Department for Energy Security & Net Zero

**3-8 Whitehall Place**
**London**
**SW1A 2AW**
**+44 020 7215 5000**
**energyinfrastructureplanning@energysecurity.gov.uk**
**www.gov.uk/desnz**

**Ref: EN010110**

Paul Carey
Medworth CHP Limited
Devonport EfW CHP Facility
Creek Road
Plymouth
PL5 1FL

20 February 2024

Dear Mr Carey,

**PLANNING ACT 2008**

**APPLICATION FOR DEVELOPMENT CONSENT FOR THE MEDWORTH ENERGY FROM WASTE COMBINED HEAT AND POWER FACILITY**

## 1. Introduction

1.1. I am directed by the Secretary of State for Energy Security and Net Zero ("the Secretary of State") to advise you that consideration has been given to the Examining Authority's ("ExA") report dated 21 November 2023. The ExA consisted of two panel members, André Pinto and Claire Megginson. The ExA conducted an examination ("the Examination") into the application submitted on 7 July 2022 ("the Application") by Medworth CHP Limited ("the Applicant") for a Development Consent Order ("DCO") ("the Order") under section 37 of the Planning Act 2008 ("PA 2008") for the Medworth Energy from Waste Combined Heat and Power Facility ("the Proposed Development"). The Application was accepted for examination on 2 August 2022. The Examination began on 21 February 2023 and closed on 21 August 2023. The Secretary of State received the ExA's Report on 21 November 2023.

1.2. On 10 January 2024, the Secretary of State issued a consultation letter seeking information on matters that were outstanding at the close of examination. This included matters relating to the Combined Heat and Power ("CHP") Action Plan proposed by the Applicant and information on identified potential customers of steam from the Proposed Development, protective provisions, Compulsory Acquisition and any other outstanding matters. The consultation letter was issued to the Applicant, Eastern Power Networks, Cadent Gas Limited, National Highways Ltd, Fenland District Council ("Fenland DC"), Wisbech Town Council ("Wisbech TC"), Cambridgeshire County Council ("Cambs CC"), Norfolk County Council ("Norfolk CC") and the Borough Council of King's Lynn and West Norfolk ("BCKLWN"). Upon the close of the consultation, Interested Parties ("IPs") were invited to comment on the Secretary of State's consultation letter as well as the responses received from the parties named in the request for information.

1.3. On the 15 January 2024 Wisbech TC sought clarification on which question it should answer. The Secretary of State directed it to answer the question on any outstanding matters that had been resolved and/or agreed upon since the close of the Examination.

1.4. A number of responses to the consultation letter were received from IPs. This included a Withdrawal of Objection to the Proposed Development from Network Rail Infrastructure Limited ("Network Rail"). Agreement has now been reached in relation to the protection of Network Rail's assets and the Applicant has confirmed that it will request that Network Rail's preferred protective provisions are included in the made Order. Other responses included updates on agreements between the Applicant, Eastern Power Networks and Cambs CC; further details on the Action Plan proposed by the Applicant for the CHP element of the EfW facility and confirmation from Fenland DC, Norfolk CC and BCKLWN that their position had not changed since the close of examination and they had no further comments to provide. Following the close of the consultation, the Secretary of State invited all IPs to comment on the information provided on the 21 January 2024. The majority of responses outlined concerns that had been outlined throughout the examination and during the recommendation period, some of which were concerns about the emissions from the Proposed Development, the impact on the local road network from the increase in traffic and the visual impact the proposed development would have on the local area.

1.5. In reaching her conclusions on the matters set out below, and in taking her decision on the Application, the Secretary of State has considered all consultation responses received.

1.6. The Order, as applied for, would grant development consent for the Proposed Development, which would recover useful energy in the form of electricity and steam from non-recyclable (residual), non-hazardous municipal, commercial and industrial waste. The Energy from Waste ("EfW") CHP Facility would have the capacity to process up to 625,600 tonnes of residual waste per annum and a generating capacity of over 50 megawatts ("MW") of electricity available to export to local users (including via a CHP connection) and the electricity distribution network. The main works comprising the Proposed Development are summarised below:

- The EfW CHP Facility;
- CHP Connection;
- Access Improvements;
- Water Connections;
- Grid Connection; and
- Temporary Construction Compound ("TCC").

1.7. The Applicant also seeks compulsory acquisition ("CA") and temporary possession ("TP") powers, which are set out in the draft Order submitted with the Application. The Proposed Development is the construction of an onshore generating station that would not generate electricity from wind and with a capacity of more than 50 MW, located wholly in England. As such, it meets the definition of a Nationally Significant Infrastructure Project ("NSIP") as set out in section 14(1) and section 15(2) of PA2008 and requires a DCO in accordance with section 31 of the PA 2008.

1.8. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website[1] is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in Chapters 3-7 of the ExA Report, and the ExA's summary of

[1] https://infrastructure.planninginspectorate.gov.uk/projects/eastern/medworth-energy-from-waste-combined-heat-and-power-facility/

conclusions and recommendation is at Chapter 8. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"].

## 2. Summary of the ExA's Report and Recommendation

2.1. The principal issues considered during the Examination and on which the ExA has reached conclusions in relation to the case for development consent are set out in the ExA Report under the following broad headings:

- Principle of the proposed development;
- Alternatives;
- Good design;
- Climate;
- Carbon capture and storage;
- Consideration of combined heat and power;
- Landscape and visual;
- Biodiversity:
- Traffic and transport;
- Air quality;
- Human health;
- Historic environment;
- Noise and vibration;
- Flood risk, drainage and water environment;
- Geology, hydrogeology and contaminated land;
- Socio-economic and population effects;
- Major accidents and damage; and
- Cumulative effects.

2.2. The ExA concludes that the Proposed Development meets the tests in section 104 of the PA2008 and that the case for development consent has been made and recommends that the Secretary of State should grant consent for the Proposed Development by making a DCO in the form attached at Appendix D of the ExA's Report [ER 8.4.1].

2.3. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of their conclusions and recommendations.

## 3. Summary of the Secretary of State's Decision

3.1. Section 104(2) of the PA2008 requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement ("NPS"). Section 104(3) requires that the Secretary of State must decide the application in accordance with the relevant NPS except to the extent that one or more specified exemptions apply, including where the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits.

3.2. The Secretary of State has considered the ExA's Report and all other material considerations, including relevant representations ("RR") received after the close of the ExA's Examination, all of which are dealt with as appropriate in the decision letter below.

3.3. The Secretary of State has concluded that the Proposed Development would be in accordance with the 2011 NPSs and 2024 NPSs. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the public benefits associated with the Proposed Development outweigh the harms identified, and that development consent should therefore be granted.

3.4. The Secretary of State has decided under section 114 of the PA2008 to make, with modifications, an Order granting consent for the Proposed Development. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the PA2008 and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").

3.5. In making her decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

## 4. The Secretary of State's Consideration of the Application

4.1. The Secretary of State has considered the ExA's Report and all other material considerations, including representations received after the close of the ExA's Examination and responses to her consultation letters. A total of 666 RRs were made in respect of the Application [ER 1.4.1]. Written Representations ("WR"), responses to questions and oral submissions made during the Examination were also taken into account by the ExA and Secretary of State. The Secretary of State has had regard to two Local Impact Reports ("LIR"), one submitted jointly by Cambs CC and Fenland DC [REP1-074] and the other also jointly submitted by Norfolk CC and BCKLWN [REP1-064] [ER 2.5.2], environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the PA2008, including relevant policy set out in NPSs EN-1, EN-3 and EN-5. The ExA and Secretary of State have also had reference to Statements of Common Ground ("SoCG").

4.2. The Energy White Paper, Powering Our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs were not being suspended in the meantime. The ExA has referred to these 2011 NPSs as EN-1, EN-3 and EN-5 and this letter refers to them in the same way. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. Updated versions of these draft NPSs were published on 30 March 2023 and subject to a further consultation which closed on 23 June 2023. The ExA makes reference to the March 2023 draft NPSs ("dNPS") throughout the Examination and in the ExA's Report, with dNPS EN-1, dNPS EN-3 and dNPS EN-5 considered important and relevant.

4.3. Revised draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 ("the 2024 NPSs"). The ExA did not consider the November 2023 versions, now the 2024 NPSs with minor amendments, as they were released following the close of the Examination.

4.4. The transitional guidance in the DESNZ consultation paper 'Planning for New Energy Infrastructure' makes clear that the assessment of any decision-making about NSIP applications in progress during the review of the NPSs should continue to be made with reference to the currently designated NPS suite which remains in force. The ExA stated that as the Proposed Development was accepted for examination before the designation of the new NPSs, the 2011 NPSs remained in force in their entirety and would have effect. These therefore form the basis of the Secretary of State's consideration of the Application. This position is also set out at paragraph 1.6.2 of 2024 NPS EN-1. The ExA states that the new NPSs are potentially capable of being important and relevant considerations in the decision-making process and therefore, where relevant, March 2023 dNPSs were considered throughout the Examination [ER 2.3.10]. The ExA also requested that the Applicant take the dNPSs into consideration and provide an NPS tracker, which was updated throughout the Examination process [REP7-038] [ER 2.3.11].

4.5. The Secretary of State has had regard to the designated 2024 NPSs in deciding the Application, and addresses these where relevant within this letter, but does not consider that there is anything contained within them that would lead her to reach a different decision on the Application than has been reached by relying on the 2011 NPSs. The Secretary of State has also had regard to the updated National Planning Policy Framework ("NPPF") from December 2023 which was released after the close of the Examination and similarly finds that there is nothing in the updated NPPF which would lead her to reach a different decision on the Application.

4.6. The Secretary of State has also had regard to the British Energy Security Strategy ("BESS") published on 7 April 2022, which outlined steps to accelerate the Government's progress towards achieving Net Zero by 2050 and a long-term shift in delivering cheaper and cleaner power.

4.7. The Secretary of State received post-examination correspondence, which has also been considered further and is explored in the sections below. The correspondence detailed a variety of issues including:

- Concerns about congestion and traffic which the operation of the Proposed Development may create, impacting local communities;
- Concerns about the residual impact on agricultural fields;
- The impact on nearby schools;
- Concerns about the impact on physical and mental wellbeing of local residents and the vulnerability to air pollution;
- Concerns about the greenhouse gas ("GHG") emissions the plant will emit and the absence of carbon capture capabilities in its immediate construction plans;
- Belief that there is an over-capacity for incinerators in the region and the facility in its current form will breach the proximity principle.

4.8. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:

a. Good design – neutral weight [ER 5.2.12 et seq.];
b. Biodiversity – moderate positive weight [ER 5.2.37 et seq.];
c. Traffic and transport – neutral weight [ER 5.2.41 et seq.];
d. Air quality – neutral weight [ER 5.2.49 et seq.];
e. Noise and vibration – neutral weight [ER 5.2.61 et seq.];

f. Flood risk, drainage and water environment – neutral weight [ER 5.2.67 et seq.];
g. Socio-economic and population effects – moderate positive weight [ER 5.2.80 et seq.];
h. Major accidents and damage – neutral weight [ER 5.2.90 et seq.]; and
i. Cumulative effects - neutral weight [ER 5.2.95].

4.9. The Secretary of State has considered the following issues in further detail below but agrees with the ExA's conclusion in respect of weighting:

a. Principle of Proposed Development – very great positive weight [ER 5.2.1 et seq.];
b. Alternatives – neutral weight [ER 5.2.7 et seq.];
c. Carbon capture and storage – neutral weight [ER 5.2.21 et seq.];
d. Consideration of combined heat and power – neutral weight [ER 5.2.25 et seq.];
e. Landscape and visual – great negative weight [ER 5.2.34 et seq.];
f. Human health – neutral weight [ER 5.2.52 et seq.];

4.10. The Secretary of State has considered the following issues in further detail below and has reached a different conclusion to the ExA in respect of weighting:

a. Climate – neutral weight [ER 5.2.14 et seq.]; minor negative weight ascribed by the Secretary of State;
b. Geology, hydrogeology and contaminated land – neutral weight [ER 5.2.75 et seq.]; minor negative weight attributed by the Secretary of State;
c. Historic environment – neutral weight [ER 5.2.58 et seq.]; minor negative weight ascribed by the Secretary of State.

National and local policy

*National Policy*

4.11. The ExA notes the relevant policy, 2011 NPS EN-1, which sets out the context for the development of nationally significant energy infrastructure, states that energy is vital to economic prosperity and social well-being and so it is important to ensure that the UK has secure and affordable energy [ER 3.2.4]. In the specific context for energy from waste, paragraph 3.4.3 of the 2011 NPS EN-1 states that the principal purpose of the combustion of waste is to reduce the amount of waste going to landfill in accordance with the Waste Hierarchy [ER 3.2.6]. 2011 NPS EN-3 deals with renewable energy infrastructure and, alongside NPS EN-1, forms part of the basis for decisions on nationally significant renewable energy infrastructure which includes energy from biomass and/or waste projects with a generating capacity greater than 50MW. As stated within Chapter 1, the facility would have a generating capacity of more than 50MW of electricity available to export to local users (inc. via a CHP connection) and the national electricity distribution network [ER 3.2.10].

4.12. Section 2.5 of NPS EN-3 deals specifically with Biomass and Waste Combustion facilities. Paragraphs 2.5.64 to 2.5.70 specifically relate to waste management issues when considering waste combustion generating station and paragraphs 2.5.66 states that an assessment should be undertaken that examines the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plans [ER 3.2.11]. Paragraph 2.5.83 states that the Secretary of State should give substantial positive weight to development proposals that have a realistic prospect of recovering these materials [ER 3.2.12].

4.13. dNPS EN-1, when released for consultation in March 2023, stated in paragraph 3.3.3, that there is a need to ensure there is sufficient electricity to meet demands and that new electricity infrastructure will have to be built to replace output from retiring plants and to ensure that we can meet increased demands [ER 3.3.13]. Although dNPS EN-1 recognises the role that combustion power station can play in providing energy when the output from intermittent renewables is low, it also recognises that most forms of combustion power also produce residual emission and, particularly in relation to EfW, it states that the amount of electricity that can be generated is constrained by the availability of feedstock, which is set to reduce further by 2035 as a result of government policies on waste and environmental management [ER 3.2.14].

4.14. The ExA noted that Paragraphs 3.3.37 to 3.3.4 of dNPS EN-1 deal specifically with EfW proposals. Paragraph 3.3.38, in line with NPS EN-1, 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 [ER 3.2.15].

4.15. Like NPS EN-3, the dNPS EN-3 covers EfW projects with a generating capacity greater than 50MW and it re-iterates that the recovery of energy from the combustion of waste plays an important role in meeting the UK's energy needs [ER 3.2.18]. Paragraph 3.7.44 states that applicants should undertake an assessment of the proposed waste combustion generating station examining the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant Waste Local Plans [ER 3.2.20]. Paragraphs 3.7.81 to 3.7.84 deal with combustion plant types and scale.

4.16. Paragraph 3.7.84 states that throughput volumes are not, in themselves, a factor in the Secretary of State's decision-making as there are no specific minimum or maximum fuel throughput limits for different technologies or levels of electricity generation; this is a matter for the applicant. However, the increase in traffic volumes, any change in air quality, and any other adverse impacts as a result of the increase in throughput should be considered by the Secretary of State in accordance with this NPS and balanced against the net benefits of the combustion of waste [ER 3.2.25]. the ExA also note that paragraphs 3.7.104 to 3.7.106 relate to the consideration of waste management impacts. Paragraph 3.7.104 re-iterates the need for the Secretary of State to be satisfied that the proposed combustion generating station is in accordance with the waste hierarchy and of a type and scope so as to not prejudice the achievement of local or national waste management targets [ER 3.2.26].

4.17. The ExA stated that the March 2023 dNPS EN-5 covers the same type of infrastructure for electricity networks and, as far as relevant to the Proposed Development, has largely similar provisions to those included in the NPS EN-5 [ER 3.2.28].

4.18. The ExA noted the relevance of the 2021 Waste Management Plan for England (2021 WMP for England) and how it focuses on waste arisings and their management [ER 3.2.30]. It is supplemented by a Waste Prevention Programme for England which sets out the Government's plans for preventing products and materials from becoming waste, including by greater reuse, repair and remanufacture supported by action to ensure better design to enable this to be done more easily [ER 3.2.31].

4.19. The 2021 WMP for England states that the Government are committed in the Resources and Waste Strategy to drive greater efficiency of energy from waste plants by encouraging use of the heat the plants produce. To deliver net zero virtually all heat will need to be decarbonised and heat networks will form a vital component of this. EfW has a role to play

in supplying this heat, but currently only around a quarter of energy from waste plants operate in combined heat and power (CHP) mode, despite most being enabled to do so [ER 3.2.32]. The 20201 WMP for England goes on to state that the government supports efficient energy recovery from residual waste – energy from waste is generally the best management option for waste that cannot be reused or recycled in terms of environmental impact and getting value from the waste as a resource. It plays an important role in diverting waste from landfill [ER 3.2.33].

4.20. The noted the Resources and Waste Strategy (2018), in which chapter 3 states that, currently, England manages waste in three main ways: sending it for energy recovery, exporting it as a refuse-derived fuel (RDF), and landfilling it. It states that landfill is the least preferred option given its environmental impact and long-lasting nature [ER 3.2.38].

4.21. The 25 Year Environment Plan (25YEP) sets out the government action to help the natural world regain and retain good health [ER 3.2.40]. The 25YEPs goals of the plan are to achieve clean air, clean and plentiful water, thriving plants and wildlife, reduce risk of harm from environmental hazards, promoting more sustainable and efficient use of resources from nature, enhance beauty, heritage and engagement with the natural environment [ER 3.2.41]. The plan identifies six areas around which action will be focused, including increasing resource efficiency, and reducing pollution and waste, and chapter 4 of the 25YEP, states that, as part of maximising resource efficiency and minimising environmental impacts at the end of life, actions proposed by the Government include achieving zero avoidable plastic waste by the end of 2042 and improving management of residual waste [ER 3.2.42].

4.22. The ExA also referred to the Environmental Improvement Plan 2023 (EIP 2023), which builds on the ten goals set in the 25YEP by setting out the progress made against all ten, the specific targets and commitments made in relation to each goal and the Government's plan to continue to deliver of those targets and overarching goals [ER 3.2.44]. Goal 5 – 'maximise our resources, minimise our waste' includes a commitment to halve 'residual' waste (excluding major mineral waste) produced per person by 2042 [ER 3.2.45].

*Local Policy*

4.23. The Cambridgeshire and Peterborough Minerals and Waste Local Plan 2036 (MWLP) (2021) provides a spatial strategy for minerals and waste development in the county and contains policies governing decisions about applications for planning permission [ER 3.2.46]. The MWLP also contains policies affecting other kinds of development to the extent to which they affect safeguarded minerals and waste development or potential minerals reserves [ER 3.2.47], with Policy 1 exploring Sustainable Development and Climate Change; Policy 3 exploring Waste Management Needs and; Policy 4 exploring Providing for Waste Management, which the ExA stated are all of particular relevance to the waste element of the proposal [ER 3.2.48].

4.24. Policy 1 states that Mineral and waste management proposals will be assessed against the overarching principle of whether the proposal would play an active role in guiding development towards sustainable solutions. It also states that waste management proposals should, set out how the principles of the waste hierarchy have been considered and addressed and; broadly quantifying the reduction in carbon dioxide and other relevant greenhouse gases e.g. methane, that should be achieved as part of the proposal, and how this will be monitored and addressed in future [ER 3.2.29].

4.25. Policy 3 states the WPAs will seek to achieve net self-sufficiency in relation to the management of wastes arising from within the plan area, plus additional provision until 2026 in order to accommodate needs arising from London (specifically regarding non-apportioned household and commercial & industrial waste) [ER 3.2.50]. Policy 4 stated that the Councils aim to actively encourage and will in principle, support the sustainable management of waste, which includes encouraging waste to move as far up the waste hierarchy as possible, whilst also ensuring net self-sufficiency over the Plan area [ER 3.2.51].

Principle of the Proposed Development

*Application and WFAA*

4.26. The ExA notes that Chapter 4.2 of the Planning Statement [APP-091] addresses the need for, and principle of, the Proposed Development. It is also supported by the Applicant's Waste Fuel Availability Assessment ("WFAA") [ER 3.2.58].

4.27. The Proposed Development, by generating electricity from residual waste, would have the capacity to export 55MW of electricity to the national grid. Operating at 90%+ availability, the Proposed Development would be able to provide a near constant supply of electricity to the UK electricity generating industry, delivering increased energy security and resilience. The incineration of residual waste would also allow for the reduction of residual waste going to landfill, which the Applicant states is in accordance with the waste hierarchy (as set out in Article 4 of the revised Waste Framework Directive and the Waste (England and Wales) Regulations 2011 ("the 2011 Regulations") ("the waste hierarchy") and aligned with the proximity principle (as set out in paragraph 4 of Part 1 of Schedule 1 of the 2011 Regulations) ("the proximity principle"). The Applicant states that these are two of the central pillars of national and local waste management [ER 3.2.54].

4.28. The Applicant states that its WFAA demonstrates that there is the potential for around 2.5 million tonnes of material to be managed further up the waste hierarchy and/ or at a location that is more proximate to the point of arising. It states that the Proposed Development could offer up to 625,600 tonnes per annum of capacity, helping to address the shortfall identified in the assessment. The Applicant contends that this responds to the Government's policy objective of diverting waste from continued management at the bottom of the waste hierarchy and would avoid significant quantities of residual Household, Industrial and Commercial waste ("HIC") waste being exported for management abroad, allowing waste to be managed in accordance with the proximity principle [ER 3.2.55].

4.29. In relation to need, the Applicant highlighted the role the CHP component of the Proposed Development would have in delivering further benefits in relation to GHG emissions and also reducing the need for fossil fuel derived energy [ER 3.2.56].

4.30. The Applicant also stated that there is clear, in principle, support for the Proposed Development in local planning policy since it would move waste capacity up the waste hierarchy, thus positively contributing to the management of residual waste that would otherwise be sent to landfill [ER 3.2.57].

4.31. The WFAA's methodology sets out the key tasks the Applicant has carried out for the assessment, including defining the spatial scope of the document's Study Area [ER 3.2.59]. In relation to the Study Area the Applicant acknowledges 2024 NPS EN-3 (then in draft form) which states that a new EfW plant must not result in over-capacity of EfW at a national or

local level, indicating that assessments for new facilities should therefore address both the local and national position [ER 3.2.60].

*Scope of Fuel Availability Assessment / Study Area*

4.32. When defining the scope for the Fuel Availability Assessment, the Applicant states that the starting point for defining a Study Area was to look at the broad geographic area that the facility is likely to draw waste from, in order to identify the relevant waste planning authority areas [ER 3.2.61].

4.33. The Applicant states that "Professional judgement is that it is generally commercially viable to transport non-hazardous household, industrial and commercial waste from up to approximately two hours away from the Proposed Development. Distances over two hours travel time from the Proposed Development can become increasingly expensive" [ER 3.2.61]. An approximate two-hour travel time includes all Waste Planning Authorities ("WPAs") - with the exception of Thurrock and Southend - which make up the former East of England planning region.

4.34. As such, and because waste data is generally presented on a 'regional' basis and a proportion of waste may come to the facility from outside the approximate two-hour travel time area, the Applicant has considered it appropriate to use the former East of England planning region as the basis for their WFAA. In addition, the Applicant has included Leicestershire (and Leicester City), Northamptonshire, Lincolnshire and Rutland as these areas are also within an approximate two-hour travel time from the site [ER 3.2.62].

4.35. The ExA notes that the Applicant's WFAA recognises that, during the Examination, there were material discussions about the appropriateness of including the entirety of WPAs, most notably Essex, within the Study Area, where only part of this WPA falls within the indicative two-hour drive time of the Proposed Development. The Applicant caveats this point by stating that, since waste arisings and disposal data for HIC waste are presented on a WPA basis only, the whole WPA must be included in the WFAA Study Area in order to render that study robust. Further, since waste needs are planned at WPA level, for the WFAA to be robust and realistic, the entire WPAs has been considered. The Applicant also states it must be recognised that waste is collected over a wide area and then taken to one or more waste transfer stations before despatch to its final treatment destination. Therefore, the Applicant believes it would not be reasonable to have regard only to that portion of the Study Area which lies within the two-hour indicative drive time of the Proposed Development [ER 3.2.63].

4.36. Regarding the proximity principle, the ExA notes that paragraph 3.3.39 of 2024 NPS EN-1 (then in draft) states in paragraph 3.3.39 that Applicants must demonstrate that proposed facilities are in line with Defra's policy position on the role of energy from waste in treating municipal waste, as per the 2021 Waste Management Plan for England. This is further supported in the NPS EN-3, paragraph 3.7.6 [ER 3.2.183].

4.37. The ExA noted that the 2021 Waste Management Plan for England (2021 WMP for England) refers to the 'proximity' principle as set out in paragraph 4 of Part 1 of Schedule 1 to the Waste (England and Wales) Regulations 2011 [ER 3.2.184 The 2011 Regulations require the establishment of an integrated and adequate network of waste disposal installations taking into account best available techniques and enabling waste to be disposed of in one of the nearest appropriate installations [ER 3.2.185].

4.38. The 2021 WMP for England states that the network should be designed to enable a movement towards the aim of self-sufficiency in waste disposal and the recovery of waste [ER 3.2.186].

4.39. Section 6 of the Applicant's Closing Position Statement on Waste addresses the 'proximity principle'. In it, the Applicant stated that it is important to keep in mind that the proximity principle aims to enable waste to be disposed or recovered in one of the nearest appropriate installations, using the most appropriate methods and technologies. The Applicant stated that: "*The use of a two-hour drive time as the starting point to identify the local area is a standard approach taken in similar projects, including the Boston Alternative Energy Facility (BAEF). North Lincolnshire Green Energy Park (NLGEP) goes further, identifying the local area, having regard to the proximity principle, as the two closest waste planning regions*" [ER 3.2.106].

*Views of IPs in relation to the Fuel Availability Assessment / Study Area*

4.40. Wisbech TC stated that the Applicant's methodology for defining the waste catchment area has been inconsistently applied [REP6-039]. It noted that Milton Keynes was removed from the catchment area as it is neither within the two-hour drive time nor within the former East of England planning region and it therefore argued that West Northamptonshire should have been removed for the same reasons [ER 3.2.83]. It also argued that Luton, Leicester City and West Northamptonshire should be removed alongside Milton Keynes as they are also not within the two-hour catchment [ER 3.2.84].

4.41. Wisbech TC maintained that the Proposed Development would compete with greater waste prevention, re-use or recycling and would result in overcapacity of EfW waste treatment contrary to dNPS EN-3 [REP7-052] [ER 3.2.85]. Wisbech TC also stated that draft Requirement 29 in the dDCO does not ensure waste is managed in accordance with the proximity principle and that the Applicant is reliant on the WFAA's study area to demonstrate that it would not result in over-capacity of EfW treatment at a local level to justify the need for the facility, but then only committing to a very small proportion of the total waste processed at the facility to have originated from within this area. [ER 3.2.86].

4.42. Several other IPs raised concerns regarding the Applicant's need case, particularly in relation to local need, and the robustness of the WFAA, particularly in relation to the suitability of the Study Area and the availability of combustible feedstock for the Proposed Development [ER 3.2.96].

4.43. Following representations made by Wisbech TC, Cambs CC and Fenland DC and UKWIN the ExA asked a series of written questions to the Applicant relating to the appropriateness of the Study Area [ER 3.2.97]. The ExA's key concerns were the proximity principle and the criteria used by the Applicant to define an appropriate Study Area [ER 3.2.98].

4.44. The ExA noted that the Study Area in the last version of the WFAA [REP5-020] was redefined, through discussion with IPs and other consultees, to exclude Milton Keynes from the local/regional assessment, as the boundary of this Waste Planning Authority area is at the limit of the indicative two-hour drive time of the Proposed Development and due to the fact that the Waste Planning Authority area falls within a different region (the South-East) to all other waste planning areas forming the Study Area [ER 3.2.99].

4.45. The ExA noted that the Applicant's WFAA recognises that, during the Examination, there were material discussions about the appropriateness of including the entirety of WPAs, most notably Essex, within the Study Area, where only part of their area falls within the indicative two-hour drive time of the Proposed Development [ER 3.2.100]. The WFAA also stated that, due to the fluid nature of waste contracts and movements around the country, the two-hour drive time has been used as an indicator (and not a limit) to inform which WPAs should be included within the Study Area for the WFAA.

4.46. To address concerns raised during the Examination in relation to the Study Area and its appropriateness, particularly those linked to compliance with the proximity principle, such as those discussed in paragraph 4.44 and 4.45 above, the Applicant committed to compliancy with the proximity principle by including in the dDCO [REP6-003/004] a requirement (Requirement 29) that guarantees that not less than 17.5% of the waste processed at the Proposed Development per operational year must originate from within Waste Area 1, the area closest to the Proposed Development [ER 3.2.101].

4.47. The ExA noted that Waste Area 1, as defined in the dDCO [REP6-003/004] and as shown in the document "DCO Requirement 29: Waste Area Plan" [REP6-015], represents a 75km radius from the Proposed Development. This equates, approximately, to the two-hour travel distance which, as the Applicant explained in the WFAA, was the starting point in defining the Study Area [ER 3.2.102].

4.48. Following the introduction of Requirement 29, the ExA asked further questions to the Applicant in relation to its justification for the proposed requirement and relevance to the Proposed Development [ER 3.2.103].

4.49. The Applicant's response to Further Written Questions [REP7-040] addressed this point, and stated that the Application's compliance with the proximity principle is not limited to the proposed commitment as regards Waste Area 1. That is only one element of the compliance strategy, and compliance with the proximity principle does not necessitate that waste be sourced only from within Waste Area 1. The Applicant goes on to say that Requirement 29 is an additional obligation that has been agreed with Cambs CC and that it serves to strengthen the credentials of the Proposed Development as regards compliance with the proximity principle. However, it would be wholly inappropriate to regard only waste sourced from within Waste Area 1 as having been sourced in accordance with the principle [ER 3.2.104].

4.50. The Applicant's Closing Position Statement on Waste, which also addressed the point on the proximity principle, stated that there had been a focus during Examination on the proximity principle and noted that although this principle is not considered or identified in either 2011 NPS-EN1 or EN3, the Waste Management Plan for England (January 2021) sets out the need to reflect the proximity principle. The focus of the policy on the proximity principle is not only to enable waste to be disposed of, or be recovered, in one of the nearest appropriate installations, but also to ensure the most appropriate methods and technologies are provided, in order to ensure a high level of protection for the environment and public health. Furthermore, while the network shall be designed in such a way as to enable a movement towards the aim of self-sufficiency in waste disposal and the recovery of waste, importantly, consideration must be given to the geographical circumstances or the need for specialised installations for certain types of waste.

4.51. The ExA concluded that even though the Applicant's assessment relies on waste being transported from areas that are beyond a 2-hour drive radius from the EfW CHP Facility, the Proposed Development is not contrary to the proximity principle in relation to the establishment of an integrated and adequate network of waste disposal installations taking into account best available techniques.

*The Secretary of State's Conclusion in relation to the Scope of the Fuel Availability Assessment / Study Area*

4.52. The Secretary of State has taken into consideration the Applicant's assessments, policy approach and methodologies, the views and concerns of the IPs and the conclusions drawn by the ExA. The Applicant has stated the residual HIC waste will come from up to 2 hours' drive away and has used a 2-hour radius as a starting point to be consistent with other projects like the Boston Alternative Energy Facility ("BAEF"). In using this methodology, it will capture almost all of the WPAs in the East of England planning region. Wisbech Council stated that the Applicant's methodology in identifying the relevant WPA's in the study area was inconsistent because it excluded Milton Keynes and included West Northamptonshire (amongst other areas). The Applicant stated that this is because Milton Keynes is not in the East of England planning region. The Applicant also explained in its WFAA that it considered it appropriate to include Leicestershire (and Leicester City); Northamptonshire; Lincolnshire and Rutland within the spatial scope of the WFAA on the basis of their proximity to the Proposed Development. The ExA found that the Proposed Development complied with the proximity principle.

4.53. Based on the information above, the Secretary of State is content with the approach proposed by the Applicant in relation to the scope of the Fuel Availability Assessment. She is satisfied that the methodology used is reasonable, agrees with interpretation of policy by the ExA, and considers that the Proposed Development will be compliant with the proximity principle.

*Fuel scope and methodology for identification of suitable types of waste*

4.54. Regarding the type of fuel that would be accepted, the ExA noted that the Proposed Development would be designed to accept residual HIC waste streams. Such waste would comprise of loose residual waste, and in some cases, refused derived fuel ("RDF") which is presently exported for final treatment in EfW facilities in continental Europe. Moreover, and quite critically, to ensure that the facility would not divert waste from management methods further up the waste hierarchy, it has been important to consider only those parts of the HIC waste stream that are presently managed at domestic landfill sites [ER 3.2.65].

4.55. The ExA notes that in order for the WFAA to only take into account relevant fuel sources and to avoid an over-estimation of available fuel, in consideration of the issues above, the WFAA has excluded waste types that are not suitable for combustion at the Proposed Development. The Applicant has identified the following waste combustible types as the primary feedstock for the Proposed Development within the two shortlisted List of Waste ("LoW") categories:

- 19 - waste from waste management facilities, off-site wastewater treatment plants and the preparation of water intended for human consumption and water for industrial use:
    - 19 12 - wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) not otherwise specified:
        - 19 12 10 combustible waste (refuse derived fuel); and

        - 19 12 12 other wastes (including mixtures of materials) from mechanical treatment of wastes.

- 20 - municipal waste (household waste and similar commercial, industrial and institutional wastes) including separately collected fractions:
    - 20 03 other municipal wastes:
        - 20 03 01 mixed municipal waste; and
        - 20 03 07 bulky waste [ER.3.2.66].

4.56. The waste types listed above were selected by the Applicant as predominantly comprising waste suitable for combustion at the Proposed Development and as a result, have formed the basis of the statistical analysis in the WFAA [ER 3.2.67]. Additionally, by limiting the assessment to the specific types of waste identified in the LoW, the WFAA states that the worst-case scenario is assessed [ER 3.2.67].

4.57. The Applicant sets out in sections 3, 4 and 5 of the WFAA; the general methodology used for the identification of suitable waste; the methodology used for carrying out the local analysis; and the methodology for the national analysis respectively [ER 3.2.108].

4.58. Regarding the methodology for the identification of suitable waste types, the Applicant stated in the WFAA, paragraph 3.2.21 and in the ER, as noted earlier in paragraph 4.54 above, that the Proposed Development would be designed to accept *"residual Household,* Industrial *and Commercial ("HIC") waste streams, of which it will comprise of loose residual waste and, in some cases, Refuse Derived Fuel ("RDF"), while still ensuring that the facility would not divert waste from management methods further up the waste hierarchy"* [ER 3.2.135].

4.59. Furthermore, as the HIC waste streams considered by the Applicant are all residual waste presently managed at domestic landfill sites, the Applicant can therefore offer reassurances that only waste that is currently treated at the bottom of the waste hierarchy and being sent to landfill, would be targeted [ER 3.2.138].

4.60. The Applicant's approach, as set out in Section 4 of the WFAA [REP5-020], was to identify how much potentially suitable 'in scope' waste is produced in the Study Area that was being treated at the bottom of the hierarchy. The Applicant's calculations reflect up-to-date data sources as set out in table 3.2 of the WFAA [REP5-020] and the Applicant has found that there are 2.4 million tonnes of non-hazardous waste HIC waste being treated at the bottom of the waste hierarchy which could be used as fuel for the Proposed Development. This would represent a more favourable option according to the waste hierarchy as it would be moving waste from the bottom of the hierarchy (disposal) to recovery of waste [ER 3.2.146]. The ExA noted that the WFAA focuses on the availability of residual HIC waste being the fraction of waste which is left over after the removal of reusable and recyclable materials, and which is currently being sent to landfill or exported abroad [ER 3.2.147].

*Views of IPs on fuel scope and methodology for identification of suitable types of waste*

4.61. Regarding the methodology for the identification and calculation of suitable residual waste, the ExA notes that concerns were raised by Wisbech TC and UKWIN. The ExA asked a series of written questions to the Applicant in relation to the identification and calculation of suitable residual waste at ExQ2 [PD-013]. This issue was then further explored at ISH7 [EV-062], under Waste Issues. Following from ISH7, at ExQ3 [PD-017], the ExA also asked

further written questions to the Applicant on this issue, particularly ExQ3.PND.3.7 and ExQ3.PND.3.9.

4.62. The ExA's key concerns were centred on the calculation of suitable residual waste, particularly at local level. At ISH7 the Applicant was asked several questions regarding the identification and calculation of suitable residual waste. In the Written Summary of the Applicant's Oral Submissions at ISH7 [REP6-025], the Applicant confirmed that the WFAA remains a conservative assessment of the availability of suitable residual waste currently managed at the bottom of the waste hierarchy and there remains a minimum shortfall of non-landfill capacity for both household and industrial and commercial waste of approximately 1.5 million tonnes of non-landfill HIC residual waste management capacity in the local area. The Applicant stated that the local assessment for the East of England region, along with the in scope East Midlands planning authorities, demonstrates how reliant these areas are on landfill. In 2021-22, around 23% of residual waste was landfilled in the East of England, in comparison to a national average of 8% [ER 3.2.110].

4.63. In its response to ExQ2 PND.2.4 the Applicant stated, in [REP5-032] that, as waste arisings and disposal data for HIC waste are presented on a WPA basis only, the whole WPA must be included in the WFAA Study Area. Future waste needs are also planned at this level, and for the WFAA to be robust and realistic, the entire WPAs have been considered [ER 3.2.111].

4.64. Further written questions were asked by the ExA on this issue to the Applicant, as part of ExQ3 [PD-017], particularly in relation to how the calculation demonstrates future suitable residual waste have taken into consideration, at a national and local level, the Government's targets in the Environment Improvement Plan ("EIP") 2023. The Applicant's response to ExQ3 PND.3.7 [REP7-040] states EIP 2023 sets a series of targets which are 'national', of which two are relevant to the Proposed Development. No local targets are identified and the WFAA has considered the implications for residual waste fuel availability, were these targets to be met, on a national level.

4.65. The Applicant stated it considered the impacts of the Government's targets on the future availability of waste at a local level in sections 4.2 and 4.3 of the WFAA. These sections set out the waste treatment capacity requirements identified by the relevant waste planning authorities up to and beyond the year 2030, test these capacity need assessments, and provide a conclusion as to the quantity of future waste management capacity, at the level of recovery, that would be required for the local area [ER 3.2.112].

4.66. UKWIN raised concerns regarding the Applicant's WFAA, particularly in relation to the estimates of waste arising, stating that the Applicant's estimates generally overstate the level of current and future combustible feedstock available for incineration. UKWIN's position by the end of the examination is summarised in [REP8-031] and [REP8-032] [ER 3.2.91]. UKWIN stated that the Applicant failed to provide a robust response to concerns in relation to non-combustibility of 19 12 12 waste and the unsuitability of that waste stream to act as a potential incinerator feedstock, especially the fraction of such waste currently sent to landfill [ER 3.2.92].

4.67. The Applicant responded to these concerns, stating that it considers that waste code 19 12 12 is a suitable waste stream that the Applicant routinely receives waste from at its existing EfW facilities and that the focus of the fuel availability assessment is on the availability of residual waste i.e. that part of the waste stream that is left over after reuse, recycling and other forms of recovery have taken place [ER 3.2.93]. Furthermore, the Applicant adds in

[REP8-017], in response to paragraph 71 of [REP7-051] that, since the November 2017 Tolvik analysis referenced in UKWIN's submission, guidance on waste classification was issued by the Government and the Environment Agency (Guidance on the Classification and Assessment of Waste – last updated in October 2021). This provided further clarity on how waste operators/handlers should categorise waste. The Applicant's experience from accepting waste of this category at their existing EfW facilities is that this waste stream is fully combustible [ER 3.2.94]. The Applicant states that its WFAA has only considered, based on a national assessment of data and categories, residual waste that would be suitable for treatment at the Proposed Development [ER 3.2.137].

4.68. Having reviewed the information in relation to types of waste, the ExA considered that the methodology used for the identification of waste was sound and robust and it saw no reason to disagree with the Applicant's overall conclusion in relation to the identification of the types of waste. The ExA found the Applicant's approach is in line with NPS EN-1 and dNPS EN-1, and since it is residual waste that has been identified, that it would not disadvantage reuse or recycling initiatives in accordance with NPS EN-3 and dNPS EN-3 [ER 3.2.138].

*The Secretary of State's Conclusion on fuel scope and methodology for identification of suitable types of waste*

4.69. The Applicant has stated that it will only use waste feedstock with specific ECW waste codes – this comprises waste currently headed to landfill and is made up of two types: loose residual HIC waste and RDF that is currently exported abroad. UKWIN objected to ECW 19 12 12 waste being used as it stated it was not combustible. The Applicant responded that it was its experience, from accepting waste from this category from its existing energy from waste facilities, that this waste stream is fully combustible. The Secretary of State agrees with the ExA that the methodology used for the identification of waste is sound and robust and is satisfied that the waste codes cited are acceptable for combustion at the Proposed Development.

4.70. The Secretary of State agrees with the ExA that the methodology used for the identification of waste is sound and robust, demonstrates that suitable residual waste is available and that the Proposed Development would not disadvantage reuse or recycling initiatives.

*Waste hierarchy*

4.71. Regarding the waste hierarchy, paragraph 3.4.3 of 2011 NPS EN-1 states that the principal purpose of the combustion of waste, or similar processes, is to reduce the amount of waste going to landfill in accordance with the waste hierarchy and to recover energy from that waste as electricity or heat [ER 3.2.139]. Paragraph 3.3.38 of dNPS EN-1 also reiterates that 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 it states in paragraph 5.12.2 that sustainable waste management is implemented through the waste hierarchy, which sets the priorities that must be applied when managing waste, with other recovery (including energy recovery) being preferred to disposal [ER 3.2.140].

4.72. Paragraph 2.5.64 of NPS EN-3 states that waste combustion generating stations need not disadvantage reuse or recycling initiatives where the proposed development accords with the waste hierarchy [ER 3.2.141]. The Resources and Waste Strategy (2018) confirms that landfill is the least preferred option to deal with waste [ER 3.2.144].

4.73. The Applicant's approach, as set in Section 4 of the WFAA [REP5-020], was to identify how much potentially suitable 'in scope' waste is produced in the Study Area that was being treated at the bottom of the hierarchy. The Applicant's calculations reflect up-to-date data sources as set out in table 3.2 of the WFAA [REP5-020] and the Applicant has found that there are 2.4 million tonnes of non-hazardous waste HIC waste being treated at the bottom of the waste hierarchy which could be used as fuel for the Proposed Development. This would represent a more favourable option according to the waste hierarchy as it would be moving waste from the bottom of the hierarchy (disposal) to recovery of waste [ER 3.2.146]. The ExA note that the WFAA focuses on the availability of residual HIC waste being the fraction of waste which is left over after the removal of reusable and recyclable materials, and which is currently being sent to landfill or exported abroad [ER 3.2.147].

4.74. For the reasons stated in paragraph 4.55 above in relation to Type of waste used for EfW Facility of this section of the report, the ExA found the Applicant had adequately demonstrated and identified relevant waste streams suitable to be used as feedstock for the Proposed Development. The ExA also found, for the reasons stated under Waste Hierarchy (4.71 et seq.), that the Proposed Development does comply with the waste hierarchy [ER 3.2.172].

4.75. The ExA noted that Requirement 14 (waste hierarchy scheme) of the dDCO had been added to ensure compliance with the waste hierarchy, including monitoring [ER 3.2.148]. It concludes that insofar as it relates to the waste hierarchy, the Proposed Development meets the requirements of the relevant NPSs and the Resources and Waste Strategy 2018 [ER 3.2.149].

4.76. The ExA notes that as the type of waste used as fuel for the Proposed Development is waste currently being sent to landfill, in principle, the Proposed Development will not prejudice the achievement of local waste plans. Nevertheless, consideration must also be given to the type and scale of the facility [ER 3.2.173].

*The Secretary of State's conclusion on the Waste Hierarchy*

4.77. The Secretary of State is satisfied that the Proposed Development would be in accordance with the waste hierarchy, reducing the amount of waste sent to landfill without disadvantaging reuse or recycling initiatives. She notes that Requirement 14 in the DCO will ensure compliance with the waste hierarchy. She also notes that the Environment Permit will secure periodic reviews of the waste being fed into the EfW facility and will work to incorporate technologies that encourage movement towards self-sufficiency. In addition to the Environment Permit, the Proposed Development will work to ensure that it meets the requirements of 2024 NPS EN-3, which aims to ensure that EfW facilities do not compete with greater waste prevention.

*Local and national need*

4.78. Part 3 of 2011 NPS EN-1 clearly establishes the need for new nationally significant energy infrastructure and states, in paragraph 3.1.1 that all types of energy infrastructure covered by this NPS, including energy from waste, are needed in order to achieve energy security [ER 3.2.150]. The ExA noted that EfW is considered, as per 2011 NPS EN-1, part of the Government's strategy to dramatically increase the amount of renewable generation capacity [ER 3.2.151]. Paragraph 3.3.38 of dNPS EN-1 reiterates this by stating that the principal purpose of the combustion of waste, or similar processes (for example Advanced

Conversion Technologies (ACTs) such as pyrolysis or gasification) is to reduce the amount of waste going to landfill in accordance with the waste hierarchy and to recover energy from that waste as electricity or heat. It states in the same paragraph 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. The ExA stated that energy recovery from residual waste has a lower GHG impact than landfill [ER 3.2.156].

4.79. The Applicant carried out a national and local analysis of need. For the national analysis of need, the WFAA baseline uses 2021 figures with projections of future requirements extending to 2030. For the local analysis, the Applicant has provided a current 'snapshot' of the present-day position within the Study Area and a forecast of future requirements for EfW facilities to manage anticipated future HIC waste [ER 3.2.68].

4.80. In section 5 of the WFAA [REP5-020] the Applicant explained and included its assessment of national need. The Applicant confirmed its analysis and position in Applicant's Closing Position Statement on Waste [REP8-020] [ER 3.2.160]. In paragraph 5.3 the Applicant stated that its national analysis demonstrates that, in 2021, around 9 million tonnes of residual waste was disposed in landfill that could be treated at an EfW facility, and that, in 2022, around 1.5 million tonnes of RDF was exported to Europe. This is consistent with the information included in the WFAA [REP5-020] in paragraph 5.3 'conclusions on the national analysis' [ER 3.2.161].

4.81. The Waste Fuel Availability Assessment: National Analysis in relation to future baseline position as assessed by the Applicant is set out in section 5.2 of the WFAA [REP5-020]. In paragraph 5.2.9 the Applicant states that, to achieve the Government's new, more stringent target of 65% by 2035, there needs to be an increase of 21% in recycling in England over the next 15 years. There would also need to be a likely substantial increase in municipal type Commercial & Industrial waste recycling – a waste stream for which there is little reliable data – which under the 'high recycling' scenario would be to a level which exceeds the Government's current municipal waste recycling target by 13%. [ER 3.2.72].

4.82. The Applicant also stated that by 2028, even taking into consideration the targets included in the EIP 2023, there is anticipated to be 21.4 million tonnes of residual HIC waste in England requiring management. Based on the above, by 2028, it is therefore predicted that there would remain a minimum shortfall of 3.5 million tonnes of residual HIC capacity in the England which could be diverted from landfill and used as fuel. This shortfall is calculated based on the amount of residual HIC waste in England requiring management and the operational capacity of EfW facilities by the end of 2027 as per the May 2023 Tolvik Report. [ER 3.2.162].

4.83. The Applicant stated that whilst the provisions of the Environment Act 2021 and the Government's Net Zero Strategy will have a positive effect on increasing municipal recycling rates at a national level, given that a large percentage of WCAs within the local Study Area of this WFAA already engage in the separate collection of food waste, it is questionable whether this measure will readily facilitate the national achievement of a further 21% in municipal waste recycling, to achieve an overall target of 65% [WFAA, 5.2.16] [ER 3.2.73]. The Applicant states it is unrealistic for the WFAA to adopt the 'high recycling' scenario when seeking to establish future likely quantities of residual HIC waste and that it is appropriate to adopt the median scenario, given that this aligns most closely with extant Government policy [WFAA, 5.2.18 et seq.] [ER 3.2.74].

4.84. The WFAA local analysis concludes that almost 2.4 million tonnes of potentially suitable waste generated in the Study Area were managed at the bottom of the waste hierarchy and sent to non-hazardous landfill in 2021. In addition, the WFAA also states that exports of RDF from England stood at 1.7 million tonnes at the end of 2021, falling to 1.5 million tonnes at the end of 2022, with approximately 181,000 tonnes in 2021 likely exported to Europe directly from the Study Area. The Applicant concluded that, based on the current pattern of waste arising and management across the spatial scope of this assessment, there is potentially over 2.5 million tonnes of material to be managed further up the waste hierarchy and/or at a location more proximate to the point of arising [ER 3.2.70].

4.85. In relation to the local analysis, the Applicant concluded that in 2021 there was a total of approximately 9.7 million tonnes of such residual HIC waste arising in the Study Area and that of the potentially suitable waste generated in the Study Area, almost 2.4 million tonnes were managed at the bottom of the waste hierarchy and sent to non-hazardous landfill in 2021 [WFAA, 6.2.1 et seq.]. In addition, exports of RDF from England stood at 1.7 million tonnes at the end of 2021, falling to 1.5 million tonnes at the end of 2022, of which approximately 163,000 tonnes was likely exported directly from within the Study Area [ER 3.2.75].

4.86. The Applicant concluded that on the current pattern of waste arising and management across the spatial scope of this assessment, there is potential for around 2.6 million tonnes of material to be managed further up the waste hierarchy and/or at a location that is more proximate to the point of arising [WFAA section 4.2] [ER 3.2.76]. The evidence bases that the Applicant has used point to a shortfall of 1.3 million tonnes per annum up to 2030 and 1.5 million tonnes per annum up to 2035 [ER 3.2.77] and the Applicant's position is that the Proposed Development would not result in an over-supply of EfW capacity at either the local/regional or national level [ER 3.2.78].

4.87. The ExA draws attention to the fact that, the further the distance waste has to travel, the higher the environmental cost, particularly considering that all waste is proposed, at the moment, to reach the proposed development by road. The Applicant included the potential for a rail connection in its design which could also be used for the transport of waste, however, this has not yet been secured [ER 3.2.176], although a SoCG has been agreed which secures Network Rail's preferences in the DCO. Consequently, the ExA found it appropriate to accept the Study Area in the Applicant's WFAA [REP5-020]. Within the Study Area the WFAA [REP5-020] has concluded, that based upon the current pattern of waste arising and management across the spatial scope of this assessment, there is potential for around 2.6 million tonnes of material to be managed further up the waste hierarchy and/or at a location more proximate to the point of arising [ER 3.2.177].

4.88. The ExA concluded that the Applicant had adequately demonstrated the need for the Proposed Development nationally and locally and that, as it will only target waste currently being sent to non-hazardous landfill at the bottom of the waste hierarchy, the Proposed Development is unlikely to compete with greater waste prevention, re-use, or recycling, or result in over-capacity of EFW waste treatment at a national or local level [ER 3.2.181].

*Views of IPs on local and national need*

4.89. At the close of the examination, the ExA noted that one of the outstanding concerns raised by Wisbech TC, as identified in the SoCG between the Applicant and Wisbech TC [REP6-020], related to whether the scale of the Proposed Development would result in over-capacity

of EfW treatment at a national or local level therefore resulting in a conflict with the waste hierarchy and waste management targets [ER 3.2.81].

4.90. The ExA noted that UKWIN, in [REP6-042] raised concerns regarding the cost of transporting and stated that commercial competitiveness would be achieved by a reduction of a gate fee to attract waste. However, this is a commercial matter and, as stated within NPS EN-3 paragraph 2.5.17 commercial issues are not likely to be an important matter for the Secretary of State in making her decision [ER 3.2.166].

4.91. Concerns were also raised in relation to the Applicant's conclusions that there is a shortfall in Waste Management facilities and that the Proposed Development would not result in an over-capacity of EfW treatment at a national or local level [ER 3.2.114], as stated in paragraph 4.89, with the ExA's concerns centring on local level capacity and the capacity created by other Waste Management facilities (Rivenhall, Newhurst and BAEF) and how these have been taken into consideration [ER 3.2.115].

4.92. The ExA asked a series of written question to the Applicant in relation to this at ExQ2 [PD-013]. This issue was further explored at ISH7 [EV-062], under Waste Issues. Following from ISH7, At ExQ3 [PD-017], the ExA asked further written questions to the Applicant on this issue [ER 3.2.117]. The Applicant's responses are based on the information contained in Appendix C Energy from Waste Capacity Data, the latest version of which was in the WFAA submitted at DL5 [ER 3.2.117].

4.93. In response to PND.2.5, the Applicant confirmed that the consented and under construction capacity in the East of England of 595,000 tonnes, as set in Appendix C Energy from Waste Capacity Data [REP5-019/020], relates to the development of Rivenhall EfW. In addition, the Applicant also confirmed that its calculation in relation to consented and under construction capacity in the East Midlands included the 350,000 tonnes Newhurst EfW facility in Leicestershire and a 170,000 tonnes facility located in Derbyshire [ER 3.2.118].

4.94. The Applicant confirmed that, of the 1 million tonnes per annum of capacity recently permitted at the BAEF, only a small amount of this capacity (approximately 160,000 tonnes per annum) represents an alternative for the management of residual waste assessed in the Study Area as being available for the Proposed Development. This is due to the BAEF only being able to process refuse derived fuel ("RDF"), which is waste that has already undergone a treatment process, unlike the Proposed Development. The Applicant estimated that only approximately 160,000 tonnes per annum of RDF are produced within the Study Area and therefore there remains a need for the Proposed Development [ER 3.2.119].

*The Secretary of State's conclusion on local and national need*

4.95. The Secretary of State has given due regard to 2024 NPS EN-3, which states that a new EfW plant must not result in over-capacity at the local or national level. As stated, the methodology the Applicant has used for waste to be sourced from WPAs that will be transported to the facility, does acknowledge that this is an approximation, and this is a standard approach taken in similar projects. The Secretary of State is content with the methodology used and agrees with the Applicant's approach, including the use of a median scenario to assess national need. The Secretary is State is also satisfied that the analysis has identified that these waste streams will not compete with the waste hierarchy.

4.96. Regarding local capacity, the Secretary of State has considered the fuel availability assessment which looked at the broad geographic area that the facility will likely draw waste from. It should also be noted that in the WFAA, RDF waste exports from the study area show that 181,000 tonnes were shipped to continental Europe for incineration in 2021 and 163,000 tonnes in 2022. The Applicant expects this number to reduce throughout the lifetime of the Proposed Development and believes that there will be enough local waste to satisfy the level of supply needed. The Secretary of State is satisfied that there is enough waste at the local level to supply the Proposed Development.

*The Secretary of State's Conclusion on the Principle of the Proposed Development*

4.97. The Secretary of State has taken into consideration the Applicant's assessments, policy approach and methodologies, the views and concerns of the IPs and the conclusions drawn by the ExA.

4.98. The Secretary of State notes that the Proposed Development would make a positive contribution to addressing the urgent need for new nationally significant electricity generating infrastructure. She notes that it would contribute to the creation of a network of facilities that are able to process waste and would be able to divert waste from landfill and use it for the creation of electricity and heat, therefore dealing with waste via a technology that would both move waste up the waste hierarchy and also use it as fuel [ER 3.2.189].

4.99. The ExA noted that the EfW CHP Facility would have the capacity to process up to 625,600 tonnes of residual waste per annum, positively contributing to the creation of a network of waste disposal installation that would address the identified shortfall while moving waste up the hierarchy via the use of appropriate technology [ER 3.2.190]. The Secretary of State notes the importance of waste treatment, but also notes that diversion of waste from landfill into a network that treats waste overall and uses it for the creation of electricity and heat is a key objective and in line with the relevant NPS.

4.100. Although the ExA accepted that the Applicant's assessment relies on waste being transported from areas beyond a two-hour drive radius from the EfW CHP Facility, the ExA did not find the Proposed Development was contrary to the proximity principle in relation to the establishment of an integrated and adequate network of waste disposal installations taking into account best available techniques [ER 3.2.191].

4.101. The Secretary of State is satisfied with the conclusions drawn by the ExA on this matter at ER 3.2.192, and notes that the Applicant's assessments and models are based on what it describes as a median scenario.

4.102. In light of the points made above in respect of the Applicant's assessments and calculations, the views of the IPs and the application of the policy by the Applicant and the ExA, the Secretary of State is satisfied that the Proposed Development meets the policy requirements of 2011 NPS EN-1, and 2024 NPS EN-1 and NPS EN-3, as well as contributing towards the achievement energy security in order to meet the 2050 Net Zero obligations.

4.103. The Secretary of State also notes the Applicant's approach to the management of the waste from the construction, operation and decommissioning of the Proposed Development is set out in Appendix E of the Outline Construction Environmental Management Plan [REP6-012], which describes the procedure by which waste would be managed during the construction phase. The Outline Decommissioning Plan [REP4-025] sets out the Applicant's approach to

waste management in relation to the decommissioning of the Proposed Development and where the Proposed Development would be subject to the Environmental Permitting regime, waste management arrangements during operations would be covered by the environmental permit [ER 3.2.80].

4.104. The Secretary of State agrees with the ExA [ER 3.2.192] that an effective system is in place in relation to waste management.

Alternatives

4.105. As noted by the ExA, EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, Applicants are required to include in their ES information about the main alternatives they have studied and include an indication of the main reasons for the choice made [ER 3.3.1]. The position in 2024 EN-1 remains the same in this regard. 2024 EN-1 also states that the Secretary of State should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site [2024 EN-1 4.3.24].

4.106. Chapter 2 of the ES [APP-029] sets out the alternatives considered by the Applicant [ER 3.3.9]. The Applicant stated that the essential criteria were: a location to respond to the requirement for additional EfW capacity; a site in proximity to potential heat and electricity customers; the ability to export electricity to the national transmission or local distribution electricity networks; a site of sufficient size to accommodate the Proposed Development; and good access to the strategic highway network [ER 3.3.10]. Additional, but preferable, criteria included: a brownfield site used for waste-related or similar commercial activities; a site allocated for waste related uses; a site where the broad spatial strategy supports its use for waste management purposes, and a site free of environmental designations [ER 3.3.11].

4.107. Based on the criteria above, the Applicant concluded that the EfW CHP Facility site was suitable for the Proposed Development, and that following the completion of the site selection process set out above, the consideration of specific alternative locations for the EfW CHP Facility was not necessary [ER 3.3.12].

4.108. The Applicant stated in its ES Chapter 2 that four important factors influencing the need to consider alternatives to the design presented in the EIA Scoping Report were: the Wisbech Access Strategy; the proposed reopening of the disused March to Wisbech Railway; consideration of the potential environmental impacts of the use of Algores Way for access; and ensuring that the Proposed Development can deliver future legal and/or policy requirements relating to carbon capture and storage ("CCS") and biodiversity net gain ("BNG") [ER 3.3.14].

4.109. In regard to site access, the Applicant decided that using New Bridge Lane as the primary access for Heavy Goods Vehicles (HGVs) delivering to the EfW CHP Facility would form a part of the Proposed Development [ER 3.3.15]. In relation to CCS, three potential areas of land were identified which represented different options from environmental and planning, technical and land and commercial perspectives [ER 3.3.16].

4.110. In relation to the EfW CHP Facility main building design, the Applicant considered four options, with option two being the preferred option as: it included the enclosure of low-level plant and machinery between the boiler house and chimneys, removed an element of visual

clutter; proposed a succession of flat roofs consistent with the roofscape of surrounding buildings; used flat roofs which minimised the height and mass of the building; and flat roofs are safer surfaces on which to undertake maintenance and repair [ER 3.3.18]. Consideration was also given to the colour and shading of external materials with the proposal for the use of darker shading at the lowest levels graduating to lighter shades being preferred [ER 3.3.19].

4.111. In relation to technology and processes, the Applicant stated, that based on its experience, the proposed technology has a proven and safe track record, and therefore no alternative forms of thermal treatment technology were considered [ER 3.3.21].

4.112. The ExA noted that the Applicant's preferred approach to the CHP connection was, for the reasons set out in paragraph 2.5.1 of ES Chapter 2 [APP-029], for to run it along the side of the corridor of the disused March to Wisbech Railway. Nevertheless, there was the need to ensure the proposed CHP Connection would not hinder the ability to bring forward the reopening of the disused line, and the Applicant investigated design options to demonstrate that the CHP Connection would allow for the reopening of the disused line by others [ER 3.3.23].

4.113. The Applicant considered three different National Grid connection alternatives in light of their environmental, technical, land use and commercial effects. In paragraph 2.6.29 of ES Chapter 2, the Applicant stated that, having given consideration to the predicted effects of the different alternatives, Alternative Grid Connection 3 was the preferred connection point [ER 3.3.25]. The alternative grid connection routes and technologies considered are in section 2.7 of ES Chapter 2 [APP-029]. National Highways had no in-principle objection to the preferred alternative of a wholly underground connection running within New Bridge Lane, the A47 verge and Broadend Road [ER 3.3.26].

4.114. Alternative locations and equipment for the Walsoken Substation are described in Chapter 2 of the ES. The Applicant considered the use of gas insulated technologies, these being air and clean air switchgear. Of the two options taken forward, the clean air switchgear is favoured because it avoids the use of sulphur hexafluoride and is of a lower height (3.2m) when compared with up to 6m for the air insulated option [ER 3.3.27].

*Views of IPs*

4.115. The ExA noted that the SoCG between the Applicant and Cambs CC and Fenland DC [REP8-011] shows that agreement has not been reached in relation to the list of alternative sites considered. This is also confirmed in Cambs CC and Fenland DC Final Position Statement [REP8-026] which states that the Applicant's submission [REP5-037] does not contain a list of alternative sites considered and that a shortlist of sites should be documented to demonstrate that there was consideration of alternative sites. Cambs CC and Fenland DC also stated that of the sites listed as alternatives [REP5-037], these are either all existing, or have extant permission, but are under the ownership of another party. As such, these sites are either not realistic alternatives or the Applicant has not demonstrated what efforts have gone into overcoming constraints prior to ruling them out of their screening process, resulting in the proposal site being the only option [ER 3.3.28].

4.116. In the SoCG, the Applicant's position is that other sites, namely Rivenhall, Saddlebrow and the Peterborough Green Energy, were considered but were not taken forward as an alternative to Medworth because these sites were either unavailable, had been refused

consent or lacked sufficient market potential for CHP. Furthermore, the Applicant also states that EN-1 confirms, at paragraph 4.4.1, that from a policy perspective that there is no general requirement to consider alternatives [ER 3.3.29].

4.117. Wisbech TC's SoCG [REP6-020] raised concerns regarding the Applicant's approach to alternatives, which remained unresolved at the close of Examination [ER 3.3.32].

4.118. Wisbech TC's concerns related to the site selection criteria for the Proposed Development and its consistency with relevant NPSs; whether the site at Algores Way is a suitable location for the provision of a new EfW CHP Facility; whether the Applicant's Flood Risk Assessment ("FRA") complies fully with the sequential test and exception test and whether sufficient consideration has been given to the evaluation of alternatives [ER 3.3.33].

4.119. In response to Wisbech TC's concerns, the Applicant stated that the site has been identified in order to meet a regional waste management capacity gap, was allocated for waste uses and that it is clear that the sequential test in the National Planning Policy Framework is not needed for sites that are allocated as such in the relevant local plan [ER 3.3.34].

*The Secretary of State's Conclusion on Alternatives*

4.120. The ExA considered that the Applicant had included descriptions of the main alternatives considered and the reasons for selecting the preferred options for the Proposed Development. Furthermore, and in line with EN-3, the Applicant had put forward a proposal that included a grid connection and considered the available transport infrastructure, as far as it relates to the policies included in EN-3 in relation to Alternatives and Site Selection [ER 3.3.41].

4.121. The site does is not within any nationally recognised designation for nature conservation and the Proposed Development can make a positive contribution to the overarching objectives of the Government's Environmental Improvement Plan [ER 3.3.42] as well as helping to achieve energy security in line with the UK's ambition to be Net Zero by 2050.

4.122. The ExA was satisfied that the Applicant has provided adequate information on a range of alternative configurations and locations for the Proposed Development which meets the requirements set out in EN-1, EN-3 and the 2024 EN-1 and EN-3 as well as the EIA Regulations 2017 [ER 3.3.44]. The Secretary of State has considered the issues raised in the Examination and notes that the Applicant has given consideration to alternatives and provided reasons for the choices made. The Secretary of State concludes that the approach taken by the Applicant to site selection, and alternatives more generally, is well reasoned and appropriate, is in accordance with the applicable NPSs and is compliant with the requirements of the EIA Regulations. In light of the information detailed above, the Secretary of State has ascribed this matter neutral weight in the overall planning balance.

<u>Climate</u>

4.123. Chapter 14 of the Environmental Statement ("ES") [APP-041] presents the likely significant effects of the Proposed Development with respect to climate. It sets out a climate change resilience assessment in Section 14.9, which identifies the future baseline in terms of climatic conditions and the associated risks during construction, operation and decommissioning. The Applicant considers that there are no significant effects due to climate change impacts on the construction, operation and decommissioning of the Proposed Development [ER

3.5.16]. The ExA agrees that there will be no adverse effects in relation to climate change resilience from the Proposed Development [ER 3.5.40].

4.124. The Proposed Development would be required under its Environmental Permit to seek continuous improvement in energy efficiency and to provide reports to the Environment Agency ("EA") [ER 3.5.22]. When seeking to reduce GHG emissions from the Proposed Development, the Applicant highlights measures in Table 14.15 of Chapter 14 ES to maximise potential for reusing or refurbishing materials, where available, to encourage circular economy processes and explore alternative lower carbon options. The Applicant would also seek to apply low carbon solutions (including technologies, materials and products) to minimise resource consumption during construction, operation and decommissioning [ER 3.5.23].

4.125. The ExA considered the Applicant's greenhouse gas ("GHG") emissions assessment was based on a worst-case scenario and comparison with a future baseline whereby residual waste processed at the EfW CHP Facility would otherwise continue to be landfilled. The ExA noted that the approach to quantifying GHG emissions was undertaken in line with the latest Institute of Environmental Management and Assessment ("IEMA") Guidance [ER 3.5.18]. The 'without Proposed Development' case considers no new infrastructure and thus represents the operational GHG emissions of landfilling residual waste over the same lifetime as the Proposed Development [ER 3.5.19].

4.126. Table 14.31 of Chapter 14 ES sets out the estimated GHG emissions during the lifecycle of the Proposed Development and the 'without Proposed Development' case. The Applicant reports that the total GHG emissions over the lifetime of the Proposed Development are estimated at approximately +8,246 ktCO2e. The GHG emissions for the 'without Proposed Development' case of landfilling are estimated at +10,817 ktCO2e. This results in a net decrease in GHG emissions, compared to the 'without Proposed Development' case equivalent to approximately -2,571 ktCO2e over the Proposed Development's lifetime.

*Views of IPs*

4.127. A number of RRs and WRs from individuals and organisations raised concerns regarding GHG emissions [ER 3.5.32]. Cambs CC and Fenland DC set out a wide range of concerns throughout the Examination in relation to the methodology of the assessment of GHG emissions and assumptions made by the Applicant. The Councils considered that the Applicant's emissions-related benefits are likely overstated or may not exist at all, and have outlined four objections to the assumptions made in the Applicant's calculations:

- The extent of the Proposed Development's GHG emissions, when compared to landfilling, is entirely dependent on the mix of fossil carbon waste (such as plastics) and biogenic carbon waste (such as paper, food, and garden waste) over the lifetime of the Proposed Development and the calculations bring such a degree of uncertainty that the claimed benefits cannot be properly relied upon;
- The Applicant's calculations as to the overall composition of the electricity generation sources do not properly reflect the likely decreasing carbon intensity of those sources over the lifetime of the Proposed Development;
- All the Applicant's calculations are performed against a baseline of all the waste going to landfill in the 'without Proposed Development' scenario, for the entire 40 years of operation. The Councils question this assumption, given UK Government policy to achieve 65% recycling for municipal solid waste by 2035, and because they consider

that there are several other possible scenarios of what could happen without the Proposed Development; and

- In the absence of a definitive commitment to install and operate CCS at the site, the scheme would continue to contribute GHGs to the atmosphere in a way which is not consistent with a trajectory towards net zero by 2050 [ER 3.5.33].

4.128. Dr Dominic Hogg, on behalf of Rt Hon Stephen Barclay MP [REP2-064], lays out that as $CO_2$ emissions from non-fossil fuel sources are rated as zero, the Applicant's analysis should have credited the amount of sequestered non-fossil carbon locked in landfill that is not emitted as either methane or $CO_2$. Further, the Applicant's analysis is based on constant carbon intensity of the source of waste over the lifetime of the Proposed Development, which is inconsistent with Government guidance. Dr Hogg provided figures showing that the net emissions from landfill, when including sequestration, is 95,353 $tCO_2$ compared to net emissions from incineration of 193,246 $tCO_2$. By using long-run marginal carbon intensity values related to generation, rather than a constant figure as the Applicant used, Dr Hogg found that the increase in emissions due to incinerating rather than landfilling over 40 years could be calculated as 5.934 $MtCO_2$.

4.129. This is at odds with the Applicant's claim that the Proposed Development would have a beneficial impact equivalent to reducing carbon emissions by 2,571 ktCO2 over its lifetime, compared to landfilling. Dr Hogg further submits that the Proposed Development would generate power at a carbon intensity of 621 g $CO_2$/kWh which is significantly more than the expected grid average supply of between 67 g $CO_2$/kWh and 92 g $CO_2$/kWh by the expected operational date of late 2026.

4.130. UKWIN highlighted a number of concerns in relation to the composition of waste and GHG emissions throughout the Examination, expressing dissatisfaction about the inadequacy of the Applicant's climate change assessment and inconsistencies with industry good practice, including the IEMA guidance. UKWIN considered that the Applicant's failure to consider better ways of waste management means that they are not comparing against a "realistic worst case" and question the consistency, transparency and accuracy of the GHG assessment [ER 3.5.37].

4.131. Cambs CC and Fenland DC [REP7-043] and UKWIN [REP7-051] disagree with a number of elements of the Applicant's assessment [REP6-030]; the Councils stating their uncertainty regarding the quantity of future emissions and their dependence on waste composition in their final position statement [REP8-026] and SoCG [REP8-027]. The Applicant provided a response [REP8-017], setting out its closing position on climate [REP8-021], where it acknowledged (paragraph 2.5) that "assessments which seek to model future emissions require assumptions to be made as to the speed of grid carbonisation and waste composition." The Applicant described the Proposed Development as 'Future Fit,' with potential for CHP and Carbon Capture Ready ("CCR") which could deliver additional GHG emissions savings [ER 3.5.39].

*The Secretary of State's Conclusion on Climate*

4.132. The Secretary of State has taken into consideration the views of the ExA, the various submissions made through RRs and WRs, and the assessments conducted by the Applicant as well as the post-examination submissions. The Secretary of State agrees with the ExA that the Applicant has taken into account the potential impacts of climate change and has identified appropriate mitigation or adaptation measures in line with paragraphs 4.8.4 and

4.8.6 of EN-1 and that there should not be any significant adverse effects in relation to climate change resilience to the Proposed Development.

4.133. The ExA notes that the Applicant has set out the embedded environmental measures to be implemented in Tables 14.15 and Table 14.37 [APP-041] of the ES and notes that construction measures to reduce GHG emissions would be set out in the Outline CEMP and secured through dDCO requirement 10 [ER 3.5.43]. The Secretary of State is satisfied with the approach taken by the Applicant and the conclusion drawn by the ExA on this matter.

4.134. In respect of GHG emissions, the Secretary of State agrees with the ExA that the Applicant has, as far as reasonably possible, assessed the GHG emissions of all stages of the development in line with paragraph 5.3.8 of 2024 NPS EN-1, and has used an appropriate methodology, whilst also recognising that the assessment of the operational phase relies on a considerable number of assumptions and estimates [ER 3.5.41]. The Secretary of State is also satisfied with the ExA's conclusion that the Applicant has conducted an adequate assessment in regard to the construction and decommissioning phases [ER 3.5.42].

4.135. The ExA stated that it cannot reconcile the differences between the parties on operational GHG emissions, agreeing with all parties that there are many variables. The Secretary of State agrees that the operational GHG emissions calculations [REP6-030] are dependent on many variables, including the composition of the waste used, which is uncertain at this stage. The Secretary of State is satisfied that comparison to a 'without Proposed Development' baseline where the waste would otherwise be landfilled is appropriate, but agrees with the ExA that there are uncertainties in the calculations for this scenario, for example relating again to the composition of the waste, the distance travelled to get to landfill sites, the operational energy use of landfill sites, the level of decomposition of waste and the rate of landfill gas capture.

4.136. The Secretary of State further notes that the calculations of 'avoided emissions' in Chapter 14 ES for the Proposed Development relate to the offset of GHG emissions by generating 55 MW of electricity by the Proposed Development relative to generation of 55 MW of electricity from the UK grid average. The Applicant confirmed that they have provided a conservative estimate by displacing the UK grid average electricity generation, rather than just fossil fuel electricity generation. However, the Secretary of State notes that the data from 2020-21 has been used which is an estimated $CO_2$ emission per unit of electricity of 182 $tCO_2$/GWh. The Secretary of State considers that by 2026, the first operational year of the Proposed Development, it is likely that this grid average will be lower, due to increased decarbonisation of electricity generation in the UK. While not certain, this is another consideration of the Applicant's stated carbon benefit of the Proposed Development compared to the 'without Proposed Development' baseline.

4.137. The ExA notes that dNPS EN-1 paragraph 3.3.41 states that "*energy recovery from residual waste has a lower GHG impact than landfill*". The same wording appears in 2024 EN-1. Evidence provided by the Applicant in ES Chapter 14 [APP-041] supports this view, concluding an overall carbon benefit of 2,571 ktCO2e from the Proposed Development compared to continued landfilling and therefore a significant beneficial effect. However, the ExA notes that the available evidence casts doubt on whether the claimed 'net benefit' can be arrived at with any great certainty [ER 3.5.45]. The Applicant explored a wide range of 31 possible operational scenarios in its Deadline 6 submission Climate Additional Sensitivity Assessment [REP6-030], which aimed to address the concerns of Cambs CC. The Applicant considers that the majority of scenarios indicate that net emissions would be less with the

Proposed Development compared with landfilling, however there are multiple factors and assumptions that are made that affect these calculations. The Secretary of State particularly notes the scenarios relating to the decarbonisation of the UK electricity grid, where some scenarios do show net positive GHG emissions from the Proposed Development. The Secretary of State agrees with the ExA that there is uncertainty in the potential carbon benefit from the Proposed Development compared with the 'without Proposed Development' baseline. The Secretary of State also agrees with the Councils [REP4-031], that "*A net reduction in emissions compared to an alternative scenario* [landfilling]*, is not equal to 'net emissions below zero'*".

4.138. Looking at the whole-life GHG emissions of the Proposed Development in isolation, it is noted that the ES predicts that the Proposed Development emits +8,246 ktCO2e net over its lifetime accounting for avoided emissions, and +11,449 ktCO2e gross excluding avoided emissions [APP-041]. Whilst the 2024 NPS EN-1 states that *"operational GHG emissions are not reasons to prohibit the consenting of energy projects or to impose more restrictions on them"* operational GHG emissions can be ascribed weight in the planning balance. The Secretary of State, based on the available evidence and taking into consideration the unavoidable uncertainty as to whether there will be an overall net benefit in terms of GHG emissions when comparing the Proposed Development to landfilling, and noting the inevitable net and gross emissions from the Proposed Development, ascribes climate matters minor negative weight overall in the planning balance.

Carbon Capture and Storage

4.139. The Applicant's ES states that the Proposed Development will be carbon capture retrofit ready with land set aside for a CCS facility, but the ExA notes that the Application does not include the construction and operation of the CCS technology within the Proposed Development [ER 3.6.12]. The Applicant stated that the layout of the Proposed Development had been designed to allow space for a CCS plant and equipment to capture $CO_2$ from the flue gas emissions and transport this to a storage facility [ER 3.6.14]. The ExA noted this took into account the call for an expansion to the 2009 CCR requirements to generation facilities under 300MW in July 2021, as set out in the 2020 Energy White Paper [ER 3.6.14].

*Views of IPs*

4.140. Cambs CC and Fenland DC, in their joint LIR [REP1-074], paragraph 9.4.20, stated *"The only way that a EfW plant could be compatible with net zero emissions is to install and operate CCS from day one of operation. Setting aside an area for future development of CCS is insufficient as it does not guarantee when or if CCS will become operational"* [ER 3.6.15]. The Applicant confirmed that Requirement 22 was introduced into the dDCO at DL1 to secure the carbon capture and export readiness reserve space required to deliver future environmental requirements relating to CCS. The Applicant at DL2, submitted their Carbon Capture and Export Readiness Reserve Space Plan (Volume 10.7) [REP2-024], which demonstrates how this space will be utilised [ER 3.6.16].

4.141. Stephen Barclay MP [REP2-064] commented that applying CCS would be beneficial but noted that the facility was proposed only to be carbon capture ready and questioned why this was, especially as a new CCS plant in Mannheim, Germany was planned by the same developer. Stephen Barclay also questioned the impact of later introducing carbon capture technology on the overall power and heat generation of the Proposed Development.

4.142. The ExA asked the Applicant to set out their approach to CCS and to explain how the dDCO requirement would work in practice [ER 3.6.18]. The Applicant replied that there are a number of technologies in the market for CCS and they have employed a technology supplier to carry out a pre-feasibility study, confident that the area set aside for CCS is adequate to build the CCS apparatus [ER 3.6.19].

4.143. The Applicant confirmed that it is committed to exploring the feasibility of CCS, and it is not in a position to commit to providing CCS until government support is known [ER 3.6.21]. In response to comments by Cambs CC and Fenland DC regarding the deliverability of CCS, the Applicant explained that considers it is policy compliant in terms of being decarbonisation ready. The Applicant was content to demonstrate that the plant was being designed to allow for CCS and that the design could accommodate various elements either immediately or following retrofitting and proposed that it would modify Requirement 22 to incorporate design commitments for CCS [ER 3.6.22].

4.144. In response to ISH4 Action Point 6 [EV-059], the Applicant produced a technical note on CHP and carbon capture delivery readiness [REP5-038], which sets out that embedded design measures would be implemented during the construction of the Proposed Development and completed prior to the date of Final Commissioning, to include space, plant and equipment to accommodate a future carbon capture facility [REP5-038]. In its closing position on climate, the Applicant describes the Proposed Development as 'Future fit', demonstrated by the land set aside for carbon capture and export equipment [ER 3.6.25].

*The Secretary of State's Conclusion on Carbon Capture and Storage*

4.145. The Secretary of State has taken into consideration the Applicant's approach to carbon capture technology and installation, the views of the local councils, the policy requirements and the position of the ExA on this matter. The ExA acknowledges that Cambs CC and Fenland DC consider that setting aside an area for future development of CCS does not guarantee when or if CCS would become operational. However, EN-1 paragraph 4.7.5and 2024 EN-1 paragraph 4.9.25 considers that all applications for new combustion plants with a generating capacity at or over 300MW should demonstrate CCR before consent may be given. The ExA are satisfied that the capacity of the Proposed Development as defined in the dDCO is below the threshold at which it should be designed to be CCR [ER 3.6.26].

4.146. The Secretary of State is satisfied with the conclusion drawn by the ExA that, despite being significantly below the EN-1 threshold, the Proposed Development has set aside sufficient land to install and use carbon capture equipment, would implement embedded design measures and would submit reports to the Secretary of State to monitor the ongoing feasibility of CCS. This shows commitment by the Applicant to explore the feasibility of CCS, although it does not show a commitment to provide CCS at the present time [ER 3.6.27].

4.147. The Secretary of State is therefore in agreement with the weighting given by the ExA and ascribes this matter neutral weight in the overall planning balance.

<u>Consideration of Combined Heat and Power</u>

4.148. Table 14.15 of ES Chapter 14 [APP-041] outlines that the Proposed Development has been conceived and designed with CHP in mind. It states that the incineration process itself would generate steam that would drive steam generators for electricity generation, and that further heat recovery can be secured by the export of steam to off-site customers such as

surrounding business users via dedicated pipelines and electricity through private wire cables [ER 3.7.15].Approximately 50-megawatt thermal (MWth) of usable steam (heat) energy would be available for export via the CHP Connection to users in the surrounding industrial estate [ER 3.7.16].

4.149. The Applicant states that there are technically feasible opportunities for the export of an annual average heat of 25.61MWth to potential heat customers. Steam extracted from the turbine would supply these potential heat consumers via the CHP Connection Corridor [ER 3.7.17]. Discussions with potential heat users are in their preliminary phases, as outlined in section 6.3 of the Applicant's Combined Heat and Power Assessment ("CHP Assessment") [APP-097]. The ExA records that Lamb Weston and Nestle Purina had indicated their process steam requirements but Eviosys packaging and Fountain Frozen had not responded. Facilities located near to, but not directly on, the proposed CHP connection corridor, such as Del Monte, had not yet been approached [ER 3.7.18]. The Secretary of State received post-examination correspondence from an IP, forwarding an email from Nestle dated 16 August 2021 which stated "*Although energy from waste plants can play a valuable role in reducing the amount of waste going to landfill, we have no plans to partner with MVV Environment on their proposed project for Wisbech. In this instance we believe there are more appropriate alternatives which can deliver the renewable energy we need, in suitable locations, as part of our journey to Net Zero".*

4.150. The CHP Assessment acknowledges there are no formal agreements in place for exporting heat from the EfW CHP Facility. The Applicant considers this is not unexpected as such agreements are typically only entered into once the Applicant is able to make guarantees as to the heat supply, which can only happen once the necessary consents are in place. The Applicant considers it is difficult for potential customers to make commercial decisions on a heat supply from the Proposed Development before any guaranteed heat price, guaranteed availability and guaranteed schedule can be committed to, and that these would be determined during the detailed design and techno-economic assessment stages [ER 3.7.19]. The Applicant has proposed an outline action plan which would be implemented alongside the construction programme, with paragraph 10.1.5 going on to state that "*constructing a detailed and reliable database of potential heat consumers is a key activity. This should be revisited and updated at least every 2-years so that new developments can be added, and existing developments can be updated* [ER 3.7.20]*.*

*Views of IPs*

4.151. In BCKLWN LIR [REP1-064] Appendix 1, Councillor Blunt questions the amount of demand locally for steam or power and considers there is limited demand for steam for local factories [ER 3.7.21]. Stephen Barclay MP [REP2-064] considers the CHP connection, in the format it has been proposed, feels like an afterthought; welcoming the intent to make use of steam but questioning why customers would use that steam. Stephen Barclay MP commented that the CHP connection design, where a pipe run at 1.6 to 1.7m height would supply steam to potential users, is an approach designed to cut costs and suggests that it might, potentially, not be well utilised. In response, the Applicant stated that it continued to engage in discussions with potential customers located along the CHP Connection Corridor as per the action plan in the CHP Assessment (Volume 7.6) [APP-097] [ER 3.7.24]. Stephen Barclay's WR also went on to state *"We have some doubts regarding the ability of the Proposed Development to deliver the heat claimed (even if it is ever used, and we doubt that companies seeking to decarbonise their heat supply would find this an attractive source) with zero penalty on the power generation side. There is no guarantee that there will be many*

*off-takers for the heat, and the planned delivery mechanism seems designed to be 'flexible' (i.e. cheap, as it might, potentially, not be well utilised)*".

4.152. During ISH4 [REP4-020] the ExA asked the Applicant to set out its approach to CHP and its level of certainty that this can be delivered and asked the Applicant to explain how Requirement 25 in the dDCO would work in practice [ER 3.7.26].

4.153. The Applicant explained that it is committed to making its facilities not just CHP ready but CHP in practice, and that Proposed Development site was specifically chosen as it lends itself to supply existing and future heat demands in the land identified as ready for industrial development [ER 3.7.27].

4.154. The Applicant explained that the drafting for the CHP requirement is based on similar requirements in other granted DCOs for development of this type and that Requirement 25 requires the Applicant to submit a report to the relevant planning authorities updating the CHP assessment and demonstrating how the Applicant has considered the opportunities for the export of heat from the EfW CHP Facility [ER 3.7.28].

4.155. The purpose of Requirement 25 is to ensure that where no existing contracts are in place for users of CHP, the Applicant must ensure there are opportunities for the heat to be taken by local users, increasing the potential for heat to be exported with opportunities explored throughout the lifetime of the Proposed Development [ER 3.7.29]. It is the Applicant's intention to enter into agreements with users once the DCO has been secured [ER 3.7.30].

4.156. The ExA stated that it would expect to see evidence such as discussions with local businesses, to demonstrate the extent of the benefits offered and the deliverability of CHP. As stated at ER 3.7.19 and 4.133 above, the Applicant considered that it is not typical to have contracts in place at this stage in the process and it was not willing to breach commercial confidentiality to provide evidence of discussions. The Applicant referred to paragraph 4.6.12 of NPS EN-1 which provides that the DCO can contain requirements to ensure a generating station is CHP-ready in the event that there are no potential users currently identified, but stated it is likely that there could be users in the future [ER 3.7.31].

4.157. The Applicant stated that it had identified four potential customers and requested data on their current energy demand, with some data provided to the Applicant. In terms of the lack of evidence of customers, the Applicant stated that their heat customers for their plant in Germany change over time, with customers there today that were not customers 20 years ago, and reiterated that the potential to provide CHP can be considered as a positive benefit and it would be unreasonable to not attach any weight to the Proposed Development's CHP potential solely on the basis that the Applicant could not provide evidence of committed customers at this point in the process [ER 3.7.32].

4.158. In response to ISH4 Action Point 6 [EV-059], the Applicant produced a technical note on CHP and carbon capture delivery readiness [REP5-038], which stated that the dDCO requirement secures the production of a CHP assessment within 18-months of the date of Final Commissioning; list actions to reasonably increase the potential to deliver CHP; consult relevant organisations, such as the Environment Agency; and a commitment to 5-year reviews" [ER 3.7.33].

4.159. Requirement 25 of the dDCO was updated to require the Applicant to provide evidence to the relevant planning authority that the embedded design measures have been constructed [ER 3.7.43]. In its closing position on climate and as stated in Table 14.15 of ES Chapter 14

[APP-041], the Applicant stated that the availability of potential CHP industrial users was an essential siting criterion [APP-029] when identifying a site for the Proposed Development [ER 3.7.35].

4.160. The Applicant highlighted para 4.7.19 of dNPS EN-1, which states where it is "reasonably possible for the applicant to reach agreement with a potential heat customer during the lifetime of the station, the Secretary of State may wish to impose requirements to ensure that the generating station is CHP-ready and designed in order to allow heat supply at a later date" [ER 3.7.36]. The same wording appears at 4.8.19 of 2024 EN-1.

4.161. The Applicant also stated that the combined Heat and Power assessment sets out the viability of a CHP connection but it is expected that commercial agreements will be concluded following the grant of the DCO, which would give potential customers clarity on whether or not the facility will come forward ER 3.7.37].

4.162. The Secretary of State's consultation letter requested further information from the Applicant to provide any additional information to evidence that opportunities for Combined Heat and Power (CHP) have been fully explored, including how the Applicant has worked with the local planning authority (LPA) and other organisations to identify opportunities for CHP in line with designated NPS EN-1 para 4.6.7. In response, the Applicant confirmed that as stated in the Examination the Applicant will not comment on the nature of commercial negotiations with any potential customers. This said, the Applicant did receive sufficient technical information in 2020 to allow it to carry out the preliminary design of the steam connections to potential customer sites, and use this information in the Combined Heat and Power Assessment (Volume 7.1) [APP-097] see Section 6.2. However, it would be unusual for there to be any discussions on the commercial terms of heat supply agreement unless and until the development consent or planning permission for any CHP project is approved. The response also stated that as the Applicant's parent company in Germany has experienced, it can take time for contracts to be secured and over the life of a project heat customers will come and go.

*The Secretary of State's Conclusion on Combined Heat and Power*

4.163. The Secretary has considered the positions on CHP of the Applicant, the ExA and the views of IPs. 2011 NPS EN-1, paragraph 4.6.6 and 2024 EN-1 paragraph 4.8.8, require any application to develop a thermal generating station to either include CHP or contain evidence that the possibilities for CHP had been fully explored. The ExA was satisfied that the Applicant had considered the opportunities for CHP at an early point in the process, using heat mapping and availability of potential customers as a criterion to inform its location choice for the Proposed Development, including the site's viability for CHP and had listed the companies it had contacted [ER 3.7.39 et seq.].

4.164. The ExA found that evidence was lacking as to how the Applicant had worked with local planning authorities and other organisations to identify opportunities for CHP in line with 2011 NPS EN-1 para 4.6.11 and 2024 NPS EN-1 para 4.7.17 [ER 3.7.41]. However, the Secretary of State notes the ExA's views on the lack of evidence provided and concludes that there is nothing in the new NPSs which detract from this conclusion. The ExA noted that the Applicant had not been able to reach agreement with any potential customer, but the Applicant was confident that agreements would come forward once the DCO was secured, the Applicant considered it reasonably possible to reach an agreement during the lifetime of the Proposed Development in line with 2024 NPS EN-1 paragraph 4.8.12 [ER 3.7.42].

4.165. The ExA considers the Proposed Development meets the overall aim of 2011 and 2024 NPS EN-1 and EN-3, which seek to ensure that CHP has been properly explored. However, it notes that EN-1 states that "substantial additional positive weight should be given…to proposals incorporating CHP" and concluded that the Proposed Development would only incorporate CHP when a customer is secured. As no customers had currently been secured, the ExA concluded that it could not afford substantial positive weight on this issue [ER 3.7.44].

4.166. The ExA also noted the wording in dNPS EN-1, which is also included in 2024 EN-1 at paragraph 4.8.16, which states that "the Secretary of State should not give development consent unless satisfied that the applicant has provided appropriate evidence that CHP is included or that the opportunities for CHP have been fully explored".

4.167. The Secretary of State has reviewed the evidence provided by the Applicant to the Examination and in response to the consultation letter and has considered whether the Application is in line with 2011 and 2024 NPS EN-1 and EN-3 in regard to CHP. It is noted that the Application includes embedded design measures relating to the inclusion of CHP and includes permission for associated development comprising the CHP connection works. The Applicant has highlighted that the location of the Proposed Development was chosen with the intention of being able to provide customers nearby with heat from the facility, having identified this location from an exploratory study of potential off-takers of heat in the area. The Secretary of State notes the ExA's conclusion that the Proposed Development would only incorporate CHP when a customer is secured, and that as no customers had currently been secured, the ExA could not afford substantial positive weight on this issue. The Secretary of State agrees. However, the Secretary of State accepts that the provision of CHP has been, and continues to be, fully explored, given the steps taken by Applicant to provide for its potential inclusion as part of the Proposed Development and the assurances provided that discussions with potential heat users, which the Applicant states are in their preliminary phases, will continue to progress following a grant of development consent. The Secretary of State concludes that the proposal therefore complies with this element of 2024 EN-1.

4.168. Based on the conclusions above, the Secretary of State considers this matter to be neutral in the overall planning balance and considers the matter of CHP to weigh neither for or against the Proposed Development.

4.169. The Secretary of State considers that more frequent reporting to the relevant planning authority in respect of the Applicant's progress in this regard would be appropriate. The Secretary of State has therefore amended Requirement 25 to provide that a CHP review, updating the CHP Assessment, must be submitted to the relevant planning authority no later than 18 months after the date of final commissioning and at five yearly intervals thereafter.

Landscape and Visual

4.170. Chapter 9 of the ES [APP-036] assessed the landscape and visual effects during all phases of the project based on the maximum extent of the Proposed Development. The Applicant described the assessment undertaken as a worst-case assessment in accordance with the Guidelines for Landscape and Visual Impact Assessment ("GLVIA") Third Edition [ER 3.8.13]. The ExA noted there are no national or local landscape designations with the potential to be affected by the Proposed Development [ER 3.8.14]. A 17km radius study area was determined, through consultation with relevant authorities [Figure 9.1 APP-053] to

encompass the grid connection corridor to the Walsoken substation. 30 representative viewpoints ("VPs") were agreed with Cambs CC (Table 9.14 of ES Chapter 9 [APP-036]) [ER 3.8.15].

4.171. The assessments considered both the magnitude of impact and the significance of effect on landscape character, townscape character, VP analysis, residential and community visual receptors, residential visual amenity assessments, recreational visual receptors, and vehicular visual receptors [ER 3.8.18].

4.172. ES Chapter 2: Alternatives [APP-029] and the Design and Access Statement [APP-096] set out the Applicant's approach to design, explaining the consideration given to different building finishes in terms of material, colour and texture and explaining the context provided by existing buildings surrounding the EfW CHP Facility Site [ER 3.8.19]. Figure 3.14 of ES Chapter 3: Description of the Proposed Development [APP-049], proposes introducing landscaping to the EfW CHP Facility frontage to New Bridge Lane which would provide a landscape using native species common in the surrounding area and would include tree planting to screen the buildings from a low level view [ER 3.8.20].

4.173. Section 9.7 of ES Chapter 9 [APP-036] sets out the embedded environmental measures which include limits to lighting, the commitment to an Outline Landscape and Ecology Strategy and the removal of expansion loops along the CHP Connection where it would run behind residential properties [ER 3.8.21]. Table 9.19 [APP-036] provides a summary of environmental measures to be implemented relating to landscape and visual and sets out the measure and method of compliance [ER 3.8.22].

4.174. The assessment of effects of the Proposed Development on landscape and townscape character is set out in Appendix 9G: Landscape Character Assessment Tables [APP-079] [ER 3.8 24]. The assessment concluded there would be no significant effects upon landscape character as defined by the extant district or borough Landscape Character Assessments during the 36-month construction period or the operation phase. The highest magnitude of change ("MoC") during the construction period would occur within the Wisbech Settled Fens Landscape Character Area ("LCA") within which the detailed assessment concludes that there would be a medium magnitude of landscape change giving rise to a moderate level of effect when combined with the assessed medium landscape sensitivity, which would not be significant [ER 3.8.25].

4.175. Appendix 9H: Townscape Character Assessment ("TCA") Tables (Volume 6.4) [APP-079] sets out the assessment of effects on the eight TCA Receptors. The assessment concludes there would be no significant effects on townscape character during the construction or operation phases [ER 3.8.26].

4.176. Appendix 9I: Viewpoint Assessment (Volume 6.4) [APP-079] sets out the assessment of effects for the 30 VPs within the Study Area [ER 3.8.28]. A summary table of the findings of the VP assessment is provided in Table 9.14 [APP-036] [ER 3.8.28].

4.177. During the construction phase, major significant effects are reported for VP1: Eastern end of New Bridge Lane and VP6: Halfpenny Lane byway north of A47 and moderate significant effects are reported for VP5: A47 east of roundabout junction with the B198.

4.178. During the operational phase, major significant effects are reported for:

VP1: Eastern end of New Bridge Lane;

VP5: A47 east of roundabout junction with the B198;
VP6: Halfpenny Lane byway north of A4; and
VP8: Public right of way (PRoW) Halfpenny Lane north-west of Elm [ER 3.8.29].

and moderate significant effects are reported for:

VP7: North Brink at Elgood's brewery;
VP9: NCR 63 Begdale Road between Elm and Begdale; and
VP12 PRoW "The Still" south of Levington [ER 3.8.30].

4.179. The Applicant considers most of the significant visual effects would be confined to VPs located within 1.5km of the base of the chimneys at the Proposed Development. Apart from VP 12, no significant visual effects are identified at any other VPs at a separation distance in excess of 1.5km [ER 3.8.31].

4.180. Appendix 9J: Visual Assessment Tables (Volume 6.4) [APP-079] sets out the assessment of effects on the views of 46 groups of residential and community visual receptors, which concludes that the construction phase would result in significant adverse visual effects for three residential receptors [ER 3.8.32]:

4.181. No. 9 New Bridge Lane is identified as a high sensitivity receptor located within 15m of the south-western boundary, that would experience a high MoC, resulting in a major effect that is significant [ER 3.8.33]. No.10 New Bridge Lane is identified as a high sensitivity receptor located 30m south of the boundary, which would experience a high MoC resulting in a major effect that is significant [ER 3.8.34]. No.25 Cromwell Road is identified as a high sensitivity receptor located just over 500m to the south-west boundary, that would experience an overall medium MoC which would result in a major adverse effect which would be significant [ER 3.8.35].

4.182. The assessment concludes that a low magnitude of visual change and a moderate effect that is not significant would be experienced by residents in the communities of Elm and Leverington due to their views of the middle and upper-level construction activities and the associated upper crane activities. In addition, a localised medium MoC and a major and significant effect would be experienced by a small number of residents at the northern edge of Begdale, noting that the majority of dwellings within the community would not experience views of the Proposed Development [ER 3.8.36]. For the operational phase, the assessment concludes that there would be few changes in comparison with the construction phase. There would continue to be significant adverse effects at the three individual residential properties. The MoC would continue to be medium in the most open views available to residents in the northern part of Begdale, with a resultant major level of effect that would be significant [ER 3.8.37].

4.183. Appendix 9K: Residential Visual Amenity Assessment (Volume 6.4) [APP-079] concludes that No.9 and No.10 New Bridge Lane would sustain significant visual effects throughout the operation period but that the Residential Visual Amenity Threshold ("RVAT") would not be breached for either property [ER 3.8.38].

4.184. Appendix 9J: Visual Assessment Tables (Volume 6.4) [APP-079] sets out the assessment of effects on recreational receptors. The assessment concludes that four recreational receptors would sustain significant visual effects due to their views of the construction activities for the Proposed Development, and these significant visual effects would remain during the operational phase for these receptors [ER 3.8.39]. During the operational phase,

significant visual effects are identified for the recreational visual receptors walking south along the 15.7km section of the Nene Way. Furthermore, cyclists travelling for 1km along the closest section of NCR 63 on Begdale Road would sustain a medium MoC with a moderate effect that is significant for a 1km stretch of the route between Elm and Begdale. In addition, users of the PRoW south of Leverington called 'The Still' would experience a moderate level of effect that would be significant [ER 3.8.40].

4.185. Appendix 9J: Visual Assessment Tables (Volume 6.4) [APP-079] sets out the assessment of effects on vehicular visual receptors. The assessment concludes that during the construction phase localised sections of the A47 and B198, would experience a moderate effect that is significant. This assessment takes into consideration the short-lived construction works alongside the A47 that would be required for the Grid Connection, but it notes that this work is due to take place night only [ER 3.8.41]. Appendix 9I also notes a major adverse effect that is significant for VP5, which represents the views of eastbound vehicular receptors on a section of the A47.

4.186. In regard to the Walsoken substation, the Applicant considers that the construction and operation of the new substation infrastructure near the frontage of Broadend Road would be partially screened by retained trees and seen in oblique views and in the context of the existing substation infrastructure and lattice pylons. Consequently, residents in Broadend Road would experience a very low MoC and a minor effect that would be not significant during construction and operation [ER 3.8.44].

*Views of IPs*

4.187. At Open Floor Hearing 1 ("OFH1") concerns were expressed regarding the scale of the Proposed Development and its prominence from many vantage points [ER 3.8.45].

4.188. Cambs CC and Fenland DC considered the Applicant's assessment methodology was reasonable to inform the assessment of likely significant effects [ER 3.8 47]. The Councils expressed concerns regarding the level of harm caused by the Proposed Development from a landscape and visual perspective [ER 3.8.48]. The Councils considered that the effects on the Wisbech Settled Fen LCA should be moderate and significant at both construction and operation (rather than the Applicant's conclusion of moderate and not significant) to acknowledge the significant effects of the proposed scheme on part of the local character, but considered it should acknowledge that wider effects on character are more limited [REP5-044] [ER 3.8.49]. The Applicant stated that altering the conclusions of the impact on the Wisbech Settled Fen LCA to moderate and significant would not comply with the approach to assessing the geographical area over which landscape effects would be felt as described in best practice guidance at paragraph 5.50 of GLVIA 3 [REP6-027 Appendix A] [ER 3.8.50].

4.189. For The Fens LCA, the Councils consider that a medium MoC (rather than low) would occur locally on the landscape, as the character of the local landscape would change given the extensive number and nature of views and experience of the proposed scheme imposed on the local area [ER 3.8.51]. The Applicant responded that with reference to paragraph 5.50 of GLVIA 3 [REP6-027 Appendix A], it is only the indirect effects at the larger scale influencing other landscape character areas where it is relevant to consider the MoC resulting from the Proposed Development [ER 3.8.52].

4.190. With regard to No. 10 New Bridge Lane, the Applicant concluded that the Proposed Development's presence and operation would not be considered to be overbearing, although there would be significant adverse effects upon visual amenity. The Councils considered that the proximity of the Proposed Development and associated traffic would breach the RVAT by turning No. 10 New Bridge Lane into an unsatisfactory place to live [ER 3.8.58].

4.191. The Councils state that the area has few PRoW, low levels of biodiversity, poor access to nature, and poor public health outcomes, and that the PRoW that do exist are, therefore, highly valued and they are exceptionally sensitive to any negative impact upon them [REP6-036] [ER 3.8.64].

4.192. The Councils consider that Outline Community Benefits Strategy ("the OCB Strategy") [REP6-016] would help to offset the adverse impacts on local communities and PRoW through improvements and enhancements to the PRoW network and local road non-motorised user ("NMU") connectivity and provision for access to BNG sites, but they note that whilst the package is welcome and would serve to recognise the adverse impact of the development in terms of landscape, it cannot make the impacts fully acceptable in planning policy terms [ER 3.8.65]. The ExA also noted that the OCB Strategy was not secured by the DCO and therefore did not clearly secure mitigation that could be relied upon [ER 3.8.90].

4.193. A s106 agreement which would secure some of the measures in the OCB Strategy was unsigned at the end of the Examination and was therefore accorded little weight by the ExA. In response to the Secretary of State's information request of 10 January 2024 the Applicant provided a signed copy of the s106 agreement between Cambs CC, Alboro Developments Limited and Medworth CHP Limited which commits the Applicant to the payment of a £400,000 community fund, referred to as the 'PRoW and NMU Enhancements contribution'.

*The Secretary of State's Conclusion on Landscape and Visual*

4.194. The Secretary of State has taken into consideration the views of the IPs in regard to the landscape and visual impact the Proposed Development would have on the surrounding area, along with the position and mitigation proposed by the Applicant and the conclusions drawn by the ExA on this matter.

4.195. The Secretary of State notes that the Applicant states that the design has sought to reduce the landscape and visual impact of the Proposed Development and the number and geographical extent of significant effects within the parameters of the functional requirements of the buildings [ER 3.8.69]. The Design and Access Statement ("DAS") (Volume 7.5) [APP-096] documents the design process and the options which were considered, adopted and dismissed by the Applicant in terms of mass, scale, roof profile and cladding materials. The Applicant's commitments to delivering the design commitments and management of construction materials are secured by DCO Requirements 2 and 19. In addition, the approval of external lighting details would be secured by DCO Requirement 18 [ER 3.8.70].

4.196. The ExA noted that despite their views regarding the prominence of the Proposed Development, Cambs CC and Fenland DC are content with the embedded environmental measures in relation to landscape. The Applicant's commitment to deliver biodiversity, landscape and ecological mitigation are secured by DCO Requirements 4, 5 and 6.

4.197. However, as both the Applicant and the Council acknowledged at ISH6, the proposed mitigation cannot overcome the significant visual effects from the Proposed Development

[ER 3.8.71]. The Secretary of State agrees but notes 2011 and 2024 NPS EN-1 which states that virtually all nationally significant energy infrastructure projects will have effects on the landscape and that projects need to take account of the potential impact. Having regard to siting, operational and other relevant constraints, the aim should be to minimise harm, providing reasonable mitigation where possible and appropriate.

4.198. The ExA recognised that opportunities for effective landscape mitigation are limited in the context of the Proposed Development site. The Outline Landscape and Ecology Management Plan [REP3-021] and Outline Landscape and Ecology Strategy [REP2-026] include tree and hedgerow planting and a ground based green wall on the administration building. These elements would aim to soften views of the built form at the lower levels and strengthen the landscape structure in line with NPS EN-3 paragraph 2.5.52. The ExA was satisfied that the Proposed Development has had regard to the siting, operational and other relevant constraints with the aim of providing reasonable mitigation and minimising harm to the landscape in line with NPS EN-1 paragraph 5.9.8 and 5.9.22 [ER 3.8.72].

4.199. Regarding the Wisbech Settled Fen LCA, the Proposed Development would have an urbanising influence from within a largely rural landscape where there is an absence of other large-scale infrastructure [ER 3.8.74] and includes a variety of vertical elements including high chimneys, which would be substantially higher and more prominent within the landscape and dissimilar to other large scale buildings in the area such as the 30m high Lineage Building [ER 3.8.77]. The ExA conclude that the visibility of sections of the Proposed Development would give rise to a moderate level of effect on the Wisbech Settled Fen LCA which would be significant [ER 3.8.78]. The Secretary of State is in agreement with the conclusion drawn by the ExA regarding Wisbech Settled Fen LCA.

4.200. Regarding the Fens LCA, the Applicant stated that the Proposed Development would have a low MoC (rather than medium as stated by the Councils) [ER 3.8.79]. When considering the location, scale and geographical extent of the Fens LCA, Cambs CC and Fenland DC considered that landscape effects of Moderate Significance (considered to be Significant Effects) extend in an arc in the open landscape from the edge of Wisbech St Mary extending round to the A1101 at approximately 5km radius. The ExA is in agreement with the Applicant, stating that they considered that the MoC on The Fens LCA would be low and not significant [ER 3.8.80], and stated that they weren't convinced that sufficient evidence had been provided to demonstrate that significant effects extend in an arc at a 5km radius from Wisbech St Mary to the A1101 [ER 3.8.91]. The Secretary of State is in agreement.

4.201. Regarding the Residential Visual Amenity Assessment ("RVAA") of No.10 New Bridge Lane, it is noted that the Proposed Development would include a 3m high acoustic fence along the entire frontage of No.10 New Bridge Lane which would assist in screening the lower parts of HGVs and their headlights. The fence itself, due to its overall height, would stand out as a dominant and incongruous feature in contrast to the dwelling and its rural surrounds [ER 3.8.83] and the ExA noted that all parties agree that significant effects on visual amenity would be experienced by residents of No.10 New Bridge Lane during construction and operation [ER 3.8.86]. Despite these effects, the ExA did not consider that the Proposed Development would breach the RVAT and turn the residence into an unsatisfactory place to live [ER 3.8.88]. The Secretary of State agrees with the conclusions drawn by the ExA, and notes that this adverse impact weighs against the Proposed Development with regard to landscape and visual impact.

4.202. With regard to the OCB Strategy, the Secretary of State notes that the signed 106 agreement secures the payment by the Applicant of £400,000 into a community fund for PRoW and NMU enhancements. It is also noted that various elements of the OCB Strategy are secured through requirements in the DCO, and that the parties considered that it would help to offset the adverse impacts on local communities and PRoW. The Secretary of State agrees that some of the impacts will be offset, but agrees with the ExA that OCB Strategy itself would not make the Proposed Development acceptable in terms of landscape and visual effects.

4.203. Taking into account the information considered above, the Secretary of State recognises that the Proposed Development, despite the mitigation measures in place, will still have a significant negative visual impact on the surrounding area and therefore ascribes great negative weight to landscape and visual impacts.

Human Health

4.204. Chapter 16 of the ES [APP-043] sets out the Applicant's assessment of the Proposed Development's effect on human health. The data included desk-based research that drew on a range of publicly accessible information to create a health baseline. Section 16.4 summarises the relevant study area and survey work and Section 16.5 outlines the baseline information on key determinants of health associated with population, economy and employment, existing health facilities and key health indicators. The temporal scope of the assessment covers the construction and operational periods.

4.205. The Applicant identified the potential for a significant impact in relation to transport related severance during the construction phase under the peak construction scenario at New Bridge Lane (East of Cromwell Road). A formal pedestrian crossing at this junction is proposed to address this issue in addition to embedded mitigation. With a crossing in place, there could be a 'Minor' (not significant) effect in relation to health, although the impacts on health at the population level is limited. Likewise, with the crossing in place, there could be a 'Minor' (not significant) effect at the local level arising from transport related severance during the operational phase. However, this impact on health would be limited at the population level. The ExA notes that there would be 'Minor' (not significant) beneficial effects on health associated with capital spend and investment at the local, district and county levels [ER 3.12.18].

4.206. During the construction phase, the Applicant expects the Proposed Development to support approximately 700 direct construction jobs and 'Moderate' (probably significant) beneficial effect on health in relation to direct employment is identified at the local and district levels. However, a 'Negligible' (not significant) beneficial effect on health at the county level is identified, given the very low magnitude of change envisaged at this scale. The Applicant also expects that around 777 indirect construction jobs would be supported during this period. This would result in a 'Moderate' (probably significant) beneficial effect on health at the local and district levels. However, a low sensitivity to change at the county level means there would be a 'Negligible' (not significant) effect on health at this scale [ER 3.12.10].

4.207. During the operational phase, the Applicant expects up to 40 full-time equivalent jobs would be created, which are intended to be filled locally. Given the low magnitude of change associated with this number of jobs there would be a 'Minor' (not significant) beneficial effect in relation to health at the local levels and a 'Negligible' (not significant) effect at the district and county levels. Regarding indirect employment, a 'Minor' (not significant) beneficial effect

in relation to health is identified at the local and district levels and a 'Negligible' (not significant) effect at the county level is envisaged [ER 3.12.20].

4.208. A major significant effect in relation to health associated with construction noise at the local level was identified. Additional mitigation measures to avoid significant effects at residential and non-residential premises due to construction noise are set out in ES Chapter 7: Noise and Vibration [APP-034]. The assessment concluded that with the additional mitigation measures, impacts would be reduced such that there would be a 'Minor' (not significant) health effect [ER 3.12.21].

4.209. The assessment of health effects associated with operational noise concluded that significant effects were likely only at No 9 and 10 New Bridge Lane. However, with the additional mitigation measures, which included provision of an acoustic fence to 10 New Bridge Lane, the identified effects would be adequately mitigated. In relation to 9 New Bridge Lane, the property has already been purchased by the Applicant, as confirmed in the Book of Reference (BoR) [REP7-030] and the dDCO [REP7-033] which secures that the property would not be used for residential purposes before the end of the decommissioning of the Proposed Development. All the proposed mitigation measures included above are also secured through the dDCO [REP7-033] [ER 3.12.22].

4.210. The assessment of health effects associated with operational noise concluded that significant effects are likely only at No 9 and 10 New Bridge Lane. However, with the additional mitigation measures, impacts would be reduced such that the resultant effects are not significant. Given the number of dwellings involved, the Applicant concludes that the operational noise would not impact on health within the wider population, including vulnerable groups [ER 3.12.23].

4.211. Regarding health effects associated with air quality during the operation of the EfW CHP Facility, there would be 'Minor' (not significant) effect at all levels. Releases to air from developments of this nature are controlled by emission limit values ("ELVs") provided by the Environmental Permitting (England and Wales) Regulations 2016 (as amended) [ER 3.12.24].

4.212. With mitigation in place, ES Chapter 16 [APP-043] concluded that any effects associated with transport, noise and vibration, air quality and EMS, including residual effects are not considered to be significant [ER 3.12.26].

4.213. The ExA were satisfied that the findings of the ES were reasonable, and that proportionate mitigation measures are adequately secured through the dDCO [ER 3.12.35], and that the Applicant had adequately assessed the impacts of the Proposed Development. They concluded [ER 3.12.37] that there are likely to be a number of negative health impacts during the construction period. These include disturbance from increased noise, and severance at New Bridge Lane, although the ExA considered this to be limited due to the proposed pedestrian crossing. The ExA found that these effects would however be short term and they could be mitigated through the CEMP and the Schedule of Mitigation and Monitoring. Once operational, the ExA found that there would be negative health impacts from noise and emissions. However, these would be appropriately mitigated through the provision of an acoustic fence to 10 New Bridge Lane and the purchase of 9 New Bridge Lane and the removal of the property from residential use. Although this represents the loss one residential unit, its overall impact on the local housing supply would be negligible. All proposed mitigation measures are also secured through the DCO [ER 3.12.38].

4.214. The ExA considered that a positive human health outcome would result from the creation of new employment opportunities during both the construction and operational stages [ER 3.12.39]. However, the number of new employment opportunities created during operation are considerably less than during construction, therefore this carries little weight in favour of the order being made. Having considered the submitted evidence, the ExA considered that matters which would have detrimental effects on health would be adequately addressed through separate regulations and consenting regimes as per the NPSs. Overall, the ExA considers that the human health impacts of the Proposed Development have been considered, minimised and mitigated as much as possible. On this basis, whilst there are some outstanding adverse effects on a small number of receptors, given their temporary duration and being limited to the construction phase, the ExA was content that the effect would be neutral, and does not weigh for or against the order being made [ER 3.12.42].

*Views of IPs*

4.215. The Secretary of State notes that a considerable number of oral representations were made at OFH1 [EV-010], OFH2 [EV-012] and OFH3 [EV-079] by IPs regarding impacts on human health, including resulting from noise, traffic and transport and air pollution. These matters are also raised in written representations, such as by Councillor Alexandra Kemp [REP1-071], Professor Clive Ballard [REP1-091], Valerie MacRae [REP1-097] and others. These matters are evidently a concern for the local community, and the Secretary of State has carefully considered the representations made by all IPs. A post-examination correspondence received on 1 February from Judi Knights raised the issue of the disposal of Incinerator Bottom Ash ("IBA"). The correspondence highlighted concerns regarding its handling and disposal and drew the Secretary of State's attention to an article[2] detailing the mishandling of IBA by the Proposed' Development's parent company. The Secretary of State notes that these matters are raised in various written representations and are evidently a concern for the local community. The Secretary of State has carefully considered the representations and has addressed these further in the section on Human Health. The Secretary of State has also taken them into consideration in regard to the overall planning balance.

4.216. The Secretary of State notes that the ExA does not report the views of the UK Health Security Agency (UKHSA), which she considers should be given great weight when considering the matter of impacts on human health. In its final SoCG the UKHSA [REP2-013] states that the study area for the assessment of impacts on human health is appropriate. The SoCG also states that the baseline description pertaining to existing health facilities accurately reflects the level of existing health provision within the study area. The embedded environmental measures proposed for the construction and operational phases are agreed to be appropriate to address impacts on matters of interest to the UKHSA. The UKHSA considered the assessment methodology to be satisfactory and agreed with the conclusions of significance as summarised in Table 16.13, particularly that the Proposed Development should not result in any significant adverse impact on public health.

4.217. During the Examination, the Environment Agency confirmed [REP4-010] that an Environmental Permit application for operational noise and air quality had been submitted but not yet determined, and that it would consult on the draft decision once the documents are available. The Secretary of State notes that after the close of Examination, the

[2] https://www.letsrecycle.com/news/mvv-not-liable-iba-shipping-explosion/

Environment Agency issued a draft decision that it was minded to approve the Environmental Permit[3] (application number EPR/HP3441QA/A001, permit number EPR/HP3441QA) and consultation on the draft decision is being conducted by the Environment Agency between 11 January 2024 and 22 February 2024.

*The Secretary of State's Conclusion on Human Health*

4.218. The Secretary of State has taken into consideration the views of IPs, the conclusions drawn by the ExA, the position of the Applicant and the proposed mitigation measures when considering this matter and agrees with the ExA, noting that the Proposed Development would result in some adverse, but adequately minimised and mitigated for, effects on a small number of receptors. The Secretary of State sees no reason to believe that detrimental effects on health would not be adequately addressed and regulated through the Environmental Permitting regime administered by the Environment Agency.

4.219. However, the Secretary of State considers that any potential beneficial effects of employment on human health are not significant in part due to the low-very low magnitude of change associate with these jobs. Overall, the Secretary of State agrees with the ExA in ascribing this matter neutral weight.

Historic Environment

4.220. The Applicant's assessment of historic environment matters is explored in ES Chapter 10 (Historic Environment) [APP-037] [ER 3.13.20]. There are no designated heritage assets within the order limits of the Proposed Development. Within the 2km study area there are three conservation areas, one registered park and garden, 317 listed buildings and three scheduled monuments. There are also seven non-designated heritage records within the order limits of the EfW CHP Facility, Access Improvements, TCC and CHP Connection, 11 within the grid connection order limits and 235 within the 1km study area. There are two previous archaeological events within the order limits [ER 3.13.21]. ES Chapter 10 includes an assessment of effects from direct disturbance and from change in setting [ER 3.13.24].

4.221. Table 10.18 of ES Chapter 10 summarises the environmental measures to be implemented, including provision for archaeological investigation and recording, to be outlined in a Written Scheme of Investigation ("WSI") which is included in the Outline CEMP and secured in draft DCO Requirement 10 [ER 3.13.25]. ES Chapter 10 concludes that there would be no significant effects upon the historic environment from the Proposed Development [ER 3.13.26].

*Views of IPs*

4.222. In the signed SoCG, between the Applicant, Cambs CC and Fenland DC [REP8-011], the Councils consider the Applicants assessment methodology is appropriate and agree there would be no likely significant effects on the setting of heritage assets or on archaeology during the construction, operation or decommissioning of the Proposed Development [ER 3.13.27].

[3] https://www.gov.uk/government/publications/pe13-2tq-medworth-chp-limited-environmental-permit-draft-decision-advertisement-eprhp3441qaa001/pe13-2tq-medworth-chp-limited-environmental-permit-draft-decision-advertisement-eprhp3441qaa001

4.223. Historic England ("HE"), in the signed SoCG with the Applicant, stated that the scope and methodology of the Applicant's assessment of effects on historic environment is appropriate and agreed that the Proposed Development would not cause substantial harm to the significance of any designated heritage asset or its setting [ER 3.13.28].

4.224. However, in its WR [REP2-036] HE expresses concerns relating to the impact of the Proposed Development on the significance of the Wisbech Conservation Area (WCA), notably Character Area No.1 The Brinks [ER 3.13.29]. HE also states in [REP2-036] that the Proposed Development site is within an industrial and commercial area approximately 1km from the southern edge of the WCA. They note that whilst this modern development has compromised the historic character of the edge of the town and had a negative effect upon the wider setting of the WCA, there is minimal inter-visibility between the WCA and the application site. The heights of the buildings are such that they have minimal impact on views out from this part of the WCA.

4.225. HE goes on to note that the Proposed Development would introduce additional bulky structures within the wider setting of the WCA which are likely to be apparent from some parts of the conservation area, and consider that the presence of the facility would be visible, creating a somewhat negative visual effect upon the way it is experienced and enjoyed [ER 3.13.31].

4.226. HE also draws attention to No.15 South Brink, which is listed grade II*, noting its unique glazed octagonal cupola feature which is designed specifically for viewing/observation from an elevated position through 360 degrees, including long views towards the Proposed Development. Whilst HE accepts that these views have already been compromised, they believe that it is "*somewhat regrettable that the existing negative effect on the visual experience would be compounded"* [ER 3.13.32], concluding that the Proposed Development would result in less than substantial harm to these heritage assets and that such harm would need to be weighed against the public benefits of the Proposal [ER 3.13.33].

*The Secretary of State's Conclusion on Historic Environment*

4.227. The ExA found that the Applicant has adequately assessed the significance of the designated and non-designated heritage assets affected by the Proposed Development and sufficient evidence has been submitted to understand the significance of the assets and their setting, and the impact the Proposed Development would have on the setting [ER 3.13.34]. The ExA was satisfied that the WSI, included in the Outline CEMP and secured through draft DCO Requirement 10 would ensure that appropriate procedures are in place for the identification and treatment of assets discovered during construction, in line with 2011 NPS EN-1 paragraph 5.8.22 [ER 3.13.35] and 2024 NPS EN-1 paragraph 5.9.21. The ExA concluded that the Proposed Development would result in less than substantial harm to the designated heritage assets [ER 3.13.36]. The ExA goes on to conclude that this harm is clearly outweighed by the public benefits of the Proposed Development. Therefore, the ExA considers that the Proposed Development is acceptable in this regard. As such the effects of the Proposed Development on the historic environment does not, in their view, weigh against the order being made [ER 5.3.15]. The Secretary of State disagrees with the approach taken by the ExA and considers that the harm to the designated heritage assets of WCA and No.15 South Brink factors into the negative weighting for Historic Environment, despite the urgent need for the development outweighing the harms outlined.

4.228. The Secretary of State has taken into consideration the views of the IPs, the conclusions drawn by the ExA, the position of the Applicant and the provisions of NPS EN-1 5.8.18 which requires that any negative effects should be weighed against the wider benefits of the Proposed Development and notes the desirability of preserving such assets. The Secretary of State agrees with the ExA, noting that the Proposed Development would result in less than substantial harm to the designated heritage assets of WCA and No.15 South Brink. However, the Secretary of State considers that this harm should carry minor negative weight in the planning balance.

## 5. Habitats Regulations Assessment

5.1. This is a record of the Habitats Regulations Assessment ("HRA") undertaken by the Secretary of State for the Proposed Development. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. Following the United Kingdom's departure from the European Union, these domestic regulations continue to apply. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation ("SACs"). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the United Kingdom and internationally. These sites are called Special Protection Areas ("SPAs"). SACs and SPAs together form part of the UK's National Site Network ("NSN"). The Convention on Wetlands of International Importance 1972 (the Ramsar Convention) provides for the listing of wetlands of international importance (Ramsar sites). Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as 'protected sites').

5.2. Regulation 63 of the Habitats Regulations provides that: *"….before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) 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 or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site's conservation objectives."*

And that: *"In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)."*

5.3. The Proposed Development is not directly connected with, or necessary to the management of, a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required (as Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects ("LSEs") cannot be ruled out, the Secretary of State must undertake an appropriate assessment ("AA") addressing the implications for the protected site in view of its conservation objectives. Where an adverse effect on the integrity ("AEoI") of the site cannot be ruled out beyond all reasonable scientific doubt, development consent must not be granted, unless the Secretary of State chooses to continue to consider the derogation provisions of Regulations 64 and 68

of the Habitats Regulations. The complete process of assessment is commonly referred to as a HRA.

5.4. The Applicant submitted a 'Habitat Regulations – No Significant Effects Report' ("NSER") [AS-007] with the Application and supporting Environmental Statement ("ES"). As no other evidence or comment against this was submitted by any other IP, the ExA considered that a Report on the Implications for European Sites ("RIES") would not be required.

5.5. The NSER considered the potential for LSE on protected sites within 20km of the Order Limits for ornithology features, as this is considered to be the maximum distance beyond which most non-marine bird species would not travel on a regular basis between foraging and roost sites. Impacts on air quality were considered for protected sites within 15km of the Order Limits boundary, in line with Environment Agency guidance, and up to 350m from the boundary of any construction activity for the assessment of dust from demolition and construction in accordance with Institute of Air Quality Management guidance. The SoCG between the Applicant and NE [REP1-043 and REP4-011] confirmed that NE was satisfied that the Applicant had identified the correct protected sites and qualifying features on which LSE could occur as a result of the Proposed Development. These sites are:

- Nene Washes SPA, SAC and Ramsar, approximately 7.2km southwest;
- The Ouse Washes SPA, SAC and Ramsar, approximately 12.5km southwest;
- The Wash SPA and Ramsar, approximately 17.3km north; and
- The Wash and North Norfolk Coast SAC, approximately 17.3km north.

5.6. The only potential effect pathways identified for consideration of LSE were air quality impacts associated with stack emissions and vehicle movements during operation, and pollution, disturbance and displacement resulting from operatives and machinery. No matters were raised by NE, other IPs or the ExA regarding the identification of other potential effect pathways to the protected sites.

5.7. The Secretary of State has carefully considered the information presented before and during the Examination, including the ES, NSER, representations made by IPs, and the ExA's Report. The Secretary of State has considered the conservation objectives and qualifying features for each of the protected sites against the potential effects of the Proposed Development:

- **Effects of pollution, disturbance and resulting displacement due to operatives and their machinery on potentially functionally-linked land ("FLL") (construction, operation & decommissioning) -** Results from the desk study and wintering bird surveys conducted in 2019/2020 (Appendix C of NSER) provide no evidence to indicate that farmland within 500m of the Order Limits is utilised on a regular basis by any of the qualifying bird species of the protected sites. The NSER considers that such land provides suboptimal conditions for these species, and that land within 500m of the Order Limits does not constitute FLL associated with any protected sites.

- **Effects of air pollution from the EfW Facility and vehicles on qualifying and supporting habitats and species (operation) -** The emissions from the two chimneys and road traffic dispersion models were used to calculate the incremental contributions to baseline concentrations of NOx, NH3, SO2 and HF, in addition to nitrogen and acid deposition rates, at the protected sites. These predictions were compared against the critical levels and critical loads provided by the Air Pollution Information System ("APIS").

The results are presented in Tables 4.2 to 4.5 of the NSER. The maximum process contribution as a percentage of the Critical Levels and Loads for each pollutant and averaging period is 0% for all but one scenario, that being the average daily Process Contribution of NOx at Nene Washes SPA, SAC and Ramsar of 1% of the Critical Level. The Applicant screens out effects as insignificant if the long-term Process Contribution is less than 1% or the short-term Process Contribution is less than 10% of the air quality assessment level (i.e. the Critical Load/Level). Therefore, no LSEs are predicted due to air pollution effects on qualifying habitats for any protected site.

- **In-combination effects -** The Applicant addressed potential in-combination effects arising from the Proposed Development within Section of 4 of the NSER which sets out the methodology applied. The other plans and projects included within the in-combination assessment for traffic emissions are set out in Table 18.9 of ES Chapter 18: Cumulative Effects Assessment [APP-045]. The in-combination assessment also considered the Boston Alternative Energy Facility ("BAEF"); another scheme involving combustion emissions. Although BAEF is located outside of the 15km search area set out in guidance, it is located approximately 6km to the north of the Wash SPA/SAC and Ramsar site and may therefore share a common receptor site. No in-combination LSE have been identified for the sites and qualifying features where LSE were excluded from the Proposed Development alone. The NSER concluded that in-combination effects from the Proposed Development and BAEF would be negligible.

5.8. The SoCG between the Applicant and NE [REP1-043 and REP4-011] records agreement on the conclusions of the screening assessment. The Applicant's conclusions on potential LSE on the protected sites and their qualifying features considered were not disputed by any other IPs.

5.9. The ExA was satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site had been assessed and was satisfied with the approach to the assessment of alone and in-combination likely significant effects [ER C.2.13] and that LSEs on any protected site can be excluded [ER C.3.5]. During the Examination, the Applicant submitted a change request as described in Chapter 1 of the ExA's Report. These changes were accepted by the ExA. The change request did not affect the HRA and no updates to the HRA were required.

5.10. The Secretary of State considers that the Proposed Development either alone or in combination with other plans or projects, is not likely to have a significant effect on any protected site and that an AA is therefore not required, due to the distance between the Proposed Development and protected sites and the absence of any realistic effect pathways. The Secretary of State notes that the ExA states [ER 8.2.3] that its conclusion is subject to mitigation secured in the rDCO. The Secretary of State notes that this is not consistent with the ExA's conclusion in Appendix C [ER C.3] and that [ER 8.2.3] may be a typographical error. For the avoidance of doubt, the Secretary of State considers that no mitigation measures are required for her to conclude that LSEs can be excluded, due to the absence of any realistic effect pathways.

5.11. The Secretary of State considers that sufficient information has been provided for her to determine that an AA is not required, and to fulfil her duties under the Habitats Regulations.

## 6. Compulsory Acquisition ("CA") and Temporary Possession ("TP")

6.1. The Secretary of State notes that to support the delivery of the Proposed Development, the Applicant is seeking powers of CA and TP of land and rights which it was unable to acquire by voluntary agreement. The Applicant is seeking these powers in respect of:

- the acquisition of all interests in land, including freehold, of land shown edged red and shaded in pink on the Land Plans (Art 23 in the dDCO);
- the acquisition of new rights and the imposition of restrictions over land shown edged red and shaded blue on the Land Plans (Art 25 of the dDCO);
- the acquisition of subsoil only rights in the land shown edged red and shaded pink and blue on the Land Plans (Art 26 of the dDCO);
- the extinguishment and/or suspension of private rights over the land shown edged red and shaded in pink, blue and green on the Land Plans (Art 27 of the dDCO);
- temporary use of land to permit construction or maintenance of the Proposed Development, shown red and shaded in green on the Land Plans (Art 32 and 33 of the dDCO) [ER 6.4.1].

National Highways

6.2. A SoCG was signed by the Applicant and National Highways [REP7-020] at the close of the Examination, which states that an agreement has been reached between both parties in relation to CA and property matters. National Highways did not formally withdraw their objection to CA and TP but no further representations were received from them in response to the Secretary of State's consultation of January 2024. The dDCO [REP8-004] contains protective provisions in paragraph 50 of Part 5 of Schedule 11 that would prohibit the use of CA power and temporary use powers in respect of National Highways' land and interests without the prior consent of National Highways [ER 6.12.12]. The ExA concludes the protective provisions would adequately protect National Highways' assets and that there is a compelling case in the public interest for the CA and TP powers sought.

Norfolk County Council

6.3. A number of concerns on technical matters were raised, Norfolk CC's primary concerns were relating to the impacts of the Proposed Development associated with the grid connection linking the primary EfW CHP Facility to Walsoken substation, which is located in Norfolk [ER 6.12.18].

6.4. However, Norfolk CC raised no formal objections to CA/TP related matters. SoCGs were produced between the Applicant and Norfolk County Council throughout the Examination, the last of which was [REP7-016] [ER 6.12.17].

Anglian Water Services Limited ("Anglian Water")

6.5. No formal objections to the plots outlined for CA/TP were received. Anglian Water's primary concerns were in relation to the protective provisions set out in Schedule 11, Part 7 of the dDCO [APP-013]. Anglian Water was that the protective provisions were based on an old version of Anglian Water's protective provisions template, which has been updated since the dDCO was drafted [APP-013] [ER 6.12.22].

6.6. The Applicant responded to Anglian Water's RR in [REP1-028] and its WW in [REP3-039] acknowledging its comments. As no formal objection to the CA/TP of land was made, no specific comments were made in relation to this. Nevertheless, the ExA notes that the Applicant reiterated its commitment to its continued engagement with Anglian Water in relation to its main concerns, including the drafting of protective provisions [ER 6.12.23].

6.7. SoCGs were produced between the Applicant and Anglian Water throughout the Examination, the last of which was [REP6-021]. The SoCG does not cover concerns in relation to CA and property matters as these were not a matter of contention between the parties but indicates that agreement had been reached between the Applicant and Anglian Water in relation to the protective provisions included in the DCO [ER 6.12.24].

King's Lynn Internal Drainage Board

6.8. No formal objection to the CA/TP of these plots was received. However, King's Lynn Internal Drainage Board ("IDB") raised a number of concerns on technical matters [ER 6.12.25].

6.9. King's Lynn IDB primary concerns were in relation to the impacts of the Proposed Development and its potential impact on the King's Lynn IDB's ability to carry out its statutory functions. The King's Lynn IDB was particularly concerned with works that included water crossings, surface water discharge and PPs [ER 6.12.26]. The Applicant responded to King's Lynn IDB RR in [REP1-028] acknowledging its comments. As no formal objection to the CA/TP of land was made, no specific comments were made in relation to this [ER 6.12.27]. SoCGs were produced between the Applicant and King's Lynn IDB throughout the Examination, the last of which was [REP7-019]. The signed SoCG did not indicate that any concerns were outstanding and confirmed that agreement had been reached in relation to the protective provisions in the DCO.

Hundred of Wisbech Internal Drainage Board ("Hundred of Wisbech IDB")

6.10. No formal objection to the CA/TP of these plots was received. However, Hundred of Wisbech IDB raised a number of concerns on technical matters [ER 6.12.29].

6.11. Hundred of Wisbech IDB's primary concerns were in relation to the impacts of the Proposed Development and its potential impact on the Hundred of Wisbech IDB statutory functions and its need to fully understand the impacts of the scheme and to determine whether any mitigation measures proposed are sufficient [ER 6.12.30]. A SoCG was produced between the Applicant and Hundred of Wisbech IDB [REP7-018], which does not cover concerns in relation to CA as these were not a matter of contention between the parties [ER 6.12.32]. The signed SoCG did not indicate that any concerns were outstanding and confirmed that agreement had been reached in relation to the protective provisions in the DCO.

Cambridgeshire County Council

6.12. Although no formal specific objection to the CA/TP of these plots was received, Cambs CC stated, in Appendix 1 of its RR [RR-002] that the Council does not support the construction of an incinerator in Wisbech and that it will use all legal powers and avenues available to oppose any plans to build any incinerators in Wisbech, which the ExA interpreted as an objection to the Proposed Development including the plots marked for CA/TP [ER 6.12.33].

6.13. SoCGs were produced between the Applicant and Cambs CC throughout the Examination, which do not cover concerns in relation to CA, suggesting that these were not a matter of contention between the parties [ER 6.12.36].

6.14. In regard to public interest, the ExA acknowledged that, whilst the proposed CA would result in some disruption and inconvenience, the extent of the rights being sought are limited [ER 6.12.39]. For plots 11/1c and 11/4a, the extension of the rights being sought is greater as this includes the acquisition of land [ER 6.12.40].

6.15. Although plot 11/4a has already been purchased by the Applicant by agreement, the ExA notes that CA powers are still being sought to guarantee that no unknown interests would impede the commencement of the Proposed Development [ER 6.12.41].

6.16. In relation to plot 11/1c (in respect of the footway), the SoR [REP7-008] states that the land forms part of the disused March-to-Wisbech Railway and that it is required to deliver vehicular access to the EfW CHP Facility [ER 6.12.42]. It is noted that while the ExA accepts that the CA and TP powers sought might result in some adverse impacts, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for that the land to be acquired compulsorily [ER 6.12.43].

6.17. The SoCG [REP7-020], which is signed by both parties, states that agreement was reached between both parties in relation the dDCO and the wording included in the Schedules. The dDCO [REP8-004] now contains protective provisions in paragraph 115 of Part 9 of Schedule 11 ensuring that, before commencing the construction of, or the carrying out of any work which involves interference with a highway, the undertaker (the Applicant) must submit plans to Cambs CC for its approval, and the works must not be carried out except in accordance with the approved plans [ER 6.12.44]. In addition, the dDCO states in paragraph 116 of Part 9 of Schedule 11 that the Applicant must not alter, disturb or in any way interfere with any property of Cambs CC on or under any highway, or the access thereto, without the consent of the Cambs CC, and any alteration, diversion, replacement or reconstruction of any such property which may be necessary may be made by Cambs CC or the undertaker as the Cambs CC thinks fit, and the expense reasonably incurred by Cambs CC in so doing must be repaid to Cambs CC by the undertaker [ER 6.12.45].

<u>Fenland District Council</u>

6.18. Similarly to Cambs CC, Fenland DC raised no formal objection to the CA/TP of the plots but stated that it does not support the construction of an incinerator in Wisbech and was clear it will use all legal powers and avenues available to oppose the plans, which the ExA interpreted as an objection to the Proposed Development and subsequent CA/TP of land rights [ER 6.12.49]. SoCGs were produced between the Applicant and Fenland DC throughout the Examination, the last of which was [REP8-011] [ER 6.12.51]. The signed SoCG states that agreement had been reached between both parties in relation to the dDCO and the wording included in the Schedules.

6.19. In regard to public interest, the ExA notes and accepts that while the CA and TP powers sought might result in some adverse impacts, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for that the land to be acquired compulsorily and is satisfied that it meets the tests in s122(3) of PA2008 [ER 6.12.59].

Wayne Clark Cowling

6.20. The Applicant provided an update on its negotiations with Mr. Cowling and stated that Head of Terms had been agreed and solicitors were due to be instructed to negotiate documents for the acquisition of this land, as per the Applicant's draft written summary of oral submissions at CAH1 and CAH2 [REP3-037]. At CAH3 [EV-063] the Applicant provided another update on its negotiations with Mr. Cowling and confirmed that agreement had not been reached [ER 6.12.93].

6.21. No confirmation of agreement being reached was submitted by the end of the Examination [ER 6.12.64]. The SoR [REP7-008] provides a detailed justification for the power sought for all of the plots. Having carefully reviewed the works plans, land plans and BoR, the ExA is satisfied that each area of land affected by CA or TP is required for the carrying out of one or more of the works identified in Schedule 1 of the dDCO or their maintenance. As such, these meet the test set out in s122(2) of the PA2008 [ER 6.12.65].

Network Rail

6.22. The ExA notes that Network Rail Infrastructure Limited (Network Rail) submitted a RR [RR-011] and a WR [REP2-039] stating it understands that the Applicant proposes to lay an overground pipeline (CHP Connection) within land forming part of the disused but operational March to Wisbech railway line (Railway Corridor). In addition, Network Rail recognises that the Applicant seeks rights of access over the currently disused level crossing on New Bridge Lane which would form part of the main site access to the Proposed Development.

6.23. Network Rail stated that it intends to reopen the March to Wisbech railway line for services in the future which would necessitate installing kit and operating train services within the Railway Corridor alongside the CHP Pipeline. As part of these plans, the New Bridge Lane level crossing would also need to be brought back into operation to facilitate the crossing of the railway by pedestrians and vehicles. For those reasons, Network Rail objected to the Compulsory Powers being granted [ER 6.12.68]. However, the signed SoCG [REP8-010] states that agreement has been reached between both parties in relation to CA and property matters. The ExA concluded that the protective provisions in the dDCO would provide adequate protection for National Rail's assets and that there was a compelling case in the public interest for the CA and TP powers sought.

6.24. Network Rail formally withdrew its objection to CA following the close of the Examination on the basis that their preferred protective provisions are included in the DCO, and the Applicant has confirmed agreement in this regard. The DCO has therefore been updated with National Rail's protective provisions.

Welle Stream Limited

6.25. Welle Stream Limited submitted a RR [RR-057] and a WR [REP2-069]. The RR stated that, as the owner of Plots 11/1a(i) and 11/8a, it welcomed an acoustic fence being erected as an alternative to the CA of the land. The ExA interpreted this as Welle Stream Limited not objecting to the CA of rights and imposition of restrictions over the land [ER 6.12.76].

6.26. No confirmation of agreement being reached was submitted by the end of the Examination [ER 6.12.79].

6.27. The SoR [REP7-008] provides a detailed justification for the power sought for these plots. The Applicant seeks the CA of rights and imposition of restrictions to deliver a mitigation measure it identified as necessary to reduce the noise effects of the Proposed Development on 10 New Bridge Lane.

6.28. The ExA are satisfied these plots are either required to facilitate the Proposed Development or are incidental to it, and that there is a compelling case in the public interest for the acquisition. As such, the tests set out in s122(2) and (3) of the PA2008 [ER 6.12.81] are met.

*The Secretary of State's Conclusion on Compulsory Acquisition and Temporary Purchase*

6.29. The Applicant's case for the CA and TP powers sought is set out in Section 6 (Justification of Powers for Compulsory Acquisition) and Section 7 (Purpose for which Acquisition Powers are Sought) of the SoR [REP7-008] and the Applicant explains how it considers its proposals meet the tests set out in s122 of PA2008. It also describes how the Applicant has considered how it has demonstrated the general considerations in the CA Guidance [ER 6.9.1]. The Secretary of State notes that none of the land included in the CA request is Crown Land, National Trust Land, open space or common land [ER 6.2.2].

6.30. The Applicant states that the purpose for which CA and TP powers are sought is to enable the Applicant to construct, operate, maintain, and decommission the Proposed Development, and without these powers, the Applicant states that there would be insufficient certainty about its ability to deliver the Proposed Development in the necessary timescales [ER 6.9.2]. The Applicant also states that the acquisition of land and rights and the temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of private rights, is no more than is reasonably required for, or to facilitate, or is incidental to the Proposed Development [ER 6.9.3].

6.31. The ExA were satisfied the Applicant has demonstrated that the land is needed and would be no more than is reasonably required for the Proposed Development. The ExA was also satisfied that all of the land is required either for the development, to facilitate it, or is incidental to it. The ExA considers the test in s122(2) of the PA2008 was met [ER 6.9.4]. The ExA was satisfied that the condition in s123(2) of the PA2008 was met [ER 6.6.5].

6.32. The Secretary of State has found a compelling case in the public interest and is therefore, in agreement with the ExA on the matters of CA/TP.

6.33. The Secretary of State has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

## 7. Secretary of State's Consideration of the Planning Balance and Conclusions

7.1. The Secretary of State acknowledges the ExA's recommendation that consent should be granted for the Proposed Development.

7.2. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:

- Principle of Proposed Development – great positive weight [ER 5.2.1 et seq.];
- Alternatives – neutral weight [ER 5.2.7 et seq.];
- Good design – neutral weight [ER 5.2.12 et seq.];

- Carbon capture and storage – neutral weight [ER 5.2.21 et seq.];
- Consideration of combined heat and power – neutral weight [ER 5.2.25 et seq.];
- Landscape and visual – great negative weight [ER 5.2.34 et seq.];
- Biodiversity – moderate positive weight [ER 5.2.37 et seq.];
- Traffic and transport – neutral weight [ER 5.2.41 et seq.];
- Air quality – neutral weight [ER 5.2.49 et seq.];
- Human health – neutral weight [ER 5.2.52 et seq.];
- Noise and vibration – neutral weight [ER 5.2.61 et seq.];
- Flood risk, drainage and water environment – neutral weight [ER 5.2.67 et seq.];
- Socio-economic and population effects – moderate positive weight [ER 5.2.80 et seq.];
- Major accidents and damage – neutral weight [ER 5.2.90 et seq.] and;
- Cumulative effects - neutral weight [ER 5.2.95].

7.3. The Secretary of State disagrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:

- Climate – neutral weight [ER 5.2.14 et seq.]; the Secretary of State has ascribed minor negative weight;
- Geology, hydrogeology and contaminated land – neutral weight [ER 5.2.75 et seq.]; the Secretary of State has ascribed minor negative weight;
- Historic environment – neutral weight [ER 5.2.58 et seq.]; the Secretary of State has ascribed minor negative weight.

7.4. Where National Policy Statements have effect, section 104 of the Planning Act 2008 requires the Secretary of State to have regard to a range of policy considerations including the relevant National Policy Statements, local impact reports, prescribed matters and any other matters that the Secretary of State thinks are important and relevant to the decision.

7.5. The Secretary of State notes that the Proposed Development should be decided in accordance with the relevant (2011) NPSs EN-1, EN-3 and EN5, and that subsequent draft and designated 2024 NPSs are important and relevant considerations. Both the ExA and the Secretary of State have identified a range of important and relevant matters, namely energy and climate change legislation, and policy which postdate the publication of the energy NPSs in 2011, including the publication of the designated 2024 NPSs. The Secretary of State agrees that significant weight should be ascribed to these matters and that they represent important and relevant matters in the context of s104(2)(d) of the PA2008.

7.6. All NSIPs will have some potential adverse impacts. In the case of the Proposed Development, the potential impacts have been assessed by the ExA as having not breached the policies in 2011 NPS EN-1, EN-3 or EN-5 or policies contained in the 2024 NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.

7.7. For the purposes of this application the Secretary of State considers that 'in development' should be interpreted using the ordinary usage of the word, which suggests an active process of being developed i.e. under construction and requires more than just simply having the benefit of planning consent, which does not of itself mean a development will come

forward. The wording of the both the NPSs is clear that it relates to projects 'already in development'.

7.8. The ExA concludes that the overarching need for the Proposed Development is strong, and that it makes a positive contribution to addressing the urgent need for new nationally significant electricity infrastructure (as set out in EN-1) by using waste for the production of electricity and heat. It notes that the Proposed Development will reduce the amount of waste that goes into landfill, does not prejudice the achievement of local or national waste management targets in England; does not compete with greater waste prevention, re-use, or recycling, and would not result in over capacity of EfW treatment at national or local level. The ExA gives very great positive weight to the need case for the Proposed Development [ER 5.3.12]. The Secretary of State notes that designated 2024 EN-1 confirms the ongoing urgent need for new electricity NSIPs, including Energy from Waste, to be brought forward as soon as possible. The Secretary of State agrees that very great positive weight should be attached to the need for the Proposed Development.

7.9. In addition, the Secretary of State accords moderate positive weight to the biodiversity enhancements and socio-economic effects associated with the Proposed Development.

7.10. As detailed above, the Secretary of State accords great negative weight to the landscape and visual impacts, minor negative weight to impacts on climate and minor negative weight to impacts on the historic environment. The Secretary of State notes the neutral weighting the ExA have given regarding BMV. However, as the Proposed Development would result in the temporary loss of BMV during the construction phase, the Secretary of State finds that this weighs slightly against the Proposed Development and therefore affords minor negative weight due to the temporary loss of BMV land.

7.11. The Secretary of State has considered and weighed the benefits and harms that have been identified. Although the Secretary of State has reached a different conclusion from the ExA in respect of some of the harms resulting from the Proposed Development, the Secretary of State also concludes that the Proposed Development is in accordance with relevant NPSs, and that the harms identified in this case are clearly outweighed by the great weight attached to the provision of urgently needed new nationally significant electricity generating infrastructure, along with the other identified benefits.

7.12. For the reasons given above, the Secretary of State is minded to grant consent in line with section 104 of the Planning Act 2008.

7.13. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the joint LIRs; one being submitted jointly by Cambridgeshire County Council (Cambs CC) and Fenland District Council (Fenland DC) and the other, also jointly submitted by Norfolk County Council (Norfolk CC) and Borough Council of King's Lynn and West Norfolk (BCKLWN), the NPSs, draft NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the Planning Act 2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

## 8. Other Matters

Equality Act 2010

8.1. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships[4]; pregnancy and maternity; religion and belief; and race.

8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the proposed Development.

8.4. The Secretary of State is confident that, in taking the recommended decision, she has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Natural Environment and Rural Communities Act 2006

8.5. The Secretary of State notes the "general biodiversity objective" to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.

8.6. The Secretary of State is of the view that the ExA's Report, together with the Environmental Impact Assessment, considers biodiversity sufficiently to inform her in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

## 9. Modifications to the draft Order

9.1. Following consideration of the draft Order provided by the ExA the Secretary of State has made the following modifications to the draft Order:

a. Amendments to the definitions in Part 1 Section 2 (Interpretation):

[4] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

i. Inclusion of definition for “EWC”, inclusion of definition of “permitted preliminary works” to replace “enabling activities” and omission of the definition of “outline Walsoken Substation flood emergency management plan”.

ii. Amendment to definition of “permitted preliminary works” to exclude activities which would not usually be considered part of permitted preliminary works.

iii. Amendment to the definition of “commence” to replace “enabling activities” with ‘permitted preliminary works’ and the words ‘beginning to carry out any’ with ‘the first carrying out of any’.

iv. Amendments to the definitions of “commissioning", "maintain”, “undertaker” and “Order land” made for clarity.

v. Amendment to the definition of “date of final commissioning” to remove the words “or any part of the authorised development” since Requirement 20 only applies to Work No. 1 and the definition needs to apply to the completion of commissioning of Work No. 1.

b. Amendments to Part 2 (Principal Powers):

i. Amendments to Article (5) to clarify that the undertaker is authorised to operate and use the authorised development for which the development consent is granted by this Order, not just the generating station comprised in the authorised development.

ii. Amendment to Article 8(4) to remove, for transferees or lessees that are the relevant statutory undertaker or licence holder, the exemption to seek consent from the Secretary of State to transfer the benefit of the Order. Article 8(8) is also amended to change the notification period from five to fourteen working days. These amendments are consistent with the position taken in previous Development Consent Orders.

c. Amendments to Part 3 (Streets):

i. Amendment of Article 14(1) to replace the words “maintenance, operation or decommissioning” with “construction” to reflect the wording in the Applicant’s EM and to take a position consistent with other DCOs.

ii. Amendment of Article 17(1) to restrict the provision of this article to the construction period only as it is considered to be too broad as drafted, and to clarify the requirements to consult and seek consent. These amendments are consistent with other DCOs.

d. Part 4 (Supplementary powers):

i. Amendments in Article 20, in paragraph (5)d, to remove the words “and take possession” which were considered not to be warranted and in paragraph (9) to replace the words “section 10(2) (further provision as to compensation for injurious affection) of the 1965” with the words “section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act”, as this is the updated provision which serves the same purpose. The same amendment is made to Article 32(7).

ii. Removal of Article 21(4) the inclusion of which was not considered appropriate here.

iii. Removal of Article 22(11) the inclusion of which was not considered appropriate here.

e. Part 5 (Powers of Acquisition)

i. Amendment to Article 23(2) to include Article 31 as an article that Article 23 is also subject to and to replace the word “construction” with “carrying out”.

ii. Amendments to Article 32 to replace “construction” with “carrying out” as “construction” is considered to be too narrow, and to Article 32(3) to include “must not remain in possession of any land under this article for longer than reasonably necessary and in any event’.

iii. Amendment to Article 33(8) to replace the words ‘10(2) (further provisions as to compensation for injurious affection) of the 1965’ with ‘152 (compensation in case where no right to claim in nuisance) of the 2008’.

f. Part 6 (Miscellaneous and General)

i. Amendment to Article 37(1) to remove “subject to article 42 (certification of plans) as the purpose served by these words was unclear.

g. Schedule 1 (Authorised Development)

i. Inclusion of words “and pedestrian crossing” to Work No. 4A for clarity.

ii. Amendment of Schedule 1 to delete the final paragraph and include words “comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development, and which are within the Order limits and fall within the scope of the work assessed by the environmental statement” for consistency with other development consent orders.

h. Schedule 2 (Requirements)

i. Amendment to Requirement 2 to include additional Work Nos. as supporting documents indicated that Work Nos. other than those cited should be included in the detailed design approvals process.

ii. Amendment to Requirement 10(4) to require agreement from the Environmental Agency as well as the relevant planning authority to depart from approved construction environmental management plan, which provides consistency with the approvals process in Requirement 10(3).

iii. Amendment to Requirement 11 and 12 to require agreement from the highway authority as well as the relevant planning authority to depart from the approved construction traffic management plan or the approved construction traffic management plan. Again this provides consistency with the approvals processes in Requirements 11(1) and 12(1).

iv. Amendments to Requirement 13 to require consultation with the lead local flood authority, which is consistent with other DCOs.

v. Amendments to Requirements 16 and 17 to replace the words ‘date of commissioning’ with ‘completion of’ to ensure a clear distinction between completion

of commissioning of part of Work No. 1, and final commissioning as defined, which is all of Work No. 1.

vi. Amendments to Requirement 19(4) and Requirement 23(a) to replace the words 'final' and 'full', respectively, with the words 'completion of' for consistency and to distinguish from final commissioning as defined.

vii. Amendment to Requirement 22(2)b to delete the words 'should it be deemed feasible to do so' as the purpose of CCR requirements are to ensure that CCR remains feasible. The Secretary of State's consent should be sought if CCR is not feasible and the Applicant intends to use the land for something else.

viii. Amendment to Requirement 25 to include Work No. 2 as well as Work No. 1 in accordance with the combined heat and power embedded design measures document.

ix. Amendment to Requirement 28 to require that the decommissioning plan that is submitted is for the authorised development.

i. Schedule 12 (Procedure for the Discharge of Requirements)

i. Insertion of paragraphs 2(3), 2(5) and 3(6) as this is consistent with the position taken in previous Development Consent Orders. Deletion of paragraph 4(10 which does not appear in other Development Consent Orders, and the inclusion of which has not been explained or justified.

9.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency. The Order, including the modifications referred to above is being published with this letter.

## 10. Challenge to decision

10.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

## 11. Publicity for decision

11.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the PA2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

11.2. Section 134(6A) of the PA2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,

David Wagstaff OBE

Head of Energy Infrastructure Development

## ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

https://infrastructure.planninginspectorate.gov.uk/projects/eastern/medworth-energy-from-waste-combined-heat-and-power-facility/

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**

## ANNEX B: LIST OF ABBREVIATIONS

| Abbreviation | Reference |
|---|---|
| AA | Appropriate Assessment |
| AEoI | Adverse Effect on Integrity |
| BCKLWN | Borough Council of Kings Lynn and West Norfolk |
| BESS | British Energy Security Strategy |
| CA | Compulsory Acquisition |
| Cambs CC | Cambridgeshire County Council |
| CHP | Combined Heat and Power |
| DCO | Development Consent Order |
| dNPS | March 2023 draft NPS |
| EA | The Environment Agency |
| EfW | Energy from Waste |
| EIA | Environmental Impact Assessment |
| ES | Environmental Statement |
| ExA | The Examining Authority |
| Fenland DC | Fenland District Council |
| GHG | Greenhouse gas |
| HIC | Household Industrial Commercial |
| HRA | Habitats Regulations Assessment |
| IP | Interested Party |
| IROPI | Imperative Reasons of Overriding Public Interest |
| LIR | Local Impact Report |
| LSE | Likely Significant Effect |
| MW | Megawatt |
| NE | Natural England |
| Norfolk CC | Norfolk County Council |
| NPS | National Policy Statement |
| NPPF | National Planning Policy Framework |
| NSN | National Site Network |
| NSIP | Nationally Significant Infrastructure Project |
| PA2008 | The Planning Act 2008 |
| PSED | Public Sector Equality Duty |
| RDF | Refuse Derived Fuel |
| RIES | Report on the Implications for European Sites |
| RR | Relevant Representation |
| SAC | Special Area of Conservation |
| SoCG | Statement of Common Ground |
| SPA | Special Protection Area |
| TP | Temporary Possession |
| UKWIN | United Kingdom Without Incineration |
| WFAA | Waste Fuel Availability Assessment |
| WR | Written Representation |
| Wisbech TC | Wisbech Town Council |