

The Planning Act 2008

**Rivenhall Integrated Waste Management Facility and  
Energy Centre Scheme**

Examining Authority's Report  
of Findings and Conclusions  
and  
Recommendation to the Secretary of State for  
Energy Security and Net Zero

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Examining Authority

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2 October 2024

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# OVERVIEW

File Ref: EN010138

The Application, dated 10 November 2023, made under section 37 of the Planning Act 2008 and was received by the Planning Inspectorate on the same date.

The Applicant is Indaver Rivenhall Limited.

The Application was accepted for examination on 8 December 2023.

The Examination of the Application began on 9 April 2024 and was completed on 30 July 2024.

The Proposed Development seeks to increase the efficiency and output of a previously consented energy from waste electricity generating station with a capacity up to 49.9 megawatts (MW), to achieve a capacity of over 50MW. The facility was under construction at the time of the Examination. The Proposed Development could achieve a capacity of over 50MW by carrying out either of the following works:

- an extension to the existing generating station comprising mechanical modifications to the actuated steam turbine inlet control valves to allow steam capacity to be increased; or
- an extension to the existing generating station comprising the installation and commissioning of unrestricted actuated steam turbine inlet control valves.

Summary of Recommendation:

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

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**ERRATA SHEET - Rivenhall Integrated Waste Management Facility  
and Energy Centre Scheme Ref. EN010138**

**Examining authority's Report of Findings and Conclusions and  
Recommendation to the Secretary of State for the Department of  
Energy Security and Net Zero, dated 2 October 2024**

**Corrections agreed by the Examining Authority prior to a decision  
being made**

<b>Vol</b>	<b>PDF Page No.</b>	<b>Para</b>	<b>Error</b>	<b>Correction</b>
	24	In 3.4.12 "consent in 2009"	"2009"	"2010"

# **1. INTRODUCTION**

## **1.1. BACKGROUND TO THE EXAMINATION**

- 1.1.1. An application (the Application) for Rivenhall Integrated Waste Management Facility (IWMF) and Energy Centre scheme (the Proposed Development), Planning Inspectorate reference EN010138, was submitted by Indaver Rivenhall Limited (the Applicant) to the Inspectorate on 10 November 2023 under section (s) 37 of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of the PA2008 on 8 December 2023. This Report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State (SoS) for Energy Security and Net Zero (DESNZ).
- 1.1.2. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Planning Inspectorate on behalf of the Secretary of State for Levelling Up, Housing and Communities (SoSLUHC) in its decision to accept the Application for Examination in accordance with s55 of the PA2008.
- 1.1.3. The Proposed Development seeks to increase the efficiency and output of a previously consented energy from waste electricity generating station with a capacity up to 49.9 megawatts (MW), to achieve a capacity of over 50MW. The Proposed Development falls within s14(1) and 15(1) of PA2008 and meets the definition of an NSIP set out in s14(1)(a), s15(2), s120(3) and s140 of the PA2008. As such, the Proposed Development requires development consent, in accordance with s31 of PA2008.
- 1.1.4. The Examination Library (EL) provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number eg [APP-001]. The reference numbers are used throughout this Report and hyperlinks are included to allow the reader to access them directly.
- 1.1.5. This Report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn by the ExA and the recommendation made in this Report.

## **1.2. APPOINTMENT OF THE EXAMINING AUTHORITY**

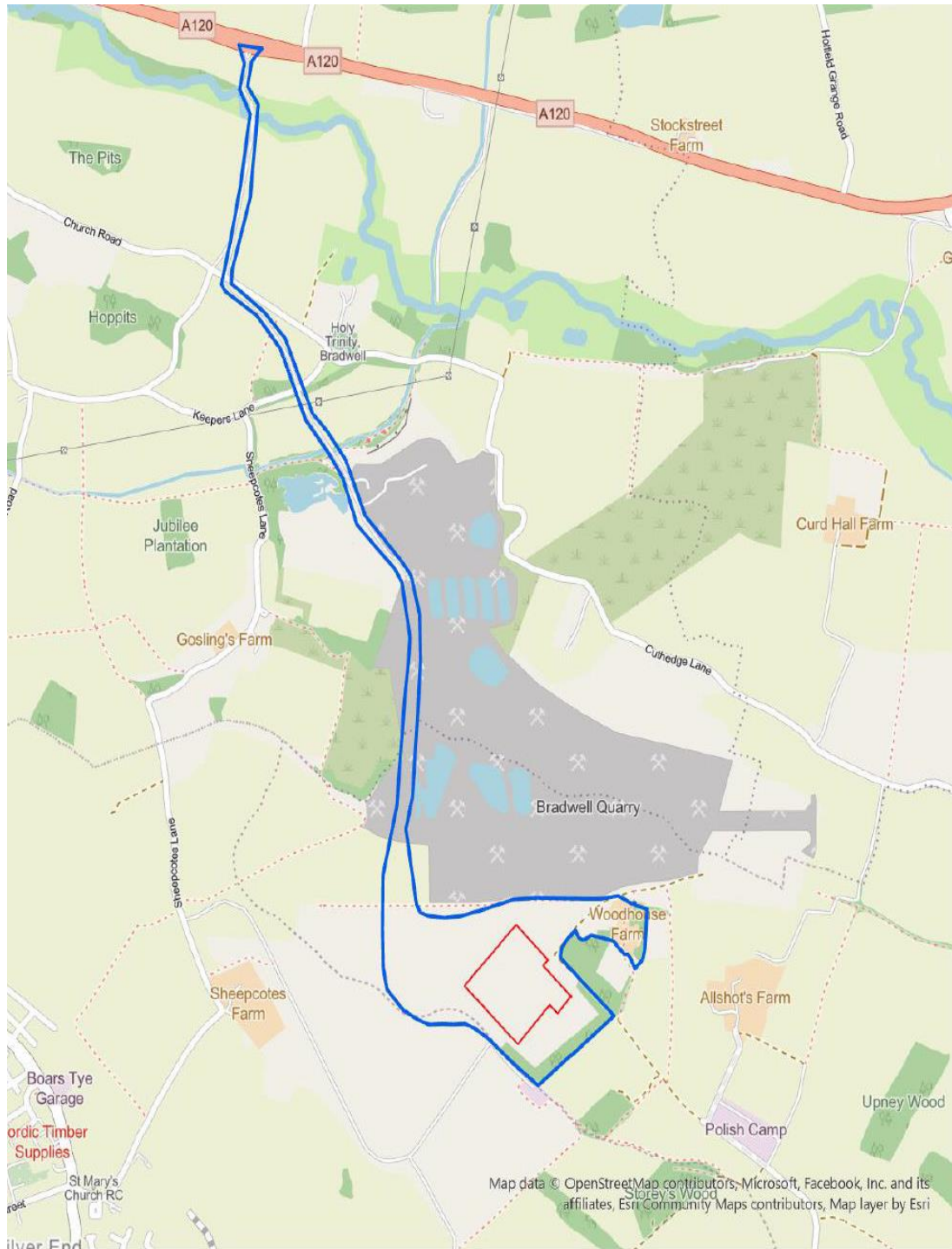
- 1.2.1. On 23 January 2024, Jonathan Manning was appointed as the ExA for the application under s61 and s79 of the PA2008 [[PD-001](#)].

## **1.3. THE APPLICATION**

### **LOCATION OF THE PROPOSED DEVELOPMENT**

- 1.3.1. The location of the Proposed Development is shown in the Location Plan [[APP-006](#)] and the Land Plan [[APP-007](#)]. The site location can be seen in Figure 1, which also illustrates the Order limits boundary in red and wider IWMF site boundary in blue.

**Figure 1: Site Location**



1.3.2. Chapter 2 of the Environmental Statement (ES) [APP-027, Section 2.2] provides a detailed description of the existing site. The Site is located within the southern part of the wider IWMF Site, which is situated on land that was formerly part of Bradwell Quarry. The Energy from Waste (EfW) component of the IWMF, associated with the existing consent, is currently under construction as can be seen in Figure 2. The topography at the Site is predominately flat and approximately 15 metres (m) below ground level. This is lower than the surrounding land due to the excavation of overburden and sand and gravel reserves, as part of the former quarrying works.



**Figure 2: Existing Consent under Construction**



- 1.3.3. A description of the wider surrounding area is provided in Chapter 2 of the ES [[APP-027, Section 2.3](#)]. The Site is located east of Braintree, approximately 3 kilometres (km) southeast of Bradwell village, approximately 1km to the northeast of Silver End and approximately 3km southwest of Coggeshall. With the exception of quarrying activity, the Site is located within a predominantly rural character area, consisting of arable crops in large fields, often without boundaries resulting in an open landscape. A small industrial estate is located approximately 400m to the southeast on Allshots Farm. The nearest residential property is The Lodge, Woodhouse Lane, approximately 425m to the east of the Site. Other properties known as Sheepcotes Farm and Haywards, lie approximately 750m west and 950m northeast from the Order Limits respectively.

### **DESCRIPTION OF THE PROPOSED DEVELOPMENT**

- 1.3.4. The Proposed Development seeks to increase the efficiency and output of a previously consented energy from waste electricity generating station with a capacity up to 49.9MW, to achieve a capacity of over 50MW. The Proposed Development works comprise:
- Work No. 1 – an extension to the existing generating station comprising mechanical modifications to the actuated steam turbine inlet control valves to allow steam capacity to be increased; or
  - Work No. 2 – an extension to the existing generating station comprising the installation and commissioning of unrestricted actuated steam turbine inlet control valves.
- 1.3.5. Further details of the proposal for each Work No can be found in Schedule 1 of the recommended Development Consent Order (rDCO) in Appendix C to this Report.

### **RELEVANT PLANNING HISTORY**

- 1.3.6. Chapter 2 of the ES [[APP-027, Section 2.4](#)] and the Planning Statement [[REP1-006, Section 2](#)] describe the existing consent. The IWMF received planning permission through the Town and Country Planning Act (TCPA) 1990 in 2010 (LPA reference ESS/37/08/BTE and Planning Inspectorate reference APP/Z1585/V/09/2104804). This was subsequently amended via an application made under s73 of the TCPA 1990 in 2016 (LPA reference ESS/34/15/BTE).

- 1.3.7. Shortly before the Examination started, an application under s73 of the TCPA 1990 to remove Condition 66 of the 2016 Planning Permission was granted (LPA reference ESS/39/23/BTE) and has become the operative permission. In addition, an application was submitted under s73 of the TCPA 1990 in January 2022 to vary condition 68 of the 2016 Planning Permission (LPA reference ESS/02/22/BTE). This is still currently undetermined. There have also been a number of non-material amendments made, which are summarised in the Planning Statement [[REP1-006, Table 1](#)].

## **1.4. THE EXAMINATION**

### **LOCAL AUTHORITIES**

- 1.4.1. The site lies within Essex County Council (ECC) and Braintree District Council (BDC) administrative areas (the host authorities) and is wholly in England.

### **START OF THE EXAMINATION**

- 1.4.2. The Preliminary Meeting (PM) took place on 9 April 2024 [[EV1-001](#)] [[EV1-002](#)] [[EV1-003](#)]. The ExA's Procedural Decisions (PD) and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter, dated 16 April 2024 [[PD-003](#)].

- 1.4.3. The Examination began on 9 April 2024 and concluded on 30 July 2024. The principal components of and events around the Examination can be seen in the Examination Timetable [[PD-003, Annex A](#)] and are summarised below.

### **PROCEDURAL DECISIONS**

- 1.4.4. The PDs taken by the ExA are recorded in the Rule 6 letter [[PD-002](#)] and Rule 8 letter [[PD-003](#)]. They detail the ExA's decisions relating to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. All were broadly discharged as intended and no further reference is made to them in this Report. They included the Rule 6 letter informing Interested Parties (IPs) of the Preliminary Meeting and the Rule 8 letter confirming the Examination Timetable [[PD-003](#)]. They also included the ExA's various written questions.

### **STATEMENTS OF COMMON GROUND**

- 1.4.5. By the end of the Examination, the host authorities had concluded and signed a Statement of Common Ground (SoCG) with the Applicant [[REP5-001](#)]. The signed SoCG has been taken fully into account by the ExA in all relevant sections of this Report.

### **WRITTEN QUESTIONS**

- 1.4.6. The ExA asked two rounds of written questions (ExQ). First written questions (ExQ1) [[PD-004](#)] were published on 16 April 2024 and the second written questions (ExQ2) were published on 25 June 2024 [[PD-006](#)].

### **SITE INSPECTIONS**

- 1.4.7. The ExA held an Accompanied Site Inspection (ASI) on 6 June 2024 in order to see the works taking place on the site, their relationship to the Proposed Development and to view the surrounding area, including several noise sensitive receptors. The itinerary of the ASI was published on 28 May 2024 [[EV2-001](#)].

## HEARINGS

- 1.4.8. Hearings were held under s91 PA2008 and s93 PA2008 into specific issues (ISHs) and open floor (OFHs). One ISH was held. The notification of the hearing was given on 9 May 2024 [[PD-005](#)] and was held virtually on Microsoft Teams on 4 June 2024. An agenda was published on 28 May 2024 [[EV3-001](#)]. Recordings [[EV3-002](#), [EV3-004](#), [EV3-006](#)] and transcripts [[EV3-003](#), [EV3-005](#), [EV3-007](#)] were published on the [Planning Inspectorate National Infrastructure website](#).
- 1.4.9. An Open Floor Hearing was requested by one party. However, when the hearing was opened no one wished to speak and it was therefore closed without any representations being heard. A recording [[EV4-001](#)] and transcript [[EV4-002](#)] was published on the [Planning Inspectorate National Infrastructure website](#).

## 1.5. CHANGES TO THE APPLICATION

- 1.5.1. Changes to the key application documents, including the wording of the draft Development Consent Order (dDCO), were submitted and updated during the Examination. The changes sought to address points raised by IPs, the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination.
- 1.5.2. The Applicant's changes to the Application documents, together with any additional information submitted, are detailed in the final Navigation Document submitted at Deadline (D) 4 [[REP4-001](#)]. This provides a guide to all documents submitted as part of the Application and was updated at each deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the Examination.

## 1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.6.1. The Applicant considers that there is no need to enter into any further agreements or obligations beyond those already secured in the s106 Agreement (s106) for the consented scheme [[REP1-013](#)]. This was disputed by ECC who considered the s106 for the consented scheme should be varied in order to properly capture the Proposed Development and to secure additional planning obligations relating to an employment and skills plan and off-site air quality monitoring [[REP2-007](#)]. These matters are discussed under Chapter 3 of this Report.

## 1.7. OTHER CONSENTS

- 1.7.1. In addition to the consents required under the PA2008, the Applicant would require other consents to construct, operate and maintain the Proposed Development. These are identified in the List of Other Consents and Licenses document [[REP3-008](#)]. The ExA is content that these are unlikely to act as an impediment to the Proposed Development.

## 1.8. STRUCTURE OF THIS REPORT

- 1.8.1. The structure of the remainder of this Report is as follows:
- [Chapter 2](#) identifies how the application is to be determined and summarises the key legislation and policy context that applies to the decision.
  - [Chapter 3](#) sets out the findings and conclusions in relation to the individual planning issues that arose from the Application and during the Examination.

- [Chapter 4](#) sets out the balance of planning considerations arising from Chapters 2 and 3 in the light of important and relevant factual, legal and policy considerations.
- [Chapter 5](#) considers the implications of the matters arising from the preceding chapters for the DCO.
- [Chapter 6](#) summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.8.2.

This report is supported by the following appendices:

- [Appendix A](#) – Reference Tables.
- [Appendix B](#) – List of Abbreviations.
- [Appendix C](#) – The Recommended DCO.

## **2. HOW THE APPLICATION IS DETERMINED**

### **2.1. INTRODUCTION**

2.1.1. This Chapter identifies the key legislation, policy and Local Impact Reports (LIRs) that the Examining Authority's (ExA) recommendations are made against.

### **2.2. LEGISLATION AND POLICY**

2.2.1. This section identifies the key legislation and policy that the ExA considers to be important and relevant to its findings and recommendations to the SoS. More detail is provided in Table A1 of Annex A to this Report.

#### **PLANNING ACT 2008**

2.2.2. The PA2008 provides a different basis for decision-making for NSIP applications where a relevant National Policy Statement (NPS) (s104) has effect from that where no NPS has effect (s105).

2.2.3. The ExA has considered the statutory basis for Examination, reporting and decision-making and has concluded that these must proceed under PA2008 s104 (decisions in cases where NPSs have effect). There are no substantial elements of the Proposed Development that fall outside the remit of relevant NPS policies and so PA2008 s105 (decisions in cases where no NPSs have effect) is not relevant. This is an application in respect of which there is an NPS in effect.

2.2.4. A NPS has effect once it has been designated as such by Parliament. It continues then to have effect until it is withdrawn. In the process of withdrawal, a draft replacement NPS may include transitional provisions which clarify how an application prepared under a withdrawn NPS is to be managed moving forward. Draft (including replacement) NPSs do not have effect until they in turn are designated, and then only subject to any transitional provisions that may apply. However, the content of draft NPSs is a matter that is capable of forming an important and relevant matter (PA2008 s104(2)(d)) to be considered by the SoS in its decision.

2.2.5. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard when making its decision. These include any relevant NPS, any duly submitted LIR, any matters prescribed in relation to the development, and any other matters the SoS thinks are both important and relevant to the decision.

2.2.6. Section 104(3) of the PA2008 requires the SoS to decide the Application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in s104(4) to (8) as follows:

- where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations;
- where deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment;
- where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- where the adverse impact of the Proposed Development would outweigh its benefits; and /or

- where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.2.7. This Report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

## **OTHER LEGISLATION**

2.2.8. A full list of relevant primary and secondary legislation, including but not limited to duties arising under the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended) can be found in Table A1 of Appendix A of this Report. All applicable legislation has been considered by the ExA as required and the findings and recommendations in this Report are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

## **2.3. NATIONAL POLICY STATEMENTS**

2.3.1. NPSs set out Government policy on different types of national infrastructure development. Having regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that NPS EN-1 (overarching energy) and NPS EN-3 (renewable energy infrastructure) are relevant to the Application.

2.3.2. The Government has published updated versions of NPS EN-1 and NPS EN-3 which were designated on 17 January 2024. However, the SoS has decided that, for any application accepted for examination before designation of the updated energy NPSs, the original suite of energy NPSs should have effect for the purpose of s104 of the PA2008. Nevertheless, the updated NPSs are capable of being important and relevant considerations in the decision-making process. As such, I have had regard to them in considering the Application and sought the views of the parties on NPS EN-1, 2024 and EN-3, 2024 [[PD-004, Q1.1.5](#)].

2.3.3. The NPSs form the primary policy context for this Examination. This Report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008. The purpose and broad content of these NPSs is summarised here. Table A2 in Appendix A provides further detail on the NPSs of relevance to the Proposed Development.

### **OVERARCHING NATIONAL POLICY STATEMENT FOR ENERGY (NPS EN-1) 2011**

2.3.4. NPS EN-1 sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. All other energy NPSs sit within the policy framework provided by this NPS. It provides the primary basis for determining if development consent should be granted for energy development.

### **NATIONAL POLICY STATEMENT FOR RENEWABLE ENERGY INFRASTRUCTURE (NPS EN-3) 2011**

2.3.5. NPS EN-3 sets out policies specifically relating to renewable energy infrastructure, including energy from waste with a capacity of more than 50MW (paragraph 1.8.1). Its policies are additional to those on generic impacts set out in EN-1 and do not replace them.

## **2.4. OTHER RELEVANT NATIONAL POLICIES**

- 2.4.1. The ExA has considered other relevant Government policy, which is set out in Table A3 in Appendix A. These policies are also discussed in more detail in Chapter 3 of this Report, where relevant.

## **2.5. LOCAL IMPACT REPORTS**

- 2.5.1. LIRs were submitted into the Examination at D1 by ECC [[REP1-018](#)] and BDC [[REP1-016](#)]. LIR content has been considered through the Examination and in this Report. It must be considered during the decision by the SoS pursuant to PA2008 s104(2)(b). The issues raised are considered in further detail in relation to relevant planning issues in Section 3 of this Report.
- 2.5.2. Amongst other matters, LIRs identify local policies (including those from the Development Plan) which are capable of being important and relevant considerations under s104(2)(d) of the PA2008. Table A4 in Appendix A lists the individual local policies that are relevant to the Proposed Development.

## **2.6. ENVIRONMENTAL IMPACT ASSESSMENT**

- 2.6.1. The Applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the ExA determined that the Proposed Development was EIA development.
- 2.6.2. On 25 April 2023, the Applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared [[APP-039](#)]. On 6 June 2023, the Planning Inspectorate provided a Scoping Opinion [[APP-040](#)]. Based on the limited nature of the Proposed Development, the scope of the ES was tightly defined on a limited number of issues.
- 2.6.3. Overall, the ExA considers that the ES, as supplemented with additional information during the Examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.
- 2.6.4. Section 3 of this Report summarises the environmental effects under each topic section. The documents that make up the ES can be seen in the EL [[APP-025 to APP-046](#)].

## **2.7. HABITATS REGULATIONS ASSESSMENT**

- 2.7.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.7.2. A Habitats Regulations Assessment (HRA) Report has not been provided with the application documents. During acceptance The Planning Inspectorate was satisfied with the justification provided by the Applicant as to why HRA is not required. Due to the reasons set out in the Planning Statement [[REP1-006, Paragraphs 6.21 and 6.22](#)], the ExA is satisfied that the Proposed Development is one that would not give rise to the potential for likely significant effects on European sites and hence has not been subject to HRA.

## **2.8. TRANSBOUNDARY EFFECTS**

- 2.8.1. In terms of Transboundary effects, the scoping opinion of the Planning Inspectorate [\[APP-040\]](#) found that the Proposed Development would be unlikely to have a significant effect either alone or cumulatively on the environment in another European Economic Area State. The ExA considers that no information came to light during the Examination to alter this conclusion.



## **3. THE PLANNING ISSUES**

### **3.1. INTRODUCTION**

3.1.1. This Chapter sets out the Examining Authority's (ExA) findings and conclusions on planning issues. The Chapter is structured firstly to examine matters of principle, including need, followed by generic topic headings which are arranged in alphabetical order. The order in which all these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, the ExA will identify the policy background, followed by a summary of the Application as made, then report on the main issues for each topic. Findings and conclusions will then be drawn and whether the effects carry little weight, moderate weight, great weight, or very great weight for/against the making of the Order.

#### **INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAPI)**

3.1.3. As required by section(s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, the ExA made an IAPI arising from the Application in advance of the PM. This formed an initial assessment of the issues based on the Application documents and submitted Relevant Representations (RR). The list of issues relates to all phases of the Proposed Development. The IAPI was raised at the PM and no other key topics were identified during the Examination. The IAPI can be found in Annex C of the Rule 6 letter [[PD-002](#)]. The issues identified in the IAPI are as follows:

- Climate Change and Greenhouse Gases
- Consented Development
- Cumulative Effects
- Development Consent Order
- Noise

#### **THE PLANNING ISSUES IN THIS REPORT**

3.1.4. The ExA considers that the issues raised by IPs were broadly in line with the IAPI and were subject to written and oral questioning during the Examination. These are the issues that the ExA has used to inform the structure of the following sections in this Report (Sections 3.3 – 3.5). It should also be noted that the IAPI is a high-level framework. The ExA has nevertheless had regard to all important and relevant matters arising from submissions from IPs and has reported on these, if required, within each section below.

3.1.5. The planning issues considered in this section of the Report are as follows:

- Section 3.2: The Principle of the Development and Need
- Section 3.3: Climate Change and Greenhouse Gases
- Section 3.4: Noise
- Section 3.5: Other Planning Matters

### **3.2. THE PRINCIPLE OF THE DEVELOPMENT AND NEED**

3.2.1. The ExA has given consideration, on an overarching basis, to the principle of the development and its need. Given that the Proposed Development will only alter the amount of energy generated from the consented IWMF and not the amount of waste managed, this Section focuses on the need for renewable energy infrastructure and

the principle of such development, including matters associated with the existing consent and whether the Order should cap the level of energy production. It does not consider the need for new waste management infrastructure or waste management policy.

## **NATIONAL POLICY STATEMENTS**

### **NPS EN-1 and NPS EN-3 2011**

- 3.2.2. Both EN-1 and EN-3 recognise that renewable energy infrastructure includes energy from waste facilities. NPS EN-3 identifies that the combustion of biomass for electricity generation is likely to play an increasingly important role in meeting the UK's renewable energy targets (paragraph 2.5.1).
- 3.2.3. NPS EN-1 recognises the benefits of having a diverse mix of power generation to avoid over dependency on one type or source of fuel or power (paragraph 3.3.4). Paragraph 3.3.15 advises that there is an urgent need for new (and particularly low carbon) energy NSIPs to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises its energy sector.
- 3.2.4. Paragraph 3.1.4 of NPS EN-1 requires the SoS to give substantial weight to the contribution that all projects would make toward satisfying this need when considering applications under the PA2008. Further, Paragraph 4.1.2 advises that given the level and urgency of need for infrastructure of the types covered by the energy NPSs, the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.

### **Revised NPS EN-1 and NPS EN-3 2024**

- 3.2.5. Revisions to EN-1 and EN-3 came into force following the acceptance of the Proposed Development for examination. Therefore, it is to be determined in accordance with the 2011 NPSs. Nonetheless, the ExA consider the revisions to be a relevant matter that the SoS may wish to take into account when determining this Application.
- 3.2.6. Paragraph 4.2.4 of Revised NPS EN-1 states that Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure. Paragraph 4.2.15 goes on to state that where there are non-Habitats Regulations Assessment and non-Marine Conservation Zone residual impacts that remain after the mitigation hierarchy has been applied, those residual impacts are unlikely to outweigh the urgent need for CNP infrastructure.
- 3.2.7. Revised NPS EN-3 sets out that the combustion of biomass for electricity generation plays an important role in meeting the UK's energy needs and supports the decarbonisation of the sector (paragraph 2.7.1).

## **OTHER RELEVANT NATIONAL POLICY**

### **National Planning Policy Framework (NPPF), December 2023**

- 3.2.8. Chapter 14 of the NPPF indicates that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. Paragraph 163 advises that when determining planning applications for renewable and low carbon development, local planning authorities

should not require applicants to demonstrate the overall need for renewable or low carbon energy; and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. It also notes that applications should be approved if its impacts are (or can be made) acceptable.

## **DEVELOPMENT PLAN POLICY**

### **Essex and Southend-on-Sea Waste Local Plan 2017**

- 3.2.9. Policy 11 Mitigating and Adapting to Climate sets out that proposals for waste management development, through their construction and operation, are required to minimise their potential contribution to climate change by reducing greenhouse gas emissions. Part 3 of Policy 11 also encourages the capturing and production of energy by the most efficient means practicable.

### **Braintree District Local Plan 2022**

- 3.2.10. Policy LPP71 Climate change sets out that the Council intends the District to meet part of its future energy needs through renewable and low carbon energy sources and will therefore encourage and support the provision of these technologies subject to their impacts being acceptable. In a similar manner, Policy LPP73 Renewable Energy Schemes notes that such schemes will be supported where the benefit of low carbon energy generating potential outweighs harms.

### ***ExA's Reasoning***

- 3.2.11. The principle of development is well established in relevant policy and the need for the development has not been disputed by any party. The Proposed Development would make a contribution to meeting the UK's low carbon energy needs and to achieving net zero. It would also help to diversify the mix of power generation using a partly renewable source of fuel and could be brought into operation quickly. This therefore weighs in favour of making the Order.

## **IMPLEMENTATION OF THE EXISTING CONSENT**

- 3.2.12. ECC is of the view [\[RR-002\]](#) [\[REP1-018\]](#) that the Energy from Waste (EfW) component of the consented IWMF cannot be delivered independently of the other facilities and on the commencement of operation there could be a breach of planning control. ECC set out [\[REP1-019, Q1.3.2\]](#) [\[EV3-002\]](#) [\[EV3-003\]](#) that this was because of the word 'integrated' in the development description and ECC's interpretation of planning condition 2 of the existing consent that includes process flow drawings of the waste to be managed. Notwithstanding this, ECC also noted that the Proposed Development would not affect the ability of the other components of the IWMF to be delivered in the future and therefore it accepted that such matters were not for this Examination to consider.
- 3.2.13. The Applicant set out [\[REP1-011, Q1.3.1\]](#) that it is undertaking development of the existing consent in phases and this approach is not uncommon, as 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 noted [\[REP1-011, Q1.3.2\]](#) that there is no need to determine whether an EfW plant alone can be constructed in accordance with the existing consent in order to determine whether the DCO for the Proposed Development should be granted. Nonetheless, the Applicant did provide a legal note [\[REP1-011, Appendix 1\]](#) that, in summary, set out:

- That it is not unlawful to partially implement a planning permission, with the Supreme Court’s ruling on *Hillside Parks Ltd. v. Snowdonia National Park Authority* [2022] UKSC 30 (Hillside) having provided definitive clarity on this point.
- 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 Hillside ruling).
- That the description of the consented scheme as an ‘IWMF’ does not require complete implementation.
- That the extant permission does not contain conditions or obligations prohibiting partial implementation or the construction and operation of the EfW plant alone.
- That ECC 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.
- That the process flow drawings (Drawings 1-9A and 1-10A) do not control what must be built or 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.
- That 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.

3.2.14. Despite requests from the ExA [\[EV3-002\]](#) [\[EV3-003\]](#) for ECC to provide a comprehensive response to the points raised above by the Applicant, including any legal opinions on the matter it had taken, none was provided.

### **ExA’s Reasoning**

3.2.15. Having considered all of the evidence provided in relation to this matter, the ExA agrees with the parties that the Proposed Development would not affect the ability for the other components of the IWMF to be delivered in the future and therefore is not for this examination to expressly consider. However, the ES does rely on the operation of the EfW plant to form a new baseline, most notably in the noise assessment.

3.2.16. Whilst the ExA finds the Applicant’s submissions persuasive, it is mindful that even if ECC’s position was proven to be correct, the Applicant could well go on to implement all components of the IWMF in any event. Consequently, the ExA considers this is not a matter that affects the Proposed Development or the approach to the assessment of the Application, particularly in relation to noise matters.

## ENERGY CAPACITY CAP

- 3.2.17. The Applicant's dDCO [APP-013] submitted with the application would allow for energy generation over 50MW without a capacity cap. The Explanatory Memorandum (EM) [APP-014] sets out that defining the capacity of a generating station as 'over 50MW' rather than setting a cap on capacity is preceded by two recent solar DCOs: The Little Crow Solar Park Order 2022 and The Cleve Hill Solar Park Order 2020 and that this approach recognises that the level of electrical output of a generating station does not affect its environmental impacts.
- 3.2.18. ECC in its LIR [REP1-018] noted that the ES [APP-029, Paragraph 4.4.3] sets out that the turbine proposed to be installed under the consented scheme has a maximum output potential and to generate electricity greater than 65MW a larger turbine and generator is likely to be required, which would require a significant change to the consented building envelope. Given this and that a capacity over 65MW had not been assessed in the ES, ECC were of the view that a cap of 65MW is required in the dDCO.
- 3.2.19. The ExA asked [PD-004, Q1.5.2] the Applicant to provide further justification for its position. The Applicant set out [REP1-011, Q1.5.2] that it is unclear what benefit there is to the inclusion of a cap to prevent a generating capacity of over 65MW, given that:
- There is no legal requirement for all assumptions used in an environmental impact assessment to be secured and 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.
  - The design point of the turbine being installed by the Applicant as part of the consented scheme is 62.37MW and 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) result in significant effects on the environment beyond those assessed in the ES, including in relation to noise and climate change and greenhouse gas (GHG) emissions.
  - 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 of the existing conditions for the consented scheme.
  - Any future development would likely 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.
  - There is no legislative requirement for a cap on energy generation to be set out in the DCO.
- 3.2.20. In response ECC remained of the view [REP2-007] that a greater energy output than 65MW could result in environmental impacts that have not been assessed and also considered that if a greater output were to be proposed at a later date it should be considered against local and national policy at that time. ECC also noted that the examples provided by the Applicant where no cap had been imposed by the SoS were all solar farms and not energy from waste plants.

- 3.2.21. Further discussion took place at ISH1 [\[EV3-004\]](#) [\[EV3-005\]](#) and the ExA asked the Applicant whether proceeding without a cap would be contrary to the EIA Regulations given that an alternative of over 65MW had not been assessed in the ES. The Applicant agreed to submit a Technical Note [\[REP3-001, Appendix 3\]](#) to provide further information on this matter. This noted that:
- An assessment of the alternative scenario where the EfW reliably generates more than 65MW has been considered in the ES [\[APP-029\]](#). To achieve this would require amendments to the existing consent, which are outside the scope of this application.
  - The ES is only required to assess the likely significant effects of the Proposed Development. Therefore, the assessment in the ES has been based upon the likely generating capacity of the Proposed Development.
  - There are possible, albeit unlikely, scenarios in which the EfW plant could generate more than 65MW as a result of the Proposed Development. These scenarios are unlikely, would be temporary in nature, and would not give rise to any additional environmental effects. This scenario is not an alternative to the Proposed Development.
  - The Applicant is not in control of the climatic conditions or the precise calorific value of the fuel. Including a cap within the DCO at 65MW could require the Applicant to take steps to prevent the plant from operating at its peak theoretical capacity. This would be counterproductive and unreasonable given the urgent need for electrical energy, the unlikely and temporary nature of the scenario, and the lack of effects which would result from this energy being produced.
  - Given that there are controls on the environmental effects of the consented scheme and that these will also control the Proposed Development, the Applicant does not consider there to be any planning merit to introducing an energy cap within the DCO.
- 3.2.22. ECC questioned [\[REP3-017\]](#) whether the ES Scoping Opinion [\[APP-040\]](#) had been based on the potential for energy production in excess of 65MW and, on this basis, whether all potential effects of doing so had been captured in the ES. ECC also noted that in the Applicant's own words [\[APP-029, Paragraph 4.4.4\]](#), exceeding 65 MW through a larger turbine could have indirect negative air quality and noise effects on the environment. ECC also noted that the Slough Multifuel Extension Order, made by the SoS on 28 November 2023 is a similar project and includes an energy cap.
- 3.2.23. ECC did however acknowledge [\[REP3-017\]](#) that electricity generated can vary from time to time due to the calorific content of the waste arriving at site and that in certain weather conditions the generation of power could increase in excess of 65MW. It therefore questioned whether a cap of 65MW 'on average' could be imposed.
- 3.2.24. The ExA proposed a cap of 65MW within its Proposed Changes to the dDCO [\[PD-007\]](#) and the Applicant reiterated its position. Although, without prejudice, it suggested that should the SoS consider a cap to be necessary it should read 'up to 65MW at an ambient air temperature of 15degC' to allow for some flexibility. The Applicant noted that this was similar wording to that proposed in the dDCO for the North Lincolnshire Green Energy Park which is awaiting determination by the SoS.

- 3.2.25. ECC raised concern [\[REP5-007\]](#) with this wording, setting out that it was vague, imprecise and unenforceable. It also noted that this could allow for energy to be produced above 65MW for 6 months of the year given the weather in Essex. Given these submissions were made on the last deadline of the Examination, the Applicant was unable to comment.

### **ExA's Reasoning**

- 3.2.26. The ExA has had regard to the basis of the ES Scoping Opinion and is content that this was considered on the basis of energy production in 'excess of 50MW' [\[APP-040, Paragraph 1.0.8\]](#). The ExA is satisfied that in order for a greater level of energy than 65MW to be feasibly and reliably produced by the IWMF then a new larger turbine (requiring physical changes to the building) would need to be used and a greater level of waste managed. The ExA therefore agrees with the Applicant that this is not a realistic alternative to the Proposed Development, in accordance with the EIA Regulations.
- 3.2.27. The ExA notes that there are controls associated with the existing consent that would also apply to the Proposed Development, given Article 6 of the dDCO. This includes limiting the amount of waste that can be processed at the facility, the number of HGV movements and noise level limits at noise sensitive receptors. The existing Environmental Permit (EP) will also control emissions. The ExA accepts the Applicant's view that should a greater level of energy than 65MW be produced within these controlled parameters then there are unlikely to be any significant or additional adverse effects on the surrounding area or sensitive receptors.
- 3.2.28. The concerns of ECC about greater indirect negative air quality and noise effects are noted. However, it is clear from the ES [\[APP-029, Paragraph 4.4.4\]](#) that this would only be relevant if a new larger turbine was being used or a greater level of waste processed, which is not the case for the Proposed Development due to physical constraints and existing controls. It is also important to note that it is highly likely that a change to either would require additional consent, where the impacts of doing so would be considered afresh.
- 3.2.29. The ExA acknowledges that the Slough Multifuel Extension is a similar project and did have a cap imposed by the SoS. However, the ExA has considered the Proposed Development on its own specific circumstances and merits.
- 3.2.30. Having had regard to all matters raised and given the specific circumstances of this case, particularly the strict controls imposed by the planning conditions of the existing consent, the ExA concludes that there is no need to impose a maximum energy generation cap within the DCO. To limit energy generation without good reason would run contrary to NPS EN-1.
- 3.2.31. Should the SoS consider that a cap is necessary it may wish to request the views of the Applicant on the matters raised by ECC on the last deadline of the Examination.

### **CONCLUSIONS**

- 3.2.32. The principle of development is well established in relevant policy and the need for the development has not been disputed by any party. The Proposed Development would make a contribution to meeting the UK's low carbon energy needs and to achieving net zero. It would also help to diversify the mix of power generation using a partly renewable source of fuel and could be brought into operation quickly.

- 3.2.33. The Proposed Development is in accordance with NPS EN-1, NPS EN-3, Revised NPS EN-1 and Revised NPS EN-3 in helping to meet the urgent need. I therefore afford the demonstrated need and low carbon energy generated from the Proposed Development great positive weight in the final planning balance.
- 3.2.34. Given the specific circumstances of this case, particularly the strict controls imposed by the planning conditions of the existing consent, the ExA consider that there is no need to impose a maximum energy generation cap within the DCO. To limit energy generation without good reason would in itself run contrary to NPS EN-1.

### **3.3. CLIMATE CHANGE AND GREENHOUSE GASES**

#### **BACKGROUND AND POLICY CONTEXT**

- 3.3.1. This Section focuses on the Applicant's consideration of the Proposed Development's effect on climate change and GHG emissions, in further support of the overall need case which has been considered in detail in Section 3.2 of this Report.

#### **National Policy Statements**

- 3.3.2. Part 2 of NPS EN-1 (2011) explains that the Government is committed to meeting the legally binding target to cut carbon emissions by at least 80% (from 1990 levels) by 2050. That reduction target was subsequently revised to 100% in June 2019 by the Climate Change Act 2008 (2050 Target Amendment) Order 2019.
- 3.3.3. The 2011 NPSs recognises that delivering this change will be a major challenge for energy providers. The focus of Government activity in this transformation is to facilitate investment by the private sector in new low-carbon energy infrastructure to contribute to climate change mitigation and to ensure security of supply.
- 3.3.4. Part 3 of NPS EN-1 (2011) highlights the need for all the types of energy infrastructure covered by the NPS for energy security and to reduce greenhouse gas emissions dramatically.
- 3.3.5. NPS EN-1 (2024) states there is a CNP for the provision of low carbon infrastructure, which includes low carbon electricity generation, such as EfW.

#### **Other Legislation and Policies**

- 3.3.6. The legislation and guidance relevant to climate change and greenhouse gases is set out in ES Chapter 7 [[APP-032, Section 7.2](#)]. Appendix A, Tables A1 to A4 of this Report and the Applicant's Planning Statement [[REP1-006](#)] also set out the national, regional and local planning policies that are considered relevant to the Proposed Development.

#### **THE APPLICATION**

##### **Environmental Statement, Scope and Methodology**

- 3.3.7. The Applicant's assessment of climate change and GHG emissions is set out in Chapter 7 of the ES [[APP-032](#)]. The scope of the assessment considers effects relating to the change in direct and indirect GHG emissions and the change in displacement of GHG emissions from other forms of power generation.



- 3.3.8. The Applicant is of the view that GHG emissions have a global impact, rather than a national or local impact. Therefore, the study area for the assessment considers the impact of the Proposed Development on net global emissions, including the displacement of other power generation plants.
- 3.3.9. The baseline for the assessment is the 2025 Future Baseline Scenario [\[APP-032\]](#). This is defined as the future date when the EfW component of the IWMF becomes operational. The information required to define the baseline was gathered from the planning applications for the consented scheme and from design information provided by the engineering, procurement and construction contractor.
- 3.3.10. The Applicant's assessment assumes that any additional power generated would reduce the need for power to be generated elsewhere in the UK and would displace the 'marginal electricity source' which is currently gas-fired power stations.
- 3.3.11. The net GHG emissions from the Proposed Development compared to the Future Baseline were calculated in line with the methodology presented in both the Institute of Environmental Management and Assessment (IEMA) 'Environmental Impact Assessment Guide to: Assessing Greenhouse Gas Emissions and Evaluating their Significance, February 2022' guidance and UK Government guidance 'Energy recovery for residual waste – a carbon-based modelling approach, 2014'.
- 3.3.12. The assessment identifies that most of the quantities, which are normally considered in GHG assessments for plants which generate power from waste, would not change as a result of the Proposed Development, as the same waste would be combusted as for the consented development. Therefore, the assessment only considered the offset of emissions generated from the grid electricity for the additional power generated compared to the consented scheme. These are considered 'Scope 2' emissions. The calculation was carried out for the opening year (2025) and for the period from 2025 to 2049 to take account of potential changes in the baseline marginal power source.

### **Applicant's Assessment of Effects and Proposed Mitigation**

- 3.3.13. The Applicant concludes [\[APP-032, Section 7.6\]](#) that there would be a beneficial effect, as the change in carbon emissions compared to the future baseline is negative. However, as the Proposed Development does not actively reverse the risk of climate change, as it does not remove carbon from the atmosphere, the assessment finds an overall negligible beneficial effect. The Applicant therefore considers that no mitigation is required.

## **LOCAL IMPACT REPORTS**

### **Essex County Council**

- 3.3.14. A number of concerns were raised in ECC's LIR [\[REP1-018\]](#):
- The assessment methodology does not accurately or robustly reflect the predicted emissions of the IWMF facility.
  - Requests that the GHG impact of the scheme through the demolition and construction, in operation, and decommissioning phases are accurately predicted.

- Is of the view that an assessment of multiple scenarios should be presented to reflect the variability in the calorific content, biogenic matter and volume of waste available in future operating conditions.
- It is not impossible to understand what actual impacts and contributions the facility will make towards contributing to climate change.
- The impact of the Proposed Development on emissions within the county and potential impact on the target for Essex to be net zero by 2050 should be included in the assessment.
- A credible emission mitigation plan detailing the decarbonisation of the facility in line with the carbon reductions required to meet net zero by 2050 has not been provided by the Applicant.

### **Braintree District Council**

3.3.15. BDC set out several points of concern in its LIR [\[REP1-016\]](#):

- The application is not clear on what effect the new equipment proposed will have on GHG emissions locally.
- Concerns raised relating to the methodology and assumptions used in the assessment.
- There is a lack of transparency as the assessment does not include or quote the Proposed Development's anticipated total annual GHG emission figure or the accumulative annual GHG emissions from the accumulative proposed and consented development combined.
- Considers that there should be consideration within the assessment of the local and regional GHG emissions.

### **ISSUES CONSIDERED DURING THE EXAMINATION**

3.3.16. Issues emerging during Examination that the Examining Authority (ExA) has examined, considered, and concluded on are whether the assessment methodology is appropriate and whether any mitigation is necessary.

#### **Assessment Methodology**

3.3.17. At the start of the Examination both ECC [\[REP1-018\]](#) and BDC [\[REP1-016\]](#) raised concern about the assessment methodology adopted in the ES [\[APP-032\]](#). The Applicant maintained that the assessment methodology was robust and proportionate [\[REP2-004, Table 3\]](#) [\[EV3-002\]](#) [\[EV3-003\]](#). The ExA explored these matters and the assumptions used in the assessment with the parties through ExQ1 [\[PD-004, Q1.2.3\]](#), ISH1 [\[EV3-002\]](#) [\[EV3-003\]](#) and ExQ2 [\[PD-006, Q2.2.1 and Q2.2.2\]](#), with particular regard to the:

- study area;
- suitability of using guidance in 'DEFRA Energy Recovery for residual waste – a carbon based modelling approach, 2014' in the assessment;
- assumption that displacement against Combined Cycle Gas Turbine energy generation would occur;

- use of a displacement factor of 0.371t CO<sub>2</sub>e/MWH in the assessment; and
- the need for a GHG assessment, including a breakdown of the carbon emission data for the construction, in operation and decommissioning phases, given the nature of the Proposed Development.

3.3.18. Following these discussions and dialogue between the parties, on the last deadline of the Examination, a signed SoCG [REP5-001, CC.01 – CC.08] was provided. This confirmed that all matters associated with climate change and GHG emissions were now agreed, with the exception of requested mitigation by ECC, which is considered further below. This included agreement that the methodology provides an appropriate approach to considering the change of direct and indirect GHG emissions from the IWMF and the change in displacement from other forms of power generation.

### ***ExA's Reasoning***

3.3.19. The ExA is satisfied that the methodology used in the ES provides a robust assessment of the effects of the Proposed Development on climate change and GHG emissions.

3.3.20. The ExA considers that providing a full greenhouse gas assessment including a breakdown of the carbon emission data for the construction, in operation and decommissioning phases, including any differing scenarios, would not be proportionate to the Proposed Development and would in effect be reassessing the entire consented scheme.

3.3.21. The concerns about local impacts and this affecting the ability for ECC and BDC to plan for net zero in their areas are acknowledged. However, the ExA is mindful that IEMA Guidance 'Assessing Greenhouse Gas Emission and Evaluating their Significance, 2022' advises that the receptor for GHG emissions is the global atmosphere. Further, and as set out by the Applicant [EV3-002] [EV3-003], once operational there will be a need for GHG emission figures from the IWMF to be provided to the Environment Agency's pollution inventory, which would allow such emissions to be taken into account when planning for future net zero in the local area by ECC and BDC.

### **Whether there is a Need for Mitigation**

3.3.22. ECC [RR-002] 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 decarbonised national grid, UK energy security, strategy and tackling climate change. Further, ECC in their LIR [REP1-018] took the view that an emissions mitigation plan detailing the decarbonisation of the IWMF with reference to the Government's 'Decarbonisation Readiness Consultation, 2022', in line with the carbon reductions required to meet net zero by 2050, should be provided. ECC noted that this could include solar panels, water reduction measures and carbon capture and storage (CCS).

3.3.23. The Applicant set out [REP2-004] that no mitigation was required due to there being no adverse effects from the Proposed Development and that the Government's decarbonisation readiness consultation identifies that plants under construction should be exempt from the requirement for CCS. The ExA examined matters

relating to the need for any potential mitigation through ExQ1 [[PD-004, Q1.2.2](#)] and ISH1 [[EV3-002](#)] [[EV3-003](#)].

- 3.3.24. In the signed SoCG [[REP5-001, CC.05](#)] at the end of the Examination, ECC acknowledge that no mitigation was required but that it had been requested by County Council members and the Site Liaison Group.

#### ***ExA's Reasoning***

- 3.3.25. The ExA accepts the findings of the ES that there would be a negligible beneficial effect on climate change and GHG emissions as a result of the Proposed Development. This was also accepted by ECC and BDC [[REP5-001, CC.04.1](#)]. On this basis, the ExA does not consider any mitigation is necessary and the requirement for such would not meet the tests for planning obligations set out Paragraph 4.1.8 of NPS EN-1. Further, the ExA accepts the position of the Applicant that there is currently no requirement for the Proposed Development to incorporate CCS.

### **CONCLUSIONS**

- 3.3.26. The ExA is content that the Applicant has undertaken a robust and proportionate assessment of the effects of the Proposed Development on climate change and GHG emissions. The ExA accepts the findings of the assessment that there would be a negligible beneficial effect on climate change and GHG emissions as a result of the Proposed Development. Consequently, the ExA considers that no mitigation is necessary.
- 3.3.27. The Proposed Development therefore complies with NPS EN-1 and NPS EN-3, as well as the 2024 revisions. Further, the ExA considers that the Proposed Development complies with the NPPF and relevant development plan policies in this regard, which contain similar provisions. The ExA affords climate change and GHG related matters little positive weight for the Proposed Development in the planning balance.

## **3.4. NOISE**

### **INTRODUCTION**

- 3.4.1. This Section focuses on the Applicant's consideration of the Proposed Development's effect on noise.

#### **National Policy Statements**

- 3.4.2. Section 5.11 of NPS EN-1 refers to the Government's policy on noise as set out in the Noise Policy Statement for England (NPSE). This recognises that excessive noise can have impacts on the quality of human life, health and the use and enjoyment of areas of value, such as quiet places.
- 3.4.3. NPS EN-1 at Paragraph 5.11.4 requires the Applicant to: identify noise sensitive areas that may be affected; describe the noise generating aspects of the development; set out the changes in the noise environment day-to-day and over the course of the proposed development; and set out measures to be employed in mitigating noise. Further, Paragraph 5.11.6 requires an assessment of operational noise with respect to human receptors using the principles of the relevant British

Standards and other guidance. In reaching a decision, the SoS should be satisfied that:

- the Proposed Development demonstrates good design through the suitable and cost-effective selection of plant, containment of noise within buildings, optimisation of plant layout, and the use of landscaping, bunds or noise barriers (NPS EN-1, Paragraph 5.11.8);
- significant adverse impacts relating to noise are avoided, mitigated and minimised (NPS EN-1, Paragraph 5.11.9); and
- mitigation measures using engineering solutions, layout and good design, and administrative methods and restricting activities are adequate (NPS EN-1, Paragraph 5.11.11).

3.4.4. These principles in relation to noise are carried forward into NPS EN-1 (2024).

### **Noise Policy Statement for England**

3.4.5. The NPSE clarifies the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. It provides guidance on defining 'significant adverse effects' and 'adverse effects' by reference to the No Observed Effect Level, Lowest Observed Adverse Effect Level and Significant Observed Adverse Effect Level.

### **Other Legislation and Policies**

3.4.6. The legislation and guidance relevant to noise is set out in ES Chapter 8 [[APP-033, Section 8.2](#)]. Appendix A, Tables A1 to A4 of this Report and the Applicant's Planning Statement [[REP1-006](#)] also set out the national, regional and local planning policies that are considered relevant to the Proposed Development.

## **THE APPLICATION**

### **Environmental Statement, Scope and Methodology**

3.4.7. The Applicant's assessment of noise is set out in Chapter 8 of the ES [[APP-033](#)]. This considers the operational noise effects associated with the Proposed Development, which includes noise breakout from the building itself. The study area encompasses the Site and extends to include the closest off-site Noise Sensitive Receptors (NSRs).

3.4.8. The assessment methodology uses the existing noise limits set out in planning conditions 38, 39 and 40 of the existing consent to assess whether the Proposed Development meets these noise limits. The future baseline for the noise assessment is taken as the consented scheme once operational.

3.4.9. Computer aided noise abatement mapping software was used for all potential sources of operational noise. Noise levels generated by the Proposed Development at the nearest NSRs were predicted using the methodology in 'ISO 9613-2:1996, Acoustics – Attenuation of Sound during Propagation Outdoors'. The predicted noise levels provided by the construction contractor were used and are based on the specification of the plant. Hourly vehicle movements were also included in the daytime and evening scenario, based on the numbers provided for the consented scheme of 40 trips per hour. The detailed assumptions used in the noise modelling are set out in the ES [[APP-033, Section 8.6](#)].

- 3.4.10. A cumulative noise assessment was also undertaken which includes consented operations associated with nearby Bradwell Quarry.

### **Applicant's Assessment of Effects and Proposed Mitigation**

- 3.4.11. The Applicant concludes [[APP-033, Sections 8.6 and 8.7](#)] that there would be negligible operational and cumulative effects on the surrounding NSRs from noise. The Applicant therefore considers that no mitigation is required. The Applicant does, however, note that compliance monitoring is required by planning condition 41 of the existing consent and the draft DCO makes clear that the IWMF (as altered by the Proposed Development) would continue to be constructed and operated according to the terms of the existing consent, including planning condition 41.

## **LOCAL IMPACT REPORTS**

### **Essex County Council**

- 3.4.12. ECC [[REP1-018](#)] raised several concerns in relation to the Applicant's assessment of noise and the approach taken:
- No consideration of relevant current guidance, i.e. BS 4142:2014+A1:2019 in demonstrating the potential impact that may arise from its operation. Instead, the assessment is based on noise limits set as part of the existing consent in 2009.
  - ECC has undertaken an indicative assessment in accordance with BS4142:2014+A1:2019, which demonstrates a potential adverse impact at the NSR known as The Lodge.
  - Insufficient information provided to determine the veracity of the noise level predictions presented within the ES. This includes details of the mechanisms to obtain the source noise data and noise modelling files.
  - The draft DCO does not require the Applicant to monitor noise levels to ensure that any limits as may be placed on the DCO are complied with, in the interest of amenity.

### **Braintree District Council**

- 3.4.13. BDC [[REP1-016](#)] deferred to ECC on noise related matters but did consider that noise levels at Silver End and Park Gate Road should be considered.

## **ISSUES CONSIDERED DURING THE EXAMINATION**

### **Assessment Methodology**

- 3.4.14. ECC raised concern [[RR-002](#)] [[REP1-018](#)] in relation to the Applicant's noise assessment methodology. Namely, the use of the existing noise limits of the existing consent to assess whether the Proposed Development meets these noise limits. ECC took the view that a new assessment in accordance with BS 4142:2014+A1:2019 should be undertaken. ECC undertook its own indicative assessment in line with BS 4142:2014+A1:2019 which it considered demonstrated a potential adverse impact at the NSR known as The Lodge. Concern was also raised that the noise limits of the existing consent were based on minerals workings and not industrial facilities.

- 3.4.15. The Applicant responded [\[REP1-011, Q1.6.2\]](#) by noting that the Proposed Development 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 plant. Therefore, the assessment methodology remained in-line with the consented scheme to allow as much of a like-for-like assessment as possible. The Applicant also set out that a separate Section 73 application for the IWMF is currently being prepared by the Applicant which includes an updated noise assessment in accordance with BS4142:2014+1:2019 and Article 6 of the dDCO would require it to comply with any amended noise conditions attached to future Section 73 permissions.
- 3.4.16. Further discussion was undertaken at ISH1 [\[EV3-004\]](#) [\[EV3-005\]](#) and the Applicant noted that the Proposed Development would not be making any more noise than the consented scheme 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. ECC reiterated the potential negative impacts that could result if new standards are not used to assess the appropriateness or otherwise of the Proposed Development. These matters remained unresolved at the end of the Examination [\[REP5-001\]](#).

### ***ExA's Reasoning***

- 3.4.17. The ExA considers that given the minor nature of the Proposed Development and the fact that the IWMF can operate under the noise limits imposed by the existing consent, irrespective of any new noise related guidance, such as BS4142:2014+1:2019, the approach adopted in the ES is appropriate. Further, it would be disproportionate to consider the entire IWMF in a new assessment. The ExA accepts the findings of the ES that the Proposed Development would not result in any greater noise effects than those that could result from the existing consent.
- 3.4.18. The ExA is content that Article 6 of the dDCO would ensure that the Proposed Development would need to accord with any new noise limits, in accordance with BS4142:2014+1:2019, imposed by any future permitted s73 applications.
- 3.4.19. The ExA is also satisfied that the assessment suitably considers potential effects on residents at Silver End and Park Gate Road, addressing the concerns of BDC.

### **Noise Modelling Inputs**

- 3.4.20. ECC are of the view [\[REP1-018\]](#) that insufficient information has been provided to determine the veracity of the noise level predictions presented within the ES [\[APP-033\]](#). This included details of the mechanisms to obtain the source noise data and noise model files. The Applicant confirmed [\[REP2-004, Table 4\]](#) [\[EV3-004\]](#) [\[EV3-005\]](#) that it would share the noise model with ECC and clarified that the noise source data had been provided by the construction contractor Hitachi Zosen Inova (HZI), which the Applicant's noise consultant had verified.
- 3.4.21. ECC subsequently reviewed the noise modelling files [\[REP3-015\]](#) and set out that a full review of the noise models had not been possible due to the supporting data (such as manufacturer datasheets, noise measurement data, internal room noise level calculations) not being made available. However, it did set out that it was possible for some checks to be completed regarding the propagation of noise from the Site to the noise receiver at the various NSRs and as a result, several queries were raised.

- 3.4.22. The Applicant responded through a Technical Memorandum [REP4-009] that reiterated the source data information had been provided directly from HZI who have built a significant number of EfW plants throughout the UK. It also set out that HZI have a contractual obligation to ensure that the noise levels generated by the Proposed Development meet the Consented Scheme noise limits at the sensitive receptors, otherwise they cannot hand over the plant to the operator at the contractual takeover date. The Applicant therefore considered that the consented scheme has been designed to meet the consented noise limits and these design parameters have been utilised as the basis of the modelling and assessment.
- 3.4.23. In response, ECC [REP5-007] noted that HZI have reversed engineered noise levels to theoretically demonstrate compliance with the consented noise level limits at the receptor locations and that no further details have been provided as to the mechanism for obtaining the source data. ECC noted that the lack of evidence provided relating to the origin and application of the source data, means that the noise level predictions can only be taken at face value. ECC did, however, acknowledge that HZI possess experience in the development of EfW centres and therefore, they would be expected to apply this to the generation of noise source information. In addition, ECC noted that confirmation that the facility would not be able to operate until it can be demonstrated that consented noise limits can be achieved provides some reassurance.
- 3.4.24. On wider technical modelling points raised in their review of the noise modelling [REP3-015], ECC confirmed it was satisfied that the Applicant's Technical Memorandum [REP4-009] provides suitable responses to such points. Matters associated with the source data remained unresolved at the end of the Examination [REP5-001].

### ***ExA's Reasoning***

- 3.4.25. The ExA note that HZI the construction contractor has significant experience in the construction of EfW plants and are well positioned to advise on likely source noise data from the Proposed Development. The ExA is further comforted by the contractual obligation to deliver the facility in accordance with the noise levels set out and controlled in the planning conditions of the existing consent.
- 3.4.26. These matters, along with the fact that no evidence has been put before the Examination to suggest that the noise levels controlled by the existing consent cannot be met, results in the ExA being content that the assessment offers an appropriate basis to consider the noise related effects of the Proposed Development.

### **Cumulative Effects**

- 3.4.27. The cumulative assessment [APP-033, Table 8.14] undertaken with Bradwell Quarry only considers day-time effects. ECC set out [RR-002] that Bradwell Quarry has consent for the operation of a Dry Silo Mortar (DSM) plant from 06.00-07.00 and 19.00-22.00. The ExA therefore asked the Applicant [PD-004] to explain why this was the case and to provide a revised cumulative assessment.
- 3.4.28. The Applicant noted [REP1-011, Q1.6.5] that third party data for the use of the DSM plant from 06.00-07.00 and 19.00-22.00 was not available and therefore, a cumulative assessment could not be undertaken. The Applicant also set out that the most recent noise monitoring to determine compliance of the DSM plant identified that the measured noise levels were above the noise limits at Heron's Farm, which



is the closest receptor, however noise from the DSM plant was not audible. The Applicant concluded [\[REP1-011, Q1.6.5\]](#) that monitoring showed that the contributions to the noise levels at Heron's Farm during the evening and nighttime period consisted of birdsong, aircraft and vehicles and the exceedance of the noise limit was not caused by the DSM plant.

- 3.4.29. ECC [\[REP2-007\]](#) set out that the majority of this data is available on ECC planning applications website and that no request had been made for copies of the data. Following further discussions at ISH1 [\[EV3-004\]](#) [\[EV3-005\]](#), the Applicant agreed to provide a Technical Memorandum [\[REP3-001, Appendix 2\]](#) that further considered the cumulative noise effects of the Proposed Development with the DSM plant. ECC noted [\[REP3-017\]](#) that the assessment did not include the bagging plant that is also permitted to operate at the same time as the DSM plant.
- 3.4.30. Following further information provided by the Applicant [\[REP4-007\]](#) [\[REP4-009\]](#) in response to ExQ2 [\[PD-006, Q2.6.1\]](#), ECC [\[REP5-007\]](#) set out that it was content the additional information demonstrates that there would not be an exceedance of consented noise level limits, as a result of cumulative noise levels.

### ***ExA's Reasoning***

- 3.4.31. The ExA has considered the cumulative noise assessment provided in the ES, alongside the additional information provided by the Applicant during the Examination. The ExA is satisfied that there would not be any adverse cumulative effects from noise from the Proposed Development, DSM plant and bagging plant at NSRs, including Heron's Farm.

### **CONCLUSIONS**

- 3.4.32. The ExA is content that the noise effects from the Proposed Development have been appropriately and proportionately assessed in line with Paragraphs 5.11.4 and 5.11.6 of NPS EN-1.
- 3.4.33. The ExA accepts the findings of the ES that there would only be negligible operational and cumulative adverse effects on the surrounding NSRs from noise. Further, these would not be any greater than those that could already result from the existing consent, including on The Lodge. The ExA is satisfied that noise levels would be suitably controlled through planning conditions 38, 39, 40 and 41 of the existing consent and the draft DCO makes clear that the IWMF (as altered by the Proposed Development) would continue to be constructed and operated according to the terms of the existing consent, or any new noise levels imposed by any future S73 applications.
- 3.4.34. The ExA therefore affords noise related matters neutral weight in the planning balance.

## **3.5. OTHER PLANNING MATTERS**

### **The Environmental Statement**

- 3.5.1. The ExA is content that the ES [\[APP-025 to APP-046\]](#) and associated information submitted by the Applicant at the time of making the application and subsequently during the Examination, have provided an adequate assessment of the environmental effects of the Proposed Development. The ExA has taken account of

the ES and associated information in the Initial Assessment of Principal Issues, while conducting the Examination of the Application and in this Report.

### **Alternatives**

- 3.5.2. The Applicant's consideration of alternatives is set out in Chapter 4 of the ES [APP-029]. The ExA is content that the consideration of alternatives has been robust in accordance with Paragraphs 4.4.1 and 4.4.2 of NPS EN-1 and the EIA Regulations. Where alternatives are of relevance to the main planning issues these are considered within those sections of this Report.

### **Cumulative Effects**

- 3.5.3. The ExA asked [PD-004, Q1.4.1] whether the Proposed Development suitably considered all other relevant developments in the vicinity of the Site, including all minerals workings. The Applicant confirmed [REP1-011] it had applied a thorough screening assessment of other developments. ECC set out [REP1-018] it was content that all other relevant developments nearby had been identified and BDC did not raise any concerns [REP1-017]. The ExA is content that cumulative effects have been appropriately assessed in the ES. Where cumulative effects are of relevance to the main planning issues these are considered within those sections of this Report.

### **Section 106 Agreement**

- 3.5.4. At the start of the Examination the ExA asked [PD-004, Q1.5.5] the Applicant whether a new or revised s106 would be needed as a result of the Proposed Development. The Applicant took the view [REP1-011] that the existing s106 for the consented scheme and the definitions contained within it were capable of accommodating the Proposed Development without the need for a deed of variation and there was no need for any further planning obligations given the minor nature of the Proposed Development.
- 3.5.5. Following discussions at ISH1 [EV3-006] [EV3-007], ECC provided a note from its legal department [REP4-011] which concluded that the definitions set out in the existing s106 were not broad enough to include the Proposed Development, as they relate specifically to the applications made at the time and do not include any future permissions. Further, ECC considered that the definitions cannot be interpreted as including future permissions in line with the precedent set by case law (*Norfolk Homes Ltd v North Norfolk District Council* [2020] EWHC 2265) (*North Norfolk*).
- 3.5.6. The Applicant disagreed [REP5-004] and set out that ECC's view is based upon a misunderstanding of the judgment in the case of *North Norfolk*. It considers the existing s106 must be interpreted in accordance with the "*natural and ordinary meaning*" of its terms and that their meaning are broad in nature and do not refer specifically to the existing TCPA consent. On this basis, the Applicant asserted that the Proposed Development, which comprises limited internal works, will not result in the planning obligations in the existing s106 from being superseded, ceasing to have effect or prevent any outstanding obligations from being triggered in due course.
- 3.5.7. The ExA is persuaded by the points set out by the Applicant. The existing s106 defines 'Development' in broad terms describing the 'Waste Management Facility' at the location. There is no reference in the definition of development to the previously granted planning permissions, either explicitly or by cross referencing the defined

terms 'Waste Management Facility' and the 'Application Site'. For all of these reasons, the ExA is content that a deed of variation is not required to capture the Proposed Development.

### **Liaison Group**

- 3.5.8. ECC requested [\[REP3-014\]](#) a change to the dDCO to include a requirement in relation to the Local Liaison Group. The Applicant took the view [\[REP3-010\]](#) that the remit of the Site Liaison Group under Schedule 3 of the existing s106 is the Application Site (ie the Consented Scheme redline) and therefore automatically includes the Proposed Development. For the reasons set out above in relation to the s106, the ExA is content that such a change is not necessary and Schedule 3 of the existing s106 is sufficient to capture the Proposed Development.

### **Socio-Economic and Air Quality Monitoring**

- 3.5.9. ECC set out that it would like to see [\[REP1-018\]](#) [\[REP2-007\]](#) a deed of variation to the s106 to require funding for educational benefits and skills training, and off-site air quality monitoring. The Applicant considers that such requirements are not necessary to make the development acceptable in planning terms, given the minor nature of the Proposed Development and the absence of adverse effects. The ExA agrees that no mitigation is required in relation to such matters and therefore such planning obligations would not meet the tests set out in Paragraph 4.1.8 of NPS EN-1. The ExA also considers that air quality monitoring is not necessary to meet the requirements of NPS EN-1 and NPS EN-3 or the 2024 versions in terms of air quality.

### **Decommissioning**

- 3.5.10. The ExA explored the matter of decommissioning through written questions [\[PD-004, Q1.5.4\]](#) and at ISH1 [\[EV3-004\]](#) [\[EV3-005\]](#). The Applicant provided a Technical Note on decommissioning and the requirements of NPS EN-1 [\[REP3-001, Appendix 4\]](#). This concluded that due to the limited nature of the works there would be no significant effects during decommissioning and therefore, there is no reasonable basis for imposing a requirement in the dDCO requiring a decommissioning plan to be provided. Further, the Applicant noted that any requirement requiring details of the decommissioning of the consented scheme would not be relevant to the development to be permitted and so cannot reasonably be imposed. Subsequently, ECC [\[REP4-011, Q2.5.1\]](#) agreed with this position. The ExA agrees with the parties that due to the limited nature of the works there are unlikely to be any significant effects during the decommissioning of the Proposed Development and consequently there is no need to impose a requirement for a decommissioning plan in the dDCO.

## **CONCLUSIONS**

- 3.5.11. The ExA has found that other matters considered in this Section would not result in any adverse effects and/or would not weigh against the Proposed Development. These issues therefore all attract neutral weight in the planning balance.

## **4. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **4.1. INTRODUCTION**

4.1.1. This Chapter sets out the ExA's reasoning and conclusions on the planning balance of the Proposed Development and whether there is a case for the making of a DCO for the Proposed Development. This includes the ExA's reasoning on project-wide matters that emerged during Examination and conclusions reached and weight given to planning issues that were examined.

4.1.2. The ExA has examined the application in line with s104(1) of PA2008. This applies to an application for an order granting development consent where a NPS has effect. The ExA confirms that the application has been examined in the context of s104(1)(2) of PA2008. This requires the SoS to have regard to any relevant NPS.

### **4.2. SUMMARY OF THE MAIN PLANNING ISSUES**

#### **THE PRINCIPLE OF DEVELOPMENT**

4.2.1. The principle of development is well established in relevant policy and the need for the development has not been disputed by any party. The Proposed Development would make a contribution to meeting the UK's low carbon energy needs and to achieving net zero. It would also help to diversify the mix of power generation using a partly renewable source of fuel and could be brought into operation quickly.

4.2.2. The Proposed Development is therefore in accordance with NPS EN-1, NPS EN-3, Revised NPS EN-1 and Revised NPS EN-3 in helping to meet the urgent need. The ExA therefore affords the demonstrated need and low carbon energy generated from the Proposed Development great positive weight in the final planning balance.

4.2.3. Given the specific circumstances of this case, particularly the strict controls imposed by the planning conditions of the existing consent, the ExA consider that there is no need to impose a maximum energy generation cap within the DCO. To limit energy generation without good reason would in itself run contrary to NPS EN-1.

#### **CLIMATE CHANGE AND GREENHOUSES GASES**

4.2.4. The ExA is content that the Applicant has undertaken a robust and proportionate assessment of the effects of the Proposed Development on climate change and GHG. The ExA accepts the findings of the assessment that there would be a negligible beneficial effect on climate change and GHG emissions as a result of the Proposed Development. As a result, the ExA considers that no mitigation is therefore necessary.

4.2.5. The Proposed Development complies with NPS EN-1 and NPS EN-3, as well as the 2024 revisions. Further, the ExA considers that the Proposed Development complies with the NPPF and relevant development plan policies in this regard. The ExA affords climate change and GHG little positive weight in the planning balance.

## **NOISE**

- 4.2.6. The ExA is content that the noise effects from the Proposed Development have been appropriately and proportionately assessed in line with NPS EN-1, Paragraphs 5.11.4 and 5.11.6.
- 4.2.7. The ExA accepts the findings of the ES that there would only be negligible operational and cumulative adverse effects on the surrounding NSRs from noise. Further, these would not be any greater than those that could already result from the existing consent, including on The Lodge. The ExA is satisfied that noise levels would be suitably controlled through planning conditions 38, 39, 40 and 41 of the existing consent and the draft DCO makes clear that the IWMF (as altered by the Proposed Development) would continue to be constructed and operated according to the terms of the existing consent. The ExA therefore affords noise related matters neutral weight in the planning balance.

## **OTHER MATTERS**

- 4.2.8. The ExA has found that other matters considered in Section 3.5 of this Report (ES, alternatives, cumulative effects, s106, liaison group, socio-economic and air quality monitoring and decommissioning) would not result in any adverse effects and/or weigh against the Proposed Development. These issues therefore all attract neutral weight in the planning balance.

## **4.3. FINDINGS AND CONCLUSIONS**

- 4.3.1. The ExA has found that the principle of development is well established and the Proposed Development would make a contribution to meeting the UK's low carbon energy needs and in achieving net zero. It would also help to diversify the mix of power generation using a partly renewable source of fuel and could be brought into operation quickly. The demonstrated need from the Proposed Development carries great positive weight. The ExA has also found that there would be some negligible positive effects on climate change and greenhouse gases and affords this little weight in favour of the Proposed Development.
- 4.3.2. The ExA considers that the Proposed Development would not result in noise levels greater than those already consented and affords neutral weight to this matter. As set out above, all other matters considered in Section 3.5, carry neutral weight in the planning balance.
- 4.3.3. Given all of this, the ExA concludes that the planning balance weighs in favour of the Proposed Development. The Proposed Development as proposed in the rDCO complies with NPS EN-1 and NPS EN-3 and the Case for Development Consent has been made. The ExA recommends the making of the Development Consent Order in the form attached at Appendix C of this Report.

## 5. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

### 5.1. INTRODUCTION

5.1.1. This Chapter describes the dDCO [APP-013] as applied for and the changes made to it during the Examination. It also describes matters that were not resolved at the close of the Examination, the ExA's recommendations on those matters and any corresponding changes that would result, as proposed in the ExA's Recommended Development Consent Order (rDCO). The dDCO was identified as a principal issue in the ExA's Initial Assessment of Principal Issues [PD-002].

### 5.2. THE ORDER AS APPLIED FOR

5.2.1. The application included a dDCO [APP-013] and an EM [APP-014]. The dDCO included a number of provisions to enable the construction, operation and maintenance of the Proposed Development. The provisions in the dDCO are set out in full in the EM [APP-014, Section 3].

### 5.3. CHANGES DURING EXAMINATION

5.3.1. This Section of the Report addresses all outstanding matters in respect of which there was discussion between the Applicant and the ExA at [PD-004] [PD-006] [PD-007] [EV3-004] [EV3-005] about potential changes to the preferred draft Order [REP4-003] (Revision 3), in a tabulated format. Table 1 sets out the provisions in respect of which the ExA has accepted the Applicant's detailed submissions in response to the ExA's proposed changes to the dDCO [PD-007] and has decided that no changes are required.

**Table 1: DCO Provisions Not Recommended to be Changed**

Provision	Examination Issue	ExA Reasoning
Part 1 - Preliminary, Article 2	Whether reference to variations to the TCPA permission granted before the date of the Order should be deleted.	The ExA accepts the reasoning provided by the Applicant [REP4-008] that this should not be deleted.
Part 3 - Miscellaneous and General, Article 9	The addition of Land Plan to the Certified Documents.	The ExA accepts the reasoning provided by the Applicant [REP4-008] that this is not necessary.
Schedule 1 – Authorised Development, Part 1	Insertion of cap on energy production to 65MW.	The ExA accepts the reasoning provided by the Applicant that this is not necessary, as set out fully in Section 3.2.

## 5.4. CONCLUSIONS

- 5.4.1. The ExA has considered all iterations of the dDCO submitted by the Applicant and is in agreement with the Applicant on the changes proposed in the final dDCO [\[REP4-003\]](#).
- 5.4.2. The ExA considers that the rDCO includes Requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in line with the NPS EN1 (Paragraph 4.1.7).
- 5.4.3. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, if the SoS is minded to make the DCO, it is recommended to be made in the form set out in Appendix C.

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

### **6.1. INTRODUCTION**

6.1.1. This Chapter summarises the conclusions arising from the Report and sets out the ExA's recommendation to the SoS.

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

6.2.1. The ExA confirms that this application has been examined with reference to s104 of the PA2008, as amended. The ExA concludes that the Proposed Development as proposed in the rDCO complies with NPS EN-1 and NPS EN-3 and the Case for Development Consent has been made. The ExA considers that the 2024 revisions and policy in relation to CNP do not alter this conclusion.

6.2.2. The ExA has considered the LIRs submitted by ECC and BDC, and other matters that are both important and relevant to the SoS decision, including the National Planning Policy Framework, 2023 and development plan policy.

6.2.3. The ExA has found that the principle of development is well established and the Proposed Development would make a contribution to meeting the UK's low carbon energy needs and in achieving net zero. It would also help to diversify the mix of power generation using a partly renewable source of fuel and could be brought into operation quickly. The demonstrated need from the Proposed Development carries great positive weight. The ExA has also found that there would be some negligible positive effects on climate change and GHG and affords this little weight in favour of the Proposed Development.

6.2.4. The ExA considers that the Proposed Development would not result in noise levels greater than those already consented and affords neutral weight to this matter. All other matters considered in Section 3.5, also carry neutral weight. Given all of this, the ExA concludes that any adverse impacts of the Proposed Development would not outweigh its benefits.

6.2.5. The ExA has had regard to the Public Sector Equality Duty (PSED) contained in s149 of the Equality Act 2010. The Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED. In addition, given the findings in relation to noise, the ExA considers that there is no conflict with the Human Rights Act 1998.

6.2.6. There is nothing to indicate that the application should be decided other than in accordance with NPSs EN-1 and EN-3. The ExA has had regard to all other matters and representations received but have found no relevant matters that would individually or collectively lead to a recommendation other than that set out below.

### **6.3. RECOMMENDATION**

6.3.1. The ExA's findings and conclusions on important and relevant matters are set out in this Report. The ExA considers that the Proposed Development meets the tests in s104 of the PA 2008 and development consent should be granted. The ExA



recommends the SoS makes the Order in the form attached at Appendix C to this Report.

- 6.3.2. Should the SoS disagree with the ExA and consider that an energy production cap is necessary, it may wish to consult the Applicant on the submissions of ECC provided at D5 [[REP5-007](#)].

# APPENDICES

## APPENDIX A: REFERENCE TABLES

**Table A1 – Summary of Relevant Legislation for the Proposed Development**

Relevant Legislation
<ul style="list-style-type: none"> <li>▪ Planning Act 2008</li> <li>▪ The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009</li> <li>▪ The Infrastructure Planning (EIA) Regulations 2017</li> <li>▪ Climate Change Act 2008</li> <li>▪ The Paris Agreement</li> <li>▪ The Air Quality Standards Regulations 2010</li> <li>▪ Industrial Emissions Directive</li> <li>▪ Environmental Permitting (England and Wales) Regulations 2016</li> <li>▪ The Conservation of Habitats and Species Regulations 2017</li> <li>▪ Water Framework Directive and the Water Framework Directive Regulations 2017</li> <li>▪ Waste (England and Wales) Regulations 2011</li> <li>▪ Natural Environment and Rural Communities Act 2006</li> <li>▪ The Wildlife and Countryside Act 1981 (as amended)</li> <li>▪ Environmental Protection Act 1990</li> <li>▪ Equality Act 2010</li> <li>▪ Human Rights Act 1998</li> <li>▪ Town and Country Planning Act 1990</li> </ul>

**Table A2 – Summary of Relevant National Policy Statements**

National Policy Statement	Summary
EN-1	<p>EN-1 sets out the government's policy for the delivery of major energy infrastructure projects. Paragraph 3.1.1 states "<i>the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions</i>". Moreover, applications for development consent should be assessed "<i>on the basis that the government has demonstrated that there is a need for those types of infrastructure</i>" (paragraph 3.1.3) and that the SoS "<i>should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008</i>" (paragraph 3.1.4).</p> <p>Paragraph 3.3.10 advises that the UK's need to diversify and decarbonise electricity generation includes increasing dramatically the amount of renewable generation capacity. It recognises that energy from waste may fall into this category. Paragraph 3.4.3 advises that the principal purpose of the</p>

	<p>combustion of waste is to reduce the amount of waste going to landfill in accordance with the Waste Hierarchy and to recover energy from that waste as electricity or heat. The energy produced from the biomass fraction of waste is renewable. Paragraph 3.4.5 identifies the urgency of bringing forward renewable energy projects.</p> <p>Paragraph 4.1.2 advises that the SoS should start with a presumption in favour of granting consent for applications for energy NSIPs, and that the presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. This presumption is subject to the requirements of PA2008 s104(3).</p> <p>Account should be taken of the potential benefits of the proposed development to meet the need for energy infrastructure, job creation and any longer term or wider benefits. Account should also be taken of potential adverse impacts, including any long term and cumulative ones, as well as measures to avoid, reduce or compensate for them (paragraph 4.1.3).</p> <p>The SoS may regard other policies, including those contained in the development plan, as important and relevant to the decision. Nevertheless, paragraph 4.1.5 is clear that NPSs have primacy for NSIPs and that, in the event of a conflict between NPS policies and those contained in any other document, the NPS policies prevail.</p> <p>All proposals for projects that are subject to the European Environmental Impact Assessment Directive must be accompanied by an ES which should cover the environmental, social and economic effects arising from pre-construction, construction, operation and decommissioning of the project (paragraphs 4.2.1 and 4.2.3). The ES should provide information on how the effects of the proposal would combine and interact with the effects of other development, including projects for which consent has been sought or granted, as well as those already in existence (paragraph 4.2.5).</p> <p>Paragraph 4.3.1 recognises the need, under the Habitats Regulations, to consider whether the project may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. The NPS also notes the need to consider alternatives under the Habitats Regulations and in the ES.</p> <p>Proposals should demonstrate the principles of good design in terms of functionality and sustainability as well as being attractive, durable and adaptive (paragraphs 4.5.1 and 4.5.3). Section 4.6 highlights the merits of CHP and advises that <i>“substantial additional positive weight should therefore be given...to applications incorporating CHP”</i> (paragraph 4.6.8).</p>
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	<p>Paragraph 4.8.6 states that the SoS should be satisfied that applicants for new energy infrastructure have taken into account the potential impacts of climate change using the latest UK Climate Projections to ensure they have identified appropriate mitigation or adaptation measures.</p> <p>With regard to pollution control, the SoS should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. It should be assumed that the relevant pollution control regime will be properly applied and enforced by the relevant regulator (paragraph 4.10.3). Where the proposal is subject to the Environmental Permitting (EP) regime, the relevant regulator will require the application to demonstrate that processes are in place to meet all relevant EP requirements (4.10.5). Consent should not be refused on the basis of pollution impacts unless there is good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted (paragraph 4.10.8).</p> <p>In relation to common law nuisance and statutory nuisance, it is important that possible sources of nuisance under section 79(1) of the Environmental Protection 1990 Act, and how they may be mitigated or limited, are considered at the application stage. This will allow appropriate requirements to be included in any subsequent order granting development consent (paragraph 4.14.2).</p>
EN-3	<p>Sets out policies specifically relating to renewable energy infrastructure, including energy from waste infrastructure with a capacity of more than 50MW (paragraph 1.8.1). Its policies are additional to those on generic impacts set out in EN-1 and do not replace them. The starting point for decisions is that the need for the infrastructure covered by EN-3 has been demonstrated (paragraph 2.1.2).</p> <p>Paragraph 2.3.3 states energy from waste generating stations are likely to require significant water resources and should consider how the plant will be resilient to increased risk of flooding and increase risk of drought affecting river flows as part of their ability to adapt to climate change.</p> <p>Section 2.4 deals with good design for energy infrastructure. Paragraph 2.5.2 recognises that the recovery of energy from the combustion of waste will play an increasingly important role in meeting the UK's energy needs as well as forming an important element of waste management strategies in England. Paragraph 2.5.9 notes that waste to energy generating stations can take fuel (waste) that would otherwise be sent to landfill and this waste can come from municipal or commercial and industrial sources.</p>

	<p>Although throughput volumes are not in themselves a factor in decision-making, any increase in traffic volumes, change in air quality, and any other adverse impacts as a result of the increase in throughput should be considered in accordance with the NPS and balanced against the net benefits of the proposal as described in paragraph 2.5.2 and in Section 3.4 of EN-1 (paragraph 2.5.13).</p> <p>EN-3 identifies impact assessment principles specific to EfW generating stations. These largely overlap with the policies for the assessment of generic impacts set out in Part 5 of EN-1 and are considered in more detail in Chapter 3 of this Report.</p>
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**Table A3 – Summary of Relevant National Policy and Considerations for the Proposed Development**

Relevant National Policy and Considerations
<ul style="list-style-type: none"> <li>▪ National Planning Policy Framework, 2023</li> <li>▪ National Planning Policy Framework Consultation, 2024</li> <li>▪ National Planning Practice Guidance</li> <li>▪ Noise Policy Statement for England 2010</li> <li>▪ Resources and Waste Strategy for England 2018</li> <li>▪ A Green Future: Our 25 Year Plan to Improve the Environment, HM Government 2018</li> <li>▪ The Ten Point Plan for a Green Industrial Revolution, HM Government 2020</li> <li>▪ Energy White Paper: Powering our net zero future, HM Government 2020</li> <li>▪ Industrial Decarbonisation Strategy, HM Government 2021</li> <li>▪ Net Zero Strategy: Build Back Greener 2021</li> <li>▪ British Energy Security Strategy 2022</li> <li>▪ Powering up Britain, DESNZ 2023</li> <li>▪ Mission Zero: Independent Review of Net Zero, Rt Hon Chris Skidmore MP 2023</li> <li>▪ Energy Security Plan, HM Government 2023</li> </ul>

**Table A4 – Summary of Relevant Development Plan Policies**

Identified Relevant Policies
<p>Essex and Southend Waste Local Plan 2017</p> <ul style="list-style-type: none"> <li>▪ Policy 1 - Need for Waste Management Facilities</li> <li>▪ Policy 2 - Safeguarding Waste Management Sites and Infrastructure</li> <li>▪ Policy 3 - Strategic Site Allocations</li> <li>▪ Policy 10 - Development Management Criteria</li> <li>▪ Policy 11 - Mitigating and Adapting to Climate Change</li> </ul>
<p>Braintree Local Plan 2013-2033</p> <ul style="list-style-type: none"> <li>▪ Policy SP1 - Presumption in Favour of Sustainable Development</li> </ul>

- Policy SP3 - Spatial Strategy for North Essex
- Policy SP6 - Infrastructure and Connectivity
- Policy SP7 - Place Shaping Principles
- Policy LPP1 - Development Boundaries
- Policy LPP52 - Layout and Design of Development
- Policy LPP63 - Natural Environment and Green Infrastructure
- Policy LPP70 - Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards
- Policy LPP71 - Climate Change
- Policy LPP73 - Renewable Energy Schemes
- Policy LPP74 - Flood Risk and Surface Water Drainage

Kelvedon Neighbourhood Plan 2022

- Policy NE3 - Protection of Green Infrastructure and Biodiversity
- Policy NE 7 - Pollution

## APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
ASI	Accompanied Site Inspection
BDC	Braintree District Council
BS	British Standard
CCS	Carbon Capture and Storage
CNP	Critical National Priority
dDCO	Draft Development Consent Order
D	Deadline
DCO	Development Consent Order
DESNZ	Department for Energy Security and Net Zero
DSM	Dry Silo Mortar
EfW	Energy from Waste
EIA	Environmental Impact Assessment
EL	Examination Library
EM	Explanatory Memorandum
EP	Environmental Permit
ES	Environmental Statement
ECC	Essex County Council
ExA	Examining Authority
ExQ	ExA Written Questions
GHG	Greenhouse Gas
HRA	Habitats Regulations Assessment
HZI	Hitachi Zosen Inova
IAPI	Initial Assessment of Principle Issues
IEMA	Institute of Environmental Management and Assessment
IP	Interested Party
ISH	Issue Specific Hearing
IWMF	Integrated Waste Management Facility
km	Kilometre
LIR	Local Impact Report



LUHC	Levelling Up, Housing and Communities
m	Metre
MW	Megawatt
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NSIP	Nationally Significant Infrastructure Project
NSR	Noise Sensitive Receptor
OFH	Open Floor Hearing
PA2008	Planning Act 2008
PD	Procedural Decision
PM	Preliminary Meeting
PSED	Public Sector Equality Duty
rDCO	Recommended Draft Development Consent Order
RR	Relevant Representation
s106	Section 106 Agreement
SoCG	Statement of Common Ground
SoS	Secretary of State
TCPA	Town and Country Planning Act 1990

## **APPENDIX C: THE RECOMMENDED DCO**

**202X No. 0000**

**INFRASTRUCTURE PLANNING**

**The Rivenhall Generating Station Extension Order 202[ ]**

*Made* - - - - 202[ ]

*Coming into force* 202[ ]

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008 (the “2008 Act”(a)) and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and with the Infrastructure Planning (Examination) Procedure Rules 2010(c). The Examining Authority has submitted a report to the Secretary of State under section 83(1) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(d), and, as a national policy statement has effect in relation to the proposed development, has had regard to the documents and matters referred to in section 104(2)(e) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State in exercise of the powers conferred by section 114, 115 and 120 of the 2008 Act, makes the following Order:

## PART 1

### General provisions

#### Preliminary

#### Citation and commencement

1. This Order may be cited as the Rivenhall Generating Station Extension Order 202[ ] and comes into force on [ ] 202[ ].

#### Interpretation

2.—(1) In this Order, unless the context requires otherwise—

“the 1989 Act” means the Electricity Act 1989(f);

“the 1990 Act” means the Town and Country Planning Act 1990(g);

“the 2006 Act” means the Companies Act 2006(h);

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(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, to which there are amendments not relevant to this Order.

(c) S.I. 2010/103. This instrument was amended by S.I. 2012/635.

(d) S.I. 2017/572, amended by S.I. 2017/1012, S.I. 2018/695, S.I. 2018/834, S.I. 2018/942, S.I. 2018/904, S.I. 2018/1232 and S.I. 2020/1534.

(e) Section 104(2) was amended by Schedule 13, paragraph 49 to the Localism Act 2011 and s58(5) of the Marine and Coastal Access Act 2009 (c. 23).

(f) 1989 c. 29.

(g) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act (c. 21), and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17 to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.

(h) 2006 c. 46.

“the 2008 Act” means the Planning Act 2008(a);

“address” includes any number or address used for the purposes of electronic transmission;

“authorised development” means the development described in Schedule 1 (Authorised Development) and illustrated indicatively on the plan(s) entitled Indicative Designs and Locations of Work No 1 and 2 certified as such by the Secretary of State under article 9 (Certification of plans, etc.);

“building” includes any structure or erection or any part of a building, structure or erection;

“commence” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (when development begins), forming part, or carried out for the purposes, of the authorised development and the words “commencement” and “commenced” are to be construed accordingly;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental information” means the Environmental Statement and any information constituting “environmental information” as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 relied upon by the Secretary of State in reaching a reasoned conclusion on the significant effects of the authorised development on the environment pursuant to regulation 21(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017;

“Environmental Statement” means the document certified as such by the Secretary of State under article 9 (Certification of plans, etc.);

“existing generating station” means the generating station authorised by the TCPA permission which is being constructed within the area shown edged red on the plan entitled “Existing Generation Station Plan” certified as such by the Secretary of State under article 9 (Certification of plans, etc.);

“extended generating station” means the existing generating station as modified by the carrying out of the authorised development;

“group company” means in relation to the undertaker, the undertaker, any subsidiary or subsidiary undertaking or any holding company or parent undertaking from time to time of the undertaker, and any subsidiary or subsidiary undertaking from time to time of a holding company or parent undertaking of the undertaker;

“holding company” shall have the meaning given in the 2006 Act;

“maintain” includes inspect, upkeep, repair, adjust, alter, refurbish, clear, remove or reconstruct, replace and improve, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental information, and any derivative of “maintain” is to be construed accordingly;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“relevant planning authority” means Essex County Council and its statutory successors as waste planning authority within the meaning of the 1990 Act;

“subsidiary” shall have the meaning given in the 2006 Act;

“TCPA permission” means—

(a) the planning permission granted by Essex County Council with reference ESS/39/23/BTE dated 26 January 2024; or

(b) any planning permission granted by the relevant planning authority pursuant to planning application ESS/02/22/BTE,

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(a) 2008 c. 29.

and 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 and any non-material amendments under Section 96A of the 1990 Act);

“undertaker” means Indaver Rivenhall Limited (company number 13020091) or the person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order);

“work” means a work identified as part of the authorised development in Schedule 1 (Authorised Development);

“Work No. 1” means the work described as such in Schedule 1 (Authorised Development);

“Work No. 2” means the work described as such in Schedule 1 (Authorised Development);

“works plan” means the plan certified by the Secretary of State as such under article 9 (Certification of plans, etc.); and

“working day” means Monday to Friday excluding bank holidays and other public holidays.

(2) In this Order, the expression “includes” or “include” is to be construed without limitation.

## PART 2

### Principal powers

#### **Development consent granted by the Order**

3. Subject to the provisions of this Order, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

#### **Authorisation of the operation of the extended generating station**

4. The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order as part of the extended generating station.

#### **Power to maintain the authorised development**

5. The undertaker may at any time maintain the authorised development, except to the extent that this Order provides otherwise.

#### **Compliance with the TCPA permission and requirements**

6.—(1) The TCPA permission and the requirements set out in Schedule 2 of this Order shall apply to the carrying out of the authorised development and to the operation of the extended generating station as if both were authorised by the TCPA permission, and all details, plans or other matters approved by the relevant planning authority pursuant to conditions of the TCPA permission prior to or following the date of this Order shall apply accordingly.

(2) The carrying out of the authorised development and the operation of the extended generation pursuant to this Order will not prevent the carrying out of development pursuant to the TCPA permission.

#### **Benefit of the Order**

7. Subject to article 7 (Consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

#### **Consent to transfer the benefit of Order**

8.—(1) Subject to paragraph (3) the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and/or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except paragraphs (5) and (6), shall include references to the transferee or lessee.

(3) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (1)—

- (a) the benefit transferred or granted (“the transferred benefit”) shall include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of powers under this article, except where the transferee or lessee is the holder of a licence under section 6 of the 1989 Act or is a group company.

(5) Where the consent of the Secretary of State is not required under paragraph (4) the undertaker must provide written notification to the Secretary of State and the relevant planning authority at least 14 days prior to transferring and/or granting any benefit pursuant to this article.

(6) A notice required under paragraphs (4) must—

- (a) state—
  - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
  - (ii) the date on which the transfer will take effect;
  - (iii) the provisions to be transferred or granted;
  - (iv) the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (b) be accompanied by a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

## PART 3

### Miscellaneous and general

#### **Certification of plans, etc.**

**9.**—(1) The undertaker must, as soon as practicable after the date on which this Order is made, submit to the Secretary of State copies of—

- (a) works plan;
- (b) Environmental Statement;
- (c) Existing Generation Station Plan;
- (d) Indicative Design and Location of Work No 1 and Work No 2 Plan; and

(e) TCPA permission

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Arbitration**

**10.**—(1) Any difference under any provision of this Order, unless otherwise agreed in writing between the parties, shall be referred to and settled by a single arbitrator to be agreed between the parties within 14 days of receipt of a notice of arbitration or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order shall not be subject to arbitration.

### **Service of notices**

**11.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978 (a) (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or



any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Signed by Authority of the Secretary of State for Business, Energy and Industrial Strategy

	<i>Name</i>
Address	Department for Energy Security and Net Zero
Date	

## SCHEDULE 1 Ref

### Authorised Development

#### **In the County of Essex**

**1.** A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act—

- (a) Work No.1 – an extension to the existing generating station comprising mechanical modifications to the actuated steam turbine inlet control valves to allow steam capacity to be increased, with the effect that the extended generating station will have a gross installed generating capacity of over 50MW; and
- (b) Work No.2 – an extension to the existing generating station comprising the installation and commissioning of unrestricted actuated steam turbine inlet control valves with a capacity of over 50MW, with the effect that the extended generating station will have a gross installed generating capacity of over 50MW.

## SCHEDULE 2 Ref

### Requirements

#### **Work No. 1 or Work No. 2**

**1.** The undertaker may only carry out either Work No. 1 or Work No. 2, and having begun either work may not carry out the other.

#### **Commencement of the authorised development**

**2.—(1)** The authorised development must commence within five years of the date on which this Order comes into force.

(2) The undertaker shall serve notice to the relevant planning authority 5 working days prior to commencement, and shall confirm in that notice whether the undertaker is carrying out Work No. 1 or Work No. 2.

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Indaver Rivenhall Limited (referred to in this Order as the undertaker) to construct an extension to an energy from waste generating station at Rivenhall, Essex, previously authorised by planning permission under the 1990 Act, and to operate the extended generating station at a capacity of over 50 MW.