

21 January 2011

Dear Sir/Madam

**Planning Act 2008 (PA 2008) and the Infrastructure Planning  
(Examination Procedure) Rules 2010**

**Notice of procedural decision made following the preliminary meeting regarding an application for a Resource Recovery Facility that comprises an energy from waste electricity generating station with a gross electrical output capacity of 65 MWe, together with associated development including a post treatment materials recovery facility at Rookery South Pit, near Stewartby, Bedfordshire – IPC Reference Number EN010011**

I am writing to you to tell you about the decision made by the Examining Authority following the Preliminary Meeting held at the Park Inn Hotel Bedford on 17 January 2011.<sup>1</sup>

This letter is being sent to all interested parties whether or not they attended the meeting, and anyone else not registered as an interested party but who attended the meeting.

1. Procedural decision and timetable

The Examining Authority is most grateful for all the views expressed at the preliminary meeting, and has considered them very carefully. The Examining Authority has now made a procedural decision about the way in which the application is to be examined.<sup>2</sup> A copy of the decision, and the timetable set by the Examining Authority, is enclosed with this letter at Annex A.<sup>3</sup> As I indicated at the meeting, a full note of the proceedings has been prepared and this is enclosed at Annex B.

2. Written questions

The Examining Authority has decided to ask a number of questions and receive further information about matters it considers relevant to the application.<sup>4</sup> Responses to these questions, which are set out at Annex C, must be received by 28 February. As the timetable indicates, we may write to

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<sup>1</sup> Rule 9 The Infrastructure Planning (Examination Procedure) Rules 2010 (SI 2010 No 103).

<sup>2</sup> s 89(1) Planning Act 2008 (PA2008).

<sup>3</sup> Rule 8.

<sup>4</sup> Rule 10(6).

interested parties with further questions or with a request for more information as the examination progresses.

### 3. Written representations

**The Examining Authority invites all interested parties to submit written representations and evidence on any matters concerning the application, and representations already submitted, also by 28 February 2011.**

Please send your representations to [RookerySouth@infrastructure.gsi.gov.uk](mailto:RookerySouth@infrastructure.gsi.gov.uk) or to the address at the top of this letter quoting reference EN010011.

For the avoidance of doubt representations can deal with any relevant matter, not just the matters set out in the Examining Authority's initial assessment of principal issues which were discussed at the preliminary meeting, nor just the questions set out in Annex C referred to in the previous paragraph. Please note that if you are submitting a written representation you must identify those parts of the application or specified matters with which you agree and those parts with which you do not agree. You must state the reasons for such disagreement.<sup>5</sup>

### 4. Principal issues

We heard a number of representations about the need to add topics to the Examining Authority's initial assessment of principal issues. The purpose of this assessment is to assist the Examining Authority in developing lines of enquiry, which will evolve during the examination. It should also guide interested parties in structuring their representations. All representations received will be considered in the examination. There is no requirement on the Examining Authority to carry out any further assessment of principal issues arising on the application.

For these reasons, we have not reissued a list of principal issues but we appreciate the points made by parties about the need to concentrate on certain additional matters, and will take those comments into account during our examination.

### 5. Methods of examination

A number of representations were made at the meeting about the need for issue specific hearings.

In the light of the representations from Mr Brock and Richard Phillips QC about the particular need for the applicant and those with experience in discharging and enforcing such requirements to have discussions, together with those who would be responsible for the decision itself, we have decided it is necessary to hold an issue specific hearing to deal with the drafting aspects

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<sup>5</sup> Rule 10(4)

of the draft Development Consent Order, including its proposed requirements, and the s106 undertaking(s).<sup>6</sup>

We have decided that issue specific hearings requested on highways, noise, landscape and design, air quality (including the effects of temperature inversion), odour, flooding, visual impact (including the plume), light, waste recovery and management, public health impact, meteorology, need and delivery of the plant, and wildlife are not necessary within the terms of s91 of PA 2008. We encourage interested parties to make detailed written representations on these topics and refer to application documents and other parties' representations wherever appropriate. If we consider that a hearing on any of these topics or any others is necessary having considered representations received we will make that decision by 13 May 2011. Parties are able to put representations in writing to us about the need for any additional issue specific hearings before that date.

It should be noted that open floor hearings as proposed in the timetable at Annex A will provide an opportunity for interested parties to explain orally their views on the application if they wish to do so.

#### 6. Availability and inspection of representations and documents

Following receipt of any written representations, responses to questions, comments or any other documents or information about the application, the Commission is under a duty to make these available to all interested parties and to anyone who requests an opportunity to inspect and take copies of them.<sup>7</sup> In order to comply with that duty, the Commission is notifying all interested parties that it will, at each stage of the examination set out in the timetable and as soon as practicable, make these available by publishing them on its website and providing an opportunity for inspection and copying. The notification is enclosed with this letter at Annex D.

#### 7. Changes to the timetable

If the Examining Authority needs to change the timetable set out in Annex A for any reason, we will write to you and any other person who was invited to the preliminary meeting and inform you of the changes.<sup>8</sup> We will also do this if the date, time and place of any hearing is changed.<sup>9</sup>

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<sup>6</sup> It should be noted, for the avoidance of any doubt, that the ExA's consideration will concentrate on drafting points associated with the draft Development Consent Order, its proposed requirements and the s106 undertaking(s) rather than the underlying issues. This will be done on a without prejudice basis and the ExA's decision to hold this hearing should not be taken to imply that it has decided in favour of the order being granted (or otherwise).

<sup>7</sup> Rule 21.

<sup>8</sup> Rule 8(3).

<sup>9</sup> Rule 13(4).

8. Deadlines for receipt of documents and requests for hearings

It is important to note that if written representations, responses to questions, further information or requests for hearings are not received by the dates specified in the timetable, the Examining Authority may disregard them.<sup>10</sup>

9. Advice sought

A number of questions were asked of us that did not directly relate to the procedural decision we were required to make. The Commission's staff will be responding directly to those who asked the questions and providing advice under s51 PA 2008 on the questions raised and recorded in the note of the meeting. This advice will be published on the Commission's website.

As an interested party you will receive notifications from the Commission about the examination throughout the process.

Yours faithfully

A handwritten signature in black ink that reads "Paul Hudson". The signature is written in a cursive style with a horizontal line underlining the name.

**Paul Hudson**

**Lead Member of the Panel of Commissioners**

For and on behalf of the Infrastructure Planning Commission

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<sup>10</sup> Rule 10 (8) Rule 13(2).

## **Annex A**

### **Planning Act 2008 (PA 2008) and the Infrastructure Planning (Examination Procedure) Rules 2010**

#### **Procedural Decision regarding an application for a Resource Recovery Facility that comprises an energy from waste electricity generating station with a gross electrical output capacity of 65 MWe, together with associated development including a post treatment materials recovery facility at Rookery South Pit, near Stewartby, Bedfordshire – IPC Reference Number EN010011**

Following the Preliminary Meeting held on 17 January, the Examining Authority has made the Procedural Decision set out below:

1. The Examining Authority has identified a number of questions it wishes to ask about certain matters relevant to the examination of the application. These are contained in Annex C.
2. Responses to these written questions and requests for information must be received by the Examining Authority by 28 February 2011.
3. Any written representations about the application that interested parties wish to make must be received by the Examining Authority by 28 February 2011.
4. The deadline for receipt of the Local Impact Report by the Commission is 28 February 2011.
5. Statements of Common Ground, setting out agreed factual information and prepared jointly by the applicant and an interested party, must be received by the Examining Authority by 28 February 2011.
6. Any written comments that interested parties may wish to make on relevant and written representations, responses to the Examining Authority's questions or the Local Impact Report must be received by the Examining Authority by 28 March 2011.
7. The Examining Authority may wish to ask further written questions and make additional requests for information following receipt of the comments referred to at point 6 above. If so, then replies to this second round of questions must be received by 9 May 2011, and any responses to these replies must be received by 6 June 2011.
8. A hearing will be held on 13 May 2011 at the Park Inn Hotel Bedford commencing at 10.00 am to consider the specific issues of the

drafting aspects<sup>11</sup> of the draft Development Consent Order and requirements, and the proposed agreement between the applicant and the local planning authorities under s106 of the Town and Country Planning Act 1990. The Examining Authority requires submission of the final draft DCO and requirements, and completed s106 agreement by 6 June 2011. If necessary, a further hearing on these specific issues will be held on 13 June 2011.

9. If the Examining Authority decides it is necessary for issue specific hearings to be held on any matters other than those in paragraph 8 above, that decision will be notified to all interested parties by 13 May 2011, and such hearings will take place between 13 and 24 June 2011.
10. If any interested parties wish to be heard at an open floor hearing or any affected persons wish to be heard at a compulsory acquisition hearing they must formally notify the Examining Authority by 6 June 2011.
11. However, the Examining Authority anticipates that an open floor hearing will be requested and intends that this will be held on 5 July 2011 at the Forest Centre, Marston Moretaine, between 10.00 am and 4.00 pm with a break for lunch, and between 7.00 pm and 10.00 pm. A further session will take place on 6 July 2011 between 2.00 pm and 4.30 pm at the Forest Centre, and between 7.00 pm and 10.00 pm at the Village Centre Stewartby.
12. Similarly, the Examining Authority expects to receive requests from affected persons for a hearing to consider the compulsory acquisition of land and interests and intends to hold a hearing for this purpose starting at 10.00 am on 27 June 2011 in the Forest Centre, Marston Moretaine and concluding by 1 July 2011.
13. The Examining Authority intends to make an accompanied visit to the Rookery South pit only on 4 February 2011 commencing at 11.00 am, and an accompanied visit to the application site and surrounding area on 12 July 2011 commencing at 10.00 am; both visits to commence at the entrance to the site.

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<sup>11</sup> Any points to be made by parties about the underlying reasons for provisions or requirements are expected to be considered in connection with the relevant issue, not at this hearing

## Timetable for the examination of the application

<b>1</b>	<p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Local Impact Report (LIR) (Rule 8(1)(j))</li> <li>• Statements of Common Ground (Rule 8(1)(e))</li> <li>• Written Representations (WRs) by all interested parties (Rule 8(1)(a))</li> <li>• Responses to ExA's first written questions</li> </ul>	<b>28 February 2011</b>
<b>2</b>	<p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on the LIR (Rule 8(1)(j))</li> <li>• Comments on relevant or WRs (Rules 8(1)(c)(i) and 8(1)(d)(i))</li> <li>• Comments on responses to ExA's first questions (Rules 8(1)(c)(ii) and 8(1)(d)(ii))</li> </ul>	<b>28 March 2011</b>
<b>3</b>	ExA's second round of written questions (Rule 8(1)(b) (i to iii))	<b>by 11 April 2011</b>
<b>4</b>	Deadline for responses to ExA's second round of questions	<b>9 May 2011</b>
<b>5</b>	Comments on responses to ExA's second round of questions (Rules 8(1)(c)(ii) and 8(1)(d)(ii))	<b>by 6 June 2011</b>
<b>6</b>	Deadline for notifying ExA of wish to be heard at an open-floor hearing for IPs (Rule 8(1)(f)) or compulsory acquisition hearing for affected persons (Rule 8(1)(g))	<b>6 June 2011</b>
<b>7</b>	Deadline for submission to ExA of final draft Development Consent Order and requirements, and completed s106 undertaking(s)	<b>6 June 2011</b>
<b>8</b>	Deadline for close of examination	<b>15 July 2011</b>

## **Annex B**

### **Note of the Preliminary Meeting**

## Rookery South Resource Recovery Facility

### Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010

#### Note of the Preliminary Meeting

Location: the Park Inn Hotel, 2 St Mary's Street, Bedford, MK42 0AR

Date: Monday 17 January 2011

Time: 10:00 to 13:05

*Preliminary meeting concerning the application by Covanta Rookery South Limited for a Development Consent Order to construct and operate a resource recovery facility (RRF) that comprises an energy from waste (EfW) electricity generating station together with associated developments including a post treatment materials recovery facility (MRF) on land at Rookery South Pit, near Stewartby, Bedfordshire*

#### List of Participants:

Paul Hudson	<b>The ExA (PH)</b>	Panel Chair
Andrew Phillipson	<b>The ExA (AP)</b>	Panel Member
Emrys Parry	<b>The ExA (EP)</b>	Panel Member
Richard Phillips Q.C.	<b>CRSL</b>	Covanta Rookery South Limited
David Brock	<b>CBC-BBC</b>	Central Bedfordshire Council and Bedford Borough Council
Alex Munro	<b>CPREB</b>	Campaign to Protect Rural England - Bedfordshire Branch
Amanda Beresford	<b>NR</b>	Network Rail
Paul Maison	<b>BW</b>	British Waterways
Geoff Gardner	<b>HBP</b>	Hanson Building Products
Sue Clarke	<b>24TPC</b>	24 Joint Signatory Town and Parish Councils
Iain Clapham	<b>BCPC</b>	Bedfordshire Councils Planning Consortium
Iain Clapham	<b>LPC</b>	Lidlington Parish Council
Ian Pickering	<b>AGPC</b>	Aspley Guise Parish Council
Richard Hyde	<b>KPC</b>	Kempston Parish Council
Tony Hare	<b>EPC</b>	Elstow Parish Council
Hugh Roberts	<b>MMAG</b>	Marston Moreteyne Action Group
Alison Ogley	<b>WRG</b>	Waste Recycling Group
Paul Fox	<b>SWSC</b>	Stewartby Water Sports Club
Adrian Dobson	<b>AD</b>	
Lynne Faulkner	<b>LF</b>	
Peter Neale	<b>PN</b>	
Richard Gillard	<b>RG</b>	
Nigel Jacobs	<b>NJ</b>	

David Toland	<b>DT</b>
John Tait	<b>JT</b>
Joan Hawkes	<b>JH</b>

Other representatives of the organisations set out above, members of the general public and the press were also present. The full attendance list is attached to this note.

## **Introduction**

0.1 **The ExA (PH)** welcomed the participants to the preliminary meeting (PM). The Panel Chair introduced himself and his fellow Panel Members and explained that, collectively they were the appointed Examining Authority (ExA) handling the application under the Planning Act 2008. During the next 6 months, the ExA would consider the application; all the representations made in response to the application; and investigate matters it considered important and relevant, or contentious. After that, the ExA would have 3 months to reach its conclusion in the form of a final decision about the application or, if the appropriate National Policy Statements (NPS) are not designated, a recommendation to the Secretary of State to take the decision.

0.2 No decisions had been taken by ExA as yet. The ExA had read the application documents, over 1000 initial written representations from local authorities, public bodies, interest groups, members of the public and others. It had also visited the site and the surrounding area last week.

0.3 The purpose of the meeting is not to discuss the merits of the application nor anyone's view about it, but how the ExA intend to undertake the examination.

0.4 The agenda can be broken down into three main items:

(1) The principal issues raised by the application – as stated in Annex D of the invitation letter dated 16 December 2010.

(2) How the ExA proposes to carry out the examination which is overwhelmingly a written process, not a public inquiry.

(3) The proposed examination timetable and its deadlines for submission of evidence, other documents and comments on other parties' submissions.

0.5 In handling each item on the agenda, the ExA asked those who have notified it of their wish to speak to do so in the following order: the local authorities, statutory consultees, other public bodies and interest groups, individuals, and finally the applicant. Participants were encouraged not to repeat comments already made by other speakers.

0.6 A number of representations have been received in writing from several interested parties on matters to be discussed at the meeting. These

will be available for viewing on the Commission's website. The ExA will be taking these representations into account when making the procedural decision after the meeting.

## **1.0 Agenda Item 1: Principal issues and other matters to be examined**

1.1 **The ExA (PH)** explained that the issues in Annex D of the letter dated 16 December 2010 are the ExA's initial assessment of the principal issues arising from consideration of the application documents and representations received. It is not a comprehensive or exclusive list of relevant matters; regard will be had to all important and relevant matters in reaching a decision after the examination is concluded. The issues are also not in any priority order.

1.2 Interested parties are invited to submit representations and evidence on any relevant matter relating to the application, but particularly those identified as principal issues. A list of questions would be issued with the EA's procedural decision letter.

1.3 **The ExA (PH)** also clarified that the application to the IPC is separate to that submitted to the Environment Agency for an Environmental Permit. The Environment Agency is understood to have received the application for an Environmental Permit and has commenced its consultation on this application.

1.4 **CBC-BBC** agreed with those issues identified as principal issues by the ExA but wish to add three further issues: the draft Development Consent Order (DCO), requirements and the section 106 (s106) agreement. The DCO gives wide ranging powers to the applicant and it overrides various legal documents. The Councils have some concerns about some of the proposals within the DCO, the requirements and the s106 agreement which they believe require modification. Consequently they are issues that need to be identified as principal issues and considered carefully and properly.

1.5 **CPREB** considered that the future of Marston Vale should be added to the list of principal issues. Approving the proposed development in Marston Vale could lead to an increase in industry in the Vale and prejudice local residents' vision for the Vale.

1.6 The ecology of Marston Vale should also be added to the issues. The Campaign to Protect Rural England, the Royal Society for the Protection of Birds, Friends of the Earth and others have expressed concern about the impact of the proposed development on the ecology of the Vale and the mitigation measures proposed as part of the proposals.

1.7 **24TPC** questioned how the principal issues could be identified in advance of the detailed evidence being submitted in the next round of written

representations and asked if additional issues could be included following receipt of the detailed evidence.

1.8 Nonetheless, several issues should be added to the list of issues including:

- Noise – as impacts such as noise spikes and other noise concerns have not been adequately covered
- Socio-economic impacts in terms of whether the benefits of the proposal outweigh the impacts
- The potential effect of temperature inversions has not been adequately considered
- Plume in terms of visual impact on the landscape
- Light, in terms of impact on the night sky
- Flooding as the proposal site is in flood zone 3 and it could increase flood risk in the surrounding area
- Transport, with regard to the impact of the proposals on the local road network.

1.9 A query was raised from the floor about whether a transcript of the PM would be published. **The ExA (PH)** explained that a note of the PM would be published in the week following the PM.

1.10 **BCPC** explained that the consortium was a pressure group campaigning on planning matters in Bedfordshire. Its work is supported by many of the Parish Councils within Bedfordshire.

1.11 The site's history should be added to the list of issues. The proposal is an attempt to avoid the cost of implementing the restoration scheme attached to the previous planning permission. The money for the restoration scheme should be recouped through the s106 agreement for the proposed development. The impact of the proposal on the local public rights of way network, the s106 and compensation for the local community had been missed from the identified issues.

1.12 There was a lack of clarity about the policy context for the proposed development. It was unclear what regard would be had to the Planning Policy Statements (PPS), National Policy Statements (NPS), regional and sub-regional plans.

1.13 **LPC** were concerned that the ownership of the site of Lidlington Pit had not been transferred to the Council as promised by the land owner.

1.14 **MMAG** asked how the ExA intended to examine the proposals in terms of weighing up adverse impacts against the benefits. What regard would be given to the guidance in the draft NPS and the exaggerated power output figures stated by the applicant in weighing up the merits of the application?

1.15 **WRG** stated that the compulsory purchase element of the proposals and the planning issues are closely linked. The issues to be examined should

include prematurity in the context of the local development frameworks (LDF); rail safety; and the alternative sites considered, which is a relevant matter to whether the compulsory purchase tests have been met. These issues should be either issues or sub-issues.

1.16 **AD** considered that the potential public health impacts of the proposed development should be added to the list of issues. Focusing on the risk of accidental releases as stated in the list of principal issues in Annex D would be insufficient. Mental health impacts should also be included as it was referred to by the local health authority. In view of the Stockholm Convention on Persistent Organic Pollutants and the EU Precautionary Principle in article 174(2) of the EU Treaty a precautionary approach must be applied where assessments of a proposal prove inconclusive. The examining authority for the Ringaskiddy incinerator inquiry in the Republic of Ireland had regard to the Treaty.

1.17 Experiences dating back to the time of the brick works illustrate how localised weather patterns exacerbate pollution in the area. The term 'accidental' in the first bullet under the air quality issue is inappropriate in view of the history of such releases from similar plants in the USA. The applicant's evidence should be subject to independent scientific evaluation.

1.18 **LF** considered that several issues were missing from the list of principal issues. These included the socio-economic impacts; bio-diversity and conservation; and noise and vibration. Furthermore, the proposal was for a waste recovery and management facility – it was not clear that sufficient waste would come forward from the nine local authority areas identified by the applicant to justify the size of the proposed facility. All the authorities seemed to be pursuing local solutions for addressing their waste in line with government guidance. The applicant should submit an updated Needs Assessment with justification for the size of the proposed plant.

1.19 **PN** supported the comments made the AD and LF above.

1.20 **NR** highlighted that the proposals would have an impact on the rail infrastructure at Green Lane. It had not yet reached an agreement with the applicant about how the impact of the proposals on Network Rail's infrastructure should be resolved. Rail safety, with specific regard to the crossing at Green Lane, should be added to the list of issues.

1.21 **HBP** suggested that a policy framework issue should be covered at the beginning of the hearings in order to clarify that aspect of the examination. The Railways Inspectorate may also have a view on the impact of the proposals on the Green Lane railway crossing. The proposal's combined heat and power (CHP) potential should also be examined.

1.22 **SWSC** expressed support for the requests by others for the addition of an issue on the interaction between pollution from the proposed plant and local weather patterns, and the use of independent scientific advice to evaluate the submitted evidence. It also considered that flood risk and surface water drainage should be added to the issues as the site of the Water

Sports Club was very close to the site of the proposed development. The Panel should also visit the surrounding area of the proposed development.

1.23 **RG** explained that pollution at the molecular level should be added to the list. The proposed generating plant would produce a poor level of energy. Covanta have a poor environmental record and it had been sued last year for a breach of environmental regulations.

1.24 **BW** explained that proposals for the western part of Green Lane threaten proposals for the Bedford & Milton Keynes Waterway; consequently this should be added to the traffic and transportation issue. The route for the Waterway is supported by the statutory plans of Central Bedfordshire, Bedford and Milton Keynes.

1.25 **NJ** sought the addition of an issue on the justification for the size of the plant given the proximity of the plants in Oxfordshire and Buckinghamshire (Ardley and Claydon).noise and independent monitoring mentioned by others were also supported.

1.26 **DT** expressed concern on the timing of the preliminary meeting so soon after the Christmas holidays. The meeting should also have been held nearer to the proposed development site. Other technology should be pursued ahead of incineration.

1.27 **LPC** sought clarification on whether the declared output of the power plant was for peak time periods or continuous.. The application should be considered by the local authority if the continuous output would be less than 50 MW.

1.28 **CRSL** responded to the points raised:

- Considered that many of the issues suggested by the participants were adequately covered by the ExA's initial assessment of principal issues set out in Annex D of the letter of 16 December 2010.
- Does not object to the DCO and s106 issues being elevated to the list of principal issues and dealt with at issue specific hearings.
- Agreed that the policy framework, which would incorporate consideration of prematurity, could also be elevated to a principal issue.
- Rail safety could be addressed under the traffic and transportation heading as it appears to be a relevant issue.
- Compulsory purchase and the examination of alternative sites were sufficiently covered by the compulsory acquisition issue.
- Flooding is extensively addressed in the Environmental Statement (ES), so it does not need to be a principal issue; but CSRL would not object to it becoming one if the ExA considered it appropriate.

## 2.0 Agenda Item 2: Methods of Examination

2.1 **The ExA (PH)** explained that there have been many calls for issue specific hearings on several topics and emphasised that the process was not akin to a public inquiry but primarily a written process. This means that all parties are expected to set out their cases and supporting evidence in writing. All parties would have the opportunity to comment on other parties' submissions.

2.2 The ExA's view was to hold an oral hearing only if it was uncertain of the position on a particular issue or it became essential to complete the examination of a particular issue. The Panel are minded to consider whether any issue specific hearings are required after two rounds of written representations, by which time points should be clearly and specifically defined. A period when issue specific hearings can be held if required has been incorporated into the draft time table. Requests made at the meeting for specific issue hearings should provide reasons and evidence as to why the written process on its own is insufficient to allow the issue to be adequately examined.

2.3 The ExA noted the intention to hold a compulsory acquisition hearing a time for which has been set aside in the draft timetable. Similarly it expected that an open floor hearing will be held towards the end of the examination period – including day and evening sessions.

2.4 The ExA intend to visit the site itself (the pit) on the 4<sup>th</sup> February 2011. A further accompanied site visit is proposed to take place on 12<sup>th</sup> July.

2.5 **CBC-BBC** explained that they are requesting five issue specific hearings on the following topics (this being reduced from those requested in their relevant representations): highways, noise, landscape and design, DCO & requirements, and S106 Agreement. Their reasoning for requiring issue specific hearings takes into account the two tests set out in s91 of the Planning Act 2008: to ensure adequate examination of the issue, or that an interested party has a fair chance to put the party's case.

2.6 Highways: It is the intention to provide detailed written representations. However, this is a highly technical area and the applicant's case uses a large number of plans and photographs. It would be much simpler to explain the party's case by taking the ExA through each plan etc orally. The example given was the impact of the Bedford and Milton Keynes waterway upon Green Lane. Therefore, in order for there to be an adequate examination of the issue there needs to be an issue specific hearing.

2.7 Landscape and Design: A hearing is considered necessary on two grounds: adequacy of examination and fair chance to put the case. Design and landscape are matters of impression and the Councils need the opportunity to explain matters by reference to visual material in order for an adequate examination. It might be possible for the Councils to produce their own relevant material but the Councils are unlikely to be able to afford this.

The Councils' time could be better spent by referring to the relevant parts of the applicant's material.

2.8 **Noise:** Noise can be a technical and difficult subject to put across wholly on paper. Matters such as tone are better explained orally, and a hearing also gives the ExA an opportunity to ask questions.

2.9 **DCO and Requirements:** These matters will proceed at a different pace to other representations. Discussion will continue in the background and the outcome needs to be brought together at the end of the process. Other relevant issues may arise during the examination which have a bearing on the DCO. Essentially there is a need to bring matters concerning the DCO and requirements to the attention of the ExA for explanation.

2.10 **S106 Agreement:** The comments made on the DCO and requirements are also relevant to the S106 agreement.

2.11 **The ExA (PH)** sought clarification on what is the current status of the S106 agreement? **CBC-BBC** replied that an early draft of the heads of terms was included in the application documents and the applicant added that the Councils' initial responses had been received to the first draft agreement.

2.12 **CPREB** requested that an issue specific hearing should be held on landscape and visual impact. **CPREB** also confirmed that its East of England branch would make a separate representation.

2.13 **24TPC** expressed strong support for the Councils' representation:

- Hearings are important in helping the ExA to understand the issues being raised and that local people have a fair opportunity to have their cases heard.
- Supports hearings on principal issues which should include highways/transportation, noise, landscape and visual impact (including the plume), air quality including the effects of temperature inversion, light and flooding.
- Considers that socio-economic impact could be kept to written evidence.

2.14 **AGPC** sought clarity on the criteria the ExA would use to balance the impacts upon the local community against the benefits for the nation as a whole.

2.15 **BCPC** stated that it is committed to openness and democracy and expressed a hope that the examination is not highly clinical and that it takes into account local feeling and the history of the site. **BCPC** agree with the points raised by the Councils on the need for hearings.

2.16 **MMAG** argued that to proceed with only written representations would undermine the integrity of the process and could result in civil unrest. Hearings should take place at a time and place that is convenient for all.

2.17 Later under this agenda item MAGG also noted that both the Council and the applicant are represented by Counsel and asked whether other groups such as community groups would be able to appoint advocates to represent them at future hearings.

2.18 **WRG** consider it vital to have a hearing on waste recovery and management. This should take place immediately before the compulsory purchase hearing.

2.19 **AD** requested that a hearing be held on the public health impact of the proposal. This should relate to both permitted and un-permitted emissions, and should consider local impacts including the history of pollution impacts on this location. He also considers that hearings should be held outside 'working hours'.

2.20 **PN** confirmed that all his points have been covered by others.

2.21 **JT** requested that hearings should be held locally in the 2 villages most affected (Stewartby and Marston Moretaine).

2.22 **SWSC** invited the ExA to the Sailing Club House when it makes its site visit. Hearings are supported on transport/highways, design and landscape, noise impacts and air quality/odour issues. A hearing should also be held on flooding and surface water impact – this is a technical subject where dialogue would help to explain the issues and impact.

2.23 **DT** expressed concern that the process could be rushed; there are so many important factors to consider with a legacy of over a quarter of a century.

2.24 **NR** asked that in the event that the issue not being resolved beforehand, a hearing should be held on the impact upon the rail crossing. This is a very technical issue with a need to refer to plans at a hearing. It could potentially be included within the highways and transportation hearing.

2.25 **HBP** highlighted, with reference to the comments of NR, that there are also other parties to the railway crossing agreement. Hearings are requested to cover the need for the proposal, the practicality of its delivery, its management and the effect upon the locality if it is built and subsequently not needed.

2.26 **BW** explained that the proposed waterway would be multi functional and argued that hearings allow for teasing out interrelationships between issue areas.

2.27 **KTC** asked that the impact upon wildlife is the subject of a hearing including the impact upon endangered species.

2.28 **CRSL** made the following submissions in response to points raised by other parties:

- Agree with the view expressed by the ExA on the requirement for hearings, emphasising that the door should not be shut on hearings, and a final decision should be taken following two rounds of representations.
- The one exception concerns the interlinked issues of the terms of the order, drafting of the requirements and the s106 agreement. It is sensible and appropriate to have an issue specific issue hearing on these interlinked matters.
- In respect of the Councils' submissions, does not consider that hearings are required on highways, landscape & design, and noise. Highly technical issues are commonly dealt with in the form of written proofs of evidence. In particular, highways and noise issues are commonly dealt with in writing in major public inquiries. There is a danger that if parties know there is a hearing, their written representations may not be as full as they probably should be
- The Councils request for a hearing on landscape and design is seemingly a resource issue. There is full opportunity to comment on others written representations including any material presented. Parties can make any comments they want to in writing.
- Whilst it may be that certain items could more easily be dealt with through oral submissions, this does not pass either of the tests in section 91 of the Act.
- Interrelated issues of the DCO, requirements and the s106 agreement, invokes the analogy of the round table session that commonly occurs at the end of planning inquiries where parties participate with the Inspector in a discussion about conditions and S106 offered. It would be difficult for the parties to adequately respond to other parties on technical drafting requirements. Therefore suggests that these three interrelated matters are properly dealt with at an issue specific hearing. Passes the test in s91 that an issue specific hearing is necessary to allow an adequate examination.
- On points made by Ms Clarke and Mr Roberts in relation to public input, the importance of the process being seen to be a fair process does not pass either of the tests in s91 of the Act. There is also to an open floor hearing at which the strength and vehemence of local opposition can be well articulated.
- On the representation made by WRG suggesting there is an issue specific hearing on waste recovery and management immediately preceding the compulsory purchase hearing, suggest that the linked or interrelated nature of those matters does not mean that an issue specific hearing is necessary in the terms set out in s91 on issues such as need, catchment area and waste management generally. Therefore oppose an issue specific hearing on waste recovery and management.
- In relation to the representation made by Mr Maison evoking the merits of an issues approach, the ExA is already proceeding on an issues approach and Mr Maison did not address whether the issues approach needed issue specific hearings. Suggest there is no necessity for that.

2.29 Discussion followed on when might be the most appropriate time for any hearing deemed necessary on the DCO, requirements and proposed

S106 agreement. **The ExA (AP)** expressed caution that having a hearing too late in the process could result in the risk of a rush to resolve any outstanding matters that arise. CRSL consider that such a hearing should be towards the end of the examination and that the exchanges of written representations should flush out the main issues beforehand.

2.30 **CBC-BBC** questioned how any revised view of the ExA on issue specific hearings would be communicated to the parties and what opportunities there will be to comment on this? **The ExA(PH)** responded that this will be dealt with in the concluding comments.

### 3.0 **Agenda Item 3: Timetable for the Examination**

3.1 **The ExA (PH)** explained that the draft timetable for the examination is included within the Annex C of the letter of 16<sup>th</sup> December. He reminded the meeting that the ExA may disregard any submissions received after the deadlines to be set out in the Procedural Decision to be issued following the preliminary meeting.<sup>12</sup>

3.2 **CBC-BBC** was happy with the draft timetable. However, it is vital that the deadline for receipt of the Local Impact Reports, written representations and Statements of Common Ground should be the same. The three are interlinked and not to do so could result in the need to amend representations already made.

3.3 Concern was raised that written representations and responses were submitted to the IPC, not exchanged with other parties and that if such documentation was not immediately posted on the IPC's website, parties would lose days from the timetable in which to respond. It was noted that there had been an occasion of a delay of one week in representations being posted on the IPC website and CBC-BBC suggested that the timetable should be pushed back one day for every day that documents are not available on the IPC website.

3.4 **ExA (PH)** explained that the Regulations require that the IPC must allow 21 days and has already allowed 28 days in the draft timetable. However, this point will be considered.

3.5 **CPREB** consider that the 28<sup>th</sup> February deadline is not sufficient to get a consensus amongst volunteer and umbrella organisations, especially when they do not have professional expertise. More than five or six weeks is required.

3.6 **NR** explained that it is involved in ongoing discussions with the applicant regarding the implications of the proposal on the level crossing.

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<sup>12</sup> The Infrastructure Planning (Examination Procedure) Rules 2010 - Rule 10(8).

There are internal processes at Network Rail to sign off a “safe” assessment of the impact on level crossings, and it would be prudent to build an issue specific hearing into the timetable should agreement not be reached.

3.7 **EPC** expressed concern that the examination appears to be a matter between two strong parties - the applicant and the local authorities – and that consideration needs to be given to the effect on local people. Four weeks for written representations, which may be very weighty issues, is too short a time.

3.8 **DT** stated that he had not received a letter about the preliminary meeting.

3.9 **WRG** agreed with the Councils regarding the website issues and expressed concern that five days is not enough for an issue specific hearing for the compulsory purchase sessions.

3.10 **MMAG** asked the ExA what the impacts upon the timetable would be if there was a Judicial Review during the process. **The ExA (PH)** replied that the Panel would act within the law.

3.11 **CBC-BBC** on checking the Regulations stated that there was a minimum of 21 days for the receipt of written representations but that there is no minimum period prescribed for parties to comment on written representations. The time for representations to be published on the website must therefore be factored in.

3.12 **CRSL** responded to various points that had been raised:

- Expressed agreement with the draft timetable but agrees with CBC-BBC about the consequences of delays in placing material on the IPC website.
- Noted their willingness to arrange mutual exchange of correspondence between CBC-BCC and the applicant to prevent delay and confirmed that similar arrangements could be put in place with any other interested party who requests it.
- Noted that parties had previously been notified of the accepted application in October so providing notice that the process was moving to examination and therefore giving parties adequate time to prepare representations.
- All application documents are on deposit at the Councils’ offices and local libraries, although no longer available at the Forest Centre.

3.13 **The ExA (PH)** asked CRSL whether it had any additional points.

3.14 **CRSL** requested clarification from the ExA on how best to frame the first written representations. Should it concentrate on the written questions to be issued by the ExA or is there freedom to address whatever point a party thinks best?

3.15 **The ExA (PH)** replied that all parties should give full written representations on whatever matters they consider to be important and relevant, and the applicant should respond on every matter it wishes to.

3.16 **CRSL** explained that the validated version of the ES had assumed a worst case stack height of 100m. The application to the Environment Agency for the Environmental Permit includes modelling based on a stack height of 105m. This may give rise to confusion. To limit this, the applicant had prepared a supplementary ES based on a stack height of 105m. This had been sent to all statutory consultees and placed on deposit locally in October 2010. The difference in the results between the modelling is very limited and there are no changes to the application or the conclusion of the ES.

3.17 **The ExA (PH)** responded that the supplementary ES can now be submitted to the ExA as part of the applicant's written representations. However, there is no impediment to it being submitted earlier than the deadline for the receipt of written representations if the material is ready.

3.18 **CRSL** explained that the baseline for the application is the low level restoration scheme which is part of the Review of Old Mineral Permissions (ROMP) and that both Councils had issued ROMP consents in December 2010 to the landowner.

3.19 **DT** spoke about the Covanta incinerator in Dublin.

3.20 **CBC-BBC** asked for clarification on what the mechanism would be for further representations to be made should the draft NPSs be designated during the examination process and recognised that this would be more difficult after the close of the examination. It could represent a breach of natural justice if parties are not able to submit further representations in the light of an adopted NPS.

3.21 A further point was raised by **CBC-BBC** about the implications for the draft DCO being sent to the Secretary of State under s121 of the Planning Act 2008 before it has been agreed. It is unclear as to how it will be handled if it is still undergoing changes.

3.22 **JH** remarked that if local residents are not going to buy into the project and will not supply waste, the waste will come from elsewhere from those who do not have to suffer the consequences. This is immoral.

3.23 **The ExA (PH)** set out his closing comments:

- The time table will now be considered and will be published by the end of the week as the procedural decision.
- The procedural decision will deal with the issue of specific issue hearings and inform parties of any that have been determined to be necessary at this stage.

- The need for issue specific hearings will be looked at again after second round of questions. Therefore, there will still an opportunity for the ExA to reconsider whether specific issue hearings are required later in the process.
- It is emphasised that the examination is primarily a written process.
- There will be an open floor hearing (only one request from an interested party is required) which will encompass afternoon and evening sessions.
- Due account will be taken of requests for local venues for hearings balanced with the availability of appropriate venues.
- Should parties wish to group together to make a submission, and be legally represented at an open floor hearing, they are entitled to do so.
- The process for making further representations about the application in the light of a designated NPS will be determined as the examination unfolds. The timetable can be adjusted if necessary.
- The future of the IPC and the implications for this application was outlined. The application is within the thresholds of the Planning Act 2008 and therefore falls for the IPC to handle it.
- The Planning Act requires the cooperation of all parties in complying with the timetable.
- All parties now have the opportunity to provide material in representations which they consider to be relevant and important to the examination and are encouraged to do so.
- Confirmed site visits are proposed to take place on 4<sup>th</sup> February and 12<sup>th</sup> July 2011.

### **The Preliminary Meeting closed at 13:05**

*This meeting note sets out the principal matters and arguments raised by participants at the preliminary meeting, but does not purport to include every point raised on every issue. Nothing in it should be taken as indicating the Examining authority's final conclusion on any matter.*

## Rookery South Preliminary Meeting List of Attendees

Name	Organisation
Rosanne McGuigan	Covanta Rookery South Ltd
Rachel Ness	Covanta Rookery South Ltd
Lee Gordon	Covanta Rookery South Ltd
Anne Dugdale	Covanta Rookery South Ltd
Ben Dove Seymour	Covanta Rookery South Ltd
Julian Boswall	Burges Salmon
Lyn Powell	Covanta Rookery South Ltd
Kirsten Berry	Covanta Rookery South Ltd
Richard Phillips Q.C.	Representing Covanta Rookery South Ltd
Darl Sweetland	Buckinghamshire County Council
Nigel Bennett	Bedford Borough Council
Iain Blackley	Bedford Borough Council
Roy Romans	Central Bedfordshire Council
Susan Marsh	Central Bedfordshire Council
Sue Frost	Central Bedfordshire Council
James Delafield	Central Bedfordshire Council
Cllr Angela Baker	Central Bedfordshire Council
Andrew Emerton	Central Bedfordshire Council
David Brock	Representing Central Bedfordshire Council and Bedford Borough Council
Alex Harrison	Milton Keynes Council
Tom Podd	Milton Keynes Council
Cllr Susan Clark	24 joint signatory Town & Parish Councils
Ian Pickering	24 joint signatory Town & Parish Councils
Cllr Mrs Sally Bacon	Amphill Town Council
Jack Hobbs	Aspley Heath Parish Council
Stuart Worrel	Aspley Heath Parish Council
Andy Kirkham	Aylesbury Vale District Council
Cllr Susan Clark	Cranfield Parish Council
Tony Hare	Elstow Parish Council
Janice Tuckett	Harlington Parish Council
Cllrs Martin Quince	Kempston Town Council
Richard Hyde	Kempston Town Council
Wendy Rousell	Luton Borough Council
Shan Askins	Luton Borough Council
Edward Carter	Willington Parish Council
Nigel Jacobs	Wilshamstead Parish Council
Paul Farrant	Woburn Sands Town Council
Simon Marlow	Bedfordshire Fire Service
Paul Maison	British Waterways
Jeremy Hill	CPRE East of England Region
Alex Munro	CPRE Bedfordshire
Martin Towlson	CPRE Bedfordshire
Barry Halton	CPRE Bedfordshire
Peter Scott.	CPRE Bedfordshire
Tom Gilbert-Wooldridge	English Heritage
Kim Follenfant	Environment Agency
Neville Benn	Environment Agency
Simon Birch	Environment Agency

Sally Holloway	Environment Agency
Rio D'Souza	Highways Agency
Lesley Mahon	Highways Agency
Phil Roast	Highways Agency
Simon Best	National Grid
Amanda Beresford	Network Rail
Steven Ballard	Network Rail
R Yates	Ardent
S Mole	Ardent
M Humphries	Francis Taylor Building
Geoff Gardner	Representing Hanson Building Products
Paul Fox	Stewartby Water Sports Club
Ruth Ivory	Stewartby Water Sports Club
Mark Hodgson	Savills
E Dowerty	URS South West
Alison Ogle	Waste Recycling Group Limited
P Marsh	Waste Recycling Group Limited
Fiona Steele	Flitwick at the Crossroads Residents Action Group
Hugh Roberts	Marston Moreteyne Action Group
Mr Redman	Marston Moreteyne Action Group
Mrs Redman	Marston Moreteyne Action Group
David Cooper	Our Marston Vale
S Terrace	Planning Aid
S Mauns	Planning Aid
Rogina Vrlie	Planning Aid
Drew Marchant	Renaissance Bedford
John Guthrie	Conservative Party Candidate for Mayor of Bedford
Richard Gillard	Member of Public
Ruth Redman	Member of Public
Elinor Ashby	Member of Public
Joan Hawkes	Member of Public
Brenda Lee	Member of Public
Steve Bishenden	Member of Public
Rebecca Hares	Member of Public
Wendy Luff	Member of Public
A K Knell	Member of Public
Stephen Balint	Member of Public
Evelyn Fox	Member of Public
Cynthia Bagchi	Member of Public
Arthur Bourne	Member of Public
Tomislav Govorusa	Member of Public
Mr & Mrs Sonnensteins	Member of Public
Richard Koller	Member of Public
Christine Koller	Member of Public
Tina Horn	Member of Public
Susan Myers	Member of Public
P Greenwell	Member of Public
Lynne Faulkner	Member of Public
A.M. Robertson	Member of Public
Abi Watkin	Member of Public
Mr R E Gale	Member of Public
Celia Lai	Member of Public
Adrian Dobson	Member of Public

Margaret Wright	Member of Public
Peter Meadows	Member of Public
David Toland	Member of Public
P E Neale	Member of Public
Stewart Long	Member of Public
Alan Apling	Member of Public
Sarah Watson	Member of Public
Janet Orchard	Member of Public
John Tait	Member of Public
Adam Thompson	Beds on Sunday
Veiron Hillhouse	Beds on Sunday
Angus Walker	Bircham Dyson Bell
S Ratcliffe	BBC News Look East

## **Annex C**

### **The Examining Authority's Written Questions and Requests for Information**

**These are questions addressed principally to the applicant (Covanta Rookery South Ltd). However all interested parties are also invited to provide information to the ExA in answer to these questions.**

#### **1. The Low Level Restoration Scheme (LLRS)**

- Are the planning approvals issued by the Councils in December 2010 and the s106 Agreement for the LLRS dated 9 December 2010 exactly as assumed in the application documents? If not what is the position?
- Have any applications for other consents/approvals required for the LLRS been made and/or determined; e.g.
  - Applications for approval of details required by conditions?
  - Protected Species licences?

#### **2. Status of Other Consents**

- What is the Environment Agency's current position on the issue of an environmental permit for the plant? Has the Environment Agency made any comment on the proposal's ability to meet emissions standards?

#### **3. The Policy Context**

- Does the policy context for the proposal described in the application documents need to be modified in the light of events since the application was submitted (e.g. the issue of revised draft NPSs EN-1 and EN-3 in October 2010 and, if relevant, the Cala judgement on the status of RSSs)?
- What are the policies of Central Bedfordshire and Bedford Borough Councils for waste disposal and the proposed uses of the Rookery South site?

#### **4. Waste Supplies**

- What level of confidence is there that Covanta will be able to secure sufficient supplies of waste to allow the plant to operate at its design capacity without prejudicing recycling initiatives?

- Allied to the above, what assurances might be offered that waste will not be sourced from outside the waste catchment area defined in the application documents?

## **5. Compulsory Acquisition Matters**

- What is the current position regarding the need for consent to occupy Crown land and certificates to occupy and install cables in special category land (see Statement of Reasons ss 7.1, 7.2 and 7.4).
- What land does the applicant currently control (please show on a plan – see Statement of Reasons para 6.2.1)?
- What assurances/guarantees can the applicant offer regarding the availability of adequate financial resources to fund any compensation payments arising as result of compulsory acquisition powers being used (see Funding Statement, para 1.4) ?

## **6. Highways and Traffic**

- What progress has been made towards finalising the proposals for alterations to the Green Lane level crossing?

## **7. Operations**

- Can the plant operate by burning waste without generating electricity and transmitting it to the grid connection?

## **8. Bedford and Milton Keynes Waterway**

- What is the safeguarded route for the proposed canal?

## **9. CHP**

- What measures are proposed to facilitate and secure the future deployment of CHP from the plant?

## **10. Rail Link**

- What measures are proposed to facilitate and secure the future provision of a rail siding on the site and to connect it to the rail network?

## **11. The Draft DCO**

- What is the justification for the extent of the powers being sought in the draft DCO covering future maintenance of the authorised project (Article 4)?

- The inclusion in Article 16 of the draft DCO of s237 of the Town and Country Planning Act 1990 is noted. However, amendments to s237 read together with amended Article 6 of the draft DCO would appear to have the effect of failing to ensure that those whose rights are interfered with as a result of the scheme, in circumstances where a successor in title to the promoter cannot pay, would be compensated.

Such provisions should not be included in a DCO under s126(3) of the Planning Act 2008 and would not be consistent with policy as set out in “Guidance related to procedures for Compulsory Acquisition”.

Please may we receive your views on these matters.

- Please respond to the following detailed queries:
  - Article 6 (4): Should “articles 14 to 26” read “articles 15 to 26”?
  - Article 9: Article 9(2) refers to “column (4) of that schedule” (i.e. Schedule 3), but there is no column 4 to that Schedule. Article 9(3) refers to Part 3 of Schedule 3, but there is no Part 3 of that Schedule.
  - Schedule 1, Part 1: The description of Works 5A and 6A and 7B in the schedule appear not to match what is shown on the plans.

## Annex D

### **Notification to all interested parties of the availability of representations and documents for inspection and copying in accordance with Rule 21**

Following receipt of any written representations, responses to questions, comments or any other documents or information about the application, the Commission will, as soon as practicable, make these available by publishing them on its website and providing an opportunity for inspection and copying.

On the Commission's website at [www.independent.gov.uk/infrastructure](http://www.independent.gov.uk/infrastructure) following the links: *Projects – Eastern – Rookery South Energy from Waste – View Representations*.

For inspection and copying at:

- Bedford Borough Council, Town Hall, St Paul's Square, Bedford, MK40 1SJ

Copying charge: 14p per sheet for black and white copies

Opening Hours: Monday - Thursday 8.45 am - 5.00 pm, Friday 8.45 am - 4.45 pm

- Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford, SG17 5TQ

Copying charge: Free for the first 50 pages and then 10p per sheet for black and white copies

Opening Hours: Monday to Thursday 8.30 am – 5.00pm, Friday 8.30 am – 4.00 pm