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David Harvey  
Palm Paper Limited  
(by email)

Your Ref: DHA/7508

Our Ref: EN010039

Date: 21 October 2014

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Dear Mr Harvey

## **Application by Palm Paper Ltd for an Order Granting Development Consent for the Palm Paper 3 Combined Cycle Gas Turbine (CCGT) Power Station Kings Lynn**

### **Section 51 advice following issue of acceptance decision**

I write in relation to your application submitted to the Planning Inspectorate on 23 September 2014, for the above named project. You will be aware that the Planning Inspectorate, acting on behalf of the Secretary of State for Communities and Local Government, issued its decision to accept the application under section 55 of the Planning Act 2008 (as amended) to proceed to examination on 20 October 2014.

In undertaking checks at the acceptance stage some matters came to light which we feel would be prudent to draw your attention at this stage. This letter therefore contains advice which is issued under section 51 of the Planning Act 2008 (as amended) to assist you in considering what action to take and when.

It would be helpful and assist in the smooth running of the Examination process if any further information, clarification documents or amendments made to the submission documents are produced and submitted to the Planning Inspectorate no later than 5 working days in advance of the preliminary meeting. The Examining Authority may then make any procedural decisions it wishes to at the preliminary meeting.

### **Habitats Regulations Assessment: No Significant Effects Report (NSER)**

The NSER (Document 5.1 – ES: Appendix 9-5) submitted with the DCO application, identifies a number of European sites located within the study area (10km radius of the proposed development), which may potentially be affected by the proposed development. The NSER concludes that the only potential mechanism, through which the proposed development may affect European sites located within the study area, is through the aerial emissions generated by the proposed development (paragraphs 4.3.18 and 5.1.6).

The NSER refers to two different guidance documents for assessing air quality impacts:

- (i) Environment Agency (2007) The EU Habitats and Birds Directive Handbook – Appendix 7, Stage 1 and 2 Assessment of new PIR permissions under the Habitats Regulations (Environment Agency) ('the EA 2007 Guidance'), and
- (ii) Environment Agency (2010b) How to comply with your environmental permit: Additional guidance for: Horizontal Guidance Note H1 - Annex (f) Air emissions (Environment Agency) ('the EA H1 Guidance' )

The EA 2007 Guidance is referred to in the NSER as stating that:

- *"Where the concentration within the emission footprint in any part of the European site(s) is less than 1% of the relevant long-term benchmark (measured as Annual Average) (Environmental Assessment Level - EAL, Critical Level or Critical Load), the emission is not likely to have a significant effect alone or in combination irrespective of the background levels"* (paragraph 4.3.24 (see also paragraph 4.3.35)).

The EA H1 Guidance is referred to in the NSER as stating that:

- *"Process contributions can be considered insignificant if: the long term process contribution is less than 1% of the long-term environmental standard (measured as Annual Average); and the short-term process contribution is less than 10% of the short term environmental standard" (measured as Daily Average)"* (paragraph 4.3.25).

The NSER explains that the air quality assessment concluded that nitrogen deposition and acid deposition from emissions from the proposed development alone are less than 1% of the lower Critical Load for all habitat features within the European sites. The NSER has therefore concluded that the impact of the emissions can be screened out as "insignificant" (paragraphs 4.3.48 and 4.3.49). On this basis the NSER concludes that *"All impacts, including impacts from aerial emissions, at the European Sites could be screened out as insignificant. As such further assessment of the cumulative impact, i.e. impacts of the proposed development with other plans or projects has not been undertaken"* (paragraph 5.1.8 of the NSER).

Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations') requires that before any consent, permission or other authorisation can be granted, which would include grant of a DCO, a competent authority must make an assessment of the likely implications for European sites where the plan or project *'is likely to have a significant effect on a European site... (either alone **or in combination**<sup>1</sup> with other plans or projects)'*. As noted above, the NSER has concluded that *'All impacts as a result of aerial emissions from the proposed CCGT at the European Sites could be screened out. As such further assessment of the cumulative impact has not been undertaken'* (paragraph 4.3.50 of the NSER).

The NSER includes a copy of Natural England's s.42 consultation response which states that *"The proposal was assessed in relation to air quality impacts to designated*

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<sup>1</sup> PINS emphasis

sites and Natural England is satisfied that that the modelling work was thorough. As the process contributions were so small compared to those from some of the other sources (outside of this development), they made very little difference to the 'in combination' values. Natural England concurs with this conclusion" (NSER, Appendix D). On the basis of this corroborated evidence provided in Natural England's s.42 consultation response, the Secretary of State considered that the information provided in the NSER is adequate for acceptance.

However, the Planning Inspectorate wishes to draw to your attention that it has not been able to locate the EA 2007 Guidance on the Environment Agency's website. The current version of the EA H1 guidance available on the Environment Agency's website is version 2.2 and is dated December 2011. The applicant is advised to clarify whether the guidance which it has used to inform the air quality assessment methodology in the NSER is the latest guidance available, and if not, the applicant may wish to consider the need for an in-combination assessment based on the latest guidance, having regard to the requirements under the Habitats Regulations. This further consideration should include discussion with Natural England, as the relevant Statutory Natural Conservation Body.

As requested above, it would be helpful and assist in the smooth running of the Examination process, if this clarification and any revised assessment, could be produced and submitted to the Planning Inspectorate no later than 5 working days in advance of the preliminary meeting.

We trust you find this information helpful, however if you have any queries regarding the matters set out above please do not hesitate to contact us.

Yours sincerely

*Oliver Blower*

Oliver Blower

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Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.