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Dear Carly Vince

PLANNING ACT 2008

APPLICATION FOR DEVELOPMENT CONSENT FOR THE RIVENHALL INTEGRATED WASTE MANAGEMENT FACILITY AND ENERGY CENTRE SCHEME

1. Introduction

1.1. I am directed by the Secretary of State for Energy Security and Net Zero ("the Secretary of State") to advise you that consideration has been given to the Examining Authority's ("ExA") report dated 2 October 2024. The ExA consisted of one examining inspector, Jonathan Manning. The ExA conducted an Examination into the application submitted on 10 November 2023 ("the Application") by Indaver Rivenhall Limited ("the Applicant") for a Development Consent Order ("DCO") ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Rivenhall Integrated Waste Management Facility and Energy Centre Scheme ("the Proposed Development"). The Application was accepted for Examination on 8 December 2023. The Examination began on 9 April 2024 and closed on 30 July 2024. The Secretary of State received the ExA's Report on 2 October 2024.

1.2. The Proposed Development is above the threshold for which development consent is required under the 2008 Act, increasing the capacity of the existing consented development (under the Town and Country Planning Act 1990 (TCPA)) under planning permission ESS/37/08/BTE (as amended) (the "IWMF TCPA Permission") from 49.9MW to over 50MW by carrying out one of two internal engineering works:

- 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. The Application does not seek powers of compulsory acquisition or temporary possession.

1.4. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website[1] is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in Chapters 3 and 4 of the ExA Report, and the ExA's summary of conclusions and recommendation is at Chapter 6. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"].

2. Summary of the ExA's Report and Recommendation

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

- The principle of the development and need
- Climate change and greenhouse gases
- Noise
- Other planning matters

2.2. The ExA concluded that the Proposed Development meets the tests in s104 of the 2008 Act and recommended that the Secretary of State should make the Order in the form attached at Appendix C of the ExA's Report [ER 6.3.1].

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

3. Summary of the Secretary of State's Decision

3.1. Section 104(2) of the 2008 Act requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement ("NPS"). Subsection (3) requires that the Secretary of State must decide the application in accordance with the relevant NPSs except to the extent that one or more of subsections (4) to (8) apply.

3.2. The Secretary of State has considered the above matters, the ExA's Report, and all other material considerations, all of which are dealt with as appropriate in this decision letter. The Secretary of State has also had regard to the Local Impact Reports ("LIRs") submitted by Essex County Council ("ECC") [REP1-019] and Braintree District Council ("BDC") [REP1-016], environmental information as defined in regulation 3(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations"), and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act including relevant policy set out in the NPS for Energy ("NPS EN-1" (July 2011)) and NPS for Renewable Energy Infrastructure ("NPS EN-3" (July 2011)). A revised suite of energy NPSs were first published on 22 November 2023 and came into force on 17 January 2024. NPS EN1 (January 2024) sets out that the 2011 suite of NPSs would apply to any application accepted for examination before designation of the 2024 amendments and the 2024 amendments would apply to applications accepted for examination after the designation of NPS of 2024. However, EN-1

[1] https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010138

(January 2024), asserts that the 2023 suite of NPSs can be important and relevant considerations for decision making process for applications accepted for examination before the 2024 amendments. The ExA report refers to the 2024 NPSs and states that they are important and relevant considerations in the decision-making process for the application [ER 2.3.2]. Therefore, the Secretary of State has had due regard to the 2024 NPSs, specifically EN-1, Overarching National Policy Statement for Energy (January 2024) and EN-3, National Policy Statement for Renewable Energy Infrastructure (January 2024).

3.3. The Secretary of State has considered all representations received. There were 13 Relevant Representations ("RRs") made in respect of the Application by statutory authorities, public bodies, members of public, a non-governmental organisation and a government agency.

3.4. On 16 October 2024, the Secretary of State issued a letter ("a clarification letter") requesting the Applicant to provide a reply to the representation made by ECC [REP5-007] that was submitted at deadline 5 (the last deadline) of the Examination which resulted in the Applicant being unable to comment[2]. In addition, the Applicant was asked to provide clarification regarding the energy capacity, the definition of 'Consented Scheme' and the proposed work options. A response was received from the Applicant on 25 October 2024[3]. The Secretary of State issued a second clarification letter on 27 November 2024 in which the Applicant was requested to provide confirmation that a particular plan submitted with the application is the correct plan to be certified as detailed in the draft Development Consent Order (dDCO) submitted[4]. The Applicant provided a response on 3 December 2024[5].

3.5. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the public benefits associated with the Proposed Development outweigh potential adverse impacts, and that development consent should therefore be granted. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting consent for the proposals in the Application.

3.6. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the EIA Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

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[2] Secretary of State – Clarification letter published on 16 October 2024 - https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010138/EN010138-000338-Consultation%20Letter%20-%20Rivenhall%20IWMF%20and%20Energy%20Centre%20Scheme_Redacted.pdf

[3] Response to the Secretary of State's letter dated 25 October 2024 - https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010138/EN010138-000339-Applicant%20response%20to%20SoS%20Request%20for%20Information%2025.10.2024.pdf

[4] Secretary of State – Clarification letter published on 27 November 2024 - https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010138/EN010138-000340-Rivenhall%20Consultation%20Letter%20-%2027.11.24.pdf

[5] Response to the Secretary of State's letter dated 3 December 2024 - https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010138/EN010138-000341-Applicant%20response%20to%20SoS%20Request%20for%20Information%2003112024_Redacted.pdf

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

4.1. The Secretary of State has considered the ExA's Report and all other material considerations. This includes RRs submitted to the ExA in respect of the Application. Written Representations ("WR"), responses to questions and oral submissions made during the Examination were also taken into account by the ExA. The Secretary of State has had regard to the LIR submitted by ECC and BDC, environmental information as defined in regulation 3(1) of the EIA Regulations, and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act including relevant policy set out in the NPS for Energy ("NPS EN-1" (July 2011)), NPS for Renewable Energy Infrastructure ("NPS EN-3" (July 2011)), Overarching National Policy Statement for Energy "(EN-1"(January 2024)) and NPS Renewable Energy Infrastructure ("EN-3" (January 2024)).

4.2. The Energy White Paper, *Powering Our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs, designated in 2011, were not being suspended in the meantime. Draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 ("the 2024 NPSs"). The ExA took into consideration NPS EN-1 and EN-3 published in 2011 and in addition had regard to Overarching National Policy Statement for Energy "(EN-1" (January 2024)) and NPS Renewable Energy Infrastructure ("EN-3" (January 2024)) in the decision making process of this application [ER 2.3.1 - 2.3.3].

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

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

a. Principle of the Development (great positive weight) [ER 3.2.33].

b. Climate Change and Greenhouse Gases (little positive weight) [ER 3.3.27]

c. Noise (neutral weight) [ER 3.4.34].

d. Other Planning Matters (neutral weight) [ER 3.5.11].

4.5. The paragraphs below set out the Secretary of State's considerations and provide further explanation of the Secretary of State's conclusions.

<u>Energy Capacity</u>

4.6. The Applicant's dDCO [APP-013] submitted with the application would allow for energy generation over 50MW without a capacity cap, and this would apply to both options. The ExA noted that the Explanatory Memorandum (EM) sets out that defining the capacity of a generating station as 'over 50MW' rather than setting a cap on capacity is precedented by two recent solar DCOs: Little Crow Solar Park Order 2022 and The Cleve Hill Solar Park Order 2020. The ExA stated that the EM set out that this approach recognised that the level of electrical output of a generating station does not affect its environmental impacts [ER 3.2.17].

4.7. The ExA noted ECC's observation in the LIR that the Proposed Development has the potential to generate electricity greater than 65MW and therefore since capacity over 65MW has not been assessed in the Environmental Statement (ES), a cap of 65MW would be required in the dDCO. The ExA noted that the Applicant provided the following justification for their position and listed points on how limiting the generation capacity to 65MW would not be beneficial which included the following:

- There is no legal requirement for all assumptions 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 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.

4.8. The ExA noted that "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" [ER 3.2.22].

4.9. The ExA referred to points raised by ECC on the application of the cap to the Proposed Development, specifically that calorific content of waste and weather conditions could lead to an increase of energy generation of over 65MW and therefore questioned if it was possible to impose a 65MW average cap. The Applicant proposed that the Secretary of State should impose a cap which states "up to 65MW at an ambient air temperature of 15degC" and that similar wording has been proposed for the North Lincolnshire Green Energy Park dDCO which is still awaiting determination. ECC was concerned that this wording was "vague, imprecise and unenforceable" and that this could allow energy over 65MW being generated for 6 months of the year due to the weather in Essex [ER. 3.2.23-3.2.25]. The ExA noted ECC's response was submitted at the last deadline of the Examination (Deadline 5) and that consequently the Applicant did not have the opportunity to respond [ER 3.2.24 - 3.2.25].

The ExA's findings

4.10. The ExA noted that controls associated with the existing consent would also apply to the Proposed Development through the dDCO. This included limits to waste processed at the facility, the number of HGV movements, and noise level limits at noise sensitive receptors.

The ExA noted that the Environmental Permit (EP) would also control emissions. The ExA accepted the Applicant's view that if energy generated would be over 65MW, there would unlikely be any significant or additional adverse effects on the surrounding area or sensitive receptors [ER 3.2.27].

4.11. The ExA noted ECC's concerns regarding indirect negative air quality and noise effects. The ExA stated these factors would only be relevant if a new larger turbine was being used or a greater level of waste was being processed and this would not apply to the Proposed Development due to physical constraints and existing controls. The ExA noted a change to a larger turbine or greater amount of waste processed would require additional consent, where the impacts of these would be considered [ER 3.2.28].

4.12. The ExA acknowledged that the Slough Multifuel Extension is a similar project to the Proposed Development and that a cap was imposed by the Secretary of State. The ExA stated the Proposed Development was considered on its own specific circumstances and merits, and concluded that having had regard to all matters raised and given the specific circumstances of the case, particularly the strict planning conditions of the existing consent, there is no need to impose a maximum energy generation cap within the DCO, and doing so without good reason would be contrary to NPS EN-1 [ER 3.2.29 – ER3.2.31].

The Secretary of State's consultation

4.13. The Secretary of State sought a response to ECC's comments through the Clarification Letter and asked the Applicant to respond to ECC's Deadline 5 representation. The Applicant responded that the energy cap issue was addressed throughout the Examination and its position was detailed in the Deadline 4 Covering Letter [REP4-003], reiterating these points and signposting each point (summarised below).

4.14. The Applicant referred to its response to the ExA's written question Q1.5.2 of ExQ1 in [REP1-011]. The Applicant stated that the EfW plant would have a generating capacity between 60 and 65MW and the turbine to be installed was designed to be 62.37MW generation over 65MW was unlikely to occur and if it did would be unlikely to result in significant effects on the environment beyond those assessed in the ES. The Applicant stated that operational vibration effects of the EfW plant if it had a generation capacity over 65MW were not assessed as part of the ES but would still result in negligible impact which would require compliance monitoring with the TCPA permission and there would be a negligible effect on climate change that would not require mitigation or monitoring. The Applicant considered a generation cap is neither necessary nor appropriate to control the environmental effects and these could be controlled by the dDCO and existing conditions in the TCPA Planning Permission. The Applicant further stated that an energy cap is not supported by relevant policy, guidance and legislation, referring to paragraph 3.2.3 of NPS EN1(2024) which states that the 'It is not the role of the planning system to deliver specific amounts or limit any form of infrastructure covered by this NPS'. In addition, the Applicant states the urgent need to increase the amount of energy derived from non-fossil fuels is made throughout NPS EN-1(2024). The Applicant therefore stated the benefit of imposing an energy cap was not clear.

4.15. The Applicant referred to Table 8 of its Comments on Deadline 1 Submissions [REP2-004] in response to ECC's comments which stated that "This DCO therefore, in the considered view of ECC, must *set a limit for power generated within the DCO to be no more than 65MW of power output as failing to do so, in the Applicants [sic] own words "would require a significant change to the consented building envelope.""* The Applicant stated that ECC's comment was a quote from the ES which in full stated that "to generate electricity greater than 65MW a larger turbine and generator is likely to be required" and thereby a larger

turbine would require changes to the consented building. The Applicant stated the use of the word 'likely' was deliberate and to signify that there is not total certainty on what would be required to generate electricity [REP2-004]. In addition, the Applicant set out that technology improvements may lead to greater electricity generation with the same amount of fuel throughput and this is why it sought flexibility in the dDCO. The Applicant also referred to its response in Agenda item 7i of the Issue Specific Hearing on 04 June (summarised in document REP3-012) which made similar points to comments in the Deadline 1 submission; physical alteration to the existing development would be required if it wished to increase the generation capacity to over 65MW. The Applicant also stated that the turbine's design point would be an average power of 63.2MW which would fluctuate and on cold days could exceed 65MW.

4.16. The Applicant also referred to Appendix 3 of its Technical Note on Energy Generation Cap and Alternatives [REP3-001]. The Applicant highlighted that the ES provided a consideration of alternatives and the alternative scenarios in which the IWMF would reliably and consistently generate greater than 65MW would require a larger turbine and generator, with associated changes to the consented building or increased fuel throughput or both factors to be present. Furthermore, for these two scenarios to occur would require amendments to the TCPA consented scheme. The Applicant detailed that there are a combination of factors that influence the amount of power generated. The first factor identified was climatic conditions, specifically external temperature, and it was stated the plant would run more efficiently on cold days compared to warmer days. The second factor identified was the calorific value of the fuel used for combustion. The Applicant stated that it would be theoretically possible for the EfW to generate more than 65MW momentarily when these two factors are at their peak. If this was to occur there would be no additional effects than already assessed as part of the application. The Applicant stated this would be because there would only be a temporary increase in electricity generation, and this would be de minimis. The turbine would not spin any faster but would operate more efficiently and all inputs into the assessed noise model would remain the same, and as such the operational noise effects would be negligible. The Applicant further highlighted that the scenario is highly unlikely, see paragraph 4.13 above which details the approach taken by Applicant in response to Secretary of State's clarification letter.

4.17. In response to the energy cap question in the Clarification Letter, the Applicant considered that the Proposed Development does not make any changes to the inputs associated with the energy from waste process and all other operational inputs and outputs are controlled in one way or another by existing consents and permits which are:

i. Condition 2 of the IWMF TCPA Permission, which controls the external appearance of the IWMF and therefore the size of the turbine.

ii. Condition 4 of the IWMF TCPA Permission, which controls the number of permitted vehicle trips.

iii. Condition 29 of the IWMF TCPA Permission and the Environmental Permit issued by the Environment Agency (Permit Number EPR/FP3335YU; Variation Permit number EPR/FP3335YU/V002; and Transfer Permit number EPR/CP3906LP), which controls the amount of waste that can be processed and incinerated at the Site

iv. Condition 38 of the IWMF TCPA Permission, which controls the permissible noise levels.

v. The Environmental Permit issued by the Environment Agency (Permit Number EPR/FP3335YU, Variation Permit number EPR/FP3335YU/V002, and Transfer

Permit number EPR/CP3906LP), which controls permissible emissions from the stack of the facility.

4.18. The Applicant stated that to achieve a consistent higher electrical output changes would be required to the planning permission and that environmental effects would be assessed through the relevant application and authority. The Applicant considered a cap unnecessary as it would duplicate controls contained within the TCPA permission and Environmental Permit granted for the IWMF. The Applicant stated that the imposition of a 65MW limit would require the installation of a mechanical cap on the valve to limit the amount of steam that can reach the turbine to avoid a breach of the Order.

4.19. The Clarification Letter asked the Applicant for the projected maximum energy output of the Proposed Development taking into account all factors that would have an effect on the energy output. The Applicant replied that the projected maximum energy output of the IWMF could be 69.379MW in the following scenario:

i. The calorific value of the fuel is unusually high;

ii. The plant is run at 110% design capacity;

iii. The ambient temperature is -10 degrees Celsius;

iv. No heat is put towards plume visibility abatement.

4.20. The Applicant added the above scenario would be rare due to two factors: condition 17 of IWMF TCPA Permission requires there to be no visible plume from the stack, and a significant amount of heat would be required to achieve this.

4.21. The Applicant indicated that were preparing an application to ECC to amend the conditions attached to the IWMF TCPA Permission, including condition 17 to allow a visible plume so that the plant can be more energy efficient which it considers is in line with Government policy. The Applicant stated the heat would be directed to third-party large-scale greenhouses adjacent to the IWMF. The Applicant stated if amendments were allowed the IWMF would produce on average less than 65MW. It is noted Applicant highlighted even though the average generation would be less than 65MW, the amendments based on theoretical terms would allow the IWMF to consistently generate more than 65MW and that the environmental impacts of the proposals would be assessed as part of that separate application.

The Secretary of State's conclusion

4.22. Paragraph 3.2.3 of NPS EN-1 (2011) states that the need for new large-scale energy infrastructure will often be urgent and as such substantial weight to considerations of need should be given. In addition, paragraph 3.3.4 of NPS EN-1 (2011) states "There are benefits of having a diverse mix of all types of power generation. It means we are not dependent on any one type of generation or one source of fuel or power and so helps to ensure security of supply." Paragraph 3.2.3 of NPS EN-1 (2024) identifies energy from waste facilities as playing a role in decarbonisation of the power sector. Paragraph 3.1.19 of NPS EN-1 (2024) states the need for "a diverse mix of electricity infrastructure to come forward" to "secure, reliable, affordable, and net zero consistent system".

4.23. Paragraph 3.3.10 of NPS EN-1 (2011) sets out that the to meet the UK's need to diversify and decarbonise electricity generation "increasingly it may include plant powered by the combustion of biomass and waste". Paragraph 2.5.2 of NPS EN-3 (2011) states that "The

recovery of energy from the combustion of waste, where in accordance with the waste hierarchy, will play an increasingly important role in meeting the UK's energy needs". In addition, paragraph 2.7.2 of NPS EN-1 (2024) states that "Energy from Waste (EfW) also plays an important role in meeting the UK's energy needs."

4.24. Paragraph 4.1.17 of NPS EN-1 (2011) sets out that requirements should only be imposed "that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects." Paragraph 4.1.16 of NPS EN-1 (2024) states the same in terms of imposition of requirements. Paragraph 4.2.4 of NPS EN-1 (2011) states that when considering a proposal the IPC should "satisfy itself that likely significant effects, including any significant residual effects taking account of any proposed mitigation measures or any adverse effects of those measures, have been adequately assessed".

4.25. The Secretary of State agrees with the ExA that energy generation greater than 65MW is likely to be temporary and in any case unlikely to give rise to any significant or additional adverse effects on the surrounding area or sensitive receptors. The Secretary of State is satisfied that any likely significant effects have been adequately assessed.

4.26. The Secretary of State agrees with the ExA that the conditions imposed by the IWMF TCPA permission on the existing plant would control environmental impacts of the Proposed Development and that the dDCO would impose similar requirements to mitigate against environmental impacts from the Proposed Development. The Secretary of State agrees with the ExA that the existing EP will control emissions. The Secretary of State considers that not imposing an energy cap will be in line with Paragraph 4.10.3 of NPS EN-1 (2011) and paragraph 4.12.10 of NPS EN-1 (2024) which state that development consent should "complement but not seek to duplicate" the work/controls of "the relevant pollution control regime and other environmental regulatory regimes".

4.27. For the reasons given above, the Secretary of State agrees with the ExA that there is no need to impose a maximum energy generation cap within the DCO and that imposing an energy capacity cap would also run contrary to NPS EN-1 (2011) and NPS EN-1 (2024) as it is not necessary or reasonable in the circumstances.

Climate Change and Greenhouse Gases

4.28. The ExA considered that the scope of the Applicant's assessment of climate change and GHG emissions includes direct and indirect GHG emissions and the displacement of GHG emissions from other forms of power generation. The Applicant considered that GHG emissions have a global impact, rather than a national or local impact and therefore the study area for the assessment considers the impact of the Proposed Development on net global emissions [ER 3.3.7 - 3.3.8].

4.29. The Applicant calculated GHG emissions according to the Institute of Environmental Management and Assessment (IEMA) methodology 'Environmental Impact Assessment Guide to: Assessing Greenhouse Gas Emissions and Evaluating their Significance, February 2022' guidance ("IEMA Guidance") and the methodology in the UK Government guidance 'Energy recovery for residual waste – a carbon-based modelling approach, 2014'. The baseline for the assessment is the 2025 Future Baseline Scenario [APP-032]. In addition, only scope 2 emissions were assessed with the calculation being 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. [ER 3.3.9, 3.3.11, 3.3.12].

4.30. Paragraph 7.4.23 of the ES [APP-032] states under the IEMA Guidance "the crux of significance is not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a science-based 1.5°C transition towards net zero which the UK government has committed to achieve by 2050".

4.31. The Applicant concludes that there would be an overall negligible beneficial effect and that no mitigation is required for the Proposed Development. The ExA states the Applicant reached this conclusion on the basis that the change in carbon emissions compared to the future baseline is negative. However, the Proposed Development does not actively reverse the risk of climate change, as it does not remove carbon from the atmosphere [ER 3.3.13].

4.32. The Applicant stated that no mitigation is required due to the development having no adverse effects and the Government's decarbonisation readiness consultation sets out that plants under construction should be exempt from the requirement for carbon capture and storage (CCS) [ER 3.3.23].

4.33. By the last deadline of the Examination, a Statement of Common Ground (SoCG) was signed between the Applicant, ECC and BDC in which all matters regarding climate change and GHG emissions were agreed except for the requested mitigation by ECC [ER 3.3.18]. The ExA note ECC acknowledged no mitigation plan was required but this had been requested by County Council members and the Site Liaison Group [ER 3.3.24].

4.34. The ExA was satisfied the ES methodology is a robust assessment of the effects of the Proposed Development on climate change and GHG emissions. The ExA determined that an assessment covering construction, operation, and decommissioning phases would not be proportionate in relation to the Proposed Development. The ExA acknowledged ECC and BDC's concerns on local impacts and this affecting the ability to plan for Net Zero. The ExA stated once the IMWF is operational emissions figures would need to be provided to the Environment Agency's pollution inventory and this would enable the councils to plan for net zero in their local areas [ER 3.3.19 – 3.3.20].

4.35. The ExA stated once the IMWF is operational emissions figures would need to be provided to the Environment Agency's pollution inventory and this would enable the councils to plan for net zero in their local areas. The ExA noted that the IEMA Guidance 'Assessing Greenhouse Gas Emission and Evaluating their Significance, 2022' advises that the receptor for GHG emissions is the global atmosphere [ER 3.3.21].

4.36. 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. In addition, the ExA accepts the findings of the assessment by the Applicant that "there would be a negligible beneficial effect on climate change and GHG emissions" and therefore the Proposed Development complies with NPS EN-1 and NPS EN-3 of 2011 and 2024 and as such ascribes this matter little positive weight [ER 3.3.26 - 3.3.27].

4.37. The Secretary of State notes ECC and BDC's concerns but considers these have been addressed and agreed upon following the submission of the SoCG between the relevant parties. The Secretary of State notes that ECC still requested a mitigation plan, but agrees

with the ExA and ECC that this is not required. The Secretary of State considers that the Applicant has adequately demonstrated that the scale of the Proposed Development would have a negligible beneficial effect on climate change and GHG emissions and complies with NPS EN-1(2011) and NPS EN-1 (2024). The Secretary of State agrees with the ExA's weighting of little positive weight on this matter.

Noise

4.38. ECC raised concerns regarding the Applicant's noise assessment and the approach taken, stating that there has been no consideration of relevant current guidance, BS4142:2014+A1:2019, in demonstrating potential impacts and that the assessment is based on noise limits from the 2010 TCPA planning consent. ECC undertook an assessment which demonstrated a potential adverse impact at the Noise Sensitive Receptor (NSR) known as The Lodge. ECC considered that insufficient information was provided to determine the veracity of the noise level predictions provided in the ES. In addition, ECC considered that the dDCO does not require the Applicant to monitor noise levels in regards to amenity [ER 3.4.12].

4.39. The ExA noted the Applicant's response to ECC's comments and its assertion that the assessment methodology remained in-line with the consented scheme to allow as much of a like-for-like assessment as possible. The ExA noted the Applicant is currently preparing a separate Section 73 application to vary conditions attached to the IWMF TCPA Permission which includes an updated noise assessment in accordance with BS4142:2014+A1:2019 and Article 6 of the dDCO would require it to comply with any amended noise conditions attached to future Section 73 permissions. In addition, the Applicant stated that the Proposed Development would not generate more noise than the consented scheme. The ExA noted that ECC reiterated the potential negative impacts that could occur if new standards were not applied to the Proposed Development and these matters remained unresolved by the end of the Examination [ER 3.4.15-3.4.16].

4.40. The ExA considered 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, the approach adopted in the ES is appropriate. The ExA also considered that "it would be disproportionate to consider the entire IWMF in a new assessment". The ExA accepted 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. [ER 3.4.15-3.4.17].

4.41. The ExA noted ECC's concerns regarding the veracity of the noise level predictions in the ES, the Applicant's ES Technical Memorandum [REP4-009] to address these concerns, and that ECC's concerns regarding the source of the data remained unresolved at the end of the Examination. The ExA noted that Hitachi Zosen Inova (HZI), the Applicant's noise consultant has significant experience in the construction of EfW plants and is in good standing to advise on likely source noise data from the Proposed Development. In addition, the ExA noted that HZI had a contractual obligation to deliver the facility in accordance with the conditions of the existing IWMF TCPA Permission for the plant [ER 3.4.20-3.4.25].

4.42. The Secretary of State notes that the ExA concluded that the noise effects from the Proposed Development have been appropriately and proportionately assessed and are in line with Paragraphs 5.11.4 and 5.11.6 of NPS EN-1. The Secretary of State notes that the ExA assigned neutral weighting to noise related matters [ER 3.4.32 -3.4.33].

4.43. The Secretary of State agrees with the ExA that the noise effects from the Proposed Development have been appropriately and proportionately assessed. The Secretary of State agrees with the ExA's findings that there would only be negligible operational and cumulative adverse effects on the surrounding NSRs from noise. The ExA ascribed neutral weighting on this matter and the Secretary of State agrees with this. The Secretary of State agrees with the ExA that the conditions of the IWMF TCPA Permission for the plant and DCO would sufficiently control noise levels form the construction and operation of the Proposed Development and complies with NPS EN-1 (2011) and NPS EN-1 (2024).

5. Habitats Regulations Assessment

5.1. This is a record of the Habitats Regulations Assessment ("HRA") that the Secretary of State has undertaken under the Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") in respect of the Proposed Development. For the purposes of these Regulations the Secretary of State is the competent authority.

5.2. The Habitats Regulations aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation ("SACs"). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas ("SPAs"). SACs and SPAs together form part of the UK's National Site Network ("NSN").

5.3. The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as "protected sites").

5.4. Regulation 63 of the Habitats Regulations provides that: *"….before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site's conservation objectives."*

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

5.5. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required (as the Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects ("LSE") cannot be ruled out, the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the protected site in view of its Conservation Objectives.

5.6. Where an adverse effects on integrity ("AEoI") of the site cannot be ruled out beyond all reasonable scientific doubt, regulations 64 and 68 of the Habitats Regulations provide for the possibility of a derogation which allows such plans or projects to be approved provided three tests are met:

- there are no feasible alternative solutions to the plan or project which are less damaging to protected sites;
- there are imperative reasons of overriding public interest ("IROPI") for the plan or project to proceed; and
- compensatory measures are secured to ensure that the overall coherence of the NSN is maintained.

5.7. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity of protected sites unless he chooses to continue to consider the derogation tests as above. The complete process of assessment is commonly referred to as a HRA.

5.8. There are no protected sites within 10km of the Proposed Development. The closest protected site is the Abberton Reservoir SPA and Ramsar site, approximately 12km to the southeast of the Proposed Development.

5.9. The Applicant did not provide a Habitats Regulations Assessment Report with the Application. In their Scoping Report [APP-039], the Applicant noted that the Proposed Development comprises the installation of internal equipment to increase the electrical efficiency of the facility and considered it unlikely that the Proposed Development would give rise to materially different environmental effects to the existing TCPA consent. The Applicant emphasised that the Proposed Development would be an internal modification and not result in any change to the building envelope or external landscaping. The Applicant also noted that the Proposed Development would not result in any change in vehicle trips, the combustion of waste, or the treatment of flue gases associated with the operation of the Proposed Development relative to the existing TCPA consent.

5.10. The Planning Inspectorate Scoping Opinion [APP-040] agreed that ecological impacts and ecological risk assessments can be scoped out of further assessment. Attached to the Planning Inspectorate's Scoping Opinion was also the EIA Scoping Opinion issued by Natural England (NE) on 18 May 2023, in which NE confirmed that the Proposed Development is unlikely to adversely impact any European or internationally designated nature conservation sites.

5.11. The ExA was satisfied that the Proposed Development is one that would not give rise to the potential for likely significant effects on protected sites and thus did not need to be subject to a HRA [ER 2.7.2]. No Interested Parties (IPs) disputed this during the Examination.

5.12. The Secretary of State has carefully considered the information before and during the Examination, including the ES, representations made by IPs, and the ExA's Report. Given the internal nature of the Proposed Development, as well as the significant distance between the Proposed Development and protected sites, the Secretary of State is content to adopt the rationale of the ExA and agrees that the Proposed Development, either alone or in-combination with other plans or projects, is not one that would give rise to the potential for

likely significant effects on protected sites. The Secretary of State therefore considers that no further tests set out in the Habitats Regulations are required.

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

6.1. The ExA concluded that the Proposed Development meets the tests in s104 of the 2008 Act and recommended that the Secretary of State makes the Order [ER 6.3.1].

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

a) Principle of the Development (great positive weight) [ER 3.2.33].

b) Climate change and Greenhouse Gases (little positive weight) [ER 3.3.27]

c) Noise (neutral weight) [ER 3.4.34].

d) Other Planning Matters (neutral weight) [ER 3.5.11].

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

6.4. For the reasons given in this letter, the Secretary of State concludes the benefits of the Proposed Development outweigh its adverse impacts. The Secretary of State does not consider that the potential adverse impacts of the Proposed Development (as mitigated by the terms of the Order) outweigh the need for the Proposed Development. Consequently, the Secretary of State concludes that development consent should be granted for the Rivenhall Integrated Waste Management Facility and Energy Centre Scheme.

6.5. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the LIRs submitted by ECC and BDC, the 2011 NPSs, 2024 NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the Planning Act 2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

6.6. The Secretary of State has decided to make the Order granting development consent, including the modifications set out in section 8 of this document.

7. Other Matters

<u>Equality Act 2010</u>

7.1. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected

characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships[6]; pregnancy and maternity; religion and belief; and race.

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

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

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

Natural Environment and Rural Communities Act 2006

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

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

8. Modifications to the draft Order

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

1. The definition of "approved variation" has been inserted to confine any variation to the TCPA permission to one which does not give rise to any materially new or materially different environmental effects to those identified in the environmental information.
2. The definition of "authorised development" has been amended to refer to the plan entitled "Illustrative Plan" instead of 'Indicative Designs and Locations of Work No 1 and 2', following confirmation from the Applicant on 3 December 2024 of the same.

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

3. The definition of “Environmental Statement” has been amended to insert the text “and submitted with the application including all appendices thereto” for further clarification as to what document is being referred to.
4. The reference to variations in the definition of “TCPA permission” was amended to refer to the new definition of “approved variations” as opposed to “any other variations thereto whether granted before or after the date of this order…”. This is because the impacts of the proposed development in the DCO have been assessed on the basis of an underlaying planning permission in the environmental information.
5. Article 8 (Consent to transfer the benefit of Order) has been amended to restrict when the provisions under the Order can be transferred or granted without the written consent of the Secretary of State, by removing the inclusion of a “group company” in paragraph 8(4).
6. Article 9(1)(d) (Certification of plans, etc.) has been updated to replace the reference to the ‘Indicative Designs and Locations of Work No 1 and 2’ plan with the ‘Illustrative Plan’ as the plan to be certified, following confirmation from the Applicant on 3 December 2024 of the same.

8.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interest of clarity and consistency and to achieve consistency with other DCOs

9. Challenge to decision

9.1. The circumstances in which the Secretary of State’s decision may be challenged are set out in Annex **A** to this letter.

10. Publicity for decision

10.1. The Secretary of State’s decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Yours sincerely,

David Wagstaff OBE

Head of Energy Infrastructure Development

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

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

https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010138

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

ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effects on Integrity
BDC	Braintree District Council
BESS	British Energy Security Strategy
CA	Compulsory Acquisition
CCS	Carbon Capture and Storage
DCO	Development Consent Order
dDCO	Draft Development Consent Order
ECC	Essex County Council
EIA	Environmental Impact Assessment
EP	Environment Permit
ES	Environmental Statement
ExA	The Examining Authority
GHG	Greenhouse Gas
HRA	Habitats Regulations Assessment
HZI	Hitachi Zosen Inova
IEMA	Institute of Environmental Management and Assessment
IP	Interested Party
IWMF	Integrated Waste Management Facility
LIR	Local Impact Report
LSE	Likely Significant Effect
MW	Megawatt
NE	Natural England
NPS	National Policy Statement
NPS EN-1	National Policy Statement for Energy
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure
NSN	National Site Network
NSIP	Nationally Significant Infrastructure Project
NSR	Noise Sensitive Receptor
PSED	Public Sector Equality Duty
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SoCG	Statement of Common Ground
SPA	Special Protection Area
TP	Temporary Possession
TCPA	Town and Country Planning Act 1990