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All Interested Parties, Statutory
Consultees, and other persons.

Your Ref:

Our Ref: EN010107

Date: 28 April 2021

Dear Sir/ Madam,

Planning Act 2008 (as amended), Section 89; The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rules 8(3) and 17

Application by EP Waste Management Limited for an Order Granting Development Consent for the South Humber Bank Energy Centre

Variation of examination timetable and request for further information.

This letter provides you with information about variations to the Examination Timetable resulting from the Examining Authority's (ExA) requests for further information from the Applicant, National Grid and North East Lincolnshire Council (NELC) under Rule 17 of the Infrastructure Planning (Examination Procedures) Rules 2010.

Further information and all documentation associated with this project can be found on the Planning Inspectorate's National Infrastructure website using this link:

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/south-humber-bank-energy-centre/>

The Examination Timetable

The Examination Timetable has been amended as a consequence of the submissions made at Deadline (D) 6 (23 April 2021) and the need of the Examining Authority (ExA) to seek further information from the Applicant, National Grid and NELC. The remaining portion of the Examination Timetable, being those parts outstanding after D6 (23 April 2021) are set out at Annex A to this letter. This supersedes the remaining portion of the Examination Timetable after D6 (23 April 2021) which was annexed to the ExA's Rule 8 letter [[PD-005](#)] dated 17 November 2021.

D7 has been changed from Tuesday 4 May 2021 to Wednesday 5 May 2021 and a new D8, of the 10 May 2021 has been added. D7 provides an additional day for the submission of responses to the ExA Rule 17 request for further information as set out

below, whilst D8 has been inserted to allow for any Interested Parties to make comments solely in response to submissions received at D7. It also allows for the submission of a new section(s).106 agreement or a Deed of Variation (DoV) that is entered into by all the appropriate parties, which expressly binds the mortgagees interest in the land to the obligations in the agreement and is compliant with all the requirements of s.106 (if required) and a final preferred version of the Applicant's DCO in the SI template validation report (if required).

Any submissions that are not in relation to the D7 or D8 submissions will not be seen by the ExA.

Request for further information from Interested Parties

I am seeking further information from the Applicant, National Grid and NELC under Rule 17 of the Infrastructure Planning (Examination Procedures) Rules 2010.

Question(s) to the Applicant and National Grid

The ExA has reviewed the D6 submissions. The ExA also notes the responses of the Applicant [[REP5-005](#)] and National Grid [[REP5-009](#)] to Question QB.1.6 of the ExA's Further Written Questions [[PD-010](#)]. Despite an unsigned and undated draft of a Statement of Common Ground (SoCG) between the Applicant and National Grid PLC, being submitted at D4 [[REP4-007](#)], the ExA is disappointed to note the absence of the submission of a completed SoCG between these parties at D6 as sought in the Examination timetable issued with the Rule 8 letter [[PD-005](#)] dated 17 November 2021.

Bearing the above in mind, the ExA asks, where possible, for outstanding matters between the Applicant and National Grid in regard to this SoCG be resolved. Subject to those outstanding matters being resolved, the ExA would request a signed and dated version of this final SoCG, between the Applicant and National Grid be submitted at D7 (5 May 2021). Should it not be possible to submit the signed and dated copy of this SoCG by D7 (5 May 2021), the Applicant and National Grid are asked to provide a detailed explanation as to why by D7 (5 May 2021).

Question(s) to the Applicant and NELC

The ExA notes the submission at D6 (23 April 2021) of a completed DoV under s.106 and 106A of the Town and Country Planning Act 1990 (TCPA), between the Applicant and NELC dated 19 April 2021 [[REP6-009](#)], together with the unsigned/ undated copy of a Confirmatory Deed attached at Appendix 1.

The s.106 agreement dated 19 April 2019 (Original Deed), which was completed by the parties, the Applicant and NELC, appears to have excluded the Mortgagee, Lloyds Bank plc, despite specifically referencing them in the Definitions of the Original Deed. Please could the Applicant/ NELC explain why they did not consider it necessary to bind the Mortgagee to the Original Deed?

The ExA is concerned that the result of the Mortgagee not being party to the Original Deed is that it does not appear that the interests of the Mortgagee is currently bound by the Original Deed and as a consequence would not be bound by the DoV, which took effect on the 19th April 2021. If this is incorrect, please could the Applicant and

NELC clearly explain why that is the case? Alternatively, if this view is correct please could the Applicant and NELC confirm this position?

Additionally, the ExA would question whether the confirmatory deed achieves its intention due to the fact that it states that it is entered into under s.106 of the TCPA, but it does not appear to comply with the requirements of s.106. This is due to the fact that the confirmatory deed does not appear to contain any obligation under s.106(1) of the TCPA. Consequently, there is nothing in the deed which complies with s.106(9)(a) or (aa) of the TCPA.

In consideration of the above, the ExA would ask the Applicant and the NELC for legal submissions, by D7 (5 May 2021), on the enforceability of the s.106 agreement (as varied) on the Mortgagee, if they take possession: (a) if the Development Consent Order (DCO) is granted; and (b) if the DCO were to be refused. Additionally, the ExA would ask, by D7 (5 May 2021), if the Applicant can suggest any alternative way to secure the habitats mitigation, should a s.106 which binds the Mortgagee to the Original Deed not be signed by the Mortgagee by the close of examination on the 10 May 2021?

Question to the Applicant and NELC

The ExA notes that the draft DCO, submitted at D6 (23 April 2021) [[REP6-003](#)] and the Explanatory Note on Page 55, where it refers to where the documents listed in that paragraph can be viewed. The address given is New Oxford House, Grimsby. However, this address appears to be imprecise, especially bearing in mind that there appear to be two New Oxford House in Grimsby. One appears to be the Royal Mail Delivery Centre, whilst the other is not far away in Osbourne Street, Grimsby, DN31 1EY. Please could you clarify where the documents listed in that paragraph can be viewed and amend the dDCO accordingly by D7 (5 May 2021).

Other Interested Parties

Other Interested Parties may wish to respond to these requests.

Finally, if you have any questions about this letter, please contact the Case Team, the contact details for whom are provided above.

Yours faithfully

Christopher Butler

Examining Authority

Annex A: Examination Timetable.

This communication does not constitute legal advice.
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Examination Timetable

The Examining Authority (ExA) is under a duty to complete the examination of the application by the end of the period of six months beginning with the day after the close of the Preliminary Meeting.

Item	Matters	Due Dates
1.	<p>Deadline 7</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on any responses/ information submitted for Deadline 6 (23 April 2021); and • Responses to the further information requested by the ExA pursuant to his Rule 17 letter dated 28 April 2021. • The Applicant's final preferred DCO in the SI template validation report (if required). 	<p>Wednesday 5 May 2021</p>
2.	<p>Deadline 8</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on any responses/ information submitted to submissions made pursuant to the ExA's Rule 17 Letter dated 28 April 2021; • Submission of a Section 106 agreement or a Deed of Variation that is entered into by all three parties, which expressly binds the mortgagees interest in the land to the obligations in the agreement and is compliant with all the requirements of s.106 (if required). 	<p>Monday 10 May 2021</p>
3.	<p>The ExA is under a duty to complete the Examination of the application by the end of the period of 6 months</p>	<p>Monday 10 May 2021</p>

Submission times for deadlines

The time for submission of documents at any deadline in the timetable is 23:59 on the relevant deadline date, unless instructed otherwise by the ExA.

Publication dates

All information received will be published on the project webpage on the National Infrastructure Planning website as soon as practicable after the deadlines for submissions. An Examination Library will be kept up to date throughout the Examination and can be accessed via the 'Documents' tab on the project

webpage. Each document will be given a unique reference. These references will be used by the ExA during the Examination:

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/south-humber-bank-energy-centre/>