

Indaver Rivenhall IWMF DCO

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure)

Regulations 2009

**Examination Documents [PINS Ref:
EN0101038]**

Applicant Responses to the ExQ1

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Indaver Rivenhall Ltd

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VERSION HISTORY

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1	07 May 2024	Deadline 1	Latest	9.1.4	

Glossary

Abbreviation	Definition
Applicant	Indaver Rivenhall Limited
CNP	Critical National Priority
The Consented Scheme	The IWMF as approved by the IWMF TCPA Permission that is currently under construction at the IWMF Site.
dDCO	Draft Development Consent Order. This being the draft Order prepared by the Applicant [APP-013] .
DCO	Development Consent Order. A DCO is the form in which the Secretary of State grants consent for development applied for under the Planning Act 2008.
DESNZ	Department of Energy Security and Net Zero
EA	Environment Agency
ECC	Essex County Council
EEAST	East of England Ambulance Service NHS Trust
EfW	Energy from Waste. Treatment processes and technologies used to generate a useable form of energy and which also reduce the solid volume of residual waste.
EIA	Environmental Impact Assessment. A process for predicting the effects of a proposed development on the environment that informs decisionmakers in relation to planning permissions, consents, licences and other statutory approvals, as required by Directive 2014/52/EU (the EIA Directive).
Environmental Permit	Environmental Permit (No.: EPR/FP3335YU), as varied by (No. EPR/FP3335/YU/V002, date 03 June 2020), and transferred to the Applicant (No. EPR/CP3906LP).
ES	Environmental Statement. The document reporting the process and outcomes of the EIA. Book 6 of this Application.
ExA	Examining Authority
Examination	The examination of the DCO Application submitted by the Applicant by the Planning Inspectorate on behalf of the Secretary of State, which began on 9 th April 2024.
ExQ1	Examining Authority's first written questions and requests for further information (issued 16 April 2024).
FRA	Flood Risk Assessment
Host Authorities	The relevant planning authorities within which the Proposed Development is located, being Braintree District Council and Essex County Council.
IWMF	Integrated Waste Management Facility
IWMF Site	The location of the IWMF as approved by the IWMF TCPA Permission.
IWMF TCPA Permission	Planning permission reference ESS/39/23/BTE (as amended and superseded from time to time, including by permissions granted pursuant to sections 73 and 96a of the TCPA 1990), dated 26

	January 2024, for the development of an Integrated Waste Management Facility at the former Rivenhall Airfield.
MW	Megawatt of electricity
NIA	Noise Impact Assessment
NPPF	National Planning Policy Framework
NSIP	Nationally Significant Infrastructure Project. A project that, by reason of its scale and/or Infrastructure Project (NSIP) importance, needs Development Consent before it can be built or operated.
NPS	National Policy Statement. Policy statements that set out the Government's objectives for the development of nationally significant infrastructure. They undergo a democratic process of public consultation and parliamentary scrutiny before being designated (i.e. published). They provide the primary basis for deciding NSIPs.
PA 2008	Planning Act 2008
PINS	Planning Inspectorate
Proposed Development	The application for which Development Consent is being sought – the proposed extension to the electrical generating capacity of the EfW component of the Rivenhall IWMF.
SoS	Secretary of State
TCPA 1990	Town and Country Planning Act 1990 (as amended)

1 Introduction

- 1.1 This document (Doc Ref 9.1.4) has been prepared on behalf of Indaver Rivenhall Ltd ('the Applicant'). It forms part of the application ('the Application') for a Development Consent Order (a 'DCO') that was submitted to the Secretary of State ('SoS') for the Department of Energy Security and Net Zero ('DESNZ') under section 37 of the Planning Act 2008 ('the PA 2008') on 10th November 2023. The Application was accepted for examination by the Planning Inspectorate on 8th December 2023, and the examination started on 9th April 2024.
- 1.2 The Applicant is seeking development consent for the extension of the electrical generating capacity of the Rivenhall Integrated Waste Management Facility ('the Consented Scheme') at land within the former Rivenhall airfield near Witham, Essex ('the Site').
- 1.3 A DCO is required for the extension as it would result in the onshore generating station having a capacity of more than 50MW and would constitute a Nationally Significant Infrastructure Project ('NSIP') for the purposes of section 14(1)(a) of the PA 2008.

2 Purpose of this document

- 2.1 The purpose of this document is to set out the Applicant's responses to the Examining Authority's written questions and requests for information ('ExQ1') issued on 16 April 2024 [[PD-004](#)].
- 2.2 The Applicant's responses to each written question is provided in **Section 2** of this document (Doc Ref 9.1.4). The ordering of the responses corresponds to the order in which the topics appear in the ExQ1 document.

3 Response to Examining Authority’s written questions and requests for information

Q1.1. General and Miscellaneous			
Ref	Respondent	Question	Response
Q1.1.1	Applicant	The ExA notes [APP-049] that an Electricity Generation Licence, Class C will be required. Is this likely to act as an impediment to the Proposed Development?	<p>No, this will not act as an impediment to the Proposed Development.</p> <p>The Applicant will fall within the Class C exemption under Schedule 2 of The Electricity (Class Exemption from the Requirement for a Licence Order) 2001 (SI2001/3270), which is for ‘Generators not exceeding 100 megawatts’.</p> <p>DESNZ has issued guidance on ‘Electricity Generation, Distribution and Supply Licence Exemptions – Frequently asked questions (FAQs)’ (July 2017, revised December 2023). This guidance confirms that ‘Class exemptions are automatically applicable in respect of an undertaking meeting the conditions of the exemption in question. In such circumstances, an undertaking does not need to apply to the Department or to Ofgem for the exemption to apply, or to notify that they are claiming a class exemption’.</p>
Q1.1.2	Applicant Environment Agency	The ExA notes the ministerial direction from DEFRA to the EA to temporarily halt the issuing of environmental permits for new waste incineration facilities until 24 May 2024. Confirm whether this has any implications for the Proposed Development.	<p>This has no implications for the Proposed Development.</p> <p>The Consented Scheme benefits from an existing Environmental Permit (Permit Number EPR/FP3335YU; Variation Permit number EPR/FP3335YU/V002; and Transfer Permit number EPR/CP3906LP) (‘the Environmental Permit’). No new environmental permit would be required to operate the Proposed Development.</p> <p>The Proposed Development would not require any variations to the Environmental Permit or a new permit. Even if a variation were needed, it is noted that the minister’s letter states that the direction ‘does not apply to... incinerators seeking a permit variation for an existing environmental permit...’</p>
Q1.1.3	Applicant	How will any major accidents and disasters	The carrying out of the Proposed Development itself will involve relatively minor construction works. These are described in detail at section 3.4 of the

		be dealt with by the Proposed Development?	<p>Environmental Statement Volume 1, Chapter 3: Proposed Development and Construction [APP-028].</p> <p>The carrying out of the Proposed Development and its operation will be in accordance with the terms of the Consented Scheme. The Consented Scheme is being constructed with an Emergency Preparedness and Response Plan (Doc Ref 9.1.5) in place, which has been prepared by the appointed contractor (Hitachi Zosen INOVA). This sets out details including assembly points, emergency services details, locations of the nearest hospital and actions and procedures for various foreseeable emergencies.</p> <p>Once constructed, the Proposed Development will be operated as part of the wider Consented Scheme, which will be subject to industry-wide safety regulations and controls. The Applicant is a subsidiary of Indaver Holding NV, a group that operates other waste management facilities in the UK, Belgium, France, Ireland and the Netherlands. It has internationally recognised certifications for its safety policies and procedures, which would be implemented at the Rivenhall IWMF.</p>
Q1.1.4	East of England Ambulance Service NHS Trust	EEAST consider [RR-005] that the Proposed Development is likely to have a significant impact on its emergency ambulance operations, service capacity and resources (staff, vehicle fleet and estate assets) requiring appropriate mitigation and management measures to be identified and secured through either a planning obligation or Deed of Covenant.	The Applicant has provided a response to EEAST's relevant representations in the Relevant Representations Report (Doc Ref 9.1.3) .

		Given that the Proposed Development will not result in any traffic movements above that already consented, provide further justification for this view.	
Q1.1.5	Applicant	The 2023 revised NPSs (EN-1 to EN-5) came into force on 17 January 2024. Set out any implications these have for the Proposed Development and whether they affect the findings of the ES.	<p>This has no implications for the findings of the ES. The revised NPSs came into force on 17 January 2024, after the DCO Application was accepted for examination. The 2011 NPSs remain the relevant NPSs for the purposes of determining the DCO Application. However, the revised NPSs are important information.</p> <p>The key change brought about by the revised NPSs is that the Proposed Development would now qualify as low carbon infrastructure for which there is a Critical National Priority (Revised NPS EN-1, paragraph 4.2.5). This does not change the overall conclusion reached in the ES because there were no residual impacts that would suggest the Proposed Development would be unacceptable in the first place. However, it does lend further weight to the acceptability of the proposals and the contribution they would meet to delivering energy security and contributing towards net zero.</p> <p>Updates have been made to the Planning Statement Version 2 (Doc Ref 7.1) to reflect the revised NPSs coming into effect and to ensure that the assessment of the Proposed Development is fully up to date. A clean and tracked changed version of the document has been provided to allow easier comparison (Doc Ref 7.1). The updates made also include an updated assessment of the Proposed Development against the National Planning Policy Framework (December 2023) and capture updates to the Consented Scheme’s planning history. Again, neither of these changes affect the overall conclusions reached. Updates have also been made to the Explanatory Memorandum to the Draft Development Consent Order V2 (Doc Ref 3.2) to capture the updates to the Consented Scheme’s planning history. Clean and tracked change versions have been provided.</p>
Q1.2. Climate Change and Greenhouse Gases			

Ref	Respondent	Question	Response
Q1.2.1	Applicant	<p>The ES [APP-032] assumes that there will be electricity generation of 62.5MW.</p> <p>Provide further justification for this assumption and explain why 60MW or 65MW is not assessed as a best/worst case?</p>	<p>In paragraph 6.6.2 of the ES [APP-031], it is explained that the EfW plant will operate between 60 and 65 MW. For the noise assessment, the worst case scenario for technical assessment was taken as 65 MW as this would involve the equipment operating at maximum level. This was appropriate for the noise assessment as this is primarily concerned with short term peak impacts. For the climate change assessment, the technical assessment was based on the design point of the turbine, which is 62.37 MW.</p> <p>The power generated by the EfW plant will vary depending on the time of year. During the summer, when the air is hotter, the air-cooled condenser will operate less efficiently, which means that the steam pressure at the exit from the turbine will be higher and less power will be generated. During the winter, the opposite will apply and more power will be generated. The design point of the plant reflects the air-cooled condenser operating at an air temperature of 10°C, giving power generation of 62.37 MW. Since the climate change assessment considers the annual impact of the EfW plant, it is appropriate to use a figure which is reflective of the average power generation, rather than the peak generation, and the Applicant considers that the design point is more reflective of the average power generation.</p>
Q1.2.2	Applicant Essex County Council	<p>ECC [RR-002] has set out that the opportunity to deliver other climate-related co-benefits of the project should be explored in order to make best use of the development and that this could include educational benefits, such as education information boards and explaining the role of the project in delivering a</p>	<p>This is not considered necessary to make the proposals acceptable in planning terms.</p> <p>The Proposed Development would result in a greater amount of electricity being generated from the same throughput of fuel, which delivers a (negligible) benefit to climate change and greenhouse gas emissions by displacing energy that would otherwise be derived from fossil fuels. It does so without any significant adverse environmental effects. No mitigation such as that outlined by ECC is necessary to make the proposals acceptable in planning terms.</p> <p>The above notwithstanding, the Applicant already engages with the community through in-person events and hosts information about the role that the IWMF plays in waste management on its website. On that website are also details of community events the Applicant has hosted in the past few years. Prior to the</p>

		<p>decarbonised national grid, UK energy security, strategy and tackling climate change.</p> <p>a) Applicant, respond to this request and set out whether you consider this to be necessary.</p> <p>b) ECC, how would such measures be secured and are they necessary to make the Proposed Development acceptable?</p>	<p>DCO Application being submitted, the Applicant opened its Information Hub building to the public across 10 days in the summer. Further information on this is set out in the Consultation Report [APP-016].</p> <p>Further, the Consented Scheme already secures benefits in the following ways:</p> <ul style="list-style-type: none"> - The Consented Scheme includes the redevelopment of the Woodhouse Farm Complex as a visitor and education centre. - The Consented Scheme Section 106 Agreement (Doc Ref 9.1.6) requires the Applicant to establish a Community Trust Fund which may be used to fund educational projects. The funding for this Community Trust Fund is based on the amount of waste imported to the site, which will not be changed by the Proposed Development. This obligation is already binding on the Applicant on an ongoing basis and will not be affected by the Proposed Development (see response to Q.1.5.5 for further details of the Section 106 Agreement). <p>For these reasons, further educational benefits secured through the DCO are not considered to be either reasonable or necessary to make the Proposed Development acceptable in planning terms.</p>
Q1.2.3	Applicant Essex County Council	<p>ECC [RR-002] are of the view that carbon emissions should be recorded and published, to show the positive impact even if small.</p> <p>a) Applicant, respond to this request and set out whether you consider this to be necessary.</p> <p>b) ECC, set out how would such measures be secured and are they necessary to make the Proposed Development acceptable?</p>	<p>This is not considered necessary to make the proposals acceptable in planning terms.</p> <p>As per the response to Q1.2.2, the proposals would deliver a negligible benefit in generating a greater amount of electrical without the need for additional fuel throughput and with no significant adverse environmental effects.</p> <p>The operator is required to make an annual submission to the EA's Pollution Inventory and this will include an estimate of CO2 emissions. The Pollution Inventory is published by the EA.</p> <p>The Applicant is also required to provide the Application Site Liaison Committee with the same air quality monitoring data as it must submit the EA (clause 3.11.2 of the Section 106 Agreement (Doc Ref 9.1.6)). This obligation is already binding on the Applicant on an ongoing basis and will not be affected by the Proposed</p>

			Development (see response to Q.1.5.5 for further details of the Section 106 Agreement).
Q1.3. Consented Development			
Ref	Respondent	Question	Response
Q1.3.1	Applicant	Confirm whether an EfW plant alone is currently being constructed and whether the other components of the existing consent will be delivered in the future.	<p>The current and ongoing intention of the Applicant is to build out the Consented Scheme subject to market conditions and viability issues. The TCPA Permission for the Consented Scheme has been lawfully implemented and has value to the Applicant who wishes to seek to maximise the opportunities offered by the Consented Scheme.</p> <p>The Applicant is undertaking its development of the Consented Scheme in phases. Such a phased approach is not uncommon. It enables the revenue from the operation of the first phase to be used to fund later phases (reducing third-party financing and other investment costs, which is particularly important during periods of high interest). It also enables more of the construction activity to be located within the void which is to house the consented building. An example of where Indaver has taken this approach is at its site in Doel, Belgium which was initially developed as an EfW plant after which a mercurial waste treatment plant, a bottom ash recycling plant, fluidized bed facilities (which treat sludge from water purification units or industry) and landfill facilities were developed in subsequent phases.</p> <p>The current construction works comprise the first phase of the development and include: the private access road extension, the earthworks and lagoons, site preparation and landscaping, installation of utilities connections, restoration of the Woodhouse Farm complex and the EfW plant.</p> <p>Following the completion of the EfW plant, the Applicant's current intention is to then develop the Materials Recycling Facility. The Applicant then intends to develop the other elements of the Consented Scheme as and when the market and commercial viability conditions allow. Provided that a planning permission is lawfully implemented, <i>'there is no time limit for completing it, unless a completion notice is served under section 94 of the 1990 Act'</i> (Judgment of Lord Sales and</p>

			<p>Lord Leggatt, paragraph 20, Hillside Parks Ltd. v. Snowdonia National Park Authority [2022] UKSC 30).</p> <p>The Applicant's approach to the phased delivery is lawful. There are no planning conditions or obligations in respect of the Consented Scheme that control the timing of the delivery of the components of the existing consent. The only control over the phasing of the implementation of the Consented Scheme relate to: completion of the highway works and access road (condition 7 and 45 and clause 3.1.1 of the Section 106 Agreement (Doc Ref 9.1.6)), the creation of the retaining structure and extraction of minerals (condition 45), and the completion of Woodhouse Farm (condition 68 and clause 3.12.1 of the Section 106 Agreement (Doc Ref 9.1.6)). Further information on this is provided in response to Q1.3.2 and also within Appendix 1 of this document.</p>
Q1.3.2	Applicant Essex County Council	<p>ECC has set out [RR-002] that it does not believe an EfW plant alone can be constructed in accordance with the existing consent.</p> <p>a) Applicant, confirm whether or not this is the case.</p> <p>b) ECC, provide full and comprehensive evidence to support your view and set out what implications you consider there are for the Proposed Development.</p>	<p>ECC's view is not relevant to the consideration of the Proposed Development.</p> <p>The SoS does not need to determine whether an EfW plant alone can be constructed in accordance with the existing consent in order to determine whether the development consent order for the Proposed Development should be granted.</p> <p>Schedule 1 of the dDCO (Doc Ref 3.1) [APP-013] describes the Proposed Development as '<i>an extension to the existing generating station</i>'. '<i>Existing generating station</i>' is defined as the generating station authorised by the existing consent. Moreover, Article 6 requires the Applicant to comply with the existing consent during the Proposed Development.</p> <p>This means that the Proposed Development can only be carried out in accordance with the existing consent and any breach of the existing consent may be enforced by ECC. Indeed, following implementation of the dDCO, ECC's enforcement powers in this respect would be strengthened as they would benefit from the powers under the Planning Act 2008 as well as their current powers under the Town and Country Planning Act 1990.</p> <p>Regardless of the correct interpretation of the existing consent, the proposed drafting of the dDCO will ensure compliance.</p>

			<p>However, without prejudice to the above, an EfW plant alone can be constructed in accordance with the existing consent.</p> <p>As set out in the response to Q1.3.2, the Applicant is taking a phased approach to the development of the Consented Scheme and such an approach is lawful. Further phases of development are subject to future market conditions and viability.</p> <p>It is the Applicant's position that the SoS does not need to determine whether the EfW plant alone can be constructed in accordance with the TCPA Permission (ref: ESS/39/23/BTE) in order to determine whether the development consent order for the Proposed Development should be granted.</p> <p>Schedule 1 of the dDCO [APP-013] describes the Proposed Development as '<i>an extension to the existing generating station</i>'. '<i>Existing generating station</i>' is defined as the generating station authorised by the IWMF TCPA Permission. Moreover, Article 6 requires the Applicant to comply with the IWMF TCPA Permission during the Proposed Development. This means that the Proposed Development can only be carried out in accordance with the IWMF TCPA Permission and associated section 106 agreement and any breach of them may be enforced by ECC. Indeed, following implementation of the dDCO, ECC's enforcement powers in this respect would be strengthened as they would benefit from the powers under the Planning Act 2008 as well as their current powers under the Town and Country Planning Act 1990.</p> <p>Therefore, ECC's concern regarding the interpretation of the IWMF TCPA Permission does not need to be determined by the SoS as part of the Application. Regardless of the correct interpretation of the TCPA Permission, the proposed drafting of the dDCO will ensure compliance.</p> <p>For the sake of completeness, a Note on the Implementation of the TCPA Permission has been prepared that sets out the Applicant's reasoning for its</p>
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			<p>position and is provided at Appendix 1 of this document. This can be summarised as follows:</p> <ol style="list-style-type: none"> a) That it is not unlawful to partially implement a planning permission, with the Supreme Court’s ruling on <i>Hillside</i> having provided definitive clarity on this point. b) That planning permissions and their conditions should be interpreted in a common sense way by a reasonable reader with some knowledge of planning law (including the <i>Hillside</i> ruling). c) That the description of the Consented Scheme as an ‘<i>Integrated Waste Management Facility</i>’ does not require complete implementation. d) That the extant permission does not contain conditions or obligations prohibiting partial implementation or the construction and operation of the EfW plant alone. e) That Essex County Council sought the imposition of a condition requiring complete implementation of the Consented Scheme in 2009 but this was rejected by the Inspector who undertook the call-in inquiry which led to the grant of the original planning permission for the Consented Scheme.
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Q1.4. Cumulative Effects			
Ref	Respondent	Question	Response
Q1.4.1	Applicant Essex County Council Braintree District Council	Has the Proposed Development suitably considered all other relevant developments in the vicinity of the site, including all minerals workings?	<p>A cumulative effects assessment is scoped into the ES. The following screening criteria were used to identify the cumulative schemes that are subject to assessment:</p> <ul style="list-style-type: none"> ▪ Expected to be built-out at the same time as the EIA Development and with a defined planning and construction programme; ▪ Spatially linked to the development (within 1km of the Site boundary); ▪ Considered an EIA development and for which an ES has been submitted with the planning application; ▪ Those which have received planning consent from the planning authority (granted or resolution to grant); and / or

			<ul style="list-style-type: none"> Introduces sensitive receptors near to the Site (but are not EIA development). <p>The only relevant cumulative schemes for the EIA Development are the Rivenhall Greenhouse Development and the mineral extraction works in vicinity to the Site. A robust cumulative assessment of these schemes has been undertaken within each of the technical topics of the ES, both for construction and once the Proposed Development is completed and operational.</p>
Q1.5. Development Consent Order			
Ref	Respondent	Question	Response
Q1.5.1	Applicant	<p>The ES [APP-032] refers to the Proposed Development having a lifespan of 25 years, whereas the FRA [APP-047] refers to 40 years.</p> <p>a) Clarify which is correct.</p> <p>b) Should the dDCO set out the Proposed Development's lifespan?</p>	<p>A) 25 years is the expected design life of the plant, however, the Applicant could extend this depending on circumstances at the time. The FRA (Doc Ref 7.2) [APP-048] has taken a more conservative approach and assessed a 40 year duration to ensure that the development would not be vulnerable to climate change.</p> <p>B) The Proposed Development has not been applied for or assessed on a temporary basis. Although the Applicant recognises that in practice the Proposed Development has an expected lifespan and would be decommissioned in the future, the date upon when decommissioning would occur is an investment decision to be made by the Applicant based on market conditions at the time.</p> <p>The Proposed Development has not been applied for or assessed on a temporary basis. Although the Applicant recognises that in practice the Proposed Development has an expected lifespan and would be decommissioned in the future, the date upon when decommissioning would occur is an investment decision to be made by the Applicant based on market conditions at the time.</p> <p>The Application is for permanent development and so the dDCO does not need to set out or limit the Proposed Development's lifespan.</p> <p>The Applicant notes that the recent Slough Multifuel Extension Order 2023 (which authorised the extension of a consented energy from waste generating station)</p>

			<p>does not include any such reference to the design life of the development. Nor was such a reference been made in other development consent orders authorising energy from waste generating stations (e.g. The Rookery South (Resource Recovery Facility) Order 2011; The Wheelabrator Kemsley K3 Generating Station Order 2021; The South Humber Bank Energy Centre Order 2021; or the Medworth Energy from Waste Combined Heat and Power Facility Order 2024).</p>
Q1.5.2	Applicant	<p>The dDCO [APP-013] does not cap the level of electricity generation. The ES [APP-046, Paragraph 4.7] states 'To generate electricity greater than 65MW, a larger turbine and generator is likely to be required. This would require significant change to the consented building envelope, greater fuel throughput and, as a result, an increased number of HGV trips. This would have negative air quality and noise effects as well as landscape and visual impacts once operational (due to the increase in building size). It was not considered a reasonable alternative by the Applicant. On this basis</p>	<p>Although the assessment carried out in the ES [APP-032] contains an indicative assumption for the purpose of the operational assessment that the EfW plant would operate with a generating capacity between 60 and 65MW (see Chapter 3, paragraph 3.2.2), it is not it is not clear what benefit there is to including a cap in the dDCO to prevent a generating capacity of over 65MW at the Site.</p> <p>There is no legal requirement for all assumptions used in an environmental impact assessment to be secured. A cap should only be inserted in the dDCO if it is necessary to prevent or mitigate adverse effects which would otherwise require the Application to be refused.</p> <p>The Applicant notes that its position that a cap is not necessary in principle accords with the Secretary of State's grant of other energy NSIPs with capacities of 'over 50 megawatts' which are not subject to a cap – e.g. The Cleve Hill Solar Park Order 2020, The Little Crow Solar Park Order 2022 and The Longfield Solar Farm Order 2023.</p> <p><u>The assumed maximum operational generating capacity of 65MW is reasonable.</u></p> <p>The assessment in the ES has been based on an indicative assumption that the EfW plant would operate with a generating capacity between 60 and 65MW. This range has been chosen in line with the design point of the turbine being installed by the Applicant as part of the Consented Scheme, being 62.37 MW. Further details of these assumptions are provided in the response to Q1.2.1 above.</p>

		<p>and given the ES has not assessed electricity generation over 65MW, should a cap be inserted into the dDCO?</p>	<p>It is reasonable and lawful for the environmental impacts to be assessed and the Application determined on the basis of such an assumption.</p> <p>The ES is required to provide a description of the likely significant effects of the Proposed Development on the environment and include the information reasonably required for reaching a reasoned conclusion on the significant effects of the Proposed Development on the environment.</p> <p>Given the design of the turbine and the nature of the Proposed Development, which save for the lack of cap is described in detail, it is reasonable to conclude that a generation of over 65MW is unlikely to occur as a result of the Proposed Development or (if it were to occur) to result in significant effects on the environment beyond those assessed in the ES.</p> <p><u>A generating capacity of over 65MW would not result in significant environmental affects</u></p> <p>Without prejudice to the above, the generation of over 65MW would not result in significant environmental effects.</p> <p>The construction impacts of the Proposed Development are controlled by the description of the Works in Schedule 1 of the dDCO [APP-013]. These would not be affected by the level of electricity generation during operation and so a cap is not required to prevent or mitigate any construction effects.</p> <p>In respect of the operational effects of the Proposed Development, if this resulted in a generating capacity of over 65MW (e.g. 65.1MW or above), this would:</p> <ul style="list-style-type: none"> ▪ For the reasons given at Chapter 8 paragraph 8.4.8 [APP-033], not impact the reasons given to explain why operational vibration has not been assessed as part of the ES; ▪ For the reasons given in Chapter 8, still result in a negligible impact on operational noise requiring compliance monitoring in line with the TCPA Permission but not requiring any mitigation; and
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			<ul style="list-style-type: none"> ▪ For the reasons given in Chapter 7 of the ES [APP-032], still result in a negligible beneficial effect on climate change not requiring any mitigation or monitoring. <p><u>A cap is not the appropriate way to control the environmental effects of the Proposed Development</u></p> <p>A cap is neither necessary nor appropriate to control the environmental effects of the Proposed Development. Such effects are adequately controlled through the description of the authorised works in Schedule 1 of the dDCO and the securing the existing conditions in the TCPA Planning Permission.</p> <p>As described above and in the ES (Chapter 4) [APP-029], the Applicant considers it unlikely that a generating capacity of over 65MW could be achieved at the site without further development. Any such future development would require further consents (and would potentially be subject to further environmental assessment). A cap is not required in the dDCO to prevent such future development taking place.</p> <p>Therefore, the insertion of a cap would prevent and criminalise the operation of the EfW plant at a capacity above 65MW where this can be achieved through: (i) the Proposed Development (which has been adequately assessed in the ES); or (ii) carrying out any future actions which are not subject to development control (and so do not need consent or assessment).</p> <p><u>Setting a cap is not supported by relevant policy, guidance and legislation</u></p> <p>Revised NPS EN-1 states at paragraph 3.2.3: <i>“It is not the role of the planning system to deliver specific amounts or limit any form of infrastructure covered by this NPS... the government does not consider it appropriate for planning policy to set limits on different technologies...”</i></p> <p>The urgent need to increase the amount of energy we derive from non-fossil fuel sources is made plain throughout the Revised NPS EN-1. Where this can be</p>
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			<p>achieved without significant adverse environmental effects, it should not be the role of the planning system to delay this. On 6th March 2024, the Department for Levelling Up, Housing & Communities published the Government's response to the consultation on the Nationally Significant Infrastructure Projects Reform Action Plan. The Government's objectives are set out as making the PA 2008 consenting process '<i>better, faster, greener, fairer and more resilient</i>'.</p> <p>Given that there is no legislative requirement for a cap on energy generation to be set out in the DCO, and that environmental effects are controlled through other means (as set out above) and in light of the Government's desire to make the PA 2008 consenting process more resilient and greener, it is not clear what benefit there is to adding another layer of statutory limitation or control to the amount of electricity the IWMF could feasibly generate.</p>
Q1.5.3	Applicant	<p>The Order limits [APP-007] [APP-008] are limited to the footprint of the building. Provide further justification for the extent of the Order limits and explain why other aspects of the Proposed Development are not included, such as the access road.</p>	<p>The Proposed Development comprises works to internal control valves within the EfW plant which is being developed as part of the Consented Scheme. Under the Consented Scheme, the internal elements of this EfW plant (including the valves) must be constructed within the footprint of the building.</p> <p>The EfW plant (and the Proposed Development) will only be located in part of the footprint of the building. This is shown on the Illustrative Plan [APP-011]. The part of the building in which the EfW plant will be located is controlled by condition 19 of the IWMF TCPA Permission which must be discharged prior to the installation of the plant.</p> <p>Therefore, until ECC approve the details of the EfW plant under condition 19, the Applicant is not in control of the final location of the EfW plant and the Proposed Development.</p> <p>In these circumstances, the footprint of the building provide the most accurate and certain limits of the location of the Proposed Development and the Applicant considers that it provides appropriate Order limits for the Application.</p>

			<p>The Proposed Development is limited to the works to the valve. The means of access to the site will remain as under the IWMF TCPA Permission and no changes are proposed or required. Article 6 ensures that the Applicant must comply with the Planning Permission when carrying out the Proposed Development or operating the extended EfW plant.</p> <p>Access is controlled by Condition 8 of the IWMF TCPA Permission which provides that <i>'No vehicles shall access or egress the site except via the access onto the Coggleshall Road (A120 trunk road) junction as shown on application drawing Figure 1-2'</i>. The site is shown in blue on the Existing Generation Station Plan [APP-012] and includes the Order limits. Therefore, Condition 8 prevents vehicles from accessing or egressing the Order limits and the Proposed Development other than via the existing access road from the A120.</p>
Q1.5.4	Applicant	The dDCO [APP-013] or the planning conditions to the existing consent [APP-046] do not contain any provisions in relation to the decommissioning of the Proposed Development. How will appropriate decommissioning be secured?	The environmental permit for the Consented Scheme requires the Applicant to prepare and comply with a Closure Plan which will control decommissioning activities (see ES Chapter 3 section 3.15).
Q1.5.5	Applicant	Will there need to be a new or revised Section 106 Agreement in support of the application? If so: a) What is the timetable for providing this? b) Will the dDCO need to refer to it?	<p>The Applicant does not consider that there needs to be a new or revised Section 106 Agreement in support of the application.</p> <p><u>New Section 106 Agreement</u> Development consent obligations should only be imposed where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The Proposed Development comprises minor internal works to extend the electrical generation capacity of the Consented Scheme and thereafter the operation of the extended EfW plant.</p>

			<p>The ES [APP-046] has not identified any mitigation which is required to be secured through a new Section 106 Agreement.</p> <p><u>Revised Section 106 Agreement</u></p> <p>The existing Section 106 Agreement for the development of the Consented Scheme contains: (i) pre-implementation obligations (which are no longer relevant); (ii) pre-'<i>Beneficial Use</i>' obligations; (iii) ongoing obligations which have already been triggered; and (iv) ongoing obligations which will be triggered by '<i>Beneficial Use</i>'.</p> <p>No amendments are required to the wording of each of the outstanding obligations in the existing Section 106 Agreement in order for these binding obligations to continue to apply and control development at the site following the grant of the dDCO. This is because the drafting of the obligations is sufficiently broad to refer to the EfW plant before and after its extension.</p> <p><u>Pre-Beneficial Use obligations</u></p> <p>These obligations require:</p> <ul style="list-style-type: none"> a) the approval of a Traffic Routing Management Scheme; b) the widening of a section of the access road; and c) reasonable endeavours to complete the refurbishment of the adjacent Woodhouse Farm. <p>All of these obligations are worded such that they require compliance or discharge prior to '<i>commencement of the Beneficial Use of the Waste Management Facility</i>'. The definitions of '<i>Waste Management Facility</i>' and '<i>Beneficial Use</i>' are as follows:</p> <p><i>'Waste Management Facility'</i> means a facility for processing and disposing of municipal and/or commercial and industrial waste including anaerobic digestion, a materials recycling facility, a mechanical biological treatment plant, a Paper Recycling Facility and a combined heat and power plant. The facility also includes energy generation from biogas as well as from the combined heat and power plant.</p>
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			<p>The extended EfW plant following the Proposed Development will still fall within the definition of Waste Management Facility.</p> <p><i>'Beneficial Use'</i> shall mean use of any part of the Waste Management Facility for the purposes permitted by [planning permission ESS/39/23/BTE (i.e. the Consented Scheme)] other than the construction of the Development and does not include use of the access road nor of any part of the Waste Management Facility as part of a trial not exceeding 14 days in length or for uses ancillary to the construction of the Development, or the use of finished buildings for sales purposes, or for use as temporary offices, or for the storage of plant and materials.</p> <p>The purpose of the EfW plant permitted by planning permission ESS/39/23/BTE is <i>'to produce electricity, heat and steam'</i>. The operation of the extended EfW plant following the Proposed Development will be for this same purpose and so the Proposed Development will still fall within the definition of <i>'Beneficial Use'</i>. For this reason, it is not necessary for a revised Section 106 Agreement to be entered into to re-secure these obligations.</p> <p><u>Triggered ongoing obligations</u></p> <p>These obligations require the Applicant to:</p> <ol style="list-style-type: none"> a) Indemnify the County Council in respect of any claims arising out of previously completed highway works (including Land Compensation Act 1973 claims). b) Use reasonable endeavours to ensure that the Application Site Liaison Group meets every six months (this group's remit is matters affecting the wider site of the Consented Scheme and so this automatically includes the dDCO). c) Provide the Application Site Liaison Group with copies of any air quality monitoring data sent to the Environment Agency under the environmental permit. d) Fund a presentation of the completed Level 2 and Level 3 archaeological surveys within the heritage and airfield museum at Woodhouse Farm.
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			<p>e) Carry out the approved ground water monitoring scheme and provide copies of the monitoring data to the County Council and the Application Site Liaison Group.</p> <p>f) Submit details of measures to mitigate any adverse effects revealed by the ground water monitoring scheme as a result of the Development.</p> <p>This obligation refers to ‘<i>Development</i>’ rather than Waste Management Facility. However, ‘<i>Development</i>’ is defined as an Integrated Waste Management Facility comprising an anaerobic digestion plant treating mixed organic waste producing biogas converted to electricity through biogas generators; a materials recovery facility for mixed dry recyclable waste to recover materials for example paper, plastic, metals; a mechanical biological treatment facility for the treatment of residual municipal and/or commercial and industrial wastes to produce a solid recovered fuel; a Paper Recycling Facility to reclaim paper; a combined heat and power plant utilising solid recovered fuel to produce electricity, heat and steam; the extraction of minerals to enable buildings to be partially sunken below ground level within the resulting void; a visitor/ education centre; an extension to the existing access road; the provision of offices and vehicle parking; associated engineering works and storage tanks at the site (i.e. the Consented Scheme, see responses to ExQ1 1.3 above).</p> <p>The extended EfW plant following the Proposed Development would still fall within this definition and no amendment to the obligation is required;</p> <p>a) To transfer the land over which the highway works were carried out to the County Council for £1 upon request within 21 years of 28 October 2009.</p> <p>b) To give the County Council notice of any disposals of land within the site.</p> <p>c) To pay £750,000 to the County Council (upon request) in the event that the existing A120 is detrunked prior to the date that the Waste Management Facility ceases operation.</p> <p>These obligations have already been triggered by the Applicant and bind the site. They would continue to be binding following the Proposed Development and are not affected by the implementation or operation of the Proposed Development.</p>
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			<p>None of the obligations are worded so as to refer to the planning permission. Therefore, they would continue to bind the site following grant of the dDCO and completion of the Proposed Development.</p> <p><u>Ongoing obligations triggered by Beneficial Use</u></p> <p>These obligations require the Applicant:</p> <ol style="list-style-type: none"> a) to notify the Council of the date of commencement of Beneficial Use of the Waste Management Facility; b) to make the educational centre at the Woodhouse Farm Complex available to local community groups; c) to undertake a study of the traffic impacts at 12 months and 5 years from the date of Beneficial Use of the Development and then provide further traffic management proposals where necessary to improve safety; d) to implement the Traffic Routeing Management Scheme; e) to set up a charitable Community Trust and pay towards local community projects £0.05 per tonne of municipal solid waste and/or commercial and industrial waste imported to the site; f) to comply with the approved plan for the maintenance and management of vegetation for twenty years from commencement of the Beneficial Use of the Waste Management Facility; and g) the Paper Recycling Facility shall only source its heat steam and energy from the Waste Management Facility with the exception of periods of maintenance and repair of the Waste Management Facility. <p>As set out above, the Proposed Development would continue to fall within the definitions of Waste Management Facility, Development and Beneficial Use. Therefore, it is not necessary for a revised Section 106 Agreement to be entered into to re-secure these obligations.</p>
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Q1.6. Noise			
Ref	Respondent	Question	Response
Q1.6.1	Applicant	The ES [APP-033] sets out that the EIA Scoping Opinion from the	Within the EIA Scoping Report (April 2023) [APP-039], the noise assessment methodology detailed within Section 8.5 refers to an assessment in-line with the consented noise limits. Within the Planning Inspectorate’s EIA Scoping

		<p>Planning Inspectorate [APP-040] was in agreement that the existing noise limits should be used as the basis for the assessment. It is unclear to the ExA where this is set out in the EIA Scoping Opinion. Provide the exact reference to the suggested agreement.</p>	<p>Opinion [APP-040] at section 3.2, the comments received related to the effects of traffic noise, vibration effects, noise upon ecological receptors and the increase volume of steam sent to the turbine. No comments were received regarding the use of existing noise limits for the basis of the assessment and as such it was assumed that the Planning Inspectorate were in agreement with the proposed approach.</p>
Q1.6.2	Applicant	<p>ECC is of the view [RR-002] that a new noise assessment is required and should be undertaken in accordance with BS4142:2014 +1:2019, appropriate for the noise effects of an industrial facility on residential properties. Further, the EfW should also be considered as a specific sound source, not the additional component, as BS4142:2014 +A1:2019 is clear that residual and background sound sources/levels should not include any contribution from the</p>	<p>As stated within the responses in Table 8.2 of the ES [APP-033] the assessment for the DCO Application relates to the increased electrical output from the EfW component of the IWMF with one item of plant proposed to be changed which would not affect the noise outputs from the EfW. Therefore, the assessment methodology remained in-line with the Consented Scheme to allow as much of a like-for-like assessment as possible.</p> <p>The assessment of the Proposed Development has considered the Site as a specific sound source and includes the cumulative noise level associated with all items of plant which would be operational within the EfW, assuming simultaneous operation as detailed within Paragraph 8.6.2 of the ES [APP-033] in order to represent a worst-case scenario. The results of that assessment has demonstrated that the Proposed Development itself would not lead to any significant adverse noise effects over and above the noise effects of the Consented Scheme.</p> <p>With regards to the need for a new noise assessment, a separate Section 73 application for the IWMF is currently being prepared by the Applicant which includes an updated noise assessment and an assessment in accordance with BS4142:2014+1:2019.</p>

		specific sound source. Whilst noting some of the Applicant's responses to these matters in the ES [APP-033, Section 8.3], provide a full and detailed response to this suggestion referring to all relevant guidance.	The definition of TCPA permission in the dDCO includes ' <i>any other variations thereto whether granted before or after the date of this Order (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act)</i> '. Therefore, Article 6 of the dDCO would require the Applicant to comply with any amended noise conditions attached to future Section 73 permissions following such an updated assessment.
Q1.6.3	Essex County Council	ECC consider [RR-002] that it is not appropriate for the noise limits of the existing permission to form the baseline for the assessment. Explain fully why the correlation between planning condition compliance and residential effects should not be used.	N/A
Q1.6.4	Applicant	The assessment methodology [APP-033, Table 8.6] sets out that the magnitude of effect is based on the level of exceedance over the noise limits set out in the existing consent. a) Explain why the noise limits were set at the levels that they were in planning conditions 38,	a) The limits were set prior to the Applicant's acquisition of the site; and Indaver and its consultant team, therefore, cannot comment on why these noise limits were originally set. It is noted that the effect of noise and disturbance on local residents were an issue considered in detail by the Inspector in their Report to the Secretary of State for Communities and Local Government dated 22 December 2009 for the original grant of permission for the Consented Scheme (Doc Ref 9.1.7) . The Inspector's assessment of operational noise impacts is set out at paragraph 13.69 of the Report where the Inspector determined that the levels of noise would not have a material impact on the amenity of local residents. This was assessed in the context of very low noise levels at the site. The limits were then considered by the Inspector at paragraph 13.152 where it was concluded that the noise limits

		<p>39 and 40 of the existing consent.</p> <p>b) Should the noise limits be considered as maximums not to be exceeded?</p> <p>c) Could any exceedance of the noise limits result in unacceptable effects on the residential receptors?</p>	<p>set out in those conditions were <i>‘reasonable and should ensure that residential amenity is not significantly harmed by noise generated at the site’</i>.</p> <p>The issue of noise at the site and the limits to be implemented were also considered by Essex County Council in April 2009 prior to the call-in inquiry which resulted in the Inspector's Report. The ECC Committee Report (Doc Ref 9.1.8) prepared in respect of the planning application for the Consented Scheme notes that Essex County Council's noise consultant raised <i>‘no objection to the noise associated with either the construction or operation phase subject to suitable conditions, including noise limits for operation of the facility no higher than those already imposed for the existing quarry operations’</i>.</p> <p>b) Yes, as these are noise limits, they should not be exceeded.</p> <p>c) Yes, exceedance of noise limits could result in significant effects at the closest residential receptors.</p>
Q1.6.5	Applicant	<p>The cumulative assessment [APP-033, Table 8.14] with Bradwell Quarry only considers day-time effects. ECC has set out that Bradwell Quarry has consent for the operation of a Dry Silo Mortar Plant from 06.00-07.00 and 19.00-22.00.</p> <p>a) Explain why this has been excluded from the cumulative assessment.</p> <p>b) Provide a revised assessment that</p>	<p>The cumulative assessment has been undertaken utilising third-party data associated with the Noise Impact Assessment (NIA) for consented operations for Bradwell Quarry (ref: ESS/12/20/BTE). No assessment of noise from the Dry Silo Mortar Plant was presented within this NIA for the 06:00-07:00 and 19:00-22:00 period, therefore a cumulative assessment could not be undertaken based upon the third-party data. Within the NIA for the application for Site A7 at Bradwell Quarry (ref: ESS/12/20/BTE), it is stated within Paragraph 2.5:</p> <p><i>“Current quarrying operations are very well screened by virtue of carefully constructed screening bunds, which are completed prior to quarrying operations commencing. This approach would be continued throughout the proposed extension across Site A7. The processing plant is constructed at a lower elevation than the surrounding land and is very well screened with high bunds, forming a bowl around the washing and screening plant, the concrete batching plant, DSM and bagging plant.”</i></p>

		includes Dry Silo Mortar Plant.	<p>Therefore, it is understood the Dry Silo Mortar Plant benefits from intrinsic mitigation which reduces noise levels at the closest sensitive receptors.</p> <p>Planning permission reference ESS/12/20/BTE outlines the hours of use of the Dry Silo Mortar Plant and Condition 22 states that noise levels should be monitored at three-monthly intervals at the closest sensitive properties to the Site. The most recent noise monitoring to determine the compliance of the Dry Silo Mortar Plant during the evening and night-time period was undertaken in December 2023 (planning permission reference: ESS/12/20/BTE/22/05). The measured noise levels were above the noise limits at Heron’s Farm, which is the closest receptor, however noise from the Dry Silo Mortar Plant was not audible. Contributions to the noise levels at Heron’s Farm during the evening and night-time period consisted of birdsong, aircraft and vehicles and the exceedance of the noise limit was not caused by the Dry Silo Mortar Plant. Therefore, it is unlikely that cumulative impacts from the Dry Silo Mortar Plant and the Proposed Development would be significant during this period.</p> <p>Additionally, analysis of baseline noise monitoring undertaken by SLR in May 2023 at Heron’s Farm (which is the closest sensitive receptor to the Dry Silo Mortar Plant) showed that during the 06:00-07:00 night-time period and 19:00-22:00 evening period there were no significant changes in noise levels over the 6-day monitoring period and it appears dawn chorus was the dominant source of noise at Heron’s Farm during the early morning period.</p>
Q1.6.6	Essex County Council	ECC has noted [RR-002] that there are no specific noise limits within the EA’s Environmental Permit. Explain why this has raised concern given there are noise limits set out within the existing consent.	N/A

Q1.6.7	Applicant	<p>The ES [APP-033, Table 8.7] sets out that residential properties are considered to be of medium sensitivity in the daytime. Provide further justification for this assumption, referring to relevant guidance.</p>	<p>The sensitivity categories are based upon the guidance presented within IEMA, The Guidelines for Environmental Noise Impact Assessment (2014). Paragraph 7.20 states:</p> <p><i>“7.20: Time-of-day sensitivity is related to the activity being undertaken by the individual affected by the noise. Consequently, it could be considered that night becomes more sensitive because people are generally trying to fall asleep, are asleep or trying to fall back asleep. Noise can disturb these activities and if a noise event occurs towards the end of the night, there is a chance of the individuals being awakened prematurely. Therefore, the key effect is sleep disturbance, and annoyance about noise at night generally cannot occur without sleep disturbance having first occurred.”</i></p> <p>Given that the night-time period is considered more sensitive due to sleep disturbance, receptors are considered to be of high sensitivity during this period, with the daytime period less sensitive, therefore they are considered to be medium sensitivity during this period. The guidance does not directly prescribe categories to determine the sensitivity of the receptor and allows for categories to be assigned based upon professional judgement. Within Paragraph 7.6 of the guidance, it states:</p> <p><i>“7.6: It must be remembered that the effects of noise are primarily subjective, and while it is desirable to include as much objectivity as possible into the assessment process in order to obtain consistency, there should be no concern in allowing professional judgement to come in the final analysis.”</i></p> <p>Additionally, within the EIA Scoping Report (April 2023) [APP-039], Table 8.2 identifies the sensitivity during the daytime as medium and during the night-time as high, which was not commented on by the Planning Inspectorate in the Planning Inspectorate’s EIA Scoping Opinion [APP-040] and therefore it was inferred that this approach was agreed with. Classifying daytime residential properties as medium sensitivity is considered a standard assessment.</p>
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			<p>Further to the above, residential receptors have been considered to be of <i>'medium'</i> sensitivity in previous noise assessments for DCO related projects undertaken recently by SLR including:</p> <ul style="list-style-type: none"> ▪ The Awel Y Mor (AYM) offshore wind farm, which was granted consent in September 2023. ▪ The Outer Dowsing offshore wind farm (ODOW) which was submitted in March 2024. <p>Additionally, residential receptors have been considered to be of <i>'medium'</i> sensitivity in previous noise assessments for DCO related projects on jobs undertaken by other noise consultants, including:</p> <ul style="list-style-type: none"> ▪ The Hornsea Project Three offshore wind farm undertaken by RPS in May 2018. ▪ The Norfolk Vanguard Offshore Wind Farm undertaken by Royal HaskoningDHV in June 2018.
Q1.6.8	Essex County Council	Do ECC agree with the modelling inputs and assumptions used in the ES [APP-033, Paragraph 8.6.2] and its appendices [APP-045]?	N/A

Appendix 1 – Note on the implementation of the IWFM TCPA Permission

RIVENHALL IWMF DCO APPLICATION (EN010138)

APPLICANT NOTE ON THE IMPLEMENTATION OF THE TCPA PLANNING PERMISSION (IN RESPONSE TO EXQ1 Q1.3.2(A))

1. INTRODUCTION

- 1.1 This note has been prepared on behalf of Indaver Rivenhall Ltd, the Applicant of the application ('**the Application**') for a development consent order ('**DCO**') to allow the extension of the electrical generating capacity of the Rivenhall Integrated Waste Management Facility ('**IWMF**').
- 1.2 The Application was accepted for examination on 8th December 2023. The examination began on 9th April 2024. On 16th April 2024 the Examining Authority ('**ExA**') issued their first written questions and requests for information ('ExQ1') [[PD-004](#)]. Responses to ExQ1 have been prepared by the Applicant in the main body of this document (**Doc Ref 9.1.4**). This note provides a response to Q1.3.2(a), which reads:

ECC has set out [RR-002] that it does not believe an EfW plant alone can be constructed in accordance with the existing consent.

a) Applicant, confirm whether or not this is the case.

- 1.3 This note provides full reasoning to support the Applicant's position that, contrary to what ECC has suggested, the EfW plant alone can be constructed in accordance with the existing consent.

2. EXECUTIVE SUMMARY

- 2.1 The Applicant's position can be summarised as follows:
- 2.1.1 As set out in the responses to ExQ1 (Doc Ref 9.1.4):
- (A) The Applicant is building out the Consented Scheme in phases. Such an approach is lawful, and the delivery of future phases will be subject to future market conditions and viability.
 - (B) The Application relates only to the EfW component of the Rivenhall IWMF. Concerns over the wider delivery of other components of the IWMF are not relevant to the Secretary of State's ('**SoS**') consideration of this Application.
 - (C) Further, the draft DCO has been drafted to ensure that EfW component must be constructed and operated in accordance with the existing planning permission for the Consented Scheme (the '**Extant Permission**'). This applies regardless of how the Extant Permission is interpreted.
- 2.1.2 It is in any case not unlawful to partially implement a project, with the Supreme Court's judgment on *Hillside* providing definitive authority on this.
- 2.1.3 That a planning permission should be interpreted objectively (i.e. by a 'reasonable reader' with some knowledge of planning law).
- 2.1.4 The planning permission being for an Integrated Waste Management Facility does not imply that the Consented Scheme must be implemented in its entirety. As a principle this is no different to any other planning permission that would give consent to multiple components (such as a large urban extension).
- 2.1.5 There is nothing in the TCPA Permission or the associated Section 106 Agreement that amounts to a requirement to fully build out and operate the IWMF.

- (A) Any condition or obligation that did require such would be unjustifiable and contrary to government guidance.
- (B) ECC sought the imposition of such a condition in 2009 during the call-in for the original application for the Consented Scheme, but this was rejected by the Inspector and the SoS.

3. **LAWFULNESS OF PARTIAL IMPLEMENTATION IN PRINCIPLE**

- 3.1 Without prejudice to the Applicant's position that it is building out the Consented Scheme in phases and that ECC's position is not relevant to the Application, it is lawful for the Applicant to partially implement the existing consent (i.e., the IWMF TCPA Permission).
- 3.2 The partial implementation of the Consented Scheme would not involve any breach of development control. This position is based on well-established legal principles.
- 3.3 The Town and Country Planning Act 1990 ("TCPA 1990") imposes no requirement that developments authorised by a grant of planning permission must be implemented in full.
- 3.4 Moreover, non-completion of a project for which planning permission has been granted does not make development carried out pursuant to the permission unlawful. There is definitive authority for this in the recent Supreme Court judgment of *Hillside Parks Ltd. v. Snowdonia National Park Authority* [2022] UKSC 30:
 - 3.4.1 At paragraph 63, Lord Sales and Lord Leggatt stated that "*Even in relation to a single building, if construction stops when the building has been only partly built, the remedy of the local planning authority, as mentioned earlier, is to serve a completion notice under section 94 of the 1990 Act ... the planning permission authorises each step of development taken in the course of its implementation.*"
 - 3.4.2 Then at paragraph 68, the Supreme Court summarised its conclusion that "*failure or inability to complete a project for which planning permission has been granted does not make development carried out pursuant to the permission unlawful.*"
 - 3.4.3 An example given in support of this conclusion was that if planning permission was granted for 200 houses, the developer would be entitled to progressively build these out and allow them to be occupied. It would also be lawful (subject to compliance with any conditions) for the developer to cease development at 150 houses.
- 3.5 In light of the decision of the Supreme Court in *Hillside*, it is not open to ECC to persist with a position that partial implementation of a planning permission is unlawful in principle.

4. **THE APPROACH TO INTERPRETING PLANNING PERMISSIONS**

- 4.1 Therefore, any concerns held by ECC in respect of the lawfulness of the construction of an EfW alone must depend upon the particular interpretation of the description of development and conditions attached to the IWMF TCPA Permission.
- 4.2 The courts have provided relevant guidance on the approach to interpreting planning permissions.
- 4.3 When seeking to discern the meaning of a condition it is necessary to adopt "an objective, purposive approach which cannot ignore the application of basic common sense" (per Jay J in *R (Smith-Ryland) v. Warwick DC* [2018] EWHC 3123 at paragraph 46, applying *Trump International v. Scottish Ministers* [2016] 1 WLR 85).
- 4.4 The approach set out in *Trump* may be summarised as follows:
 - 4.4.1 The exercise of interpretation is an objective one, concerned not with what the maker of the document subjectively intended or wanted to convey, but with what a reasonable reader would understand the words used, considered in their particular context, to mean.

- 4.4.2 Because a planning permission is not personal to the applicant and enures for the benefit of the land, it cannot be assumed that the holder of the permission will be aware of all the background facts known to the person who applied for it.
- 4.4.3 Furthermore, a planning permission is a public document on which third parties are entitled to rely. Those characteristics dictate that the meaning of the document should be ascertainable from the document itself, other public documents to which it refers such as the planning application and plans and drawings submitted with the application, and physical inspection of the land to which it relates.
- 4.4.4 So far as conditions are concerned, the court asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and the consent as a whole.
- 4.4.5 The court will exercise great constraint in implying terms into public documents which have criminal sanctions.
- 4.5 As a planning permission is a document created within the legal framework of planning law, the reasonable reader referred to in *Trump* is to be treated as being equipped with some knowledge of planning law and practice: *DB Symmetry Ltd v. Swindon Borough Council* [2022] UKSC 33 at paragraph 66.
- 4.6 The court will approach the exercise of interpretation on the basis that the condition imposes no greater obligation on the interested parties than the law allows.
- 4.7 Regard should also be had to the requirements in paragraphs 56¹ of the NPPF and the guidance on 'Use of planning conditions' set out in the PPG (as set out in *R (Cathie) v. Cheshire West and Chester BC* [2022] EWHC 2148 (Admin) at [54]).
- 4.8 A condition will only be lawful if it complies with the principles set down in *Newbury DC v. Secretary of State for the Environment* [1978] 1 WLR 1241. These principles are that conditions imposed must be for a planning purpose and not for any ulterior one, and that they must fairly and reasonably relate to the development permitted. Also they must not be so unreasonable that no reasonable planning authority could have imposed them.
- 4.9 A condition that is unenforceable may be regarded as manifestly unreasonable, and therefore in conflict with the third of the Newbury principles (*R v. Rochdale MBC, ex parte Tew* [1999] 3 PLR 74). In this context enforceability should be approached not on the basis of what is theoretically possible, but on the basis of whether the person served with an enforcement notice could reasonably be expected to have to comply with it.
- 4.10 In interpreting conditions, it will also be relevant to have regard to the reasons given for their imposition. A local authority is required to "state clearly and precisely their full reasons ... for any condition imposed" (Town and Country Planning (Development Management Procedure) (England) Order 2015 Article 35(1)(a)(i)). As the court noted in *R (Newey) v. South Hams DC* [2018] EWHC 1872 (Admin) "the reasons for imposing a condition should identify the demonstrable planning harm which the condition is seeking to obviate."

5. THE DESCRIPTION OF THE CONSENTED SCHEME AS AN "INTEGRATED WASTE MANAGEMENT FACILITY" DOES NOT REQUIRE COMPLETE IMPLEMENTATION

- 5.1 The description of the Consented Scheme is "*Integrated Waste Management Facility comprising: Anaerobic Digestion Plant treating mixed organic waste, producing biogas converted to electricity through biogas generators; Materials Recovery Facility for mixed dry recyclable waste to recover materials e.g. paper, plastic, metals; Mechanical Biological Treatment facility for the treatment of residual municipal and residual commercial and industrial wastes to produce a solid recovered fuel; De-inking and Pulping Paper Recycling Facility to reclaim paper; Combined Heat and Power Plant (CHP) utilising solid recovered*

¹ NPPF (December 2023), paragraph 56: "*Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.*"

fuel to produce electricity, heat and steam; extraction of minerals to enable buildings to be partially sunken below ground level within the resulting void; visitor/education centre; extension to existing access road; provision of offices and vehicle parking; and associated engineering works and storage tanks."

- 5.2 This description is not sufficient to override the general principles set out above and require complete implementation.
- 5.3 The form and nature of the Extant Permission is no different in principle from, say, a planning permission for what is commonly described holistically as a 'sustainable urban extension' comprising multiple housing units and other elements such as shops, offices etc.
- 5.4 The inclusion of the word "*integrated*" in the description of the development in the Extant Permission (i.e. "an Integrated Waste Management Facility") accords with this, and indeed the court in *Hillside* made its decision having expressly recognised that "planning permission for a multi-unit development is applied for and is granted for that development as an integrated whole" (paragraph 50). As the court further made clear in *Hillside*, development of part of such a permission would not be unlawful pending completion.
- 5.5 If the decision-maker wishes to ensure that some parts of a development are implemented and made available for use before other parts may be used, it would need to impose clear conditions to that effect when planning permission is granted, and give full and detailed reasons justifying such a constraint. For the reasons set out further below, that was not what happened here.
- 5.6 The Applicant's interpretation of the description of the Consented Scheme as enabling the EfW plant to be developed and operated prior to (or without) the remainder of the elements of the Consented Scheme is further supported by:
 - 5.6.1 The definition of 'IWMF' in the existing consent (footnote 2 to Condition 3) which is "the buildings, structures and associated plant and equipment for the treatment of waste at the site." Pursuant to that definition, each individual element of the authorised development comprising the IWMF would fall within that definition. This is supported by and consistent with the way that the term is used:
 - (A) in Condition 26, which refers to the market de-inked paper pulp plant only sourcing its heat steam and energy "from the IWMF with the exception of periods of start-up and maintenance and repair of the IWMF". That use of the term "IWMF" can only be understood as referring to the CHP, which forms part of it, and not the IWMF as a whole; and
 - (B) in Condition 56, which provides that "Only one stack shall be erected on the site to service all elements of the IWMF". If the term IWMF only meant the totality of its individual elements, then the words "all elements of" would be superfluous.
 - 5.6.2 The definition of 'Beneficial Use' in the Section 106 Agreement which means "use of any part of the Waste Management Facility for the purposes permitted by the Planning Permission other than the construction of the Development and does not include use of the access road nor of any part of the Waste Management Facility as part of a trial not exceeding 14 days in length or for uses ancillary to the construction of the Development, or the use of finished buildings for sales purposes, or for use as temporary offices, or for the storage of plant and materials". This definition (which was agreed with ECC in 2009 and is used as a trigger point) acknowledges that different components of the Consented Scheme may be brought into use at different times in accordance with the [existing consent].

6. **THE EXTANT PERMISSION DOES NOT CONTAIN CONDITIONS OR OBLIGATIONS PROHIBITING PARTIAL IMPLEMENTATION OR THE CONSTRUCTION AND OPERATION OF THE EFW PLANT ALONE**

- 6.1 Further, no condition imposed on the Extant Permission or obligation contained in the Section 106 Agreement (**Doc Ref 9.1.6**) requires or refers to the complete implementation of the Consented Scheme.
- 6.2 Given the statutory duty to give clear, precise and full reasons for any condition, it would be reasonable to expect any such condition to be set out in clear and unequivocal terms and to be clearly and explicitly justified in the reasons given for its imposition.
- 6.3 In fact, securing complete implementation was considered and rejected during the call-in inquiry for the original permission authorising the Consented Scheme in 2009 (ref. ESS/37/08/BTE).
- 6.4 During this inquiry, ECC proposed a condition requiring complete implementation: "23. No element of the development may be implemented in isolation of others" (see page 135 of the report). This proposed condition was rejected by the Inspector in their recommendation report dated 22 December 2009.
- 6.5 This is unsurprising given:
- 6.5.1 the need for flexibility which was a key issue in the call-in inquiry and given careful consideration in the Inspector's Report (see paragraph 1.11(iv)).
- The Inspector variously described flexibility as:
- (A) helping "to maximise the economic viability of the project" (paragraph 13.57); and
- (B) necessary "to accommodate future changes in waste arisings and in waste management techniques and practices" so that the proposal was "sustainable and economically viable in the long term" (paragraph 13.61).
- This position was then adopted by the SoS in their decision:
- '...15. The Secretary of State agrees with the Inspector's reasoning and conclusions on need, viability, flexibility and the fallback position.....As for the flexibility of the proposal, the Secretary of State agrees that its design and its multiple autonomous process lines would provide a reasonable and sufficient degree of flexibility to enable future changes in the composition of waste and the ways in which waste is managed to be accommodated....';*
- 6.5.2 the "modular" design of the IWMF involving "multiple autonomous process lines" (paragraph 13.64 of the Inspector's Report); and
- 6.5.3 the extraordinary and draconian nature and effect of such a condition.
- 6.6 Such a condition would conflict with long-standing Government guidance. The government's Planning Practice Guidance on the 'Use of planning conditions' (23 July 2019) states that: "*Conditions requiring a development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. Such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development.*"
- 6.7 Save as specifically provided for in Conditions 21 (car parking) and 26 (de-inked paper pulp plant), none of the conditions imposed on the Extant Permission require operation of any element of the authorised development in conjunction with some other element.
- 6.7.1 Condition 21 simply requires vehicle parking details to be approved by ECC prior to occupation and to be subsequently implemented.
- 6.7.2 The effect of Condition 26 is to require the market de-inked paper pulp plant to source its heat steam and energy from the IWMF, subject to certain specified exceptions.

The reason given for imposing that condition is to ensure that the market de-inked paper pulp plant (which is an industrial process and not a recycling operation) only remains at the site (which is allocated for waste management development in the Essex and Southend-on-Sea Waste Local Plan 2017) as a direct consequence of its co-location with the IWWMF.

Clear, detailed and full reasons for imposing Condition 26 were given by ECC and in the Inspector's Report.

- 6.8 There is no equivalent condition prohibiting operation of the EfW plant other than in circumstances where it is supplying heat steam and energy to the market de-inked paper pulp plant. In particular, there is no equivalent condition prohibiting operation of the EfW plant other than in circumstances where other elements of the Consented Scheme are not in operation. The prohibition only works in one direction.
- 6.9 The presence of Condition 26 further support's the Applicant's position (set out above) that the description of development does not mean that each element of the Consented Scheme must be constructed and operated together, and that IWWMF is used in the Extant Permission to refer to parts of the IWWMF as well as the Consented Scheme as a whole. If ECC's position were correct, Condition 26 would be unnecessary (and consequently unlawful) as it would not be possible for the market de-inked paper pulp plant to operate in the absence of the energy and heat generating elements of the Consented Scheme.
- 6.10 The presence of Condition 26 further demonstrates that Condition 2 (which is a 'typical' or 'standard' condition requiring the development permitted to be carried out in accordance with certain application documents and a list of drawings and plans) does not require all elements of the Consented Scheme to be developed.
- 6.11 The reasons given for the imposition of Condition 2 are as follows:
"For the avoidance of doubt as to the nature of the development hereby permitted, to ensure development is carried out in accordance with the approved application drawings, details (except as varied by other conditions), to ensure that the development is carried out with the minimum harm to the local environment and in accordance with [policies listed]."
- 6.12 Those broadly expressed reasons are reflective of its generalised purpose. They make no reference to any requirement for complete implementation, nor do they seek to explain what harm would arise if that did not occur.
- 6.13 Despite this, the Applicant understands that ECC is concerned that the development of the EfW plant alone would breach Condition 2 and in particular the following listed drawings:
6.13.1 Drawing 1-9A, Simplified Process Flow, dated 21.5.15
6.13.2 Drawing 1-10A, Integrated Process Flow, dated 21.5.15
- 6.14 Drawing 1-9A, entitled 'Simplified Process Flow' is a layout plan, but with boxes summarising the processes envisaged to be undertaken within each area. This drawing is labelled as indicative. The note to the drawing states:
"This drawing shows proposed IWWMF process and landscape areas as indicative only. Under the Submission of Details process, final details of all process plant layout and configuration will be as approved under Condition 19, final details of all landscape details will be as approved under Condition 57, final details of all access roads will be as approved under Condition(s) 6, 62, 63, and final details of Woodhouse Farm Car Park will be as approved under Condition 61."
- 6.15 Condition 19 provides that no works to install process equipment or plant within the IWWMF shall commence until details of the IWWMF process layout and configuration have been submitted to and approved in writing by ECC. The development must then be implemented in accordance with the approved details. The reason given for the imposition of Condition 19 is to ensure that the layout and configuration of the process equipment and plant would not give rise to impacts not assessed as part of the application and Environmental Statement, to protect local amenity and comply with relevant policy.

- 6.16 The role of Drawing 1-9A is simply to identify (indicatively) the location and nature of various processes within the site. Its inclusion in the list in Condition 2 cannot be taken as requiring any particular physical development to be carried out, nor does it refer to any phasing of any physical development, or the timing or conditions for the use of any element referred to.
- 6.17 Drawing 1-10A entitled 'Integrated Process Flow' is not labelled as 'indicative' but refers expressly to "Planning condition 29: > 853,000 tpa". The note to the plan states:
"Condition 29: No waste other than those waste materials defined in the application shall enter the site for processing or treatment in the IWMF plant. No more than 853,000tpa of Municipal Solid Waste and/or Commercial and Industrial Waste shall be imported to the site".
- 6.18 This note echoes Condition 29 itself which provides that:
"No waste other than those waste materials defined in the application shall enter the site for processing or treatment in the IWMF plant. No more than 853,000tpa of Municipal Solid Waste and/or Commercial and Industrial Waste shall be imported to the site".
- 6.19 The Reason for this condition is stated to be:
"To ensure the scale of the facility would not give rise to impacts not assessed as part of the planning application and Environmental Statement and to protect local amenity and to comply with WLP policies W3A, W8A and W10E, BCS policy CS5 and BDLP policies RLP 36, RLP 62 and RLP 90".
- 6.20 Drawing 1-10A shows no physical development at all, only a set of processes, labelled as 'input', 'processes' and 'output'. Therefore, the inclusion of the drawing in the list in Condition 2 cannot be read as requiring any particular physical development to be carried out. Nor does the drawing refer to any phasing of any physical development, or the timing or conditions for the use of any element referred to. It has been included as part of the 'approved plans' in Condition 2 simply as a shorthand way of describing the types of waste (i.e. "those waste materials defined in the application") which Condition 29 allows to "enter the site". These are the 'inputs' in the first column of the diagram: Residual MSW and/or C&I, mixed dry recyclables, SRF/RDF, C&I paper & card etc. The inclusion of Drawing 1-10A within the list in Condition 2 therefore performs the important role of defining the meaning of the words used in Condition 29 and thereby prohibiting, for example, hazardous or clinical waste entering the site. Drawing 1-10A also shows how waste, if all elements of the Consented Scheme were built, could work together,
- 6.21 Accordingly, neither drawing seeks to control what must be built or to require complete implementation of the authorised development, and nothing said on the drawings or their explanatory notes or in the reasons for imposing Condition 2 suggests that is their intended role.
- 6.22 Further, an interpretation of Condition 2 and Drawings 1-9A and 1-10A that required complete implementation of the Consented Scheme and prevented any element of the Consented Scheme (such as the EfW plant) from operating other than in compliance with the submitted process diagrams would be unenforceable and unreasonable.
- 6.23 It would mean that any deviation from the diagrams during operation would amount to a breach, no matter what the reason. If any element of the Consented Scheme were to cease operating, for example for maintenance or repair, all other elements would need to cease operating.
- 6.24 That outcome would not only be unjustified, in the sense that nowhere on the face of the Extant Permission would any reason have been given for such an extraordinarily strict constraint, it would also obviously be unjustifiable.
- 6.25 Such a strict condition would be unenforceable for the reasons given in Government guidance set out in 'Use of Planning Conditions' as to why conditions requiring the development to be carried out in its entirety are inappropriate, namely the range of external factors that can influence whether every element is constructed and operated.

- 6.26 It would also contradict the wording of Condition 26 which allows the market de-inked paper pulp plant to operate independently of the EfW plant during “periods of start-up and maintenance and repair of the IWMF”.

