

██████████  
23A Milton Street  
Saltburn by the Sea  
Redcar and Cleveland  
TS12 1DJ

Our ref: NY/2015/0233/ENV

17<sup>th</sup> November 2015

Dear ██████████

Planning application to hydraulically stimulate and test the various geological formations previously identified during the 2013 KM8 drilling operation, followed by the production of gas from one or more of these formations into the existing production facilities, followed by wellsite restoration. Plant and machinery to be used includes a workover rig (maximum height 37m) hydraulic fracture equipment, coil tubing unit, wireline unit, well testing equipment, high pressure flowline, temporary flowline pipe supports, permanent high pressure flowline and permanent pipe supports on land at KMA wellsite, Alma Farm, off Habton Road, Kirby Misperton, North Yorkshire on behalf of Third Energy UK Gas Ltd

I write with regard to the abovementioned planning application made on behalf of your Client, Third Energy UK Gas Limited.

While I'm sure you will appreciate that every endeavour continues to be made to process your Client's planning application with due diligence and timeliness, it has not been possible to determine the application within the stated timescale as set down within the letter of formal acknowledgement upon receipt of the application i.e. before the 18<sup>th</sup> November 2015. There are a number of reasons for this and below you will find a list of the outstanding matters yet to be resolved which, while not exhaustive, nevertheless serves to demonstrate the breadth of scope of the various issues which require attention. The purpose of this letter, therefore, is to formally request an extension to the time in which to determine your Client's application.

That which follows within the bullet-point list below (in no particular order of priority or preference) comprises the outstanding matters which have given rise to the need to write to you requesting your Client's written agreement to an extension of time. It has had regard to, inter alia, your Client's response to the request for further information (the County Planning Authority's letter dated 11<sup>th</sup> October 2015 refers), the responses to consultation received by the County Planning Authority to date and also the representations made to the Authority thus far. Regard has also been had to the logistics and the time which will be required to prepare the substantive report to be presented to Members of the County Council's Planning & Regulatory Functions Committee, the arrangement and the conduct of a formal Committee Site Visit and the co-ordination of Members' diaries to make the necessary arrangements in the event that an extraordinary meeting of the Committee may be required allowing reasonable time for presentations from both those in support and those against the proposals. Having considered the above, please note the following:

**Planning Services**

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Contact: Victoria Perkin

- The County Council, having received the response of your Client to the Authority's request for further information, has complied with its statutory duty to advertise, consult and allow a period of at least 21 days for the making of representations on that further information. The afore-mentioned 21-day period is due to end on Wednesday 25<sup>th</sup> November 2015. You will, however, appreciate that this date comes after the expiry of the 16-week determination period by seven days;
- You will also be aware that following the recent resolution of the Members of Ryedale District Council's Planning Committee to defer a decision on the formal response of the District Council to consultation on the application, the formal decision of that Authority in respect of its comments on your Client's application will not now be known until, at the earliest, Wednesday 2<sup>nd</sup> December 2015. This again falls outside the 16-week determination period by two weeks;
- The County Council has consulted widely on the application and while many of those consulted have now responded to the Authority's original consultation with their respective comments, some responses remain outstanding. These include, as already mentioned, the Ryedale District Council, and also the Environment Agency, the Highway Authority, Malton Town Council, Marishes Parish Meeting, Norton-on-Derwent Town Council, Normanby Parish Meeting and Scampston Parish Council. Of course, consideration should also be borne in mind that the Authority has consulted on the further information received which may give rise to further comments being received from those who may have already given their views in the earlier period of consultation;
- Both you and your Client are already aware, as we have recently met to discuss the issues (Wednesday 4<sup>th</sup> November 2015), that the Authority has additional concerns arising from the content of the response to the recent Regulation 22 request (in no particular order of priority or preference):
  - **NOISE** - the alternative noise attenuation barrier which is referred to as an Echo Barrier is solely conveyed to the Authority by way of a manufacturer's leaflet and a photograph (referred to as '*Echo Barrier technical sheet*' and '*Echo Barrier scaffold barrier example*' in your response). There are no details provided such as height etc. nor a submission of a noise impact assessment of this alternative noise attenuation barrier by which to assess its effects. Having read the '*brochure*', there are a number of factors that weigh in the balance as to whether Echo Barrier would be suitable e.g. weight, height and proximity to point source of noise generation without giving rise to increased noise levels to those working within the noise attenuated zone from a health and safety at work perspective. Notwithstanding, any reduction in associated vehicle movements, there requires to be demonstrable evidence of the capability of the alternative noise attenuation barrier to achieve levels which can then be assessed by the County Planning Authority's adviser on such matters. It is considered that for your Client to address this, it is possible that this will impact upon the timescale in which to determine your Client's application; nonetheless, I shall look forward to the receipt of this further evidence in due course;
  - **LIGHTING** - with regard to external lighting, the lighting impact assessment within the Environmental Statement needs to refer to and acknowledge all external lighting including that on the derrick of the 37-metre high rig and the 25-metre high coil tubing tower. The assessment requires identification, acknowledgement, assessment and then demonstrate the absence or otherwise of significant effects;
  - **TRAFFIC – SURVEY** - notwithstanding your Client's intention to undertake works in March 2016, there are a number of factors outside your Client's control that affect this timetable. It follows, therefore, that no guarantee may

be placed on the March 2015 traffic survey being wholly relevant and representative. It therefore must be demonstrated how the March 2015 can be deemed to be relevant for any other times of the year. It is considered that for your Client to address this, it is possible that this could impact upon the timescale in which to determine your Client's application;

- **TRAFFIC – TIMING OF VEHICULAR MOVEMENTS** - you will be aware of the concerns raised in consultation and in representation with regard to traffic (in particular the response of the North Yorkshire Police Authority). This, therefore, requires a re-assessment of the traffic proposals by your Client with a view to understanding the consequential impacts should the '*operational*' times for vehicular movements change to accommodate the representations made and the consultation responses received. It is considered that for your Client to address this, it is possible that this could impact upon the timescale in which to determine your Client's application;
- **TRAFFIC – ROUTING** - In addition to the matter of the traffic survey and the '*operational*' times of the vehicular traffic, it is understood that in the event of any inability to use the route as proposed within the application details, that all works at the application site requiring vehicular access would be suspended and that no other alternative route is proposed to be used. It would be appreciated if this could be confirmed in writing for the Authority such that it may be clear as to what is proposed with regard to the routing of vehicles. It is thought that giving consideration to this written confirmation could possibly impact upon the timescale in which to determine your Client's application. For the sake of absolute clarity, in the event that a decision is taken that such a commitment to use only one route cannot be made by your Client, then any alternative route must be subject to an assessment of its attendant effects as part of the environmental impact assessment of the proposed development;
- **TRAFFIC – OTHER ROAD USERS** – Notwithstanding your Client's response with regard to the, as yet unimplemented, Malton to Pickering cycle route, any permission, should planning permission be forthcoming, would be subject to a statutory time limit of three years for implementation or longer at the discretion of the County Planning Authority. It is, therefore, considered to be wholly reasonable to request that the assessment of the effects of the development have regard to all road users, including cyclists, and the potential that the cycle route may be implemented within the timeframe of implementation of any permission. Whether the cycle route comes to fruition or not does not negate the need to assess the proposed development in terms of its effects upon cyclists as users of the public highway. It is considered that for your Client to address this, it is possible that this could impact upon the timescale in which to determine your Client's application. The traffic survey has been subject to the request for further information with regard to the absence of any assessment of other users of the public highway such as cyclists, pedestrians, horse-riders and motorcyclists. For the assessment to withstand scrutiny, it must be based on sound survey information. One single survey, outside the 'open season' of the Flamingo Land Resort, solely reporting on vehicular traffic is not sufficiently robust unless demonstrated within the assessment is shown the reasoning behind the omission of other road users;
- **TRAFFIC - LISTED BRIDGE OVER COSTA BECK** – it is understood that your Client has agreed to undertake a detailed condition survey of the bridge to determine its structural integrity and, thereby, its ability to withstand the forces of the traffic associated with the proposed development. Inextricably linked to this is an assessment of the effects of the proposed development in

respect of its impact upon a listed structure. The Heritage Impact Assessment, which accompanies your Client's planning application, whilst identifying the bridge as a listed structure within the 3 kilometre area of search, makes no connection with the impact of the proposed development through the effects of associated heavy vehicular traffic traversing the bridge. It is considered that for your Client to address these issues concerning the listed bridge could possibly impact upon the timescale in which to determine your Client's application;

- **PROPOSED HOURS FOR HYDRAULIC FRACTURING** – there is a need to ensure absolute clarity in respect of the proposed development and the statement that the proposed hydraulic fracturing stimulation treatment would be conducted during “*daylight hours*” is imprecise. There is therefore a need to ensure precision. Taking into account that hours of daylight can vary at different times of the year, but in any event the proposed hydraulic fracture stimulation treatment would only require a five hour ‘*window*’, a more precise expression of proposed hours would be to identify a period of 8 hours between which the proposed operations would take place and reflecting the vary times of available daylight during the year. For example, between 0800 hours and 1600 hours, thereby allowing for an 8-hour ‘*window*’ for each hydraulic fracture stimulation treatment to take place. This would lend precision and provide interested parties with greater understanding and certainty about what is proposed. It is appreciated that your Client may need time to give this particular matter due consideration which understandably could impact upon the timescale in which to determine your Client's application;
- **NON-DESIGNATED HERITAGE ASSETS** – Following a discussion on this specific issue in the meeting on the 4<sup>th</sup> November 2015, it is understood that you will be undertaking a desk-based analysis of available information to assist in the assessment of the effects of the development upon non-designated assets of historic value. At the time of the meeting, it was not clear how long such analysis would take and it would therefore be appreciated if this could be made known to the County Planning Authority at the earliest opportunity. Depending upon the time to undertake this analysis, it is possible that this could impact upon the timescale in which to determine your Client's application;
- **WATER** – the Regulation 22 request sought details with regard to the amount of water which would be additional to that proposed to be used in the hydraulic fracturing stimulation treatment and specifically with regard to the volume required to ‘*purge*’ or ‘*flush through*’ the pipeline. Notwithstanding the verbal undertaking given during the recent meeting that the pipeline would not be used for waste water re-injection of condensate down the KM3 well while the hydraulic fracture stimulation treatment would be taking place (in other words, gas production and thereby electricity generation ceasing for the period of hydraulic fracture stimulation treatment), is there not a contingency for a circumstance where the five zones of hydraulic fracture stimulation did not take place consecutively? It is understood that in the absence of any contingency, a written undertaking would be forthcoming that would explain that the pipeline would not be used for any other purpose until all five treatments had been completed. It is appreciated that your Client may need time to give this particular matter due consideration which understandably could impact upon the timescale in which to determine your Client's application;
- **LANDSCAPE** – the Landscape and Visual Impact Assessment is predicated on the mitigation of impact of the proposed development by putting forward

for consideration by the County Planning Authority, its consultees and all interested parties documents showing the shipping containers painted a dark green colour to reduce the visual impact of the proposed 8.7 metre high wall of hi-cube shipping containers (Photomontage of Phases 1 and 2 from Viewpoint No. 2 within the Assessment refers). It was affirmed in the Regulation 22 response and re-iterated during the recent meeting that there is no proposal to define a specific colour. In the absence of an undertaking to ensure the colour of the shipping containers, it can only be concluded that the assessment incorrectly portrayed the proposed development of mitigating its impact by providing photomontages of shipping containers painted in a dark green colour when the later statement made in the Regulation 22 response is that “*we are not proposing a specific colour*”. One can only assume, therefore, without any indication to the contrary that a mixture of colours could be a possibility without any control;

- **THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010** – the County Planning Authority has received a letter from the Friends of the Earth which contends your Client’s assessment of the impact on a number of European protected species to be inadequate; believing the Phase 1 Habitat Survey to also be inadequate and that a more comprehensive assessment is warranted. Furthermore, it is argued by the Friends of the Earth that the evaluation on the River Derwent Special Area of Conservation is flawed and that Barn Owls risk being impacted by the proposed development. The County Planning Authority is considering the content of the letter and it is expected that your Client will similarly be giving consideration to its content which could ultimately have an impact upon the timescale in which to determine your Client’s application;
- **LEGAL AGREEMENT** – the recent meeting provided an opportunity to reiterate that any proposal for any financial contribution in connection with the planning application and also its long-term effects with respect to the legacy left by the development is to be enshrined within a legal agreement and that any legal agreement should be at the penultimate drafting stage prior to the signatures of the parties concerned. Legal advice guides the Authority to ensure that where Members of the Planning & Regulatory Functions Committee are being asked to consider a legal agreement that it be as substantially complete in order that they may be made aware of its content while at the same time not necessarily being furnished with a duly signed and dated Agreement. It should be noted that any draft legal agreement is legally obliged to be placed on Part 1 of the statutory planning register and made available for comment by any interested party. Any draft legal agreement should therefore be submitted to the County Planning Authority at the earliest opportunity;
- **DRAFT CONDITIONS** – it was agreed at the meeting to adopt best practice and, without prejudice to any formal decision that the County Planning Authority may take with regard to your Client’s application, to draft a set of planning conditions for consideration that would be made available to view by all interested parties and would be accessible in advance of any published Officer report to allow time for engagement by any interested party and provide the opportunity to comment;
- **REPRESENTATIONS** – the County Planning Authority has received a significant number of representations and a number of those have made substantial comments to which one would normally expect to see responded to by way of a ‘*right of reply*’ document on behalf of an applicant. If, on this occasion, the opportunity to submit counter-arguments is not proposed to be

taken up by your Client, it would be appreciated if this could be communicated to the County Planning Authority.

Before concluding this letter, it is important to make clear that, at this point in time and with regard to the numerous matters that remain outstanding, the requested further information, upon receipt by the County Planning Authority, will be required to be advertised, consulted upon and a period of 21 days be allowed for any interested party to make representation in respect of the information received.

It is for the reason within the above paragraph and the bullet points by which it is preceded that this letter is being sent to you on behalf of the County Planning Authority to seek an extension to the period of time in which to determine your Client's application to the next available scheduled meeting of the County Council's Planning & Regulatory Functions Committee on Tuesday 9<sup>th</sup> February 2016.

This date has been arrived at, in the absence of an indication by your Client as to a reasonable time period to which it would consider agreeing. This date has also been suggested based upon a number of assumptions as follows:

- The receipt of all the further information which remains outstanding as outlined above and which remains outstanding from the Regulation 22 response ;
- A statutory minimum period of consultation of 21 days on a potential third period of consultation concerning the further information to be received in response to the bullet point above (although this is very much dependent upon the scale of information received);
- The listing of the planning application on the draft Agenda of the February Committee meeting on Wednesday 6<sup>th</sup> January 2016;
- The undertaking of a formal Committee Site Visit on a date between Tuesday 2<sup>nd</sup> February and Monday 8<sup>th</sup> February 2016;
- Publication of the substantive Officer report at least five working days prior to the date of the meeting of the County Council's Planning & Regulatory Functions Committee on Tuesday 2<sup>nd</sup> February 2016;
- A period of a maximum of 2 days of '*sitting*' of the County Council's Planning & Regulatory Functions Committee on Tuesday 2<sup>nd</sup> February 2016 and an additional date taking into account any possible adjournment into a second day depending upon the number of speakers and both questions and points of clarification as well as the debate by Members of the Committee;
- Assuming the stage at which the drafting of any legal agreement has reached substantially toward its completion (with the exception of signatures), either Wednesday 10<sup>th</sup> February 2016 or the day after the second day of '*sitting*' of the Committee to be the day on which to prepare the formal Decision Notice of the County Planning Authority.

I trust you will bring this to the attention of your Client at the earliest possible opportunity.

Yours sincerely,

  


**Head of Planning Services**