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To All Interested Parties

Your Ref:

Our Ref: EN010082

Date: 5 September 2018

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Dear Sir/Madam

**Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 17**

**Application by Sembcorp Utilities (UK) Limited for an Order Granting Development Consent for the Proposed Tees CCPP Project**

**Examining Authority's request for further information and notification of Report on the Implications for European Sites**

***Notification of the Report on the Implications for European Sites***

In accordance with the published timetable for this examination, the Examining Authority (ExA) is issuing the following document for consultation with all Interested Parties (IPs):

- The ExA's Report on the Implications for European Sites (RIES).

This document is now available on the Tees CCPP project page of the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/document/EN010082-000562>

All IPs are invited to make written comments in response to this document by **Deadline 7, Wednesday 26 September 2018.**

***Request for Further Information***

In accordance with the published timetable for this examination, the Examining Authority (ExA) requests that further information on the following is submitted for **Deadline 7, Wednesday 26 September 2018.**

**1. Designation of Teesmouth and Cleveland Coast as a proposed Special Protection Area (pSPA), proposed Ramsar site and enlarged Site of Special Scientific Interest (SSSI)**

The Applicant and Natural England are requested to:

- Comment on the implications for the Habitats Regulations Assessment (HRA) of the formal designation of the Teesmouth and Cleveland Coast as a pSPA and proposed Ramsar site (as well as notification of the enlarged Teesmouth and Cleveland Coast SSSI) during the Examination.

The Applicant is requested to:

- Provide any other information to demonstrate the anticipated impact from the Proposed Development on the proposed Ramsar site and the newly identified qualifying feature of the pSPA (ruff), which are not considered in the No Significant Effects Report **[REP1-001]**

**2. DCO Requirement 4(1)(d), 4(2)(b) and 4(3) - detailed design of the authorised development**

**The scope of the authorised development**

The Secretary of State (SoS) cannot make the DCO without having examined the environmental information and conducting the other activities required by EIA Regulations. The environmental information includes the Environmental Statement (ES) submitted with this application and any other information, or representations made by anybody required or invited to make representations and any representations duly made by any other person about the environmental effects of the development.

The assessment of air quality effects within the Applicant's ES and HRA has assessed a stack height of 75 metres (and nothing less) and a stack diameter of 8 metres. The Applicant's assessment is constrained in terms of its approach to the parameters applicable to the stack height and diameter. This approach impedes the SoS's ability to authorise the development to an extent which differs from that assessed. Any assessment which may be carried out by the Environment Agency in relation to the environmental permit cannot substitute the assessment which must be made by the SoS in keeping with his statutory duty under the EIA Regulations (or HRA Regulations).

To enable the SoS to lawfully grant development consent in the way prescribed by the draft DCO (ie. a stack of "up to 75" metres and an unspecified diameter) the ExA considers that the applicant would need to assess the impacts of a stack of "up to 75 metres" and put this information into the examination.

**Addressing uncertainty through a requirement**

The Applicant's attention is drawn to:

- *R. (on the application of Hubert) v Carmarthenshire CC Queen's Bench Division (Administrative Court), 05 August 2015*

- *R. (on the application of Midcounties Co-operative Ltd) v Wyre Forest DC Queen's Bench Division (Administrative Court) 27 March 2009*
- Section 17 (in particular paragraph 17.3) of the Planning Inspectorate's Advice Note 15 [https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/10/advice\\_note\\_15\\_version\\_1.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/10/advice_note_15_version_1.pdf)

The ExA considers that DCO requirement 4 (1) (d) and (2) (b) (detailed design) as currently drafted **[REP6-008]** may result in the local planning authority (LPA) authorising a change to the development to an extent that is beyond what has been assessed in the ES (in relation to the height and diameter of the stack/s). The proposed new requirement also fails to acknowledge the necessary relationship between what is assessed and examined and what can be authorised.

The Applicant is therefore asked to:

- Consider further drafting changes to the DCO in order to fix the stack height and diameter so that it aligns with what has been assessed (for example by amendments to the description of the authorised development in Schedule 1) and to comment on the above points, with reference to the relevant case law as necessary.
  - In relation to requirement 4 (1) (d) and (2) (b), the LPA is asked to comment on whether or not (in its view) it would have jurisdiction to entertain a subsequent application to approve a stack height of less than 75 metres.
- 3. DCO Requirement 13(2)(a)(ii) – noise monitoring specification within the Construction Environmental Management Plan (“CEMP”)**

With reference to the Applicant's Deadline 5 response to the ExA's second written questions, specifically Question 2.6.1 [REP5-005], the Applicant is requested to:

- amend the drafting of dDCO Requirement 13 (2)(a)(ii) and the draft CEMP [REP6-009] to include specific reference to the two types of construction noise monitoring detailed in the answer to the question.

#### **4. Carbon Capture Readiness Report ('CCR Report')**

The Applicant indicated **[Q2.0.2, REP5-005]** that it would provide a further CCR report/statement at Deadline 6, but to date has not submitted this information. The ExA notes the comments from the Environment Agency (EA) in **[AS-028]**. Can the Applicant confirm precisely when it intends to submit the required information to the Examination, noting that the EA has advised it will take approximately three weeks for them to review and provide their comments?

If you have any queries, please do not hesitate to contact the Tees CCPP case team.

Yours sincerely

*David Richards*

**David Richards**  
Examining Authority

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