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Councillor Howard Greenman  
Chair – Strategic Planning Committee  
Wiltshire Council  
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**Sent by email:** [howard.greenman@wiltshire.gov.uk](mailto:howard.greenman@wiltshire.gov.uk)

Date: 29 June 2022

**RE: Notification of Appeal for Non-Determination of Planning Application no. 20/06775/WCM – Northacre Energy from Waste Facility, Stephenson Road, Northacre Industrial Estate, Westbury**

Dear Councillor Greenman

I am writing to you on behalf of Northacre Renewable Energy Limited (NREL) to confirm that we have lodged an appeal for non-determination of the Northacre Facility planning application (ref: 20/06775/WCM). Your officers will have received a copy of the full appeal documentation. Receipt of the appeal has now been acknowledged by the Planning Inspectorate and ascribed the reference: APP/Y3940/W/22/3302008. As such, Wiltshire Council is no longer the decision maker for the application. However, its future position remains an important consideration and is the subject of this correspondence.

As you will be aware, the Northacre Facility planning application was in determination for a significant period of time, having been initially submitted in August 2020. On 21<sup>st</sup> June 2021, Wiltshire Council's Strategic Planning Committee (SPC) resolved to grant planning consent, in line with the officer recommendation. This positive resolution was subject to referral to the Secretary of State.

On 31<sup>st</sup> March 2022, The Secretary of State confirmed that NREL's current Northacre Facility proposal did not meet the selective requirements for a call-in, and was satisfied that it could be determined by Wiltshire Council's SPC.

Despite the previous resolution by Wiltshire Council's SPC to grant permission, the decision was made to take the planning application back to the SPC, which took place on 20<sup>th</sup> April 2022. The purpose to taking the application back was so that the SPC could evaluate any material changes in the relevant planning circumstances that may have arisen in the previous 9 months, which might alter the previous resolution to grant planning permission made in June 2021.

In advance of the Committee, the Head of Development Management published an update to his report setting out that there had: *"...been no changes that should lead the committee to conclude differently in its assessment of the application. Accordingly, the committee is recommended to endorse its original decision to grant planning permission subject to conditions."*

However, without regard to the officer's updated report, Wiltshire Council's SPC elected to defer a decision on the application until July 2022, pending the outcome of the Government's consultation on various environmental targets, which includes consultation on residual waste targets for 2042, pursuant

to the Environment Act 2021. This decision was made in the knowledge that there will be no published outcome on the consultation before October 2022. As such, there would have been no new information on this matter available to the SPC by the time of its July 2022 meeting. In short, the same information would have been before them as was at their April meeting.

NREL's clearly stated position is that:

- As a matter of fact, no new material planning considerations have come to light since the June 2021 SPC resolution, which come close to being capable of attracting sufficient weight for the SPC to justify not expediting the approval of the Northacre Facility planning application in April of this year.
- We do not believe that Wiltshire Council's SPC would have determined the planning application at the July 2022 meeting.

Accordingly, NREL has appealed the application on the basis of non-determination, which will (inevitably) be heard by way on an inquiry.

The appeal process now requires, within 5 weeks of the appeal 'Start Date', that Wiltshire Council submits its Statement of Case to the Planning Inspectorate. In order to do this, the Council must take the matter to Committee (presumably the SPC) and decide how they would have determined the application had it still been in a position to do so. At this point the Council has 2 options:

- Resolve that it would have approved the planning application, which would be entirely consistent with the officer recommendation and the SPC's decision in June 2021; or
- Decide that it would have refused the application. Such a decision will require the Council to formulate a putative reason (or reasons) for refusal; and to robustly defend the reason(s) at inquiry, including why the SPC has both ignored the officer recommendation and reversed its own decision taken in June 2021.

The former position (resolution to have approved the application) would show the Council to have acted consistently and not unreasonably. As such, the Council would absolve itself from a potential claim for costs made by NREL.

The latter position (resolution to have refused the application) requires the Council to:

- Set aside the recommendation that the application be approved by the Head of Development Management;
- Ignore the existence of an extant planning permission approved by the SPC in 2019 for the same use on the application site, albeit for a slightly different iteration of the Facility, but one that fulfils the same function;
- Ignore the fact that the application site is appropriately allocated for the Northacre Facility as a strategic scale waste treatment use and that the proposal has repeatedly been found to accord with the development plan;
- Find a putative reason for refusal which is not obviated by the Facility's Environmental Permit, which was issued by the Environment Agency on 15<sup>th</sup> June 2022, and which establishes the acceptability of the scheme, in principle, in terms of emissions and the protection of human health and the environment;
- Reverse the SPC's resolution of June 2021.

In NREL's view, the foregoing factors make it improbable that the Council can resolve that it would have refused the application, and thus appear at the appeal against the scheme, and maintain that they have acted reasonably.

# Northacre

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## RENEWABLE ENERGY

Should NREL find that the Council has acted unreasonably during the appeal process, as would appear likely in the event of a resolution of refusal, it will vigorously pursue an award of costs against the authority.

Accordingly, we urge that, in due course, the Council resolve that it would have approved the Northacre Facility planning application, had it still been in a position to do so. As such, it can then let the independent Planning Inspectorate determine the appeal, safe in the knowledge that the authority is insulated from a claim for costs from NREL.

We trust that the Council will give full consideration to the contents of this letter in formulating its position in relation to the forthcoming appeal.

Yours sincerely



Alex Young  
**Director, Northacre Renewable Energy Limited**

**Cc:**

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