

South Humber Bank Energy Centre DCO

**The Examining Authority's written questions and requests for information (ExQ2) –
North East Lincolnshire Council's Response - Appendices**

Planning inspectorate Reference: EN010107

Appendix 1 – PPA Heads of Terms

SOUTH HUMBER BANK ENERGY CENTRE

HEADS OF TERMS FOR A PLANNING PERFORMANCE AGREEMENT (PPA)

Status of these heads of terms	For agreement between the parties, not legally binding. Subject to contract.
Status of the PPA	Legally binding agreement
Parties	EP Waste Management Limited (EPWM) and North East Lincolnshire Council (NELC, as local planning authority)
Statutory powers for agreement	Section 111 Local Government Act 1972 and section 1 Localism Act 2011
Obligations on NELC	<p>NELC to covenant that when it receives an application from EPWM to discharge a condition on the SHBEC Planning Permission, it will consult with relevant third parties before determining that application.</p> <p>The 'relevant third parties' for a condition will be a) those listed in the PPA (being those to be consulted within each equivalent requirement in the Draft DCO as at Deadline 4); b) any other person who is included by the Secretary of State as a consultee in a requirement in the DCO as made; and c) any other person who NELC may wish to consult (at its absolute discretion). Provision will also be made for notification of Royal Mail in relation to the Construction Traffic Management Plan.</p>
Statutory discretion	The PPA does not fetter NELC's statutory discretion.
Other clauses	Other clauses as required to give effect to the PPA and regulate the relationship of the parties.

Appendix 2 – Draft PPA

DATED

2021

(1) NORTH EAST LINCOLNSHIRE COUNCIL

(2) EP WASTE MANAGEMENT LIMITED

PLANNING PERFORMANCE AGREEMENT

**in respect of applications to discharge conditions for the
South Humber Bank Energy Centre**

BETWEEN:-

- (1) **NORTH EAST LINCOLNSHIRE COUNCIL** of Municipal Offices Town Hall Square Grimsby North East Lincolnshire ("**the Council**"); and
- (2) **EP WASTE MANAGEMENT LIMITED** (company registration number 12144128) of Part Ground Floor, Paradigm Building, 3175 Century Way, Thorpe Park, Leeds LS15 8ZB ("**EPWM**").

RECITALS:-

- (A) The Council is the local planning authority and granted the Planning Permission;
- (B) EPWM submitted the DCO Application to the Secretary of State;
- (C) The Parties agree that certain people should be consulted on Condition Applications and enter into this legally binding Agreement to set out the terms agreed between them as to that consultation;
- (D) The Council and EPWM agree to work cooperatively to facilitate the efficient processing of the Condition Applications while allowing for due and proper considerations at each stage of the process including any requisite consultation;
- (E) The Council has powers under Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and Section 93 of the Local Government Act 2003 to enter into this Agreement and to charge for certain activities associated with the Condition Applications as set out in this Agreement;
- (F) This PPA will not fetter the Council in exercising its statutory duties as local planning authority.

IT IS AGREED as follows:-

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (which includes the Recitals, Schedules and Appendices to it) the following words and expressions have the following meanings unless the context requires otherwise:-

" Condition "	means conditions attached to the Planning Permission
" Condition Applications "	means an application made to discharge or pursuant to Conditions
" DCO "	means the South Humber Bank Energy Centre Order 2022[*] in such form as it may be granted by the Secretary of State pursuant to the DCO Application
" DCO Application "	means the application for the DCO submitted by EPWM on 9 April 2020 to the Secretary of State
" Development "	means an energy from waste facility and other development at the Site as more particularly described in and permitted by the Planning Permission

"Parties"	means the parties to this Agreement
"Planning Permission"	means the planning permission granted by the Council on 12 April 2019 with reference DM/1070/18/FUL in relation to the Development and as may be varied pursuant to sections 73 or 96A of the Town and Country Planning Act 1990
"Site"	means land at South Humber Bank Power Station, South Marsh Road, Stallingborough, North East Lincolnshire to which the Planning Permission relates
"Working Day"	means a day other than a Saturday or Sunday or public holiday in England

1.2 In this Agreement, unless otherwise indicated, reference to any:-

1.2.1 words importing the singular meaning include the plural meaning and vice versa;

1.2.2 words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, other corporate bodies, firms or legal entities and all such words shall be construed interchangeably in that manner; and

1.2.3 Act of Parliament shall include any amendment, modification, extension, consolidation or re-enactment of that Act for the time being in force and in each case shall include all statutory instruments, orders, regulations and directions for the time being made, issued or given under that Act or deriving validity from it.

1.3 Headings where they are included are for convenience only and are not intended to influence the construction and interpretation of this Agreement.

1.4 Any notice, notification, consent, approval, agreement, request or statement or details to be made, given or submitted under or in connection with this Agreement shall be made or confirmed in writing.

1.5 Nothing in this Agreement prejudices the proper consideration and determination of any application or fetters the Council's discretion nor the exercise of the Council's statutory duties or functions.

2. **AGREEMENT POWERS AND OBJECTIVES**

2.1 This Agreement is entered into by the Council under Section 111 Local Government Act 1972, Section 1 Localism Act 2011, and Section 93 Local Government Act 2003 and shall be governed by and construed in accordance with English law and its provisions shall be binding and enforceable by the law of contract.

2.2 This Agreement seeks to provide:

2.2.1 a consultation framework for the determination of the Condition Applications; and

2.2.2 a means to facilitate the expeditious determination of the Condition Applications.

2.3 The Parties will act in good faith and will work collaboratively in order to comply with their respective commitments in this Agreement and to achieve the Agreement objectives set out in clause 2.2.

2.4 The Parties undertake to meet and discuss matters in a spirit of co-operation and where necessary to seek early resolution of any areas of concern to one Party so as to seek to achieve the Agreement objectives set out in clause 2.2.

3. **TERM AND TERMINATION**

3.1 This Agreement is effective from the date that it is completed (as written at the start of it) until the earlier of:

3.1.1 the date of determination of the last of the Condition Applications; or

3.1.2 if the DCO Application is refused by the Secretary of State, the date of that refusal.

3.2 In the event of termination of this Agreement pursuant to clause 3.1.2:

3.2.1 the Council agrees that it is not entitled to reimbursement in respect of any work carried out in relation to the Condition Applications after the date of termination; and

3.2.2 the Council and EPWM will agree within 20 Working Days of termination the level of outstanding costs that the Council has incurred and which it is entitled to reclaim pursuant to this Agreement, and the Council will issue an invoice for such agreed amount for to be dealt with pursuant to clause 6 below.

4. **CONSULTATION**

4.1 The Council must consult the following parties prior to determining relevant Condition Applications:

4.1.1 Anglian Water in relation to a Condition relating to surface water drainage;

4.1.2 the Environment Agency and Anglian Water in relation to a Condition relating to foul water drainage;

4.1.3 the Environment Agency in relation to a Condition relating to piling or contamination;

4.1.4 Network Rail in relation to a Condition relating to construction traffic management and/or delivery and servicing;

4.1.5 the local highway authority in relation to a Condition relating to a new access point to the public highway or its visibility splays;

4.1.6 any other person who is included by the Secretary of State as a person to be consulted in a requirement in Schedule 2 to the DCO in relation to the equivalent Condition (such equivalence shown by the list of corresponding Conditions and DCO requirements in Schedule 3 to the DCO); and

4.1.7 any other person who the Council wishes to consult (at its absolute discretion).

4.2 EPWM must notify Royal Mail within 20 Working Days of a construction traffic management plan being approved pursuant to a Condition and will at the same time provide Royal Mail with a copy of the approved construction traffic management plan.

5. **RESOURCING AND FUNDING**

5.1 In consideration of the obligations entered into by the Council in this Agreement, EPWM agrees to make funding available to the Council of £40 (forty pounds) per hour for time spent by the Council's officers in undertaking the consultation outlined in clause 4.

5.2 EPWM's maximum liability pursuant to this Agreement is £1,000 (one thousand pounds), plus any amount payable pursuant to clause 10.

5.3 The Council can invoice EPWM for the time spent in accordance with clause 5.1 not more often than monthly and will at the same time provide a summary of the work covered by the invoice and a summary of the time spent on the work covered by the invoice.

5.4 EPWM will pay to the Authority the amount set out in the invoice within 20 Working Days of receipt of a valid invoice and the accompanying information set out at clause 5.3

6. **CHARGING PRINCIPLES AND STATUS OF AGREEMENT**

6.1 The funding arrangements entered into between EPWM and the Council in this Agreement are to be in accordance with the following charging principles:

6.1.1 the charging relates exclusively to the Council's recovery of its costs for the provision of services it is authorised but not required (by an enactment) to provide;

6.1.2 the payments are on a not-for-profit basis (year by year) and, taking one year with another, the income from the charges for such services must not exceed the cost of providing them;

6.1.3 there shall be full transparency with regards to costs incurred; and

6.1.4 the sole basis for charging is that the Council can recover resources expended in consulting on the Condition Applications.

6.2 Any charging by the Council under this Agreement must be carried out in accordance with the provisions of section 93 of the Local Government Act 2003, any relevant Government guidance and the guidance and requirements of the professional codes of practice issued by the Chartered Institute of Public Finance and Accountancy from time to time.

6.3 The Council shall keep proper records of the expenditure and allocation of monies paid to it pursuant to this Agreement, will operate in an open and transparent manner in respect of all work done and monies reclaimed pursuant to this Agreement and shall make those records available to EPWM to audit within 10 Working Days of a request to view them by EPWM.

6.4 The Council is authorised by statute and pursuant to its constitution to enter into this Agreement.

6.5 This Agreement does not oblige EPWM to proceed with the Condition Applications nor the Development.

7. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

Nothing in this Agreement will create any rights in favour of or be enforceable by any person who is not a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999.

8. **NOTICES**

Any notice issued pursuant to this Agreement (including termination) must be in writing and must be served on the following persons at the addresses set out below:

Notices to EPWM:	To: Company Secretary, Byron House, 7-9 St James' Street, London SW1A 1EE; and Simon Bate, Part Ground Floor, Paradigm Building, 3175 Century Way, Thorpe Park, Leeds LS15 8ZB
Notices to the Council:	To: North East Lincolnshire Council c/o Planning Manager Engie, New Oxford House, George Street, Grimsby, DN31 1HB

9. **DISPUTE RESOLUTION**

9.1 In the event of any dispute or difference arising between the Parties concerning any matter arising out of this Agreement the Parties will work together to endeavour to resolve the dispute or difference by mutual agreement and the Parties jointly intend to enter into discussions in good faith to settle any dispute as soon as reasonably practicable.

9.2 In the event that the Parties are unable to resolve the dispute or difference within 20 Working Days of the dispute or difference arising, any Party to the dispute may refer the dispute or difference to the nominated officers of the Parties as follows:

9.2.1 in respect of EPWM: James Chiodini, Head of Legal, Investment; and

9.2.2 in respect of the Council: Simon Jones Assistant Director Law, Governance and Assets (Monitoring Officer) Legal Services Municipal Offices, Town Hall Square, Grimsby, DN31 1HU

or such other person of appropriate seniority as a Party may nominate.

10. **VALUE ADDED TAX**

10.1 Each amount stated to be payable to or pursuant to this Agreement is exclusive of value added tax (if any).

10.2 If any value added tax is at any time chargeable on any supply made by the Council or EPWM under or pursuant to this Agreement the Party making the payment shall pay the other Party an amount equal to that value added tax as additional consideration on receipt of a valid VAT invoice.

EXECUTED as a deed by the parties on the date which first appears in this Agreement

Appendix 3

Amends to Article 5:

“varied condition” means a condition of the SHBEC planning permission:

- (a) which has at any time been varied pursuant to section 73 of the 1990 Act *[add section name]* or section 96A of the 1990 Act *[add section name]* (or any power varying or replacing those); or
- (b) where the numbering of the condition has changed compared to the numbering as originally issued on 12 April 2019.

Amends to Article 5:

(5) **Subject to paragraph (6)**, where details, plans or any other matters have been approved or agreed by the relevant planning authority under a condition of the SHBEC planning permission in column (1) of Schedule 3 prior to the date on which the undertaker serves notice under paragraph (1) they are deemed to have been approved for the purpose of the corresponding requirement in column (2) of Schedule 3 from the date of the undertaker’s notice.

(6) Paragraph (5) does not apply to a varied condition unless the relevant planning authority issues a notice pursuant to paragraph (7).

(7) The relevant planning authority may issue a notice to the undertaker confirming:

- (a) that the discharge of details, plans or other matters in paragraph (5) applies to a varied condition; and
- (b) where the numbering of the conditions of the SHBEC planning permission has changed compared to those as originally issued on 12 April 2019, the number of the relevant condition and requirement to which the deemed discharge applies (and in which case for any varied conditions the corresponding condition and requirement in Schedule 3 do not apply).

(8) The relevant planning authority may only issue a notice pursuant to paragraph (7) where it has been demonstrated to the satisfaction of that authority that the application of paragraph (5) will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.