



Department for  
Business, Energy  
& Industrial Strategy

1 Victoria Street  
London SW1H 0ET

T +44 0300 068 5677  
E [Beiseip@beis.gov.uk](mailto:Beiseip@beis.gov.uk)

[www.beis.gov.uk](http://www.beis.gov.uk)

Jonathan Maginness  
Planning Consultation  
Axis P.E.D Limited  
Wilmslow  
Cheshire  
SK9 5BB

6 December 2022

Dear Mr Maginness,

**ELECTRICITY ACT 1989**

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)**

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

**LOSTOCK SUSTAINABLE ENERGY PLANT (“LSEP”), LOSTOCK WORKS, WORKS LANE, NORTHWICH, CW9 7NU**

**1. THE APPLICATION**

- 1.1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the application dated 1 October 2021 (“the Application”) on behalf of Lostock Sustainable Energy Plant Limited (“the Applicant”) to vary the section 36 consent and deemed planning permission granted by the Secretary of State on 2 October 2012 (the “Original Consent”) that was subsequently varied on 10 July 2019 (“the Varied Consent”). The Applicant currently operates the LSEP under the Varied Consent.
- 1.2. The Application seeks to increase the consented annual waste tonnage throughput from the current allowance of 600,000 tonnes per annum (“tpa”) to 728,000tpa. To facilitate the proposed increase in waste fuel throughput, the Application seeks to permit increased HGV movements to and from the LSEP site from the consented 131 HGV arrivals (262 round trips) per weekday, to up to 217 HGV arrivals (434 round trips) per weekday. To allow a greater degree in flexibility in the delivery of waste fuel to the LSEP, the Application also seeks to extend the HGV delivery hours, from the current position of 07:00 – 19:00 on weekdays, to 07:00 – 23:00 on weekdays.
- 1.3. The Original Consent was supported by an Environmental Statement. Whilst this Application does not involve any physical development, it does seek to increase the volume of waste throughput, the permitted number of HGV movements, and the

permitted HGV delivery hours. An Environmental Impact Assessment (“EIA”) Scoping Report was submitted by the Applicant in March 2021 to the Secretary of State. The Secretary of State provided a Scoping Opinion to the Applicant in May 2021. The Scoping Opinion has formed the basis of the updated Environmental Impact Assessment Report (“EIAR”) which has been submitted as part of this variation Application, in accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (as amended) (“the EIA Regulations”). The updated EIAR has assessed the likely environmental effects of the proposed changes during operation.

## **2. SUITABILITY OF THE SECTION 36 VARIATION PROCEDURE FOR PERMITTING THE PROPOSED VARIATION**

- 2.1. 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”.*

- 2.2. The section 36 variation procedure does not allow a change to 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.
- 2.3. The Secretary of State notes that the Application included a re-assessment of a number of environmental topics, which have been reported on in the EIAR. As noted, the Applicant has advised that the EIAR has been informed and carried out in accordance with the Secretary of State’s Scoping Opinion issued on 12 May 2021.
- 2.4. The Secretary of State notes that the Application would not be fundamentally different in physical character or physical scale from the Original Consent, is in keeping with the guidance note for the section 36 variation procedure, and that it is therefore appropriate for this Application to be considered under the section 36 variation procedure.
- 2.5. The 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, Chester West and Chester Council. The Application was also subject to public consultation between 4 November 2021 and 2 December 2021.

### **3. THE SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION**

- 3.1. Regulation 6 of the EIA 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 EIA Regulations.
- 3.2. As noted in paragraph 2.3 above, the Application included a re-assessment of a number of environmental topics, which have been reported on in the EIAR. The Applicant has advised that the EIAR has been informed and carried out in accordance with the Secretary of State's Scoping Opinion issued on 12 May 2021.

### **4. ISSUES RAISED DURING CONSULTATION**

- 4.1. The consultation period for this Application commenced on 4 November 2021. The deadline for response was 2 December 2021. The application was published in the London Gazette and in the Northwich Guardian so that any person wishing to make representations on the application to the Secretary of State could do so.
- 4.2. Representations were received by the Secretary of State from Chester West and Chester Council ("CWACC"), Cheshire Anti-Incineration Network ("CHAIN"), Cheshire Fire and Rescue Service ("CFRS"), Cheshire Wildlife Trust ("CWT"), the Environment Agency ("EA"), the Environmental Services Association ("ESA"), Historic England ("HE"), the Health and Safety Executive ("HSE"), Lach Dennis and Lostock Green Parish Council ("LDLGPC"), Lostock Gralam Parish Council ("LGPC"), National Highways, NATS (air traffic control), Natural England ("NE"), Northwich Town Council ("NTC"), Transition Northwich, and the UK Health Security Agency ("UKHSA").
- 4.3. In addition to these responses the Secretary of State, received objections from Councillor Louise Gittins, Councillor Sam Naylor, Ester McVey MP and Mike Amesbury MP, 234 e-mails from members of the public and 206 letters from residents.
- 4.4. The points raised in the representations are summarised below along with the Secretary of State's consideration of the issues raised.
- 4.5. Responses to the consultation are available on the Applicant's project website at: <https://lostocksep.fccenvironment.co.uk/planning-application/>
- 4.6. CWACC are the relevant planning authority for this Application. On 30 November 2021, Councillor Louise Gittins submitted a response to the Secretary of State on behalf of CWACC, ahead of CWACC submitting its formal response on 23 December 2021. The letter of 30 November 2021 raised concerns about a number of issues, including in relation to the burning of plastic, the fact that LSEP plays no part in CWACC's own waste processing plans, that transport has been permitted by road but that there is a serviceable railhead at the site, and that the road network in and out of the site cannot cope with the planned extra traffic.
- 4.7. In its formal response, CWACC also confirmed its objection to the Application. Its response noted a continuing concern about the changes in the volume and composition of traffic and the potential effect on the perceived safety of walking, cycling, and discouraging some residents from active travel. With regard to air quality, odour and human health, CWACC noted that all emissions have been calculated as negligible,

except for PM2.5 which is measured as slight adverse for a few receptors close to the A350. It was also noted that the Applicant did not appear to consider possible health impacts of Electric and Magnetic Fields (“EMF”), and CWACC requested that the potential impacts be assessed or justification be provided for this being scoped out of the Application. However, CWACC confirmed that they do not have concerns related to landscape matters or noise and vibration. CWACC noted that the socio-economic assessment remains the same as the original submission and as such considers there are no additional factors relating to the level of investment, job creation, and local supply chain to be considered, and further notes that there is an existing obligation under the Unilateral Undertaking dated 30 November 2011 to provide for local employment.

- 4.8. CWACC commissioned WSP in its capacity as a consultant to produce a Technical Note (“TN”) on transport and highways matters related to the Application. WSP undertook a review of the Chapter 4 (Traffic & Transport) of the EIA and the associated Transport Assessment (“TA”). In their formal response of 23 December 2021, CWACC provided that the TN identified a number of highway issues and concerns that have not been suitably addressed or mitigated and therefore CWACC consider the proposal to have detrimental impact on the highway and in particular on pedestrians, cyclists and other more vulnerable road users.
- 4.9. With regard to junction impacts, WSP note that the northern arm of the A556 / A530 roundabout is above capacity in the 2023 and 2028 ‘Do-nothing’ and ‘with development’ scenarios. The 2028 with development scenario increases queue length on the northern arm by 20 Passenger Car Units (“PCU”) in the AM peak, and by 29 PCUS in the PM peak. This also notes that modelling of the proposed improvement works, agreed as part of the consented LSEP development has been undertaken, with the improvements resulting in a forecast that the junction will operate above the practical capacity threshold in the 2028 scenarios in both peak periods but without the significant queues forecast prior to the improvement works. WSP note that an HGV PCU factor of 2.0 has been applied, but that higher values are often recommended, for example in TfL’s Traffic Modelling Guidelines. WSP advise that, given the high proportion of large articulated waste vehicles anticipated, a higher value may be appropriate.
- 4.10. WSP also provide a Personal Injury Accident analysis, in which it notes that the proposals would increase the proportion of HGVs along Griffiths Road and King Street in particular, and would increase the exposure of vulnerable road users (i.e. cyclists and pedestrians) to HGV traffic by 66% versus the existing permitted HGV volumes. WSP suggest that there is an opportunity to reinstate and/or widen the footway to a minimum 2.0m from the site access to the Broken Cross junction. WSP note that on its site visit of 24 November 2021, the footway from Penny’s Lane south to approximately the petrol station is less than 2.0m wide and is reduced further by overgrown verges/hedges on third party land, in contrast to Table 4.4 (see Chapter 4 of the ES), which states that ‘adequate footways are in place on both sides of the carriageway’. WSP question the link sensitivities provided by the Applicant in Table 4.4, with the stated sensitivities for Griffiths Road and King Street on the A530 not being ‘negligible’. WSP consider that these sensitivities should be reconsidered. WSP note that additional HGV movements associated with the increase in tonnage and throughput would increase flows on Griffiths Road and King Street by 35% and 22% respectively, and that paragraph 4.4.6 of the ES notes that impacts are anticipated to be moderate on these links. In light of these comments about sensitivity, WSP consider that residual effects on these links may be higher than stated.

- 4.11. WSP also note that Condition 11 of the Varied Consent requires the Applicant to pursue opportunities to utilise the existing railhead where economically viable, and advises that it may be appropriate to consider requesting that the wording is strengthened to encourage its use in future. WSP noted that information has been provided by the Applicant to justify why the railhead is not in use and is likely to remain so in the future, but that a review of that information was beyond the scope of the Technical Note produced by WSP.
- 4.12. WSP highlight policy set out in Paragraph 104 of the National Planning Policy Framework, the government's 'Gear Shift (2020)' document, and STRAT10 of the CWACC Local Plan (Part 1) (2015). WSP state that, given the policy requirements highlighted, and the shift towards prioritising and protecting vulnerable road users since the time of the original consent, it is considered that the Applicant should demonstrate that these adverse effects are appropriately and proportionately mitigated.
- 4.13. In its conclusions and recommendations, WSP set out requests for additional information and clarification from the Applicant. WSP also states that it considers that the routes forecast to see increase in HGVs at the magnitude stated in the TA and ES have a higher sensitivity to the changes in the volume and proportion of HGVs than stated, and that this is considered likely to result in detrimental effect on walkers, cyclists and other more vulnerable road users in particular.
- 4.14. CWACC's response highlighted concerns raised by local ward members and local residents. These concerns included the fact that a previous variation to the site was to increase the capacity of the plant from 60MW to 90MW without the need for more fuel and traffic, and that this "appears to have been false as the request is now to increase the input of waste to achieve this [increase in capacity]".
- 4.15. CHAIN object to the proposals. The response from CHAIN states that: residual waste volumes have continued to decrease in Cheshire whilst recycling rates are one of the highest in the country; that the incineration of waste is not renewable; that the additional 464 HGV diesel movements will worsen the traffic situation and contribute to a decrease in air quality in this area; and that a full safety assessment/hazard and operability study has never been carried out and should be completed before any decision on expansion is considered.
- 4.16. CFRS commented that the implications of the increase in waste throughput on fire safety arrangements is not clear and that CFRS had not been consulted as of yet as a statutory consultee under the Building Regulations 2010.
- 4.17. CWT confirmed that its original comments had been considered in full and that it had no further comments in regards to the Application.
- 4.18. The EA provided a late response on 22 December 2021. The EA notes that the Application makes no reference to steam or heat output and its supply to the neighbouring soda ash works facility. The EA notes that the EIAR does not include how capacity changes may impact upon steam and heat generation, and that steam changes will need to be addressed during the Environmental Permitting Regulation permit variation application that is required in addition to the Application for the changes to be carried out. The EA notes that the EIAR states that there are improvements to air quality based on new model input parameters but that the EA has not validated the latest model and cannot therefore confirm this is the case. The EA encourages twin tracking of permit

applications and this Application to ensure it is able to validate the parameters and outputs from any new Air Quality models used.

- 4.19. ESA wrote to the Secretary of State on 30 November 2021 in support of the Application. In its letter, the ESA commented that each tonne diverted from landfill to the new facility will save around 200kg of CO<sub>2</sub> based on current landfill waste compositions and noted that decarbonising waste treatment will require us to stop sending organic material to landfill, stop plastics going to energy from waste, and to connect these facilities to district heating networks where possible, and deploy carbon capture at all feasible locations. The ESA also advise that its Net Zero Strategy published in June 2021 will enable the sector to reach net zero by 2040, eliminating 35 million tonnes of CO<sub>2</sub> currently generated by the industry's activities.
- 4.20. Historic England confirmed that it had no objection to the proposal, noting that the Application would not increase the physical footprint of the LSEP and that the appearance of the facility would not change.
- 4.21. HSE note that the proposed development is located within HSE's land-use-planning consultation zones for two major accident hazard pipelines, and that there is potential to initiate a major accident at the major accident hazard pipeline. HSE suggest that the EIAR should show that the operator of the pipeline has been consulted regarding the following issues or that these issues have been considered in the assessment: the development restricted area due to the pipeline, and ensuring the integrity of the pipeline and protecting the pipeline from development and operational works. HSE also note that the proposed development is located within HSE's land-use-planning consultation zones for two major hazard sites, Ineos Chlor Enterprises Condition Plant and Thor Specialities. HSE state that this indicates that the proposed development could be vulnerable to harmful effects from an industrial major accident at the nearby major accident hazard establishment or pipelines.
- 4.22. LDLGPC object to the Application. In its response, LDLGPC note that the road that leads to the plant is wholly unsuitable for the current volume of traffic, and advise that there is no option to widen the road at any point, which is of concern for the safety of pedestrians. LDLGPC advise that when two HGVs are passing there is nowhere for them to avoid collision unless they mount the pavement and put pedestrians in danger. LDLGPC highlights that the fact that all waste being brought in by HGV was the worst-case scenario presented in the original 2010 Traffic Assessment, and that there has been no mention of the railhead actually being used because it is not financially viable. LDLGPC also notes its concerns that there appears to be no increase in the number of jobs from the additional throughput and therefore no direct benefit to the community impacted.
- 4.23. LGPC's response states that the Parish "feels duped by the [energy from waste] plant", as the original permitted output was 60MW, but that subsequent permission was granted to increase the output to 90MW as it was advised that this could be achieved by better technology rather than an increase in waste, and that it was not known that this variation was paving the way for a further application to increase the permitted capacity by 128,000 tonnes. LGPC ask why the government is allowing larger energy from waste plants to be built in residential areas in the North West compared to the South. LGPC consider that Northwich should not have to shoulder the burden of an excessively sized energy from waste plant, and states that Northwich produces less than 10,000 tonnes

of non-recyclable waste per year and that CWACC sending 66,853 tonnes of waste not for recycle in 2018/19.

- 4.24. National Highways, NATS and Natural England's responses confirmed that they had no objection to the proposal.
- 4.25. NTC objects to the Application. Its response highlighted their concerns with planning creep, noting that LSEP was granted a variation to the original consent to increase the operating capacity of the plant from 60MW to 90MW but with no increase in input fuel and no increase in traffic. NTC states that the Applicant postulated that new energy from waste technologies meant that a 50% improvement in efficiency would be possible, but now considers this to have been false as the Applicant is asking for a 21% increase in the input fuel. NTC note that the proposal has an increase of vehicle movements by 65% and over a working day extended by 33%, to support a tonnage increase of only 21%, and the output of the plant increasing by just 14%. NTC express concern that they are going to see many more changes to the way the plant will operate in the future. NTC also express concern with the candour of LSEP and note that both CWACC and Cheshire East have long term contracts with another energy from waste site operated by Viridor and that no locally produced waste will be available. NTC also raise concerns with the number of HGV movements, air quality impacts, and concerns around vehicle waiting.
- 4.26. Transition Northwich's response noted deep concerns with the Application, and highlighted concerns around pollution, congestion, and the likelihood of serious road accidents.
- 4.27. UKHSA's response noted that it is encouraging to note that the updated air quality modelling does not identify any significant exposures to pollutants and does not identify any significant risks to human health, and that the emissions from the process will be managed by an environmental permit. It advises that based on the submitted documentation and compliance with regulatory requirements, in terms of air quality, they are satisfied that the increased capacity should not pose a significant risk to public health. UKHSA notes that, in terms of traffic impacts, there is a substantial increase in HGV movements associated with the Application, with an increase of delivery hours of 4 hours a day, which would allow vehicle movements for 16 hours a day from Monday to Friday. UKHSA also advise that their response to the Scoping Opinion consultation, issued on 16 April 2021, raised concerns regarding the lack of a full assessment of the impacts on non-vehicular road users, and that having reviewed the current submission, they cannot see any reference to this being considered, even though the number of vehicle movements has significantly increased. In terms of additional traffic, UKHSA note the potential for detrimental impacts on the local community and recommend that impacts and possible mitigation measures be discussed and agreed with the public health team at the Local Authority. UKHSA also note that the Application does not appear to have considered the possible impacts of EMFs, and requests that the potential impacts be assessed or, if scoped out of the Application, this decision be justified.

#### *Applicant's Comments on Consultation Responses*

- 4.28. The Applicant issued a letter dated 20 December 2021 to the Secretary of State responding to the letter of CWACC dated 30 November 2021.

- 4.29. On 23 February 2022, the Secretary of State invited the Applicant to respond to the consultation responses received and to provide any relevant further information. The Secretary of State requested that further information be provided to address the points raised in the responses, and advised that this should include (but was not limited to) further information to address the points identified in the response from CWACC (including the points raised on pages 9 and 10 of the WSP TN document submitted as part of this response), as well as to address the responses from the EA, the HSE, and the UKHSA. The Applicant provided its response to the Secretary of State on 1 April 2022.
- 4.30. In its response to the WSP TN, the Applicant submitted a Highways Technical Note (“HTN”). The HTN responds to matters raised by WSP and provides the points of clarification and additional information requested. The HTN also sets out proposed opportunities to improve pedestrian amenity along the A350 corridor via new and improved footpaths, with this presented as a plan in Appendix 2 of the HTN. The Applicant issued the HTN and proposed footway improvements to CWACC for their consideration on 25 February 2022. The Applicant notes its intention, should CWACC support the proposals, and the Application is approved that the improvements be delivered by a new, second Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990, mirroring the current off-site highway improvement works has been delivered pursuant to the original Section 36 consent.
- 4.31. Regarding the issue of link sensitivities raised by WSP, the Applicant responds that the assessment of link sensitivity was determined through professional judgement as prescribed in the IEMA guidance, but notes that additional opportunities to improve pedestrian and cyclist amenity along the A530 have been identified, as illustrated in Appendix 2 of the HTN. With regard to the PCU value used, the Applicant responds that a PCU factor of 2.0 is considered to be appropriate in this case.<sup>1</sup>
- 4.32. In terms of the requirement to pursue opportunities to utilise the existing railhead where economically viable, which was highlighted by WSP, the Applicant states that it would welcome the opportunity to make use of rail as a means of transporting waste to the site, but that there are few local authorities across the UK with the scale and urban concentration sufficient to be able to collect the extremely large volumes of waste necessary at a single collection point.
- 4.33. With regard to the need for a full assessment of the impact of non-vehicular road users, an issue which was highlighted by CWACC and UKHSA, the Applicant advises that the exact impacts have not been specified for both assessment or further assessment. The Applicant also provides that there is no acknowledgement that Chapter 4 of the EIAR provides a detailed assessment of the environmental effects of road traffic on pedestrian amenity, pedestrian delay, accidents and safety, and severance, which are topics directly related to non-vehicular road users. The Applicant notes that the assessment in Chapter 4 finds no unacceptable impacts on non-vehicle road users.

---

<sup>1</sup> The Applicant advises that national modelling guidance set out in WebTAG Unit 3.1 (paragraph D.7.2), identifies that a PCU value of 2.0 should be applied to HGVs on all non-motorway / all-purpose dual-carriageway roads"



- 4.34. In response to the issue of the assessment of EMFs, raised by CWACC and the UKHSA, the Applicant has provided an EMF Technical Note (“EMFTN”) which addresses the health impacts of EMFs from the electric plant at LSEP. The Applicant concludes that there will be no health impacts from EMF at the LSEP site through either the Varied Consent or through the Application.
- 4.35. In response to the issue of steam and heat output raised by the EA, the Applicant notes that the potential for LSEP to deliver heat export to neighbouring developments is discussed and covered within several paragraphs of the Support Statement to the Application and in the Heat Demand Investigation. LSEP would be capable of exporting up to 100 tonnes per hour of heat /steam to the neighbouring Tata Chemicals Europe chemical manufacturing facility (the current neighbouring plant) but Tata Chemicals Europe does not consider LSEP as its primary source of heat/steam.
- 4.36. With regard to the response from HSE, the Applicant advises that a Hazardous Substances Consent is not required and has thus not been applied for, and notes that it is already following HSE’s advice in relation to the relevant pipeline and confirms that there should be no vulnerability in relation to the hazard sites.
- 4.37. On 11 May 2022, CWACC provided its comments on the Applicant’s response of 1 April 2022. CWACC maintained its objection to the Application, and noted that:

*‘Overall, the impacts of additional HGV traffic and likely significance of residual effects remain and would have a detrimental impact on the highway and in particular on pedestrians, cyclists and other more vulnerable road users.*

*The proposed footway scheme, whilst welcomed and of benefit to pedestrian amenity, is not considered to mitigate the anticipated negative effects arising from the proposed development, and no scheme has been submitted by the applicant to demonstrate that the negative effects of the proposals could be mitigated. The Council therefore maintains its objection to the proposals.’*

- 4.38. CWACC’s response of 11 May 2022 included a Second Technical Note (“STN”) produced by WSP dated 6 May 2022. The STN summarises the key points raised. The STN notes the following unresolved issues:
- Point 1: details on calculation of HGV arrivals and departure profile for proposed additional HGV traffic.
  - Point 7: the TA presenting data relating to increases in HGVs for the peak hours. The impact of additional HGVs in terms of percentage increase should be presented for each hour between 0700-2300.
  - Point 8: the use of a higher HGV PCU value may be considered to reflect, for example, TfL and other guidance and anticipated sizes of delivery vehicles.
  - Point 9: the review of stated link sensitivities on Griffiths Road and King Street A530 and subsequent residual environmental effect.
  - Point 10: a) the original consent included a commitment for a “contribution made towards other highway improvements that will benefit pedestrian and residential amenity in the vicinity of the development”. Given the forecast percentage

increases in HGVs, poor pedestrian infrastructure, and adjacent residential areas (on King Street A530 for example) CW&C may wish to request proportionate improvements and/or contributions to benefit residential and pedestrian amenity on routes subject to increases in HGVs. b) Identify opportunities to improve conditions for pedestrians and cyclists i.e. increasing horizontal separation and ensuring minimum 2.0m footways available.

- Point 11: King Street Roundabout has a high degree of sensitivity to increase traffic flows, particularly on the northern arm. Sensitivity testing appropriate to determine likelihood and impact of additional HGV movements due to changes in vehicle composition/ hourly variations.
- Point 12: Condition 11 requires the applicant to pursue opportunities to utilise the existing railhead where economically viable. It may be appropriate to consider request that the wording is strengthened in this regard to encourage its use in future. WSP note that information has been provided by the applicant to justify why the railhead is not in use and is likely to remain so in the future. A review of that information is beyond the scope of this TN.

4.39. The STN provides the following conclusions:

*The original WSP Technical Note identified a number of matters that were considered to require further investigation in order for CW&C to properly assess the likely impacts of the amendments to the s36 consent and inform their representation to the Department for Business, Energy & Industrial Strategy (BEIS). WSP have undertaken a review of the Axis response titled "Response to WSP Review of Transport Assessment – 25 February 2022". WSP have considered the responses provided by Axis. Many of these address the matters raised by WSP in the initial response and are considered to be resolved.*

*Notwithstanding that, WSP's original comments made in relation to the impacts of additional HGV traffic and likely significance of residual effects, remain.*

*Primarily it is considered that the routes forecast to see increase in HGVs at the magnitude stated in the TA and ES have a higher sensitivity to changes in the volume and proportion of HGVs than stated; this is considered likely to result in a detrimental effect on walkers, cyclists and other more vulnerable road users in particular. These specific environmental effects include fear and intimidation, highways safety, pedestrian amenity, and severance. Furthermore, it is considered that hourly increases in HGVs (i.e. periods with lower baselines of HGV traffic) would incur higher environmental effects than those reported.*

*As stated in WSP's original Technical Note, in order to conform to national and local planning policy and guidance the applicant should demonstrate that the proposals would not have significant and unacceptable impacts on road users – particularly vulnerable users groups – and suitably mitigates negative environmental effects of the proposals. It is considered that the additional information, whilst providing clarity on some matters, does not address the overall concerns relating to the significance of residual environmental effects likely to be incurred as a result of the additional HGVs. Furthermore, the proposed footway scheme – whilst welcomed and of benefit to pedestrian amenity - is not*

*considered to mitigate the anticipated negative effects arising from the proposed development, and no scheme has been submitted by the applicant to demonstrate that the negative effects of the proposals could be mitigated.*

- 4.40. In an email of 13 May 2022, the Applicant noted that *'With regard to the local highway issues, the latest WSP Note (on behalf of CWACC) now concludes: Many of these address the matters raised by WSP in the initial response and are considered to be resolved'*. The Applicant also noted that it *remained 'in disagreement with WSP / CWACC on their position on what is effectively a single matter which has not been resolved'* and that *'It would appear that CWACC's previously non-specific objection, may now have become a highway specific point.'*
- 4.41. The Applicant submitted a further Technical Note on 10 June 2022, providing further survey data as part of this response to address outstanding issues identified by WSP including (but not limited to) the calculation of HGV arrivals and departures profile, the need to present the impact of additional HGVs in terms of percentage increase for each hour between 7am to 11pm, the need to use a higher HGV PCU value, the need to review stated link sensitivities on Griffiths Road and King Street A530 and subsequent residual environmental effects.

## **5. THE SECRETARY OF STATE'S CONSIDERATION OF THE APPLICATION**

- 5.1. The Secretary of State notes the objections received to the Application, including an objection from the Local Planning Authority, CWACC. The Secretary of State also notes the other consultation responses received that confirmed no objection, and the letter of support sent by the ESA.
- 5.2. The Secretary of State notes the further information provided by the Applicant in relation to the consultation responses, and the additional improvements proposed to the A350 corridor in the form of new and improved footpaths. The Secretary of State notes that the EIAR also concluded that the Varied Consent together with the Application will have potential benefits in reducing unemployment levels locally, particularly as a range of different job types, at different skill levels, would be provided. The EIAR concludes that "in the context of the wider Study Area economy, it is concluded that there would be major beneficial and significant effects". The Secretary of State further notes the findings of the Applicant's Carbon Assessment that concluded that the increase in throughput would provide a benefit of 159,989 tonnes of CO<sub>2</sub> equivalent per annum compared to the landfill counterfactual.
- 5.3. The Secretary of State notes the policy set out in National Policy Statement NPS EN-3, paragraph 2.5.25, which advises that Government policy encourages multi-modal transport, and that the Secretary of State should expect materials (fuel and residues) to be transported by water or rail routes where possible, but notes that whether such methods are viable is likely to be determined by the economics of the scheme. The Secretary of State notes the Applicant's consideration of the use of rail, but that ultimately there is no guarantee that the railhead available at the site will be used to deliver waste throughput. The railhead therefore cannot be considered as a benefit in the overall planning balance.
- 5.4. The Secretary of State also notes that the Varied Consent (approved in 2019) permitted an increase from 60MW capacity to 90MW capacity on the basis of improved efficiencies in technology, given that the summary and conclusions of the supporting statement

submitted as part of that 2019 Varied Consent, the Applicant stated *'the increase in efficiencies and thus increase in electrical power output for the same amount of throughput as that already consented is supported by National policy in the form of the NPSs.'* The decision letter for the 2019 Varied Consent noted *'that there will be no change in the main fuel source of the Varied Development'*. The Secretary of State considers that the rationale for the current application is therefore inconsistent with the basis upon which the 2019 Varied Consent was granted.

- 5.5. The Secretary of State notes that LSEP currently generates 67.3MW and that the increase in throughput would see this rise to 76.8MW. The Secretary of State notes the percentage increases set out in the NTC response (see paragraph 4.25 above), with the Application seeking to increase vehicle movements by 65%, over a working day extended by 33%, to support a tonnage increase of 21%, with the output of the plant increasing by 14%. The Secretary of State notes that the Application, in order to facilitate the proposed increase in throughput, proposes to increase the number of vehicle movements and the number of delivery hours on weekdays significantly.
- 5.6. The Secretary of State notes the relevance of paragraph 2.5.13 of NPS EN-3 to this Application. This paragraph states that: *'Throughput volumes are not, in themselves, a factor in IPC decision-making as there are no specific minimum or maximum fuel throughput limits for different technologies or levels of electricity generation. This is a matter for the applicant. However the increase in traffic volumes, any change in air quality, and any other adverse impacts as a result of the increase in throughput should be considered by the IPC in accordance with this NPS and balanced against the net benefits of the combustion of waste and biomass as described in paragraph 2.5.2 above and in Section 3.4 of EN-1.'* This wording is carried through to paragraph 2.7.3 of the draft NPS EN-3. In accordance with this the Secretary of State has carefully considered the implications of the increases in traffic volumes and the increased operating hours as set out in paragraph 7.2 below.
- 5.7. The Secretary of State also notes the relevance of paragraph 2.5.2 of the current NPS EN-3 which states *'The recovery of energy from the combustion of waste, where in accordance with the waste hierarchy will play an increasingly important role in meeting the UK's energy needs. Where the waste burned is deemed renewable, this can also contribute to meeting the UK's renewable energy targets. Further, the recovery of energy from the combustion of waste forms an important element of waste management strategies in both England and Wales.'* and the draft NPS EN-3 which states *'In accordance with the waste hierarchy, the recovery of energy from the combustion of waste, plays an important role in meeting the UK's energy needs. Furthermore, the recovery of energy from the combustion of waste forms an important element of waste management strategies in both England and Wales.'*

## **6. SECRETARY OF STATE'S CONSIDERATION OF OTHER MATERIAL ISSUES**

- 6.1 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 Application;
  - (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 Application and the Secretary of State has judged that the likely key environmental impacts are acceptable;

- (c) the views of the relevant planning authority, and all other relevant matters have been carefully considered;
- (d) the legal procedures for considering an application for a variation of the generating station consent and Planning Conditions have been properly followed; and
- (e) 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.

6.2 The Energy White Paper, Powering our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain relevant policy documents for the Secretary of State's consideration of the Application. The Secretary of State notes that the British Energy Security Strategy, published in April 2022, highlights the need to build a British energy system that is more self-sufficient and less dependent on foreign energy imports.

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

7.1 The Secretary of State has taken into consideration the representations made in response to the consultation. The Secretary of State notes that the relevant planning authority, CWACC, has continued to object to this Application. He has also carefully considered the information provided as part of this Application by the Applicant and the further submissions by the Applicant to the consultation responses.

7.2 The Secretary of State has considered the overall planning balance, and considers that the increase in the number of HGV movements and the proposed increase in delivery hours, as well as the premise upon which the Varied Consent was granted, weigh against the granting of the Application. As set out at paragraph 5.4 above, the rationale for the current application is inconsistent with the basis upon which the 2019 Varied Consent was granted. The Secretary of State notes the conclusions set out in WSP's STN, as set out at paragraph 4.39 above, which concludes that *'it is considered that the routes forecast to see increase in HGVs at the magnitude stated in the TA and ES have a higher sensitivity to changes in the volume and proportion of HGVs than stated; this is considered likely to result in a detrimental effect on walkers, cyclists and other more vulnerable road users in particular. These specific environmental effects include fear and intimidation, highways safety, pedestrian amenity, and severance. Furthermore, it is considered that hourly increases in HGVs (i.e. periods with lower baselines of HGV traffic) would incur higher environmental effects than those reported'*. Noting these environmental effects, the Secretary of State ascribes significant negative weight to the proposed increase in the number of HGV movements and significant negative weight to the proposed increase in delivery hours against the granting of the Application.

7.3 The Secretary of State gives moderate positive weight to the increase in electricity generating capacity from 67.3MW to 76.8MW, noting the contribution the Application

would make in terms of the need for greater self-sufficiency as set out in the BESS (see paragraph 6.2 above). The Secretary of State gives little positive weight to the socio-economic benefits of the scheme and moderate positive weight to the findings of the Applicant's Carbon Assessment (details of which are set out at paragraph 5.2 above).

- 7.4 The Secretary of State, having considered these factors, concludes that the harms of the Application, including those set out in paragraph 7.2 above, outweigh the benefits. The Secretary of State has therefore decided to refuse the Application.

## **8. THE SECRETARY OF STATE'S DECISION ON THE HOLDING OF A PUBLIC INQUIRY**

- 8.1 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.

- 8.2 CWACC, as the relevant planning authority, have continued to object to the Application.

### Conclusion

- 8.3 The Secretary of State has carefully considered the views of the relevant planning authority, along with the views submitted in response to the consultation. He takes the view that the Application for consent should be refused in light of the planning balance and the significant harms including those set out in paragraph 7.2 above associated with the Application. The Secretary of State is 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 Application.

## **9. EQUALITY ACT 2010**

- 9.1 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 (e.g. age; sexual orientation; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race) and persons who do not share it; and
- (c) the fostering of good relations between people who share a relevant protected characteristic and those who do not share it.

- 9.2 The Secretary of State has considered the potential impacts of granting or refusing the 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 and sees no evidence which suggests that such differential impacts are likely in the present case.

9.3 The Secretary of State does not, therefore, consider that either the grant or refusal of the 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.

## **10. HUMAN RIGHTS ACT 1998**

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

## **11. NATURAL ENVIRONMENTAL AND RURAL COMMUNITIES ACT 2006**

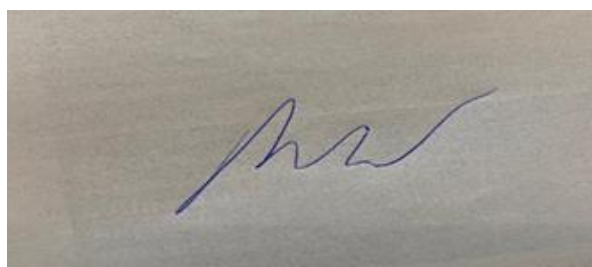
11.1 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has had regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when considering the Application.

11.2 The Secretary of State has also had due regard to conserving biodiversity and consider that the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989.

## **12. 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 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.

Yours sincerely

A photograph of a handwritten signature in blue ink on a light-colored background. The signature is stylized and appears to read 'DW'.

David Wagstaff OBE

Head of Energy Infrastructure Planning

Dept for Business Energy and Industrial Strategy (BEIS)