

Date: 16 May 2018
Our ref: 244690
Your ref: Tees CCPP Project (EN010082)



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Dear Sir/Madam

NSIP Reference Name / Code: Tees CCPP Project (EN010082)
User Code: 20010120

Thank you for your consultation on the above dated 18 April 2018 which was received by Natural England on the same date.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Written Representation

PART I: Summary of Natural England's advice.

Natural England is satisfied that the proposal is unlikely to have significant effects on European designated sites and nationally designated sites.

PART II: Annexes including Natural England's evidence and answers to the ExA's first written questions

Content

Part 1 – Introduction

Part 2 – Conservation Interests

Annex A – Designated site maps

Annex B – Designated site conservation objectives and citations

Annex C – Schedule of Natural England's responses to Examining Authority's initial questions

Annex D – Natural England letter dated 26 April 2017

PART 1 INTRODUCTION

1.1. Purpose and structure of these representations

- 1.1.1. These Written Representations are submitted in pursuance of rule 10(1) of the Infrastructure Planning (Examination Procedure) Rules 2010 ('ExPR') in relation to an application under the Planning Act 2008 for a Development Consent Order ('DCO') for Tees CCPP Project ('the Project') submitted by Sembcorp Utilities UK Limited ('the Applicant') to the Secretary of State.
- 1.1.2. Natural England has already provided a summary of its principal concerns in its Relevant Representations, submitted to the Planning Inspectorate on 7 February 2018. This document comprises an updated detailed statement of Natural England's views, as they have developed in view of the common ground discussions that have taken place with the Applicant to date. These are structured as follows:
 - a. Section 2 describes the conservation designations, features and interests that may be affected by the Project and need to be considered.
 - b. Section 3 comprises Natural England's submissions in respect of the issues that concern it. This submission cross-refers to, and is supported by, the evidence contained in the Annexes.
 - c. Section 4 is a dedicated section answering the Examining Authority's written questions which were asked on 7 February 2018, cross-referenced to the rest of this document.
 - d. Section 5 provides a summary of Natural England's case.
 - e. The Annexes contain evidence referred to in the main body of these Representations.

2. CONSERVATION DESIGNATIONS, FEATURES AND INTERESTS THAT COULD BE AFFECTED BY THE PROPOSED PROJECT

The following is a brief summary of the interest features of the relevant designated areas of concern in this matter. Designation maps and citations are included in Annexes A and B.

2.1. International conservation designations

Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar Site;
North York Moors SPA and Special Area of Conservation (SAC)

2.2. National conservation designations

Seaton Dunes and Common Site of Special Scientific Interest (SSSI);
Lovell Hill Pools SSSI;
Cowpen Marsh SSSI;
Seal Sands SSSI;
North York Moors SSSI;
Redcar Rocks SSSI;
Saltburn Gill SSSI;
South Gare & Coatham Sands SSSI;
Pinkney and Gerrick Woods SSSI;
Tees and Hartlepool Foreshore and Wetlands SSSI.

3. NATURAL ENGLAND'S CONCERNS AND ADVICE

3.1. The principal issue

3.1.1. Natural England identified the following main issue in its Relevant Representations:

- a. Impacts on habitats and species associated with designated sites as a result of changes in air quality

This issue will be discussed in corresponding section below along with any updates on the progress or resolution of issues.

3.2. a. Impacts on habitats and species associated with designated sites as a result of changes in air quality

3.2.1. The air quality assessments (document ref: 6.3.12) and Environmental Statement (in particular Chapter 7 on air quality - document ref: 6.2.7 and Chapter 9 on ecology and nature conservation - document ref: 6.2.9) show that the process contributions with regards to oxides of nitrogen, acid deposition and nutrient nitrogen deposition are below the level considered to be significant for all designated sites. The applicant has also submitted a Habitats Regulations Assessment (document ref: 6.3.15) which concludes that the project is unlikely to have significant effects on European designated sites alone, or in combination with other projects.

The submitted assessment also includes potential impacts on the planned extension to Teesmouth and Cleveland Coast SPA, which has not been formally consulted on and therefore has no official status yet as a potential SPA. Irrespective of this, the air quality assessments provided by the applicant have taken this proposed extension into account, which also conclude no likely significant effects.

Natural England also worked with Sembcorp Utilities to develop a Statement of Common Ground (dated April 2018, document ref 7.2), in which it is agreed that there are no outstanding matters between the two parties.

3.3. Conclusions

3.3.1. In conclusion, Natural England concurs with the conclusion of the Habitats Regulations Assessment and the Environmental Statement that the proposal is unlikely to have significant effects on European and nationally designated sites.

3.4. The questions received

3.4.1. In its Rule 8 letter dated 18 April 2018, the Examining Authority asked Natural England a number of questions. These are set out, along with the answers, in the table provided at Annex C. The table cross-refers to passages in these Written Representations and their Annexes.

Part II: Annexes
















ANNEX A: Designated site maps

ANNEX B: Designated site conservation objectives and citations

ANNEX C: Schedule of Natural England's responses to Examining Authority's initial questions

ANNEX D: Natural England letter dated 26 April 2017

ANNEX A: Designated site maps

 Cowpen Marsh SSSI Map.pdf	 Lovell Hill Pools SSSI Map.pdf	 North York Moors SAC map.pdf	 North York Moors SPA Map.pdf	 North York Moors SSSI Map.pdf	 Pinkney And Gerrick Woods Map
 Redcar Rocks SSSI Map.pdf	 Saltburn Gill SSSI Map.pdf	 Seal Sands SSSI Map.pdf	 Seaton Dunes & common SSSI Map.p	 South Gare & Coatham Sands SSSI	 Tees and Hartlepool Foreshor
 Tees and Hartlepool Foreshor	 Teesmouth and Cleveland Coast SPA	 Teesmouth and Cleveland Coast Rar			

ANNEX B: Designated site conservation objectives and citations

 Cowpen Marsh SSSI - Citation.pdf	 Lovell Hill Pools SSSI Citation.pdf	 North York Moors SAC citation.pdf	 North York Moors SPA citation.pdf	 North York Moors SSSI Citation.pdf	 North-York-Moors- SAC-CO.pdf
 North-York-Moors- SPA-CO.pdf	 Pinkney And Gerrick Woods Citat	 Redcar Rocks SSSI - Citation.pdf	 Saltburn Gill SSSI Citation.pdf	 Seal Sands SSSI - Citation.pdf	 Seaton Dunes & Common SSSI - Citat
 South Gare & Coatham Sands SSSI	 Tees & Hartlepool Foreshore and Wetl	 Teessmouth & Cleveland Coast	 Teessmouth & Cleveland Coast	 Teessmouth-and-Cle veland-Coast-SPA-V.	

ANNEX C: Schedule of Natural England's responses to Examining Authority's initial questions

Ref no and question	Answer
<p>Q1.2.1</p> <p>Table 9.1 of the Environmental Statement (ES) [APP-051] refers to Natural England's (NE) letter to the Applicant (dated 26 April 2017) regarding the scope of surveys.</p> <p>Please provide a copy of the letter. In commenting on the letter, reference is made to 'off-site effects on the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar site' [ES Table 9.1].</p> <p>Why was this particular location highlighted?</p>	<p>Natural England has attached the copy of the response letter referred to in Annex D. The applicant requested clarification on the Environmental Impact Assessment Scoping consultation response provided by Natural England (dated 17 March 2017, our ref 209151), which we responded to in a letter dated 26 April 2017 (our ref 231952). This response includes the questions asked by the Applicant and our response.</p> <p>The relevant query was: <i>'Section 3.67 (PINS report) We also need to secure agreement that the only potential impact on European Sites is atmospheric emission. Our understanding from the site visit with NE and PINS was that this was the case, but we need to have this formally in writing.'</i></p> <p>Our response was: 'Natural England concurs that the only potential impact on European protected sites is atmospheric emissions. We expect the air quality assessment to include a 15-kilometer zone for assessing potential impacts. The impacts to consider are indirect effects on the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar site through changes in habitat (such as sand dunes, freshwater marsh and mudflats). Even though the extension to the SPA has not been formally consulted on, it will be so in the near future and we therefore advise to include the extended boundaries and additional qualifying features (breeding common tern and breeding avocet) into the assessment. More information on the extension can be found here.'</p>
<p>Q1.2.2</p> <p>With reference to paragraph 9.35 of the ES [APP-051], please expand on the reasons why the 15km radius from the application site was</p>	<p>In the Preliminary Environmental Information Report (dated June 2017), the Applicant stated that they applied a 15km radius in line with EA</p>

<p>agreed with NE as the basis for assessing impacts on internationally and nationally designated nature conservation sites and why a 2km radius was adopted for locally designated nature conservation sites and protected and priority habitats and species.</p>	<p>guidance, which states that larger emitters (greater than 50 megawatt) may be required to screen to 15km for European sites and up to 15km for SSSIs. Due to the nature of the proposal, Natural England concurred that taking a precautionary approach and applying a worst case screening study area was appropriate in this case.</p>
<p>Q1.2.5</p> <p>Table 9.10 of the ES [APP-051] provides a 'Screening Summary for Nationally and Locally Designated Sites', based on the detailed data tables in Annex G1 [APP-073]. Explain further the basis on which sites were assessed either to be scoped out of requiring further assessment or the criteria was not exceeded.</p>	<p>The Applicant provided information regarding Air Quality impacts on designated sites in Appendix G1. Tables G1.4 – G1.7 state that Process Contributions were either not applicable or not exceeding 1%. Impacts were therefore concluded not to be significant and did not require further assessment as criteria were not exceeded.</p>
<p>Q1.2.6</p> <p>Can the Applicant, EA and NE comment on the reliance placed on the EA's significance criteria as set out in Table 7.11 of the ES [APP-049] and Table H2.2 of the HRA report [APP-076] in concluding no likely significant effects (LSE) of the project alone and in-combination for the purposes of HRA. In particular, why the relevant thresholds are applicable for HRA (e.g. increases in process contributions to critical loads of less than 1% being considered 'insignificant').</p>	<p>Natural England cannot comment on Environment Agency Guidance but does support the use of the 1% of critical level or load threshold as a reflection of inconsequential effects due to the magnitude of change this represents. This magnitude of change is considered suitably precautionary to be used as a guideline in Habitats Regulations Assessment. In cases where the critical levels or loads are very small (e.g. most sensitive habitats) 1% represents an un-measurable level or a level that if measured would be difficult to assign to specific source outside of background pollution. For instance, when considering ammonia concentrations, the 1% of critical level for lower plants (1 microgram per cubic metre of air) is at or below the limit of detection for the best passive samplers typically used and for some active samplers.</p>
<p>Q1.2.7</p> <p>For the last sentence of question 1.2.6 above, can NE specifically confirm that the EA's EPR Risk Assessment screening criteria, set against UK Air Quality Strategy Objectives, which defines 'insignificant effects' as being</p>	<p>1% of critical level or load represents a habitat specific estimate of inconsequential level change in air quality. This magnitude of change is considered suitably precautionary to be used</p>

<p>where long-term process contributions should be less than, or equal to 1%, is a suitable criteria for the assessment of likely significant effects on European sites in respect of HRA.</p>	<p>as a guideline in Habitats Regulations Assessment.</p>
<p>Q1.2.8</p> <p>Can the Applicant, EA and NE explain if and why the thresholds applied in the Applicant’s assessment for determining the absence of LSE (or otherwise) are appropriate for European sites where there are already exceedances above the critical loads or levels for given pollutants (as acknowledged in paragraph H1.57 and set out in Appendix A of the HRA report [APP-076]. The ExA notes that Table H2.1 of the HRA report includes links to Site Improvement Plans for the Teesmouth and Cleveland Coast SPA and the North York Moors SPA and SAC, which refer to atmospheric nitrogen deposition as issues which are currently impacting or threatening the sites. The explanation provided should take into account the impact of the Proposed Development alone and in-combination with other plans and projects.</p>	<p>For the same reasons in Q1.2.6, 1% of critical level or load represents a habitat specific estimate of inconsequential level change in air quality. Natural England considers it to be suitable as a screening threshold in this case with the background pollution levels.</p>
<p>Q1.2.9</p> <p>The judgment in <i>Wealden District Council v Secretary of State for Communities and Local Government</i> [2017] EWHC 351 highlights the procedural requirement of the Habitats Regulations in regard to the assessment of in-combination effects. The ExA acknowledges the Applicant’s current approach as described in the HRA report (sections H3.3.4 and H3.3.5 [APP-076]), which explains that the in-combination assessment has been undertaken on a qualitative basis. However the ExA is unclear as to how the conclusions that there would be no likely significant in-combination effects are substantiated with reference to the thresholds applicable to the findings of LSE referred to in question Q1.2.6 above. The ExA requests the Applicant provide the information necessary to undertake the assessment of LSE of the Proposed Development in-combination with other plans and projects, with particular reference to the</p>	<p>The purpose of the screening stage of the Habitats Regulations Assessment is to identify the risk or possibility of significant adverse effects on a European site which could undermine the achievement of the site’s conservation objectives and which therefore require further examination at appropriate assessment. The Habitats Regulations do not specifically require an air quality threshold to be applied at the ‘likely significant effect’ screening stage. Natural England considers the 1% of critical level or load threshold to be a useful guideline to trigger further investigation. In <i>Wealden v SSCLG</i> [2017] the defendants principally relied on the relevant screening threshold to show ‘no likely significant effect’. The court concluded in that case that the screening threshold should be applied both alone and in combination with effects from other plans or projects. The judgment did not consider in detail other factors that could be</p>

<p>thresholds of LSE as referred to above. The ExA also requests a response from NE on the apparent relevance of the Wealden judgement to the need for a quantitative in-combination assessment in respect of the Proposed Development.</p>	<p>relevant at the screening stage. In this case, having considered the information provided by the applicant, it is Natural England's judgement that there is no likely significant effect alone or in combination with the plans and projects identified by the applicant. The further information considered includes:</p> <ul style="list-style-type: none"> • the expected decline in background levels from pollution sources no longer in operation, and • the low levels of contributions are not expected to make a significant difference to the features for which the site is classified.
<p>Q1.2.10</p> <p>With regard to the above, the ExA requests NE to confirm if they are still content with the Applicant's conclusions of no LSE (alone and in-combination with other plans and projects) at the European sites identified as being relevant in the assessment.</p>	<p>Natural England confirms that we are still content with the Applicant's conclusions of no LSE (alone and in-combination with other plans and projects) at the European sites identified as being relevant in the assessment.</p>
<p>Q1.2.12</p> <p>Please confirm whether all relevant plans/projects which may result in in-combination effects together with the Proposed Development have been identified and considered in the Applicant's HRA report [APP-076].</p>	<p>Natural England is not aware of any additional projects and plans beyond those included in the Applicant's HRA report.</p>
<p>Q1.5.4</p> <p>Table 3.6 of the ES [APP-045] identifies other developments which have been considered cumulatively with the proposed development for the cumulative effects assessment (CEA).</p> <ul style="list-style-type: none"> • Confirm whether the scope of the CEA was agreed with relevant consultees. • Are Redcar and Cleveland Borough Council (RCBC) Natural England (NE) and the Environment Agency (EA) content that all relevant developments have been considered in the cumulative assessment? • With reference to paragraph 11.54 of the ES [APP-053] which records that developments 	<p>Natural England is not aware of any additional developments that should be considered in the cumulative assessment.</p>

within a 5km study area were considered for the cumulative assessment for the landscape and visual assessment, can the applicant confirm that no other plans/projects have been proposed since the Scoping Report was produced in February 2017 which could have cumulative landscape and visual effects upon the Proposed Development?

ANNEX D: Natural England letter dated 26 April 2017

Date: 26 April 2017
Our ref: 213952
Your ref: TCCPP PINS Scoping Opinion Statement



David Sigsworth
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Dear David Sigsworth

Reference: TCCPP PINS Scoping Opinion Statement
Location: Wilton International, Middlesbrough

Thank you for your email on the above dated 11 April 2017.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Please find below Natural England's position on the points raised in the email:

- *Section 2.5 (of letter) states that we need to undertake a habitat survey equivalent to Phase 2. INCA undertook a very detailed Phase 2 survey for us in October 2016 and this was referenced extensively in the scoping statement. Does NE require us to undertake a second Phase 2 study?*

The habitat surveys that INCA has carried out of the site are sufficient; as these surveys concluded that there is little potential for biodiversity impacts on site, Natural England does not require a phase 2 study to be carried out.

- *Section 2.5 (of letter) also states that ornithological, botanical and invertebrate surveys are required even though the scoping report (based on the October Phase 2) ruled out any potential effects on the latter two groups. There is no standard methodology for bird or invertebrate surveys, so would be grateful if you could confirm how you wish us to proceed.*

The surveys that have already been carried out are sufficient and we do not require any additional ornithological, botanical and invertebrate surveys to be carried out.

- *Section 3.67 (PINS report) We also need to secure agreement that the only potential impact on European Sites is atmospheric emission. Our understanding from the site visit with NE and PINS was that this was the case, but we need to have this formally in writing.*

Natural England concurs that the only potential impact on European protected sites is atmospheric emissions. We expect the air quality assessment to include a 15-kilometer zone for assessing potential impacts. The impacts to consider are indirect effects on the [Teesmouth and Cleveland Coast Special Protection Area](#) (SPA) and [Ramsar site](#) through changes in habitat (such as sand dunes, freshwater marsh and mudflats).

Even though the extension to the SPA has not been formally consulted on, it will be so in the

near future and we therefore advise to include the extended boundaries and additional qualifying features (breeding common tern and breeding avocet) into the assessment. More information on the extension can be found [here](#).

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact Ellen Bekker on 0208 225 7091 or ellen.bekker@naturalengland.org.uk. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

Andrew Whitehead
Northumbria Area Team