



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

SCOPING OPINION

Proposed Wheelabrator Kemsley Generating Station Power Upgrade

Planning Inspectorate Reference: EN010083

January 2017

TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	3
1 INTRODUCTION.....	5
BACKGROUND.....	5
THE SECRETARY OF STATE’S CONSULTATION	6
STRUCTURE OF THE DOCUMENT.....	7
2 THE PROPOSED DEVELOPMENT	8
INTRODUCTION.....	8
THE APPLICANT’S INFORMATION	8
THE SECRETARY OF STATE’S COMMENTS	14
3 EIA APPROACH AND TOPIC AREAS	20
INTRODUCTION.....	20
EU DIRECTIVE 2014/52/EU	20
NATIONAL POLICY STATEMENTS	20
ENVIRONMENTAL STATEMENT APPROACH	21
ENVIRONMENTAL STATEMENT STRUCTURE.....	23
MATTERS TO BE SCOPED IN/OUT	23
TOPIC AREAS	25
4 OTHER INFORMATION	39
APPENDIX 1 – PRESENTATION OF THE ENVIRONMENTAL STATEMENT	
APPENDIX 2 – LIST OF CONSULTATION BODIES FORMALLY CONSULTED	
APPENDIX 3 – RESPONDENTS TO CONSULTATION AND COPIES OF REPLIES	

EXECUTIVE SUMMARY

This is the Scoping Opinion (the Opinion) provided by the Secretary of State in respect of the content of the Environmental Statement for the proposed Wheelabrator Kemsley Generating Station Power Upgrade, Sittingbourne, Kent.

This report sets out the Secretary of State's opinion on the basis of the information provided in K3 CHP Ltd's ('the Applicant's') report entitled 'Wheelabrator Kemsley Generating Station Power Upgrade EIA Scoping Report' ('the Scoping Report'). The Opinion can only reflect the proposals as currently described by the Applicant.

The Secretary of State has consulted on the Scoping Report and the responses received have been taken into account in adopting this Opinion. The Secretary of State is satisfied that the topic areas identified in the Scoping Report encompass those matters identified in Schedule 4, Part 1, paragraph 19 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended).

The Secretary of State draws attention both to the general points and those made in respect of each of the specialist topic areas in this Opinion. The main potential issues identified are:

- impacts on ecological sites and protected species, particularly nationally and internationally designated sites and their features;
- impacts on water quality and hydrological features; and
- traffic and transport impacts on the local road network.

Matters are not scoped out unless specifically addressed and justified by the Applicant, and confirmed as being scoped out by the Secretary of State.

The Secretary of State notes the potential need to carry out an assessment under The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations).

1 INTRODUCTION

Background

1.1 On 12 December 2016 the Secretary of State (SoS) received the Scoping Report submitted by K3 CHP Ltd ('the Applicant'), under Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2263) (as amended) ('the EIA Regulations'), in order to request a scoping opinion for the proposed Wheelabrator Kemsley Generating Station Power Upgrade ('the proposed development'). This Opinion is made in response to this request and should be read in conjunction with the Applicant's Scoping Report.

1.2 In submitting the request for a Scoping Opinion as to the content and scope of the environmental impact assessment, the Applicant is deemed to have notified the SoS under Regulation 6(1)(b) of the EIA Regulations that it proposes to provide an environmental statement (ES) in respect of the proposed development. Therefore, in accordance with Regulation 4(2)(a) of the EIA Regulations, the proposed development is determined to be EIA development.

1.3 The EIA Regulations enable an Applicant, before making an application for an order granting development consent, to ask the SoS to state in writing their formal opinion (a 'scoping opinion') on the information to be provided in the ES.

1.4 Before adopting a scoping opinion the SoS must take into account:

- (a) *the specific characteristics of the particular development;*
- (b) *the specific characteristics of the development of the type concerned; and*
- (c) *environmental features likely to be affected by the development'.*

(EIA Regulation 8 (9))

1.5 This Opinion sets out the information that the SoS considers should be included in the ES for the proposed development. The Opinion has taken account of:

- the EIA Regulations;
- the nature and scale of the proposed development;
- the nature of the receiving environment; and
- current best practice in the preparation of an ES.

1.6 The SoS has also taken account of the responses received from the statutory consultees (see Appendix 3 of this Opinion). The matters addressed by the Applicant have been carefully considered and use has been made of professional judgement and experience in order to

adopt this Opinion. It should be noted that when it comes to consider the ES, the SoS will take account of relevant legislation and guidelines (as appropriate). The SoS will not be precluded from requiring additional information if it is considered necessary in connection with the ES submitted with the application for a development consent order (DCO).

- 1.7 This Opinion should not be construed as implying that the SoS agrees with the information or comments provided by the Applicant in their request for an opinion from the SoS. In particular, comments from the SoS in this Opinion are without prejudice to any decision taken by the SoS (on submission of the application) that any development identified by the Applicant is necessarily to be treated as part of a nationally significant infrastructure project (NSIP), or associated development, or development that does not require development consent.
- 1.8 Regulation 8(3) of the EIA Regulations states that a request for a scoping opinion must include:
- (a) a plan sufficient to identify the land;*
 - (b) a brief description of the nature and purpose of the development and of its possible effects on the environment;*
and
 - (c) such other information or representations as the person making the request may wish to provide or make.*
- (EIA Regulation 8 (3))*
- 1.9 The SoS considers that this has been provided in the Applicant's Scoping Report.

The Secretary of State's Consultation

- 1.10 The SoS has a duty under Regulation 8(6) of the EIA Regulations to consult widely before adopting a scoping opinion. A full list of the consultation bodies is provided at Appendix 2. A list has also been compiled by the SoS under their duty to notify the consultation bodies in accordance with Regulation 9(1)(a). The Applicant should note that whilst the SoS's list can inform their consultation, it should not be relied upon for that purpose.
- 1.11 The list of respondents who replied within the statutory timeframe and whose comments have been taken into account in the preparation of this Opinion is provided at Appendix 2 along with copies of their comments at Appendix 3, to which the Applicant should refer in undertaking the EIA.
- 1.12 The ES submitted by the Applicant should demonstrate consideration of the points raised by the consultation bodies. It is recommended that a table is provided in the ES summarising the scoping responses

from the consultation bodies and how they are, or are not, addressed in the ES.

- 1.13 Any consultation responses received after the statutory deadline for receipt of comments will not be taken into account within this Opinion. Late responses will be forwarded to the Applicant and will be made available on the Planning Inspectorate's website. The Applicant should also give due consideration to those comments in carrying out the EIA.

Structure of the Document

- 1.14 This Opinion is structured as follows:

- **Section 1:** Introduction
- **Section 2:** The proposed development
- **Section 3:** EIA approach and topic areas
- **Section 4:** Other information

- 1.15 This Opinion is accompanied by the following Appendices:

- **Appendix 1:** Presentation of the ES
- **Appendix 2:** List of consultation bodies formally consulted
- **Appendix 3:** Respondents to consultation and copies of replies

2 THE PROPOSED DEVELOPMENT

Introduction

- 2.1 The following is a summary of the information on the proposed development and its site and surroundings prepared by the Applicant and included in their Scoping Report. The information has not been verified and it has been assumed that the information provided reflects the existing knowledge of the proposed development and the potential receptors/resources.

The Applicant's Information

Overview of the proposed development

- 2.2 Paragraph 1.4 of the Scoping Report confirms that the proposed development is to be built pursuant to the terms of extant planning permissions under the Town and Country Planning Act 1990 (TCPA), which consented the generating station, with the same benefits, but that the Applicant now wishes to operate the plant with a greater maximum electrical output. The consented scheme would allow the plant to operate at up to 49.9MWe (gross) but the Applicant now wishes this maximum limit to increase to up to 75MWe (gross). It is stated that the power upgrade is the only reason for needing to seek a DCO. However, in order to secure a single and complete consent for the proposed development, the Applicant will also seek consent for its construction and operation. It is noted that there will be no change to the types and quantum of fuel throughput, nor any changes to emissions (paragraph 1.4 of the Scoping Report).
- 2.3 The principal elements of the proposed development are identified in Section 4 of the Scoping Report and include:
- an energy from waste generating station with an electrical output of up to 75 megawatts electric (MWe), capable of processing up to 550,000 tonnes of waste per year;
 - a reception hall, waste fuel bunker and boiler hall;
 - a building to house processing equipment;
 - an Incineration Bottom Ash (IBA) Recycling Facility (hereafter referred to as 'the IBA facility'), capable of processing up to 140,000 tonnes of IBA per year, incorporating storage and processing buildings, metal storage bays, an external storage area and a conveyor link to the generating station;
 - a gatehouse, weighbridge, office and welfare building;
 - formation of improved access road and parking;
 - a new drainage system, including water attenuation features and outfall to the Swale Estuary; and
 - landscaping.

- 2.4 Paragraph 4.8 of the Scoping Report explains that the application for the IBA facility will be determined by Kent County Council (KCC).

Description of the site and surrounding area

The Application Site

- 2.5 The proposed development would be located on land adjacent to and immediately north-east of Kemsley Paper Mill, within the Swale district of Kent, approximately 0.85km to the north-east of Kemsley and approximately 2.5km to the north of Sittingbourne.
- 2.6 A description of the site is provided in paragraphs 4.1 to 4.4 of the Scoping Report, with a site location plan provided at Figure 1 of the Scoping Report. Figure 2 illustrates the 'assessment boundary', which paragraph 4.8 of the Scoping Report explains will be used for the assessments in the ES. This covers an area of approximately 12.5 hectares, and includes the landtake for the generating station, the IBA facility and the accesses and utilities.
- 2.7 At the time of production of the Scoping Report, the site comprised primarily bare ground, having been cleared of vegetation and undergoing levelling to facilitate construction of the consented scheme (paragraph 3.15 of the Scoping Report). The route of a dismantled railway bisects the western/ south-western sections of the site.
- 2.8 As illustrated on Figure 4 of the Scoping Report, the application site is located immediately adjacent to the Swale, a strip of sea which separates the north Kent mainland from the Isle of Sheppey. The eastern extent of the site boundary extends into the Swale Estuary Marine Conservation Zone. Ecological surveys undertaken to support the 2010 ES identified a number of protected and notable species present on or around the application site, including reptiles, birds and invertebrates.
- 2.9 Parts of the application site lie within Flood Zones 2 and 3a, as illustrated on Figure 6 of the Scoping Report. The site is underlain by superficial Alluvium (classified as a secondary aquifer) over the London Clay Formation.

The Surrounding Area

- 2.10 In broad terms, paragraph 4.1 of the Scoping Report characterises the land uses in the surrounding area as industrial and commercial land.
- 2.11 The Swale, which lies immediately to the east of the site, is designated as a Special Protection Area (SPA), Ramsar site and Site of Special Scientific Interest (SSSI). Paragraph 8.3 of the Scoping Report identifies a number of other local, national and internationally designated ecological sites in proximity to the proposed development,

Scoping Opinion for
Proposed Wheelabrator Kemsley Generating Station Power Upgrade

the locations of some of which are illustrated on Figure 4 of the Scoping Report. These include:

- Medway Estuary and Marshes SPA, Ramsar and SSSI;
- Elmley National Nature Reserve (NNR); and
- Milton Creek Local Wildlife Site (LWS).

2.12 Milton Creek flows to the south of the application site, joining the Swale which flows in an easterly direction until its confluence with the North Sea, approximately 16km to the east of the site.

2.13 Paragraph 13.3 of the Scoping Report confirms that the nearest residential receptors to the application site are located approximately 1km to the west of the site, within the north-eastern part of Kemsley.

2.14 The Saxon Shore Way, a long-distance public footpath, runs alongside the Swale and Milton Creek, to the north, east and south of the site.

2.15 Paragraph 7.6 of the Scoping Report confirms that four Air Quality Management Areas (AQMAs) have been designated by Swale Borough Council (SBC) due to high levels of nitrogen dioxide (NO₂) pollution from road traffic. The closest AQMA to the application site is St Pauls Street, Sittingbourne, located approximately 2.5km to the south-west of the application site.

2.16 The area around the Swale and the adjoining coastal landscape is designated as the North Kent Marshes Special Landscape Area (as illustrated on Figure 7 of Scoping Report).

2.17 Section 9 of the Scoping Report identifies a number of heritage assets in proximity to the application site. These are illustrated on Figures 5 and 7 of the Scoping Report and include:

- Conservation Areas (in closest proximity to the application site is the Milton Regis High Street Conservation Area, located approximately 2.5km to the south-west);
- Registered Parks and Gardens (in closest proximity to the application site is Doddington Place, located approximately 9km to the south);
- Scheduled Monuments (in closest proximity to the application site is Castle Rough, located approximately 500m to the south-west); and
- Listed buildings (in closest proximity to the application site are the Grade II listed Little Murston Farmhouse, located to the south-east; and Great Grovehurst Farmhouse, located to the west site. The distance of these assets from the application site has not been specified).

Alternatives

- 2.18 The Applicant discusses alternatives to the proposed development in section 4 of the Scoping Report. Paragraph 4.69 of the Scoping Report explains that further detail is available in the ES (dated 2010) which supported the application for the consented scheme. A copy of the 2010 ES has not been provided with the Scoping Report.
- 2.19 The Applicant considered a number of alternative sites within the administrative area of Kent County Council (KCC). On the basis of the size of the proposed development and that the energy produced would primarily be used to power the Kemsley Paper Mill, the Applicant searched for sites which were a minimum of 4 hectares in size and within a 2km radius of Kemsley Paper Mill. Paragraph 4.72 of the Scoping Report explains that the application site was chosen for a number of reasons including its location adjacent to the paper mill, accessibility via existing transport infrastructure and compliance with planning policy.
- 2.20 The Applicant also considered the use of alternative technologies (including fluidised bed technology, gasification, pyrolysis, plasma arc gasification and biological treatment), alternative designs and alternative electrical outputs, as detailed in paragraphs 4.74 to 4.78 of the Scoping Report. Landfill was considered as an alternative waste management option, but the Scoping Report explains (paragraph 4.74) that this would not produce enough energy to power Kemsley Paper Mill.

Description of the proposed development

- 2.21 The proposed development comprises a new energy from waste generating station with an electrical output of up to 75 MWe, capable of processing up to 550,000 tonnes of waste fuel per year. The waste fuel would be in the form of pre-treated waste (comprising solid recovered fuel waste, commercial and industrial waste and municipal solid waste). Whilst the precise sources of the waste fuel have yet to be determined, this would be sourced primarily from Kent, with the balance from London, the south-east and elsewhere in the UK. Heavy Goods Vehicles (HGVs) would be used to transport the waste to the site.
- 2.22 The energy produced would be used to power the existing Kemsley Paper Mill, with any excess electricity to be exported to the national grid.
- 2.23 Indicative locations for the generating station, the IBA facility and the areas to be utilised for access, utilities and drainage are illustrated on Figure 3 of the Scoping Report. Plans included in Appendix 2 of the Scoping Report indicate that the generating station would be 53.5m in height at its maximum point, with the exception of the stacks which would be up to 90m in height. Dimensions for the IBA facility have not been provided.

- 2.24 Paragraph 3.12 of the Scoping Report explains that a standalone application for the IBA facility is currently with KCC for determination under the TCPA. The IBA facility would be located immediately adjacent to the generating station (see Figure 3 of the Scoping Report). As detailed in paragraphs 3.13 and 3.14 of the Scoping Report, the Applicant also intends to submit to KCC applications for various non-material amendments to the consented scheme and the IBA facility (subject to approval). Anticipated dates for submission of the non-material amendment applications to KCC have not been specified.
- 2.25 A landscape masterplan which relates to the consented scheme has been provided in Appendix 5 of the Scoping Report (see Appendix 4 of that appendix).
- 2.26 The drainage strategy for the consented scheme is illustrated in Appendix 5 of the Scoping Report (see Appendix 3 of that document), which demonstrates the indicative location of the outfall to the Swale.

Proposed access

- 2.27 Paragraph 14.5 of the Scoping Report confirms that vehicular access to the proposed development would be via Barge Way, as illustrated on Figure 8 of the Scoping Report. Figure 8 illustrates how HGVs would access the application site from the A249.

Construction

- 2.28 The Scoping Report does not include a separate section to describe the construction works associated with the proposed development, although it is noted in paragraph 6.3 of the Scoping Report that this information will be included in the ES.
- 2.29 Paragraph 3.15 of the Scoping Report explains that construction of the consented scheme commenced in August 2016 and that the site has been cleared of vegetation and levelling works are being undertaken. A Construction Method Statement prepared for the consented scheme has been provided in Appendix 5 of the Scoping Report (see Appendix 2 of that document), which includes a programme of works as well as information on construction methods, waste management, lighting and working hours. An Environmental Monitoring and Mitigation Plan (EMMP) prepared for the consented scheme has been provided in Appendix 5 of the Scoping Report (see Appendix 3 of that document).
- 2.30 Approximately 500 contractors will be employed during construction of the proposed development (paragraph 4.51 of the Scoping Report). It is not stated whether this figure relates to the number of contractors required at any one time or at the peak of construction. The EMMP indicates that construction working hours would be Monday to Friday, 07:30 to 18:00. The Scoping Report indicates that some

overnight construction works may be required (paragraph 13.24), although the anticipated frequency of this has not been stated.

- 2.31 Night-time lighting of the site would be required during the construction phase (Appendix 6 of the Scoping Report, paragraphs 9.252 to 9.255).
- 2.32 The anticipated number and type of vehicular movements required during the construction phase and how these vehicles would access the site has not been stated. It is not stated whether any materials would be transported by rail or sea.
- 2.33 Appendix 5 of the Scoping Report (paragraph 2.25) states that plant and equipment required for the consented scheme would likely include: piling rigs, cranes, 360 excavators, dumpers, a roller, a wacker plate, a floor saw, breakers, generators, flood lights, accommodation/ office supplies, fencing, signs, locks, skips, wheelbarrows, shovels and trowels.
- 2.34 The Applicant anticipates that the generating station will be operational with an output of up to 49.9MWe by June 2019. Should the proposed development be granted, the generating station will operate at up to 75MWe by June 2019 (paragraph 4.5 of the Scoping Report). The Scoping Report indicates that the IBA facility would also be operational by June 2019.

Operation and maintenance

- 2.35 Once operational, the proposed generating station would employ approximately 50 full-time staff, whilst the proposed IBA facility would employ between 6 and 12 staff. During planned shutdowns, an average of 100 contractors would be required.
- 2.36 Paragraph 4.46 of the Scoping Report states that the proposed generating station would operate continuously for 24 hours a day, seven days a week. This would be the case throughout the year, with the exception of planned shutdowns and unplanned maintenance. Paragraph 4.47 indicates that the IBA facility would also operate on a 24/7 basis, although associated HGV movements would be restricted to between the hours of 07:00 and 23:00.
- 2.37 Paragraph 14.15 of the Scoping Report notes that traffic movements associated with both the consented scheme and the IBA facility will be established and used to inform the EIA. Paragraph 4.48 of the Scoping Report explains that a Transport Assessment was prepared to support the planning application for the IBA facility (currently with KCC for determination), although a copy of this document has not been provided with the Scoping Report. Operation of the IBA facility is anticipated to generate approximately 42 HGV movements per day, plus staff vehicles (paragraph 4.48 of the Scoping Report). It is not stated whether any waste would be transported to the application site by rail or sea.

Decommissioning

- 2.38 Paragraph 6.3 of the Scoping Report notes that a description of the key works, activities and processes associated with decommissioning the proposed development will be included in the ES. The topic chapters confirm that the ES would include an assessment of the environmental effects resulting from decommissioning.

The Secretary of State's Comments

Description of the application site and surrounding area

- 2.39 Paragraphs 4.1 to 4.4 of the Scoping Report provide a high level description of the site and surrounding area. In addition to detailed baseline information to be provided within topic-specific chapters of the ES, the ES should include a section that summarises the site and surroundings. This would identify the context of the proposed development and any relevant designations and sensitive receptors. This section should identify land that could be directly or indirectly affected by the proposed development and any associated auxiliary facilities, landscaping areas and potential off-site mitigation or compensation schemes.
- 2.40 Section 10 of the Scoping Report notes the potential presence of a landfill site within the assessment site, however it is indicated elsewhere in the Report that the landfill site lies outside the assessment site. Section 10 also refers to the presence of an aquifer below the site, which is not identified in the site description in Section 4. The ES should clearly and correctly identify the location of relevant features both within and outside the proposed development site.
- 2.41 The SoS notes the consultation response from National Grid, which confirms that National Grid Electricity Transmission Plc, National Grid Gas Plc and National Grid Gas Distribution Limited do not have any infrastructure within proximity to the application site. It should be stated in the ES whether any other gas, electricity, water or other utilities infrastructure is situated within or in close proximity to the application site and whether any could be affected by the proposed development.
- 2.42 The ES should clearly delineate the study areas used to identify designated and non-designated ecological sites and include information on the various designated features. The SoS welcomes the inclusion in the Scoping Report of Figure 4, which identifies the location of some designated ecological sites relative to the proposed development. A similar plan should be provided to accompany the ES and should identify all ecological sites considered in the EIA.
- 2.43 Paragraph 7.6 of the Scoping Report explains that four AQMAs have been designated by SBC, although only specifies one AQMA by name.

The ES should clearly name all four AQMAs and confirm the proximity of each of these to the application site.

Description of the proposed development

- 2.44 The SoS notes the Applicant's slightly novel approach with regard to the proposed development and that which is already permitted by the extant TCPA planning permission and under construction. The SoS reminds the Applicant of its responsibility to demonstrate the 'planning need' with regard to development proposed through the DCO process. The SoS also broadly understands the reasons why such an approach would be proposed. The Applicant should be aware, however, that the application will be treated as a new application for development consent and the information provided (including the ES) will need to robustly support all elements of the application.
- 2.45 It is unclear from the description of the proposed development provided in the Scoping Report which elements will form part of the DCO scheme. For example, it is unclear whether the IBA facility (which paragraph 4.8 of the Scoping Report explains would be determined by KCC) will be included in the DCO application. The ES should include a distinct section which clearly identifies the physical characteristics of the whole development and if they differ from development included in the extant TCPA permission.
- 2.46 The description of the proposed development should be comprehensive and consistent throughout the ES. For example, the Scoping Report and its appendices refer interchangeably to the 'stack' and 'stacks' which form part of the consented scheme; and Section 10 of the Report refers to a Sustainable Urban Drainage System (SuDs) to be installed on the site, although no reference is made to a SuDs in the description of the proposed development in Section 4 of the Scoping Report.
- 2.47 If a draft DCO is to be submitted, the Applicant should clearly define what elements of the proposed development are integral to the NSIP and which is 'associated development' under the Planning Act 2008 (PA2008) or is an ancillary matter. Associated development is defined in the PA2008 as development which is associated with the principal development. Guidance on associated development can be found in the DCLG publication 'Planning Act 2008: Guidance on associated development applications for major infrastructure projects'. Any proposed works and/ or infrastructure required as associated development, or as an ancillary matter, (whether on or off-site) should be assessed as part of an integrated approach to environmental assessment.
- 2.48 The SoS recommends that the ES should include a clear description of all aspects of the proposed development, at the construction, operation and decommissioning stages, and include:

Scoping Opinion for
Proposed Wheelabrator Kemsley Generating Station Power Upgrade

- Land use requirements;
 - Site preparation;
 - Construction processes and methods;
 - Transport routes;
 - Operational requirements including the main characteristics of the production process and the nature and quantity of materials used, as well as waste arisings and their disposal;
 - Maintenance activities including any potential environmental or navigation impacts; and
 - Emissions - water, air and soil pollution, noise, vibration, light, heat, radiation.
- 2.49 The environmental effects of all wastes to be processed and removed from the site should be addressed. The ES will need to identify and describe the control processes and any mitigation required for storing and transporting waste to and from the site. All waste types should be quantified and classified.
- 2.50 The Applicant should use careful and consistent terminology in the ES to ensure a clear distinction is made between the proposed development subject to the DCO application and the extant permission under the TCPA. For example, the Scoping Report refers interchangeably to the 'Sustainable Energy Plant' (SEP), the 'Wheelabrator Kemsley Generating Station' and the 'Generating Station'.
- 2.51 Paragraph 4.29 of the Scoping Report explains that surface water will be stored on site within a single swale pond and discharged to the Swale Estuary through a new outfall. Paragraph 9.118 (within Appendix 6 of Scoping Report Appendix 5) indicates that, under the consented scheme, this would replace the surface water drainage system which currently exists on the site. It is noted that paragraph 9.120 (within Appendix 6 of Scoping Report Appendix 5), refers to 'outfalls' – the ES should clearly describe the new outfall/ s proposed as part of the DCO application and assess the impacts resulting from this.
- 2.52 The consultation response from the Environment Agency (EA) explains that the site benefits from an existing environmental permit and that the Applicant will likely need to apply to the EA for a variation to this permit. The SoS notes from the EA's consultation response that the Applicant has already approached the EA for pre-application permitting discussions, and welcomes this. The DCO application should demonstrate the progress made towards securing the permit variation from the EA and should include supporting evidence (for example, a letter) indicating whether the ES is likely to grant a permit before the Examination of the DCO application closes.

Grid connection

- 2.53 The Scoping Report (Appendix 5, paragraph 1.8) states that grid connection cables, plant and equipment will be required to connect the proposed generating station to the grid. The routing of the grid connection cables has not been described in the Scoping Report, although it is noted from Figures 2 and 3 of the Scoping Report that the site boundary extends to an existing electricity substation located to the west of the site. It appears from the plans in Appendix 3 of the Scoping Report that two new substations would form part of the proposed development, although this is not clear.
- 2.54 It should be explained in the ES how the proposed development would connect to the grid. All of the necessary infrastructure should be described and it should be confirmed and whether the grid connection (and all associated infrastructure) forms part of the DCO application as 'associated development' (as defined under the PA2008). The ES should assess the potential environmental impacts resulting from the grid connection, either as part of the DCO scheme, as a cumulative development or as a consequential development.
- 2.55 It is unclear from the Scoping Report whether the grid connection forms part of the consented scheme. This should be clarified in the ES.

Proposed access

- 2.56 Paragraph 14.5 of the Scoping Report confirms that vehicular access to the proposed development would be via Barge Way, located to the north of the application site. The ES should confirm whether this would apply to traffic movements associated with construction, operation and decommissioning of the proposed development.
- 2.57 The ES should clarify at what point in the construction programme improvements to the internal access road would be undertaken.

Flexibility

- 2.58 The ES should include a clear explanation of any elements of the proposed development which have yet to be finalised and explain why that is the case. The scheme parameters will need to be clearly defined in the draft DCO and therefore in the accompanying ES. It is a matter for the Applicant, in preparing an ES, to consider whether it is possible to robustly assess a range of impacts resulting from a large number of undecided parameters. The description of the proposed development in the ES must not be so wide that it is insufficiently certain to comply with requirements of paragraph 17 of Schedule 4 Part 1 of the EIA Regulations. The Applicant should ensure that the parameters are consistently applied throughout the ES.
- 2.59 The Applicant's attention is drawn to Advice Note Nine: 'Using the 'Rochdale Envelope', which is available on the Planning Inspectorate's

website, and to the 'Flexibility' section in Appendix 1 of this Opinion which provides additional details on the recommended approach.

- 2.60 It should be noted that if the proposed development changes substantially during the EIA process, prior to submission of the DCO application, the Applicant may wish to consider the need to request a new scoping opinion.

Alternatives

- 2.61 The EIA Regulations require that the Applicant provide 'An outline of the main alternatives studied by the Applicant and an indication of the main reasons for the Applicant's choice, taking into account the environmental effects' (see Appendix 1).
- 2.62 The SoS notes that alternative sites, technologies, designs and electrical outputs are considered in Section 4 of the Scoping Report, with further detail stated to be contained in the 2010 ES. All information relevant to the consideration of alternatives to the proposed development should be presented in the ES which accompanies the DCO application.
- 2.63 The SoS would also expect to see detailed information in the ES regarding alternative construction methods and any other alternatives considered during the evolution of the scheme design. It should be clear from the ES how the environmental effects have been taken into account in the choices made.

Construction

- 2.64 The SoS considers that information regarding construction of the proposed development should be clearly set out in a distinct section the ES, supported by plans as appropriate. This should include all elements of the proposed development, rather than addressing certain elements, eg the IBA facility, separately. This should include (but not be limited to):
- phasing of the programme including anticipated start and end dates;
 - build-out scenarios including initial operation, full build out and intermediate stages where construction and operation may overlap;
 - the approach to phasing of landscape planting to maximise opportunities for the establishment of screen planting;
 - the construction methods (eg piling) and activities (eg site clearance, demolition, land levelling) associated with each construction phase;
 - types of plant and machinery required and their anticipated noise levels;

- anticipated numbers of full/ part time construction workers;
 - construction hours and whether any night time working will be required;
 - lighting equipment/ requirements;
 - the number, routeing and parking of construction vehicles (including abnormal loads, HGVs, Light Goods Vehicles (LGV) and staff vehicles); and
 - whether any construction materials would be arriving by rail/ water.
- 2.65 The SoS notes that the Scoping Report does not confirm the size and location of required construction compounds. Potential locations for the compounds can be identified from the phasing plans contained within the Construction Method Statement for the consented scheme (see Appendix 1 of Appendix 5 in the Scoping Report). The Applicant is reminded that this information will be required in the ES and that the land required for construction compounds should be included in the DCO boundary.
- 2.66 The SoS notes that an EMMP was produced for the consented scheme, and has been provided in Appendix 5 of the Scoping Report. The Applicant may wish to include this document (or similar) with the DCO application. This should be appended to the ES and should clearly distinguish between 'construction' and 'operational' activities.

Operation and maintenance

- 2.67 Information on the operation and maintenance of the proposed development should be included in the ES and should cover but not be limited to such matters as: the number of full/ part-time jobs; the operational hours and if appropriate, shift patterns; and the number and types of vehicle movements generated during the operational stage.

Decommissioning

- 2.68 The SoS welcomes the Applicant's intention to include in the ES an assessment of the environmental effects of decommissioning the proposed development (as stated in the topic sections of the Scoping Report). The ES should confirm the operational design life of the proposed development.
- 2.69 The SoS acknowledges that the further into the future any assessment is made, the less reliance may be placed on the outcome. However, the purpose of such a long-term assessment is to enable the decommissioning of the works to be taken into account in the design of the proposed development and use of materials, such that structures can be taken down with the minimum of disruption. The process and methods of decommissioning should be considered and options presented in the ES.

3 EIA APPROACH AND TOPIC AREAS

Introduction

- 3.1 This section contains the SoS's specific comments on the approach to the ES and topic areas as set out in the Scoping Report. General advice on the presentation of an ES is provided at Appendix 1 of this Opinion and should be read in conjunction with this section.

EU Directive 2014/52/EU

- 3.2 The SoS draws the Applicant's attention to European Union (EU) Directive 2014/52/EU (amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment), which was made in April 2014.
- 3.3 Under the terms of the 2014/52/EU Directive, Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 16 May 2017.
- 3.4 Whilst transitional provisions will apply to such new regulations, the Applicant is advised to consider the effect of the implementation of the amended Directive in terms of the production and content of the ES.
- 3.5 On 23 June 2016, the UK held a referendum and voted to leave the EU. There is no immediate change to infrastructure legislation or policy. Relevant EU Directives have been transposed into UK law and those are unchanged until amended by Parliament.

National Policy Statements

- 3.6 Sector-specific National Policy Statements (NPSs) are produced by the relevant Government Departments and set out national policy for NSIPs. They provide the framework within which the Examining Authority (ExA) will make their recommendations to the SoS and include the Government's objectives for the development of NSIPs.
- 3.7 The relevant NPSs for the proposed development, ie EN-1, EN-3 and EN-5, set out both the generic and technology-specific impacts that should be considered in the EIA for the proposed development. When undertaking the EIA, the Applicant must have regard to both the generic and technology-specific impacts and identify how these impacts have been assessed in the ES.
- 3.8 The SoS must have regard to any matter that the SoS thinks is important and relevant to the SoS's decision. This could include a draft NPS if the relevant NPS has not been formally designated.

Environmental Statement Approach

- 3.9 The Applicant's approach to the proposed development and the relationship with the extant TCPA permission is an interesting one. The Secretary of State agrees that there is logic in making use of the existing EIA provided for the consented scheme and avoiding unnecessary duplication of effort. However, the Applicant should ensure that the ES provided in support of the DCO application is sufficiently robust and that the information necessary to assess the proposed development and any changes from the consented scheme is provided. The Secretary of State recommends that the ES includes (as part of the description of development) a schedule to explain how the consented scheme compares with that proposed in the DCO application, specifically addressing areas of difference.
- 3.10 The Scoping Report contains variable levels of detail and evidence on which to base this Opinion particularly in respect to the different elements of the proposed development, such as in relation to the baseline that will inform the assessments, the approach to be taken to assessing environmental impacts, and the proposed mitigation measures. Some relevant information is contained in the Appendices to the Scoping Report; however, much of this is not cross-referenced or identified in the main body of the Report. The ES should not be a series of separate reports collated into one document, but rather a comprehensive assessment drawing together the environmental impacts of the proposed development. This is particularly important when considering impacts in terms of any permutations or parameters to the proposed development. The contents of any Appendices should be identified at the front end of the ES and/or in the relevant topic chapters.
- 3.11 The ES needs to provide comprehensive information on all the elements that will form part of the proposed development, including the IBA facility if that is to be included as part of the DCO application. The SoS notes that it is currently the subject of a planning application to be determined by KCC, however it is not clear from the description in Section 4 of the Scoping Report whether it was only included at this stage for assessment purposes or whether it is intended to include it in the DCO application. If it does not form part of the application it should be considered in the cumulative effects assessment in the ES.
- 3.12 The SoS notes that it is proposed that the EIA will consider three baseline scenarios. If this approach is to be followed, the justification should be stated clearly in the ES. The baselines should be described in detail and the Applicant must ensure that all ES topic chapters consistently address each of them. The SoS suggests that the three baselines could be described in an introductory chapter and that the description would not need to be subsequently repeated in each topic chapter.

- 3.13 The overarching methodology is not fully described in Section 5 of the Scoping Report, although individual topic sections indicate that they will rely on it. The ES should include a description of the overarching methodology that is to be applied to the EIA and any alternative methodologies in the individual topic chapters; particularly if they depart from the overarching methodology. The source of the criteria and definitions that are applied should be provided.
- 3.14 The SoS suggests that the Applicant ensures that appropriate consultation is undertaken with the relevant consultees in order to agree wherever possible the timing and relevance of survey work as well as the methodologies to be used. The SoS recommends that the physical scope of the study areas should be identified under all the environmental topics and should be sufficiently robust in order to undertake the assessment. The extent of the study areas should be on the basis of recognised professional guidance, whenever such guidance is available. The study areas should also be agreed with the relevant consultees and, where this is not possible, this should be stated clearly in the ES and a reasoned justification given. The scope should also cover the breadth of the topic area and the temporal scope, and these aspects should be described and justified.
- 3.15 No reference is made to residual effects in the Scoping Report. The ES must identify the potentially significant impacts, the mitigation measures proposed to avoid or reduce those effects, and any remaining residual effects following the implementation of the mitigation.
- 3.16 The SoS recommends that in order to assist the decision-making process the Applicant considers the use of tables in the ES in respect of the following:
- (a) to set out the mitigation measures proposed. In addition to assisting the reader, the SoS considers that this would enable the Applicant to cross-refer the proposed mitigation measures to specific provisions proposed to be included within the draft DCO (dDCO);
 - (b) to identify and collate the residual impacts following mitigation on the basis of specialist topics, inter-relationships and cumulative impacts;
 - (c) to demonstrate how the assessment has taken account of this Opinion and other responses to consultation;
 - (d) to cross-reference where details in the Habitats Regulations assessment (HRA) (where one is provided), such as descriptions of European sites and their locations, together with any mitigation or compensation measures, are to be found in the ES.

Environmental Statement Structure

- 3.17 Although the Scoping Report does not specifically identify a list of the topics that will be covered in the ES, Section 5 notes that the ES will provide an assessment of effects for the topics described in Sections 7 - 15 of the Report as follows:
- Air quality and climate
 - Ecology and nature conservation
 - Historic environment
 - Hydrogeology and ground conditions
 - Hydrology and flood risk
 - Landscape, townscape and visual impact
 - Noise and vibration
 - Socio economics
 - Cumulative effects
- 3.18 The SoS recommends that the ES should include a description of the proposed construction programme and methods, including frequency of overnight works, vehicular movements during construction, and site access arrangements. It should also include information on waste generated by the proposed development and the proposed methods of disposal.

Matters to be Scoped In/Out

- 3.19 The Applicant has identified in each topic section of the Scoping Report the matters proposed to be 'scoped out', which are as follows:
- transboundary effects for all topics;
 - assessment of pollutants from construction vehicles;
 - operational vibration effects;
 - landfill diversion, carbon footprint, (Paper) Mill competitiveness, and impacts on recreation and community resources (from the socio-economic assessment).
- 3.20 Matters are not scoped out unless specifically addressed and justified by the Applicant, and confirmed as being scoped out by the SoS.
- 3.21 It is proposed that transboundary effects are scoped out of all topic assessments. The SoS considers that, having had regard to the information provided about the currently proposed development, significant effects appear unlikely. However, this will be considered in detail as part of the transboundary screening process under Regulation 24 of the EIA Regulations (see Section 4 of this Opinion).

- 3.22 It is proposed that the assessment of pollutants from construction vehicles for the proposed development is scoped out of the air quality assessment if the change in traffic numbers on local roads as a result of construction/decommissioning traffic does not exceed the indicative threshold criteria set out in the EPUK/IAQM 2015 guidance, 'Land-Use Planning and Development Control: Planning for Air Quality'. The SoS agrees that this is an acceptable approach and that this matter may be scoped out of the assessment on that basis, as long as the evidence on traffic numbers which supports that approach is provided within the ES.
- 3.23 It is proposed that operational vibration effects are scoped out of the assessment. The SoS does not agree that this matter can be scoped out as insufficient information has been provided to justify this approach at this stage.
- 3.24 It is proposed that landfill diversion, carbon footprint, and (Paper) Mill competitiveness are scoped out from the socio-economic assessment as they are discussed 'elsewhere in the ES, specifically within the section that identifies the 'Need for the Development'. It is not clear if this is intended to refer to the information contained in paragraphs 4.54 – 4.65 of the Scoping Report, which contain limited information on these matters specific to the proposed development, and state that the need for the proposed development will be presented in a separate report that will form part of the DCO application. Having regard to matters discussed in paragraph 3.9 of this Opinion in respect of the relationship between the extant TCPA permission and the proposed development, the SoS does not agree that it is appropriate to scope these matters out from the assessment.
- 3.25 It is proposed that impacts on recreation and community resources are scoped out from the socio-economic assessment. No information has been provided to justify this approach and the SoS does not agree that these matters can be scoped out at this stage. The Applicant is referred to the consultation responses, contained in Appendix 3 of this Opinion, from the MMO and NE in respect of this matter.
- 3.26 Although not explicitly identified within the Hydrogeology and Ground Conditions section of the Scoping Report as a matter to be scoped out, the SoS notes that the Applicant considers that a cumulative effects assessment is not required for this topic on the basis that future schemes coming forward will undertake assessments and mitigate any effects so that there are no significant effects. The SoS does not agree with this approach and these assumptions, particularly in absence of a detailed explanation or justification. The Applicant is referred to Planning Inspectorate Advice Note 17 and Section 4 of this Opinion for advice on cumulative effects assessments.
- 3.27 Whilst the SoS has not agreed in the Opinion to scope out certain topics or matters on the basis of the information available at the

time, this does not prevent the Applicant from subsequently agreeing with the relevant consultees to scope such topics/matters out of the ES, where further evidence has been provided to justify this approach. In order to demonstrate that the topics/matters have not simply been overlooked, the ES should explain the reasoning for scoping them out and justify the approach taken.

Topic Areas

Air Quality and Climate (see Scoping Report Section 7)

- 3.28 It is welcomed that the Applicant will base the assessment study area for the construction and decommissioning phases of the proposed development on the criteria set out in the 2014 Institute of Air Quality Management (IAQM) guidance. The SoS notes that it is proposed that the study area for the operational effects assessment will comprise a 10km radius of the assessment area boundary, and that the cumulative assessment will consider projects identified by KCC, where cumulative effects are likely. The rationale for selecting the preferred study area and basis for concluding which other projects are likely to give rise to cumulative effects together with the proposed development should be fully explained in the ES. The Applicant must satisfy itself that the cumulative assessment identifies all relevant developments, and is referred to the advice contained in Planning Inspectorate Advice Note Seventeen: 'Cumulative effects assessment relevant to nationally significant infrastructure'.
- 3.29 The Scoping Report notes that SBC has designated four AQMAs; however only identifies the nearest one to the proposed development, and does not make any subsequent reference to this or any other AQMA. The SoS advises that the air quality assessment should consider potential impacts on local AQMAs and provide justification in the ES for scoping out any such matters.
- 3.30 Table 3 (page 33) of the Scoping Report refers to 'Short term' and 'Long term' pollutant background concentrations. However, it does not define the length of time relevant to these descriptions. Table 4 (page 33-34) includes a number of acronyms, eg NAQIA, EPAQS, TOMPS, that are not explained or included in the Scoping Report Glossary. Paragraph 7.27 refers to relying on DEFRA/EA 2016 guidance but does not provide its title. All criteria applied, terms used and guidance quoted in the ES should be clearly identified and explained.
- 3.31 In relation to the baseline data it is stated in paragraph 7.7 of the Scoping Report that pollutant concentrations are expected, in the absence of any new emissions sources, to have remained the same as or be lower than the concentrations identified in site-specific 2008 monitoring exercises, which were limited to selected pollutants. This assumption should be fully justified in the ES, and the Applicant must be confident that any baseline data relied upon for the purposes of the assessment is relevant, up-to-date, and comprehensive.

- 3.32 No information is provided in the Scoping Report on the dimensions of the stacks, other than in Appendix 6 of Appendix 5 of the Scoping Report ('Environmental Statement Appendix 9.6: 'Information for an Appropriate Assessment'), which suggests that the stacks will be approximately 90m high. The implications for air quality of stack height and dispersion of the discharge need to be clearly explained in the ES. Dispersion modelling should consider a range of possibilities and seek to ensure that the 'worst case' scenario is assessed. The SoS notes that Appendix 6 of Appendix 5 explains that there will be two stacks but that they have been modelled as a single stack in line with EA guidance. This will need to be made clear in the ES topic chapter.
- 3.33 The SoS notes that the site is in proximity to a number of nationally and internationally designated nature conservation sites. Consideration should be given in the assessment to potential effects on those sites and their features due to an increase in airborne pollution, including fugitive dust, especially during site preparation, demolition and construction. The air quality assessments should inform the ecological assessments, and inter-relate to the traffic assessments. Cross-references should be made in the ES between this topic chapter and the ecology and traffic and transport chapters.
- 3.34 In relation to mitigation measures, the SoS notes, according to paragraphs 7.9 and 7.31 of the Scoping Report, that the Applicant intends to rely on the implementation of best available techniques through an environmental permit, an 'Environmental Monitoring and Mitigation Plan' approved for the consented scheme (Scoping Report Appendix 5), and a 'Fugitive Emissions Risk Assessment and Management Plan' submitted with the application for the IBA Recycling Facility (Appendix 6). It is not clear if the reference to the permit is to an existing one for the consented scheme or to a future permit applicable to the proposed development. Information provided in the Scoping Report and its appendices is only in respect of an environmental permit for the IBA facility; none is provided in relation to a permit for the consented scheme or the proposed development. The ES for the DCO application must clearly identify the impacts of the proposed development that require mitigation, the specific measures proposed to avoid or reduce those impacts, how they are secured, and any residual impacts that remain following mitigation.
- 3.35 Notwithstanding the above, the SoS notes, according to the consultation response of the EA (contained in Appendix 3), that an application will be required for a variation to an existing permit for the proposed development the subject of the DCO application, and that the Applicant is currently in discussion with the EA about this matter. Annex D of Planning Inspectorate Advice Note 11 provides advice on permits that may be granted by the EA. .
- 3.36 It is not clear whether, and for which stages of the proposed development, cumulative assessments will be undertaken in relation

to vehicular emissions. Cumulative assessments are not included under issues proposed to be scoped out identified in paragraphs 7.32-7.34 of the Scoping Report. The SoS advises that such matters cannot be scoped out unless sufficient justification for doing so is provided in the ES. Text has been omitted from paragraph 7.33 so that it is unclear what matters it is proposing to scope out.

- 3.37 Air quality and dust levels should be considered not only on site but also offsite, including along access roads, local footpaths and other PROW, for all stages of the development. Consideration should be given to monitoring dust complaints.

Ecology and Nature Conservation (see Scoping Report Section 8)

- 3.38 Paragraph 8.2 notes that the proposed study area for this topic is described as 'the immediate environs of the site and the surrounding designated sites', and that study areas of 10km and 2km for international and national/local sites, respectively, are proposed, although the basis for this is not explained. The extent of the study area will need to be clearly defined in the ES, and should not be restricted only to nearby designated sites, but should cover the area in which it is considered ecological features, including protected species, could be affected by the proposed development.
- 3.39 The SoS advises that the ecological receptors considered in the assessment should not be restricted only to habitats and species of conservation concern. The Applicant must ensure that all receptors which could be significantly affected by the proposed development are considered.
- 3.40 The SoS notes that a number of designated sites (but not their features) are identified in paragraph 8.3 as within 10km of the assessment boundary, however, the Thames Estuary and Marshes SPA, Thames Estuary and Marshes Ramsar site, and Queensdown Warren SAC are not referenced, nor are they shown on Figure 4: 'Statutory Nature Conservation Designations'. They are considered in Appendix 6 of Appendix 5 of the Scoping Report ('Environmental Statement Appendix 9.6: 'Information for an Appropriate Assessment'), which was prepared for the consented scheme. The Outer Thames Estuary pSPA is not identified in the list of international sites that will be considered, provided in paragraph 9.11 of Appendix 6, or subsequently considered, however is referenced in its conclusions section. It is assumed that this was a textual error, and that the reference should have been to Queensdown Warren SAC, to which no reference has been made in the conclusions.
- 3.41 Although no reference is made to Habitats Regulations assessment (HRA) in the body of the Scoping Report, the SoS notes the need for consideration of HRA in view of the location of the proposed development in relation to the internationally designated sites, and the potential need for an appropriate assessment. The ES ecology

topic chapter should explicitly cross-refer to the HRA Report. The Applicant's attention is drawn to the advice on HRA contained in Section 4 of this Opinion.

- 3.42 The SoS notes that part of the assessment site falls within the Swale Estuary Marine Conservation Zone (MCZ), and advises that consideration of the potential effects of the proposed development on that site and its features should be included in the ES. In this regard the Applicant's attention is drawn to the comments of the Marine Management Organisation (MMO), contained in Appendix 3 of this Opinion.
- 3.43 Reference is made in this topic section of the Scoping Report to protected species surveys undertaken in 2010 to support the ES for the consented scheme application; and 2016 breeding bird and intertidal surveys for the IBA facility application, on the basis of which it is proposed that no further surveys will be undertaken. No information is provided on the area covered by the surveys, the species surveyed, or the findings. The SoS notes that the IBA facility would be located in the north of the proposed development site, that a new outfall to the Swale is proposed for surface water drainage, and that a number of designated sites, including the Swale Estuary MCZ, lie to the east and south of the site. Survey information for habitats and species must be included in the ES, and the Applicant should ensure that the surveys relate to the proposed development the subject of the DCO application, are comprehensive, and up to date.
- 3.44 The methodology that will be used for this topic assessment is unclear. Paragraphs 8.22 – 8.23 of this section state that for this topic the criteria that will be used to define the magnitude of an impact, and the methodology that will be applied to evaluate the significance of predicted effects, is set out in Section 4 (assumed to mean Section 5) of the Scoping Report; however, it is stated in Section 5 that each ES topic chapter will define the criteria that will be applied to that topic. It is noted that ecological receptors will only be considered if they are valued at 'district' level or above sensitivity, although Table 5 in this topic section defines sensitivities on a scale of 'negligible' to 'very high' (albeit it is stated in the definition of 'low' sensitivity that it would include importance at district level). The definition of what would be considered to constitute a significant effect is not provided. The SoS advises that the overarching methodology and criteria used for the EIA should be described in a discrete ES chapter, and any departure from that should be described in individual topic chapters as appropriate. Care should be taken in the ES to ensure that the terms used in respect of the methodology are used consistently in each topic chapter.
- 3.45 The second bullet point in the list of ecological mitigation measures on page 45 of the Scoping Report notes that a range of measures are covered in Appendix 7 of the Scoping Report ('Ecological Mitigation Report'). The SoS notes that Appendix 7 includes some information

on marsh harrier protection and Annual Beard-grass, but that it is basically a reptile translocation report and not a more encompassing Ecological Mitigation Report. Reference is also made in the bullet point list (and Appendix 7) to an 'Ecological Mitigation and Management Plan' (for the consented scheme), which is not included with the Scoping Report. Although the Report Glossary identifies 'EMMP' as referring to 'Ecological Mitigation and Management Plan', all subsequent references to an EMMP refer to the Environmental Monitoring and Mitigation Plan (for the consented scheme) attached at Appendix 5 of the Report. For the avoidance of doubt, the mitigation measures should be applicable to the proposed development the subject of the DCO application, and sufficient information must be contained in the ES to provide confidence in the efficacy of proposed mitigation and therefore the overall conclusions of the assessment.

- 3.46 No reference is made in this section of the Scoping Report to consultation with relevant statutory nature conservation bodies (SNCBs), such as Natural England (NE), in respect of ecological matters, although the SoS notes that Appendix 6 of Appendix 5 refers to discussion with NE in relation to the HRA. The SoS advises that matters such as mitigation measures proposed to address impacts of the proposed development on ecological features should be discussed and agreed with NE, and that this should be reported in the ES. The Applicant's attention is drawn to the comments of NE, contained in Appendix 3 of this Opinion, particularly in relation to the assessment of potential impacts on protected sites and species, and consideration of mitigation measures.
- 3.47 The Applicant should also have regard to the comments of the MMO, contained in Appendix 3 of this Opinion, in respect of the Elmley Marshes RSPB reserve (now the Elmley National Nature Reserve) and the Swale Important Bird Area, and fish ecology.
- 3.48 The assessment of the construction/decommissioning stages of the proposed development should include consideration of the impacts of noise, vehicular emissions, dust deposition, and light emissions on ecological receptors. Cross-reference should be made in the ES between this and relevant chapters, eg the air quality, noise and vibration, and traffic and transport chapters.

Historic Environment (see Scoping Report Section 9)

- 3.49 The SoS notes the inclusion of a plan at Figure 5 identifying historic environment features, and recommends that the study area is delineated on the plan submitted with the ES and that the features that may be affected by the proposed development are identified by name/title. The SoS welcomes that KCC and Historic England will be consulted on the scope of surveys to be undertaken.
- 3.50 The SoS notes that it is proposed to assess direct impacts on heritage assets during the construction phase from construction work only on

the area of the site containing the IBA facility. Notwithstanding that construction work for the generating station has already begun, the assessment in the ES should identify the potential effects of all works within the boundary of the proposed development site, and therefore should include the works required for the generating station, accesses and utilities. This would be consistent with assessing the potential effects of the project against the 'future baseline' scenario, as stated in Section 5 and this section of the Scoping Report.

- 3.51 The methodology that will be applied to this topic assessment must be clearly described in the ES. It is not clear, from the description of the methodology that will be used for this topic assessment, what criteria will be used to define magnitude and sensitivity, and therefore how the level of significance of an effect will be determined. Reference is made to relying on an assessment matrix in Section 4 (assumed to mean Section 5) of the Scoping Report, which has not been provided. Reference is made to Department of Culture, Media and Sport 2013 guidance in relation to scheduled monuments, however the recommended criteria is not described.
- 3.52 The SoS notes that no mitigation is proposed in relation to this topic, although paragraph 9.11 states that the assessment will establish whether the existing proposed mitigation is sufficient and whether further mitigation is required. All potentially significant effects that are identified as a result of the assessments, proposed corresponding mitigation measures, and any residual effects must be identified in the ES.
- 3.53 The only guidance referenced in the information on the policy context for this topic is NPS EN-1. The ES should consider (as applicable) other relevant national and local policy.
- 3.54 The SoS welcomes that the historic environment assessments will be considered alongside the landscape and visual assessments, including application of the ZTV study area.

Hydrogeology and Ground Conditions (see Scoping Report Section 10)

- 3.55 The SoS recommends that the ES includes a plan that identifies the study area for this topic and the hydrogeological features that could be affected by the proposed development.
- 3.56 In relation to the existing baseline conditions, the final bullet point under paragraph 10.9 notes the potential presence of a landfill site and refuse tip within the assessment site. The refuse tip is not mentioned otherwise in the Scoping Report, and it is indicated elsewhere, including in paragraphs 10.3 and 10.6 of this topic section, that the landfill site lies outside the assessment site. Reference is made in paragraph 10.29 of the mitigation section to the presence of an aquifer below the site; however, this is not included in the description of the baseline. The SoS notes that mitigation is

proposed to prevent run-off into a SuDs to be installed on the site; however, no reference is made to a SuDs in the description of the project in Section 4 of the Scoping Report. The ES should clearly and correctly identify the location of relevant features both within and outside the proposed development site.

- 3.57 The information provided on the proposed scope of the assessment refers only to the 'current baseline' and 'consented future baseline' scenarios, and does not indicate that, as set out in paragraph 5.7 of Section 5 of the Scoping Report, the 'future baseline' scenario will be considered. All of the topics included in the ES must be consistently assessed according to the baseline scenarios identified by the Applicant.
- 3.58 The SoS notes that the potential operational impacts identified by the Applicant in paragraph 10.18 do not include the mobilisation of contaminants, although it is identified in relation to the construction stage. The SoS recommends that consideration is given to whether this impact should be assessed for the operational stage, given that paragraph 10.29 identifies that an aquifer lies below the site and that the site surface water is proposed to be drained from the site via a new outfall into the Swale Estuary. The Applicant's attention is drawn to the comments of the EA, contained in Appendix 3 of this Opinion, particularly in relation to potential contamination of the aquifer.
- 3.59 No information is provided in the Scoping Report in relation to any environmental consent required for the new outfall(s), or to consideration of potential impacts of the proposed development on existing or proposed discharge consents and water abstractions. The SoS expects that such information will be included in the ES. Advice in relation to other consents that may be required is contained in Section 4 of this Opinion. The Applicant's attention is drawn to the comments of the MMO, contained in Appendix 3 of this Opinion, particularly in relation to the need for the DCO application to include provision for deemed marine licence(s) (DMLs) in respect of a number of elements of the proposed development, such as, for example, the surface water outfall into the Swale.
- 3.60 The source of the sensitivity and magnitude criteria and definitions set out in Tables 6 and 7, respectively, are not provided. The SoS expects these to be identified and justified in the ES. It is not explained in Table 7 to what document the references to 'Part IIA' refer. No matrix combining sensitivity and magnitude values to determine levels of significance is provided in this section. Paragraph 10.23 notes that the significance of an effect will be determined in accordance with the assessment matrix in Section 4 (assumed to mean Section 5). However, the matrix is not provided and Section 5 indicates that such information will instead be included in each topic section. Where an overarching methodology for the EIA does not apply, the topic chapter in the ES should set out the relevant methodology that will be applied.

- 3.61 The SoS notes that site investigations for the generating station were undertaken between 2009 and 2012, and that the 2016 assessment for the IBA facility included a review of previous intrusive ground investigations. However, the breadth of the review and the extent of the assessment site that was included in the review are unclear. The Applicant should ensure that the potential impacts identified in the ES are assessed according to full and comprehensive information about the baseline environment of the proposed development.
- 3.62 It is not clear from the information provided in this topic section on mitigation which potential impacts of the proposed development the proposed measures are intended to address and they appear to relate only to the construction stage. They do not appear to address impacts identified under the final bullet point in paragraph 10.9, such as low to moderate risks to controlled waters, and risks from gas. Paragraph 10.23 indicates that effects that are concluded to be moderate or above will be considered significant, and would therefore require mitigation. The ES should clearly identify, for each stage of the proposed development, all the potential significant effects, the specific measures proposed to mitigate each significant effect, and any residual effects, significant or otherwise.
- 3.63 The assessments undertaken for this topic should inform the ecological assessment, and the ES topic chapter should cross-reference to the ecology and hydrology chapters.

Hydrology and Flood Risk (see Scoping Report Section 11)

- 3.64 The SoS notes that a study area for this topic of 500m radius is proposed, on the basis that it will be difficult to ascertain the exact source of any potential impacts on water quality beyond 500m. The site area from which the radius extends is not specified in the Scoping Report; it will need to be made clear in the ES topic chapter.
- 3.65 The Applicant should ensure that the study area is based on a worst case scenario and encompasses all those features which could be significantly affected by the proposed development. The Applicant's attention is drawn to the comments of the MMO, contained in Appendix 3 of this Opinion, particularly in relation to the potential impacts on the water body status of the Swale Estuary according to the Water Framework Directive (WFD). Information on the requirements of the WFD is contained in Section 4 of this Opinion.
- 3.66 The SoS notes that part of the site lies within Flood Zones 2 and 3, and welcomes that a revised Flood Risk Assessment (FRA) will be undertaken. The SoS recommends that this is done in consultation with the EA, and the local Councils and Internal Drainage Board. The FRA should cover tidal flood risk as well as fluvial flooding. It should form an appendix to and be cross-referenced from the ES.
- 3.67 In relation to the criteria that will be used to define the magnitude of an impact, Table 9 (page 69) indicates impacts of medium magnitude

will be defined as of medium term duration, ie less than 20 years; and impacts of high magnitude will be defined as of long term duration, ie approximately 50 years. The SoS suggests that consideration is given to whether these provide sufficiently comprehensive definitions to enable the magnitude of an impact to be clearly determined.

- 3.68 The information provided in paragraphs 11.31 and 11.32 of the Scoping Report in relation to mitigation during the construction phase refers to measures contained in separate documents which have not been provided with the Report. Additionally, it is not clear whether the proposed measures relate only to the generating station or to all of the elements of the proposed development, such as, for example, the IBA facility. Information on all of the proposed mitigation measures should be included in the ES and should not be contained in a series of external documents. On-going monitoring to ensure that any mitigation measures are effective should also be agreed with the relevant authorities and addressed in the ES.
- 3.69 The information on mitigation provided in this topic section makes reference to a number of elements that are not included in the project description in Section 4 of the Scoping Report, such as, for example, onsite concrete batching plants and drainage pipework. It is not clear whether a second outfall to the Swale is proposed for the IBA facility or whether it is intended that the facility will utilise the outfall proposed for the generating station element of the project. The terminology used to describe the attenuation and settlement elements of the IBA facility is not used consistently. The SoS advises that the project description in the ES needs to be clear and comprehensive and reflect the proposed development against which the topic assessments have been made.
- 3.70 The SoS considers that the impacts of climate change, in terms of increased run-off and rises in sea level, should be addressed in the ES, and welcomes that climate change has been considered in proposing mitigation measures for the operational phase of the proposed development.
- 3.71 No reference is made in the Scoping Report to potential impacts of the proposed development on the public sewer network. This should be addressed in the ES, and the SoS recommends that consultation is undertaken in relation to this matter with both South East Water and the EA.
- 3.72 Cross-reference should be made in the ES from this topic chapter to the Hydrogeology and Ecology chapters. Alternatively, the Applicant may wish to consider amalgamating this ES chapter with the Hydrogeology chapter.

Landscape, Townscape and Visual Impact (see Scoping Report Section 12)

- 3.73 The information in this topic section does not identify that there are any Areas of Outstanding Natural Beauty (AONBs) and Registered Parks and Gardens within the anticipated 15km study area, although a number of these features are shown on Figure 7. The SoS advises that the assessment should include consideration of all landscape and visual receptors that could be affected by the proposed development and that they should be identified by name on a plan in the ES.
- 3.74 The SoS welcomes the Applicant's intention to establish a Zone of Theoretical Visibility (ZTV) for the purposes of this assessment and that the location of viewpoints will be agreed with KCC. The ES should describe the ZTV model used and provide information on the methodology applied and any survey work undertaken.
- 3.75 The SoS notes that no policy documents, other than NPS EN-1 and NPS EN-3, and no legislation are referenced in this section, and draws the attention of the Applicant to the need to liaise with the local planning authorities to ensure that the EIA refers to the most current policy documents. The ES topic chapter should identify relevant policy and legislation.
- 3.76 The SoS notes that the proposed development includes large structures, such as, for example, the stacks. Careful consideration should be given to the form, siting, and use of materials and colours in terms of minimising the visual impact of such structures. Night-time views and impacts of light pollution, as advised in NPS EN-3, should be considered in the assessment. The SoS welcomes that photomontages will be provided in the ES.
- 3.77 The source of, or rationale for applying, the sensitivity and magnitude assessment criteria in Tables 11, 12 and 13 (pages 75 – 77) that will be used for this topic is not identified, and the magnitude values used in the assessment matrix in Table 14 are not consistent with those defined in Table 13. The information contained in paragraphs 12.23 and 12.24 about the level of significance of an effect that will be considered to constitute a significant effect appears contradictory, and it is unclear if a moderate effect will be considered to be a significant effect (although it is common practice to define a moderate effect as a significant effect). The assessment criteria used in the ES must be clearly explained and justified and consistently applied.
- 3.78 The SoS notes that it is considered that no mitigation measures are required, other than those designed into the proposed development, which are not described. The potential effects of the proposed development at all stages and the mitigation proposed to address those effects must be set out in the ES, and it should be confirmed whether any residual effects remain.

- 3.79 Cross-reference should be made between this ES topic chapter and related topic chapters, such as the historic environment chapter and the ecology chapter, particularly in relation to the potential effects of any proposed landscape mitigation measures on ecological features.
- 3.80 The Applicant's attention is drawn to the comments of the Ministry of Defence, contained in Appendix 3 of this Opinion, in respect of the need for aviation warning lighting on tall structures.

Noise and Vibration (see Scoping Report Section 13)

- 3.81 The extent of the study area for this topic is not clear from the description in paragraph 13.2 of the Scoping Report. The study area will need to be clearly defined and justified in the ES.
- 3.82 The SoS notes the Applicant's reliance on baseline noise data collected in support of the 2010 ES for the consented scheme and the IBA facility application. The Applicant will need to be able to satisfy the SoS that the data remains relevant and current, and that no changes have occurred in the baseline environment that would result in changes to the noise baseline. It is not explained why it is considered that no measurement of baseline vibration is required. This should be fully justified in the ES topic chapter.
- 3.83 The extent of consultation to-date with relevant bodies is not made clear in this topic section. In accordance with EN-1, the Applicant is advised to consult the EA and NE in respect of the assessment of the potential effects of noise on protected species and other wildlife, and to reference such consultation in the ES.
- 3.84 In relation to the proposed scope of the assessment, the SoS advises that noise arising from traffic generated by the proposed development should be assessed onsite and offsite for all stages: construction; operation and maintenance; and decommissioning.
- 3.85 Information should be provided in the ES on the types of vehicles and plant to be used during the construction phase.
- 3.86 In relation to the methodology for this topic assessment, the criteria that will be used to define the sensitivity of the receptors and the magnitude of the impact are not described. It should be fully explained in the ES. Reference is made only to people or operations as receptors; the noise assessment should also include consideration of ecological receptors. The SoS recommends that the methodology and noise receptors to be considered should be agreed with the relevant Environmental Health Department of the Council and with the EA. Potential noise disturbance at night and at other unsocial hours such as weekends and public holidays should be considered in the assessment. Consideration should be given to monitoring noise complaints during construction and when the development is operational.

- 3.87 The SoS welcomes the description in paragraph 13.21 of what is considered to constitute a significant effect. However, it is noted that it includes a 'substantial' effect, which is not referenced in this topic section. The specific criteria and definitions that are applied to each topic assessment must be used consistently in the ES.
- 3.88 No reference is made in this topic section to the assessment of potential effects on the Swale Estuary MCZ. The Applicant should consider whether the assessment in the ES should include this protected site, in addition to consideration of the other protected sites identified by the Applicant. The Applicant's attention is drawn to the comments of the Marine Management Organisation (MMO), contained in Appendix 3 of this Opinion, on this matter.
- 3.89 The information in this topic section on mitigation for potential effects during the operational stage makes reference to plans and appendices contained within the 2010 ES for the consented scheme. Such plans and information should be updated as necessary and incorporated into the ES for the proposed development.
- 3.90 The noise and vibration assessments should take account of the traffic movements along access routes, especially during the construction phase. The results from the noise and vibration assessments will also provide information to inform the ecological assessments. Cross-reference should be made in the ES between this topic chapter and the ecology and traffic and transport chapters.

Traffic and Transport (see Scoping Report Section 14)

- 3.91 The extent of the study area, and the baseline environment, are not clear from the description in paragraphs 14.2 – 14.7 of this section of the Scoping Report. It notes that the roads in the study area are depicted on Figure 8. However, the figure is titled 'Proposed HGV Access Route', its legend refers only to a proposed operational route, and it does not identify Barge Way or show the route as including a section of Swale Way described as to the south of Barge Way. Ridham Avenue is described as south of the site and connecting with Swale Way at a roundabout, although it appears on Figure 8 to be to the west of the site and to have no connection to Swale Way. The extent of the study area in relation to the proposed development site must be clearly and correctly identified in the ES, and must be sufficiently broad to capture all receptors that could be affected at the construction and decommissioning stages of the proposed development as well as at the operational stage. The SoS recommends that the assessment should take account of the location of public rights of way (PROW) including footpaths, bridleways and byways. The Applicant's attention is drawn to the comments of Ne, contained in Appendix 3 of this Opinion, particularly in relation to PROW, including coastal paths.
- 3.92 The SoS welcomes that traffic information will be obtained from the local highways authority and Highways England (HE), and

recommends on-going consultation and agreement, where possible, with such bodies. The Applicant's attention is drawn to the comments of HE, contained in Appendix 3 of this Opinion, in respect of potential impacts, including cumulative impacts, from vehicle movements on the strategic road network, particularly the A249 and the M2.

- 3.93 The SoS notes that EN-1, which recommends that a travel plan is prepared, and Government Planning Practice Guidance, which provides guidance on travel plans, are referenced in this section. No information is provided on whether consideration has been given to the need to prepare a travel plan for the proposed development, and the information on mitigation only proposes measures in respect of traffic movements on the site and site accesses. The SoS recommends that consideration is given to the potential need for mitigation measures in relation to the wider transport network, and that information is provided on such measures in the ES.
- 3.94 The origin of the sensitivity criteria described in Table 17 (page 89) is not provided, and the SoS notes that 'Very High' sensitivity is defined as applying to receptors with 'high sensitivity' to traffic flow changes, whereas 'High' sensitivity is defined as applying to receptors of 'greatest sensitivity' to traffic flows. The terms used to describe receptor sensitivity and magnitude impacts in Table 21 (page 91) reflect the terms used in Tables 17 and 18. However the source of the criteria used for the significance assessment is identified as 'The Design Manual for Roads and Bridges (DMRB) Volume 11', which uses different descriptions of magnitude, and does not include 'substantial' as a level of significance. The SoS recommends that definitions of the criteria used for this topic assessment, and their origins, are clearly explained in the ES.
- 3.95 The Applicant's attention is drawn to the comments of Royal Mail, contained in Appendix 3 of this Scoping Opinion, particularly in relation to the potential cumulative impacts of the proposed development during both the construction and operational phases.
- 3.96 Cross-reference should be made in the ES between this topic chapter and the noise and vibration and air quality chapters.

Socio-economics (see Scoping Report Section 15)

- 3.97 The SoS recommends that the types of jobs generated by the proposed development should be considered in the context of the available workforce in the area, and advises that this applies equally to the construction and operational stages. The SoS notes the comments of KCC, contained in Appendix 3 of this Opinion, in this regard.
- 3.98 The SoS recommends that the assessment criteria should be locationally-specific and consider the potential significant effects within the local and regional context.

- 3.99 The SoS draws the Applicant's attention to the need to apply 'The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009' to the assessment of this project, rather than The 'Town and Country Planning (Environmental Impact Assessment) Regulations 2011', as referenced in paragraph 15.10 of this topic section.
- 3.100 The Applicant's attention is drawn to the comments, contained in Appendix 3 of this Opinion, of the MMO in respect of recreational users of the Swale, and NE, particularly in relation to recreational use of local PROW.

Cumulative Effects (see Scoping Report Section 16)

- 3.101 The SoS welcomes that the plans or projects to be included in the cumulative effects assessment (CEA) for the proposed development will be developed and agreed with consultees in accordance with Planning Inspectorate Advice Note 17, and that the 'long list' of developments identified to-date at Appendix 4 of the Scoping Report will be updated accordingly.
- 3.102 It is recommended that the IBA facility is included in the CEA if it does not form part of the proposed development the subject of the DCO application.

Waste (not identified in the Scoping Report)

- 3.103 The SoS considers that the ES should include information on waste arisings from the proposed development and explain how they will be dealt with. The ES should identify the types of waste that will be generated, their disposal method, and the transport routes and associated vehicular movements related to disposal of waste offsite. The traffic and transport assessment should consider the impacts of waste removal and they should be reported in the ES.
- 3.104 The SoS notes that paragraph 2.31 of the EMMP attached at Appendix 5 of the Scoping Report indicates that a Waste Management Plan is appended at Appendix 5 of the EMMP. However Appendix 5 states that the Plan will be available closer to the start of the operational phase, and no information is provided. The SoS recommends that a draft Waste Management Plan is prepared and appended to the ES.

Electric and Magnetic Fields (not identified in the Scoping Report)

- 3.105 No reference is made in the Scoping Report to the potential for impacts from electric and magnetic fields generated by any elements of the proposed development. The Applicant's attention is drawn to the comments of Public Health England, contained in Appendix 3 of this Opinion, on this matter.

4 OTHER INFORMATION

- 4.1 This section does not form part of the SoS's Opinion as to the information to be provided in the environmental statement. However, it does respond to other issues that the SoS has identified which may help to inform the preparation of the application for the DCO.

Pre-application Prospectus

- 4.2 The Planning Inspectorate offers a service for Applicants at the pre-application stage of the nationally significant infrastructure planning process. Details are set out in the prospectus 'Pre-application service for NSIPs'¹. The prospectus explains what the Planning Inspectorate can offer during the pre-application phase and what is expected in return. The Planning Inspectorate can provide advice about the merits of a scheme in respect of national policy; review certain draft documents; and advise on procedural and other planning matters. Where necessary a facilitation role can be provided. The service is optional and free of charge.
- 4.3 The level of pre-application support provided by the Planning Inspectorate will be agreed between an Applicant and the Inspectorate at the beginning of the pre-application stage and will be kept under review.

Preliminary Environmental Information (PEI)

- 4.4 Consultation forms a crucial aspect of environmental impact assessment. As part of their pre-application consultation duties, Applicants are required to prepare a Statement of Community Consultation (SoCC). This sets out how the local community will be consulted about the proposed development. The SoCC must state whether the proposed development is EIA development, and if it is, how the Applicant intends to publicise and consult on PEI. Further information in respect of PEI may be found in Planning Inspectorate Advice Note Seven - 'Environmental Impact Assessment: Preliminary Environmental Information, Screening and Scoping'.

Habitats Regulations Assessment (HRA)

- 4.5 The SoS notes that European sites² could be potentially affected by the proposed development. The Habitats Regulations require

¹ The prospectus is available from:
<http://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-Applicants/>

² The term European Sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs) and candidate SACs, Special Protection Areas (SPAs), possible SACs, potential SPAs, Ramsar sites, proposed Ramsar sites, and any sites identified as compensatory measures for adverse effects on any of the above. For a full description of the designations to which the Habitats Regulations

competent authorities, before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects). Applicants should note that the competent authority in respect of NSIPs is the relevant SoS. It is the Applicant's responsibility to provide sufficient information to the competent authority to enable them to carry out an AA or determine whether an AA is required.

- 4.6 The Applicant's attention is drawn to Regulation 5(2)(g) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) ('The APFP Regulations') and the need to include with the DCO application a report identifying European sites, to which the Habitats Regulations apply, and Ramsar sites, which may be affected by the proposed development.
- 4.7 The report to be submitted under Regulation 5(2)(g) of the APFP Regulations with the application must deal with two issues: the first is to enable a formal assessment by the competent authority of whether there is a likely significant effect; and the second, should it be required, is to enable the carrying out of an AA by the competent authority.
- 4.8 The Applicant's attention is also drawn to UK Government policy³, which states that the following sites should be given the same protection as European sites: possible SACs (pSACs); potential SPAs (pSPAs); proposed Ramsar sites (in England); and sites identified, or required, as compensatory measures for adverse effects on any of the above sites. Therefore, applicants should also consider the need to provide information on such sites where they may be affected by the proposed development.
- 4.9 Further information on the HRA process is contained within Planning Inspectorate Advice Note Ten: 'Habitat Regulations Assessment relevant to nationally significant infrastructure projects', available on the National Infrastructure Planning pages of the Planning Inspectorate's website. It is recommended that Applicants follow the advice contained within this Advice Note.
- 4.10 The Applicant's attention is drawn to the comments of the MMO, contained in Appendix 3 of this Opinion, on the assessment of potential effects on the protected sites and the related monitoring of water quality.

apply, and/or are applied as a matter of Government policy, see PINS Advice Note Ten.

³ In England, the NPPF, paragraph 118. In Wales, TAN 5, paragraphs 5.2.2 and 5.2.3.

Plan To Agree Habitats Regulations Information

- 4.11 A plan may be prepared to agree upfront what information in respect of Habitats Regulations the Applicant needs to supply to the Planning Inspectorate as part of a DCO application. This is termed an Evidence Plan for proposals in England or in both England and Wales, but a similar approach can be adopted for proposals only in Wales. For ease these are all termed 'Evidence Plans' here.
- 4.12 An Evidence Plan will help to ensure compliance with the Habitats Regulations. It will be particularly relevant to NSIPs where impacts may be complex, large amounts of evidence may be needed or where there are a number of uncertainties. It will also help Applicants meet the requirement to provide sufficient information (as explained in Advice Note Ten) in their application, so the Examining Authority can recommend to the SoS whether or not to accept the application for examination and whether an appropriate assessment is required.
- 4.13 Any NSIP applicant can request an Evidence Plan. A request for an Evidence Plan should be made at the start of the pre-application stage by contacting Natural England, after notifying the Planning Inspectorate on an informal basis.

Sites of Special Scientific Interest (SSSIs)

- 4.14 The SoS notes that a number of SSSIs are located close to or within the proposed development. Where there may be potential impacts on the SSSIs, the SoS has duties under sections 28(G) and 28(I) of the Wildlife and Countryside Act 1981 (as amended) (the W&C Act). These are set out below for information.
- 4.15 Under s28(G), the SoS has a general duty '... to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest'.
- 4.16 Under s28(I), the SoS must notify the relevant nature conservation body (NCB), NE in this case, before authorising the carrying out of operations likely to damage the special interest features of a SSSI. Under these circumstances 28 days must elapse before deciding whether to grant consent, and the SoS must take account of any advice received from the NCB, including advice on attaching conditions to the consent. The NCB will be notified during the examination period.
- 4.17 If Applicants consider it likely that notification may be necessary under s28(I), they are advised to resolve any issues with the NCB before the DCO application is submitted to the SoS. If, following assessment by Applicants, it is considered that operations affecting the SSSI will not lead to damage of the special interest features, Applicants should make this clear in the ES. The application

documents submitted in accordance with Regulation 5(2)(1) could also provide this information. Applicants should seek to agree with the NCB the DCO requirements which will provide protection for the SSSI before the DCO application is submitted.

European Protected Species (EPS)

- 4.18 Applicants should be aware that the decision maker under the Planning Act 2008 (PA 2008) has, as the CA, a duty to engage with the Habitats Directive. Where a potential risk to a European Protected Species (EPS) is identified, and before making a decision to grant development consent, the CA must, amongst other things, address the derogation tests in Regulation 53 of the Habitats Regulations. Therefore the Applicant may wish to provide information which will assist the decision maker to meet this duty.
- 4.19 If an Applicant has concluded that an EPS licence is required the ExA will need to understand whether there is any impediment to the licence being granted. The decision to apply for a licence or not will rest with the Applicant as the person responsible for commissioning the proposed activity by taking into account the advice of their consultant ecologist.
- 4.20 Applicants are encouraged to consult with NE and, where required, to agree appropriate requirements to secure necessary mitigation. It would assist the examination if Applicants could provide, with the application documents, confirmation from NE whether any issues have been identified which would prevent the EPS licence being granted.
- 4.21 Generally, NE are unable to grant an EPS licence in respect of any development until all the necessary consents required have been secured in order to proceed. For NSIPs, NE will assess a draft licence application in order to ensure that all the relevant issues have been addressed. Within 30 working days of receipt, NE will either issue 'a letter of no impediment' stating that it is satisfied, insofar as it can make a judgement, that the proposals presented comply with the regulations or will issue a letter outlining why NE consider the proposals do not meet licensing requirements and what further information is required before a 'letter of no impediment' can be issued. The Applicant is responsible for ensuring draft licence applications are satisfactory for the purposes of informing formal pre-application assessment by NE.
- 4.22 Ecological conditions on the site may change over time. It will be the Applicant's responsibility to ensure information is satisfactory for the purposes of informing the assessment of no detriment to the maintenance of favourable conservation status (FCS) of the population of EPS affected by the proposals. Applicants are advised that current conservation status of populations may or may not be favourable. Demonstration of no detriment to favourable populations

may require further survey and/or submission of revised short or long term mitigation or compensation proposals.

- 4.23 In England the focus concerns the provision of up to date survey information which is then made available to NE (along with any resulting amendments to the draft licence application). Applicants with projects in England (including activities undertaken landward of the mean low water mark) can find further information in Planning Inspectorate Advice Note Eleven, Annex C⁴.

Other Regulatory Regimes

- 4.24 The SoS recommends that the Applicant should state clearly what regulatory areas are addressed in the ES and should ensure that all relevant authorisations, licences, permits and consents that are necessary to enable operations to proceed are described in the ES. Also, it should be clear that any likely significant effects of the proposed development which may be regulated by other statutory regimes have been properly taken into account in the ES.
- 4.25 It will not necessarily follow that the granting of consent under one regime will ensure consent under another regime. For those consents not capable of being included in an application for consent under the PA 2008, the SoS will require a level of assurance or comfort from the relevant regulatory authorities that the proposal is acceptable and likely to be approved, before they make a recommendation or decision on an application. The Applicant is encouraged to make early contact with other regulators. Information from the Applicant about progress in obtaining other permits, licences or consents, including any confirmation that there is no obvious reason why these will not subsequently be granted, will be helpful in supporting an application for development consent to the SoS.

Water Framework Directive

- 4.26 EU Directive 2000/60/EC ('the Water Framework Directive') establishes a framework for the protection of inland surface waters (rivers and lakes), transitional waters (estuaries), coastal waters and groundwater. Under the terms of the Directive, Member States are required to establish river basin districts and corresponding river basin management plans outlining how the environmental objectives outlined in Article 4 of the Directive are to be met.
- 4.27 In determining an application for a DCO, the SoS must be satisfied that the applicant has had regard to relevant river basin management plans and that the proposed development is compliant with the terms of the WFD and its daughter directives. In this respect, the

⁴ Advice Note eleven, Annex C – Natural England and the Planning Inspectorate available from: http://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/10/PINS-Advice-Note-11_AnnexC_20150928.pdf

Applicant's attention is drawn to Regulation 5(2)(l) of the APFP Regulations which requires an application for an NSIP to be accompanied by 'where applicable, a plan with accompanying information identifying-... ..(iii) water bodies in a river basin management plan, together with an assessment of any effects on such sites, features, habitats or bodies likely to be caused by the proposed development.'

The Environmental Permitting Regulations and the Water Resources Act

Environmental Permitting Regulations 2010

4.28 The Environmental Permitting Regulations 2010 require operators of certain facilities, which could harm the environment or human health, to obtain permits from the Environment Agency. Environmental permits can combine several activities into one permit. There are standard permits supported by 'rules' for straightforward situations and bespoke permits for complex situations. For further information, please see the Government's advice on determining the need for an environmental permit⁵.

4.29 The Environment Agency's environmental permits cover:

- industry regulation;
- waste management (waste treatment, recovery or disposal operations);
- discharges to surface water;
- groundwater activities; and
- radioactive substances activities.

4.30 Characteristics of environmental permits include:

- they are granted to operators (not to land);
- they can be revoked or varied by the Environment Agency;
- operators are subject to tests of competence;
- operators may apply to transfer environmental permits to another operator (subject to a test of competence); and
- conditions may be attached.

The Water Resources Act 1991

4.31 Under the Water Resources Act 1991 (as amended), anyone who wishes to abstract more than 20m³/day of water from a surface source such as a river or stream or an underground source, such as

⁵ Available from: <https://www.gov.uk/environmental-permit-check-if-you-need-one>

an aquifer, will normally require an abstraction licence from the Environment Agency. For example, an abstraction licence may be required to abstract water for use in cooling at a power station. An impoundment licence is usually needed to impede the flow of water, such as in the creation of a reservoir or dam, or construction of a fish pass.

- 4.32 Abstraction licences and impoundment licences are commonly referred to as 'water resources licences'. They are required to ensure that there is no detrimental impact on existing abstractors or the environment. For further information, please see the Environment Agency's WR176 guidance form on applying for a full, transfer or impounding licence⁶:
- 4.33 Characteristics of water resources licences include:
- they are granted to licence holders (not to land);
 - they can be revoked or varied;
 - they can be transferred to another licence holder; and
 - in the case of abstraction licences, they are time limited.

Role of the Applicant

- 4.34 It is the responsibility of Applicants to identify whether an environmental permit and/or water resources licence is required from the Environment Agency before an NSIP can be constructed or operated. Failure to obtain the appropriate consent(s) is an offence.
- 4.35 The Environment Agency allocates a limited amount of pre-application advice for environmental permits and water resources licences free of charge. Further advice can be provided, but this will be subject to cost recovery.
- 4.36 The Environment Agency encourages Applicants to engage with them early in relation to the requirements of the application process. Where a project is complex or novel, or requires a Habitats Regulations Assessment, Applicants are encouraged to "parallel track" their applications to the Environment Agency with their DCO applications to the Planning Inspectorate. Further information on the Environment Agency's role in the infrastructure planning process is available in Annex D of the Planning Inspectorate's Advice Note Eleven: 'Working with public bodies in the infrastructure planning process'.⁷

⁶ Available from: <https://www.gov.uk/government/publications/wr176-applying-for-full-transfer-or-impoundment-licence-form-guidance>

⁷ Available from: <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

- 4.37 When considering the timetable to submit their applications, applicants should bear in mind that the Environment Agency will not be in a position to provide a detailed view on the application until it issues its draft decision for public consultation (for sites of high public interest) or its final decision. Therefore the Applicant should ideally submit its application sufficiently early so that the Environment Agency is at this point in the determination by the time the DCO reaches examination.
- 4.38 It is also in the interests of an Applicant to ensure that any specific requirements arising from their permit or licence are capable of being carried out under the works permitted by the DCO. Otherwise there is a risk that requirements could conflict with the works which have been authorised by the DCO (eg a stack of greater height than that authorised by the DCO could be required) and render the DCO impossible to implement.

Health Impact Assessment

- 4.39 The SoS considers that it is a matter for the Applicant to decide whether or not to submit a stand-alone Health Impact Assessment (HIA). However, the Applicant should have regard to the responses received from the relevant consultees regarding health, and in particular to the comments from the Health and Safety Executive, and Public Health England in relation to electrical safety issues and electric and magnetic fields (see Appendix 3 of this Opinion).
- 4.40 The methodology for the HIA, if prepared, should be agreed with the relevant statutory consultees and take into account mitigation measures for acute risks.

Transboundary Impacts

- 4.41 The SoS has noted that the Applicant has indicated whether the proposed development is likely to have significant impacts on another European Economic Area (EEA) State.
- 4.42 Regulation 24 of the EIA Regulations, which inter alia require the SoS to publicise a DCO application if the SoS is of the view that the proposal is likely to have significant effects on the environment of another EEA state and where relevant to consult with the EEA state affected. The SoS considers that where Regulation 24 applies, this is likely to have implications for the examination of a DCO application.
- 4.43 The SoS recommends that the ES should identify whether the proposed development has the potential for significant transboundary impacts and if so, what these are and which EEA States would be affected.
- 4.44 The ES will also need to address this matter in each topic area and summarise the position on trans-boundary effects of the proposed

Scoping Opinion for
Proposed Wheelabrator Kemsley Generating Station Power Upgrade

development, taking into account inter-relationships between any impacts in each topic area.

APPENDIX 1 – PRESENTATION OF THE ENVIRONMENTAL STATEMENT

A1.1 The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2264) (as amended) sets out the information which must be provided for an application for a development consent order (DCO) for nationally significant infrastructure under the Planning Act 2008. Where required, this includes an environmental statement. Applicants may also provide any other documents considered necessary to support the application. Information which is not environmental information need not be replicated or included in the ES.

A1.2 An environmental statement (ES) is described under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2263) (as amended) (the EIA Regulations) as a statement:

- (a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and of any associated development and which the Applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile; but*
- (b) that includes at least the information required in Part 2 of Schedule 4.*

(EIA Regulations Regulation 2)

A1.3 The purpose of an ES is to ensure that the environmental effects of a proposed development are fully considered, together with the economic or social benefits of the development, before the development consent application under the Planning Act 2008 is determined. The ES should be an aid to decision making.

A1.4 The SoS advises that the ES should be laid out clearly with a minimum amount of technical terms and should provide a clear objective and realistic description of the likely significant impacts of the proposed development. The information should be presented so as to be comprehensible to the specialist and non-specialist alike. The SoS recommends that the ES be concise with technical information placed in appendices.

ES Indicative Contents

A1.5 The SoS emphasises that the ES should be a 'standalone' document in line with best practice and case law. The EIA Regulations Schedule 4, Parts 1 and 2, set out the information for inclusion in environmental statements.

A1.6 Schedule 4 Part 1 of the EIA Regulations states this information includes:

17. Description of the development, including in particular—

- (a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;*
- (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;*
- (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc) resulting from the operation of the proposed development.*

18. An outline of the main alternatives studied by the Applicant and an indication of the main reasons for the Applicant's choice, taking into account the environmental effects.

19. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.

20. A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from:

- (a) the existence of the development;*
- (b) the use of natural resources;*
- (c) the emission of pollutants, the creation of nuisances and the elimination of waste,*

and the description by the Applicant of the forecasting methods used to assess the effects on the environment.

21. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

22. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.

23. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the Applicant in compiling the required information.

(EIA Regulations Schedule 4 Part 1)

The content of the ES must include as a minimum those matters set out in Schedule 4 Part 2 of the EIA Regulations. This includes the consideration of 'the main alternatives studied by the Applicant' which the SoS recommends could be addressed as a separate chapter in the ES. Part 2 is included below for reference:

24. A description of the development comprising information on the site, design and size of the development

25. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects

26. The data required to identify and assess the main effects which the development is likely to have on the environment

27. An outline of the main alternatives studied by the Applicant and an indication of the main reasons for the Applicant's choice, taking into account the environmental effects, and

28. A non-technical summary of the information provided [under the four paragraphs of Schedule 4 part 2 above].

(EIA Regulations Schedule 4 Part 2)

- A1.7 Traffic and transport is not specified as a topic for assessment under Schedule 4; although in line with good practice the SoS considers it is an important consideration *per se*, as well as being the source of further impacts in terms of air quality and noise and vibration.

Balance

- A1.8 The SoS recommends that the ES should be balanced, with matters which give rise to a greater number or more significant impacts being given greater prominence. Where few or no impacts are identified, the technical section may be much shorter, with greater use of information in appendices as appropriate.

The SoS considers that the ES should not be a series of disparate reports and stresses the importance of considering inter-relationships between factors and cumulative impacts.

Scheme Proposals

- A1.9 The scheme parameters will need to be clearly defined in the draft DCO and therefore in the accompanying ES which should support the application as described. The SoS is not able to entertain material

changes to a project once an application is submitted. The SoS draws the attention of the Applicant to the DCLG and the Planning Inspectorate's published advice on the preparation of a draft DCO and accompanying application documents.

Flexibility

A1.10 The SoS acknowledges that the EIA process is iterative, and therefore the proposals may change and evolve. For example, there may be changes to the scheme design in response to consultation. Such changes should be addressed in the ES. However, at the time of the application for a DCO, any proposed scheme parameters should not be so wide ranging as to represent effectively different schemes.

A1.11 It is a matter for the Applicant, in preparing an ES, to consider whether it is possible to assess robustly a range of impacts resulting from a large number of undecided parameters. The description of the proposed development in the ES must not be so wide that it is insufficiently certain to comply with requirements of paragraph 17 of Schedule 4 Part 1 of the EIA Regulations.

A1.12 The Rochdale Envelope principle (*see R v Rochdale MBC ex parte Tew (1999) and R v Rochdale MBC ex parte Milne (2000)*) is an accepted way of dealing with uncertainty in preparing development applications. The Applicant's attention is drawn to the Planning Inspectorate's Advice Note nine 'Rochdale Envelope' which is available on the Advice Note's page of the National Infrastructure Planning website.

A1.13 The Applicant should make every attempt to narrow the range of options and explain clearly in the ES which elements of the scheme have yet to be finalised and provide the reasons. Where some flexibility is sought and the precise details are not known, the Applicant should assess the maximum potential adverse impacts the project could have to ensure that the project as it may be constructed has been properly assessed.

A1.14 The ES should be able to confirm that any changes to the development within any proposed parameters would not result in significant impacts not previously identified and assessed. The maximum and other dimensions of the proposed development should be clearly described in the ES, with appropriate justification. It will also be important to consider choice of materials, colour and the form of the structures and of any buildings. Lighting proposals should also be described.

Scope

A1.15 The SoS recommends that the physical scope of the study areas should be identified under all the environmental topics and should be sufficiently robust in order to undertake the assessment. The extent of the study areas should be on the basis of recognised professional

guidance, whenever such guidance is available. The study areas should also be agreed with the relevant consultees and local authorities and, where this is not possible, this should be stated clearly in the ES and a reasoned justification given. The scope should also cover the breadth of the topic area and the temporal scope, and these aspects should be described and justified.

Physical Scope

A1.16 In general the SoS recommends that the physical scope for the EIA should be determined in the light of:

- The nature of the proposal being considered;
- The relevance in terms of the specialist topic;
- The breadth of the topic;
- The physical extent of any surveys or the study area; and
- The potential significant impacts.

A1.17 The SoS recommends that the physical scope of the study areas should be identified for each of the environmental topics and should be sufficiently robust in order to undertake the assessment. This should include at least the whole of the application site, and include all offsite works. For certain topics, such as landscape and transport, the study area will need to be wider. The extent of the study areas should be on the basis of recognised professional guidance and best practice, whenever this is available, and determined by establishing the physical extent of the likely impacts. The study areas should also be agreed with the relevant consultees and, where this is not possible, this should be stated clearly in the ES and a reasoned justification given.

Breadth of the Topic Area

A1.18 The ES should explain the range of matters to be considered under each topic and this may respond partly to the type of project being considered. If the range considered is drawn narrowly then a justification for the approach should be provided.

Temporal Scope

A1.19 The assessment should consider:

- Environmental impacts during construction works;
- Environmental impacts on completion/operation of the proposed development;
- Where appropriate, environmental impacts a suitable number of years after completion of the proposed development (for example, in order to allow for traffic growth or maturing of any landscape proposals); and

- Environmental impacts during decommissioning.

A1.20 In terms of decommissioning, the SoS acknowledges that the further into the future any assessment is made, the less reliance may be placed on the outcome. However, the purpose of such a long term assessment, as well as to enable the decommissioning of the works to be taken into account, is to encourage early consideration as to how structures can be taken down. The purpose of this is to seek to minimise disruption, to re-use materials and to restore the site or put it to a suitable new use. The SoS encourages consideration of such matters in the ES.

A1.21 The SoS recommends that these matters should be set out clearly in the ES and that the suitable time period for the assessment should be agreed with the relevant statutory consultees.

A1.22 The SoS recommends that throughout the ES a standard terminology for time periods should be defined, such that for example, 'short term' always refers to the same period of time.

Baseline

A1.23 The SoS recommends that the baseline should describe the position from which the impacts of the proposed development are measured. The baseline should be chosen carefully and, whenever possible, be consistent between topics. The identification of a single baseline is to be welcomed in terms of the approach to the assessment, although it is recognised that this may not always be possible.

A1.24 The SoS recommends that the baseline environment should be clearly explained in the ES, including any dates of surveys, and care should be taken to ensure that all the baseline data remains relevant and up to date.

A1.25 For each of the environmental topics, the data source(s) for the baseline should be set out together with any survey work undertaken with the dates. The timing and scope of all surveys should be agreed with the relevant statutory bodies and appropriate consultees, wherever possible.

A1.26 The baseline situation and the proposed development should be described within the context of the site and any other proposals in the vicinity.

Identification of Impacts and Method Statement

Legislation and Guidelines

A1.27 In terms of the EIA methodology, the SoS recommends that reference should be made to best practice and any standards, guidelines and legislation that have been used to inform the

assessment. This should include guidelines prepared by relevant professional bodies.

A1.28 In terms of other regulatory regimes, the SoS recommends that relevant legislation and all permit and licences required should be listed in the ES where relevant to each topic. This information should also be submitted with the application in accordance with the APFP Regulations.

A1.29 In terms of assessing the impacts, the ES should approach all relevant planning and environmental policy – local, regional and national (and where appropriate international) – in a consistent manner.

Assessment of Effects and Impact Significance

A1.30 The EIA Regulations require the identification of the 'likely significant effects of the development on the environment' (Schedule 4 Part 1 paragraph 20).

A1.31 As a matter of principle, the SoS applies the precautionary approach to follow the Court's reasoning in judging 'significant effects'. In other words 'likely to affect' will be taken as meaning that there is a probability or risk that the proposed development will have an effect, and not that a development will definitely have an effect.

A1.32 The SoS considers it is imperative for the ES to define the meaning of 'significant' in the context of each of the specialist topics and for significant impacts to be clearly identified. The SoS recommends that the criteria should be set out fully and that the ES should set out clearly the interpretation of 'significant' in terms of each of the EIA topics. Quantitative criteria should be used where available. The SoS considers that this should also apply to the consideration of cumulative impacts and impact inter-relationships.

A1.33 The SoS recognises that the way in which each element of the environment may be affected by the proposed development can be approached in a number of ways. However it considers that it would be helpful, in terms of ease of understanding and in terms of clarity of presentation, to consider the impact assessment in a similar manner for each of the specialist topic areas. The SoS recommends that a common format should be applied where possible.

Inter-relationships between environmental factors

A1.34 The inter-relationship between aspects of the environments likely to be significantly affected is a requirement of the EIA Regulations (see Schedule 4 Part 1 of the EIA Regulations). These occur where a number of separate impacts, e.g. noise and air quality, affect a single receptor such as fauna.

A1.35 The SoS considers that the inter-relationships between factors must be assessed in order to address the environmental impacts of the

proposal as a whole. This will help to ensure that the ES is not a series of separate reports collated into one document, but rather a comprehensive assessment drawing together the environmental impacts of the proposed development. This is particularly important when considering impacts in terms of any permutations or parameters to the proposed development.

Cumulative Impacts

A1.36 The potential cumulative impacts with other major developments will need to be identified, as required by the Directive. The significance of such impacts should be shown to have been assessed against the baseline position (which would include built and operational development). In assessing cumulative impacts, other major development should be identified through consultation with the local planning authorities and other relevant authorities on the basis of those that are:

- Projects that are under construction;
- Permitted application(s) not yet implemented;
- Submitted application(s) not yet determined;
- All refusals subject to appeal procedures not yet determined;
- Projects on the National Infrastructure's programme of projects; and
- Projects identified in the relevant development plan (and emerging development plans - with appropriate weight being given as they move closer to adoption) recognising that much information on any relevant proposals will be limited.

A1.37 Details should be provided in the ES, including the types of development, location and key aspects that may affect the EIA and how these have been taken into account as part of the assessment will be crucial in this regard.

A1.38 The SoS recommends that offshore wind farms should also take account of any offshore licensed and consented activities in the area, for the purposes of assessing cumulative effects, through consultation with the relevant licensing/consenting bodies.

A1.39 For the purposes of identifying any cumulative effects with other developments in the area, Applicants should also consult consenting bodies in other EU states to assist in identifying those developments (see commentary on Transboundary Effects below).

Related Development

A1.40 The ES should give equal prominence to any development which is related with the proposed development to ensure that all the impacts of the proposal are assessed.

A1.41 The SoS recommends that the Applicant should distinguish between the proposed development for which development consent will be sought and any other development. This distinction should be clear in the ES.

Alternatives

A1.42 The ES must set out an outline of the main alternatives studied by the Applicant and provide an indication of the main reasons for the Applicant's choice, taking account of the environmental effect (Schedule 4 Part 1 paragraph 18).

A1.43 Matters should be included, such as inter alia alternative design options and alternative mitigation measures. The justification for the final choice and evolution of the scheme development should be made clear. Where other sites have been considered, the reasons for the final choice should be addressed.

A1.44 The SoS advises that the ES should give sufficient attention to the alternative forms and locations for the off-site proposals, where appropriate, and justify the needs and choices made in terms of the form of the development proposed and the sites chosen.

Mitigation Measures

A1.45 Mitigation measures may fall into certain categories namely: avoid; reduce; compensate or enhance (see Schedule 4 Part 1 paragraph 21); and should be identified as such in the specialist topics. Mitigation measures should not be developed in isolation as they may relate to more than one topic area. For each topic, the ES should set out any mitigation measures required to prevent, reduce and where possible offset any significant adverse effects, and to identify any residual effects with mitigation in place. Any proposed mitigation should be discussed and agreed with the relevant consultees.

A1.46 The effectiveness of mitigation should be apparent. Only mitigation measures which are a firm commitment and can be shown to be deliverable should be taken into account as part of the assessment.

A1.47 It would be helpful if the mitigation measures proposed could be cross referred to specific provisions and/or requirements proposed within the draft development consent order. This could be achieved by means of describing the mitigation measures proposed either in each of the specialist reports or collating these within a summary section on mitigation.

A1.48 The SoS advises that it is considered best practice to outline in the ES, the structure of the environmental management and monitoring plan and safety procedures which will be adopted during construction and operation and may be adopted during decommissioning.

Cross References and Interactions

- A1.49 The SoS recommends that all the specialist topics in the ES should cross reference their text to other relevant disciplines. Interactions between the specialist topics is essential to the production of a robust assessment, as the ES should not be a collection of separate specialist topics, but a comprehensive assessment of the environmental impacts of the proposal and how these impacts can be mitigated.
- A1.50 As set out in EIA Regulations Schedule 4 Part 1 paragraph 23, the ES should include an indication of any technical difficulties (technical deficiencies or lack of know-how) encountered by the Applicant in compiling the required information.

Consultation

- A1.51 The SoS recommends that ongoing consultation is maintained with relevant stakeholders and that any specific areas of agreement or disagreement regarding the content or approach to assessment should be documented. The SoS recommends that any changes to the scheme design in response to consultation should be addressed in the ES.
- A1.52 Consultation with the local community should be carried out in accordance with the SoCC which will state how the Applicant intends to consult on the preliminary environmental information (PEI). This PEI could include results of detailed surveys and recommended mitigation actions. Where effective consultation is carried out in accordance with Section 47 of the Planning Act, this could usefully assist the Applicant in the EIA process – for example the local community may be able to identify possible mitigation measures to address the impacts identified in the PEI. Attention is drawn to the duty upon Applicants under Section 50 of the Planning Act to have regard to the guidance on pre-application consultation.

Transboundary Effects

- A1.53 The SoS recommends that consideration should be given in the ES to any likely significant effects on the environment of another Member State of the European Economic Area. In particular, the SoS recommends consideration should be given to discharges to the air and water and to potential impacts on migratory species and to impacts on shipping and fishing areas.
- A1.54 The Applicant's attention is also drawn to the Planning Inspectorate's Advice Note twelve 'Development with significant transboundary

impacts consultation' which is available on the Advice Notes Page of the National Infrastructure Planning website⁸.

Summary Tables

A1.55 The SoS recommends that in order to assist the decision making process, the Applicant may wish to consider the use of tables:

Table X: to identify and collate the residual impacts after mitigation on the basis of specialist topics, inter-relationships and cumulative impacts.

Table XX: to demonstrate how the assessment has taken account of this Opinion and other responses to consultation.

Table XXX: to set out the mitigation measures proposed, as well as assisting the reader, the SoS considers that this would also enable the Applicant to cross refer mitigation to specific provisions proposed to be included within the draft Development Consent Order.

Table XXXX: to cross reference where details in the HRA (where one is provided) such as descriptions of sites and their locations, together with any mitigation or compensation measures, are to be found in the ES.

Terminology and Glossary of Technical Terms

A1.56 The SoS recommends that a common terminology should be adopted. This will help to ensure consistency and ease of understanding for the decision making process. For example, 'the site' should be defined and used only in terms of this definition so as to avoid confusion with, for example, the wider site area or the surrounding site. A glossary of technical terms should be included in the ES.

Presentation

A1.57 The ES should have all of its paragraphs numbered, as this makes referencing easier as well as accurate. Appendices must be clearly referenced, again with all paragraphs numbered. All figures and drawings, photographs and photomontages should be clearly referenced. Figures should clearly show the proposed site application boundary.

Confidential Information

A1.58 In some circumstances it will be appropriate for information to be kept confidential. In particular, this may relate to information about the presence and locations of rare or sensitive species such as

⁸ Available from: <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

badgers, rare birds and plants where disturbance, damage, persecution or commercial exploitation may result from publication of the information. Where documents are intended to remain confidential the Applicant should provide these as separate paper and electronic documents with their confidential nature clearly indicated in the title, and watermarked as such on each page. The information should not be incorporated within other documents that are intended for publication or which the Planning Inspectorate would be required to disclose under the Environmental Information Regulations 2014.

Bibliography

A1.59 A bibliography should be included in the ES. The author, date and publication title should be included for all references. All publications referred to within the technical reports should be included.

Non-Technical Summary

A1.60 The EIA Regulations require a Non-Technical Summary (EIA Regulations Schedule 4 Part 1 paragraph 22). This should be a summary of the assessment in simple language. It should be supported by appropriate figures, photographs and photomontages.

APPENDIX 2 – CONSULTATION BODIES FORMALLY CONSULTED

Note: the Prescribed Consultees have been consulted in accordance with the Planning Inspectorate’s Advice Note Three, ‘EIA Consultation and Notification’ (Version 6, June 2015)⁹.

SCHEDULE 1 DESCRIPTION	ORGANISATION
The Health and Safety Executive	Health and Safety Executive
The National Health Service Commissioning Board	NHS England
The relevant Clinical Commissioning Group	Swale Clinical Commissioning Group
Natural England	Natural England
The Historic Buildings and Monuments Commission for England	Historic England - South East
The relevant fire and rescue authority	Kent Fire and Rescue Service
The relevant police and crime commissioner	Kent Police and Crime Commissioner
The Environment Agency	The Environment Agency - Kent, South London and East Sussex
The Maritime and Coastguard Agency	Maritime & Coastguard Agency
The Marine Management Organisation	Marine Management Organisation
The Civil Aviation Authority	Civil Aviation Authority
The relevant Highways Authority	Kent County Council Highways Authority
The relevant strategic highways company	Highways England - South East Region
Trinity House	Trinity House
Public Health England, an executive agency of the Department of Health	Public Health England
The Crown Estate Commissioners	The Crown Estate
The Forestry Commission	Forestry Commission - South East and London Area
The Secretary of State for Defence	Ministry of Defence

⁹ Available from: <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

Scoping Opinion for
Proposed Wheelabrator Kemsley Generating Station Power Upgrade

RELEVANT STATUTORY UNDERTAKERS	
The relevant Clinical Commissioning Group	Swale Clinical Commissioning Group
The National Health Service Commissioning Board	NHS England
The relevant NHS Foundation Trust	South East Coast Ambulance Service NHS Foundation Trust
Railways	Network Rail Infrastructure Ltd
	Highways England Historical Railways Estate
Civil Aviation Authority	Civil Aviation Authority
Licence Holder (Chapter 1 Of Part 1 Of Transport Act 2000)	NATS En-Route Safeguarding
Universal Service Provider	Royal Mail Group
Homes and Communities Agency	Homes and Communities Agency
The relevant Environment Agency	Environment Agency - Kent, South London and East Sussex
The relevant water and sewage undertaker	Southern Water**
The relevant public gas transporter	Energetics Gas Limited
	Energy Assets Pipelines Limited
	ES Pipelines Ltd
	ESP Connections Ltd
	ESP Networks Ltd
	ESP Pipelines Ltd
	Fulcrum Pipelines Limited
	GTC Pipelines Limited
	Independent Pipelines Limited
	Indigo Pipelines Limited
	Quadrant Pipelines Limited
	LNG Portable Pipeline Services Limited
	National Grid Gas Plc
	National Grid Gas Distribution Limited
	Scotland Gas Networks Plc
Southern Gas Networks Plc	
Wales and West Utilities Ltd	
The relevant electricity distributor with CPO Powers	Energetics Electricity Limited
	ESP Electricity Limited
	Harlaxton Energy Networks Limited
	Independent Power Networks Limited
	Peel Electricity Networks Limited
The Electricity Network Company Limited	

Scoping Opinion for
Proposed Wheelabrator Kemsley Generating Station Power Upgrade

RELEVANT STATUTORY UNDERTAKERS	
	UK Power Distribution Limited
	Utility Assets Limited
	UK Power Networks Limited
The relevant electricity transmitter with CPO Powers	National Grid Electricity Transmission Plc

SECTION 43 CONSULTEES (FOR THE PURPOSES OF SECTION 42(B))	
Local Authorities	Swale Borough Council
	Medway Council
	Ashford Borough Council
	Canterbury City Council
	Maidstone Borough Council
	Thurrock Council
	Kent County Council
	East Sussex County Council
	Surrey County Council
	London Borough of Bexley
	London Borough of Bromley

NON-STATUTORY CONSULTEES	
Royal National Lifeboat Institution	

** Southern Water were identified by the Planning Inspectorate as a statutory consultee. Due to an administrative error, they do not appear to have received a copy of the scoping consultation notification letter. The deadline for consultation responses was 9 January 2017, and is a statutory requirement that cannot be extended. Any responses received after the deadline are not included within this Scoping Opinion but will be forwarded to the Applicant. Southern Water have been informed, and provided with the information that was contained in the scoping consultation notification letter.

APPENDIX 3 – RESPONDENTS TO CONSULTATION AND COPIES OF REPLIES

Bodies who replied by the statutory deadline:

Environment Agency
Forestry Commission
Health and Safety Executive
Highways England
Kent County Council
London Borough of Bexley
Marine Management Organisation
MOD
National Grid
NATS En-Route Safeguarding
Natural England
Public Health England
Royal Mail
Swale Borough Council
Trinity House

The Planning Inspectorate
3/18 Eagle Wing
Temple Quay House (2 The Square) Temple
Quay
Bristol
Avon
BS1 6PN

Our ref: KT/2016/122170/01-L01
Your ref: 161212_EN010083
Date: 09 January 2017

Dear Sir/Madam

EIA SCOPING CONSULTATION: APPLICATION BY K3 CHP LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE PROPOSED WHEELABRATOR KEMSLEY GENERATING STATION POWER UPGRADE

LAND TO THE EAST OF KEMSLEY PAPER MILL, KEMSLEY, SITTINGBOURNE, KENT, ME10 2TD

We welcome the opportunity to comment on this EIA scoping consultation. We are generally satisfied with the proposed scope of the EIA, as set out in this report, and would like to offer the following advice.

Chapter 8

We note that significant work has already been carried out at the site. This includes surveys, some completed and some still underway. It also includes mitigation and compensation for some of the ecological elements adversely affected by the previous planning application. The scoping report appears to satisfactorily consider:

- The nature of the Study Area
- Designated Sites (in as much as the Environment Agency has a remit for the Priority Species present in them)
- Habitats to include for which the Environment Agency is the lead
- Protected Species for which the Environment Agency is the lead
- Methods to be employed to determine current and future baselines to be used for determination of effects and their significance.

We also accept the conclusions regarding issues to be addressed in the EIA Report and those to be scoped out (8.27 Transboundary effects).

Environment Agency
Orchard House Endeavour Park, London Road, Addington, West Malling, Kent, ME19 5SH
Customer services line: 03708 506 506
Email: enquiries@environment-agency.gov.uk
www.gov.uk/environment-agency



Chapter 10

We accept the conclusions of this chapter. As the applicant is aware, this site is underlain by superficial Alluvium over the London Clay Formation, which are classified as a secondary aquifer and unproductive strata respectively. A historic landfill site is also located within the site boundary. Any pathways for contamination must be strictly controlled to avoid pollution of the secondary aquifer from any historic contamination identified on the site from previous uses. The applicant should follow the requirements of the National Policy Statement for Energy, a set out in the scoping report. We also recommend that the applicant:

- Applies the risk-based framework set out in the Model Procedures for the Management of Land Contamination (CLR 11) and follow the guidance in that document so that the best decision are made for the site
- Refers to the Environment Agency guidance on requirements for land contamination reports
- Uses BS 10175 2001, Investigation of potentially contaminated sites – Code of Practice as a guide to undertaking the desk study and site investigation scheme
- Uses MCERTS accredited methods for testing contaminated soils at the site
- Consult our website at www.environment-agency.gov.uk for further information about any permissions that may be required.

We would also recommend the applicant discusses human health risks with the council's Environmental Health Department, as our comments do not consider this.

Chapter 11

We accept the conclusions of this chapter, and look forward to commenting on the revised flood risk assessment when it is available. We are also pleased to note that foul and surface water drainage (from a pollution prevention perspective) has been considered.

Environmental Permitting: Informative

For your information, this site already benefits from an Environmental Permit. However the applicant will need to apply to us to vary this permit because of the proposed changes. The applicant has approached us for pre-application permitting discussions, and we are providing them with advice.

Please do not hesitate to contact me if you require clarification on any of the above points.

Yours faithfully

Mr Niall Connolly
Planning Specialist

Direct dial 0208 474 6765
Direct e-mail ksplanning@environment-agency.gov.uk

Alison L Down
EIA and Land Rights Advisor
The Planning Inspectorate
3D Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

South East & London Area Office
Bucks Horn Oak
Farnham
GU10 4LS

Tel: 0300 0674420
southeast.fce@forestry.gsi.gov.uk

Area Director
Alison Field

06 January 2017

Your Ref: 161212_EN010083

Dear Ms Down,

Application by K3 CHP Limited for an Order Granting Development Consent for the proposed Wheelabrator Kemsley Generating Station Power Upgrade

Thank you for your consultation on the above dated 12th December 2016 which was received by the Forestry Commission via email on 14th December 2016.

The Forestry Commission is the Government Department that works with others to protect, improve and expand our nation's forests and woodland, increasing their value to society and the environment.

The Forestry Commission is a **statutory consultee** for major infrastructure (Nationally Significant Infrastructure Projects (NSIPs)) that are likely to affect the protection or expansion of forests and woodlands (Planning Act 2008).

The Forestry Commission is a **non-statutory consultee** on developments in or within 500m of an ancient woodland. We have published joint [Standing Advice with Natural England on Ancient Woodlands and Veteran Trees](#).

The National Planning Policy Framework (NPPF) is referenced with respect to planning decisions affecting agricultural land. It is also worth note that the NPPF (paragraph 118) also indicates ancient woodland should be a planning consideration:

"planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss"

The Forestry Commission's advice in this response is based on information submitted by The Planning Inspectorate in support of its application for an Order Granting Development Consent for the proposed Wheelabrator Kemsley Generating Station Power Upgrade.

The Forestry Commission is not aware of woodland that may be affected by the proposed project. The Forestry Commission is content with the proposal in relation to woodlands, based on the information provided.

However, the Forestry Commission is in a position to advise if in the future, the fuel source to be used by the Kemsley Generating Station Power is wood based. In this instance, the Forestry Commission will be able to provide factual advice on forestry and woodland matters to ensure

any planning decision made follows forestry principles set out in the UK Forestry Standards. This advice would include:

1. Fuel source: The Forestry Commission appreciates that the current fuel source is based on safe and environmentally sound conversion of everyday residential and business waste into clean energy. If, in future, the fuel supply is to include virgin wood then the Forestry Commission suggest the ES should consider:
 - a. If imported – biosecurity implications due to the potential to import tree pests and diseases
 - b. If locally sourced – provide details demonstrating a sustainable supply chain – there is plenty of wood in SE England but current market growth is starting to have an impact hence ES should address this to include how to source and access fuel from traditional broadleaved woods in the area.
2. Landscaping/green infrastructure in and around the development

Forestry Commission's headline points are that on the basis of the information submitted, if approved, the project must be subject to all necessary and appropriate requirements which ensure that unacceptable environmental impacts either do not occur or are sufficiently mitigated, as proposed in the proposed Code of Construction Practice.

If you disagree with our assessment of this proposal, or should the proposal be amended in a way which significantly affects its impact on woodland, then please consult the Forestry Commission again.

Yours faithfully,

Caroline Parker

Local Partnership Advisor
Forestry Commission - South East & London
Bucks Horn Oak
Farnham
Surrey
GU10 4LS

caroline.parker@forestry.gsi.gov.uk
+44 (0)300 067 4420 (Switchboard)
+44 (0)300 067 4424 (Direct)

CEMHD Policy - Land Use Planning
NSIP Consultations
Building 2.2, Redgrave Court
Merton Road, Bootle
Merseyside, L20 7HS

Your ref: EN010083
Our ref: 4.2.1.5711

HSE email: NSIP.applications@hse.gov.uk

FAO Alison L Down
The Planning Inspectorate
Temple Quay House
Temple Quay,
Bristol
BS1 6PN

Dear Ms Down,

04 January 2017

**PROPOSED WHEELABRATOR KEMSLEY GENERATING STATION POWER UPGRADE (the project)
PROPOSAL BY K3 CHP LTD (the applicant)
INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2009 (as
amended) – Regulations 8 and 9**

Thank you for your letter of 12th December 2016 regarding the information to be provided in an environmental statement relating to the above project. HSE does not comment on EIA Scoping Reports but the following information is likely to be useful to the applicant.

HSE's land use planning advice

Will the proposed development fall within any of HSE's consultation distances?

The proposed development does not fall within the consultation distances of any Major Accident Hazard sites or pipelines. However, you will wish to be aware it lies close to the end of the Southern Gas Networks pipeline 1398 "Church Marshes to UK Paper (GM5-0550/80)".

Would Hazardous Substances Consent be needed?

The presence of hazardous substances on, over or under land at or above set threshold quantities (Controlled Quantities) may require Hazardous Substances Consent (HSC) under the Planning (Hazardous Substances) Act 1990 as amended. The substances, alone or when aggregated with others, for which HSC is required, and the associated Controlled Quantities, are set out in The Planning (Hazardous Substances) Regulations 2015.

Hazardous Substances Consent would be required if the site is intending to store or use any of the Named Hazardous Substances or Categories of Substances and Preparations at or above the controlled quantities set out in schedule 1 of these Regulations.

Further information on HSC should be sought from the relevant Hazardous Substances Authority for the proposed development.

Explosives sites

HSE has no comment to make in this regard, as there are no licensed explosive sites in the vicinity.

Waste

In respect of waste management the applicant should take account of and adhere to relevant health and safety requirements. More details can be found on HSE's website at:

<http://www.hse.gov.uk/waste/index.htm>

Electrical Safety

No comment from a planning perspective.

Please send any further electronic communication on this project directly to the HSE's designated e-mail account for NSIP applications. Alternatively any hard copy correspondence should be sent to:

Mr Dave Adams (MHPD)
NSIP Consultations
2.2 Redgrave Court
Merton Road
Bootle, Merseyside
L20 7HS

Yours sincerely,

A solid black rectangular box used to redact the signature of Dave Adams.

Dave Adams
CEMHD4 Policy

From: [Bown, Kevin](#)
To: [Environmental Services](#)
Cc: ["planningsupport@midkent.gov.uk"](#); [GillHarris@swale.gov.uk](#); [Planning SE](#); [growthandplanning](#);
["transportplanning@Dft.Gsi.Gov.Uk"](#)
Subject: FAO Case Officer Alison Down: Highways England response re ENO10083_WHEELABRATOR KEMSLEY GENERATING STATION POWER UPGRADE EIA SCOPING NOTIFICATION AND CONSULTATION
Date: 19 December 2016 13:51:59

Dear Ms Down

I am writing in response to the request for advice dated 12 December relating to the above described and located proposed development, to be forwarded no later than 9 January 2017

Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

Highways England have no comment on whether an EIA is required; but if it is (or is produced voluntarily), it should be compatible and consistent with the Transport Assessment and also contain information on all transport related effects including noise, vibration and air quality.

Due to the scale of the development and its location we are particularly concerned about:

- 1) The difference between what has previously been permitted at this site (and its vicinity) and is now being sought (taking account of the limit to HGV movements set by Condition 03 of permission SW/10/444 of 258 movements per day on a site potentially operation 24/7) in terms of impact on the SRN, particularly during AM and PM peaks.
- 2) The difference in assumed cumulative impacts on the SRN arising from the previous permissions that were based on older iterations of the Local Plan and would not have been able to take account of the current list of relevant planning permissions for all development in Swale affecting the SRN. Any TA will need to ensure it is based upon the latest Modifications version of the Local Plan which contains additional major allocations in the vicinity of the A249 Grovehurst junction and/or affecting the A29/ M2 J5 generally.

Given its location adjacent to, and its likely impact on, the A249 and M2, we would therefore wish to work with the applicant's transport advisors with regards the production of an appropriate, robust Transport Assessment to cover both the impacts and any necessary mitigation required as a result of the demolition, construction and future use of the site.

The Transport Assessment should be undertaken in accordance with

- DfT Circular 02/2013 *The Strategic Road Network and the Delivery of Sustainable Development* (September 2013)
- HE publication: *Planning for the future – A guide to working with Highways England on planning matters* (Sept 2015)

We would also recommend that paragraph 15 of the *Guidance for Travel plans, transport assessments and statements in decision-taking* (DCLG March 2014) is followed when completing the Transport Assessment.

I hope the above comments are useful. Should you have any questions or comments then please do not hesitate to contact me to discuss the proposals further, or any aspect related to the SRN.

Regards

Kevin Bown, Spatial Planning Manager

Highways England | Bridge House | 1 Walnut Tree Close | Guildford | GU1 4LZ

Tel: +44 (0) 300 470 1046

Web: <http://www.highways.gov.uk>

Safe roads, reliable journeys, informed travellers
Highways England: operating, maintaining and improving the strategic road network in England.

This email may contain information which is confidential and is intended only for use of the recipient/s named above. If you are not an intended recipient, you are hereby notified that any copying, distribution, disclosure, reliance upon or other use of the contents of this email is strictly prohibited. If you have received this email in error, please notify the sender and destroy it.

Highways England Company Limited | General enquiries: 0300 123 5000
| National Traffic Operations Centre, 3 Ridgeway, Quinton Business Park,
Birmingham B32 1AF | [https://www.gov.uk/government/organisations/highways-](https://www.gov.uk/government/organisations/highways-england)
[england](https://www.gov.uk/government/organisations/highways-england) | info@highwaysengland.co.uk

Registered in England and Wales no 9346363 | Registered Office: Bridge House,
1 Walnut Tree Close, Guildford, Surrey GU1 4LZ

Consider the environment. Please don't print this e-mail unless you really need to.



The Planning Inspectorate
3D Eagle Wing
Temple Quay House
2 The Square
Bristol BS1 6PN

Planning Applications Group
First Floor, Invicta House
County Hall
Maidstone
Kent ME14 1XX
Tel: 03000 411200

For the attention of Alison Down

Website: www.kent.gov.uk/planning
Email: planning.applications@kent.gov.uk
Direct Dial/Ext: 03000 413350
Text relay: 18001 03000 417171
Ask for: Mr Mike Clifton
Your ref: 161212_ENO10083
Our ref: PAG/KCC/SW/10/444
Date: 4 January 2016

BY E MAIL ONLY

Dear Madam

Planning Act 2008 (as amended) and The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) – Regulations 8 and 9.

Application by K3 CHP Limited for an Order Granting Development Consent for the proposed Wheelabrator Kemsley Generating Station Power Upgrade.

Scoping consultation and notification of the Applicant's contact details and duty to make available information to the Applicant if requested.

Land to the North East of Kemsley Paper Mill, Kemsley, Sittingbourne, Kent.

I write further to your letter dated 12 December 2016 in respect of the above, whereby the applicant K3 CHP Limited, has asked the Secretary of State for its opinion (a Scoping Opinion) as to the information to be provided in an environmental statement relating to the above proposed project.

As indicated in the EIA Scoping Report prepared by the applicant, an environmental statement (E.S.) was prepared in 2010 in support of a planning application submitted to Kent County Council (Ref. SW/10/444) for the development of a Sustainable Energy Plant (SEP) at the site. The E.S. included an assessment of the potential effects of the proposed development in relation to the existing conditions pertaining at that time at the site and also its surroundings.

Having regard to the specified information as required under the Town and Country Planning (Assessment of Environmental Effects) Regulations 1999 (as amended) the following key matters were taken into account during the County Council's formal consideration and determination of the application:

1. Need
2. Traffic

As part of the Council's commitment to equalities if you have any concerns or issues with regard to access to this information please contact us for assistance.



3. Air Quality
4. Landscape and Visual Impacts
5. Nature Conservation
6. Hydrology
7. Noise and,
8. Socio Economic Impacts (employment)

Permission was subsequently granted by Kent County Council in March 2012. In granting permission the County Council had regard to relevant national and regional government policy and guidance together the relevant development plan policies which applied, along with other material planning considerations. The Council was also satisfied that taking into account the conclusions of the E.S. which included a number of mitigation measures, there would be no significant adverse environmental impacts both at the site or upon the surrounding area. Permission was granted subject to the satisfactory conclusion of a legal agreement to secure offsite mitigation measures by way of the creation of and future management of new reedbed habitat together with a requirement for a strategy to be formally approved by the Council in order to maximise the use of locally employed personnel at the site. Both matters have since been formally discharged. Since the original permission was granted there have been a number of applications to vary/amend the original submission. Construction work for the development as originally permitted by the County Council commenced in August 2016 thereby formally implementing the permission.

Whilst the previous application submitted to and determined by Kent County Council was considered as a 'waste matter' and determined against those relevant policies at the time as set out in national and regional guidance along with the relevant development plan policies, it was recognised that the proposal was clearly primarily driven by the need to meet the future energy requirements of Kemsley Paper Mill. On this basis whilst it was therefore appropriate to consider how the facility could fulfil a future role in providing additional waste management capacity in the county, it was also accepted that the argument put forward by the applicant for the need for the Paper Mill to remain competitive in the light of European competition, and most fundamentally in order to safeguard local jobs with the potential for creating additional local employment opportunities, was also a major material consideration.

As referred to in the EIA Scoping Report the County Council is currently considering an application for an Incinerator Bottom Ash Recycling Facility (IBA) which is intended to form an integral part of the permitted SEP and also if permitted, the Kemsley Generating Station Power Upgrade proposal. I can confirm that formal consultations on the IBA application are nearing completion and that on the basis of responses from statutory consultees it is highly likely that permission will be granted in the very near future subject to the imposition of appropriate conditions.

Since the grant of the permission for the SEP by the County Council in March 2012 the Kent Minerals and Waste Local Plan 2013-30 (KMWLP) July 2016 has now been formally adopted. The KMWLP establishes the strategic policy framework against which future applications for mineral and waste developments will be considered and therefore represents a material consideration in the determination of the Kemsley Generating Station Power Upgrade by the Secretary of State. One of the main aims of the Plan is to drive waste up the Waste Hierarchy enabling waste to be considered as a valuable resource and which will also ensure that requirements such as a Low Carbon Economy and climate change issues are incorporated into new developments for waste.

As part of the Council's commitment to equalities if you have any concerns or issues with regard to access to this information please contact us for assistance.



With regard to energy from waste, in accordance with current national planning policy and guidance, these types of development feature strongly in the plan as representing one of a number of alternative waste management options to landfill which will help contribute towards the County Council's future waste management capacity requirements

It therefore remains clear that national policy continues to see energy from waste as playing an important role towards dealing with future waste arisings and also in helping transition away from traditional methods of power generation by providing a more sustainable alternative which reduces reliance on fossil fuels, improving the carbon footprint and ensuring a degree of energy supply security in the continuing volatile European markets. Arguably the application for the power upgrade to the permitted SEP at Kemsley will help underpin this ongoing transition.

I note that with the exception of the power upgrade to some 75MWe which has meant that in order to operate the plant at this output level requires separate consent from the Secretary of State, the applicant has confirmed that there will be no change to the types and quantum of fuel throughput, or any changes to emissions. On this basis, with the exception of the proposed assessment of cumulative effects which takes into account current baseline conditions in respect of air quality, and which may have changed since the County Council considered the original SEP application and which assumes the IBA to be operational along with any other more recent developments, I would not anticipate any other additional potential impacts arising from the proposal which weren't considered previously by the County Council. For this reason I agree that the County Council's previous decision to permit the original application represents a further material consideration to be taken into account in the Secretary of State's decision on the proposed power upgrade application. Nevertheless, given that the applicant has chosen not to restrict their application to the power upgrade alone but has decided to seek one complete consent for both the construction of the plant together with its operation, those matters which were set out in the E.S. which accompanied the original application for the plant will similarly be addressed in the E.S that will accompany the power upgrade application. I agree that this is entirely the correct approach and am satisfied that the scope of the proposed E.S. as set out in the EIA Scoping Report will ensure that the development as consented and proposed will be properly assessed in terms of whether it would result in any significant adverse effects that cannot be satisfactorily mitigated.

Yours faithfully

Sharon Thompson

Head of Planning Applications Group

As part of the Council's commitment to equalities if you have any concerns or issues with regard to access to this information please contact us for assistance.

From: [Collins, Cheryl](#)
To: [Environmental Services](#)
Subject: REF: 061212_EN010083 Wheelabrator Kemsley Generating Station
Date: 09 January 2017 15:29:07

Dear Sir/Madam

I can confirm that the London Borough of Bexley do not have any comments.

Kind regards

Cheryl Collins

Planning Obligations Officer/ Planning Officer

London Borough of Bexley

Civic Offices, 2 Watling Street

Bexleyheath, DA6 7AT

Direct Dial: 0203 045 5734

This Email is confidential and intended solely for the use of the individual to whom it is addressed. If you are not the intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing or copying of the email is strictly prohibited.

If you have received this email in error please notify London Borough of Bexley by telephone on +44 (0) 20 8303 7777.

Web Site: <http://www.bexley.gov.uk>

This message has been scanned for malware by Websense Inc. www.websense.com

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>



Marine Management Organisation

Scoping Opinion

Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) (“the Regulations”)

Title: Planning Act 2008 (as amended) and The Infrastructure Planning
(Environmental Impact Assessment) Regulations 2009 (as amended) –
Regulations 8 and 9

Application by K3 CHP Limited for an Order Granting Development
Consent for the proposed Wheelabrator Kemsley Generating Station
Power Upgrade

Contents

Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) (“the Regulations”).....	1
1. The MMO’s role in Nationally Significant Infrastructure Projects	2
2. Proposal	3
2.1 Project Background	3
2.2 Overview of the Project.....	3
3. Location.....	4
4. Environmental Impact Assessment (EIA)	4
5. Scoping Opinion	5
6. Nature Conservation	5
6.1. The Swale Estuary Marine Conservation Zone (MCZ)	5
6.2. The Swale Special Protected Area (SPA).....	6
6.3. The Swale Site of Special Scientific Interest (SSSI)	6
6.4. The Swale RAMSAR	9
6.5. The Elmley Marshes RSPB reserve	10
6.6. The Swale Important Bird Area (IBA)	10
7. Coastal Processes	10

8. Fish Ecology and Fisheries	10
9. Navigation / Other Users of the Sea.....	10
10. Water Quality	10
11. Habitats Regulations Assessment.....	11
12. Cumulative Impacts.....	11
13. Conclusion	11

1. The MMO’s role in Nationally Significant Infrastructure Projects

The MMO was established by the Marine and Coastal Access Act 2009 (the “2009 Act”) to make a contribution to sustainable development in the marine area and to promote clean, healthy, safe, productive and biologically diverse oceans and seas.

The responsibilities of the MMO include the licensing of construction works, deposits and removals in English inshore and offshore waters and for Welsh and Northern Ireland offshore waters by way of a marine licence¹. Inshore waters include any area which is submerged at mean high water spring (“MHWS”) tide. They also include the waters of every estuary, river or channel where the tide flows at MHWS tide. Waters in areas which are closed permanently or intermittently by a lock or other artificial means against the regular action of the tide are included, where seawater flows into or out from the area.

In the case of Nationally Significant Infrastructure Projects (“NSIPs”), the 2008 Act enables Development Consent Order’s (“DCO”) for projects which affect the marine environment to include provisions which deem marine licences².

As a prescribed consultee under the 2008 Act, the MMO advises developers during pre-application on those aspects of a project that may have an impact on the marine area or those who use it. In addition to considering the impacts of any construction, deposit or removal within the marine area, this also includes assessing any risks to human health, other legitimate uses of the sea and any potential impacts on the marine environment from terrestrial works.

Where a marine licence is deemed within a DCO, the MMO is the delivery body responsible for post-consent monitoring, variation, enforcement and revocation of provisions relating to the marine environment. As such, the MMO has a keen interest in ensuring that provisions drafted in a deemed marine licence (“dML”) enable the MMO to fulfil these obligations.

Further information on licensable activities can be found on the MMO’s website³. Further information on the interaction between the Planning Inspectorate and the MMO can be found in our joint advice note⁴.

¹ Under Part 4 of the 2009 Act

² Section 149A of the 2008 Act

³ <https://www.gov.uk/planning-development/marine-licences>

2. Proposal

Wheelabrator Kemsley Generating Station - Power Upgrade

2.1 Project Background

Wheelabrator Kemsley Generating Station Power Upgrade ('the project') comprises the final construction design of the Wheelabrator Kemsley Generating Station (as consented by Kent County Council, inclusive of all of the changes as a result of non-material amendments including those subject to forthcoming applications) including that the plant would operate with a greater maximum electrical output of up to 75 MWe. The adjacent IBA Recycling Facility is included in the description of the Project' for EIA purposes, albeit the application for the IBA facility would be determined by Kent County Council. This is the project that will be assessed in the EIA. The assessment boundary for the project is shown on Figure 2.

Subject to the grant of development consent, the change to the consented scheme would be an operational change only and would arise through removal of a 'limiter' on the CHP turbine to ensure that it can generate up to 75 MW electrical output. For clarification, an overview of the main project components is provided below.

2.2 Overview of the Project

The project site is located on land adjacent to and immediately north east of the existing Kemsley Paper Mill as indicated in Figure 1. The site lies within the ward of Kemsley (0.85 km to the south west) and Milton Regis (2.6 km to the south west). Sittingbourne is approximately 2.5 km south of the proposal site. The town of Maidstone is 19.5 km to the south west, and Gillingham is 15 km to the west. The assessment boundary is approximately 12.55 hectares.

The Wheelabrator Kemsley Generating Station will process pre-treated waste fuel using a two line process, where all easily recoverable recyclates have been removed and would otherwise go to landfill – residual waste fuel. The residual waste fuel will be in the form of pre-treated waste comprising Solid Recovered Fuel waste, Commercial & Industrial waste and Municipal Solid Waste. The calorific value of a fuel is a measure of how much energy is available per tonne of waste. The mixed waste stream will have a predicted average net calorific value of 10.5 MJ/kg.

The sources of treated waste fuel have yet to be determined. Pre-treated waste will be sourced from Kent with the balance from London, the South East and elsewhere in the UK. Waste will be brought to the site by heavy goods vehicles. The plant may accept up to approximately 25,000 tonnes per annum of waste plastics from the paper mill.

⁴ <http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/04/Advice-note-11-v2.pdf>

3. Location

The site of the Wheelabrator Kemsley Generating Station lies adjacent to the Kemsley Paper Mill on the industrial northern edge of Sittingbourne which is displayed in Figure 1 below.

Figure 1: Wheelabrator Kemsley Generating Station location



4. Environmental Impact Assessment (EIA)

The Marine Management Organisation (MMO) considers the proposed works to be an Annex II project under the EIA Directive 2011/92/EU (“the Directive”), specifically: Article 4(2) 3 (a) Industrial installations for the production of electricity, steam and hot water.

The application required for the proposed works are being routed through the Planning Inspectorate (PI), however, aspects of this application have been identified as licensable as defined in section 66 of the Marine and Coastal Access Act 2009, and therefore, the MMO would expect to see a deemed marine licence as part of any resultant application to the Planning Inspectorate.

Component parts of this project which typically require marine licensing include:

- Surface water outfall(s) which are discharging into the UK Marine Area (e.g. The Swale)
- Sluice valves, or any equipment which by a lock or artificial means is halting the regular action of the tide
- Any water storage which by a lock or artificial means is halting the regular action of the tide
- Maintenance works to existing primary drainage systems which are discharging into the UK Marine Area (e.g. The Swale)

5. Scoping Opinion

Christopher LeCointe has prepared a Scoping Report entitled “Wheelabrator Kemsley Generating Station Power Upgrade - EIA Scoping Report” submitted to the Marine Management Organisation (MMO) via the Planning Inspectorate on behalf of the Secretary of State.

The MMO agrees with the topics outlined in the Scoping Report and in addition, recommends that the following aspects are considered further during the EIA and should be included in any resulting ES.

6. Nature Conservation

6.1. The Swale Estuary Marine Conservation Zone (MCZ)

The proposed works are located within 10 meters of The Swale Estuary MCZ boundary. This site has been designated for the below features that the following conservation objectives:

Protected features	General management approach
Estuarine rocky habitats	Maintain in favourable condition
Low energy intertidal rock	Maintain in favourable condition
Intertidal mixed sediments	Maintain in favourable condition
Intertidal coarse sediment	Maintain in favourable condition
Intertidal coarse sediment	Maintain in favourable condition
Intertidal coarse sediment	Maintain in favourable condition
Subtidal coarse sediment	Maintain in favourable condition
Subtidal mixed sediments	Maintain in favourable condition
Subtidal sand	Maintain in favourable condition
Subtidal mud	Maintain in favourable condition

The MMO request that this site and its designated features be taken into consideration in the ES and the resulting section should contain details on the potential impacts and any proposed mitigation. The MMO also request that they, along with Natural England (NE), are consulted should the developer require any pre-application advice and/or have any questions regarding the drafting of the ES.

6.2. The Swale Special Protected Area (SPA)

The proposed works are located within 100 meters of The Swale SPA boundary. This site has been designated for the below features that the following conservation objectives:

Protected features	Conservation objective
A046a <i>Branta bernicla bernicla</i> ; Dark-bellied brent goose (Non-breeding)	Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring; <ul style="list-style-type: none"> • The extent and distribution of the habitats of the qualifying features • The structure and function of the habitats of the qualifying features • The supporting processes on which the habitats of the qualifying features rely • The population of each of the qualifying features, and, • The distribution of the qualifying features within the site.
A149 <i>Calidris alpina alpina</i> ; Dunlin (Non-breeding)	
Breeding bird assemblage	
Waterbird assemblage	

The MMO welcome the inclusion of this site and its designated features. The ES should contain details on the potential impacts and any proposed mitigation. The MMO also request that they, along with Natural England (NE), are consulted should the developer require any pre-application advice and/or have any questions regarding the drafting of the ES.

6.3. The Swale Site of Special Scientific Interest (SSSI)

The proposed works are located within 100 meters of The Swale SSSI boundary. This site has been designated for the below features that the following conservation objectives:

Protected features	Conservation objective
20,000 Non-Breeding Waterbirds	Maintain in favourable condition
Avocet, <i>Recurvirostra avosetta</i> (breeding)	Maintain in favourable condition
Bearded tit, <i>Panurus biarmicus</i> (breeding)	Maintain in favourable condition
Gadwall, <i>Anas strepera</i> (breeding)	Maintain in favourable condition
Lapwing, <i>Vanellus vanellus</i> (breeding)	Maintain in favourable condition

Marsh harrier, <i>Circus aeruginosus</i> (breeding)	Maintain in favourable condition
Pochard, <i>Aythya farina</i> (breeding)	Maintain in favourable condition
Redshank, <i>Tringa tetanus</i> (breeding)	Maintain in favourable condition
Shoveler, <i>Anas clypeata</i> (breeding)	Maintain in favourable condition
Bearded Tit, <i>Panurus biarmicus</i> (breeding)	Maintain in favourable condition
Black-tailed godwit, <i>Limosa limosa islandica</i> (non-breeding)	Maintain in favourable condition
Brent goose (dark-bellied), <i>Branta bernicla bernicla</i> (non-breeding)	Maintain in favourable condition
Curlew, <i>Numenius arquata</i> (non-breeding)	Maintain in favourable condition
Dunlin, <i>Calidris alpina alpina</i> (non-breeding)	Maintain in favourable condition
Gadwall, <i>Anas strepera</i> (non-breeding)	Maintain in favourable condition
Great crested grebe, <i>Podiceps cristatus</i> (non-breeding)	Maintain in favourable condition
Grey plover, <i>Pluvialis squatarola</i> (non-breeding)	Maintain in favourable condition
Hen harrier, <i>Circus cyaneus</i> (non-breeding)	Maintain in favourable condition
Knot, <i>Calidris canutus</i> (non-breeding)	Maintain in favourable condition
Little Stint, <i>Calidris Minuta</i> (non-breeding)	Maintain in favourable condition
Marsh harrier, <i>Circus aeruginosus</i> (non-breeding)	Maintain in favourable condition
Oystercatcher, <i>Haematopus ostralegus</i> (non-breeding)	Maintain in favourable condition
Pintail, <i>Anas acuta</i> (non-breeding)	Maintain in favourable condition
Redshank, <i>Tringa tetanus</i> (non-breeding)	Maintain in favourable condition

Ringed plover, <i>Charadrius hiaticula</i> (non-breeding)	Maintain in favourable condition
Ruff, <i>Philomachus pugnax</i> (non-breeding)	Maintain in favourable condition
Shelduck, <i>Tadorna tadorna</i> (non-breeding)	Maintain in favourable condition
Shoveler, <i>Anas clypeata</i> (non-breeding)	Maintain in favourable condition
Spotted redshank, <i>Tringa erythropus</i> (non-breeding)	Maintain in favourable condition
Teal, <i>Anas crecca</i> (non-breeding)	Maintain in favourable condition
Variety of Passage Species (non-breeding)	Maintain in favourable condition
Variety of Wintering Species (non-breeding)	Maintain in favourable condition
White-fronted goose, <i>Anser albifrons albifrons</i> (non-breeding)	Maintain in favourable condition
Wigeon, <i>Anas Penelope</i> (non-breeding)	Maintain in favourable condition
Assemblages of breeding birds - Lowland damp grasslands	Maintain in favourable condition
Assemblages of breeding birds - Lowland fen without open water	Maintain in favourable condition
Brackish lakes	Maintain in favourable condition
Ditches	Maintain in favourable condition
Floodplain fen (lowland)	Maintain in favourable condition
Invert. assemblage M311 saltmarsh and transitional brackish marsh	Maintain in favourable condition
Invert. assemblage W211 open water on disturbed sediments	Maintain in favourable condition
Invert. assemblage W314 reed-fen & pools	Maintain in favourable condition
Ponds	Maintain in favourable condition

SM4-28 - Saltmarsh	Maintain in favourable condition
Standing waters	Maintain in favourable condition
Vascular Plant Assemblage	Maintain in favourable condition

The MMO welcomes the inclusion of this site and its designated features. The ES should contain details on the potential impacts and any proposed mitigation. The MMO also request that they, along with Natural England (NE), are consulted should the developer require any pre-application advice and/or have any questions regarding the drafting of the ES.

6.4. The Swale RAMSAR

The proposed works are located within 100 meters of The Swale Estuary Ramsar Site boundary. This site has been designated for the below features:

Protected features
Ramsar criterion 2 The site supports nationally scarce plants and at least seven British Red data book invertebrates.
Ramsar criterion 5 Assemblages of international importance: Species with peak counts in winter: 77501 waterfowl (5 year peak mean 1998/99-2002/2003)
Ramsar criterion 6 Species/populations occurring at levels of international importance. Qualifying Species/populations (as identified at designation): Species with peak counts in spring/autumn: Common redshank , <i>Tringa totanus totanus</i> , Species with peak counts in winter: <ul style="list-style-type: none"> • Dark-bellied brent goose, <i>Branta bernicla bernicla</i>, • Grey plover , <i>Pluvialis squatarola</i> Species/populations identified subsequent to designation for possible future consideration under criterion 6. Species with peak counts in spring/autumn: <ul style="list-style-type: none"> • Ringed plover , <i>Charadrius hiaticula</i>, • Species with peak counts in winter: Eurasian wigeon , <i>Anas penelope</i>, • Northern pintail , <i>Anas acuta</i>, • Northern shoveler , <i>Anas clypeata</i>, • Black-tailed godwit , <i>Limosa limosa islandica</i>,

The MMO welcomes the inclusion of this site and its designated features. The ES should contain details on the potential impacts and any proposed mitigation. The MMO also request that they, along with Natural England (NE), are consulted should the developer require any pre-application advice and/or have any questions regarding the drafting of the ES.

6.5. The Elmley Marshes RSPB reserve

The proposed works are located within 500 meters of The Elmley Marshes RSPB reserve boundary. The MMO welcome the intention to consider the impacts on the reserve within the ES. We would recommend the local RSPB are consulted on the final ES.

6.6. The Swale Important Bird Area (IBA)

The proposed works are located within 70 meters of The Swale IBA boundary. The MMO request that the impacts on the reserve are taken into account and that the local RSPB are consulted on the final ES.

7. Coastal Processes

The MMO welcome the intention to consider impacts to local estuarine processes as a result of the project. The MMO also request that they, along with The Environment Agency (EA), are consulted should the developer require any pre-application advice and/or have any questions regarding the drafting of the ES.

8. Fish Ecology and Fisheries

The project site is located within 10 meters of:

- a high intensity fish spawning area for sole;
- a low intensity fish spawning area for sandeel; and
- a Cod recovery zone.

As such, the MMO would expect consideration to be given to the potential impacts arising from the construction and operation of the project on the features highlighted above. Consultation with the Kent and Essex Inshore Fisheries and Conservation Authority (IFCA) and National Federation of Fishermen's Organisations (NFFO) would also be expected.

9. Navigation / Other Users of the Sea

The project site is within 10 meters of two Royal Yachting Association (RYA) cruising routes. Consideration should be given to the potential impacts arising from the construction and operation of this project upon such recreational users of the Swale. The MMO request that this is taken into account in the resulting ES and that the RYA are consulted on any pre-application advice and/or any questions the developer may have regarding the drafting of the ES.

10. Water Quality

It is proposed that an outfall will be used to facilitate discharging into The Swale. The MMO welcomes the intention to consider impacts to water quality arising from the

construction and operational phases of this project. Consideration should include the potential impacts to the water body status of the Swale Estuary (part of the wider Thames River Basin Management Plan) with regard to the Water Framework Directive. The MMO also request that they, along with The Environment Agency (EA), are consulted should the developer require any pre-application advice and/or have any questions regarding the drafting of the ES.

11. Habitats Regulations Assessment

As set out in section 6 of this response (Nature Conservation), there are a number of designated sites in the vicinity of the project site. In order for the impacts to these sites to be fully assessed, sufficient evidence should be provided within the ES as to the potential extent of impacts on the European designated sites as a result of the construction and operation of the project and any relevant mitigation measures. In this respect, measures to monitor water quality and processes in place to minimise any hydrological changes are of particular interest.

12. Cumulative Impacts

Whilst the applicant has covered all cumulative impacts that are known these should continue to be monitored and any new projects that come about should also be considered.

13. Conclusion

The topics highlighted in this scoping opinion should be assessed during the EIA process and the outcome of these assessments should be documented in the ES in support of the Marine Licence Application and the planning application(s). This statement, however, should not necessarily be seen as a definitive list of all EIA requirements. Given the scale and programme of these planned works, other assessments may prove necessary.

The MMO welcome further consultation and recommend that Christopher LeCointe contact them at the earliest opportunity to discuss licensing requirements under the 2009 act, including the process of obtaining a Deemed Marine Licence.

Should you have any further questions or wish to discuss the matter further, please do not hesitate to contact me directly quoting the reference above.

Yours sincerely,

Heather Hamilton
Marine Licensing Case Officer
9 January 2017



Ministry
of Defence

Defence Infrastructure Organisation

Safeguarding Department
Statutory & Offshore

Alison Down
The Planning Inspectorate
3D Eagle Wing
Temple Quay House
2 The Square
Bristol BS1 6PN

Defence Infrastructure Organisation
Kingston Road
Sutton Coldfield
West Midlands
B75 7RL

Tel: +44 (0)121 311 3818 Tel (MOD): 94421 3818

Fax: +44 (0)121 311 2218

E-mail: DIO-safeguarding-statutory@mod.uk

www.mod.uk/DIO

15 December 2016

Your Reference: 161212_EN010083
Our reference: 10038247

Dear Sir/ Madam

MOD Safeguarding – SITE OUTSIDE SAFEGUARDING AREA

Proposal: Application by K3 CHP Limited for an Order Granting Development Consent for the proposed Wheelabrator Kemsley Generating Station Power Upgrade

Location: Sustainable Energy Plant, Kelmsley Paper Mill, Sittingbourne, Kent

Grid Ref: 591668, 166805

Thank you for consulting Defence Infrastructure Organisation (DIO) on the above proposed development. This application relates to a site outside of Ministry of Defence (MOD) statutory safeguarding areas. We can therefore confirm that the MOD has no safeguarding objections to this proposal.

In the interests of air safety, the MOD requests that the structure is fitted with aviation warning lighting. The mast should be fitted with a minimum intensity 25 candela omni directional flashing red light or equivalent infra-red light fitted at the highest practicable point of the structure.

Whilst we have no safeguarding objections to this application, the height of the development will necessitate that aeronautical charts and mapping records are amended. Defence Infrastructure Organisation (DIO) Safeguarding therefore requests that, as a condition of any planning permission granted, the developer must notify UK DVOF & Powerlines at the Defence Geographic Centre with the following information prior to development commencing:

- a. Precise location of development.
- b. Date of commencement of construction.
- c. Date of completion of construction.
- d. The height above ground level of the tallest structure.

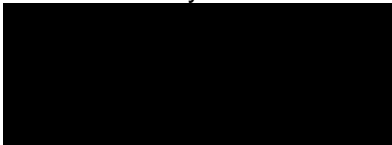
- e. The maximum extension height of any construction equipment.
- f. Details of aviation warning lighting fitted to the structure(s)

This information can be sent by e-mail to the Defence Geographic Centre at: dvof@mod.uk, or post it to:

D-UKDVOF & Power Lines
Geospatial Air Information Team
Defence Geographic Centre
DGIA
Elmwood Avenue
Feltham
Middlesex
TW13 7AH

I trust this adequately explains our position, however should you have any questions regarding this matter please do not hesitate to contact me.

Yours sincerely

A solid black rectangular box used to redact the signature of Debbie Baker.

Debbie baker

Sent electronically to:

environmentalservices@pins.gsi.gov.uk

Nick Dexter
DCO Liaison Officer
Land & Business Support

Nicholas.dexter@nationalgrid.com
Tel: +44 (0)7917 791925

www.nationalgrid.com

06th January 2017

Dear Sir / Madam,

Ref: ENO10083 – Wheelabrator Kemsley Generating Station Power Upgrade – EIA Scoping Notification and Consultation

This is a joint response on behalf of National Grid Electricity Transmission Plc (NGET), National Grid Gas Plc (NGG) and National Grid Gas Distribution Limited (NGGDL). I refer to your letter dated 12th December 2016 in relation to the Wheelabrator Kemsley Generating Station Power Upgrade EIA Scoping Notification and Consultation. Having reviewed the Scoping Report, I would like to make the following comments:

National Grid infrastructure within / in close proximity to the order boundary

Electricity Transmission

NGET does not have any infrastructure within close proximity to the proposed order limits.

Gas Transmission


NGG does not have any infrastructure within close proximity to the proposed order limits.

Gas Distribution

NGGDL does not have any infrastructure within close proximity to the proposed order limits.

I hope the above information is useful. If you require any further information please do not hesitate to contact me.

Yours Faithfully



Nick Dexter.

From: [ROSSI, Sacha](#)
To: [Environmental Services](#)
Cc: [NATS Safeguarding](#)
Subject: RE: ENO10083_WHEELABRATOR KEMSLEY GENERATING STATION POWER UPGRADE_EIA SCOPING NOTIFICATION AND CONSULTATION
Date: 15 December 2016 12:47:56

Dear Sir/Madam,

NATS operates no infrastructure within 10km of the proposed development site. Accordingly it anticipates no impact and has no comments to make on the application.

Regards
S. Rossi

Mr Sacha Rossi
NATS Safeguarding Office

☎: 01489 444 205
✉: sacha.rossi@nats.co.uk

4000 Parkway,
Whiteley, PO15 7FL

<http://www.nats.co.uk/windfarms>

From: Environmental Services [<mailto:environmentalservices@pins.gsi.gov.uk>]
Sent: 12 December 2016 15:27
Subject: ENO10083_WHEELABRATOR KEMSLEY GENERATING STATION POWER UPGRADE_EIA SCOPING NOTIFICATION AND CONSULTATION

Dear Sir/Madam

Please see attached correspondence on the proposed Wheelabrator Kemsley Generating Station Power Upgrade.

Please note the deadline for consultation responses is 9 January 2017 and is a statutory requirement that cannot be extended.

Kind regards.
Alison L Down
EIA & Land Rights Advisor – Environmental Services Team
Major Applications and Plans
The Planning Inspectorate, 3D Eagle, Temple Quay House, Temple Quay,
Bristol, BS1 6PN

Twitter: [@PINSgov](#)

Helpline: 0303 444 5000

Email: environmentalServices@pins.gsi.gov.uk

This communication does not constitute legal advice.
Please view our [Information Charter](#) before sending information to the Planning Inspectorate.

[This email and any files transmitted with it are private and intended solely](#)

for the use of the individual or entity to which they are addressed. If you are not the intended recipient the E-mail and any files have been transmitted to you in error and any copying, distribution or other use of the information contained in them is strictly prohibited.

Nothing in this E-mail message amounts to a contractual or other legal commitment on the part of the Government unless confirmed by a communication signed on behalf of the Secretary of State.

The Department's computer systems may be monitored and communications carried on them recorded, to secure the effective operation of the system and for other lawful purposes.

Correspondents should note that all communications from Department for Communities and Local Government may be automatically logged, monitored and/or recorded for lawful purposes.

If you are not the intended recipient, please notify our Help Desk at Email Information.Solutions@nats.co.uk immediately. You should not copy or use this email or attachment(s) for any purpose nor disclose their contents to any other person.

NATS computer systems may be monitored and communications carried on them recorded, to secure the effective operation of the system.

Please note that neither NATS nor the sender accepts any responsibility for viruses or any losses caused as a result of viruses and it is your responsibility to scan or otherwise check this email and any attachments.

NATS means NATS (En Route) plc (company number: 4129273), NATS (Services) Ltd (company number 4129270), NATSNAV Ltd (company number: 4164590) or NATS Ltd (company number 3155567) or NATS Holdings Ltd (company number 4138218). All companies are registered in England and their registered office is at 4000 Parkway, Whiteley, Fareham, Hampshire, PO15 7FL.

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

Date: 09 January 2017
Our ref: 203889
Your ref: 161212_EN010083



Alison Down
The Planning Inspectorate
3D Eagle Wing
Temple Quay House
2 The Square
Bristol BS1 6PN

Customer Services
Hornbeam House
Crew e Business Park
Electra Way
Crew e
Cheshire
CW1 6GJ

T 0300 060 3900

BY EMAIL ONLY

environmentalservices@pins.gsi.gov.uk

Dear Ms Down

Planning Act 2008 (as amended) and The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) – Regulations 8 and 9

Application by K3 CHP Limited for an Order Granting Development Consent for the proposed Wheelabrator Kemsley Generating Station Power Upgrade

Thank you for seeking our advice on the scope of the Environmental Statement (ES) in your consultation dated 12 December 2016 which we received 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.

Case law¹ and guidance² has stressed the need for a full set of environmental information to be available for consideration prior to a decision being taken on whether or not to grant planning permission. Annex A to this letter provides Natural England's advice on the scope of the Environmental Impact Assessment (EIA) for this development.

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 Alison Giacomelli on 0208 225 7693. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.

Yours sincerely

Alison Giacomelli
Sussex and Kent Area Team

¹ Harrison, J in *R. v. Cornwall County Council ex parte Hardy* (2001)

² *Note on Environmental Impact Assessment Directive for Local Planning Authorities* Office of the Deputy Prime Minister (April 2004) available from

<http://webarchive.nationalarchives.gov.uk/http://www.communities.gov.uk/planningandbuilding/planning/sustainability/environmental/environmentalimpactassessment/noteenvironmental/>

Annex A – Advice related to EIA Scoping Requirements

1. General Principles

Schedule 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, sets out the necessary information to assess impacts on the natural environment to be included in an ES, specifically:

- A description of the development – including physical characteristics and the full land use requirements of the site during construction and operational phases.
- Expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.
- An assessment of alternatives and clear reasoning as to why the preferred option has been chosen.
- A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.
- A description of the likely significant effects of the development on the environment – this should cover direct effects but also any indirect, secondary, cumulative, short, medium and long term, permanent and temporary, positive and negative effects. Effects should relate to the existence of the development, the use of natural resources and the emissions from pollutants. This should also include a description of the forecasting methods to predict the likely effects on the environment.
- A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
- A non-technical summary of the information.
- An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

It will be important for any assessment to consider the potential cumulative effects of this proposal, including all supporting infrastructure, with other similar proposals and a thorough assessment of the 'in combination' effects of the proposed development with any existing developments and current applications. A full consideration of the implications of the whole scheme should be included in the ES. All supporting infrastructure should be included within the assessment.

Natural England welcomes the approach to the EIA process as set out in Section 5 of the EIA Scoping Report (December 2016). In terms of the baseline environmental conditions against which to assess the impacts of the proposal, the approach set out in paragraph 5.7-5.10 of the EIA Scoping Report, whereby impacts against the current baseline (March 2017) and the future baseline (in opening year of operation with and without the consented generating station), is sensible.

2. Biodiversity and Geology

2.1 Ecological Aspects of an Environmental Statement

Natural England advises that the potential impact of the proposal upon features of nature conservation interest and opportunities for habitat creation/enhancement should be included within this assessment in accordance with appropriate guidance on such matters. Guidelines for Ecological Impact Assessment (EclA) have been developed by the Chartered Institute of Ecology and Environmental Management (CIEEM) and are available on their website.

EclA is the process of identifying, quantifying and evaluating the potential impacts of defined actions on ecosystems or their components. EclA may be carried out as part of the EIA process or to support other forms of environmental assessment or appraisal.

The National Planning Policy Framework sets out guidance in S.118 on how to take account of biodiversity interests in planning decisions and the framework that local authorities should provide to assist developers.

2.2 Internationally and Nationally Designated Sites

The ES should thoroughly assess the potential for the proposal to affect designated sites. European sites (eg designated Special Areas of Conservation and Special Protection Areas) fall within the scope of the Conservation of Habitats and Species Regulations 2010. In addition paragraph 118 of the National Planning Policy Framework requires that potential Special Protection Areas, possible Special Areas of Conservation, listed or proposed Ramsar sites, and any site identified as being necessary to compensate for adverse impacts on classified, potential or possible SPAs, SACs and Ramsar sites be treated in the same way as classified sites.

Under Regulation 61 of the Conservation of Habitats and Species Regulations 2010 an appropriate assessment needs to be undertaken in respect of any plan or project which is (a) likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and (b) not directly connected with or necessary to the management of the site.

Should a Likely Significant Effect on a European/Internationally designated site be identified or be uncertain, the competent authority may need to prepare an Appropriate Assessment, in addition to consideration of impacts through the EIA process.

Sites of Special Scientific Interest (SSSIs) and sites of European or international importance (Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites)

The development site is in close proximity to the following designated nature conservation sites:

- The Swale SPA/Ramsar/SSSI
- The Swale Estuary Marine Conservation Zone (MCZ)
- Medway Estuary and Marshes SPA/Ramsar/SSSI
- Queendown Warren SAC/SSSI
- Further information on the SSSIs and their special interest features can be found at www.magic.gov. The Environmental Statement should include a full assessment of the direct and indirect effects of the development on the features of special interest within these sites and should identify such mitigation measures as may be required in order to avoid, minimise or reduce any adverse significant effects.
- Natura 2000 network site conservation objectives are available on our internet site <http://publications.naturalengland.org.uk/category/6490068894089216>

The sites above are sensitive to the following impacts, which should be considered in the EIA:

- Construction disturbance
- Disturbance during operation, including from noise, visual intrusion and lighting
- Water quality and hydrological impacts on adjacent habitats
- Air pollution impacts on Queendown Warren SAC/SSSI

Natural England notes that the project that will be subject to EIA (described at paragraph 4.8 of the EIA Scoping Report) includes the consented Wheelabrator Kemsley Generating Station, the power upgrade, and the adjacent IBA Recycling Facility (which will be determined by Kent County Council). We have already advised on the applications for the consented Generating Station and the IBA Recycling Facility. The EIA for the whole project will have to determine whether the avoidance and mitigation measures included in the consented Generating Station and IBA Recycling Facility

applications are sufficient, or whether further measures are required to address any additional impacts from the power upgrade.

2.3 Regionally and Locally Important Sites

The EIA will need to consider any impacts upon local wildlife and geological sites. Local Sites are identified by the local wildlife trust, geoconservation group or a local forum established for the purposes of identifying and selecting local sites. They are of county importance for wildlife or geodiversity. The Environmental Statement should therefore include an assessment of the likely impacts on the wildlife and geodiversity interests of such sites. The assessment should include proposals for mitigation of any impacts and if appropriate, compensation measures. Contact the local wildlife trust, geoconservation group or local sites body in this area for further information.

2.4 Protected Species - Species protected by the Wildlife and Countryside Act 1981 (as amended) and by the Conservation of Habitats and Species Regulations 2010

The ES should assess the impact of all phases of the proposal on protected species (including, for example, great crested newts, reptiles, birds, water voles, badgers and bats). Natural England does not hold comprehensive information regarding the locations of species protected by law, but advises on the procedures and legislation relevant to such species. Records of protected species should be sought from appropriate local biological record centres, nature conservation organisations, groups and individuals; and consideration should be given to the wider context of the site for example in terms of habitat linkages and protected species populations in the wider area, to assist in the impact assessment.

The conservation of species protected by law is explained in Part IV and Annex A of Government Circular 06/2005 *Biodiversity and Geological Conservation: Statutory Obligations and their Impact within the Planning System*. The area likely to be affected by the proposal should be thoroughly surveyed by competent ecologists at appropriate times of year for relevant species and the survey results, impact assessments and appropriate accompanying mitigation strategies included as part of the ES.

In order to provide this information there may be a requirement for a survey at a particular time of year. Surveys should always be carried out in optimal survey time periods and to current guidance by suitably qualified and where necessary, licensed, consultants. Natural England has adopted [standing advice](#) for protected species which includes links to guidance on survey and mitigation.

2.5 Habitats and Species of Principal Importance

The ES should thoroughly assess the impact of the proposals on habitats and/or species listed as 'Habitats and Species of Principal Importance' within the England Biodiversity List, published under the requirements of S41 of the Natural Environment and Rural Communities (NERC) Act 2006. Section 40 of the NERC Act 2006 places a general duty on all public authorities, including local planning authorities, to conserve and enhance biodiversity. Further information on this duty is available here <https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>.

Government Circular 06/2005 states that Biodiversity Action Plan (BAP) species and habitats, 'are capable of being a material consideration...in the making of planning decisions'. Natural England therefore advises that survey, impact assessment and mitigation proposals for Habitats and Species of Principal Importance should be included in the ES. Consideration should also be given to those species and habitats included in the relevant Local BAP.

Natural England notes that habitat and species surveys have been undertaken to inform the consented Generating Station and the IBA Recycling Facility applications. Our view is that no further habitat surveys are necessary to inform the EIA for the power upgrade. We welcome the fact that breeding bird and wintering intertidal bird surveys were carried out in 2016, in order to update the bird surveys previously undertaken.

The Environmental Statement should include details of:

- Any historical data for the site affected by the proposal (eg from previous surveys);
- Additional surveys carried out as part of this proposal;
- The habitats and species present;
- The status of these habitats and species (eg whether priority species or habitat);
- The direct and indirect effects of the development upon those habitats and species;
- Full details of any mitigation or compensation that might be required.

The development should seek if possible to avoid adverse impact on sensitive areas for wildlife within the site, and if possible provide opportunities for overall wildlife gain.

3. Access and Recreation

Natural England encourages any proposal to incorporate measures to help encourage people to access the countryside for quiet enjoyment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways are to be encouraged. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should be incorporated where appropriate.

Rights of Way, Access land and Coastal access

The EIA should consider potential impacts on access land, public open land, rights of way and coastal access routes in the vicinity of the development. We also recommend reference to the relevant Right of Way Improvement Plans (ROWIP) to identify public rights of way within or adjacent to the proposed site that should be maintained or enhanced.

England Coastal Path

Natural England has a duty to provide coastal access on foot around the whole of the English coast and is aiming to complete this by 2020. This is a new National Trail with an associated margin of land predominantly seawards of this, for the public to access and enjoy. Natural England takes great care in considering the interests of both land owners/occupiers and users of the England Coast Path, aiming to strike a fair balance when working to open a new stretch. We follow an approach set out in the approved [Coastal Access Scheme](#) and all proposals have to be approved by the Secretary of State.

We would encourage any proposed development to include appropriate provision for the England Coast Path to maximise the benefits this can bring to the area. We suggest that the development includes provision for a walking or multi-user route, where practicable and safe. This should not be to the detriment of nature conservation, historic environment, landscape character or affect natural coastal change.

We would welcome discussions as to how this could best be achieved within the development proposals. We would also be happy to provide suggestions as to the most appropriate areas for coastal access on site. To find out progress of the England Coast Path in your area, visit the Natural England website [here](#).

4. Air Quality

Air quality in the UK has improved over recent decades but air pollution remains a significant issue; for example over 97% of sensitive habitat area in England is predicted to exceed the critical loads for ecosystem protection from atmospheric nitrogen deposition ([England Biodiversity Strategy](#), Defra 2011). A priority action in the England Biodiversity Strategy is to reduce air pollution impacts on biodiversity. The planning system plays a key role in determining the location of developments which may give rise to pollution, either directly or from traffic generation, and hence planning decisions can have a significant impact on the quality of air, water and land. The assessment should take account of the risks of air pollution and how these can be managed or reduced. Further information on air pollution impacts and the sensitivity of different habitats/designated sites can be

found on the Air Pollution Information System (www.apis.ac.uk). Further information on air pollution modelling and assessment can be found on the Environment Agency website.

5. Climate Change Adaptation

The [England Biodiversity Strategy](#) published by Defra establishes principles for the consideration of biodiversity and the effects of climate change. The ES should reflect these principles and identify how the development's effects on the natural environment will be influenced by climate change, and how ecological networks will be maintained. The NPPF requires that the planning system should contribute to the enhancement of the natural environment 'by establishing coherent ecological networks that are more resilient to current and future pressures' ([NPPF](#) Para 109), which should be demonstrated through the ES.

6. Cumulative and in-combination effects

A full consideration of the implications of the whole scheme should be included in the ES. All supporting infrastructure should be included within the assessment.

The ES should include an impact assessment to identify, describe and evaluate the effects that are likely to result from the project in combination with other projects and activities that are being, have been or will be carried out. The following types of projects should be included in such an assessment, (subject to available information):

- a. existing completed projects;
- b. approved but uncompleted projects;
- c. ongoing activities;
- d. plans or projects for which an application has been made and which are under consideration by the consenting authorities; and
- e. plans and projects which are reasonably foreseeable, ie projects for which an application has not yet been submitted, but which are likely to progress before completion of the development and for which sufficient information is available to assess the likelihood of cumulative and in-combination effects.



Public Health
England

CRCE/NSIP Consultations T +44 (0) 1235 825278
Chilton F +44 (0) 1235 822614
Didcot
Oxfordshire OX11 0RQ www.gov.uk/phe

Ms Alison Down
EIA & Land Rights Advisor –
Environmental Services Team
Major Applications and Plans
The Planning Inspectorate
3D Eagle, Temple Quay House
Temple Quay,
Bristol,
BS1 6PN

Your Ref : 161212_EN01008

Our Ref : 29567

6th January 2017

Dear Ms Down,

**Re: Scoping Consultation
Application for an Order Granting Development Consent for the
proposed Wheelabrator Kemsley Generating Station Power Upgrade**

Thank you for including Public Health England (PHE) in the scoping consultation phase of the above application. Our response focuses on health protection issues relating to chemicals and radiation. Advice offered by PHE is impartial and independent.

We understand that the promoter will wish to avoid unnecessary duplication and that many issues including air quality, emissions to water, waste, contaminated land etc. will be covered elsewhere in the Environmental Statement (ES). PHE however believes the summation of relevant issues into a specific section of the report provides a focus which ensures that public health is given adequate consideration. The section should summarise key information, risk assessments, proposed mitigation measures, conclusions and residual impacts, relating to human health. Compliance with the requirements of National Policy Statements and relevant guidance and standards should also be highlighted.

In terms of the level of detail to be included in an ES, we recognise that the differing nature of projects is such that their impacts will vary. Any assessments undertaken to inform the ES should be proportionate to the potential impacts of the proposal, therefore we accept that, in some circumstances particular assessments may not be relevant to an application, or that an assessment may be adequately completed using a qualitative rather than quantitative methodology. In cases where this decision is made the promoters should fully explain and justify their rationale in the submitted documentation.

It is noted that the current proposals do not appear to consider possible health impacts of Electric and Magnetic Fields (EMF). The proposer should confirm either that the proposed development does include or impact upon any potential sources of EMF; or ensure that an adequate assessment of the possible impacts is undertaken and included in the ES.

The attached appendix outlines generic areas that should be addressed by all promoters when preparing ES for inclusion with an NSIP submission. We are happy to assist and discuss proposals further in the light of this advice.

Yours sincerely,

Environmental Public Health Scientist
nsipconsultations@phe.gov.uk

Please mark any correspondence for the attention of National Infrastructure Planning Administration.

Appendix: PHE recommendations regarding the scoping document

General approach

The EIA should give consideration to best practice guidance such as the Government's Good Practice Guide for EIA¹. It is important that the EIA identifies and assesses the potential public health impacts of the activities at, and emissions from, the installation. Assessment should consider the development, operational, and decommissioning phases.

It is not PHE's role to undertake these assessments on behalf of promoters as this would conflict with PHE's role as an impartial and independent body.

Consideration of alternatives (including alternative sites, choice of process, and the phasing of construction) is widely regarded as good practice. Ideally, EIA should start at the stage of site and process selection, so that the environmental merits of practicable alternatives can be properly considered. Where this is undertaken, the main alternatives considered should be outlined in the ES².

The following text covers a range of issues that PHE would expect to be addressed by the promoter. However this list is not exhaustive and the onus is on the promoter to ensure that the relevant public health issues are identified and addressed. PHE's advice and recommendations carry no statutory weight and constitute non-binding guidance.

Receptors

The ES should clearly identify the development's location and the location and distance from the development of off-site human receptors that may be affected by emissions from, or activities at, the development. Off-site human receptors may include people living in residential premises; people working in commercial, and industrial premises and people using transport infrastructure (such as roads and railways), recreational areas, and publicly-accessible land. Consideration should also be given to environmental receptors such as the surrounding land, watercourses, surface and groundwater, and drinking water supplies such as wells, boreholes and water abstraction points.

Impacts arising from construction and decommissioning

Any assessment of impacts arising from emissions due to construction and decommissioning should consider potential impacts on all receptors and describe monitoring and mitigation during these phases. Construction and decommissioning will be associated with vehicle movements and cumulative impacts should be accounted for.

We would expect the promoter to follow best practice guidance during all phases from construction to decommissioning to ensure appropriate measures are in place

¹ Environmental Impact Assessment: A guide to good practice and procedures - A consultation paper; 2006; Department for Communities and Local Government. Available from: <http://webarchive.nationalarchives.gov.uk/20100410180038/http://communities.gov.uk/planningandbuilding/planning/sustainability/environmental/environmentalimpactassessment/>

² DCLG guidance, 1999 <http://www.communities.gov.uk/documents/planningandbuilding/pdf/155958.pdf>

to mitigate any potential impact on health from emissions (point source, fugitive and traffic-related). An effective Construction Environmental Management Plan (CEMP) (and Decommissioning Environmental Management Plan (DEMP)) will help provide reassurance that activities are well managed. The promoter should ensure that there are robust mechanisms in place to respond to any complaints of traffic-related pollution, during construction, operation, and decommissioning of the facility.

Emissions to air and water

Significant impacts are unlikely to arise from installations which employ Best Available Techniques (BAT) and which meet regulatory requirements concerning emission limits and design parameters. However, PHE has a number of comments regarding emissions in order that the EIA provides a comprehensive assessment of potential impacts.

When considering a baseline (of existing environmental quality) and in the assessment and future monitoring of impacts these:

- should include appropriate screening assessments and detailed dispersion modelling where this is screened as necessary
- should encompass all pollutants which may be emitted by the installation in combination with all pollutants arising from associated development and transport, ideally these should be considered in a single holistic assessment
- should consider the construction, operational, and decommissioning phases
- should consider the typical operational emissions and emissions from start-up, shut-down, abnormal operation and accidents when assessing potential impacts and include an assessment of worst-case impacts
- should fully account for fugitive emissions
- should include appropriate estimates of background levels
- should identify cumulative and incremental impacts (i.e. assess cumulative impacts from multiple sources), including those arising from associated development, other existing and proposed development in the local area, and new vehicle movements associated with the proposed development; associated transport emissions should include consideration of non-road impacts (i.e. rail, sea, and air)
- should include consideration of local authority, Environment Agency, Defra national network, and any other local site-specific sources of monitoring data
- should compare predicted environmental concentrations to the applicable standard or guideline value for the affected medium (such as UK Air Quality Standards and Objectives and Environmental Assessment Levels)
 - If no standard or guideline value exists, the predicted exposure to humans should be estimated and compared to an appropriate health-based value (a Tolerable Daily Intake or equivalent). Further guidance is provided in Annex 1
 - This should consider all applicable routes of exposure e.g. include consideration of aspects such as the deposition of chemicals emitted to air and their uptake via ingestion
- should identify and consider impacts on residential areas and sensitive receptors (such as schools, nursing homes and healthcare facilities) in the area(s) which may be affected by emissions, this should include consideration of any new receptors arising from future development

Whilst screening of impacts using qualitative methodologies is common practice (e.g. for impacts arising from fugitive emissions such as dust), where it is possible to undertake a quantitative assessment of impacts then this should be undertaken. PHE's view is that the EIA should appraise and describe the measures that will be used to control both point source and fugitive emissions and demonstrate that standards, guideline values or health-based values will not be exceeded due to emissions from the installation, as described above. This should include consideration of any emitted pollutants for which there are no set emission limits. When assessing the potential impact of a proposed installation on environmental quality, predicted environmental concentrations should be compared to the permitted concentrations in the affected media; this should include both standards for short and long-term exposure.

Additional points specific to emissions to air

When considering a baseline (of existing air quality) and in the assessment and future monitoring of impacts these:

- should include consideration of impacts on existing areas of poor air quality e.g. existing or proposed local authority Air Quality Management Areas (AQMAs)
- should include modelling using appropriate meteorological data (i.e. come from the nearest suitable meteorological station and include a range of years and worst case conditions)
- should include modelling taking into account local topography

Additional points specific to emissions to water

When considering a baseline (of existing water quality) and in the assessment and future monitoring of impacts these:

- should include assessment of potential impacts on human health and not focus solely on ecological impacts
- should identify and consider all routes by which emissions may lead to population exposure (e.g. surface watercourses; recreational waters; sewers; geological routes etc.)
- should assess the potential off-site effects of emissions to groundwater (e.g. on aquifers used for drinking water) and surface water (used for drinking water abstraction) in terms of the potential for population exposure
- should include consideration of potential impacts on recreational users (e.g. from fishing, canoeing etc) alongside assessment of potential exposure via drinking water

Land quality

We would expect the promoter to provide details of any hazardous contamination present on site (including ground gas) as part of the site condition report.

Emissions to and from the ground should be considered in terms of the previous history of the site and the potential of the site, once operational, to give rise to issues. Public health impacts associated with ground contamination and/or the migration of material off-site should be assessed³ and the potential impact on nearby receptors and control and mitigation measures should be outlined.

³ Following the approach outlined in the section above dealing with emissions to air and water i.e. comparing predicted environmental concentrations to the applicable standard or guideline value for the affected medium (such as Soil Guideline Values)

Relevant areas outlined in the Government's Good Practice Guide for EIA include:

- effects associated with ground contamination that may already exist
- effects associated with the potential for polluting substances that are used (during construction / operation) to cause new ground contamination issues on a site, for example introducing / changing the source of contamination
- impacts associated with re-use of soils and waste soils, for example, re-use of site-sourced materials on-site or offsite, disposal of site-sourced materials offsite, importation of materials to the site, etc.

Waste

The EIA should demonstrate compliance with the waste hierarchy (e.g. with respect to re-use, recycling or recovery and disposal).

For wastes arising from the installation the EIA should consider:

- the implications and wider environmental and public health impacts of different waste disposal options
- disposal route(s) and transport method(s) and how potential impacts on public health will be mitigated

Other aspects

Within the EIA PHE would expect to see information about how the promoter would respond to accidents with potential off-site emissions e.g. flooding or fires, spills, leaks or releases off-site. Assessment of accidents should: identify all potential hazards in relation to construction, operation and decommissioning; include an assessment of the risks posed; and identify risk management measures and contingency actions that will be employed in the event of an accident in order to mitigate off-site effects.

The EIA should include consideration of the COMAH Regulations (Control of Major Accident Hazards) and the Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009: both in terms of their applicability to the installation itself, and the installation's potential to impact on, or be impacted by, any nearby installations themselves subject to the these Regulations.

There is evidence that, in some cases, perception of risk may have a greater impact on health than the hazard itself. A 2009 report⁴, jointly published by Liverpool John Moores University and the HPA, examined health risk perception and environmental problems using a number of case studies. As a point to consider, the report suggested: "Estimation of community anxiety and stress should be included as part of every risk or impact assessment of proposed plans that involve a potential environmental hazard. This is true even when the physical health risks may be negligible." PHE supports the inclusion of this information within EIAs as good practice.

Electromagnetic fields (EMF)

⁴ Available from: <http://www.cph.org.uk/wp-content/uploads/2012/08/health-risk-perception-and-environmental-problems--summary-report.pdf>

This statement is intended to support planning proposals involving electrical installations such as substations, underground cables and overhead lines. PHE advice on the health effects of power frequency electric and magnetic fields is available in the following link:

<https://www.gov.uk/government/collections/electromagnetic-fields#low-frequency-electric-and-magnetic-fields>

There is a potential health impact associated with exposure to the electric and magnetic fields produced around substations, power lines and cables. The following information provides a framework for considering the health impact, including the direct and indirect effects of exposure.

Policy Measures for the Electricity Industry

In 2004, the Government adopted the exposure guidelines published in 1998 by the International Commission on Non-Ionizing Radiation Protection (ICNIRP) within the framework of the 1999 EU Council Recommendation on limiting exposure of the general public (1999/519/EC). In 2009, one additional precautionary policy was introduced relating to the optimum phasing of high-voltage power lines. The National Policy Statement for Electricity Network Infrastructure EN-5 confirms these policies, and the Department of Energy and Climate Change (DECC) has published two accompanying Codes of Practice, agreed between the Energy Network Association and the Government, which specify how the guideline compliance and the optimum phasing requirements are implemented:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37447/1256-code-practice-emf-public-exp-guidelines.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48309/1255-code-practice-optimum-phasing-power-lines.pdf

A companion code of practice dealing with indirect effects of exposure to power frequency electric fields is also available:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224766/powerlines_vcop_microshocks.pdf

Exposure Guidelines

PHE recommends the adoption in the UK of the EMF exposure guidelines published by the International Commission on Non-ionizing Radiation Protection (ICNIRP). Formal advice to this effect was published by one of PHE's predecessor organisations (NRPB) in 2004 based on an accompanying comprehensive review of the scientific evidence:-

<http://webarchive.nationalarchives.gov.uk/20140629102627/http://www.hpa.org.uk/Publications/Radiation/NPRBArchive/DocumentsOfTheNRPB/Absd1502/>

Updates to the ICNIRP guidelines for static fields have been issued in 2009 and for low frequency fields in 2010. However, the Government policy is that the ICNIRP guidelines are implemented in line with the terms of the 1999 EU Council Recommendation on limiting exposure of the general public (1999/519/EC):

http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Publichealth/Healthprotection/DH_4089500

Static magnetic fields

For static magnetic fields, the ICNIRP guidelines published in 2009 recommend that acute exposure of the general public should not exceed 400 mT (millitesla), for any part of the body, although the previously recommended value of 40 mT is the value used in the Council Recommendation. However, because of potential indirect adverse effects, ICNIRP recognises that practical policies need to be implemented to prevent inadvertent harmful exposure of people with implanted electronic medical devices and implants containing ferromagnetic materials, and injuries due to flying ferromagnetic objects, and these considerations can lead to much lower restrictions, such as 0.5 mT.

Power frequency electric and magnetic fields

At 50 Hz, the known direct effects include those of induced currents in the body on the central nervous system (CNS) and indirect effects include the risk of painful spark discharge on contact with metal objects exposed to the field. The ICNIRP guidelines published in 1998 give reference levels for public exposure to 50 Hz electric and magnetic fields, and these are respectively 5 kV m⁻¹ (kilovolts per metre) and 100 µT (microtesla). The reference level for magnetic fields changes to 200 µT in the revised (ICNIRP 2010) guidelines because of new basic restrictions based on induced electric fields inside the body, rather than induced current density. If people are not exposed to field strengths above these levels, direct effects on the CNS should be avoided and indirect effects such as the risk of painful spark discharge will be small. The reference levels are not in themselves limits but provide guidance for assessing compliance with the basic restrictions and reducing the risk of indirect effects.

Long term effects

There is concern about the possible effects of long-term exposure to electromagnetic fields, including possible carcinogenic effects at levels much lower than those given in the ICNIRP guidelines. In the NRPB advice issued in 2004, it was concluded that the studies that suggest health effects, including those concerning childhood leukaemia, could not be used to derive quantitative guidance on restricting exposure. However, the results of these studies represented uncertainty in the underlying evidence base, and taken together with people's concerns, provided a basis for providing an additional recommendation for Government to consider the need for further precautionary measures, particularly with respect to the exposure of children to power frequency magnetic fields.

The Stakeholder Advisory Group on ELF EMFs (SAGE)

SAGE was set up to explore the implications for implementing precautionary measures for extremely low frequency electric and magnetic fields (ELF EMFs), and to make practical recommendations to Government:

<http://www.emfs.info/policy/sage/>

SAGE published its First Interim Assessment in 2007, recommending various low cost measures aimed at reducing exposure. One of the recommendations was the introduction of optimal phasing of dual circuit high voltage power lines, which the Government supported in its response published in 2009. Government was also asked to consider the option to create corridors adjacent to high voltage power lines on health grounds; however, this was not supported as it was regarded to be disproportionate given the evidence base on the potential health risks arising from exposure. The full Government response to SAGE's First Interim Assessment is available here:

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_107124

SAGE also called for more information to be made available to the public on the possible health consequences of power frequency electric and magnetic fields, and the Health Protection Agency developed new web material, which is available here:

<http://webarchive.nationalarchives.gov.uk/20140629102627/http://www.hpa.org.uk/Topics/Radiation/UnderstandingRadiation/UnderstandingRadiationTopics/ElectromagneticFields/ElectricAndMagneticFields/>

Liaison with other stakeholders, comments should be sought from:

- the local authority for matters relating to noise, odour, vermin and dust nuisance
- the local authority regarding any site investigation and subsequent construction (and remediation) proposals to ensure that the site could not be determined as 'contaminated land' under Part 2A of the Environmental Protection Act
- the local authority regarding any impacts on existing or proposed Air Quality Management Areas
- the Food Standards Agency for matters relating to the impact on human health of pollutants deposited on land used for growing food/ crops
- the Environment Agency for matters relating to flood risk and releases with the potential to impact on surface and groundwaters
- the Environment Agency for matters relating to waste characterisation and acceptance
- the Clinical Commissioning Groups, NHS commissioning Boards and Local Planning Authority for matters relating to wider public health

Environmental Permitting

Amongst other permits and consents, the development will require an environmental permit from the Environment Agency to operate (under the Environmental Permitting (England and Wales) Regulations 2010). Therefore the installation will need to

comply with the requirements of best available techniques (BAT). PHE is a consultee for bespoke environmental permit applications and will respond separately to any such consultation.

Annex 1

Human health risk assessment (chemical pollutants)

The points below are cross-cutting and should be considered when undertaking a human health risk assessment:

- The promoter should consider including Chemical Abstract Service (CAS) numbers alongside chemical names, where referenced in the ES
- Where available, the most recent United Kingdom standards for the appropriate media (e.g. air, water, and/or soil) and health-based guideline values should be used when quantifying the risk to human health from chemical pollutants. Where UK standards or guideline values are not available, those recommended by the European Union or World Health Organisation can be used
- When assessing the human health risk of a chemical emitted from a facility or operation, the background exposure to the chemical from other sources should be taken into account
- When quantitatively assessing the health risk of genotoxic and carcinogenic chemical pollutants PHE does not favour the use of mathematical models to extrapolate from high dose levels used in animal carcinogenicity studies to well below the observed region of a dose-response relationship. When only animal data are available, we recommend that the 'Margin of Exposure' (MOE) approach⁵ is used

⁵ Benford D et al. 2010. Application of the margin of exposure approach to substances in food that are genotoxic and carcinogenic. Food Chem Toxicol 48 Suppl 1: S2-24



Wheelabrator Kemsley Generating Station Power Upgrade – proposed development by K3 CHP Limited

Royal Mail Group Limited comments on information to be provided in applicant's Environmental Statement

Introduction

Reference the letter from PINS to Royal Mail dated 12 December 2016 requesting Royal Mail's comments on information that should be provided in K3 CHP Limited's Environmental Statement.

Royal Mail's consultants BNP Paribas Real Estate have reviewed the applicant's Scoping Report dated December 2016.

Royal Mail-relevant information

Royal Mail is responsible for providing efficient mail sorting and delivery nationally. As the Universal Service Provider under the Postal Services Act 2011, Royal Mail has a statutory duty to deliver mail to every residential and business address in the country as well as collecting mail from all Post Offices and post boxes six days a week.

Royal Mail's postal sorting and delivery operations rely heavily on road communications. Royal Mail's ability to provide efficient mail collection, sorting and delivery to the public is sensitive to changes in the capacity of the highway network.

Royal Mail is a major road user nationally. Disruption to the highway network and traffic delays can have direct consequences on Royal Mail's operations, to meet the Universal Service Obligation and comply with the regulatory regime for postal services thereby presenting a significant risk to Royal Mail's business.

Royal Mail has operational facilities in Sittingbourne, Faversham, Sheerness and Gillingham as well as all other main settlements in Kent. In exercising its statutory duties Royal Mail's vehicle use, on a daily basis, all of the main roads that may potentially be affected by additional traffic arising from the construction and operation of the proposed Kemsley Generating Station Power Upgrade.

Royal Mail therefore wishes to ensure the protection of its future ability to provide an efficient mail sorting and delivery service to the public in accordance with its statutory obligations which may be adversely affected by the construction and operation of this proposed scheme.

Royal Mail's comments on information that should be provided in K3 CHP Limited's Environmental Statement

The proposed scope of the work for the EIA states that the traffic and transport assessment will consider:

- 1. An assessment of traffic generated from all phases of the project in the context of a current baseline environment (March 2017), and future baseline environment (2019), when the project is likely to become operational. This will establish whether the existing proposed mitigation is sufficient and whether further mitigation is required.*



2. *An assessment of the predicted effects of traffic arising alongside other developments within the study area. For the assessment of cumulative operational effects, it will be necessary to include developments that are permitted ('committed development') as part of the baseline.*
3. *An assessment scenario that includes the consented Generating Station and IBA Facility (assumed to be permitted, constructed and operational by 2019) as part of the baseline, in order to isolate and understand the environmental effects of the power upgrade alone.*

Generally, this headline scope for the Traffic and Transportation section of the EIA looks adequate to Royal Mail. However, Royal Mail has the following comments / requests:

1. Due to the magnitude of the likely HGV movements in hauling up to 550,000 tonnes of residual waste fuel to the plant each year, additional vehicle movements during the operational phase have potential to be more disruptive to Royal Mail's road operations than those during the construction phase.
2. The scoping report helpfully identifies the need to assess cumulative traffic effects arising from other major developments in the area, but it does not specify what these developments are. Royal Mail considers that very careful attention must be given to the potential for cumulative traffic impact during the construction and operation phases.
3. Royal Mail requests that the Traffic and Transportation section of the EIA includes information on the needs of major road users (such as Royal Mail) and acknowledges the requirement to ensure that major road users are not disrupted through full consultation at the appropriate time in the DCO and development process.

Royal Mail is able to supply the applicant with information on its road usage / trips if required.

Should PINS or K3 CHP Limited have any queries in relation to the above then in the first instance please contact Jennifer Douglas (jennifer.douglas@royalmail.com) of Royal Mail's Legal Services Team or Daniel Parry-Jones (daniel.parry-jones@bnpparibas.com) of BNP Paribas Real Estate.

From: [Ross McCardle](#)
To: [Environmental Services](#)
Subject: FAO Alison Down - ref. 161212_EN010083; Wheelabrator Kemsley, Sittingbourne, Kent.
Date: 03 January 2017 15:28:25
Attachments: [image001.jpg](#)
[image002.jpg](#)

Dear Ms Down,

Thank you for the Scoping Opinion in respect of the above scheme.

I have discussed the proposals with the Council's Environmental Health Manager, and we note that the development differs from that previously granted permission by virtue of an internal change to plant / machinery, and that there is unlikely to be any significant external changes or difference in hours of operation, vehicle movements, waste, etc.

In that regard I can confirm that the Council considers the proposed extent of the ES to be reasonable.

Please let me know if you have any questions or require any further information.

Kind regards,
Ross McCardle.

Ross McCardle | Senior Planner | Development Management
Swale Borough Council | Swale House | East Street | Sittingbourne | Kent ME10 3HT | Tel:
01795 417108 | Email: rossmccardle@swale.gov.uk | www.swale.gov.uk



This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity they are addressed. If you have received this email in error please notify postmaster@swale.gov.uk

From: [Navigation](#)
To: [Environmental Services](#)
Cc: [Thomas Arculus](#); [Nick Dodson](#); [Trevor Harris](#)
Subject: RE: ENO10083_WHEELABRATOR KEMSLEY GENERATING STATION POWER UPGRADE_EIA SCOPING NOTIFICATION AND CONSULTATION
Date: 09 January 2017 10:26:34
Attachments: [Letter to stat cons Scoping AND Reg 9 Notification English.pdf](#)

Good morning Alison,

With reference to your attached letter, we would expect any works to be carried out below the high water mark, such as the new outfall into the Swale Estuary, to be fully risk assessed and so form part of the Environment Statement.

Kindest regards,

Steve Vanstone
Navigation Services Officer
Trinity House

From: Environmental Services [<mailto:environmentalservices@pins.gsi.gov.uk>]
Sent: 12 December 2016 15:43
Subject: ENO10083_WHEELABRATOR KEMSLEY GENERATING STATION POWER UPGRADE_EIA SCOPING NOTIFICATION AND CONSULTATION

Dear Sir/Madam

Please see attached correspondence on the proposed Wheelabrator Kemsley Generating Station Power Upgrade.

Please note the deadline for consultation responses is 9 January 2017 and is a statutory requirement that cannot be extended.

Kind regards.

Alison L Down
EIA & Land Rights Advisor – Environmental Services Team
Major Applications and Plans
The Planning Inspectorate, 3D Eagle, Temple Quay House, Temple Quay,
Bristol, BS1 6PN

Twitter: @PINSgov

Helpline: 0303 444 5000

Email: environmentalServices@pins.gsi.gov.uk

This communication does not constitute legal advice.
Please view our Information Charter before sending information to the Planning Inspectorate.

This email and any files transmitted with it are private and intended solely for the use of the individual or entity to which they are addressed. If you are not the intended recipient the E-mail and any files have been transmitted to you in error and any copying, distribution or other use of the information contained in them is strictly prohibited.

Nothing in this E-mail message amounts to a contractual or other legal commitment on the part of the Government unless confirmed by a communication signed on behalf of the Secretary of State.

The Department's computer systems may be monitored and communications carried on them recorded, to secure the effective operation of the system and for other lawful purposes.

Correspondents should note that all communications from Department for Communities and Local Government may be automatically logged, monitored and/or recorded for lawful purposes.

This communication, together with any files or attachments transmitted with it contains information which is confidential and may be subject to legal privilege and is intended solely for the use by the named recipient. If you are not the intended recipient you must not copy, distribute, publish or take any action in reliance on it. If you have received this communication in error, please notify postmaster@thls.org and delete it from your computer systems. Trinity House reserves the right to monitor all communications for lawful purposes. Receipt of this email does not imply consent to use or provide this email address, or any others contained therein, to any third party for any purposes. The contents of this email are protected under international copyright law. This email originated from the Corporation of Trinity House of Deptford Strond which is incorporated by Royal Charter in England and Wales. The Royal Charter number is RC 000622. The Registered office is Trinity House, Tower Hill, London, EC3N 4DH.

To save energy and paper please print this email only if you really need to.

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>
