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Your ref:  
Our ref: 12.04.09.04/35C

2 October 2012

Dear Mr LeCointe

**ELECTRICITY ACT 1989 ("the Act")  
TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE AN ENERGY  
FROM WASTE-FUELLED GENERATING STATION AT LAND FORMERLY  
OCCUPIED BY THE LOSTOCK POWER STATION, LOSTOCK, NORTHWICH,  
CHESHIRE**

**I. THE APPLICATION**

1.1 I am directed by the Secretary of State for Energy and Climate Change ("the Secretary of State") to refer to the application dated 24 February 2010 ("the application") on behalf of Tata Chemicals Europe (formerly Brunner Mond) and E.ON Energy from Waste Limited ("the Company") for both the consent of the Secretary of State under section 36 of the Act ("section 36 consent") to construct and operate a 60MW energy from waste fuelled electricity generating station on land formerly occupied by the Lostock Power Station, Lostock, Northwich, Cheshire, and a direction under section 90(2) of the Town and Country Planning Act 1990 ("section 90 direction") that planning permission for that generating station and ancillary development (together referred to as "the Development") be deemed to be granted.

1.2 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (as amended) ("the EIA Regulations") the Company also submitted on 24 February 2010 documents entitled "Environmental Statement". The Company submitted a supplement to the Environmental Statement in September 2010 including minor changes to the design and a carbon assessment report and a report on the response to representations. Additionally they submitted a Consolidated Environmental Statement in July 2011 which incorporated all information

from previous documents. The documents describe the proposed Development and give an analysis of its environmental effects. The documents are collectively hereafter referred to in this letter as the “Environmental Statement”. The Environmental Statement was advertised and placed in the public domain and an opportunity given to those who wished to comment to do so.

1.3 Cheshire West and Chester Council (“the relevant planning authority”) formally objected to the application triggering a mandatory public inquiry (see section III below) which was duly held from 11 October 2011 until 10 November 2011 at Northwich Victoria Football Club, Wincham Lane, Northwich.

1.4 As part of the inquiry process the Inspector prepared a set of planning conditions. All the main parties to the Inquiry were given the opportunity to comment on and feed into these conditions. These conditions form the basis of the conditions of deemed planning permission attached to this decision letter at Annex 1.

## II. SECRETARY OF STATE’S CONSIDERATION OF THE PLANNING CONDITIONS

2.1 The Secretary of State has considered the planning conditions recommended by the Inspector carefully. He agrees that they form a suitable basis for any section 90 direction which he may give. However, he has made a number of changes, as follows:

(a) a further condition has been added requiring the Company to keep opportunities to use non-road modes of transport for fuel under review in accordance with a scheme to be approved by the Council (see Condition 11). This reflects the concerns of objectors to the scheme that delivery of fuel over very long distances by road would be unsustainable, and the Company’s representations about the suitability of rail transport over distances of more than 70 miles;

(b) the fuel sustainability condition (Condition 32) has been re-drafted so as to remove the need to cross-refer to EN-3;

(c) additional details have been added to clarify some conditions (for example on ecology and nature conservation, in relation to bats and owls);

(d) drafting changes have been made or additional conditions inserted to reflect the Secretary of State’s normal practice in relation to generating station consents.

## III. THE PUBLIC INQUIRY

3.1 The Secretary of State received a formal objection to the proposed Development from Cheshire West and Chester Council, the relevant planning authority (RPA), on 3 March 2011. Under Schedule 8 of the Electricity Act 1989, a

maintained objection to a section 36 development consent application by the RPA automatically triggers a public inquiry.

3.2 When the Public Inquiry was announced the Secretary of State issued a statement of matters which he believed should be considered at the Inquiry as follows:

- 1) the extent to which the proposed development would be in accordance with the relevant development plan(s) for the area, and in particular policies 1, 2, 3 & 34A of the Cheshire Replacement Waste Local Plan (2007);
- 2) the extent to which the proposed Development will maximise the opportunities for waste to be managed in accordance with the waste hierarchy, minimise avoidable carriage of waste over long distances, and take advantage, where practicable, of opportunities to transport waste by rail and water;
- 3) the extent to which a need for the proposed Development as a means of managing waste has been demonstrated, in particular by reference to the capacity of existing waste management facilities in the sub-region;
- 4) the extent to which the proposed Development is consistent with the objectives of the Government's policy on the energy mix and maintaining a secure and reliable supply of electricity as the UK makes the transition to a low carbon economy, and achieving climate change goals;
- 5) concerns about perceived health impacts of the proposed Development;
- 6) the impact of construction and operational traffic associated with the proposed Development on the local highways, including users and safety;
- 7) the visual impact of the proposed Development;
- 8) the cumulative impact of the proposed Development with other proposed and operational developments of a similar nature within the region;
- 9) the proximity of the proposed Development to residential dwellings and other non-industrial units;
- 10) any other matter that the Inspector considers relevant.

3.3 Accordingly, under matter 10, at the pre-inquiry meeting, the Inspector informed attendees that an additional four issues would be considered at the inquiry:

- 1) the weight to be given to the Regional Spatial Strategy (RSS), given the Government's intention to revoke them under the (then) Localism Bill;

- 2) the weight to be given to the consultation draft National Planning Policy Framework;
- 3) any policy changes as a result of the publication of the Government Review of Waste Policy in England 2011 and its Action Plan;
- 4) the effect on the setting of the Trent and Mersey Canal Conservation Area (CA), adjacent to the site.

3.4 The Public Inquiry was held from 11 October to 10 November 2011 at Northwich Victoria Football Club. The Secretary of State appointed E. Hill, an Inspector in the Planning Inspectorate, to hear the Public Inquiry. A pre-inquiry meeting was also held on 26 July 2011. During the inquiry, the Inspector heard evidence from the applicants, the RPA, Cheshire Anti-Incinerator Network (CHAIN) and a number of other interested parties. Six people or parties requested "Rule 6" status at the inquiry.

3.5 During the Inquiry, a signed Statement of Common Ground was submitted. It covered a description of the site and the proposal, the background to the application, relevant planning history, national energy and waste policy, the development plan and other matters agreed between the applicants and the RPA, including matters to be covered by planning conditions and obligations. An Agreed Statement on Highway Matters was signed by the Company and the RPA and submitted during the inquiry. It covered agreed facts, forecasts, assessments and mitigation measures in relation to highways issues and those matters which could be dealt with through planning conditions and obligations. A signed unilateral undertaking was submitted by the Company, dated 30 November 2011 which covered highway works, local community liaison, maintenance contributions, traffic management and local employment.

#### IV. SECRETARY OF STATE'S CONSIDERATION OF THE INSPECTOR'S REPORT

4.1 In her report to the Secretary of State, the Inspector considered the nine substantive issues recommended by the Secretary of State in the statement of matters issued prior to the Public Inquiry plus four additional issues (see section 3.2 and 3.3 above for full details).

4.2 In making her report to the Secretary of State, the Inspector's final recommendation was as follows:

*I recommend that consent is granted for a 60MW generating station at Lostock Works, Lostock, Northwich, Cheshire under section 36 of the Electricity Act 1989 and deemed planning permission under section 90(2) of the Town and Country Planning Act 1990, subject to the conditions set out in Annex 2 [to the Inspector's report].*

4.3 Except as indicated otherwise in this letter and the attached documents, the Secretary of State accepts the full content of the Inspector's report, including her findings on matters of fact, conclusions and recommendation (including the reasons given for that recommendation). A full copy of the Inspector's report can be found at Annex 2 to this letter.

## V. SECRETARY OF STATE'S DECISION ON REOPENING THE PUBLIC INQUIRY

5.1 Rule 21 of the Electricity Generating Stations and Overhead Lines (Inquiries Procedure) (England and Wales) Rules 2007 ("the Inquiry Rules") allows –and in certain circumstances requires – the Secretary of State to re-open the Public Inquiry. The Secretary of State does not consider that he is obliged to re-open the Public Inquiry in the present case, nor does he believe there to be any reason to use this discretion do so.

## VI. SECRETARY OF STATE'S CONSIDERATION OF THE STATUTORY REQUIREMENTS

6.1 In the Secretary of State's view, the statutory requirements relating to the proper consideration of a section 36 application and the relevant consultation and advertising requirements have been met.

## VII. SECRETARY OF STATE'S CONSIDERATION OF ISSUES RAISED FOLLOWING THE CLOSE OF THE PUBLIC INQUIRY

7.1 Following the close of the Public Inquiry, a number of representations have been received by DECC (other than those mentioned below in paragraph 7.2 regarding the National Policy Planning Framework). These largely rehearse arguments raised before or during the Public Inquiry and to the extent that the Secretary of State considers that they have already been addressed by the Inspector in her consideration of the Inquiry and subsequent report they are not further addressed in this letter.

### National Planning Policy Framework

7.2 Following the close of the Public Inquiry the Department of Communities and Local Government (DCLG) published the National Planning Policy Framework (NPPF), which came into force on 27 March 2012. In line with the approach taken by DCLG and the Planning Inspectorate, DECC asked the main parties to the Public Inquiry for their views on the relevance, if any, of the NPPF to the case which they presented at the Inquiry. Responses were received from the Company and all Rule 6 parties (including Cheshire West & Chester Council and CHAIN), which were then re-circulated on 14 May 2012, inviting further comment.

7.3 The representations received from the Rule 6 parties emphasised the need for the Secretary of State to take full account of the terms of the NPPF in considering the application and in particular to assess whether corresponding (additional) weight should be given to certain issues considered by the Inspector in light of the importance placed on those within the NPPF. The main themes highlighted by the Rule 6 parties were the emphasis in the NPPF on sustainable development, sustainable transport and community involvement in local planning decisions. However, their submissions also covered a number of other matters.

7.4 The Secretary of State has considered these further representations carefully. His overall conclusion is that they do not raise any points of evidence or argument which cause him to take the view that materially different weight should be given to any particular matter relevant to his decision on the application and, whilst he departs from the reasoning applied by the Inspector on certain questions of resolving policy conflicts, the analysis and conclusions contained in the Inspector's report address all relevant matters of substance relating to the application and are an appropriate basis for his own decision in this case. His views on points made in the further representations, in particular of those opposed to the proposed Development, are set out below.

#### Sustainability – sustainable development and sustainable transport

7.5 A primary theme of the representations from the Rule 6 parties was the question of whether the incineration of waste is in principle compatible with the NPPF's focus on sustainable development. It should be noted that the emphasis on sustainable development is not unique to the NPPF among Government statements of planning policy (it was also a primary consideration in the formulation of the National Policy Statements (NPSs) - see Planning Act 2008, section 10); that it is apparent from the NPSs that the Government does not consider energy from waste projects above 50MW (either generally, or of particular types) unsustainable *per se*; and that in the Secretary of State's view, the NPPF does not set out to take a different position from the NPSs on this point.

7.6 Against this background, the Secretary of State notes with agreement the Inspector's analysis of relevant energy policy (and nearest appropriate installation/minimising transport distances) including her general conclusions at sections 16.3 – 16.12 (and at 16.22 – 16.28) of her report. The Secretary of State acknowledges in particular the NPSs' articulation of the urgent national need for an increase in renewable energy and the role of waste combustion in meeting that need (see for example EN-1 paragraphs 3.1.4 and 4.1.2 and EN-3 paragraph 2.5.1-2). Accordingly, he does not consider that the emphasis placed on sustainability in the NPPF invalidates or makes it inappropriate for him to adopt the conclusions of the Inspector.

#### Sustainable transport

7.7 The Rule 6 parties also highlighted the emphasis within the NPPF on the need to promote sustainable transport, raising the question of whether transportation

of waste over long distances for incineration is compatible with the NPPF. Whilst the Secretary of State acknowledges the emphasis placed on sustainable development in the NPPF, and the need to have regard to the NPPF in the decision-making process, he does not reach materially different conclusions, as regards the implications for his decision of questions of sustainability, than were reached by the Inspector, having regard to the NPSs. However, he also notes the emphasis placed in EN-3 (paragraph 2.5.25) on the environmental advantages of non-road modes of transport for delivery of waste as fuel to generating stations, and the evidence and views submitted both by the Company and those opposed to the Development during and after the Inquiry about the prospects for the delivery of fuel by rail and the undesirability of delivering waste to the proposed Development over very long distances by road. It would not be appropriate, given the need to preserve the operator's commercial freedom to process waste from different sources (as noted by the Inspector – see, for example, sections 16.25/16.26 of her report), to impose restrictions on how much waste should be delivered in particular ways. However, the Secretary of State does consider, given both the possibility of supply of waste of long distances and the Company's evidence that for distances of over 70 miles "*it is reasonable to assume that the fuel is more likely to be transported by rail*" that it would be appropriate to impose a condition requiring the Company to keep under review, in accordance with an approved scheme, the opportunities for using non-road modes of transport for fuel deliveries, particularly over distances greater than 70 miles.

#### Sustainability – waste hierarchy

7.8 Representations were also made by Cheshire West & Chester Council, CHAIN and two other Rule 6 parties concerning interference with the waste hierarchy caused by incineration, in particular that the "demand for waste" from the proposed Development will act as a disincentive to the locality to reduce, re-use and recycle. The Secretary of State considers that this objection has already been adequately addressed by the Inspector's recommendation to make planning approval conditional on various measures designed to ensure that the proposed Development does not operate in such a way as to undermine the waste hierarchy.

#### Sustainability – low carbon and alternative technologies

7.9 A number of representations have been made concerning the emphasis in the NPPF on transition to a low carbon economy. One of the core principles at paragraph 17 of the NPPF refers to supporting "*the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy)*". It is apparent from the NPSs, however, that the kind of technology to be used by the proposed Development is not to be ruled out as contrary to the objectives of developing low carbon energy sources. Whilst it may be true that there are other technologies that may be superior from a purely low carbon point of view, it should be noted in response to this and a number of other representations made by objectors that the role of the section 36 process is not to ask whether there is a better way to generate the electricity a proposed generating

station will generate, or a possible better use of the proposed Development site, but to consider whether the impacts of the Company's proposal would be (or can be made) acceptable in planning terms. From a carbon emissions point of view, the Secretary of State sees no reason to depart from the analysis and conclusions of the Inspector.

#### Importance of local plans

7.10 Cheshire West & Chester Council, CHAIN and two other Rule 6 parties each highlighted the emphasis in the NPPF on local plans and for the planning system to be "plan-led". The first of the 12 core planning principles (at paragraph 17 of the NPPF) provides that planning should: *"be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues..."* The parties submit that the emphasis in the NPPF on decision making being plan-led requires, among other things, greater weight to be attributed to the local development plan (i.e. the Cheshire Replacement Waste Local Plan 2007 (the CRWLP)) than might have been attributed before the coming into force of the NPPF (i.e. during the Public Inquiry and the period when the Inspector's report was made). Cheshire West & Chester Council's letter of 9 May 2012 refers in particular to the implications for the additional weight that should be given to policy 3 of the CRWLP which seeks to restrict Energy from Waste facilities unless there is a capacity shortfall in the locality. The Secretary of State acknowledges the emphasis on local plans in the NPPF, including at paragraph 215, which allows greater weight to be given to local plans according to their degree of consistency with the NPPF (Cheshire West & Chester Council submit in their letter of 9 May 2012 that policy 3 of the CRWLP shows consistency with the first of the core planning principles at paragraph 17 of the NPPF). The Inspector's ultimate conclusion on this point is set out at 16.21 of her report and states: *"The proposal would be contrary to policy 3 of the CRWLP, which is a saved policy with full weight, based on its definition of capacity. However, this policy is out-of-step with more recent national policy, particularly in EN-3, with which the proposal would be in accordance on this matter, and recent decisions. In such cases para 4.1.5 of EN-1 says that the NPS should prevail. One of the concerns of policy 3 of CRWLP, that any overcapacity would deter recycling, would be overcome through the acceptance criteria condition that would ensure that only residual waste was accepted. The other concern, about the distance waste would travel, would be likely to be limited by the costs of transporting the waste, which would be a significant element in the waste contracts accepted. The proposal would also be in accordance with policy 2 in establishing a need, since a lack of operational capacity has been shown."*

7.11 Notwithstanding the emphasis within the NPPF on "plan-led" decision making, the Secretary of State broadly accepts the conclusions of the Inspector with regard to the proper assessment of capacity need in the locality and the weight to be given to the NPSs when considered against the terms of the CRWLP. The Secretary of State notes that arguments have been made on both sides of the question whether the Development is consistent with the CRWLP; whether the CRWLP is up to date;



and whether it is consistent with the NPPF. While he broadly agrees with the Inspector's analysis of these points, even if they were all resolved in favour of the objectors, the Secretary of State would be entitled to, and does in any event, give greater weight, in the light of the national importance of the Development (as measured by its capacity), to the policies in the NPSs to the extent, if any, that they may be thought to be at variance with other material considerations such as the CRWLP or the NPPF. In the Secretary of State's view, the differences between the relevant policies in the NPPF and the NPSs have been overstated by objectors to the proposed Development, while the differences between the CRWLP and the NPSs turn on the inherent merits of this type of EfW plant: a matter on which he prefers to follow his own policy as represented by the NPSs (which were formulated with plant of more than 50MW capacity in mind) to the extent that it points in a different direction from the CRWLP (without necessarily taking the view that, in section 36 cases, NPS policies will invariably prevail over those in a local development plan: see section 18.3 of the Inspector's report).

#### Community involvement in decision making

7.12 In addition to the emphasis on local plans, Cheshire West & Chester Council, CHAIN and two other Rule 6 parties have highlighted the provisions within the NPPF on the need for proper involvement of local communities in planning decision making. The Secretary of State acknowledges the need for the involvement of local communities in planning decision making and the representations made by the Rule 6 parties with regard to local objections to the proposal (which note, for example, the large number of written objections to the proposal). Whilst the Secretary of State wholly accepts the need for community involvement in planning decisions, he does not consider there is any reason to suggest the Inspector's report did not take into adequate account the views of those in the locality i.e. by way of the full Public Inquiry. It is in fact acknowledged by a Rule 6 party per a letter of 4 May 2012 that a high attendance was recorded at public meetings and Inquiry sessions and the fact of the Rule 6 party submission process in relation to the NPPF is further evidence that there is no reason why the Inspector's recommendations should be reconsidered in this regard in light of the NPPF.

#### Other representations concerning the NPPF

7.13 As mentioned, in addition to the broad issues of sustainability and community involvement in decision making, a number of wider representations were received in relation to the NPPF. These emphasise, for example, the importance placed in the NPPF on ensuring the vitality of town centres, supporting a prosperous rural economy and requiring good design. The Secretary of State has carefully considered all of the wider representations received and considers that they either relate to matters to which little weight should be given for planning purposes, are contradicted by the Inspector's assessment of the impacts of the Development, or result from a misguided interpretation of the NPPF. By way of example one of the Rule 6 parties raises that the NPPF highlights that planning policies should promote development and diversification of agriculture and claims that "*The EfW will directly result in the closure of at least two of the local organic farmers that are within a mile of the*

*proposed plant, due to the impact the permitted emissions will have on their produce. This proposed EfW directly contradicts the overarching support afforded to diversifying and supporting agriculture as by its very nature emissions and dioxins will adversely affect local produce particularly organic farming.”* Whilst perceived health impact was not a formal objection of the RPA, the Secretary of State is aware that considerable representations have been made during the Public Inquiry and further representations were received subsequently (see paragraph 7.20 below). The Secretary of State does not consider that the Inspector’s report failed to take adequate consideration of the various inputs and wholly accepts the conclusions of the Inspector with regard to the proper distinction between the planning process and the pollution control process. Moreover, like other planning policy documents, the NPPF recognises the need to strike a balance between competing aspects of the public interest, and as the Company has pointed out, it contains strong positive messages about energy developments, as well as agriculture. Even in the absence of the further policy emphasis in favour of energy infrastructure supplied by the NPSs, a planning decision-maker is entitled to give greater weight to one aspect of the public interest mentioned in a policy document over another.

## Middlewich

7.14 Further representations were received from the Rule 6 parties, the Chairman of Rudheath Parish Council and Burial Authority and a number of local residents following a decision by the Secretary of State for Communities and Local Government on 20 July this year to turn down on appeal a Town and Country Planning Act application by Covanta Energy for a smaller (370,000 tonnes) Energy from Waste facility at Middlewich, some four miles from Lostock. The Secretary of State CLG accepted the Middlewich Inspector’s recommendation to dismiss Covanta’s appeal against the local planning authority’s (Cheshire East Council) decision to refuse consent for the project. Whilst the Middlewich proposal fell entirely outside those sites allocated for thermal waste plants within the development plan, Planning Policy Statement 10 (PPS) supports approval where it would be consistent with local planning strategy and with the PPSs themselves. The Secretary of State CLG agreed with the Inspector’s finding that the project would create overcapacity locally and thus would conflict with the policy in the CRWLP requiring proposals to demonstrate that existing waste treatment capacity is inadequate to meet needs identified in the Regional Spatial Strategy. He also considered that the proposal would conflict with the policy aims of Annex E of PPS 10 in terms of visual intrusion, nature conservation, traffic and access, and air emissions (as they apply to traffic). The extent of conflict with the CRWLP and the PPS, among other things, was not sufficiently outweighed by the potential benefits of the proposal (the economic benefits of the application were also considered to be overstated). Many of these issues, together with references to the Company’s short listing for the West London Waste Authority (WLWA) municipal waste recycling contract (see paragraph 7.18 below), the proximity principle for waste management as expressed in PPS10 and the localism agenda, were also covered in a motion unanimously adopted in respect of the Development by Cheshire West and Chester Council at a full Council meeting on 26 July. However, with the possible exception of the short listing for the WLWA waste recycling contract, which is considered at paragraph 7.18 below, the Secretary

of State does not consider that the representations received in this further round of representations raised any issues which were both substantively new and to which he considers that material weight should be given in forming a planning judgment on the proposed Development, so that, having considered the further representations carefully, he is satisfied that the analysis and conclusions contained in the Inspector's report address all relevant matters of substance and are an appropriate basis for his own decision in this case.

7.15 Having given careful consideration to all relevant matters, the Secretary of State considers that the Inspector for Lostock reached different conclusions to the Inspector for Middlewich and the Secretary of State CLG principally because, unlike the Middlewich application, the Lostock application, although made under section 36, is for a proposed Development that would be a nationally significant infrastructure project (NSIP) as defined in Section 15(2) of the Planning Act 2008, i.e. an onshore electricity generating project with an output capacity in excess of 50MW. The Secretary of State therefore considers it was appropriate that the Lostock Inspector, in considering the matters before her and in making her recommendation to the Secretary of State, gave substantial weight to the Overarching NPS (EN-1) and the NPS on Renewable Energy Infrastructure (EN-3), which were designated by Parliament in July 2011 under the Planning Act and which represent the most recent expression of Government policy on the national need and urgency for such infrastructure. The Inspector concluded that the proposal would be in accordance not only with EN-1 and EN-3, but also with a number of relevant regional and local policies as set out in the Regional Spatial Strategy and the CRWLP, and would *"comply with national policies on energy mix and maintaining a secure reliable and flexible supply of electricity as the UK makes the transition to a low carbon economy, and achieving climate change goals"*(see section 16.12 of the Inspector's report).

7.16 The Inspector also considered the relevance of, and weight that should be attached to, local waste policies, and especially those set out in various sections of the CRWLP in determining the application. Her conclusions on these matters are set out in detail in sections 16.12 - 16.28 of her report, but in summary she concluded that:

(a) subject to the addition of a suitably-worded condition (see condition 31), the waste to be used as fuel would be managed in accordance with the waste hierarchy, paragraph 2.5.70 of EN-3, policy EM11 of the Regional Spatial Strategy and policies 1 and 34A of the CRWLP (see section 16.15 of the Inspector's report);

(b) the proposal would be contrary to policy 3 of the CRWLP, i.e. that based on the definition of capacity in the CRWLP, it would create overcapacity in Cheshire, but that this policy is out of step with more recent national policy, particularly in EN3, and recent decisions on other nationally significant Energy from Waste projects. In such cases paragraph 4.1.5 of EN-1 clearly states that the relevant NPS should prevail (see sections 16.6 – 16.21 of the Inspector's conclusions and 18.2 – 18.4 of her consideration of policy balance: although the present application is not governed by the Planning Act, the Secretary of State is nevertheless entitled to follow the NPS policy given the scale of the proposed Development); and

(c) the proposal would meet national waste policy in terms of national self-sufficiency through the establishment of a network of facilities which move waste up through the hierarchy, i.e. diverting it from landfill, as set out in the Waste (England and Wales) Regulations 2011. Market forces and the costs of transport would help to ensure that there would not be unsustainable movements of waste.

7.17 By contrast, the Middlewich scheme was designed to deal with “Cheshire waste”. It also appears to have had the potential to give rise to a number of significant adverse effects (for example in relation to nature conservation) which are not found in the case of the proposed Development. Ultimately each planning decision must be considered and assessed on its own merits; however, in so far as they are material for the purposes of his decision, the representations received in respect of the Secretary of State CLG’s Middlewich decision do not lead the Secretary of State to take a different position in respect of the present application from that recommended in the Lostock Inspector’s report.

The West London Waste Authority (WLWA) municipal waste contract

7.18 While the Company’s intention to bid for the WLWA municipal waste recycling contract, and subsequent short listing for that contract, was not known during the Inquiry, the Inspector nonetheless considered the issue of where waste could be sourced from and concluded that *“the energy from waste plants that have been permitted in and near Cheshire, just like those permitted elsewhere (e.g. Rookery South and Ferrybridge) are “merchant” facilities, i.e. schemes which do not have committed waste contracts in place at the time of the grant of consent; any condition concerning the source of waste (e.g. to tie Cheshire plants to processing “Cheshire waste”) would defeat the whole purpose of such schemes and would be anti-competitive. Therefore EfW schemes are often approved without conditions of this nature. Accordingly, there is no guarantee or even proven likelihood that the permitted EfW plants in Cheshire, if built, would process any “Cheshire waste” at all”* (see section 7.32 of the Inspector’s report). On the basis that the Inspector did not assume that any given degree of waste would be sourced from Cheshire, the Secretary of State considers that adequate account was taken by the Inspector in her report to the prospective impact of waste being transported from outside Cheshire.

Other additional representations

7.19 A further representation has been received from CHAIN with reference to data published by DEFRA on 3 August 2012 titled ‘Local Authority collected waste for England – quarterly statistics’, which shows that the proportion of waste sent for recycling, composting or reuse in England increased from 41.5% in 2010 to 42.9% in 2011. CHAIN claim that this, together with improvements in the waste recycling performance of the Borough of Cheshire West and Chester, which has now increased to 70% following the recent introduction of a new waste recycling facility in Northwich and Winsford, undermine the case for the proposed Development. However, given the Inspector’s assumptions (or lack of them) referred to above as regards local sourcing of fuel for the proposed Development, the Secretary of State

does not consider that this information, or other data contained in the Defra publication, raise any issues that would justify refusing consent to the application.

7.20 Local residents, supported by CHAIN, have made representations regarding a recent dioxin leak at an Energy from Waste plant in Dumfries where the Regulator has suspended operation of the plant while a problem that resulted in dioxin emissions being 2.5 times over the permitted limit is addressed. Although it is understandable that this incident has given cause for concern, the Secretary of State is satisfied that a robust regulatory framework exists under the UK's pollution prevention regime, which is separate and distinct from the consenting/planning regime, for dealing promptly and effectively with such incidents, as the Dumfries case to some extent demonstrates. In sections 16.34 - 16.49 of her report, the Inspector provides her conclusions on perceived health impact of the proposal, stating in section 16.44 that there are "*well established processes for dealing with emissions and the release of pollutants in abnormal operating conditions*" (through the environmental permitting process). It is also noted in section 14.2 of her report that the Environment Agency has not raised objections to the proposal and that compliance will be required with the Waste Incineration Directive and the revised Waste Framework Directive when determining the Environmental Permit. Furthermore, national policy, as set out for example in paragraph 4.10.3 of EN-1 and the relevant sections of the Waste Strategy for England 2007, clearly state that decision makers should work on the assumption that the appropriate pollution control regimes will be properly applied and enforced by the regulator.

7.21 A Rule 6 party has made additional representations considering the adequacy of consideration of visual impacts during the Inquiry, claiming that, as in the Middlewich Inquiry, visual impacts of the proposed Development on views up to some 30km from the site should have been taken into account. The Secretary of State notes that it was agreed by the correspondent and the applicant during the Inquiry that the Zone of Theoretical Visibility (ZTV) for the main building/ash handling facility stretched for over 21km, and that the Inspector concluded in section 16.63 of her report that "*the impact in landscape terms diminishes quickly with distance, limiting any adverse impacts.*" The Inspector also states in section 16.63 that "*the indicative height of the SEP's twin stacks at 90 metres would tend to make them more visible over a wide area but their slim design and proposed colour scheme would decrease the impact with distance.*" The Secretary of State does not consider that there was any inadequacy in the Inspector's consideration with regard to the visual impact of the proposed Development and therefore agrees with the Inspector's conclusions as set out in sections 16.59 – 16.67 of her report. The Secretary of State also notes that the RPA raised no objections to the proposal in terms of landscape, design or visual impact.

7.22 Further representations have been received from one of the Rule 6 parties (by email of 15 August 2012) and from CHAIN by letters dated 20 August 2012, 29 August 2012 and 30 August 2012. In their email, the Rule 6 party requested that, if the Secretary of State is minded to approve the proposal, planning conditions be included to require compliance with Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) (Recast) of 24 November 2010. The

Secretary of State notes however that the operative terms of the Directive relate to pollution control rather than planning or consenting. Incineration plants will be subject to its requirements according to the regulations transposing the Directive in England and Wales (as they are already in respect of the directives which it will replace) in due course; they are not for the Secretary of State to implement by way of planning conditions.

7.23 The representations received from CHAIN by letter dated 20 August 2012 concerned a separate letter from the Health Protection Agency (HPA) addressed to another Rule 6 party in response to a Freedom of Information request. The HPA's letter responds to certain queries of the other Rule 6 party regarding in particular its views on traffic impacts related to the proposed Development. CHAIN submit that the reason the HPA's letter is important: *"is that it provides new expert information about the risk of road traffic accidents on the Griffiths Road/King Street stretch of the A530 which would be caused by increased numbers of HGVs if you give your approval to the above application..."* CHAIN go on to say that it is notable that the HPA describe "road traffic accidents as 'important health hazards'." The Secretary of State does not consider that the HPA's letter, which refers to information submitted as part of the HPA/Primary Care Trust (PCT) consultation process (including information about the work done by the HPA and a comment on the Health Impact Assessment), raises issues that have not already been addressed by the Inspector in the inquiry process (referred to for example in the Inspector's report at sections 7.72 (for the applicants), at 9.30 (for CHAIN) and 16.52 (Inspector's conclusions)). With reference to the recommendation of HPA/PCT submitted by letter of 3 February 2011 (referred to in the letters of CHAIN and the HPA) the Secretary of State also notes his proposed inclusion of a new condition (Condition 11 in the deemed planning consent) requiring review of non-road modes of fuel delivery.

7.24 The second letter from CHAIN (dated 29 August 2012) draws attention to the North Wales Waste Treatment Project (NWRWTP), a proposal to treat residual waste from Flintshire, the Isle of Anglesey, Conwy, Denbighshire and Gwynedd (see <http://www.nwrwtp.org/home>). The letter notes that both preferred bidders in the competition to provide this service are proposing to build a new waste incinerator in Deeside (*"approximately 10 miles from the huge Covanta plant now under construction at Ince Marches in Cheshire West and about 5 miles from the city of Chester"*). This Project is not discussed in the Inspector's report. However, the Secretary of State does not consider that this is a matter to which any significant weight should be given in the context of the present decision. In so far as the existence of other waste treatment capacity is a relevant matter, he agrees with the Inspector's focus on consideration of existing capacity, which (as referred to at sections 16.17 of the report) took assessments of *operational* rather than permitted or merely proposed capacity as the proper basis. Moreover, as noted above, the case for the Development does not rely on presumed supplies of waste from any particular area. As regards any cumulative impacts which may be thought to arise from the potential proximity of the North Wales Project and plants in Cheshire, that would be an issue for consideration if and when the successful bidder for the North Wales project submits a planning application for it, not as part of the Company's application in respect of Lostock (at this stage, planning permission for the North

Wales Project has not been granted or applied for: see page 27 of the “NWRWTP Information Pack – Summer 2012” available on the website above).

7.25 The third letter from CHAIN (dated 30 August 2012) brings attention to a recent settlement between E.On, one of the applicants, and Gazprom of Russia, concerning long-term contracts for the export of natural gas to European markets (see for example: <http://www.themoscowtimes.com/mobile/article/461530.html>). CHAIN submit that the significant reduction in the cost to E.On of exporting gas resulting from the settlement (“*estimated by expert commentators to be about 10%*”) increases the probability that TATA will close its chemical manufacturing plant in the UK (resulting in a loss of jobs in Northwich). In the Secretary of State’s view, CHAIN’s arguments in this regard are similar to representations made by another Rule 6 party at the inquiry and considered by the Inspector at sections 16.8-16.9 of her report: in so far as they could be considered material considerations in the context of his decision and the policies which he is applying, they are matters of too much speculation and too little direct connection with the planning impacts of the proposed development to be given any significant weight.

### Conclusion

7.26 The Secretary of State has carefully considered the views of the Inspector, relevant planning authorities, consultees and others, the matters set out above and all other material considerations. For the reasons given above, he does not consider that any of the objections responded to above raise any additional issues and he does not consider that they raise concerns that justify refusing consent to the application.

## VIII. SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

8.1 The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (as amended) (“the EIA Regulations”) prohibit the Secretary of State from granting section 36 consent unless he has first taken into consideration the environmental information, as defined in those Regulations.

8.2 The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination on the application and that the Company has followed the applicable procedures in the EIA Regulations.

8.3 The Secretary of State has considered the environmental information carefully; in addition to the Environmental Statement he has considered the comments made by the Council, those designated as statutory consultees under regulation 2 of the EIA Regulations and comments by others.

8.4 Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Company has agreed to take or will be

required to take either under the conditions attached to the section 36 consent or the Planning Conditions or by regulatory authorities including the Environment Agency, the Secretary of State believes that any remaining adverse environmental effects will not be such that it would be appropriate to refuse section 36 consent for the proposed Development or the deemed planning permission.

## IX. SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON NATURE CONSERVATION INTERESTS

9.1 Pursuant to the Conservation of Habitats and Species Regulations 2010 ("the 2010 Regulations") the Secretary of State is required to consider whether the Development would be likely to have a significant effect on a Natura 2000 site (i.e. Special Protection Area (SPA), Special Area of Conservation (SAC), or Ramsar site). The nearest Natura 2000 sites to the Development are understood to be components of the Midlands Meres and Mosses Ramsar site (nearest site approximately 8km distant), Rostherne Mere Ramsar site (at approximately 11km) and Oak Mere SAC (approximately 12km distant). No direct impacts from the proposed Development on these sites are predicted by the Company. Following a review of the Supplementary Environmental Information provided by the Company in September 2010, in particular the information on predicted air emissions (Consolidated Environmental Statement Appendix 9.8) Natural England advised DECC that it does not consider that this project will have a significant effect either alone or in combination with other plans or projects on the International sites. The Secretary of State agrees with the advice that the proposed Development will not have a significant effect on Natura 2000 sites and consequently there is no requirement for an appropriate assessment under the 2010 Regulations.

9.2 There are 32 SSSI sites within 15km of the proposed Development. Some of these sites have bog/moss vegetation as interest features of the designation and following discussions with the Company's consultant Natural England has concluded that the information on air emissions provided by the Company is sufficient to conclude that there will be no significant individual or cumulative effect on these nationally important sites.

9.3 The Inspector's report notes that the local planning authority raised no objection to the proposed Development on ecology matters, nor was the impact on designated sites or notable flora and fauna notified by the Secretary of State as a matter for consideration at the Inquiry. The Company has identified the presence of protected species on the Development site (notably signs of a bat roost in the old power station building) and has proposed that prior to any demolition of this structure (should planning consent be granted for this activity) an application will be made to Natural England for the necessary European Protected Species licence.



9.4 The Inspector concludes (see section 16.80 of her report) that, taking account of Natural England's advice and the habitat and species mitigation and enhancements identified by the Company in the Environmental Statement and to be implemented under a suitable planning condition (see Condition 24 in the deemed planning consent), there will be no harm to nature conservation interests from the proposed Development.

## **X. SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER**

10.1 The Application is covered by the Departmental published guidance<sup>1</sup> for all combustion power station proposals, requiring developers to demonstrate that opportunities for CHP have been seriously explored before section 36 consent can be granted. The Secretary of State is satisfied that the Company has complied with those requirements.

10.2 The Secretary of State notes the Company has provided a Heat User Assessment considering the potential to export heat beyond its own demands to local users and included within the ES an investigation of the potential to export heat to local users and has been advised that the Company were unable to identify any major heat loads within 5km of the site. Analysis of distributed loads indicated a total heat demand of 155MW<sub>th</sub> within 5km of the site with the two largest contributors being the small-scale industrial (66%) and domestic (31%) sectors. It is thought that the Company's own operations represent a substantial component of this small-scale industrial demand. While there remains unutilised heat capacity from the scheme, we would expect the Company to regularly review the economic potential to supply more of its own heat demand from the plant and the availability of further local, external heat demands.

10.3 Furthermore the Secretary of State noted that if the Company recovers the quantities of heat stated as being required for their own operations, and the identified heat customers in the area, should it become economically viable to do so, a large proportion of the plant's installed capacity is likely to qualify as Good Quality CHP.

## **XI. SECRETARY OF STATE'S DECISION ON THE APPLICATION**

11.1 The Secretary of State has carefully considered the views of the Inspector, relevant planning authorities, consultees and others, the matters set out above and all other material considerations. In particular, the Secretary of State considers the following issues material to the merits of the section 36 consent application:

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<sup>1</sup> Guidance on background information to accompany notifications under section 14(1) of the Energy Act 1976 and applications under section 36 of the Electricity Act 1989: December 2006 - <http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/development%20consents%20and%20planning%20reform/guidance/file35728.pdf>

- i) adequate environmental information has been provided for him to judge its impact;
- ii) the Company has identified what can be done to mitigate any potentially adverse impacts of the proposed Development;
- iii) the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the Environmental Statement and he has judged that the likely environmental impacts are acceptable;
- iv) the fact that legal procedures for considering a generating station application have been properly followed;
- v) the views of the Inspector, relevant planning authorities, the views of others under the Electricity (Applications for Consent) Regulations 1990, the views of statutory consultees under the EIA Regulations and the 2010 Regulations, the environmental information and all other relevant matters have been considered;
- vi) that, in his view, and taking particular account of the Inspector's report, none of the objections raised to the proposed Development is such as to justify refusal of consent or a section 90 direction, given the imposition of Planning Conditions and the matters referred to in sections 7.2 - 7.25 above; and
- vii) his policies on the need for and development of new electricity generating infrastructure, including energy from waste generating stations, as set out in the Overarching NPS for Energy (EN-1 and in particular, sections 3.3 and 3.4) and the National Policy Statement for Renewable Energy Infrastructure (EN-3 and in particular section 2.5), designated by him on 19 July 2011 under the Planning Act 2008 following their approval by Parliament, and the reasons given for those policies in those national policy statements<sup>2</sup>.

11.2 The Secretary of State, having regard to the matters specified in paragraph 11.1 above, has decided to grant consent for the proposed Development pursuant to section 36 subject to: (i) a condition that the proposed Development shall be in accordance with the particulars submitted with the application, and (ii) a condition as to time within which the proposed Development must commence.

11.3 The Secretary of State believes the Planning Conditions will ensure that the Development proceeds in a form and manner that is acceptable in planning policy terms, and therefore he has decided to issue a section 90(2) direction that planning permission be deemed to be granted subject to the Planning Conditions.

11.4 I accordingly enclose the Secretary of State's consent under section 36 of the Electricity Act 1989 and a direction under section 90(2) of the Town and Country Planning Act 1990.

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<sup>2</sup> See

[http://www.decc.gov.uk/en/content/cms/meeting\\_energy/consents\\_planning/nps\\_en\\_infra/nps\\_en\\_infra.aspx](http://www.decc.gov.uk/en/content/cms/meeting_energy/consents_planning/nps_en_infra/nps_en_infra.aspx)

## XII. GENERAL GUIDANCE

12.1 The validity of the Secretary of State's decision may be challenged by making an application to the High Court for permission to seek a judicial review. Such application must be made as soon as possible and in any event not later than three months after the date of the decision. Parties seeking further information as to how to proceed should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2A 2LL (General Enquiries 020 7947 6025/6655).

12.2 This decision does not convey any approval or consent or waiver that may be required under any enactment, by-law, order or regulation other than section 36 and Schedule 8 of the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours faithfully

Giles Scott  
Head of National Infrastructure Consents

## **ANNEX A**

**Our ref: 12.04.09.04/35C**

**DEPARTMENT OF ENERGY AND CLIMATE CHANGE**  
**ELECTRICITY ACT 1989**  
**CONSTRUCTION AND OPERATION OF AN ENERGY FROM WASTE**  
**GENERATING STATION AT LOSTOCK, NORTHWICH, CHESHIRE**

1. Pursuant to section 36 of the Electricity Act 1989 the Secretary of State for Energy and Climate Change (“the Secretary of State”) hereby consents to the construction, on the area of land delineated by a solid red line on Figure 1, annexed hereto and duly endorsed on behalf of the Secretary of State, of an energy from waste electricity generating station at land known as the Lostock Works Site, Griffiths Road, Northwich, Cheshire (“the Development”), and to the operation of that generating station. This consent is granted to Tata Chemicals Europe Limited and E.ON Energy from Waste UK Limited and its assigns and successors (“the Company”).
2. Subject to paragraph 3(1), the Development shall be up to 60 MW capacity and comprise:
  - (a) a steam turbine generator;
  - (b) a fuel reception hall;
  - (c) boiler house and switchgear building;
  - (d) flue gas treatment building;
  - (e) emissions stacks;
  - (f) air cooled condenser;
  - (g) ash handling facility;
  - (h) associated infrastructure including onsite pipelines for the collection and distribution of steam, transformer compound, internal roads, parking, gatehouse, weighbridge, rail connection, water treatment, fuel store, fencing, landscaping and offices; coke fuel storage area; and
  - (i) demolition of existing power station buildings on the Site.
3. This consent is granted subject to the following conditions:
  - (1) The Development shall be constructed and operated in accordance with the details contained in paragraph 2 of this consent and the application of the Company in respect of the Development dated 24 February 2010, as amended

on 21 September 2010 and 1 July 2011, subject to any minor changes which may be approved by the Council pursuant to the requirements of deemed planning permission.

- (2) The commencement of the Development shall not be later than five years from the date of this consent, or such longer period as the Secretary of State may hereafter direct in writing.

DIRECTION TO DEEM PLANNING PERMISSION TO BE GRANTED UNDER  
SECTION 90 OF THE TOWN AND COUNTRY PLANNING ACT 1990

CONSTRUCTION AND OPERATION OF A 60 MW ENERGY FROM WASTE  
ELECTRICITY GENERATING STATION AT LOSTOCK, NORTHWICH, CHESHIRE

4. The Secretary of State in exercise of the powers conferred on him by section 90(2) of the Town and Country Planning Act 1990 hereby directs that planning permission for the Development be deemed to be granted subject to the following conditions:

Definitions

In these Conditions unless the context otherwise requires:

"BS 4142:1997" means British Standard 4142:1997 - Method for rating industrial noise affecting mixed residential and industrial areas;

"Bank Holiday" means a day that is, or is to be observed as, a Bank Holiday or a holiday under the Banking and Financial Dealings Act 1971;

"Public Holiday" means a day that is, or is to be observed as a public holiday;

"CHPQA Standard issue 3" means the CHPQA Standard document issued in January 2009 which sets out the definitions, criteria and methodologies for the operation of the UK's CHP Quality Assurance (CHPQA) programme;

"the commencement of the Development" means the date on which the Development shall be taken to be initiated by the carrying out of material operations in accordance with section 56 of the Town and Country Planning Act 1990 (as amended);

"the commissioning of the Development" means the date on which, following completion of the testing of the Development, the Development first supplies electricity on a commercial basis;

"the Company" means Tata Chemicals Europe Limited and E.ON Energy from Waste UK Limited and its assigns and successors;

"the Council" means Cheshire West and Chester Council and its successors;

"the Development" means the energy from waste electricity generating station proposed to be constructed on land known as the Lostock Works Site, Griffiths Road, Northwich, Cheshire;

"emergency" means circumstances in which there is reasonable cause for apprehending imminent injury to persons, serious damage to property or danger of serious pollution to the environment;

"Environment Agency" means the Environment Agency and its successors;

"Highways Agency" means the Highways Agency and its assigns and successors;

"Natural England" means Natural England and its assigns and successors;

"the Site" means the area of land outlined red on the map annexed hereto.

### **The Site**

- (1) The construction of the Development shall only take place within the boundary of the Site.

**Reason:** To ensure that no construction takes place beyond the boundary of the area that is the subject of this planning permission.

### **Time limits**

- (2) The commencement of the Development shall not be later than the expiry of five years from the date of this permission.

**Reason:** To limit the consent to reflect the time it may reasonably take to put in place the necessary pre-construction measures required, for example tendering, obtaining the necessary financing and detailed design of the proposal.

### **Demolition Method Statement**

- (3) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a Demolition Method Statement and Management scheme. No Development shall take place except in accordance with the approved Demolition Methodology Statement and Management Scheme. The scheme shall include:
  - i) measures to control dust, noise, vibration, light and odour and appropriate mitigation techniques that prevent unnecessary disturbance to neighbouring properties;
  - ii) details of the environmental management of the demolition of the existing buildings on the Site including the mitigation measures necessary for any protected species;

iii) provision to restrict the hours of demolition to 07.00 – 19.00 Monday - Friday; 07:00 – 13:00 Saturdays, with no demolition work at all on Sundays and Bank/Public Holidays; and,

iv) a waste audit, setting out the steps to be taken to ensure that the maximum amount of waste arising from the demolition process is incorporated within the Development so far as is reasonably practicable, and the steps to be taken to reuse and recycle the waste that cannot be incorporated within the Development.

**Reason:** To ensure the proper control of dust, noise vibration, light and odour, to ensure the welfare of protected species during the Site clearance period, and to ensure proper management of clearance waste.

### **Construction Environmental Management Plan**

(4) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a Construction Environmental Management Plan (CEMP). No construction of the Development shall take place except in accordance with the approved CEMP subject to any variation which has the prior written approval of the Council. The Plan shall include:

i) measures to control dust, noise, vibration, light and odour from construction activities and appropriate mitigation techniques that prevent unnecessary disturbance to neighbouring properties;

ii) details of the environmental management of the construction of the Development;

iii) provision to ensure that, with the exception of:

a) construction activities using the concrete slip-forming method;

b) construction activities requiring constant pouring concrete; and

c) process works within the Site boundary relating to mechanical and/or electrical equipment installation, no noise and vibration from the construction works will be audible at noise sensitive premises outside the hours of 07.00 – 19.00 Monday - Friday; 07:00 – 13:00 Saturdays and not at all on Sundays and Bank Holidays;

iv) details of parking of site operatives' and visitors' vehicles;



- v) loading and unloading of plant and materials and their storage;
- vi) a scheme for recycling/disposing of waste from construction works.

**Reason:** To ensure the proper control of dust, noise vibration, light and odour during the Site construction period.

### **Construction Traffic Management Plan**

- (5) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council, in consultation with the Highways Agency, a Construction Traffic Management Plan which shall include provisions for addressing any abnormal wear and tear to the highway. The Construction Traffic Management Plan shall be complied with for the duration of the construction of the Development subject to any variation which has the prior written approval of the Council in consultation with the Highways Agency.
- (6) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council details of wheel-cleaning facilities to be provided during the demolition and construction phases of the Development. The approved details shall include the type, location and layout of the facilities together with measures to ensure use by all construction vehicles leaving the Site. All areas used for the washing of vehicles shall be contained to prevent the discharge of wastewater to underground strata or controlled waters. This shall apply to all areas of the Site including the construction lay-down areas. The demolition and construction phases of the Development shall be carried out in accordance with the approved scheme.

**Reason:** To reduce the impact of construction traffic movements on the locality.

### **Prevention of contamination of watercourses**

- (7) The commissioning of the Development shall not take place until all areas of the Site including natural habitat, drains and watercourses that are to be retained as part of the Development hereby approved, have been fenced off or otherwise delineated to avoid incursion and disturbance by construction activity. This protection shall be maintained for the duration of the construction period and no construction materials, machinery or equipment are to be stored within these areas.

**Reason:** To ensure the prevention of contamination of drains and watercourses on the Development Site during construction.

### **Road deliveries of fuel**

- (8) No waste delivery HGVs shall enter or leave the Site by road outside the hours of 07:00 and 19:00 on weekdays and the hours of 07:00 and 13:00 on Saturdays. No HGVs shall enter or leave the Site outside these times or at any time on Sundays or Bank/Public Holidays.
- (9) HGV movements to and from the Development once operational shall not exceed 262 round trips (131 movements in, 131 movements out) Monday to Friday on more than 3 days in a continuous 30 day monitoring period and shall not exceed 276 round trips (138 movements in, 138 movements out) on any one day, Monday to Friday. HGV movements to and from the Development once operational shall not exceed 132 round trips (66 movements in, 66 movements out) on Saturdays.
- (10) Records shall be kept of waste delivery HGVs entering and leaving the Site each day, and shall include numbers, origins and times of arrival and departure and these records will be made available to the Council on written request.
- (11) The Company shall keep under review opportunities to use, and/or make further use of, non-road modes of transport for the delivery of fuel to and from the Site (particularly over distances of more than 70 miles) where such modes may reasonably be considered both commercially feasible and more sustainable than road transport. The commissioning of the Development shall not commence until there has been submitted to, approved in writing by, and deposited with the Council, a scheme for evaluating and responding to such opportunities, which shall be adhered to.

**Reason:** To reduce the impact of fuel delivery traffic movements on the locality and to ensure that opportunities for non-road transport of fuel, particularly over long distances, are kept under review where these may reasonably be considered commercially feasible and more sustainable than road transport of fuel.

### **Rail deliveries of fuel**

- (12) Fuel deliveries by train shall not be made to the Site outside the hours of 07:00 and 23:00.
- (13) Fuel deliveries by train shall not be unloaded at the Site outside the hours of 07:00 and 23:00. Vehicles used to load and unload the trains, that are permanently based on the Site for this purpose, shall be fitted with reversing

alarms of a type to be agreed in writing with the Council, before commissioning of the Development.

**Reason:** In the interests of amenity.

### **Sustainable travel plan and parking**

(15) The commissioning of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a scheme for proposed staff and visitor vehicular parking. The parking provision shall be completed as agreed prior to operation of the Development and thereafter retained.

(16) The commissioning of the Development shall not take place until the following measures to encourage staff to travel via sustainable modes are introduced at the Site:

- i) Covered and secure storage for 10 bicycles, with additional space for the storage of 7 additional bicycles should they be required in the future;
- ii) Walking and cycling routes will be identified and communicated to staff;
- iii) Shower and changing facilities;
- iv) Car sharing databases and information will be communicated to staff; and
- v) Information display boards in foyer areas detailing public transport timetables and frequencies.

**Reason:** To establish measures to encourage more use of sustainable non-car modes of transport during the construction and operation of the Development.

### **Site layout and design etc**

(17) The commencement of the main Development shall not take place until there has been submitted to, approved in writing by, and deposited with the Council, a scheme for the construction of the Development which shall include provisions for the:

- a) details of the siting, design and external appearance of all buildings, structures to be erected and retained following the commissioning of the Development;

b) details of the colour, materials and surface finish in respect of those buildings and structures referred to in (i) above;

c) details of ground levels and dimensions of all permanent buildings and structures together with cross-sections through the Site showing existing and proposed ground levels;

d) details of fire suppression measures and access of fire appliances to all major buildings, structures and storage areas;

e) details of permanent fencing or other enclosure; and

f) phasing of works included in the scheme.

In addition, prior to commencement of construction of any building within the Development, samples of all materials to be used on the exterior of that building shall be submitted to and approved in writing by the Council. All buildings and structures shall be constructed in accordance with the approved scheme.

(18) The commencement of the Development shall not take place until there have been submitted to, approved in writing by and deposited with the Council details of vehicular circulation roads, parking, hardstanding, loading and unloading facilities and turning facilities on site, including in particular details of the two-way internal road and access details between the Ash Handling Facility and the main Sustainable Energy Plant building. The approved details shall be implemented prior to commissioning of the Development.

(19) The commencement of the Development shall not take place until there have been submitted to, approved in writing by and deposited with the Council details of the access to the southern construction lay-down area. The access shall be implemented in accordance with those approved details.

(20) The commencement of the Development shall not take place until there have been submitted to, approved in writing by and deposited with the Council details of measures to mitigate the effects of emergencies arising from loads carried by rail and details to ensure access for emergency vehicles along the rail track. The agreed measures shall be implemented prior to the commissioning of the Development.

**Reason:** To enable the Council to exercise reasonable and proper control over the design and appearance of the Development and to ensure adequate fire prevention measures are in place.

## **Landscaping**

- (21) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a landscape management plan for soft landscaping works (such as planting and maintenance of plants and shrubs etc). The landscape management plan shall include: a timetable for implementation, details of vegetation to be retained and its means of protection, proposed earthwork materials, finished levels or contours, proposed plant species locations and mixes and details of its long-term management. The soft landscape works shall thereafter be implemented in accordance with the approved scheme unless otherwise agreed in writing with the Council.
- (22) If within a period of five years from the date of the planting of any tree or shrub within the Development, that tree/shrub, or any tree/shrub planted in replacement for it, is removed, uprooted, destroyed or dies, another tree of the same species and size as that originally planted shall be planted at the same place unless the Council gives its written consent for any variation.
- (23) Prior to commencement of any phase of the Development, full details of hard landscaping works (such as earthmoving, erection of fences etc) relating to that phase shall have been submitted to and approved in writing by the Council and the works shall be carried out in accordance with the approved plans. These details shall include proposed finished levels or contours, means of enclosure, street furniture, hard surfacing materials and a programme of implementation and maintenance. The landscaping works shall include the installation of a footpath (fenced with a buffer of hedgerow shrubs) within the proposed coke store site of the Development.

**Reason:** To ensure proper landscaping for the Development.

## **Ecology and Nature Conservation**

- (24) Prior to the commencement of any phases of the Development a scheme detailing the ecological mitigation and enhancement measures identified in the Environmental Statement shall be submitted to and approved in writing by and deposited with the Council in consultation with Natural England. The scheme shall include the following: details of the measures to be taken to protect the barn owl nest site from disturbance; details of the measures to be taken to mitigate any impact on bat populations using the Site; and the other ecological measures referred to in Chapter 9 and Figure 8.21 of the Environmental

Statement. The Development shall be carried out in accordance with the approved scheme.

**Reason:** To mitigate the impact of the Development on protected species and safeguard ecology and nature conservation.

#### **Prevention of contamination of watercourses - drainage**

(25) The commissioning of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council, in consultation with the Environment Agency a scheme for the management of surface water (including a surface water regulation system) and foul water, based on Appendix 10.2 of the Environmental Statement. The scheme shall thereafter be fully implemented and operated as approved.

**Reason:** To ensure proper drainage of the Site and to ensure that contamination is controlled and not allowed to cause harm to the health of human beings nor impact on the integrity of environmentally sensitive areas.

#### **Prevention of contamination of land**

(26) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a scheme to deal with the risks associated with any contamination of the Site. Any measures identified as being necessary shall be carried out to a timetable to be agreed in writing with the Council. That scheme shall include the following elements unless any are specifically excluded in writing by the Council:

- a) a desk study identifying:
  - i) all previous uses;
  - ii) potential contaminants associated with those uses;
  - iii) a conceptual model of the Site indicating sources, pathways and receptors;
  - iv) potential unacceptable risks arising from contamination at the Site;
- b) a Site investigation scheme based on a) above to provide information for an assessment of risk to any receptors that may be affected on and off the Site;
- c) a method statement based on results of the Site investigation and risk assessment, giving details of any remediation measures required and details of how these measures are to be undertaken;

- d) a verification report on any remediation measures that have been undertaken; and
- e) a timescale for implementation.

**Reason:** To ensure that contamination is controlled and not allowed to cause harm to the health of human beings nor impact on the integrity of environmentally sensitive areas.

### **Fuel Storage**

- (27) All fuels, oils and other liquids with the potential to contaminate the Site shall be stored in a secure bunded area at the Site. The storage area shall not drain to any surface water system.

**Reason:** To provide adequate long-term protection to the water environment at the Site.

### **Operational Noise**

- (28) The commissioning of the Development shall not take place until there has been submitted to, approved in writing by, and deposited with the Council a programme for the monitoring and control of noise generated by the normal commercial operation of the Development. The programme shall specify the locations from which noise will be monitored, the method of noise measurement (which shall be in accordance with BS 4142 1997) and the maximum permissible levels of noise at each such monitoring location. At the approved measurement locations noise levels during the operation of the Development shall not exceed the levels specified in the approved programme, except in so far as any variation has been approved in writing by the Council or in an emergency.

**Reason:** To ensure the proper control of noise during the operation of the Development.

### **Control of Odour**

- (29) The commissioning of the Development shall not take place until a scheme for the management of odour generated from the operation of the Development has been submitted to, approved in writing by and deposited with the Council. The scheme shall thereafter be implemented and operated as approved throughout the life of the Development.

**Reason:** In the interests of local amenity.

### **Lighting**

(30) The commissioning of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a scheme of lighting of the Development hereby permitted for both its construction and operational phases. The Development shall be illuminated in accordance with the approved scheme.

### **Waste Hierarchy**

(31) The commissioning of the Development shall not take place until a scheme setting out arrangements for the maintenance of the waste hierarchy in priority order by minimising recyclable and reusable waste received as a fuel feedstock during the operational life of the Development has been submitted to and approved in writing by and deposited with the Council. The scheme shall include details of:

- a) the type of information that shall be collected and retained on the sources of the residual waste after the recyclable and reusable waste has been removed;
- b) the arrangements that shall be put in place for ensuring that as much reusable and recyclable waste as is reasonably possible is removed from the waste to be supplied for use as a fuel feedstock in the Development; so that the feedstock is as far as practicable only residual waste that is from a waste stream that has been comprehensively recycled;
- c) the arrangements that shall be put in place for ensuring the suppliers of residual waste operate a written Environmental Management System which includes establishing a baseline for recyclable and reusable waste removed from residual waste and specific targets for improving the percentage of such removed reusable and recyclable waste;
- d) the arrangements that shall be put in place for discontinuing supply arrangements from suppliers who fail to remove as much reusable and recyclable waste as is reasonably possible from residual waste or who fail to retain Environmental Management Systems;
- e) the arrangements that shall be put in place for regularly monitoring the waste delivered to the facility to ensure that it is residual waste; and



f) the form of records that shall be kept for the purpose of demonstrating compliance with the above details and the arrangements in place for allowing inspection of such records by the Council.

The records referred to in paragraph (f) of this condition shall be made available for inspection by the Council at all reasonable times.

Incineration of waste shall not take place except in accordance with the approved scheme, which shall be adhered to at all times that the Development is operational.

**Reason:** To ensure the proposed facility accords with national, regional and local waste strategies.

### **Fuel Sustainability**

(32)The Development shall not accept as a feedstock:

- (a) any material directly produced by conventional forestry management (including thinning, felling and coppicing of trees from any green space);
- (b) tree-derived residues directly produced by the processing of material directly produced from conventional forestry management by sawmills or the wood processing or timber industry;
- (c) plant material from crops grown primarily for use in energy generation, including 'woody' energy crops such as short rotation coppice (SRC) and miscanthus grass;
- (d) agricultural residues such as straw, husks and kernels.

**Reason:** to ensure the plant remains an energy from waste plant and does not change its purpose or designation.

### **Air pollution monitoring**

(33)The commissioning of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council in consultation with the Environment Agency a scheme for the monitoring of air pollution in the vicinity of the Site. The approved scheme shall include the measurement location or locations within the relevant area from which air pollution will be monitored, the equipment and methods to be used and the frequency of measurement. The scheme shall provide for the first measurement to be taken not less than 12 months prior to the commissioning of the

Development and for the final measurement to be taken not more than 24 months after commissioning of the Development. The scheme shall be implemented in accordance with its terms and shall supply full details of the measurements obtained in accordance with the scheme to the Council as soon as possible after they become available.

- (34) Should the Council require continued monitoring of air pollution the scheme approved pursuant to Condition 33 above shall be extended for a period of up to 36 months from the date of the last measurement taken pursuant to Condition 33 above. Full details of the measurements obtained during the extended period shall be provided to the Council as soon as possible after they become available.

**Reason:** To ensure the Council are kept informed on a regular and programme basis about any changes in the level of air pollution at locations within its area.

### **Archaeology**

- (35) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a scheme of archaeological investigation and an associated implementation programme. Development shall be in accordance with the approved scheme and implementation programme.

**Reason:** To allow the surveying of the Site for archaeological artefacts and the recovery of any important archaeological discoveries prior to the commencement of the Development.

### **Demolition**

- (36) Within 18 months of the permanent cessation of the commissioning of the Development, a scheme shall be submitted to the Council, for approval in writing, for the demolition and removal of the Development from the Site. The approved scheme shall include:

- a) details of all structures and buildings which are to be demolished or retained;
- b) details of the means of removal of materials resulting from the demolition;
- c) the phasing of the demolition and removal;
- d) details of the restoration works; and

e) the phasing of the restoration works.

The demolition of the Development shall be implemented in accordance with the approved scheme.

**Date:** 2 October 2012

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