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Dear Mr Nolan,

ELECTRICITY ACT 1989

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

THE ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS)(ENGLAND AND WALES) REGULATIONS 2013

TILBURY GREEN BIOMASS AND ENERGY FROM WASTE FUELLED GENERATING STATION

1. THE APPLICATION

- 1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to refer to the application dated 15 February 2019 (“the Variation Application”) on behalf of Tilbury Green Power Limited (“the Applicant”) to vary the consent granted by the Secretary of State on 27 August 2009 (“the Original Consent”) to construct and operate a generating station comprising two generation units (Phase 1 and 2) with a combined electrical capacity of 60MW and processing up to 650,000 tonnes of fuel per annum, and, a direction under section 90(2) of the Town and Country Planning Act 1990 (“Planning Conditions”) that planning permission for the development be deemed to be granted (“the Consented Development”). A variation was granted by the Secretary of State on 19 July 2011 to the Original Consent and a subsequent variation granted on 20 August 2014 to extend the latest date for commencement of the development to 27 August 2015. The variation being requested is to optimise the consented site by amending the design and layout of the second phase of the development and to increase the overall electricity generating capacity permitted by the Consented Development from 60MW to 80MW, by using a more efficient generating system while retaining the previously consented maximum

waste throughput. Amendments to the related deemed Planning Conditions are also sought (“the Varied Development”).

- 1.2 The original application was supported by an Environmental Statement prepared in 2008. The Variation Application includes an update to this in the form of a Supplementary Environmental Information Report in accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (“the 2017 EIA Regulations”) and describes the assessment of likely significant effects of the development on the environment and analyses how these differ from those described in the Environmental Statement in 2008.
- 1.3 The Variation Application was published in accordance with the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (“the Variation Regulations”) and served on the relevant planning authority. The Variation Application was also subject to public consultation as well as consultation with statutory advisers such as Natural England and the Environment Agency.
- 1.4 A Supporting Statement dated December 2018 was submitted with the Variation Application. The Supporting Statement was advertised and placed in the public domain, along with the previously submitted environmental information and the original 2008 Environmental Statement, to give the general public an opportunity to comment on it.

2. SECRETARY OF STATE’S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

- 2.1 Regulation 3 of the 2017 EIA Regulations as applied by regulation 7 of the Variation Regulations prohibits the Secretary of State from granting a variation of a section 36 consent unless he has first taken into consideration the environmental information as defined in the 2017 EIA Regulations.
- 2.2 Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Applicant will be required to take under the conditions attached to the variation to the section 36 consent and the Planning Conditions, the Secretary of State considers that the significance of the environmental effects will not differ from that predicted for the Original Consent such that it would be appropriate to refuse the variation to the Consented Development.

3. SECRETARY OF STATE’S CONSIDERATION OF POSSIBLE EFFECTS ON A EUROPEAN SITE

- 3.1 The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) require the Secretary of State to consider whether the Varied Development would be likely to have a significant effect on a Natura 2000 Site as defined in the Habitats Regulations and, if so, to undertake an Appropriate Assessment (“AA”) of the implications for the European Site in view of its conservation objectives. In the absence of imperative reasons of overriding public interest, consent may be granted only if it can be shown that the Varied Development will not have an adverse effect on the integrity of the Natura 2000 Site (regulations 63(5) and 64). Regulation 63(6) provides that when considering whether the Varied Development will adversely affect the integrity of a Natura 2000 Site, the competent authority can take into account measures proposed to mitigate such impacts as part of the AA. This process is commonly referred to as a Habitats Regulations Assessment (“HRA”).
- 3.2 The Applicant has provided an Ecological Impact Assessment (“EIA”) in support of the Application. Although it has been provided with the other Application documents, and following their risk-based approach, Natural England has made the decision to not provide a detailed consultation response. It refers to its standing advice to assess impacts on

protected species and also Natural England's and the Forestry Commission's standing advice to assess impacts on ancient woodlands.

- 3.3 The nearest Natura 2000 designated sites are the Thames Water Estuary and Marshes Special Protection Area ("SPA") and Ramsar site located 6km south-east of the Development site. In view of the nature of the proposed variations sought, the environmental information provided by the Applicant, and considering that no consultation responses raised concerns about impacts on designated sites, the Secretary of State is satisfied that the varied development will not have a likely significant effect on any Natura 2000 site either alone or in-combination with other plans and projects. He therefore considers that an AA is not necessary and finds no reason for refusing the variation application on the grounds of adverse effects on the integrity of a Natura 2000 Site.
- 3.4 The Wildlife and Countryside Act 1981 (as amended) is the primary legislation relating to the designation and protection of Sites of Specific Scientific Interest ("SSSIs"). Natural England's initial screening indicated that one or more Impact Risk Zones have been triggered by the proposed development, indicating that impacts to SSSIs are likely and may be significant. Natural England advise that the decision maker and local planning authority request sufficient information from the developer to assess any impacts that may arise. It should be noted that neither the local planning authority (Thurrock Council) nor any other interested parties provided further information on impacts to SSSIs.
- 3.5 In the Supplementary Environmental Information Report, the Applicant identified two statutorily designated SSSIs within 2km of the development site: Globe Pit SSSI and Grays Thurrock Chalk Pit SSSI. A third SSSI (Hangman's Wood and Deneholes) is just over 2km away from the Development site. There is also one non-statutory designated site, Little Thurrock Reedbeds Local Wildlife Site ("LWS") approximately 0.9km from the Development site. The Applicant concluded that the varied development would not have significant impacts on any of these nearby SSSIs.
- 3.6 The Secretary of State is satisfied that the Applicant has provided sufficient information to show that the varied development would be unlikely to have a significant impact on the SSSI network.
- 3.7 On the basis of the information provided, the Secretary of State considers that the increase in the capacity of the Varied Development will not have any environmental impacts above those assessed in the original application, including no likely significant effects on any Natura 2000 Site either alone or in-combination with other plans or projects.

4. SECRETARY OF STATE'S CONSIDERATION OF THE REVISED PLANNING CONDITIONS

- 4.1 The relevant Planning Authority ("Thurrock Council") has suggested that Condition 12 (Landscaping and Creative Conservation) should include reference to offsite mitigation measures (i.e. covered by a section 106 agreement). This is because the relatively small, isolated ecological area proposed in 2008 would have limited value in comparison with a funding contribution for a larger, alternative ecological opportunity within Thurrock Council's area. This is now set out in the signed section 106 Unilateral Undertaking and the Secretary of State notes the potential opportunities are to be determined in liaison with Thurrock Council's landscape and ecology advisor. The Secretary of State also notes that the financial contribution is to be paid upon Commencement of Phase 2 of the development.
- 4.2 The Secretary of State has considered the proposed battery storage as part of the variation application. The Secretary of State notes that the battery storage system would not be a significant part of the total installed generating capacity of the generating station which is

currently authorised to be built. The Secretary of State is content that the inclusion of the battery storage units would not result in a development which is fundamentally different in scale or character from that previously consented or result in fundamentally different environmental impacts already considered in the application.

- 4.3 In view of the fact that the Applicant has stated that Phase 1 of the Development relies on 300,000 tonnes per annum of waste wood biomass, Thurrock Council queried why a wider flexibility in the proposed removal of restrictions in waste type in Condition 55 (Materials Inputs) was being sought. In the Council's view, the 300,000 tonnes of waste wood biomass per annum should be fixed in Condition 55 and that figure does not require amendment. In the report to the Planning Committee of Thurrock Council on 6 June 2019, a suggested rewording of Condition 55 was proposed as follows:

“No more than 650,000 tonnes of Biomass, Waste Wood, Refuse Derived Fuel, Solid Recovered Fuel, Commercial & Industrial Waste and Municipal Solid Waste (“MSW”) shall be brought onto the site per annum. This will include no more than 350,000 tonnes per annum of MSW, Commercial & Industrial Waste, Solid Recovered Fuel and Refuse Derived Fuel”.

The Applicant has confirmed that the revised wording proposed by Thurrock Council is acceptable to them. The Secretary of State considers it appropriate to vary the Condition as set out above.

- 4.4 The Applicant has also requested the removal of the restriction imposed by Condition 56 (Material Inputs), which currently allows only 450,000 tonnes of waste and biomass fuel to be brought to the site by road (i.e. the remaining 200,000 tonnes needs to be delivered by the River Thames). Thurrock Council queried whether the proposed amendment is consistent with policies promoting sustainable transport (i.e. the Thurrock development plan for waste includes the National Policy for Waste (2014) and adopted Core Strategy (2015); The National Planning Policy Framework and NPS (Energy) also refer to the importance of sustainable transport). The Secretary of State has considered the issue and notes, in particular, that although the policy requirements in EN-1 (Overarching National Policy Statement for Energy) and EN-3 (Renewable Energy Infrastructure) do not mandate the used of water-based transport there is a clear expectation that transportation of materials by water or rail should be preferred where cost effective and that any change should be based on considerations of the impacts of its retention on the costs-effectiveness and viability of the scheme. The Secretary of State has also considered the information contained within the Transport Assessment provided by the Applicant and notes that Highways England has not objected to the proposed removal of the condition. The Applicant has not provided any specific evidence as to why the condition should be removed or why it is no longer cost effective. The Secretary of State therefore considers that the current condition which was put in place to minimise the impact on the surrounding roads should be retained.
- 4.5 The Secretary of State notes that Thurrock Council is content that Conditions 57 to 60 (regulating the source of Municipal Solid Waste, Solid Recovered Fuel or Waste Wood, Commercial & Industrial Waste and Biomass) be deleted. The Secretary of State accepts the arguments presented by the Applicant that the changes are necessary to increase the flexibility of the operation locally and notes that the changes would accord with Government waste planning policy and guidance which emphasise the importance of self-sufficiency and the importance of being able to source materials as near to the place of production as possible.

- 4.6 As is normal practice, the Secretary of State has since consulted on the revised draft section 36 and deemed planning permission conditions on a without prejudice basis and with a view to obtaining agreement on them. The draft conditions, which have now been agreed with the Applicant, Thurrock Council and Environment Agency, include a revised Condition 76 (Bridge over Botney Channel) that now states:

“Except for the Permitted Preliminary Works, the commencement of Phase 2 of the Development shall not take place until there has been submitted to, approved in writing by, and deposited with, the Relevant Planning Authority, in consultation with the Environment Agency, a scheme for the construction of the bridge over the Botney Channel. The bridge shall be constructed in accordance with the agreed scheme.”

- 4.7 In their response Highways England welcomed the suggestion to include a condition of consent requiring the Construction Traffic Management Plan to be reviewed and approved by Highways England prior to the works taking place. Highways England has suggested the review would include timing of vehicle movements to avoid coinciding with movements of Tilbury 2 construction traffic. Highways England also stated that they would like to review and approve the updated Travel Plan and Vehicle Monitoring Plan prior to the Phase 2 works taking place. This review would include consideration of the proposed changes and any lessons from the construction of Phase 1: the updates should be for both the construction and operational phases.

- 4.8 We note that the Applicant’s suggested wording is that Thurrock Council agree the plans in consultation with Highways England in the form of the condition 19. Highways England would like the agreed form of this updated Vehicle Monitoring Plan to be secured by Conditions and/or a section 106 agreement if consent is granted. In response to Highways England’s requests the Applicant has proposed a revised condition:

(20) The Vehicle and Accident Monitoring Scheme approved by the Relevant Planning Authority in 2014 and updated in 2018 shall be further updated. Except for the Permitted Preliminary Works, the Commencement of the Development shall not take place until the updated Vehicle and Accident Monitoring Scheme has been submitted to, approved in writing by, and deposited with, the Relevant Planning Authority, in consultation with Highways England.

- 4.9 The Secretary of State has considered the revised Planning Conditions carefully including the suggested amendments. In particular he is of the view that the conditions will allow Highways England to be properly consulted and review the plans. With the exception of the deletion of condition 56 as explained in paragraph 4.4 above he has decided they are suitable for inclusion in any direction under section 90(2ZA) of the Town and Country Planning Act 1990 which he may give, subject to any minor drafting amendments.

5. ISSUES RAISED DURING CONSULTATION

- 5.1 Representations registering concerns and objections were received from a number of interested parties, however no objections to the Variation Application were received from: the Met Office, Civil Aviation Authority, National Air Traffic Services, Defence Infrastructure Organisation, Historic England and the Health and Safety Executive. Representations were received from Thurrock Council, Highways England, Environment Agency, Natural England, and the Port of London Authority. One objection was received from a member of the public. The points raised in these representations are summarised below and the Secretary of State’s consideration of the issues raised are summarised in section 6. Responses to the consultation are available on the Applicant’s project website at: www.TilburyERF.com

Views of the Relevant Planning Authority – Thurrock Council

- 5.2 Thurrock Council's Planning Committee agreed with the planning officer's recommendation in relation to the conditions in the deemed planning permission, which included a number of queries and suggestions. Thurrock Council raised a number of points regarding traffic and transportation, in particular potential changes in vehicle movements arising from the proposed amendment to the trunk road network, and the Transport Assessment that relied on assumptions concerning the Tilbury 2 Transport Assessment. The Council has confirmed that it agrees with the list of committed developments that Highways England and the Applicant have agreed.

Highways England

- 5.3 Following its initial request for further information and feedback to the Applicant, a further Technical Appendix Update on traffic and transport effects associated with the proposed Variation was provided to Highways England. This included up-to-date transport surveys and further assessment to model traffic growth and construction traffic in light of construction traffic at Tilbury 2 and operation of Amazon Distribution Centre. As this additional information constituted further environmental information under Regulation 26 of the 2017 EIA Regulations a further consultation took place. Highways England has since confirmed in its substantive response to the Secretary of State, that they are now satisfied that their technical concerns have been addressed by the Applicant subject to the inclusion of conditions of consent requiring (i) the Construction Traffic Management Plan to be reviewed and approved by Highways England prior to the works taking place, and (ii) a condition requiring HE to be consulted upon the updated Travel Plan and Vehicle Monitoring Plan prior to the Phase 2 works taking place.

Environment Agency

- 5.4 The Environment Agency ("EA") had previously provided comments in respect of Environmental Permitting and had no further comments regarding the variations proposed. Their consultation response pointed out that Flood Defence Consents now fall under the Environmental Permitting regime and noted that the Applicant may need a permit for flood risk activities if they do work in, under, over or within 16m of any flood defence structure or culvert. The EA currently regulate the Tilbury Biomass Energy Station under Environmental Permit (EPR-KP 3936ZB), which also covers Phase 2 of the development. As the proposed variation seeks to increase the amount of waste processed from 170,000 to 360,000 tonnes per annum, the permit would therefore need to be varied and the EA has advised the Applicant to contact them as soon as possible to discuss. The EA has since also confirmed on a without prejudice basis, that it does not envisage any major problems regarding the issue of the Environmental Permit for the variations proposed. Air quality and fire prevention are two areas the EA has identified as needing particular attention, but they consider these can be resolved by the Applicant working with them prior to and during the development of the next phase.

Natural England

- 5.5 Natural England provided a standard response to the consultation, choosing not to provide detailed comments. The Secretary of State's consideration of Natural England's representation is set out in section 3 above.

Port of London Authority

- 5.6 The Port of London Authority had no comment on the changes to the permitted scheme, including increasing the overall electrical capacity to 80MW, changes to the building, off-site ecological development, a bridge over the Botney Channel and removal of restrictions to the permitted proportion of waste types and sources. However, given the emphasis on sustainable transport and moving material in bulk by water, the Port of London Authority have raised concerns on the removal of the current consent restrictions that apply to the

delivery of waste (i.e. Planning condition 56 restricting fuel delivery to no more than 450,000 tonnes per annum by road). They consider its removal would appear to be contrary to planning policy and as such objects to the proposed amendment. As indicated at paragraph 5.2 above, Thurrock Council had similar concerns.

Other Representations

- 5.7 The Secretary of State also received an objection from one member of the public on the basis of the proposed development's proximity to local housing area and smell omitting when the wind is blowing from its direction. The objector mentions that this smell already exists for the burning of wood in Phase 1 of the development and the suggestion is that it would be worse if waste is also burnt. The objector is also critical of the Applicant not responding to telephone queries and asks that the variation not be granted on environmental grounds and considers there is already enough pollution in the area. It should be noted that Condition 52 of the deemed planning permission would require a scheme to be approved by Thurrock Council for the control of fugitive odours prior to the commissioning of Phase 2. Unless otherwise agreed with the Council or in an emergency, Condition 62 would also require the external handling of waste from Phase 2 to be under cover at all times during the operation of the Development. Operational emissions from the Development would be controlled under the Environmental Permit and the Environment Agency has indicated on a without prejudice basis that they do not envisage any major problems and expect any potential problems to be resolved. Prior to commissioning, Condition 64 would also requires a scheme for monitoring air pollution in the relevant area for Phase 2 to be approved by Thurrock Council, in consultation with the Environment Agency.

6. SECRETARY OF STATE'S CONSIDERATION OF THE ISSUES RAISED DURING CONSULTATION

Suitability of the Section 36 Variation Procedure for permitting the Proposed Variation

- 6.1 The 'Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales' guidance issued in 2013 ("the guidance note") states:

"Changes in the design of generating stations which have been consented but not constructed which would allow them to generate an amount of power that would be inconsistent with the original consent are likely to be appropriate subject matter for a variation application, provided there are no major changes in the environmental impact of the plant. Similar changes to an existing plant could be appropriate subject matter for a variation application only if they did not involve physical extension of the generating station, relocation of generating plant, or the installation of new equipment that would amount to the construction of a new generating station".

- 6.2 The section 36 variation procedure does not allow a change in an existing consent that would result in a development that would be fundamentally different in character or scale from what has been originally granted. Any such changes would be the subject of a fresh application for consent.
- 6.3 The Applicant has stated that the increase in the overall generating capacity of the Varied Development will be possible by employing a more efficient generating system while retaining the previously consented maximum waste throughput, which will result in the optimal utilisation of the consented site. The Secretary of State notes that the Varied Development will not result in any additional environmental impacts from those assessed for the Consented Development and these have been assessed in a Supplementary Environmental Information Report concluding there are no significant additional environmental impacts arising from the proposed changes, with mitigation measures being

proposed where considered appropriate and necessary. The Secretary of State has not agreed to the requested removal of the current restrictions that apply to the delivery of waste to the site so that all waste can be delivered by road and has agreed with the Council, that Conditions 57 to 60 (Source of Municipal Solid Waste, Solid Recovered Fuel or Waste Wood, Commercial & Industrial Waste and Biomass) be deleted removing waste catchment restrictions. In addition, the Secretary of State notes that neither Natural England nor the Environment Agency have raised any objections to the Variation Application.

- 6.4 The Secretary of State therefore considers that the Varied Development would not be fundamentally different in character of scale from the Consented Development and is in keeping with the guidance note for the section 36 variation procedure, it is appropriate for this Variation Application to be considered under the section 36 variation procedure.

Conclusion

- 6.5 For the reasons set out above, the Secretary of State considers that all matters raised in the representations received from the relevant local authority or any other respondent are addressed either in the conditions attached to the original consent which are not being varied, the additional environmental information or in the information supplied by the Applicant in support of the variation application.

7. SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER

- 7.1 In accordance with Departmental guidance, as also referred to in Part 4.6 of Overarching National Policy Statement for Energy (EN-1) and Part 2 of National Policy Statement for Renewable Energy Infrastructure (EN-3), any application to develop a thermal generating station over 50MW must include either CHP or contain evidence that the possibilities for CHP have been fully explored. A CHP assessment from 2014 was provided with the Variation Application, and page 35 of the Supplementary Environmental Information Report confirms that "The Report previously submitted and approved in accordance with conditions 67 and 68 will be implemented for Phase 2 of the development to ensure the design is appropriate to enable CHP opportunities to minimise impacts". The Secretary of State considers that this does not require updating. The Secretary of State notes that the deemed planning permission already includes requirements for CHP Assessment.

Conclusion

- 7.2 The Secretary of State is conscious that all opportunities for the deployment of CHP should be encouraged where possible and considers that the CHP conditions (Conditions 67 and 68) remain appropriate and should be retained in the revised conditions (as modified).

8. CONSIDERATION OF OTHER MATERIAL ISSUES

- 8.1 The Secretary of State considers the following issues material to the merits of the Application:
- (a) the Applicant has provided adequate environmental information for the Secretary of State to judge the impacts of the proposed Varied Development;
 - (b) the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the environmental information submitted in support of the Variation Application and the Secretary of State has judged that the likely key environmental impacts are acceptable;
 - (c) the views of the relevant planning authority, statutory consultees under the Habitats Regulations, and all other relevant matters have been carefully considered;

- (d) the Secretary of State is aware that the Varied Development would require an amendment to the Explanatory Memorandum to the existing Environmental Permit issued by the Environment Agency to reflect that the Varied Development is able to generate electricity at a higher capacity through the installation of more efficient technology;
- (e) the legal procedures for considering an application for a variation of the generating station consent and Planning Conditions have been properly followed; and
- (f) the Secretary of State has also considered policies on the need for and development of new electricity generating infrastructure, as set out in the *Overarching National Policy Statement for Energy (EN-1)* and the *National Policy Statement for Renewable Energy (EN-3)* in determining this Section 36C variation application. On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 – this was given effect by an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline). The Secretary of State considers that the Variation Application is consistent with the policies set out in the National Policy Statements (EN-1 and EN-3). In particular, the Secretary of State considers that the Variation Application is consistent with the policies set out in the National Policy Statement (EN-1) which state: *“Developing our infrastructure.....will help us maintain and improve our security and access to competitive suppliers, particularly for electricity generation...”* and that the development is in line with the national need for secure and reliable supplies of electricity as part of the transition to a low carbon economy. The Secretary of State therefore considers that granting the variation would not be incompatible with the amendment to the Climate Change Act 2008.

9. SECRETARY OF STATE'S DECISION ON THE HOLDING OF A PUBLIC INQUIRY

- 9.1 Regulation 8 of the Variation Regulations gives the Secretary of State discretion to hold a public inquiry into a Variation Application. In considering whether to hold a public inquiry, the Secretary of State must consider any representations which have been made to him by a relevant planning authority or any other person where those representations are not withdrawn, alongside all other material considerations.
- 9.2 In its response, the relevant planning authority did not object to the Variation Application.
- 9.3 No sustained objections were received by the Secretary of State to the proposed variation from statutory advisers, Natural England, the Environment Agency, the Health and Safety Executive and Historic England.

Conclusion

- 9.4 The Secretary of State has carefully considered the views of the relevant planning authority, statutory advisers, representations from members of the public and all other material considerations. He takes the view that all matters raised in the representations have been addressed either in the conditions attached to the Original Consent which will be retained in the varied consent, and the information submitted by the Applicant in support of the Variation Application. The Secretary of State is therefore of the view that there is no further information required to enable him to take a decision on the Application and that it would not, therefore, be appropriate to cause a discretionary public inquiry to be held into the Variation Application.

10. EQUALITY ACT 2010

10.1 The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to:

- (a) the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- (b) the advancement of equality of opportunity between people who share a protected characteristic and those who do not; and
- (c) the fostering of good relations between people who share a protected characteristic and those who do not.

10.2 The Secretary of State has considered the potential impacts of granting or refusing the Variation Application in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the protected characteristics.

10.3 The Secretary of State does not, therefore, consider that either the grant or refusal of the Variation Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

11. HUMAN RIGHTS ACT 1998

11.1 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the Varied Development. The Secretary of State considers that the grant of Varied Development would not violate any human rights as given effect in UK law by the Human Rights Act 1998.

12. SECRETARY OF STATE'S DECISION ON THE VARIATION APPLICATION

12.1 The Applicant has requested that the Consented Development be varied to allow for an increase in the capacity of the Consented Development from 60MW to 80MW, and to make amendments to the associated deemed planning permission to incorporate changes in the scale and design of the Development. The Secretary of State notes that there will be no change in the previously consented maximum waste throughput and there have been no significant changes in the environmental and other impacts identified in relation to the Varied Development. The Secretary of State is therefore of the view that the Varied Development does not result in a development that is fundamentally different in character or scale to that originally consented. The Secretary of State is of the view that the Varied Development is appropriate and necessary (with the exception of the proposed deletion of condition 56), and is satisfied that the changes are of a kind that is reasonable to authorise by means of the variation procedure in section 36C of the Electricity Act 1989.

12.2 The Secretary of State has also had regard to the other matters specified in section 5 above and has decided to grant a variation to the Consented Development pursuant to section 36C of the Electricity Act 1989. The varied consent is annexed to this variation decision and is subject to the conditions set out in the varied consent. The Secretary of State also considers the Planning Conditions as varied, form a sufficient basis on which the Varied Development might proceed, and has, therefore decided to issue a section 90(2ZA) direction that the conditions to the Planning Conditions be varied as specified in the annex to that direction. The reasons for the variation to particular conditions are as explained in the Annex to this letter.

12.3 Accordingly I enclose the Secretary of State's variation of consent under section 36C of the Electricity Act 1989 and under section 90(2ZA) of the Town and Country Planning Act 1990 varying the Planning Conditions.

13. GENERAL GUIDANCE

13.1 The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review. Such an application must be made as soon as possible. Parties seeking further information as to how to proceed, including the relevant time limits for making an application, 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.

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

Yours sincerely

Gareth Leigh

Gareth Leigh

Head of Energy Infrastructure Planning