevant Representation

Ramblers Association Bedfordshire Area

RA/1 Relevant Representation

Renaissance Bedford

RB/1 Relevant Representation
RB/2 Written Representation

Revamp Ampthill Ltd

RevA/1 Relevant Representation

Royal Society for the Protection of Birds

RSPB/1 Relevant Representation

The Greensand Trust

GT/1 Relevant Representation

The Wildlife Trust for Bedfordshire, Cambridgeshire and Northamptonshire

WT/1 Relevant Representation

Treasury Solicitor (on behalf of Asphalte Solutions Ltd)

TSoL/1 Written Representation

Village of Stewartby (Cllr Tim Hill)

VSTH/1 Relevant Representation
VSTH/2 Written Representation
VSTH/3 Note of Oral Representation at Open Floor Hearing

Woburn Sands & District Society

WSDS/1	Relevant Representation
WSDS/2	Written Representation
WSDS/3	Response to First Written Questions
WSDS/4	Comments on the Written Representations
WSDS/5	Comments on Responses to the Second Written Questions
WSDS/6	Comments on the Finalised NPSs
WSDS/7	Response to Comments on the NPSs

Representations Submitted by Other Interested Parties and the General Public

BUN/1	Bundle of Relevant Representations
BUN/2	Bundle of Written Representations including Responses to First Written Questions
BUN/3	Bundle of Comments on Relevant and Written Representations
BUN/4	Bundle of Responses to the Second Written Questions
BUN/5	Bundle of Representations on the Finalised NPSs
BUN/6	Bundle of Comments on Representations Received on the Finalised NPSs
BUN/7	Notes of Oral Representations at Open Floor Hearing.
BUN/8	Local Petition on behalf of Marston Moretaine Action Group

Statements of Common Ground

SOCG/1	SoCG between Covanta, CBC and BBC – Noise and Vibration
SOCG/2	SoCG between Covanta, CBC and BBC – Rights of Way
SOCG/3	SoCG between Covanta and Highways Agency – Highways and Transportation
SOCG/4	SoCG between Covanta and CBC – Landscape and Visual
SOCG/5	SoCG between Covanta and BBC – Cultural Heritage
SOCG/6	SoCG between Covanta and CBC – Cultural Heritage
SOCG/7	SoCG between Covanta and BBC – Landscape and Visual
SOCG/8	SoCG between Covanta and English Heritage – Cultural Heritage
SOCG/9	SoCG between Covanta, BBC and CBC on the topic of the Development Plan for Application Site
SOCG/10	SoCG between Covanta, BBC, CBC & WRG – Volumes of Residual Waste
SOCG/11	SoCG between Covanta, BBC and CBC - Delivery Hours (Highways, Transportation)
SOCG/12	SoCG between Covanta and Highways Agency - Delivery Hours (Highways, Transportation)
SOCG/13	SoCG between Covanta and BBC - Delivery Hours (Noise)
SOCG/14	SoCG between Covanta and CBC - Delivery Hours (Noise)
SOCG/15	SoCG between Covanta and CBC – Highways and Transportation
SOCG/16	SoCG between Covanta and BBC – Highways and Transportation

D) Parties Making Oral Representations at Hearings

Issue specific Hearings

13 May 2011 - The Draft Development Consent Order and Requirements, and the Proposed s106 Agreement

Richard Phillips QC of Counsel	Covanta
Howard Bassford - DLA Piper LLP	Covanta
Benjamin Dove Seymour - DLA Piper LLP	Covanta
Rachel Ness	Covanta
David Brock - Mills and Reeve	CBC and BBC
Susan Marsh	CBC and BBC
Nigel Bennett	BBC
Ian Pickering	25 Town and Parish Councils
Angus Walker - Bircham Dyson Bell	

13 June 2011 - The Draft Development Consent Order and Requirements, and the Proposed s106 Agreement

Howard Bassford - DLA Piper LLP	Covanta
Kirsten Berry - ERM	Covanta
David Brock - Mills and Reeve	CBC and BBC
Susan Marsh	CBC and BBC
Roy Romans	CBC and BBC
Nigel Bennett	BBC
Ian Pickering	25 Town and Parish Councils

17 June 2011(am) - Waste Hierarchy

Howard Bassford - DLA Piper LLP	Covanta
Rachel Ness	Covanta
Kirsten Berry - ERM	Covanta
Susan Marsh	CBC and BBC
Roy Romans	CBC and BBC
Ian Pickering	25 Town and Parish Councils
John Leeson - SLR	Waste Recycling Group
Dr Bill Temple-Pediani	KTI Energy Ltd
Andrew Lockley	Milton Keynes Friends of the Earth
Richard Gillard	

17 June 2011(pm) - The Noise impact of Early Morning Operations

Richard Phillips QC of Counsel	Covanta
Howard Bassford - DLA Piper LLP	Covanta
Colin English	Covanta
Peter Nash	BBC
Daniel Baker	CBC and BBC
Susan Marsh	CBC and BBC
John Hilton	25 Town and Parish Councils

Ian Pickering	25 Town and Parish Councils
Nigel Allison	Stewartby Water Sports Club
Richard Gillard	-

21 June 2011 - Landscape, Visual Impact and Design Matters

Howard Bassford - DLA Piper LLP	Covanta
Alister Kratt	Covanta
Phil Nicholson	BBC
Richard Guise	CBC
Rob Uff	CBC
Alison Myers	CBC
Sue Clark	25 Town and Parish Councils
Graham Wright	25 Town and Parish Councils
David Toland	Marston Moreteyne Action Group
Richard Gillard	

22 June 2011 - Heritage Assets

Richard Phillips QC of Counsel	Covanta
Dr Carter	Covanta
Howard Bassford - DLA Piper LLP	Covanta
Alison Myers	CBC
Nigel Bennett	BBC
Sue Clark	25 Town and Parish Councils
Guy Williams of Counsel	English Heritage
David Grech	English Heritage

Compulsory Acquisition Hearing – 27 June to 1 July 2011

Richard Phillips QC of Counsel	Covanta
Howard Bassford - DLA Piper LLP	Covanta
Simon Aumônier - ERM	Covanta
James Delafield	CBC and BBC
Robin Green of Counsel	CBC and BBC
Roy Romans	CBC and BBC
Andrew Williamson - Walker Morris	Waste Recycling Group
John Leeson - SLR	Waste Recycling Group

Open Floor Hearing

Session 1 - 5 July 2011 (10am)

David Brock - Mills and Reeve	CBC and BBC
Margret Wright	Ampthill Town Council
Iain Clapham	Liddlington Parish Council
Cllr Jacky Jeffreys	Woburn Sands Town Council
Paul Maison	British Waterways
Dave Hodgson	

Councillor Charles Royden	
Hugh Roberts	Marston Moreteyne Action Group
Jean Sampson	
Lynne Faulkner	
Heather Metherall	
David Toland	
George Young	
Jeremy Hill	CPRE East of England & Bedford
Rosalind Blevins	
Dee Blackmore	
Cllr Alan Bastable	
Ruth Redman	
George Young	
Howard Bassford - DLA Piper LLP	Covanta

Session 2 - 5 July 2011 (7pm)

Jo Green	Brogborough Parish Council
Hilda Duguid	
Hugh Clark	
John Redman	
Howard Bassford - DLA Piper LLP	Covanta

Session 3 – 6 July 2011 (2pm)

Peter Neale	Marston Moreteyne Parish Council
Nigel Allison	Stewartby Water Sports Club
Graham Mabbutt	Bedford and Milton Keynes Waterway Trust
Paul Fox	
Mr Robertson	
Penelope Sowter	
Nicola Ryan-Raine	
Rosalind Blevins	
Ms Gaskin	
Katie Gray	
Mike Blair	
Howard Bassford - DLA Piper LLP	Covanta
Robin Treacher	Covanta

Session 4 - 6 July 2011 (7pm)

Sue Clark and Ian Pickering	25 Town and Parish Councils
Councillor Tim Hill	Wooton Ward, Stewartby
David Cooper	Our Marston Vale & Stewartby Parish Council
Paul Farrant	
Anthony Hare	
Judith Cunningham	

Stuart Hazel
Steve Lonsdale
Sarah Watson
David Hoy
Graham Glover
Nicola Chaplin
George Cansdale
Sian Griffith
Allan Wright
Janet Orchart
Steve Heaviside
Irena Forster
Catherine James
Zhi-Hua Gao-Levins
James Carter
Ray Catterhorn
John Simons
Howard Bassford - DLA Piper LLP — Covanta

E) Members of the Public Registered as Interested Parties and Others

The following is a list of members of the public (as separate from the organisations and groups listed previously) who submitted relevant representations to register as interested parties. Although not listed separately, some of the interested parties listed here also submitted further written representations at various stages of the examination process.

Also listed at the end of this section are others who made representations in writing which were accepted by the Panel notwithstanding their not registering as interested parties.

Interested Parties

Surname	First name
Abbey	John
Abbott	Mike
Abrahams	Liam
Ackroyd	Alastair
Akhtar	Parvez
Albone	Mrs A
Alden-Salter	Valerie
Alder	Jean
Alexander	Caroline
Alexander-Buckley	Keith
Allan	Donald
Allison	Nigel
Allison	Sarah
Anderson	M E
Andrew	Mr M
Andrew	Mrs M
Andrews	Michael C
Apling	Alan
Arden	Mrs S
Ashby	Elinor
Ashby	John
Ashcroft	Nicola
Ashdown	Richard
Atkinson	Mark
Atlay	Mark
Atlay	Norma
Avis	Margaret
Bacon	David
Bacon	Michael A
Bacon	Mrs V A
Bacon	Sally
Bagchi	Cynthia
Baker	Clive

Baker	Ms
Baker	Richard
Balint	Julie
Balint	Sally
Balint	Stephen
Ball	Andrew
Ball	David
Ball	Delise
Barber	Lynda
Barnes	Michael
Barrett	Dean
Barton	Karl
Bastable	Alan Richard
Bastable	Marion
Basterfield	Tim
Bates	Colin
Batham	Leah
Bayley	Melane
Beal	Anita
Bean	Mary
Beaty	Valerie
Beavis	Linda
Beckerleg	John
Bell	Kevin
Bell	Sarah
Bellamy	Graham
Bennett	M
Bentley	John
Bernadette	Mrs
Bevan	Colin
Bews	Peter
Bews	Tony
Bews	William
Biggs	Hanna
Bines	Mrs M
Bishenden	David
Bishenden	Janet
Bishenden	Steve
Bishop	Andrew
Bishop	Jayne
Black	Mark
Black	Pauline
Black	Catherine
Blackmore	Mrs D
Blackwell	Amy Eleanor
Blackwell	Frederick
Bladon	Adrian
Bladon	Anne
Blaine	Peter
Blake	Kevin M
Blake	Wendy
Bland	Bryan
Blevins	Joanna Fern
Blevins	Simon
Blevins	Trevor
Blevins	Anne
Bloodworth	Hayley
Bloodworth	Karen
Bloodworth	William
Boddington	Major J
Boddington	Shelagh
Bolton	Peter
Boniface	S
Borrett	Alison
Borrett	David
Boshier	Lynne
Bourn	Barbara
Bourne	Arthur
Bowker	Quentin
Boyle	Felicity
Bradshaw	Steve
Brindley	Edna
Brindley	Roy
Bristow	Hannah
Bristow	Jessica
Britton	R
Brocklebank	Andrew
Brookman	Darryl
Brooks	Jonathan
Brooks	Michael
Browes	Nicola
Brown	Ann Nella
Brown	Gwen
Brown	James
Brown	Jeannette
Brown	Laurence
Brown	Lyn
Brown	Sarah
Browning	Mike
Bryer	Melanie
Buck	Keith
Buckley	Heather
Buckley	Siobhan
Budd	Andrew
Bulled	Jeff
Bulled	Linda
Bullock	Pete
Bunney	Anna
Bunney	Steve
Bunyan	Andrew
Burkett	Julia
Burr	Mark
Burrell	C
Buswell	Felicity
Butler	Matthew
Butten	Keith
Butten	Linda
Butterworth	Sandra

Bye	Catherine	Corless	Andrew
Bywater	Lucy	Corzo-Menendez	Nuria
Cahill	Thomas	Cosby	Jane
Cain	Robert	Cosher	P
Campbell	Ian	Coughlin	Linda
Cansdale	George	Couldridge	Daniel
Cargill	Yasmine	Couldridge	Julie
Carpenter	Colin	Coulson	Barbara
Carr	Ian	Coulson	Mrs E M
Carr	Susan	Crampin	Mrs A
Carrington	John	Cranny	Elizabeth
Carter	E C	Creamer	Emmeline
Carter	Richard	Creamer	Matthew
Casey	Mr J	Cronin	Lucy
Cavender	Helen	Cunningham	Judith
Cavender	Stephen	Curwen	P M I
Cawkwell	Jane	Dance	Ann
Cawkwell	Richard	Dance	Emma
Cawte	Bill	Dance	Tanya
Chadwick	Mark	Dant	Ruth
Chaplin	Anthony	Dare	Katrina
Chaplin	Max	Davidson	Alan
Chaplin	Nicola	Davidson	E W
Chaplin	Phyllis	Davidson	Mrs J
Chapman	Fiona	Davies	Peter
Chatham	Robina	Davis	Diane S
Cheadle	David	Davis	L
Cheadle	Lynne	Day	Francis
Chiari	Sarah Alison	Day	Julie
Circuit	Lillian	Dean	Andrew
Circuit	Stephen	Dean	Christine
Clapham	Iain	Dean	John
Clark	Harry	Delany	Mr
Clark	Hugh	Denchfield	Fiona
Clark	Jill	Denchfield	Nigel
Clark	Louise	Dennis	Tina
Clark	Susan	Deverell	Nathan
Clements	David	Devereux	Martin
Clements	Roger	Devereux	Tanya
Clements	Susan	Dilley	Vanessa
Clifford	Lady	Dixon	David
Clifford	Sir Timothy	Dobson	Adrian
Cole	Adrian	Dobson	Hannah
Cole	Susan	Dobson	Mark
Conlan	Alexander	Dobson	Rebecca
Conlan	G	Dobson	Ruby
Constable	M A	Dobson	Stephen
Cook	Elaine	Dooley	Gary
Cook	Frank James	Dosser	Mr B
Cook	Rebecca	Drew	Craig
Cooper	Roy	Drew	Kirstie
Cooper	Stuart	Drew	Paul
Cooper	T	Drew	Ruth
Cope	Raymond	Duckett	Paul

Dudley	Andrew	Freeman	Ian
Duffy	Tracey	French	George
Duggan	Dominic	French	Joan
Duguid	Hilda	French	Margaret
Duguid	Jim	French	Ray
Dunn	James	Frost	Kate
Dunn	R	Fudger	David
Dunne	Peter	Fuller	Grace
Durkin	Mathew	Fuller	Jack
Dyke	Barry	Fuller	James
Dyke	Michael	Funge	David
Dyson	Michelle	Gahagan	James
Easter	Mrs	Gale	Robert
Eaton	Derek	Galliara	J
Eaton	Sally	Gardner	Peter
Edwards	C	Gardener	Jeff
Edwards	Darren	Garner	Mr B
Edwards	J A C	Garratt	Roger
Edwards	Mrs	Gautier	Christopher
Edwards	Nigel	George	Margaret
Ellerbeck	Emma	Gesoff	Annette
Elliot	Paula	Gesoff	Frank
Ellis	Mr M	Gibb	William
Ellis	Mrs	Gibson	Mrs D
Elson	Mrs J	Gilbert	Mark
Evan	Roger	Giles	William
Evans	Graham	Gill	Anthony
Eves-Down	Miss	Gillard	Richard
Eves-Down	Ms	Gilson	Leslie James
Eves-Down	Ms	Gilson	June
Faulkner	Lynne	Glover	Graham
Felce	Mr D	Goggin	Josephine
Felce	Brenda	Goggin	Thomas
Field	Tammy	Gooch	Jeremy
Finch	Jonathan	Goss	Gloria
Finn	Hester	Gout	John
Fisher	David	Graham-Young	James
Fisher	Rosemary	Gray	Kathleen
Fishlock	Mrs J	Gray	Lee
Fitz-Gibbon	H	Gray	Joan
Fleet	Barbara	Green	David
Fleet	Ian	Green	Janice
Ford	David	Green	Martin
Fortune	Caroline	Green	Maureen
Fortune	Gary	Green	Michael
Fothergill	David	Green	Joanne
Fountain	Alan	Greenlees	T
Fountain	Julie	Griffin	Denise
Fountain	Richard	Griffith	Janet
Fox	Evelyn	Griffith	Kimberley
Fox	Paul	Griffith	Michele
Franceys	R	Griffith	Roger
Frangiamore	Lisa	Griffith	Sian
Franklin	Barrie	Griffiths	Barbara

Grimes	Clare	Holland	Kathleen
Gritton	Georgia	Holme	Eric
Gross	Pamela	Holme	Robert
Grummitt	David	Holme	Doreen
Haigh	Anthony	Horner	Susan
Haigh	Wendy	Howard	June
Hall	Luan	Howard	Mark
Halse	Barbara	Howard Partnership	
Halson	Kathie	Howell	Frances
Hamilton	Stuart	Howell	Phil
Harbottle	Paul	Howell	Richard
Hares	Rebecca	Howes	Daniele
Harpur	Derek	Howes	Tony
Harris	Timothy	Howitt	Ian
Harrison	David	Hoy	David
Harrison	Godfrey	Hoy	Christine
Harrison	Mrs M	Hubble	Diana
Harvey	Eric	Hubble	Terry
Hasell	Stuart	Hudson	Adrian
Hawker	John	Hudson	Audrey
Hawkes	Joan	Hughes	Mr L
Hawkes	Simon	Hughesdon	Mrs P
Hawkyard	Steven	Humphreys	Robert
Hayden	Yvonne	Humphries	C
Hazelwood	Julian	Hunter	Peter
Hazelwood	Pamela	Hutchings	Rosalind
Headford	Alan	Hutchinson	Kim
Headley	Michael	Hutchinson	Lee
Heley	Mrs B	Hyde	Terence
Henderson	Neil	Ingram-Moore	Colin
Hennessy	Michael	Inwood	Graham
Henson	Michael	Itzinger	Andrew
Herbert	Clifford	Ivory	Ruth
Herbert	Wendy	Ivory	Stephen
Herget	Mrs S	Jacobs	Nigel
Hetherington	Peter	James	Richard
Hewett	J	Janes	Chris
Hickey	Carl	Jay	Adrian
Hickman	Joanne	Jay	Ruth
Hill	Brian	Jefcoate	Mick
Hill	Charlotte	Jefcoate	Patsy
Hill	Kim	Jellis	Adam
Hill	Steve	Jellis	Andrew
Hilton	Brian	Jellis	Karen
Hilton	John	Jennings	Pauline
Hilton	Susan	Johns	Tracy
Hingley	Sue	Johnson	Lawrence
Hinson	Audrey	Johnson	Sarah
Hinson	Peter	Johnston	David
Hoar	Mrs H	Johnston	Sian
Hoare	Phillip	Jones	Andre
Hodgson	Dave	Jones	Ken
Hofmann	Joshua	Jones	Norman
Holland	Derrick	Jones	Owen

Jones	Robyn
Jones	Trevor
Jordan	John William
Jowitt	Heather
Joyner	Patricia
Joynson	Jane
Joynson	Jeff
Judd	Claire
Kay	John
Kaye	Andrew
Kaye	Anna
Keenan	Cynthia
Kemp	Joan
Kemp	Lindsay
Kemp	Sue
Keogh	Paul
Key	Mr
Key	Mrs
Khan	Mohammed
Kibblewhite	Laurence
King	Bob
King	Camilla
King	John
King	Nicola
King	Robert
King	Stuart
King	William
Kirby	Sam
Knell	A
Knight	Mary
Knights	Julia
KTI Energy Limited	
Kurz	Annemarie
Lafferty	Henry
Lai	Celia
Laird	Daisy
Laird	Harrison
Laird	Kirk
Laird	Rosie
Laird	Sarah
Lambe	Robert
Lander	Roger
Lane	Andrew
Lane	Maxine
Last	Gemma
Last	Richard
Last	Steph
Laurence	Marion
Law	Sally
Lawrence	M
Lawson	Myriam
Lawton	B A
Layton	Laura
Lee	Brenda
Legg	Garry
Lloyd	Abigail
Lloyd	Carol
Lloyd	Gareth
Lockhart	Robert
Long	Rachel
Long	Stewart
Lonsdale	Steven
Lopez	Donna
Louisa	
Lousada	Toby
Lovell	Mark
Lowe	Peter Clifford
Lowe	Shiela
Lowell	Angela
Lowings	Adele Leonie
Lowings	Tara
Luck	David
Luck	Mrs
Luff	Steve
Luff	Wendy
Lunnon	Scott
Lunnon	Natalie
Lyn	Mrs
Ma	Guimin
MacDonald	Alan
MacDonald	Norma
Mace	Craig
Mackenzie	Sharon
Mackin	Paul
MacRitchie	Donald
MacRitchie	Kathryn
Male	Peter
Mann	Janet
Mann	Richard
Mannings	Michael
Mannings	Monica
Markham	Gillian
Marr	Mary
Marr	Nicholas
Marsh	Clive
Marsh	John
Marshall	Marie Anne
Marshall	Peter
Martin	Deborah
Mason	Natasha
Mason	Robert
Mason	Tim
Mathewson	Murdo
Mayo	Ed
McConnell	Bernard
McConnell	James
McCormick	Kim
McDorman	A

McFarling Fred
McHugh Matthew
McLeod Ross
McNamara David
Mead Joy
Meaden Karyn
Meadows Peter
Meadows Mrs E J
Mears Mr T
Meeks Ian
Mernagh Hannah
Merryman Philip
Metcalfe Iain
Metcalfe Karen
Metherall Heather
Metherall Peter
Michael Peter
Miller David
Miller John
Miller Karen
Mills Kathleen
Mills Peter
Mills Tina
Milne Tracey
Minchington Stephen
Mison Michael
Mitcalf John
Molyneaux Denise
Molyneaux Geoff
Moore Adele
Moore Derek
Moore Harry
Moore Norma
Morley Ann
Morley Hugh
Morris A
Morris Mr S
Morris Mr S H
Morris Mrs B
Mudd Gary
Murawski Mrs C
Murgatroyd John
Murphy Christine
Murray Christine
Murray Nigel
Nash David
Neale Peter
Nevinson Ann
Newbert Rebecca
Newman Michael
Nicholls Robert
Nightingale Richard
Noble Donna
Noble Steven
Nockels James
Noon Terence
Noon Barbara
Noone Jim
Norman Lindsey
Norman Mark
Norman Sarah
North Jane
Notton Chris
O'Brien John
O'Brien Russell
Harriet
Olds Lavender
Olds Matthew
Orchart Janet
OReilly Mark
Padian Michael
Padian Mrs D
Page L R G
Page Steve
Page Stuart
Page Zena
Palfreyman Graham
Palmer Diana
Parish Caroline
Parish William
Parker Andrew
Parker Roger
Parry Cedryn
Parry Lynne
Pascal Ghislain
Pashley Dawn
Paterson Alan
Pathan Ashma
Peachey-May Carole
Peat J V
Peat Robert
Pelling Jonathan
Pengilley Beryl
Penn Andrew
Penn Mobena
Percival Sue
Perkins Jeremy
Persaud Mrs R
Pestell James
Pestell Jeremy
Peverill Ian
Phillips Peter
Phillips Rosalind
Pickering Ian
Pickering Izzie
Pickersgill John
Pilbeam Barbara
Pilbeam Francis

Pilkington	Jane	Rowe	Amanda
Plant	Steven	Rowse	Steven
Plater	David	Royden	Charles
Plumb	Andrew	Rumbold	Maria
Pointon	Mr N	Rumbold	Chris
Pointon	S	Ruocco	Carlo
Pointon	Stuart	Ruocco	Mary
Poll	Roy van de	Ruocco	Mr J
Pollock	L	Russell	Keith
Porter	Kevin	Rust	Maurice
Posnett	Urszula	Ryan	Audra
Poultney	Mr S	Ryan-Raine	Nicola
Poultney	Mrs D	Sale	Jake
Pountney	Karl	Sampson	Jean
Powell	Jennifer	Sanchez	Jacqueline
Powell	Martin	Sanchez	Martin
Powell	A K	Sawford	Steve
Presley	Susan	Schwalm	Adam
Pritchard	Sylvia	Sealey	Andrea
Pritchard	Terence	Sealey	Paul
Prowse	Irene	Sellwood	Geoffrey
Cole	Barry	Shadbolt	Mrs R
Raggett	Collin	Sharratt	Helen
Raggett	Dawn	Sharratt	Jonathan
Raine	Colin	Shenton	Andrew
Ralphs	Andrew	Short	Chris
Rambart	Ian	Shorter	Robert
Randall	Christopher	Shrimpton	Graham
Randall	Elaine	Shurety	D J
Randall	Gemma	Silva	Carlos
Randall	Joanne	Silva	Claire
Randall	Mark	Simmons	John
Randall	Paul	Singer	Mrs L M
Redman	John	Skoyles	John
Redman	Ruth	Skoyles	Mrs S
Reeve	A W	Smith	Angela
Relton	Sheila	Smith	Kathleen R
Revill	Keith	Smith	Malcolm
Richardson	G M	Smith	Michael
Richardson	Judith	Smith	Phil
Richardson	Kirsty	Smullen	Bill
Richardson	Tony	Smythe	Miranda
Roberts	Hugh	Soderberg	Neville
Robertson	Brian	Somerfield	Lynn
Robertson	C J	Sonnenstein	Christopher
Robertson	Mr A M	Sonnestein	Ann Elizabeth
Robinson	Brian	Souster	John
Robinson	G	Sowter	Penelope Jane
Robinson	Mrs D	Speedy	C
Rolfe	Jeffery C	Spicer	Marianne
Rolfe	Paul	Spinks	Glynis
Romans	Mrs C	Stallwood	Clive
Ross	Aron	Stanbridge	Muriel
Ross	Tanya	Stanton	Alex

Stanton Laura
Stanton Nicholas
Stanton Rebecca
Stanton Rosemary
Stanton Treena
Starkess M
Stimson Neville
Stone Nicholas
Stone Rhiannon
Stone Susan
Storey Mr R
Storey Mr
Straccia Vincenzo
Street Mike
Stringer Mathew
Stroud Michelle
Stuart-Smith Kim
Sullivan Barry Desmond
Summerfield George
Sweetman Mark
Symonds John
Taggart Rolf
Tait John
Tasker Colin
Tasker Jane
Tassell John
Tassell Sue
Taylor Nick
Teakle Richard
Teakle Sally
Tebbutt Roy
Thomas Chris
Thomas Mr
Thomas Jennifer
Thompson Elizabeth
Thomson Therese
Thorburn Marjorie
Thornton Elizabeth Jane
Thorpe Kim
Timms Francis John
Timothy R
Tobin Catherine
Todhunter Nola
Toland David
Tomber Christine
Tomlin John
Tomlin Mary
Tomuins Emma
Tothill Ibtisam E
Townsend Ian
Trott Gilbert J
Trotter Julie
Trussell Mark
Tuck David
Turland Elaine
Turner Emma
Turner Nicholas
Turner Rebecca
Tyrrell Barry
Tysoe Lee
Underhill Kathryn
Vass Daniel
Vaughan Helen
Vaughan Margaret
Vickers Ann
Vickers G J
Viney Graham
Walker Audrey
Walker Mr T
Wallace Ingrid
Waller Cyril
Waller Joan
Walsh James
Walton Diane
Ward Brian
Ward Hazel
Ward Lucy
Ward Mel
Ward Nicholas
Ward Timothy
Ward Tom
Wardle Ms
Warner Kirsty
Warwick Andrew
Watkin Mr T
Watkin Mrs A
Watson Nicholas
Watson Sarah
Watson Stephen
Watts Carol
Watts Edward
Watts Mari
Weeks Andrew
Weiser Patricia
West Lynne
West Tracy
Westgarth G
Westgarth Linda
Weston Poppy
Wheeler Barbara
Wheeler Roger
White Carole
Whitham Simon
Whittaker Pippa
Whittle Keith
Wickings Mr
Wigley Dian

Wildman	Joan	Wright	Allan
Wilkinson	G	Wright	Janice
Williams	David	Wright	Mr A
Williams	Julie	Wright	Mrs A
Williams	Phil	Wright	Mrs M
Willoughby	Roger	Wright	T
Wilson	Fred	Wyatt	Robert
Wilson	John	Wyer	Jillian
Wilson	Mr J	Yates	Brad
Wilson	Mr R	Yates	Carole
Wilson	Mrs	Yates	Clive
Withers	D T	Yates	Emma
Witt	Natasha	Young	Derry
Wood	Emma	Young	Geoff
Woodcock	Mrs S	Young	George W E
Woodcock	Simon	Young	Sue
Woolhead	Mr K	Young	Susan
Worrall	C L	Yuen	Kirstie
Worrall	F A		

Representations Submitted by Persons not Registered as Interested Parties

DAY/1	Adrian Day
LLD/1	Evangelia Lloyd
ARM/1	Edwin Armstrong

APPENDIX D – THE DEVELOPMENT CONSENT ORDER

Order made by the Infrastructure Planning Commission subject to special parliamentary procedure, and laid before Parliament under section 1 of the Statutory Orders (Special Procedure) Act 1945 on ... 2011, together with the certificate or statement required by section 2 of that Act.

S T A T U T O R Y I N S T R U M E N T S

2011 No. 0000

INFRASTRUCTURE PLANNING, ENGLAND

The Rookery South (Resource Recovery Facility) Order 2011

Made - - - -	**** [2011]*
Laid before Parliament	*****
Coming into force - -	*****

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SCHEDULE 1 — AUTHORISED DEVELOPMENT AND REQUIREMENTS
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SCHEDULE 7 — PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

An application has been made to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 made under sections 37, 42, 48, 51, 56, 59 and 232 of the Planning Act 2008 (the "Act")(ccc) for an Order under sections 37, 55, 115, 120, 121, 122 and 140 of the Act;

The application was examined by a Panel appointed by the Chair of the Infrastructure Planning Commission pursuant to Chapter 4 of Part 6 of the Act;

The Panel, having considered the representations made and not withdrawn and the application with the documents that accompanied the application, in accordance with section 104 of the Act has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change in the proposals;

The Order will not come into force until it has been before Parliament and has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965;

(ccc) 2008 c.29.

Accordingly, in exercise of the powers conferred by sections 114, 115, 120, 121, 122 and 140 of the Act, the Infrastructure Planning Commission makes the following Order:

Citation and commencement

1. This Order may be cited as the Rookery South (Resource Recovery Facility) Order 2011.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(ddd);

"the 1965 Act" means the Compulsory Purchase Act 1965(eee);

"the 1980 Act" means the Highways Act 1980(fff);

"the 1990 Act" means the Town and Country Planning Act 1990(ggg);

"the 1991 Act" means the New Roads and Street Works Act 1991(hhh);

"the 2008 Act" means the Planning Act 2008(iii);

"the authorised development" means the development and associated development described in Part 1 of Schedule 1 and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

"the book of reference" means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

"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;

"the code of construction practice" means the code of construction practice certified by the decision-maker as the code of practice for the purposes of this Order;

(ddd) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

(eee) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 10 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 9181 (c.23). Section 13 was amended by section 139 of the Tribunals Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). There are other amendments to the 1965 Act which are not relevant to this Order.

(fff) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (consequential Provisions)Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales)Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(ggg) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(hhh) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(iii) 2008 c.29.

"commence" means begin to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, or the temporary display of site notices or advertisements and "commencement" is to be construed accordingly;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"the decision-maker" has the same meaning as in section 103 of the 2008 Act;

"the design and access statement" means the design and access statement certified by the decision-maker as the design and access statement for the purposes of this Order;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"the land plans" means the plans certified as the land plans by the decision-maker for the purposes of this Order;

"limits of deviation" means the limits of deviation for the scheduled works comprised in the authorised development shown on the works plans;

"local highway authority" has the same meaning as in section 329(1) of the 1990 Act;

"maintain" includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace and improve and "maintenance" is to be construed accordingly;

"the Order land" means the land shown on the land plans which is within the Order limits and described in the book of reference;

"the Order limits" means the limits shown on the Order limits plan and works plan within which the authorised development may be carried out;

"the Order limits plan" means the plan certified as the Order limits plan by the decision-maker for the purposes of the Order;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(jjj);

"the relevant planning authority" means Central Bedfordshire Council in relation to land in its area and Bedford Borough Council in relation to land in its area, and "the relevant planning authorities" means both of them;

"requirement" means a requirement set out in Part 2 of Schedule 1 (requirements) to this Order;

"the rights of way plan" means the plan certified as the rights of way plan by the decision-maker for the purposes of this Order;

"the scheduled works" means the works specified in Schedule 1 to this Order, or any part of them as the same may be varied pursuant to article 3;

"the sections" means the sections certified as the sections by the decision-maker for the purposes of this Order;

"statutory undertaker" means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

(jjj) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

"the undertaker" means, in relation to any provision of this Order, Covanta Rookery South Limited and any other person who has the benefit of that provision in accordance with article 7 or section 156 of the 2008 Act;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain and also includes the water body or water bodies contained in Rookery North Pit, Stewartby; and

"the works plans" means the plans certified as the works plans by the decision-maker 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 air-space above its surface.

(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 to be taken to be measured along that work.

Development consent etc. 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 to be carried out within the Order limits.

(2) The authorised development may be constructed in the lines or situations shown on the works plans and, subject to the provisions of the requirements, in accordance with the drawings specified in the requirements.

(3) The works comprised in the authorised development may be constructed within the limits of deviation.

(4) In constructing or maintaining the scheduled works, the undertaker may—

(a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation; and

(b) deviate vertically from the levels shown for those works on the sections to any such extent downwards as may be necessary, convenient or expedient provided that the stack shall not be lower in height than 135.25 metres above ordnance datum.

(5) Nothing in this Order or the Town and Country Planning (General Permitted Development) (England and Wales) Order 1995(kkk) in its application to the authorised development permits—

(a) development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part III of the 1990 Act or any requirement otherwise than where expressly authorised by either Order;

(b) any part of Work No. 1 (other than the stack comprised in that work) to exceed the height of the building shown on the plans listed in requirement 6.

Procedure in relation to approvals etc under requirements

4.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

(a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(kkk)S.I. 1995/418.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989.

Maintenance of authorised development

5.—(1) Subject to the other terms of this Order, including the requirements, the undertaker may maintain the authorised development, except to the extent that an agreement made under this Order, provides otherwise.

(2) Subject to paragraph (3) and the requirements, the power to maintain the authorised development includes the power to carry out and maintain such of the following as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction or operation of the authorised development, namely—

(a) works to alter the position of apparatus below ground level, including mains, sewers, drains and cables including below ground structures associated with that apparatus within the Order limits;

(b) works of decommissioning and demolition.

(3) This article only authorises the carrying out of maintenance of works within the Order limits.

Operation of generating station

6.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any other obligation under any other legislation that may be required to authorise the operation of a generating station.

Benefit of the Order

7.—(1) Except as provided for by this article, section 156(1) of the 2008 Act applies to the grant of development consent by this Order.

(2) The undertaker may—

(a) transfer to another person (the “transferee”) any or all of the benefit of the provisions of this Order 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 in writing between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) 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.

(5) The consent of the Secretary of State, being the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order, is required for the exercise of the of the powers of paragraph (2) except where—

(a) the transferee or lessee is—

(i) a statutory undertaker;

(ii) a principal council, a joint authority or a joint waste authority in England as defined in the Local Government Act 1972(lll);

(iii) an authority designated under the Waste Regulation and Disposal (Authorities) Order 1985(mmm); or

(iv) a person having security over any part of the undertaking of the undertaker in respect of Work No. 1 in relation to contractual arrangements relating to a contract between the undertaker and a person referred to in sub-paragraphs (i) to (iii);

(b) the time limits for 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 claim has been made and has been compromised or withdrawn;

(iii) compensation has been paid in final settlement of any such claim;

(iv) payment of compensation into court in lieu of settlement of any such claim has taken place; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable; or

(c) the transfer or lease relates to any part of the authorised development except Work No. 1.

(6) The provisions of articles 8 to 11, 13 to 24 and 29 have effect only for the benefit of Covanta Rookery South Limited and a person who is a transferee or lessee as referred to in paragraph (2) and is also—

(a) the transferee or lessee of the land occupied by Work No. 1;

(b) in respect of Works No. 6A to 6H, a person who holds a licence under section 6(1) of the Electricity Act 1989, or who is not required to hold such a licence by virtue of an exemption order under section 5 of that Act;

(c) in respect of articles 14 and 17, the transferee or lessee of the land occupied by Work No. 2; or

(d) in respect of functions under article 9 relating to a street, a street authority.

(7) Where a person who is the transferee or lessee as referred to in paragraph (2)—

(a) is liable to pay compensation by virtue of any provision of this Order; and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker in respect of Work No. 1.

Guarantees in respect of payment of compensation

7A.—(1) The authorised development must not be commenced and the undertaker must not begin to exercise the powers of articles 16 to 26 of this Order (compulsory purchase and temporary use) unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order or an alternative form of security for that purpose is in place which has been approved by the relevant planning authorities.

(2) A guarantee given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable.

(lll) 1972 c.70.

(mmm) S.I. 1985/1884.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(nnn) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or nuisance) no order may 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 carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(ooo); 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—

(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authorities as described in requirement 19; or

(ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do 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.

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) tunnel or bore under the street;

(c) place apparatus in the street;

(d) maintain apparatus in the street or change is position; and

(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (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) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(nnn) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(ooo) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

(4) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

Public rights of way

10.—(1) With effect from the date upon which authorised development is first commenced the section of each public right of way specified in columns (1) and (2) of Part 1 of Schedule 3 and shown on the rights of way plan is extinguished to the extent specified in column (3) of that Part of that Schedule.

(2) With effect from the date of satisfaction by the local highway authority that a public right of way specified in columns (1) and (2) of Part 2 of Schedule 3 has been improved to the standard defined in the implementation plan, the public right of way in question is deemed to have the status specified in column (3) of that Part of that Schedule.

(3) In this article "implementation plan" means the written plan agreed between the undertaker and the local highway authority for the improvement of the public right of way in question.

Temporary stopping up of streets

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.

(4) The undertaker must not temporarily stop up, alter or divert—

(a) the street specified as mentioned in paragraph (3) without first consulting the local highway authority; and

(b) any other street without the consent of the local highway authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private rights of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

12. The undertaker may, for the purposes of carrying out the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 5 (access to works); and

(b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve 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

13.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) any stopping up, alterations or diversion of a street authorised by this Order; or

(b) the carrying out in the street of any of the works referred to in article 9(1) (street works).

(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.

Discharge of water

14.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out 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 of the Water Industry Act 1991(ppp) (right to communicate with public sewers).

(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; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(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 such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) 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.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by Regulation 38 of the Environmental Permitting Regulations (England and Wales) 2010(qqq) (offences of polluting water).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(9) This article has effect in relation to watercourses or drains that are created or to be created as part of any restoration scheme applicable to Rookery South Pit and authorised by a review of old minerals permissions pursuant to section 96 of the Environment Act 1995(rrr) reference number BC/CM/2000/08.

Authority to survey and investigate the land

15.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(ppp) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(qqq) S.I. 2010/675.

(rrr) 1995 c.25.

(a) survey or investigate the land;

(b) without prejudice 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 prejudice 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 on entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes must 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.

Compulsory acquisition of land

16.—(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 under section 134(3) of the 2008 Act 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 to which it was previously subject.

(3) Any person who suffers loss by the extinguishment or suspension 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 24 (temporary use of land for carrying out the authorised development).

Power to override easements and other rights

17.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker, by its successor pursuant to a transfer or lease under article 7 of this Order, by any person deriving title under them or by any of their servants or agents) is authorised by this Order for the purposes of this article if it is authorised by the Order apart from this article and 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 carrying out, or maintenance of any building or work on land;

(b) the erection, construction, or maintenance of anything in, on, over or under land; or

(c) the use of any land.

(3) The interests and rights to which this article applies are 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 having that effect.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge in pursuance of this article, compensation—

(a) is payable under section 7 or 10 of the Compulsory Purchase Act 1965; 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.

(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).

(7) This article does not apply in respect of any agreement, restriction, obligation or other provision contained in a deed made pursuant to section 106 of the 1990 Act or section 278 of the 1980 Act.

Time limit for exercise of authority to acquire land compulsorily

18.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

(a) no notice to treat may be served under Part 1 of the 1965 Act; and

(b) no declarations may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(sss) as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 24 (temporary use of land for carrying out the authorised development) ceases 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.

(sss) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are other amendments to the 1981 Act which are not relevant to this Order.

Compulsory acquisition of rights

19.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which a new right is vested in the undertaker, whichever is the later, the land over which any new right is acquired is discharged from all rights trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act as substituted by article 22 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not be required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension 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.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

20.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is substituted—

> "(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—
>
> (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
>
> (b) published in a local newspaper circulating in the area in which the land is situated. ".

(4) In that section, in subsection (2), for "(1)(b)" there is substituted "(1)" and after "given" there is inserted "and published".

(5) In that section for subsections (5) and (6) there is substituted—

> "(5) For the purposes of this section, a person has a relevant interest in land if—
>
> (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
>
> (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.".

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after "publication" there is inserted "in a local newspaper circulating in the area in which the land is situated"; and

(b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words "(as modified by section 4 of the Acquisition of Land Act 1981)" are omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

21.—(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 16 (compulsory acquisition of land) as may be

required for any purpose for which that land may be 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) Paragraph (2) does not prevent article 22 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(4) Nothing in this article requires the undertaker to acquire any estate, right or interest in any adopted highway.

Acquisition of part of certain properties

22.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

(a) a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole ("the land subject to the counter-notice").

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner may be required to sell only the land subject to the notice to treat is, unless the undertaker agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice;

(c) the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

(b) the material detriment is not confined to a part of the land subject to the counter-notice;

(c) the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land that that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

23.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or 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) does not 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 appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

24.—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;

(b) remove any buildings and vegetation from that land; and

(c) construct temporary or permanent works (including the provision of means of access) and buildings on 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 after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (2) of Schedule 6 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 19 of this Order.

(4) 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 be required to replace a building 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 any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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) except that the undertaker is not precluded from—

(a) acquiring new rights over any part of that land under article 19 (compulsory acquisition of rights); or

(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 21 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker cannot be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

25.—(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 such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) 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 provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 cannot be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

26. The undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the Order limits and described in the book of reference;

(b) extinguish the rights of and remove or reposition apparatus belonging to statutory undertakers in, on or over land shown on the land plans and described in the book of reference; and

(c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Railway undertakings

27.—(1) Subject to the following provisions of this article, the undertaker may not under article 9 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

(a) is under the control or management of, or is maintainable by, railway undertakers; or

(b) forms part of a level crossing belonging to any such undertakers or to any other person,

except with the consent of the undertakers or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld or delayed.

Application of landlord and tenant law

28.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(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) Accordingly, no such enactment or rule of law applies 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;

(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 purposes of the 1990 Act

29. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees

30.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with 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 of the 1961 Act.

Certification of plans etc

31.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

(a) the book of reference;

(b) the code of construction practice;

(c) the design and access statement;

(d) the land plans including plan number 3052/SK013 showing areas of land subject to restrictive covenants;

(e) the Residual Waste Acceptance Scheme dated 8 July 2011;

(f) the rights of way plan;

(g) the sections;

(h) the travel plan within the meaning of requirement 39(1),

for certification that they are true copies of the plans or documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Protection of Network Rail Infrastructure Limited

32. Schedule 7 has effect.

Arbitration

33. Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the decision-maker.

Signed by authority of the Infrastructure Planning Commission

Paul Hudson, Andrew Phillipson and Emrys Parry
Members of the Panel
Infrastructure Planning Commission

Date

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT AND REQUIREMENTS

PART 1

AUTHORISED DEVELOPMENT

In Central Bedfordshire

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act comprising:

Work No. 1 An electricity generating station with a nominal gross electrical output capacity of 65 MWe fuelled by waste and including—

(a) three waste processing streams each comprising a reciprocating grate, furnace, boiler and associated air pollution control system;

(b) transformer compound;

(c) an administration building;

(d) a tipping hall;

(e) refuse bunkering;

(f) a flue gas treatment facility;

(g) flues or stack;

(h) turbines and turbine hall;

(i) air cooled condensers;

(j) a facility to enable steam pass-outs and/or hot water pass-outs; and

(k) a visitor centre/education facility; and

associated development within the meaning of section 115(2) of the Act comprising—

Work No. 2 A post-combustion materials recovery facility for the purpose of treating incinerator bottom ash produced by the electricity generating station comprised in Work No. 1 and including—

(l) a screened ash/aggregate yard;

(m) buildings housing apparatus and necessary plant for separation of co-mingled metals from incinerator bottom ash and grading of such ash;

(n) a separation lagoon;

(o) an administration building;

(p) a weigh bridge; and

(q) a foul water pump house;

Work No. 3 A drainage channel to be constructed on an east - west alignment linking with a drainage channel to be constructed pursuant to a review of old minerals permissions bearing statutory reference number BC/CM/2000/08;

Work No. 4 An extension to the attenuation pond to be constructed pursuant to a review of old minerals permissions bearing statutory reference number BC/CM/2000/08;

In the Borough of Bedford and in Central Bedfordshire

Work No. 5A A new access road commencing at the north-east corner of Work No. 2 and running in a Northerly direction to a new junction with Green Lane, Stewartby;

Work No. 5B A new access road commencing at the north-west corner of Work No. 1 and running in a Northerly direction to a junction with Work No. 5A;

Work No. 6A A grid connection consisting of one or more cables laid in a trench commencing at a point on the Northern side of Work No. 1 and running in a Northerly direction to the vicinity of the new junction with Green Lane created as part of Work No. 5A;

Work No. 6B A grid connection consisting of one or more cables laid beneath the Marston Vale Railway Line and connecting with Works No. 6A and 6C;

Work No. 6C A grid connection consisting of one or more cables connecting Work No. 6B to Work No. 6D at a point on Green Lane in the vicinity of the existing access to Stewartby Water Sports Club;

Work No. 6D A grid connection consisting of one or more cables laid in a trench on Green Lane Stewartby and connecting Work No. 6C to Works No. 6E and 6G at a point at the junction of Green Lane and Copart Access Road, Marston Moretaine;

Work No. 6E A grid connection consisting of one or more cables laid in a trench from the junction of Green Lane and the Copart Access Road, Marston Moretaine to the junction of the Copart Access Road and the C94;

Work No. 6F A grid connection laid consisting of one or more cables connecting Work No. 6E to the proposed Marston Grid Substation west of the A421 Trunk Road in Marston Moretaine;

Work No. 6G A grid connection consisting of one or more cables laid in a trench from the junction of Green Lane and the Copart Access Road, Marston Moretaine to the existing Marston Road Primary Substation;

Work No. 6H A grid connection consisting of one or more cables laid in a trench from the junction of Works No. 6F and 6E to the existing Marston Road Primary Substation;

Work No. 7A A work for the improvement of the entrance to the Marston Vale Millennium Country Park to the West of the Green Lane Level Crossing;

Work No. 7B A work for the creation of new site access works, including new footways to the East of Green Lane Level Crossing;

Work No. 7C A work comprising a footway and cycleway link crossing the new access road comprised in Work No. 5A and linking Green Lane and the circular path passing around Rookery North Pit to be constructed pursuant to a review of old minerals permissions bearing statutory reference number BC/CM/2000/08;

Work No. 8A An improvement to Green Lane comprising the improvement of the carriageway and footway including the provision of facilities for cyclists West of Green Lane Level Crossing;

Work No. 8B An improvement to Green Lane comprising the improvement of the carriageway and footway including the provision of facilities for cyclists East of Green Lane Level Crossing; and

Work No. 9 An improvement to Green Lane Level Crossing including a widening of the carriageway, alterations to footways and the installation of full barriers and associated improvements to Green Lane, Stewartby;

and in connection with such works and to the extent that they do not otherwise form part of any such work, further associated development shown on the plans referred to in the requirements including—

(r) weighbridges and security gatehouses;

(s) internal site roads and vehicle parking facilities;

(t) workshops and stores;

(u) bunds, embankments, swales, landscaping and boundary treatments;

(v) pipes for steam pass outs and/or hot water pass outs within the Order limits;

(w) habitat creation;

(x) the provision of footpaths, cycleways and footpath linkages;

(y) water supply works, foul drainage provision, surface water management systems and culverting; and

(z) whether or not shown on the plans referred to in the requirements, the demolition of all or part of the redundant conveyor structure within the Order limits.

PART 2

REQUIREMENTS

Interpretation

In this Part of this Schedule—

"the approved development plans" mean the plans submitted with the application on 4 August 2010 or later and listed at requirement 6;

"by-products" includes incinerator bottom ash aggregate and ferrous and non-ferrous metal compounds;

"commercially operate" means operate the authorised development for commercial processing of waste and production of electricity for transmission to the national electricity grid following completion of hot commissioning and "commercial operation" and "commercially operated" shall be construed accordingly;

"heavy goods vehicle" means—

(aa) a heavy goods vehicle of 7.5 tonnes gross vehicle weight or more; and

(bb) any other vehicle designed for the transport of waste including refuse collection vehicles;

"low level restoration scheme" means the scheme for the restoration of Rookery North and Rookery South Pits which has been developed as a part of the review of old minerals permissions application which was submitted to Bedford Borough Council and Central Bedfordshire Council on 5 June 2009 and bears statutory reference number BC/CM/2000/08.

Time limits

1. The authorised development may commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Type of waste to be treated

2. The waste permitted to be incinerated in Work No. 1 must be limited to waste categorised as residual municipal waste and residual commercial and industrial waste and materials derived therefrom.

Commencement

3. Notice of commencement of the authorised development must be given to the relevant planning authorities within 7 days beginning with the date that the authorised development is commenced.

Incineration, Operation, etc.

4. Notice of commencement of—

(a) incineration at the authorised development, and

(b) commercial operation of the authorised development,

must be given to the relevant planning authorities within 7 days beginning with the date that incineration commences and the authorised development is first commercially operated respectively.

Detailed design approval

5. Except where the authorised development is carried out in accordance with the plans listed in requirement 6, no authorised development may commence until details of the layout, scale and external appearance of Works No. 1, 2, 5A, 5B, 7A, 7B and 9 comprised in the authorised development so far as they do not accord with the approved development plans have been submitted to and approved by the relevant planning authorities. The authorised development must be carried out in accordance with the approved details.

6.—(1) The authorised development must be carried out in accordance with the approved development plans bearing references 2.1 to 2.4 and 2.11 to 2.35 and strategies listed in this requirement (unless otherwise approved in writing by the relevant planning authorities and the altered development accords with the principles of the design and access statement and falls within the Order limits)—

Application Site Plan/the Order limits plan (drawing number: 2807LO/Order/007) (application document reference 2.1)

Works Plan: Key Plan (drawing number 2807LO/Order/001) application document reference 2.2)

Works Plan: 1 of 2 (drawing number 2807LO/Order/001.1) application document reference 2.3)

Works Plan: 2 of 2 (drawing number 2807LO/Order/001.2) application document reference 2.4)

The rights of way plan (drawing number: 3052LO/SK010) (application document reference 2.11 Rev A)

EfW Facility South Elevation (drawing number: B3250-P1100) (application document reference 2.12)

EfW Facility North Elevation (drawing number: B3250-P1101) (application document reference 2.13)

EfW Facility East Elevation (drawing number: B3250-P1103) (application document reference 2.14)

EfW Facility West Elevation (drawing number: B3250-P1103) (application document reference 2.15)

EfW Facility East Sectional Elevation (drawing number: B3250-P1104) (application document reference 2.16)

EfW Facility West Sectional Elevation (drawing number: B3250-P1105) (application document reference 2.17)

Secondary Buildings Elevations - MRF (drawing number: B3250-P1106) (application document reference 2.18)

RRF Tertiary Buildings Elevations (drawing number: B3250-P1107) (application document reference 2.19)

RRF North and South Elevations (drawing number: B3250-P1300) (application document reference 2.20)

RRF East and West Elevations (drawing number: B3250-P1301) (application document reference 2.21)

RRF Site Section (drawing number: B3250-P1302) (application document reference 2.22)

RRF Boundary Details (drawing number: B3250-P1310) (application document reference 2.23)

RRF Elevation & Section Key Plan (drawing number: B3250-P1320) (application document reference 2.24)

RRF Roof Plan (drawing number: B3250-P1330) (application document reference 2.25)

Proposed access road existing footpath width at level crossing (drawing number: 210010_18) (application document reference 2.26)

Proposed access road with proposed 2.5m, footpath at level crossing (drawing number: 210010_20) (application document reference 2.27)

Proposed access to The Rookery Resource Facility Proposed cross section (drawing number: 210010_19) (application document reference 2.28)

Level Crossing (drawing number: RX_DR_GL_LC_03) (application document reference 2.29)

Lighting Layout & Strategy Operational Area (drawing number: 9V3657-7003) (application document reference 2.30)

Landscape Strategy & Key Plan (drawing number: 2807LO/PA002RevB) (application document reference 2.31B)

Operational Area Masterplan and Green Lane Country Park & RRF Entrance (drawing number: 2807LO/PA/007) (application document reference 2.32)

Planting Strategy - Wider Site (drawing number: 2807LO/PA/004_RevB) (application document reference 2.33B)

Planting Strategy: Operations Area and Indicative Scheme Layout for Green Lane Country Park & RRF Entrance (drawing number: 2807LO/PA/005RevA) (application document reference 2.34A)

Trees to be removed/retained (drawing number: 2897LO/PA/008) (application document reference 2.35)

Surface Water Drainage Strategy (drawing number 21780/076/002 Rev B)

Foul Water Drainage Strategy (drawing numbers 21780/077/001 Rev C and 21780/077/002 Rev D).

(2) Where any alternative details are approved pursuant to this requirement and requirements 5 or 30, those details are to be deemed to be substituted for the corresponding approved details set out in this requirement.

BREEAM Rating

7.—(1) No part of the authorised development may commence until—

(a) a pre-construction stage consultation with the Building Research Establishment (BRE) (in accordance with the BRE's requirements for such consultation) has been carried out; and

(b) proposals identifying the range of options to achieve the BRE Environmental Assessment Methodology (BREEAM) rating specified in the consultation response, which must in any event (and in the absence of a consultation response) be of no less a standard than "good" have been submitted to and approved in writing by Central Bedfordshire Council.

(2) The authorised development must be carried out in accordance with the details approved pursuant to requirement 7(1). Any variation of the BREEAM rating must be agreed with BRE and submitted to Central Bedfordshire Council for approval in writing.

Provision of landscaping

8.—(1) No part of the authorised development may commence until a detailed landscaping scheme and associated working programme (which accords with the landscape strategy submitted with the application) has been submitted to and approved in writing by the relevant planning authorities.

(2) The landscaping scheme must include details of—

(a) the location, number, species, size and planting density of proposed planting;

(b) the retention of existing vegetation along the route of Work No. 5A specified in that scheme;

(c) a planting design in the vicinity of the attenuation pond and site access proposals within the Order land;

(d) any importation of materials and other operations to ensure plant establishment;

(e) proposed finished ground levels;

(f) planting and hard landscaping within the operational areas of the authorised development and the vehicular and pedestrian access, parking and circulation areas;

(g) the green wall and brown roofs to be constructed as part of the authorised development, including the method of construction, plant types, sizing and spacing, and the measures proposed for maintenance of those walls and roofs;

(h) minor structures such as signage, refuse or other units, and furniture;

(i) signage and cycle parking facilities at the site access on Green Lane;

(j) proposed and existing functional services above and below ground, including power and communications cables and pipelines, manholes and supports;

(k) the specified standard to which the works will be undertaken; and

(l) a timetable for the implementation of all hard and soft landscaping works.

Implementation and maintenance of landscaping

9.—(1) All landscaping works must be carried out in accordance with the detailed landscaping scheme approved under requirement 8 and to the specified standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) Any tree or shrub planted as part of the detailed landscaping scheme approved under requirement 8 that, within a period of 5 years after planting, 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, unless otherwise approved by the relevant planning authority.

(3) The green wall that is part of the landscaping scheme approved under requirement 8(1) must be maintained in accordance with the approved landscaping scheme following its installation for the duration of the period of commercial operation of the authorised development.

Highway accesses

10.—(1) The highway works comprised in Works No. 8A and 8B to Green Lane, including the two pedestrian crossings and the footway running parallel to and south of Green Lane and the first 10 metres chainage of the access road comprised in Work No. 5A from its junction with Green Lane (including the pedestrian crossing that forms part of the junction in those Works), must be completed prior to the commencement of Works No. 1 and 2.

(2) The access road comprised in Work No. 5A (including the pedestrian crossing that forms part of the junction in those Works) must be constructed to base course for a minimum distance of 100 metres chainage from the section of the access road that has been completed in accordance with requirement 10(1) prior to the commencement of Works No. 1 and 2. The access road must

be laid out in accordance with the approved access plans. The remainder of the route of the access road must be surfaced with crushed stone or other temporary materials appropriate for the purposes of constructing the authorised development.

(3) The works comprised in Works No. 5A and 5B must be substantially completed to the standard specified in the Design Manual for Roads and Bridges and in accordance with the approved access plans (application document reference 2.26) set out in requirement 6(1) as certified by an appropriate certifying professional prior to incineration of waste in Work No. 1.

(4) The commencement of Work No. 1 must not take place until a scheme to provide wheel cleaning facilities for heavy goods vehicles and provision for road cleaning in relation to construction of the authorised development has been submitted to and approved in writing by Central Bedfordshire Council. The scheme must include details of the measures and location for the wheel cleaning facilities and details of how cleaning of the highway will be secured so as to remove mud and other debris that may be carried on to it from the authorised development.

Fencing and other means of site perimeter enclosure

11.—(1) No part of the authorised development may commence until details of all proposed permanent fences, walls or other means of enclosure according with boundary details shown on drawing B3250-P1310 (application document reference no. 2.23) including the acoustic fence adjacent to the ramp serving the tipping hall comprised in Work No. 1 have been submitted to and approved in writing by Central Bedfordshire Council.

(2) All construction sites must remain securely fenced at all times during construction of the authorised development.

(3) All temporary fencing must be removed on completion of the authorised development.

(4) All perimeter fences, walls or other means of site perimeter enclosure for the authorised development approved in accordance with paragraph (1) must be completed prior to commencement of commercial operation in accordance with the approved details.

Surface and foul water drainage

12.—(1) Except where the authorised development is constructed in accordance with the approved drainage strategies, details of the surface and foul water drainage system (including means of pollution control and information demonstrating compliance with the best practice for sustainable drainage schemes) must be submitted to and approved in writing by Central Bedfordshire Council. Unless otherwise agreed in writing by Central Bedfordshire Council, such details must accord with the principles of the drainage strategy submitted with the application, making provision for the construction of Work No. 3, and must be implemented in accordance with the approved details.

(2) The drainage strategy must provide that all drains provided as part of the authorised development must, where necessary and appropriate, contain trap gullies or interceptors.

Land stability

13.—(1) No part of the authorised development may commence until a scheme to deal with land stability has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by Central Bedfordshire Council, to identify the extent of any land stability matters, and the remedial measures to be taken to render the land fit for its intended purpose.

(3) Land stabilisation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by Central Bedfordshire Council.

Contamination and groundwater

14.—(1) No part of the authorised development may commence until a scheme to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by Central Bedfordshire Council, to 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) Remediation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by Central Bedfordshire Council.

Archaeology

15.—(1) No part of the authorised development may commence until a written scheme of archaeological investigation has been submitted to and approved in writing by the relevant planning authorities.

(2) The archaeological investigation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by the relevant planning authorities.

Code of construction practice

16. All construction works must be undertaken in accordance with the code of construction practice unless otherwise agreed in writing by the relevant planning authorities.

Control of noise during construction and operational phase

17. During construction the daytime free field noise level as a result of the construction of the authorised development at any residential location must not exceed 55 dB LAeq, 1 hour unless otherwise agreed in writing by Central Bedfordshire Council.

18.—(1) Except in case of an emergency, or with the prior written agreement of Central Bedfordshire Council, the Rating Level as defined in BS4142:1997 of the noise emitted from the operation of the authorised development must not exceed the free field noise levels listed in the following table—

Location	*Daytime (0700-2300) dB* $L_{Aeq\ 1\ hour}$	*Night-time (2300-0700) dB* $L_{Aeq\ 5\ minutes}$
Stewartby Way, Stewartby	35	35
South Pillinge Farm	39	35
Pillinge Farm Cottages	35	35

(2) Compliance with these limits must be demonstrated by noise measurements at locations closer to the Order limits selected to allow measurement of noise from the authorised development to be made without significant influence of noise from other sources. Noise levels must be calculated for these locations in accordance with the propagation methodology in ISO 9613 and agreed with the relevant planning authorities.

19.—(1) No part of the authorised development may commence until a scheme providing for the monitoring of noise generated during the construction and operation of the authorised development has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The scheme must specify the locations at which noise will be monitored and the method of noise measurement (which must be in accord with BS 4142, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances).

(3) The scheme must be implemented to establish baseline noise conditions.

(4) This monitoring programme must be subject to periodic reviews to establish the frequency of noise monitoring and the need for continued monitoring.

(5) Throughout the operational lifetime of the development the monitoring programme must be reviewed following any change in plant, equipment or working practices likely to affect noise conditions and any such change shall be notified in writing to Central Bedfordshire Council; or following a written request by Central Bedfordshire Council in relation to a noise related complaint.

(6) Such review must be submitted to Central Bedfordshire Council for its written approval within 4 weeks of the notification or request.

20.—(1) In any case where the noise levels specified in requirement 18 or otherwise agreed in writing for monitoring locations is exceeded because of an emergency, the undertaker must notify Central Bedfordshire Council in writing of the nature of the emergency within 2 working days, the reasons for exceeding the noise limit and its expected duration.

(2) If the period of excess noise is expected to last for more than 24 hours then the undertaker must inform any community liaison panel or any other consultative body established as a result of the authorised development, the relevant planning authorities and adjoining occupiers or land users.

(3) Notification of the excess, the reasons for it and its expected duration must also be posted on the undertaker's internet web site.

21. Except in an emergency, the undertaker must give at least three working days' written notice to Central Bedfordshire Council of any proposed operation of emergency pressure valves or similar equipment. Where steam purging is to take place, the undertaker must give 3 working days' prior written notice to local residents and businesses by informing any community liaison panel or any other consultative body established in respect of the authorised development as well as the relevant planning authorities. Notification of the incident, the reasons for it and its expected duration must also be posted on the undertaker's internet web site.

22. So far as reasonably practicable, steam purging may only take place between the hours of 0900-1700 Mondays-Saturdays and not on any Sunday or Bank Holiday.

23.—(1) Prior to the commencement of construction for the building envelope to contain Work No. 1 an acoustic design report must be submitted to and approved in writing by Central Bedfordshire Council.

(2) The report must detail—

(a) the noise control measures that are proposed to be included in the design of the building envelope;

(b) acoustic barriers;

(c) predicted sound power levels and noise emissions from the air cooled condensers; and

(d) acoustic attenuation measures for internal plant and equipment.

(3) The measures must be installed in accord with the approved scheme prior to commencement of operation of the authorised development and retained and maintained afterwards in accordance with the manufacturers' specifications unless Central Bedfordshire Council gives its written consent to any variation.

(4) The acoustic design report must demonstrate compliance with requirements 18 and 19.

Construction hours

24.—(1) Construction work (which for the purpose of this requirement does not include non-intrusive activities such as electrical installation and internal fit out works) may not take place other than between 0700 and 1900 hours on weekdays and 0700 and 1300 hours on Saturdays, excluding public holidays, unless otherwise agreed in writing by Central Bedfordshire Council.

Combined Heat and Power

25. A facility must be provided and maintained within Work No. 1 to enable steam pass-outs and/or hot water pass-outs and reserve space for the provision of water pressurisation, heating and pumping systems for off-site users of process or space heating and its later connection to such systems.

Delivery Hours and Traffic Management

26.—(1) No heavy goods vehicle transporting municipal waste or commercial and industrial waste may enter or leave the authorised development at any time on a Sunday, Christmas Day, New Year's Day or Easter Day (unless otherwise approved in writing by Central Bedfordshire Council).

(2) No heavy goods vehicle transporting municipal waste or commercial and industrial waste may enter or leave Work No. 1 except on Monday to Saturday between the hours of 0700 to 2300.

(3) No heavy goods vehicle transporting by-products may enter or leave Work No. 2 except on the following days and prescribed times—

(a) Monday to Friday between the hours of 0700 to 1800;

(b) Saturday between the hours of 0700 to 1400.

(4) No heavy goods vehicle may enter or leave the lorry park except between the hours of 0700 to 2300 on Monday to Saturday.

(5) This requirement applies except where such a movement as it describes is—

(a) an abnormal load;

(b) associated with an emergency; or

(c) carried out with the written approval of Central Bedfordshire Council.

CCTV

27.—(1) No part of the authorised development may commence until a scheme for the installation of a CCTV camera (or cameras) to monitor the entrance to the site from Green Lane has been submitted to and approved in writing by Central Bedfordshire Council. The scheme must include details of—

(a) the column(s) and camera(s) to be used,

(b) the viewing area covered,

(c) the capability for remote access viewing, and

(d) the ability to record live footage.

(2) The approved CCTV scheme must be installed prior to commencement of incineration of waste in Work No. 1 and must be operated afterwards in accordance with the approved scheme unless otherwise agreed in writing by Central Bedfordshire Council.

Loads to be covered

28. All heavy goods vehicles carrying bulk materials or waste into and out of the site of the authorised development during the construction, operational and decommissioning phases of development must be covered unless the load is otherwise enclosed, except when required to inspect incoming loads of waste.

Restoration

29.—(1) On the 32nd anniversary of the commencement of operation of the authorised development or on the cessation of the commercial operation of the development, whichever is earlier, the applicant must inform Central Bedfordshire Council as to whether it intends to

maintain the authorised development in its then current state, refurbish it or demolish the facility and restore the land.

(2) In the event that it is intended to refurbish the authorised development details of external changes must be submitted to Central Bedfordshire Council for approval in writing. Any such refurbishment must be implemented in accordance with the approved details.

(3) In the event that it is not intended to maintain the authorised development (whether by carrying out changes authorised under requirement 29(2) or otherwise) the authorised development must be removed.

(4) Prior to any demolition of the authorised development demolition details must be submitted to Central Bedfordshire Council for approval in writing.

(5) The details must include—

(a) the structures and buildings to be demolished or retained;

(b) the phasing of demolition and means of removal of demolition materials; and

(c) the proposed condition of the land following restoration (including whether the land will be in the condition authorised by the Low Level Restoration Scheme approved under statutory reference BC/CM/2000/08) or an alternative scheme approved by Central Bedfordshire Council depending upon the condition of the land).

(6) The demolition must be carried out in accordance with the approved details following cessation of commercial operation of the authorised development unless otherwise agreed in writing by Central Bedfordshire Council.

Amendments to approved details

30. With respect to any requirement which requires the authorised development to be carried out in accordance with details approved by the relevant planning authorities or either of them, the approved details are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authorities or either of them as the case may be.

Low level restoration scheme

31. No part of the authorised development may commence until the works comprising phase 1 of the low level restoration scheme, which has been authorised as a part of the review of old minerals permission granted on 9 December 2010 with reference number BC/CM/2000/08 by Bedford Borough Council and Central Bedfordshire Council have been carried out so as to provide an engineered site for the authorised development.

Incinerator Bottom Ash processing and storage

32. No incinerator bottom ash or other combustion residues produced at any other generating station may be accepted at or processed in Work No. 2 of the authorised development.

33. No by-products stored at Work No. 2 comprised in the authorised development may exceed 10 metres in height from the surface of the yard comprised in Work No. 2.

34.—(1) Work No. 2 must not be commercially operated until a written scheme for the management and mitigation of dust emissions has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented and maintained for the duration of the operation of the authorised development.

Lighting strategy

35.—(1) No part of the authorised development may commence until a detailed lighting strategy (which accords with the approved lighting strategy listed in requirement 6(1) and described in the

design and access statement) has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The approved lighting strategy must be implemented in accordance with the approved details prior to the commencement of incineration of waste in Work No. 1 of the authorised development and must be maintained afterwards for the duration of commercial operation of the authorised development.

(3) Where construction of Work No. 2 has not been completed prior to the incineration of waste in Work No. 1 the relevant elements of the approved lighting scheme relating to Work No. 2 must be implemented in accordance with the approved details prior to commercial operation of Work No. 2 and must be maintained afterwards for the duration of the operation of the authorised development.

Connection to the national grid

36.—(1) No incineration of waste in Work No. 1 may take place, apart from during commissioning, until a grid connection comprised in Works No. 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H has been installed and is capable of transmitting electricity generated by Work No. 1.

(2) No waste may then be incinerated in Work No. 1 unless electricity is being generated by Work No. 1 except during periods of maintenance, inspection or repair or at the direction of the holder of a licence under section 6(1)(b) or (c) of the Electricity Act 1989 who is entitled to give such direction in relation to transmission of electricity from Work No. 1 to the national grid.

Visibility requirements at Green Lane/C94 junction

37.—(1) No part of the authorised development may commence until a scheme which overcomes the substandard visibility splay to the left on exit at the junction of Green Lane with the C94 has been submitted to and approved in writing by Bedford Borough Council and implemented on site in accordance with the approved details.

(2) Visibility requirements at either the existing junction or any new or realigned junction must accord with the requirements set out in the Design Manual for Roads and Bridges.

Vehicle movements

38.—(1) The total number of heavy goods vehicles importing or exporting waste, incinerator bottom ash aggregate or flue gas treatment residues to and from the authorised development must not exceed 594 movements per day.

(2) Records of such vehicle movements must be kept by the operator and provided to Central Bedfordshire Council every 6 months.

(3) The records must specify the following—

(a) number of vehicles both entering and leaving the authorised development; and

(b) time and date of vehicles both entering and leaving the authorised development.

Travel Plan

39.—(1) The authorised development may not be commercially operated except in accordance with the travel plan which, prior to the approval of the travel plan referred to in requirement 39(2), means the travel plan submitted with the application together with the addendum headed "Interim Travel Plan SoCG Appendix" unless otherwise agreed in writing by the relevant planning authorities.

(2) A full travel plan must be submitted to the relevant planning authorities for approval in writing prior to the expiration of 6 months from the date on which the authorised development is first commercially operated. Following such approval that travel plan must be implemented in accordance with the approved details.

(3) A review of the travel plan must be carried out on each anniversary of the date of commencement of commercial operation of the authorised development and an annual travel plan report including any revisions to the travel plan deemed necessary as a result of the review must be submitted to the relevant planning authorities for written approval. Following approval of the revisions to the travel plan by the relevant planning authorities the authorised development must be operated in accordance with the revised travel plan.

Ecological management scheme

40.—(1) No part of the authorised development may commence until an ecological management scheme has been submitted to and approved in writing by the relevant planning authorities.

(2) The ecological management scheme must include details of—

- (a) the protection of species covered by wildlife legislation, including great crested newts and reptiles, from activities associated with the authorised development;
- (b) measures to sustain favourable conditions for stoneworts and invertebrate communities;
- (c) the control of quality and quantity of water released from the authorised development to the drainage channels and attenuation pond in Rookery South Pit;
- (d) the rotational management of water bodies and other wetland habitats within Rookery Pits;
- (e) the management of woodland and scrub planting to maximise the habitat mosaic so as to complement woodland objectives in the wider area;
- (f) how the lighting strategy referred to at requirement 35 avoids or minimises the use and effect of lighting;
- (g) a strategy for ecological management of vegetated surfaces to include brown roofs associated with the Work No. 1;
- (h) a programme for implementation of the proposed measures;
- (i) details of ongoing maintenance; and
- (j) an annual reporting protocol.

(3) The approved ecological management scheme must be implemented and maintained during commercial operation of the authorised development unless otherwise agreed in writing by the relevant planning authorities.

Residual Waste Acceptance Scheme

41.—(1) Incineration of waste in Work No. 1 must not take place except in accordance with the Residual Waste Acceptance Scheme dated 8 July 2011.

(2) On a date no later than the anniversary of the commencement of incineration of waste in Work No. 1 in each year, a written report in respect of a review of the effectiveness of the scheme must be submitted to Central Bedfordshire Council for approval in writing together with proposals for such revised, additional or substituted measures as appear to be necessary.

(3) Following approval of the alterations to the scheme by Central Bedfordshire Council incineration of waste in Work No. 1 must take place in accordance with the altered scheme.

(4) The purpose of altering the scheme is to ensure that the scheme continues to address changes in waste management, and that Work No. 1 is used only for the incineration of residual waste.

SCHEDULE 2

Article 9

STREETS SUBJECT TO STREET WORKS

(1) *Area*	*(2)* *Street subject to street works*
Bedford Borough and Central Bedfordshire	Green Lane, Stewartby between a point at its junction with Footpath 4 to the south of Stewartby and its junction with the existing C94
	Green Lane Level Crossing, Stewartby
	The Copart Access Road, Marston Moretaine from its junction with Green Lane, Marston Moretaine to its junction with the C94
Central Bedfordshire	The C94 within the Order limits
	Footpath 72 from its junction with Green Lane or west of Green Lane Level Crossing and its junction with the Copart Access Road, Marston Mortaine

SCHEDULE 3

Article 10

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY EXTINGUISHED

(1) *Area*	*(2)* *Right of way extinguished*	*(3)* *Extent to which extinguished*
Central Bedfordshire	Footpath No. 4 west of Rookery South Pit	Existing footpath between points X1 and X2
	Footpath No. 17 East of the western boundary of the Marston Vale railway line	Existing footpath between points X3 and X4
	All footpaths, bridleways and other rights of way affecting the area of the Rookery shown shaded grey on the rights of way plan	Within the area shaded grey on the rights of way plans

PART 2

RIGHTS OF WAY CREATED OR IMPROVED

(1) *Area*	*(2)* *Existing or new right*	*(3)* *New status*
Central Bedfordshire	A new combined footpath and cycleway between points N1 and N2	Footpath with cycle rights
	A new combined footpath and cycleway between points N3 and N4	Footpath with cycle rights
	A new combined footpath and cycleway between points N5 and N6	Footpath with cycle rights
	Footpath 72 to be upgraded to include cycle rights between points I1 and I2	Footpath with cycle rights
Bedford Borough	Footpath to be upgraded to include cycle rights between points I8 and I9	Footpath with cycle rights
Bedford Borough and Central Bedfordshire	Footpath to be upgraded to include cycle rights between points I3 and, thence by a circular route via points I4-I7 to Point I3	Footpath with cycle rights

SCHEDULE 4

Article 11

STREETS TO BE TEMPORARILY STOPPED UP

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*
Bedford Borough and Central Bedfordshire	The Copart Access Road, Marston Moretaine	Within the Order limits

SCHEDULE 5

Article 12

ACCESS TO WORKS

(1) *Area*	*(2)* *Description of access*
Bedford Borough	An improved access to Green Lane Stewartby at or near to point A

SCHEDULE 6

Article 24

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Area*	*(2)* *Number of land shown on land plan*	*(3)* *Purpose for which temporary possession may be taken*
	52, 72, 73, 74, 75, 76, 77	Carrying out and maintaining landscaping, tree planting and ecological improvements
	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 29/1, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63	Installation, retention and maintenance of electricity transmission line and the improvement of highways and public rights of way

SCHEDULE 7

Article 32

PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

1. The following provisions of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In 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 of the Railways Act l993;

"Network Rail" means Network Rail Infrastructure Limited 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 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;

"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 Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement 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 is or may be subject to railway operational procedures, Network Rail shall—

(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 their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker shall not exercise the powers conferred by articles 15 (authority to survey and investigate land), 16 (compulsory acquisition of land), 17 (power to override easements and other rights), 19 (compulsory acquisition of rights) or 24 (temporary use of land for carrying out the authorised development) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker shall 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 shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 26, 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 shall 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) Prior to commencement of construction of the authorised project the Undertaker and Network Rail shall, having regard to the Undertaker's timetable for development, agree in writing a programme for the implementation of any works approved by Network Rail to the railway

crossing of the Bletchley Bedford railway line at Green Lane, Stewartby, Bedford and the undertaker will thereafter comply with the provisions of the programme.

(6) Where Network Rail is asked to give its consent or agreement pursuant to this paragraph, such consent or agreement shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker shall 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 shall 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) shall 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 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 shall 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 shall construct it with all reasonable dispatch 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 should he 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 the same (including any relocation de-commissioning 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 shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

(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 thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall 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 Schedule shall impose 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.

7. The undertaker shall—

(a) at all times afford reasonable facilities to the engineer for access to a specified 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 the method of constructing it.

8. Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(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 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 shall be specified in the notice), the undertaker shall 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 by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified 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 is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(3), 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.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(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 shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker shall 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 5(3) or in constructing any protective works under the provisions of paragraph 5(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;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be 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;

(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 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.

11.—(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 shall apply 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 5(1) 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 shall in the design and construction of the authorised development take all measures necessary to prevent EMI and shall 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 shall 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 shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail shall 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 pursuant to sub-paragraph (a); and

(c) Network Rail shall allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant 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 shall not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) shall have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of commercial operation of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker shall 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) forthwith 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 shall afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail shall afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail shall 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 pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail shall allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply 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 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 33 (arbitration) to an arbitrator to be agreed shall be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers to be agreed.

12. If at any time after the completion of a specified 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 appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall 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.

14. 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 shall, 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.

15.—(1) The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in 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 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,

and the undertaker shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified 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 his supervision shall 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 shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum 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 shall 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 shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to 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 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.

16. Network Rail shall, 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 Schedule (including the amount of the relevant costs mentioned in paragraph 15) 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 pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there shall 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 Schedule or increasing the sums so payable.

18. 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 and 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.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

20. The undertaker shall give written notice to Network Rail where any application is required and is proposed to be made by the undertaker for the decision-maker’s consent; under article 7

(transfer of benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall 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 decision-maker to whom the application is to be made.

21. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the decision-maker in accordance with article 31 (certification of plans etc), provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Covanta Rookery South Limited to construct, operate and maintain, an electricity generating station at Rookery South Pit, near Stewartby, Bedfordshire together with all necessary and associated development. For the purposes of the development that it authorises Covanta Rookery South Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land and to use land, as well as to override easements and other rights. The Order also authorises the making of alterations to the highway network, provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 31 (certification of plans, etc) of this Order may be inspected free of charge at the offices of Central Bedfordshire Council at Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ and Bedford Borough Council at Borough Hall, Cauldwell Street, Bedford MK42 9AP.

APPENDIX E – ABBREVIATIONS

(the) Act	(the) Planning Act 2008
Anglian	Anglian Water Services Limited
BBC	Bedford Borough Council
BBCS	Bedford Borough Core Strategy and Rural Issues Plan
BLMWLP	Bedfordshire and Luton Minerals and Waste Local Plan, First Review
BMKW	Bedford to Milton Keynes Waterway
C&I	commercial and industrial
CA Land	The 93 plots of land identified in the Book of Reference
CA Plan	The Land Plan (Doc Ref No: 2.5)
CBC	Central Bedfordshire Council
CBCS	Central Bedfordshire Core Strategy and Development Management Policies Development Plan Document
Covanta	Covanta Rookery South Ltd and/or Covanta Energy Ltd (as the context requires)
CHP	combined heat and power
CWS	County Wildlife Site
DCO	Development Consent Order
EA	Environment Agency
EfW	energy from waste
EoEP	East of England Plan
EP	Environmental Permit
EPN	Eastern Power Networks Plc
ES	Environmental Statement
et seq	and the following
HA	Highways Agency
HGV(s)	heavy goods vehicle(s)
IBA	incinerator bottom ash
ibid	in the same passage
IPC	Infrastructure Planning Commission
km	kilometres
km^2	square kilometres
kv	kilovolts
LLRS	low level restoration scheme
l/s	litres per second
m	metres
m^2	square metres
m^3	cubic metres
MKSM	Milton Keynes and South Midlands Sub Regional Strategy
MRF	materials recovery facility
MSW	municipal solid waste
mtpa	million tonnes per annum
MVT	Marston Vale Trust
MW	Megawatts
Network Rail	Network Rail Infrastructure Limited
NSIP	nationally significant infrastructure project
OMV	Our Marston Vale

para	paragraph
PPG	Planning Policy Guidance [Note]
PPS	Planning Policy Statement
ROMP	review of old minerals permissions
RRF	resource recovery facility
s	section (in an Act or similar)
SoCG	statement of common ground
SWSC	Stewartby Water Sports Club
tpa	tonnes per annum
25TPCs	The Consortium of 25 Town and Parish Councils (or Meetings)
WID	Waste Incineration Directive (2000/76/EC)
WRG	Waste Recycling Group Ltd

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008 (as amended)

Ferrybridge Multifuel 2 (FM2)

Examining Authority's Report of Findings and Conclusions

and

Recommendation to the
Secretary of State for Energy and Climate Change

Examining Authority

Dr Michael Ebert, MSc, PhD, CEng, MICE, FIC, CMC

29 July 2015

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ExA's findings, conclusions and recommendation in respect of the proposed generating station, known as Ferrybridge Multifuel 2 (FM2) Power Station.

File Ref: EN010061

The application, dated 30 July 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 31 July 2014.

The Applicant is Multifuel Energy Limited.

The application was accepted for examination on 20 August 2014.

The examination of the application began on 5 December 2014 and was completed on 29 April 2015

The Proposed Development comprises:

- a multifuel power station (referred to as the 'power station') that will be capable of generating up to 90MWe (Megawatts electrical) gross of electricity from the combustion of waste derived fuel from various sources of processed municipal waste, commercial and industrial waste and waste wood
- a new electrical connection (referred to as the 'grid connection') to export electricity from the power station to the electricity grid
- improvements to an existing access road known as the 'unnamed road' to provide an alternative means of access for cars and light goods vehicles to access the power station from Stranglands Lane
- a new foul water connection between the power station and the existing foul water drainage network.

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

1.0 PLANNING ACT 2008 (AS AMENDED)

1.0.1 The application, dated 30 July 2014, was made under Section (s) 37 of the Planning Act 2008 (PA2008) and was received in full by the Planning Inspectorate on 31 July 2014.

1.0.2 The Applicant is Multifuel Energy Limited [AD-004]. Multifuel Energy Ltd (MEL) is a joint venture between SSE Generation Limited and Wheelabrator Technologies Inc. The application was accepted for examination on 20 August 2014. The examination of the application began on 5 December 2014 and was completed on 29 April 2015.

1.0.3 The Proposed Development, comprises:

- a multifuel power station (referred to as the 'power station') that will be capable of generating up to 90MWe (Megawatts electrical) gross of electricity from the combustion of waste derived fuel from various sources of processed municipal waste, commercial and industrial waste and waste wood
- a new electrical connection (referred to as the 'grid connection') to export electricity from the power station to the electricity grid
- improvements to an existing access road known as the 'unnamed road' to provide an alternative means of access for cars and light goods vehicles to access the power station from Stranglands Lane
- a new foul water connection between the power station and the existing foul water drainage network.

1.0.4 This document is the Examining Authority's (ExA's) Report to the Secretary of State for Energy and Climate Change (SSECC). It sets out the ExA's findings and conclusions and the recommendation, as required by s.83(1) of PA2008.

1.0.5 The application project is a Nationally Significant Infrastructure Project (NSIP) as defined by s.14(1)(a) and s.15 of PA2008.

1.0.6 The Applicant gave notice [CERT-01] under s.56 of the PA2008 to the persons prescribed that the application had been accepted and gave them an opportunity to make Relevant Representations. The notice dated 17 October 2014 certified that this had been carried out. Twenty five Relevant Representations were subsequently received [RR-01 to RR-25].

1.1 APPOINTMENT OF EXAMINING AUTHORITY

1.1.1 On 8 October 2014, the Secretary of State for Communities and Local Government appointed a single examining inspector as the Examining Authority (ExA) for the application under Section 79 of the PA2008 (as

amended) [PrD-03]. The single examining inspector is Dr Michael Ebert MSc PhD CEng MICE FIC CMC.

1.2 THE EXAMINATION AND PROCEDURAL DECISIONS

1.2.1 On 10 November 2014, notice was given [PrD-03] of the Preliminary Meeting which was held on 4 December 2014, at which the Applicant and all other interested parties and statutory parties were able to make representations about how the application should be examined. The examination commenced the following day, 5 December 2014.

1.2.2 The timetable for the examination [PrD-04], a procedural decision of the ExA under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), was issued to interested parties on 11 December 2014. It was accompanied by the ExA's invitation to submit Statements of Common Ground (SoCG), written representations, comments on relevant representations, requests for notification to be heard at a hearing and notification of wish to attend a site inspection.

1.2.3 Under s.60 of PA2008 an invitation was also issued to the relevant Local Authorities to submit a Local Impact Report (LIR) in the Rule 8 letter [PrD-04]. A joint LIR between Selby District Council (SDC) and North Yorkshire County Council (NYCC) [D1-016] and a LIR produced by the Local Planning Authority, Wakefield Metropolitan District Council (WMDC) [D1-001], were received.

1.2.4 The ExA issued his First Written Questions [PrD-05] on 18 December 2014. Responses to these questions were received at Deadline 1, 22 January 2015 [D1-001 - D1-019]. No other questions or requests for further information under Rule 17 of the Infrastructure Planning Examination Procedure) Rules 2010 were issued.

1.3 SITE INSPECTIONS

1.3.1 In addition to an unaccompanied site visit to see the site, local viewpoints and the surrounding area, the ExA carried out an accompanied site inspection in the company of interested parties on Tuesday 17 March 2015.

1.4 OTHER CONSENTS REQUIRED

1.4.1 The Applicant has provided information on other consents and licences that may be required under other legislation for the construction and operation of Ferrybridge Multifuel 2 [AD-034]. This document was updated by the Applicant at Deadline 3, 13 March 2015 [D3-003].

1.5 REQUESTS TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (S102A, S102B AND S102ZA).

1.5.1 There were no s.102 requests to become or withdraw from being an interested party received during the Ferrybridge Multifuel 2 examination.

1.6 UNDERTAKINGS/OBLIGATIONS GIVEN TO SUPPORT APPLICATION

1.6.1 There are no undertakings or obligations supporting the Ferrybridge Multifuel 2 application.

1.7 STRUCTURE OF REPORT

1.7.1 Chapter 1 *Introduction* outlines the main features of the examination.

1.7.2 Chapter 2 *Main Features of the Proposal and Site* summarises the application as made and at the close of the examination.

1.7.3 Chapter 3 *Legal and Policy Context* outlines the legal and policy context that ExA considers applies to this application.

1.7.4 Chapter 4 *Findings and Conclusions in Relation to Policy and Factual Issues* draws out ExA's findings and conclusions for each of the areas of the examination.

1.7.5 Chapter 5 *The Examining Authority's Conclusion on the Case for Development Consent* summarises ExA's opinion on each of the topics in Chapter 4 to distil the case for development consent.

1.7.6 Chapter 6 *Draft Development Consent Order* (DCO) identifies the journey leading to the draft DCO in the final form tabled by the Applicant at Deadline 4 [D4-004] and ExA in Appendix A to this document.

1.7.7 Chapter 7 *Summary of Findings, Conclusions and Recommendation* draws the report together and makes a recommendation to the SSECC.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.0 THE APPLICATION AS MADE

2.0.1 Multifuel Energy Limited (the Applicant), which is a partnership between SSE Generation Ltd and WTI/EfW Holdings Ltd, a subsidiary of Wheelabrator Technologies Inc., proposes to develop a new 'multifuel' power generating station with a gross electrical output of up to 90 megawatts electrical (MWe), together with associated development at the Ferrybridge Power Station site, Knottingley, West Yorkshire.

2.0.2 The Proposed Development for the purposes of the examination and this report is Ferrybridge Multifuel 2 (FM2) Power Station. FM2 would produce electricity through the use of fuels derived from waste products from various sources including municipal, commercial and industrial waste, including waste wood [AD-010]. The Proposed Development is a Nationally Significant Infrastructure Project (NSIP) as it would be an onshore generating station with an average gross electrical output in excess of 50MW (PA2008 s.14 and s.15(2)(c)).

2.0.3 The Application site covers approximately 32 hectares between the River Aire and the A1(M), on land that was originally part of a former golf course for the Ferrybridge power station, adjacent to the Ferrybridge Multifuel 1 (FM1) Power Station, another multifuel power station currently under construction on land adjacent to the existing Ferrybridge "C" coal fired Power Station. The Application site is located close to Knottingley, West Yorkshire [AD-012].

2.0.4 The Project would comprise the following principal elements:

- the multifuel power station and all the components required for the development such as fuel reception and storage facilities, the combustion system, steam turbine and emissions stack (Work No. 1 in the draft DCO) [AD-006, D4-004]
- associated development [AD-010].

2.0.5 The associated development for the project mentioned above which will support the operation of the multifuel power station is:

- a new connection to the electricity grid network (Work No. 2 in the draft DCO)
- improvements to an existing access road (Work No. 3 in the draft DCO)
- a new foul water connection (Work No. 4 in the draft DCO)
- other associated development relating to Works 1, 2, 3 and 4 above in the draft DCO.

2.1 THE APPLICATION AT THE CLOSE OF EXAMINATION

2.1.1 No formal requests to amend the application during examination were made.

2.1.2 In addition to the draft DCO as originally submitted [AD-006], two further iterations were submitted. One was at Deadline 2 on 17 February 2015 [D2-003] and a final version was at Deadline 4 on 2 April 2015 [D4-004].

2.1.3 ExA has made one recommended amendment in the draft DCO at Appendix A. This is at Schedule 7 Clause 3(2), and it is discussed in Section 6.4 below.

2.2 RELEVANT PLANNING HISTORY

2.2.1 In the immediate vicinity of the application site there has been a history of development for power generation at the Ferrybridge Power Station since the 1920s, including the development of the currently operational Ferrybridge 'C' coal-fired Power Station, which was approved in 1961 [AD-035].

2.2.2 Ferrybridge 'C' encompassed land that had originally formed part of the Ferrybridge 'B' Power Station, which has ceased operation. Ferrybridge 'C' comprises four generation units (Units 1-4) each with a generating capacity of 500MWe (2000MWe or 2 Gigawatts (GWe) in total). Units 1 and 2 ceased to operate in 2014. Units 3 and 4 continue to operate. Ferrybridge 'C' has a coal storage area and associated rail link (used to deliver coal) which is located in the northern part of the Power Station site [AD-035].

2.2.3 Consent was granted by the Secretary of State for Energy and Climate Change in October 2011 for a Ferrybridge Multifuel power station (FM1) with up to 108 MWe gross output under Section 36 (S36) of the Electricity Act 1989 [AD-035]. Construction and commissioning is due to be complete in the last quarter of 2015, so FM1 is expected to be operational while FM2 is being constructed.

2.2.4 A copy of the FM1 Section 36 consent and the Secretary of State's decision letter is provided at Appendix 1 of the FM2 application Planning Statement [AD-035]. The Planning Statement states that *"FM1 will also generate electricity from waste derived fuel (although the s.36 consent provides for the combustion of biomass fuel stocks) and is currently being built on land to the south of where the Proposed Development for FM2 will be located. As part of the FM1 works, the existing rail spur/siding has been upgraded and extended and a new unloading gantry constructed adjacent to it to allow for the delivery of fuel/removal of ash by rail. The Proposed Development will be able to make use of this facility, subject to fuel suppliers and contracts"*.

2.2.5 Planning conditions attached to the FM1 consent, amongst other matters, required the provision of alternative sports facilities, as the

FM1 works involved the use of land within the power station site that had previously been used for golf, cricket and football [AD-035]. This has included the provision of a new cricket pitch and pavilion within the Power Station site and a new football pitch to the south in Knottingley. Members of the Power Station golf course have been provided with membership at another local golf club. Planning permission has recently been granted for a new golf course across the A1(M) to the north-west of the Power Station site [AD-035].

3 LEGAL AND POLICY CONTEXT

3.0 PLANNING ACT 2008 (AS AMENDED)

3.0.1 The Proposed Development is a multifuel generating station with a capacity of up to 90 MWe Gross, which is a Nationally Significant Infrastructure Project (NSIP) as defined by s.14(1)(a) and s.15 of PA2008. The Secretary of State must therefore have regard to s.104 of the PA2008 which states that *"In deciding the application the Secretary of State must have regard to…any national policy statement* that *has effect in relation to development of the description to which the application relates"*. S.104 applies subject to certain exceptions.

3.0.2 Whilst other policies, including those contained in the development plans for the area, may constitute matters that the Secretary of State may regard as important and relevant to the decision, the primacy of the National Policy Statement (NPSs) is clear (PA2008 s.104(3) and NPS EN-1, paragraph 1.1.1). In the event of a conflict between policies contained in any other documents (including development plan documents) and those contained in an NPS, those in the NPS prevail for the purposes of decision making on nationally significant infrastructure (NPS EN-1, paragraph 4.1.5).

3.0.3 The Planning Statement [AD-035] and the Environmental Statement (ES) [AD-044] which accompany the application describe the main legal and policy context as understood by the Applicant.

3.0.4 This report sets out the ExA's findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s.104 of PA2008.

3.1 NATIONAL POLICY STATEMENT(S)

3.1.1 The ExA has had regard first and foremost to the requirements of the PA2008, as amended. In relation to s.104 the ExA has had regard to the matters in subsection (2).

3.1.2 There are two relevant NPSs for Energy in force (s.104 (2) (a) of Planning Act 2008):

- Overarching NPS for Energy (NPS EN-1)
- NPS for Renewable Energy Infrastructure (NPS EN-3).

3.1.3 These two NPSs formed the primary policy context for this examination. These were formally designated as statements of national policy and presented to Parliament in accordance with s.5(9) of the PA2008 in July 2011, and the ExA's views on their significance for this application are set out in Chapter 4.

3.1.4 Section 1.1.2 of EN-1 states that:

"The Planning Act 2008 also requires that the IPC must decide an application for energy infrastructure in accordance with the relevant NPSs except to the extent it is satisfied that to do so would:

- *lead to the UK being in breach of its international obligations;*
- *be in breach of any statutory duty that applies to the IPC;*
- *be unlawful;*
- *result in adverse impacts from the development outweighing the benefits; or*
- *be contrary to regulations about how its decisions are to be taken."*

3.2 LOCAL IMPACT REPORTS

3.2.1 In relation to s.104 of PA2008, the ExA has had regard to the matters in subsection (2)(b).

3.2.2 There is a requirement under s.60(2) of PA2008 to give notice in writing to each local authority falling under s.56A inviting them to submit Local Impact Reports (LIRs). This notice was given on 11 December 2014 [PrD-04].

3.2.3 Two LIRs have been submitted: by WMDC [D1-001] and jointly by SDC and NYCC [D1-016]. These are considered in Chapter 4 of this Report.

3.3 INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS

3.3.1 The application is also subject to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended), which require the Secretary of State to take the environmental information into consideration before taking a decision.

3.3.2 The application is EIA development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended). The application was accompanied by an Environmental Statement (ES) [AD-044 - AD-087]. In reaching conclusions and recommendation, the environmental information as defined in Regulation 2(1) (including the ES and all other information on the environmental effects of the development) has been taken into consideration (see Section 4).

3.4 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

HABITATS DIRECTIVE AND BIRDS DIRECTIVE

3.4.1 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around

two pillars: the Natura 2000 network of protected sites, including special areas of conservation (SAC) and the strict system of species protection.

3.4.2 The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) updated the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.

3.4.3 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles and require a competent authority, before giving consent for a plan or project which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans and projects) and is not directly connected with or necessary to the management of that site, to make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

3.4.4 The Habitats Regulations define a 'European site' as including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). In addition, as a matter of policy, the Government also applies the procedures under the Habitats Regulations to potential SPAs, Ramsar sites, proposed Ramsar Sites and sites identified, or required, as compensatory measures for adverse effects on Natura 2000 sites, which are collectively referred to as a 'European sites'.

3.4.5 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species.

3.4.6 The application of the Habitats Regulations is discussed in Chapter 4 of this report.

WETLANDS CONVENTION

3.4.7 The UK is also bound by the terms of the Convention on Wetlands of International Importance 1971 (the Ramsar Convention), resulting in the designation of Ramsar sites in the UK, which are wetlands of international importance.

WATER FRAMEWORK DIRECTIVE

3.4.8 On 23 October 2000, the *"Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy"* or, in short, the EU Water Framework Directive (WFD) was adopted.

3.4.9 The Directive was published in the Official Journal (OJ L 327) on 22 December 2000 and entered into force the same day. Some amendments have been introduced into the Directive since 2000[1].

3.4.10 Twelve "Water Notes" which give an introduction and overview of key aspects of the implementation of the Water Framework Directive are available to download.[2]

INDUSTRIAL EMISSIONS (INTEGRATED POLLUTION PREVENTION AND CONTROL (IPPC)) AND (THE "INDUSTRIAL EMISSIONS DIRECTIVE" ("IED"))

3.4.11 Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) of 24 November 2010 recast seven directives related to industrial emissions, in particular Directive 2008/1/EC of 15 January 2008 concerning Integrated Pollution Prevention and Control (the IPPC Directive) and Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (the Large Combustion Plant Directive (LCPD)), into a single legislative instrument to improve the permitting, compliance and enforcement regimes adopted by Member States.

3.4.12 The Large Combustion Plant Directive and Integrated Pollution Prevention and Control Directive are implemented in the UK by the Environmental Permitting (England and Wales) Regulations 2010 (the EP Regulations).

3.4.13 The Environmental Permitting (England and Wales) Regulations 2007 sought to introduce a single streamlined environmental permitting (EP) and compliance regime to apply in England and Wales. They do this by integrating the previous regimes covering waste management licensing and Pollution Prevention and Control. The EP Regulations 2010 increase the scope of the 2007 Regulations.

3.4.14 The Environment Agency (EA) will control and regulate the Proposed Development with respect to the emissions to air via an Environmental Permit that will be required for the Proposed Development, under the EP Regulations. The Environmental Permit will include specific emissions limit values to apply to the Proposed Development for the

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[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:02000L0060-20090625:EN:NOT
[2] http://ec.europa.eu/environment/water/participation/notes_en.htm

relevant pollutants considered within the Industrial Emissions Directive. The application of these regulations is discussed in Section 4 below.

AMBIENT AIR QUALITY DIRECTIVE

3.4.15 Council Directive 96/62/EC on ambient air quality assessment and management (the Air Quality Framework Directive) described the basic principles as to how air quality should be assessed and managed in the Member States. Subsequent Directive 2008/50/EC of 21 May 2008 introduced numerical limits, thresholds and monitoring requirements for a variety of pollutants including oxides of nitrogen and sulphur dioxide to guarantee that there are no adverse effects with regard to human health.

3.4.16 The Air Quality Standards Regulations 2010 (the AQS Regulations) give effect, in England, to the Ambient Air Quality Directive. The relevance of these standards to this application is discussed in Section 4 below.

WASTE FRAMEWORK DIRECTIVE

3.4.17 The Waste Framework Directive (WFD) 2008/98/EC sets the basic concepts and definitions related to waste management, such as definitions of waste, recycling and recovery. It explains when waste ceases to be waste and becomes a secondary raw material (so called end-of-waste criteria), and how to distinguish between waste and by-products. The Directive lays down some basic waste management principles: it requires that waste be managed without endangering human health and harming the environment, and in particular without risk to water, air, soil, plants or animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest. Waste legislation and policy of the EU Member States shall apply as a priority order the following waste management hierarchy: prevention, preparing for reuse, recycling, recovery and disposal (Article 4).

3.4.18 The Waste (England and Wales) (Amendment) Regulations 2012 were laid before Parliament and the Welsh Assembly on 19 July 2012 and came into force on 1 October 2012. The amendments were in relation to the earlier Waste (England and Wales) Regulations 2011, which establish the WFD in England and Wales, and the regulations relate to the separate collection of waste of different types.

3.4.19 The Waste Regulations introduce the waste hierarchy, waste management plans and waste prevention programmes into statute, as well as the proximity principle/ nearest appropriate installation (NAI).

3.4.20 The application of these regulations is discussed in Section 4 below.

CARBON CAPTURE READINESS

3.4.21 The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013, No. 2696, came into force on 25 November 2013. The Regulations state in Section 2:

"For the purposes of these Regulations, the carbon capture readiness (CCR) conditions are met in relation to a combustion plant, if, in respect of all of its expected emissions of CO2:

(a) suitable storage sites are available;
(b) it is technically and economically feasible to retrofit the plant with the equipment necessary to capture that CO2; and
(c) *it is technically and economically feasible to transport such captured CO2 to the storage sites referred to in sub-paragraph (a)*".

3.4.22 In determining these applications, the Secretary of State for Energy and Climate Change will be acting as the Competent Authority. The relevance of these Regulations to this Application is discussed in Section 4 below.

3.5 OTHER LEGAL AND POLICY PROVISIONS

UNITED NATIONS ENVIRONMENT PROGRAMME CONVENTION ON BIOLOGICAL DIVERSITY 1992

3.5.1 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.

3.5.2 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA must have regard to this Convention in its consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation.

3.5.3 This is of relevance to EIA matters discussed in chapter 4.

3.6 TRANSBOUNDARY EFFECTS

3.6.1 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (EIA Regulations), the Secretary of State screened the Proposed Development for potential transboundary effects on 23 September 2013 and 27 August 2014 and concluded that the Proposed Development is not likely to have a significant effect on the environment in another European Economic Area (EEA) State [PrD-07]. In reaching this view the Secretary of State applied the

precautionary approach. Consultation on transboundary issues under Regulation 24 of the EIA Regulations was therefore not considered necessary.

3.6.2 On this basis, the ExA was of the view that the Proposed Development was unlikely to have significant effects on the environment in another EEA State and therefore the ExA did not consider potential transboundary effects further during the examination.

3.7 NATIONAL PLANNING POLICY FRAMEWORK

3.7.1 The National Planning Policy Framework (NPPF) was published on 27 March 2012. The NPPF sets out the Government's planning policies for England and how these are expected to be applied.

3.7.2 The NPPF states in paragraph 3 that it:

"*…does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and are a material consideration in decisions on planning applications*".

3.7.3 NPPF policies are not a material consideration under the PA2008, but are important and relevant to this application in certain parts. These are highlighted in Section 4 below.

3.7.4 On 6 March 2014 the previous planning guidance documents were replaced by the new Planning Practice Guidance (PPG). The guidance supports the NPPF and is designed to provide useful clarity on the practical application of policy.

3.8 NATIONAL WASTE POLICY

3.8.1 National waste policy in England is captured in the following documents:

(1) Review of Waste Policy in England (2011);
(2) Waste (England and Wales) (Amendment) Regulations 2012 (see Waste Framework Directive above);
(3) Waste Management Plan for England (2013);
(4) National Planning Policy for Waste (2014).

3.8.2 These documents should be read in conjunction with the National Planning Policy Framework (see above) and relevant NPSs.

3.9 THE DEVELOPMENT PLAN

3.9.1 Paragraph 4.1.5 of EN-1 states:

"*Other matters that the IPC may consider both important and relevant to its decision-making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure. The energy NPSs have taken account of relevant Planning Policy Statements (PPSs) and older-style Planning Policy Guidance Notes (PPGs) in England and Technical Advice Notes (TANs) in Wales where appropriate*".

3.9.2 The application site lies entirely within the administrative area of WMDC. The development plan policy for WMDC comprises:

- The 'saved' policies of the Wakefield District Unitary Development Plan (2003)
- WMDC Core Strategy Development Plan Document (2009)
- WMDC Development Policies Development Plan Document (2009)
- WMDC Waste Development Plan Document (2009)
- WMDC Local Development Framework Policies Map (2012)
- WMDC Site Specific Policies Local Plan (2012).

3.9.3 While the Proposed Development lies entirely within the administrative area of WMDC, the site is located close to the boundary of SDC to the east. The EIA undertaken for the Proposed Development has had regard to the development plan policies in place within SDC that relate to the environmental topics that have been assessed.

3.9.4 Conformity with the local development plan policies is assessed in Chapter 4 below.

3.10 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

3.10.1 The ExA was aware of the need to consider whether changes to the application meant that the application had changed to the point where it was a different application and whether the Secretary of State would have power therefore under s.114 of PA2008 to make a DCO having regard to the development consent applied for.

3.10.2 The view expressed by the Government during the passage of the Localism Act was that s.114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.

3.10.3 In exercising this power the Secretary of State may wish to take into account the following views of the ExA:

(1) In the case of the Ferrybridge Multifuel 2 application, there were no changes to the application after submission, so there has been no decision to make concerning the materiality of any changes;

(2) The Secretary of State might wish to consider whether she is happy with the response times which the DCO seeks to impose upon her in Schedule 7 - see Section 6.4 below.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.0 MAIN ISSUES IN THE EXAMINATION

4.0.1 At the start of the examination and within Annex C to the Rule 6 letter that called the Preliminary Meeting [PrD-03], ExA set out his assessment of the principal issues arising from the application, based on the application documents and the relevant representations received during the pre-examination period [RR-01 to RR-25].

4.0.2 The list of issues was not intended to be a comprehensive or exclusive list of all relevant matters, and it was stated that the examination would have regard to all important and relevant matters during the examination and when ExA wrote his recommendation to the Secretary of State after the examination had concluded.

4.0.3 The following were the issues identified at that time:

(a) DCO including:

- Cumulative impacts of Ferrybridge Multifuel 2 power station in tandem with the Ferrybridge Multifuel 1 and the coal-fired power stations
- The requirements including the Construction Environmental Management Plan (CEMP) and Ecological Management Plan (EMP)
- Production, storage and removal of non-hazardous and hazardous waste
- Implementation and monitoring of mitigation measures
- Incorporation of Combined Heat and Power (CHP) readiness and CCR
- Impact on water resources (ground water and surface water) during construction and operation, as well as flood risk
- Parallel tracking of the DCO and the Environmental Permit.

(b) Transport and Traffic:

- Means and effects of transporting construction materials and personnel to site
- Means and effects of transporting power station fuel materials to site and waste materials away from site
- Fuel sources, availability and locations
- Implications for the highway, rail, river and canal network.

(c) Compulsory Acquisition:

- Confirmation that there is no need for compulsory acquisition.

(d) Visual, Noise, Odour, Emissions/Air Quality, Climate Change, Light and Health Impacts:

- Impacts during the three life cycle phases of the development – construction, operation and decommissioning
- Impact of the scheme and its design on the local area, countryside, archaeology and local amenity, including on those living near the power station.

(e) Ecology and Natural Environment:

- Adequacy of baseline assessment and of proposed monitoring
- Impacts on protected sites, local wildlife and ecology, and proposed mitigation measures
- Impact on agricultural land and on individual holdings.

(f) Socio-economic impact:

- Impact on the local and wider economy and the economic development of the area
- Impact on businesses in the local area.

4.0.4 These issues informed ExA's first questions, issued with the Rule 8 letter on 11 December 2014 [PrD-05].

4.1 ISSUES ARISING FROM WRITTEN SUBMISSIONS

4.1.1 SoCGs between the Applicant and Natural England (NE), the Civil Aviation Authority (CAA), Highways Agency (HA), English Heritage (EH), Coal Authority (CA), Canal and River Trust (CRT), EA and West Yorkshire Archaeological Advisory Service (WYAAS) were submitted by the Applicant as part of the Application [AD-088 to AD-095, respectively].

DEADLINE 1 (22 JANUARY 2015)

4.1.2 Comments on relevant representations were received from the Applicant only [AD-08]. This was a point-by-point response from the Applicant to the various points raised by the Interested Parties.

4.1.3 Written representations were received from the EA, National Grid Electricity Transmission (NGET), and CRT [AD-04/05, AD-18 and AD-19, respectively].

4.1.4 Responses to ExA's first written questions were received from WMDC, EA, the Applicant, SDC, NGET and CRT [D1-02, D1-06, D1-11, D1-15, D1-17 and D1-19, respectively].

4.1.5 Local Impact Reports (LIRs) were received from WMDC and SDC/NYCC [D1-01 and D1-16, respectively].

4.1.6 Updates were received of the SoCGs between the Applicant and CRT and EA [D1-09 and D1-13, respectively], as were new SoCGs between the Applicant and WMDC and SDC [D1-03/10 and D1-14, respectively].

4.1.7 Correspondence between the Applicant and YWT was also received [D1-07].

DEADLINE 2 (17 FEBRUARY 2015)

4.1.8 The Applicant submitted comments on the relevant representations [D2-01], comments on the LIRs and written representations [D2-02], an updated version of the draft DCO [D2-03/04], comments on responses to ExA’s first written questions [D2-06], an update to the Book of Reference (BoR) [D2-07], and an update to the Explanatory Memorandum [D2-08/09].

4.1.9 No submissions from any other party were received at Deadline 2.

DEADLINE 3 (12 MARCH 2015)

4.1.10 With regard to the information identified in the event calendar for Deadline 3, none of the specified submissions were received - i.e. responses to comments on the written representations, responses to comments on the LIRs, comments on the revised draft DCO at Deadline 2, or comments on any other information submitted at Deadline 2.

4.1.11 However, the Applicant submitted a number of documents following discussions with Yorkshire Wildlife Trust (YWT) – revisions to the Indicative Landscaping Plan [D3-01/02], Landscape Strategy [D3-04/05], and Biodiversity Strategy [D3-06/07], as well as an update to the Consents and Licences Required [D3-03], and an updated SoCG between the Applicant and WMDC Rev 4.0 [D3-08].

4.1.12 The submissions received at Deadlines 1-3 informed ExA's questions for the Issue-Specific Hearing on the draft DCO on 18 March 2015 [HG-005].

4.1.13 The main issues at this stage were:

- Private treaties for acquiring all necessary land within the Order limits
- Status of the Environmental Permit
- Defence to Proceedings in Respect of Statutory Nuisance (draft DCO Article 18)
- Procedures for Approvals, etc. (draft DCO Article 19 and Schedule 7)
- The Authorised Development: definition of Any Other Works (draft DCO Schedule 1)
- Fuel Type (draft DCO Requirement 3)
- Design of Fuel Storage Bunker (draft DCO Requirement 5)

- Pre-development Groundwater Table Level Survey (draft DCO Requirement 6)
- Provision of Landscaping (draft DCO Requirement 7)
- Implementation and Maintenance of Landscaping (draft DCO Requirement 8)
- Biodiversity Enhancement and Management Plan (draft DCO Requirement 17)
- CEMP (draft DCO Requirement 18)
- Construction Traffic Routing and Management Plan (draft DCO Requirement 19)
- Construction Hours (draft DCO Requirement 20)
- Control of Noise During Construction (draft DCO Requirement 23)
- Control of Operational Noise (draft DCO Requirement 24)
- Control of Odour Emissions (draft DCO Requirement 25)
- Control of Dust Emissions (draft DCO Requirement 26)
- Control of Smoke Emissions (draft DCO Requirement 27)
- Operational Traffic Routing and Management Plan (draft DCO Requirement 3)
- Travel Plan – Operational Staff (draft DCO Requirement 33)
- Sustainable Fuel Transport Management Plan (draft DCO Requirement 35)
- Air Quality – Emissions Reduction (draft DCO Requirement 37)
- Air Quality Monitoring (draft DCO Requirement 38)
- Decommissioning Costs (draft DCO Requirement 43).

4.1.14 Local residents were concerned about potential noise during construction from FM2 alone, FM2 in combination with FM1 and the existing coal-fired power station, and in combination with existing traffic on the A1(M).

4.1.15 A number of interested parties - WMDC as the Local Planning Authority and EA - cited air quality as a concern [D1-001, D1-004]. This is discussed in Section 4.11 below.

4.1.16 Some interested parties - local residents and the CRT - were keen to see rail and water transport used where possible, especially during operation.

DEADLINE 4 (02 APRIL 2015)

4.1.17 The Applicant submitted a final version of the DCO (Rev 3.0) [D4-004/005] and Explanatory Memorandum [D4-02/03], as well as an updated SoCG between itself and WMDC [D4-08].

4.1.18 Resident Mr Elphinstone (on behalf of Mrs Gill), the Applicant, WMDC and resident Mr Willans submitted written summaries of oral cases made at the Open Floor Hearing (17 March 2015) and Issue-Specific Hearing on the draft DCO (18 March 2015) [D4-01, D4-09, D4-10, D4-11, respectively].

DEADLINE 5 (17 APRIL 2015)

4.1.19 No submissions were received on the Applicant's revised draft DCO submitted at Deadline 4.

4.1.20 The Applicant and WMDC submitted a signed version of the SoCG between them [D5-001/002].

4.1.21 The Applicant commented on the submissions at Deadline 4 from WMDC and local resident Mr Elphinstone on behalf of Mrs Gill [D5-003/004].

4.1.22 After Deadline 5, the only unresolved issue related to DCO Schedule 7: *Procedure for Approvals* in regard to two of the response times that the Applicant had asked WMDC as the LPA to accept (see also Chapter 6: Draft DCO).

4.1.23 Timings with regard to clauses 3(2)(a) and (c) were subsequently agreed and the Applicant asked ExA to make the necessary amendments to the draft DCO before submission to the Secretary of State, which ExA has done in the version of the draft DCO at Appendix A of this report. The Applicant rejected WMDC's proposed 35 business days instead of the Applicant's 18 business days for clause 3(2)(b) on the grounds that 18 business days was a reasonable and achievable period for consultees to notify the planning authority that further information was required in respect of a requirement that they had been consulted upon.

4.1.24 This remained a matter that had not been agreed in the SoCG between the Applicant and WMDC [D5-001/002] at the closure of the examination. See discussion in Section 6.4.

4.2 ISSUES ARISING IN LOCAL IMPACT REPORTS

4.2.1 Under s.104 of PA2008, the ExA must have regard to any Local Impact Reports (LIR) submitted to the Secretary of State before the deadline set in s.60(2).

4.2.2 Two LIRs were received - from WMDC and jointly from SDC/NYCC - at Deadline 1 [D1-001 and D1-016, respectively].

4.2.3 The issues raised within them were addressed point by point by the Applicant in its response at Deadline 2 [D2-002]. Issues that were agreed by the Applicant were reflected in the revised draft DCO at Deadline 2 [D2-003/004].

4.2.4 Outstanding issues were carried forward through iterations of the SoCG between the Applicant and WMDC [D3-008, D4-008, D5-001/002], culminating in a version that was signed by both parties at Deadline 5 with just one unresolved issue (response timings). A SoCG between the Applicant and SDC was tabled at Deadline 1 [D1-014] and showed no unresolved matters at that point.

WMDC's Local Impact Report

4.2.5 In the conclusion to WMDC's LIR, the Council stated that the need for a Multi-Fuel Power Station of this nature was emphasised in the National Policy Statements and the Council recognised that, in accordance with the Overarching National Policy Statement for Energy (NPS EN-1), the examination of the Proposed Development should start with a presumption in favour of granting consent.

4.2.6 WMDC cited its Local Development Framework Core Strategy, policy CS15 *Waste Management*, which *"places great emphasis on avoiding waste production and managing waste produced in the most sustainable way"*.

4.2.7 WMDC accepted that there was a need for this type of installation to reduce the amount of waste sent to landfill where it could not be recycled or reused, and that the proposal could help to maintain a secure supply of energy into the future and avoid surges in electricity prices.

4.2.8 WMDC referred to its Local Development Framework Site Specific Policies Local Plan, SSP1 *Presumption in Favour of Sustainable Development*, but stated that nevertheless the Council recognised that there was still a need to assess the impacts of the proposal and weigh its adverse impacts against its benefits. Through Section 7 of its LIR, the Council provided its assessment on the advantages and disadvantages of the Proposed Development.

4.2.9 WMDC stated that the Council's sustainable waste management was *"implemented through the waste hierarchy … which as set out in Article 7 of the Waste Framework Directive 2008 and the Waste (England and Wales) Regulations 2011, sets out the priorities that must be applied when managing waste … prevention, preparing for reuse, recycling,* ***other recovery including energy recovery****, and disposal"*.

4.2.10 The LIR stated that: *"The Council's adopted Waste Development Plan Document outlines the overall approach to waste management in the district"*, and goes on to summarise the policies that underpin the Plan.

4.2.11 The Council recorded the Applicant's assessment of the effects/ implications of the multifuel power station in Chapter 16 of its ES, as well as the EA's advice that *"as part of Environmental Permit regime they (EA) will be responsible for determining whether the applicant can demonstrate that operational waste management processes are in place for the efficient use of raw materials and waste recovery"*.

4.2.12 The Council noted that: *"in advance of an Environmental Permit application being submitted, the EA states that they welcome and support the inclusion of Requirement 41 of the draft DCO relating to Waste Management – Construction and Operational Waste. They consider that the potential impacts of waste management from the*

project have been considered by the applicant and that regard has been given to the waste hierarchy and designing waste out of the construction phase".

4.2.13 With regard to traffic and transport, WMDC stated in its LIR that it was *"accepted that the traffic associated with both the construction and operational phases of FM2 can be satisfactorily accommodated upon the highway network … without resulting in capacity or highway safety issues. This is largely due to the highway improvement works associated with the FM1 development* ".

4.2.14 With the exception of air emissions, the Council stated that it considered that overall the proposal would have a neutral impact on the Wakefield District. The proposal would provide local jobs during the construction phase and contribute to the local economy as a result, but it would also have a moderate to major adverse impact on nearby residents during construction by way of noise. In addition, there would be a loss of biodiversity on the land as a result of construction but a longer term potential for enhancements.

4.2.15 The Council's biggest concern with the proposal related to air emissions of harmful substances associated with the burning of waste for fuel and the potential respiratory and other health impacts that this could have on the population living in the surrounding area.

4.2.16 Nonetheless, the Council appreciated that the Applicant needed to apply for a separate Environmental Permit from the EA, that extensive air quality and emissions testing would be undertaken as part of that application process and that the Proposed Development would not be allowed to proceed if the relevant national and international standards and benchmarks were not met.

4.2.17 With that in mind, WMDC accepted that most of the main issues had been addressed in the Environmental Statement and supporting documents and that the identified adverse impacts were considered acceptable, or could be made acceptable, through modified or additional Requirements in the DCO (as proposed in the LIR).

SDC/NYCC's Local Impact Report

4.2.18 In the conclusion to SDC/NYCC's LIR, the Councils stated that: *"The site is located entirely within the administrative boundary of Wakefield Metropolitan District Council, albeit close to the Councils' administrative boundaries, so the main impacts will be in relation to the impacts of the construction and operation of the Proposed Development on those residents in the proximity of the power station site*".

4.2.19 The Councils go on to state that: *"Clarification was sought from the Applicant on the impact of construction staff vehicles on the local highway network within North Yorkshire. The number of vehicles is below the threshold advised in the DfT Guidance on Transport*

Assessments where an impact assessment is required. As such it is not considered necessary to contribute to the LIR".

4.2.20 Whilst the Proposed Development would be visible from nearby parts of North Yorkshire, the County Council considered that in this case the primary impacts as well as opportunities for mitigation and landscape enhancement were likely to occur within Wakefield's administrative area. As such the County Council would support in principle any required and appropriate visual impact and enhancement measures that WMDC might seek.

SUMMARY OF LIR MATTERS

4.2.21 The main issues raised by WMDC, SDC and NYCC related to air quality and noise. These and other matters arising from the LIRs are considered later in this Chapter (Sections 4.11 and 4.27, respectively).

4.3 CONFORMITY WITH THE DEVELOPMENT PLAN POLICIES

4.3.1 In WMDC's LIR [D1-001], the Council stated that regard had to be had to the National Planning Policy Framework (NPPF, March 2012), which sets out the Government's general planning policies for England and how these are to be applied. The Council pointed out that paragraph 3 of the NPPF was clear that it did not contain specific policies for NSIPs and these were to be determined in accordance with the decision making framework set out in the PA2008 and relevant NPSs, as well as any other matters that were considered both important and relevant. However, the NPPF confirmed that such 'important and relevant matters' might include the NPPF itself.

4.3.2 The Council stated that central to the NPPF was the presumption in favour of sustainable development, as highlighted in Paragraph 14. For decision-making, this meant approving without delay applications that accorded with the Development Plan.

4.3.3 The Development Plan specifically designated the Ferrybridge site in the Local Development Framework as a Strategic Development Site as a Power Generation Employment Zone. The proposal therefore had the support in principle of WMDC, subject to the minimisation of negative on and off-site impacts.

4.4 CONFORMITY WITH NATIONAL POLICY STATEMENTS, MARINE POLICY STATEMENTS, MARINE PLANS AND OTHER KEY POLICY STATEMENTS

4.4.1 The Proposed Development is defined by s.14 and s.15 of the Planning Act 2008 as a Nationally Significant Infrastructure Project (NSIP), being an electricity generating station with an average gross electrical output in excess of 50 megawatts (MW). Consequently, the application is for a DCO and is made to the Planning Inspectorate on behalf of the Secretary of State for Energy and Climate Change.

4.4.2 As a NSIP, the proposal needs to be considered under policies set out in National Policy Statements and in particular in NPS EN-1, the overarching NPS for Energy.

4.4.3 The proposed FM2 development is a land development and does not need to conform to Marine Policy Statements and Marine Plans.

4.5 ENVIRONMENTAL STATEMENT AND ENVIRONMENTAL IMPACT ASSESSMENT

4.5.1 The Overarching National Policy Statement for Energy, NPS EN-1, Section 4.2 *Environmental Statement* states: *"All proposals for projects that are subject to the European Environmental Impact Assessment Directive must be accompanied by an Environmental Statement (ES) describing the aspects of the environment likely to be significantly affected by the project. The Directive specifically refers to effects on human beings, fauna and flora, soil, water, air, climate, the landscape, material assets and cultural heritage, and the interaction between them.*

4.5.2 *… The IPC should satisfy itself that likely significant effects, including any significant residual effects taking account of any proposed mitigation measures or any adverse effects of those measures, have been adequately assessed"*.

4.5.3 The Applicant presented an environmental statement (ES) with its application [AD-043 to AD-087]. This comprised a Non-Technical Summary, a Volume 1 (Main Report), a Volume 2 (Figures for the various chapters), and 18 appendices covering the various topics. The Applicant also presented a range of reports expanding on a number of topics [AD-030 to AD-042].

4.5.4 The topics covered were the assessment methodology, transport and access, air quality, noise and vibration, land use and socio-economics, landscape and visual amenity, water resources and flood risk, ground conditions, ecology, archaeology and cultural heritage, waste and resource management, sustainability, health impact, and cumulative and combined effects. The effects of the Proposed Development on receptors during construction, operation and decommissioning were considered.

4.5.5 The ES was not amended during the course of the examination.

4.5.6 The Applicant has proposed mitigation measures in the ES, identified how these would be included within the design, and where necessary secured and delivered through the draft DCO.

4.5.7 The Applicant has updated the draft DCO as a result of the examination [D2-003/004, D4-004/005].

4.5.8 The various topics summarised above are addressed in subsequent sections of this Chapter.

4.6 ENVIRONMENTAL PERMIT

4.6.1 NPS EN-1 Section 4.10.5 states that: *"Many projects covered by this NPS will be subject to the Environmental Permitting (EP) regime, which also incorporates operational waste management requirements for certain activities. When a developer applies for an Environmental Permit, the relevant regulator (usually EA but sometimes the local authority) requires that the application demonstrates that processes are in place to meet all relevant EP requirements*. *Applicants are advised to make early contact with relevant regulators … to discuss their requirements for environmental permits and other consents*.

4.6.2 *The IPC should be satisfied that development consent can be granted taking full account of environmental impacts*. *The IPC should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted"*.

4.6.3 The EA will control and regulate the Proposed Development via an Environmental Permit, under the Environmental Permitting (England and Wales) Regulations 2010. For discussion on Air Quality and Pollution, see Section 4.11 below.

4.6.4 In Q6.2 of ExA's first questions [PrD-05], ExA asked the Applicant when it intended to submit the Environmental Permit (EP) application to the EA, and asked the EA if it was in a position to provide a timetable for the EP regime such that the determination of the permit would be available in a timely fashion to inform the DCO examination.

4.6.5 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that it had submitted its EP application on 22/12/2014, and that the EP application would be considered by the EA in parallel with the DCO examination.

4.6.6 In EA's submission at Deadline 1 [D1-006], EA stated that it had *"received an environmental permit application from the Applicant for this site on the 23 December 2014 … we can now commence our assessment of this application ... Given that we have only just received the application … we will be extremely unlikely to be in a position to provide a detailed view on the environmental permit during the DCO examination ... The absence of an environmental permit does not preclude the Secretary of State from making a Development Consent Order (DCO)"*.

4.6.7 In the SoCG between the Applicant and the EA [AD-094], EA stated that at this point the EA was not aware of anything that would preclude the granting of an EP.

4.6.8 In Agenda Item 22 for the Issue Specific Hearing on the DCO on 18 March 2015 [HG-005], ExA asked the EA if it would be able and willing

to submit an update on the status of the EP application (timescale & whether 'duly made') by Deadline 4.

4.6.9 In EA's correspondence prior to the Issue Specific Hearing [CoRR-07, dated 17/03/2015], the EA stated that *"We can now confirm that … the 'Duly Made' date for the environmental permit application is confirmed as 14th January 2015. Work has now commenced on the determination of the permit … This stage in our assessment process is estimated to take until the end of July 2015. The outcome of this stage will be a decision as to whether we are minded to grant a permit or not"*.

4.6.10 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that the latest information from the EA was that a decision on the EP application was likely earlier than initially thought. According to the Applicant, the EA had confirmed that the Environmental Permit application was of a 'high quality'.

4.6.11 No further submission was received from the EA at Deadline 4, and no submissions were received from the Applicant or EA at Deadline 5. The position at the close of the examination is therefore as stated above. ExA is satisfied that the emissions can be adequately regulated through the Environmental Permit and is not aware of any reasons why the permit would not be granted.

4.7 GOOD DESIGN

4.7.1 PA2008 Section 10 *Sustainable Development* states that in setting policy for NSIPs the Secretary of State must have regard to the desirability of achieving 'good design'.

4.7.2 NPS EN-1 Section 4.5 *Criteria for "Good Design" for Energy Infrastructure*, states that the ExA (formerly IPC) *"needs to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable and adaptable (including taking account of natural hazards such as flooding) as they can be. In so doing, the IPC (ExA) should satisfy itself that the Applicant has taken into account both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located) as far as possible".*

4.7.3 The Applicant's document *Design and Access Statement* [AD-036] sets out how the Applicant has had regard to "good design" in designing the Proposed Development.

4.7.4 The Applicant states that: *"… the broad approach that has been taken to the design of the Proposed Development has been to take design references from its surroundings, notably FM1. The Applicant has, however, sought to explore how the scale and massing of components of the Proposed Development could potentially be reduced, while the*

decisions with regard to its siting and layout have also been aimed at minimising its visual impacts where possible.

4.7.5 The Applicant stated that the final design of the Proposed Development was functional, reflecting its purpose to generate electricity and the industrial context within which it would sit. In terms of siting and layout, opportunities had been taken to minimise the visual impact of the development by locating it close to the existing buildings and structures at the Power Station site, while in terms of its form, scale and appearance it would broadly reflect FM1. The areas around the main process area would be landscaped, enhancing their biodiversity and appropriate access routes and arrangements would be provided.

4.7.6 The Applicant concluded that: "*The Proposed Development will incorporate a number of sustainability measures within its design and will be both resilient to the effects of climate change, while making a positive contribution toward combating these*".

4.7.7 Interested Parties made no comment on the Proposed Development in terms of good design, although specific features of the design were raised under Landscape and Visual Impact. See Section 4.26 where these issues are discussed.

4.7.8 ExA's view is that the design of FM2 broadly follows the design of FM1, it will be situated alongside FM1, and it will be configured consistently with FM1, thus mitigating any additional negative visual impact. They both build on designs used by the Applicant and others elsewhere. The enhanced local road network installed for FM1 will also be available for FM2.

4.7.9 ExA is of the view that the proposed FM2 development conforms with the requirements for good design, in that it is sustainable, as well as being attractive, durable and adaptable. While the term "attractive" is subjective, the form of the structure has been made sympathetic to the existing structures.

4.8 COMBINED HEAT AND POWER

4.8.1 NPS EN-1 Section 4.6 *Consideration of Combined Heat and Power* states: *"Under guidelines issued by DECC (then DTI) in 2006, any application to develop a thermal generating station under Section 36 of the Electricity Act 1989 must either include CHP or contain evidence that the possibilities for CHP have been fully explored to inform the IPC's consideration of the application ... The same principle applies to any thermal power station which is the subject of an application for development consent under the Planning Act 2008"*.

4.8.2 The Applicant's document *Combined Heat and Power Assessment* [AD-038] states: *"This CHP assessment demonstrates that the Proposed Development meets the BAT (Best Available Technology) tests outlined in the EA CHP Guidance and it therefore will be designed and*

built as 'CHP Ready' to supply any identified viable heat load of up to 20 MWth to allow for the future implementation of CHP should the heat loads become economically viable".

4.8.3 WMDC in its LIR states that: *"A Combined Heat and Power Assessment (dated July 2014) has been submitted, which concludes that there are currently no economically viable options available. However, CHP requirements are covered by the Environmental Permitting regime and the EA has confirmed that they will require all new combustion power plants to be CHP-ready to a sufficient degree dictated by the likely future technically-viable opportunities for heat supply in the vicinity of the plant ... The EA consider that the submitted CHP Assessment adequately determines the CHP Ready status of the plant and welcomes the inclusion of Requirement 39 (now Req 40) of the draft DCO which secures the space and routes for the provision of CHP for the lifetime of the development"*.

4.8.4 The draft DCO at Deadline 4 [D4-004/005] Requirement 40: *Combined Heat and Power* secures the fact that the authorised development may not be brought into commercial use until the planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems. The undertaker must maintain such space and routes for the lifetime of the authorised development.

4.8.5 Twelve months after the authorised development is first brought into commercial use, the undertaker must submit to the planning authority for its approval a CHP review updating the CHP assessment. The undertaker must consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission, and include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.

4.8.6 ExA is satisfied that Requirement 40 adequately provides for CHP to be implemented in the future if it should become viable. CHP will also be examined further during the application for the Environmental Permit.

4.9 GRID CONNECTION

GRID CONNECTION OPTIONS

4.9.1 NPS EN-1 Section 4.9 Grid Connection states that: *"It is for the Applicant to ensure that there will be necessary infrastructure and capacity within an existing or planned transmission or distribution network to accommodate the electricity generated. The Applicant will liaise with National Grid who own and manage the transmission*

network in England and Wales or the relevant regional Distribution Network Operator (DNO) to secure a grid connection".

4.9.2 The NPS recognises that the Applicant may not have received or accepted a formal offer of a grid connection from the relevant network operator at the time of the application, but it goes on to state that the Secretary of State will want to be satisfied that there is no obvious reason why a grid connection would not be possible.

4.9.3 In the ES [AD-044] Chapter 3 *The Proposed Development*, Section 3.6 *Supporting Facilities*, Sub-Section 3.6.21 *Grid Connections*, the Applicant states: *"The Proposed Development will require a connection to export electricity to the transmission grid or the distribution network, owned and operated by National Grid (NG) and Northern Power Grid (NPG) respectively. Early discussions have indicated three possible options … It is not possible to select a single option at this stage as feasibility work is ongoing. The Grid Connection Statement (Application Document Ref. No. 5.5) sets out the current status of works"*.

4.9.4 The Applicant's document Grid Connection Statement [AD-033] confirms this position and states *"the need for further evaluation of the options by the Applicant and relevant transmission and distribution operators. Therefore, all three options have been included within the Application. It is anticipated that a decision on which option to select will be made at the detailed design stage, after any DCO for the Proposed Development has been granted*".

4.9.5 The Applicant goes on to state that: *"All land required for the three options lies within the Order Limits and is within the control of the Applicant apart from the final connection point into the third party operated sub-station infrastructure … Other than known infrastructure and potential unknown ground conditions and obstructions along the route of the cable, which would be identified at the time of construction, there are no other environmental constraints that have been identified"*.

4.9.6 The draft DCO at Deadline 4 [D4-004] Schedule 1: *Authorised Development*, identifies Work No. 2 – a connection to the electricity grid network, including, where required, modification works to existing grid connection infrastructure consisting of one only of options 2A, 2B or 2C.

PROTECTIVE PROVISIONS AND PRIVATE TREATIES

4.9.7 In National Grid Electricity Transmission (NGET)'s Relevant Representation [RR-02], NGET stated in respect of existing NGET infrastructure, that NGET would require protective provisions to be included within the DCO to ensure that apparatus was adequately protected and to include compliance with relevant safety standards.

4.9.8 In Agenda Item 23 of the Issue-Specific Hearing on the DCO on 18 March 2015 [HG-005], ExA asked NGET to state the position on

protective provisions in the draft DCO, and the Applicant and NGET to state their positions on a possible private treaty agreement.

4.9.9 In the Applicant's submission at Deadline 4, the Applicant stated that NGET had confirmed in its written response to this Agenda Item (dated 16 March 2015) that negotiations with the Applicant had reached a satisfactory conclusion and that its interests and apparatus were adequately protected by existing private treaty rights. Accordingly, NGET required no further protection by way of protective provisions or commercial agreement. NGET made no submission at Deadline 4.

SUMMARY OF CONNECTION ISSUES

4.9.10 The Applicant has stated that it has not been possible to select a single grid connection option in advance of the submission of the Application, due to the need for further evaluation of the options by the Applicant and relevant transmission and distribution operators. All three grid connection options are therefore specified in the draft DCO. The ES has assessed the effects from the three proposed grid connection options, and has concluded no likely significant effects on receptors.

4.9.11 In accordance with NPS EN-1 Section 4.9, ExA is satisfied that there are no obvious reasons why the necessary approvals for achieving a grid connection are likely to be refused.

4.10 CARBON CAPTURE AND STORAGE / CARBON CAPTURE READINESS

4.10.1 NPS EN-1 Section 4.7 *Carbon Capture and Storage and Carbon Capture Readiness* states that: *"All commercial scale fossil fuelled generating stations have to be carbon capture ready … Operators of fossil fuel generating stations will also be required to comply with any Emission Performance Standards (EPS) that might be applicable".*

4.10.2 However, the NPS requirement is expressed in terms of coal-fired power stations of capacity greater than 300MW.

4.10.3 Since the Proposed Development will lead to a power station with a maximum capacity of 90MW, there is therefore no requirement on the Applicant to consider carbon capture and storage.

4.11 AIR QUALITY AND EMISSIONS

4.11.1 NPS EN-1 Section 5.2 *Air Quality and Emissions* states: *"Where the project is likely to have adverse effects on air quality the Applicant should undertake an assessment of the impacts of the proposed project as part of the Environmental Statement (ES). The ES should describe any significant air emissions, their mitigation and any residual effects … the predicted absolute emission levels of the proposed*

project after mitigation methods have been applied, existing air quality levels and the relative change in air quality from existing levels, and any potential eutrophication impacts".

4.11.2 The Applicant has considered Air Quality and Emissions in its ES [AD-043/044] Chapter 8 *Air Quality*, together with Appendix 8A *Air Quality Assessment* [AD-072]. The construction, operation and decommissioning phases have all been assessed. The assessment considers:

- the existing baseline excluding FM1 in operation
- the future (modified) baseline against which the Proposed Development impacts are assessed, including process emissions from operation of the adjacent FM1 plant and associated traffic pollutant contributions
- the impacts from construction of the Proposed Development, currently anticipated to commence in 2015, with respect to associated construction traffic, on-site plant emissions and construction dust
- the impacts from operational process emissions and road traffic emissions associated with the Proposed Development in the opening year anticipated to be 2018.

4.11.3 The Applicant states in its ES Non-Technical Summary [AD-043]: *"The air quality assessment has considered potential impacts up to 10 km from the Proposed Development (the study area) on both human and ecological receptors including residential properties, schools, Sites of Special Scientific Interest, Local Nature Reserves and Local Wildlife Sites ... There are no internationally designated (European) ecological sites within the study area ... The Site is located within the M62 Air Quality Management Area that was declared due to higher levels of nitrogen dioxide (NO2) in the air (close to European air quality standards), largely from traffic sources ... The Site is also close to the Castleford Air Quality Management Area, also designated for the same reason*".

4.11.4 With regard to dispersion modelling, the Applicant states that: *"The assessment used computer models to predict the dispersion of air emissions from the construction and operation of the Proposed Development including anticipated emissions from the new stack and traffic emissions associated with the Proposed Development. Effects during the decommissioning phase are anticipated to be similar to the construction phase*".

4.11.5 The Applicant also notes that: "*… the combined impacts of FM1 and the Proposed Development have been assessed by determining a modified air quality baseline from FM1 traffic and stack emissions, on to which the predicted impacts of the Proposed Development emissions have been added"*.

4.11.6 The Applicant concludes in its ES Non-Technical Summary that: *"There would be no significant effects arising from air quality changes as a*

result of the Proposed Development through the use of embedded mitigation".

Potential Impacts Arising from Emissions and Air Pollution

4.11.7 In Q6.20 of the ExA's first questions [PrD-05], ExA asked the Applicant to explain how it had identified and assessed the potential impacts arising from emissions and air pollution generated during both the construction and operational phases. ExA also asked what mitigation measures were relied upon to reduce the significance level of impacts, where these measures had been assessed within the ES, and how these measures would be secured in the draft DCO.

4.11.8 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that embedded mitigation measures had been considered as follows:

- compliance with the Environmental Permit and Industrial Emissions Directive. For discussion on the Environmental Permit, see Section 4.6 above
- compliance with a tighter Emission Limit Value for nitrogen oxide emissions from the stack, secured by draft Requirement 36 (now 37)
- restricting the fuel delivery fleet to achieving the Euro VI engine performance standard, again secured by draft Requirement 36 (now 37)
- use of an approved CEMP to control emissions during construction, secured by draft Requirement No. 18
- use of a minimum stack height, secured by Article 5(4)(a) of the draft DCO.

4.11.9 The Applicant stated that measures had been presented to, discussed and agreed with, the WMDC environmental health department.

Emission Levels

4.11.10 In the Applicant's first draft DCO [AD-006], Requirement 37 (then 36) required the daily average emission limit value for nitrogen monoxide and nitrogen dioxide, expressed as nitrogen dioxide, to be exactly 180 mg/Nm3. The Explanatory Memorandum [AD-007] stated that this was a maximum value. The use of the words *"daily average emission limit value"* in the requirement was not precise and Requirement 37 would not be enforceable as a result.

4.11.11 In Q2.10 and Q6.31 of the ExA's first questions [PrD-05], ExA asked the Applicant:

(i) to clarify whether the values presented in Table 8.7 of the ES [AD-044] corresponded to the maximum allowances of the Waste Incineration Directive

(ii) to consider replacing the words *"daily average emission limit value for"* with the word *"maximum"*, insert the words *"no more than"* before 180mg/Nm3, and thereafter insert the words

"calculated between 00:00 and 23:59 on any day"; or similar wording to make the requirement precise and enforceable

(iii) to state how the daily emissions would be monitored and controlled through the DCO and Environmental Permit.

4.11.12 In the Applicant's response at Deadline 1 [D1-011], the Applicant responded to point (1) by stating that as presented in paragraph 8.3.32 of the ES, the Emission Limit Values were based on the maximum allowable values specified in the Industrial Emissions Directive (IED) for waste incineration plant with the exception of emissions of nitrogen oxides. Due to the location of the site in an Air Quality Measurement Area (AQMA), the Applicant had committed through draft Requirement 37 to the plant achieving a tighter Emission Limit Value for emissions of nitrogen oxides than was specified in the IED.

4.11.13 In the EA's response [D1-006] to ExA's questions [PrD-05], EA stated that: *"When assessing the application for a permit to operate the facility we will set conditions to ensure that emissions to air and discharges to water, land and groundwater along with odour, noise and vibration are at a level that will not result in significant impact on people and the environment, reflecting current statutory requirements and to ensure compliance with European Directive 2010/75/EU on Industrial Emissions. We cannot grant a permit until we are satisfied that the facility can be operated without causing significant pollution to the environment or harm to human health"*. EA did not comment on how the Applicant's emissions commitment would relate to what might be imposed in the Environmental Permit.

4.11.14 With regard to point (2), the Applicant proposed amended wording for Requirement 37, which it claimed was precise and enforceable. It stated that these words had been included in the draft DCO at Deadline 2, and the matter was thereby resolved.

4.11.15 With regard to point (3), the Applicant stated that monitoring would be done continuously through the conditions of the Environmental Permit.

4.11.16 ExA is satisfied with these responses

Cumulative and Combined Effects

4.11.17 In Q6.13 of the ExA's first questions [PrD-05], ExA noted the Applicant's statement in the ES [AD-044] Chapter 19: *Cumulative and Combined Effects* that given the scale of the proposed waste management facility and Advanced Thermal Treatment plant, the prevailing wind direction [which was not in the direction of the former ARBRE (Association of Resources for Biophysical Research in Europe, Biomass Renewable Energy facility) from the Proposed Development], the lack of shared transport links and the distance from the Proposed Development Site, it was considered that there was no potential for cumulative impacts relating to air quality, noise, landscape and visual

amenity or transport. ExA asked SDC and the EA for their views on this statement by the Applicant.

4.11.18 In SDC's submission at Deadline 1 [D1-015], SDC stated that consideration had been given to the air quality assessment presented for a 2012 application by Drenl Ltd (a recycling and renewable energy company) in respect of emissions to air, and SDC would agree that - as the maximum predicted effects of this application would occur within 1 km of the stack - this issue did not require further consideration.

4.11.19 In EA's submission at Deadline 1 [D1-006], EA stated that the Applicant's assessment of the cumulative and combined effects of the proposed facility would be considered by EA through the determination of the Environmental Permit application.

Operation of Diesel Generators

4.11.20 In the ExA's Agenda Item 17 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to clarify the meaning of the statement *"assuming the diesel generators operate all year round"* (ref. Applicant's response to ExA's questions at Deadline 1 [D1-011]).

4.11.21 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that the statement *"…assuming the diesel generators operate all year round…"* was made to account for the way the dispersion modelling was undertaken and not the actual operation of the generators. In the dispersion modelling, the generators were simulated as running for the whole year to account for different meteorological conditions within that year, so that the peak short term impacts could be understood. Their actual operation would be restricted to a total of 100 hours per year, as their purpose is to enable the safe shut-down of the plant in the event of a total power failure.

FM2 and FM1 Construction Timings

4.11.22 In Q6.21 of the ExA's first questions [PrD-05], ExA asked the Applicant to confirm its confidence that the assumption in Chapter 8 of the ES [AD-044] that the existing baseline (represented by a 2011 baseline that excluded FM1 construction effects which would not be present during construction / operation of FM2) was still valid and that FM1 construction / FM2 construction would not overlap.

4.11.23 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that FM1 was due to be commissioned in Summer 2015, and the earliest date for the FM2 DCO to be approved by the Secretary of State would be December 2015. *Note: given the fact that the examination was closed on 29 April 2015, earlier than 04 June 2015 as required by the statutory maximum of six months for the examination period, the S*ecretary *of S*tate'*s decision should be made by 29 October 2015, but this does not affect the response to ExA's question.*

Use of FM1 Air Quality Monitoring Information

4.11.24 In Q6.23 of the ExA's first questions [PrD-05], ExA noted that there was no reference to any ongoing construction air quality / dust management monitoring that may have been required as part of the FM1 consent being fed into the presentation of baseline data and the impact assessment of the proposed FM2 development. ExA asked the Applicant to clarify whether any such monitoring had been undertaken for FM1, if so whether this information could be provided, and where this information is available, whether the Applicant had used this data to verify the air quality assessment predictions undertaken for FM2.

4.11.25 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that no on-going construction dust monitoring was undertaken for FM1. It had been accepted that the distance over which construction air quality effects could occur is 200m, and there were no identified receptors within 200m of the main construction site for FM1. Draft Requirement 37 (now 38) would secure a similar monitoring programme for the FM2 development as for FM1.

4.11.26 In the ExA's Agenda Item 12 at the Issue-Specific Hearing on the DCO 18 March 2015 [HG-005], ExA asked Public Health England [(PHE), Centre for Radiation, Chemicals & Environmental Hazards] to comment on the Human Health Risk Assessment of the Proposed Development. ExA also asked the Applicant to state its position on the SDC request to align Requirement 37 with the requirement for FM1, and whether the information gained from the monitoring could be used as the basis for a medical study on the health impacts.

4.11.27 In the ExA's Agenda Item 18 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to clarify whether the additional background monitoring data started for FM1 had been, or would be, used for the FM2 assessment, and ExA asked WMDC and SDC to confirm their agreement to the modified baseline and the wording of Requirement 37 (now 38) in the draft DCO at Deadline 2 [D2-003/004] with regard to bringing Requirement 37 more in line with FM1 conditions.

4.11.28 No submission was received from PHE at Deadline 4 (or any other deadline).

4.11.29 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that it had now drafted Requirement 38 (formerly 37) to be consistent with the wording of FM1 planning conditions 68 and 69. For FM1, the analysis of metals had been agreed under the scheme submitted for approval to discharge the planning conditions and a similar approach was proposed in relation to the FM2 Proposed Development. In terms of using the data as a basis for medical study, the Applicant referred SDC to the published position of PHE which stated that *"well run and regulated modern municipal waste incinerators are not a significant risk to public health"*. In addition, the Applicant understood that PHE had reaffirmed its intention to publish

in 2015 a study looking at the potential health impacts from waste incineration.

4.11.30 The Applicant further stated that the FM1 monitoring data had not been used for the assessment of the Proposed Development as it was not available at that time. The results of the first year of background monitoring had been completed in November 2014 and the report of those results had been published in February 2015. The Applicant stated that results showed that the Brotherton baseline air quality was not compromised and was consistent with the assumptions used in the air quality impact assessment for the Proposed Development. Use of the modified baseline had been discussed and agreed with the WMDC Scientific Officer prior to submission of the Application.

Assumptions for Construction Traffic

4.11.31 In Q6.25 of the ExA's first questions [PrD-05], ExA asked the Applicant to clarify how the assumptions for the construction traffic data in the ES [AD-044] Chapter 8 corresponded to the relevant evaluation criteria in immediately excluding the need for further assessment (i.e. worst case potential increases along roads within the study area compared to the threshold criteria for assessment).

4.11.32 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the Design Manual for Roads and Bridges (DMRB) presented assessment thresholds for changes to, or increases in, traffic on roads, whereby traffic increases below those thresholds are accepted not to give rise to unacceptable air quality effects. Other similar thresholds existed in guidance published by Environmental Protection UK (EPUK) and these had also been considered. In the DMRB guidance, changes in traffic of more than 1,000 AADT (Annual Average Daily Traffic Flow) were to be considered further by quantitative assessment. For changes in traffic below this criterion, significant changes in air quality were not expected and no quantitative assessment was required. A review of changes in road traffic vehicle trips for the routes around the site indicated that none of the DMRB or EPUK screening criteria were anticipated to be exceeded during construction (e.g. through the expected number of additional HGV deliveries). Therefore, no further quantitative assessment works had been undertaken for construction road vehicles.

Justification for the Absence of Background Monitoring Data

4.11.33 In Q6.22 of the ExA's first questions [PrD-05], ExA asked the Applicant to provide further justification as to the absence of background monitoring data.

4.11.34 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that substantial air monitoring and evaluation had been performed by and for WMDC in relation to the AQMA which was used for the assessment. Continuous monitoring of a suite of pollutants had commenced pursuant to a planning condition attached to the FM1

consent and data from that monitoring had started to become available to further characterise the local environment. The Applicant had wanted to avoid the inclusion of any potential contribution from FM1 construction in baseline data since this would have led to an unnecessarily pessimistic assessment of potential impact (hence the modified baseline). FM1 is due to be commissioned in September 2015, while the Secretary of State's decision on the FM2 DCO is not expected to be until the end of October 2015, with construction potentially starting in 2016.

4.11.35 No submissions on air quality were received at Deadlines 4 or 5 from any Interested Party - notably WMDC, SDC or PHE - and no outstanding areas of disagreement are present with regard to air quality in the SoCG between the Applicant and WMDC [D5-001/002].

4.11.36 Revised wording for draft DCO Requirement 37 *Air Quality Emissions Reduction* and Requirement 38 *Air Quality Monitoring* has been included in the draft DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004/005].

4.11.37 ExA is satisfied that air quality will be sufficiently controlled by the embedded mitigation measures in the design, Requirements 37 and 38 in the draft DCO (Appendix A to this report), and the measures in the Environmental Permit, the application for which is currently being considered by the EA.

4.12 BIODIVERSITY, BIOLOGICAL ENVIRONMENT AND ECOLOGY CONSERVATION

4.12.1 NPS EN-1 Section 5.3 states: *"Where the development is subject to EIA the Applicant should 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.*

4.12.2 *As a general principle … development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives*.

4.12.3 *The IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment*".

4.12.4 The Applicant has considered ecology in its ES [AD-043/044] Chapter 14 *Ecology*, together with Appendix 14A *Ecology Desk Study Records*.

The construction, operation and decommissioning phases have all been assessed. The assessment considers:

- Ecological receptors over a 5 km radius
- Air emissions during operations over a 10 km radius
- Statutory and non-statutory designated nature conservation sites
- Internationally and nationally designated sites
- European and nationally protected species.

4.12.5 The Applicant states in its ES Non-Technical Summary [AD-043]: *"Ecological receptors have been identified within a 5 km study area of the Proposed Development (10 km for the potential effects of emissions to air from the operational Proposed Development) through a desk based study, and a Phase 1 Habitat Survey has been undertaken for the Site and its immediate surroundings. Within the 5 km study area, five statutory and 19 non-statutory designated nature conservation sites have been identified. In addition, the habitat survey indicated that the wider Ferrybridge Power Station site holds very little value for wildlife. Ecological receptors of note in the Site vicinity are the River Aire, Fryston Beck, a pond within the former golf course and woodland habitat, although none of these sites are internationally or nationally designated. There are no internationally designated sites within 20 km of the Site and Natural England has confirmed that there are no potential effects on internationally designated sites*".

4.12.6 The Applicant concludes that: *"As a result of the design of the Proposed Development which includes a replacement pond and Landscape and Biodiversity Strategies, no significant adverse effects on ecological receptors are predicted as a result of construction and operation"*.

4.12.7 In the Applicant's *Biodiversity Strategy* [AD-042], the Applicant stated the conservation objectives.

4.12.8 In addition, some of the habitats and European and UK protected species met the requirements of the Natural Environment and Rural Communities (NERC) Act 2006 Section 41 habitats and Wakefield Biodiversity Action Plan (BAP).

4.12.9 The proposed mitigation and enhancement comprises the creation of a habitat mosaic within the Proposed Development Site. This encompasses the provision of a new pond, broad-leaved woodland stands, scattered scrub and unimproved grassland. There would also be areas of wildflower planting. These habitats would be managed for conservation purposes and would be further enhanced post development through appropriate management.

4.12.10 The proposed mitigation was considered by the Applicant to be sufficient to alleviate what the Applicant regarded as the small loss in biodiversity as a result of the Proposed Development and would further enhance the site as a whole in accordance with relevant national and local planning policy.

4.12.11 The ExA concurs with this position. The small loss of biodiversity relates to an existing pond on the former golf course, and the mitigation measures include the establishment of a replacement pond.

Natural England

4.12.12 In its Relevant Representation [RR-11], NE stated that: *"The following European protected species may be affected by the proposed project: bats*. *The following nationally protected species may be affected by the proposed project: nesting birds, common frog, common toad, and smooth newt"*.

4.12.13 NE further stated that it had: *"no objection to the project for the following reasons*. *There are no European sites, Ramsar sites or nationally designated landscapes located within the vicinity of the project that could be significantly affected*. *NE is satisfied that the project is unlikely to have a significant impact on the nearby Fairburn & Newton Ings Site of Special Scientific Interest".*

4.12.14 *"The project site currently supports habitats of negligible ecological interest and all issues relating to protected species (including any licensing requirements under the Habitats Regulations or the 1981 Act) have already been addressed"*.

4.12.15 NE further stated that it *"welcomes the ecological enhancement measures set out in Section 14 of the Environmental Statement [AD-044] and in the Biodiversity Strategy [AD-042], which would have a positive effect on the natural environment by providing a range of biodiverse habitats on the site. This is in accordance with the principles set out in paragraph 118 of the National Planning Policy Framework. Natural England notes that this commitment is reflected in Requirement 17 (Biodiversity Enhancement and Management Plan) of the draft DCO"*.

4.12.16 The signed SoCG between the Applicant and NE [AD-088] stated that there were no matters not agreed between the two parties.

Yorkshire Wildlife Trust

4.12.17 In YWT's Relevant Representation [RR-22], YWT stated that it had made comments on:

- Ecological enhancement of the site
- Nitrogen effects on Fairburn and Newton Ings SSSI
- Climate change and carbon emission calculations
- Cumulative effects.

4.12.18 YWT had expressed concerns in all of these areas and had challenged data presented in the application.

4.12.19 In Q6.54 of the ExA's first questions [PrD-05], ExA asked the Applicant for its position with regard to the points raised by YWT, and the Applicant and YWT to prepare a SoCG in response to the issues

raised in YWT's relevant representation and any other relevant matters

4.12.20 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the issues raised by YWT in its Relevant Representation had been discussed and the agreement reached between the Applicant and the YWT had been outlined in the minutes of the meeting held between the Applicant and the YWT on 18 December 2014 [D1-007].

4.12.21 The Applicant stated that, in respect of nitrogen deposition, the meeting minutes recorded that a SoCG had been signed with NE that there were no significant effects, which were being mitigated through the use of an appropriate stack height and a tighter emission limit value than required under the Industrial Emissions Directive.

4.12.22 According to the Applicant, its summary of the meeting was: *"It was agreed that subject to the amendment of the landscaping and biodiversity strategies and the commitment to engage with YWT during the finalisation of any detailed landscaping scheme, the comments made in the YWT representation have been addressed to the satisfaction of both parties and no further actions are required."*

4.12.23 In ExA's Agenda Item 8 at the Issue-Specific Hearing on the DCO on 18 March 2015 [HG-005], ExA asked the Applicant and YWT to state their current positions with regard to the meeting Applicant/YWT on 18 December 2014 and Requirement 17 *Biodiversity Enhancement and Management Plan*, and ExA asked YWT and NE to state whether they wished to be included as consultees of the Biodiversity Enhancement and Management Plan in the wording of Requirement 17.

4.12.24 In the Applicant's submission at Deadline 4 [D4-009], the Applicant confirmed the agreement with YWT as documented in the minutes of the meeting held on 18 December 2014 and submitted at Deadline 1 [D1-007]. The Biodiversity and Landscaping Strategies and Landscaping Plan (submitted with the Application) had been updated to take account of the YWT's recommendations in relation to the inclusion of magnesian grassland within the biodiversity proposals. The updated documents had been submitted at Deadline 3 [D3-001/002/004/005/006/007]. The Applicant had no objection to the YWT being a consultee for the purposes of Requirement 17 and this had been incorporated into the revised draft DCO at Deadline 4 [D4-004/005].

4.12.25 In its written response dated 17 March 2015 [CoRR-10] to ExA's Agenda Item 8 for the Issue Specific Hearing on the DCO, YWT had confirmed that it would wish to be consulted on the Biodiversity Enhancement and Management Plan submitted to the planning authority pursuant to Requirement 17. NE in its written response dated 13 March 2015 [CoRR-08] to the same Agenda Item confirmed that it would not wish to be consulted in respect of Requirement 17.

Securing the ecological mitigation through the DCO

4.12.26 A number of requirements have been included in the draft DCO, to ensure that matters relating to habitats must be addressed if they are discovered during the construction of the FM2 project. Requirements are also in place with regard to broader ecological and biodiversity considerations.

4.12.27 Draft DCO Requirement 18 *CEMP* secures the fact that the CEMP as submitted and approved must include measures for the protection of any protected species found to be present on the Order land during construction, as well as including the mitigation measures included in Chapter 9 of the ES [AD-044].

4.12.28 Requirement 7 *Provision of Landscaping* secures the fact that the landscaping schemes as submitted and approved must be in accordance with the Landscaping Plan, Biodiversity Strategy and Biodiversity Enhancement and Management Plan.

4.12.29 Requirement 17 *Biodiversity Enhancement and Management Plan* secures the development of an approved Biodiversity Enhancement and Management Plan.

4.12.30 Requirement 31 *Restoration of Land used Temporarily for Construction* secures the fact that land used for construction must be restored in accordance with the Biodiversity Enhancement and Management Plan.

4.12.31 Engagements between the Applicant, NE and the YWT before and during the examination led to NE and YWT being content with the measures proposed in the draft DCO at Deadline 4 [D4-004/005], and in particular the requirements that would secure what they regarded as necessary.

4.12.32 These requirements were revised by the Applicant in updated drafts of the DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004].

4.12.33 ExA is satisfied that the mitigation measures embedded in the design and those secured through the DCO requirements identified above will provide the necessary controls with regard to biodiversity, biological environment, and ecology.

4.12.34 ExA is satisfied that based on NE's representations, a European Protected Species licence under the Habitats Regulation is not required for the Proposed Development.

4.12.35 Effects on European site under the Habitats Regulations are considered in Section 4.35 below.

4.13 CIVIL AND MILITARY AVIATION AND DEFENCE INTERESTS

4.13.1 NPS EN-1 Section 5.4 states: *"Where the Proposed Development may have an effect on civil or military aviation and/or other defence assets*

an assessment of potential effects should be set out in the ES … The Applicant should consult the MoD (Ministry of Defence), CAA (Civil Aviation Authority), NATS (National Air Traffic Service) and any aerodrome – licensed or otherwise – likely to be affected by the Proposed Development in preparing an assessment of the proposal on aviation or other defence interests …

4.13.2 *The IPC should be satisfied that the effects on civil and military aerodromes, aviation technical sites and other defence assets have been addressed by the Applicant and that any necessary assessment of the proposal on aviation or defence interests has been carried out*".

4.13.3 The Applicant tabled a SoCG between the Applicant and the CAA [AD-089] with its application. With regard to military interests, the SoCG referred to consultation with the Defence Infrastructure Organisation in which the latter had stated that the application site lay outside any MoD safeguarding areas, and that as such MoD had no safeguarding objections to the Proposed Development.

4.13.4 The Applicant's first draft DCO [AD-006] included Requirements 44 *Aviation Warning Lighting* and 45 *Air Safety*. No changes were made to these requirements during the examination.

4.13.5 In Q7.2 of the ExA's first questions [PrD-05], ExA asked the CAA and the Applicant to confirm the position stated in the SoCG.

4.13.6 In the Applicant's submission at Deadline 1, the Applicant stated that the SoCG with the CAA remained agreed and as far as the Applicant was aware there were no matters that would need to be addressed during the examination. It was not therefore considered that the SoCG needed to be updated.

4.13.7 The CAA made no submission at Deadline 1 (or Deadlines 2-5).

4.13.8 There was no change in the relevant Requirements 44 and 45, and ExA is satisfied that they provide adequate mitigation.

4.14 CLIMATE CHANGE MITIGATION

4.14.1 NPS EN-1 Section 4.8 Climate Change Adaptation states: *"The IPC should be satisfied that Applicants for new energy infrastructure have taken into account the potential impacts of climate change using the latest UK Climate Projections available at the time the ES was prepared to ensure they have identified appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure*".

4.14.2 The NPSs state that there is an urgent need for new electricity generating capacity in the UK, particularly low carbon and renewable forms of energy, including Energy from Waste (EfW) generating stations to enhance security and diversity of supply, support the

transition to a low carbon economy and enable the Government to meet its climate change commitments.

4.14.3 The Applicant states in its ES Non-Technical Summary [AD-043] Section 1.3: *"The Proposed Development will make a positive contribution towards addressing a number of challenges. These include the UK Government's climate change commitments, security of national electricity supply, and positive use of waste materials"*.

4.14.4 The Applicant deals with climate change and waste policy in its *Planning Statement* [AD-035] and its *Fuel Availability and Waste Hierarchy and Plans Compliance Assessment* [AD-037].

4.14.5 In its Planning Statement, the Applicant states: *"The use of Waste Derived Fuel (WDF) to generate electricity will deliver very substantial carbon savings making a positive contribution toward the Government's ambitious and legally binding climate change commitment of a reducing greenhouse gas emissions by 80% (compared to 1990 levels) by 2050. The carbon savings will not only be in terms of reduced reliance on more polluting fossil fuel generation, but also the savings that will result from diverting waste from landfill, where the waste breaks down and generates greenhouses gases, principally methane"*.

4.14.6 As an EfW generating station, the Proposed Development will respond to the policy stated in the NPSs, delivering up to 90 MWe of low carbon electricity generating capacity by 2018, and is a commitment to climate change mitigation at a national level. There is also built-in mitigation in the design of the scheme, in that it is building on the experience with FM1and employing the latest techniques from FM1 and elsewhere.

4.14.7 Requirement 35 *Sustainable Fuel Transport Management Plan*, secures the development and maintenance of a Sustainable Fuel Transport Management Plan, with periodic reviews (every five years) of the viability of using water transport. Furthermore, in Requirement 37 *Air Quality - Emissions Reduction* in the draft DCO, the Applicant has committed to tight emission limit values for the heavy goods vehicles that will transport fuel and waste materials.

4.14.8 ExA is satisfied that the nature of the generating station (waste derived fuel) and its design embed the key principles of climate change mitigation, notably the waste hierarchy (reduce, reuse, recycle, recover), and that the Applicant has taken account of climate change mitigation as far as reasonably possible through both the design and the additional mitigation secured through Requirements 35 and 37.

4.15 CLIMATE CHANGE ADAPATION

4.15.1 NPS EN-1 Section 4.8 states: *"New energy infrastructure will typically be a long-term investment and will need to remain operational over*

many decades, in the face of a changing climate. Consequently, Applicants must consider the impacts of climate change when planning the location, design, build, operation and, where appropriate, decommissioning of new energy infrastructure. The ES should set out how the proposal will take account of the projected impacts of climate change.

4.15.2 *The IPC should be satisfied that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections, taking account of the latest credible scientific evidence"*.

4.15.3 The Applicant has addressed the need for the proposed generating station to be ready for the eventuality of extreme weather events, in particular flood risk, in its document Flood Risk Assessment [AD-077], and mitigation is secured in the draft DCO through Requirement 14 *Flood Risk Mitigation*. See also Section 4.20 below.

4.15.4 ExA is satisfied that the design of the generating station has embedded mitigation measures for climate change adaptation, and that the Applicant has secured climate change adaptation as far as reasonably possible at this time through Requirement 14.

4.16 COASTAL CHANGE

4.16.1 As an entirely land-based development not located near the coast, the proposed FM2 development has no impact with regard to the coast.

4.17 COMMERCIAL IMPACTS

4.17.1 The Applicant has addressed commercial impacts in its *Funding Statement* [AD-011].

4.17.2 The Funding Statement states: *"The Applicant is a joint venture that has been formed by SSE Generation Ltd, part of the SSE plc group (SSE), and WTI/EFW Holdings Ltd, a subsidiary of Wheelabrator Technologies Inc. (WTI). Both SSE and WTI are well established and recognised companies that benefit from substantial funds*.

4.17.3 *The Applicant has acquired the necessary interests and rights for the land within the Order limits that is within SSE's control, while the draft DCO would provide the necessary rights in respect of the other land within the Order limits. Therefore, no compulsory acquisition of interests or rights in land is being sought*.

4.17.4 *As no compulsory acquisition is required, it is anticipated that there is limited likelihood of any claims for compensation (including blight) and that even if such claims were to be made, the total costs involved would be very low. Article 15 makes appropriate provision for*

compensation for any loss sustained in relation to the appropriation of rights in Kirkhaw Lane.

4.17.5 *MEL will obtain financial backing for the Proposed Development from SSE and WTI. This will be committed by the presiding board of MEL. This would also involve providing funding for any compensation"*.

4.17.6 ExA's view is that the Proposed Development would be on the site of an existing generating station, with no compulsory acquisition requirements, and no other obvious impediments.

4.17.7 The Applicant would appear to be a well-founded joint venture comprised of two substantial companies in the energy generation and transmission market place. None of the Interested Parties questioned the finances of the Applicant during the examination.

4.18 COMMON LAW NUISANCE AND STATUTORY NUISANCE

4.18.1 NPS EN-1 Section 4.14 *Common Law Nuisance and Statutory Nuisance* states: *"It is very important that, at the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the IPC so that appropriate requirements can be included in any subsequent order granting development consent*"*.*

4.18.2 The Applicant has addressed nuisance in its *Statutory Nuisance Statement* [AD-032]. This document cross-refers to multiple locations in the ES [AD-044] and its associated appendices [AD-062 to AD-087]. According to the Applicant, the only potentially significant impacts relate to landscape/visual amenity and noise.

4.18.3 In conclusion, the Applicant states that: *"The only matters addressed by the EPA which have been assessed as potentially not being insignificant for the Proposed Development are identified as noise and visual amenity … it has been demonstrated that the Proposed Development would have no significant noise or visual nuisance effects following the implementation of the identified embedded mitigation measures. Other potential nuisance aspects have been considered … and through embedded mitigation no statutory nuisance effects are considered likely to occur*.

4.18.4 *Embedded mitigation has been secured by appropriate DCO requirements. As a result, it is not expected that the construction, operation or decommissioning of the Proposed Development would engage Section 79(1) and give rise to any statutory nuisance under the EPA, following the implementation of appropriate mitigation"*.

4.18.5 Examination of a number of causes of nuisance - such as dust, noise and vibration, landscape and visual impacts - is included elsewhere in this chapter.

4.18.6 Substantial dialogue took place during the examination around Article 18 of the draft DCO *Defence to Proceedings in Respect of Statutory Nuisance*.

4.18.7 The Applicant's first draft DCO [AD-006] removed all liability for claims for nuisance arising from the operation of the development in relation to the state of the premises, smoke, fumes, gases, dust, steam, smell, accumulation or deposit, insects, artificial lighting and noise. As NPS EN-1 (paragraph 4.14) makes clear, this defence should be available *"only to the extent that the nuisance is the inevitable consequence of"* the Proposed Development. Where the defence is employed, it is important that all of the factors should be adequately controlled by schemes approved under corresponding requirements in the DCO.

4.18.8 In Q2.7 of the ExA's first questions [PrD-05], ExA asked the Applicant what evidence there was that these nuisances were inevitable and would not be mitigated as set out in the ES to the extent that in each case this defence was required, and where such evidence was not clear why the defence should not be dis-applied as set out in NPS EN-1 paragraph 4.14. ExA also asked WMDC and the EA whether they were content that nuisance arising from the operation of the development would be adequately controlled by schemes approved under the corresponding requirements in the DCO.

4.18.9 In WMDC's submission at Deadline 1 [D1-002], WMDC stated that it had some concerns about the extent of the defence sought by the Applicant.

4.18.10 In EA's submission at Deadline 1 [D1-006], EA stated that the operation of the development would be regulated by the EA through an Environmental Permit as required under the Environmental Permitting (England and Wales) Regulations 2010 (EPR) (as amended).

4.18.11 In ExA's Agenda Item 3 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to state why Article 18(3) had been left in place, and asked WMDC and EA to state whether they were content with the Article 18 wording in the draft DCO at Deadline 2 [D2-003/004].

4.18.12 The Applicant and WMDC tabled written submissions at Deadline 4 [D4-009 and D4-010, respectively], and the Applicant tabled a further written submission at Deadline 5 [D5-004]. In this latter submission, the Applicant stated that it had amended Article 18(2)(b) of the Draft DCO in line with the EA's recommendations by deleting reference to the Environmental Permit. The Applicant had also introduced a new requirement, Requirement 24 *Control of Operational Noise* to the draft DCO in order to provide a mechanism to monitor and control noise generated by the authorised development during its operational phase.

4.18.13 ExA is satisfied that Article 18 as amended in the draft DCO at Deadline 4 [D4-004] secures the necessary safeguards with regard to common law nuisance and statutory nuisance.

4.18.14 See elsewhere in this chapter for discussion on various specific potential causes of nuisance - notably noise and vibration, dust, smoke, and landscape and visual effects.

4.19 DUST AND OTHER POTENTIAL NUISANCE

4.19.1 NPS EN-1 Section 4.14 *Common Law Nuisance and Statutory Nuisance* states: *"It is very important that … possible sources of nuisance under section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the IPC so that appropriate requirements can be included in any subsequent order granting development consent".*

4.19.2 NPS EN-1 Section 5.6 *Dust, Odour, Artificial Light, Smoke, Steam and Insect Infestation* states: *"The Applicant should assess the potential for insect infestation and emissions of odour, dust, steam, smoke and artificial light to have a detrimental impact on amenity, as part of the Environmental Statement ...*

4.19.3 *The IPC should satisfy itself that an assessment of the potential* of *artificial light, dust, odour, smoke, steam and insect infestation to have a detrimental impact on amenity has been carried out, and that all reasonable steps have been taken, and will be taken, to minimise any such detrimental impacts"*.

4.19.4 The Applicant has addressed potential nuisances in its *Statutory Nuisance Statement* [AD-032] and ES [AD-043/044] with supporting Appendices for *Air Quality* [AD-072], *Odour Management* [AD-073], *Noise Modelling and Survey* [AD-074/075], *Landscape and Visual Assessment* [AD-076], *Lighting Strategy* [AD-040] and *Human Health Risk Assessment* [AD-087].

4.19.5 The Applicant has assessed the significance of each of the potential nuisances against the legislative framework, and concluded that only Landscape and Visual and Noise will have a potentially significant impact. All other potential nuisances are assessed to have minor to negligible impact.

4.19.6 The Applicant has identified embedded mitigations for each type of nuisance [AD-032], through the design of the generating facility, conformance with necessary legislation, and the development of an Environmental Permit to be agreed with the EA.

4.19.7 Further mitigation measures will be secured through the draft DCO [D4-004] Requirements 18 *CEMP*, 19 *Construction Traffic Routing and Management Plan*, 20 *Construction Hours*, 23 *Control of Noise During Construction*, 24 *Control of Operational Noise*, 25 *Control of Odour Emissions*, 26 *Control of Dust Emissions*, 27 *Control of Smoke*

Emissions, 28 *Control of Steam Emissions*, 29 *Control of Insects and Vermin* and 38 *Air Quality Monitoring*. Most of these requirements have been amended as a result of the examination.

4.19.8 Some potential nuisances are discussed in other sections of this report, particularly Sections 4.11 *Air Quality and Emissions*, 4.27 *Noise and Vibration*, and 4.32 *Traffic and Transport*, which were the subject of submissions from a number of Interested Parties.

Control of Dust Emissions

4.19.9 In ExA's Agenda Item 14 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked WMDC to clarify what mitigation measures it was relying on in the draft DCO with regard to construction phase dust and emission generating activities, and whether it required anything more than draft Requirement 26 (originally 25) *Control of Dust Emissions*.

4.19.10 WMDC did not make a submission at Deadline 4.

4.19.11 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that the WMDC Scientific Officer's response on this point dated 13 March 2015 was to refer to a dust management guidance document that included measures to be considered in the CEMP. This guidance was based on national practice guidance.

4.19.12 The Applicant confirmed that such measures would be included within the scheme submitted to discharge Requirement 26, and stated that (in its view) no changes to the Requirement itself were considered necessary. ExA concurs with this view.

Control of Odour Emissions

4.19.13 In Q6.24 of the ExA's first questions [PrD-05], ExA asked the Applicant whether any quantified assessment of potential odour effects had been undertaken, in terms of baseline conditions, modified baseline (including FM1) and the potential impact of the Proposed Development, such that the environmental effects could be controlled by the DCO requirements and the environmental permit.

4.19.14 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that at the time of the DCO Application preparation, no significant odour sources had been identified at the site or in the area and therefore no odour baseline monitoring had been undertaken. With FM1 nearing commissioning, baseline odour patrols and odour monitoring were starting to be conducted in the area.

4.19.15 The Applicant stated that the Environmental Permit would specify a condition similar to that in the FM1 Permit that *"Emissions from the activities shall be free from odour at levels likely to cause pollution outside the site, as perceived by an authorised officer of the Environment Agency, unless the operator has used appropriate measures, including, but not limited to, those specified in any*

approved odour management plan, to prevent or where that is not practicable to minimise the odour".

4.19.16 The Applicant further stated that draft Requirement 25 (formerly 24) *Control of Odour Emissions* would also control potential odour emissions through an agreed scheme of odour management and mitigation.

4.19.17 In the ExA's Agenda Item 13 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked SDC to confirm that it was content with the revised wording of Requirement 25 (formerly 24) in the draft DCO at Deadline 2 [D2-003/004], and ExA asked Interested Parties to state any concerns and proposed mitigations for potential odour emissions.

4.19.18 The Applicant's submission at Deadline 4 [D4-009] stated that the amendments sought by SDC in its LIR had been included, namely that SDC would be consulted by WMDC on the details submitted to discharge Requirement 25. No other submissions were received at Deadline 4.

4.19.19 ExA is satisfied that mitigation measures embedded in the design of the Proposed Development and those secured through the DCO requirements cited above the provide the necessary controls to secure the development with regard to nuisances.

4.20 FLOOD RISK

4.20.1 NPS EN-1 Section 5.7 *Flood Risk* states: *"Applications for energy projects of 1 hectare or greater in Flood Zone 1 in England or Zone A in Wales and all proposals for energy projects located in Flood Zones 2 and 3 in England or Zones B and C in Wales should be accompanied by a flood risk assessment.*

4.20.2 *A flood risk assessment will also be required where an energy project less than 1 hectare may be subject to sources of flooding other than rivers and the sea (for example surface water), or where the EA, Internal Drainage Board or other body have indicated that there may be drainage problems. This should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account"*.

4.20.3 The Applicant addressed Flood Risk in its ES Appendix 12A *Flood Risk Assessment* [AD-077]. The Applicant has undertaken an assessment of the potential flood hazards due to both surface water and sewage, as well as the flood defences. They have assessed the possible impact of climate change, and have identified a range of mitigation measures to be embedded in the design of the generating station.

4.20.4 The Applicant has identified that the primary residual risk following the implementation of mitigation measures is risk of flooding as a result of blockages or failure of the drainage system, the Fryston Beck culvert,

or in the event of a storm in excess of the design storm. The former risk would be mitigated through regular maintenance.

4.20.5 In addition to the mitigation measures specified in the Flood Risk Assessment, Requirement 14 *Flood Risk Mitigation* in the draft DCO provided by the Applicant with the application [AD-006] secures the production by the Applicant, and approval by the EA, of a scheme for flood risk mitigation through the construction and operational phases of the generating station.

4.20.6 In the EA's Relevant Representation [RR-18], EA stated that it would have no objection to the scheme on the basis of flood risk provided that the DCO included appropriate Requirement(s) to ensure that the identified mitigations measures were applied throughout the appropriate stages of the development. Without the inclusion of appropriate requirements, EA's position would be one of objection.

4.20.7 In Q2.16 of the ExA's first questions [PrD-05], ExA asked the EA to explain how this expectation could be incorporated into Requirement 14, including identification of any draft wording that the EA would find appropriate. ExA also asked whether the EA considered that Requirement 14(2) should include reference to the detail of such mitigation measures as described in the Applicant's Flood Risk Assessment.

4.20.8 In the EA's submission at Deadline 1 [D1-006], the EA stated that, given the detail was to be agreed by the EA and local planning authority and was to be consistent with the principles and strategy set out in the Applicant's Flood Risk Assessment, it was considered that further detail did not need to be included in the Requirement 14 wording.

4.20.9 The draft DCO at Deadline 4 [D4-004] is therefore unchanged in this regard.

4.20.10 ExA is satisfied that mitigation measures embedded in the design of the Proposed Development and those secured through Requirement 14 in the draft DCO provide the necessary controls to secure the development with regard to flood risk.

4.21 HAZARDOUS SUBSTANCES

4.21.1 NPS EN-1 Section 4.12 *Hazardous Substances* states: *"All establishments wishing to hold stocks of certain hazardous substances above a threshold need Hazardous Substances consent. Applicants should consult the HSE (Health and Safety Executive) at pre-application stage if the project is likely to need hazardous substances consent. Where hazardous substances consent is applied for, the IPC will consider whether to make an order directing that hazardous substances consent shall be deemed to be granted alongside making an order granting development consent".*

4.21.2 The Applicant in its ES [AD-044] Section 1.5 states that: *"It is not currently anticipated that the Control of Major Accident Hazards (COMAH) Regulations 1999 (as amended) will apply to the site due to the small volumes of hazardous materials that will be stored"*.

4.21.3 In ES Section 3.5, the Applicant states that: *"Flue Gas Treatment (FGT) residues will comprise fine particles of ash and residues from the flue gas treatment process, which will be collected in the bag filters. The FGT residue will be stored in a sealed silo adjacent to the flue gas treatment facility. Due to the alkaline nature of the FGT residues, they are classified as hazardous waste (in much the same way as cement). As a result, the residues will be transported by road in a sealed tanker to an appropriate treatment facility"*.

4.21.4 The Applicant goes on to state that: *"Storage areas for flammable/ toxic/ corrosive materials will be located in a separate locked fenced off area. Material data sheets will be available for all these materials and the COSHH (Control of Substances Hazardous to Health) assessments kept within the relevant Risk Assessment for the task"*.

4.21.5 The embedded mitigation measures referenced above will be in place through the design of the Proposed Development.

4.21.6 Additional mitigation will be secured through the draft DCO Requirements 18 *CEMP*, 38 *Air Quality Monitoring* and 42 *Waste Management: Construction and Operational Waste*. These requirements secure production of plans by the Applicant to be approved by the LPA before the Proposed Development may commence. The development will then be controlled through the Environmental Permit.

4.21.7 WMDC in its LIR [D1-001] re-states the Applicant's proposals for handling flue gas treatment residues as hazardous waste, but does not make any specific representation in this regard.

4.21.8 SDC and NYCC in their LIR [D1-016] make no mention of hazardous waste. EA in its written representations [D1-004] also makes no mention of hazardous waste.

4.21.9 ExA is satisfied that mitigation measures embedded in the design of the Proposed Development and those secured through the draft DCO Requirements 18, 38 and 42 provide the necessary controls to secure the development with regard to hazardous substances.

4.22 HEALTH

4.22.1 NPS EN-1 Section 4.13 *Health* states: *"Where the proposed project has an effect on human beings, the ES should assess these effects for each element of the project, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate. The impacts of more than one development*

may affect people simultaneously, so the Applicant and the IPC should consider the cumulative impact on health.

4.22.2 *The direct impacts on health may include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests*".

4.22.3 The Applicant addressed health matters in its ES Appendix 18A *Human Health Risk Assessment* [AD-087], and summarised the position in its ES *Non-Technical Summary* Chapter 15 *Health Impact Summary*.

4.22.4 The *Human Health Risk Assessment* document considered the calculations of predicated pollution concentrations, and the baseline local health conditions in the administrative areas of WMDC, Leeds City Council, SDC and Doncaster Metropolitan Borough Council.

4.22.5 It also considered the potential for health effects from exposure to particulate matter, nitrogen dioxide and sulphur dioxide, as well as health effects arising from emissions of metals and organic substances.

4.22.6 The *Health Impact Summary* document cross-refers to other documents relating to Air Quality, Noise and Vibration, Water Resources, Flood Risk, and Ground Conditions. It concludes that during construction, operation and decommissioning: *"No significant health effects have been identified as a result of the construction or operation of the Proposed Development following the implementation of the identified mitigation measures*".

4.22.7 WMDC considers health effects in Section 7 of its LIR [D1-001] from the perspectives of traffic and transport, air emissions and land contamination. WMDC highlights a number of potential health concerns with reference to higher than average negative health statistics already present in the Knottingly area.

4.22.8 In conclusion, WMDC considers that: *"While health impacts associated with air emissions are a particular area of concern in this LIR, it is acknowledged that the EPR process should provide an adequate means of dealing with any potential emissions from the development. Notwithstanding, the Council does not consider that the proposal meets the requirements of the NPPF or Local Plan Policy D20 because air quality within the AQMA will be made worse. Thus in view of the concerns of the internal consultees, WMDC recommends an additional Requirement in the DCO requiring a scheme for the monitoring of air pollution from the proposed development in the area to be agreed with the Local Planning Authority, in consultation with the Environment Agency, to ensure that the LPA are kept informed on a regular and programmed basis about any changes in the level of air pollution at locations within the area, which may be attributable to the development*".

4.22.9 As recognised by WMDC, the Environmental Permit will clearly have a key role in safeguarding human health.

4.22.10 Mitigation measures in the ES have been embedded in the design of the Proposed Development, in terms of its stack height, emissions cleaning provisions, traffic and transport.

4.22.11 Further mitigation measures have been included in the draft DCO [D4-004] Requirements 19 *Construction Traffic Routing and Management Plan*, 20 *Construction Hours*, 24 *Control of Operational Noise*, 26 *Control of Dust Emissions*, 37 *Air Quality Emissions Reduction* and 38 *Air Quality Monitoring*.

4.22.12 ExA is satisfied that the mitigation measures embedded in the design of the Proposed Development and those secured through draft DCO Requirements 19, 20, 24, 26, 37 and 38 will provide the necessary controls with regard to health.

4.23 HISTORIC ENVIRONMENT

4.23.1 NPS EN-1 Section 5.8 Historic Environment states: *"As part of the ES, the Applicant should provide a description of the significance of the heritage assets affected by the Proposed Development and the contribution of their setting to that significance ... As a minimum the Applicant should have consulted the relevant Historic Environment Record … and assessed the heritage assets themselves using expertise where necessary according to the Proposed Development's impact*".

4.23.2 The Applicant has addressed the historic environment in its ES [AD-044] Chapter 12 *Archaeology and Cultural Heritage*, Appendix 15A *Archaeology Desk Based Assessment* [AD-083], and in the ES Non-Technical Summary [AD-043] Chapter 12 *Archaeology and Cultural Heritage*.

4.23.3 In the *Archaeology and Cultural Heritage* document, the Applicant states: *"The desk based assessment of the study area has identified no designated heritage assets within the Site. In the wider area (within 1 km of the Site), 53 heritage assets were identified, including two Scheduled Monuments, one Grade I and ten Grade II listed buildings. Historical knowledge and understanding of the area is well documented from prehistoric (30,000 BC) through to modern times. Assets recorded from these periods range from chance finds to crop marks associated with early agriculture and ritual features*".

4.23.4 The Applicant has considered impacts during construction, operations and decommissioning on designated heritage assets and has concluded that: *"With the implementation of mitigation, no significant effects on archaeology and cultural heritage assets have been identified"*.

4.23.5 The SoCG between the Applicant and the WYAAS [AD-095], signed by both parties and tabled with the application, listed the matters agreed between the two parties with regard to the Proposed Development. The SoCG stated: *"It is agreed that the Proposed Development would not have a significant effect upon any designated heritage assets or*

their settings", but that *"The Applicant must produce a written scheme of investigation in consultation with WYAAS, to be agreed prior to the commencement of the development"*.

4.23.6 In Q7.8 of the ExA's first questions [PrD-05], ExA asked the WYAAS to confirm that the position as stated in the June 2014 SoCG had not changed, and to identify if there were any outstanding matters that needed to be addressed during the course of the examination. ExA also asked the Applicant to do likewise.

4.23.7 There was no submission from WYAAS at Deadline 1.

4.23.8 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the SoCG with WYAAS remained agreed and as far as the Applicant was aware there were no matters that would need to be addressed during the examination.

4.23.9 In accordance with the SoCG, the Applicant's revised draft DCO at Deadline 2 [D2-003] included amended text for Requirement 16 *Archaeology* to include details of the programme of archaeological investigation work that must be produced, consulted with WYAAS and approved by the planning authority before the authorised development could commence.

4.23.10 ExA is satisfied that the mitigation agreed in the SoCG with the WYAAS and secured through Requirement 16 provides the necessary control to secure the development with regard to the historic environment.

4.24 LAND USE

4.24.1 NPS EN-1 Section 5.10 *Land Use Including Open Space, Green Infrastructure and Green Belt* states: *"The ES (see Section 4.2) should identify existing and proposed land uses near the project, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing. Applicants should also assess any effects of precluding a new development or use proposed in the development plan*.

4.24.2 *The IPC should not grant consent for development on existing open space, sports and recreational buildings and land unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements or the IPC determines that the benefits of the project (including need), outweigh the potential loss of such facilities, taking into account any positive proposals made by the Applicant to provide new, improved or compensatory land or facilities*".

4.24.3 The Applicant has considered land use in the ES Non-Technical Summary [AD-043] Chapter 7 and the ES [AD-044] Chapter 10 both entitled *Land Use and Socio-Economics*.

4.24.4 The Applicant's Non-Technical Summary document states that: *"No significant effects on land use are anticipated as the majority of the Site lies within the existing Ferrybridge Power Station site and is currently used as a construction laydown area for FM1. The Site is also allocated for power generation use in the local development plan. No Public Rights of Way will be affected by the Proposed Development*.

4.24.5 In WMDC's LIR [D1-001], the Council stressed the importance of land use and socio economics, and stated that the principle of the development on the Ferrybridge site had been established by the long term existence of power generation in the Ferrybridge location since the 1920s. The Council was keen to see land use and socio-economic issues secured through an explicit requirement in the draft DCO.

4.24.6 In response, the Applicant added Requirement 48 *Employment, Skills and Training Plan* to the draft DCO at Deadline 4 [D4-004/005]. This requirement secures the principle that Work No. 1 (an onshore electricity generating station) cannot commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents had been submitted to and approved by the planning authority, and the approved plan must be implemented and maintained during the construction and operation of Work No. 1.

4.24.7 ExA is satisfied that the land use envisaged for the FM2 generating station is consistent with both national and local policy, and that mitigation measures secured through the draft DCO Requirement 48 meet the socio-economic needs for appropriate land use (see also Section 4.31 *Socio-Economic Impacts* below).

4.25 COAL MINING

4.25.1 While there are numerous mentions of coal and coal-fired power stations in NPS EN-1, there is no mention of coal mining.

4.25.2 The Applicant deals with coal-related matters in the ES [AD-044] Chapter 13 *Ground Conditions* and Appendix 13B CA *Report*.

4.25.3 In the CA's Relevant Representation [RR-12], the Coal Authority stated that it was able to confirm that the proposal was located outside of both the Development High Risk Area and the licence area of underground coal mining activity. Accordingly, the CA had no concerns regarding unstable land issues resulting from past or current coal mining activity.

4.25.4 With regard to the potential sterilisation of coal resources at or close to the surface by this proposed NSIP, the CA requested that the Applicant consider this issue further.

4.25.5 As a result, the CA signed a SoCG with the Applicant [AD-092] in June 2014. The SoCG recorded agreement that:

- *It would not be practical to carry out the prior extraction of any surface coal resources that may exist beneath the site in advance of the Proposed Development being constructed;*
- *There are significant deep coal resources in the local area that could be worked in the future and that the Proposed Development would not prevent this;*
- *The Proposed Development would not result in the sterilisation of coal resources in the area*.

4.25.6 The Applicant and CA also recorded the fact that no matters had been identified at that stage that were the subject of disagreement between them.

4.25.7 In Q6.51 of ExA's first questions [PrD-05], ExA asked the CA and the Applicant to confirm that there had been no change to the position stated above.

4.25.8 The CA made no submission at Deadline 1 (or Deadlines 2-5). In the Applicant's submission at Deadline 1, the Applicant stated that it could confirm that there had been no change to the position stated, which was recorded in the SoCG agreed with the CA.

4.25.9 ExA is satisfied that there are no outstanding matters that require mitigating action with regard to coal.

4.26 LANDSCAPE AND VISUAL IMPACTS

4.26.1 NPS EN-1 Section 5.9 *Landscape and Visual* states: *"The Applicant should carry out a landscape and visual assessment and report it in the ES … The landscape and visual assessment should include reference to any landscape character assessment and associated studies as a means of assessing landscape impacts relevant to the proposed project. The Applicant's assessment should also take account of any relevant policies based on these assessments in local development documents in England and local development plans in Wales*.

4.26.2 *The IPC will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project"*.

4.26.3 The Applicant has considered landscape and visual impacts in the ES Non-Technical Summary [AD-043] Chapter 8 *Landscape and Visual Amenity*, the ES [AD-044] Chapter 11 *Landscape and Visual Amenity* the ES Appendix 11A *Landscape and Visual Assessment Methodology*, and a *Landscape Strategy* [AD-041].

4.26.4 The Applicant has considered the construction, operation and de-commissioning phases, and states in the Non-Technical Summary: *"The existing landscape character is recognised to be influenced by existing large power stations which may be visible over long distances. Within the immediate local landscape, the Ferrybridge Power Station*

site is considered to have a significant influence on the surrounding landscape character.

4.26.5 In conclusion, the Applicant states: *"The only significant effect identified on visual amenity is an anticipated moderate adverse visual effect on residential properties around the northern end of Darkfield Lane, Pontefract. No significant adverse effects on landscape character are predicted*. *The Landscape and Biodiversity Strategies for the Site will increase the amenity value to site workers and visitors and enhance the green infrastructure and biodiversity value of the Site"*.

4.26.6 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the landscape assessment had concluded that effects on the national and regional landscape character areas would be negligible during construction and operation, largely as a result of the presence of the existing Ferrybridge 'C' Power Station and FM1, which provided the context for the proposed FM2 development. One representative viewpoint … predicted a moderate adverse (significant) effect due to the nature and angle of the view. The Proposed Development, FM1 and the Ferrybridge 'C' Power Station structures would be viewed alongside each other with limited opportunities for mitigation.

4.26.7 In Q6.47 of the ExA's first questions [PrD-05], ExA asked WMDC to comment on the Proposed Development's impact on visual amenity with regard to local residents, and to state whether there were any additional mitigation measures that the Council would want the Applicant to consider and provide as part of the DCO to address any potential adverse effects on visual amenity.

4.26.8 In WMDC's submission at Deadline 1 [D1-002], WMDC stated that visual amenity had been considered by the Council in Section 7.2 of the LIR [D1-001]. The Proposed Development would have some impact on the natural landscape when viewed from near or afar, and in particular the additional stacks and largest buildings would be visible from some distance away. However, the proposal would be largely viewed against the backdrop of the existing power station and would make very little alteration to the perception of the site and its surrounds.

4.26.9 WMDC also stated that landscaping requirements contained within the draft DCO could be more expansive and that revised requirements had been recommended in its LIR. The LIR had stated that it seemed unreasonable to require the Applicant to provide for a further scheme of off-site creative conservation / improvement to that required by the FM1 permission to try to mitigate some (although possibly not all) of the visual impact which the development might have on the nearest receptors to the site. WMDC stated that it considered that draft DCO Requirement 7 *Provision of Landscaping* did not go far enough to ensure proper landscaping of the site, and WMDC therefore

recommended that the ExA considered employing the wording of the Landscaping Conditions on the FM1 Permission.

4.26.10 In WMDC's submission at Deadline 4 [D4-010], WMDC stated that in general the draft DCO combined landscaping with the proposed biodiversity enhancement strategy and management, so Requirements 7 *Provision of Landscaping*, 8 *Implementation and* M*aintenance of* L*andscaping* and 17 *Biodiversity Enhancement and Management Plan* should reflect this situation, in relation to approval of plans, ongoing maintenance and management, and implementation. In WMDC's view, Requirement 7 should incorporate items similar to the Knottingley Power station DCO (6 items listed). WMDC also proposed amended wording for Requirement 8.

4.26.11 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that Requirements 7 and 8 had been amended to incorporate elements of the FM1 planning conditions relating to landscaping. This wording had been included in the draft DCO at Deadline 4 [D4-004/005].

4.26.12 In the Applicant's submission at Deadline 5 [D5-003], the Applicant stated that it had accommodated WMDC's proposals at Deadline 4 with regard to the harmonisation of Requirements 7, 8 and 17 and the additional information in Requirements 7 and 8. The wording of Requirement 7 and 8 had been agreed with WMDC and this was documented within the SoCG submitted for Deadline 5 [D5-001/002].

4.26.13 Also the Landscaping Strategy, with which the landscaping scheme(s) must be in accordance, had been amended to incorporate the recommendations regarding magnesian grassland and had been submitted at Deadline 3 [D3-004/D3-005].

4.26.14 ExA is satisfied that the mitigation measures embedded in the design of the generating station and those secured through the draft DCO Requirements 7, 8 and 17 will provide the necessary controls with regard to landscape and visual impacts.

4.27 NOISE AND VIBRATION

4.27.1 NPS EN-1 Section 5.11 *Noise and Vibration* states: *"Where noise impacts are likely to arise from the Proposed Development, the Applicant should include the following in the noise assessment:*

- *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*, and *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*
- *measures to be employed in mitigating noise.*

4.27.2 *The IPC should not grant development consent unless it is satisfied that the proposals will meet the following aims:*

- *avoid significant adverse impacts on health and quality of life from noise*
- *mitigate and minimise other adverse impacts on health and quality of life from noise*
- *where possible, contribute to improvements to health and quality of life through the effective management and control of noise*".

4.27.3 The Applicant addressed noise and vibration in the ES [AD-044] Chapter 9 *Noise and Vibration* supported by Appendix 9A *Noise Modelling Methodology* [AD-074] and Appendix 9B *Noise Survey Report* [AD-075], as well as the ES Non-Technical Summary [AD-043] Chapter 6 *Noise and Vibration*.

4.27.4 In the ES Non-Technical Summary, the Applicant states: *"The potential for increased noise during both construction and operation has been predicted using noise models and the results compared with recorded baseline noise levels during the day and night. The degree of change has been compared with national standards for noise to conclude whether the increased noise will be noticeable at receptors and whether there is therefore the potential for significant effects*.

4.27.5 *The assessment has considered the potential for vibration effects from both construction and operation of the Proposed Development, and concluded that due to the distance to any utilities and/or buildings … and the nature of the works proposed, it is highly unlikely there would be any vibration impacts*.

4.27.6 *The noise and vibration effects during decommissioning are anticipated to be similar to those identified for construction"*.

Noise and Vibration Concerns and Issues

4.27.7 Noise and vibration was probably the single most discussed issue during the examination.

4.27.8 In ExA's Agenda Item 11 at the Issue-Specific Hearing on the DCO [HG-005], relating to noise concerns, ExA asked WMDC and Applicant to state their positions, including any matters not yet agreed on the following:

(a) Night time construction noise effects. The Applicant and WMDC to state their positions towards agreement on a satisfactory night-

time construction noise limitation level [draft Requirements 20(2) and 20(3)]

(b) Noise and vibration effects of continuous 24 hour construction hours. The Applicant and other Interested Parties to comment on the potential for Requirement 20(2) (which identifies a specific noise level) to conflict with Requirement 23(2)(c) (where noise levels were subject to approval and were not as yet agreed), and also whether there should be cross-referencing between requirement 20(2) and 23 in relation to continuous noise monitoring

(c) The proposed noise level of 55 dB LAeq (1hr) at the Order limit for night time working, and Requirement 20(3) for start-up and shut-down activities before 07.00 and after 19.30. The Applicant and WMDC to state their positions;

(d) Additional noise assessment work being undertaken, and agreements reached at the meeting on 6th February 2015 between the Applicant and WMDC's Environmental Health Office. The Applicant, WMDC and SDC to state their positions

(e) Noise and vibration receptor sensitivity and impact magnitude and significance. WMDC to state its position on construction noise re the classification of receptors (all medium sensitivity)

(f) Any 'stop work' actions and monitoring provisions that the developer and contractors would have to take to ensure adherence to maximum permitted noise levels. WMDC and SDC to state whether they are content with the revised wording of Requirement 23 in the draft DCO at Deadline 2.

4.27.9 In the Applicant's submission at Deadline 4 [D4-009], the Applicant responded to ExA's seven inquiries as follows:

(a) Matters had been agreed with the WMDC Environmental Health officer (EHO) through revised wording for Requirements 18 and 20. All matters were agreed;

(b) There was indeed a potential conflict in the wording of these Requirements and the wording of Requirement 23 had therefore been amended to remove reference to evening and night-time periods in clause (c)

(c) The Travel Plan had been agreed with WMDC and amendments made to Requirements 18 *CEMP*, 20 Construction Hours and 23 *Control of* N*oise during Construction*

(d) As for (c)

(e) The receptor noise limits agreed with WMDC were in accordance with BS5228 which defined the acceptable limit at residential receptors based on the ambient noise level already received (the ABC method)

(f) The additional 'stop work' wording in Requirement 23 had been included at the request of the WMDC EHO.

4.27.10 In WMDC's submission at Deadline 4 [D4-010], WMDC responded to ExA's seven inquiries as follows:

(a) Amended Requirements 20 & 23 had been agreed

(b) Requirement 20 (2) had been agreed re noise level and a scheme of monitoring would be undertaken during the duration of the works at the Order boundary of the site, linked to meeting the level at the receptors. It had not yet been agreed what these levels equated to at the Order boundary
(c) A level of 55 dB LAeq (1 hour) had been agreed at Category C receptors. Amendments to the condition to cover the start-up and shut down working activities had been agreed
(d) Additional noise information had been provided in the first meeting and review of noise levels from the FM1 construction monitoring had been discussed in the second meeting which allowed a Category C and Category B condition to be agreed to protect the residents from night time construction activities
(e) WMDC did not need to categorise receptors as medium as WMDC had to ensure that they were not caused a noise nuisance
(f) WMDC was satisfied with Requirement 23 and that any stop works would be covered in the CEMP.

4.27.11 In a submission at Deadline 4 [D4-001], local resident M C Elphinstone, Secretary Oakland Hill Resident's Association, responded on behalf of Mrs Gill who had made a verbal contribution at the Issue-Specific Hearing on the DCO on 18 March 2015. Mr Elphinstone cited:

- Significantly increased levels of noise pollution coming from both the adjacent A1M motorway and building works associated with the construction of FM1
- Concerns that the noise levels would be exacerbated by FM2
- Increase in HGV traffic.

4.27.12 Mr Elphinstone did not produce any evidence in support of his submission.

4.27.13 In the Applicant's submission at Deadline 5 [D5-003], the Applicant stated that the wording of Requirements 20 *Construction hours* and 23 *Control of* N*oise* D*uring* C*onstruction*, as set out in the draft DCO at Deadline 4 [D4-004] had been agreed with the WMDC EHO and this was documented within the SoCG submitted for Deadline 5 [D5-001/002]. The Applicant had also agreed the wording of Requirement 24 *Control of Operational Noise* with the EHO. This wording had also been incorporated within the revised draft DCO at Deadline 4.

4.27.14 Re Mr Elphinstone's Deadline 4 submission, the Applicant stated that it had agreed appropriate controls with the WMDC EHO relating to the construction hours and the control of construction and operational noise. These controls would be secured by Requirements 20, 23 and 24 of the draft DCO. The wording of these Requirements had been agreed with the EHO and the agreement had been documented in the SoCG [D5-001/002].

4.27.15 The Applicant also responded to the reference that was made in the letter submitted on behalf of Mrs M Gill stating that the Highways Agency had insisted that the noise was due to MF1 (FM1). The

Applicant stated that, during the discussions that it had conducted with the Highways Agency as part of its pre-application consultation, the Agency had never suggested or expressed the view that noise experienced by residents of Oakland Hill was a result of the construction of FM1. It had been agreed with the Highways Agency during pre-application consultation as documented within the SoCG agreed with the Agency [AD-090] that noise attenuation barriers would not be necessary on the western side of the A1(M) to mitigate noise from the authorised development.

4.27.16 While ExA understands the points being made by the residents, they have submitted no evidence linking increased noise on the A1(M) with FM1 and no evidence leading to an expectation of a significant increase in noise due to the construction or operation of FM2.

Noise Monitoring During Construction and Operations

4.27.17 In Q6.42 of the ExA's first questions [PrD-05], ExA asked the Applicant to provide further detail in terms of minimum monitoring requirements (for example, those measures that were included as part of FM1 construction monitoring).

4.27.18 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that a continuous noise monitor would be installed at the Order limits throughout the construction period, as had been installed and operated for FM1. In addition, for FM1 an additional programme of noise monitoring at six sensitive receptors around the site had also been agreed. Draft DCO Requirement 23 *Control of Noise During Construction* would now secure a tighter programme of noise monitoring during the construction of the Proposed Development.

4.27.19 In the Applicant's submission at Deadline 5, the Applicant stated that it had introduced a new requirement to the draft DCO, Requirement 24 *Control of Operational Noise*, to secure a mechanism by which to monitor and control noise generated by the authorised development during its operational phase. The Applicant stated that the wording of Requirement 24 had been agreed with the WMDC EHO and this had been documented in the SoCG that had been agreed with WMDC and submitted for Deadline 5 [D5-001/002]. The Applicant stated that the revised draft DCO submitted at Deadline 4 [D4-004] incorporated the new Requirement 24 as well as amendment to Article 18(2)(b).

Noise Complaints and Corrective Actions

4.27.20 In ExA's Agenda Item 9 at the Issue-Specific Hearing on the DCO [HG-005], with regard to noise and vibration mitigation and monitoring, ExA asked the Applicant to state its position on WMDC's suggested requirement 7.8.11 in its Local Impact Report [D1-001] and WMDC to state how its suggested requirement 7.8.11 fitted with existing Requirements 18, 20 and 23.

4.27.21 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that Requirement 18 as originally drafted included a complaints

procedure relating to noise, odour and dust. Further discussions had taken place with the WMDC EHO and Requirement 18 had been amended to refer to substantiated noise complaints and corrective actions. This wording had been agreed with the EHO and was now included within the revised draft DCO at Deadline 4 [D4-004].

4.27.22 In WMDC's submission at Deadline 4 [D4-010], WMDC stated that the 7.8.11 complaint procedure had now been covered in Requirement 18 *CEMP* and would be picked up with the Applicant/proposed Contractor within the detail of the CEMP.

Cumulative Effects of Noise

4.27.23 In Q6.40 of ExA's first questions [PrD-05], ExA asked the Applicant to clarify whether consideration had been given to potential cumulative effects in the noise and vibration assessment, and to identify where this was to be found.

4.27.24 In the Applicant's submission at Deadline 1 [D1-011], the Applicant referred to Tables 19.3 and 19.4 of the ES [AD-044] where it had been concluded that there was no potential for significant cumulative noise and vibration effects with other proposed and planned developments due to the distance between these, so no further assessment had been provided after Table 19.4. Noise effects from road traffic associated with these developments were considered to be insignificant.

4.27.25 Noise control mitigation measures will be secured through amended Requirements 18 *CEMP*, 19 *Construction Traffic Routing and Management Plan*, 20 *Construction Hours*, 23 *Control of Noise During Construction* and 24 *Control of Operational Noise* in the revised draft DCO [D4-004] and have been included in the recommended DCO provided at Appendix A.

4.27.26 With the wording of the mitigation measures agreed with the LPA that will have to enforce them, and with the EA controlling the Environmental Permit in which these matters will be examined in more detail, ExA is satisfied that the necessary mitigation measures and controls to secure the development with regard to noise and vibration controls are in place.

4.28 POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES

4.28.1 NPS EN-1 Section 4.10 *Pollution Control and other Environmental Regulatory Regimes* states: *"The IPC 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 IPC 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. It should act to complement but not seek to duplicate them".

4.28.2 The Applicant refers to pollution control in a number of places within the ES [AD-044]. In Chapter 5 *Planning Policy Context* the Applicant identifies Chapters 8, 9, 11, 12, 13, 16 and 18 as the locations where pollution control has been addressed in response to NPS EN-1 and WMDC's Development Plans and Policies.

4.28.3 The Environmental Permit will have a role, as will the CEMP secured through Requirement 18.

4.28.4 With regard to acceptable use of land, the Applicant considers this matter in Chapter 10 *Land Use and Socio-Economics*.

4.28.5 Land use has been assessed in Section 4.24 above, in which ExA has concluded that land use for the proposed development is consistent with Government policy for energy, notably NPS-EN1. It is also consistent with the WMDC's land use policy with regard to the Ferrybridge site.

4.28.6 With regard to the Waste Framework Directive and the Nearest Available Installation, the Proposed Development would form part of a network of sites to deliver sustainable waste management in the north of England as set out in application document 5.9 *Fuel Availability and Waste Hierarchy Assessment* [AD-037].

4.29 SAFETY

4.29.1 NPS EN-1 Section 4.11 *Safety* states: *"*The Health and Safety Executive (*HSE*) *is responsible for enforcing a range of occupational health and safety legislation some of which is relevant to the construction, operation and decommissioning of energy infrastructure. Applicants should consult with HSE on matters relating to safety"*.

4.29.2 In the ES Chapter 3 *The Proposed Development*, Section 3.11 *Hazard Prevention and Emergency Planning*, the Applicant states: *"The Applicant aims to protect human health by safely and responsibly managing site activity. A Health and Safety Plan covering the works, commissioning and operation of the Proposed Development will be written. A competent and adequately resourced CDM* (Construction Design and Management) *Coordinator and Principal Contractor will be appointed. The Applicant will ensure that its own staff, its designers and contractors follow the Approved Code of Practice (ACoP) laid down by the CDM Regulations 2007. Details of health and safety controls that will be employed at the Proposed Development during operation are provided in the Proposed Development Description Document*"[AD-031].

4.29.3 In fact, Chapter 8 of the *Proposed Development Description Document* simply states the above text on Health & Safety.

4.29.4 The document also states the Applicant's proposals with regard to fire: *"The Contractor will ensure that the design and build of the plant is in accordance with current Building Regulations, British and European Standards and insurance requirements. Unless otherwise specifically required the plant will be designed to comply with NFPA 850, Fire Protection for Electrical Generation Plants and High Voltage Direct Current Converter Stations"*.

4.29.5 ExA is satisfied that mitigation measures for potential health and safety issues are embedded in the design of the generating station and in the relevant regulatory regimes, and that these mitigation measures provide the necessary control regime for health and safety.

4.30 SECURITY CONSIDERATIONS

4.30.1 NPS EN-1 Section 4.15 *Security Considerations* states: *"National security considerations apply across all national infrastructure sectors. Overall responsibility for security of the energy sector lies with DECC. It works closely with Government security agencies including the Centre for the Protection of National Infrastructure (CPNI) to reduce the vulnerability of the most 'critical' infrastructure assets in the sector to terrorism and other national security threats*.

4.30.2 *The Applicant should only include sufficient information in the application as is necessary to enable the IPC to examine the development consent issues and make a properly informed decision on the application"*.

4.30.3 The Applicant references various aspects relating to security throughout the ES [AD-044]. In Chapter 5 *Planning Policy Context*, the Applicant states that: *"Development will be designed to ensure a safe and secure environment that reduces opportunities for crime"*, and cross-refers to the document *Design and Access Statement* [AD-036].

4.30.4 The Design and Access Statement states: *"The details of the access arrangements to and within the Site will be secured by requirements that have been included within the draft DCO, while access to buildings will need to comply with Building Regulations. Building Regulations approval would not be sought until after a DCO had been granted and the detailed design has been completed"*.

4.30.5 Requirement 46 *Site Security* in the Applicant's draft DCO at Deadline 4 [D4-004] states that: *"The authorised development may not be commissioned until a scheme detailing security measures to minimise the risk of crime within the Order limits has been submitted to and, after consultation with West Yorkshire Police, approved by the planning authority. The approved scheme must be maintained and operated throughout the operation and decommissioning of the authorised development"*.

4.30.6 This requirement remained unchanged between the draft DCO version submitted with the application [AD-006] and the version submitted at Deadline 4 [D4-004].

4.30.7 ExA's view is that the Proposed Development will be on the existing Ferrybridge Power Station site. Security for both the existing coal fired power station, and FM1 which is currently under construction, is already in place. Extension of the security provisions to include FM2 should not be problematic.

4.30.8 ExA is satisfied that measures for potential security issues are embedded in the design of the generating station together with measures secured through Requirement 46 in the draft DCO, and that these measures provide the necessary control regime for security.

4.31 SOCIO-ECONOMIC IMPACTS

4.31.1 NPS EN-1 Section 5.12 Socio-Economic states: *"Where the project is likely to have socio-economic impacts at local or regional levels, the Applicant should undertake and include in their application an assessment of these impacts as part of the ES.*

4.31.2 *This assessment should consider all relevant socio-economic impacts, which may include the creation of jobs and training opportunities, the provision of additional local services, improvements to local infrastructure, effects on tourism, the impact of a changing influx of workers during the different construction, operation and decommissioning phases of the energy infrastructure, and cumulative effects*.

4.31.3 *The IPC should have regard to the potential socio-economic impacts of new energy infrastructure identified by the Applicant and from any other sources that the IPC considers to be both relevant and important to its decision"*.

4.31.4 The Applicant's Non-Technical Summary document [AD-043] states that: *"The Applicant is committed to taking practical measures to encourage the use of local suppliers and workers*.

4.31.5 *The Proposed Development is predicted to have a temporary significant beneficial effect on the local and regional economy through the creation of up to 500 construction jobs at the peak of construction (350 on average), some of which will provide opportunities for local employment, as well as indirect economic benefits during the construction phase*".

4.31.6 The Applicant goes on to state that: *"During operation the Proposed Development will employ between 35 and 46 full-time permanent staff. Assuming a conservative figure of 35 jobs, approximately 27 are expected to be filled by people from the local and regional area based on evidence from similar past projects".*

4.31.7 In WMDC's LIR [D1-001], the Council highlighted the importance of land use and socio economics, and stated that the principle of the development on the Ferrybridge site had been established by the long term existence of power generation in the Ferrybridge location since the 1920s. The Council also stated that there was a national need to replace coal fired power stations with cleaner/more environmentally friendly methods, and that the site had been designated in the Local Plan for power generation and job opportunities.

4.31.8 The Council stated that given the current levels of economic inactivity within the Knottingley area and the high levels of deprivation, it was important that any investment of this significance within the locality optimised the opportunities for positive benefits to the local community. A scheme detailing arrangements to promote employment and skills development opportunities for local residents needed to be agreed in advance with the Local Authority and the Wakefield Employment and Skills Partnership and arrangements should be operated throughout the lifetime of the development. One way to do this was through an Employment and Skills Plan, which could be secured by a requirement in the DCO.

4.31.9 The Applicant responded positively to WMDC's proposals, and added a new requirement, Requirement 48 *Employment, Skills and Training Plan* to the draft DCO at Deadline 4 [D4-004]. This requirement secures the development, implementation and maintenance of a plan for socio-economic development. The Proposed Development cannot commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to, and approved by, the planning authority. The approved plan must be implemented and maintained during the construction and operation of the works.

4.31.10 The Knottingley Power Plant application provides a relevant comparator. In his decision letter (dated 10 March 2015), the Secretary of State stated that he had decided to include in the DCO a requirement securing socio-economic benefits from the development.

4.31.11 ExA is satisfied that Requirement 48 *Employment, Skills and Training Plan* provides the necessary mitigation measures and control to secure the development with regard to socio economic matters as articulated by, and agreed with, the local planning authority.

4.32 TRAFFIC AND TRANSPORT

4.32.1 NPS EN-1 Section 5.13 *Traffic and Transport* states: *"The consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development*.

4.32.2 *If a project is likely to have significant transport implications, the Applicant's ES should include a transport assessment, using the … methodology stipulated in Department for Transport guidance, or any*

successor to such methodology. Applicants should consult the Highways Agency and Highways Authorities as appropriate on the assessment and mitigation.

4.32.3 *Where appropriate, the Applicant should prepare a travel plan including demand management measures to mitigate transport impacts*.

4.32.4 *A new energy NSIP may give rise to substantial impacts on the surrounding transport infrastructure and the IPC should therefore ensure that the Applicant has sought to mitigate these impacts, including during the construction phase of the development. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the IPC should consider requirements to mitigate adverse impacts* ".

4.32.5 The Applicant has addressed traffic and transport in its ES Non-Technical Summary [AD-043] Chapter 4 *Transport and Access*, and its ES [AD-044] Chapter 7 *Transport and Access* together with Appendices 7A *Transport Assessment* [AD-069], 7B *Construction Travel Plan* [AD-070] and 7C *Operational Travel Plan* [AD-071].

4.32.6 In the Non-Technical Summary, the Applicant states: *"The transport and access assessment identifies the potential effects of the Proposed Development on Kirkhaw Lane, Stranglands Lane and the A162 Ferrybridge Bypass (the study area). The assessment considers the predicted number of vehicle movements generated during the construction and operation of the Proposed Development, and the sensitivity (including pedestrian and cyclist safety) and capacity of the road network. Effects during the decommissioning phase are anticipated to be similar to those during the construction phase"*.

4.32.7 The Non-Technical Summary goes on to conclude: *"The transport assessment has assumed the 'worst case' number of HGVs during operation based on the maximum tonnage of fuel, and all fuel deliveries coming by road over shorter (not extended) delivery hours. In summary there are no predicted significant transport or access effects and the surrounding road network has the capacity to absorb the additional vehicle movements as a result of the Proposed Development*.

4.32.8 *The Applicant is continuing to consider other transport methods for material deliveries and ash removal (e.g. rail or barge) and to encourage the workforce to travel to Site by shared car, public transport or bicycle through the implementation of Travel Plans"*.

BASELINE CONDITIONS

4.32.9 In Q6.7 of ExA's first questions [PrD-05], ExA asked the Highways Agency and WMDC whether they agreed with the justifications and assumptions used by the Applicant in the ES Chapter 7: *Transport and Access*, Section 7.4, for the baseline conditions for transport and traffic, and if not, whether they could explain what the implications

were for the assessment and the conclusions reached by the Applicant.

4.32.10 In WMDC's submission at Deadline 1 [D1-002], WMDC stated that the 2013 survey data and suggested growth factors for calculating background traffic growth were considered to be acceptable. The removal of FM1 construction traffic and addition of FM1 operational traffic was also accepted. On this basis the methodology for calculating the 2017 base scenario was agreed.

CONSTRUCTION TRAFFIC

4.32.11 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that Table 9.9 of the ES referred to potential noise disturbance during unsocial hours, noise from the existing Ferrybridge Power Station site and concern about 24 hour working. The only potentially significant effects would be at Oakland Hill receptors during night-time construction work and at sensitive receptors along the access route. Mitigation had been identified including a night-time construction noise limit at the site boundary (draft Requirement 20), restrictions on the types of activities that could take place outside 'normal' construction working hours (draft Requirement 20), provision of remote holding areas and control of temporary parking near noise sensitive receptors for any night-time construction deliveries, and designated HGV routes (draft Requirements 19 and 31).

4.32.12 In the Applicant's revised draft DCO submission at Deadline 2 [D2-003/004], the Applicant included a new clause 19(3)(g) *"details of a co-ordinator to be appointed to manage and monitor the implementation of the plan, including date of appointment, responsibilities and hours of work"*.

4.32.13 In ExA's Agenda Item 10 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked WMDC to state its position on the Travel Plan, and on construction traffic impacts with regard to the Applicant's comparisons of FM2 with FM1.

4.32.14 In WMDC's submission at Deadline 4 [D4-010], WMDC stated that it could confirm that the construction Travel Plan was now considered to be acceptable. WMDC's Environmental Health Officer was satisfied that FM1 construction did not have an impact on residents and that FM2 could be conditioned for out of hours construction work with similar requirements as FM1 including 55 dBLAeq (1 hour) noise levels at residential properties and HGVs not arriving at site until 7.30 am. However, WMDC would still have to look at the detail of the actual noise mitigation controls for night time activity when the CEMP was submitted.

4.32.15 WMDC stated that the proposed construction start times were considered to be acceptable. It was recognised that construction hours could be 24 hours a day during the peak construction months and this was considered acceptable. The issues previously raised in relation to

anticipated daily HGV flows and minibus usage were now agreed. On this basis, and taking into account that the impacts would occur outside peak hours, the construction traffic impacts were considered to be acceptable. In terms of the comparisons between FM1 and FM2, the removal of FM1 construction traffic flows, and addition of FM1 operational flows was considered to be acceptable. The use of FM1 HGV routing was also accepted, as was the assumption of nine minibus trips per day.

4.32.16 WMDC stated that the submitted Framework Travel Plan, which stated that the contractors would be requested to provide minibuses for transporting workers from their origin to the site, was not considered by WMDC to be sufficient, although it was acknowledged that this could be part of Requirement 19.

4.32.17 In the Applicant’s submission at Deadline 5 [D5-003], the Applicant noted the WMDC response, and stated that the Construction Traffic Routing and Management Plan that must be approved under Requirement 19 would set out the proposals for the provision of mini buses for construction workers, including a timetable for provision in addition to measures to promote the use of sustainable transport modes.

4.32.18 The Applicant stated that Requirements 19 *Construction Traffic Routing and Management Plan* and 20 *Construction Hours* had been agreed with WMDC and that this agreement was documented in the SoCG [D5-001/002] submitted for Deadline 5.

OPERATIONAL TRAFFIC

4.32.19 In Q6.11 of ExA’s first questions [PrD-05], ExA asked the Applicant to clarify various points with regard to the operational traffic flows in the Environmental Statement [AD-044] from section 7.6.14 onwards.

4.32.20 In the Applicant’s submission at Deadline 1 [D1-011], the Applicant stated its methodology for estimating operational traffic flow. The 2017 modified baseline flows (with FM1 operational traffic) were not presented in ES Chapter 7 as a number of years of modified baseline needed to be calculated and it was considered that this would lead to potential misunderstanding within the Chapter. The full methodology for calculating the modified baseline was presented in the transport assessment (Appendix 7A of the ES) for the AM and PM peak hours (Tables 7A.12 and 7A.13). Figures 7A.11 to 7A.32 provided the traffic flows for the future baseline scenarios (2017 Construction Peak and 2018 Operational).

TRAVEL PLAN FOR OPERATIONAL STAFF

4.32.21 In the Applicant’s submission at Deadline 1 [D1-011], the Applicant stated that it was not its intention to secure a site-wide travel plan for the entire Ferrybridge Power Station site with SSE Generation Limited as part of the Proposed Development. Instead, draft Requirement 33 (formerly 32) would secure an operational staff travel plan for the

Proposed Development. It had been agreed through a SoCG between the Applicant and the Highways Agency [AD-090] that such a plan related solely to the Proposed Development.

4.32.22 In the ExA's Agenda Item 5 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to clarify the additional measures envisaged in Requirement 33 *Travel Plan Operational Staff*, and WMDC to state whether it was satisfied that this requirement was sufficiently unambiguous and enforceable.

4.32.23 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that any additional measures that might be applied would depend on the outcome of the monitoring and review of the Travel Plan during its implementation as required by Requirement 33 (3)(d). Such additional measures would be determined by the Travel Plan Co-ordinator to encourage staff to use other modes of transport. The process for implementation of additional measures if targets were not achieved was likely broadly to be as follows:

(1) analyse travel surveys to establish whether targets were being met;
(2) identify what measures effectively influenced travel modes;
(3) ask staff what potential measures would change their mode of travel;
(4) agree additional measures with the Highways Agency and planning authority to implement.

4.32.24 In WMDC's submission at Deadline 4 [D4-010], WMDC stated that in its view Requirement 33 was sufficiently unambiguous and enforceable. WMDC also confirmed that the peak construction daily HGV flows had been derived from traffic surveys for FM1 construction traffic in May 2013. The surveys revealed that FM1 had 60 trips per day; therefore the assumption of 100 trips per day was considered to be robust. The traffic flows for the construction phase were therefore considered to be acceptable.

4.32.25 In the Applicant's submission at Deadline 5 [D5-003], the Applicant stated that it had previously advised that FM1 and the authorised development would be separate operational entities. The travel plan for operational staff that must be submitted and approved pursuant to Requirement 33 (formerly 32) would therefore relate solely to the authorised development. In addition, it was relevant to note that the numbers of operational staff associated with both facilities were relatively modest (approximately 45 each) and would not result in significant travel demand.

WORST CASE CALORIFIC VALUES FOR TRANSPORTED FUEL

4.32.26 In Q6.8 of ExA's first questions [PrD-05], ExA asked the view of Interested Parties on the robustness of the use of a worst case calorific value of 10MJ/kg fuel, and the corresponding maximum weight of fuel to be transported, as the worst case scenario.

4.32.27 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the average calorific value (CV) of 10MJ/kg was the 'worst case' scenario for delivery by road, and that the design of the plant physically restricted the maximum throughput of fuel to 675,000 tonnes / year. An average calorific value below 10MJ/kg was not commercially advantageous as it reduced the electrical output from the generating station.

4.32.28 In WMDC's submission at Deadline 1 [D1-002], WMDC stated that although the lowest value of the fuel was 8.5 MJ/kg, given that fuel deliveries would have different calorific values, it was reasonable to take an average which was likely to be higher than the lowest value. On this basis the figure of 10 MJ/kg was considered to be acceptable. The Highways Agency had also confirmed that even if the calorific value were to fall to 8 MJ/kg, the corresponding increase in the number of vehicles using the Strategic Road Network would be well within the limits with which it could cope. The HGV capacity for fuel deliveries has been taken to be 22 tonnes. This is considered to be a robust assumption, as fuel payloads could in reality be higher, which would result in a lower level of HGV traffic.

SUSTAINABLE FUEL TRANSPORT MANAGEMENT PLAN

4.32.29 In the CRT's Relevant Representation [RR-20], CRT stated that it welcomed the inclusion of a requirement for a Sustainable Fuel Transport Management Plan within the draft DCO, and also recommended that Requirement 34 (now 35) be amended in order that a viability assessment of the costs associated with the upgrading of the existing wharf facility could be undertaken to determine whether its future use in the operation of FM2 was an option.

4.32.30 In Q2.12, Q6.5 and Q6.9 of ExA's first questions [PrD-05], ExA noted that the ES [AD-044] Section 3.2.2 allowed for 100% operational and construction deliveries by road, and only an aspiration for materials to be brought in by other means (e.g. rail and water), while the draft DCO is not specific on this point. ExA also noted that the ES Chapter 7: *Transport and Access*, Section 7.4.15, stated that, as part of FM1, the Applicant was in discussions with fuel suppliers and rail hauliers to establish the feasibility of using rail for fuel deliveries.

4.32.31 ExA therefore asked the Applicant:

(1) to explain why rail and water transport had not been given higher prominence as delivery mechanisms;
(2) to state its position on the quantum of freight which would be waterborne for FM2 and if applicable, how such a quantum would be secured through the DCO or plans to be approved under the DCO;
(3) to give its response to the CRT's proposal for amending Requirement 35 *Sustainable Fuel Transport Management Plan* of the draft DCO, and the implications of the proposed amendment,

for example whether the wharf area was within the draft DCO order limits;

(4) to state how its commitment to review the use of transport by barge would be implemented and monitored (e.g. would the Applicant have to inform the Local Planning Authority or undertake a review at a specified interval);

(5) to provide an update on the status of the discussions with fuel suppliers and rail hauliers, the potential impacts of fuel deliveries by rail, and the extent to which these had been assessed in each of the technical assessment chapters of the Environmental Statement.

4.32.32 ES Chapter 7 makes clear that the traffic volumes include the transport of bottom ash and flue gas treatment (FGT) residue as well as fuel and consumables.

4.32.33 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that a worst case scenario based on all waste derived fuel and consumables being transported by road had been carried out and demonstrated that there was sufficient capacity on the highway network. The Applicant also stated that it was unable to disclose discussions with fuel suppliers, due to their commercial nature, but discussions were underway. The Sustainable Fuel Transport Management Plan (draft Requirement 34 (now 35)) would be used to assess each potential supply contract against a defined set of criteria, in order to determine the most appropriate and sustainable mode of transport for that contract. Road, rail and barge were all to be included within the appraisal tool.

4.32.34 In the Applicant's revised draft DCO at Deadline 2 [D2-003], the Applicant proposed amended wording for Requirement 35 to reflect the CRT's Relevant Representation.

4.32.35 In the ExA's Agenda Item 16 at the Issue-Specific Hearing on the DCO on 18 March 2015 [HG-005], ExA asked the Applicant to state why Requirement 35 still did not refer to the proposed Transport Liaison Committee as discussed with the CRT, and to make explicit the term 'periodically' at Requirement 35(5).

4.32.36 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that the wording of Requirement 35 had been agreed with the CRT, and that this was documented within the agreed SoCG with that body [D1-009]. The Applicant stated that the equivalent FM1 planning condition (Condition 61) similarly did not explicitly mention the use of a Transport Liaison Committee, but nevertheless, the use of the Transport Liaison Committee was included within the details of the plan developed and used for FM1, and this would also be the case for the FM2 development. The Applicant also noted ExA's comments relating to the word 'periodically', and Requirement 35(5) had been amended in the final draft DCO at Deadline 4 [D4-004] to refer to a specific review/appraisal period of every five years.

ROAD CLASSIFICATIONS

4.32.37 In Q6.12 of ExA's first questions [PrD-05], ExA asked the Applicant to provide further justification for the roads being classified as they had been in Chapter 7 of the ES [AD-044], since the explanation given involved a degree of professional judgement.

4.32.38 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated its rationale. With regard to Kirkhaw Lane, there was very low pedestrian and cycle activity, and very few sensitive receptors with only three properties close to Stranglands Lane. The existing HGV route already was used by other companies and historically by Ferrybridge 'C' traffic with low traffic flows. There was no severance effect, and Kirkhaw Lane was considered very low sensitivity.

4.32.39 With regard to Stranglands Lane, there was low pedestrian and cycle activity, and it was an existing HGV route. There were few sensitive receptors along the length between Kirkhaw Lane and the A1 and traffic flows were well within link capacity. There were no identified severance or delay problems, and Stranglands Lane was considered low sensitivity.

4.32.40 With regard to the A162 Links both North and South of Stranglands Lane, the A162 was previously the main A1 trunk road and had very low pedestrian and cycle activity. There were very few sensitive receptors close to the carriageway. Traffic flows were substantially below previous A1 flows and there was ample spare capacity to accommodate the additional FM1 and FM2 traffic flows. There were no severance or delays experienced, and these links were considered to be very low sensitivity.

4.32.41 There were no other submissions on this matter, and it did not appear to be an issue for Interested Parties.

MITIGATION MEASURES SECURED OUTSIDE THE FM2 DCO

4.32.42 In Q6.16 of ExA's first questions [PrD-05], ExA asked the Applicant to clarify the extent to which FM2 was reliant on transportation and access mitigation measures that were to be secured and delivered outside of the FM2 DCO (i.e. that might be part of FM1 consent or other highway improvements), and identify for any such mitigation how this mitigation would be delivered.

4.32.43 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the Proposed Development was not reliant on any mitigation measures that were to be secured and delivered outside of the draft DCO. The FM1 rail siding and gantry had now been constructed and was available for shared use with the Proposed Development and the highway improvements at the Dish Hill Roundabout on the A162 had been completed in 2013. All of the mitigation measures described in Section 7.7 of Chapter 7 of the ES would be secured by draft Requirements 19 and 32-35 in the draft DCO.

ROYAL MAIL COLLECTION, TRANSPORT AND DELIVERY

4.32.44 In Q6.18 of ExA's first questions [PrD-05], ExA noted that in Royal Mail's Relevant Representation [RR-13], Royal Mail had stated that it had no issue with the principle of the proposed FM2 Power Station going ahead, but it was concerned about the potential for disruption to its mail collection, transport and delivery during the construction and operation phases. ExA asked Royal Mail whether it was now able to clarify its position with regard to the Proposed Development, and where Royal Mail had outstanding concerns, to identify how it would wish these concerns to be addressed and secured as proposed requirements in the draft DCO.

4.32.45 Royal Mail made no submissions at Deadlines 1-5, and ExA has therefore deduced that Royal Mail has no concerns that it is prepared to articulate as proposed requirements in the draft DCO.

IMPACT ON RAIL NETWORK

4.32.46 In Q6.19 of ExA's first questions [PrD-05], ExA noted that Network Rail Infrastructure Limited's Relevant Representation [RR-21] had highlighted a number of concerns:

- the import of raw materials and export of waste products when the power station was operational by rail with regard to additional train paths
- headroom on roads under rail bridges for construction traffic
- the need to arrange railway possessions for any work on road/rail structures.

4.32.47 ExA asked Network Rail to clarify whether protective provisions were required in the draft DCO to address its concerns, and if so, whether it had any proposed wording. ExA also asked the Applicant to confirm whether an oversailing licence would be required; if so, what implications this would have during construction and whether these implications would affect the construction methodology assessed in the Environmental Statement.

4.32.48 Network Rail made no submissions at Deadlines 1-5.

4.32.49 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that an oversailing licence for crane components over the railway was not anticipated to be required and Network Rail had not indicated this requirement during consultation. It was not expected that there would be any other construction related impacts on rail infrastructure. The Applicant also stated that transport effects had been based on the worst case of all movements taking place by road, and that the Applicant could not commit to the use of rail or barge at this stage as no contracts were yet in place with suppliers.

4.32.50 Traffic and transport mitigations will be secured through DCO Requirements 19 *Construction Traffic Routing and Management Plan*, 32 *Operational Traffic Routing and Management Plan*, 33 *Travel Plan:*

Operational Staff, 34 *Operational Deliveries*, and 35 *Sustainable Fuel Transport Management Plan*.

4.32.51 These requirements were revised where necessary by the Applicant in updated drafts of the DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004].

4.32.52 ExA is satisfied that the above requirements provide the necessary mitigation measures and controls to secure the development with regard to traffic and transport.

4.33 WASTE MANAGEMENT

WASTE GENERATION AND USE OF RESOURCES

4.33.1 NPS EN-1 Section 5.14 *Waste Management* states: *"The Applicant should set out the arrangements that are proposed for managing any waste produced and prepare a Site Waste Management Plan. The arrangements described and Management Plan should include information on the proposed waste recovery and disposal system for all waste generated by the development, and an assessment of the impact of the waste arising from development on the capacity of waste management facilities to deal with other waste arising in the area for at least five years of operation. The Applicant should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that this is the best overall environmental outcome*.

4.33.2 NPS EN-1 goes on to state: "*The IPC should consider the extent to which the Applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of the Proposed Development. It should be satisfied that any such waste will be properly managed, both on-site and off-site, the waste from the proposed facility can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available, and adequate steps have been taken to minimise the volume of waste arisings"*.

4.33.3 The Applicant has addressed waste management in its ES Non-Technical Summary [AD-043] Chapter 13 *Waste and Resource Management*, its ES Volume 1 (Main Report) [AD-044] Chapter 16 *Waste and Resource Management*, together with ES Appendix 16A *Site Waste Management Plan* [AD-084] and Appendix 17B *WRATE (Waste and Resources Assessment Tool) Assessment* [AD-086]. The Applicant has also supplemented the ES with its report 5.9 *Fuel Availability and Waste Hierarchy Assessment* [AD-037].

4.33.4 In the ES Non-Technical Summary, the Applicant states: *"The assessment has taken into consideration the likely effects associated with the generation of waste and use of resources during the construction and operation of the Proposed Development*".

4.33.5 The Applicant estimates that the construction of the Proposed Development will generate approximately 37,800 tonnes of waste based on records from previous comparable construction projects, and states that: *"This is considered in the context of regional construction, demolition and excavation waste arisings of around 4.7 million tonnes per year in the Yorkshire and Humber region. In 2008, 85% of this type of waste in England was recovered or re-used. Therefore the level of waste expected to be generated from the construction of the Proposed Development is not considered significant or likely to lead to any capacity issues within the regional waste management network. Assuming a similar proportion of demolition waste is recycled at the decommissioning phase, the decommissioning effects are anticipated to be similar*".

4.33.6 The Applicant goes on to say that: *"A Site Waste Management Plan will be implemented by the contractor to reduce, re-use and recycle construction waste where feasible (a framework SWMP is included in the ES). The Proposed Development is being designed to minimise excavation waste by balancing the 'cut' of surplus material and 'fill' to level the Site prior to construction as much as possible"*.

4.33.7 The Applicant states that during operations: *"The Proposed Development will generate up to 116,000 tonnes of ash and up to 22,500 tonnes of flue gas treatment residue per year, as well as approximately 9 tonnes of general office waste. Following appropriate storage on Site, the ash will be taken off Site for recycling wherever possible. In the context of commercial and industrial waste arisings of around 1.26 million tonnes per year in Wakefield … the generation of waste during operation of the Proposed Development is not considered to be significant*"

4.33.8 The Applicant concludes that: *"There will be no significant effects as a result of waste arising from the construction or operation of the Proposed Development"*.

4.33.9 In the EA's Relevant Representation [RR-18], EA stated that it welcomed and supported the inclusion of draft DCO Requirement 42 *Waste Management: Construction and Operational Waste*. EA considered that the potential impacts of waste management from the project had been considered and regard had been given to the waste hierarchy and designing waste out of the construction phase.

4.33.10 EA stated that, if waste materials were to be used in elements of the site construction, a suitable exemption or environmental permit would be required. At this stage specific advice was not possible until EA was aware whether or not waste would be used in construction. The Environmental Protection (Duty of Care) Regulations 1991 for dealing with waste materials were applicable for any off-site movements of wastes. The Applicant as a waste producer therefore had a duty of care to ensure that all materials removed went to an appropriate permitted facility and all relevant documentation was completed and kept in line with regulations.

4.33.11 In Q2.19 of the ExA's first questions [PrD-05], ExA asked the Applicant:

(1) to state what its response was to the EA's statement with regard to the Environmental Permit and the treatment of waste
(2) to state whether waste materials would be used in site construction
(3) to state, if so, whether the extent of such use would be secured under the DCO, and if so, how
(4) to state how it would comply with its duty of care with regard to waste materials removed from site.

4.33.12 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that it agreed with the EA's statement, and that it would not import any waste materials to site.

4.33.13 Draft DCO Requirement 42 *Waste Management: Construction and Operational Waste* is unchanged in the Applicant's revised draft DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004]. This requirement secures the submission by the Applicant, and approval by the planning authority, of a Site Waste Management Plan in accordance with the principles set out in Chapter 16 of the ES before the authorised development may commence.

WASTE HIERARCHY AND SUSTAINABLE WASTE MANAGEMENT

4.33.14 NPS EN-3 Section 2.5 states: *"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"*.

4.33.15 *"The IPC should be satisfied that management plans for residue disposal satisfactorily minimise the amount that cannot be used for commercial purposes. The IPC should give substantial positive weight to development proposals that have a realistic prospect of recovering residues"*.

4.33.16 The Applicant has addressed the conformity of the Proposed Development with the waste hierarchy and the effect of the Development on the relevant waste plans in its *Fuel Availability and Waste Hierarchy Assessment* [AD-037].

4.33.17 The Applicant has analysed fuel availability in the region from sources that would otherwise go to landfill, and concluded that there is adequate availability of fuel.

4.33.18 The Applicant has done a waste hierarchy compliance review in relation to the Proposed Development, and concluded that *"the operation of the Proposed Development would be in accordance with*

the waste hierarchy in that it would move the management of residual wastes, predominantly arising in the north of England, away from landfill and up to recovery in the hierarchy".

4.33.19 The Applicant has conducted a waste policy compliance review and concluded that that *"the scheme would be in compliance with the relevant waste plans of the waste planning authorities from which the Proposed Development is likely to obtain its feedstock*".

4.33.20 The Applicant has assessed the Proposed Development in relation to national recovery targets, and concluded that *"the Proposed Development could make a significant contribution (of up to 5%) to meeting the 11.9 Mt shortfall in national energy recovery capacity that the government expects to remain by 2020*".

4.33.21 The Applicant has developed plans for residue disposal in terms of storage, handling and transport in its ES [AD-044] Section 3.5 (see also Section 4.21 *Hazardous Waste* above).

4.33.22 The LIR from WMDC [D1-001] states that: *"The Council's adopted Waste Development Plan Document outlines the overall approach to waste management in the district*".

4.33.23 WMDC goes on to summarise the waste policies that will apply to the FM2 Proposed Development (W1-W7). In addition, Core Strategy Policy CS15 (Waste Management) states that: *"waste will be managed using the 'waste management hierarchy' and that sites for waste management will be identified, while Development Policy D28 (Sustainable Construction and Efficient Use of Resources) states that the Council will consider the use of renewable and recycled materials during construction, demolition and excavation wastes, as desirable*".

4.33.24 In assessing the application, the Council states that: *"The applicant's waste documents have been considered by several WMDC departments, not least Waste Policy, Highways, and Spatial Policy ... The applicant suggests that the proposed recovery operation will complement recycling initiatives by only accepting the waste that remains after recycling has been carried out, thereby forming part of an integrated waste management system that supports the waste hierarchy. In principle this is acceptable*".

4.33.25 The Council also notes that the facility will reduce the amount of waste material that may otherwise be sent to landfill, saving valuable landfill space but also reducing greenhouse gas emissions (including methane) that would otherwise have been generated from the breakdown of waste material had it gone to landfill, thus helping to meet the Landfill Directive.

4.33.26 WMDC records the fact that the Applicant is conservatively assuming that no Local Authority Collected Waste that is currently being sent to landfill in northern England would be available to the Proposed Development, but that a very large quantity of Commercial and Industrial Waste (C&IW) arising in northern England is currently being

landfilled at non-hazardous waste landfills and a significant fraction of this is of a type from which energy could be recovered.

4.33.27 The Council expressed some reservations about the capacity need for energy from waste facilities, but accepted that *"as a National Significant Infrastructure project, FM2 is deemed by the UK Government to meet a capacity need in accordance with National Policy Statement (NPS) EN-3"*.

4.33.28 The Council stated in conclusion that: *"taking account of the findings of the ES, the advice given by the EA and the fact that an Environmental Permit must still be obtained separately to the DCO, it is considered that the Requirements contained within the DCO would adequately mitigate the impacts of the development and ensure that the proposal would not undermine the Council's waste management strategy"*.

4.33.29 ExA believes that the Proposed Development complies with the waste hierarchy in that it is driving waste up the hierarchy from landfill to recovery of energy, and that the Proposed Development complies with NPS EN-3 Section 2.5. Plans for residue storage and disposal are also sound.

4.33.30 ExA is satisfied that the mitigation measures embedded in the design and those secured through DCO Requirement 42 will provide the necessary controls with regard to waste management.

4.34 WATER QUALITY AND RESOURCES

4.34.1 NPS EN-1 Section 5.15 *Water Quality and Resources* states: *"Where the project is likely to have effects on the water environment, the Applicant should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment as part of the ES or equivalent"*.

4.34.2 The Applicant has addressed water quality and resources in its ES Non-Technical Summary [AD-043] Chapter 9 *Water Resources and Flood Risk*, and its ES Volume 1 (Main Report) [AD-044] Chapter 12 *Water Resources and Flood Risk*.

4.34.3 In the ES Non-Technical Summary, the Applicant states: *"The assessment identifies the key water bodies that may receive run-off from the Site during construction, operation and decommissioning of the Proposed Development, and considers the potential contamination risk to these water bodies as a result*.

4.34.4 *The main surface watercourses close to the Site are the River Aire to the east and Fryston Beck, which flows through the Ferrybridge Power Station site, partly open and partly underground. The Site is not within a groundwater protection zone; however the groundwater beneath the site is used for public water supply (defined as a Principal Aquifer)*.

4.34.5 *The regulator for the water environment (the Environment Agency) defines the existing quality of watercourses by their 'potential' in terms of ecological and chemical quality in accordance with the Water Framework Directive*".

4.34.6 The Applicant has considered possible effects during construction and operations and states: *"The assessment has concluded that during construction there is the potential for spillages to occur, but the likelihood of these occurring would be very low through the use of best practice construction methods … During operation of the Proposed Development, the risk and potential impacts are largely the same as those identified for the construction phase, and therefore will be managed by similar best practice measures for working procedures and the storage of materials and fuels. These measures will be implemented through the site Environmental Management System that will be developed by the operator to maintain compliance with the Environmental Permit*".

4.34.7 The Applicant concludes: *"No significant effects on surface or ground water bodies are predicted due to the proposed use of best practice measures during construction, operation and decommissioning, and the design of the drainage system for the Proposed Development*".

DESIGN OF FUEL BUNKER

4.34.8 In the EA's Relevant Representation [RR-18], EA recommended amended wording to Requirement 5 *Design of Fuel Storage Bunker*, specifically that a new clause 5(2) should be inserted: *"The design of the fuel storage bunker must be informed by the results of the groundwater table level survey approved under requirement 6(1)"*.

4.34.9 In Q2.13 of the ExA's first questions [PrD-05], ExA asked the Applicant what its response was to the EA's recommended amendments to DCO Requirement 5.

4.34.10 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that, subject to minor changes, it had adopted the wording proposed by the EA for Requirement 5, and that the wording was documented within a SoCG with EA [D1-013].

4.34.11 In the EA's submission at Deadline 1 [D1-006], EA stated the same position as the Applicant, with the proposed wording included in its submission.

4.34.12 The Applicant's revised draft DCO at Deadline 2 [D2-003/004] contained the agreed wording.

PRE-DEVELOPMENT GROUND WATER TABLE SURVEY

4.34.13 In the EA's Relevant Representation [RR-18], EA recommended amendments to the wording of Requirement 6 *Pre-development Groundwater Table Level Survey*, specifically to clarify how the groundwater table level survey should be undertaken.

4.34.14 In Q2.14 of the ExA's first questions [PrD-05], ExA asked the Applicant what its response was to the EA's recommended amendments.

4.34.15 In the Applicant's submission at Deadline 1, the Applicant stated that, subject to minor changes, it had adopted the wording proposed by the EA for Requirement 6, and that the wording was documented within a SoCG with EA [D1-013]. In its submission at Deadline 1, the EA stated the same position, with the proposed wording included in its submission.

4.34.16 The Applicant's revised draft DCO at Deadline 2 [D2-003] contains the agreed wording, but also a tailpiece to clause 6(2)(a) that had not at that stage been agreed: *"or within such other boreholes on the Order land as the planning authority, after consultation with the Environment Agency, may approve"*. The Applicant also omitted the wording that the survey *"accounts for the effects of abstractions and river levels on the groundwater table level"* which was within the agreed wording in the EA's Written Representation [RR-18].

4.34.17 In the ExA's Agenda Item 6 at the Issue-Specific Hearing on the DCO on 18 March 2015 [HG-005], ExA asked the EA to state whether it was content with the Deadline 2 wording, and in particular the added tailpiece and omitted wording. ExA also asked the EA to state its position with regard to the wording on Requirement 6 in the SoCG between itself and the Applicant.

4.34.18 The EA's written submission to the Issue-Specific Hearing [CoRR-006/CoRR-07] confirmed that the wording of Requirement 6 was agreed, and EA did not make any further submission at Deadline 4.

SURFACE AND FOUL WATER DRAINAGE

4.34.19 In EA's Relevant Representation [RR-18], EA stated that it would have no objection to the scheme on the basis of pollution impacts to surface waters provided that the DCO included appropriate Requirement(s) to ensure that the identified mitigation measures were applied throughout the appropriate stages of the development. Without the inclusion of appropriate requirements, its position would be one of objection. EA stated its expectation that where relevant an assessment of sustainable drainage systems (SuDs) along with proposed mitigation would be submitted as part of the details required by Requirement 13 *Surface and Foul Water Drainage*.

4.34.20 In Q2.15 of the ExA's first questions [PrD-05], ExA asked the Applicant for its response to the EA's expectation, and asked the EA to explain how this expectation could be incorporated into Requirement 13, including identification of any draft wording that the EA would find appropriate.

4.34.21 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that through the SoCG agreed between the EA and the Applicant [D1-013], amended wording of draft Requirement 13 had

been agreed, as noted, and would be included in the revised draft of the DCO at Deadline 2.

4.34.22 In EA's submission at Deadline 1 [D1-006], EA stated that its Relevant Representation was intended to re-iterate that, at the stage when details of the surface water drainage system design were submitted for approval, those details should include consideration and mitigation of any risks to controlled waters. Provided that Requirement 13 retained the need for consultation with the EA on the details of the surface and foul water drainage systems, EA did not consider that any amendment to the requirement was needed. EA stated that it had discussed and agreed the wording of a number of requirements with the Applicant, and the agreed wording of these requirements was set out in the SoCG between the Applicant and EA dated January 2015. EA understood that the Applicant would include all agreed wording as set out in the SoCG within the DCO.

4.34.23 The amended wording was included in the Applicant's revised draft DCO at Deadline 2 [D2-003].

CONTAMINATED LAND AND GROUNDWATER

4.34.24 In the EA's Relevant Representation [RR-18], EA stated that it would have no objection to the scheme on the basis of the risks to groundwater resources provided that the DCO included appropriate Provisions and Requirement(s) to ensure that the identified mitigation measures were applied throughout the appropriate stages of the development. Without the inclusion of appropriate provisions and requirements, EA's position would be one of objection.

4.34.25 EA stated that a site investigation and risk assessment had been completed, which indicated that the risk to controlled waters was considered to be low. However, the EA requested the inclusion of an additional requirement to ensure that contamination that had not previously been identified was satisfactorily dealt with if this was discovered during the construction phase.

4.34.26 In Q6.48 of the ExA's first questions [PrD-05], ExA asked the Applicant what its response was to the EA's recommendation for inclusion of the above in Requirement 15 *Contaminated Land and Groundwater*.

4.34.27 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that, subject to minor changes, it had adopted the wording proposed by the EA for Requirement 15, and that the wording was documented within a SoCG with EA [D1-013].

4.34.28 In EA's submission at Deadline 1 [D1-006], EA stated that it had discussed and agreed the wording of Requirement 15 with the Applicant. The agreed wording of the requirement was set out in the SoCG between the Applicant and EA dated January 2015. EA understood that the Applicant would include all agreed amended wording within the DCO.

4.34.29 The agreed wording was included in the Applicant's revised draft DCO at Deadline 2 [D2-003].

4.34.30 In summary, various aspects relating to water quality and resources have been secured in the draft DCO through Requirements 5 *Design of Fuel Bunker*, 6 *Pre-development Groundwater Table Level Survey*, 13 *Surface and Foul Water Drainage* and 15 *Contaminated Land and Groundwater*.

4.34.31 During the course of the examination, these requirements were revised to the satisfaction of all parties through updates to the draft DCO by the Applicant.

4.34.32 ExA is satisfied that the mitigation measures embedded in the design of the generating station and those secured through draft DCO Requirements 5, 6, 13 and 15 will provide the necessary controls with regard to water quality and resources.

4.35 HABITATS REGULATIONS

4.35.1 NPS EN-1 Chapter 4.3 Habitats and Species Regulations paragraph 4.3.1 states: *"Prior to granting a development consent order, the IPC must, under the Habitats and Species Regulations … consider whether the project may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects ... The Applicant should seek the advice of Natural England and/or the Countryside Council for Wales, and provide the IPC with such information as it may reasonably require to determine whether an Appropriate Assessment is required. In the event that an Appropriate Assessment is required, the Applicant must provide the IPC with such information as may reasonably be required to enable it to conduct the Appropriate Assessment. This should include information on any mitigation measures that are proposed to minimise or avoid likely effects"*.

4.35.2 The Applicant addressed the Habitat Regulations in its ES Appendix 14A *Habitats Regulation Assessment Screening Report* [AD-080].

4.35.3 In this document, the Applicant concludes that: *"There would be no Likely Significant Effect, either alone or in-combination, upon European Sites as none occur within 20 km of the Proposed Development, and no effects of the Proposed Development are expected to occur beyond that distance. Given this, an Appropriate Assessment is not required"*.

4.35.4 The Applicant's conclusion is supported by a SoCG agreed with NE [AD-088].

4.35.5 This position was confirmed by NE in its Relevant Representation [RR-11], where NE stated its overall position to be that it had no objection to the Proposed Development as *"There were no European sites,*

Ramsar sites or nationally designated landscapes located within the vicinity of the project that could be significantly affected".

4.35.6 Given these findings and having regard to paragraph 4.3.1 of NPS EN-1, ExA is satisfied that there is sufficient evidence to allow the Secretary of State to conclude that the Proposed Development is not likely to have a significant effect on any European site and for any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects.

4.35.7 Furthermore, in accordance with the same paragraph of NPS EN-1, sufficient information has been provided for the Secretary of State to determine that an Appropriate Assessment is not required.

4.36 COMPULSORY ACQUISITION AND RELATED MATTERS

4.36.1 Compulsory acquisition requirements are specified in Part 7, Chapter 1, s.122 – 134 of the Planning Act 2008 (as amended).

4.36.2 The Applicant has made no request for compulsory acquisition powers within the draft DCO.

4.36.3 All land specified within the draft Order limits is vested as freehold owner in SSE Generation Limited, a 50-50 joint partner organisation within the Applicant, Multifuel Energy Limited. No other land is required to undertake the Proposed Development.

STATEMENT OF REASONS

4.36.4 In Clause 1.21-1.24 of the Statement of Reasons [AD-010], the Applicant stated: *"In the case of the subject Application, the Applicant has negotiated to acquire the necessary interests and rights in land for the Proposed Development*, *and the Applicant has an option agreement to enter into a lease for the land within the Order limits that is within the control of SSE, while the draft DCO will provide the necessary rights in respect of the other land within the Order limits*.

4.36.5 *The only land outside SSE's control that is within the Order limits encompasses a corridor of land along an existing street (known as Kirkhaw Lane) under which it may be necessary to install a foul water connection for the Proposed Development. In respect of this, Article 15 of the draft DCO 'Rights under* or *over streets' (Application Document Ref. No. 2.1) would provide the Applicant with the ability to enter on and appropriate so much of the subsoil beneath Kirkhaw Lane that may be required for the purposes of installing this connection, removing the need for the Applicant to seek any compulsory purchase powers through the DCO*.

4.36.6 The Applicant stated that the draft DCO was not seeking compulsory purchase powers, and all land required for the Proposed Development would be acquired through private treaty or under alternative measures. A Statement of Reasons was not required. However, it was

considered beneficial to provide such a statement to explain how the Proposed Development relates to the existing landholders and how the third party interests would be treated. The Statement of Reasons also confirmed that, where agreements for acquisition by private treaty had been secured, the Applicant would not seek to rely on compulsory purchase powers. Those parcels of land were though still included within the Order limits as part of the Order land.

4.36.7 Under the heading of Ownership of the Land, the Applicant stated in clauses 3.16-20 of the Statement of Reasons [AD-010]: *"The Book of Reference (Application Document Ref. No. 3.1) and the Land Plan (Application Document Ref. No. 4.3) identify those persons with an interest in the Order land*.

4.36.8 *No residential properties are to be acquired as part of the Proposed Development. It will not be necessary to extinguish the rights of the four third parties along the unnamed road leading from Stranglands Lane. These rights are identified in the Book of Reference*.

4.36.9 Article 15 of the draft Order *'Rights under or over streets'* would provide the Applicant with the ability to enter on and appropriate *"so much of the subsoil beneath Kirkhaw Lane as may be required for installing the foul water connection"*. However, the Applicant also intends to apply to WMDC as highway authority for a Section 50 Licence under the New Roads and Street Works Act 1991 to provide for this connection. This would remove the need to rely upon Article 15. However, Article 15 has been retained within the draft Order as the Section 50 Licence has not yet been obtained.

4.36.10 The Applicant concludes that it: "*does not therefore need to acquire any interests from the current landowners compulsorily"*.

4.36.11 The examination in this case required the ExA to confirm that the Applicant was indeed not seeking compulsory acquisition powers.

4.36.12 ExA also had to satisfy himself that the Applicant had, or would be able to acquire, all necessary rights over the land within the Order limits.

4.36.13 As noted above, the Applicant has clearly stated that it is not seeking compulsory acquisition powers, and no such powers are sought within the draft DCO.

PRIVATE TREATIES AND LEASES

4.36.14 In Q3.1 of the ExA's first questions [PrD-05], ExA asked the Applicant to identify the status of the private treaty or alternative measures for acquiring all necessary land from SSE Generation Limited within the DCO.

4.36.15 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that SSE Generation Limited, as freehold owner of the

Ferrybridge site, had agreed to grant a lease to the Applicant for the construction and operation of the Propose Development.

4.36.16 In ExA's Agenda Item 21 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to state the position between itself and SSE Generation Limited with regard to the granting of a lease to the Applicant for the construction and operation of the Proposed Development.

4.36.17 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that the landowner, SSE Generation Limited, had issued a letter of comfort confirming that terms had been agreed and that the Parties had proposed to enter into agreements. The Parties intended to enter into an Agreement for Lease, followed by a Construction Lease and finally an Operating Lease. The Applicant pointed out that SSE Generation Limited was also a 50/50 joint venture partner of the Applicant, Multifuel Energy Limited. As such SSE Generation was incentivised to grant the necessary land rights and accordingly, on this basis, rights of compulsory acquisition were not being sought through the DCO.

BOOK OF REFERENCE - PART 2 CLAIMANTS

4.36.18 In Q3.3 of the ExA's first questions [PrD-05], ExA noted that Category 3 in Part 2 of the BoR [D2-007] had been divided into two columns (s.10 Compulsory Purchase Act 1965 and Part 1 Land Compensation Act 1973). ExA pointed out that the definition of "relevant claim" in s.57(6) of Planning Act 2008 had been amended in 2012 to include claims under s.152(3) of Planning Act 2008, and asked the Applicant how this had been taken into account.

4.36.19 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that it had taken s.152(3) into account, and no parties had been identified which held valid grounds for a claim.

BOOK OF REFERENCE - CROWN LAND

4.36.20 In Q3.5 of the ExA's first questions [PrD-05], ExA pointed out that Part 4 of the BoR [D2-007] indicated that the Order land included Crown land, but there were no articles related to this in the draft DCO. ExA asked the Applicant whether it intended to include additional DCO articles to address this issue (ref advice which had been previously provided on this point http://infrastructure.planningportal.gov.uk/legislation-and-advice/register-of-advice/?ipcadvice=2ff39f4609).

4.36.21 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that, in its opinion, no articles relating to Crown land were required in this instance.

4.36.22 ExA is satisfied that no compulsory acquisition powers are being sought by the Applicant within the draft DCO, and mechanisms are being pursued by the Applicant to secure the necessary rights over the

land within the Order limits to be able to undertake the Proposed Development.

5 THE EXAMINING AUTHORITY'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.0.1 In determining the application in accordance with s.104 of the Planning Act 2008 (as amended), the Secretary of State must have regard to any relevant National Policy Statements, Local Impact Reports, prescribed matters and other matters considered to be relevant to the decision.

5.0.2 The need for proposals of this nature is set out in Government policy in NPS EN-1.

5.0.3 ExA has set out his reasons on each of the matters in Chapter 4. In summary, ExA's conclusions on the main issues are that ExA is satisfied on the following:

(1) ***The Development.*** The development would be secured through the recommended draft DCO Part 2: Principal Powers, Part 3: Supplementary Powers, and Part 4: Miscellaneous and General. Schedule 1 specifies The Authorised Development in terms of its component Works, Schedule 2 contains the Requirements that secure various aspects of the development as determined through the examination, and Schedules 3 and 4 detail the maximum and minimum building dimensions respectively. Schedule 5 identifies the streets subject to street works, Schedule 6 identifies access to works and Schedule 7 states the procedure for approvals required by the requirements.

(2) ***Design Approach.*** The design of the Proposed Development has been set out in the application as far as possible at this stage. The design approach accords with the aims of NPS EN-1 and NPS EN-3 and the detailed aspects of the design for the proposal would be subject to control by the relevant local planning authorities through the requirements. The design of the Proposed Development is sufficiently fixed to enable the assessment of environmental effects in accordance with the Regulations (i.e. that it covers the 'Rochdale envelope' issue.

(3) ***Air Quality and Pollution.*** The proposal would not have any unacceptable effects in terms of air quality, subject to consent being granted for an Environmental Permit, for which an application has been made and is well advanced. Mitigations embedded in the design of the generating station, together with those within Requirements 37 *Air Quality Emissions Control* and 38 *Air Quality Monitoring* would secure acceptable mitigation and control for air quality and pollution.

(4) ***Landscape and Visual Amenity.*** The proposal would not be of a size and scale to have a significant adverse impact in terms of the landscape and visual amenity. The FM2 Proposed Development would be built alongside the FM1 development and both are within the site of the visually dominant coal-fired power station with its significantly larger buildings and cooling towers. Nevertheless, mitigations embedded in the design of the generating station, together with those within Requirements 7

Landscape Provision and 8 *Landscape Implementation and Maintenance* would secure acceptable mitigation and control for landscape and visual amenity.

(5) ***Transport and Traffic.*** The proposal would not have an unacceptable adverse impact on existing transport networks including traffic routing and management, highway safety and the environmental impact of traffic. Measures embedded in the design of the generating station, together with those within Requirements 18 *CEMP*, 19 *Construction Traffic Routing and Management Plan*, 20 *Construction Hours*, and 32 *Operational Traffic Routing and Management Plan* would secure acceptable mitigation and control for traffic and transport.

(6) ***Noise, Disturbance and Vibration.*** The proposal would not give rise to significant adverse noise, disturbance and vibration. Requirements 23 *Control of Noise During Construction* and 24 *Control of Operational Noise* would provide acceptable mitigation and control for noise, disturbance and vibration during the construction and operational phases respectively.

(7) ***Flood Risk.*** No part of the authorised development may commence until a scheme for the mitigation of flood risk during the construction and operation of that part has been submitted to and, after consultation with the EA, approved by the planning authority. Measures embedded in the design of the generating station, together with those within Requirement 14 *Flood Risk Mitigation* would provide acceptable mitigation against flood risk. Mitigation for risks to water quality would be secured through measures in Requirements 13 *Surface and Foul Water Drainage*, 14 *Contaminated Land and Groundwater* and 18 *CEMP*.

(8) ***Biodiversity and Protected Wildlife Conservation Sites.*** There is sufficient evidence to allow the Secretary of State to conclude that the Proposed Development is not likely to have a significant effect on a European site or any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. Furthermore, in accordance with the NPS EN-1, sufficient information has been provided for the Secretary of State to determine that an Appropriate Assessment is not required. Based on NE's representations, a European Protected Species licence under the Habitats Regulation is not required for the Proposed Development. Requirement 17 *Biodiversity Enhancement and Management Plan* would secure the submission of plans for biodiversity management for consultation with Yorkshire Wildlife Trust and NE, as well as approval of appropriate measures by the local planning authority. This provides acceptable mitigation and control.

(9) ***Waste Management.*** The Proposed Development would make appropriate arrangements for waste management at the construction, operational and decommissioning stages. It complies with NPS EN-3 in providing sustainable waste management, moving waste up the hierarchy and contributing to a network of installations to deal with waste in the north of England. Measures embedded in the design of the generating

station, together with those within Requirements 41 *Waste Hierarchy Scheme* and 42 *Waste Management – Construction and Operational Waste* would secure the necessary mitigation and control, the management of which would also be the controlled by the Environmental Permit.

(10) ***Historic Environment.*** The Proposed Development would not have an unacceptable adverse impact on the historic environment. Mitigation measures would only be required for archaeology, and these would be secured through Requirement 16 *Archaeology*, with the West Yorkshire Archaeology Advisory Service in a consultative capacity and the planning authority with the approval role.

(11) ***Combined Heat and Power (CHP).*** As required by NPS EN-1, the proposal would make provision for CHP. Requirement 40 *CHP* would secure the fact that the authorised development may not be brought into commercial use until the planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems if they should become viable.

(12) ***Grid Connection.*** DCO Schedule 1, Work No. 2, includes three alternatives for a grid connection. The selection of one of these alternatives would be the subject of the detailed design. All three alternatives are within the Order limits, and the FM2 generating station would be on the site of two existing generating stations, so grid connection is not expected to be problematic. An environmental assessment has been undertaken for each design option.

(13) ***Health, Safety and Security.*** The proposal would comply with the guidance in NPS EN-1, in terms of health and safety, safety and security, aviation safety, health and land stability. Measures embedded in the design of the generating station, together with those within Requirements 44 *Aviation Warning Lighting*, 45 *Air Safety* and 46 *Site Security* would secure the necessary mitigation and control.

(14) ***Socio-Economic Impact.*** The Proposed Development would have a positive socio-economic impact, especially in terms of regeneration, employment, skills and education. The proposal would comply with the guidance on site selection in NPS EN-1. It would also be in accordance with development plan policies for land use in the local area. Requirement 48 *Employment, Skills and Training Plan* was included in the DCO as a result of dialogue between the Applicant and the planning authority, WMDC, and would secure the fact that Work No. 1 may not commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to, and approved by, the planning authority.

5.0.4 ExA's overall conclusion on the case for development consent for the scheme is based on his assessment of these matters, including the

strong levels of agreement between most bodies and the limited level of objection.

5.0.5 ExA's view is that the case for development consent, based on the draft DCO in Appendix A to this document, is well made.

6 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

6.0 INTRODUCTION

6.0.1 The draft DCO constitutes the consent sought for the Proposed Development. It sets out the authority to be given to the undertaker, including commitments that the Applicant must accept to carry out the development, the further approvals that are required before particular works can commence, the protective provisions necessary to safeguard the interests of other parties and requirements similar to planning conditions to be met when implementing the consent.

6.0.2 A draft DCO was submitted as part of the application [AD-006], accompanied by the required Explanatory Memorandum [AD-007]. Where the DCO applies, modifies or excludes a statutory provision under s.120 (5) (a) of the PA2008, s.117(4) of the same Act requires the DCO to be in the form of a statutory instrument. The draft DCO includes such provision and is in the form of a statutory instrument.

6.0.3 A revised draft DCO [D2-003] was submitted by the Applicant at Deadline 2 (17 February 2015), together with a revised BoR [D2-007] and Explanatory Memorandum [D2-008/009].

6.0.4 An Issue-Specific Hearing on the DCO was held on 18 March 2015 with updates to the draft DCO being reported by the Applicant and outstanding issues on the Articles and Requirements tabled by ExA [HG-005]. The final draft DCO [D4-004] was submitted by the Applicant at Deadline 4 (02 April 2015), together with a revised Explanatory Memorandum [D4-002].

6.0.5 Where particular provisions, requirements or schedules are not mentioned, then the Secretary of State can be clear that ExA is satisfied that the measures proposed are appropriate. Unless otherwise stated, ExA's comments below relate to the Applicant's final draft DCO [D4-004], carried forward with minor modifications into ExA's recommended DCO at Appendix A to this document.

6.1 ARTICLES

6.1.1 The articles set out the principal powers to be granted if consent is given. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remained a starting point for the consideration of the draft DCO and a comparison with them has been provided as part of the application [AD-008]. Precedent cases have also been considered where appropriate.

ARTICLE 2 – INTERPRETATION

6.1.2 Most of the changes made to Article 2 are minor and are corrections, clarifications, updates or additions to the original version submitted by the Applicant, some in response to ExA's questions on drafting. However, during the course of the examination, a number of questions were asked about some the definitions in the interpretation section.

6.1.3 In the Applicant's first draft DCO [AD-006], submitted with the application, the definition of *"the authorised development"* included the development set out in Schedule 1 but also *"any other development authorised by this Order which is development within the meaning of section 32 of the 2008 Act"*. This potentially placed legal risk on the decision-making Secretary of State, because it is not clear exactly what would be consented by the Order, if granted.

6.1.4 In Q2.1 of the ExA's first questions [PrD-05], ExA asked the Applicant what other developments it envisaged would be authorised by the Order, and for the Applicant to justify the inclusion of these words within the draft DCO.

6.1.5 In the Applicant's submission at Deadline 1 [D1-011], the Applicant agreed to delete these words in a revised DCO, and this was done at Deadline 2 [D2-003].

6.1.6 Similarly, with regard to ExA's Q2.2, the Article 2 definition of *"maintain"* and Article 7 *"power to maintain"* were widely worded, giving the undertaker the power to adjust, alter or replace the authorised development. It was therefore not clear what was being consented and it was also not clear that the maintenance authorised had been fully assessed for its possible environmental effects. The definitions needed to be restricted to works that had been assessed in the Environmental Statement. Following ExA's first questions, the Applicant agreed to amend these definitions, and this was done at Deadline 2 [D2-003].

6.1.7 The definition of *"statutory undertaker"*, referred to the Planning Act 2008 Sections 128 and 129, which have been repealed and should be removed from the definition. The Applicant agreed to remove these references, and this was done at Deadline 2 [D2-003].

6.1.8 In ExA's view, the final draft DCO at Deadline 4 [D4-004] addressed the above matters and no further action is necessary.

ARTICLE 5 - LIMITS OF DEVIATION

6.1.9 The Applicant's first draft DCO [AD-006] included the terms *"inwards"* and *"outwards"* for lateral deviation. No definition was given in the DCO, although paragraph 5.8 of the Explanatory Memorandum made it clear that this was intended to refer to a reduction or increase in the size of the relevant part of the Authorised Development.

6.1.10 In Q2.4 of the ExA's first questions [PrD-05], ExA asked the Applicant to clarify these terms, and did so again under Agenda Item 1 at the Issue-Specific Hearing on the DCO [HG-005].

6.1.11 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that it considered the DCO and Explanatory Memorandum as drafted were already entirely consistent, and that the ordinary meanings of the words "inwards" and outwards" in this context were sufficiently clear and did not require definition. The Applicant stated that these definitions had been previously used in legislation in the same context without definition, and therefore the drafting change suggested was not considered necessary. Nevertheless, the Applicant made the requested change within the revised draft DCO at Deadline 4 [D4-004].

6.1.12 In ExA's view, the draft DCO at Deadline 4 [D4-004] addressed the above matters and no further action is necessary.

ARTICLE 7 - POWER TO MAINTAIN THE AUTHORISED DEVELOPMENT

6.1.13 See commentary under Article 2 above, which also refers to Article 7.

ARTICLE 8 - TRANSFER OF THE BENEFIT OF THE ORDER

6.1.14 The Applicant's first draft DCO [AD-006] removed the need for Secretary of State consent to transfer the benefit of the order in specific situations (to the holder of a generation/transmission/ distribution/supply/ interconnector licence, to another group company, or to a street authority). This was explained in the Explanatory Memorandum, but no justification was given.

6.1.15 In Q2.5 of the ExA's first questions [PrD-05], ExA asked the Applicant to justify its reason for this approach.

6.1.16 In the Applicant's submissions at Deadline 2, the Applicant amended the wording in the revised draft DCO [D2-003], meaning that the overall benefit of the order could be transferred with the Secretary of State's consent to a transmission/ distribution licence holder. The specific benefits relating to street works could also be transferred to a street authority.

6.1.17 In ExA's Agenda Item 2 at the Issue-Specific Hearing on the DCO [HG-005], ExA also proposed minor typographical amendments and these were reflected in the Applicant's revised draft DCO at Deadline 4 [D4-004].

6.1.18 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the transfer of benefit of the Order.

ARTICLE 18 - DEFENCE TO PROCEEDINGS IN RESPECT OF STATUTORY NUISANCE

6.1.19 Section 4.18 *Common Law Nuisance and Statutory Nuisance* above summarises the examination with regard to the defence to nuisance.

6.1.20 As stated in Section 4.18, this was the subject of some debate during the examination. The Applicant's first draft DCO [AD-006] removed all liability for claims for nuisance arising from the operation of the development.

6.1.21 WMDC and the EA as Interested Parties expressed concerns about the extent of the defence sought, since the Applicant had stressed throughout that all necessary mitigation measures against nuisance were secured through requirements in the draft DCO.

6.1.22 As a result of various submissions and questioning at the Issue-Specific Hearing on the DCO on 18 March 2015, the Applicant amended the drafting of Article 18 in the draft DCO at Deadline 4.

6.1.23 ExA is satisfied that Article 18 as drafted in the draft DCO at Deadline 4 [D4-004] provides an appropriate level of defence against common law and statutory nuisances.

6.2 SCHEDULE 1: THE AUTHORISED DEVELOPMENT

AMBIGUITY

6.2.1 In the Applicant's first draft DCO [AD-006], the drafting left some ambiguity as to which additional works or associated development might be envisaged by the Applicant.

6.2.2 In ExA's Agenda Item 5 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to state what other works might be required, other than those listed as (a)-(m) following the text on Work No 4. If none could be identified, the text *"any other works … environmental statement"* should be removed as being too vague. If any could be identified, they should be added to the list.

6.2.3 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that it had listed all the further works that it currently believed would be required at Schedule 1 of the draft DCO. However, it considered that some limited flexibility was appropriate. The draft DCO had therefore been amended to follow the approach taken in the confirmed Knottingley DCO - that is to list all the known further works, followed by a 'catch-all provision' as follows: *"…and to the extent that they do not form part of any such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement."*

DEFINITION OF WORK NO. 1

6.2.4 In the Applicant's first draft DCO [AD-006], the Applicant stated in Schedule 1 that the generating station would be fuelled "primarily" by waste derived fuels, and Requirement 3 *Fuel Type* stated that the fuel type would be restricted to the types set out in the Environmental Permit (which had not yet been produced and agreed). This led to a potential conflict (or at least a lack of clarity).

6.2.5 ExA needed assurance from the Applicant that the worst case had been assessed in the Environmental Statement, so that whatever was consented and finally built (if consent is granted) was within the parameters assessed in the Environmental Statement.

6.2.6 In Q2.9 of the ExA's first questions [PrD-05], ExA asked the Applicant to quantify in the definition of Work No.1 the extent of use of waste derived fuel and the extent of all other categories of fuel to be used in accordance with the levels of such fuel usage assessed in the Environmental Statement. ExA also asked which fuels other than waste derived fuels might be used, in what proportions of the total fuel consumption, and how these had been assessed within the Environmental Statement.

6.2.7 In the Applicant's submission at Deadline 1 [D1-011], the Applicant cited gas oil as the necessary start up fuel to achieve and maintain the operating temperature, and proposed wording to amend Requirement 3 to make clear the circumstances in which non-waste derived fuel may be used.

6.2.8 The necessary wording was added to Requirement 3 in the revised draft DCO at Deadline 2 [D2-003].

6.2.9 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the fuel types to be used.

6.3 SCHEDULE 2: REQUIREMENTS

REQUIREMENT 3 – FUEL TYPE

6.3.1 See commentary under Schedule 1, the Authorised Development - Definition of Work No. 1, which also refers to Requirement 3.

REQUIREMENT 5 – DESIGN OF FUEL BUNKER

6.3.2 Section 4.34 *Water Quality and Resources* above summarises the examination with regard to the design of the fuel bunker.

6.3.3 In its Relevant Representation [RR-18], the EA recommended amended wording to Requirement 5 to secure an approved

groundwater table level survey to inform the design of the fuel storage bunker.

6.3.4 The Applicant agreed with EA's proposed wording and included this wording in a revised Requirement 5 in the draft DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004].

6.3.5 ExA is satisfied that the draft DCO at Deadline 4 secures the necessary mitigation and control with regard to the design of the fuel bunker.

REQUIREMENT 6 – PRE-DEVELOPMENT GROUNDWATER TABLE LEVEL SURVEY

6.3.6 Section 4.34 *Water Quality and Resources* above summarises the examination with regard to the need for a pre-development groundwater table level survey.

6.3.7 In its Relevant Representation [RR-18], the EA recommended amended wording to Requirement 6 to secure clarity on how the groundwater table level survey should be undertaken.

6.3.8 The Applicant agreed with EA's proposed wording and included this wording in a SoCG between the Applicant and the EA at Deadline 1 [D1-013], as well as a revised Requirement 6 in the DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004]. Although the Applicant also added a tailpiece to Requirement 6, the EA agreed with the wording [CoRR-06/07].

6.3.9 ExA is satisfied that the draft DCO at Deadline 4 secures the necessary mitigation and control with regard to the groundwater table level survey.

REQUIREMENT 7 – PROVISION OF LANDSCAPING

6.3.10 Section 4.26 *Landscape and Visual Impacts* above summarises the examination with regard to the provisions for landscaping in the Proposed Development.

6.3.11 During the examination, a number of submissions were made concerning Requirements 7, 8 and 17. WMDC proposed revised wording of all three requirements, so that the measures that they secured were appropriately harmonised.

6.3.12 The Applicant accepted the proposals and reflected them in its draft DCO at Deadline 4 [D4-004].

6.3.13 Agreement between the Applicant and WMDC was recorded in a SoCG at Deadline 5 [D5-001/002].

6.3.14 ExA is satisfied that the draft DCO at Deadline 4 secures the necessary mitigation and control with regard to the provision of landscaping.

REQUIREMENT 8 - IMPLEMENTATION AND MAINTENANCE OF LANDSCAPING

6.3.15 See the commentary under Requirement 7 above for references to Requirement 8, for which the position is covered by that commentary.

6.3.16 ExA is satisfied that the draft DCO at Deadline 4 secures the necessary mitigation and control with regard to the implementation and maintenance of landscaping.

REQUIREMENT 13 - SURFACE AND FOUL WATER DRAINAGE

6.3.17 Section 4.34 *Water Quality and Resources* above summarises the examination with regard to surface and foul water drainage.

6.3.18 In its Relevant Representation [RR-18], the EA called for tighter wording to Requirement 13 to secure mitigation for potential pollution to surface water.

6.3.19 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that through the SoCG agreed between the EA and the Applicant [D1-013], amended wording of draft Requirement 13 had been agreed, and would be included in the revised draft of the DCO at Deadline 2, which it was [D2-003].

6.3.20 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to surface and foul water drainage.

REQUIREMENT 14 – FLOOD RISK

6.3.21 Section 4.20 *Flood Risk* above summarises the examination with regard to flood risk.

6.3.22 During the examination, the EA stated that, given that the flood risk detail was to be agreed by the EA and local planning authority, and was to be consistent with the principles and strategy set out in the Applicant's Flood Risk Assessment, further detail did not need to be included within Requirement 14.

6.3.23 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to flood risks.

REQUIREMENT 15 - CONTAMINATED LAND AND GROUNDWATER

6.3.24 Section 4.34 *Water Quality and Resources* above summarises the examination with regard to contaminated land and groundwater.

6.3.25 In its Relevant Representation [RR-18], the EA called for an extra requirement, Requirement 15, to secure mitigation with regard to potential pollution to groundwater due to contaminated land.

6.3.26 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that, subject to minor changes, it had adopted the wording proposed by the EA for Requirement 15, and that the wording was documented within a SoCG with EA [D1-013].

6.3.27 The agreed wording was included in the Applicant's revised draft DCO at Deadline 2 [D2-003].

6.3.28 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to contaminated land and groundwater.

REQUIREMENT 16 - ARCHAEOLOGY

6.3.29 Section 4.23 *Historic Environment* above summarises the examination, with regard to archaeological matters.

6.3.30 A SoCG [AD-095] between the Applicant and the WYAAS was tabled with the application.

6.3.31 The SoCG stated that it had been agreed that the Proposed Development would not have a significant effect upon any designated heritage assets or their settings, and that the Applicant must produce a written scheme of investigation in consultation with WYAAS for approval prior to the commencement of the Proposed Development.

6.3.32 The examination confirmed the fact that the SoCG remained agreed.

6.3.33 In the Applicant's revised draft DCO at Deadline 2 [D2-003], the Applicant amended the text of Requirement 16 to include details of the programme of archaeological investigation work that had to be produced, consulted with WYAAS and approved by the planning authority before the authorised development could commence.

6.3.34 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to archaeology.

REQUIREMENT 17 - BIODIVERSITY ENHANCEMENT AND MANAGEMENT PLAN

6.3.35 Section 4.12 *Biodiversity, Biological Environment, Ecology and Geological Conservation* above summarises the examination with regard to biodiversity enhancement and management.

6.3.36 NE stated its overall position to be that it had no objection to the project, since there were no European designated sites, Ramsar sites or nationally designated landscapes located within the vicinity of the

project that could be significantly affected, and the project was unlikely to have a significant impact on the nearby Fairburn & Newton Ings Site of Special Scientific Interest. NE also stated that the Proposed Development site currently supported habitats of negligible ecological interest and all issues relating to protected species had already been addressed. NE welcomed the Biodiversity Enhancement and Management Plan as secured through proposed Requirement 17.

6.3.37 The YWT expressed concerns in a number of areas and challenged data presented in the application. During the examination, these concerns were explored, and agreement was reached between the Applicant and YWT, subject to the amendment of the landscaping and biodiversity strategies and the commitment to engage with YWT during the finalisation of any detailed landscaping scheme.

6.3.38 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to biodiversity enhancement and management.

REQUIREMENT 18 - CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN

6.3.39 Requirement 18 secures the fact that the authorised development may not commence until a CEMP has been submitted to and, after consultation with SDC, approved by the planning authority.

6.3.40 Requirement 18 has been amended through the examination to include measures for:

- the protection of any statutory protected species found to be present on the Order land during construction
- the mitigation measures included in Chapter 9 of the Environmental Statement
- incorporation of a scheme for handling complaints received from local residents, businesses and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.

6.3.41 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the CEMP.

REQUIREMENT 19 – CONSTRUCTION TRAFFIC ROUTEING AND MANAGEMENT PLAN

6.3.42 Section 4.32 *Traffic and Transport* above summarises the examination with regard to various aspects relating to traffic and transport:

- Baseline Conditions
- Construction Traffic

- Operational Traffic
- Travel Plan for Operational Staff
- Worst Case Calorific Values for Transported Fuel
- Sustainable Fuel Transport Management Plan
- Road Classifications
- Mitigation Measures Secured Outside of the FM2 DCO
- Royal Mail Collection, Transport and Delivery
- Impact on the Rail Network.

6.3.43 Mitigation measures described in Chapter 7 of the ES would be secured by Requirement 19 as well as Requirements 32-35 in the draft DCO.

6.3.44 Requirement 19 secures the development of a Construction Traffic Routeing and Management Plan before the Proposed Development may commence. In the Applicant's revised draft DCO submission at Deadline 2 [D2-003], the Applicant included a new clause 19(3)(g) *"details of a co-ordinator to be appointed to manage and monitor the implementation of the plan, including date of appointment, responsibilities and hours of work"*.

6.3.45 The Applicant stated that Requirement 19 had been agreed with WMDC and that this agreement was documented in the SoCG [D5-001/002] submitted for Deadline 5.

6.3.46 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the Construction Traffic Routeing and Management Plan.

REQUIREMENT 20 – CONSTRUCTION HOURS

6.3.47 Section 4.27 *Noise and Vibration* above summarises the examination with regard to noise and vibration during construction hours.

6.3.48 As a result the Applicant revised the wording of Requirement 20, as well as Requirements 18 *CEMP* and 23 *Control of Noise During Construction*.

6.3.49 These revised requirements now secure more provisions for:

- consultation on plans and schemes with local authorities
- corrective action in relation to substantiated complaints relating to emissions of noise
- noise level limits
- revised construction hours
- provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise.

6.3.50 With noise mitigations and controls secured through amended Requirements 18, 20 and 23 of the revised draft DCO to the satisfaction of the planning authority that will have to enforce them,

and with the EA controlling the Environmental Permit in which these matters will be examined in more detail, ExA is satisfied that the necessary controls with regard to construction hours are in place.

REQUIREMENT 21 – PILING AND PENETRATIVE FOUNDATION DESIGN

6.3.51 In the EA's Relevant Representation [RR-18], EA requested amendments to Requirement 21 to ensure that a relevant risk assessment was undertaken prior to the commencement of the development to secure mitigation for groundwater risks.

6.3.52 In Q2.18 to the ExA's first questions [PrD-05], ExA asked the Applicant what its response was to the EA's recommended amendments to DCO Requirement 21.

6.3.53 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that, subject to minor changes, it had adopted the wording proposed by the EA for Requirement 21, and that the wording was documented within a SoCG with the EA [D1-013]. This was confirmed in the EA's submission at Deadline 1 [D1-006].

6.3.54 The agreed wording was included in the Applicant's revised draft DCO at Deadline 2 [D2-003].

6.3.55 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to piling and penetrative foundation design.

REQUIREMENT 23 (ORIGINALLY 22) - CONTROL OF NOISE DURING CONSTRUCTION

6.3.56 Section 4.27 *Noise and Vibration* above summarises the examination with regard to noise and vibration control.

6.3.57 As a result, the Applicant amended draft Requirement 23 to secure more consultation and a tighter programme of noise monitoring during the construction of the Proposed Development.

6.3.58 See also Requirement 20 *Construction Hours* above, where other aspects of noise control are secured.

6.3.59 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the control of noise during construction.

REQUIREMENT 24 (ORIGINALLY 23) - CONTROL OF OPERATIONAL NOISE

6.3.60 Section 4.27 *Noise and Vibration* above summarises the examination with regard to the control of operational noise.

6.3.61 As a result, the Applicant introduced a new Requirement 24 *Control of Operational Noise* to secure a mechanism by which to monitor and control noise generated by the authorised development during its operational phase.

6.3.62 See also the commentary on Article 18: *Defence to Proceedings in Respect of Statutory Nuisance* above.

6.3.63 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the control of operational noise.

REQUIREMENTS 25-28 (ORIGINALLY 24-27) - CONTROL OF ODOUR, DUST, SMOKE AND STEAM EMISSIONS

6.3.64 Section 4.19 *Dust and Other Potential Nuisance* above summarises the examination with regard to the control of emissions.

6.3.65 Requirements 25-28 secure the fact that the authorised development may not be commissioned until a scheme for the management and mitigation of odour, dust, smoke and steam emissions, respectively, has been submitted to and, after consultation with SDC, approved by the planning authority.

6.3.66 The requirement to consult with SDC was added during the examination.

6.3.67 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the control of emissions.

REQUIREMENT 32 (ORIGINALLY 31) - OPERATIONAL TRAFFIC ROUTEING AND MANAGEMENT PLAN

6.3.68 Section 4.32 *Traffic and Transport* above summarises the examination with regard to various aspects relating to traffic and transport routeing and management, including the Operational Traffic Routeing and Management Plan:

- Baseline Conditions
- Construction Traffic
- Operational Traffic
- Travel Plan for Operational Staff
- Worst Case Calorific Values for Transported Fuel
- Sustainable Fuel Transport Management Plan

- Road Classifications
- Mitigation Measures Secured Outside of the FM2 DCO
- Royal Mail Collection, Transport and Delivery.

6.3.69 Mitigation measures described in Chapter 7 of the ES would be secured by draft Requirement 32, as well as other requirements in the draft DCO [D4-004].

6.3.70 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the Operational Traffic Routeing and Management Plan.

REQUIREMENT 33 (ORIGINALLY 32) - TRAVEL PLAN: OPERATIONAL STAFF

6.3.71 Section 4.32 *Traffic and Transport* above summarises the examination with regard to various aspects relating to traffic routeing and management, including the Travel Plan for Operational Staff.

6.3.72 Mitigation measures described in Chapter 7 of the ES would be secured by draft Requirement 33 in the draft DCO.

6.3.73 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the travel plan for operational staff.

REQUIREMENT 35 (ORIGINALLY 34) - SUSTAINABLE FUEL TRANSPORT MANAGEMENT PLAN

6.3.74 Section 4.32 *Traffic and Transport* above summarises the examination with regard to various aspects relating to the traffic and transport routeing and management, including Sustainable Fuel Transport and Management.

6.3.75 Mitigation measures described in Chapter 7 of the ES would be secured by Requirement 35 in the draft DCO.

6.3.76 Requirement 35 was significantly amended as a result of the examination to include:

- a requirement for the undertaker to conduct an assessment of the costs of upgrading the existing wharf facility at the Ferrybridge Power Station site, including a description of the refurbishment work required and a breakdown of the costs of that work
- Every five years during the operation of the authorised development, the undertaker must periodically carry out an appraisal of the viability of upgrading the existing wharf facility in the context of the evaluation of the potential for fuel and ash transportation by water.

6.3.77 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the *Sustainable Fuel Transport and Management Plan*.

REQUIREMENT 37 (ORIGINALLY 36) - AIR QUALITY: EMISSIONS REDUCTION

6.3.78 Section 4.11 *Air Quality and Emissions* above summarises the examination with regard to air quality emissions reduction:

- Potential impacts arising from emissions and air pollution
- Emission levels
- Cumulative and combined effects
- Operation of diesel generators
- FM2 and FM1 construction timings.

6.3.79 The design of the Proposed Development includes embedded mitigations, and emissions reductions are further secured through draft DCO Requirement 37, which was amended for clarity during the examination.

6.3.80 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to air quality emissions reduction.

REQUIREMENT 38 (ORIGINALLY 37) - AIR QUALITY MONITORING

6.3.81 Section 4.11 *Air Quality and Emissions* above summarises the examination with regard to air quality emissions monitoring:

- Use of FM1 air quality monitoring information
- Justification for the absence of background monitoring data
- Assumptions for construction traffic.

6.3.82 The design of the Proposed Development includes embedded mitigations, and emissions reductions are further secured through draft DCO Requirement 38, which includes the need for the Applicant to develop a scheme of air quality monitoring to be submitted to and, after consultation with SDC, approved by the planning authority.

6.3.83 Requirement 38 was significantly amended during the examination to:

- provide clarity on when the monitoring measurements will be made
- allow the planning authority to give notice to the undertaker that the scheme is to be extended for the period specified in the notice
- ensure that the undertaker provides a report each year to the planning authority within 3 months after the final measurement made in that year.

6.3.84 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to air quality emissions monitoring.

REQUIREMENT 43 (ORIGINALLY 42) - DECOMMISSIONING

6.3.85 In WMDC's submission at Deadline 1, WMDC stated that it had no evidence or reason to believe that the Applicant could not meet the required costs of decommissioning and clean up. However, WMDC stated that Requirement 43 (originally 42) should include a subsection specifying that all decommissioning costs would be met by, and were the responsibility of, the landowner and/or operator of the plant.

6.3.86 In the Applicant's submission at Deadline 2 [D2-002/D2-006], the Applicant's response was that this was not necessary.

6.3.87 In the ExA's Agenda Item 19 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant and WMDC to state their positions re WMDC's proposal to include a subsection (6) to Requirement 43 relating to decommissioning responsibility.

6.3.88 In WMDC's submission at Deadline 4 [D4-010], WMDC re-stated its position that the requirement should be amended to cover decommissioning costs.

6.3.89 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that Requirement 43 within the revised draft DCO had been amended to make clear that the undertaker must implement the decommissioning scheme as approved and was responsible for the costs of the decommissioning works.

6.3.90 Requirement 43 in the draft DCO at Deadline 4 reflects this position.

6.3.91 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to decommissioning.

REQUIREMENT 48 - EMPLOYMENT, SKILLS AND TRAINING PLAN

6.3.92 Section 4.31 *Socio-Economic Impacts* above summarises the examination with regard to socio-economic matters, including the Employment, Skills and Training Plan.

6.3.93 As a result of dialogue during the examination, the Applicant added Requirement 48 to the draft DCO at Deadline 4 [D4-004 to D4-007]. Under this requirement, Work No. 1 may not commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to and approved by the planning authority. The approved plan must be implemented and maintained during the construction and operation of Work No. 1.

6.3.94 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the Employment, Skills and Training Plan.

6.4 SCHEDULE 7: PROCEDURES FOR APPROVALS

6.4.1 In the Applicant's first draft DCO [AD-006], the Applicant sought to impose unusual and limited response times on both the Local Planning Authority and Planning Inspectorate/Secretary of State. This was an attempt to substitute the appeal provisions of ss.72, 78 and 79 from the Town and Country Planning Act 1990 for Article 19 and Schedule 7, given that this is the usual approach in DCOs.

6.4.2 In Q2.8 of the ExA's first questions [PrD-05], ExA asked the Applicant to justify why these timeframes had been specified, bearing in mind that recent DCO's that had been made (e.g. Daventry International Rail Freight Terminal) had emphasised that it is generally inappropriate for an Order as secondary legislation to amend primary legislation in such matters. ExA also asked WMDC to state whether it had any concerns over these timescales.

6.4.3 In WMDC's submission at Deadline 4 [D4-010], WMDC proposed alternative response times for some of its actions.

6.4.4 In the Applicant's submission at Deadline 4 [D4-009], the Applicant cited precedents for bespoke response times

6.4.5 In the Applicant's submission at Deadline 5 [D5-003], the Applicant submitted a further response and accepted WMDC's proposed response times of 5 business days at clause 3(2)(a) and (c). The revised draft DCO submitted for Deadline 4 [D4-004] did not incorporate these agreed amendments on the timescales since the agreement was reached after Deadline 4.

6.4.6 The Applicant therefore asked the ExA to make these changes to the draft DCO, which ExA has done in the draft DCO at Appendix A to this document.

6.4.7 The Applicant rejected WMDC's proposed 35 business days instead of the Applicant's 18 business days for clause 3(2)(b) on the grounds that it was a reasonable and achievable period for consultees to notify the planning authority that further information was required in respect of a requirement that they had been consulted upon.

6.4.8 This remained a matter that had not been agreed in the SoCG between the Applicant and WMDC [D5-001/002] at the closure of the examination.

6.4.9 ExA's considered opinion is that 18 business days is indeed adequate for 3(2)(b) and this is therefore unchanged in the draft DCO at Appendix A.

6.4.10 Schedule 7 Paragraph 5(5) of the draft DCO similarly imposes a response time on the Secretary of State. The ExA considers that 10 business days is an unreasonably short period for the SoS to appoint a person to determine the appeal, and therefore that the DCO should be amended to require this to be done “as soon as reasonably practicable”. However, the SoS may wish to consider whether it is appropriate to impose a suitable fixed period instead.

6.5 CONCLUSION

6.5.1 In view of all of the above points, ExA concludes that the final draft DCO at Appendix A is appropriate in relation to the proposal, with the possible exception of the point raised under Section 6.4.10 above. ExA therefore recommends that, should consent be given, the Order is made in the form set out in Appendix A.

7 SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATION

7.0 INTRODUCTION

7.0.1 In coming to his overall conclusion, ExA has had regard to the relevant National Policy Statements, local impact reports submitted during the examination, all prescribed matters and all matters that ExA considered were important and relevant to this application.

7.1 FINDINGS AND CONCLUSIONS

7.1.1 Chapter 3 *Legal and Policy Context* outlines the legal and policy context that ExA considers applies to this application.

7.1.2 Chapter 4 *Findings and Conclusions in Relation to Policy and Factual Issues* draws out ExA's findings and conclusions for each of the areas of the examination.

7.1.3 Chapter 5 *The Examining Authority's Conclusion on the Case for Development Consent* summarises each of the topics in Chapter 4 to distil the case for development consent.

7.1.4 Chapter 6 *Draft Development Consent Order* explains the steps leading to the draft DCO in the final form tabled by the Applicant at Deadline 4 [D4-004] and ExA in Appendix A to this document.

7.1.5 ExA has concluded and recommended that if the development consent is granted as recommended, then the order should be made in the form set out in Appendix A. In coming to this view, ExA has taken into account all of the matters raised in the representations and considers that there is no other reason that would lead him to a different conclusion. The draft DCO contains 49 requirements, which will secure a range of conditions relating to the Proposed Development, as agreed by the Applicant as a result of the examination.

7.1.6 In relation to s.104 of the Planning Act 2008, ExA further concludes:

(a) that making the recommended DCO would be in accordance with relevant NPSs and in particular EN-1
(b) that in consideration of the other exceptions referred to in s.104 of the Planning Act 2008, ExA finds no reason on the matters before him to demonstrate that deciding the application in accordance with the relevant NPSs would: lead to the United Kingdom being in breach of its international obligations; lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment; or, be otherwise unlawful by virtue of any enactment.

7.1.7 Other consents would be required, notably the Environmental Permit, but, from the SoCG and other submitted evidence, there is no reason,

at this stage, to suggest that these consents would not be granted, as required.

7.2 RECOMMENDATION

7.2.1 Therefore, ExA recommends that, for the reasons set out in the above report, the Secretary of State makes the Ferrybridge Multifuel 2 Power Station Order, as set out in Appendix A to this document.

APPENDIX A

RECOMMENDED DEVELOPMENT CONSENT ORDER

STATUTORY INSTRUMENTS

2015 No. 9999

INFRASTRUCTURE PLANNING, ENGLAND

The Ferrybridge Multifuel 2 (FM2) Power Station Order 2015

Made - - - - [*date*]

Coming into force - - [*date*]

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An application was made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**a**) made under section 37 of the Planning Act 2008(**b**) for an Order under sections 114, 115, 120, 122 and 140 of that Act.

The application was examined by an Examining authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the Planning Act 2008.

The Examining authority, having examined the application with the documents that accompanied it and the objections made and not withdrawn, has made a recommendation to the Secretary of State.

The Secretary of State, having considered the recommendation of the Examining authority, has decided to make an Order granting development consent for the development described in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122 and 140 of the Planning Act 2008, makes the following Order:

(**a**) S.I. 2009/2264.
(**b**) 2008 c. 29.

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Ferrybridge Multifuel 2 (FM2) Power Station Order 2015.

(2) This Order comes into force on [*date*].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1971 Act" means the Banking and Financial Dealings Act 1971(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1989 Act" means the Electricity Act 1989(**d**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**e**);

"the 2008 Act" means the Planning Act 2008;

"the 2010 Regulations" means the Environmental Permitting (England and Wales) Regulations 2010(**f**);

"the authorised development" means the development and associated development described in Schedule 1 (the authorised development);

"building" includes any structure or erection or any part of a building, structure or erection;

"business day" means any day except—

(a) Christmas Day;

(b) Good Friday;

(c) a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

(d) any other day that is a Saturday or a Sunday;

"carriageway" has the same meaning as in the 1980 Act;

"the environmental statement" means the environmental statement (including the figures and appendices) submitted with the application for this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order under article 23;

"the FM1 Power Station " means the Ferrybridge Multifuel 1 (FM1) power station within the Ferrybridge Power Station site for which consent under section 36 of the Electricity Act 1989 was granted in October 2011;

"heavy goods vehicle" means a motor vehicle constructed or adapted to carry or to haul goods of more than 3.5 tonnes in weight;

"highway" has the same meaning as in the 1980 Act;

"highway authority" has the same meaning as in the 1980 Act;

"light goods vehicle" means a motor vehicle constructed or adapted to carry or to haul goods of not more than 3.5 tonnes in weight;

(**a**) 1961 c. 33.
(**b**) 1971 c. 80.
(**c**) 1980 c. 66.
(**d**) 1989 c. 29.
(**e**) 1991 c. 22.
(**f**) S.I. 2010/675.

"maintain" includes (i) inspect, repair, adjust, alter, clear, improve, refurbish, reconstruct and decommission and (ii) in relation to a part (but not the whole) of the authorised development, remove, demolish or replace; and "maintenance" and other cognate expressions are to be construed accordingly;

"the Order land" means the land which is within the Order limits;

"the Order limits" means the limits, shown by the red line boundary on the Order plan, within which the authorised development may be carried out;

"the Order plan" means the document certified as the Order plan by the Secretary of State for the purposes of this Order under article 23;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**a**);

"a part" of the authorised development means any part of Works Nos. 1-4;

"the planning authority" means Wakefield Metropolitan District Council, as the planning authority for the area in which the Order land is situated;

"the requirements" means the requirements set out in Schedule 2 (the requirements); and a reference to a numbered requirement is a reference to the requirement imposed by the corresponding numbered paragraph of that Schedule;

"statutory undertaker" means any person falling within section 127(8) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"the undertaker" means Multifuel Energy Limited, a company incorporated under the Companies Acts (company number SC286672) and having its registered office at Inveralmond House, 200 Dunkeld Road, Perth PH1 3AQ; or (except in article 8(2)) any other person to whom the benefit, or any part of the benefit, of this Order may from time to time have been transferred or granted under article 8 (transfer of the benefit of this Order), to the extent of the relevant transfer or grant;

"the unnamed road" means the unnamed road to the east of and adjacent to the A1(M) which leads northwards from Stranglands Lane to the western boundary of Work No. 1A;

"waste derived fuel" means fuel derived from (i) processed municipal solid waste, (ii) commercial and industrial waste or (iii) waste wood;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"the works plans" means the documents certified collectively as the works plans by the Secretary of State for the purposes of this Order under article 23.

(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.

(3) A reference in this Order to a "grid reference" is a reference to the map co-ordinates on the National Grid used by the Ordnance Survey.

(4) 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 to be taken to be measured along that work.

(5) All references in this Order to grid references and heights above ordnance datum are to be construed subject to the tolerances to which Ordnance Survey measures them.

(6) A reference in this Order to a "Work" identified by a number is a reference to the Work of that number described in Schedule 1 and shown on the works plans.

(**a**) 1981 c. 67.

Electronic communications

3.—(1) In this Order—

(a) references to documents, maps, plans, drawings, certificates or other documents, or to copies, include references to them in electronic form;

(b) references to a form of communication being "in writing" include references to an electronic communication that satisfies the conditions in paragraph (3); and "written" and other cognate expressions are to be construed accordingly.

(2) If an electronic communication is received outside the recipient's business hours, it is to be taken to have been received on the next business day.

(3) The conditions are that the communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(4) For the purposes of paragraph (3)(b), a communication is legible in all material respects if the information contained in it is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form.

(5) In this article "electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000(**a**).

PART 2

PRINCIPAL POWERS

Development consent granted by this Order

4. Subject to the provisions of this Order (including the requirements), the undertaker is granted development consent for the authorised development.

Limits of deviation

5.—(1) In carrying out the authorised development the undertaker may deviate laterally from the lines, situations or building outlines shown on the works plans and sheet 1 of the indicative layout—

(a) in such a way as to reduce the size of the relevant part of the authorised development, to such extent as the undertaker considers necessary or expedient;

(b) in such a way as to increase the size of the relevant part of the authorised development, to the maximum extent of the limits of deviation shown on the relevant document.

(2) Paragraph (1) is subject to the following exceptions—

(a) the centre point of the emissions stack comprised in Work No. 1A must be at grid reference 447250 425345;

(b) the north-west corner of the cooling system comprised in Work No. 1A must be at grid reference 447226 425285;

(c) the width and length of each building comprised in the authorised development and listed in Schedule 3 (maximum building dimensions) must not exceed the maximum width or length for that building specified in that Schedule; and

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(**a**) 2000 c. 7.

(d) the width and length of each building comprised in the authorised development and listed in Schedule 4 (minimum building dimensions) must not be less than the minimum width or length for that building specified in that Schedule.

(3) In carrying out the authorised development the undertaker may deviate vertically from the levels shown on sheet 2 of the indicative layout, in such a way as to reduce or increase the size of the relevant part of the authorised development, to such extent as the undertaker considers necessary or expedient.

(4) Paragraph (3) is subject to the following exceptions—

(a) the height of the emissions stack comprised in Work No. 1A must be 136 metres above ordnance datum (Newlyn);

(b) the height of each building comprised in the authorised development and listed in Schedule 3 (maximum building dimensions) must not exceed the maximum height for that building specified in that Schedule;

(c) the height of each building comprised in the authorised development and listed in Schedule 4 (minimum building dimensions) must not be less than the minimum width or length for that building specified in that Schedule; and

(d) each part of the authorised development, apart from piling works, must be at least 1 metre above the relevant groundwater table level.

(5) In this article—

the "indicative layout" means the document certified as the indicative generating station site layout, elevation and sections plan – concept layout by the Secretary of State for the purposes of this Order under article 23;

"the relevant groundwater table level" means, in relation to each part of the authorised development, the level of the groundwater table in the land on which it is proposed to construct that part, as established pursuant to requirement 6 (pre-development groundwater table level survey).

Authorisation of the construction and operation of the electricity generating station

6.—(1) In accordance with section 140 of the 2008 Act, the undertaker is authorised to construct and operate the electricity generating station comprised in Work No. 1.

(2) Paragraph (1) does not relieve the undertaker of any obligation other than under section 36 of the 1989 Act to obtain a permit, licence or other authorisation for the purposes of constructing or operating an electricity generating station.

Power to maintain the authorised development

7.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order (including the requirements), or an agreement made under this Order, provides otherwise.

(2) Paragraph (1) does not authorise any works—

(a) not assessed in the environmental statement, or

(b) which would result in the authorised development varying from the description in Schedule 1.

Transfer of the benefit of this Order

8.—(1) Where paragraph (3) applies, the undertaker may—

(a) transfer to another person ("the transferee") all or any part of the benefit of the provisions of this Order and such related statutory rights as may be agreed 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 and such related statutory rights as may be agreed between the undertaker and the lessee.

(2) 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.

(3) This paragraph applies where—

(a) the Secretary of State consents in writing to the proposed transfer or grant;

(b) the proposed transfer or grant—

(i) is to a person who is a street authority, and

(ii) is a transfer or grant of only the benefit of article 9 (street works) and related statutory rights; or

(c) the proposed transfer or grant—

(i) is to a person who holds a transmission licence or a distribution licence under section 6 of the 1989 Act, and

(ii) is a transfer or grant of the benefit of the Order only to the extent necessary for that person to operate the connection to the electricity grid network comprised in Work No. 2.

PART 3

SUPPLEMENTARY POWERS

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of the streets specified in Schedule 5 (streets subject to street works) as is within the Order limits and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) tunnel or bore under the street;

(c) place apparatus in the street;

(d) maintain apparatus in the street or change its position;

(e) execute any works required for or incidental to any works referred to in subparagraphs (a), (b), (c), and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of section 48(3) (streets, street works and undertakers) and section 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

Access to works

10. The undertaker may, for the purposes of the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the location specified in Schedule 6 (access to works); and

(b) with the approval of the planning authority after consultation with the highway authority, form and lay out such other means of access, or improve 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

11.—(1) The street authority and the undertaker may enter into an agreement with respect to the carrying out of any of the works referred to in article 9(1) (street works).

(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 the street authority specifying a reasonable time for the completion of the works;

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Discharge of water

12.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out 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 of the Water Industry Act 1991(**a**) (right to communicate with public sewers).

(3) The undertaker may not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose but may not be unreasonably withheld.

(4) The undertaker may 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 such approval may not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker may not, in carrying out or maintaining any works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) 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.

(7) This article does not authorise a water discharge activity prohibited by regulation 12 of the 2010 Regulations.

(8) In this article—

"public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(**b**), an internal drainage board, a joint planning board, a local authority, a National Park authority, a sewerage undertaker or an urban development corporation;

"water discharge activity" has the same meaning as in the 2010 Regulations;

other expressions, excluding "watercourse", used both in this article and in the Water Resources Act 1991(**c**) have the same meanings as in that Act.

Authority to survey and investigate the land

13.—(1) The undertaker may, for the purposes of this Order, enter on any land within the Order limits or which may be affected by the authorised development and—

(**a**) 1991 c. 56.
(**b**) 1964 c. 40.
(**c**) 1991 c. 57.

(a) survey or investigate the land;

(b) without prejudice to the generality of subparagraph (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 prejudice to the generality of subparagraph (a), carry out ecological or archaeological investigations on such land;

(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 when entering the land, produce written evidence of his or her authority to do so;

(b) may take with him or her such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

(a) in land located within the highway boundary, without the consent of the highway authority;

(b) in a private street, without the consent of the street authority.

(5) A consent for the purpose of paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.

(6) The undertaker must compensate any owner or occupier of land who sustains loss or damage by reason of the exercise of the authority conferred by this article for that loss or damage.

(7) Any compensation payable under paragraph (6) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

Felling or lopping of trees

14.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes that it is 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;

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker may not cause unnecessary damage to a tree or shrub.

(3) The undertaker must compensate any person who sustains loss or damage by reason of the exercise of the authority conferred by this article for that loss or damage.

(4) Any compensation payable under paragraph (3) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

Rights under or over streets

15.—(1) The undertaker may enter on and appropriate 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 and may use the subsoil or airspace for those purposes or 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) does not apply in relation to—

(a) a subway or underground building;

(b) a 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 (6), the undertaker must compensate any owner or occupier of land appropriated under paragraph (1) who sustains loss by reason of that appropriation for that loss.

(5) Any compensation payable under paragraph (4) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) Compensation is not payable under paragraph (4) to a person who is an undertaker to which section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Statutory undertakers

16.—(1) The undertaker may extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers shown on the land plan and described in the book of reference.

(2) In paragraph (1), "the land plan" and "the book of reference" mean the documents respectively certified as such by the Secretary of State for the purposes of this Order under article 23.

Recovery of costs of new connections

17.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 16 (statutory undertakers), 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 16 (statutory undertakers), any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer, or

(b) the owner of a private sewer which communicated with that sewer,

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 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 has no effect in relation to apparatus to which Part 3 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**);

"public utility undertaker" has the same meaning as in the 1980 Act.

(**a**) 2003 c. 21.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance constituted by noise emitted from premises

18.—(1) Paragraph (2) applies where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act.

(2) No order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—

(i) in accordance with a notice served under section 60 of the Control of Pollution Act 1974(**b**) (control of noise on construction site),

(ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site) or section 65 of that Act (noise exceeding registered level), or

(iii) in compliance with requirement 20 (construction hours), requirement 23(3) (British Standards) or the programme approved under requirement 23(1) (programme for the monitoring and control of construction noise);

(b) relates to premises used by the undertaker for the purposes of or in connection with the operation of the authorised development and is attributable to that operation in compliance with the programme approved under requirement 24(1) (programme for the monitoring and control of operational noise); or

(c) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do 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.

Procedures for approvals etc. required by the requirements

19. Schedule 7 (procedures for approvals etc. required by the requirements) has effect in relation to each approval, consent and agreement required by the requirements.

Removal of human remains

20.—(1) Before the undertaker carries out any development or works which it has reason to think will or may disturb any human remains in the Order land it must remove those remains, or cause them to be removed, from the Order land in accordance with the following provisions of this article.

(2) Before any such remains are removed the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

(**a**) 1990 c. 43.
(**b**) 1974 c. 40.

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to Wakefield Metropolitan District Council.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of a deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of his or her intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4) and the remains in question can be identified, that person may cause the remains to be—

(a) removed and re-interred in a burial ground or cemetery in which burials may legally take place, or

(b) removed to, and cremated in, a crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of a deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land, or

(b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days, or

(c) within 56 days after an order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains, or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article the undertaker must send—

(a) a certificate of re-interment or cremation to the Registrar General, giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) to Wakefield Metropolitan District Council.

(11) The removal of the remains of a deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(**a**) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

Application of landlord and tenant law 21.—

(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the authorised development;

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as the agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of an agreement to which this article applies.

(3) No enactment or rule of law regulating the rights and obligations of landlords and tenants applies in relation to the rights and obligations of the parties to any lease granted by or under an agreement to which this article applies so as to—

(a) exclude or in any respect modify any of the rights or obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(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 Town and Country Planning Act 1990

22. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990(**b**) (cases in which land is to be treated as operational land for the purposes of that Act).

Certification of documents

23.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State a copy of each of the documents submitted with the application for this Order and listed in paragraph (2), for certification that it is a true copy of the document.

(2) The documents are—

(a) the biodiversity strategy;

(b) the book of reference;

(c) the combined heat and power assessment;

(d) the design and access statement;

(e) the environmental statement, including the figures and appendices;

(**a**) 1857 c. 81.
(**b**) 1990 c. 8.

(f) the grid connection statement;
(g) the indicative generating station site layout, elevations and sections – concept layout;
(h) the indicative landscaping plan;
(i) the land plan;
(j) the landscaping strategy;
(k) the lighting strategy;
(l) the Order plan;
(m) the statement of engagement of section 79(1) of the Environmental Protection Act 1990;
(n) the statement of reasons;
(o) the works plans.

(3) A document certified in accordance with paragraph (1) is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

24. Any dispute under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator agreed between the parties or, failing agreement, appointed on the application of either party (after giving notice in writing to the other) by the President of the Law Society of England and Wales.

Signed by authority of the Secretary of State

Name
Address — Parliamentary Under Secretary of State
Date — Department

SCHEDULES

SCHEDULE 1

Article 2

THE AUTHORISED DEVELOPMENT

Nationally significant infrastructure project

The construction and operation of a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, comprising:

Work No. 1 – an onshore electricity generating station located on land at the Ferrybridge Power Station site, north-west of Knottingley, West Yorkshire, with a nominal gross electrical capacity of up to 90MWe, fuelled primarily by waste derived fuels and comprised of the following works:

Work No. 1A – the generating station and its main process area, including:

(a) fuel reception and storage facilities, consisting of a tipping hall and vehicle ramps, shredder, fuel storage bunker and crane;

(b) a combustion system housed within a boiler hall comprising two combustion lines and associated boilers;

(c) a steam turbine and generator housed within a turbine hall;

(d) a bottom ash handling system, including storage bunker and ash collection bay;

(e) a flue gas treatment system, including residue and reagent storage silos and tanks;

(f) an emissions stack and associated emissions monitoring systems;

(g) a cooling system comprising an air cooled condenser;

(h) a compressed air system;

(i) diesel storage tanks;

(j) a process effluent storage tank;

(k) a demineralised water treatment plant;

(l) fire water tank and fire protection facilities;

(m) up to two auxiliary diesel generators each of up to 4MWe output;

(n) pipe racks and pipe runs;

(o) an electrical switchyard, including circuit breaker and transformer;

(p) a control and administrative building;

(q) a workshop building; and

(r) hardstandings, internal vehicular access roads, vehicle turning, waiting and parking areas and pedestrian and cycle facilities and routes.

Work No. 1B – in connection with and in addition to Work No. 1A, supporting buildings, works and areas, including:

(a) a vehicular access road, level crossing and pedestrian and cycle facilities and routes;

(b) security gatehouses and barriers;

(c) up to four weighbridges;

(d) a heavy goods vehicle holding area;

(e) an external fuel container storage area;

(f) vehicle parking;

(g) an outage contractor compound; and

(h) a surface water attenuation pond and surface water drainage connection and pipework to Fryston Beck.

Work No. 1C – in connection with and in addition to Work No. 1A, further supporting works, including a towns mains water connection and pipework to Stranglands Lane.

Shown on works plan sheet 2.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1, comprising:

Work No. 2 – a connection to the electricity grid network, including, where required, modification works to existing grid connection infrastructure consisting of one only of the following options:

> *Work No. 2A* – an underground electrical connection running south-west from Work No. 1A and to the north and west of the FM1 Power Station and connecting with the substation associated with the FM1 Power Station to the south-west of the FM1 Power Station.
>
> *Work No. 2B* – an underground electrical connection running north-east from Work No. 1A and connecting to the National Grid substation on the former Ferrybridge 'B' Power Station site.
>
> *Work No. 2C* – an underground electrical connection running north-east from Work No. 1A and connecting to a new substation (including circuit breaker, transformer and switch yard), to be constructed to the east of Work No. 1A and connected to the existing 132kV underground cables to the east.

Shown on works plan sheet 3.

Work No. 3 – improvements to an existing access road known as the unnamed road, running from the south-west of Work No. 1A, south and to the west of the FM1 Power Station, to provide pedestrian access and an alternative vehicular access for cars and light goods vehicles, including widening, resurfacing, drainage, lighting, fencing and a security gatehouse;

Shown on works plan sheet 4.

Work No. 4 – a foul water connection, consisting of one only of the following options:

> *Work No. 4A* – an underground pipe running from the south-west corner of Work No. 1A and to the west of the FM1 Power Station connecting to an existing private foul water system to the south of the FM1 Power Station.
>
> *Work No. 4B* – an underground pipe running from the south-east corner of Work No. 1A and south-east and south along Kirkhaw Lane connecting to an existing public foul water system.

Shown on works plan sheet 5.

In connection with and in addition to Works Nos. 1, 2, 3 and 4 and to the extent that it does not otherwise form part of those Works, further associated development including:

(a) external lighting;

(b) fencing, boundary treatment and other means of enclosure;

(c) signage;

(d) CCTV and other security measures;

(e) surface and foul water drainage facilities;

(f) potable water supply;

(g) new telecommunications and utilities apparatus and connections;

(h) hard and soft landscaping;

(i) biodiversity enhancement measures;

(j) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;

(k) works for the protection of buildings and land affected by the authorised development;

(l) 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;

(m) establishment of temporary construction compounds, vehicle parking areas, materials storage and laydown areas, construction related buildings, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities;

and, to the extent that it does not form part of such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

Article 2

THE REQUIREMENTS

Commencement of the authorised development

1.—(1) The authorised development must commence within five years of the date on which this Order comes into force.

(2) The authorised development may not commence unless the undertaker has given the planning authority 14 days' notice of its intention to commence the authorised development.

Commercial use

2. The authorised development may not be brought into commercial use unless the undertaker has given the planning authority 28 days' notice of its intention to commence commercial use of the authorised development.

Fuel type

3.—(1) Only fuel of a type specified in the environmental permit may be combusted in the boilers of the authorised development.

(2) Except for purposes of the start-up or support firing of a boiler, only waste derived fuel may be combusted in the boilers of the authorised development.

Detailed design

4.—(1) Work No. 1 may not commence until details of the following have been submitted to and approved by the planning authority—

(a) the siting, layout, scale and external appearance (including the colours, materials and surface finishes) of all new temporary and permanent buildings;

(b) the internal roads, ramps, turning facilities, parking, loading and unloading facilities, weighbridges, hardstandings and pedestrian and cycle facilities and routes;

(c) drainage, storage tanks and external lighting;

(d) finished ground and floor levels.

(2) Work No. 2 may not commence until notice of which one of Work No. 2A, Work No. 2B or Work No. 2C has been selected as the connection to the electricity grid network, including details of the design of the option selected, has been submitted to and approved by the planning authority.

(3) Work No. 3 may not commence until details of the following have been submitted to and approved by the planning authority—

(a) surfacing

(b) drainage;

(c) fencing;

(d) external lighting;

(e) pedestrian and cycle facilities and routes.

(4) Work No. 4 may not commence until notice of which one of Work No. 4A or Work No. 4B has been selected as the connection to the foul water system, including details of the design of the option selected, has been submitted to and approved by the planning authority.

(5) All details submitted and approved under subparagraph (1), (2), (3) or (4) must be in accordance with the design and scale parameters set out in chapter 3 of the environmental statement.

(6) The authorised development must be carried out in accordance with the approved details.

Design of fuel storage bunker

5.—(1) Work No. 1 may not commence until details of the design of the fuel storage bunker comprised in Work No. 1A have been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(2) The design of the fuel storage bunker must be informed by the results of the groundwater table level survey approved under requirement 6(1).

(3) The fuel storage bunker must be constructed in accordance with the approved details.

Pre-development groundwater table level survey

6.—(1) Work No. 1 may not commence until the undertaker has carried out the groundwater table level survey and the results of that survey have been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(2) In subparagraph (1), "the groundwater table level survey" means a survey which—

(a) is carried out within the three existing boreholes on the Order land shown in the Geotechnical Site Investigation Report in Appendix 13A to the environmental statement or within such other boreholes on the Order land as the planning authority, after consultation with the Environment Agency, may approve,

(b) is carried out over a period of 12 months, and

(c) establishes the groundwater table level at each of those locations.

Provision of landscaping

7.—(1) No part of the authorised development may be commissioned until a detailed landscaping scheme for that part has been submitted to and approved by the planning authority.

(2) Each scheme submitted and approved must include details of all proposed hard and soft landscaping works, including—

(a) the treatment of hard surfaced areas;

(b) earthworks, including the proposed levels and contours of landscaped areas;

(c) the seed mix for areas of grassland;

(d) tree and shrub planting, including the height, size and species and the density of distribution;

(e) the management of existing and new areas of grassland and tree and shrub planting;

(f) an implementation timetable for the phasing and completion of the landscaping works.

(3) Each scheme submitted and approved must be in accordance with the indicative landscaping plan, the biodiversity strategy and the biodiversity enhancement and management plan.

(4) In subparagraph (3), "the biodiversity enhancement and management plan" means the plan approved under requirement 17(1).

Implementation and maintenance of landscaping

8.—(1) All landscaping works must be carried out in accordance with the relevant landscaping scheme (including the implementation timetable) approved under requirement 7.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the 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.

(3) Any area of grassland planted as part of an approved landscaping scheme that, within a period of five years after planting, dies or becomes, in the opinion of the planning authority,

seriously damaged or diseased, must be reseeded in the first available planting season with the same seed mix as that originally planted.

(4) The undertaker must implement and maintain an annual landscaping maintenance plan during the construction, operation and decommissioning of the authorised development.

External lighting

9.—(1) No part of the authorised development may commence until a scheme for all temporary and permanent external lighting to be installed during the construction and operation of that part (except the aviation warning lighting required by virtue of requirement 44) has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) Each scheme submitted and approved must—

(a) include measures to minimise and otherwise mitigate any artificial light emissions during construction and operation of the authorised development;

(b) be in accordance with the lighting strategy.

(3) In subparagraph (2)(b), "the lighting strategy" means the document certified as the lighting strategy by the Secretary of State for the purposes of this Order under article 23.

(4) Each scheme must be implemented as approved.

Highway accesses

10.—(1) No part of the authorised development may commence until details of the siting, design and layout (including visibility splays and surfacing) of any new or modified permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, for that part have been submitted to and, after consultation with the relevant highway authorities, approved by the planning authority.

(2) The authorised development may not be brought into commercial use until all highway accesses have been constructed.

(3) The highway accesses must be constructed in accordance with the relevant approved details.

Fencing – A1(M)

11.—(1) The authorised development may not commence until details of the design and construction of any fencing on the boundary of the authorised development with the A1(M) have been submitted to and, after consultation with the Highways Agency, approved by the planning authority.

(2) The authorised development must be carried out in accordance with the approved details.

(3) The authorised development may not be brought into commercial use until the fencing has been completed.

Fencing and other means of enclosure

12.—(1) No part of the authorised development may commence until details of all proposed means of enclosure for that part have been submitted to and approved by the planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction of the authorised development.

(3) Any approved temporary means of enclosure must be removed within 12 months after the authorised development is brought into commercial use.

(4) The authorised development may not be brought into commercial use until any approved permanent means of enclosure has been completed.

(5) Each part of the authorised development must be carried out in accordance with the relevant approved details.

Surface and foul water drainage

13.—(1) No part of the authorised development may commence until details of the surface and foul water drainage systems (including means of pollution control, in accordance with the CEMP) for that part have been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(2) The details submitted and approved must be in accordance with the principles and strategy set out in Appendix 12A to the environmental statement.

(3) The surface and foul water drainage systems must be constructed in accordance with the relevant approved details.

(4) The authorised development may not be commissioned until the surface and foul water drainage systems have been constructed.

Flood risk mitigation

14.—(1) No part of the authorised development may commence until a scheme for the mitigation of flood risk during the construction and operation of that part has been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(2) Each scheme submitted and approved must be in accordance with the principles and strategy set out in Appendix 12A to the environmental statement.

(3) Each approved scheme must be maintained throughout the construction and operation of the relevant part of the authorised development.

Contaminated land and groundwater

15.—(1) No part of the authorised development may commence until a scheme to deal with the contamination of land (including groundwater) within the Order limits, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, for that part has been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(2) Each scheme submitted and approved under subparagraph (1)—

(a) must be in accordance with the principles set out in chapter 13 of, and the Geotechnical Site Investigation Report in Appendix 13A to, the environmental statement;

(b) may be included in the CEMP.

(3) Each scheme submitted and approved under subparagraph (1) must include an investigation and assessment report, prepared by a specialist consultant approved by the planning authority, to 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.

(4) Subparagraph (5) applies if, during the construction of any part of the authorised development, any contamination of land (including groundwater) which was not identified in the approved scheme for that part is found within the Order limits.

(5) Unless the planning authority agrees otherwise, no further construction of the relevant part of the authorised development may be carried out until a remediation scheme to deal with the contamination has been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(6) The authorised development, including any remediation, must be carried out in accordance with all approved schemes.

Archaeology

16.—(1) No part of the authorised development may commence until a programme of archaeological work for that part has been submitted to and, after consultation with West Yorkshire Archaeology Advisory Service, approved by the planning authority.

(2) Each programme submitted and approved must include—

(a) a written scheme of investigation;

(b) an assessment of significance and research questions;

(c) a programme and methodology for site investigation and recording;

(d) a programme for post-investigation assessment;

(e) arrangements to be made for—

(i) the analysis of site investigation and recording,

(ii) the publication and dissemination of the analysis and of the records of the site investigation, and

(iii) the archive deposition of the analysis and records;

(f) the nomination of a competent person or organisation to carry out works set out in the written scheme of investigation.

(3) Any field work must be carried out in accordance with the written scheme of investigation included in the approved programme.

(4) The authorised development may not be brought into commercial use until—

(a) the site investigation and post-investigation assessment provided for in the approved programme have been completed, and

(b) the arrangements referred to in subparagraph (2)(e) made under the approved programme have been implemented.

Biodiversity enhancement and management plan

17.—(1) The authorised development may not be commissioned until a biodiversity enhancement and management plan has been submitted to and, after consultation with Yorkshire Wildlife Trust, approved by the planning authority.

(2) The plan submitted and approved must—

(a) be in accordance with the survey results and mitigation and enhancement measures included in chapter 12 of the environmental statement, the biodiversity strategy and the indicative landscaping strategy;

(b) include an implementation timetable and details relating to maintenance and management.

(3) The plan must be implemented as approved.

Construction environmental management plan

18.—(1) The authorised development may not commence until a construction environmental management plan has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The plan submitted and approved must—

(a) be in accordance with the principles set out in chapters 7 to 16 of the environmental statement and the framework construction environmental management plan contained in Appendix 3A to the environmental statement;

(b) include measures for the protection of any protected species found to be present on the Order land during construction;

(c) include the mitigation measures included in chapter 9 of the environmental statement;

(d) incorporate a code of construction practice; and

(e) incorporate a scheme for handling complaints received from local residents, business and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.

(3) In subparagraph (2)(b), a "protected species" means a species protected under the Wildlife and Countryside Act 1981(**a**) or the Conservation of Habitats and Species Regulations 2010(**b**).

(4) All construction works associated with the authorised development must be carried out in accordance with the CEMP.

Construction traffic routing and management plan

19.—(1) The authorised development may not commence until a construction traffic routing and management plan has been submitted to and, after consultation with the relevant highway authorities, approved by the planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 7 of the environmental statement and the construction travel plan framework contained in Appendix 7C to the environmental statement.

(3) The plan submitted and approved must include—

(a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;

(b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;

(c) the construction programme;

(d) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment and any temporary removal of street furniture;

(e) measures to promote the use of sustainable transport modes by construction personnel in order to minimise the overall traffic impact and promote sustainable transport modes;

(f) details of parking for construction personnel within the construction site; and

(g) details of a co-ordinator to be appointed to manage and monitor the implementation of the plan, including date of appointment, responsibilities and hours of work.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved.

Construction hours

20.—(1) Construction work associated with the authorised development may only take place—

(a) between 0700 and 1900 hours on weekdays (excluding bank holidays);

(b) between 0700 and 1300 hours on Saturdays (excluding bank holidays).

(2) The restrictions in subparagraph (1) do not apply to work as a result of which the level of noise emitted from the construction site does not exceed the noise limits specified in subparagraph (3) as measured by continuous noise monitoring and which—

(a) does not involve the use of impact wrenches, sheet piling, concrete scabbling, external earthworks or concrete jack hammering,

(b) is associated with an emergency, or

(c) is carried out with the prior approval of the planning authority.

(**a**) 1981 c. 69.
(**b**) S.I. 2010/490.

(3) The limits are, under reference to British Standard 5228-1:2009+A1:2014—

(a) 55 dB $L_{Aeq,\ 1h}$ at the receptors identified in chapter 9 of the environmental statement as category C receptors;

(b) 50 dB $L_{Aeq,\ 1h}$ at the receptors identified in chapter 9 of the environmental statement as category B receptors.

(4) Nothing in subparagraph (1) prevents—

(a) start-up activities from 0630 to 0700 hours on weekdays and Saturdays (excluding bank holidays),

(b) shut-down activities from 1900 to 1930 hours on weekdays (excluding bank holidays), or

(c) shut-down activities from 1300 to 1330 hours on Saturdays (excluding bank holidays).

(5) In subparagraph (4), "start-up activities" and "shut-down activities" mean activities carried out by construction staff in preparation for or when finishing work, as applicable, including—

(a) changing into or out of protective clothing,

(b) receiving safety or other briefings, and

(c) any other such activities that do not generate levels of noise above ambient levels at the receptors identified in chapter 9 of the environmental statement.

(6) During the construction of the authorised development, heavy goods vehicles may only enter or leave the construction site—

(a) between 0730 and 1900 hours on weekdays (excluding bank holidays);

(b) between 0730 and 1300 hours on Saturdays (excluding bank holidays).

(7) The restrictions in subparagraph (6) do not apply to vehicle movements which are carried out with the prior approval of the planning authority.

Piling and penetrative foundation design

21.—(1) No part of the authorised development may commence until a piling and penetrative foundation design method statement, informed by a risk assessment, for that part has been submitted to and, after consultation with the Environment Agency and Selby District Council, approved by the planning authority.

(2) No piling or penetrative foundation works may be carried out unless the relevant approved method statement concludes that the works will not result in an unacceptable risk to the groundwater within the Order limits.

(3) All piling and penetrative foundation works must be carried out in accordance with the relevant approved method statement.

Construction – A1(M)

22.—(1) The authorised development may not commence until a scheme detailing the construction methods to be employed in the vicinity of the A1(M) has been submitted to and, after consultation with the Highways Agency, approved by the planning authority.

(2) The scheme submitted and approved must include details of—

(a) the location and dimensions of any cranes within the vicinity of the boundary fence of the A1(M), including a crane risk assessment;

(b) the location of any other major items of construction plant;

(c) the location and extent of any construction areas or compounds or construction buildings within the vicinity of the boundary fence of the A1(M); and

(d) external lighting, including measures to minimise light spillage to the A1(M).

(3) The scheme must be implemented as approved.

Control of noise during construction

23.—(1) The authorised development may not commence until a programme for the monitoring and control of noise during the construction of the authorised development has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The programme submitted and approved must specify—

(a) each location from which noise is to be monitored;

(b) the method of noise measurement;

(c) the maximum permitted levels of noise at each monitoring location during the daytime;

(d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and

(e) the noise control measures to be employed.

(3) All activities on the Order land associated with the construction of the authorised development must be carried out in accordance with British Standards 5228-1:2009 and 5228-2:2009.

Control of operational noise

24.—(1) The authorised development may not be commissioned until a programme for the monitoring and control of noise during the operation of the authorised development has been submitted to and, after consultation with the Environment Agency and Selby District Council, approved by the planning authority.

(2) The programme submitted and approved 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; and

(d) provision requiring the undertaker to take noise measurements as soon as possible following a request by the planning authority and to submit the measurements to the planning authority as soon as they are available.

(3) The level of noise at each monitoring location must not exceed the maximum permitted level specified for that location in the programme, except—

(a) in the case of an emergency,

(b) with the prior approval of the 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 (4).

(4) Except in the case of an emergency, the undertaker must give the planning authority 24 hours' notice of any proposed steam purging or operation of emergency pressure relief valves or similar equipment.

(5) So far as is 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);

(b) between 0900 and 1300 hours on Saturdays (excluding bank holidays).

(6) Where the level of noise at a monitoring location exceeds the maximum permitted level specified for that location in the programme 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 planning authority a statement detailing—

(i) the nature of the emergency, and

(ii) why it is necessary for the level of noise to have exceeded the maximum permitted level; and

(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.

Control of odour emissions

25.—(1) The authorised development may not be commissioned until a scheme for the management and mitigation of odour emissions has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The scheme submitted and approved must be in accordance with the principles set out in the odour management plan contained in Appendix 8B to the environmental statement.

(3) The authorised development may not be brought into commercial use until the approved scheme has been implemented.

(4) The approved scheme must be maintained throughout the operation of the authorised development.

Control of dust emissions

26.—(1) The authorised development may not commence until a scheme for the management and mitigation of dust emissions has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the authorised development.

Control of smoke emissions

27.—(1) The authorised development may not commence until a scheme for the management and mitigation of smoke emissions has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the authorised development.

Control of steam emissions

28.—(1) The authorised development may not commence until a scheme for the management and mitigation of steam emissions has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The approved scheme must be maintained during the construction, operation and decommissioning of the authorised development.

Control of insects and vermin

29.—(1) The authorised development may not be commissioned until—

(a) a scheme to prevent the infestation or emanation of insects or vermin from the authorised development has been submitted to and approved by the planning authority; and

(b) the approved scheme has been implemented.

(2) The approved scheme must be maintained throughout the operation of the authorised development.

(3) In subparagraph (1), "insects and vermin" excludes insects and vermin that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981(**a**) (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

Accumulations and deposits

30.—(1) The authorised development may not commence until a scheme for the management of relevant accumulations and deposits has been submitted to and approved by the planning authority.

(2) In subparagraph (1), "relevant accumulations and deposits" means accumulations and deposits—

(a) which may occur during the construction, operation or decommissioning of the authorised development, and

(b) the effects of which may be harmful or noticeable from outside the Order limits.

(3) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the authorised development

Restoration of land used temporarily for construction

31.—(1) The authorised development may not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the planning authority.

(2) The land must be restored within 12 months after the authorised development is brought into commercial use, in accordance with—

(a) the restoration scheme approved in accordance with subparagraph (1),

(b) each landscaping scheme approved in accordance with requirement 7, and

(c) the biodiversity enhancement and management plan approved in accordance with requirement 17.

Operational traffic routing and management plan

32.—(1) The authorised development may not be commissioned until an operational traffic routing and management plan has been submitted to and, after consultation with the relevant highway authorities, approved by the planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 7 of the environmental statement and the operational travel plan framework contained in Appendix 7C to the environmental statement.

(3) The plan submitted and approved must include details of the routes to be used for the transport of fuel, consumables and combustion by-products to and from the authorised development.

(4) The plan must be implemented as approved.

Travel plan – operational staff

33.—(1) The authorised development may not be brought into commercial use until a travel plan for operational staff has been submitted to and, after consultation with the relevant highway authorities, approved by the planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 7 of the environmental statement and the operational travel plan framework contained in Appendix 7C to the environmental statement.

(**a**) 1981 c. 69.

(3) The plan submitted and approved must include—

(a) details of the travel plan budget;

(b) measures to promote the use of sustainable transport modes to and from the authorised development by operational staff;

(c) provision as to the responsibility for, and timescales of, the implementation of those measures;

(d) a monitoring and review regime.

(4) The approved plan must be implemented within six months after the authorised development is brought into commercial use and must be maintained throughout the operation of the authorised development.

Operational deliveries

34.—(1) A heavy goods vehicle transporting fuel, consumables or combustion by-products may only enter or leave the authorised development—

(a) between 0700 and 2200 hours on weekdays (excluding bank holidays);

(b) between 0700 and 1830 hours on Saturdays (excluding bank holidays).

(2) The restrictions in subparagraph (1) do not apply to a movement of a heavy goods vehicle which is—

(a) associated with an emergency, or

(b) carried out with the prior approval of the planning authority.

Sustainable fuel transport management plan

35.—(1) The authorised development may not be brought into commercial use until a sustainable fuel transport management plan has been submitted to and, after consultation with the relevant highway authorities and Canal & River Trust, approved by the planning authority.

(2) The plan submitted and approved must set out measures to be taken by the undertaker during the operation of the authorised development to promote the sustainable transport of fuel and combustion by-products by means other than road, including by rail and barge.

(3) The plan submitted and approved must include—

(a) details of measures to promote sustainable modes of transport;

(b) details of arrangements for monitoring and recording transport movements by mode of transport;

(c) details of a review regime;

(d) a requirement to undertake an assessment of the costs of upgrading the existing wharf facility at the Ferrybridge Power Station site, including a description of the refurbishment work required and a breakdown of the costs of that work.

(4) The approved plan must be maintained and operated during the operation of the authorised development.

(5) Every five years during the operation of the authorised development, the undertaker must carry out an appraisal of the viability of upgrading the existing wharf facility in the context of the evaluation of the potential for fuel and ash transportation by water.

Enclosure of loads

36. During the operation of the authorised development, each heavy goods vehicle transporting bulk materials, fuel or combustion by-products to or from the authorised development must be enclosed.

Air quality – emissions reduction

37.—(1) During the operation of the authorised development—

(a) the average emission limit value for nitrogen monoxide and nitrogen dioxide, expressed as nitrogen dioxide, of the combustion emissions discharged through the emissions stack comprised in Work No. 1A for each day must not exceed 180 mg/Nm^3, standardised to the requirements specified in Annex VI of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010(**a**);

(b) each heavy goods vehicle delivering fuel to the authorised development must be designed to comply with the emission limit values in Annex 1 to Regulation (EC) 595/2009 of the European Parliament and of the Council of 18th June 2009(**b**).

(2) In subparagraph (1)(a), "day" means a period of twenty-four hours beginning at midnight.

Air quality monitoring

38.—(1) The authorised development may not be commissioned until a scheme of air quality monitoring has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The scheme submitted and approved must provide for the monitoring of—

(a) nitrogen oxides;

(b) any other pollutant agreed by the planning authority.

(3) The scheme submitted and approved must specify—

(a) each location at which air pollution is to be measured;

(b) the equipment and method of measurement to be used;

(c) the frequency of measurement.

(4) The first measurement made in accordance with the scheme must be made not less than 12 months before the authorised development is brought into commercial use.

(5) Unless the planning authority gives the undertaker notice under subparagraph (6), the final measurement made in accordance with the scheme must be made at least 24 months after the authorised development is commissioned.

(6) The planning authority may, if it thinks appropriate, give notice to the undertaker that the scheme is to be extended for the period specified in the notice, which may not be more than 24 months from the date of the final measurement in accordance with the scheme as originally approved.

(7) The scheme must be implemented as approved.

(8) For each year from the date on which the authorised development is commissioned, the undertaker must, within three months after the final measurement made in that year, provide the planning authority with a report of measurements made in accordance with the scheme in that year.

Fire prevention

39.—(1) The authorised development may not commence until a fire prevention method statement has been submitted to and, after consultation with West Yorkshire Fire and Rescue Service, approved by the planning authority.

(2) The method statement submitted and approved must include—

(a) a fire risk assessment;

(b) details of fire detection and suppression measures;

(**a**) OJ No L 334, 17.12.10, p17.
(**b**) OJ No L 188, 18.7.09, p1.

(c) the location of and accesses to all fire appliances in each major building and each storage area in the authorised development.

Combined heat and power

40.—(1) The authorised development may not be brought into commercial use until the planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems.

(2) The undertaker must maintain such space and routes for the lifetime of the authorised development.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the planning authority for its approval a report ("the CHP review") updating the combined heat and power assessment.

(4) The CHP review submitted and approved must—

(a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and

(b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.

(6) On each date during the lifetime of the authorised development that is five years after the date on which it last submitted the CHP review or a revised CHP review to the planning authority, the undertaker must submit to the planning authority for its approval a revised CHP review.

(7) Subparagraphs (4) and (5) apply in relation to a revised CHP review submitted under subparagraph (6) in the same way as they apply in relation to the CHP review submitted under subparagraph (3).

(8) In subparagraph (1), "the combined heat and power assessment" means the document certified as the combined heat and power assessment by the Secretary of State for the purposes of this Order under article 23.

Waste hierarchy scheme

41.—(1) The undertaker must operate the authorised development in accordance with the waste hierarchy by means of the measures specified in the environmental permit and any operational environmental management system.

(2) In subparagraph (1)—

"the waste hierarchy" means the waste hierarchy set out in Article 4 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008(**a**);

"operational environmental management system" means a system of policies and procedures adopted by the undertaker to manage the environmental impact of the authorised development.

Waste management – construction and operational waste

42.—(1) The authorised development may not commence until a construction site waste management plan has been submitted to and approved by the planning authority.

(2) The construction site waste management plan submitted and approved must be in accordance with the principles set out in chapter 16 of the environmental statement and the framework site waste management plan contained in Appendix 16A to the environmental statement.

(**a**) OJ No L 312, 22.11.08, p3.

(3) The construction site waste management plan must be implemented as approved.

(4) The authorised development may not be brought into commercial use until an operational waste management plan has been submitted to and approved by the planning authority.

(5) The operational waste management plan submitted and approved must be in accordance with the principles set out in chapter 16 of the environmental statement.

(6) The operational waste management plan must be implemented as approved.

Decommissioning

43.—(1) Within six months after it decides to decommission the authorised development, the undertaker must submit to the planning authority for its approval a decommissioning scheme.

(2) No decommissioning works may be carried out until the planning authority has approved the scheme.

(3) The scheme submitted and approved must be in accordance with the principles set out in chapter 3 of the environmental statement.

(4) The scheme submitted and approved must include details of—

(a) the buildings to be demolished;

(b) the means of removal of the materials resulting from the decommissioning works;

(c) the phasing of the demolition and removal works;

(d) any restoration works to restore the Order land to a condition agreed with the planning authority;

(e) the phasing of any restoration works;

(f) a timetable for the implementation of the scheme.

(5) The undertaker must implement the scheme as approved and is responsible for the costs of the decommissioning works.

(6) In subparagraph (5), "the undertaker" does not include a person to whom part of the benefit of this Order has been transferred or granted under article 8(3)(b) or (c) (transfer of part of the benefit of the Order to a street authority or to the operator of the connection to the electricity grid network).

Aviation warning lighting

44.—(1) The authorised development may not commence until details of the aviation warning lighting to be installed on the emissions stack comprised in Work No. 1A and each crane required for the construction of the authorised development which has a height of 60m or greater have been submitted to and approved by the planning authority.

(2) The aviation warning lighting must be installed and operated in accordance with the approved details.

Air safety

45. The authorised development may not commence until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for civil aviation purposes have been submitted to and approved by the planning authority.

Site security

46.—(1) The authorised development may not be commissioned until a scheme detailing security measures to minimise the risk of crime within the Order limits has been submitted to and, after consultation with West Yorkshire Police, approved by the planning authority.

(2) The approved scheme must be maintained and operated throughout the operation and decommissioning of the authorised development.

Local liaison committee

47.—(1) The authorised development may not commence until the undertaker has established a committee to liaise with local residents, businesses and organisations in relation to the construction and operation of the authorised development.

(2) The committee must include representatives of the undertaker.

(3) The undertaker must invite the planning authority and Selby District Council to nominate representatives to be members of the committee.

(4) The undertaker may invite such other businesses and organisations as it thinks appropriate to nominate representatives to be members of the committee.

(5) If there already exists a local liaison committee in relation to development on the Order land, that committee may, with the agreement of the planning authority and Selby District Council perform the functions of the committee to be established under subparagraph (1); and in that case the duty to establish a committee under subparagraph (1) does not apply.

Employment, skills and training plan

48.—(1) Work No. 1 may not commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to and approved by the planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of Work No.1.

Interpretation

49.—(1) In this Schedule—

“a bank holiday” is a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

“the biodiversity strategy” means the document certified as the biodiversity strategy by the Secretary of State for the purposes of this Order under article 23;

“the CEMP” means the construction environmental management plan approved in accordance with requirement 18(1);

“the commencement of the authorised development” means the first carrying out of any works, other than permitted preliminary works, for the construction of the authorised development; and “commence” and other cognate expressions, in relation to the authorised development, are to be construed accordingly;

“the commercial use” of the authorised development means the export of electricity from the authorised development for commercial purposes;

“the commissioning of the authorised development” means the process of testing all systems and components of the authorised development (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and “commission” and other cognate expressions, in relation to the authorised development, are to be construed accordingly;

“the construction site” means the Order land during the construction of the authorised development;

“the environmental permit” means a permit granted under the 2010 Regulations authorising the operation of the authorised development;

“the indicative landscaping plan” means the document certified as the indicative landscaping plan by the Secretary of State for the purposes of this Order under article 23;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

"permitted preliminary works" means site clearance work, survey work, archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements, the provision of site security and any other works agreed by the planning authority; and

"the relevant highway authorities" means Wakefield Metropolitan District Council, North Yorkshire Council and the Highways Agency, each in its capacity as a highway authority.

(2) A reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication in writing.

(3) A reference in this Schedule to details, a method statement, a plan, a programme, a scheme or any other document approved by the planning authority is a reference to that document including any amendments subsequently approved by the planning authority.

SCHEDULE 3

Article 5

MAXIMUM BUILDING DIMENSIONS

Building	*Maximum length (metres)*	*Maximum width (metres)*	*Maximum height (metres above ordnance datum (Newlyn))*
Tipping hall (Work No. 1A)	45	102	53
Fuel storage bunker (Work No. 1A)	42	102	64
Entry ramp to fuel storage bunker (Work No. 1A)	120	70	27
Exit ramp from fuel storage bunker (Work No. 1A)	120	70	27
Boiler hall (Work No. 1A)	63	60	74
Turbine hall (Work No. 1A)	40	40	44
Ash storage bunker and collection bay (Work No. 1A)	43	48	39
Flue gas treatment system (Work No. 1A)	55	82	56
Air cooled condenser (Work No. 1A)	98	40	41
Electrical switchyard, including circuit breaker and transformer (Work No. 1A)	40	15	31
Workshop building (Work No. 1A)	30	40	39
Control and administrative building (Work No. 1A)	15	55	64
Security gatehouses and weighbridges (Work No. 1B)	20	4	20
Substation (Work No. 2C)	90	55	36

SCHEDULE 4

Article 5

MINIMUM BUILDING DIMENSIONS

Building	*Minimum length (metres)*	*Minimum width (metres)*	*Minimum height (metres above ordnance datum (Newlyn))*
Tipping hall (Work No. 1A)	31	58	31
Fuel storage bunker (Work No. 1A)	31	58	49
Entry ramp to fuel storage bunker (Work No. 1A)	55	25	24
Exit ramp from fuel storage bunker (Work No. 1A)	55	25	24
Boiler hall (Work No. 1A)	27	45	57
Turbine hall (Work No. 1A)	27	27	34
Ash storage bunker and collection bay (Work No. 1A)	13	13	29
Flue gas treatment system (Work No. 1A)	40	70	46
Air cooled condenser (Work No. 1A)	63	18	34
Electrical switchyard, including circuit breaker and transformer (Work No. 1A)	27	9	25
Workshop building (Work No. 1A)	10	15	26
Control and administrative building (Work No. 1A)	27	11	46
Security gatehouses and weighbridges (Work No. 1B)	10	2.5	19
Substation (Work No. 2C)	80	50	34

SCHEDULE 5

Article 9

STREETS SUBJECT TO STREET WORKS

Area	*Street subject to street works*
Wakefield Metropolitan District	Kirkhaw Lane
Wakefield Metropolitan District	The unnamed road

SCHEDULE 6

Article 10

ACCESS TO WORKS

Area	*Description of access*
Wakefield Metropolitan District	The location of Work No. 3

SCHEDULE 7

Article 19

PROCEDURES FOR APPROVALS ETC. REQUIRED BY THE REQUIREMENTS

Application of this Schedule

1. This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as "the authority") for an approval, consent or agreement required by any of the requirements.

Decision period

2.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In subparagraph (1), "the decision period" means—

(a) where the authority does not give written notice under paragraph 3(1) or (2) requiring further information, the period of eight weeks from the later of—

(i) the day immediately following the day on which the authority receives the application, and

(ii) the day on which the authority receives the fee payable under paragraph 4; or

(b) where the authority gives written notice under paragraph 3(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or

(c) such longer period as may be agreed in writing by the undertaker and the authority.

Further information

3.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a "consultee") in relation to the application—

(a) the authority must consult the consultee within five business days from the day on which it receives the application;

(b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and

(c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under subparagraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with subparagraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

Fees

4.—(1) The undertaker must pay the authority a fee of £97, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under subparagraph (1) to the undertaker, within the relevant period, if it—

(a) rejects the application as being invalidly made;

(b) fails to give the written notice required by paragraph 2(1).

(3) Subparagraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In subparagraphs (2) and (3) "the relevant period" means the period of eight weeks from, as the case may be—

(a) the day on which the authority rejects the application as being invalidly made;

(b) the day after the day on which the decision period expires.

Appeal to the Secretary of State: procedure

5.—(1) The undertaker may appeal to the Secretary of State against—

(a) the authority's refusal of an application;

(b) the authority's grant subject to conditions of an application;

(c) the authority's failure to give the written notice required by paragraph 2(1);

(d) a written notice given by the authority under paragraph 3(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

(a) its grounds of appeal;

(b) a copy of the application submitted to the authority;

(c) any supporting documentation which it wishes to provide.

(3) In subparagraph (2), "the relevant day" means—

(a) in the case of an appeal under subparagraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;

(b) in the case of an appeal under subparagraph (1)(c), the day after the day on which the decision period expires;

(c) in the case of an appeal under subparagraph (1)(d), the day on which the undertaker receives the authority's notice.

(4) At the same time as it sends the documents mentioned in subparagraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) Within 10 business days from the day on which the Secretary of State receives the documents mentioned in subparagraph (2), he must—

(a) appoint a person (referred to in this Schedule as "the appointed person") to determine the appeal on his behalf;

(b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person's address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under subparagraph (5)(b), the authority and any consultee—

(a) may submit written representations in respect of the appeal to the appointed person; and

(b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.

(7) Within 10 business days from the last day on which representations are submitted to the appointed person under subparagraph (6), any party—

(a) may make further representations to the appointed person in response to the representations of another party; and

(b) must, at the same time, send a copy of any such further representations to each other party.

Appeal to the Secretary of State: powers of the appointed person

6.—(1) The appointed person may—

(a) allow or dismiss the appeal;

(b) reverse or vary any part of the authority's decision, irrespective of whether the appeal relates to that part;

(c) make a decision on the application as if it had been made to the appointed person in the first instance.

(2) The appointed person—

(a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;

(b) if he gives such a notice, must—

(i) at the same time send a copy of it to each other party, and

(ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.

(3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

Appeal to the Secretary of State: supplementary

7.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to subparagraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under subparagraph (4) the appointed person must have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Multifuel Energy Limited to construct, operate and maintain, a new electricity generating station with a nominal gross electrical capacity of up to 90MWe fuelled primarily by waste derived fuels. The generating station is to be located at the Ferrybridge Power Station site, north-west of Knottingley, West Yorkshire. The Order also grants development consent for associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in the Order, and certified in accordance with article 23, may be inspected free of charge at Knottingley Library at Knottingley Sports Centre, Hill Top, Pontefract Road, Knottingley, WF11 8EE, and at the offices of Wakefield Metropolitan District Council at Wakefield One, Burton Street, Wakefield, WF1 2EB, North Yorkshire County Council at County Hall, Northallerton, North Yorkshire, DL7 8AD, and Selby District Council at Access Selby, 8-10 Market Cross, Selby, YO8 4JS.

APPENDIX B – EXAMINATION LIBRARY

Ferrybridge Multifuel 2 (FM2) Power Station – EN010061

Examination Library

The following list of documents has been used during the course of the Examination. The documents are grouped together by examination deadline.

Each document has been given an identification number (i.e. AD-001), and all documents are available to view on the Planning Inspectorate's National Infrastructure Planning website at the Ferrybridge Multifuel 2 (FM2) Power Station project page:

http://infrastructure.planninginspectorate.gov.uk/ferrybridge-multifuel-2-fm2-power-station

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Document Type	Reference
Application Documents	AD-xxx
Procedural Decisions	PrD-xxx
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Relevant Representations	RR-xxx
Correspondence	CoRR-xxx
Deadline I	D1-xxx
Deadline II	D2-xxx
Deadline III	D3-xxx
Deadline IV	D4-xxx
Deadline V	D5-xxx
Hearings	HG-xxx

Application Documents		Date Received/ Sent
Application Form		
AD-001	1.1 Application Cover Letter	
AD-002	1.2 Application Acceptance Checklist	
AD-003	1.3 Introduction to Application	
AD-004	1.4 Application Form	
AD-005	1.5 Notices for Statutory Publicity	
Development Consent Order		
AD-006	2.1 Draft Development Consent Order (DCO)	
AD-007	2.2 Explanatory Memorandum	
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Compulsory Purchase Information		
AD-009	3.1 Book of Reference (Parts 1-5)	
AD-010	3.2 Statement of Reasons	
AD-011	3.3 Funding Statement	
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AD-013	4.2 Order Plan	
AD-014	4.3 Land Plan	
AD-015	4.4 Works Plans (Sheets 1-5)	
AD-016	4.5 Indicative Generating Station Concept Site Layout (Sheets 1-2)	
AD-017	4.6 Indicative Generating Station Horizontal Boiler Layout (Sheets 1-2)	
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AD-019	4.8 Indicative Utilities Plan	
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AD-023	4.12 Indicative Landscaping Plan	
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AD-026	5.1.1 Consultation Report Appendices 3.1 - 5.2	
AD-027	5.1.2 Consultation Report Appendices 6.1 - 7.7	

AD-028	5.1.3 Consultation Report Appendices 7.8	
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AD-030	5.2 Application Site Description Document	
AD-031	5.3 Proposed Development Description Document	
AD-032	5.4 Statutory Nuisance Statement	
AD-033	5.5 Grid Connection Statement	
AD-034	5.6 Consents and Licences	
AD-035	5.7 Planning Statement	
AD-036	5.8 Design and Access Statement	
AD-037	5.9 Fuel Availability and Waste Hierarchy Assessment	
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AD-039	5.11 Climate Change Statement	
AD-040	5.12 Lighting Strategy	
AD-041	5.13 Landscape Strategy	
AD-042	5.14 Biodiversity Strategy	
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AD-044	6.2 Environmental Statement - Volume I (Main Report)	
AD-045	6.3 Environmental Statement - Volume II (Figures) Cover and Contents	
AD-046	6.3.1 ES Vol II (Figures) for Chapter 1	
AD-047	6.3.2 ES Vol II (Figures) for Chapter 2	
AD-048	6.3.3 ES Vol II (Figures) for Chapter 3 Part 1 of 2	
AD-049	6.3.4 ES Vol II (Figures) for Chapter 3 Part 2 of 2	
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AD-054	6.3.9 ES Vol II (Figures) for Chapter 9	
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AD-057	6.3.12 ES Vol II (Figures) for Chapter 12	
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AD-060	6.3.15 ES Vol II (Figures) for Chapter 15	
AD-061	6.3.16 ES Vol II (Figures) for Chapter 19	
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AD-069	6.4.7 ES Appendix 7A - Transport Assessment	
AD-070	6.4.8 ES Appendix 7B - Construction Travel Plan	
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AD-072	6.4.10 ES Appendix 8A -Air Quality Assessment	
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AD-077	6.4.15 ES Appendix 12A - Flood Risk Assessment	
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AD-090	7.3 Highways Agency SoCG	
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AD-092	7.5 Coal Authority SoCG	
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AD-095	7.8 West Yorkshire Archaeology Advisory Service SoCG	
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PrD-02	Notification of Decision to Accept Application	
PrD-03	Rule 6	
PrD-04	Rule 8	
PrD-05	Examining Authoritys First Written Questions and Requests	
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AoC-02	AoC 2 Barnsley Metropolitan Borough Council	
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AoC-04	AoC 4 Doncaster Metropolitan Borough Council	
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RR-02	National Grid	
RR-03	Oakland Hill Residents Association	
RR-04	Wakefield Council - Regeneration team	
RR-05	Huntercombe Consultants Ltd.	
RR-06	Paul Willans	
RR-07	Frank A Wright	
RR-08	John Mannering	
RR-09	Mrs S Bage	

RR-10	Selby District Council	
RR-11	Natural England	
RR-12	The Coal Authority	
RR-13	Daniel Parry-Jones on behalf of Royal Mail Group Ltd	
RR-14	North Yorkshire County Council	
RR-15	Leeds and Partners	
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CoRR-03	English Heritage	
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CoRR-06	Environment Agency - Correspondence received from Environment Agency prior to the issue specific hearing on the draft Development Consent Order (DCO)	
CoRR-07	Environment Agency - Correspondence received from Environment Agency prior to the issue specific hearing on the draft Development Consent Order (DCO)	
CoRR-08	Natural England - Correspondence received from Natural England prior to the issue specific hearing on the draft Development Consent Order (DCO)	
CoRR-09	National Grid Electricity Transmission plc ("NGET") - Correspondence received from National Grid Electricity Transmission plc ("NGET") prior to the issue specific hearing on the draft Development Consent Order (DCO)	
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D1-002	Wakefield Metropolitan District Council - Responses to the Examining Authority's first round of written questions	
D1-003	Wakefield Metropolitan District Council - Statement of Common Ground	
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D1-005	Environment Agency - Summary of Written Representations	
D1-006	Environment Agency - Responses to the Examining Authority's first round of written questions	
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D1-010	Multifuel Energy Limited - Statement of Common Ground between Multifuel Energy Limited and Wakefield Metropolitan District Council	
D1-011	Multifuel Energy Limited - Responses to the Examining Authority's first round of written	

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D1-012	Multifuel Energy Limited - Draft Itinerary for Accompanied Site Visit	
D1-013	Multifuel Energy Limited - Statement of Common Ground between Multifuel Energy Limited and Environment Agency	
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D1-015	Selby District Council - Responses to the Examining Authority's first round of written questions	
D1-016	Selby District Council & North Yorkshire County Council - Local Impact Report	
D1-017	National Grid Electricty Transmission - Responses to the Examining Authority's first round of written questions	
D1-018	National Grid Electricity Transmission - Written Representation	
D1-019	Canal & River Trust - Written Representation and responses to the Examining Authority's first round questions	
Deadline II – 17 February 2015 **Comments on Responses to ExA 1ST Questions, Comments on Written Representations etc**		
D2-001	Multifuel Energy Limited -Applicant's Comments on Relevant Representations	

D2-002	Multifuel Energy Limited - Applicant's Comments on Local Impact Reports, Responses to the Examining Authority's First Written Questions and Written Representations	
D2-003	Multifuel Energy Limited - Draft Development Consent Order (DCO) - Clean Version – Rev 2.0	
D2-004	Multifuel Energy Limited - Draft Development Consent Order (DCO) - Track Change Version – Rev 2.0	
D2-005	Multifuel Energy Limited - Draft DCO - Comparison to Model Provisions Version – Rev 2.0	
D2-006	Multifuel Energy Limited -Applicant's Response to the Examining Authority's First Written Questions	
D2-007	Multifuel Energy Limited - Book of Reference (Parts 1-5	
D2-008	Multifuel Energy Limited - Explanatory Memorandum - Clean Version – Rev 2.0	
D2-009	Multifuel Energy Limited - Explanatory Memorandum - Track Change Version – Rev 2.0	
Deadline III – 12 March 2015 **Responses to comments on Written Representations and Local Impact Reports, Comments on any other information submitted at Deadline II etc**		
D3-001	Multifuel Energy Limited - Indicative Landscaping Plan – clean version – Rev 2.0. Accepted as late submission by the Examining Authority	

D3-002	Multifuel Energy Limited - Indicative Landscaping Plan – changes marked version – Rev 2.0. Accepted as late submission by the Examining Authority	
D3-003	Multifuel Energy Limited - Consents and Licences required under Other Legislation – Rev 2.0. Accepted as late submission by the Examining Authority	
D3-004	Multifuel Energy Limited - Landscape Strategy – Clean Version – Rev 2.0. Accepted as late submission by the Examining Authority	
D3-005	Multifuel Energy Limited -Landscape Strategy – Tracked Change Version – Rev 2.0. Accepted as late submission by the Examining Authority	
D3-006	Multifuel Energy Limited - Biodiversity Strategy – Clean Version – Rev 2.0. Accepted as late submission by the Examining Authority	
D3-007	Multifuel Energy Limited - Biodiversity Strategy – Tracked Change Version – Rev 2.0. Accepted as late submission by the Examining Authority	
D3-008	Multifuel Energy Limited - Statement of Common Ground (SoCG) – Wakefield Metropolitan District Council (WMDC) - Draft – Rev 4.0. Accepted as late submission by the Examining Authority	
D3-009	Multifuel Energy Limited - Application Document Index. Accepted as late submission by the Examining Authority	
Deadline IV – 2 April 2015 **Applicant's revised draft DCO, Comments on any other information submitted at Deadline III etc**		
D4-001		

	Michael Elphinstone on behalf of Margaret Gill - Written summaries of oral cases put at Issue Specific Hearing held on 18 March 2015. Accepted as late submission by the Examining Authority	
D4-002	Multifuel Energy Limited - Explanatory Memorandum - Clean Version – Rev 3.0	
D4-003	Multifuel Energy Limited - Explanatory Memorandum - Track Change Version (Changes from Deadline 2) – Rev 3.0	
D4-004	Multifuel Energy Limited - Draft Development Consent Order (DCO) - Clean Version – Rev 3.0	
D4-005	Multifuel Energy Limited - Draft Development Consent Order (DCO) - Track Change (All Changes) – Rev 3.0	
D4-006	Multifuel Energy Limited -Draft Development Consent Order (DCO) - Comparison to Model Provisions Version – Rev 3.0	
D4-007	Multifuel Energy Limited - Draft Development Consent Order (DCO) - Track Change Version (Changes from Deadline 2) – Rev 3.0	
D4-008	Multifuel Energy Limited - Statement of Common Ground (SoCG) - Wakefield Metropolitan District Council	
D4-009	Multifuel Energy Limited - Applicant's Written Summaries of Oral Submissions made to the Issue Specific Hearing on 18 March 2015	
D4-010	Wakefield Metropolitan District Council - Wakefield Metropolitan District Council- Written summaries of oral cases put at Issue-specific hearing held on 18 March 2015	
D4-011	Paul Willans -Written summaries of oral cases put at Issue Specific Hearing held on 18 March 2015. Accepted as late submission by the Examining Authority	

Deadline V – 17 April 2015 **Any other information requested by the ExA for this deadline, Comments on applicant's revised draft DCO, and on any other information submitted at Deadline IV etc**		
D5-001	Wakefield Metropolitan District Council Signed Statement of Common Ground between Multifuel Energy Limited and Wakefield Metropolitan District Council	
D5-002	Multifuel Energy Limited - Signed Statement of Common Ground (SoCG) with Wakefield Metropolitan District Council (WMDC).	
D5-003	Multifuel Energy Limited - Applicant's Comments on Deadline IV Submissions	
D5-004	Multifuel Energy Limited -Applicant's comments on Deadline IV Submissions – Rev 2.0. Accepted as late submission by the Examining Authority	
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HG-001	Preliminary Meeting Audio	
HG-002	Preliminary Meeting Note	
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HG-003	Itinerary for accompanied site visit - Tuesday 17 March 2015	
Hearings		
HG-004	Agenda for Open Floor Hearing – 17 March 2015	

HG-005	Agenda for Issue Specific Hearing on the DCO on 18 March 2015	
HG-006	Audio recording of the Open Floor Hearing	
HG-007	Part 1 of the audio recording of the Issue Specific Hearing -Issue Specific Hearing on the draft Development Consent Order	
HG-008	Part 2 of the audio recording of the Issue Specific Hearing – Issue Specific Hearing on the draft Development Consent Order	

APPENDIX C

EVENTS IN THE EXAMINTAION

The list below contains the main events that occurred and procedural decisions that were taken during the examination

Date	Examination Event
Thursday 4 December 2014	Examination begins
Thurday 11 December 2014	Issue by ExA of: • Examination timetable • Requests for Statements of Common Ground and Local Impact Reports
Thursday 18 December 2014	Issue by ExA of: • ExA's first written questions
Thursday 22 January 2015	**Deadline 1** Deadline for receipt by the ExA of: • Comments on relevant representations (RRs) • Summaries of all RRs exceeding 1500 words • Written representations (WRs) by all interested parties • Summaries of all WRs exceeding 1500 words • Local Impact Report from any local authorities • Updated Statements of Common Ground (SoCG) and SoCG requested by ExA – see Annex C of Rule 8 letter dated 11 December 2014 • Responses to ExA's first written questions • Submissions from interested parties recommending items for the itinerary for the accompanied site visit **Notifications** • Notification by interested parties of wish to speak at an Open floor hearing. • Notification by interested parties of their intention to attend the accompanied site visit.

Tuesday 17 February 2015	**Deadline 2** Deadline for receipt by the ExA of: • Comments on WRs • Responses to comments on RRs • Comments on Local Impact Reports • Comments on responses to ExA's first written questions • Any revised draft DCO from applicant • Any other information requested by the ExA
Wednesday 18 February 2015	Issue by ExA of: • Notification of dates for hearings and accompanied site visit
Thursday 12 March 2015	**Deadline 3** Deadline for receipt by the ExA of: • Responses to comments on WRs • Responses to comments on Local Impact Reports • Comments on any revised draft DCO from applicant • Comments on any other information submitted at Deadline 2 • Request to be heard at any issue specific hearing • Any other information requested by the ExA
Tuesday 17 March 2015	Accompanied site inspection
Tuesday 17 March 2015	Open floor hearing
Wednesday 18 March 2015	Issue specific hearing on draft DCO
Thursday 2 April 2015	**Deadline 4** Deadline for receipt of: • Applicant's revised draft DCO • Written summaries of oral cases put at hearings • Any information requested by the ExA at hearings • Any other information requested by the ExA • Comments on any other information submitted at Deadline 3

<table>
<tr><td>Friday 17 April 2015</td><td>Deadline 5

Deadline for receipt of:

• Comments on applicant’s revised draft DCO
• Any other information requested by the ExA for this deadline
• Comments on any other information submitted at Deadline 4</td></tr>
<tr><td>Wednesday 29 April 2015</td><td>Close of Examination</td></tr>
</table>

APPENDIX D

LIST OF ABBREVIATIONS

AADT	Annual Average Daily Traffic Flow
AQMA	Air Quality Measurement Area
AQS Regulations	Air Quality Standards Regulations 2010
BAP	Biodiversity Action Plan
BAT	Best Available Technology
BoR	Book of Reference
CA	Coal Authority
CAA	Civil Aviation Authority
CRT	Canal and River Trust
CCR	Carbon capture readiness
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
COMAH	Control of Major Accident Hazards
COSHH	Control of Substances Hazardous to Health
CPNI	Centre for the Protection of National Infrastructure
DCO	Development Consent Order
DECC	Department of Energy and Climate Change
DMRB	Design Manual for Roads and Bridges
DNO	Distribution Network Operator
DTI	Department of Trade and Industry
EA	Environment Agency
EEA	European Economic Area
EfW	Energy from Waste
EH	English Heritage
EHO	Environmental Health Officer
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EP	Environmental Permitting
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EPS	Emission Performance Standards
EPUK	Environmental Protection UK
ES	Environmental Statement
ExA	Examining Authority
FGT	Flue Gas Treatment
FM1	Ferrybridge Multifuel 1
FM2	Ferrybridge Multifuel 2
HA	Highways Agency
HGV	Heavy Goods Vehicle
HSE	Health and Safety Executive
IED	Industrial Emissions Directive
IPC	Infrastructure Planning Commission
IPPC	Integrated Pollution Prevention and Control
LCPD	Large Combustion Plant Directive
LIR	Local Impact Report
MW	Megawatts
MWe	Megawatts Electrical

NAI	Nearest Appropriate Installation
NE	Natural England
NERC	Natural Environment and Rural Communities
NG	National Grid
NGET	National Grid Electricity Transmission
NO2	Nitrogen Dioxide
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NTS	Non-Technical Summary
NYCC	North Yorkshire County Council
PA2008	Planning Act 2008
PHE	Public Health England
PPG	Planning Practice Guidance
PPS	Planning Policy Statement
SDC	Selby District Council
SoCG	Statement of Common Ground
SPA	Special Protection Area
SSE	SSE Generation Ltd, part of the SSE plc Group
SSECC	Secretary of State for Energy and Climate Change
SSSI	Site of Special Scientific Interest
SWMP	Site Waste Management Plan
TAN	Technical Advice Note
WFD	Water Framework Directive
WMDC	Wakefield Metropolitan District Council
WRATE	Waste and Resources Assessment Tool
WTI	WTI/EFW Holdings Ltd, a subsidiary of Wheelabrator Technologies Inc.
WYAAS	West Yorkshire Archaeological Advisory Service
YWT	Yorkshire Wildlife Trust