

**Department of Energy &
Climate Change**

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15 July 2009

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Tel. 0300 068 5680
Our ref: 01.08.10.04/351C

Dear Sir

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

APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A BIOMASS
FUELLED GENERATING STATION AT TEESPORT, TEESSIDE

I. THE APPLICATION

1.1 I am directed by the Secretary of State for Energy and Climate Change ("the Secretary of State") to refer to the application dated 23 July 2008 as amended on 18 December 2008 ("the application") on behalf of MGT Teesside Ltd ("the Company") for both the consent of the Secretary of State under section 36 of the Act ("section 36 consent") to construct and operate a 295 MW biomass fuelled generating station at Teesport, Teesside ("the development"), and a direction under section 90(2) of the Town and Country Planning Act 1990 ("section 90 direction") that planning permission for the Development be deemed to be granted.

1.2 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 ("the 2000 Regulations") the Company also submitted on 23 July 2008 documents, entitled "Tees Renewable Energy Plant Environmental Statement Volumes 1, 2 and 3 July 2008", "Tees Renewable Energy Plant Non Technical Summary July 2008", "Tees Renewable Energy Plant Design Access Statement July 2008" and "Tees Renewable Energy Plant CHP Assessment July 2008". The Company supplemented these documents with further documents as follows:

(i) "Tees Renewable Energy Plant Traffic Management - November 2008"; and

(ii) a letter on behalf of the Company from PB Power to Natural England dated 24 October 2008.

1.3 The documents describe the Development and give an analysis of its environmental effects. The documents are collectively hereafter referred to in this letter as the "Environmental Statement". The Environmental Statement, and its supplements, were advertised and placed in the public domain and an opportunity given to those who wished to comment on them to do so.

1.4 Redcar and Cleveland Borough Council ("the relevant planning authority") entered into discussions with the Company over terms on which it would be content for the Development to proceed. As a result of these discussions:

(i) 56 conditions ("the Planning Conditions") to be attached to any section 90 direction were agreed between the Company and the relevant planning authority; and

(ii) the Company, the relevant planning authority and other parties entered into an agreement under section 106 of the Town and Country Planning Act 1990, dated 6 April 2009, covering a waste heat feasibility study, employment, economic development and transport initiatives, off-site environmental improvements and renewable energy educational initiatives in the area ("The Section 106 agreement").

1.5 In view of the successful conclusion of these discussions the relevant planning authority has not maintained any objection to the Application providing that the Planning Conditions are imposed should the Secretary of State be minded to grant section 36 consent and issue a section 90 direction in respect of the Development.

II. SECRETARY OF STATE'S CONSIDERATION OF THE PLANNING CONDITIONS

2.1 The Secretary of State has considered the Planning Conditions carefully. He agrees that they are suitable for inclusion in any section 90 direction which he may give.

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

3.1 As indicated in paragraph 1.5 above, the relevant planning authority has not maintained an objection to the Application, and Secretary of State is therefore not obliged to cause a public inquiry to be held.

3.2 Paragraph 3(2) of Schedule 8 to the Act, however, requires the Secretary of State to consider all objections that he has received pursuant to the Electricity (Applications for Consent) Regulations 1990 (made under paragraph 3(1) of Schedule 8), ("the Applications Regulations"), together with all other material considerations, in order to determine whether it would nevertheless be appropriate to hold a public inquiry.

3.3 The Secretary of State has received no objections to the Application made under the Applications Regulations. However, a letter was received from the Royal Society for Protection of Birds ("RSPB"), which while supporting the Government's commitment to reaching its 2020 renewable energy targets and welcoming the Company's commitment to sustainable sources of biomass, sets out their view that only the Forestry Stewardship Council (FSC) certification currently provides sufficient certainty regarding the sustainability of timber. The Secretary of State notes that the RSPB also recommended that more information be provided to explain how the sustainability of energy crops will be secured within the UK and abroad. He also notes they consider this should include more information regarding how impacts on biodiversity, humans and natural resources will be assessed.

3.4 The Secretary of State has carefully considered the content of RSPB's letter. His comments are as follows:

3.5 The Secretary of State notes that it is proposed that biomass will be sourced from a variety of countries including the UK, other EU states and North America and the Company states in its ES that it is *'committed to ensuring that all biomass is certified using independent, internationally recognised standards for example those provided by the FSC. Certification standards will include criteria for best practice management of wildlife, positive- impact social policy and measurement of carbon lifecycle emissions as well as sustainability of forest production...'* On fuel from new plantations, the Company also states that it supports *'responsible regulation to prevent deforestation of virgin forest to create such plantations and in addition MGT will select biomass source companies based on the strength of their effective internal biomass trade regulations.'* The Company has also stressed that the project will be "project-financed", meaning that *'the project will borrow money from large international banks to finance the £400m construction cost. These loans are repaid over long periods of up to 25 years and this necessitates the establishment of long term, low-risk fuel supply arrangements with reputable forest companies, able to pass strict lenders due diligence criteria.'*

3.6 More generally on biomass sustainability, the Secretary of State notes that the RSPB has provided no evidence to support its view that only the FSC certification currently provides sufficient certainty regarding sustainable timber. He is aware that in 2006 the Department commissioned a report "Evaluating the Sustainability of Co-firing in the UK" (available at www.berr.gov.uk/file/file34448.pdf) to consider the sustainability of the various materials used in co-firing and this found *'the net carbon balance in the production, transport and use of biomass for co-firing is positive in almost all circumstances, including for both imported and domestic biomass'*. This is partly because the wide range of materials used for electricity generation tend to be wastes and residues from other processes rather than virgin crop and the report expects the practice to continue. The report also found that

'There is currently no evidence to suggest the market for biomass and co-products generally is leading to depletive/over extraction of the resources for co-firing. Indeed, there is evidence from the forestry industry in the UK that the forestry system would benefit from increased demand that would make thinning more financially viable. While the value of biomass wastes and residues remain a relatively small fraction of the value of the main product then co-firing is unlikely to be a driver of unsustainable biomass development.'

3.7 The Energy White Paper Meeting the Energy Challenge May 2007 acknowledged that *'It is important to ensure that co-firing and large dedicated biomass schemes are sustainable over the long-term. We will therefore require co-firers and developers of larger biomass power stations to submit to the regulator an annual report on the biomass they have used, its origins, and whether it has been sourced under existing codes of practice or accreditation schemes...'* The Government's Response to the Statutory Consultation on the Renewables Obligation 2009, has since set out arrangements for the provision of an annual sustainability report to the Office of Gas and Electricity Markets (Ofgem) on the biomass used in generating stations during the Obligation period. From April 2009, generators using biomass to generate electricity in stations with a net capacity greater than 50kW will be required to provide information including the origin of the biomass and whether it is from an 'Environmental Quality Assurance Scheme'. Ofgem has the discretion to postpone or even refuse, in certain circumstances, the issue of Renewables Obligation Certificates (ROCs) if that information is not provided. Government has also made clear that if there is evidence of significant unsustainable sourcing of biomass it will take action to prevent this.

3.8 In the longer term, the Secretary of State notes that efforts are also being made to develop international criteria and standards on biomass sustainability, such as CEN/TC 383 working group; the World Energy Council Biofuels Standards and Technologies Task Force and the Global Bio-energy Partnership (GBEP) Task Force on Sustainability and ongoing work at a European level to develop a sustainability standard for biomass under the Renewable Energy Directive. He also understands that this may lead to future changes to reporting requirements under the Renewables Obligation (RO). The Secretary of State is satisfied the Company will need to provide information on the sustainability of the biomass used in the proposed generating station to Ofgem and that they will also need to comply with any other requirements or restrictions that may arise by subsequent amendments to the RO.

3.9 With regard to energy crops from the UK and the RSPB's view that the Environmental Statement should consider the current land use of proposed planting areas, the Secretary of State refers to the grants process applicable to perennial energy crops grown in England. He notes that Natural England's Energy Crop Scheme provides grant to growers to subsidise establishment costs and that crops would not be commercially viable without this support. All grant applications are automatically subject to an environmental assessment as part of the administration process. A full Environmental Impact Assessment (EIA) may be necessary where the planting site is identified as uncultivated land or semi-natural habitat above certain size thresholds in accordance with the requirements of the EIA (Agriculture) (England) (No2) Regulations 2006. In cases where the planting site is identified as

permanent grassland or a semi-natural area, it may also be necessary for Natural England to make an assessment under the EIA Regulations. Should an EIA be required, Natural England will arrange for this to be carried out and will advertise the proposal on the public register. There is a provision for the details of all potential applications which might also require EIAs to be entered on a public register. All applications for short rotation coppice planting are placed on a public register by the Forestry Commission and are assessed using the same EIA determination process used for wood afforestation under the EIA (Forestry) Regulations, 1999. He considers therefore that RSPB's concerns about domestically sourced energy crops are, therefore, already addressed. Furthermore, any energy crops sourced from abroad would in the first instance need to comply with the legislative and environmental requirements of the country of origin. Energy crops would also be subject to the sustainability reporting requirements set out above. The Secretary of State also refers to Planning Conditions (45), (46) and (47), which place restrictions on the fuel type used in the operation of the Development and the quantity of biomass that can be delivered by road.

3.10 In view of the above, the Secretary of State is satisfied that further information on the sustainability of biomass fuel to be used in the operation of the generating station is not required before determining the application. While noting the RSPB's concerns, he is content that what is proposed by the Company is in line with current government policy and that there are mechanisms beyond the planning system for ensuring that the station is operated in a way that conforms to future Government policy in this area. The Secretary of State therefore considers biomass sustainability is not a ground for refusing consent and has decided that it would not be appropriate to include conditions limiting the use of biomass to certain biomass certification schemes.

Conclusion

3.11 The Secretary of State has carefully considered the views of the relevant planning authority and consultees, the comments of RSPB and others, the matters set out above and all other material considerations. He takes the view there is nothing further that needs probing and that it would not be appropriate to cause a public inquiry to be held into the Application.

IV. SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

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

4.2 The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination on the Application and that the Company has followed the applicable procedures in the 2000 regulations.

4.3 The Secretary of State has considered the environmental information carefully; in addition to the Environmental Statement, he has considered the comments made by the relevant planning authority, by those designated as statutory consultees under regulation 2 of the 2000 Regulations and by others.

4.4 Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Company has agreed to take or will be required to take either under the conditions attached to the section 36 consent or the Planning Conditions or by regulatory authorities including the EA, the Secretary of State believes that any remaining adverse environmental effects will not be such that it would be appropriate to refuse section 36 consent for the Development or the deemed planning permission.

IV. SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON A EUROPEAN SITE

5.1 The Conservation (Natural Habitats, &c) Regulations 1994 as amended ("the 1994 Regulations") require the Secretary of State to consider whether the Development would be likely to have a significant effect on a European Site, as defined in the 1994 Regulations.

5.2 The Secretary of State notes that the Development is located near to the Teesmouth and Cleveland Coast Special Protection Area and Ramsar Site and the Tees and Hartlepool Foreshore and Wetlands SSSI. However, he has been informed by Natural England that the location, scale and nature of the proposed development are such that it will not be likely to have a significant effect on their interest features and an "Appropriate Assessment" (AA) does not need to be undertaken by the Secretary of State pursuant to regulation 48 of the 1994 Regulations.

VI. SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER¹

6.1 The Energy White Paper 2007 ("Meeting the Energy Challenge") makes clear that the Government strongly support combined heat and power ("CHP"). The Application is covered by the Departmental published guidance¹ for all fossil fuelled power station proposals, requiring developers to demonstrate opportunities for CHP have been seriously explored before section 36 consent can be granted. The Secretary of State is satisfied that the Company has complied with those requirements. Consultants acting on behalf of the Department have assessed the proposal and are of the view that there is significant existing industrial heat demand within the vicinity of the proposed plant though there is also significant existing CHP capacity in the area and this is anticipated to increase in the near future. The Secretary of State notes that the Company has advised that it has identified a potential heat user situated on an adjacent site and there may be a possibility of connecting the plant to an industrial heat pipeline associated with the Wilton CHP scheme. He agrees with the Consultant's view that the Company be encouraged to

¹ This application is covered by DTI guidance CHP guidance dating from December 2006 (URN/06/2138).

contribution to 'provide or contribute towards a Waste Heat Feasibility Study exploring the potential to utilise waste heat from the Development (and/or biomass power stations in general) for use within the locality thereof (including use for domestic purposes)'.

6.2 However, notwithstanding the outcome of the feasibility study, in view of the Government's strong support for CHP and the use of heat, the Secretary of State does not wish to lose the opportunity to exploit potential heat demand which may arise in the future. To this effect he has decided to include a condition in any section 90 direction he may give which requires the Company to install the necessary infrastructure to enable the future supply of waste heat should such a heat demand arise ("the Heat Condition").

VII SECRETARY OF STATE'S DECISION ON THE APPLICATION

7.1 The Secretary of State considers the following issues material to the merits of the section 36 consent application:

- i) adequate environmental information has been provided for him to judge its impact;
- ii) the Company has identified what can be done to mitigate the impact of the proposed Development;
- iii) the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the Environmental Statement and he has judged that the likely environmental impacts are acceptable;
- v) the fact that legal procedures for considering a generating station application have been properly followed;
- vi) the views of the relevant planning authority, the views of others under the Applications Regulations, the views of statutory consultees under the 1994 Regulations and the 2000 Regulations, the environmental information and all other relevant matters have been considered; and
- vii) the proposed development is consistent with the Government's energy policy as set out in the Energy White Paper 2007, "Meeting the Energy Challenge" released on 23 May 2007 in respect of meeting diversity and security of supply for power generation.

7.2 The Secretary of State, having regard to the matters specified in paragraph 7.1 above, has decided to grant consent for the Development pursuant to section 36 subject to: (i) a condition that the Development shall be in accordance with the particulars submitted with the Application, and (ii) a condition as to time within which the Development must commence.

7.3 The Secretary of State believes that the Planning Conditions form a sufficient basis on which the Development might proceed, and therefore he

has decided to issue a section 90(2) direction that planning permission be deemed to be granted subject to the Planning Conditions.

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

IX. GENERAL GUIDANCE

8.1 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 application must be made as soon as possible and in any event not later than three months after the date of the decision. Parties seeking further information as to how to proceed should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6025/6655).

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

Yours faithfully

A handwritten signature in blue ink, appearing to read "R P Mellish".

Richard Mellish
Head of Development Consents and Planning Reform

Our ref: 01.08.10.04/351C

DEPARTMENT OF ENERGY AND CLIMATE CHANGE
ELECTRICITY ACT 1989
CONSTRUCTION AND OPERATION OF A BIOMASS FUELLED
GENERATING STATION AT TEESPORT, TEESSIDE

1. Pursuant to section 36 of the Electricity Act 1989 the Secretary of State for Energy and Climate Change ("the Secretary of State") hereby consents to the construction by MGT Teesside Ltd ("the Company"), on the area of land delineated by a solid red line on Figure 4.1, annexed hereto and duly endorsed on behalf of the Secretary of State, of a biomass fuelled generating station at Teesport, Teesside in the administrative area of the Borough Council of Redcar and Cleveland ("the Development"), and to the operation of that generating station.
2. Subject to paragraph 3(1), the Development shall be no more than 295 MW capacity and comprise all that is mentioned in the Company's application dated 23 July 2008 (as amended on 18 December 2008) and Figure 4.3 contained in the supporting Environmental Statement (supplemented by the "Tees Renewable Energy Plant Traffic Management - November 2008"; and a letter on behalf of the Company from PB Power to Natural England dated 24 October 2008), including:
 - (a) a single circulating fluidised bed boiler;
 - (b) one stack;
 - (c) a steam turbine generator;
 - (d) air cooled condensers;
 - (e) fuel feedstock storage area;
 - (f) electrical transformers and switchgear building;
 - (g) ancillary plant and equipment; and
 - (h) the necessary buildings (including administration offices, workshops and stores) and civil engineering works; and
3. This consent is granted subject to the following conditions:
 - (1) The Development shall be constructed and operated in accordance with the details contained in paragraph 2 of this consent and the Company's application's application of 23 July 2008 (as amended on 18 December 2008) and supporting Environmental Statement (supplemented by the "Tees Renewable Energy Plant Traffic Management - November 2008"; and a letter on behalf of the Company from PB Power to Natural England dated 24 October 2008).

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

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

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

Definitions

- (1) In these Conditions unless the context otherwise requires -

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

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

"the commencement of the Development" means the date on which the Development shall be taken to be initiated in accordance with section 56 of the Town and Country Planning Act 1990, as amended;

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

"the Company" means MGT Teesside Limited and its assigns and successors;

"the Council" means Redcar and Cleveland Borough Council and its successors;

"the Development" means the biomass fuelled generating station at the Teesport, Teesside;

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

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

"heavy commercial vehicle" has the meaning given by section 138 of the Road Traffic Regulation Act 1984;

“Highways Agency” means the Highways Agency and its successors;

"the main Development" means the construction work commencing with the placing of the first concrete for the main plant foundations of the Development;

“Natural England” means Natural England and its successors;

“operating weight” in relation to a goods vehicle has the meaning given by section 138 of the Road Traffic Act 1984;

"the Site" means the area of land outlined red on Figure 4.1, annexed hereto.

The Site

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

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

Time Limits

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

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Suppression of Dust and Dirt during Demolition and Construction

- (4) The commencement of the Development shall not take place until there has been submitted to, approved in writing by, and deposited with the Council a scheme for the provision of wheel cleansing facilities for heavy commercial vehicles and any other vehicle which has an operating weight exceeding three tonnes. Such approved facilities shall be installed in accordance with a timescale to be approved in writing by the Council and shall be maintained throughout the period of the construction of the Development unless any variation has been approved in writing by the Council.
- (5) All heavy commercial vehicles and any other vehicle or mobile plant which has an operating weight exceeding three tonnes associated with the construction of the Development leaving the

Site, other than those vehicles exclusively using tarmacadam or concrete roads, shall on each occasion, prior to leaving, pass through the wheel cleansing facilities provided pursuant to Condition (4).

- (6) The demolition of existing buildings and structures on the Site shall not take place until there has been submitted to, approved in writing by, and deposited with the Council a scheme employing the best practicable means for the suppression of dust during the period of demolition of existing buildings and structures on the Site and the construction of the Development. The measures approved in the scheme shall be employed throughout the period of construction unless any variation has been approved in writing by the Council.
- (7) All open bodied heavy commercial vehicles carrying dry loose aggregate, cement or soil into and out of the Site shall be sheeted or sealed so as to prevent the release of such materials into the local environment.

Reason: To ensure that satisfactory measures are in force so as to alleviate any impact dust and dirt may have on the local environment during construction.

Temporary Buildings and Roads

- (8) The commencement of the Development shall not take place until there has been submitted to, approved in writing by, and deposited with, the Council a scheme which shall include provisions for the:
 - (i) details of the siting, design, external appearance of temporary buildings and structures, artificial lighting and fencing to be erected and used during the period of construction of the Development;
 - (ii) details of temporary vehicular circulation roads, parking, hardstandings, laydown areas, loading and unloading facilities and turning facilities during the construction of the Development;
 - (iii) phasing of works included in the scheme.

Reason: To enable the Council to exercise reasonable and proper control over the temporary works associated with the Development.

Site Layout, Design, Floor Levels and Fire Prevention

- (9) The commencement of the Main Development shall not take place until there has been submitted to, approved in writing by, and

deposited with, the Council a scheme which shall include provisions for the:

- (i) details of the siting, design, dimensions, external appearance and floor levels of all buildings and structures which are to be retained following the completion of the construction of the Development;
 - (ii) details of the colour, materials and surface finishes in respect of those buildings and structures referred to in (i) above;
 - (iii) details of vehicular circulation roads, parking, hardstandings, loading and unloading facilities and turning facilities on the Site;
 - (iv) details of artificial lighting required during the operation of the Development;
 - (v) details of all new or modified permanent fencing and gates required on the Site;
 - (vi) details of any proposed landscaping on the Site;
 - (vii) details of fire suppression measures and access of fire appliances to all major buildings, structures and storage areas; and
 - (viii) phasing of works included in the scheme.
- (10) The Development shall proceed only in accordance with the approved scheme referred to in Condition (9), subject to any variation as may be approved in writing by the Council.

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

Demolition, Construction and associated Noise

- (11) All activities associated with the demolition of existing buildings and structures on the Site and the construction of the Development shall be carried out in accordance with British Standard 5228, Parts 1 and 2: 1997 and Part 4: 1992; Noise and Vibration Control on Construction and Open Sites.
- (12) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a scheme for the monitoring of noise generated

during the demolition of existing buildings and structures on the Site and construction of the Development.

- (13) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with the Council a scheme for impact pile, or other means of pile driving, including methods and duration and shall state the selection criteria. The approved scheme shall be adhered to during the period of construction of the Development.
- (14) No impact piling approved shall take place on the Site on any Sunday or Bank Holiday or any other day except the between the following hours;
- Monday to Saturdays 0800 - 1900
- Unless such work –
- (a) is associated with an emergency; or
- (b) is carried out with the prior written approval of the Council.
- (15) Notwithstanding the terms of Condition (14) all impact pile driving shall only take place during the months of April to October inclusive.
- (16) No demolition or construction work associated with the Development shall take place on the Site at any time on any Sunday or Bank Holiday nor on any other day except between the following times:
- Monday to Friday 0700 – 1900 hours
Saturday 0800 – 1700 hours
- unless such work -
- (a) is associated with an emergency; or
- (b) is carried out with the prior written approval of the Council; or
- (c) does not cause existing ambient noise levels to be exceeded;
- (17) In any instance where a time limitation referred to in Condition (14) and (16) is exceeded because of an emergency the Company shall as soon as possible notify the Council and follow up the notification with a written statement detailing the nature of the

emergency and the reason why the time limitation could not be observed.

Reason: To ensure reasonable and proper control to be exercised over noise during demolition and construction activities.

Operational Noise

- (18) The noise generated by the normal commercial operation of the Development shall not exceed a rating level of 40 dB(A) (measured as an LA eq over 1 hour during the day and 5 minutes at night) when measured generally in accordance with BS 4142 1997 at the facades of any existing residential property at the date of this permission.
- (19) Such noise shall exhibit no tonal or impulse content at those properties in all weather conditions. These limitations as to noise level shall be adhered to at all times except in an emergency or in accordance with any lower noise level which may be approved by the Council pursuant to Condition (18).
- (20) In any instance where the noise limitation referred to in Condition (18) is exceeded because of an emergency the Company shall as soon as possible, and within two working days, provide the Council with a written statement detailing the nature of the emergency and the reason why the noise level and/or limitation could not be observed. If the emergency period is expected to be for more than twenty-four hours then the Company shall inform those residents affected by the emergency of the reasons for the emergency and the expected duration.
- (21) Except in an emergency, the Company shall give at least 2 working day's written notice to the Council of any proposed operation of emergency pressure valves or similar equipment. In any instance where steam purging is to take place the Company shall give two working days prior notice to local residents and businesses affected by the noise of such purging.

So far as is reasonably practicable, any such operation shall not take place on any Sunday or Bank Holiday or any other day except between the following hours;

Monday to Friday	0900 - 1700
Saturday	0900 - 1300

Reason: To ensure the proper control of noise during the operation of the Development and to give advance warning of the timing of exceptionally noisy events.

Noise Complaints Procedure

- (22) In any instance where a local resident has cause to make a reasonable complaint about noise generated by the construction and/or operation of the Development the Company shall carry out investigations to establish the justification, or otherwise, of the complaint, the likely cause and possible remedial measures. A written report to the complainant shall be made as soon as reasonably practicable following the investigation and/or remedial work. The Company shall keep all such reports in an appropriate file and such file shall be made available to the Council on request.

Reason: To ensure that any complaints on the grounds of noise are properly dealt with so as to reduce the impact of the Development on local residents.

Site Drainage

- (23) The commencement of the Development shall not take place until there has been submitted to, approved in writing by, and deposited with the Council, in consultation with the Environment Agency, a scheme showing the method and working of drainage facilities on the Site. Such facilities shall be put in place in accordance with the approved scheme.
- (24) The scheme referred to in Condition (23) shall include:
- (i) measures to ensure that no leachate or any contaminated surface water from the Site shall be allowed at any time to enter directly or indirectly into any watercourse or underground strata or onto adjoining land;
 - (ii) provision so as to ensure that all existing drainage systems continue to operate and that riparian owners upstream and downstream of the Site are not adversely affected;
 - (iii) provision for trapped gullies in car parks, hardstandings and roadways;
 - (iv) measures to ensure that all foul sewage must drain to an approved foul sewerage and/or sewage disposal system;
 - (v) provisions to distinguish between temporary and permanent parts of the works; and
 - (vi) phasing of works.
- (25) Any surface water contaminated by hydrocarbons which are used during the construction of the Development shall be passed

through oil/grit interceptor(s) prior to being discharged to any public sewer or watercourse or to any other surface water disposal system approved by the Environment Agency.

- (26) All facilities required for the storage of hydrocarbons, process chemicals or similar liquids which are used during the construction of the Development must be sited on impervious bases and surrounded by impervious bund walls. The size of the bunded compound(s) shall be at least equivalent to the capacity of the largest tank plus 10%. All filling points, vents and sight glasses must be located within the bund and there must be no drain through the bund floor or walls.
- (27) All bunded compound(s) referred to in Condition (26) in which acids, alkalis or sulphides in addition to being contained in suitable facilities shall have appropriate protective lining applied to the inner walls of the bunds.
- (28) Any storage facility to which Conditions (26) or (27) refer shall be completed in accordance with the requirements of those Conditions before being brought into use.

Reason: To ensure proper drainage of the Site and that proper containment facilities are built.

Flood Protection Measures

- (29) The commencement of the Development shall not take place unless in accordance with the findings and recommendations of the Tees Flood Risk Assessment (Appendix D of the submitted Environmental Statement July 2008).
- (30) The commencement of the Development shall not take place until a flood warning and evacuation plan has been submitted to, approved in writing by, and deposited with, the Council. The plan shall include details of how flood warnings will be obtained and disseminated throughout the Site, and the action to be taken. The plan shall be operated throughout the lifetime of the Development.

Reason: To reduce the risk of flooding.

Construction Traffic

- (31) The commencement of the Development shall not take place until a traffic management plan for the construction phase of the Development, to include details of the site access, the Company has been submitted to, approved in writing by, and deposited with the Council, in consultation with the Highways Agency.

Archaeology

- (32) The commencement of the Development shall not take place until there has been submitted to, approved in writing by, and deposited with, the Council, a scheme of archaeological investigation and an associated implementation programme.
- (33) The scheme approved pursuant to Condition (32) shall provide for:
- (i) any person nominated by the Council to be permitted safe access to the part of the Site where the find is made;
 - (ii) finds of national importance to be evaluated and, where practicable, preserved in situ; and
 - (iii) phasing of works.
- (34) Any further investigations and recording of such finds as are considered necessary by the Council shall be undertaken prior to the construction of any part of the Development on that part of the Site where such finds are identified, and in the case of finds of national importance in accordance with the phasing of works approved pursuant to Condition (33)(iii), unless otherwise approved in writing by the Council.

Reason: To allow the surveying of the site for archaeological artefacts and the recovery of any important archaeological discovery before construction of the main Development begins.

Contaminated Waste

- (35) The commencement of the Development shall not take place until a scheme to deal with the risks associated with contamination of the Site has been submitted to, approved in writing by, and deposited with the Council. The scheme shall include details of the following matters:
- (a) a desk study identifying
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the Site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the Site;

- (b) a Site investigation scheme based on (a) to provide information for an assessment of the risk to all receptors that may be affected, including those off-Site; and
 - (c) the results of the Site investigation and risk assessment pursuant to (b) and a method statement based on those results giving full details of the remediation measures required and how they are to be undertaken.
- (36) The measures approved pursuant to Condition (35) shall be adhered to during the construction of the Development, unless any variation has been approved in writing by the Council, in consultation with the Environment Agency.
- (37) If, during construction of the Development, contamination not previously identified is found to be present at the Site then no further work shall be carried out until there has been submitted to, approved in writing by, and deposited with, the Council an amendment of the method statement approved pursuant to Condition (35) detailing how this unsuspected contamination shall be dealt with.
- (38) Contaminated material arising from the construction of the Development shall be treated on the Site in accordance with a scheme to be submitted to, approved in writing by, and deposited with, the Council, in consultation with the Environment Agency, or shall be disposed of to licensed disposal facilities.
- (39) Prior to the commissioning of the Development the Company shall provide a verification report on completion of the works set out in Condition (35)(c) confirming the remediation measures that have been undertaken in accordance with the method statement and setting out measures for maintenance, further monitoring and reporting.

Reason: To ensure that any potential contaminated waste found on the Site is disposed of properly.

Protection and Mitigation For Birds

- (40) The commencement of the Development shall not take place until the Company has undertaken, in consultation with Natural England, a comprehensive investigation to establish whether birds are present on the Site. Should the investigation indicate that birds are present on the Site then the Company shall submit a scheme of mitigation measures for approval in writing by the Council, in consultation with Natural England.

- (41) Notwithstanding any mitigation measures approved pursuant to Condition (40) no trees, hedges, scrub or dense vegetation shall be cleared from the Site during the bird breeding season of 1 March to 30 September inclusive, except where a suitably qualified ecological consultant, appointed by the Company, has confirmed that such clearance works will not affect any nesting birds and is approved in writing by the Council, in consultation with Natural England.

Reason: To cause the least interference possible to breeding birds.

Travel Plan

- (42) The commencement of the Development shall not take place until there has been submitted to, approved in writing by and deposited with, the Council a scheme for transporting those involved in the construction and operation of the Development by means other than by single passenger car occupancy. The approved scheme shall be adhered to throughout the period of construction and operation of the Development unless otherwise agreed in writing by the Council.

Reason: In the interests of establishing sustainable patterns of transport.

Construction Transport

- (43) The commencement of the Development shall not take place until the Company has submitted to the Council the main findings and conclusions of an investigation as to whether an existing waterway and/or railway could be utilised to provide a practical, economical and environmentally advantageous (when compared and contrasted with road transportation) means of transportation to the Site of construction materials associated with the Development. The results of the investigation shall be submitted to, agreed in writing by, and deposited with the Council.
- (44) In the event that the investigation referred to in Condition (43) identifies that an existing waterway and/or railway could be utilised to provide a practical, economical and environmentally advantageous (when compared and contrasted with road transportation) means of transportation, the Development shall not commence until there has been submitted to, approved in writing by, and deposited with the Council a scheme for the transportation by waterway and/or railway of construction materials.

Reason: To ensure that sustainable modes of transport are considered for the transportation of construction materials.

Fuel Type

- (45) Unless agreed in writing with the Council, and with the exception of hydrocarbon fuels used for the start up of the main and auxiliary boilers and use in the standby-generator, only untreated wood shall be used as fuel in the operation of the Development.

Reason: In the interests of amenity.

Operational Delivery of Biomass by Road

- (46) Unless otherwise agreed in writing with the Council, road deliveries of biomass fuel used in the operation of the Development shall not exceed 200,000 tonnes per annum.
- (47) The commissioning of the Development shall not commence until a scheme covering the monitoring and delivery to and from the Site by road of biomass fuel and post-combustion residues has been submitted to, approved in writing by, and deposited with the Council. The scheme shall include provision for it to be reviewed annually with the Council.

Reason: To ensure that the delivery of biomass fuel and disposal of post-combustion residues by road are managed and do not harm the free flow of traffic on the highways network.

Handling of Biomass and Post-Combustion Residues

- (48) Biomass used in the operation of the Development and post-combustion residues shall be handled under cover at all times.
- (49) Loose post-combustion residues shall be transported from the Site in sealed vessels.

Reason: To suppress dust during the operation of the Development.

Air Pollution Monitoring

- (50) The commissioning of the Development shall not take place until there has been submitted to and approved in writing by, and deposited with, the Council, in consultation with the Environment Agency, a scheme for the monitoring of air pollution including nitrogen oxides in the vicinity of the Development. The scheme shall include the measurement location or locations within the Council area from which air pollution will be monitored, the equipment and methods to be used and the frequency of measurement. The scheme shall provide for the first measurement to be taken not less than 12 months prior to the Commissioning of the Development and for the final measurement to be taken not more than 24 months after commissioning of the Development. The Company shall supply full details of the measurements

obtained in accordance with the scheme to the Council as soon as possible after they become available.

- (51) Should the Council require continued monitoring of air pollution the Company shall extend the Scheme pursuant to Condition (50) for a period of up to 36 months from the date of the last measurement taken pursuant to Condition (50). The Company shall supply full details of the measurements obtained during the extended period to the Council as soon as possible after they become available.

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

Use of Waste Heat

- (52) The commissioning of the Development shall not take place until the Company has installed the necessary plant and pipework to enable the future supply of waste heat to the Site perimeter.

Reason: To ensure that waste heat is available for use to the benefit of the local domestic, commercial and industrial users when the demand arises.

Cessation of works and restoration of the Site

- (53) Unless otherwise agreed with the Council, within 12 months of the Site ceasing to be used for the purposes of electricity generation, the Company shall submit to the Council, for approval in writing, a scheme for the demolition and removal of the Development from the Site.
- (54) The scheme referred to in Condition (53) shall include:
- (i) details of all structures and buildings which are to be demolished;
 - (ii) details of the means of removal of materials resulting from the demolition;
 - (iii) the phasing of the demolition and removal;
 - (iv) details of the restoration works; and
 - (v) the phasing of the restoration works.
- (55) The demolition and removal of the Development (which shall include all buildings, structures, plant, equipment, areas of hardstanding and access roads) and subsequent restoration of the Site shall thereafter be implemented in accordance with the

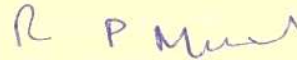
scheme approved by the Council, unless otherwise agreed in writing by the Council.

Reason: To ensure the Site is not allowed to become derelict after the cessation of electricity generation.

Default of Agreement

- (56) Where any matter is required to be agreed or approved by the Council under any of the foregoing Conditions that matter shall in default of agreement or approval be determined by the Secretary of State for Energy and Climate Change.

Date: 15 July 2009

A handwritten signature in blue ink, appearing to read 'R P Mellish'.

Richard Mellish
Head of Development Consents and
Planning Reform
Department of Energy and Climate
Change

