

Date: 21 August 2018
Our ref: 254798
Your ref: EN010082



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BY EMAIL ONLY

Dear Sir/Madam

NSIP Reference Name: EN010082 Application by Sembcorp Utilities (UK) Limited for an Order granting Development Consent for the proposed Tees Combined Cycle Power Plant: The Examining Authority's Second Written Questions and Request for Information

Thank you for your consultation on the above dated 24 July 2018 which was received by Natural England on 07 August 2018.

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 the answers to the Examining Authority's second written questions on pages 2-4.

Yours faithfully,

Andrew Whitehead
Northumbria Area Team

SWQ	Question to:	Question:	Answer:
2.0.3	Applicant Natural England	<p>The Applicant maintains a position that it is not feasible to undertake a quantitative assessment of in-combination air quality impacts [REP4-011]. The finding of no likely significant effects with regards to the assessment of in-combination effects lacks authoritative evidence in the form of quantitative data. In absence of such evidence it is not obvious how the Applicant has arrived at the outcome of no likely significant effect. The Wealden judgement clearly demonstrates the importance of addressing this issue as a matter of legal principle.</p> <p>It is also important to note that the in-combination assessment suggests that there is a ‘widespread reduction in emissions’ in the surrounding area. The robustness of this assertion would be increased if the evidence to support it was provided.</p> <p>In order to address the points raised above can the Applicant and NE explain what information is available to support the Applicant’s position of ongoing improvements to background emission levels? The Applicant should also explain how, in absence of a quantitative in-combination assessment, the findings of no likely significant effect have been derived.</p>	<p>Natural England notes that the applicant has provided further information relating to background emission levels (document ref 8.46). We have no further information to provide.</p>
2.1.5	Natural England	<p>The Applicant describes “embedded measures” as turbines that meet current Best Available Technology (BAT) for NO_x emissions and stack design to achieve sufficient dispersion [response to</p>	<p>The Sweetman judgment is a recent ruling and there is little guidance from the courts at the moment as to what constitutes avoidance or reduction measures. We advise the Applicant and Competent Authority to take their own legal</p>

		<p>Q1.1.20, REP2-080]. The Applicant states that no further mitigation is required.</p> <p>a) To what extent does NE agree that BAT and stack design are ‘embedded measures’ and not avoidance or reduction measures as described in the Sweetman judgement?</p> <p>b) The Applicant’s position is that the Sweetman judgement does not affect the Applicant’s HRA screening exercise, on the basis that no mitigation measures have been relied upon [REP4-011]. Can NE confirm whether or not it is in agreement with the Applicant’s position?</p>	<p>advice on this matter. Where the Competent Authority is unsure whether certain matters are avoidance or reduction measures, it will need to consider whether to carry out an appropriate assessment to avoid the risk of a legal challenge.</p>
2.2.1	Natural England	<p>Please confirm whether or not NE is content with the Applicant’s revised HRA screening matrices [Tables H3.2 – H3.6, REP1-001</p>	<p>We refer to our answer to question 2.1.5 whether an appropriate assessment might be necessary.</p> <p>We presume that section H.1.76 (page H-27) should be labelled as ‘c.’.</p> <p>We have no further comments regarding the matrices.</p>
2.2.2	Environment Agency Natural England	<p>The EA indicated at the ISH that it would like to run the Applicant’s detailed air quality data through its model. The Applicant has now submitted this data to the Examination [REP4-010]. Do they EA or NE have any comments in this regard?</p>	<p>We refer to the Environment Agency’s answer on this matter.</p>
2.2.5	Environment Agency Natural England	<p>The Applicant has confirmed [REP1-001; REP4-011] that it is not relying on any mitigation to reach the conclusions of the NSER. The ExA notes that the draft DCO (R13)(2)(f) refers to ‘...mitigation measures designed to protect controlled waters’, with such measures described in the Updated Mitigation Summary Table [REP2-006] as primary and/or tertiary mitigation. The Applicant has confirmed that the River Tees is</p>	<p>The Sweetman judgment is a recent ruling and there is little guidance from the courts at the moment as to what constitutes avoidance or reduction measures. We advise the Applicant and Competent Authority to take their own legal advice on this matter. Where the Competent Authority is unsure whether certain matters are avoidance or reduction</p>

		<p>hydrologically connected to the Proposed Development via the existing Wilton International drainage system.</p> <p>To what extent does NE agree that the proposed measures to ensure safe discharge of water to the existing drainage system (as described in REP2-006] are 'embedded measures' and not avoidance or reduction measures as described in the Sweetman judgement?</p>	<p>measures, it will need to consider whether to carry out an appropriate assessment to avoid the risk of a legal challenge.</p>
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