

Indaver Rivenhall IWMF DCO

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

# **Written summary of Applicant's oral submissions made at the Issue Specific Hearing**

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18 June 2024  
Indaver Rivenhall Ltd

Leading the field in  
sustainable waste  
management.



## Note

# Written summary of Applicant's oral submissions made at the Issue Specific Hearing

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## 1 Introduction

- 1.1 This document contains Indaver Rivenhall Ltd's (the "**Applicant**" or "**Indaver**") summary of oral evidence and post hearing comments on submissions made at the Issue Specific Hearing ("**ISH**") held on 4 June 2024. Where the comment is a post-hearing comment submitted by the Applicant, this is indicated.
- 1.2 Actions for the Applicant arising from the ISH are submitted separately.
- 1.3 This document uses headings from each item in the agenda published for ISH by the Examining Authority ('ExA') on 28 May 2024.
- 1.4 The Applicant, which is promoting the proposed extension to the electrical generating capacity of the EfW component of the Rivenhall IWMF (the "**Proposed Development**") was represented by the following persons at ISH:
  - 1.4.1 Catherine Howard, Partner, Herbert Smith Freehills LLP;
  - 1.4.2 Carly Vince, Senior Director, Quod;
  - 1.4.3 Gareth Jones, Project Development Specialist, Indaver Rivenhall Limited;
  - 1.4.4 Stephen Othen, Technical Director, Fichtner Consulting Engineers Limited; and
  - 1.4.5 Benedict Sarton, Technical Director – Acoustics & Vibration, SLR Consulting Limited.

## 2 Agenda items 1 and 2: Welcome and procedure

- 2.1 The Applicant did not make any submissions under these agenda items.

## 3 Agenda item 3: Climate change and greenhouse gases

- 3.1 Agenda Item 3 listed the following relevant matters:
  - i. Whether the assessment methodology [\[APP-032\]](#) is robust, in terms of: study area; the suitability of using guidance in 'DEFRA Energy Recovery for residual waste – a carbon based modelling approach, 2014' in the assessment; whether displacement against Combined Cycle Gas Turbine is appropriate; and the use of a displacement factor of 0.371t CO<sub>2</sub>e/MWH in the assessment.
  - ii. If a greenhouse gas assessment including a breakdown of the carbon emission data for the construction, in operation and decommissioning phases is required given the nature of the Proposed Development?
  - iii. Whether the Slough Multifuel Extension and its assessment are relevant to the Proposed Development?



## Note continued

- iv. If further mitigation in the form of carbon capture, solar panels and water reduction should be considered by the Proposed Development?

### Item 3(i): Study Area

- 3.2 *The ExA noted that Essex County Council ("ECC") and Braintree District Council ("Braintree DC") consider that local impacts should have been considered in the study area, and asked for the Applicant's response to this.*
- 3.3 The Applicant responded that the impact of carbon emissions is global or national, rather than local, so the study area is global. This is supported by the IEMA Guidance "Assessing Greenhouse Gas Emissions and Evaluating their Significance", which says "GHG emissions are not geographically limited. They have a global effect rather than directly affecting any specific local receptor to which a level of sensitivity can be assigned. The receptor for GHG emissions is the global atmosphere."<sup>1</sup> The carbon assessment set out in ES Volume 1 Chapter 7: Climate Change [APP-032] has compared the change in carbon emissions as a result of the Proposed Development with baseline emissions in the UK and Essex, and with the UK carbon budgets in terms of assessing their significance.
- 3.4 *The ExA asked that ECC and Braintree DC explain why they consider that a different approach to that set out by the Applicant is appropriate, especially in light of IEMA Guidance.*
- 3.5 ECC and Braintree DC responded that they have a responsibility to meet Net Zero targets and therefore expected the Applicant to provide evidence in relation to local impacts.
- 3.6 In response, the Applicant stated that table 7.4 of the ES, Vol 1 Chapter 7 Climate Change [APP-032] specifies the baseline figures for the Essex area. Table 7.5 of the same compares this against the UK carbon budgets. The Applicant explained that the root of the disagreement between the Applicant and ECC is that the Applicant has assessed only the impact of the Proposed Development – that is, the increase in electrical power generation - rather than of the IWMF as approved by the planning permission with reference ESS/34/15/BTE (the "IWMF TCPA Permission") (the "Consented Development"). The Applicant noted that only the Proposed Development has been assessed because the Consented Development already has permission and is currently under construction. It therefore forms the baseline.
- 3.7 *The ExA referenced the query as to the suitability of using guidance in 'DEFRA Energy Recovery for residual waste – a carbon based modelling approach, 2014' and noted that the Applicant responded to this query as part of their submissions at Deadline 2, noting that whilst sections of the guidance aren't relevant as the baseline is not landfill, other sections relating to displacement are directly relevant (the Applicant's full answer is set out in Table 3 of the Applicant's Comments on the Local Impact Reports [REP2-004]). The ExA requested Braintree*

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<sup>1</sup> IEMA, 2022. Environmental Impact Assessment Guide to: Assessing Greenhouse Gas Emissions and Evaluating their Significance. February 2022.



## Note continued

*DC's response to this submission. The ExA also asked Braintree DC what other guidance it considers the Applicant should have relied on, if not the above mentioned DEFRA guidance.*

- 3.8 *The ExA then asked the Applicant which decisions of the Secretary of State were referred to in Deadline 2 and asked the Applicant if it wished to respond to Braintree DC.*
- 3.9 Braintree DC's view was that other methods could have been used, and that there is an Environment Agency calculation that would have been appropriate. Braintree DC accepted that the above mentioned DEFRA guidance is used elsewhere.
- 3.10 The Applicant responded that the most recent decisions referred to are the Slough Multifuel Extension Order 2023 (made on 28 November 2023) (EN010129) and the Riverside Energy Park Order 2020 (made on 9 April 2020) (EN010093).
- 3.11 In response to Braintree DC, the Applicant noted that the Defra guidance sets out the various different types and sources of carbon emissions as a result of an EfW project, but the vast majority of these will not change. The detail of this is set out in paragraph 7.4.20 of the ES Volume 1 Chapter 7. It has been made clear throughout the DCO application that the waste combusted will not change as a result of the DCO. Therefore, whilst the Applicant agrees that direct carbon emissions can vary depending on the amount and types of waste that is incinerated, this isn't a matter related to the Proposed Development.
- 3.12 The Applicant expanded upon why the Defra guidance on displacement of electricity from Combined Cycle Gas Turbines ('CCGT') remains valid and applicable. This is because UK power generation is mainly a mixture of nuclear, non-fuelled renewables and CCGTs. Nuclear power plants run as the baseload and non-fuelled renewables (solar and wind) run whenever they can. CCGTs make up the difference between supply and demand, acting as the marginal source of energy between the baseload and the non-fuelled renewables. EfW plants also run as baseload plants, which means that power from EfW plants reduces the need for CCGTs as the marginal source when supply from the baseload and renewables cannot meet demand.
- 3.13 The Applicant further explained that in 2014, when the DEFRA Guide was published, the UK generated 100 TWh of power from gas (with 100 TWh from coal, 60 TWh from nuclear and 78 TWh from various renewables). In 2023, provisional data shows that the UK still generated 98 TWh from gas (with less than 3 TWh from coal, and only 41 TWh from nuclear, but renewables had increased to 135 TWh). This validates that CCGT remains the marginal source of power in the UK and that energy from EfW plants would displace CCGT-derived energy as they are a baseload generator. The benefit of the Proposed Development is that it increases the capacity of the baseload generators and therefore CCGTs will fire slightly less.
- 3.14 The Applicant further explained that the displacement factor of 0.371t CO<sub>2</sub>e/MWh is a reasonable displacement factor for CCGT. However, this figure is only used for the baseline calculation and the comparison with the local and sector GHG emissions in Table 7.6 in the ES. For future years, it has been assumed that the displacement factor would gradually reduce, in line with the Government's plans for the decarbonisation of the grid. This is shown in Figure 7.1 in the ES Chapter 7, which shows that the displacement factor drops to under 0.05 t CO<sub>2</sub>e/MWh by 2035. These reduced figures are used to compare the benefit of the Proposed Development with UK carbon budgets in Table 7.7 of the ES Chapter 7.



## Note continued

- 3.15 In response to a further submission from ECC that the assessment should have been made in respect of the Consented Development in any case, the Applicant reiterated that this is an application to increase the power generated by the Consented Development and that the assessment does not need to consider an alternative scenario in which the Consented Development does not exist, because it does exist.
- 3.16 In response to submissions from ECC in respect of the Applicant's statement that scope 1 and scope 3 emissions would be unaffected, the Applicant re-affirmed that the Proposed Development would not lead to changes in emissions during construction, operation or decommissioning and therefore scope 1 and scope 3 emissions do not change. ECC agreed.
- 3.17 *The ExA queried whether the emissions from the Site would differ if there were changes to the way waste was processed on site.*
- 3.18 The Applicant responded that it is not appropriate to speculate in this regard and reiterated that the Proposed Development will permit the installation of a valve that will allow more energy to be produced from the same amount of waste. The Applicant noted that the Proposed Development does not affect the Consented Development in any other way, and that all controls on the Consented Development that are in place as a result of the IWMF TCPA Permission will remain in effect. Therefore, any concerns from ECC in respect of whether all of the works comprised in the Consented Development have to be completed for the Consented Development to be lawfully operational are not within the scope of the DCO. It was agreed that the Applicant would provide a written submission following a written question on the matter from the ExA.
- 3.19 *The ExA asked ECC what further operational emissions data they required.*
- 3.20 In response to ECC's and Braintree DC's further submissions in response to the ExA's question, the Applicant stated that the carbon benefits of the Consented Scheme were assessed when planning permission for the IWMF TCPA Permission was granted. The Applicant noted that direct emissions data will be submitted to the Environment Agency once the Consented Scheme is operational as a requirement of its Environmental Permit, and that none of this is changed by the Proposed Development which is the subject of the ISH.
- 3.21 *The ExA queried why ECC did not consider that the approach taken in the Slough Multifuel Extension Order 2023 was the correct approach for the Proposed Development.*
- 3.22 Following ECC's submissions in this regard, the Applicant clarified that the annual report setting out the emissions of the plant including polluting substances to be submitted to the Environment Agency does not include CO<sub>2</sub>. In response to ECC's references to the Medworth Energy from Waste Combined Heat and Power Facility Order 2024, the Applicant noted that this project was for a brand new EfW plant and therefore not comparable with the Proposed Development. The Slough Multifuel project on the other hand was for the extension of an existing generating station, which is directly comparable to the Proposed Development.
- 3.23 *The ExA asked for responses in respect of ECC and Braintree DC's request for further mitigation in the form of carbon capture, solar panels and water reduction to be considered by the Proposed Development.*



## Note continued

3.24 The Applicant explained that the government confirmed on 23 May 2024, via a consultation by the UK Emissions Trading Scheme Authority, that it is the intention to expand the UK ETS to include energy from waste plants by 2028. This will provide a financial incentive for EfW plants to reduce their carbon emissions by capturing carbon. The Applicant noted that it is looking into this separately but reiterated that this is separate from the Proposed Development and that no carbon mitigation is required to make the proposals acceptable.

### 4 Agenda Item 4: The Consented Development

4.1 Agenda Item 4 listed the following relevant matters:

- i. If the matter of whether a standalone EfW plant can be constructed under the existing consent is an issue for the Examination?
- ii. Whether there are any planning controls in place under the existing consent that would result in a breach of planning control?
- iii. Essex County Council's reply to Annex 1 of the Applicant's reply to first written questions, particularly Sections 5 and 6.
- iv. Whether Essex County Council has taken any formal legal advice on this matter?

4.2 *The ExA requested ECC's input on their concerns outlined above, and asked for the Applicant's response to ECC's subsequent submissions*

4.3 The Applicant responded that this is not an issue for the Examination and confirmed that the draft DCO provided has been drafted to ensure that the IWMF TCPA Permission will remain binding on the Site, the Consented Development and the Proposed Development. The Applicant reaffirmed that, regardless of the correct interpretation of the IWMF TCPA Permission, the draft DCO will ensure compliance with the IWMF TCPA Permission and that ECC's ability to take enforcement action is not prejudiced.

4.4 The Applicant also noted that the issue noted in item 4(i) was clearly considered by the Inspector in the appeal determining the Consented Development. A condition requiring full implementation was rejected by the Inspector, who recognised the clear need for flexibility in this respect. ECC using the DCO as an opportunity to revisit this issue is wholly unjustified.

4.5 The Applicant reiterated their submission that any such requirement in the proposed DCO would be wholly unjustified, and noted that it is open to ECC to take separate legal action in respect of the Consented Development if they wish to do so.

4.6 In response to further queries in respect of the process flow drawings at condition 2 of the IWMF TCPA Permission, the Applicant noted that the drawings state that they are indicative and simply show what the process would be if everything was built. They do not equate to a requirement for everything to be built. Figure 1-10A shows the types of waste that can enter the Site under Condition 29 of the IWMF TCPA Permission, but this does not equate to a requirement to bring in all of those waste types. In any case, a discussion of these drawings is not relevant to the determination of the Proposed Development and the DCO Application.



## Note continued

### 5 Agenda Item 5: Noise

5.1 Agenda Item 5 listed the following relevant matters:

- i. The robustness of source noise data used in the ES.
- ii. The relationship between the noise limits of the existing consent and the Proposed Development.
- iii. Whether the new noise assessment, in accordance with BS4142:2014+1:2019, referred to in Essex County Council's Local Impact Report (LiR) [\[REP1-018\]](#) should be provided?
- iv. Whether the cumulative assessment [APP-033] is robust, having particular regard to the Dry Silo Mortar Plant at Bradwell Quarry.
- v. Whether the Rating Noise Level Limit Recommendations set out in Table 1.2 of Essex County Council's LiR [REP1-018] are justified.
- vi. The potential for adverse noise effects at the sensitive receptor known as 'The Lodge'.
- vii. Whether the finding in the cumulative assessment that there would be no significant effect on sensitive receptor R03 'Haywards' is justified?
- viii. Whether there is a need for noise monitoring to be secured in the DCO?

5.2 *The ExA queried the robustness of the source noise data.*

5.3 The Applicant responded that the source noise data, (including octave band spectra data) utilised within the assessment has been provided by the EPC Contractor (HZI) based upon their own benchmark data and similar projects. These levels were assigned by HZI in order to meet the Consented Development noise limits and were also utilised in a model commissioned by HZI. These octave band levels for all items of plant have been used within the noise model for the Proposed Development which the ES was based on. That modelling data was then assessed and verified by the Applicant prior to using it as the basis of the noise assessment set out in the ES.

5.4 It was reiterated that the information came directly from HZI who have built numerous EfW plants throughout the UK and with regards to noise HZI have designed the Consented Development in conjunction with the consented limits as they have an obligation to meet these before they can handover the plant to the operator. It has also been confirmed with HZI that they will have to undertake performance guarantee monitoring to ensure the specified noise limits for the Consented Development are met at the relevant Noise Sensitive Receptors.

5.5 Therefore, the Applicant considers the data to be as robust as reasonably practicable. Further to the above the Applicant has since received (after the DCO ES was submitted) refined noise data from HZI which will be utilised for other workstreams; however, it is considered that the information utilised for the purposes of the DCO ES is robust and valid for assessing the Proposed Development in any case.

5.6 In response to the ExA's query as to when this refined data would be provided, the Applicant confirmed that this would be provided as soon as possible.

5.7 *The ExA asked for ECC's views on the Appellant's response.*



## Note continued

- 5.8 ECC noted that they wished to see more information in respect of how the noise data provided was obtained. The Applicant responded that the data was provided by HZI based on benchmark data from other projects and using a noise model commissioned by HZI. The Applicant's noise consultants verified HZI's data, and it was also noted that HZI are obliged to undertake noise compliance monitoring to prove the Proposed Development is operating within its consented limits before they hand it over to the operator.
- 5.9 *The ExA queried the relationship between the noise limits of the Consented Development and the Proposed Development.*
- 5.10 In response to ECC's submission that operation within the existing noise limits could still lead to complaints, the Applicant stated that it had undertaken an assessment to determine whether the Proposed Development would comply with the existing noise limits set out in the IWMF TCPA Permission. The Applicant noted that the Proposed Development would not be making any more noise than the Consented Development and reiterated that the correct approach is to assess the Proposed Development against the baseline provided by the existing noise limits, rather than using the DCO to set new limits.
- 5.11 *The ExA queried whether the new noise assessment prepared as part of a section 73 application, in accordance with BS4142:2014+1:2019, referred to in Essex County Council's Local Impact Report (LiR) [REP1-018] could be provided?*
- 5.12 The Applicant responded that this could be submitted, but that the assessment still needs to progress through Environmental Impact Assessment scoping and that it could not (in the ISH) confirm a timeline for this. The Applicant noted that, if and when this information is provided, it will be submitted with a note explaining why the assessment is not legally relevant to the consideration of the Proposed Development and that any conditions proposed in this respect would need to be necessary to mitigate the impact of the Proposed Development.
- 5.13 *The ExA asked whether the cumulative assessment [APP-033] is robust, having particular regard to the Dry Silo Mortar Plant at Bradwell Quarry.*
- 5.14 The Applicant affirmed that predicted noise levels from the Consented Development are well below the set noise limits, and as such that there is no cumulative impact.
- 5.15 It was agreed that ECC and the Applicant would discuss this issue and come to an agreement ahead of Deadline 3. The Applicant agreed to provide the relevant information to ECC as soon as possible.
- 5.16 *The ExA asked the Applicant whether the Rating Noise Level Limit Recommendations used by the Application are justified.*
- 5.17 The Applicant confirmed that they deem the methodology taken to set the limits to be justified; however, with regards to the rating noise level limit values themselves they would further discuss this issue with ECC after the ISH.
- 5.18 *The ExA asked for comments on the potential adverse effects to 'the Lodge'.*
- 5.19 The Applicant stated that potential adverse effects would arise based on limits proposed by ECC in their LIR [REP1-018] which are not agreed and which do not align with the consented





## Note continued

noise limits set out in the IWMF TCPA Permission. The Applicant added it would further discuss the issue with ECC after the ISH.

- 5.20 *The ExA noted the potential sensitive receptor at Haywards and queried whether the finding in the cumulative assessment that there would be no significant effect on sensitive receptor R03 'Haywards' is justified. The ExA also queried whether mitigations or noise monitoring were appropriate in this respect and whether such measures should be secured in the DCO.*
- 5.21 The predicted daytime/ noise level from the Proposed Development at Haywards is 35.4dB, whilst the predicted noise level from Bradwell Quarry operations is 46dB, which is 1dB above the specified limit of 45dB. The overall cumulative noise level is 46.4dB, and so the Proposed Development only contributes an additional 0.4dB to the overall noise levels. It was noted that a 1db exceedance is considered minor in EIA terms and is not audible to the human ear.
- 5.22 In respect of mitigation, the Applicant confirmed that no mitigation at the Consented Development would have an impact on the cumulative assessment. The Applicant also confirmed that if (for example) acoustic barriers were installed at the Consented Development, there would be no change in the cumulative assessment. This is because the noise from the quarry is the major contributor to the cumulative assessment and even if the Proposed Development was not operating there would still be a 1dB exceedance in the limit at Haywards due to the quarry.
- 5.23 In response to further comments from ECC and the ExA regarding noise monitoring, the Applicant responded that it would not be necessary to secure noise monitoring in the DCO. Noise monitoring is already a requirement in the IWMF TCPA Permission, which will continue to apply. Further monitoring is not required in respect of the impacts of the Proposed Development.

## 6 Agenda Item 6: General and Miscellaneous

- 6.1 Agenda Item 6 listed the following relevant matters:
- i. Discussion on Essex County Council's view (at Deadline 2) that the Environmental Permit may need to be varied if all elements of the IWMF are not constructed.
  - ii. Whether compliance with the Emergency Preparedness and Response Plan provided by the Applicant should be secured in the dDCO?
  - iii. Further discussion on EEAST's concerns about the effect of the Proposed Development on ambulance services.
- 6.2 *The ExA noted that the Applicant had confirmed that no variation to the Environmental Permit was required.*
- 6.3 The Applicant clarified that one specific element of the Environmental Permit will need to be varied if the paper pulp plant does not operate simultaneously with the EfW and that this variation will relate to the (uncontaminated) water discharged from site.
- 6.4 The Applicant confirmed that this does not present an impediment to development and agreed that the Other Consents and Licences document will be updated and re-submitted at Deadline 3.



## Note continued

- 6.5 *The ExA queried whether compliance with the Emergency Preparedness and Response Plan provided by the Applicant should be secured in the DCO.*
- 6.6 The Applicant responded that this plan is a requirement of Regulation 30 of the Construction Design and Management Regulations 2015 in any case and that there is no need to duplicate this. The Applicant also noted that a specific plan for the Proposed Development would also not be necessary given the limited scope and nature of the Proposed Development (i.e., amendments to a valve). The Applicant confirmed that this would be picked up with EEAST after the ISH.
- 6.7 *The ExA noted EEAST's submitted concerns, but noted that they were no longer present at the ISH.*
- 6.8 The Applicant stated that it hoped there would be agreement between the Applicant and EEAST on this point by the end of the Examination period, noting in particular EEAST's acceptance in recent submissions that the Proposed Development would not have a material impact on operations.

## 7 Agenda Item 7: Draft Development Consent Order

- 7.1 Agenda Item 7 listed the following relevant matters:
- i. Whether a cap in energy generation should be limited to 65MW in the dDCO and, if this may be possible, whether this should have been assessed as an alternative in the Environmental Statement?
  - ii. If the Closure Plan required by the Environmental Permit is sufficient to meet the requirements of NPS EN-1 (2011), namely Paragraph 4.2.3, with regard to decommissioning.
  - iii. Whether the definitions in the S106 are sufficiently broad to capture the Proposed Development?
  - iv. Essex County Council's request for a deed of variation to the S106.
  - v. Changes to the dDCO considered necessary by Essex County Council in its Deadline 2 submission.
- 7.2 *The ExA queried whether there should be a cap in energy generation limited to 65MW and whether this should have been assessed as an alternative in the Environmental Statement.*
- 7.3 After submissions from ECC on the subject, the Applicant noted that there would be no need in planning terms to impose a cap on energy generation. If the Applicant did wish for the proposed plant to generate more than 65MW, this would likely require further engineering operations in any case and therefore a new application for physical development would be required.
- 7.4 The Applicant noted that the approach to assessment was to assess and be transparent as to the design point of the turbine, which will have an average power of 63.2MW. The Application confirmed that the exact amount will fluctuate, and that on a cold day the energy generation could exceed 65MW.



## Note continued

- 7.5 The Applicant reaffirmed that the Proposed Development operating in excess of 65MW would not have an environmental impact and as such that there would be no planning justification for a cap. It was also noted that there is a benefit if the Proposed Development is able to produce a higher energy output from the same amount of waste.
- 7.6 It was agreed that the alternative of the Proposed Development operating in exceedance of 65MW was not assessed, but that the environmental impact of such an exceedance would be no impact. The Applicant agreed to submit a technical note to confirm this point at Deadline 3, and that the note would include any necessary information on consultation.
- 7.7 *The ExA queried whether the Closure Plan required by the Environmental Permit is sufficient to meet the requirements of NPS EN-1 (2011), namely Paragraph 4.2.3, with regard to decommissioning.*
- 7.8 The Applicant confirmed that paragraph 4.2.3 refers to the environmental, social and economic effects of decommissioning. The Applicant noted that the closure plan under the Environmental Permit would control the environmental effects of decommissioning, but that the Proposed Development clearly would not result in any additional social or economic effects to those already created by the Consented Development.
- 7.9 The Applicant also noted that there has been no request for decommissioning to be addressed in the scoping process.
- 7.10 *The ExA asked whether there were grounds to consider the requirements of the NPS, regardless of whether the issue was addressed by a different regime.*
- 7.11 The Applicant responded that there was no need to consider these requirements on the basis that (1) the requirements of paragraph 4.2.3 are covered by a different regime and that the NPS is clear that parties are able to assume that other regimes control these points effectively and (2) the IWMF TCPA Permission considered and controlled the actual effects of the Consented Development. The Applicant is not aware of any additional social or economic impacts arising from the decommissioning of the Proposed Development.
- 7.12 *The ExA noted that the Closure Plan under an Environmental Permit would not consider land use matters.*
- 7.13 The Applicant agreed with this statement, but that it still does not follow that a closure plan is necessary. The Applicant agreed to provide further submissions on this issue at Deadline 3, referring to the scoping agreed between all of the parties.
- 7.14 *The ExA noted ECC's concern that the definitions in the S106 are not sufficiently broad to capture the Proposed Development.*
- 7.15 The Applicant noted that it does not understand the need for variations to the s106 agreement, noting the proposals are for alterations to an internal valve and that the key definitions in the existing section 106 agreement are broadly drafted and are not specifically tied to any specific planning permission. The Applicant noted that it has made a submission in writing in response to Q1.5.5 on this which explains the s106 Agreement refers to the Beneficial Use of a Waste Management Facility and the Development which is not tied only to a particular planning permission or a particular power output. The definition of 'Beneficial Use' does refer to the IWMF TCPA Permission, however, this is in the phrase "for the purposes permitted by the



## Note continued

TCPA Permission". The Proposed Development will simply authorise internal works and the generation of over 49.9MW of electricity. The purpose of the generating station will remain "to produce electricity, heat and steam" as set out in the IWMF TCPA Permission. This will not change as a result of the DCO.

- 7.16 The Applicant explained that the Proposed Development is therefore very clearly caught by the existing provisions of the Section 106 Agreement.
- 7.17 The Applicant confirmed that they would engage further with ECC on this point ahead of Deadline 3.
- 7.18 *The ExA noted ECC's request for a deed of variation to the Section 106 Agreement, and their request that new mitigations relating to educational and skills training or air quality monitoring are added.*
- 7.19 The Applicant noted it is mindful that obligations need to be directly related to the Proposed Development and fairly and reasonably related to the scale of that development. The obligations suggested by ECC in regard to employment and training do not comply with these requirements and the Applicant does not agree that these are necessary to include in a deed of variation to the Section 106 Agreement.
- 7.20 The Applicant further responded that, as set out in the Applicant's response to Q1.2.2, the Applicant does not consider that the requested educational benefits are necessary. The Proposed Development does not result in any significant adverse environmental effects which require mitigation and no deed of variation to the s106 agreement is needed.
- 7.21 The Consented Development includes the redevelopment of the Woodhouse Farm Complex as a visitor and education centre. It is not considered necessary or reasonable to require further education measures to be taken to make the Proposed Development acceptable in planning terms.
- 7.22 *The ExA noted the changes to the dDCO considered necessary by ECC and requested the Applicant's input on these requested updates*
- 7.23 The Applicant confirmed that it was happy to add reference to non-material amendments to the definition of 'TCPA Permission' but that it did not agree with the other proposed updates to the definition.
- 7.24 The Applicant's explained that its preference was not to refer to the current operative permission for the Consented Development (i.e. ESS/39/23/BTE) nor to omit variations granted before the Order from the definition of TCPA Permission. This is because there is a pending section 73 variation of ESS/34/15/BTE awaiting determination by ECC. If the definition is updated as proposed by ECC, any permission granted pursuant to this pending application would not be caught by the DCO. The current operative permission is also caught by the definition proposed by the Applicant.
- 7.25 Neither ECC nor the Applicant has control over the date of the Order. Therefore, it is necessary for the definition to include variations granted before the date of the Order.
- 7.26 In respect of ECC's request for a new article 6, the Applicant confirmed that it does not consider this update to be necessary. It is for the Applicant to structure its future applications in such a



## Note continued

way as to avoid any breach of the DCO or to seek a change of the DCO where necessary to enable the developments to come forward in parallel, and the Applicant would have to comply with the existing law on drop-in permissions in any case.

7.27 The Applicant confirmed that it did not agree with ECC's updates to Article 7 (relating to noise limits), the inclusion of a MW cap or a requirement requiring submission of a decommissioning plan for the reasons outlined in section 5 and paragraphs 7.2-7.13 above.

### **8 Agenda Items 8 and 9: Procedural Decisions, Review Of Actions And Next Steps And Closing Remarks**

8.1 The Applicant did not make any submissions under these agenda items.

