

BY E-MAIL

Secretary of State for Business, Energy and
Industrial Strategy
Energy and Infrastructure Planning
Level 3, Orchard 2,
1 Victoria Street
London
SW1H 0ET

**For the Attention of:
James Dawkins
Head of Planning**

5 October 2022

Dear James

**REGULATION 4 OF THE INFRASTRUCTURE PLANNING (CHANGES TO, AND
REVOCATION OF, DEVELOPMENT CONSENT ORDERS) REGULATIONS 2011 (“THE 2011
REGULATIONS”)**

**APPLICATION TO MAKE A NON-MATERIAL CHANGE TO THE RIVERSIDE ENERGY PARK
ORDER 2020 (S.I. 2020/419)**

1. Introduction and Background

- 1.1 Riverside Energy Park Limited (“**REPL**”) (company number 11536739) of registered address Level 5, 10 Dominion Street, London, England, EC2M 2EF is the undertaker with the benefit of the Riverside Energy Park Order 2020, which was granted by the Secretary of State for Business, Energy and Industrial Strategy on 9 April 2020 (S.I. 2020 No. 419) (the “**Order**”) as corrected by the Riverside Energy Park (Correction) Order 2021 (S.I. 2021 No. 273) following an application made by Cory Environmental Holdings Limited (“**CEHL**”) (see further paragraph 1.5 below).
- 1.2 The Order authorises the construction, operation and maintenance of a new energy recovery facility at Belvedere in the London Borough of Bexley (“**REP**”). Once constructed, REP will be located adjacent to CEHL’s existing operational facility called Riverside Resource Recovery Facility (“**RRRF**”).
- 1.3 As the Department is aware, on 15 April 2021 CEHL submitted an application to the Secretary of State to vary the current section 36 consent for RRRF pursuant to section 36C of the Electricity Act 1989 and to request that the Secretary of State then gave a direction under section 90(2) of the Town and Country Planning Act 1990 to vary the current planning permission that RRRF operates under (“**the ROP Application**”). The

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ROP Application was granted consent on 17 December 2021 and the direction to vary the current planning permission for RRRF has been given.

- 1.4 As a result of the ROP Application, some minor consequential amendments are required to the Order. These amendments are needed to ensure consistency between the Order and the planning permission RRRF will operate under following approval of the ROP Application, in order that construction and implementation of the Order does not result in a breach of the conditions contained in the new deemed planning permission for RRRF granted as part of that application.
- 1.5 It is noted that the Order was originally made for the benefit of CEHL as the undertaker. On 4 January 2022, CEHL transferred all of the benefit of the Order to its wholly owned subsidiary REPL, using the powers contained in Article 9 of the Order. A copy of the completed transfer is available on the Planning Inspectorate's website.¹ This application is therefore made by REPL, as the undertaker for the purposes of the Order.

2. **Supporting documentation**

- 2.1 REPL is applying to the Secretary of State pursuant to section 153 and paragraph 2 of Schedule 6 to the Planning Act 2008 to make changes to the Order that are not material. This application is subject to the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011. As such, the following documents are included to support the application for a non-material change:
- (a) Non-material change application (included as an Appendix to this letter);
 - (b) Regulation 6 Notice;
 - (c) Draft amendment Order (Word and PDF version); and
 - (d) Email confirming successful validation of the draft amendment Order.
- 2.2 Please do contact Richard Griffiths (Richard.Griffiths@pinsentmasons.com) or Ruth Taylor (Ruth.E.Taylor@pinsentmasons.com) should you have any further questions.

Yours sincerely

Pinsent Masons LLP
(This letter has been sent electronically and so is unsigned)

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/london/riverside-energy-park/?ipcsection=docs>



APPENDIX

NON-MATERIAL CHANGE APPLICATION REPORT

1. INTRODUCTION

- 1.1 Riverside Energy Park Limited (“**REPL**”) (company number 11536739) of registered address Level 5, 10 Dominion Street, London, England, EC2M 2EF is the undertaker with the benefit of the Riverside Energy Park Order 2020, which was granted by the Secretary of State for the Business, Energy and Industrial Strategy on 9 April 2020 (S.I. 2020 No. 419) (the “**Order**”) as corrected by the Riverside Energy Park (Correction) Order 2021 (S.I. 2021 No. 273) following an application made by Cory Environmental Holdings Limited (“**CEHL**”).
- 1.2 The Order authorises the construction, operation and maintenance of a new energy recovery facility at Belvedere in the London Borough of Bexley (“**REP**”). Once constructed, REP will be located adjacent to CEHL’s existing operational facility called Riverside Resource Recovery Facility (“**RRRF**”). The Order authorises development consent for the works set out at Schedule 1 of the Order, which is an onshore electricity generating station in England with a capacity of more than 50MW comprising waste energy recovery, waste anaerobic digestion, battery storage, solar generation and associated electrical connection, and also authorises the compulsory acquisition of land required for the authorised development, as well as land that is required to facilitate or is incidental to the authorised development.
- 1.3 On 15 April 2021 CEHL submitted an application to the Secretary of State to vary the current section 36 consent for RRRF pursuant to section 36C of the Electricity Act 1989 and to request that the Secretary of State then gives a direction under section 90(2) of the Town and Country Planning Act 1990 to vary the current planning permission that RRRF operates under (“**the ROP Application**”).² The ROP Application was granted consent on 17 December 2021 and the direction to vary the current planning permission for RRRF has been given.³
- 1.4 The covering letter to the ROP Application made clear that were the application granted consent, some minor consequential amendments would be required to the Order, and that it was CEHL’s intention to submit a non-material change application to the Order shortly after receiving consent for the ROP Application. These amendments were also discussed in a meeting with the Department and representatives from CEHL/REPL and Pinsent Masons on 16 March 2021 and have been the subject of correspondence between the Department and Pinsent Masons in the period since. The amendments are needed to ensure consistency between the Order and RRRF following approval of the ROP Application, in order that construction and implementation of the Order does not result in a breach of the conditions contained in the new deemed planning permission for RRRF granted as part of the ROP Application. The amendments are required in order that the new deemed RRRF planning permission is referred to in the Order comprises changes to article 6(4) and the definitions in article 2(1) of the Order, as set out at section 3 below.
- 1.5 REPL hereby applies to the Secretary of State pursuant to section 153 and paragraph 2 of Schedule 6 of the 2008 Act to make changes to the Order that are not material (referred to hereafter as a “**Non-Material Change (NMC) Application**”). The NMC Application is subject to the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011, as amended (the “**2011**”).

² The ROP Application documents and consultee responses are available to view here: <https://www.corygroup.co.uk/media/news-insights/rop-application-2021/>

³ The decision letter, variation and explanatory memorandum are available to view here: <https://www.gov.uk/government/publications/riverside-resource-recovery-facility-variation-to-section-36-consent-electricity-act-1989>



Regulations). This NMC Application has been prepared with reference to the Department of Communities and Local Government document 'Guidance on Changes to Development Consent Orders' (December 2015).

- 1.6 This document sets out the proposed non-material change to the Order sought by REPL and the rationale for doing so and details of the consultation process undertaken. It also sets out why the changes sought in the NMC Application will result in no new or different likely significant environmental effects, given that the amendments proposed are technical and would not result in any development beyond that already consented through the Order and the ROP Application, both of which have already been subject to Environmental Impact Assessment.
- 1.7 It is noted that the Order was originally made for the benefit of CEHL as the undertaker. On 4 January 2022, CEHL transferred all of the benefit of the Order to its wholly owned subsidiary REPL, using the powers contained in Article 9 of the Order. A copy of the completed transfer is available on the Planning Inspectorate's website.⁴ This application is therefore made by REPL, as the undertaker for the purposes of the Order.

2. **CONSULTATION PROCESS**

Background

- 2.1 Under the 2011 Regulations, on making an NMC Application the applicant must notify and consult those persons specified in the Regulations, this being all those who were notified (in accordance with section 56 of the Planning Act 2008) when the application for the original development consent order was accepted by the Secretary of State, as well as any other person who may be directly affected by the changes proposed in the application.
- 2.2 Regulation 7(3) of the 2011 Regulations also provides that an applicant need not consult a person or authority specified in the Regulations if they have the written consent of the Secretary of State not to do so.
- 2.3 A letter of 6 July 2021 from Pinsent Masons to the Department requested written consent from the Secretary of State under regulation 7(3) of the 2011 Regulations that only the London Borough of Bexley ("**LBB**") should be consulted on the non-material change application, given the nature of the amendments sought and their role as the relevant planning authority that can take enforcement action in the event that there is a breach of a condition of the RRRF planning permission or the Order requirements.
- 2.4 On 16 May 2022, the Secretary of State confirmed he agreed that the consultee list should include LBB, but that he also considered that the Greater London Authority ("**GLA**") and London Power Networks ("**LPN**") should also be directly consulted on the NMC Application. The reasoning given was the GLA's interest in the Riverside Energy Park more generally, and that LPN has the benefit of Work No. 6 (in so far as such works relate to Work No. 9), Work No.9 and Work No.10 of the 2020 Order under article 8(2), jointly with REPL.
- 2.5 The Secretary of State agreed that all other parties need not be consulted as they are not directly affected by the NMC Application, either because the changes proposed will not affect their interests or because their interests relate to a different part of the scheme.
- 2.6 Accordingly, the Secretary of State gave written consent, under regulation 7(3) of the 2011 Regulations, that only LBB, the GLA and LPN need be consulted on the NMC

⁴ <https://infrastructure.planninginspectorate.gov.uk/projects/london/riverside-energy-park/?ipcsection=docs>



Application. No other parties who may be directly affected by the changes proposed in the NMC Application have been identified.

Overview

2.7 Regulations 6 and 7 of the 2011 Regulations set out the process for publicising and consulting respectively on an NMC Application. Pursuant to Regulation 7A of the 2011 Regulations, REPL will submit a separate Consultation and Publicity Statement confirming its compliance with Regulations 6 and 7a of the 2011 Regulations.

2.8 In summary, the following has, or is being, undertaken by REPL to comply with Regulations 6 and 7:

2.8.1 REPL notified the Planning Inspectorate ("**PINS**") and BEIS of the intention to submit an NMC Application, on 14 September 2022 and 17 December 2021 respectively. BEIS were updated on the application submission date on 26 September;

2.8.2 REPL is publicising the NMC Application by publishing a notice in the Bexley News Shopper (being a newspaper local to the site of the authorised development) for two successive weeks. The notice will be published for the first time on 28 September 2022 when the NMC Application is made to the Secretary of State. A copy of the notice will be included in the Consultation and Publicity Statement;

2.8.3 the project email address RiversideEP@planninginspectorate.gov.uk has been included in the notice publicising the NMC Application so that members of the public can make a formal response to PINS in relation to the NMC Application; and

2.8.4 following receipt of notice from the Secretary of State pursuant to Regulation 7(3) on 16 May 2022, the list of consultees contacted regarding the NMC Application will be LBB, the GLA and LPN.

2.9 Hard copies of the NMC Application will be made available for public inspection at Upper Belvedere Library, Woolwich Road, Upper Belvedere, DA17 5EQ at the following times:

Mondays (excluding bank holidays) 09:30am-5pm

Tuesdays 09:30am-5pm

Fridays 09:30am-5pm

Saturdays 09:30am-2pm

The library can be contacted by email to: upperbelvederelibrary@ecocom.org.uk or by phone on: 01322 838490.

2.10 The NMC Application will be available to view on the project website at:

www.corygroup.co.uk/media/news-insights/rop-application-2021

and also on PINS' website at:

<https://infrastructure.planninginspectorate.gov.uk/projects/london/riverside-energy-park/?ipcsection=docs>



- 2.11 Hard copies of the NMC Application can be requested by contacting REPL at info@repconsultation.com or on 0330 838 4254. Each hard copy is available at the cost of £25 per copy.
- 2.12 Consultees are invited to provide comments on the NMC Application until the closing date for consultation.
3. **PROPOSED NON-MATERIAL CHANGE TO THE ORDER**
- 3.1 The Order consists of 43 articles and 13 Schedules. This NMC Application proposes amendments to only two of these articles – article 2(1) and 6(4). The content of these changes is set out in the table below.

Table 1 - Proposed amendments to the Order

Article of the REP DCO	Proposed amendment
2(1) (Interpretation)	Insert the following new definitions in the correct alphabetical order: <i>““RRRF 2021 planning permission” means the planning permission granted under the 1990 Act by the Secretary of State for the RRRF and dated 17 December 2021;</i> <i>“RRRF 2021 condition” means a condition to the RRRF 2021 planning permission and where a condition is referred to by a number, that reference is to the corresponding numbered condition on the RRRF 2021 planning permission;”</i>
6(4) (Disapplication of legislative provisions and modifications to section 36 consent and RRRF planning permission)	Amend as follows (additions shown in underline): <i>“To the extent that there is an inconsistency on the land coloured brown identified on the REP and RRRF Applications Boundaries Plan between any provision of this Order and all or any of RRRF condition 1, RRRF condition 22 or RRRF condition 32; or <u>RRRF 2021 condition 1, RRRF 2021 condition 22 or RRRF 2021 condition 32</u> then, in respect of such inconsistency only, there is deemed to be no breach of all or any of RRRF condition 1, RRRF condition 22 or RRRF condition 32; or <u>RRRF 2021 condition 1, RRRF 2021 condition 22 or RRRF 2021 condition 32</u> (as applicable) and no enforcement action can be taken following the carrying out of the pre-commencement works, commencement or operation of the authorised development.”</i>

- 3.2 RRRF conditions 1, 22 and 32 are as follows:

“1. Except where otherwise required by virtue of a planning permission deemed to have been granted by the Secretary of State or granted by the London Borough of Bexley, the development shall be operated in accordance with the details contained in the Company's application of 29 September 1999, as varied by

i. the Company's letter of 28 June 2002 and drawing nos. D1.2; D2.4A; D2.5-10; D2.11A-12A; D10.1A; D10.2B-3B; D10.4A and PA117 Rev A;

ii. the Company's variation application of 25 September 2014;

iii. the Company's variation application of 25 August 2016; and



iv. the Company's variation application of 15 April 2021.”

“22. The written scheme agreed with the Council, in consultation with the Environment Agency or another competent authority, for an ecological protection and management plan to cover management of all habitats, water bodies and associated wetlands during the operation of the development shall be implemented unless the Council gives its prior written consent to any variation.

Reason: To protect the biodiversity on and in the vicinity of the site.”

“32. On the 27th anniversary of the commencement of operation of the development or upon the permanent cessation of the operation of the development whichever is the earlier, details of a scheme of restoration and aftercare of the site shall be submitted for approval in writing by the Council. The scheme shall include any proposed future uses for the site; details of structures and buildings to be demolished or retained; details of the means of removal of materials of demolition; phasing of demolition and removal; details of restoration works and phasing thereof. The approved scheme shall be implemented following the permanent cessation of the operation of the development.

Reason: To protect the long-term future of the site and its appearance.”

- 3.3 Save for the new reference to the ROP Application on 15 April 2021 in condition 1, none of conditions 1, 22 and 32 were varied as a result of the deemed planning permission granted as part of the ROP Application. Therefore the conditions remain exactly the same as they were at the point at which the drafting of the draft Order was scrutinised during the examination of Order and when the Order was originally made.⁵
- 3.4 The amendments to the Order proposed are procedural in nature: they are required to remedy a technical discrepancy and to ensure that the Order refers to the planning permission under which RRRF is currently operating (being the RRRF planning permission as defined in the Order) and the planning permission under which RRRF will be operated pursuant to in the future should the NMC Application be approved (being the planning permission dated 17 December 2021). This is so that, by carrying out the development as authorised by the Order, to the extent that there is an inconsistency on the land coloured brown identified on the REP and RRRF Applications Boundaries Plan between any provision of this Order and all or any of the listed conditions from the 2021 planning permission, in respect of such inconsistency only there is no breach of those conditions and no enforcement action can be taken by LBB as the relevant planning authority.
- 3.5 Due to the limited and highly technical nature of the amendments proposed and the fact that the conditions of the RRRF permission it relates to remain unchanged from when the Order was originally made, this NMC Application is not anticipated to have any new or different likely significant environmental effects as compared to the Order. This NMC Application does not introduce any new substantive changes to the consents for either RRRF or REP; it does not result in any physical development or amend any of the Order plans; nor does it increase the time period for commencement of the Order. The NMC Application is purely required to ensure that the new permission granted a consequence of the substantive changes consented via the ROP Application is referred to in the Order, so that article 6(4) of the Order can continue to operate as it was intended when the Order was made.⁶ The ROP Application itself was subject to an Environmental Impact Assessment prepared in accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (as amended) and a Stage

⁵ For the relevant examination documents where the Order drafting was scrutinised and amended, please see [Microsoft Word - Riverside Energy Project - LB Bexley's Deadline 4 Submissions.docx \(planninginspectorate.gov.uk\)](#) pp 7-9; [Microsoft Word - REP DCO - 12.08.19-1.docx \(planninginspectorate.gov.uk\)](#) p.11 and [Microsoft Word - 3.3 Draft DCO Schedule of Changes \(Rev 1\).DOCX \(planninginspectorate.gov.uk\)](#) pp. 4-5.

⁶ See paragraph 3.2.14 of the Explanatory Memorandum for the Order: [EN010093-000982-3.2 Draft DCO Explanatory Memorandum \(Rev 4\).pdf \(planninginspectorate.gov.uk\)](#)



1 Habitats Regulations Assessment in accordance with the Conservation of Habitats and Species Regulations 2017.

4. SUMMARY AND CONCLUSIONS

- 4.1 REPL is proposing to amend the Riverside Energy Park Order 2020 (as amended) so that the new deemed planning permission for RRRF is referred to in articles 2(1) and 6(4) of the Order.
- 4.2 No change to the other provisions in the Order, physical development or other controls regulating the construction, operation, maintenance or decommissioning of the authorised development are proposed.
- 4.3 The proposed changes would not require additional compulsory acquisition of land, nor would they have new or different effects on local residents or businesses or any additional implications in respect of habitats regulation assessment. They are simply required so that the Order refers to the planning permission recently granted for the adjacent RRRF site, so that article 6(4) of the Order can continue to operate as it was intended when the Order was made.
- 4.4 Given the information presented in this document, as summarised above, it is considered that the proposed changes are non-material amendments for the purposes of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011. Accordingly, REPL submits that the proposed changes as outlined in section 3 of this document can be granted consent by the Secretary of State as non-material changes.