The Infrastructure Planning Commission
Temple Quay House
Temple Quay
Bristol
BS1 6PN

t: 0303 444 5000
e: ipcenquiries@infrastructure.gsi.gov.uk

Date: 13 October 2011

The Planning Act 2008

Rookery South Resource Recovery Facility Order

Panel's Decision and Statement of Reasons

Panel's decision and statement of reasons in respect of an application for a Development Consent Order for a resource recovery facility that comprises an energy from waste electricity generating station with a gross electricity output of 65 MWe together with associated development including a materials recovery facility and other elements at Rookery South Pit, near Stewartby, Bedfordshire.

IPC Reference EN0100011

File Ref EN0100011
Rookery South Resource Recovery Facility

- The application, dated 4 August 2010, was made under s37 of the Planning Act 2008.
- The Applicant is Covanta Rookery South Limited.
- The application was accepted for examination on 26 August 2010.
- The examination of the application began on 18 January 2011 and was completed on 15 July 2011.
- The development proposed is a resource recovery facility that comprises an energy from waste electricity generating station with a gross electricity output of 65 MWe together with associated development including a materials recovery facility and other elements.

Summary of Decision: The Panel as the decision maker under s103 of the Planning Act 2008 has decided that development consent should be granted, and therefore proposes to make an Order under s114(1) of the Planning Act 2008.

Contents

1 Introduction 3
2 Procedural Decisions 6
3 The Application 8
4 Legal and Policy Context 12
5 The Main Matters - Findings and Conclusions 19
6 The Panel's Conclusion on the Case for Development 55
7 Compulsory Acquisition Matters 61
8 The Proposed Order and the s106 Agreement 89
9 Overall Conclusion and Decision 93
Appendix A – Obligations 95
Appendix B – The Examination 98
Appendix C – List of Documents and those Making Representations 101
Appendix D – The Development Consent Order 128
Appendix E – Abbreviations 170

1 INTRODUCTION

1.1 On 29 November 2010 a Panel of three Commissioners was appointed by the chair of the Infrastructure Planning Commission (IPC) to handle the application. The Panel comprised:

- Paul Hudson – lead member of the Panel;
- Andrew Phillipson – member of the Panel; and
- Emrys Parry – member of the Panel.

1.2 This document sets out in accordance with s116 of the Planning Act 2008 (the Act) the Panel's reasons for our decision to make an Order granting development consent for the proposal under s114 of the Act.

1.3 The proposed development for which consent is required under s31 of the Act comprises a generating station with a capacity of more than 50 megawatts (MW). It is within England and comprises a nationally significant infrastructure project (NSIP) as defined by s14 and s15 of the Act and associated development defined in s115 of the Act.

1.4 The application is EIA development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. It was accompanied by an environmental statement (ES) which in our view meets the definition given in Regulation 2(1) of these Regulations. Additional environmental information was supplied during the course of the examination. In reaching our decision, we have taken the environmental information as defined in Regulation 2(1) (including the ES and any other information on the environmental effects of the development) into consideration in accordance with Regulation 3(2) of these Regulations.

1.5 A preliminary meeting was held on 17 January 2011 at which the Applicant and all interested parties were able to make representations to the Panel about how the application should be examined. The Panel's procedural decision was issued on 21 January 2011. This set out our decision about how the application would be examined and the examination proceeded in line with this.

1.6 In addition to the consent required under the Act (which is the subject of this decision), the proposal is subject to the Environmental Permitting regime.[1] An application for an Environmental Permit (EP) for the energy from waste plant was submitted on the Applicant's behalf and accepted by the Environment Agency (EA) as duly made on 14 December 2010 (EA/3, Annex 2). Subsequently, a second application was submitted to the EA for an EP for the materials recovery facility. Both applications to the EA are separate from the application for development consent made to the IPC. At the time the

[1] Environmental Permitting (England and Wales) Regulations 2010.

examination closed on 15 July 2011, neither EP application had been determined.

Undertakings

1.7 During the course of the examination, a s106 Agreement under the Town and Country Planning Act 1990 was concluded between Covanta,[1] the owner of Rookery South Pit (O&H Q7 Ltd), Bedford Borough Council (BCC) and Central Bedfordshire Council (CBC).

1.8 A separate deed concluded on 8 July 2011 between Covanta and the Marston Vale Trust (MVT) repeats and adds more detail to Covanta's undertaking in the s106 Agreement to pay financial contributions to the MVT and sets out further undertakings made by the parties.

1.9 A unilateral undertaking dated 8 July 2011 in favour of the Stewartby Water Sports Club (SWSC) was also entered into by the Applicant. It commits the Applicant to erecting and maintaining two noise attenuation fences in the north-east corner of the SWSC site. It further commits the Applicant to use reasonable endeavours to maintain the existing access to the SWSC during the works and to not interfere with SWSC's use and enjoyment of the site during construction.

1.10 In this report 'resource recovery facility' ('RRF') is used to mean the proposal as a whole. 'Energy from waste' ('EfW') plant is used for the main plant, including the tipping hall, boiler house, turbine house, flue gas treatment area, stack and (external) cooling plant. 'Materials recycling facility' ('MRF') is used for the bottom ash storage and treatment area.

Structure of the Report

1.11 Chapter 2 summaries the main procedural steps taken during the examination. Chapter 3 sets out the main features of the proposed development. Chapter 4 summarises the policy context applicable to it. In Chapters 5 and 6, the Panel's findings and our conclusions in respect of each of the main considerations and on the development merits are set out. Chapter 7 deals with compulsory acquisition matters. Chapter 8 considers the representations made concerning the content of the proposed Order (including requirements). Chapter 9 sets out our overall conclusion that the Order should be made.

1.12 Appendix A summarises the contents of the obligations referred to in paras 1.7 to 1.9 above. The main 'events' occurring during the examination and the main procedural decisions taken by the Panel are listed in Appendix B. Appendix C lists the documents submitted

[1] The s106 Agreement was entered into by Covanta Rookery South Limited ('the Applicant') and Covanta Energy Limited. Both are referred to subsequently in this report as 'Covanta' (individually or jointly as the context requires).

by the Applicant and others in connection with the examination, with the references used subsequently in this report. It also contains a list of those parties making written and oral representations to the Panel. For the avoidance of any doubt, all representations properly made were duly considered and taken into account by the Panel before coming to our decision.

1.13 Appendix D contains the Development Consent Order (DCO) in the form that the Panel has decided it should be made, subject to consideration by the Secretary of State under s121 of the Act (see para 8.20 below). Appendix E contains a list of the main abbreviations used in this report.

2 PROCEDURAL DECISIONS

2.1 This chapter provides an overview of the main procedural decisions made by the Panel during the examination of the application. This includes information on the participation of the public in the examination.[1] In all cases the lead member of the Panel wrote as appropriate on behalf of the Examining Authority (ExA). A full chronological breakdown of the examination process is set out in Appendix B.

2.2 Following the preliminary meeting, the lead member of the Panel wrote to all interested parties on 21 January 2011 setting out the Panel's 'procedural decision'. This established the timetable for the examination, including the deadlines for submitting written representations, local impact reports, statements of common ground (SoCGs) and responses to our first round of questions contained in an Annex to the letter.

2.3 Additionally, the letter confirmed that an issue specific hearing would be held on 13 May 2011 to consider the drafting aspects of the draft DCO and requirements, and the proposed agreement between the Covanta and the local planning authorities under s106 of the Town and Country Planning Act 1990.

2.4 Following the receipt of written representations, the local impact reports, responses to the first round of questions and subsequent comments on these documents, the lead member of the Panel wrote to all interested parties on 11 April 2011 setting out the Panel's second round of written questions.

2.5 On 13 May 2011 the lead member of the Panel confirmed that additional issue specific hearings would be held on the following matters:

- **13 June:** Drafting aspects of the draft DCO and requirements, and the proposed s106 Agreement.
- **17 June (am):** The effect of the proposed development on the waste hierarchy.
- **17 June (pm):** The noise impact of early morning operations on the living conditions of residents (including campers at the SWSC) living near to the access routes proposed for heavy goods vehicles (HGVs) between the A421 and the site.
- **21 June:** Landscape, visual impact and design matters, including specifically whether the viewpoints considered in the ES are representative and the identification of any additional viewpoints that interested parties wanted the Panel to include in their site visit.

[1] Regulation 23 Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

- **22 June:** The impact of the development on the setting of heritage assets.

2.6 Following the receipt of several formal requests from interested parties wishing to be heard at an open floor hearing the lead member of the Panel formally confirmed in his letter of 7 June 2011 that such a hearing would be held, consisting of four sessions on 5 and 6 July 2011. Similarly, following the receipt of formal requests from affected persons, he confirmed in a separate letter dated 7 June 2011 that a hearing to consider the compulsory acquisition of land and interests would be held starting on 27 June 2011. The letter included a list of matters where cross-examination by the parties would be permitted.

2.7 In a third letter dated 7 June 2011, the Applicant was asked (i) to submit further documents to support the proposed parent company guarantee, and (ii) to provide further information in respect of four plots of land affected by a restrictive covenant.

2.8 Following the publication of the versions for approval of the suite of Energy National Policy Statements (NPSs), the lead member of the Panel wrote on 23 June 2011 to all interested parties. This was to give them the opportunity to submit written representations setting out any points made in their previous representations which they would have expressed differently had the finalised NPSs been available at the time. Comments on the representations made were invited through a further letter dated 8 July 2011.

2.9 The examination closed at 5.00pm on 15 July 2011.

3 THE APPLICATION

The Site and its Surroundings

3.1 The site for the proposed RRF is shown on the plans submitted as part of the application (principally DOC/2.4 and DOC/2.31). It comprises some 9.3 ha of land in the north-west quadrant of Rookery South Pit, near Stewartby, Bedfordshire, within the larger area of the Order land of approximately 130 ha shown on DOC/2.1.

3.2 This pit is one of two large former clay pits, Rookery North and Rookery South (together known as 'The Rookery'). They lie in the Marston Vale immediately to the south of Stewartby, between the Midland Main Line and the Marston Vale Branch Railway Line. An unexcavated area of clay separates the two pits. A further strip of unexcavated clay between the Rookery North Pit running alongside the eastern side of the Marston Vale Branch Railway Line currently provides the main access to the site.

3.3 The majority of Rookery South Pit, which has a total area of approximately 116 ha, lies some 10 to 20 m below the level of the surrounding land. It is bounded by steep clay banks and the base of the pit comprises a range of wetland habitats, including large areas of reed bed and several ephemeral pools. The central and western parts of Rookery North Pit (which lie outside the proposed development area) contain a large lake.

3.4 The nearest settlements to the site are Stewartby, which adjoins Rookery North, and Marston Moretaine, which lies some 1.4 km to the west of the site for the proposed RRF. Millbrook lies approximately 2.5 km to the south and the A421 trunk road, which links Bedford to the M1, runs approximately 2 km to the west. The Millennium Country Park occupies a site immediately to the west of the Marston Vale Branch Railway Line. Within the Country Park, the main administration and amenity buildings ('The Forest Centre') are situated some 800 m from the proposed RRF.

3.5 Planning permission for the restoration of Rookery South Pit to agriculture - the 'low level restoration scheme' (LLRS) – was granted in December 2010 (reference BC/CM/2000/08). The application for the DCO presumes that Phase 1 of the LLRS is completed before works to construct the RRF commence (DOC/6.1, Section 2.6), to be given effect by proposed Requirement 31, and it is on this basis that we have considered the application.

3.6 At the time of our site visit in July 2011 works to trap great crested newts and other reptiles on the site were underway, in accordance with a licence for these works granted by Natural England in connection with the LLRS (NE/3).

The Proposal

3.7 The application proposes the construction and operation of a RRF within the Rookery South Pit and includes several key elements. The main operations area (DOC/2.32) contains the EfW plant; a post treatment MRF; internal site roads and hard standing areas; parking; weighbridges; security gatehouse and boundary fencing. The EfW plant would be located in the western part of the main operations area, and the MRF in the eastern part.

3.8 The proposed EfW plant (Work No 1) is the NSIP itself and includes a tipping hall with access ramp, a refuse bunker, a boiler house, a flue gas treatment area and stack, administrative offices, a visitor centre/educational facility, a turbine hall, workshop and stores, air cooled condensers and a transformer compound. The nominal throughput of the proposed plant is expected to be 585,000 tonnes of residual waste per annum which would generate an average gross output of approximately 65 MWe (DOC/3.1, Section1).

3.9 The proposed MRF (Work No 2) would provide for the management of the incinerator bottom ash produced by the EfW plant. It would include an open ash/aggregate yard; buildings housing plant to separate co-mingled metals from the incinerator bottom ash and to grade the ash; a lagoon to collect and separate aqueous run-off from the area; an administration building; a weigh bridge; and a pump house.

3.10 The application also includes a number of other elements (Works Nos 3-9):

- transport infrastructure: comprising a new/improved access to the site from Green Lane (running approximately along the line of the existing access track) and improvements to Green Lane and the level crossing;
- utility connections: including cables to export (and import) electricity from the plant and the grid;
- landscaping: including woodland planting, earth bunding, a wetland area and green walls and brown roofs on the EfW buildings;
- improvements to public rights of way: including upgrading existing paths to permit their use by cyclists and creation of additional links between the paths and Green Lane;
- lighting: including lighting to the main operational area, additional lighting on Green Lane and aircraft warning lights on the stack; and
- facilities for handling and treating surface water run-off and effluent from the plant.

3.11 Having regard, amongst other matters, to the large area of the proposed MRF compared with the area needed for the EfW plant, we

considered at the DCO hearing held on 13 May the description of the authorised development in schedule 1 of the Order, and the distinction between the NSIP and the range of associated development. Our conclusion is that the balance between the NSIP (Work No 1) and the various elements of associated development (Works Nos 2 -9) together comprising the proposed authorised development in schedule 1 of the Order is appropriate. Bearing in mind the advice in guidance, we are further satisfied that the proposed MRF comprises associated development under the PA 2008 as it is necessary for the development and effective operation to its design capacity of the EfW and therefore can properly be included within the DCO.[1]

Stack height

3.12 The application as submitted on 4 August 2010 proposed a stack height of 105 m (see e.g. DOC/2.12 and DOC/3.1, table 3.1). Notwithstanding this, the air dispersion modelling in the ES assumed a stack height of 100 m (the 'conservative worst case'). Subsequently the Applicant carried out dispersion modelling for a 105 m stack which was used to support its application for an EP.

3.13 In order to avoid confusion between the two sets of dispersion modelling results, and to bring the modelling results in the ES into line with the stack height shown on the drawings submitted as part of the application for the DCO, the Applicant prepared and issued additional supplementary documents (DOC/3.5, DOC/4.5, and DOC/4.6). These were formally submitted following an announcement at the preliminary meeting, published on the IPC's project website, and made available for public inspection.

3.14 In the light of the reasons given in the submission, the Panel concluded that the updated documents should be accepted. Accordingly, the examination proceeded on the basis of the revised dispersion modelling.

Effluent disposal

3.15 The documents submitted with the application indicated that it was the Applicant's expectation that all foul water from the plant, and any surplus contaminated run-off from the MRF, would be piped off site for treatment at Anglian Water Services Limited's (Anglian's), Stewartby sewage treatment plant (DOC/4.4, s16). In May 2011, the Applicant advised that this strategy had been revised and on 9 May 2011 issued an addendum to the Flood Risk Assessment previously submitted with application (APP/3.2, Appendix 2.5).

[1] Guidance on associated development, DCLG 2009, para 10

3.16 In summary, the revision proposes to treat effluent on site and discharge it to the surface water system, rather than to pump it to Anglian's sewers. The Applicant's addendum to the Flood Risk Assessment explained that the revision had been prepared in response to representations made by Anglian and in response to discussions with the EA in connection with the EP application (ibid). The submission was published on the IPC's project website and made available for public inspection.

3.17 Following this, a representative of the Applicant advised us at the hearing held on 13 June 2011 that no new above-ground structures other than those included in the application for the DCO would be required in connection with the proposed change. We were further advised that, with the on-site treatment proposed, the surface water quality in the receiving water bodies would not be detrimentally affected (APP/3.2, Appendix 2.5, para 5.3.1).

3.18 Regulation of all aqueous discharges from the site is a matter that the EA will need to address in due course through the consenting process for the EPs that would be required for the plant to operate. As part of that process, the EA will carefully scrutinise the proposed design for the water treatment plant. If a permit is granted, we would expect it to set limits on the quality and quantity of effluent that the plant would be permitted to discharge. We would further expect that these limits would be set having regard to the need to protect human health and the environment.

3.19 The Panel considered whether the proposed change to the application was a substantial one and, taking into account the above considerations and the opportunity for interested parties who might be concerned about the matter to make representations on the effect of the change, the Panel decided to accept the amendment proposed to the application as originally submitted and examine it accordingly.

4 LEGAL AND POLICY CONTEXT

4.1 The application documents (principally the Planning Statement DOC/5.1) contain a detailed description of the legislative and policy framework that the Applicant considers relevant to the proposal. Several representations, (for example, those made by CPRE Bedfordshire, and Waste Recycling Group Ltd (WRG), also contain views about the appropriate policy context for handling the application. We sought clarification of aspects of the policy context through the first round of questions concerning the 'CALA' judgements as they affect regional planning policy and the development plan. In our second round of questions, we asked for a SoCG on planning policy. This was not achieved between the parties, though a statement from the Applicant, CBC and BBC of what constitutes the development plan was provided on 9 May (SOCG/9). Our conclusions on the appropriate policy context for this application are set out below. In addition, we set out the context for consideration of the application with regard to European Directives and the planning history of relevance to the site.

National Policy Statements

4.2 S104(2) of the Act states that *'in deciding the application the Panel must have regard to any national policy statement which has effect in relation to development of the description to which the application relates.'* Several representations were made suggesting that the principal purpose of the proposed development is waste incineration rather than energy generation. However, we consider there is no doubt that the proposal is for a generating station with a capacity of more than 50 MW, within England, and thus falls within s15(2) of the Act.

4.3 S104(3) of the Act further requires that, with exceptions including whether the development would result in adverse impacts outweighing the benefits, *'the Panel must decide the application in accordance with any relevant national policy statement.'* The National Policy Statements (NPSs) most relevant to this application are EN-1 and EN-3 which were designated by the Secretary of State for Energy and Climate Change on 19 July 2011 in accordance with s5 of the Act. They therefore provide the primary basis for decisions by the IPC (NPS EN-1, para 1.1.1).

Overarching National Policy Statement for Energy (EN-1)

4.4 This NPS sets out national policy for energy infrastructure and the role of EfW in renewable electricity generation. Part 4 sets out the assessment principles to be applied in considering applications for development consent. Those which we regard as particularly important in relation to this application are:

- Development Plan Documents or other documents in the Local Development Framework. Notwithstanding this, NPS EN-1, paragraph 4.1.5, advises that, in the event of a conflict between these or any other documents and an NPS, the NPS prevails for the purposes of IPC decision-making given in the national significance of the infrastructure;
- from a policy perspective, there is no general requirement to consider alternatives or to establish whether the proposed project represents the best option (NPS EN-1, s4.4);
- 'good design' for energy infrastructure goes far beyond aesthetic considerations but is important for fitness for purpose and sustainability. It is acknowledged that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area (ibid, s4.5);
- substantial additional positive weight should be given by the IPC to applications incorporating CHP (ibid, para 4.6.8); and
- the planning and pollution control systems are separate, but complementary. In considering an application for development consent, the IPC 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. The IPC should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate them (ibid, s4.10).

4.5 Finally, the NPS sets out the range of generic impacts which are anticipated to arise most frequently in the assessment of energy infrastructure development proposals, and the way in which the IPC should take these into account in its decision making.

National Policy Statement for Renewable Energy Infrastructure (EN-3)

4.6 This NPS sets out additional policy specific to renewable energy applications including those using waste as a fuel and generating more than 50 MW of electricity.

4.7 Detailed assessment principles relevant to EfW applications include:

- air quality and emissions;
- odour, insects and vermin infestation;
- waste and management (i.e. accordance with the waste hierarchy);
- residue management; and
- water quality and resources.

European Legal Requirements

4.8 Guidance on the relevant European Directives and their transposition into UK law is given in the NPSs. The principal ones referred to by those making representations during the examination and which we have also taken into account as relevant are those dealing with renewable energy, waste and landfill.

Renewable Energy Directive 2009

4.9 The Renewable Energy Directive[1] sets out legally binding targets for Member States with the expectation that by year 2020, 20% of the European Union's energy mix and 10% of transport energy will be generated from renewable energy sources. The UK's contribution to the 2020 target is that by then 15% of energy will be from renewable sources.

4.10 This represents a seven-fold increase in UK renewable energy consumption from 2008 levels. The UK Renewable Energy Strategy 2009 sets out how the UK proposes to meet the targets.

Revised Waste Framework Directive 2008

4.11 The Revised Waste Framework Directive (rWFD)[2] formally codifies the principles of the waste hierarchy, proximity ('nearest appropriate installations'), self-sufficiency, and recovery.

4.12 Considerable discussion took place at the compulsory acquisition hearing about the interpretation of these principles, transposed into UK legislation through the Waste (England and Wales) Regulations 2011, and particularly whether self sufficiency applies at a local level or is satisfied at a Member State level.

Waste Incineration Directive 2000

4.13 Compliance with the Waste Incineration Directive (WID)[3] in England is enforced through the environmental permitting regime regulated by the EA. If an EP is not granted then the plant cannot operate (NPS EN-3, para 2.5.41).

The Development Plan

4.14 Paragraph 2.5.70 of NPS EN-3 advises that the assessment of an EfW plant should take into account relevant waste strategies and plans. This is in order to satisfy the requirement that the proposal should be in accordance with the waste hierarchy and of an

[1] Directive 2009/28/EC.
[2] Directive 2008/98/EC.
[3] Directive 2000/76/EC.

appropriate type and scale so as not to prejudice the achievement of local or national waste management targets.

4.15 We therefore need to consider what constitutes the development plan relevant to the application.

4.16 The effect of the judgements following the challenges by CALA Homes is that Regional Spatial Strategies continue to form part of the development plan until this position is changed by legislation (as is intended by the Localism Bill currently before Parliament). Taking this into account together with the SoCG referred to in paragraph 4.1 above the development plan relevant to the application before us comprises the following:

- The East of England Plan 2001-2021 (EoEP), adopted May 2008;
- Milton Keynes and South Midlands Sub Regional Strategy (MKSM), adopted March 2005;
- Saved policies of the Bedfordshire and Luton Minerals and Waste Local Plan First Review (BLWMLP), adopted January 2005;
- Saved policies of the Mid-Bedfordshire Local Plan, adopted December 2005;
- Saved policies of the Bedford Borough Local Plan, adopted October 2002;
- Central Bedfordshire Core Strategy and Development Management Policies Development Plan Document (CBCS), adopted November 2009;
- Central Bedfordshire site allocations (North area) Development Plan Document, adopted April 2011; and
- Bedford Borough Core Strategy and Rural Issues Plan, adopted April 2008 (BBCS).

Other Policy Documents

National policy

4.17 Whilst the NPSs provide the primary framework for deciding this application, they have in turn taken account of planning policy statements, and other Government documents, to which we have therefore had regard. These include:

- Planning Policy Statement 5: Planning for the Historic Environment, March 2010 and Practice Guide;
- Planning Policy Statement 10: Planning for Sustainable Waste Management, July 2005; an update was issued in March 2011, incorporating the new waste hierarchy set out in Article 4 of the rWFD;
- Planning Policy Statement 23: Planning and Pollution Control, November 2004;

- Planning Policy Guidance Note 24: Planning and Noise, October 2004;
- Planning Policy Statement 25: Planning and Flood Risk, December 2006 and consequent updates;
- Energy White Paper: Meeting the Challenge, May 2007;
- UK Low Carbon Transition Plan, National Strategy for Climate and Energy, July 2009;
- UK Renewable Energy Strategy, July 2009;
- Planning our electric future: a White Paper for secure, affordable and low carbon electricity, July 2011;
- Waste Strategy for England, May 2007; and
- Government Review of Waste Policy in England, July 2011.

4.18 On 20 July 2011 the Government published a draft National Planning Policy Framework (NPPF) for consultation. This is intended to replace the current range of planning policy statements in their entirety, but with the exception of PPS 10. This will remain in force until it is revised and annexed to the National Waste Management Plan, intended to be published in the spring of 2012. The consultation on the NPPF runs until October 2011, following which the Government will have regard to the responses before finalising the Framework with the intention of adopting it in April 2012. This draft NPPF is therefore afforded very little weight in the assessment of this application.

Local policy

4.19 In addition to the development plan, other local policy documents we consider are relevant to this application include:

- Draft revision to the Regional Spatial Strategy for the East of England, March 2010;
- Central Bedfordshire, Bedford Borough and Luton Borough Council: Waste Core Strategy Preferred Options Consultation Document, 1 June – 12 July 2010;
- Bedford Borough Allocations and Designations Plan (consultation draft plan issues and options) May 2010; and
- Marston Vale Forest Plan, 1995 and Review, 2000.

Planning History and Development Context Relating to Rookery South Pit

4.20 The Rookery as a whole has a long history of clay working. The winning and working of clay was originally permitted in 1952, and under the review of old mineral permissions (ROMP) required by the Environment Act 1995, various proposals have been put forward for its restoration. The planning permission (reference BC/CM/2008) granted by Central Bedfordshire and Bedford Borough Councils in December 2010 covering The Rookery is subject to a number of conditions covering the hours of operation and noise. A s106 Agreement between the two local authorities, Covanta Energy Ltd,

and the landowners, O&H Q7 Ltd, dated 9 December 2010, provides for the ecological management of the pits in the longer term and the creation of footpaths across the site.

4.21 A remaining reserve of clay in the south-west corner of Rookery South Pit will be used to stabilise the slopes surrounding both the north and south pits; material will therefore be used on site and not transported off-site. Together with drainage, ecological mitigation and landscape measures, the scheme of works to be implemented is commonly known as the Low Level Restoration Scheme (LLRS). The overall purpose of the LLRS is to restore Rookery South Pit to a state that is suitable for low intensity agricultural use, while dedicating Rookery North Pit to nature conservation and amenity uses. The restoration of Rookery South Pit is to be achieved through four phases, and, as noted in paragraph 3.5 above, the DCO contains a proposed requirement that the development cannot proceed until the first phase of the LLRS has been implemented. This therefore forms the baseline for our consideration of the application for development consent.

4.22 In terms of the broader development context, Rookery South Pit falls within the Northern Marston Vale growth area, as set out in the EoEP, MKSM and CBCS. Mixed use developments have been proposed (and some are underway) at Marston Moretaine (approximately 500 houses), Stewartby Brickworks (including 1,200 houses, although this application has been undetermined for some time), Kempston (approximately 1,100 houses) and Wootton (approximately 1,100 houses). Other major development proposals near Rookery South Pit include expansion of The Wixams (including approximately 4,500 houses) to the south of Bedford, residential and mixed use developments at Ampthill, and further employment provision at Cranfield. The Bedford & Milton Keynes Waterway Trust is proposing to develop a canal through the area. South of the Northern Marston Vale Growth Area is located the new Warren Wood Centre Parc, consisting of 700 lodges, hotel and ancillary development, construction of which started in spring 2011.

4.23 Rookery South Pit has been put forward in the Waste Core Strategy Preferred Options Consultation Document 2010 for non-hazardous waste landfill and as a preferred strategic recovery site. The document defines a ‘strategic site’ as one which is essential to the delivery of the plan, and includes recovery facilities with a capacity of more than 75,000 tonnes per year. It also proposes that if landfill took place, this would be in the south eastern part of the site. The land could then be restored to grassland or other restoration compatible with the approved restoration of the remainder of the pit. If not, then the land would be available for agriculture.

4.24 Although Rookery South is former clay pit with a long history of substantial extraction, it is not allocated for development in the

adopted local plan. Neither are there any extant planning permissions for development on the site (except for development required in conjunction with the LLRS). Given this, our view is that the site should be regarded in policy terms as a greenfield site in a rural location.

5 THE MAIN MATTERS - FINDINGS AND CONCLUSIONS

5.1 Having regard to the various representations made during the examination, the legal obligations on us as decision-makers, the policy context set by the NPSs, the local impact reports, and all other relevant and important matters referred to, our findings and conclusions on the main matters raised are as set out below.

5.2 The order in which matters are considered in this section is not intended to reflect the relative importance attributed to them by the Panel in reaching our overall conclusion.

Waste Hierarchy

5.3 NPS EN-3 states at paragraph 2.5.66:

> *'An assessment of the proposed waste combustion generating station should be undertaken that examines the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plan or plans where a proposal is likely to involve more than one local authority.'*

Waste plans

5.4 The Councils (CBC and BBC) strongly challenged the conformity of the application with the waste hierarchy. They pointed to the development plan, comprising the BLMWLP (policies W1, W2 and W3) and the EoEP (policies WM3 and WM 4), which requires localities to provide for disposal of waste generated in their areas and discourages import of waste from outside. They were supported in this by many representations against the proposal, claiming that it would mean the continuation of Bedfordshire's historic role as a recipient of imported waste particularly from London, objecting to the catchment area of the proposed plant, and its resulting size.

5.5 CPRE also argued that the application is in conflict with the development plan because it would undermine the waste hierarchy on account of its size, acting as a pull on all waste from a wide radius and therefore discouraging steps to reduce and recycle waste locally.

5.6 The BLMWLP seeks to restrict waste facilities to be 'primarily' for the treatment of waste arising from within its administrative areas. The Applicant argued in the Planning Statement (DOC/5.1) that there is no definition provided for 'primarily' in either the BLMWLP or the EoEP, and that in any event the proposal would provide for the waste management needs of the Bedfordshire and Luton subregion first and is therefore compliant. The Applicant also argued that the BLMWLP is now out of date in the light of national policy directives. The WRATE Report (DOC/5.4) demonstrates the economies of scale with the resulting environmental benefits.

5.7 The Councils' joint Waste Core Strategy Preferred Options Consultation Document seeks to limit waste recovery and disposal capacity to wastes arising from within the plan area. It also identifies Rookery South Pit as a strategic recovery site for such locally arising wastes only. However, this document has several stages to pass through before adoption and the Councils' representative at the compulsory acquisition hearing indicated that the future timetable is uncertain. Because of this, we accord this document only limited weight.

5.8 In our view, the proposal does conflict with the development plan, represented by the BLMWLP and the EoEP. However, NPS EN-1 states at paragraph 4.1.5 that in the event of a conflict between the development plan and an NPS, the NPS prevails for the purposes of IPC decision-making given the national significance of the infrastructure.

Impact on the waste hierarchy

5.9 As to the effect on the waste hierarchy,[1] incineration of waste with energy recovery is within the *'other recovery'* band. As such it is above *'disposal'* (which includes landfill) but below 'recycling', *'preparing for re-use'* and *'prevention'*. The proposed plant's effect on the hierarchy was a matter of considerable concern during the examination, with several parties (including CBC, BCC and the consortium of 25 Town and Parish Councils or Meetings (25TPCs)) sharing CPRE's argument that building an EfW facility of the size proposed would reduce the incentive and/or propensity for people to recycle.

5.10 We recognised this as a principal issue at the outset of the examination and asked a question in our first round about waste being sourced from outside the waste catchment area, and whether recycling initiatives would be prejudiced by the project. We also held an issue specific hearing on 17 June 2011 to consider the extent to which the proposal would compromise the achievement of waste reduction, reuse and recycling.

5.11 Because there were widely differing views between the Applicant, the Councils and WRG about:

- the definition of residual waste;
- the volume of municipal solid waste (MSW) and commercial / industrial (C&I) waste arisings;
- the contractual position regarding MSW and therefore how much of this waste would be available for treatment; and

[1] For a full description of the waste hierarchy see Article 4 of the revised Waste Framework Directive (2008/98/EC).

- the extent to which capacity at other planned disposal plants in the waste catchment area should be taken into account in assessing the 'need' for the proposed development,

we sought a statement of common ground to try to narrow these differences. This was provided on 11 May 2011, and set out each party's position.

5.12 Even with this, it remained difficult to reconcile the figures, given that the totals in the SoCG for MSW exclude Herts, whilst those for C&I waste exclude Windsor and Maidenhead. These matters were also explored in some depth at the compulsory acquisition hearing, at the conclusion of which the Councils and WRG broadly accepted the Applicant's assessment of the amount of MSW likely to be available.

5.13 It is the amount of C&I waste that WRG assert has been grossly overestimated by the Applicant, as a consequence of different methods used to calculate the estimates of C&I waste arisings. However, at the compulsory acquisition hearing, the Councils put forward a recalculation of the MSW and C&I waste arisings for the waste catchment area (but including Peterborough as well) which suggested the amount of C&I waste was broadly similar to that put forward by the Applicant.

5.14 As we see it, the difference between the parties is that the Applicant calculates the total amount of residual waste in the catchment area at about 2 million tonnes per annum (mtpa), with the Councils suggesting it could be slightly more, whilst WRG suggest it will be half that. Our assessment is that even if the outturn of residual waste were to be towards the bottom end of this range, this is a plausible basis to justify the size of the plant proposed (with a nominal capacity 585,000 tpa).

5.15 In terms of the waste management capacity available in the catchment area (which could be regarded as alternatives to the proposal when dealing with the compulsory acquisition issues) there were significant differences between the parties. These centred largely on whether facilities with permission but not commenced together with those planned should be included in the analysis, or whether the analysis should be limited to only those facilities which are built and operational. In our view, having regard to the advice in NPS EN-3, paragraph 2.5.67, the correct approach to this is to take into account only existing operational capacity. Accordingly we agree with the Applicant that proposed facilities should be discounted from the analysis.

The waste catchment area

5.16 The waste catchment area is one which the Applicant has defined rather than deriving it from the development plan at regional or local

level. It embraces part of the South East and East Midlands regions as well as that part of the East of England region in which the proposal is located. The Planning Statement (DOC/5.1) considers the effect of the proposal on the waste plans of Bedfordshire and Luton. The question raised by the Councils and WRG is whether this is sufficient to satisfy the requirements of paragraph 2.5.70 of NPS EN-3 or whether all the waste plans in the waste catchment area should have been considered.

5.17 In this regard, whilst we acknowledge that the size of the proposed plant is such that it would be likely to accept waste from beyond Bedfordshire and Luton, there is no doubt in our minds that the proposal is intended to serve the waste disposal needs of the Bedfordshire and Luton areas in the first instance. The emphasis in the NPS is on relevant waste plans and, whilst the Planning Statement would have benefited from an analysis of all the waste plans within the local authority areas comprising the waste catchment area as defined by the Applicant, the Need Assessment (DOC/5.3) does have a brief overview of the East of England Plan, the South East Plan, and the East Midlands Plan and the waste policy documents for each of the local authorities in the waste catchment area, in addition to the Bedfordshire and Luton sub region. It seems to us therefore that sufficient account has been taken of all the waste plans in the waste catchment area.

Catchment area restriction

5.18 The Need Assessment (DOC/5.3) assumes 65% recycling of MSW (compared with 55% by CBC and 36.5% by BBC in 2009 /10) and together with C&I waste this leads to an estimate of 1.65 mtpa of residual waste from the waste catchment area.

5.19 The Need Assessment Addendum (APP/1.2, Appendix 2.6) reviews the situation in the light of:

- the latest position concerning municipal waste management contracts in the waste catchment area;
- a revised estimate of C&I waste arisings;
- an updated assessment of operational waste management capacity; and
- assuming 70% recycling of municipal waste.

5.20 At least 1.368 mtpa of residual waste would be available in the light of this reassessment (ibid, para 1.7.8) and, with a nominal capacity of 585,000 tpa, the proposal would only deal with about 43% of this. Notwithstanding this, the Applicant resisted a restriction on the sourcing of waste from beyond the waste catchment area, citing NPS EN-3 in support of the contention that this is a commercial matter for the Applicant.

5.21 The final position of the Councils was to continue to request a waste catchment area restriction to limit material to the Applicant's defined waste catchment area (not just Bedfordshire and Luton). This request was supported by the 25TPCs, who also continued to argue for a definition of residual waste.

5.22 In response to the concerns raised, the Applicant argued, in summary, that the incinerator was intended only to take 'residual waste' i.e. that remaining after all practicable measures to remove material suitable for recycling had taken place. The proposal would therefore accord with the waste hierarchy in that waste that would otherwise have been landfilled would be burnt at the plant, and energy recovered.

5.23 We considered this matter at some length. Information supplied with the application (in the Planning Statement at sections 7.3 and 7.4 and reflecting the Waste Strategy 2007) showed that experience from other European countries is that very high recycling rates are compatible with energy from waste.

Definition of residual waste

5.24 The Applicant also argued that the regulatory system governing MSW was such as to effectively ensure that only residual waste would be delivered to the plant. Further they argued that non residual C&I waste would be effectively prevented from coming to the plant by economic drivers. In short they put it that, for C&I waste, the combination of economic incentives to recover materials (especially metals) for recycling and the requirement to pay gate fees for each tonne of waste delivered to the plant for incineration would be such as ensure that as much recyclable and other material as practicable would be recovered from this waste stream prior to treatment as residual waste. To send recyclable materials to a residual waste management facility would simply be poor business and financial management.

5.25 For our part, we find the argument attractive for MSW and, on balance, we conclude that the risk of local authorities delivering waste to the plant that could practically be recycled is low.[1] For C&I waste, however, we found the argument less convincing.

5.26 Our concerns in this regard were increased:

[1] In reaching this conclusion we accept that the 'residual' waste stream (essentially the 'black bin' waste) will inevitably contain some plastics, paper and other materials that could theoretically be recycled. These materials are, however, mixed with other, non-recyclable waste and, once mixed, separation is not generally practical.

- because of the absence of any secure contracts from the municipal waste sector, which could result in the plant operating with a very high proportion of C&I waste; and
- because of the length of time for which the plant is expected to remain operational. During this time it seems to us that there is not only potential for legislation in the waste sector to move on, but also for the economic drivers for recycling to change.

5.27 Although the Applicant argued this is unnecessary, in order to meet these concerns, a requirement was 'offered' (Requirement 42)[1], the effect of which would be to put in place a residual waste acceptance scheme for the plant, to be reviewed and approved annually by CBC. The express purpose of the requirement is to 'ensure that the scheme continues to address changes in waste management, and that [the plant] is used only for the incineration of residual waste'. To some degree the requirement would duplicate Requirement 2. However, we foresee potential long-term difficulties in enforcing Requirement 2 without the additional Requirement 42. With the additional requirement in place, the Council (CBC) would be in a position to ensure on an ongoing basis that only residual waste is accepted at the plant. Such a requirement would ensure compliance with the advice in NPS EN-1 which states that 'only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be used for energy recovery'.[2] To our minds, only with the requirement in place, can we be satisfactorily assured that the proposal would conform to the waste hierarchy.

5.28 In reaching this conclusion we have had regard to those representations that called for a definition of 'residual waste' to accompany the requirement, particularly those made by the 25TPCs. We take the view, however, that this is not necessary given that the term is generally well understood and that it is used in its 'everyday' sense in the requirement. Equally, we have had regard to the suggestion that if CBC were to contract with the Applicant to handle the authority's residual waste, then it might elect, for commercial reasons, not to enforce the condition. There is no evidence to support the view that this would be so, however, and in our opinion, any such move would be improper and can be safely disregarded.

The proximity principle

5.29 Also of concern to us was a claim by several objectors to the proposal that the plant would, on account of its size, be in conflict with the proximity principle set out in PPS 10 as issued in 2005 and the BLMWLP. The Applicant robustly argued otherwise, putting it that

[1] At the time the Requirement was 'offered' it was numbered 42. However, it was subsequently renumbered (see para 8.18 below) as Requirement 41.
[2] See NPS EN-1, para 3.4.3, 4th bullet point headed 'Energy from Waste'.

applying the proximity principle at a local level was, in their view, contrary to the intent of PPS 10.

5.30 Waste planning policy has continued to evolve with the publication of the Waste Strategy for England 2007, and the rWFD which, amongst other matters, seeks to prevent the unnecessary transfer of waste for treatment between member states of the EU. The rWFD has been transposed into UK legislation by the Waste Regulations 2011 and the amended waste hierarchy contained in the rWFD has been reflected in an updated version of PPS 10, issued in March 2011. The Waste Regulations 2011 state that *'the network must enable waste to be disposed of and mixed municipal waste collected from private households to be recovered in one of the nearest appropriate installations, by means of the most appropriate technologies.'*

5.31 Plainly, it is not logical for every administrative area to be self sufficient in recovery capacity given the very wide differences in population between often adjacent local authority areas, and the economies of scale in the size of recovery plants. The Review of Waste Policy in England 2011 states at paragraph 263 *'there is no requirement for individual authorities to be self-sufficient in terms of waste infrastructure …..'*

5.32 In essence, it seems to us that policies which promote waste disposal self sufficiency within one administrative area (be it a region, a county or a smaller area) have their place, but should not be applied to prevent the transfer of waste for treatment across administrative boundaries. Indeed, where treatment facilities are located close to an administrative boundary, preventing waste from crossing that boundary could work to prevent its treatment at one of the nearest appropriate installations. Such an outcome would be in conflict with the Waste Regulations. With a location such as that offered by Rookery South Pit it would not make sense to allow the proposed plant to accept waste from, say, Luton (a distance of some 33 km but within the area covered by the BLMWLP) while precluding it being accepted from parts of Milton Keynes, which is nearer, but outside the local plan area.

Size and capacity

5.33 Further allied to this matter, several parties argued that the size of the proposed plant was excessive, and there were alternative ways of handling waste through a network of smaller plants. Obviously, if only waste from (the former) Bedfordshire and Luton area is to be accepted that would be the case.[1] The Applicant's intent, however, is

[1] The quantity of MSW arisings in Bedfordshire and Luton (only) are estimated to be 145,000 tpa (CBC/BCC) and 170,000 tpa (Covanta). The corresponding C&I waste arisings are estimated to be 162,000 tpa (CBC/BCC) and 206,000 tpa (Covanta). Total arisings are thus

to accept waste from a wider area and the evidence of the WRATE Report submitted with the application is that the benefits in sustainability terms of having a single plant such as that proposed, would be significant as compared to the option of developing a number of smaller plants positioned more closely to the source of the waste (DOC/5.4). We agree.

5.34 In this regard, there can be no doubt that, if a plant of the size proposed were to be developed, fewer other plants would be required to deal with a given volume of waste. Indeed, some plants that might have otherwise come forward, including ones on sites close to the Rookery, may not do so. However, whilst several schemes were put forward during the examination as 'alternatives' to the Applicant's proposal, the evidence is that most are at an early stage of development and there is no certainty that they will progress (see para 7.92 et seq below).

5.35 In any event the Government's policy on capacity is clear. NPS EN-1, paragraph 3.1.2 advises that *'The Government does not consider it appropriate for planning policy to set targets for or limits on different technologies'*. In the following paragraph it states '*The IPC should therefore assess all applications for development consent for the types of infrastructure covered by the NPSs on the basis ….that there is a need for those types of infrastructure…'*. Paragraph 3.4.5 of the document records that *'The need for generation projects is therefore urgent.'*

Conclusion on the waste hierarchy

5.36 In our view, even taking into account higher levels of recycling and the consequent reduction in the volumes of residual waste arisings, there will still be a requirement for handling substantial volumes of residual waste in the waste catchment area. In a broader context, the Review of Waste Policy in England 2011 says at paragraph 214 *'our horizon scanning work up to 2020, and beyond 2030 and 2050 indicates that even with the expected improvements in prevention, reuse and recycling, sufficient residual waste feedstock will be available through diversion from landfill to support significant growth in this area [of renewable energy from waste] without conflicting with the drive to move waste further up the hierarchy.'*

5.37 Given this and the advice in NPS EN-3, paragraph 2.5.17 that *'Commercial matters are not likely to be an important matter for IPC decision making',* and having taken into account the intentions of the rWFD, we conclude that there is no reason to refuse the application for a DCO on the grounds that granting it would be likely to undermine

estimated to be 307,000 tpa (CBC/BCC) and 376,000 tpa (Covanta). This compares to the nominal throughput for the proposed plant of 585,000 tpa (SOCG/10).

the waste hierarchy,[1] result in an excess of waste treatment capacity in the area, and/or displace alternative (preferable) proposals for waste treatment in the area. We further conclude that it should not prejudice the achievement of local or national waste management targets.

Landscape, Visual Impacts and Design

5.38 The impact of the proposal on the landscape of Marston Vale and the extent to which it would alter the visual appearance of the locality was the subject of a large number of representations. We identified landscape and visual impacts as one of the principal issues, and held an issue specific hearing on 21 June 2011 in order to pursue the matter further, together with the related concerns around the design of the plant.

5.39 The local impact reports submitted by the Councils (CBC/4; BBC/4) set out the site description, history of brick making and current permitted development proposals, and we used these as a context for considering the impact of the application on Marston Vale.

The character of Marston Vale

5.40 The present appearance of Marston Vale, particularly as seen from the Greensand Ridge, and from Cranfield, is generally rural and open. The view of the Applicant is that this is a transitional position between a landscape dominated by the heavy clay extraction and brick making of the past 100 years and the current proposals for major growth in this part of the Vale. The EoEP sets a requirement of 19,500 dwellings between 2001 and 2021, with a further 9750 dwellings for the period 2021 to 2031 as an indication of the likely scale of future development in the northern Marston Vale.

5.41 As noted in paragraph 4.22 above, substantial new development is envisaged around Kempston and Wootton. A new community is being built at the Wixams to the south of Bedford, and various other residential and mixed use schemes are planned or under construction at Marston Moretaine and Stewartby. The Applicant argues that what is seen now is therefore a snapshot, unrepresentative of the heavy industrial processes experienced until quite recently, and the landscape changes which will take place over the next few years as new development occurs.

5.42 By contrast, local people, the 25TPCs and the Councils point to the major improvements which have taken place to the appearance of Marston Vale since brick making ceased, the achievements of the Marston Vale Forest, and the Millennium Country Park. Marston Vale

[1] With Requirement 42 (subsequently renumbered as Requirement 41), discussed in para 5.27 above.

is an area which is now changing its function and turning away from its historic role as an area where clay is extracted, in turn leaving large holes in the ground to be filled with waste from other parts of the country. Rather, it is now a rural, peaceful landscape, deserving to be left that way. The intrusion of the proposed EfW development would mean a return to the past.

5.43 The 25TPCs argue that the physical legacy of the industrial past has now largely disappeared and, as a result, the landscape character assessments presented in the ES are out of date and inaccurate.

5.44 Chapter 10 of the ES (DOC/3.1) systematically sets out in detail the landscape characteristics of the area in the Landscape and Visual Impact Assessment (LVIA). It starts with the national landscape character assessment carried out by the Countryside Agency and English Nature in 1999. This covered the Bedfordshire and Cambridgeshire clay vales, a time when brick making was still very much in evidence in Marston Vale. At the next level down, the mid-Bedfordshire landscape character assessment (2007) is the most recent comprehensive analysis of the features of the locality in which the application is set. It identifies an agricultural landscape with an open and exposed character offering long-distance views, but fragmented by current and former industrial activity including brickworks, opencast clay pits, landfill, distribution centres and industrial estates. The open nature of the Marston Vale contrasts dramatically with the Greensand Ridge and the elevated Cranfield to Stagsden ridge. To provide an up-to-date detailed site assessment of the Rookery Pit and the countryside and settlements immediately surrounding it, a site scale landscape character assessment was carried by consultants.

5.45 Statements of common ground were agreed between the Applicant, CBC (SOCG/4) and BBC (SOCG/7). Both Councils agree that ‘the planning policy for the area and resulting development will result in significant change in the landscape of the Marston Vale over time’ (ibid, paras 2.5.16).

5.46 In our view, this is an area where major change has taken place recently and further development is envisaged. The landscape surrounding The Rookery includes major new distribution warehouses on the edge of Bedford, the upgraded A 421, and several lines of electricity pylons. A variety of new developments are proposed in the vicinity, including the NIRAH scheme granted planning permission in September 2009, but not yet implemented, whose main building would be about 48 m high. And the Forest of Marston Vale itself will be a source of continuing change to the appearance of the landscape.

5.47 Whilst local planning policies could well see Rookery South Pit being simply restored for agricultural use, emerging waste planning policies

also contemplate the site being used for waste recovery analogous to the current application, albeit on a smaller scale, as well as landfill (see para 4.23 above).

5.48 This is not an area subject to any formal landscape protection policies in the development plan. But the overriding impression from vantage points on the Greensand Ridge looking across the Vale is currently one of openness and limited built development. Many elements of infrastructure have blended well into the landscape, for example the railway lines and Millbrook proving ground. In our view, it is not a scarred heavy industrial landscape into which a major new built development can easily be inserted.

Visual impact

5.49 The size and scale of the proposed development is therefore an important and relevant matter in assessing its acceptability. Visual impact is clearly, and in our view fairly, represented in the application documents. It is not a question of the development being unnoticed in the landscape if it proceeds - that is just not possible. Where representations simply point to the development being visible from various viewpoints in the near, medium and long distances as a major disadvantage without further explanation, they fail, in our view, to show how the visibility detracts from the appreciation and enjoyment of the landscape.

5.50 The largest building (the boiler house) would be 43 m high, but because the plant would be set in the floor of the clay pit it would be some 33 m above the surrounding (unexcavated) ground level, and with local variations in topography it would appear to be lower, especially from the south and east. The planting strategy seeks to screen the lower level buildings and activity from all viewpoints. The views from the west would be the most apparent as this is where there is the least natural screening, and therefore the planting arrangements would be particularly important to ensure that the views from the Forest Centre are not dominated by the size and scale of the building.

5.51 Given that the size and scale of the proposed development as a whole means that it would not be possible to avoid it in the landscape, the issue is whether it has particular characteristics that are so damaging as to render it unacceptable. We found the photomontages, and the indicative heights represented by the balloons flying on the day of our second site visit, particularly helpful in conveying the visual impact of the development in the locality. At 105 m the stack would be particularly visible from long distance viewpoints, but would be seen in the context of the four listed chimneys at Stewartby brickworks, albeit that these are all lower and of different appearance, reflecting their historic purpose.

5.52 In our view, the visual impact of the development would be most marked in short distance views, for example, from the Millennium Country Park and the Stewartby Water Sports Club (SWSC) site. The closest building to the Country Park would be the tipping hall which would be 25 m above the surrounding level. In our opinion the scale of this facade and the taller section of the plant building beyond it would be overbearing as seen from the footpath and cycleway running alongside the railway track on the eastern side of Park.

5.53 As to the proposed mitigation, the bunding and landscaping proposed around the margins of Rookery South Pit would soften the impact of the proposed development from middle and long views. However, this planting would not screen the upper levels of the buildings, since they are simply too substantial. From more distant and elevated viewpoints some mitigation would be achieved by using recessive colours for the cladding, but this would not be effective in short distance views where the plant would be seen against the sky.

5.54 Requirement 8 of the Order (see Appendix D, schedule1, part 2) provides for the detailed landscaping proposals to be submitted to the local planning authorities for approval. Pursuant to this requirement, in our view, they will need to consider particularly carefully the efficacy of the proposed green wall on the western face of the building in terms of its actual contribution to mitigating short distance visual impacts from the Millennium Country Park.

5.55 At the open floor hearing held on 5/6 July 2011, the Councils' representative confirmed that there is not an issue in principle in relation to a waste management facility at Rookery South Pit; rather the main overriding issue is its size. Several people who spoke at the open floor hearing, for example the CPRE representative, nonetheless objected to the principle of the proposal on landscape impact grounds.

5.56 The relationship between the throughput of waste and the size of the plant is therefore worth exploring. The Engineering Design Statement (DOC/6.2) states that after adjusting the building heights for capacity, the height of the proposed Rookery South EfW plant would be at the lower end of the range when compared with other similar plants in the UK. Also, a single stream plant of 200,000 tpa would require a building of the same height as a three stream plant of 600,000 tpa. This suggests that reducing the capacity of the proposed Rookery South EfW plant would not necessarily lead to a reduction in the height of the buildings. We agree.

5.57 Several representations expressed concern about the plume in addition to the height of the stack. Appearance of the plume would not be a regular or necessarily frequent occurrence, and its impact is therefore difficult to judge. That said, we accept that at those times

when the plume is visible it would tend to draw the eye to the plant and thereby increase the apparent visual impact.

5.58 Our conclusion therefore is that the size and scale of the proposed development at Rockery South Pit is a major disbenefit, given that it would be clearly visible from many parts of the Vale. Notwithstanding that it would be set some 10 m below the surrounding ground level in the base of the pit it would appear as a solitary heavy industrial scale plant in an otherwise rural location. Whilst, over time, its impact would be reduced, both by the associated landscaping and by other new development in the area, its scale and appearance would nonetheless remain dominating, in our opinion. We therefore attach substantial weight to the adverse impact of the plant in its landscape setting.

Design

5.59 Plainly, the design of the proposed development has a major bearing on how successfully it can be assimilated in the landscape, and the impacts mitigated. Noting the advice in paragraph 4.5.1 of NPS EN-1 that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area, we looked particularly carefully at the design solution adopted. We accept that the function of the proposed development as an EfW plant means that large boxlike structures are the most efficient way of handling the requirements of waste input, processing, electricity generation and residue disposal. In this case the ES says the majority of the buildings would be constructed of steel frames on pre-cast concrete plinths and finished in steel cladding.

5.60 Some representations considered the design to be flawed and drew attention to alternative design solutions, for example, wave roof forms such as recently built at Colnbrook or even dome structures, such as built at Marchwood. But it was unclear to us whether these were being advocated as preferable to the design put forward in the application, or just demonstrating that alternatives were possible. The Councils' representative at the issue specific hearing held on 21 June 2011 considering landscape appeared to accept that a horizontal roofline would be the most appropriate design solution.

5.61 The Design and Access Statement (DOC/6.1) records that CABE were consulted by the Applicant on two occasions (December 2009 and March 2010) and generally endorsed the Applicant's design approach. However, the evidence is that this view was reached without the benefit of a site visit by CABE.

5.62 From our own experience of visiting the site and the locality, it is difficult to gain a full appreciation of how the proposal sits in the landscape and its design considerations without a site visit, and for

this reason we conclude that the reliance by the Applicant on views expressed by CABE needs to be treated with some caution.

5.63 In the light of the views put forward by the Councils, the 25TPCs, Our Marston Vale (OMV) and others, we acknowledge that a curved roof form might provide a better design solution in the landscape even though the Design and Access Statement explains that such a building would need to be even higher than that proposed. However, we were not convinced that a radically different design would have less visual impact. We conclude therefore that the proposed design is acceptable in the context of the function the development is intended to perform, and in the light of the design process carried out in the preparation of the application.

Heritage Assets

5.64 The Infrastructure Planning (Decisions) Regulations 2010 oblige the IPC when deciding an application to consider the setting of heritage assets such as listed buildings and scheduled monuments, and the desirability of preserving or enhancing the character or appearance of conservation areas in assessing the development. Paragraph 5.8.18 of NPS EN-1 provides that where development does not preserve the setting, the harm should be weighed against the benefits.

5.65 The proposed development would not directly affect any heritage assets, as there are none on the site itself. The nearest heritage asset is South Pillinge Farm, a Grade 2 listed building, to the south of Rookery South Pit.

5.66 Statements of common ground were agreed between the Applicant and English Heritage (EH) (SOCG/8) and the Applicant and the Councils (SOCG/5 and SOCG/6). In the SoCGs, the Councils agreed with the Applicant that impacts on heritage assets would not be significant, except in the case of Ampthill Park House, where the impact would be of minor significance. Notwithstanding this, BBC subsequently stated that harm would be caused by the proposal to the listed chimneys at Stewartby.[1]

5.67 A major point of difference between the Applicant and EH concerned the impact the proposed development would have on the setting of several heritage assets in the wider locality. EH's position, although at odds with the Councils, was supported by several others, including the 25TPCs (who suggested additionally that not all the viewpoints in the photomontages included in the ES were representative).

5.68 The methodology for the assessment of impacts on the setting of heritage assets and their significance was not agreed between the Applicant and EH. The Practice Guide accompanying PPS 5 does not

[1] At the issue specific hearing held on 22June 2011.

seek to prescribe a single methodology or particular data sources, and states that alternative approaches may be equally acceptable. This is provided they are compliant with national policies and objectives, are clearly justified, transparently presented and robustly evidenced.

5.69 The assessment of impacts on setting requires professional judgement, and in this regard, EH considers that the proposed development would cause substantial harm to the settings of Ampthill Castle (Scheduled Monument), Ampthill Park House (listed Grade 2*), Ampthill Park (Registered Park, Grade 2) and Houghton House (Scheduled Monument and listed Grade 1). The impact on the Ampthill and Millbrook conservation areas would be harmful.

5.70 The position of EH is, in essence, that these heritage assets are intimately connected to the local landscape and that appreciation of them would be severely compromised by the size and scale of the proposed development. A green agrarian view is an essential element of the setting of the heritage assets surrounding the Rookery South site, with wide open panoramas and extensive views across the Vale. EH consider that the landscape of Marston Vale is now closer to its original appearance than at any time over the past 100 years.

5.71 We took these concerns very seriously and decided to hold an issue specific hearing on 22 June 2011 to enable the respective views of the parties to be thoroughly explored. We also had these views very much before us when carrying out our site visit on 12 July 2011. At our request, the two Councils and the 25TPCs identified 13 viewpoints they wished us to visit. We added six additional locations to ensure we had visited as many as possible of the viewpoints identified during the examination.

5.72 Having considered the evidence and concluded our site visit we were not persuaded that the setting of heritage assets would be fundamentally damaged. There would be no avoiding the presence of the development in the landscape. However, the proposal would occupy only a small portion of the panoramic view from the heritage assets in question and, to our minds, the impact on their setting would not be such as to amount to substantial harm. The main impact from the ridges surrounding the site would be from the stack which would break the skyline. But other existing features do so already, and indeed the proposed wind turbine in the Marston Vale Country Park would be taller than the stack at 120 m.

5.73 The changing nature of Marston Vale over the past century coupled with:

- the likelihood of future development in the Vale;
- the absence of formal landscape policy protection to this area; and

- the fact that the landscape on and surrounding the site is not one which has been explicitly designed or designated for its historic or other quality,

suggests to us that views from Ampthill Park House, Ampthill Park and Houghton House are likely to continue to change in the future.

Traffic and Transport

5.74 Given that the proposed EfW plant would be operational 24 hours a day for 365 days a year, many interested parties expressed concerns that traffic, and particularly HGV traffic, coming to and leaving the proposed RRF would do so using unsuitable routes, thereby resulting in disturbance to nearby residents and inconvenience and danger to other road users.

5.75 We acknowledge these concerns and agree that, relative to the volume of HGV traffic currently using the roads, the proposal would result in a large increase in HGV movements, particularly on the section of Green Lane between the proposed site entrance and the C94 (the 'old'A421).[1] However, the s106 Agreement would oblige Covanta to only operate the plant in accordance with the agreed Access and Routing Strategy. This would preclude HGVs (other than local refuse collection vehicles) from coming to or leaving the site except via Green Lane and the C94. Further, given that there is a low bridge and a 7.5 tonne weight limit on the only road linking Stewartby village to the B530, it seems to us that those fears expressed regarding the propensity for HGV traffic to use this route are unfounded.[2] Accordingly, we see no reason to refuse the DCO on this account.

5.76 As to the possibility of traffic proceeding to the M1 via the C94 through Brogborough (as opposed to via the 'new' A421 which bypasses the village), plainly this is a risk. The route is not one of those permitted by the Access and Routeing Strategy contained in the s106 Agreement, however, and, having driven the route, it seems to us that any benefit that HGV drivers would gain by using it would be marginal at best. Given the 'penalties' for using it contained in the s106 Agreement we take the view that few, if any, HGV drivers coming to or leaving the plant would be likely to follow this route. We conclude that this concern should attract minimal weight in our decision as to whether or not to make the DCO.

[1] Technical Notes appended to the SOCGs concluded with CBC and BCC predict a total of 356 HGV movements/day at 'nominal throughput' scenario, and 594 movements/day for the 'maximum throughput' scenario (Technical Note appended to SOCGs 15 and 16, table following para 2.8).

[2] To our minds this is the only sensible alternative route to the site from the main road network (whilst it would be technically possible to access the C94 via Broadmead Road, this route would offer no advantage compared to the more direct route via Green Lane).

5.77 With regard to the fears expressed that traffic coming to and leaving the site would cause congestion at the M1/A421 junction or other junctions on or leading to the A421, we note that the responsible highway authorities are content that this would not be the case. To our minds their professional views should be afforded significant weight in such matters. Accordingly, we see no reason to refuse the DCO on this account, nor on the grounds that the proposal would materially increase congestion in the area at times when the M1 is badly congested due to an accident or other incident.

5.78 The impact of the proposals on roads near to transfer stations or other sites that may be used to supply the plant, or on the roads between these and the plant is not, as we see it, a matter we can take into account. We have no evidence on how the proposed development would directly impact on each of these sites and we would not expect such evidence to be provided in connection with assessing this application. Rather, it is a matter that, in due course, will need to be considered by those responsible for the sites in question.

5.79 In reaching these conclusions we have had regard to the statement of common ground concluded with the Highways Agency (SOCG/3) and the statements of common ground on traffic matters concluded between the Applicant and the local highway authorities (SOCGs 11, 12, 15 and 16).

5.80 Turning to the adequacy of the designated routes for HGV traffic, we are satisfied that the width and alignment of Green Lane between the site and the C94 is in all respects capable of accommodating the increased HGV traffic that the development would impose on it without significant harm to the safety and convenience of those who currently use the road, including members of the SWSC entering and leaving the SWSC site. Notwithstanding this, the structural condition of Green Lane is plainly a cause for concern. The s106 Agreement provides for this to be monitored, however, and for Covanta to make good any damage caused by construction traffic coming to or leaving the proposed development. Visibility to the south at the C94/Green Lane junction is also agreed to be substandard. This matter would be addressed by Requirement 37 in the DCO (see Appendix D, schedule 1, part 2). Requirement 39 would satisfactorily address the requirement for a travel plan (ibid).

5.81 With regard to the arrangements at the proposed site entrance, the DCO provides for Green Lane to be locally widened and a new ghost island junction constructed with enhanced lighting. New footpaths would also be provided, linking into nearby existing paths (DOC/2.26 and DOC/2.27). Requirement 10(1) would secure completion of these works and the associated pedestrian crossings before construction of the main plant commences. No concerns regarding this element of the proposals were raised by the affected highway authorities and we

satisfied that the arrangement would be appropriate for the development proposed.

5.82 On a more fundamental matter, several representations were received suggesting that waste should be transported to the plant by rail, as opposed to by road, using one of the adjacent railway lines. Doing so would accord with the preference expressed in NPS EN-1 at paragraph 5.13.10. This is qualified, however, in that rail transport is only preferred over road 'where cost effective'. In this case, the evidence shows that this would not currently be the case (DOC/6.4). The s106 Agreement moreover imposes obligations on Covanta; it:

- requires the situation to be monitored, and
- reserves an area of land near the MRF to be used to construct rail sidings should it be concluded at some future date that waste should be brought to the site using the Marston Vale Branch Railway Line (APP/6.1.4, schedule 1, s15 and s16).[1]

To our minds, these provisions are a fair and reasonable response to the policy context set by the NPS.

Noise

5.83 Whilst many local residents making representations took the view that noise from the RRF would adversely affect their living conditions, the analysis in the Applicant's ES does not bear this out.[2] The Councils' position is more complex. In essence, the wording of a series of requirements to control operational noise from the site was agreed with the Applicant (Requirements 17 to 24). Prior to settling the text of the requirements, a statement of common ground was signed by representatives of the Applicant, CBC and BCC. This confirms:

- that the baseline (ambient) noise surveys undertaken by the Applicant's consultant were carried out in an appropriate manner;
- that the method presented in BS5228 is appropriate for calculating construction noise;
- that operational noise should be assessed using the methodology presented in ISO 9613 and SoundPlan software; and
- that noise levels due to movements of vehicles on the access road should be calculated in terms of L_{Aeq} and L_{Amax} and those on the wider road network calculated using the methodology set down in 'Calculation of Road Traffic Noise' (SOCG/1).

[1] In this regard it is our understanding that bringing waste to the site via the alternative main line would not be technically feasible (DOC/6.4, section 5.2).
[2] Chapter 9 of the ES (DOC/3.1) concludes that noise during construction and operation of the plant and from traffic going to and from the plant is not likely to be significant.

5.84 It was further agreed that the noise assessments should have regard to the general advice in PPG 24, together with the specific advice in BS5228 for construction noise and BS4142 for industrial noise. With regard to the latter, it was agreed that the noise from the air cooled condensers, which would be the major source of noise outside the EfW building, should not attract the +5 dB rating correction for tonality.

5.85 At the close of the examination, the points remaining at issue between the Applicant and the Councils concerned (CBC/10; BCC/10):

- what the rating noise level for night-time operational noise specified in Requirement 18 should be;[1]
- what the daytime construction noise level specified in Requirement 17 should be;
- at what hours construction should be permitted to take place (Requirement 24); and
- whether HGVs should be permitted to enter and leave the site on weekday evenings and Saturday afternoons (Requirement 26).

5.86 Early in the examination, concerns were also expressed by the Councils and many others regarding the potential for HGVs travelling to and from the site between 05.00 and 07.00 in the morning to disturb residents and campers at the SWSC. However, this concern was removed when the need for deliveries in that period was reconsidered and the Applicant proposed that the requirement governing delivery hours and traffic management should be amended to prevent HGVs entering or leaving the site before 07.00 (APP/4.1, s18.3).

5.87 The concerns expressed by other interested parties broadly matched those of the Councils. In addition, the 25TPCs argued strongly that any requirement that left agreement on the noise monitoring scheme as a matter for the Applicant to settle with CBC at a later date would be unsatisfactory. In their view (and without prejudice to their contention that the DCO should be refused) the need for effective noise monitoring is a matter of such importance that it should be resolved before the examination closed and a detailed scheme set down in the requirements.

5.88 For their part, the SWSC expressed concerns regarding the affect that noise from the facility, and particularly noise from traffic going to and from the plant, would have on their activities, including camping and water ski instruction.

[1] For definition of rating noise level see BS4142:1997.

5.89 As to the points of disagreement, with regard to the first issue there is no dispute that ambient noise levels in the areas surrounding the site at night are low.[1] The Councils' proposed noise limit for night-time operations at the nearest sensitive receptors (25 dB $L_{Aeq,5\ minutes}$) (BBC/10 and CBC/10, Requirement 18) reflects this and there is no doubt that, were this to be imposed, the current ambient noise levels would not materially rise (in contrast to the situation which could occur with the Applicant's proposed limit of 35 dB $L_{Aeq,5\ minutes}$ (APP/6.1, Requirement 18)).

5.90 But is the lower limit proposed by the Councils necessary? In our opinion, it is not. The reason for this conclusion is that the primary purpose of the condition is to protect residents' living conditions. At night these residents are generally sleeping indoors. With a maximum level of 35 dB $L_{Aeq,5\ minutes}$ measured outside, as proposed by the Applicant, the internal noise levels in the bedrooms would be materially less than those at which sleep disturbance is likely; and setting a lower limit, as suggested by the Councils, would serve no practical purpose. We conclude that the free field night-time rating noise limit laid down in Requirement 18 should be 35 dB $L_{Aeq,5\ minutes}$ at all locations specified.

5.91 Turning to the second matter, Requirement 17 as proposed by the Applicant in the draft DCO (APP/6.1.1) would operate to restrict construction noise at any residential location to a maximum of 65 dB $L_{Aeq,1hour}$. The Councils suggest that, following the advice in BS 5228:1 Annex E, and having regard to the likely duration of the works, the limit should be 55 dB $L_{Aeq,1hour}$ (BBC/1, s6.2; CBC/1, s7.2). Having regard also to the current ambient noise levels in the area, we agree.

5.92 Notwithstanding this, it is clear from the information contained in the ES (DOC/3.1, Drg 2926_9.2) that, if construction is not to be unreasonably constrained, the limit for South Pillinge Farm would need to be up to 5 dB higher whilst piling is in progress and whilst concreting works and construction of the tipping hall and its associated ramps are underway. At Stewartby, some flexibility would also be necessary for relatively short periods during works near the site entrance. This could be achieved by altering Requirement 17 to set a lower limit for general application, but allowing the Council to agree higher limits in specific circumstances where they are satisfied that the need to do so is justified.

5.93 As to the matter of the hours at which construction can take place, we take the view that, having regard to the limits on construction noise that would be imposed by Requirement 17, there is no valid reason to preclude construction taking place between 07.00 and 08.00 as requested by the Councils. In our opinion, a requirement restricting

[1] See the ES (APP/3.1, table 9.6).

the permitted hours for any noisy construction works to 07.00 to 19.00 on weekdays and 07.00 to 13.00 on Saturdays would be satisfactory to protect the living conditions of residents living near the site. In reaching this conclusion we further take the view that these limits should apply to all (noisy) construction activity. We therefore do not support the Applicant's proposal that, in addition to the permitted hours, 'start-up' and 'shut down' periods of a further half an hour at each end of the working day should also be permitted.[1]

5.94 Turning to the matter of the hours at which HGVs should be permitted to enter and leave the site, we note the Councils' position and accept that the statement of common ground on noise indicates that HGVs are not expected to enter or leave the site after 18.00 on a weekday (Appendices to SOCG/13 and SOCG/14). This may be so; however, the ES makes it clear that, whilst the majority of HGV movements are expected to occur in the daytime, flexibility is required to allow vehicles to return to the site for overnight storage in the evening (DOC/3.1, para 3.3.14). Critically also, there is no evidence that if HGVs were to enter or leave the site during the evening hours or on Saturday afternoons material harm to the living conditions of those living near the roads leading to the site, or other harm, would result. Accordingly, we cannot support the Councils' contention that the hours suggested by the Applicant's draft Requirement 26 should be amended.

5.95 With regard to other matters raised, we appreciate the concerns expressed by the 25TPCs regarding the form of the noise requirements. We agree that monitoring compliance with the requirements is important. However, we do not agree that the detail of the monitoring scheme is a matter that should not be left to CBC. Under the terms of the requirements, CBC is the body primarily responsible for monitoring compliance and, in our view, it is appropriate that the same body should agree, on an ongoing basis, the details of the scheme to be used. The requirements themselves are clear as to the standards that would have to be met.

5.96 As to the SWSC, whilst we note their concerns, it was clear from our site visit and the representations made that their use of the site for camping is only occasional. The site is also currently subject to noise both from traffic on Green Lane and from passing trains. In our view, the Applicant's undertaking to erect and maintain noise barriers around the north-east corner of the site (see para 1.9 above) is a fair response to any additional noise that the Club might suffer if the proposal proceeds.

[1] In reaching this conclusion we are mindful that the requirement as drafted does not bite on 'non-intrusive' construction activities. As we see it such activities would include workers arriving at the site in normal road going vehicles before 07.00 and leaving after 19.00.

Air Quality and Health

5.97 In their representations many local residents, their representatives, OMV and others expressed concerns regarding the potential for emissions from the plant to adversely impact on air quality in the area and on the health of the local population. These issues are explored in the ES (DOC/3.1, Chapter 8) and the Health Impact Assessment (DOC/5.6) which conclude that any impact would be very small. We asked a question at the outset of the examination in order to explore this issue. The Health Protection Agency (HPA), whilst not objecting to the proposed development, recommended that several matters should further investigated or clarified (HPA/2).

5.98 We understand these concerns and appreciate that the problems local people encountered with the emissions from the brickworks that were until relatively recently working in the Vale were significant, particularly during temperature inversions. We can well appreciate that many residents are fearful that emissions from the proposed plant would result in similar problems in the future. We also appreciate that reports of Covanta failing to comply with emissions standards set for some of their plants in the USA have exacerbated these concerns.

5.99 Notwithstanding this, we are mindful that emissions from all large incinerators in this country are regulated through standards originally set by the European Union in the WID and subsequently transposed into UK legislation. As we understand it these standards were set with the express objective of ensuring that emissions from incinerators do not harm human health or the environment and the ES notes that the WID sets the most stringent emission controls for any thermal process regulated in the EU (DOC/3.1, para 3.13.13).

5.100 As to the standards, NPS EN-3 reminds us it is the environmental permitting regime through which compliance with the WID is enforced. In order to operate there is no doubt that the proposed EfW plant will require an EP issued by the EA.

5.101 The application for an EP[1] has been submitted, accepted, and advertised and the evidence is that, in determining the application, the EA will fully assess matters relating to air quality and emissions against accepted standards, taking into account the representations made to them by local residents and others regarding the potential for emissions from the plant to adversely affect the health of the local population (EA/5).

[1] We here refer to the application for the EP for the EfW plant. At the time the examination closed, a separate application had been made, but not accepted as complete, for an EP for the MRF.

5.102 At the close of the examination the EA had not completed their assessment and had therefore not yet determined the EP application. Notwithstanding this, their advice to us in May 2011 was that they had *'not so far identified any points of principle which would prevent an environmental permit being issued for the proposal'* (EA/5).

5.103 Given this, and the clear advice in NPS EN-1 at paragraph 4.10.13 that *'the IPC should work on the assumption that the relevant pollution control regimes …will be properly applied and enforced by the relevant regulator. It should act to complement, but not seek to duplicate them'*, we are satisfied that the measures necessary to ensure that the plant operates safely within appropriate air quality standards, including the requirements for monitoring, are matters for the EA to consider and regulate through the EP. We are further satisfied that the EP process is designed to prevent a breach of legal obligations in respect of the impact of waste management on human health, and that operating the plant in compliance with the WID would not result in any local air quality standards being breached.

5.104 As to emissions exceeding the standards that we would expect to be set in any EP that might be granted for the plant, or for harmful emissions of matter not specifically regulated or monitored to occur, we acknowledge that many local residents are fearful that this could be the case. We accept that such fears could, in themselves, be detrimental to their health and wellbeing and, as such, we accept that this is a matter that bears on our decision.

5.105 However, we found no evidence to support the view expressed by several local residents that any permit issued by the EA would fail in its objective of protecting human health or people with characteristics[1] protected under the Equality Act 2010. We equally found no evidence to support the view that the EA would be unable or unwilling to monitor and, if necessary, enforce compliance with the terms of any such permit.

5.106 Further comfort in this regard is given by the obligation imposed on Covanta by the s106 Agreement to display emissions data for the plant, and the corresponding limits in the EP, within the visitor centre, on the website and at other agreed public buildings (APP/6.1.4, schedule 1, s7).

5.107 Accordingly, we conclude that there is no evidence that any adverse consequences of the RRF on air quality and human health cannot be properly controlled within the applicable standards applied and enforced by the EA.

[1] Such as age, disability, pregnancy or maternity.

Lighting

5.108 Several interested parties expressed concerns during the examination that light pollution would result from the proposed development if it were to proceed.

5.109 Given that the site is currently 'dark', with no artificial light sources normally present on it, and that the proposed development would operate 24/7 with external lighting in the hours of darkness we understand their concerns. Notwithstanding this, there are numerous existing light sources in the surrounding area, including street lights in both Stewartby and Marston Moretaine.

5.110 As to the proposals for the development, a preliminary lighting strategy has been drawn up (DOC/2.30). This shows the intention is to light the main operational areas, but not the access road that would link the plant to Green Lane. During the course of the examination it was further agreed that a requirement should be attached to any DCO granted obliging the Applicant to obtain CBC's approval of a detailed lighting strategy before commencing work (Requirement 35 - see Appendix D, schedule 1, part 2). Thereafter, the approved lights would have to be provided before the plant commences operation. Other controls would operate to preclude external lights other than those approved being installed.

5.111 With regard to the stack, this would be lit with three medium intensity red obstruction lights (including one high-level light positioned within 1 m of the top of the stack and two mid-level lights facing west) in compliance with regulations and in agreement with Cranfield airport.

5.112 Given the safeguards that the requirement would achieve, our conclusion is that the impact of lighting is not a matter which should attract significant weight in our decision as to whether to make the proposed DCO.

The Materials Recycling Facility (MRF)

5.113 The proposed MRF would be located adjacent to the EfW plant. It would comprise a paved open area for the storage of processed incinerator bottom ash (IBA) prior to its removal from site, together with buildings for storing untreated IBA, and containing screens and other plant for processing the ash and foul water pumps. Retained metals would be stored in skips adjacent to the processing building. A small administration building is also proposed (APP/3.1, s3.6). The total area of land occupied by the MRF would be approximately 4 ha and broadly equal to that of the proposed EfW plant.

5.114 Rainwater and other run-off from the area would be collected and routed via a catch pit to a dedicated storage lagoon where it would be held for treatment (DOC/3.1, para 3.12.6).

5.115 Incinerator bottom ash from the EfW plant would be moved to the open storage area of the MRF by tipper truck. Within the yard it would be handled by mobile plant. Requirement 26 would restrict the hours at which the processed ash could be collected from the site to 07.00 to 18.00 on weekdays and 07.00 to 14.00 on Saturdays. Requirements 32 and 33 would prevent ash (but not necessarily any other inert material) from off-site being imported for processing at the plant and would ensure that stockpiles are not more than 10 m high. Requirement 34 requires that a scheme to control dust from the area is approved by CBC and implemented for so long as the development is operational (see Appendix D, schedule 1, part 2).

5.116 NPS EN-3 at paragraph 2.5.62 states under the heading *'mitigation'* that *'reception, storage and handling of waste and residues should be carried out within defined areas, for example bunkers or silos, within enclosed buildings at EfW generating stations'*. Plainly, this would not be the case with the proposed MRF, and both the Councils and the 25TPCs, suggested in their representations that the MRF's failure to comply with the statement should lead the decision maker to refuse to make the DCO (BBC/9; CBC/9 and 25TPC/9).

5.117 We disagree for the following reasons. Firstly, the section in which the paragraph appears is headed – *'Biomass/Waste Impacts - Odour, insect and vermin infestation'.* It is clear from this heading and the other paragraphs in the section that the main concern to which the mitigation advice is directed is the potential for biodegradable waste to attract insects and vermin and to emit unpleasant odours. This concern is addressed in the application by the proposal to deposit all incoming waste in a reception bunker as part of the EfW plant inside a building with slight negative air pressure to assist in containing odours (APP/7.2). Also, residues from the flue gas treatment plant (which constitute hazardous waste) would be collected in a silo within a building (APP/3.1, para 3.13.34).

5.118 As to the incinerator bottom ash, clearly this is a *'residue'* and whilst it is proposed to place it initially in an (open-sided) building, after screening the IBA aggregate and metals would be stored in the open, outside any building (APP/3.1, s3.6). There is no suggestion, however, that doing so would cause odours or attract insects or vermin and, whilst open air storage could result in dust being emitted, this would be controlled by the scheme submitted and approved in accordance with Requirement 34. Further, noise emitted by plant handling the bottom ash would be controlled, along with other noise from the proposed facility, by Requirement 18 et seq.

5.119 It is also worth noting that the MRF would be some 300 m from the site boundary and 1000 m from the nearest residential property in Stewartby.

5.120 In our opinion, given these distances and the various controls imposed by the requirements referred to above, there is minimal potential for the 'open' storage of ash to cause material harm to the nearby environment. In particular, there is no evidence that the arrangement proposed would increase the risk of odour, insect or vermin infestation. Accordingly, whilst we acknowledge the conflict with paragraph 2.5.62 of EN-3, we conclude that this conflict is not a matter that should attract significant weight in our overall decision.

Impact on the Millennium Country Park

5.121 The Forest of Marston Vale was established by the Countryside Agency and the Forestry Commission in 1995. It stretches on either side of the A421 from the M1 to the southern outskirts of Bedford, and wraps around the eastern side of the town. The implementation of the forest is guided by the Marston Vale Trust's Forest Plan, the aim of which is to deliver environmental regeneration, whilst providing major recreation, landscape, biodiversity, cultural heritage and quality of life benefits.

5.122 The Marston Vale Millennium Country Park is near the centre of the Marston Vale Forest and immediately adjacent to the Rookery South Pit, being separated from it by the Marston Vale railway line. The Country Park is located on restored clay workings and characterised by large bodies of open water and significant areas of woodland planting. The Forest Centre building within the Country Park faces east, and therefore has its principal views directly towards the Rookery South Pit and the proposed development.

5.123 The Country Park and Forest Centre are owned and operated by the Marston Vale Trust. While regretting the adverse impact that the proposed RRF development would have on the landscape of the Vale and the attractiveness of the Park and Forest Centre, the Trust stated in its submission (MVT/2) that it was neutral on the application, provided that the Applicant agreed to fund mitigation to compensate for the impact on visitors and the impact on the Forest Centre businesses, and to contribute adequately to the creation of the Forest of Marston Vale.

5.124 Many representations drew attention to the adverse impact the proposal would have on the enjoyment of large numbers of visitors to the Country Park, suggesting that because of the physical presence and operation of the RRF, the DCO should be refused on this account.

5.125 This strength of feeling is perhaps surprising given the position of neutrality expressed by the Trust who consider that the design has been developed taking into account the landscape and key views from the Forest Centre. This has resulted in the stack being lowered by 10 m, the maximum building height being reduced by 7 m and a

green wall being introduced to the west facing end of the main building.

5.126 The Trust's submission (MVT/2) records the Applicant's agreement to provide a financial contribution towards the objectives of the Forest of Marston Vale Plan consisting of £250,000 for the first year of operation and £50,000 each year thereafter. It was further noted that a second formal access to the Country Park would be provided from Green Lane. Woodland planting would be provided around the perimeter of the application site and within the Country Park itself to assist screening the development. The planting and financial contributions would be secured through a deed of undertaking between the Trust and Covanta (mirroring the provision in the s106 Agreement between Covanta and the Councils), which would also provide for Covanta to contribute £10,000 each year from the first year of operation towards the Trust's electricity costs (see para 1.8 above).

5.127 Notwithstanding these measures, it was clear to us from our study of the photomontage in the ES (DOC/3.2, view 2) and our site visit that the planting proposed would only screen the lower levels of the RRF and, in time, serve to block some views of the plant from within the Country Park. From many parts of the Country Park, however, it seems to us that clear views of the development would remain and for those visitors walking the paths on the eastern side of the Country Park, near the railway, the plant would be a dominant feature that, for some, would materially detract from their enjoyment of their visit. In our judgement, the impact would inevitably be major and adverse. Accordingly, it is a matter that we conclude should attract significant weight in our decision as to whether or not to grant development consent for the proposal.

Impact on Stewartby Water Sports Club

5.128 Several matters of particular concern to the Club were raised in their various representations to us including:

- the effect the proposal might have on water quality in the Stewartby Lake;
- how noise, dust and odour associated with the plant would affect their facilities;
- the visual impact of the plant; and
- the effect the buildings would have on wind patterns on the lake and its use for sailing.

5.129 As to the first of these matters, the drainage proposals for the site are considered below (see para 5.158 et seq below). In essence, any foul or process water from the plant that would be discharged to the Mill Brook, and thence to Stewartby Lake, would be treated before discharge. Moreover, the design of the treatment plant proposed, and

the risks associated with its operation, are matters that will be scrutinised in due course by the EA in conjunction with the applications for EPs for the RRF. Any permit to discharge water to the Mill Brook would set both quantitative and qualitative limits for the effluent and these would be determined by the EA having regard to, amongst other matters, the quality and use of the receiving waters. Plainly, this would include the use the SWSC make of the lake. Accordingly, and having regard to the advice in EN-1, paragraph 4.10.3, we take the view that the need to regulate aqueous discharges from the facility in order to protect the interests of the SWSC is a matter that should properly be left to the EA.

5.130 As to noise, we were at one stage during the examination concerned regarding the potential for HGVs travelling to and from the RRF between 05.00 and 07.00 to cause disturbance to campers on the SWSC site. Subsequently, however, the Applicant proposed a change to the draft requirements, the effect of which would be to prevent HGVs coming to the site before 07.00 (see para 5.86 above). This should avoid campers being disturbed by noise from the HGVs when sleeping.[1] The Applicant further entered into an undertaking to erect and maintain two noise fences at the north-east corner of the SWSC site near to Green Lane and to maintain access to the site during construction (see para 1.8 above). Having considered the evidence submitted on the matter, our conclusion is that this is a fair response to the various concerns expressed by the Club and would prevent significant harm to their amenities of on account of noise from HGVs entering or leaving the plant or passing the site on Green Lane or the access road.

5.131 With regard to dust and odour, whilst we appreciate the Club's concerns, no evidence was provided to substantiate the fears expressed. Given the precautions to prevent such nuisance outlined in the application documents, and having regard to the consideration that the EA will give such matters when examining the EP applications, we conclude that these are not matters that should weigh significantly against the proposal in our decision as to whether or not to grant development consent for the proposal.

5.132 Visual impact, including the impact of the proposal on the SWSC, is a matter that is considered in paragraphs 5.49 et seq above.

5.133 Turning to the effect the building would have on wind patterns across the lake, the main plant buildings would be some 500 m from the edge of the section of the lake used for sailing. Whilst the EfW building would be large, the only potential for it to adversely affect

[1] In reaching this conclusion we recognise that some campers are likely to wish to remain asleep after 07.00. The camping areas on the SWSC site are, however, close to the railway. Hence there is significant potential for disturbance by trains which we understand are timetabled to pass the site before 07.00.

wind conditions on the lake would be at those times when the wind is blowing from the south-east quadrant.[1] Even then, the evidence is that the distance between the building and the main sailing area is such that any adverse effects would only be minor (APP/2.1, para 19.9). Accordingly, we conclude that this too is a matter that should not weigh significantly against the proposal in our decision as to whether or not to grant development consent for the proposal.

Rail Safety

5.134 Initially, Network Rail Infrastructure Limited (Network Rail) made representations regarding the need to include protective provisions in any DCO that might be granted in order to ensure the safety of the railway would not be compromised by the Applicant's proposed works (NR/1). These were subsequently agreed with the Applicant (APP/6.1) such that Network Rail were able to withdraw their objection (see para 7.111 below).

5.135 The main concern is the level crossing on Green Lane. This is situated some 70 m west of the proposed site entrance and would be crossed by virtually all HGVs and the majority of other vehicles going to and from the RRF. Currently, the crossing is controlled by an automatic half barrier and the DCO proposes that it should be upgraded to full barriers (see Appendix D, s1, part 1, Work No 9). This upgrade has not, however, been agreed with Network Rail who, at the time the examination closed, had still to complete their GRIP Stage 3 study (NR/3). Their advice is that they would only be in a position to confirm the appropriateness or otherwise of the full barrier crossing when the study is complete (ibid).

5.136 At the time of writing this report, we do not know the results of the study and it is possible that it may conclude that an alternative design to that proposed by the Applicant and included in the draft DCO should be adopted. Should this be the case, any such different arrangement would not be authorised by the DCO, and a separate permission for the upgrade to the crossing would have to be sought by the Applicant in order for the development to proceed.[2]

5.137 As to the various representations made regarding the adequacy of the Applicant's upgrade proposals, plainly it would be unwise for us to consider this matter without seeing the results of the GRIP Stage 3 study. Notwithstanding this, we found no evidence to suggest that the proposals would cause dangerous queuing across the railway, or be otherwise inherently unsafe. Equally, we found no evidence to support the argument that delays to road traffic at the crossing would

[1] Wind is estimated to blow from this direction for 11.6% of the time (APP/2.1, para 19.11).
[2] It should be noted that the Applicant would be unable to proceed with the development without upgrading the crossing to a programme agreed with Network Rail by clause 4(5) of the protective provisions for Network Rail (included as schedule 7 to the Order).

become unacceptable. Accordingly, we see no reason for these considerations to prevent the grant of development consent for the proposal.

The Bedford to Milton Keynes Waterway (BMKW)

5.138 The BMKW is a proposed new waterway, designed to link the Grand Union Canal at Milton Keynes to the River Great Ouse at Bedford. Work on the project is being led by the BMKW Consortium, members of which include, amongst others, CBC and BBC. The proposal is supported by the development plans of both authorities, but the route is not formally safeguarded (APP/2.1, paras 9.207 and 15.6). The extent to which design and construction of the waterway has been completed is variable. However, the point at which the route would pass under Green Lane and the Copart Access Road is constrained both by the local topography and nearby development. For practical purposes we are advised that the route in this area may be regarded as effectively 'fixed' (BBC/4, para 4.3.6; CBC/4, para 4.4.5 and RB/2, Appendix 9). The Applicant's proposed grid connections are buried cables from the RRF to the substations alongside the A421 which would cross the line of the waterway where it crosses Green Lane and the Copart Access Road.

5.139 The s106 Agreement provides, in summary, that Covanta will meet the costs of diverting or altering these grid connections if and when required to enable the construction and operation of the BMKW (APP/6.1.4, schedule 1, s13). The Councils argue, however, that more should be provided and seek a requirement that Covanta should construct or fund the construction of the culverts under Green Lane and the Copart Access Road and the section of waterway between them. (BCC/10; CBC/10).

5.140 As to the reasonableness of this suggestion, we appreciate the Councils' desire to further construction of the waterway and acknowledge that it has some policy support. However, this policy support is for 'green infrastructure' in general and it requires developers to make a contribution towards this, rather than fully funding individual projects (MBCS, policy DM16 and BBCS, policy CP22). Whilst green infrastructure includes the BMKW, the policies are of wider application. Given the contributions that the Applicant would make to the work of the Forest Plan (see para 5.126 above), the question is thus whether they should be required to fund construction of part of the BMKW in addition.

5.141 In essence, no works are proposed in the application for the DCO which would materially alter either Green Lane or the Copart Access Road at the points where the waterway is expected to cross. Whilst construction costs for the culverts might be increased on account of the presence of the proposed grid connections, the s106 Agreement

provides for Covanta to meet any such additional costs incurred by the BMKW consortium in diverting or protecting them.

5.142 Accordingly, we do not support the additional requirement sought by the Councils.

Rights of Way

5.143 The rights of way strategy for the proposal (DOC/ 2.11) proposes:

- upgrading the existing 'circular' right of way around Rookery North Pit to include cycle rights;
- upgrading the length of FP72 that runs parallel to Green Lane between the level crossing and a point near the Copart Access Road, again to include cycle rights;
- the creation of two short footpath/cycle links between Green Lane and the right of way around Rookery North; and
- the creation of a further short footpath/cycle link between Green Lane and FP72, close to the level crossing.

5.144 Two short lengths of footpath crossing the railway into Rookery South Pit from the Millennium Country Park are proposed to be extinguished. Both routes, whilst shown on the definitive map, are effectively short stubs and do not lead anywhere. Under the terms of the s106 Agreement, Covanta are required to agree proposals for upgrading and maintaining the rights of way, before undertaking the work. We are satisfied therefore that alternatives would be provided to enable these public rights of way to be extinguished.

The Grid Connection

5.145 NPS EN-1 (section 4.9) advises that it is for the applicant to ensure that there will be a connection to the grid. The proposed RRF would be connected to the grid via underground cables (Work No 6). These would run in ducts along the access road to a point near Green Lane before turning to pass under the Marston Vale railway line and across the entrance to the SWSC. Thereafter, they would run in ducts along Green Lane to EDF's substations located either side of the A421. Two cables would be provided; a 33 kv main connector and an 11 kv standby power supply for the EfW facility (APP/3/1, Section 3.9).

5.146 The protective provisions agreed with Network Rail would ensure that the cables are installed and maintained having due regard to the need to avoid disruption to the railway (see para 5.134 above). Disruption to SWSC's access from cable installation works would be mitigated by the undertaking entered into by the Applicant in favour of the Club (see para 1.8 above).

5.147 Given the arrangements noted above we are satisfied about the proposed grid connections.

Readiness for Combined Heat and Power (CHP)

5.148 NPS EN-3 states at paragraph 2.5.26:

> *'The Government's strategy for CHP is described in Section 4.6 of EN-1, which sets out the requirements on applicants either to include CHP or present evidence in the application that the possibilities for CHP have been fully explored.'*

5.149 At paragraph 2.5.27 it continues:

> *'Given the importance which Government attaches to CHP, for the reasons set out in EN-1, if an application does not demonstrate that CHP has been considered the IPC should seek further information from the applicant. The IPC should not give development consent unless it is satisfied that the applicant has provided appropriate evidence that CHP is included or that the opportunities for CHP have been fully explored. For non-CHP stations, the IPC may also require that developers ensure that their stations are configured to allow heat supply at a later date as described in paragraph 4.6.8 of EN-1 and the guidance on CHP issued by BIS in 2006.'*

5.150 The application was accompanied by a report setting out the proposals for development of CHP at the site (DOC/6.3). The report demonstrates that the potential for CHP to be delivered as part of the development has been explored. Potential users of heat are identified and discussions with them have been initiated. Whilst it appears that the timetable for working up a detailed CHP proposal set out in the report has already slipped significantly, the evidence is that the Applicant remains committed to developing a CHP facility at the plant when commercially viable. To this end:

- Requirement 25 would oblige the Applicant to build and maintain the EfW facility with steam and hot water pass-outs in place and space reserved in the building for the other plant and connections necessary to facilitate delivery of CHP (i.e. the plant would have to be 'CHP enabled'); and
- The s106 Agreement requires the Applicant to use reasonable endeavours to obtain customers for heat from the plant and to provide evidence of this to the Councils on an ongoing basis.

5.151 On the evidence, we are satisfied that the potential for CHP has been fully explored as part of the preparation of the application. We are further satisfied that, should the development proceed, appropriate arrangements would be put in place to ensure (i) that the plant is CHP enabled and (ii) that marketing of CHP continues with a view to developing a CHP facility at the plant when commercially viable. We conclude therefore that, having regard to the advice in NPSs EN-1 and EN-3, the proposed development's readiness for CHP is not a

matter that should lead us to refuse to grant development consent for the proposal.

Ecology and Biodiversity

5.152 Natural England advised in their relevant representation that they had *'no objection to the proposals'* given that there are *'no European sites…… within the vicinity of the proposals that could be significantly affected.'* Consequently no appropriate assessment is required.[1] Further, Natural England were satisfied, based on the air quality assessment carried out by consultants for the Applicant, that the proposals would be *'unlikely to have a significant impact on any Sites of Special Scientific Interest'* (NE/1).

5.153 As to the more local nature conservation and biodiversity interests, the site itself comprises part of The Rookery which is designated as a County Wildlife Site (CWS). Features of particular interest include great crested newts, stoneworts and invertebrates. The site is also used by a range of breeding and wintering birds and reptiles. Bats forage and/or commute in and around the site.

5.154 With regard to the impact of the proposal on the site, this has to be viewed in the context of the approved LLRS. This will inevitably result in major disturbance of existing species and habitat in Rookery South Pit and, at the time of our second site visit, ecologists were on site attending to traps set to catch reptiles and great created newts (which we understand were being transferred to reception areas in Rookery North Pit and elsewhere). Given this disturbance, and the limited size of the proposed RRF relative to that of the CWS, the potential for the RRF to harm to the biodiversity interests of the site would be small, both during construction and operation.

5.155 Notwithstanding this, it is important that the landscaping and other features associated with plant are designed and subsequently maintained having regard to the desirability of maximising their habitat potential, and that appropriate precautions are taken both during construction and subsequent operation of the plant to avoid any unnecessary harm to nature conservation interests. This would be secured by Requirement 40.

5.156 Whilst no CWS other than The Rookery would be directly impacted by the proposal, there are a total of around 20 CWSs within 10 km of the site that could potentially be adversely affected by acid, nitrogen or other depositions from the EfW facility. The ES concludes, however, that the operation of the plant would have no significant impact on the habitats present in any of these sites (DOC/3.5, para 12.9.13). This conclusion was not contested by the authorities responsible for the sites.

[1] NPS EN-1, paragraph 4.3.1.

5.157 We accordingly conclude that there is no reason to refuse to grant development consent for the proposal on ecological grounds.

Flooding and Surface Water Drainage

5.158 Several representations were received, for example from Woburn Sands and District Society, arguing that the proposal would increase the risk of flooding. The application was accompanied by a Flood Risk Assessment (DOC/4.4) prepared in response to the requirement for such an assessment laid down by NPS EN-1, paragraph 5.7.4.

5.159 As noted above, Rookery South is a former brick pit. It is subject to shallow seasonal flooding. It is crossed by a small watercourse (the Mill Brook) which drains a predominantly rural catchment of 4.5 km^2. The Mill Brook passes through a culvert under the Marston Vale branch railway line before discharging into the Stewartby Lake.

5.160 In its current condition, parts of the Rookery South Pit are subject to flooding, and a hydraulic model developed in conjunction with preparing the LLRS showed that floodwater from the Mill Brook may discharge into the Pit during a 1 in 100 year flood event (DOC/4.4 para 10.4.2). With the LLRS in place, any overflow from the stream would be 'managed' and channelled to a new attenuation pond from which it would be pumped into the Mill Brook at a maximum rate of 23 l/s (2,000 m^3 per day) in accordance with the terms of an existing discharge consent. A second pump would allow it to be pumped for storage in the Rookery North Pit. This strategy was agreed with the EA and the River Ivel Internal Drainage Board (ibid, paras 7.3.2 and 10.4.3).

5.161 Further modelling was undertaken to support the present application for a DCO. This showed that, whilst floodwater would discharge into Rookery South Pit during a 1 in 100 year event, the site for the RRF (which it is proposed to raise as part of the LLRS) would be approximately 3 m above the predicted flood level (ibid, para10.11.2) . During a 1 in 1000 year 'extreme' event, floodwater is predicted to discharge immediately upstream of the railway and to flow along the highway and across the car park towards the attenuation pond. The predicted depth and speed of flow are modest, however, and would not compromise access by either vehicles or pedestrians (ibid, para 10.10.3 et seq).

5.162 Having regard to the above, the Applicant agreed with the EA that the platform on which the RRF would sit should be classified as Flood Zone 2 (ibid, para 10.11.2).[1] Given that the development would be located outside of the floodplain, it was further agreed that the proposals would not give rise to any loss of floodplain storage or

[1] For definition of Flood Zone 2 see PPS 25, Annex D.

interrupt the flood routing process (ibid, para 10.12.1). We therefore see no reason to refuse a DCO on flooding grounds.

5.163 As to the proposals for surface water drainage, modelling showed that it would be possible to drain the impermeable surfaces associated with the RRF to the LLRS attenuation pond without the pond overflowing during an extreme flood event (ibid, s11).[1]

5.164 Water running off from the MRF is expected to be contaminated. It is therefore proposed to discharge it to a catch pit and collection lagoon within the MRF from which it would be treated and pumped back to the EfW plant for use as process water. Domestic foul water flows (from toilets, showers and the like) would also be (separately) treated and pumped to the EfW plant for use as process water. Should at any time the combined volume of treated water from these sources exceed the available storage capacity in the EfW plant, then it is proposed to discharge the surplus to the attenuation pond (APP/3.2, Appendix 2.5).[2]

5.165 We agree that there is potential for pollution from the plant to enter the watercourse in this way and this potential was a source of concern to SWSC and others (SWSC/4). However, the treatment plant design and operation would be scrutinised by the EA in conjunction with the EP applications and any permit granted would set standards for effluent quality designed to protect the receiving watercourse (including proposals for monitoring discharge water quality). Given this, we see no reason to refuse development consent for the proposal on account of the foul water drainage strategy proposed.

Socio-Economic Effects

5.166 The immediate area in which the plant is proposed to be located is one where the average quality of life is among the best in the country as measured by the Index of Multiple Deprivation (DOC/3.1, para 15.6.12 et seq). The area has a lower unemployment rate than the national average, albeit that the trend has been upwards as the recession has affected the economy (ibid, para15.6.37).

5.167 In terms of the effect that the plant would have on the socio-economic well-being of the area, an average workforce of around 320 persons

[1] It should be noted that whilst re-profiling of the southern bank of the attenuation pond is proposed, any resultant increase in the pond's storage volume is not required for flood attenuation purposes. Similarly, whilst a water feature is proposed as part of the development, this is not required to attenuate surface water run-off.

[2] It should be noted that when the application was made it was anticipated that all domestic foul water and surplus run-off from the MRF would be pumped off-site to Anglian Water's Stewartby Sewage Treatment Works STW). The strategy was revised, however, following Anglian Water's advice in November 2010 that the Stewartby STW does not have capacity available to accommodate the additional flows from the RRF (see para 3.15 et seq above).

is predicted to be required during the 39 month construction period. When operational the plant is expected to employ 80 full time permanent staff. Salary levels for these staff are likely to be above the average for the area. In both phases the majority of the jobs are likely to be suitable for local residents. However, it is likely that some of the jobs requiring a specific and rare skill set would go to people currently resident outside the area. In both phases the employment available on the site is expected to increase the demand for locally sourced goods and services, leading to modest indirect/induced benefits and increased employment in the supply chain.

5.168 Overall our conclusion is that the jobs the plant would offer would be beneficial for the local economy.

5.169 As to other socio-economic effects, the proposal to provide a visitor centre/educational facility within the plant is likely to be of some benefit and further limited benefits would arise from the improvements proposed to the public rights of way near the site. The Applicant's proposal to set up and contribute to a Community Trust Fund and to provide a modest subsidy to existing residents in the area by way of a contribution towards the cost of their electricity bills would also offer positive benefits. These matters would be secured by the s106 Agreement. The s106 Agreement would also secure initial and annual payments to be used to further the work of the Forest of Marston Vale (ibid). Collectively we expect these proposals to be moderately beneficial to the local community and, whilst some representations (for example the 25TPCs) suggested that more should have been offered (or the benefits should have been made more widely available), we found very little by way of evidence to support this contention.

5.170 Turning to the possible disadvantages, the areas of greatest concern locally centred on the effect the proposal would have on local house prices and the area's attractiveness for tourism and as a place to set up or expand a business.

5.171 Paragraph 5.12 7 of EN-1 advises that limited weight should be given to assertions of socio-economic impacts that are not supported by evidence. In this regard, such studies that have been undertaken on the effects plants such as that proposed have had on house prices have tended to be inconclusive (DOC/5.5, s3.3). On the latter, whilst we can appreciate people's concerns, we found nothing to substantiate the view that the area's potential as a tourist destination or attractiveness as a place to do business would be significantly harmed were the proposal to go ahead. Accordingly, we take the view that these concerns should not attract significant weight in the overall balance.

6 THE PANEL'S CONCLUSION ON THE CASE FOR DEVELOPMENT

6.1 As noted above at paragraph 4.3, the suite of Energy NPSs was formally designated on 19 July 2011. They provide the primary basis for decisions made by the IPC. Our conclusions on the case for development contained in the application before us are therefore underpinned by the advice therein.

6.2 The importance that Government attaches to the provision of new energy generating capacity is clearly set out in NPS EN-1. Paragraph 3.13 in that document requires the IPC to assess all applications for development consent *'on the basis that the Government has demonstrated that there is a need for [the types of infrastructure covered by the NPSs] and that the scale and urgency of that need is as described for each of them…'*. Paragraph 3.14 states that *'the IPC 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.'* Paragraph 3.3.24 states that *'it is not the Government's intention to set targets or limits on any new generating infrastructure to be consented in accordance with the energy NPSs*.'

6.3 As to renewable energy, paragraph 3.3.10 of EN-1 advises that '*the Government is committed to increasing dramatically the amount of renewable energy capacity*' and that increasingly this capacity *'may include plant powered by the combustion of biomass and waste….'.* Paragraphs 3.4.3 and 3.4.4 say the principal purpose of the combustion of waste is *'to reduce the amount of waste going to landfill in accordance with the waste hierarchy and to recover energy from the waste as electricity or heat. Only waste that cannot be reused or recycled, with less environmental impact and would otherwise go to landfill should be used for energy recovery.'* The ability of EfW *'to deliver predictable, controllable electricity is increasingly important in ensuring the security of UK supplies.'*

6.4 Paragraph 3.3.15 of EN-1 emphasises the urgency of the need for new energy NSIPs to be brought forward *'as soon as possible'.* More specifically, paragraph 3.4.5 advises that *'it is necessary to bring forward new renewable energy generating projects as soon as possible. The need for new renewable energy generation projects is therefore urgent*.'

6.5 Paragraph 2.1.2 of NPS EN -3 reaffirms the principle that '*the IPC should act on the basis that the need for infrastructure covered by this NPS has been demonstrated.'* Paragraphs 2.5.11 and 2.5.13 state that 'the *IPC should not be concerned about the type of technology used' and 'throughput volumes are not, in themselves, a factor in IPC decision-making as there are no specific minimum or maximum fuel throughput limits for different technologies or levels of electricity*

generation.' Paragraph 2.5.18 states that '*waste combustion plants are unlike other electricity generating power stations in that they have two roles: treatment of waste and recovery of energy.'*

Assessing the Impacts

6.6 Turning to the range of potential impacts that would arise in the case of the proposed development (see Chapter 5 above), we find that, the plant would be significantly larger than required to serve the (former) Bedfordshire and Luton area (see para 5.33 et seq above), and as such in conflict with the development plan (see para 5.8 above). Notwithstanding this we conclude that the benefits in sustainability terms of having a single large plant such as that proposed would be significant as compared to the alternative of developing a number of smaller plants positioned more closely to the source of the waste (ibid).

6.7 Given the advice in NPS EN-1 regarding the urgency of need for new renewable energy generating projects (see para 6.3 above) and the further advice in NPS EN-3 regarding how the IPC should view commercial matters, we conclude that there is no reason to refuse to grant the DCO on the grounds that the proposed development would be likely to undermine the waste hierarchy, result in an excess of waste treatment capacity in the area, and/or displace alternative (preferable) proposals for waste treatment (see para 5.37 above).

6.8 We further conclude that, with the various safeguards that could be secured by the requirements and the s106 Agreement, there is no reason to refuse grant development consent on account of the widespread concerns expressed regarding the impact the proposal would have on the local highway network and those using it (see para 5.74 et seq). Similarly, whilst the form of the improvements required at the Green Lane level crossing had not been finalised by the time the examination closed, we see no reason for the grant of development consent to be frustrated on this account (see para 5.137 above). We are satisfied also about the proposals for amending rights of way (see para 5.144 above).

6.9 With regard to noise, our view is that the safeguards that would be provided by the requirements and the undertaking the Applicant entered into in favour of the SWSC are critical (see para 1.9 above). With this mitigation in place, coupled with our modification to Requirement 17, we conclude that there is no reason to refuse to grant development consent on account of the impact the proposal would have on the living conditions of those potentially affected by noise from the plant (see para 5.83 et seq above).

6.10 Any adverse effect that emissions from the plant would have on local air quality, including considerations relating to the effect on the health of local residents, are matters that we are satisfied should not attract

significant weight in our decision, having regard to the scrutiny that the EA would give these matters when considering the applications for EPs for the development (see para 5.100 et seq above). We are satisfied that, given the safeguards that the agreed requirements would achieve, the impact of lighting is not a matter which should attract significant weight in our decision (see para 5.112 above).

6.11 As to the MRF, the proposal is to store incinerator bottom ash in an open storage yard. This would not accord with the advice in paragraph 2.5.62 of NPS EN-3 which calls for reception, storage and handling of residues from EfW generating stations to be carried out within enclosed buildings. We nonetheless take the view that it would not be reasonable to refuse to grant development consent on this account having regard to the minimal potential for ash stored in the way proposed to cause material harm to the nearby environment (see para 5.120 above).

6.12 On other matters we find no reason to refuse the DCO on flooding grounds (see para 5.162 above) or on account of the foul water drainage strategy proposed (see para 5.165 above). With regard to harm to ecological and biodiversity interests we note that Natural England *'had no objection to the proposals'* (see para 5.152 above) and that the potential for the RRF to harm the biodiversity interests of The Rookery CWS would be limited having regard to the works already approved in conjunction with the LLRS (see para 5.154 above). Overall we conclude therefore that there is no reason to refuse to grant development consent for the proposal on account of its impact on features of ecological or biodiversity interest (see para 5.157 above).

6.13 We are satisfied about the proposed grid connection arrangements (see para 5.147 above), the inter-relationship with the BMKW (see para 5.142 above), and the application for CHP reinforced by Requirement 25 and the s106 Agreement (see para 5.151 above).

6.14 With regard to socio-economic matters, we conclude that the jobs and the various benefits to the local community that would be secured by the s106 Agreement would be moderately beneficial (see paras 5.168 and 5.169 above). Also, whilst several interested parties expressed fears that the proposed development would adversely affect house prices in the nearby settlements, evidence on this was inconclusive. We accordingly take the view that these matters should not attract significant weight in the overall balance (see para 5.171 above).

6.15 As to the effect on the immediate neighbours we conclude that the concerns expressed by the SWSC regarding dust, odour and the effect the proposed development would have on wind patterns across their sailing lake should not weigh significantly against the proposal (see paras 5.131 and 5.133 above). Similarly, we conclude that the Applicant's undertaking to erect and maintain noise barriers around

the corner of the SWSC site would prevent significant harm to their amenities on account of noise (see para 5.130 above).

6.16 With regard to the impact on the Millennium Country Park, the declared position of the Marston Vale Trust is one of neutrality, given the mitigation that would be secured through their Agreement with Covanta. Notwithstanding this it was clear from the photomontages provided that the mitigation planting would not effectively screen the upper parts of the building as it would be seen from the Forest Centre. Also, there is no doubt in our minds that the size and scale of the building would tend to appear 'overwhelming' to walkers on the paths closest to the edge of the site and the railway line. This to our minds would be a significant disadvantage of the proposal to be weighed in the balance (see para 5.127 above).

6.17 Turning to visual impact, the area surrounding the proposed plant, whilst formerly scarred by the brickworks, their associated clay workings and subsequent landfill operations, is now predominantly rural in character. The site is within the Marston Vale growth area and it is common ground that the area is one subject to change (see para 5.45 above). The evidence is that for the most part, large scale changes will occur around the fringes of Bedford and that, with some exceptions[1], new built development in the part of the Vale near to The Rookery, will be at a much smaller scale than the proposed RRF.

6.18 Given this, the evidence presented and our observations during the site visit, there is no doubt in our minds that the proposed RRF would be widely visible in the landscape. This visibility would not be materially reduced should the plant throughput be smaller (see para 5.56 above). And, whilst screening bunds and planting could soften the appearance of the plant and hide much of the ground level activity from sight, as it matures, it would do nothing to screen the upper levels of the building and the stack. Inevitably, the plant would be seen from many of the more distant viewpoints in the surrounding landscape as an essentially industrial plant in a rural location (see para 5.58 above). From close quarters our conclusion is that its presence would be 'overwhelming'. This weighs substantially against the proposal.

6.19 As to design, we note CABE's endorsement of the 'functional' design approach proposed by the Applicant, but give this endorsement limited weight for the reasons given in paragraph 5.62. Notwithstanding this there is no evidence to suggest that any alternative design approach with, for example, a curved roof, would materially reduce the visual impact of the plant and we see no reason to refuse the DCO on design grounds.

[1] Particularly NIRAH.

6.20 With regard to the impact on heritage assets we acknowledge the EH view that the settings of several nearby Scheduled Monuments or listed buildings would be harmed if the development were to proceed. However, we were not persuaded that the settings would be fundamentally damaged or the heritage values of the assets in question reduced to such an extent as to be unacceptable (see para 5.72 above).

Overall Conclusion on the Case for Development

6.21 NPS EN -1 (para 4.1.2) advises that, subject to the provisions of s104 of the Act[1], the starting point of our determination is a presumption in favour of granting consent to applications for energy NSIPs.

6.22 In reaching our conclusions on the case for the proposed development we have had regard to the relevant NPSs, the local impact reports submitted by the Councils, and all other matters which we consider are both important and relevant to our decision. We have further considered whether determining this application in accordance with the relevant NPSs would lead the UK to be in breach of any of its international obligations where relevant, including the objective in the rWFD to minimise the negative effects of waste management on the environment. We have also considered our own and the Infrastructure Planning Commission's legal duties such as under the Human Rights Act 1998 and the Equality Act 2010. We have concluded that in respect of the case for development we and the Commission in whose name the Order will be made have complied with such duties.

6.23 Bringing the above together, we find no reason to refuse development consent for the proposal on the grounds of the impact it would have on the waste hierarchy or on the grounds that it would displace alternative (preferable) proposals for waste treatment in the area. With the safeguards that would be secured by the requirements and the s106 Agreement, we further conclude that there is no reason to refuse development consent on account of the concerns expressed regarding the impact the proposal would have on traffic in the locality or highways safety or rights of way. We also conclude that noise and lighting associated with the plant would not adversely affect the living conditions of those living nearby or the amenities enjoyed by visitors to the Millennium Country Park or the SWSC to an extent sufficient to justify refusal of the application. And, whilst widespread concerns were expressed regarding the impact that emissions from the plant would have on air quality and the health of those living locally, this is not a matter that, in our view, would justify us not granting consent for the development, given the scrutiny that these matters will receive from the EA as they consider the EP applications for consent for the proposed development to operate.

[1] Including adverse impacts from the development not outweighing the benefits.

6.24 In a similar vein we conclude that there is no reason to refuse the DCO on the grounds of the impact the proposed development would have on features of ecological and biodiversity interest or on flooding and drainage grounds. We are satisfied with the grid connection arrangements, inter-relationship with the BMKW, and arrangements for CHP. Socio-economic impacts would be beneficial overall, to the extent that they can be accurately assessed.

6.25 Conversely, we conclude that the proposal would appear as an essentially industrial plant in a rural location and that when viewed from close quarters its presence would be 'overwhelming'. There is no doubt in our minds that its presence would be seen by many local residents as a 'step backwards' towards re-industrialisation of the Vale, in conflict with those policies aimed at restoring and 'greening' the area following the closure of the brickworks and the subsequent landfilling of the former clay pits. This consideration weighs heavily against the proposal.

6.26 Alongside this we note the Government's strong support for energy generating plants, including those fuelled by waste. The need for such plants is stated to be *'urgent'* and, in our opinion, the benefits of meeting this need outweigh the adverse impacts of the development in visual terms and all other matters considered by us during the course of the examination.

6.27 Accordingly, we conclude that, in development terms[1], the case for granting development consent for the plant proposed should succeed.

[1] As opposed to considerations relating to the compulsory acquisition of land and rights.

7 COMPULSORY ACQUISITION MATTERS

The Request for Compulsory Acquisition Powers

7.1 The application for the DCO seeks compulsory acquisition powers both to acquire land and to acquire rights over land. The Order Land covers an area of approximately 130 ha. A brief description of the site and the surrounding area is included in Chapter 3 of this report.

7.2 The application also seeks powers including various matters set out below the details of which are included in the articles and schedules of the Order as follows:

- Street Works, article 9, schedule 2;
- Public rights of way, article 10, schedule 3;
- Temporary stopping up of streets, article 11, schedule 4;
- Access to works, article 12, schedule 5; and
- Temporary possession, articles 24 and 25, schedule 6.

7.3 The application was accompanied by a Statement of Reasons, a Funding Statement, a plan showing land which would be acquired or over which rights would be acquired and a Book of Reference.

7.4 The Book of Reference (DOC/1.8) identifies 93 plots of land (the Compulsory Acquisition (CA) Land)[1] and these are shown on the Land Plan included with the application (DOC/2.5). With regard to 30 plots shown coloured pink on the Land Plan the power is sought to acquire the land and with regard to a further 63 plots shown coloured blue on the Land Plan the power is sought to acquire rights over the land to enable the proposed development to take place.

7.5 The Statement of Reasons (DOC/1.6) states that certain plots are affected by a restrictive covenant included in a transfer dated 17 March 1988 between (i) London Brick Property Limited; (ii) British Agricultural Services Limited; (iii) Hanson Brick Limited; and (iv) London Brick Company Limited which provide that these plots may not be used for any 'Protected Business'. 'Protected Business' is defined in paragraphs 5.4.2 and 5.4.3 of the Statement of Reasons and includes the use of the land for the purposes for which the DCO application is made.

7.6 The restrictive covenant affects all the plots shown coloured pink on the Land Plan.[2] Those who are entitled to the benefit of the covenants are listed in the schedule enclosed at page 95 of the Book

[1] Whilst the Book of Reference refers to 93 plots, plot 66 has not been allocated and is thus not shown on the Land Plan but an additional plot 29/1is included.
[2] Also shown coloured green on the plan accompanying the Applicant's representations dated 9 May 2011 (APP/3.2, Appendix 3.1).

of Reference under the heading 'Land benefiting from Covenants Listed in Part 2'.

7.7 Further, it is proposed to override an easement in favour of Hanson Building Products Limited over plots 31, 68, 70 and 79, the extent of which is shown on the Land Plan coloured pink and cross hatched blue.

7.8 A number of the plots comprise land in respect of which some protection against compulsory acquisition (including the compulsory acquisition of rights) is given (Special Land) by requiring that the land in question may be subject to Special Parliamentary Procedure. Special Land comprises interests in 9 plots which are statutory undertakers' land, 35 plots which are local authority land and 11 plots which are open space land. These plots are listed in Parts 1 and 5 of the Book of Reference. Also included are 15 plots in which the Crown has an interest (Crown Land) listed in Part 4 of the Book of Reference.

7.9 The DCO seeks to incorporate the provisions of The Compulsory Purchase (General Vesting Declarations) Act 1981 and also a provision relating to the overriding of restrictive covenants in similar terms to those set out in s237 of The Town and Country Planning Act 1990. SI20(5)(a) of the Planning Act 2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO, and under s117(4) if a DCO includes such provisions it must be in the form of a Statutory Instrument.

What the Planning Act 2008 Requires

7.10 Compulsory acquisition powers can only be granted if the conditions set out in s122 and s123 of the Act are complied with. S122(2) requires that the land must be required for the development to which the DCO relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and must be proportionate.[1]

7.11 With regard to s123 we are satisfied that s123(2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.

7.12 S122(3) requires that there must be a compelling case in the public interest and the public benefits derived from the compulsory acquisition must outweigh the private loss which would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right.

[1]Guidance related to procedures for compulsory acquisition,DCLG February 2010.

But this does not mean that the compulsory acquisition proposals can be considered in isolation from the wider consideration of the merits of the project: there will be some overlap. There must be a need for the project to be carried out and there must be consistency and coherency in the decision making process.

7.13 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on us as decision makers:

- all reasonable alternatives to compulsory acquisition must be explored;
- the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
- the Panel must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

The Approach of the Panel

7.14 We recognised the significance of the request for compulsory acquisition powers in our first round of questions, particularly seeking assurances about the adequacy of financial resources provided by the Applicant to fund any compensation payments. We pursued this matter further in our letter of 11 April 2011 concerning a parent company guarantee to cover the estimated compensation liabilities, and again in a letter of 7 June 2011.[1]

7.15 We held a compulsory acquisition hearing commencing on 27 June 2011 to explore issues raised by affected parties, principally Waste Recycling Group (WRG) and the Councils. The main matters covered were:

- **Scale and need** - the justification for a development of the scale proposed;
- **Alternative sites** - whether the need could be met on an alternative site or in an alternative way (not requiring the grant of compulsory acquisition powers) having regard to NPS EN -1; and
- **Policy** - the policy context that should be applied when considering compulsory acquisition matters for a development in this location.

7.16 A final submission was made to us by the Applicant on 8 July 2011 containing, amongst other matters, a signed parent company guarantee and a planning obligation by undertaking given by Covanta

[1] Sent pursuant to Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010.

in favour of the Councils. These matters are considered in detail later in this chapter.

The Applicant's Case

7.17 The Applicant's case for the grant of compulsory acquisition powers is set out in the Statement of Reasons together with the Funding Statement and Alternative Site Assessment Report. Additional information relating to Crown Land, open space land, statutory undertakers land, local authority land and the Funding Statement was submitted in response to the Panel's questions and in Further Representations submitted by the Applicant.

Requirement for the compulsory acquisition of CA Land

7.18 Much of the CA Land is already under the control of Covanta under contractual arrangements with the freehold owner. Notwithstanding this, compulsory acquisition powers are needed in order to ensure that the land is available to the Applicant to construct and operate the development. Table 1, following paragraph 6.2.7 of the Statement of Reasons, sets out the purpose for which each plot is required.

Need for power to override rights and easements

7.19 The Applicant considers that the justification for the acquisition of the plots as set out in Table 1 demonstrates that the overriding of the restrictive covenant is for a legitimate purpose. Further, the Applicant considers that, given the availability of compensation, it is both necessary and appropriate for the powers to be given expressly authorising the benefit of the restrictive covenant to be overridden.

Alternatives to compulsory acquisition

7.20 Guidance requires that in relation to the compulsory acquisition of land it is appropriate to consider whether an alternative exists which does not require the use of powers of compulsory acquisition.

7.21 The Applicant sets out at paragraphs 6.4.1 to 6.4.19 of the Statement of Reasons (DOC/1.6) its approach and conclusion with regard to alternative sites. The Alternative Site Assessment Report (DOC/5.2) deals with its consideration of alternative sites and, it argues, demonstrates that Rookery South is an appropriate location for the development. The reasons for this are set out in paragraph 6.4.12 of the Statement of Reasons.

7.22 The Applicant further considered the deliverability of other sites within its defined waste catchment area but concluded only four sites (Rookery South, Calvert Landfill, Brogborough Landfill and Corby South-East) were capable of being delivered (without considering matters of ownership) (DOC/1.6, para 6.4.17). Notwithstanding this,

the Applicant argued that where sites were not in their control they were not true alternatives (DOC/1.6, para 6.4.3).

7.23 They also argued that even if an alternative site did exist and could be advanced in addition to the proposed development at Rookery South, the need for a number of generating and waste management projects means that Rookery South can be justified as well in its own right. Critically, Rookery South is available to develop now (DOC/1.6 paras 6.4.18 and 6.4.19).

Availability of funds for compensation

7.24 Accompanying the Statement of Reasons was a Funding Statement (DOC/1.7) in which the Applicant states that through its holding companies it has the ability to procure the financial resources required for the development, including the cost of acquiring any land and the payment of compensation (DOC/1.7, para 1.4). It also states that the capital resources of the Applicant or its holding companies would be used to meet any claims for blight **(**DOC/1.7, para 2.1).

7.25 In a subsequent submission in response to questions posed by the Panel, the Applicant, Covanta Energy Limited and Covanta Holdings Corporation, confirmed that they had obtained specialist compensation advice as to the amount of compensation they are likely to be liable to pay if the DCO is made and implemented and that the funds for compensation can be provided from Covanta Holdings Corporation's resources (APP/3.2, Appendix 2.19). Copies of Covanta Holdings Corporation's financial statements for the year ending 31st December 2010 were enclosed (APP/ 3.2, Appendix 2.9).

7.26 In response to a letter from the lead member of the Panel dated 7June 2011[1], the Applicant confirmed that a parent company guarantee would be given by Covanta Holdings Corporation to meet compensation liabilities secured by a Unilateral Undertaking under s106 of the Town and Country Planning Act 1990. This would be in place by the close of the examination and replaced or refreshed prior to the commencement of development or the exercise of compulsory acquisition powers.

Compelling case

7.27 Paragraphs 6.6.1 to 6.6.24 of the Statement of Reasons set out how the Planning Statement (DOC/5.1) supports the Applicant's argument for there being a compelling case in the public interest for the compulsory acquisition powers to be granted. Paragraphs 6.6.3 to 6.6.23 conclude that the development would be in conformity with the NPSs. It would:

[1] Sent pursuant to Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010.

- not conflict with any important or relevant policies of the development plan;
- deliver important and relevant benefits (in addition to the supply of renewable energy and provision of a key part of the waste hierarchy) which would significantly outweigh the adverse effects and environmental burdens associated with the proposed development;
- contribute to the regeneration of Marston Vale;
- provide of a range of employment opportunities;
- provide visitor facilities;
- establish trust funds to serve the local community and Forest of Marston Vale;
- provide additional landscaping; and
- improve public access around the site to enhance the existing public rights of way network.

7.28 The Applicant considers that the project is financially viable and deliverable within a reasonable period and that it would be:

- in accordance with emerging national policy in relation to NSIPs contained in NPS EN-1 and NPS EN-3;
- required to meet a pressing national need for generating capacity;
- required to meet a national and regional need for waste management facilities;
- in accordance with regional and local planning policy both current and emerging; and
- entirely necessary and proportionate to the extent that interference with private rights is required.

7.29 On this basis the Applicant considers there is a compelling case in the public interest for the DCO to be made including compulsory acquisition powers.

Special considerations

Crown Land

7.30 Crown Land, which comprises plots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 15,37,38,39 and 40 is land vested in the Secretary of State for Transport (Highways Agency) pursuant to a compulsory purchase order associated with the construction of a new alignment of the A421.

7.31 The Applicant seeks the right to occupy the Crown Land in order to install cables and thereafter to maintain them and is seeking to conclude private treaty arrangements with the Crown for the necessary rights.

Open Space Land

7.32 The CA Land includes provision for the right to use open space land – plots 43, 44, 45, 47, 52, 72, 73, 74, 75, 76 and 77 – for the purpose of installing and keeping maintained electricity cables to connect to the electricity grid, and for the purpose of establishing and maintaining landscape and ecological improvements. In its first representations the Applicant advised that it was in the process of applying to the Secretary of State for a Certificate in accordance with s132(2) of the Act.

Statutory Undertakers Land

7.33 The CA Land interfaces with two substations owned by EDF to enable the connection of the development to the National Grid. It also includes land owned by Network Rail required to lay cables and to improve the Green Lane level crossing at Stewartby. The Applicant entered into discussions with both parties with a view to reaching agreements with them.

Local Authority Land

7.34 The Applicant's proposals include areas of public highway and other land where the Applicant requires powers to lay, retain and maintain cables for the purpose of connection to the National Grid.

Human rights

7.35 The Statement of Reasons acknowledges that as a consequence of the grant of compulsory acquisition powers there would be an infringement of rights under the Human Rights Act 1998, in particular Article 1 of the First Protocol, Article 6 and Article 8.

7.36 The Applicant states that it has weighed the potential infringement of the Convention rights against the potential public benefits and considers there would be sufficient public benefit arising from the grant of development consent but that public benefit can only be realised by the grant of the compulsory acquisition powers it seeks. In considering the impact of the use of the compulsory acquisition powers, the Applicant was mindful of the statutory rights to compensation for those affected to make representations to require a compulsory acquisition hearing to be held and the rights of challenge under s118 of the Act.

7.37 Against this background the Applicant considered that the interference was both legitimate and proportionate in the public interest.

The Objectors' Cases

7.38 Objections to the application for the grant of compulsory acquisition powers were received from BBC, CBC, Waste Recycling Group Limited (WRG), Network Rail Infrastructure Ltd (Network Rail), Eastern Power Networks Plc (EPN), the Highways Agency, the SWSC, Hanson Building Products Limited and Gardenvale Properties Limited.

The local authorities: BBC and CBC

7.39 Together BBC and CBC have legal interests in 35 plots but their interests are essentially as local highway authorities. Both Councils acknowledge the need for facilities to treat and dispose of residual waste arising within their area. Their concerns relate to the size of the facility proposed and the extent of the catchment area identified, which extends well beyond the boundaries of the Bedfordshire and Luton authorities. Additionally, they are concerned that the Applicant does not intend to limit the sourcing of waste from this extended area, because the proposed plant would operate as a merchant facility (i.e. available for use generally and not restricted to a specific contracting party).

7.40 For essentially the same reasons set out in their representations opposing the DCO, the Councils oppose the inclusion in the DCO of the powers of compulsory acquisition**.** They do so on the basis that if their representations were successful and development consent was not granted there would be no case for compulsory acquisition of rights over their land.

7.41 At the compulsory acquisition hearing BBC and CBC gave evidence as follows:

- **Policy** - NPS EN-1 states that the starting presumption in favour of NSIPs applies unless more specific and relevant policies set out in the relevant NPS clearly indicates that consent should be refused.[1] At Rookery South Pit the relevant NPS is EN-3 which makes it clear that (i) the object of generating energy is subservient to the need to comply with the waste hierarchy and (ii) that the type and scale of a proposed energy from waste facility should not prejudice the achievement of local or national waste management targets.[2]

- If all residual MSW and C&I waste in Bedfordshire and Luton were taken to Rookery South Pit, between 209,000 (the Applicant's figures) and 338,000 tonnes (the Council's figures) of residual waste would be imported every year to fuel the

[1] EN-1 Part 4 para 4.1.2.
[2] EN-3 para 2.5.70.

facility. Importing such a quantity of waste would undermine the principles of self-sufficiency and proximity which are promoted at all levels of waste policy (DOC BBCBC/5).

- **Scale and need** - Whilst the Councils accept the need for additional generating capacity in the UK, they do not accept the need for a facility on the scale of Rookery South and consider the need would be better met by a number of more local facilities. The widely ranging estimates of waste management capacity between the Applicant, the Councils and WRG was exacerbated because the Applicant only included existing operational capacity, though it did acknowledge some future capacity could be taken into account.

- In this case, and bearing in mind that the plant would not be operational until at least 2015 (assuming the timely grant of all consents required), the proposal should be assessed against the likely changes in capacity by that time. The Councils argued that in view of the increased pressure to avoid sending waste to landfill, it is expected proposals for other facilities will come forward so that there should be a significantly increased waste management capacity in the area. If Rookery South were to be permitted it would act as a disincentive to the development of waste management facilities of a scale that respected the self-sufficiency and proximity principles.

- **Alternatives** - Only if one assumes there is a need for energy from waste facility with a nominal capacity of 585,000 tonnes in the middle of the Applicant's own defined catchment area is there no alternative to the Rookery South proposal. If one does not, the Applicant's Alternative Site Assessment can be disregarded.

7.42 In summary, NPSs EN-1 and EN-3 do not seek to override waste planning policy and, if there is to be an exception to those policies, evidence must be produced showing why a deviation from the strategies is appropriate. Rookery South conflicts with national, regional and local waste planning policy and prejudices both the self-sufficiency and proximity elements of these policies. As such the Councils concluded there can be no compelling case in the public interest for the authorisation of compulsory acquisition powers.

Waste Recycling Group Ltd

7.43 WRG submitted in February 2011 a written representation objecting to the compulsory purchase of its interests. The submission was supported by detailed evidence on policy, need and alternatives.

7.44 WRG enjoys the benefits of the restrictive covenant described in paragraphs 7.5 and 7.6 which affect all the plots which it is proposed

to acquire by compulsory acquisition. It owns the subsoil of plots 22 and 23 and land interests which benefit from the restrictive covenants namely freehold land marked G on the Extinguishment of Rights Plan (DOC/ 2.7) and a Caution against First Registration of the freehold of Grog Plant Stewartby marked S on the same plan.

7.45 A number of preliminary issues of principle were raised by WRG. At paragraph 2.6 of its representation it points out that the only type of waste facility specifically listed as NSIPs are hazardous waste facilities and waste water plants and that the Act is only triggered in this case as a result of the generation of energy that would occur. At paragraph 2.7 it states that there is no policy support for the use of compulsory acquisition powers in the waste management context and therefore no policy justification for state intervention in the realm of waste management.

7.46 At paragraph 3 the point is made that the tests for granting planning powers differs from those for granting compulsory acquisition powers and this should be borne in mind when considering the tests set out in s122. At paragraph 4 it is suggested that the statutory tests set out in s122 are in the wrong order and that the test as to whether or not there is a compelling case should be considered first and the requirement for the land should be considered only in the event that the compelling case test has been met.

7.47 WRG sets out the conclusions drawn from its evidence at paragraph 7 of its representations arguing that the Panel should conclude that a compelling case in the public interest has not been made out by the Applicant for the following reasons:

- **Scale** - the scale of the project is not justified. Neither the purported 'economies of scale' nor the extensive catchment area is borne out by the facts.

- **Need** - the principal justification for the project is the national need for energy generation. However, this can be met by small scale installations as well as a large-scale installation. The project would provide waste management capacity not matched by local and regional needs and the Applicant has grossly overestimated the amount of C&I waste that would be available. The Applicant's case is further undermined when one factors in the facilities within the catchment area and on its periphery that are either operational or at various stages in the development process.

- **Alternatives** - Rookery South should only be promoted over and above alternative sites if it is manifestly a better site in environmental terms. The legitimacy and comprehensiveness of the exercise on alternatives undertaken by the Applicant is undermined because of (i) the retrospective nature of the

Alternative Site Assessment and (ii) the failure to justify discounting the three alternative sites it did identify as deliverable other than by reference to a catchment area, the extent of which is not substantiated. The Applicant's approach wrongly assumes that any option would have to consider Rookery South but it has failed to examine a fundamental alternative, namely a dispersed or local waste management solution which would have led to a conclusion that there were alternative proposals which offer advantages over the proposed site.

- **Timing and Sustainability** - the proposed development is subject to the same uncertainties as to timing and delivery as the other sites and in the case of Rookery South this is exacerbated by the presence of the restrictive covenant.

- **Policy** - the wide catchment area is not supported in policy terms either by existing or emerging policy.

- **Public Interest** - the authorisation of compulsory acquisition would raise significant public interest issues and particular attention is drawn to:

    - adverse effects of long distance waste transportation;
    - likely effect of oversupply of energy recovery capacity;
    - more likely CHP application where there are smaller dispersed facilities;
    - prematurity in the context of the LDF process;
    - competition would be undermined; and
    - market confidence would be undermined if enforceability of private contracts were seen to be at risk.

- **Proportionality** - compulsory acquisition of the restrictive covenant would not be proportionate: there are alternative sites where compulsory acquisition is not needed and an excessive burden would be suffered by WRG. Elstow South, which has the benefit of planning permission for mineral abstraction with restoration by backfill of waste, has significant advantages given its proximity to the MRF at Elstow North. WRG's concerns regarding the removal of the restrictive covenant are legitimate land use concerns.

7.48 WRG contend that when one takes all these factors into account and also applies the principle of proportionality, a compelling case in the public interest is not made out.

7.49 Following the Applicant's second and third representations which had responded to WRG's representations and to questions raised by the Panel, WRG submitted in June 2011 further representations. These

emphasised the distinction between planning and compulsory purchase, responded to the Applicant's representations regarding the demonstration of need, identified issues relating to waste policy and addressed competition issues.

7.50 In summary, these further representations concluded that:

- there remained a paucity of compelling evidence to demonstrate that the tests for granting compulsory acquisition powers had been made out by the Applicant;
- because there is an interference with property rights a higher threshold has to be met;
- the test for the grant of compulsory acquisition powers is significantly higher than those imposed for the grant of planning permission; and
- the Applicant had failed to demonstrate a need for the facility or that other alternative sites are not either readily available or likely to come forward within similar time scales and that there were significant risks of material adverse consequences.

Network Rail

7.51 Network Rail submitted representations objecting to the use of compulsory acquisition powers on the grounds that operational railway land, being part of the Marston Vale railway line, would be adversely affected. With regard to the proposed installation of a full barrier crossing at Green Lane and a new access to Green Lane, Network Rail indicated that a new access off Green Lane, leading to an increased volume of traffic over the level crossing, could introduce unacceptable risks to the railway.

7.52 However, discussions were taking place with the Applicant to agree protective measures whereby the Applicant would fund mitigation works. An options study was being carried out by Network Rail to determine the extent of infrastructure works needed. Network Rail would therefore seek protection for operational land and for the protection of the railway during construction and otherwise to protect its land and interests. It was envisaged that such protection would be contained in protective measures to be included in the Order. The Applicant would be required to take into account the recommendations of the level crossing options study and works deemed necessary at the level crossing, as well as appropriate asset protection measures to protect the operational railway and Stewartby station.

Eastern Power Networks Plc (EPN)

7.53 EPN in its representations noted that an existing electric line/electrical plant may be affected, wished to reserve its position pending a more

detailed assessment, and indicated if compulsory acquisition powers were being sought it would require appropriate compensation.

The Highways Agency (HA)

7.54 In its representations HA expressed its concerns in relation to the works being undertaken to the new A421 trunk road.

Stewartby Water Sports Club Ltd

7.55 SWSC submitted representations in which it noted the compulsory acquisition of rights which was proposed by the Applicant over its land. SWSC sought assurances as to how it would access its land during the construction works, that it would be adequately compensated and suggested alternative options for the route of the cables. It acknowledged that the Applicant had met with SWSC to discuss the position. SWSC maintained its concerns at the open floor hearing on the issues of access, noise and noise attenuation fencing.

Hanson Building Products Ltd

7.56 In its representations, Hanson confirmed that it owned various wayleaves over the land and had other rights across the site. It indicated that there was no prospect of an agreement being reached for Hanson to surrender its rights given the current terms of the offer - rights which secured valuable corridors needed by Hanson as its own development proposals emerged in the future.

Gardenvale Properties Ltd (Gardenvale)

7.57 Mr Gallagher is the sole shareholder of Gardenvale and also owns/controls Wixham First Ltd and Gallagher Elstow Ltd, the land owning and developing companies of the Wixhams development at Elstow. This adjoins the land owned by Gardenvale which benefits from the same restrictions in the 1998 transfer referred to at paragraphs 7.5 and 7.6.

7.58 Essentially Gardenvale's case was that:

- in its current form the DCO would constitute a breach of the Human Rights Act because it effectively deprives Gardenvale of its property rights and the Panel cannot be satisfied on the material before it that it would receive compensation;
- the Applicant has underestimated the compensation liability: for example the likely 'stigma' effect on the Wixhams and the apparent differing approaches of Gardenvale and the Applicant to a compensation valuation under article 16[1] would significantly increase the compensation payable and have a knock on effect

[1] Article 17 in the final form of the DCO at Appendix D.

on viability. Its application for draconian powers appears doomed to fail for want for example of bonded financial guarantees to cover all its costs; and

- the Funding Statement is defective; the Applicant is a man of straw with no guarantee of funds being available and there is uncertainty because funding is subject to final Board approval.

7.59 Further Gardenvale raised a number of other issues:

- since the works required by the Review of Old Mineral Permissions (ROMP) are outside the DCO they are not protected by restrictions in the 1998 transfer. The Statement of Reasons assumes the ROMP as a baseline and contemplates the implementation of the ROMP works, but such works would, it is argued, be injunctable by the beneficiaries of the restrictive covenant;
- two requirements in the DCO were challengeable. Requirement 3[1] relating to the type of waste would appear to be in conflict with the Environmental Permitting Regime of the EA, and Requirement 14[2] concerning land stability issues does not appear to have been factored into the Applicant's financial considerations;
- the MRF is part of the NSIP itself and not associated development as determined by the Applicant and by being treated as associated development there may be unassessed environmental consequences;
- the Applicant has failed to consider Circular 06/04 and to address the issue of a private sector company seeking effectively to step into the shoes of a public acquiring authority;
- there appears to be no evidence of the Applicant considering the potential range of high sums payable as compensation in the event that article 16 powers of the DCO to override are used in relation to the restrictive covenant;
- article 6(1) [3] of the draft DCO contemplates transfer to others of any or all of the benefit of the DCO provisions without safeguards as to the ability of the transferees to meet the Applicant's liabilities including the liability to pay compensation.

The Applicant's Response to the Objections

The Local Authorities: BBC and CBC

7.60 The Councils' position with regard to compulsory acquisition is somewhat unsatisfactory since they have made no representation specific to compulsory purchase of their land interests but simply rely

[1] Requirement 2 in the final form of the DCO at Appendix D.
[2] Requirement 13 in the final form of the DCO at Appendix D.
[3] Article 7(1) in the final form of the DCO at Appendix D.

on their planning representations. It is notable that the Councils have included the site in their Waste Core Strategy Preferred Options Consultation Document as an appropriate location for a strategic waste facility. Even being aware of the restrictive covenant did not alter their attitude about the suitability of Rookery South for a waste facility and they saw the restrictive covenant impediment as a commercial concern.

7.61 Against this background, the Applicant queried the basis on which the Councils maintain an objection to the compulsory acquisition other than on planning issues. It is inconceivable that if development consent were to be given that the Councils would seek to frustrate the delivery of nationally significant infrastructure on account of interference with their property interests amounting to no more than the laying of cables beneath the surface of the highway. In these circumstances there is no further response to be made in the compulsory acquisition context - planning issues are dealt with in the consideration of the case for the grant of development consent.

WRG

7.62 In response to WRG the Applicant stated that the planning case it has advanced has demonstrated a compelling public interest in a manner applicable to both planning and compulsory acquisition contexts. The Applicant's response to a number of other issues raised by WRG is as follows.

7.63 The application is for a waste generating station with a capacity greater than 50 MW and as such is an NSIP with compulsory acquisition powers available to it under the Act.

7.64 Whilst different tests apply to the grant of compulsory acquisition powers and development consent there is an overlap and the nature of the case advanced is such that it demonstrates a compelling case in the public interest in a manner applicable to both planning and compulsory purchase.

7.65 WRG misunderstands the statutory process which is twofold: firstly a judgement is made as to whether or not the land is required to implement the development and only then is the test of whether there is a compelling case in the public interest applied.

7.66 In regard to criticism of the catchment area, it is important to consider the policy context in which the proposals are being made namely s104(3) of the Act which requires the Panel to determine the application in accordance with the relevant national policy statements.

7.67 Contrary to WRG's view, statements on scale and urgency in generic policies and the current approach to need in the NPSs, the Energy White Paper and the Supplement to PPS 1 are of great significance.

7.68 With regard to giving waste policy supremacy over energy policy, the correct approach is to have regard to policy in both areas and apply such weight as deemed appropriate in the light of the NPSs.

7.69 In response to WRG's argument that there are alternative sites which could be used to meet existing need without using compulsory acquisition powers:

- in view of the urgent need for additional renewable energy generation and the scale of the current need, the sites should not be looked at as alternatives – all are needed. The Government has not sought to cap the volume of development coming forward: quite the opposite. Paragraph 3.3.24 of NPS EN-1 states '*it is not the Government's intention in presenting the above figures to set targets or limits on any new generation infrastructure to be considered in accordance with the NPSs'*;
- none of the alternative sites put forward by WRG are as capable of meeting national policy objectives as Rookery South: apart from the fact that they could not process the same volume they have not reached the same stage in the development process and cannot be truly be regarded as alternatives;
- the presence of the restrictive covenant will not cause delay since the compulsory powers would override it;
- the planning position will not be uncertain because there will be a sequential approach by the Panel which will consider the grant of the compulsory acquisition powers only after it has formed a view on the planning issues;
- WRG's suggestion that compulsory acquisition could only be justified if the Panel considered Rookery South was 'manifestly a better site in environmental terms' is wrong in law.

7.70 The use of the compulsory acquisition powers to override the restrictive covenant would not be anti-competitive but rather would enable the market to operate freely without artificial constraint, and if WRG suffered loss it would be compensated.

7.71 Proposals for Elstow South are inchoate in nature and if losses are demonstrated they would be compensatable.

7.72 WRG's approach to proportionality does not accord with that adopted by the courts and the context of cases referred to by WRG is different to the compulsory acquisition context.

7.73 It would be proportionate to approve the use of compulsory acquisition powers since the benefit to the public would be significant and the national need to provide new sources of renewable energy is urgent and compelling. The need to direct large quantities of residual waste from landfill is immediate and pressing; the interests which WRG seek to set against those needs are commercial in nature and compensatable.

Network Rail

7.74 The Applicant sought to conclude with Network Rail protective provisions acceptable to it. By a letter dated 8 July 2011 Network Rail advised the Panel that protective provisions (as submitted to the Panel on 6 June 2011) were agreed. As a consequence, provided they are incorporated in the DCO. Network Rail will withdraw its objection to the application.

EPN

7.75 EPN confirmed on 1 July 2011 that it has no objection in principle to the DCO provided that if EPN owns or operates any electric lines or electric plant that is acquired or temporarily or permanently occupied pursuant to the DCO either the rights to retain maintain and access such equipment are retained following the grant of the DCO or suitable alternatives are provided and relocation costs are met (APP/6.1.7).

The Highways Agency

7.76 The HA confirmed (APP/6.1.8) that it had no objections in principle to the Applicant's proposals and the installation of the grid connection beneath the new A421.

Stewartby Water Sports Club

7.77 A Unilateral Deed of Undertaking in favour of SWSC was signed by the Applicant on 8 July 2011 (APP/6 1.6). The undertaking was given by the Applicant so as to provide comfort to SWSC and to address the noise concerns raised by SWSC, notwithstanding the fact that the entire representation of SWSC in opposition to the project continues to be maintained.

Hanson Building Products Limited

7.78 In its second representations, the Applicant pointed out that the advantages of Rookery South in the northern Marston Vale Growth Area were considered in detail in its Planning Statement, and that the planning application to redevelop the former Stewartby Brickworks, though submitted in 2008 and still undetermined, was nevertheless explicitly considered in the ES. With regard to the alleged adverse impact on Stewartby Brickworks and Hanson's adjoining land, the Applicant is unclear from Hanson's representation as to how this would occur.

Gardenvale Properties Limited

7.79 Notwithstanding the non-appearance of Gardenvale at the compulsory acquisition hearing, at the request of the Panel the Applicant did address some of the issues they had raised. It was no

part of the Applicant's case that land or rights should be acquired or overridden without compensation; the DCO and the compensation regime provide a mechanism whereby any party which suffers loss would be entitled to recover full and fair compensation.

7.80 At the outset, the Applicant assessed liabilities which might arise if compulsory acquisition powers were used and has kept those liabilities under review in the light of representations made. Mr Chilton (Managing Director, Covanta Energy Ltd) in his letter of 29 June 2011 (APP/8.10) indicated that there was nothing in the representations regarding compensation payments which would deter the Applicant from implementing the project.

7.81 The Applicant does not accept that Gardenvale is entitled to compensation for the amounts claimed. In any event, it is not necessary for the Panel to consider the statutory basis on which the claim would be made. This question is one of compensation and if no agreement is possible it would fall to the Upper Chamber (formerly the Lands Tribunal) to consider. There can be no reasonable concern that the Applicant would be unable to discharge its financial obligations even if WRG were entitled to recover in the sum currently claimed.

7.82 The Applicant is in the course of providing a parent company guarantee by a party possessing assets in the region of $2.6 billion (circa £1.7 billion). Further, the company has offered to provide an updated parent company guarantee at the point of implementation of the DCO, secured by a planning obligation which would prohibit implementation prior to the Applicant having obtained approval from the local planning authority (CBC). The point at which compensation would accrue as a matter of law is the date on which the RRF commences operations. This necessarily follows the wording of the restrictive covenant the effect of which is to prohibit the use of the servient tenement for a protected business.

7.83 There are various assertions as to the extent of the loss which Gardenvale would suffer, but quite apart from the dispute as to the legal basis of the claim, the Applicant does not accept the quantum of loss put forward. However, the examination is not an appropriate forum to consider the quantum of compensation. Indeed the Act expressly provides that the Panel may disregard objections relating to compensation.

7.84 In reality Gardenvale raises only one question with which the Panel should be concerned, namely 'will the Applicant be able to provide compensation to those parties whose rights and interests are acquired or overridden?' In the light of the parent company guarantee to be provided and the safeguards as to the operation of the DCO and the planning obligation the certainty that appropriate compensation would be forthcoming can no longer reasonably be questioned.

The Panel's Conclusions

7.85 Our approach to the consideration of the granting of compulsory acquisition powers has been to address the requirements of s122 and s123 of the Act, the Guidance[1] and Regulations [2] and consider in the light of representations received and evidence submitted to the compulsory acquisition hearing whether a compelling case in the public interest has been made.

7.86 We are, however, mindful that the DCO considers both the development and compulsory acquisition powers and that the case for the grant of compulsory acquisition powers cannot properly be considered until the position regarding the development matters has been determined. There must be consistency and coherency and accordingly we have adopted a two-stage approach: we have first formed a view on the case for development, and then in this Chapter have proceeded on the basis of that conclusion.

7.87 Chapter 6 reaches the conclusion that in development terms consent should be granted. That being said, all the issues which arose in considering the case for development have also been considered in the case for the grant of compulsory acquisition powers. Some issues relevant to the consideration of the grant of development consent were examined further in the context of compulsory acquisition. For that reason, the Panel suggested to the Applicant and affected persons a number of areas which should be tested by cross-examination at the compulsory acquisition hearing. The areas in question were scale and need, alternative sites, and policy. However, the list was not exhaustive, and all affected parties were invited to suggest other areas that might be so tested, but none did so.

7.88 Turning now to the Act, the effect of s122(1) and s122(2) is to insist that the land is required for the development to which the development consent relates; effectively that the land needs to be acquired, or rights over it acquired or impediments upon it removed, in order that the development can be carried out. To reach our judgement on this we examined the case for all the plots included in the CA Land and the justification for their inclusion set out in Table 1 at paragraph 6.2.7 of the Statement of Reasons (DOC/1.6). We are satisfied that in the event of the grant of development consent for the RRF there will be a need to acquire the interests and rights in the CA Land and the powers sought in the DCO would be required in order to implement the development.

[1] Guidance related to procedures for compulsory acquisition, DCLG February 2010
[2] The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and The Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

7.89 With regard to s122(3), we consider there is a number of principal issues to be considered in making the judgement as to whether or not there is a compelling case in the public interest.

Scale and Need

7.90 Need embraces two aspects: firstly, the need for additional energy generation; and secondly the need for infrastructure capacity to divert residual waste from landfill. NPSs EN-1 and EN-3 place considerable emphasis on the need to bring forward energy infrastructure and in various places the need is described as urgent.[1] We place substantial weight on this policy guidance and in particular where the NPSs direct that where the IPC is considering whether or not to grant consent for a renewable energy facility it should regard the need case as already proven[2] and further the statement in EN-1 that there is a presumption in favour of such development.[3] So far as justifying scale, NPS EN-1 advises that the provision of NSIPs is market based/market led and that the role of the planning system is to facilitate private sector investment in the provision of new infrastructure.[4]

7.91 WRG suggest that the Applicant is not entitled to rely on generic policies and general need for energy and waste management. We refute this; statements in the NPSs relating to such matters are in our view of considerable relevance to our decision. Further, we consider this to be an area which provides a good example of where consideration of the development and compulsory acquisition issues overlap with these issues being relevant to both and consider this approach to be both consistent and coherent.

Alternatives

7.92 The Applicant suggests that because of the deficit in waste recovery capacity in the catchment area and the need for renewable energy infrastructure, there is a requirement for other projects to come forward in addition to that proposed, and therefore discussion of alternatives is inappropriate. We note and understand the reasoning behind this suggestion but we have considered the case for alternatives argued both by the Applicant and WRG and reached our conclusion having regard to the guidance in paragraph 4.4.3 of EN -1 namely that *'the IPC should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) within the same timescale'.*

[1] NPS EN-1 Part 3 para 3.1.3.
[2] NPS EN-1 Part 3 para 3.1.3.
[3] NPS EN-1 Part 4 para 4.1.2.
[4] See for example NPS EN-1 paragraphs 2.2.19, 2.2.24 and 3.1.2.

7.93 A number of points were put to us in the course of the compulsory acquisition hearing including the following:

- none of the alternatives is capable of delivering the same capacity;
- none of the alternatives has the same prospect of delivering further carbon savings by CHP;
- none of the alternatives would deliver the same benefits in terms of climate change or energy security (para 4.4.3 of EN-1 expressly emphasises the significance of such benefits in the context of alternatives); and
- there is no material prospect of any comparatively sized facility coming online within the same timescale.

7.94 We are of the view that there are no alternative sites to Rookery South in terms of delivery and timescale. At the compulsory acquisition hearing the Applicant submitted a letter dated 29 June 2011 written by Mr Chilton (the Managing Director of Covanta Energy Limited) which confirmed the company's intention to progress the project with every urgency (APP/8.10). But owing to the timing of its submission, and the fact that the author was not present to respond to questioning on it, we afford limited weight to it.

Policy

7.95 Concerning objections relating to waste particularly, the Councils and WRG argued that the proposed development conflicts with existing policies. The Applicant gave evidence highlighting the limitations of these policies and, whilst it did not accept that the proposed development was necessarily in conflict with them, if there was a conflict, the NPSs would prevail. S104(3) directs the Panel to determine an application in accordance with the relevant NPSs. The relevant NPSs in this case are EN-1 and EN-3. Paragraph 4.1.5 of EN-1 states *'Other matters that the IPC may consider both important and relevant to its decision making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS the NPS prevails for the purposes of IPC decision making given the national significance of the infrastructure..*

7.96 We considered policy conflict concerns but concluded that none were of such importance and relevance to deter us from determining in accordance with the NPS and that the adverse effects that might result from such policy conflicts do not outweigh the benefits of the proposal.

Funding

7.97 We are required to make a judgement as to whether adequate funding would be available, and indeed in this context we considered

and addressed many of the concerns raised by Gardenvale through questions and requests to the Applicant. Gardenvale, though copied in to these exchanges, made no comments thereon whilst expressing a view in its representation that it would seek the opportunity to address their case in more detail at the compulsory acquisition hearing. Gardenvale did not in fact appear.

7.98 The Act provides for the situation whereby private companies can be the recipient of compulsory acquisition powers. We examined the Funding Statement against the requirements and restrictions of the Act and the observations of Gardenvale. S106(1)(c) expressly provides that the Panel may disregard objections relating to compensation and in so far as Gardenvale's representation relates to the quantum or likely quantum of compensation we have disregarded it. But we do accept Gardenvale's assertion that a misunderstanding of the likely quantum of compensation could lead the Applicant to underestimate the likely compensation payable, which in turn could impact on viability and thus affect the argument for a compelling case.

7.99 Having read the Applicant's Funding Statement we considered the position was inadequate in terms of ensuring that the resources of Covanta Holdings would in fact be available to the Applicant.

7.100 Following questions raised by us we received from the Applicant an indication that a parent company guarantee would be available. A letter from the Applicant dated 9 May 2011 confirmed that specialist compensation advice had been received as to the amount of compensation which it would be liable to pay if the DCO was made including the requested compulsory acquisition powers, and that intergroup arrangements would ensure that the Applicant would be in a position to make such payments.

7.101 Following further exchanges between ourselves and the Applicant, the position by the close of the examination was that by Unilateral Undertaking the Applicant undertook not to implement any part of the proposed development or use compulsory acquisition powers until a parent company guarantee from Covanta Holdings was in place in the form agreed. The benefit of that guarantee would be available specifically to successful claimants for compensation arising from the exercise of compulsory acquisition powers. Amendments were suggested to Articles 7 and 17 of the final draft DCO to ensure that these safeguards would be effective in the event of a transfer of the benefit of the proposed DCO to a third party (APP/6.1.1). We deal with this matter in more detail in Chapter 8 dealing with the form of the Order. On the basis that such funding guarantees are in place we consider the Funding Statement and subsequent documentation adequate to support the case for a compelling case for the grant of compulsory acquisition powers.

Human Rights

7.102 A key element in formulating a compelling case is a consideration of the interference with human rights which would occur if compulsory acquisition powers were granted and used. The Applicant in its Statement of Reasons at Chapter 8 (DOC/1.6) argues that interference with human rights is justified on the grounds of the particular public benefits which would occur in the event of the development proceeding; that those affected are able to claim and receive compensation; and that both in terms of processes under the Act and in relation to the determination of the quantum of compensation there are legal rights to challenge for those aggrieved by any such decisions.

7.103 Gardenvale considered that granting development consent would constitute a breach of the Human Rights Act 1998 because it would deprive Gardenvale of its property rights and there was doubt about the Applicant's ability to fund the compensation which would be payable. As indicated above there were subsequent exchanges with the Applicant which led both to a change in the form of the draft DCO and the commitments made by the Applicant's parent company. As we have noted earlier, Gardenvale did not attend the compulsory acquisition hearing or comment on the exchanges between the Panel and the Applicant, and we can therefore reach no conclusion as to whether in the changed circumstances Gardenvale might itself have changed its view. But in any event, as a consequence of the provision of a parent company guarantee we do not consider that with regard to the compulsory acquisition of Gardenvale's interests there would be any breach of the Human Rights Act 1998.

7.104 WRG argues in section 6 of its February 2011 representations that it would not be proportionate to deprive WRG of the benefit it derives from the restrictive covenant by overriding it. We are of the view, however, that taking into account the above issues and our conclusions, it would be proportionate and that the benefits to the public would outweigh the loss to WRG which are effectively commercial in nature and can adequately compensated.

The Panel's conclusions on other issues raised by objectors

Bedford Borough Council and Central Bedfordshire Council

7.105 The Councils' objections were based on the development issues and no specific property-based objections were raised. We have therefore proceeded on the basis that in connection with the compulsory acquisition of the local authorities' interests in land, our judgement on the merits of the development case would be highly important and relevant to whether compulsory acquisition of these land interests should be authorised. On that basis we consider that compulsory

acquisition of the local authorities' interests should be authorised in this case.

Waste Recycling Group

7.106 Our conclusions about the issues raised by WRG are:

- *The order in which the tests set out in s122 are considered:* our view is that the first test to be applied should be whether the proposed development 'needs' the land to be acquired – i.e. it is required, and only when this judgement has been made should the more substantive consideration of whether there is a compelling case be addressed;
- *The only waste facilities in the Act which are NSIPs are hazardous waste and wastewater plants and the Act is only triggered because of the energy generated:* our response is that it is unequivocally a renewable energy scheme and the Act is triggered accordingly;
- *No policy support in the waste management context for the use of compulsory acquisition powers:* our response is that it is because it is a renewable energy scheme that compulsory acquisition powers can be sought;
- *The public interest:* some matters are dealt with in our consideration of the principal issues relating to the compelling case referred to above; all other factors and issues referred to have been considered but do not in our view warrant any weight such as to affect our conclusion as set out above;
- *Proportionality:* this has been considered by us in our consideration of human rights and the provisions of the Human Rights Act, but the argument put forward by WRG is not accepted and our conclusion is as set out above; and
- *Competition and the restrictive covenant:* we have considered WRG's arguments regarding these matters and the response by the Applicant. We have not formed any view on the enforceability or otherwise of the covenant or the issues regarding competition and do not consider it appropriate that we should do so. The only relevance to us is the relationship, if any, between these issues and the grant of compulsory acquisition powers. We are satisfied that we can deal with the matter by relying on the fact that the Act contemplates the grant of compulsory acquisition powers including a power to override interests such as restrictive covenants, and providing a compelling case can be made it is lawful to interfere with such interests.

Gardenvale

7.107 The substantive case of Gardenvale concerned the financial strength of the Applicant. We consider below a number of other issues raised by Gardenvale.

- *The ROMP*: Whilst we note the point raised we do not consider it an issue for us to form a view on; if Gardenvale consider the legal position to be such as they argue then they have remedies available to them if the development proceeds;
- *Requirements 3 and 14*[1]*:* In the absence of further clarification which was unavailable to us, we cannot form a view as to whether or not the requirements are defective as argued but do not consider that these are matters which would affect our overall conclusions;
- *Scope of the excavation power:* A fuller explanation of the argument being put forward here would have assisted but in the event we do not consider that this is a matter that would have affected our overall conclusions;
- *Scope of associated development:* We are of the view that the MRF is correctly described as associated development as applied for by the Applicant (see para 3.11 above).
- *Failure to consider Circular 06/04*: To give any weight to this proposition we would have wished to test it at the compulsory acquisition hearing and, as we were unable to do so, no weight has been attached to it;
- *Scope of Article 16 (Article 17 in final form of draft DCO):* The drafting of Article 16 has moved through several iterations following discussions between ourselves and the Applicant. These have been made available to all affected persons as they took place. As we have indicated previously, no comments were forthcoming from affected persons except the Councils. We are satisfied as to the meaning, extent and effect of the relevant article;
- *The trigger for entitlement to compensation:* We see no difficulty here: the making of the DCO does not of itself give rise to any claim for compensation save in relation to blight. It is a breach of the covenant which does so and it is our understanding that it is at that moment when the breach occurs that the cause of action for a claim for compensation would arise;
- *Safeguards in the event of transfer of the DCO powers:* These were the subject of discussion and amendment to the draft DCO subsequent to the submission of Gardenvale's representations and we are satisfied that the issues raised have been addressed.

Stewartby Water Sports Club Ltd

7.108 We note that SWSC maintains its objection but we are satisfied that the Unilateral Undertaking given by the Applicant (see para 1.9 above) addresses the main concerns raised by SWSC and accordingly we consider the objection to have been dealt with in an acceptable manner.

[1] Requirements 2 and 13 in the final form of the DCO at Appendix D.

Hanson

7.109 We consider that some of the assertions made in its representation required some clarification and justification and in other areas substantiation by the production of evidence, all of which would have been tested at the compulsory acquisition hearing. As Hanson did not appear at the compulsory acquisition hearing and offered no further representations in these circumstances we afford little weight to this objection.

Other outstanding matters

7.110 Whilst the objections of WRG, Gardenvale, SWSC and Hanson remained outstanding at the close of the examination, the position with regard to the other affected persons who had made objections was as follows:

Network Rail

7.111 This objection was withdrawn following agreement being reached with the Applicant regarding protective provisions and these being included in the draft DCO.

Eastern Power Networks

7.112 Whilst EPN's objection was not formally withdrawn, in an email to the Applicant's solicitors dated 1 July 2011 EPN confirmed that it had no objection in principle to the IPC granting a DCO providing that the requirements set out in paragraph 7.75 (effectively safeguarding their operational activities) were met by the Applicant.

The Highways Agency

7.113 The HA confirmed by letter to the Applicant dated 1 July 2011 that it had no objections in principle to the Applicant's proposals.

Open Space Land

7.114 On 28 June 2011, the Department for Communities and Local Government wrote to the Applicant confirming the Secretary of State's intention to give a certificate in accordance with the provisions of s132(3) of the Act and requiring the Applicant to give public notice of this intention.

25 Town and Parish Councils

7.115 At the open floor hearing on 6 July 2011 the 25TPCs made submissions on the financial credibility of the Applicant. The 25TPCs are not affected persons in terms of the Act and accordingly no weight is attached to their observations. But we would note that the issues

raised by them were in fact considered and addressed at paragraphs 7.100 & 7.101 in response to representations made by Gardenvale.

Lafarge

7.116 For the record a copy of a letter dated 10 June 2011 from Lafarge (UK) Services Ltd to Covanta Rookery South Ltd was copied to the lead member of the Panel (LSL/1). It was copied to him so that we were aware of the potential breach of the restrictive covenant referred to at paragraph 7.5 (which benefits land owned by Lafarge Aggregates Ltd at Elstow Railhead, Elstow) if the proposed development went ahead. No representation was received from Lafarge.

The Panel's Decision on the Request for Compulsory Acquisition Powers

7.117 With regard to s122(2) of the Act we are satisfied that the legal interests in all the plots described and set out in the Book of Reference and shown on the Land Plan are required in order to implement the development.

7.118 With regard to s122(3) we are satisfied that in relation to the application that:

- development consent for the development is to be granted;
- the NPSs are to be considered the pre-eminent policy;
- the NPSs require that the 'need 'case is to be considered as already proven;
- there are no sites which are an alternative to Rookery South in terms of delivery and timescale;
- funding is adequate and secure so far as may be achieved under the Act;
- the interference with human rights is considered lawful in the public interest and proportionate.

7.119 In these circumstances, we consider that there is a compelling case in the public interest for the grant of the compulsory acquisition powers sought by the Applicant in respect of the CA Land as shown on the Land Plan.

7.120 In addition to the compulsory acquisition powers set out in the DCO the specific powers referred to in articles 9, 10, 11, 12, 24 and 25, the details of which are set out in schedules 2, 3, 4, 5 and 6 respectively, should also be granted.

7.121 Lastly, with regard to the incorporation of other statutory powers pursuant to s120(5)(a) we are satisfied that as required by s117(4) the DCO has been drafted in the form of a Statutory Instrument and

further that no provision of the DCO contravenes the provisions of s126 which preclude the modification of compensation provisions.

8 THE PROPOSED ORDER AND THE S106 AGREEMENT

8.1 The proposed Development Consent Order (DCO) is the heart of the application, setting what the approval would cover, what is authorised, the compulsory acquisition of land and rights, and what is governed by way of requirements (analogous to planning conditions). The DCO submitted as part of the application enables the Panel and participants in the process to see what is envisaged and precisely how the project is intended to be authorised and controlled.

8.2 For that reason, we identified at an early stage in the examination of the application that we needed to consider the draft DCO in detail. The Councils had advocated at the preliminary meeting an issue specific hearing to consider drafting of the DCO, which was supported by the Applicant. Having considered these requests, we arranged two issue specific hearings on 13 May and 13 June 2011 to consider on an entirely without prejudice basis the drafting of the DCO. The 25TPCs were also active participants in these hearings, commenting on specific clauses of the DCO and how their concerns could be met by additional requirements.

8.3 In order to progress and refine the draft DCO, we required for each of the issue specific hearings a re-draft of the Order including the requirements, and the proposed s106 Agreement. Although the s106 Agreement is a matter between the parties and not specifically for decision by us, the relationship between the Agreement and the DCO is extremely important. For that reason, we asked for some matters which were proposed at one stage to be part of the Agreement to be framed as requirements as we felt they were central to the integrity of the Order itself. We also asked for a comparison of the draft Order with the Model Provisions[1] and a justification for each area where these had not been followed. We were satisfied with the explanation.

8.4 We requested from the Applicant by 8 July 2011 a final draft of the DCO. This Order (as submitted) is in the form of a Statutory Instrument with 33 articles and 7 schedules. The authorised development is described in schedule 1 in terms of 9 works covering the NSIP (the EfW, Work No 1) and associated development (the MRF, Work No 2 and related infrastructure such as access improvements and cable connections Works Nos 3 to 9). It is subject to 41 requirements. Schedule 7 contains the protective provisions for Network Rail.

8.5 Also supplied was a signed s106 Agreement dated 8 July 2011 between the owner of the land (O&H Q7 Ltd), Covanta and the Councils. The matters it covers are summarised in Appendix 1.

[1] The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.

8.6 The Order contains a number of matters which are put forward by the Applicant expressly for determination by the Panel: enforceability of guarantees given in respect of liabilities of the undertaker (additional paragraphs to article 7), and the provision of a residual waste acceptance scheme (Requirement 42).[1]

8.7 We asked the Councils and the 25TPCs to provide a statement setting out any parts of the draft DCO with which they disagree, or conversely matters which they continue to wish to see included in it. These were duly supplied (APP/6.3).

8.8 The Councils set out the following concerns about the requirements as drafted in the Order:

- noise levels during construction and operations, a concern also shared by the 25TPCs;
- delivery hours, also shared by the 25TPCs; and
- a strategic residual waste scheme, also shared by the 25TPCs who argued in addition for a definition of residual waste.

8.9 The Councils also wished for additional requirements to cover a waste area restriction, and the construction of culverts under Green Lane and the Copart access road to facilitate the BMKW.

8.10 The 25TPCs argued that the parent company guarantee should cover all of the Applicant's obligations arising under the DCO, and highlighted the change to foul water treatment, noise monitoring, and the storage of IBA at the MRF. They also considered the HGV routing strategy should be a requirement and not just part of the s106 Agreement between Covanta and the Councils, and commented that provisions in the undertaking for the Community Trust Fund and the extent of the electricity subsidy area are inadequate.

The Order

8.11 We have considered the draft DCO in the light of our decision to grant development consent and the outstanding differences highlighted by the Councils and the 25TPCs. The final version of the Order in Appendix D has been amended by us to reflect our decisions in this regard, together with a considerable number of minor drafting and typographical corrections. Some of these simply place definitions in a more appropriate place. As the decision is one for us as the Panel in the light of designated National Policy Statements we have changed the references in the DCO from the Secretary of State where appropriate. We are satisfied that the drafting amendments we have made do not alter the substantive effect of the Order. The following

[1] Draft Requirement 42 was subsequently renumbered as Requirement 41 (see para 8.18 below).

paragraphs provide a short explanation of the main changes made and the reasons for them.

8.12 Article 4, concerning the process that should be followed when further approvals are required under requirements, has been redrafted to ensure all powers are available in connection with applications and appeals that may be made under specific requirements in the Order. It also ensures that appeals will be determined by the appropriate Secretary of State in accordance with the law as it currently applies to statutory undertakers who benefit from a licence under s6 of the Electricity Act 1989.

8.13 Article 7A has been inserted as replacement wording for that suggested (see para 8.6 above) regarding the enforceability of guarantees for payment of compensation in the event of compulsory acquisition of land or relevant claims. The replacement wording ensures that the enforcement regime that applies to development consent orders applies to the provision of guarantees without altering the process by which the relevant planning authorities approve the terms of any guarantee. We are satisfied that this article provides the necessary level of certainty and clarity on this issue. These amendments in our view meet the representation of the 25TPCs that the parent company guarantee should meet all of the Applicant's obligations**.**

8.14 Requirement 41 has been deleted and replaced by Article 3 (5)(b) which has the same effect but it more appropriately located in the Order.

8.15 In terms of the requirements set out in part 2 of schedule 1, we do not consider a definition of residual waste or the waste catchment area to accompany Requirement 2 is needed for the reasons set out in paragraph 5.28 above. We agree with the Councils' request for a lower construction noise level in Requirement 17, but do not agree with the request for lower night time noise limits, so the levels as set out in Requirement 18 are confirmed as drafted for the reasons set out in paragraph 5.90 above. In terms of construction hours we do not agree the request by the Councils for shorter construction hours, neither those by the Applicant for additional ’start up’ or ‘shut down’ hours at the beginning and end of each working day (see para 5.93 above). Requirement 24 is modified accordingly. We do not consider the need for an additional requirement to cover noise monitoring as requested by the 25TPCs, for the reasons given in paragraph 5.95 above.

8.16 We do not agree that amendments are needed to further restrict delivery hours and traffic management in Requirement 26, nor the need to amend Requirement 34 to provide for IBA being stored within a building rather than out of doors, for the reasons set out in paragraphs 5.116 et seq above.

8.17 We have considered carefully the representation from the 25TPCs that there should be an additional requirement to make failure to comply with the HGV routeing strategy subject to the sanctions imposed by the Act. Whilst we understand the concern of the 25TPCs about adequate enforcement of the HGV access and routeing plan, in our view the fact that this is the subject of an explicit undertaking directly between Covanta and the Councils through the s106 Agreement suggests that compliance is likely to be rigorously monitored. Accordingly, we do not consider that an additional requirement is necessary.

8.18 The additional Requirement 42 offered by the Applicant (see para 8.6 above) to provide a Residual Waste Acceptance Scheme to ensure that only residual waste is incinerated is agreed as submitted, and becomes Requirement 41 in the Order. This will help to provide the conformity of the proposal with the waste hierarchy as set out in paragraph 5.27 above.

8.19 Finally, we reject the request from the Councils for an additional requirement for the Applicant to fund the construction of culverts for the BMKW. We consider the s106 Agreement is sufficient for the reasons set out in paragraphs 5.139 et seq above. Similarly, we do not consider that the surface and foul drainage provisions (Requirement 12) are deficient as the 25TPCs believe and are capable of meeting the amended arrangements under discussion between Applicant, Anglian Water Services and the EA.

8.20 As the Order must be made as a Statutory Instrument because it includes legislative provisions, it requires consideration by the Secretary of State under the provisions of s121 of PA 2008 before it can be made.

The S106 Agreement

8.21 We have considered the scope of the completed s106 Agreement dated 8 July 2011 between the parties and conclude it is satisfactory in both the range of matters that covers, and the relationship with the requirements in the DCO (APP/6.1.4 and Appendix A). We note the comments made by the 25TPCs about the adequacy of the financial contributions to the Community Trust Fund and the electricity subsidy area, and whilst we have some sympathy that Brogborough should be brought into the area of benefit these are matters for the parties to consider and are not important and relevant matters that weigh in our decision.

9 OVERALL CONCLUSION AND DECISION

Overall Conclusion

9.1 We conclude for the reasons set out above that the proposal would accord with National Policy Statements EN-1 and EN-3. We have considered the application against the provisions of s104 of the Planning Act 2008, and conclude that for the reasons stated none of the adverse impacts of the proposed development that we have identified including the compulsory acquisition of land and rights, would either individually or taken together, outweigh its benefits.

9.2 Furthermore, we have considered whether the deciding the application in accordance with the National Policy Statements would either:

- lead to the United Kingdom being in breach of its international obligations;
- lead to the Panel or the Commission being in breach of any duty imposed on us by any enactment; or
- be unlawful by virtue of any enactment.

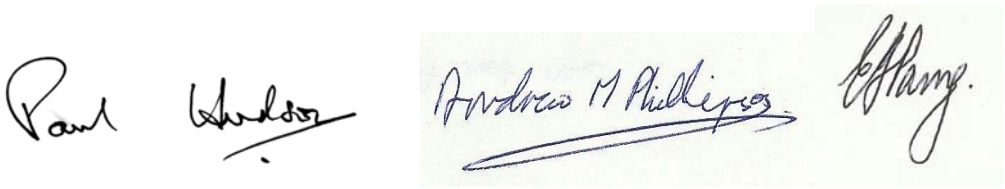
9.3 We have considered all representations made in respect of international and domestic legal obligations and are satisfied, as stated in relevant parts of this statement of reasons, that we are able to determine the application in accordance with the relevant National Policy Statements.

9.4 Given our conclusions on the merits of the Applicant's case for both the development proposed and the compulsory acquisition of land and rights, we conclude that an Order granting development consent should be made.

9.5 In reaching our conclusion that development consent should be granted we have taken into account all other matters raised in the representations. However, we found no relevant matters of such importance that they would individually or collectively lead us to a conclusion different to that above.

Decision

9.6 For the reasons set out above the Panel as the decision maker under s103 of the Planning Act 2008, has decided that development consent should be granted and therefore proposes to make an Order under s114(1) of the Planning Act 2008.



Paul Hudson Andrew Phillipson Emrys Parry

APPENDIX A – OBLIGATIONS

The S106 Agreement

Signatories

(a) Bedford Borough Council
(b) Central Bedfordshire Council
(c) O&H Q7 Limited
(d) Covanta Energy Limited
(e) Covanta Rookery South Limited

Summary of Provisions

(a) The routes used by heavy goods vehicles (HGVs) coming to and from the proposed plant to be restricted to agreed roads;
(b) planting to be carried out within the Millennium Country Park;
(c) Covanta to pay financial contributions to the Marston Vale Trust;
(d) Covanta to provide, upgrade and maintain certain footpaths and other public rights of way near the site;
(e) Covanta to disseminate information on the development to the Community Liaison Panel and to implement a procedure to assist members of the public wanting to make complaints about the operation or construction of the plant;
(f) Covanta to establish a Community Trust Fund and pay financial contributions thereto;
(g) Covanta to regularly publish data on airborne emissions from the plant;
(h) Covanta to provide a visitor centre within the main plant building;
(i) Covanta to implement a scheme to encourage the employment of local people to construct and operate the plant;
(j) Covanta to use reasonable endeavours to obtain customers for heat and power from the plant;
(k) Covanta to pay an electricity subsidy to qualifying local households;
(l) Covanta to meet the costs of diverting or altering the grid connections installed as part of the proposal, should this be required in connection with the construction of the Bedford to Milton Keynes Waterway where it crosses Green Lane and the Copart Access Road;
(m) Covanta to make good any damage to Green Lane occurring as a result of the construction of the plant;
(n) the feasibility of using rail to bring waste to the plant to be periodically reviewed and, if found to be feasible, for reasonable endeavours to be used to provide a rail facility on the site;

(o) the retention and ongoing maintenance of an area of woodland adjoining Stewartby in Rookery North; and
(p) Covanta to pay the Councils' costs incurred in discharging any provisions of the Agreement or requirements attached to any Development Consent Order (DCO) that might be granted that require the prior approval of the Councils.

Deed of Undertaking with the Marston Vale Trust (MVT)

Signatories

(a) Covanta Rookery South Limited
(b) The Marston Vale Trust
(c) Covanta Energy Limited

Summary of Provisions

(a) Covanta to pay initial and annual financial contributions to the Marston Vale Trust;
(b) Covanta to make a further annual financial contribution towards the electricity costs of the Forest Centre;
(c) Covanta to undertake tree, shrub and other planting within the Millennium Country Park;
(d) Covanta to make a financial contribution towards the cost of providing a bridge over the railway separating the Millennium Country Park from the Rookery;
(e) the MVT to not unreasonably delay or withhold consent for Covanta to erect noise fences on land leased by the Trust to the Stewartby Water Sports Club;
(f) Covanta to consult the MVT regarding the proposals for upgrading the level crossing on Green Lane;
(g) Covanta to not compulsorily acquire land belonging to the MVT pursuant to the DCO subject to the Trust granting Covanta any necessary easements over it; and
(h) MVT not to seek compensation from Covanta over and above that provided by the terms of the Deed.

Unilateral Undertaking with the Stewartby Water Sports Club (SWSC)

Signatory

(a) Covanta Rookery South Limited

Summary of Provisions

(a) Covanta to erect and maintain two noise attenuation fences in the north-east corner of the SWSC site;

(b) Covanta to use reasonable endeavours to maintain access to the site via the existing access from green lane and, if that is not possible, to provide a reasonable alternative access; and

(c) Covanta to use reasonable endeavours not to interfere with SWSC's use and enjoyment of the site during construction.

APPENDIX B – THE EXAMINATION

The table below lists the main 'events' occurring during the examination and the main procedural decisions taken by the Panel.

Date	Examination event
17 January 2011	Preliminary Meeting
21 January 2011	Notice of procedural decision including confirmation of the examination timetable and first round of written questions from the Examining authority (ExA)
4 February 2011	Accompanied site visit to the Rookery South pit
28 February 2011	Deadline for receipt of: • Written representations • Responses to written questions • Local impact report(s) • Statements of common ground
28 March 2011	Deadline for comments on: • Relevant and written representations • Responses to the ExA's questions • Local Impact Report(s)
11 April 2011	ExA issued its second round of written questions
9 May 2011	Deadline for responses to the ExA's second round of written questions
13 May 2011	Issue specific hearing to consider the drafting aspects of the draft Development Consent Order and requirements, and the proposed agreement between the applicant and local planning authorities under s106 of the Town and Country Planning Act 1990
13 May 2011	ExA notification of the programme for further issue specific hearings
26 May 2011	Letter from ExA setting out further details of the issue specific hearings including areas for discussion and parties asked to attend

6 June 2011	Deadline for the receipt of comments on responses to the ExA's second round of written questions
6 June 2011	Deadline for i) interested parties to notify the ExA of their intention to be heard at an open floor hearing and ii) affected persons to notify the ExA of their wish to be heard at a compulsory acquisition hearing
7 June 2011	Letter from the ExA confirming dates and arrangements for the open floor hearing
7 June 2011	Letter from ExA confirming dates and arrangements for the compulsory acquisition hearing
7 June 2011	Letter (Rule 17[54]) from ExA to the Applicant requesting further information regarding parent company guarantee and Statement of Reasons
13 June 2011	Issues specific hearing on drafting of DCO and requirements and proposed s106 agreement
17 June 2011	Letter (Rule 17) from ExA confirming their request (made at the issue specific hearing on 13 June) for a final version of the draft DCO and a completed s106 Agreement by 8 July 2011, together with statements from the Councils and 25TPCs setting out any parts of the DCO and requirements with which they disagree
17 June 2011 (am)	Issue specific hearing on the effect of the proposed development on the waste hierarchy
17 June 2011 (pm)	Issue specific hearing on the noise impact of early morning operations on the living conditions of residents (including campers at the Stewartby Water Sports Club) living near to the access routes proposed for HGVs between the A421 and the site
21 June 2011	Issue specific hearing on landscape, visual impact and design matters, including specifically whether the viewpoints considered in the Environmental Statement are representative and the identification of any additional viewpoints that interested parties want the ExA to include in their site visit
22 June 2011	Issue specific hearing on the impact of the development on the setting of the heritage assets.

[54] Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010

23 June 2011	Letter (Rule 17) from ExA inviting written representations in relation to the finalised NPSs (deadline of 6 July 2011).
27 June -1 July 2011	Compulsory acquisition hearing (four sessions held on the 27, 28, 29 June and 1 July)
5 - 6 July 2011	Open floor hearing (four sessions held over two days)
8 July 2011	Letter (Rule 17) from ExA inviting comments received in response to the ExA's previous letter of 23 June (deadline of 14 July 2011)
8 July 2011	Deadline for the submission of the final draft of the DCO and proposed s106 agreement
12 July 2011	Accompanied site visit to the application site and surrounding area.
15 July 2011	Notification from the ExA of the completion of the examination.

APPENDIX C – LIST OF DOCUMENTS AND THOSE MAKING REPRESENTATIONS

List of Documents and those Making Representations

A) Documents submitted with the application
B) Documents submitted by the Applicant during the examination
C) Representations submitted in writing to the IPC
D) Parties making oral representations at hearings
E) Members of the public registered as interested parties, and others

A) Documents Submitted with the Application

Category	Doc Ref	Title
Formalities	DOC/1.1	Letter
	DOC/1.2	Application Form
	DOC/1.3	Copies of Newspaper Notices
	DOC/1.4	Development Consent Order
	DOC/1.5	Explanatory Memorandum
	DOC/1.6	Statement of Reasons
	DOC/1.7	Funding Statement
	DOC/1.8	Book of Reference Parts 1-5
	DOC/1.9	Statement of Engagement
	DOC/1.10	Grid Connection Statement
	DOC/1.11	Heads of Terms
Plans	DOC/2.1	Application Site Plan / Order Limits Plan
	DOC/2.2	Works Plan – Key Plan
	DOC/2.3	Works Plan – 1 of 2
	DOC/2.4	Works Plan – 2 of 2
	DOC/2.5	Land Plan
	DOC/2.6	Land Plan: Extinguishment of Rights – Key Plan
	DOC/2.7	Land Plan: Extinguishment of Rights – 1 of 4
	DOC/2.8	Land Plan: Extinguishment of Rights – 2 of 4
	DOC/2.9	Land Plan: Extinguishment of Rights – 3 of 4
	DOC/2.10	Land Plan: Extinguishment of Rights – 4 of 4
	DOC/2.11	Rights of Way Plan
	D0C/2.12	EfW Facility South Elevation
	DOC/2.13	EfW Facility North Elevation
	DOC/2.14	EfW Facility East Elevation
	DOC/2.15	EfW Facility West Elevation
	DOC/2.16	EfW Facility East Section Elevation
	DOC/2.17	EfW Facility West Sectional Elevation
	DOC/2.18	Secondary Buildings Elevations – MRF
	DOC/2.19	RRF Tertiary Building Elevations
	DOC/2.20	RRF North and South Elevations

	DOC/2.21	RRF East and West Elevations
	DOC/2.22	RRF Site Section
	DOC/2.23	RRF Boundary Details
	DOC/2.24	RRF Elevation & Section Key Plan
	DOC/2.25	RRF Roof Plan
	DOC/2.26	Proposed Access Road Existing Footpath Width at Level Crossing
	DOC/2.27	Proposed Access Road with Proposed 2.5 m Footpath at Level Crossing
	DOC/2.28	Proposed Access to the Rookery Resource Facility. Proposed Cross Section
	DOC/2.29	Level Crossing – Ground Plan (Grip 3 Level of Detail)
	DOC/2.30	Lighting Layout & Strategy - Operations Area
	DOC/2.31	Landscape Strategy & Key Plan for Planting Details
	DOC/2.32	Operational Area and Green Lane Country Park & RRF Entrance
	DOC/2.33	Planting Strategy – Wider Site
	DOC/2.34	Planting Strategy: Operations Area and Indicative Scheme Layout for Green Lane Country Park & RRF Entrance
	DOC/2.35	Trees to be Removed and Retained
Environmental Statement	DOC/3.1	Environmental Statement Volume 1
	DOC/3.2	Environmental Statement Volume 2
	DOC/3.3	Environmental Statement Volume 3
	DOC/3.4	Non-Technical Summary
Reports	DOC/4.1	Report on Natural Features
	DOC/4.2	Report as to Effects on European Sites
	DOC/4.3	Historic Environment Report
	DOC/4.4	Flood Risk Assessment
Planning	DOC/5.1	Planning Statement
	DOC/5.2	Alternative Site Assessment Report
	DOC/5.3	Need Assessment
	DOC/5.4	WRATE Carbon and Efficiencies of Scale Report
	DOC/5.5	Economic Statement
	DOC/5.6	Health Impact Assessment
	DOC/5.7	Sustainability Assessment
Design	DOC/6.1	Design and Access Statement
	DOC/6.2	Engineering Design Statement
	DOC/6.3	Combined Heat and Power Development Strategy
	DOC/6.4	Rail Feasibility Report
	DOC/6.5	Transport Assessment
	DOC/6.6	Travel Plan

Consultation Report	DOC/7.1	Consultation Report
	DOC/7.2	Consultation Report - Appendices

B) Documents Submitted by the Applicant during the Examination

Written Representations

DOC/3.5	Environmental Statement Supplement and Non-Technical Summary
DOC/4.5	Report on Natural Features Supplement
DOC/4.6	Report on Effects on European Sites Supplement
DOC/7.3	Consultation Report Supplement
APP/1.1	Written Representation
APP/1.2	Appendix to Written Representation
APP/1.3	Summary of Written Representation

Comments on the Written Representations

APP/2.1	Second Written Representation
APP/2.2	Appendices Volume 1 to Second Written Representation
APP/2.3	Appendices Volume 2 to Second Written Representation
APP/2.4	Appendices Volume 3 to Second Written Representation

Response to the Second Round of Questions

APP/3.1	Third Written Representation
APP/3.2	Appendences to the Third Written Representation

Comments on the Responses to the Second Round of Questions

APP/4.1	Fourth Written Representation
APP/4.2	Appendices to the Fourth Representation

Other Documents

APP/6.1	Written Submission on 8 July 2011 including:
APP/6.1.1	Final draft DCO
APP/6.1.2	Parent Company Guarantee
APP/6.1.3	Planning Obligation in favour of BBC and CBC
APP/6.1.4	S106 Agreement
APP/6.1.5	Deed of Undertaking with Marston Vale Trust
APP/6.1.6	Deed of Unilateral Undertaking in favour of Stewartby Water Sports Club
APP/6.1.7	Email from Eastern Power Networks dated 1 July 2011
APP/6.1.8	Letter from Highways Agency dated 1 July 2011
APP/6.2	Residual Waste Acceptance Scheme
APP/6.3	Response to Rule 17 Letter dated 17 June 2011

Finalised National Policy Statements

APP/7.1 Representations on Finalised NPSs
APP/7.2 Comments on NPS Representations

Documents Submitted at Hearings

APP/8.1 Summary submitted at the Issue Specific Hearing on the Waste Hierarchy
APP/8.2 Summary of Case submitted at the Issue Specific Hearing on Noise
APP/8.3 Summary of Written Representation and Position of the Applicant submitted at the Issue Specific Hearing on Landscape etc
APP/8.4 Opening Statement of Richard Phillips QC submitted at the Compulsory Acquisition Hearing
APP/8.5 Summary in relation to alternatives by Environmental Resources Management submitted at the Compulsory Acquisition Hearing
APP/8.6 Summary in relation to Policy by Environmental Resources Management submitted at the Compulsory Acquisition Hearing
APP/8.7 Summary in relation to Scale and Need by Environmental Resources Management submitted at the Compulsory Acquisition Hearing
APP/8.8 Note on C&I Waste Arisings Method by Environmental Resources Management submitted at the Compulsory Acquisition Hearing
APP/8.9 Mr Aumônier's CV submitted at the Compulsory Acquisition Hearing
APP/8.10 Letter from Mr Chilton dated 29 June 2011 submitted at the Compulsory Acquisition Hearing
APP/8.11 Note with Responses to Oral Questions from ExA submitted at the Compulsory Acquisition Hearing
APP/8.12 Closing Submission submitted at the Compulsory Acquisition Hearing

C) Representations Submitted in Writing to the IPC

Local Authorities

Bedford Borough Council

BBC/1 Relevant Representation
BBC/2 Written Representation
BBC/3 Response to First Written Questions (Bound with document BBC/2)
BBC/4 Local Impact Report
BBC/5 Comments on Written and Relevant Representations
BBC/6 Comments on Responses to First Written Questions
BBC/7 Response to Second Written Questions
BBC/8 Comments on Responses to Second Written Questions

BBC/9	Comments on Finalised National Policy Statements
BBC/10	Comments on draft DCO
BBC/11	Summary of Representations submitted for the Issue Specific Hearing on the draft DCO
BBC/12	Summary of Representations submitted for the Issue Specific Hearing on Waste Hierarchy
BBC/13	Summary of Representations submitted for the Issue Specific Hearing on Landscape etc
BBC/14	Summary of Representations submitted for the Issue Specific Hearing on Heritage Assets

Central Bedfordshire Council

CBC/1	Relevant Representation
CBC/2	Written Representation
CBC/3	Response to First written Questions (Bound with document CBC/2)
CBC/4	Local Impact Report
CBC/5	Comments on the Written and Relevant Representations
CBC/6	Comments on Responses to First Written Questions
CBC/7	Response to Second Written Questions
CBC/8	Comments on Responses to Second Written Questions
CBC/9	Comments on Finalised National Policy Statements
CBC/10	Comments on draft DCO
CBC/11	Summary of Representations submitted at the Issue Specific Hearing on the draft DCO
CBC/12	Summary of Representations submitted at the Issue Specific Hearing on the Waste Hierarchy
CBC/13	Summary of Representations submitted at the Issue Specific Hearing on Landscape etc

Bedford Borough Council and Central Bedfordshire Council (Joint Submissions)

BBCBC/1	Approvals Pursuant to Requirements Cases by Mills and Reeve, submitted at the Issue Specific Hearing on the draft DCO (13th May 2011)
BBCBC/2	Agreed position on the draft DCO submitted at the Issue Specific Hearing on the draft DCO (13th June 2011)
BBCBC/3	Comparison draft DCO submitted at the Issue specific hearing on the draft DCO (13th June 2011)
BBCBC/4	Extract from the East of England Plan 2008 submitted at the Compulsory Acquisition Hearing
BBCBC/5	Closing submission submitted at the Compulsory Acquisition Hearing
BBCBC/6	Note of Oral Representations by David Brock at Open Floor Hearing

Aylesbury Vale District Council

AVDC/1	Relevant Representation
AVDC/2	Written Representation

Buckinghamshire County Council

BCC/1 Relevant Representation
BCC/2 Relevant Representation
BCC/3 Written Representation

Cambridgeshire County Council

CCC/1 Written Representation including Response to Second Written Questions

Hertsmere Borough Council

HBC/1 Relevant Representation

Luton Borough Council

LBC/1 Relevant Representation

Milton Keynes Council

MKC/1 Relevant Representation
MKC/2 Written Representation

Town and Parish Councils

The Consortium of 25 Town and Parish Councils

25TPC/1 Relevant Representation
25TPC/2 Written Representation
25TPC/3 Response to First Written Questions
25TPC/4 Comments on Local Impact Reports
25TPC/5 Comments on Written Representations
25TPC/6 Comments on Responses to First Written Questions
25TPC/7 Response to Second Written Questions
25TPC/8 Comments on Responses to Second Written Questions
25TPC/9 Comments on Finalised NPSs
25TPC/10 Comments on draft DCO
25TPC/11 Response to Comments on the Finalised NPSs
25TPC/12 Letter dated 13th June 2011 submitted at the Issue Specific Hearing on the draft DCO (13th May 2011)
25TPC/13 Summary Statement submitted at the Issue Specific Hearing on the Waste Hierarchy
25TPC/14 Note of Oral Representations at Session Four of the Open Floor Hearing

Ampthill Town Council

ATC/1 Relevant Representation
ATC/2 Written Representation

Aspley Guise Parish Council

AGPC/1 Relevant Representation

Aspley Heath Parish Council

AHPC/1 Relevant Representation

Bletchley & Fenny Stratford Town Council

BFSTC/1 Relevant Representation

Bow Brickhill Parish Council

BBPC/1 Relevant Representation

Brogborough Parish Council

BPC/1 Relevant Representation
BPC/2 Written Representation
BPC/3 Note of Oral Representation at Session One of the Open Floor Hearing,

Campton & Chicksands and Silsoe Parish Council

CCSPC/1 Relevant Representation

Cranfield Parish Council

CPC/1 Relevant Representation
CPC/2 Written Representation

Elstow Parish Council

EPC/1 Relevant Representation
EPC/2 Written Representation

Flitwick Town Council

FTC/1 Relevant Representation
FTC/2 Written Representation

Great Denham Parish Council

GDPC/1 Relevant Representation

Harlington Parish Council

HarPC/1 Relevant Representation

Haynes Parish Council

HayPC/1 Relevant Representation

Hockliffe Parish Council

HocPC/1 Relevant Representation

Houghton Conquest Parish Council

HCPC/1 Relevant Representation
HCPC/2 Written Representation

Hulcoate and Salford Parish Council

HSPC/1 Relevant Representation

Kempston Town Council

KTC/1 Written Representation

Lidlington Parish Council

LPC/1 Relevant Representation
LPC/2 Written Representation
LPC/3 Note of Oral Representation at Open Floor Hearing

Marston Moreteyne Parish Council

MMPC/1 Relevant Representation
MMPC/2 Note of Oral Representation at Open Floor Hearing

Marsworth Parish Council

MarPC/1 Relevant Representation

Maulden Parish Council

MauPC/1 Relevant Representation

Millbrook Parish Meeting

MPM/1 Relevant Representation

Renhold Parish Council

RenPC/1 Relevant Representation

Ridgemont Parish Council

RidPC/1 Relevant Representation

Steppingley Parish Council

StePC/1 Relevant Representation

Stewartby Parish Council

SPC/1 Relevant Representation

Wilshamstead Parish Council

WPC/1 Relevant Representation
WPC/2 Written Representations

Woburn Parish Council

WPC/1 Relevant Representation

Woburn Sands Town Council

WSTC/1 Relevant Representation
WSTC/2 Note of Oral Representation at Open Floor Hearing

Other Prescribed Statutory Consultees

Anglian Water Services Limited

AWS/1 Relevant Representation

British Waterways

BW/1 Relevant Representation
BW/2 Note of Oral Representations at Open Floor Hearing and subsequent emails

Civil Aviation Authority

CAA/1 Relevant Representation

East of England Development Agency

EDA/1 Relevant Representation

Eastern Power Networks Plc

EPN/1 Relevant Representation

English Heritage

EH/1 Relevant Representation
EH/2 Written Representation
EH/3 Response to Second Written Questions
EH/4 Summary of Written Representation submitted at the Issue Specific Hearing on Heritage Assets

Environment Agency

EA/1 Relevant Representation
EA/2 Written Representation
EA/3 Response to First Written Questions
EA/4 Response to Second Written Questions
EA/5 Note dated 13 May 2011 on Progress of Environmental Permit Applications
EA/6 Comments on Responses to the Second Written Questions
EA/7 Comments on draft DCO

Forestry Commission

FC/1 Relevant Representation

Health Protection Agency

HPA/1 Relevant Representation
HPA/2 Written Representation

Highways Agency

HA/1 Relevant Representation

National Grid

NG/1 Written Representation

National Air Traffic Service

NAT/1 Written Representation

Natural England

NE/1 Relevant Representation
NE/2 Written Representation
NE/3 Response to the First Written Questions

Network Rail Infrastructure Limited

NR/1 Relevant Representation
NR/2 Written Representation
NR/3 Second Written Representation
NR/4 Comments on draft DCO

NHS Bedfordshire

NHS/1 Relevant Representation
NHS/2 Written Representation

Office of Rail Regulation

ORR/1 Response to the Second Written Questions
ORR/2 Representation on Finalised NPSs

SSE Pipelines

SSE/1 Written Representation

The Water Services Regulation Authority

OFW/1 Written Representation
OFW/2 Response to the Second Written Questions

Affected Persons

AWG Landholdings Ltd

AWG/1 Relevant Representation
AWG/2 Written Representation

Copart UK Ltd

COP/1 Relevant Representation

Gallagher Estates

GAL/1 Relevant Representation
GAL/2 Response to the Second Written Questions
GAL/3 Comments on Responses to the Second Written Questions
GAL/4 Comments on the Finalised National Policy Statements

Gardenvale Properties Ltd

GAR/1 Relevant Representation

Hanson Building Products Ltd

HBP/1 Relevant Representation
HBP/2 Written Representation
HBP/3 Comments on Written Representations
HBP/4 Comments on Responses to the First Written Questions
HBP/5 Response to the Second Written Questions

Lafarge UK Services Ltd

LSL/1 Written Representation

O&H Q7 Ltd

O&H/1 Relevant Representation

Stewartby Water Sports Club Ltd

SWSC/1 Relevant Representation
SWSC/2 Written Representation
SWSC/3 Response to the Second Written Questions
SWSC/4 Comments on Responses to the Second Written Questions
SWSC/5 Note of oral representation submitted at Session Three of the Open Floor Hearing, 6th July

Waste Recycling Group Ltd

WRG/1 Relevant Representation
WRG/2 Written Representation
WRG/3 Jacobs/Defra report into Commercial and Industrial Waste Survey 2009 submitted at the Compulsory Acquisition Hearing
WRG/4 Defra Statistical Release 2010 submitted at the Compulsory Acquisition Hearing
WRG/5 Summary of Statements on Planning Policy, Needs and Alternatives by John Leeson (SLR) submitted at Compulsory Acquisition Hearing
WRG/6 Closing Submissions submitted at the Compulsory Acquisition Hearing

Non-Prescribed Groups and Organisations

Against Rookery Pit Incineration

ARPI/1 Relevant Representation

Ampthill and District Preservation Society

ADPS/1 Relevant Representation

Ampthill Development Action Group

ADAG/1 Relevant Representation

Bedford & Milton Keynes Waterway Trust

BMKWT/1 Relevant Representation
BKWT/2 Note of Oral Representation and Plans of Proposed Waterway Link submitted at Open Floor Hearing

Bedford Borough Local Access Forum

BBLAF/1 Relevant Representation

Bedford Commuters Association

BCA/1 Relevant Representation

Bedford Councils Planning Consortium

BCPC/1 Relevant Representation

CPRE Bedfordshire

CPREB/1 Relevant Representation
CPREB/2 Written Representation
CPREB/3 Comments on Written Representations

CPRE East of England Region

CPREE/1 Relevant Representation
CPREE/2 Written Representation
CPREE/3 Comments on the Written Representations
CPREE/4 Note of Oral Representation at Open Floor Hearing

Flitwick and District Heritage Group

FDHG/1 Relevant Representation

Flitwick at the Crossroads Residents Action Group

FCRAG/1 Relevant Representation
FCRAG/2 Written Representation

Kingmind Limited

KIN/1 Relevant Representation
KIN/2 Written Representation
KIN/3 Response to the First Written Questions

Marston Moreteyne Action Group

MMAG/1 Relevant Representation
MMAG/2 Written Representation
MMAG/3 Response to First Written Questions
MMAG/4 Note of Oral Representation at Open Floor Hearing

Marston Vale Trust

MVT/1 Relevant Representation

MVT/2 Written Representation
MVT/3 Deed of Undertaking with Covanta

Milton Keynes Friends of the Earth

MKFoE/1 Relevant Representation
MKFoE/1 Written Representations

Ministry of Defence

MoD/1 Relevant Representation

Our Marston Vale

OMV/1 Relevant Representation
OMV/2 Written Representation
OMV/3 Response to First Written Questions
OMV/4 Response to Second Written Questions
OMV/5 Note of Oral Representation at Open Floor Hearing

Railfuture (Freight Committee)

RFC/1 Relevant Representation

Ramblers Association Bedfordshire Area

RA/1 Relevant Representation

Renaissance Bedford

RB/1 Relevant Representation
RB/2 Written Representation

Revamp Ampthill Ltd

RevA/1 Relevant Representation

Royal Society for the Protection of Birds

RSPB/1 Relevant Representation

The Greensand Trust

GT/1 Relevant Representation

The Wildlife Trust for Bedfordshire, Cambridgeshire and Northamptonshire

WT/1 Relevant Representation

Treasury Solicitor (on behalf of Asphalte Solutions Ltd)

TSoL/1 Written Representation

Village of Stewartby (Cllr Tim Hill)

VSTH/1 Relevant Representation
VSTH/2 Written Representation
VSTH/3 Note of Oral Representation at Open Floor Hearing

Woburn Sands & District Society

WSDS/1	Relevant Representation
WSDS/2	Written Representation
WSDS/3	Response to First Written Questions
WSDS/4	Comments on the Written Representations
WSDS/5	Comments on Responses to the Second Written Questions
WSDS/6	Comments on the Finalised NPSs
WSDS/7	Response to Comments on the NPSs

Representations Submitted by Other Interested Parties and the General Public

BUN/1	Bundle of Relevant Representations
BUN/2	Bundle of Written Representations including Responses to First Written Questions
BUN/3	Bundle of Comments on Relevant and Written Representations
BUN/4	Bundle of Responses to the Second Written Questions
BUN/5	Bundle of Representations on the Finalised NPSs
BUN/6	Bundle of Comments on Representations Received on the Finalised NPSs
BUN/7	Notes of Oral Representations at Open Floor Hearing.
BUN/8	Local Petition on behalf of Marston Moretaine Action Group

Statements of Common Ground

SOCG/1	SoCG between Covanta, CBC and BBC – Noise and Vibration
SOCG/2	SoCG between Covanta, CBC and BBC – Rights of Way
SOCG/3	SoCG between Covanta and Highways Agency – Highways and Transportation
SOCG/4	SoCG between Covanta and CBC – Landscape and Visual
SOCG/5	SoCG between Covanta and BBC – Cultural Heritage
SOCG/6	SoCG between Covanta and CBC – Cultural Heritage
SOCG/7	SoCG between Covanta and BBC – Landscape and Visual
SOCG/8	SoCG between Covanta and English Heritage – Cultural Heritage
SOCG/9	SoCG between Covanta, BBC and CBC on the topic of the Development Plan for Application Site
SOCG/10	SoCG between Covanta, BBC, CBC & WRG – Volumes of Residual Waste
SOCG/11	SoCG between Covanta, BBC and CBC - Delivery Hours (Highways, Transportation)
SOCG/12	SoCG between Covanta and Highways Agency - Delivery Hours (Highways, Transportation)
SOCG/13	SoCG between Covanta and BBC - Delivery Hours (Noise)
SOCG/14	SoCG between Covanta and CBC - Delivery Hours (Noise)
SOCG/15	SoCG between Covanta and CBC – Highways and Transportation
SOCG/16	SoCG between Covanta and BBC – Highways and Transportation

D) Parties Making Oral Representations at Hearings

Issue specific Hearings

13 May 2011 - The Draft Development Consent Order and Requirements, and the Proposed s106 Agreement

Richard Phillips QC of Counsel	Covanta
Howard Bassford - DLA Piper LLP	Covanta
Benjamin Dove Seymour - DLA Piper LLP	Covanta
Rachel Ness	Covanta
David Brock - Mills and Reeve	CBC and BBC
Susan Marsh	CBC and BBC
Nigel Bennett	BBC
Ian Pickering	25 Town and Parish Councils
Angus Walker - Bircham Dyson Bell	

13 June 2011 - The Draft Development Consent Order and Requirements, and the Proposed s106 Agreement

Howard Bassford - DLA Piper LLP	Covanta
Kirsten Berry - ERM	Covanta
David Brock - Mills and Reeve	CBC and BBC
Susan Marsh	CBC and BBC
Roy Romans	CBC and BBC
Nigel Bennett	BBC
Ian Pickering	25 Town and Parish Councils

17 June 2011(am) - Waste Hierarchy

Howard Bassford - DLA Piper LLP	Covanta
Rachel Ness	Covanta
Kirsten Berry - ERM	Covanta
Susan Marsh	CBC and BBC
Roy Romans	CBC and BBC
Ian Pickering	25 Town and Parish Councils
John Leeson - SLR	Waste Recycling Group
Dr Bill Temple-Pediani	KTI Energy Ltd
Andrew Lockley	Milton Keynes Friends of the Earth
Richard Gillard	

17 June 2011(pm) - The Noise impact of Early Morning Operations

Richard Phillips QC of Counsel	Covanta
Howard Bassford - DLA Piper LLP	Covanta
Colin English	Covanta
Peter Nash	BBC
Daniel Baker	CBC and BBC
Susan Marsh	CBC and BBC
John Hilton	25 Town and Parish Councils

Ian Pickering	25 Town and Parish Councils
Nigel Allison	Stewartby Water Sports Club
Richard Gillard	-

21 June 2011 - Landscape, Visual Impact and Design Matters

Howard Bassford - DLA Piper LLP	Covanta
Alister Kratt	Covanta
Phil Nicholson	BBC
Richard Guise	CBC
Rob Uff	CBC
Alison Myers	CBC
Sue Clark	25 Town and Parish Councils
Graham Wright	25 Town and Parish Councils
David Toland	Marston Moreteyne Action Group
Richard Gillard	

22 June 2011 - Heritage Assets

Richard Phillips QC of Counsel	Covanta
Dr Carter	Covanta
Howard Bassford - DLA Piper LLP	Covanta
Alison Myers	CBC
Nigel Bennett	BBC
Sue Clark	25 Town and Parish Councils
Guy Williams of Counsel	English Heritage
David Grech	English Heritage

Compulsory Acquisition Hearing – 27 June to 1 July 2011

Richard Phillips QC of Counsel	Covanta
Howard Bassford - DLA Piper LLP	Covanta
Simon Aumônier - ERM	Covanta
James Delafield	CBC and BBC
Robin Green of Counsel	CBC and BBC
Roy Romans	CBC and BBC
Andrew Williamson - Walker Morris	Waste Recycling Group
John Leeson - SLR	Waste Recycling Group

Open Floor Hearing

Session 1 - 5 July 2011 (10am)

David Brock - Mills and Reeve	CBC and BBC
Margret Wright	Ampthill Town Council
Iain Clapham	Liddlington Parish Council
Cllr Jacky Jeffreys	Woburn Sands Town Council
Paul Maison	British Waterways
Dave Hodgson	

Councillor Charles Royden	
Hugh Roberts	Marston Moreteyne Action Group
Jean Sampson	
Lynne Faulkner	
Heather Metherall	
David Toland	
George Young	
Jeremy Hill	CPRE East of England & Bedford
Rosalind Blevins	
Dee Blackmore	
Cllr Alan Bastable	
Ruth Redman	
George Young	
Howard Bassford - DLA Piper LLP	Covanta

Session 2 - 5 July 2011 (7pm)

Jo Green	Brogborough Parish Council
Hilda Duguid	
Hugh Clark	
John Redman	
Howard Bassford - DLA Piper LLP	Covanta

Session 3 – 6 July 2011 (2pm)

Peter Neale	Marston Moreteyne Parish Council
Nigel Allison	Stewartby Water Sports Club
Graham Mabbutt	Bedford and Milton Keynes Waterway Trust
Paul Fox	
Mr Robertson	
Penelope Sowter	
Nicola Ryan-Raine	
Rosalind Blevins	
Ms Gaskin	
Katie Gray	
Mike Blair	
Howard Bassford - DLA Piper LLP	Covanta
Robin Treacher	Covanta

Session 4 - 6 July 2011 (7pm)

Sue Clark and Ian Pickering	25 Town and Parish Councils
Councillor Tim Hill	Wooton Ward, Stewartby
David Cooper	Our Marston Vale & Stewartby Parish Council
Paul Farrant	
Anthony Hare	
Judith Cunningham	

Stuart Hazel
Steve Lonsdale
Sarah Watson
David Hoy
Graham Glover
Nicola Chaplin
George Cansdale
Sian Griffith
Allan Wright
Janet Orchart
Steve Heaviside
Irena Forster
Catherine James
Zhi-Hua Gao-Levins
James Carter
Ray Catterhorn
John Simons
Howard Bassford - DLA Piper LLP Covanta

E) Members of the Public Registered as Interested Parties and Others

The following is a list of members of the public (as separate from the organisations and groups listed previously) who submitted relevant representations to register as interested parties. Although not listed separately, some of the interested parties listed here also submitted further written representations at various stages of the examination process.

Also listed at the end of this section are others who made representations in writing which were accepted by the Panel notwithstanding their not registering as interested parties.

Interested Parties

Abbey	John	Andrews	Michael C
Abbott	Mike	Apling	Alan
Abrahams	Liam	Arden	Mrs S
Ackroyd	Alastair	Ashby	Elinor
Akhtar	Parvez	Ashby	John
Albone	Mrs A	Ashcroft	Nicola
Alden-Salter	Valerie	Ashdown	Richard
Alder	Jean	Atkinson	Mark
Alexander	Caroline	Atlay	Mark
Alexander-Buckley	Keith	Atlay	Norma
Allan	Donald	Avis	Margaret
Allison	Nigel	Bacon	David
Allison	Sarah	Bacon	Michael A
Anderson	M E	Bacon	Mrs V A
Andrew	Mr M	Bacon	Sally
Andrew	Mrs M	Bagchi	Cynthia
		Baker	Clive

Baker	Ms
Baker	Richard
Balint	Julie
Balint	Sally
Balint	Stephen
Ball	Andrew
Ball	David
Ball	Delise
Barber	Lynda
Barnes	Michael
Barrett	Dean
Barton	Karl
Bastable	Alan Richard
Bastable	Marion
Basterfield	Tim
Bates	Colin
Batham	Leah
Bayley	Melane
Beal	Anita
Bean	Mary
Beaty	Valerie
Beavis	Linda
Beckerleg	John
Bell	Kevin
Bell	Sarah
Bellamy	Graham
Bennett	M
Bentley	John
Bernadette	Mrs
Bevan	Colin
Bews	Peter
Bews	Tony
Bews	William
Biggs	Hanna
Bines	Mrs M
Bishenden	David
Bishenden	Janet
Bishenden	Steve
Bishop	Andrew
Bishop	Jayne
Black	Mark
Black	Pauline
Black	Catherine
Blackmore	Mrs D
Blackwell	Amy Eleanor
Blackwell	Frederick
Bladon	Adrian
Bladon	Anne
Blaine	Peter
Blake	Kevin M
Blake	Wendy
Bland	Bryan
Blevins	Joanna Fern
Blevins	Simon
Blevins	Trevor
Blevins	Anne
Bloodworth	Hayley
Bloodworth	Karen
Bloodworth	William
Boddington	Major J
Boddington	Shelagh
Bolton	Peter
Boniface	S
Borrett	Alison
Borrett	David
Boshier	Lynne
Bourn	Barbara
Bourne	Arthur
Bowker	Quentin
Boyle	Felicity
Bradshaw	Steve
Brindley	Edna
Brindley	Roy
Bristow	Hannah
Bristow	Jessica
Britton	R
Brocklebank	Andrew
Brookman	Darryl
Brooks	Jonathan
Brooks	Michael
Browes	Nicola
Brown	Ann Nella
Brown	Gwen
Brown	James
Brown	Jeannette
Brown	Laurence
Brown	Lyn
Brown	Sarah
Browning	Mike
Bryer	Melanie
Buck	Keith
Buckley	Heather
Buckley	Siobhan
Budd	Andrew
Bulled	Jeff
Bulled	Linda
Bullock	Pete
Bunney	Anna
Bunney	Steve
Bunyan	Andrew
Burkett	Julia
Burr	Mark
Burrell	C
Buswell	Felicity
Butler	Matthew
Butten	Keith
Butten	Linda
Butterworth	Sandra

Bye	Catherine
Bywater	Lucy
Cahill	Thomas
Cain	Robert
Campbell	Ian
Cansdale	George
Cargill	Yasmine
Carpenter	Colin
Carr	Ian
Carr	Susan
Carrington	John
Carter	E C
Carter	Richard
Casey	Mr J
Cavender	Helen
Cavender	Stephen
Cawkwell	Jane
Cawkwell	Richard
Cawte	Bill
Chadwick	Mark
Chaplin	Anthony
Chaplin	Max
Chaplin	Nicola
Chaplin	Phyllis
Chapman	Fiona
Chatham	Robina
Cheadle	David
Cheadle	Lynne
Chiari	Sarah Alison
Circuit	Lillian
Circuit	Stephen
Clapham	Iain
Clark	Harry
Clark	Hugh
Clark	Jill
Clark	Louise
Clark	Susan
Clements	David
Clements	Roger
Clements	Susan
Clifford	Lady
Clifford	Sir Timothy
Cole	Adrian
Cole	Susan
Conlan	Alexander
Conlan	G
Constable	M A
Cook	Elaine
Cook	Frank James
Cook	Rebecca
Cooper	Roy
Cooper	Stuart
Cooper	T
Cope	Raymond
Corless	Andrew
Corzo-Menendez	Nuria
Cosby	Jane
Cosher	P
Coughlin	Linda
Couldridge	Daniel
Couldridge	Julie
Coulson	Barbara
Coulson	Mrs E M
Crampin	Mrs A
Cranny	Elizabeth
Creamer	Emmeline
Creamer	Matthew
Cronin	Lucy
Cunningham	Judith
Curwen	P M I
Dance	Ann
Dance	Emma
Dance	Tanya
Dant	Ruth
Dare	Katrina
Davidson	Alan
Davidson	E W
Davidson	Mrs J
Davies	Peter
Davis	Diane S
Davis	L
Day	Francis
Day	Julie
Dean	Andrew
Dean	Christine
Dean	John
Delany	Mr
Denchfield	Fiona
Denchfield	Nigel
Dennis	Tina
Deverell	Nathan
Devereux	Martin
Devereux	Tanya
Dilley	Vanessa
Dixon	David
Dobson	Adrian
Dobson	Hannah
Dobson	Mark
Dobson	Rebecca
Dobson	Ruby
Dobson	Stephen
Dooley	Gary
Dosser	Mr B
Drew	Craig
Drew	Kirstie
Drew	Paul
Drew	Ruth
Duckett	Paul

Dudley	Andrew
Duffy	Tracey
Duggan	Dominic
Duguid	Hilda
Duguid	Jim
Dunn	James
Dunn	R
Dunne	Peter
Durkin	Mathew
Dyke	Barry
Dyke	Michael
Dyson	Michelle
Easter	Mrs
Eaton	Derek
Eaton	Sally
Edwards	C
Edwards	Darren
Edwards	J A C
Edwards	Mrs
Edwards	Nigel
Ellerbeck	Emma
Elliot	Paula
Ellis	Mr M
Ellis	Mrs
Elson	Mrs J
Evan	Roger
Evans	Graham
Eves-Down	Miss
Eves-Down	Ms
Eves-Down	Ms
Faulkner	Lynne
Felce	Mr D
Felce	Brenda
Field	Tammy
Finch	Jonathan
Finn	Hester
Fisher	David
Fisher	Rosemary
Fishlock	Mrs J
Fitz-Gibbon	H
Fleet	Barbara
Fleet	Ian
Ford	David
Fortune	Caroline
Fortune	Gary
Fothergill	David
Fountain	Alan
Fountain	Julie
Fountain	Richard
Fox	Evelyn
Fox	Paul
Franceys	R
Frangiamore	Lisa
Franklin	Barrie
Freeman	Ian
French	George
French	Joan
French	Margaret
French	Ray
Frost	Kate
Fudger	David
Fuller	Grace
Fuller	Jack
Fuller	James
Funge	David
Gahagan	James
Gale	Robert
Galliara	J
Gardner	Peter
Gardener	Jeff
Garner	Mr B
Garratt	Roger
Gautier	Christopher
George	Margaret
Gesoff	Annette
Gesoff	Frank
Gibb	William
Gibson	Mrs D
Gilbert	Mark
Giles	William
Gill	Anthony
Gillard	Richard
Gilson	Leslie James
Gilson	June
Glover	Graham
Goggin	Josephine
Goggin	Thomas
Gooch	Jeremy
Goss	Gloria
Gout	John
Graham-Young	James
Gray	Kathleen
Gray	Lee
Gray	Joan
Green	David
Green	Janice
Green	Martin
Green	Maureen
Green	Michael
Green	Joanne
Greenlees	T
Griffin	Denise
Griffith	Janet
Griffith	Kimberley
Griffith	Michele
Griffith	Roger
Griffith	Sian
Griffiths	Barbara

Grimes	Clare
Gritton	Georgia
Gross	Pamela
Grummitt	David
Haigh	Anthony
Haigh	Wendy
Hall	Luan
Halse	Barbara
Halson	Kathie
Hamilton	Stuart
Harbottle	Paul
Hares	Rebecca
Harpur	Derek
Harris	Timothy
Harrison	David
Harrison	Godfrey
Harrison	Mrs M
Harvey	Eric
Hasell	Stuart
Hawker	John
Hawkes	Joan
Hawkes	Simon
Hawkyard	Steven
Hayden	Yvonne
Hazelwood	Julian
Hazelwood	Pamela
Headford	Alan
Headley	Michael
Heley	Mrs B
Henderson	Neil
Hennessy	Michael
Henson	Michael
Herbert	Clifford
Herbert	Wendy
Herget	Mrs S
Hetherington	Peter
Hewett	J
Hickey	Carl
Hickman	Joanne
Hill	Brian
Hill	Charlotte
Hill	Kim
Hill	Steve
Hilton	Brian
Hilton	John
Hilton	Susan
Hingley	Sue
Hinson	Audrey
Hinson	Peter
Hoar	Mrs H
Hoare	Phillip
Hodgson	Dave
Hofmann	Joshua
Holland	Derrick
Holland	Kathleen
Holme	Eric
Holme	Robert
Holme	Doreen
Horner	Susan
Howard	June
Howard	Mark
Howard Partnership	
Howell	Frances
Howell	Phil
Howell	Richard
Howes	Daniele
Howes	Tony
Howitt	Ian
Hoy	David
Hoy	Christine
Hubble	Diana
Hubble	Terry
Hudson	Adrian
Hudson	Audrey
Hughes	Mr L
Hughesdon	Mrs P
Humphreys	Robert
Humphries	C
Hunter	Peter
Hutchings	Rosalind
Hutchinson	Kim
Hutchinson	Lee
Hyde	Terence
Ingram-Moore	Colin
Inwood	Graham
Itzinger	Andrew
Ivory	Ruth
Ivory	Stephen
Jacobs	Nigel
James	Richard
Janes	Chris
Jay	Adrian
Jay	Ruth
Jefcoate	Mick
Jefcoate	Patsy
Jellis	Adam
Jellis	Andrew
Jellis	Karen
Jennings	Pauline
Johns	Tracy
Johnson	Lawrence
Johnson	Sarah
Johnston	David
Johnston	Sian
Jones	Andre
Jones	Ken
Jones	Norman
Jones	Owen

Jones	Robyn
Jones	Trevor
Jordan	John William
Jowitt	Heather
Joyner	Patricia
Joynson	Jane
Joynson	Jeff
Judd	Claire
Kay	John
Kaye	Andrew
Kaye	Anna
Keenan	Cynthia
Kemp	Joan
Kemp	Lindsay
Kemp	Sue
Keogh	Paul
Key	Mr
Key	Mrs
Khan	Mohammed
Kibblewhite	Laurence
King	Bob
King	Camilla
King	John
King	Nicola
King	Robert
King	Stuart
King	William
Kirby	Sam
Knell	A
Knight	Mary
Knights	Julia
KTI Energy Limited	
Kurz	Annemarie
Lafferty	Henry
Lai	Celia
Laird	Daisy
Laird	Harrison
Laird	Kirk
Laird	Rosie
Laird	Sarah
Lambe	Robert
Lander	Roger
Lane	Andrew
Lane	Maxine
Last	Gemma
Last	Richard
Last	Steph
Laurence	Marion
Law	Sally
Lawrence	M
Lawson	Myriam
Lawton	B A
Layton	Laura
Lee	Brenda
Legg	Garry
Lloyd	Abigail
Lloyd	Carol
Lloyd	Gareth
Lockhart	Robert
Long	Rachel
Long	Stewart
Lonsdale	Steven
Lopez	Donna
Louisa	
Lousada	Toby
Lovell	Mark
Lowe	Peter Clifford
Lowe	Shiela
Lowell	Angela
Lowings	Adele Leonie
Lowings	Tara
Luck	David
Luck	Mrs
Luff	Steve
Luff	Wendy
Lunnon	Scott
Lunnon	Natalie
Lyn	Mrs
Ma	Guimin
MacDonald	Alan
MacDonald	Norma
Mace	Craig
Mackenzie	Sharon
Mackin	Paul
MacRitchie	Donald
MacRitchie	Kathryn
Male	Peter
Mann	Janet
Mann	Richard
Mannings	Michael
Mannings	Monica
Markham	Gillian
Marr	Mary
Marr	Nicholas
Marsh	Clive
Marsh	John
Marshall	Marie Anne
Marshall	Peter
Martin	Deborah
Mason	Natasha
Mason	Robert
Mason	Tim
Mathewson	Murdo
Mayo	Ed
McConnell	Bernard
McConnell	James
McCormick	Kim
McDorman	A

McFarling	Fred
McHugh	Matthew
McLeod	Ross
McNamara	David
Mead	Joy
Meaden	Karyn
Meadows	Peter
Meadows	Mrs E J
Mears	Mr T
Meeks	Ian
Mernagh	Hannah
Merryman	Philip
Metcalfe	Iain
Metcalfe	Karen
Metherall	Heather
Metherall	Peter
Michael	Peter
Miller	David
Miller	John
Miller	Karen
Mills	Kathleen
Mills	Peter
Mills	Tina
Milne	Tracey
Minchington	Stephen
Mison	Michael
Mitcalf	John
Molyneaux	Denise
Molyneaux	Geoff
Moore	Adele
Moore	Derek
Moore	Harry
Moore	Norma
Morley	Ann
Morley	Hugh
Morris	A
Morris	Mr S
Morris	Mr S H
Morris	Mrs B
Mudd	Gary
Murawski	Mrs C
Murgatroyd	John
Murphy	Christine
Murray	Christine
Murray	Nigel
Nash	David
Neale	Peter
Nevinson	Ann
Newbert	Rebecca
Newman	Michael
Nicholls	Robert
Nightingale	Richard
Noble	Donna
Noble	Steven
Nockels	James
Noon	Terence
Noon	Barbara
Noone	Jim
Norman	Lindsey
Norman	Mark
Norman	Sarah
North	Jane
Notton	Chris
O'Brien	John
O'Brien	Russell
	Harriet
Olds	Lavender
Olds	Matthew
Orchart	Janet
OReilly	Mark
Padian	Michael
Padian	Mrs D
Page	L R G
Page	Steve
Page	Stuart
Page	Zena
Palfreyman	Graham
Palmer	Diana
Parish	Caroline
Parish	William
Parker	Andrew
Parker	Roger
Parry	Cedryn
Parry	Lynne
Pascal	Ghislain
Pashley	Dawn
Paterson	Alan
Pathan	Ashma
Peachey-May	Carole
Peat	J V
Peat	Robert
Pelling	Jonathan
Pengilley	Beryl
Penn	Andrew
Penn	Mobena
Percival	Sue
Perkins	Jeremy
Persaud	Mrs R
Pestell	James
Pestell	Jeremy
Peverill	Ian
Phillips	Peter
Phillips	Rosalind
Pickering	Ian
Pickering	Izzie
Pickersgill	John
Pilbeam	Barbara
Pilbeam	Francis

Pilkington	Jane
Plant	Steven
Plater	David
Plumb	Andrew
Pointon	Mr N
Pointon	S
Pointon	Stuart
Poll	Roy van de
Pollock	L
Porter	Kevin
Posnett	Urszula
Poultney	Mr S
Poultney	Mrs D
Pountney	Karl
Powell	Jennifer
Powell	Martin
Powell	A K
Presley	Susan
Pritchard	Sylvia
Pritchard	Terence
Prowse	Irene
Cole	Barry
Raggett	Collin
Raggett	Dawn
Raine	Colin
Ralphs	Andrew
Rambart	Ian
Randall	Christopher
Randall	Elaine
Randall	Gemma
Randall	Joanne
Randall	Mark
Randall	Paul
Redman	John
Redman	Ruth
Reeve	A W
Relton	Sheila
Revill	Keith
Richardson	G M
Richardson	Judith
Richardson	Kirsty
Richardson	Tony
Roberts	Hugh
Robertson	Brian
Robertson	C J
Robertson	Mr A M
Robinson	Brian
Robinson	G
Robinson	Mrs D
Rolfe	Jeffery C
Rolfe	Paul
Romans	Mrs C
Ross	Aron
Ross	Tanya
Rowe	Amanda
Rowse	Steven
Royden	Charles
Rumbold	Maria
Rumbold	Chris
Ruocco	Carlo
Ruocco	Mary
Ruocco	Mr J
Russell	Keith
Rust	Maurice
Ryan	Audra
Ryan-Raine	Nicola
Sale	Jake
Sampson	Jean
Sanchez	Jacqueline
Sanchez	Martin
Sawford	Steve
Schwalm	Adam
Sealey	Andrea
Sealey	Paul
Sellwood	Geoffrey
Shadbolt	Mrs R
Sharratt	Helen
Sharratt	Jonathan
Shenton	Andrew
Short	Chris
Shorter	Robert
Shrimpton	Graham
Shurety	D J
Silva	Carlos
Silva	Claire
Simmons	John
Singer	Mrs L M
Skoyles	John
Skoyles	Mrs S
Smith	Angela
Smith	Kathleen R
Smith	Malcolm
Smith	Michael
Smith	Phil
Smullen	Bill
Smythe	Miranda
Soderberg	Neville
Somerfield	Lynn
Sonnenstein	Christopher
Sonnestein	Ann Elizabeth
Souster	John
Sowter	Penelope Jane
Speedy	C
Spicer	Marianne
Spinks	Glynis
Stallwood	Clive
Stanbridge	Muriel
Stanton	Alex

Stanton	Laura
Stanton	Nicholas
Stanton	Rebecca
Stanton	Rosemary
Stanton	Treena
Starkess	M
Stimson	Neville
Stone	Nicholas
Stone	Rhiannon
Stone	Susan
Storey	Mr R
Storey	Mr
Straccia	Vincenzo
Street	Mike
Stringer	Mathew
Stroud	Michelle
Stuart-Smith	Kim
Sullivan	Barry Desmond
Summerfield	George
Sweetman	Mark
Symonds	John
Taggart	Rolf
Tait	John
Tasker	Colin
Tasker	Jane
Tassell	John
Tassell	Sue
Taylor	Nick
Teakle	Richard
Teakle	Sally
Tebbutt	Roy
Thomas	Chris
Thomas	Mr
Thomas	Jennifer
Thompson	Elizabeth
Thomson	Therese
Thorburn	Marjorie
Thornton	Elizabeth Jane
Thorpe	Kim
Timms	Francis John
Timothy	R
Tobin	Catherine
Todhunter	Nola
Toland	David
Tomber	Christine
Tomlin	John
Tomlin	Mary
Tomuins	Emma
Tothill	Ibtisam E
Townsend	Ian
Trott	Gilbert J
Trotter	Julie
Trussell	Mark
Tuck	David
Turland	Elaine
Turner	Emma
Turner	Nicholas
Turner	Rebecca
Tyrrell	Barry
Tysoe	Lee
Underhill	Kathryn
Vass	Daniel
Vaughan	Helen
Vaughan	Margaret
Vickers	Ann
Vickers	G J
Viney	Graham
Walker	Audrey
Walker	Mr T
Wallace	Ingrid
Waller	Cyril
Waller	Joan
Walsh	James
Walton	Diane
Ward	Brian
Ward	Hazel
Ward	Lucy
Ward	Mel
Ward	Nicholas
Ward	Timothy
Ward	Tom
Wardle	Ms
Warner	Kirsty
Warwick	Andrew
Watkin	Mr T
Watkin	Mrs A
Watson	Nicholas
Watson	Sarah
Watson	Stephen
Watts	Carol
Watts	Edward
Watts	Mari
Weeks	Andrew
Weiser	Patricia
West	Lynne
West	Tracy
Westgarth	G
Westgarth	Linda
Weston	Poppy
Wheeler	Barbara
Wheeler	Roger
White	Carole
Whitham	Simon
Whittaker	Pippa
Whittle	Keith
Wickings	Mr
Wigley	Dian

Wildman	Joan	Wright	Allan
Wilkinson	G	Wright	Janice
Williams	David	Wright	Mr A
Williams	Julie	Wright	Mrs A
Williams	Phil	Wright	Mrs M
Willoughby	Roger	Wright	T
Wilson	Fred	Wyatt	Robert
Wilson	John	Wyer	Jillian
Wilson	Mr J	Yates	Brad
Wilson	Mr R	Yates	Carole
Wilson	Mrs	Yates	Clive
Withers	D T	Yates	Emma
Witt	Natasha	Young	Derry
Wood	Emma	Young	Geoff
Woodcock	Mrs S	Young	George W E
Woodcock	Simon	Young	Sue
Woolhead	Mr K	Young	Susan
Worrall	C L	Yuen	Kirstie
Worrall	F A		

Representations Submitted by Persons not Registered as Interested Parties

DAY/1	Adrian Day
LLD/1	Evangelia Lloyd
ARM/1	Edwin Armstrong

APPENDIX D – THE DEVELOPMENT CONSENT ORDER

Order made by the Infrastructure Planning Commission subject to special parliamentary procedure, and laid before Parliament under section 1 of the Statutory Orders (Special Procedure) Act 1945 on … 2011, together with the certificate or statement required by section 2 of that Act.

S T A T U T O R Y I N S T R U M E N T S

2011 No. 0000

INFRASTRUCTURE PLANNING, ENGLAND

The Rookery South (Resource Recovery Facility) Order 2011

Made - - - -	**** [2011]*
Laid before Parliament	*****
Coming into force - -	*****

CONTENTS

1. Citation and commencement
2. Interpretation
3. Development consent etc. granted by the Order
4. Procedure in relation to approvals etc under requirements
5. Maintenance of authorised development
6. Operation of generating station
7. Benefit of the Order
7A. Guarantees in respect of payment of compensation
8. Defence to proceedings in respect of statutory nuisance
9. Street works
10. Public rights of way
11. Temporary stopping up of streets
12. Access to works
13. Agreements with street authorities
14. Discharge of water
15. Authority to survey and investigate the land
16. Compulsory acquisition of land
17. Power to override easements and other rights
18. Time limit for exercise of authority to acquire land compulsorily
19. Compulsory acquisition of rights
20. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
21. Acquisition of subsoil only
22. Acquisition of part of certain properties
23. Rights under or over streets

24. Temporary use of land for carrying out the authorised development
25. Temporary use of land for maintaining authorised development
26. Statutory undertakers
27. Railway undertakings
28. Application of landlord and tenant law
29. Operational land for purposes of the 1990 Act
30. Felling or lopping of trees
31. Certification of plans etc
32. Protection of Network Rail Infrastructure Limited
33. Arbitration

SCHEDULE 1 — AUTHORISED DEVELOPMENT AND REQUIREMENTS
PART 1 — AUTHORISED DEVELOPMENT
PART 2 — REQUIREMENTS
SCHEDULE 2 — STREETS SUBJECT TO STREET WORKS
SCHEDULE 3 — PUBLIC RIGHTS OF WAY
PART 1 — PUBLIC RIGHTS OF WAY EXTINGUISHED
PART 2 — RIGHTS OF WAY CREATED OR IMPROVED
SCHEDULE 4 — STREETS TO BE TEMPORARILY STOPPED UP
SCHEDULE 5 — ACCESS TO WORKS
SCHEDULE 6 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
SCHEDULE 7 — PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

An application has been made to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 made under sections 37, 42, 48, 51, 56, 59 and 232 of the Planning Act 2008 (the "Act")(ccc) for an Order under sections 37, 55, 115, 120, 121, 122 and 140 of the Act;

The application was examined by a Panel appointed by the Chair of the Infrastructure Planning Commission pursuant to Chapter 4 of Part 6 of the Act;

The Panel, having considered the representations made and not withdrawn and the application with the documents that accompanied the application, in accordance with section 104 of the Act has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change in the proposals;

The Order will not come into force until it has been before Parliament and has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965;

(ccc) 2008 c.29.

Accordingly, in exercise of the powers conferred by sections 114, 115, 120, 121, 122 and 140 of the Act, the Infrastructure Planning Commission makes the following Order:

Citation and commencement

1. This Order may be cited as the Rookery South (Resource Recovery Facility) Order 2011.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(ddd);

"the 1965 Act" means the Compulsory Purchase Act 1965(eee);

"the 1980 Act" means the Highways Act 1980(fff);

"the 1990 Act" means the Town and Country Planning Act 1990(ggg);

"the 1991 Act" means the New Roads and Street Works Act 1991(hhh);

"the 2008 Act" means the Planning Act 2008(iii);

"the authorised development" means the development and associated development described in Part 1 of Schedule 1 and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

"the book of reference" means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"the code of construction practice" means the code of construction practice certified by the decision-maker as the code of practice for the purposes of this Order;

(ddd) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

(eee) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 10 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 9181 (c.23). Section 13 was amended by section 139 of the Tribunals Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). There are other amendments to the 1965 Act which are not relevant to this Order.

(fff) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (consequential Provisions)Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales)Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(ggg) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(hhh) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(iii) 2008 c.29.

"commence" means begin to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, or the temporary display of site notices or advertisements and "commencement" is to be construed accordingly;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"the decision-maker" has the same meaning as in section 103 of the 2008 Act;

"the design and access statement" means the design and access statement certified by the decision-maker as the design and access statement for the purposes of this Order;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"the land plans" means the plans certified as the land plans by the decision-maker for the purposes of this Order;

"limits of deviation" means the limits of deviation for the scheduled works comprised in the authorised development shown on the works plans;

"local highway authority" has the same meaning as in section 329(1) of the 1990 Act;

"maintain" includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace and improve and "maintenance" is to be construed accordingly;

"the Order land" means the land shown on the land plans which is within the Order limits and described in the book of reference;

"the Order limits" means the limits shown on the Order limits plan and works plan within which the authorised development may be carried out;

"the Order limits plan" means the plan certified as the Order limits plan by the decision-maker for the purposes of the Order;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(jjj);

"the relevant planning authority" means Central Bedfordshire Council in relation to land in its area and Bedford Borough Council in relation to land in its area, and "the relevant planning authorities" means both of them;

"requirement" means a requirement set out in Part 2 of Schedule 1 (requirements) to this Order;

"the rights of way plan" means the plan certified as the rights of way plan by the decision-maker for the purposes of this Order;

"the scheduled works" means the works specified in Schedule 1 to this Order, or any part of them as the same may be varied pursuant to article 3;

"the sections" means the sections certified as the sections by the decision-maker for the purposes of this Order;

"statutory undertaker" means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

(jjj) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

"the undertaker" means, in relation to any provision of this Order, Covanta Rookery South Limited and any other person who has the benefit of that provision in accordance with article 7 or section 156 of the 2008 Act;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain and also includes the water body or water bodies contained in Rookery North Pit, Stewartby; and

"the works plans" means the plans certified as the works plans by the decision-maker for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) The authorised development may be constructed in the lines or situations shown on the works plans and, subject to the provisions of the requirements, in accordance with the drawings specified in the requirements.

(3) The works comprised in the authorised development may be constructed within the limits of deviation.

(4) In constructing or maintaining the scheduled works, the undertaker may—

(a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation; and

(b) deviate vertically from the levels shown for those works on the sections to any such extent downwards as may be necessary, convenient or expedient provided that the stack shall not be lower in height than 135.25 metres above ordnance datum.

(5) Nothing in this Order or the Town and Country Planning (General Permitted Development) (England and Wales) Order 1995(kkk) in its application to the authorised development permits—

(a) development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part III of the 1990 Act or any requirement otherwise than where expressly authorised by either Order;

(b) any part of Work No. 1 (other than the stack comprised in that work) to exceed the height of the building shown on the plans listed in requirement 6.

Procedure in relation to approvals etc under requirements

4.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

(a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(kkk)S.I. 1995/418.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of "statutory undertaker") to appeals pursuant this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989.

Maintenance of authorised development

5.—(1) Subject to the other terms of this Order, including the requirements, the undertaker may maintain the authorised development, except to the extent that an agreement made under this Order, provides otherwise.

(2) Subject to paragraph (3) and the requirements, the power to maintain the authorised development includes the power to carry out and maintain such of the following as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction or operation of the authorised development, namely—

(a) works to alter the position of apparatus below ground level, including mains, sewers, drains and cables including below ground structures associated with that apparatus within the Order limits;

(b) works of decommissioning and demolition.

(3) This article only authorises the carrying out of maintenance of works within the Order limits.

Operation of generating station

6.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any other obligation under any other legislation that may be required to authorise the operation of a generating station.

Benefit of the Order

7.—(1) Except as provided for by this article, section 156(1) of the 2008 Act applies to the grant of development consent by this Order.

(2) The undertaker may—

(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 in writing between the undertaker and the transferee; or

(b) grant to another person (the "lessee") for a period agreed in writing 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.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) 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.

(5) The consent of the Secretary of State, being the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order, is required for the exercise of the of the powers of paragraph (2) except where—

(a) the transferee or lessee is—

(i) a statutory undertaker;

(ii) a principal council, a joint authority or a joint waste authority in England as defined in the Local Government Act 1972(lll);

(iii) an authority designated under the Waste Regulation and Disposal (Authorities) Order 1985(mmm); or

(iv) a person having security over any part of the undertaking of the undertaker in respect of Work No. 1 in relation to contractual arrangements relating to a contract between the undertaker and a person referred to in sub-paragraphs (i) to (iii);

(b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claim has been made and has been compromised or withdrawn;

(iii) compensation has been paid in final settlement of any such claim;

(iv) payment of compensation into court in lieu of settlement of any such claim has taken place; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable; or

(c) the transfer or lease relates to any part of the authorised development except Work No. 1.

(6) The provisions of articles 8 to 11, 13 to 24 and 29 have effect only for the benefit of Covanta Rookery South Limited and a person who is a transferee or lessee as referred to in paragraph (2) and is also—

(a) the transferee or lessee of the land occupied by Work No. 1;

(b) in respect of Works No. 6A to 6H, a person who holds a licence under section 6(1) of the Electricity Act 1989, or who is not required to hold such a licence by virtue of an exemption order under section 5 of that Act;

(c) in respect of articles 14 and 17, the transferee or lessee of the land occupied by Work No. 2; or

(d) in respect of functions under article 9 relating to a street, a street authority.

(7) Where a person who is the transferee or lessee as referred to in paragraph (2)—

(a) is liable to pay compensation by virtue of any provision of this Order; and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker in respect of Work No. 1.

Guarantees in respect of payment of compensation

7A.—(1) The authorised development must not be commenced and the undertaker must not begin to exercise the powers of articles 16 to 26 of this Order (compulsory purchase and temporary use) unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order or an alternative form of security for that purpose is in place which has been approved by the relevant planning authorities.

(2) A guarantee given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable.

(lll) 1972 c.70.
(mmm) S.I. 1985/1884.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(nnn) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(ooo); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authorities as described in requirement 19; or

(ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) tunnel or bore under the street;

(c) place apparatus in the street;

(d) maintain apparatus in the street or change is position; and

(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(nnn) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(ooo) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

(4) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

Public rights of way

10.—(1) With effect from the date upon which authorised development is first commenced the section of each public right of way specified in columns (1) and (2) of Part 1 of Schedule 3 and shown on the rights of way plan is extinguished to the extent specified in column (3) of that Part of that Schedule.

(2) With effect from the date of satisfaction by the local highway authority that a public right of way specified in columns (1) and (2) of Part 2 of Schedule 3 has been improved to the standard defined in the implementation plan, the public right of way in question is deemed to have the status specified in column (3) of that Part of that Schedule.

(3) In this article "implementation plan" means the written plan agreed between the undertaker and the local highway authority for the improvement of the public right of way in question.

Temporary stopping up of streets

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.

(4) The undertaker must not temporarily stop up, alter or divert—

(a) the street specified as mentioned in paragraph (3) without first consulting the local highway authority; and

(b) any other street without the consent of the local highway authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private rights of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

12. The undertaker may, for the purposes of carrying out the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 5 (access to works); and

(b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

13.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) any stopping up, alterations or diversion of a street authorised by this Order; or

(b) the carrying out in the street of any of the works referred to in article 9(1) (street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Discharge of water

14.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(ppp) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by Regulation 38 of the Environmental Permitting Regulations (England and Wales) 2010(qqq) (offences of polluting water).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(9) This article has effect in relation to watercourses or drains that are created or to be created as part of any restoration scheme applicable to Rookery South Pit and authorised by a review of old minerals permissions pursuant to section 96 of the Environment Act 1995(rrr) reference number BC/CM/2000/08.

Authority to survey and investigate the land

15.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(ppp) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(qqq) S.I. 2010/675.

(rrr) 1995 c.25.

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required on entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes must be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Compulsory acquisition of land

16.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 24 (temporary use of land for carrying out the authorised development).

Power to override easements and other rights

17.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker, by its successor pursuant to a transfer or lease under article 7 of this Order, by any person deriving title under them or by any of their servants or agents) is authorised by this Order for the purposes of this article if it is authorised by the Order apart from this article and done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article "authorised activity" means—

(a) the erection, construction or carrying out, or maintenance of any building or work on land;

(b) the erection, construction, or maintenance of anything in, on, over or under land; or

(c) the use of any land.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract having that effect.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge in pursuance of this article, compensation—

(a) is payable under section 7 or 10 of the Compulsory Purchase Act 1965; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

(7) This article does not apply in respect of any agreement, restriction, obligation or other provision contained in a deed made pursuant to section 106 of the 1990 Act or section 278 of the 1980 Act.

Time limit for exercise of authority to acquire land compulsorily

18.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

(a) no notice to treat may be served under Part 1 of the 1965 Act; and

(b) no declarations may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(sss) as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 24 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period if the land was entered and possession was taken before the end of that period.

(sss) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are other amendments to the 1981 Act which are not relevant to this Order.

Compulsory acquisition of rights

19.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which a new right is vested in the undertaker, whichever is the later, the land over which any new right is acquired is discharged from all rights trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act as substituted by article 22 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not be required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

20.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is substituted—

"(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated. ".

(4) In that section, in subsection (2), for "(1)(b)" there is substituted "(1)" and after "given" there is inserted "and published".

(5) In that section for subsections (5) and (6) there is substituted—

"(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.".

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after "publication" there is inserted "in a local newspaper circulating in the area in which the land is situated"; and

(b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words "(as modified by section 4 of the Acquisition of Land Act 1981)" are omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

21.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 16 (compulsory acquisition of land) as may be

required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 22 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(4) Nothing in this article requires the undertaker to acquire any estate, right or interest in any adopted highway.

Acquisition of part of certain properties

22.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

(a) a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole ("the land subject to the counter-notice").

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner may be required to sell only the land subject to the notice to treat is, unless the undertaker agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice;

(c) the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

(b) the material detriment is not confined to a part of the land subject to the counter-notice;

(c) the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land that that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

23.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

24.—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;

(b) remove any buildings and vegetation from that land; and

(c) construct temporary or permanent works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (2) of Schedule 6 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 19 of this Order.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not be required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker is not precluded from—

(a) acquiring new rights over any part of that land under article 19 (compulsory acquisition of rights); or

(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 21 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker cannot be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

25.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker cannot be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

26. The undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the Order limits and described in the book of reference;

(b) extinguish the rights of and remove or reposition apparatus belonging to statutory undertakers in, on or over land shown on the land plans and described in the book of reference; and

(c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Railway undertakings

27.—(1) Subject to the following provisions of this article, the undertaker may not under article 9 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

(a) is under the control or management of, or is maintainable by, railway undertakers; or

(b) forms part of a level crossing belonging to any such undertakers or to any other person,

except with the consent of the undertakers or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld or delayed.

Application of landlord and tenant law

28.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

29. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees

30.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Certification of plans etc

31.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

(a) the book of reference;

(b) the code of construction practice;

(c) the design and access statement;

(d) the land plans including plan number 3052/SK013 showing areas of land subject to restrictive covenants;

(e) the Residual Waste Acceptance Scheme dated 8 July 2011;

(f) the rights of way plan;

(g) the sections;

(h) the travel plan within the meaning of requirement 39(1),

for certification that they are true copies of the plans or 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.

Protection of Network Rail Infrastructure Limited

32. Schedule 7 has effect.

Arbitration

33. Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the decision-maker.

Signed by authority of the Infrastructure Planning Commission

Paul Hudson, Andrew Phillipson and Emrys Parry
Members of the Panel
Date Infrastructure Planning Commission

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT AND REQUIREMENTS

PART 1

AUTHORISED DEVELOPMENT

In Central Bedfordshire

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

Work No. 1 An electricity generating station with a nominal gross electrical output capacity of 65 MWe fuelled by waste and including—

(a) three waste processing streams each comprising a reciprocating grate, furnace, boiler and associated air pollution control system;

(b) transformer compound;

(c) an administration building;

(d) a tipping hall;

(e) refuse bunkering;

(f) a flue gas treatment facility;

(g) flues or stack;

(h) turbines and turbine hall;

(i) air cooled condensers;

(j) a facility to enable steam pass-outs and/or hot water pass-outs; and

(k) a visitor centre/education facility; and

associated development within the meaning of section 115(2) of the Act comprising—

Work No. 2 A post-combustion materials recovery facility for the purpose of treating incinerator bottom ash produced by the electricity generating station comprised in Work No. 1 and including—

(l) a screened ash/aggregate yard;

(m) buildings housing apparatus and necessary plant for separation of co-mingled metals from incinerator bottom ash and grading of such ash;

(n) a separation lagoon;

(o) an administration building;

(p) a weigh bridge; and

(q) a foul water pump house;

Work No. 3 A drainage channel to be constructed on an east - west alignment linking with a drainage channel to be constructed pursuant to a review of old minerals permissions bearing statutory reference number BC/CM/2000/08;

Work No. 4 An extension to the attenuation pond to be constructed pursuant to a review of old minerals permissions bearing statutory reference number BC/CM/2000/08;

In the Borough of Bedford and in Central Bedfordshire

Work No. 5A A new access road commencing at the north-east corner of Work No. 2 and running in a Northerly direction to a new junction with Green Lane, Stewartby;

Work No. 5B A new access road commencing at the north-west corner of Work No. 1 and running in a Northerly direction to a junction with Work No. 5A;

Work No. 6A A grid connection consisting of one or more cables laid in a trench commencing at a point on the Northern side of Work No. 1 and running in a Northerly direction to the vicinity of the new junction with Green Lane created as part of Work No. 5A;

Work No. 6B A grid connection consisting of one or more cables laid beneath the Marston Vale Railway Line and connecting with Works No. 6A and 6C;

Work No. 6C A grid connection consisting of one or more cables connecting Work No. 6B to Work No. 6D at a point on Green Lane in the vicinity of the existing access to Stewartby Water Sports Club;

Work No. 6D A grid connection consisting of one or more cables laid in a trench on Green Lane Stewartby and connecting Work No. 6C to Works No. 6E and 6G at a point at the junction of Green Lane and Copart Access Road, Marston Moretaine;

Work No. 6E A grid connection consisting of one or more cables laid in a trench from the junction of Green Lane and the Copart Access Road, Marston Moretaine to the junction of the Copart Access Road and the C94;

Work No. 6F A grid connection laid consisting of one or more cables connecting Work No. 6E to the proposed Marston Grid Substation west of the A421 Trunk Road in Marston Moretaine;

Work No. 6G A grid connection consisting of one or more cables laid in a trench from the junction of Green Lane and the Copart Access Road, Marston Moretaine to the existing Marston Road Primary Substation;

Work No. 6H A grid connection consisting of one or more cables laid in a trench from the junction of Works No. 6F and 6E to the existing Marston Road Primary Substation;

Work No. 7A A work for the improvement of the entrance to the Marston Vale Millennium Country Park to the West of the Green Lane Level Crossing;

Work No. 7B A work for the creation of new site access works, including new footways to the East of Green Lane Level Crossing;

Work No. 7C A work comprising a footway and cycleway link crossing the new access road comprised in Work No. 5A and linking Green Lane and the circular path passing around Rookery North Pit to be constructed pursuant to a review of old minerals permissions bearing statutory reference number BC/CM/2000/08;

Work No. 8A An improvement to Green Lane comprising the improvement of the carriageway and footway including the provision of facilities for cyclists West of Green Lane Level Crossing;

Work No. 8B An improvement to Green Lane comprising the improvement of the carriageway and footway including the provision of facilities for cyclists East of Green Lane Level Crossing; and

Work No. 9 An improvement to Green Lane Level Crossing including a widening of the carriageway, alterations to footways and the installation of full barriers and associated improvements to Green Lane, Stewartby;

and in connection with such works and to the extent that they do not otherwise form part of any such work, further associated development shown on the plans referred to in the requirements including—

(r) weighbridges and security gatehouses;

(s) internal site roads and vehicle parking facilities;

(t) workshops and stores;

(u) bunds, embankments, swales, landscaping and boundary treatments;

(v) pipes for steam pass outs and/or hot water pass outs within the Order limits;

(w) habitat creation;

(x) the provision of footpaths, cycleways and footpath linkages;

(y) water supply works, foul drainage provision, surface water management systems and culverting; and

(z) whether or not shown on the plans referred to in the requirements, the demolition of all or part of the redundant conveyor structure within the Order limits.

PART 2

REQUIREMENTS

Interpretation

In this Part of this Schedule—

"the approved development plans" mean the plans submitted with the application on 4 August 2010 or later and listed at requirement 6;

"by-products" includes incinerator bottom ash aggregate and ferrous and non-ferrous metal compounds;

"commercially operate" means operate the authorised development for commercial processing of waste and production of electricity for transmission to the national electricity grid following completion of hot commissioning and "commercial operation" and "commercially operated" shall be construed accordingly;

"heavy goods vehicle" means—

(aa) a heavy goods vehicle of 7.5 tonnes gross vehicle weight or more; and

(bb) any other vehicle designed for the transport of waste including refuse collection vehicles;

"low level restoration scheme" means the scheme for the restoration of Rookery North and Rookery South Pits which has been developed as a part of the review of old minerals permissions application which was submitted to Bedford Borough Council and Central Bedfordshire Council on 5 June 2009 and bears statutory reference number BC/CM/2000/08.

Time limits

1. The authorised development may commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Type of waste to be treated

2. The waste permitted to be incinerated in Work No. 1 must be limited to waste categorised as residual municipal waste and residual commercial and industrial waste and materials derived therefrom.

Commencement

3. Notice of commencement of the authorised development must be given to the relevant planning authorities within 7 days beginning with the date that the authorised development is commenced.

Incineration, Operation, etc.

4. Notice of commencement of—

(a) incineration at the authorised development, and

(b) commercial operation of the authorised development,

must be given to the relevant planning authorities within 7 days beginning with the date that incineration commences and the authorised development is first commercially operated respectively.

Detailed design approval

5. Except where the authorised development is carried out in accordance with the plans listed in requirement 6, no authorised development may commence until details of the layout, scale and external appearance of Works No. 1, 2, 5A, 5B, 7A, 7B and 9 comprised in the authorised development so far as they do not accord with the approved development plans have been submitted to and approved by the relevant planning authorities. The authorised development must be carried out in accordance with the approved details.

6.—(1) The authorised development must be carried out in accordance with the approved development plans bearing references 2.1 to 2.4 and 2.11 to 2.35 and strategies listed in this requirement (unless otherwise approved in writing by the relevant planning authorities and the altered development accords with the principles of the design and access statement and falls within the Order limits)—

Application Site Plan/the Order limits plan (drawing number: 2807LO/Order/007) (application document reference 2.1)

Works Plan: Key Plan (drawing number 2807LO/Order/001) application document reference 2.2)

Works Plan: 1 of 2 (drawing number 2807LO/Order/001.1) application document reference 2.3)

Works Plan: 2 of 2 (drawing number 2807LO/Order/001.2) application document reference 2.4)

The rights of way plan (drawing number: 3052LO/SK010) (application document reference 2.11 Rev A)

EfW Facility South Elevation (drawing number: B3250-P1100) (application document reference 2.12)

EfW Facility North Elevation (drawing number: B3250-P1101) (application document reference 2.13)

EfW Facility East Elevation (drawing number: B3250-P1103) (application document reference 2.14)

EfW Facility West Elevation (drawing number: B3250-P1103) (application document reference 2.15)

EfW Facility East Sectional Elevation (drawing number: B3250-P1104) (application document reference 2.16)

EfW Facility West Sectional Elevation (drawing number: B3250-P1105) (application document reference 2.17)

Secondary Buildings Elevations - MRF (drawing number: B3250-P1106) (application document reference 2.18)

RRF Tertiary Buildings Elevations (drawing number: B3250-P1107) (application document reference 2.19)

RRF North and South Elevations (drawing number: B3250-P1300) (application document reference 2.20)

RRF East and West Elevations (drawing number: B3250-P1301) (application document reference 2.21)

RRF Site Section (drawing number: B3250-P1302) (application document reference 2.22)

RRF Boundary Details (drawing number: B3250-P1310) (application document reference 2.23)

RRF Elevation & Section Key Plan (drawing number: B3250-P1320) (application document reference 2.24)

RRF Roof Plan (drawing number: B3250-P1330) (application document reference 2.25)

Proposed access road existing footpath width at level crossing (drawing number: 210010_18) (application document reference 2.26)

Proposed access road with proposed 2.5m, footpath at level crossing (drawing number: 210010_20) (application document reference 2.27)

Proposed access to The Rookery Resource Facility Proposed cross section (drawing number: 210010_19) (application document reference 2.28)

Level Crossing (drawing number: RX_DR_GL_LC_03) (application document reference 2.29)

Lighting Layout & Strategy Operational Area (drawing number: 9V3657-7003) (application document reference 2.30)

Landscape Strategy & Key Plan (drawing number: 2807LO/PA002RevB) (application document reference 2.31B)

Operational Area Masterplan and Green Lane Country Park & RRF Entrance (drawing number: 2807LO/PA/007) (application document reference 2.32)

Planting Strategy - Wider Site (drawing number: 2807LO/PA/004_RevB) (application document reference 2.33B)

Planting Strategy: Operations Area and Indicative Scheme Layout for Green Lane Country Park & RRF Entrance (drawing number: 2807LO/PA/005RevA) (application document reference 2.34A)

Trees to be removed/retained (drawing number: 2897LO/PA/008) (application document reference 2.35)

Surface Water Drainage Strategy (drawing number 21780/076/002 Rev B)

Foul Water Drainage Strategy (drawing numbers 21780/077/001 Rev C and 21780/077/002 Rev D).

(2) Where any alternative details are approved pursuant to this requirement and requirements 5 or 30, those details are to be deemed to be substituted for the corresponding approved details set out in this requirement.

BREEAM Rating

7.—(1) No part of the authorised development may commence until—

(a) a pre-construction stage consultation with the Building Research Establishment (BRE) (in accordance with the BRE's requirements for such consultation) has been carried out; and

(b) proposals identifying the range of options to achieve the BRE Environmental Assessment Methodology (BREEAM) rating specified in the consultation response, which must in any event (and in the absence of a consultation response) be of no less a standard than "good" have been submitted to and approved in writing by Central Bedfordshire Council.

(2) The authorised development must be carried out in accordance with the details approved pursuant to requirement 7(1). Any variation of the BREEAM rating must be agreed with BRE and submitted to Central Bedfordshire Council for approval in writing.

Provision of landscaping

8.—(1) No part of the authorised development may commence until a detailed landscaping scheme and associated working programme (which accords with the landscape strategy submitted with the application) has been submitted to and approved in writing by the relevant planning authorities.

(2) The landscaping scheme must include details of—

(a) the location, number, species, size and planting density of proposed planting;

(b) the retention of existing vegetation along the route of Work No. 5A specified in that scheme;

(c) a planting design in the vicinity of the attenuation pond and site access proposals within the Order land;

(d) any importation of materials and other operations to ensure plant establishment;

(e) proposed finished ground levels;

(f) planting and hard landscaping within the operational areas of the authorised development and the vehicular and pedestrian access, parking and circulation areas;

(g) the green wall and brown roofs to be constructed as part of the authorised development, including the method of construction, plant types, sizing and spacing, and the measures proposed for maintenance of those walls and roofs;

(h) minor structures such as signage, refuse or other units, and furniture;

(i) signage and cycle parking facilities at the site access on Green Lane;

(j) proposed and existing functional services above and below ground, including power and communications cables and pipelines, manholes and supports;

(k) the specified standard to which the works will be undertaken; and

(l) a timetable for the implementation of all hard and soft landscaping works.

Implementation and maintenance of landscaping

9.—(1) All landscaping works must be carried out in accordance with the detailed landscaping scheme approved under requirement 8 and to the specified standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) Any tree or shrub planted as part of the detailed landscaping scheme approved under requirement 8 that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

(3) The green wall that is part of the landscaping scheme approved under requirement 8(1) must be maintained in accordance with the approved landscaping scheme following its installation for the duration of the period of commercial operation of the authorised development.

Highway accesses

10.—(1) The highway works comprised in Works No. 8A and 8B to Green Lane, including the two pedestrian crossings and the footway running parallel to and south of Green Lane and the first 10 metres chainage of the access road comprised in Work No. 5A from its junction with Green Lane (including the pedestrian crossing that forms part of the junction in those Works), must be completed prior to the commencement of Works No. 1 and 2.

(2) The access road comprised in Work No. 5A (including the pedestrian crossing that forms part of the junction in those Works) must be constructed to base course for a minimum distance of 100 metres chainage from the section of the access road that has been completed in accordance with requirement 10(1) prior to the commencement of Works No. 1 and 2. The access road must

be laid out in accordance with the approved access plans. The remainder of the route of the access road must be surfaced with crushed stone or other temporary materials appropriate for the purposes of constructing the authorised development.

(3) The works comprised in Works No. 5A and 5B must be substantially completed to the standard specified in the Design Manual for Roads and Bridges and in accordance with the approved access plans (application document reference 2.26) set out in requirement 6(1) as certified by an appropriate certifying professional prior to incineration of waste in Work No. 1.

(4) The commencement of Work No. 1 must not take place until a scheme to provide wheel cleaning facilities for heavy goods vehicles and provision for road cleaning in relation to construction of the authorised development has been submitted to and approved in writing by Central Bedfordshire Council. The scheme must include details of the measures and location for the wheel cleaning facilities and details of how cleaning of the highway will be secured so as to remove mud and other debris that may be carried on to it from the authorised development.

Fencing and other means of site perimeter enclosure

11.—(1) No part of the authorised development may commence until details of all proposed permanent fences, walls or other means of enclosure according with boundary details shown on drawing B3250-P1310 (application document reference no. 2.23) including the acoustic fence adjacent to the ramp serving the tipping hall comprised in Work No. 1 have been submitted to and approved in writing by Central Bedfordshire Council.

(2) All construction sites must remain securely fenced at all times during construction of the authorised development.

(3) All temporary fencing must be removed on completion of the authorised development.

(4) All perimeter fences, walls or other means of site perimeter enclosure for the authorised development approved in accordance with paragraph (1) must be completed prior to commencement of commercial operation in accordance with the approved details.

Surface and foul water drainage

12.—(1) Except where the authorised development is constructed in accordance with the approved drainage strategies, details of the surface and foul water drainage system (including means of pollution control and information demonstrating compliance with the best practice for sustainable drainage schemes) must be submitted to and approved in writing by Central Bedfordshire Council. Unless otherwise agreed in writing by Central Bedfordshire Council, such details must accord with the principles of the drainage strategy submitted with the application, making provision for the construction of Work No. 3, and must be implemented in accordance with the approved details.

(2) The drainage strategy must provide that all drains provided as part of the authorised development must, where necessary and appropriate, contain trap gullies or interceptors.

Land stability

13.—(1) No part of the authorised development may commence until a scheme to deal with land stability has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by Central Bedfordshire Council, to identify the extent of any land stability matters, and the remedial measures to be taken to render the land fit for its intended purpose.

(3) Land stabilisation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by Central Bedfordshire Council.

Contamination and groundwater

14.—(1) No part of the authorised development may commence until a scheme to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by Central Bedfordshire Council, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Remediation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by Central Bedfordshire Council.

Archaeology

15.—(1) No part of the authorised development may commence until a written scheme of archaeological investigation has been submitted to and approved in writing by the relevant planning authorities.

(2) The archaeological investigation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by the relevant planning authorities.

Code of construction practice

16. All construction works must be undertaken in accordance with the code of construction practice unless otherwise agreed in writing by the relevant planning authorities.

Control of noise during construction and operational phase

17. During construction the daytime free field noise level as a result of the construction of the authorised development at any residential location must not exceed 55 dB LAeq, 1 hour unless otherwise agreed in writing by Central Bedfordshire Council.

18.—(1) Except in case of an emergency, or with the prior written agreement of Central Bedfordshire Council, the Rating Level as defined in BS4142:1997 of the noise emitted from the operation of the authorised development must not exceed the free field noise levels listed in the following table—

Location	*Daytime (0700-2300) dB* $L_{Aeq\ 1\ hour}$	*Night-time (2300-0700) dB* $L_{Aeq\ 5\ minutes}$
Stewartby Way, Stewartby	35	35
South Pillinge Farm	39	35
Pillinge Farm Cottages	35	35

(2) Compliance with these limits must be demonstrated by noise measurements at locations closer to the Order limits selected to allow measurement of noise from the authorised development to be made without significant influence of noise from other sources. Noise levels must be calculated for these locations in accordance with the propagation methodology in ISO 9613 and agreed with the relevant planning authorities.

19.—(1) No part of the authorised development may commence until a scheme providing for the monitoring of noise generated during the construction and operation of the authorised development has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The scheme must specify the locations at which noise will be monitored and the method of noise measurement (which must be in accord with BS 4142, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances).

(3) The scheme must be implemented to establish baseline noise conditions.

(4) This monitoring programme must be subject to periodic reviews to establish the frequency of noise monitoring and the need for continued monitoring.

(5) Throughout the operational lifetime of the development the monitoring programme must be reviewed following any change in plant, equipment or working practices likely to affect noise conditions and any such change shall be notified in writing to Central Bedfordshire Council; or following a written request by Central Bedfordshire Council in relation to a noise related complaint.

(6) Such review must be submitted to Central Bedfordshire Council for its written approval within 4 weeks of the notification or request.

20.—(1) In any case where the noise levels specified in requirement 18 or otherwise agreed in writing for monitoring locations is exceeded because of an emergency, the undertaker must notify Central Bedfordshire Council in writing of the nature of the emergency within 2 working days, the reasons for exceeding the noise limit and its expected duration.

(2) If the period of excess noise is expected to last for more than 24 hours then the undertaker must inform any community liaison panel or any other consultative body established as a result of the authorised development, the relevant planning authorities and adjoining occupiers or land users.

(3) Notification of the excess, the reasons for it and its expected duration must also be posted on the undertaker's internet web site.

21. Except in an emergency, the undertaker must give at least three working days' written notice to Central Bedfordshire Council of any proposed operation of emergency pressure valves or similar equipment. Where steam purging is to take place, the undertaker must give 3 working days' prior written notice to local residents and businesses by informing any community liaison panel or any other consultative body established in respect of the authorised development as well as the relevant planning authorities. Notification of the incident, the reasons for it and its expected duration must also be posted on the undertaker's internet web site.

22. So far as reasonably practicable, steam purging may only take place between the hours of 0900-1700 Mondays-Saturdays and not on any Sunday or Bank Holiday.

23.—(1) Prior to the commencement of construction for the building envelope to contain Work No. 1 an acoustic design report must be submitted to and approved in writing by Central Bedfordshire Council.

(2) The report must detail—

(a) the noise control measures that are proposed to be included in the design of the building envelope;

(b) acoustic barriers;

(c) predicted sound power levels and noise emissions from the air cooled condensers; and

(d) acoustic attenuation measures for internal plant and equipment.

(3) The measures must be installed in accord with the approved scheme prior to commencement of operation of the authorised development and retained and maintained afterwards in accordance with the manufacturers' specifications unless Central Bedfordshire Council gives its written consent to any variation.

(4) The acoustic design report must demonstrate compliance with requirements 18 and 19.

Construction hours

24.—(1) Construction work (which for the purpose of this requirement does not include non-intrusive activities such as electrical installation and internal fit out works) may not take place other than between 0700 and 1900 hours on weekdays and 0700 and 1300 hours on Saturdays, excluding public holidays, unless otherwise agreed in writing by Central Bedfordshire Council.

Combined Heat and Power

25. A facility must be provided and maintained within Work No. 1 to enable steam pass-outs and/or hot water pass-outs and reserve space for the provision of water pressurisation, heating and pumping systems for off-site users of process or space heating and its later connection to such systems.

Delivery Hours and Traffic Management

26.—(1) No heavy goods vehicle transporting municipal waste or commercial and industrial waste may enter or leave the authorised development at any time on a Sunday, Christmas Day, New Year's Day or Easter Day (unless otherwise approved in writing by Central Bedfordshire Council).

(2) No heavy goods vehicle transporting municipal waste or commercial and industrial waste may enter or leave Work No. 1 except on Monday to Saturday between the hours of 0700 to 2300.

(3) No heavy goods vehicle transporting by-products may enter or leave Work No. 2 except on the following days and prescribed times—

(a) Monday to Friday between the hours of 0700 to 1800;

(b) Saturday between the hours of 0700 to 1400.

(4) No heavy goods vehicle may enter or leave the lorry park except between the hours of 0700 to 2300 on Monday to Saturday.

(5) This requirement applies except where such a movement as it describes is—

(a) an abnormal load;

(b) associated with an emergency; or

(c) carried out with the written approval of Central Bedfordshire Council.

CCTV

27.—(1) No part of the authorised development may commence until a scheme for the installation of a CCTV camera (or cameras) to monitor the entrance to the site from Green Lane has been submitted to and approved in writing by Central Bedfordshire Council. The scheme must include details of—

(a) the column(s) and camera(s) to be used,

(b) the viewing area covered,

(c) the capability for remote access viewing, and

(d) the ability to record live footage.

(2) The approved CCTV scheme must be installed prior to commencement of incineration of waste in Work No. 1 and must be operated afterwards in accordance with the approved scheme unless otherwise agreed in writing by Central Bedfordshire Council.

Loads to be covered

28. All heavy goods vehicles carrying bulk materials or waste into and out of the site of the authorised development during the construction, operational and decommissioning phases of development must be covered unless the load is otherwise enclosed, except when required to inspect incoming loads of waste.

Restoration

29.—(1) On the 32nd anniversary of the commencement of operation of the authorised development or on the cessation of the commercial operation of the development, whichever is earlier, the applicant must inform Central Bedfordshire Council as to whether it intends to

maintain the authorised development in its then current state, refurbish it or demolish the facility and restore the land.

(2) In the event that it is intended to refurbish the authorised development details of external changes must be submitted to Central Bedfordshire Council for approval in writing. Any such refurbishment must be implemented in accordance with the approved details.

(3) In the event that it is not intended to maintain the authorised development (whether by carrying out changes authorised under requirement 29(2) or otherwise) the authorised development must be removed.

(4) Prior to any demolition of the authorised development demolition details must be submitted to Central Bedfordshire Council for approval in writing.

(5) The details must include—

(a) the structures and buildings to be demolished or retained;

(b) the phasing of demolition and means of removal of demolition materials; and

(c) the proposed condition of the land following restoration (including whether the land will be in the condition authorised by the Low Level Restoration Scheme approved under statutory reference BC/CM/2000/08) or an alternative scheme approved by Central Bedfordshire Council depending upon the condition of the land).

(6) The demolition must be carried out in accordance with the approved details following cessation of commercial operation of the authorised development unless otherwise agreed in writing by Central Bedfordshire Council.

Amendments to approved details

30. With respect to any requirement which requires the authorised development to be carried out in accordance with details approved by the relevant planning authorities or either of them, the approved details are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authorities or either of them as the case may be.

Low level restoration scheme

31. No part of the authorised development may commence until the works comprising phase 1 of the low level restoration scheme, which has been authorised as a part of the review of old minerals permission granted on 9 December 2010 with reference number BC/CM/2000/08 by Bedford Borough Council and Central Bedfordshire Council have been carried out so as to provide an engineered site for the authorised development.

Incinerator Bottom Ash processing and storage

32. No incinerator bottom ash or other combustion residues produced at any other generating station may be accepted at or processed in Work No. 2 of the authorised development.

33. No by-products stored at Work No. 2 comprised in the authorised development may exceed 10 metres in height from the surface of the yard comprised in Work No. 2.

34.—(1) Work No. 2 must not be commercially operated until a written scheme for the management and mitigation of dust emissions has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented and maintained for the duration of the operation of the authorised development.

Lighting strategy

35.—(1) No part of the authorised development may commence until a detailed lighting strategy (which accords with the approved lighting strategy listed in requirement 6(1) and described in the

design and access statement) has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The approved lighting strategy must be implemented in accordance with the approved details prior to the commencement of incineration of waste in Work No. 1 of the authorised development and must be maintained afterwards for the duration of commercial operation of the authorised development.

(3) Where construction of Work No. 2 has not been completed prior to the incineration of waste in Work No. 1 the relevant elements of the approved lighting scheme relating to Work No. 2 must be implemented in accordance with the approved details prior to commercial operation of Work No. 2 and must be maintained afterwards for the duration of the operation of the authorised development.

Connection to the national grid

36.—(1) No incineration of waste in Work No. 1 may take place, apart from during commissioning, until a grid connection comprised in Works No. 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H has been installed and is capable of transmitting electricity generated by Work No. 1.

(2) No waste may then be incinerated in Work No. 1 unless electricity is being generated by Work No. 1 except during periods of maintenance, inspection or repair or at the direction of the holder of a licence under section 6(1)(b) or (c) of the Electricity Act 1989 who is entitled to give such direction in relation to transmission of electricity from Work No. 1 to the national grid.

Visibility requirements at Green Lane/C94 junction

37.—(1) No part of the authorised development may commence until a scheme which overcomes the substandard visibility splay to the left on exit at the junction of Green Lane with the C94 has been submitted to and approved in writing by Bedford Borough Council and implemented on site in accordance with the approved details.

(2) Visibility requirements at either the existing junction or any new or realigned junction must accord with the requirements set out in the Design Manual for Roads and Bridges.

Vehicle movements

38.—(1) The total number of heavy goods vehicles importing or exporting waste, incinerator bottom ash aggregate or flue gas treatment residues to and from the authorised development must not exceed 594 movements per day.

(2) Records of such vehicle movements must be kept by the operator and provided to Central Bedfordshire Council every 6 months.

(3) The records must specify the following—

(a) number of vehicles both entering and leaving the authorised development; and

(b) time and date of vehicles both entering and leaving the authorised development.

Travel Plan

39.—(1) The authorised development may not be commercially operated except in accordance with the travel plan which, prior to the approval of the travel plan referred to in requirement 39(2), means the travel plan submitted with the application together with the addendum headed “Interim Travel Plan SoCG Appendix” unless otherwise agreed in writing by the relevant planning authorities.

(2) A full travel plan must be submitted to the relevant planning authorities for approval in writing prior to the expiration of 6 months from the date on which the authorised development is first commercially operated. Following such approval that travel plan must be implemented in accordance with the approved details.

(3) A review of the travel plan must be carried out on each anniversary of the date of commencement of commercial operation of the authorised development and an annual travel plan report including any revisions to the travel plan deemed necessary as a result of the review must be submitted to the relevant planning authorities for written approval. Following approval of the revisions to the travel plan by the relevant planning authorities the authorised development must be operated in accordance with the revised travel plan.

Ecological management scheme

40.—(1) No part of the authorised development may commence until an ecological management scheme has been submitted to and approved in writing by the relevant planning authorities.

(2) The ecological management scheme must include details of—

(a) the protection of species covered by wildlife legislation, including great crested newts and reptiles, from activities associated with the authorised development;

(b) measures to sustain favourable conditions for stoneworts and invertebrate communities;

(c) the control of quality and quantity of water released from the authorised development to the drainage channels and attenuation pond in Rookery South Pit;

(d) the rotational management of water bodies and other wetland habitats within Rookery Pits;

(e) the management of woodland and scrub planting to maximise the habitat mosaic so as to complement woodland objectives in the wider area;

(f) how the lighting strategy referred to at requirement 35 avoids or minimises the use and effect of lighting;

(g) a strategy for ecological management of vegetated surfaces to include brown roofs associated with the Work No. 1;

(h) a programme for implementation of the proposed measures;

(i) details of ongoing maintenance; and

(j) an annual reporting protocol.

(3) The approved ecological management scheme must be implemented and maintained during commercial operation of the authorised development unless otherwise agreed in writing by the relevant planning authorities.

Residual Waste Acceptance Scheme

41.—(1) Incineration of waste in Work No. 1 must not take place except in accordance with the Residual Waste Acceptance Scheme dated 8 July 2011.

(2) On a date no later than the anniversary of the commencement of incineration of waste in Work No. 1 in each year, a written report in respect of a review of the effectiveness of the scheme must be submitted to Central Bedfordshire Council for approval in writing together with proposals for such revised, additional or substituted measures as appear to be necessary.

(3) Following approval of the alterations to the scheme by Central Bedfordshire Council incineration of waste in Work No. 1 must take place in accordance with the altered scheme.

(4) The purpose of altering the scheme is to ensure that the scheme continues to address changes in waste management, and that Work No. 1 is used only for the incineration of residual waste.

SCHEDULE 2

Article 9

STREETS SUBJECT TO STREET WORKS

(1) *Area*	*(2)* *Street subject to street works*
Bedford Borough and Central Bedfordshire	Green Lane, Stewartby between a point at its junction with Footpath 4 to the south of Stewartby and its junction with the existing C94
	Green Lane Level Crossing, Stewartby
	The Copart Access Road, Marston Moretaine from its junction with Green Lane, Marston Moretaine to its junction with the C94
Central Bedfordshire	The C94 within the Order limits
	Footpath 72 from its junction with Green Lane or west of Green Lane Level Crossing and its junction with the Copart Access Road, Marston Mortaine

SCHEDULE 3

Article 10

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY EXTINGUISHED

(1) *Area*	*(2)* *Right of way extinguished*	*(3)* *Extent to which extinguished*
Central Bedfordshire	Footpath No. 4 west of Rookery South Pit	Existing footpath between points X1 and X2
	Footpath No. 17 East of the western boundary of the Marston Vale railway line	Existing footpath between points X3 and X4
	All footpaths, bridleways and other rights of way affecting the area of the Rookery shown shaded grey on the rights of way plan	Within the area shaded grey on the rights of way plans

PART 2

RIGHTS OF WAY CREATED OR IMPROVED

(1) *Area*	*(2)* *Existing or new right*	*(3)* *New status*
Central Bedfordshire	A new combined footpath and cycleway between points N1 and N2	Footpath with cycle rights
	A new combined footpath and cycleway between points N3 and N4	Footpath with cycle rights
	A new combined footpath and cycleway between points N5 and N6	Footpath with cycle rights
	Footpath 72 to be upgraded to include cycle rights between points I1 and I2	Footpath with cycle rights
Bedford Borough	Footpath to be upgraded to include cycle rights between points I8 and I9	Footpath with cycle rights
Bedford Borough and Central Bedfordshire	Footpath to be upgraded to include cycle rights between points I3 and, thence by a circular route via points I4-I7 to Point I3	Footpath with cycle rights

SCHEDULE 4

Article 11

STREETS TO BE TEMPORARILY STOPPED UP

(1) *Area*	*(2)* *Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*
Bedford Borough and Central Bedfordshire	The Copart Access Road, Marston Moretaine	Within the Order limits

SCHEDULE 5

Article 12

ACCESS TO WORKS

(1) *Area*	*(2)* *Description of access*
Bedford Borough	An improved access to Green Lane Stewartby at or near to point A

SCHEDULE 6

Article 24

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Area*	*(2)* *Number of land shown on land plan*	*(3)* *Purpose for which temporary possession may be taken*
	52, 72, 73, 74, 75, 76, 77	Carrying out and maintaining landscaping, tree planting and ecological improvements
	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 29/1, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63	Installation, retention and maintenance of electricity transmission line and the improvement of highways and public rights of way

SCHEDULE 7

Article 32

PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

1. The following provisions of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act l993;

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006 the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker shall not exercise the powers conferred by articles 15 (authority to survey and investigate land), 16 (compulsory acquisition of land), 17 (power to override easements and other rights), 19 (compulsory acquisition of rights) or 24 (temporary use of land for carrying out the authorised development) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 26, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Prior to commencement of construction of the authorised project the Undertaker and Network Rail shall, having regard to the Undertaker's timetable for development, agree in writing a programme for the implementation of any works approved by Network Rail to the railway

crossing of the Bletchley Bedford railway line at Green Lane, Stewartby, Bedford and the undertaker will thereafter comply with the provisions of the programme.

(6) Where Network Rail is asked to give its consent or agreement pursuant to this paragraph, such consent or agreement shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should he carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all

reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker shall—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for

inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution of diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker shall in the design and construction of the authorised development take all measures necessary to prevent EMI and shall establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker shall consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail shall make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail shall allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) shall have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of commercial operation of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker shall afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail shall afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail shall make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail shall allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 33 (arbitration) to an arbitrator to be agreed shall be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers to be agreed.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

20. The undertaker shall give written notice to Network Rail where any application is required and is proposed to be made by the undertaker for the decision-maker's consent; under article 7

(transfer of benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the decision-maker to whom the application is to be made.

21. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the decision-maker in accordance with article 31 (certification of plans etc), provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Covanta Rookery South Limited to construct, operate and maintain, an electricity generating station at Rookery South Pit, near Stewartby, Bedfordshire together with all necessary and associated development. For the purposes of the development that it authorises Covanta Rookery South Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land and to use land, as well as to override easements and other rights. The Order also authorises the making of alterations to the highway network, provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 31 (certification of plans, etc) of this Order may be inspected free of charge at the offices of Central Bedfordshire Council at Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ and Bedford Borough Council at Borough Hall, Cauldwell Street, Bedford MK42 9AP.

APPENDIX E – ABBREVIATIONS

(the) Act	(the) Planning Act 2008
Anglian	Anglian Water Services Limited
BBC	Bedford Borough Council
BBCS	Bedford Borough Core Strategy and Rural Issues Plan
BLMWLP	Bedfordshire and Luton Minerals and Waste Local Plan, First Review
BMKW	Bedford to Milton Keynes Waterway
C&I	commercial and industrial
CA Land	The 93 plots of land identified in the Book of Reference
CA Plan	The Land Plan (Doc Ref No: 2.5)
CBC	Central Bedfordshire Council
CBCS	Central Bedfordshire Core Strategy and Development Management Policies Development Plan Document
Covanta	Covanta Rookery South Ltd and/or Covanta Energy Ltd (as the context requires)
CHP	combined heat and power
CWS	County Wildlife Site
DCO	Development Consent Order
EA	Environment Agency
EfW	energy from waste
EoEP	East of England Plan
EP	Environmental Permit
EPN	Eastern Power Networks Plc
ES	Environmental Statement
et seq	and the following
HA	Highways Agency
HGV(s)	heavy goods vehicle(s)
IBA	incinerator bottom ash
ibid	in the same passage
IPC	Infrastructure Planning Commission
km	kilometres
km^2	square kilometres
kv	kilovolts
LLRS	low level restoration scheme
l/s	litres per second
m	metres
m^2	square metres
m^3	cubic metres
MKSM	Milton Keynes and South Midlands Sub Regional Strategy
MRF	materials recovery facility
MSW	municipal solid waste
mtpa	million tonnes per annum
MVT	Marston Vale Trust
MW	Megawatts
Network Rail	Network Rail Infrastructure Limited
NSIP	nationally significant infrastructure project
OMV	Our Marston Vale

para	paragraph
PPG	Planning Policy Guidance [Note]
PPS	Planning Policy Statement
ROMP	review of old minerals permissions
RRF	resource recovery facility
s	section (in an Act or similar)
SoCG	statement of common ground
SWSC	Stewartby Water Sports Club
tpa	tonnes per annum
25TPCs	The Consortium of 25 Town and Parish Councils (or Meetings)
WID	Waste Incineration Directive (2000/76/EC)
WRG	Waste Recycling Group Ltd