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Dear Mr Lawson

PLANNING ACT 2008

**APPLICATION FOR THE PROPOSED NORTH BLYTH POWER STATION
ORDER**

I. INTRODUCTION

1.1 On 14 March 2012 North Blyth Energy Limited (“the Applicant”) made an application (“the Application”) to the Infrastructure Planning Commission (“IPC”) under section 37 of the Planning Act 2008 (“the Act”) for a Development Consent Order (“the Order” – a draft of which accompanied the Application as required, and further drafts of which were subsequently submitted by the Applicant). The Application was made in respect of the construction of a biomass fuelled power station with a generating capacity of 99.9MW at Battleship Wharf within the Port of Blyth, Northumberland.

1.2 The Order, if made, would grant development consent for the generating station and approval for linked items of infrastructure (‘associated development’) comprising cooling water intake and outfall and a grid connection by underground cable. The Applicant also seeks compulsory acquisition powers over 16 parcels of land that are to be used for the generating station, as well as other ancillary powers (including a deemed marine licence and powers to

undertake street and highway works). In this letter, the sum of the development for which the Applicant is seeking development consent under the Act is referred to as “the Blyth Biomass project”.

1.3 Following the abolition of the IPC on 1 April 2012, the Application was accepted by the Planning Inspectorate for examination on 11 April 2012. On 15 June 2012 Mr Robert Upton CBE was appointed as the single appointed person ‘examining authority’ (“ExA”) for the Application. The ExA’s examination of the Application began on 3 August 2012 and was completed on 2 February 2013. The examination included an accompanied site visit by the ExA, written evidence presented to the ExA and a series of issue specific hearings. A list of the main events which occurred during the examination is at Appendix A of the ExA’s report (“ER”).

1.4 The ExA made his report to the Secretary of State under section 83 of the Act on the Application on 2 May 2013. Since then, the Secretary of State has considered the Application, having regard to the matters specified in section 104(2) of the Act, and in particular to the contents of the ER.

1.5 A copy of the ER is attached as **Annex A** to this letter. The ExA’s conclusions and recommendation are set out in Section 4 of the ER. All paragraph references in this letter, unless otherwise stated, are to the ER and references to “Requirements” are to those in Schedule 2 to the Order.

II. SUMMARY OF THE ER AND RECOMMENDATION

2.1 The ER included the ExA’s findings and conclusions on the following key areas:

- Legal and policy context;
- Visual impact at the landscape scale;
- Potential health risks and sources of nuisance;
- Impact on European Sites and ornithological interests;
- Impact on terrestrial ecology;
- Traffic and transportation - particularly the impact traffic generated during construction and operation would have on local residents;
- Impact of a large development on the residential amenity of the residents of North Blyth;
- Impact on cultural heritage; and
- Socio-economic benefits in local terms, eg local job creation.

2.2 The ExA's recommendation is as follows:

"4.7 Overall, therefore, the ExA considers that there is no reason why in accordance with s.104 the Secretary of State should not grant consent to the application as developed through this examination, and recommends that consent should be given."

2.3 The ExA therefore recommended that the Order be made, based on the final version submitted by the Applicant (dated 30 January 2013) but incorporating modifications specified at various points in the ER (notably in Section 6 and Appendix H).

III. DECISION

3.1 The Secretary of State has decided under section 114 of the Act to make (and has made) an Order granting development consent for the proposals in the Application. A copy of the final Order is attached at **Annex B** to this letter.

3.2 The terms of the Order reflect the ExA's comments, conclusions and recommendations and the modifications discussed at 6.4 below. It also contains minor drafting changes which do not materially alter its effect, including changes to reflect legislative best practice (for example, by removing references to those articles and requirements denoted as "not used" and re-numbering Schedules so that they appear in the order of the provisions that introduce them).

3.3 This letter constitutes both the statement of reasons required by section 116 of the Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations").

3.4 In reaching his decision, the Secretary of State has had regard to the local impact report submitted by Northumberland County Council, the environmental information as defined in regulation 2(1) of those Regulations (for the purposes of regulation 3(2) of the 2009 Regulations) and to all other matters which he considers important and relevant to his decision as required by section 104 of the Act. In making his decision under the Act the Secretary of State has complied with all applicable legal duties on him and has not taken account of any matters which are not relevant to his decision.

IV. THE HABITATS REGULATIONS

4.1 The Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") require the Secretary of State to consider whether the Blyth Biomass project would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 61 of the Habitats Regulations to address potential adverse effects on site integrity. The Secretary of State may only agree to the project if he has ascertained that it will not adversely affect the integrity of a European site.

4.2 A Habitats Regulations Assessment (HRA) was submitted with the Application, assessing the potential impacts of the Blyth Biomass project on the

Northumbria Coast Special Protection Area (the European site). In the Secretary of State's view, this contains sufficient information to inform an Appropriate Assessment and this is agreed in the Statement of Common Ground with Natural England [Document Number 27.1.1]. Both the HRA and the Report on the Implications for European Sites (RIES) indicate that likely significant effects cannot be ruled out in respect of two bird species that are features of the European site (Purple Sandpiper and Ruddy Turnstone). A number of mitigation measures were subsequently included in the proposed DCO to minimise disturbance during the construction and operational phases of the project on those species.

The ExA notes in this regard that Natural England is content that "*sufficient mitigation is secured through the draft DCO to ensure that there are unlikely to be effects on the integrity of the European Site*" [ER 3.30]. The ExA therefore concluded that, subject to the mitigation measures proposed in the Requirements of the Order¹, the Blyth Biomass project will not have an adverse impact on the European site or other ornithological interest or on terrestrial ecology [ER 4.2].

4.3 Notwithstanding the ExA's conclusion, it is for the Secretary of State, as competent authority, to complete the Appropriate Assessment (as confirmed by the ExA at ER 4.4). As likely significant effects could not be ruled out, the Secretary of State has given further consideration to the risk of adverse impacts on Purple Sandpiper and Ruddy Turnstone. As part of his assessment, he has reviewed the evidence underpinning the ExA's conclusion of no adverse impacts, including: the Applicant's HRA; the RIES and written responses to it; and the views of Natural England and other interested parties. Having considered this evidence, the Secretary of State gives considerable weight to the recommendations of the ExA and the advice of Natural England that, given the mitigation measures proposed, there will be no adverse impact on any European site as a result of the Blyth Biomass project either alone or in combination with other plans and projects. This conclusion is made on the basis that the mitigation measures proposed during the examination are included in Schedule 2 as part of the Requirements of the Order and the commitments given by the Applicant.

4.4 The Secretary of State has confidence that the mitigation measures included will effectively ensure that no adverse impact will occur. Furthermore, the Secretary of State understands that Natural England will continue to be a consultee on those measures as part of their ongoing involvement in the project. He therefore concludes that there will be no adverse impact on any

¹ The Secretary of State notes for example Requirement 11, which provides for a plan to be approved to reflect ecological mitigation and enhancement measures; Requirement 27 which provides for the site to be re-surveyed prior to the start of works and Requirement 29 which restricts the timing of piling to outside the periods which would cause the most disturbance to overwintering bird population.

European Site, as a result of the project alone and in combination with other plans and projects.

V. ENVIRONMENTAL IMPACT ASSESSMENT

5.1 The Secretary of State has considered the environmental information supplied in respect of the Application in line with his duties under regulation 3(2) of the 2009 Regulations. In particular, he has considered the likely significant effects identified in the Environmental Statement (“ES”) and the ER, which includes an assessment of all the environmental information received up to the end of the examination period. No additional environmental information has been received since the close of the examination.

5.2 Except where it is stated otherwise in this letter, the Secretary of State agrees that the environmental information is sufficient for him to take a decision on the Blyth Biomass project and there is no need for the ES to be further supplemented. Before taking his decision, he has weighed the benefits of the Blyth Biomass project against its potential detrimental impacts (in particular but not exclusively) in respect of socio-economic factors, traffic, noise, visual effects, and amenity and recreation as well as specific issues in respect of the European Site and protected species which are dealt with in section IV above.

VI. CONSIDERATION OF THE APPLICATION

6.1 The account of the Secretary of State’s consideration of the ER below focuses on those matters on which he takes a materially different view from that expressed by the ExA. Since neither sub-paragraph (a) nor (b) of regulation 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 applies in respect of the view which he has formed on any of these matters, he is not required to notify interested parties to give them an opportunity to make further representations under regulation 19(3) before taking his decision on the Application.

6.2 Following the closure of the examination on 2 February 2013, no representations were submitted. The Secretary of State does not consider that he requires further information on which to take a decision with respect to the Application.

6.3 THE CASE FOR DEVELOPMENT

6.3.1 The policy and legal context of the Application

6.3.1(i) It is critical that the UK continues to have secure and reliable supplies of electricity. An increasing proportion of those supplies need to come from low carbon sources. It is Government policy that renewable sources of energy, such as biomass, should be able to contribute as much as possible to the UK’s new electricity generating capacity. The policy background to the

need for new capacity generally, and new renewable power in particular, is set out in Parts 2 and 3 of Overarching Energy National Policy Statement (“NPS”) EN-1 and in section 2.5 of NPS EN-3 (renewable energy infrastructure).

Paragraph 3.4.5 of EN-1 states:

“Paragraph 3.4.1 above sets out the UK commitments to sourcing 15% of energy from renewable sources by 2020. To hit this target, and to largely decarbonise the power sector by 2030, it is necessary to bring forward new renewable electricity generating projects as soon as possible. The need for new renewable electricity generation projects is therefore urgent.”

6.3.1(ii) Paragraph 2.5.1 of NPS EN-3 makes it clear that the combustion of biomass for electricity generation is likely to play an increasingly important role in meeting the UK’s renewable energy targets.

6.3.1(iii) The NPSs demonstrate strong Governmental policy in favour of new renewable development. They do so predominantly because of the national and wider benefits of such development. However, the NPSs make clear that consideration of applications for new development must take full account of the local impacts of such development, and the Act gives the Secretary of State a discretion to refuse to grant development consent, even where it would otherwise be consistent with the NPSs to grant consent, if he considers that the adverse impact of a proposed development would outweigh its benefits (sub-section 104(8)).

6.3.1(iv) Although in policy terms the National Planning Policy Framework (“NPPF”) is not the primary point of reference for his decision, in so far as it does not have the same status as the NPSs, it is a relevant matter. The Secretary of State notes in this regard that a decision to grant consent in respect of the Application would be consistent with the Government’s commitment to sustainable development set out therein.

6.3.1(v) The Secretary of State has no reason to disagree with the ExA’s conclusion that the matters raised by Northumberland County Council in their Local Impact Report are not an obstacle to the granting of development consent and that the Blyth Biomass project conforms with extant local plan policies [ER 4.2 (a)].

6.3.1(vi) Taking account of the matters below and in the Annexes to this letter (including in particular the mitigation measures included), the Secretary of State has formed the view that it would be consistent with the NPSs to grant consent in respect of the Application on the terms of the Order (in its final form – see Annex B), and that the adverse impacts of the Blyth Biomass project would not, in any event, outweigh its benefits.

6.4 MODIFICATIONS TO THE ORDER

6.4.1 Benefit of Order

The Secretary of State has noted the reasons why article 7 of the Order as proposed by the ExA allows for the benefit of the Order to be transferred to another statutory undertaker without his consent [ER 6.22]. However he is of the view that while transfer without recourse to the Secretary of State is acceptable for the purpose of provisions dealing with compulsory acquisition (subject to its terms) it is necessary in order to guarantee the effectiveness of each of the Requirements of the Order and the commitments given by the Applicant that he retains oversight of any proposed transfer of the other terms by means of requiring his consent to such a transfer. The Secretary of State considers that this is necessary to ensure that necessary mitigation works for example will continue to be undertaken in accordance with the commitments given by the Applicant. He considers this is necessary in order for him to determine that his conclusions on the impact on the European site or protected species remain valid (see section IV above).

6.4.2 Piling and vibration

6.4.2(i) The Secretary of State welcomes the ExA's proposed Requirements included to ensure the reduction of the level of noise and vibration emanating during piling works and impacting on residents of North Blyth and local fauna to an acceptable level.

6.4.2(ii) The Secretary of State notes however that Requirements 30 - 32 of the Order (as proposed by the ExA) make provision for three ostensibly separate conditions dealing with this matter. He has concluded that Requirements 30 – 32 could be combined in such a manner so as to make it clearer to determine when and where piling can be undertaken in relation to the Blyth Biomass project. The Secretary of State's new composite Requirement 29 seeks to achieve this while at the same time safeguarding the amenity of local residents and his conclusions on the impact the European site(see section IV above).

6.4.3 Flood risk assessment

6.4.3(i) There are three categories of Flood Risk Zone: Flood Zone 3 where there is a high probability of flooding, Flood Risk Zone 2 where there is a medium probability of flooding and Flood Risk Zone 1 where there is a low probability of flooding. Electricity generating stations are classified as essential services for the purposes of national planning policy² and should, wherever possible, be sited in the lowest Flood Risk Zone available – or failing that be able to operate during periods of flooding. The site of the Blyth Biomass project is partly within a Flood Risk Zone 3 and therefore subject to a “Sequential Test”

² See for example: PPS25 (Table D2)

<http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement25.pdf>

and an “Exception Test”. A Sequential Test is undertaken to ensure that no other reasonably available sites are in fact available for a development within areas or zones of lower flood risk. An Exception Test has to demonstrate that the development is able to operate during periods when the site is flooded.

6.4.3(ii) The Environment Agency acknowledges that the flood risk assessment undertaken by the Applicant includes a Sequential Test but is unable to confirm whether or not it has been passed as that is for the decision maker (i.e. the Secretary of State) to determine [ER 3.51]. The ExA concludes that the Applicant has made an adequate assessment of flood risk and that – if the Blyth Biomass project goes ahead – the flood risk should be minimal. In these circumstances the question of whether there might be other sites available with lower flood risk is not relevant [ER 3.52].

6.4.3(iii) In order to comply with national policy³ in this regard the Secretary of State has considered whether any part of the Blyth Biomass project which is to be situated in Flood Zone 3 could interfere with the operation of the station if it were to become inoperable due to flooding and therefore needs to be relocated to a lower Flood Zone area. He has determined that the main processes and infrastructure which could be affected is the delivery of fuel by ship and the cooling water intake pump house. While the loss of delivery by ship would be unfortunate it should not cause any reduction to the operation of the Blyth Biomass project as the fuel could be delivered by road and the six fuel storage sheds would have sufficient capacity until such time as any extreme flooding had subsided. In order to support this however, the Secretary of State has decided to amend Requirement 38(2) (delivery of fuel by road) to take deliveries by road during flooding outside the limits requiring the Applicant to give notice to the local planning authority and highways authorities in respect of a traffic mitigation plan, i.e. treat as an emergency situation.

6.4.3(iv) The Secretary of State takes the view that the siting of the pump house is more problematic as its failure would cause the closure of the Blyth Biomass project due to a lack of cooling water. The Secretary of State notes that the Applicant’s flood risk assessment indicates that owing to the design of the Blyth Biomass project and the constraints of the site it is not considered feasible to move the pump house to another part of the site (i.e. to a Flood Zone 1 area). However the Secretary of State also notes that the Applicant’s flood risk assessment requires the pump house to be designed for water compatibility and constructed to a standard which will withstand the maximum water depth and wave inundation. The Secretary of State has therefore concluded that provided Requirement 19 (flooding – mitigation) is included in the Order, the operation of the Blyth Biomass project would not be compromised and the Sequential Test and Exception Test are satisfied, and that no consideration of assessing alternative sites is required.

³ See for example PPS25 and section 5.7 of EN-1

6.4.4 Flood warning and evacuation plan

Requirement 39 of Schedule 4 to the Order (version as recommended by the ExA) concerns the production of an evacuation plan to be approved in the event of flooding prior to Blyth Biomass project being brought into commercial use [ER 6.48]. Due to the fact that the scope of this Requirement is limited to preventing the Blyth Biomass project from entering into *commercial use* before a flood warning and evacuation plan has been drawn up, it is arguable that contractors working at the *construction* phase will fall outside any such scheme. This suggests that the construction workforce would have to draw up a separate plan which risks giving rise to confusion between plans therefore placing staff in danger if flooding occurs. It is the Secretary of State's view that, in the event of flooding at the site, any evacuation plan should also cover the construction phase (which is in fact when most workers will be on site). He has therefore decided to amend recommended Requirement 39 (in the final Order this now numbers as Requirement 20) to reflect this change.

6.4.5 European protected species

6.4.5(i) Requirement 28 of Schedule 4 to the Order (version as recommended by the ExA) concerns the making of a further assessment of the Blyth Biomass project site regarding whether conditions have changed sufficiently to make the site suitable for European protected species. This provides that the assessment must be undertaken if works on the site have not commenced within two years of the date of the environmental statement submitted with the Application.

6.4.5(ii) The Secretary of State believes that such a requirement needs to be tighter and that an assessment should be carried out prior to work starting on the site irrespective of whether that takes place within two years of the environmental statement. He takes this view in the knowledge that a protected species could take up residence on the site at any time and it would be best to have any measures in place in advance, for example a new habitat to relocate the protected species to, in order to leave enough time for the undertaker to obtain the necessary protected species licence (if required) for their handling and/or removal. He has therefore decided to amend Requirement 28 (in the final Order this now numbers as Requirement 27) to reflect this change.

6.5 OTHER MATTERS

6.5.1 Traffic and Transportation

6.5.1(i) The Secretary of State accepts that the construction of the Blyth Biomass project would result in a substantial increase in traffic in the area. It is also clear that the delivery of the fuel stock by road also has the potential to result in a substantial increase in traffic. This impact on local amenity would, of course, extend beyond the construction period and possibly through to the completion of the decommissioning of the Blyth Biomass project.

6.5.1(ii) The Secretary of State has given careful consideration to the impact of traffic movements on the residents of North Blyth, particularly those living in close proximity to the Port and along the route which the bulk of traffic would take. Overall he agrees with the ExA's conclusions that there would be an increase in traffic resulting in an adverse impact on the amenity of the residents of North Blyth [ER 4.2(f)]. He is also in agreement with the ExA that those impacts would be lessened by implementing the measures contained in the unilateral undertaking under section 106 of the Town and Country Planning Act 1990, as amended (section 106 undertaking), and the agreement under section 278 of the Highways Act 1980 (section 278 agreement) to improve pedestrian safety. The ExA concluded that the Secretary of State should not grant development consent until the section 278 agreement had been finalised [ER 6.85] and that the works contained in the section 106 undertaking, whilst not in his view essential, were important [ER 6.91]. The Secretary of State has been informed that the section 106 undertaking was finalised on 1 February 2013 and the section 278 agreement on 23 May 2013 and therefore there is no impediment to him granting development consent to the Blyth Biomass project on traffic grounds.

6.5.2 Compulsory Acquisition Powers

6.5.2(i) The Application seeks compulsory acquisition powers and was accompanied by a Statement of Reasons, a Funding Statement, a Book of Reference and Land Plans showing the 16 plots of land referred to in the Book of Reference.

6.5.2(ii) The Secretary of State notes that Chapter 5 of the ExA's report considers the Applicant's request for compulsory acquisition powers. On the question of whether or not compulsory acquisition powers should be given, the ExA concluded:

"5.58 The ExA therefore concludes that a compelling case in the public interest has been demonstrated adequately. The ExA also concludes that the interference with human rights is lawful, in the public interest and proportionate."

6.5.2(iii) There is one issue which the Secretary of State has had to consider since the close of the examination, namely land in which there is a Crown interest [ER 5.26]. The Book of Reference identifies Parcels 6A and 6C as plots of land where the Crown has an interest. Section 135 of the Planning Act 2008 requires that the appropriate Crown authority must have given its consent for inclusion of provisions allowing the compulsory acquisition of interests in Crown land (section 135(1)) or for inclusion of provisions which apply in relation to Crown land, or rights benefiting the Crown (section 135(2)).

6.5.2(iv) Whilst the Order does not authorise the compulsory acquisition of the Crown interests in Parcels 6A and 6C (mentioned above), the consent of the

Crown Estate (the relevant Crown authority) was obtained under section 135(2) for the inclusion provisions applying generally in relation to Crown land or right benefitting the Crown.

6.5.3 Human Rights

The Secretary of State's decision on the Application is one which must be taken in accordance with the relevant requirements of the Human Rights Act 1998. The making of an Order, including provisions for compulsory acquisition, engages, most notably, Article 6 of the European Convention on Human Rights ("ECHR") and Article 1 Protocol 1 ECHR. He is satisfied that the procedures followed in relation to the Application are compatible with the ECHR rights of interested parties, noting in particular the conclusion of the ExA contained in paragraph 5.58 of his report, namely:

"... The ExA also concludes that the interference with human rights is lawful, in the public interest and proportionate."

6.6 SCREENING FOR THE PURPOSES OF THE EQUALITY ACT 2010 ("the 2010 Act")

6.6.1 In reaching his decision on the Application, the Secretary of State has had regard to the three elements of the public sector duty described in section 149 of the 2010 Act which came into force on 6 April 2011. In respect of certain "protected characteristics" (age; disability; gender reassignment; marriage and civil partnerships⁴; pregnancy and maternity; race; religion and belief; sex; and sexual orientation), public authorities must have due regard in the exercise of their functions to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
2. advance equality of opportunity between people who share a protected characteristic and those who do not; and
3. foster good relations between people who share a protected characteristic and those who do not.

6.6.2 His assessment of the Blyth Biomass project in this respect is that it is not likely that there would be a disproportionate impact in relation to any of the protected characteristics. He does not therefore consider that the development and operation of Blyth Biomass project 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.

⁴ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

6.7 MATTERS ARISING SINCE CLOSE OF EXAMINATION ON 2 FEBRUARY 2103

No representations have been made to the Secretary of State since the close of the examination period, either directly or relayed by the Planning Inspectorate.

6.8 OVERALL SUMMARY

The Secretary of State recognises that some people, both local residents and others, may disagree with the Government's policy on new biomass fuelled power stations and/or with some or all of the Applicant's proposals in respect of the Blyth Biomass project. Whilst he understands the extent of the adverse impacts which will occur in the vicinity of the Blyth Biomass project, both during construction and operation, he is of the view that the range of mitigations and controls provided for in the Order, the section 106 agreement and the section 278 agreement will be effective in reducing the local impacts of the project to an acceptable level. In his view, any adverse effects are outweighed by the Blyth Biomass project's potential contribution to renewable electricity generation which, as referred to above, is of crucial national importance.

7. CHALLENGE TO DECISION

The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached to this letter.

8. PUBLICITY FOR DECISION

The Secretary of State's decision on this Application is being publicised as required by section 116 of the Act and regulation 23 of the 2009 Regulations.

Yours sincerely

Giles Scott
Head, National Infrastructure Consents

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an Application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. The North Blyth Biomass Power Station Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/north-east/port-blyth-new-biomass-plant/>

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