

**Review of the Palm Paper CCGT 3 Habitats Regulations  
Assessment: No Significant Effects Report (NSER)  
(dated 11 May 2014)**

**Introduction**

Please see below the Planning Inspectorate's (the Inspectorate) comments on Palm Paper Ltd's (the applicant) draft NSER. Please note that the comments provided are without prejudice to any decisions taken by the Secretary of State (SoS) during acceptance or the Examining Authority (ExA) during examination, if the proposed development is accepted for examination. These comments are not intended to be a detailed review of the HRA NSER and its findings, but are rather a high level review intended to provide helpful comments/observations as appropriate.

Please note that reference to 'European sites' within this document is to Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites.

**Identification of European Sites considered within the NSER**

Paragraph 50 of the NSER states that the European sites and their features considered within the Report are identified in Appendix A, with the location of these sites identified on Figure HRA-1. Appendix A includes a list of designated sites, including both European and nationally protected sites (SSSI), explaining why each site has either been included or excluded from the NSER. These sites include the River Nar SSSI which is described as being included in the NSER although it is noted that there is no further reference to the River Nar SSSI within the NSER. As this is not a European site, it should not be considered within the NSER and the applicant may wish to consider removing non-European sites from the Table in Appendix A. However, any potential impacts on the SSSI, which underpin the European sites, should be considered and assessed within the ES.

It would be helpful if Appendix A listed the features of the European sites, especially as the NSER refers to the features of the SPA/Ramsar sites in paragraph 98, but these are not listed anywhere in the NSER.

Whilst Appendix A identifies and explains why the SPA and Ramsar designations identified within the 10km study area have been excluded from further consideration, paragraph 51 in the NSER only refers to consideration of SAC and SPA sites within the 10km study area. This should be corrected to include reference to the Ramsar sites as well. In addition, Table 3-1 is referred to as 'European sites within the study area'. This is incorrect as the European sites identified within the study area also include the SPA and Ramsar sites identified in the Table in Appendix A and shown on Figure HRA-1.

## **Noise**

Paragraph 31 of the NSER states that noise will accord with acceptable levels, however no details have been provided on the anticipated noise levels and what is considered to be 'acceptable'. Whilst the Inspectorate acknowledges the distance between the European sites and the application site, it recommends that cross referencing to the relevant topic chapter of the ES is provided for transparency and to support statements made in the NSER.

## **European Sites: Description, Characteristics and Conservation**

### **Objectives**

Section 3.3.1 of the NSER provides a description of The Wash and North Norfolk Coast Special Area of Conservation (SAC). Paragraph 70 refers to Annex I habitat coastal lagoon as a qualifying feature, but not a primary reason for selection of the site and the Annex II species common seal and otter; these features have not been considered further in the NSER and are not included on the relevant screening matrices. The Inspectorate requests that impacts on all features identified on the Natura 2000 data forms and the Natural England conservation objectives (provided in Appendix C) are considered and all features are included in the screening matrices for each European site. Likewise, the European dry heath qualifying feature of Roydon Common and Dersingham Bog SAC should be included in the relevant screening matrices.

Paragraph 73 of the NSER refers to a 'Marine Scheme of Management'. The Inspectorate recommends that the NSER clarifies what this scheme is.

### **Screening for Likely Significant Effects**

Paragraph 88 of the NSER refers to Section 17 of the ES for a summary of the avoidance and mitigation measures that have been built into the proposed project. The Inspectorate is unable to comment on these measures as they are contained within a separate document but advises the applicant to ensure that they are secured in the draft DCO, if they are relying on their implementation to conclude no likely significant effects on a European site. Therefore, express reference should be made in the NSER to the draft requirements within the DCO which would secure any such mitigation. The applicant may find it helpful to provide this information in a Table format, so that it is clear to the reader of the NSER, how these mitigation measures would be secured through the requirements in the draft DCO.

The Inspectorate recommends that the NSER makes appropriate reference to the survey results which inform the conclusions of section 4.3.3, which may be by reference to where this information can be found in the ES.

Paragraph 106(3) of the NSER states that many habitats of The Wash and North Norfolk Coast SAC are not sensitive to eutrophication; the NSER should clearly state which habitats are sensitive to eutrophication and which are not.

The NSER states that the Air Pollution Information System (APIS) database was used to determine the critical loads for specific habitats in the SACs. The Inspectorate has noted some discrepancies between the critical load values provided in the NSER and those on the APIS database, as detailed below:

- Paragraph 106(3)(a) of the NSER states that the habitats of The Wash and North Norfolk Coast SAC that are sensitive to eutrophication can be 'grouped as "pioneer and low-mid salt marshes", with a critical load of 30-40 kg N/ha/yr'; however the APIS table of indicative values within nutrient nitrogen critical load ranges for use in air pollution impact assessments (<http://www.apis.ac.uk/indicative-critical-load-values>) identifies the critical load for this habitat type as 20-30 kg N/ha/yr.
- The critical load values on APIS for Roydon Common and Dersingham Bog SAC provided in the NSER (paragraph 106(3)(b)) do not accord with the figures the Inspectorate has obtained from the site specific data on APIS:
  - The NSER states 10-25kg N/ha/year for North Atlantic wet heaths whereas APIS states 10-20kg N/ha/year
  - The NSER states 10-20 kg N/ha/year for Depressions on peat substrates of the Rhynchosporion whereas APIS states 10-15kg N/ha/year
- A critical load values on APIS for European dry heaths at Roydon Common and Dersingham Bog SAC has not been provided in the NSER but is 10-20kg N/ha/year on APIS
- Paragraph 106(4)(a) of the NSER states that none of the habitats of The Wash and North Norfolk Coast SAC are sensitive to acidification. The Inspectorate notes this, but also notes that otter, a feature of the European site, is defined as sensitive to acidification on the APIS database.
- The APIS database also identifies European dry heaths of the Roydon Common and Dersingham Bog SAC as sensitive to acidification but this has not been acknowledged in Paragraph 106(4)(b) of the NSER.

The applicant is advised to check the critical loads used and to update their assessment if necessary. The applicant should provide a robust justification should different values from those publically available on the APIS database be used in the assessment.

The modelling has assumed a stack height of 70m and 80m. However, it is not clear why given that the 'Interpretation' section of the draft Development Consent Order (DCO) states that '*the main stack comprised in Work No. 1 and shown on the planning drawings shall not be constructed lower than 80 metres above ordnance datum*' and that the stack is stated to be 80m in the building heights table in Schedule 1 Part 2. On this basis, the Inspectorate would expect the assessment to be undertaken for a stack height of 80m only, and notes that with this height the process contributions are less than with a stack height of 70m. As an aside, it is noted that in the 'Interpretation' in the draft DCO the 80m height is AOD, but in Schedule 1 Part 2 this is '*above adjacent ground level*'. The two sections of the draft DCO should be consistent with one another, as well as with all other application documents.

The NSER should provide details of the air quality modelling undertaken, or provide appropriate cross reference to other relevant application documents that contain this information.

With reference to Tables 4-2, 4-4 and 4-6 of the NSER, the Inspectorate does not understand why the screening criteria for nitrogen oxides is  $7.50\mu\text{g}/\text{m}^3$  for the daily mean and  $0.30\mu\text{g}/\text{m}^3$  for the annual mean, when Table 4-1 identifies that critical levels from the Air Quality Directive as being  $75\mu\text{g}/\text{m}^3$  for the daily mean and  $30\mu\text{g}/\text{m}^3$  for the annual mean. Likewise, Tables 4-3 and 4-5 utilise a screening criteria of  $0.20\mu\text{g}/\text{m}^3$  as the annual mean for sulphur dioxide whereas Table 4-1 states this should be  $20\mu\text{g}/\text{m}^3$ . In addition, a screening criteria of 10% of the critical level has been used for the nitrogen oxide maximum daily average when paragraph 115 states that process contribution is insignificant if less than 1% of the critical level (in accordance with Environment Agency H1 Technical Guidance Note). The applicant is advised to address these points and clarify the NSER where necessary.

In terms of transparency, it would be useful if Tables 4-2 to 4-8 referenced the critical levels so it is clear which values have been used in the calculations.

With reference to Table 4-6 and considering, as an example, the 70m stack height, the Inspectorate assumes that  $0.572\text{g}/\text{m}^3$  ( $= 1.14\mu\text{g}/\text{m}^3 - 0.568\mu\text{g}/\text{m}^3$ ) is the quantity of nitrogen oxides released from the sludge combustor. It is noted that the sludge combustor is not yet built (paragraph 15) and therefore the NSER should clarify where this information has been obtained, (e.g. by modelling) and cross refer to relevant details in other application documents.

The Inspectorate notes that the process contribution of nitrogen oxides for the maximum daily average (Table 4-6), exceeds the 1% value referred to in paragraph 115 of the NSER. It is noted that the screening criteria in the Table is 10% of the critical value, however as commented upon above, the Inspectorate is unclear on how this criteria has been determined. In line with the 1% value suggested by the Environment Agency H1 Technical Guidance Note (referred to in paragraphs 114 and 126 of the NSER), the Inspectorate notes there is a potential for a significant effect and considers that this necessitates further investigation. The inclusion of predicted environmental concentrations would be useful.

The Inspectorate queries whether paragraph 126 bullet point three should read '>1%', rather than '<1%'?

Tables 4-9 and 4-10 contain the results of the calculation of deposition of nitrogen and sulphur and paragraphs 138 and 139 confirm that nitrogen and acid deposition is less than 1% of the critical load for all habitat features. A conclusion on sulphur deposition has not been provided. The calculations of the percentage of critical loads from the proposed development are provided and it would be useful if the tables included the critical loads used in the calculations.

## **In-combination effects**

The NSER concludes that the proposed development both alone and in-combination with other proposed projects would have 'no adverse effect' on any European site (paragraph 151). However, despite paragraph 110 stating that *'the assessment has considered the cumulative impacts of the proposed operations with the existing King's Lynn Power Station and the consented King's Lynn Power Station A and Willows Power and Recycling Centre'*, there is no evidence of this within the NSER. The Inspectorate advises that this is rectified to evidence that the NSER has considered impacts on the European sites both alone and in-combination. The screening matrices should also include a new column ('in-combination' effects) recording how potential in-combination effects have been considered for each European site and each feature of that European site.

The NSER should also describe how the 'other plans and projects' considered in the in-combination assessment have been identified i.e. what study area has been used. It would also be helpful to include a statement in the NSER stating whether the list of 'other plans and projects' have been discussed and agreed with the local planning authority and Natural England. Where any 'other plans and projects' have been identified, but not included within the in-combination assessment, these should also be identified within the NSER.

The Inspectorate also advises that a plan is provided appended to the NSER to identify the location of the 'other plans and projects' considered within the in-combination assessment.

The applicant should also note that the requirement under The Conservation of Habitats and Species Regulations 2010 (as amended), is whether the *"plan or project is likely to have a significant effect on a European site...(either alone or in combination with other plans and projects)"* (Regulation 61(1)). Therefore the project should be screened against the criteria of likely significant effects, not 'adverse effects' as referred to in paragraph 151 of the NSER, which may be confused with an Appropriate Assessment, under stage 2 of the HRA process. The applicant should therefore take care to ensure that reference at the screening stage in the HRA process, is only to whether the proposed development is likely to have significant effects on a European site.

## **Screening Matrices**

The Inspectorate welcomes the provision of the screening matrices in the NSER. However, the Inspectorate notes that a screening matrix has not been provided for every European site identified in the Table in Appendix A ((list of European sites within the 10km study area). The Inspectorate, advises, that in accordance with Advice Note 10 (on HRA)<sup>1</sup>, screening matrices are provided for all European

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<sup>1</sup> Advice Note 10 states that *"The screening matrices must reflect the screening exercise undertaken in its entirety, showing the screening result for all European sites including*

sites listed in the Table in Appendix A, including the sites that the applicant has excluded from further consideration.

To assist the reader and to provide support for the statements made by the applicant in the footnotes of the screening matrices, reference should be made to specific paragraphs in documents. For example, where reference is made to Chapter 9 in the ES (Ecology), the specific paragraph number you wish to refer the reader to, should be provided.

The applicant is also referred to the Inspectorate's comments above in 'in-combination effects'.

The applicant is also requested to provide both a PDF and Word copy of the matrices with the application.

### **References**

In Section 6 of the NSER references are provided for documents referred to within the Report. If these documents are not easily publically available, i.e. cannot be downloaded free of charge from a website, please could a copy of these be appended to the NSER, to ensure that the reader is able to review these documents.

### **Consultation with Natural England**

The Inspectorate welcomes that pre-application consultation has been undertaken with Natural England (NE) and is encouraged to see that they have been provided with previous drafts of the NSER. As a copy of the NSER to which NE refer to in their letter dated 1 April 2014 (Appendix B) has not been appended, the Inspectorate is unable to review the draft against which NE have commented. The applicant is advised to append a copy of NE's response to the section 42 consultation to the NSER.

### **Transboundary consultation**

The Inspectorate notes that in paragraph 101, the NSER states that the Secretary of State's Scoping Opinion concluded that there would be no transboundary effects largely due to the distance of the project from other EEA States. As there is no reference to consideration of transboundary impacts within the Secretary of State's Scoping Opinion for this project dated October 2012, it is assumed that this reference is meant to be to the Secretary of State's Transboundary Screening Matrix dated 25 October 2012, available on the Inspectorate's website:

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*all features for which the European site(s) are designated, even if the screening exercise has concluded no LSE on certain European sites or features. This may include European sites and features screened out at the very beginning of the process, for example, those not mentioned by the consulted SNCBs as having the potential to be affected" (page 6)*

[http://infrastructure.planningportal.gov.uk/wp-content/uploads/projects/EN010039/1.%20Pre-Submission/EIA/Regulation%2024/121025\\_EN010039\\_Transboundary%20Screening%20Matrix%20Palm%20Paper.pdf](http://infrastructure.planningportal.gov.uk/wp-content/uploads/projects/EN010039/1.%20Pre-Submission/EIA/Regulation%2024/121025_EN010039_Transboundary%20Screening%20Matrix%20Palm%20Paper.pdf)

Please also note that the Secretary of State's transboundary screening was undertaken based on the information on the project available at that time, in the applicant's scoping report. If the project is accepted for examination, the Secretary of State will re-screen the project for transboundary effects, based on the information provided in the application documents. Please also note that the screening undertaken by the Secretary of State was done so under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) and is separate from the HRA process. Therefore, the applicant may not feel it appropriate to refer to the Secretary of State's transboundary screening, in the footnotes of the screening matrices provided with the NSER.

### **Presentation**

On a presentation matter, whilst paragraph numbers are helpful, the Inspectorate considers the paragraph numbering system used in the NSER non-intuitive and recommends that the paragraphs are numbered in accordance with the headings which they come under (e.g. similar to the referencing system used in the consultation report). This will enable easier referencing.

### **Planning Inspectorate**

**25 July 2014**