



Document 3.1- ES Volume 2

Appendix 3.5 Response to

S42 Consultation

**The Kemsley Mill K4 Combined Heat and
Power Generating Station Development
Consent Order**

April 2018 - Submission Version

PINS Ref: EN010090

Response to the S42 Consultation & S48 Publication

Introduction

The approach taken by the applicant to pre-application consultation and publicity is explained in full in the Consultation Report [Document 5.1] which forms part of the DCO application.

Section 42 of the Planning Act 2008 requires the applicant to consult various prescribed bodies, directly affected and adjoining local authorities, the Greater London Authority where relevant and any parties identified under S44, such as owner, lessees, tenants or occupiers and others.

Section 48 of the same Act requires the applicant to publicise the proposed application in the prescribed manner.

Section 42 consultation packs were sent to the required parties on 24th January 2018. A further Section 42 consultation in respect of additional Section 44 parties was undertaken on the 5th March 2018.

A draft ES was produced pursuant to the EIA Scoping process and formed the basis on which the S42 Consultation was undertaken. A copy of the consultation letter with a link to the relevant documents on DS Smith's website is provided in **Technical Appendix 3.4** (a CD containing all consultation documents was also sent to all consultees) as well as any consultation responses received. In accordance with the EIA Regulations a copy of the Section 48 notice was included within the S42 consultation packs.

Statutory notices under Section 48 were placed in locally circulating newspapers on the 24th and 31st January 2018, the London Gazette on the 31st January 2018 and the Daily Telegraph on the 30th January 2018.

Responses were received from 22 of the organisations consulted under Section 42. No responses were received as a result of the Section 48 notices. Full consultation responses are provided as **Appendix 3.4**.

The following table presents the key issues raised by consultees and provides responses to each of the relevant comments i.e. where a suggested amendment to the proposed scope of the ES is made. Comments that do not suggest an amendment to the scope of the draft ES pursuant to the S42 consultation have been excluded for ease of reference.

Where applicable, cross-references are made to where the issues have been addressed in the Environmental Statement. Please note, where comments received from consultees are quite lengthy, only the main points have been extracted and noted in the comments column below.

Statutory and non-statutory consultee scoping response/ comments	Response to comments made / cross references to where issues have been addressed
Environment Agency	
<p>Groundwater and Contaminated Land</p> <p>The DCO application documents will need to set out how the ground conditions will be investigated, assessed, and if necessary remediated as part of the development. Details of any piling for foundations will also need to be agreed through the DCO process to ensure protection of the underlying aquifer.</p>	
<p>A full desk based phase I survey has been undertaken and is provided as appendix 8.1 to the ES in addition to the main ES chapter (Chapter 8). This sets out how the ground will be investigated, assessed and if necessary remediated as part of the development including necessary precautions related to piling.</p>	<p>Historic England</p> <p>“We think that the assessment of the development’s impact upon the setting of the closest scheduled monument (Castle Rough) is inadequate in some respects. The assessment discusses only the visual impact of the development upon the setting of the monument, i.e. it fails to assess the impact that changes in ambient lighting, noise and traffic might also have. We would expect an assessment of these aspects of setting to have been undertaken, especially considering the proximity of the monument to the proposed development. This would also have been in line with Historic England’s guidance on setting (‘The Setting of Heritage Assets’), and advice we gave in August 2017 regarding the scope of the ES.</p> <p>Although we think the assessment is in some aspects inadequate, we do - following our own site visit - agree that the visual impact of the development on the setting of Castle Rough will be negligible. This is because views to, from and around the monument have already been considerably compromised by the existing industrial complex. As the new development will sit comfortably within the massing of the existing complex, the additional visual impact it will cause should therefore indeed be</p>
<p>The assessment of the impact of the development on Castle Rough has been reviewed to ensure it completely aligns with the identified Historic England guidance. This includes additional consideration of the effects of noise, traffic and lighting on the setting of the monument.</p> <p>The Heritage Chapter (12) of the ES has been amended in accordance with the above.</p>	

negligible.

It may be that the impact of additional noise, lighting and traffic associated with the development will also be negligible for the same reasons. However, we note that this has not been formally assessed and thus we cannot determine this aspect of the development's impact. We understand that a noise assessment has been carried out and was used to assess impacts upon residential areas and ecology; therefore we believe that sufficient raw data should be available to allow the impact of additional noise upon the setting of Castle Rough to be assessed also.

We agree that the development's impact upon the setting of the Castle Rough scheduled monument will be negligible as regards visual impact. Although this may also be true of the development's impact upon other aspects of the monument's setting (e.g. noise, lighting levels), we note that this has not yet been clearly assessed or demonstrated within the ES.

We recommend that any application for a Development Consent Order is accompanied by a refined assessment of the development's impact upon the setting of the Castle Rough scheduled monument, i.e. one which also addresses the impact of increased noise, lighting and traffic. This is in accordance with paragraph 128 of the NPPF.

If the application cannot demonstrate that the impact of these aspects upon the setting of the Castle Rough scheduled monument will also be negligible, the applicant should seek to improve the proposal so that harm is avoided, minimised or mitigated. This is in accordance with paragraph 8 of the NPPF."

Natural England

“Based on the information provided, there are a number of areas where Natural England recommends further clarity is provided in relation to potential impacts to designated nature conservation sites and the associated mitigation measures that may be required.

Natural England considers that impacts to these sites are likely to result through a number of pathways including lighting, noise, water quality, changes to water temperature within The Swale, air quality and disturbance to species associated with the above sites. These are discussed in more detail below.

Noise

The Environmental Statement and accompanying Information to Inform the Habitats Regulations Assessment (Appendix 10.1) discounts impacts on the basis that noise levels within the designated sites will not exceed 80dB LAmax. Natural England’s advice is that it is generally accepted that noise levels below 55dB are unlikely to result in disturbance to coastal bird species. Above 55dB, disturbance can occur and the significance of the impact is both species and site specific. Consequently, we recommend that further assessment of the potential impacts from noise impacts during construction and operation to species associated with The Swale SSSI, SPA and Ramsar Site and The Swale MCZ is provided along with details of any avoidance and mitigation measures that may be required. It would also be helpful if a noise contour plan detailing existing noise levels is provided to supplement those provided for construction and operation levels within the Environmental Statement.

Air Quality

Natural England notes that the Ecology section of the Environmental Statement (Chapter 10) and the Information to Inform the Habitats Regulations Assessment (Appendix 10.1) in general defer consideration of the air quality impacts and mitigation measures to Chapter 5 of the Environmental Statement. Chapter 5, the Air Quality section of the Environmental Statement appears to relate primarily to human health rather than ecological impacts. As such, we would recommend that further

The effects of the development resulting from lighting, noise, water quality and changes to water temperature were presented in draft ES pursuant to S42 consultation albeit it is acknowledged that the No Significant Effect HRA Report (Appendix 10.2) did not perhaps reference them sufficiently for the ease of the reader.

The HRA has been reviewed on this basis to ensure it cross references appropriately to other locations in the ES where detailed information is presented which support the conclusions set out in the HRA.

It is noted that while 80dB LAmax is adopted as the threshold at which significant effects will occur, it is evident from the noise contour plan that accompanies the Ecology Chapter that no noise at or above 80dB LAmax is predicted. Indeed, a noise level greater than 65dB LAmax is not predicted anywhere within the SPA and the area over which a level up to 65dB LAmax could occur is limited to 20.8ha which represents approximately 0.32 % of the entire SPA.

RPS and DHA Environment have sought to hold a meeting with Natural England subsequent to their S42 response to discuss their concerns and agree a way forward but at the time of writing have not had a response.

Appendix 5.4 of the Environmental Statement contains the results of the air quality assessment looking at nutrient nitrogen and acid deposition on the Swale SPA. These indicate that no likely significant effect on the Swale SPA is likely. Clarification in the HRA and Chapter 10 has been provided to cross reference accordingly and further explanation provided as deemed necessary.

detailed consideration of the potential for air quality impacts, which should include information on the specific avoidance and mitigation measures to be implemented in relation to designated sites is provided.

We also note that section 5.29 of Appendix 10.1 states that 'redevelopment is not anticipated to increased traffic on the A249, nor on local service roads'. Natural England recommends that further clarity is provided within the assessment to confirm that there will be no increase in traffic which could result in air quality impacts to the designated sites. Natural England notes that the Air Quality 'in-combination' assessment within Appendix 10.1 has yet to be completed and as such we are unable to provide detailed advice on this at present.

Water quality

The Environmental Statement highlights that the scheme could result in a number of impacts to the designated sites in close proximity to the application site (The Swale SSSI, SPA and Ramsar Site and The Swale MCZ). These include impacts from contaminated run-off, construction materials and altered water flow for example. Whilst the Environmental Statement provides general principles of the measures that are to be developed to ensure impacts to the designated sites do not occur, we recommend that greater clarity is provided at this stage on the prevention and control measures that are to be implemented. The final detail of which can of course be agreed post consent but there needs to be sufficient certainty at this stage that impacts can be avoided or fully mitigated to allow Natural England to provide detailed advice on the proposal.

Water temperature

Mention is made of warm water discharges to The Swale within the Environmental Statement but no assessment of the potential impacts that could result to the designated sites from this appears to have been provided. It would be helpful if clarity were provided on whether this will result in any additional impacts to those from the existing consented CHP which this proposal will replace; if so the potential ecological impacts should be fully detailed along with the avoidance and mitigation measures.

The Proposed Development will result in a de Minimis impact on traffic movements once operational and therefore the only potential impact result from the construction traffic movements as set out in Chapter 4 Traffic and Transport. As set out in Chapter 5 Air Quality the volume on traffic and the roads in question are such that any potential impact can be ruled out as not significant without necessitating detailed assessment in accordance with Institute of Air Quality Management guidance. Appropriate cross-referencing has been provided to aid the reader and the 'in-combination' assessment completed.

It is considered that sufficient detail is provided in Chapter 9 (Water Environment) of the ES at the application stage and to the satisfaction of the EA and KCC. The reader is directed to this chapter of the ES and specific detailed cross referencing has been added to aid the reader.

As set out in Chapter 2 and 9 of the ES:

"In order to safeguard the quality of all water discharged from K4 all process drains along with any waste water are collected via a dedicated drains network and flow into a dedicated sump for neutralisation by the addition of acid (if required). From here any excess water will be conveyed to the Mills existing waste water treatment facility (WWTF) and discharged under DS Smith's existing discharge permit (permit no. EPR BJ7468IC-V009) into the Swale as currently occurs for K1. The volume of water

discharged from K4, by virtue of being a smaller more efficient plant than K1, will be less and will not therefore exceed the existing WWTF permit limit. The permit for the WWTF contains discharge limits for both water pH and temperature which will remain in place for K4 and subject to periodic monitoring. Both water quality and temperature from K4 is therefore safeguarded before being discharged into the Swale.”

It is therefore considered that any potential effect can be screened out on this basis.

Lighting

Sections 10.6.4 and 10.6.5 of the Environmental Statement detail that light impacts during construction and operation are unlikely to result in significant impacts to the designated sites. It would however be helpful if light contour plans detailing the current and likely lux levels within the designated sites during construction and operation of the scheme are provided.”

The Proposed Development is not at the detailed design stage whereby lighting plans are feasible. However notwithstanding this Lighting will be minimal and implemented using BS EN 12464-2:2007 *Lighting of work places. Outdoor work places. Part 1 & 2*. Contemporary lighting schemes minimise light spill and reduce lateral and vertical light spill from the source. Given the Site lies over 280m from the nearest part of the SPA and the existing lit context in which the development will sit not significant effect is likely.

Kent County Council

“Traffic and Transport

KCC, as the Local Highway Authority, does not agree to the current extent of the road network and junctions that the ES identifies as requiring assessment. The full list should be agreed with the County Council prior to submission of the final TA.

Following receipt of KCC's S42 comments the RPS Transport consultant has been in direct correspondence with KCC with agree the spatial context of the road network and junctions to be assessment.

It is noted that reference is made in the ES to an assessment on the M2 being included in the final submitted Transport Assessment (TA).

Chapter 4 of the ES now includes an assessment of the development on the M2.

Development proposals

The principle of the construction access being directed to the northern access (Barge Way) and staff access via Ridham Avenue is considered appropriate. KCC agrees that only an assessment of the construction traffic (and not operational traffic generation) is appropriate. However, the final TA will be required to demonstrate a justification for the predicted number of HGV movements. It will also need to provide a clear indication as to the length of time that the peak number of staff would be expected on site. In addition, the number of remaining staff expected for the construction period should be made clear for the true impacts and parking needs to be assessed.

Chapter 4 of the ES has been amended to provide justification of the length of time that peak numbers of staff would be expected and other periods during the construction.

Future Year Traffic Flows

It is agreed that 2019 is the appropriate future year for assessment, taking into account the peak traffic impact. Whilst the list of committed sites is largely agreed, consideration should also be given to the application at Wienerberger Smeed Dean Works, Church Road, Sittingbourne, ME10 3TN for the erection of a tile factory including service yard, storage yard and car parking area (17/505073/FULL), as this may have been determined by the time of final submission of the Development Consent Order (DCO). KCC agrees that the sites at north west and south west Sittingbourne are sufficiently delayed to not impact the future scenario, but consideration should be given to include the permitted l Wade developments that may not be currently generating any traffic.

The scope of the cumulative impact assessment of the development with other local permitted or planned developments has been increased to include 17/505073/FULL and others.

Trip Generation

It is noted that the assessment assumes workers will arrive between 06:00 and 07:00 and leave at 19:00 and 20:00 on a weekday, with the traffic count identifying peaks as between 08:00 and 09:00 and 17:00 and 18:00. Although the HGV movements in table 6.2 appear slightly incorrect, the principle of up to eight movements in a peak hour is unlikely to have a significant impact. As previously stated, additional counts and junction assessments are requested by KCC, with the potential need to include additional committed sites as appropriate.

The RPS Transport consultant has been in direct correspondence with KCC to agree the spatial context of the road network and junctions to be assessment (see Chapter 4).

Construction Traffic Management Plan (CTMP)

It is noted that a full CTMP is to be agreed with the Highway Authority prior to the commencement of the development. The details proposed in paragraph 4.8.2 are considered appropriate, however, KCC would also wish to ensure that control measures are put in place to ensure the arrivals and departures of construction staff are indeed outside of the identified peak traffic. With regards to the contractor car sharing or mini bus collection, due to the high numbers of staff involved, it would be appropriate for a small-scale Travel Plan to be produced. This should include details of minibus provision and operation, along with the signposting of staff to sustainable transport options.

The proposed scope of the CTMP has been amended to reflect the request of KCC and a commitment to a small scale travel plan identified.

Landscape and Visual Effects

KCC notes that the applicant has acknowledged the existence of the Public Rights of Way network and the Saxon Shore Way, and has considered the potential impacts on these routes. In addition to these paths, the applicant should be aware that KCC is currently working in partnership with Natural England to develop the England Coast Path in this region. This is a new National Trail walking route that will eventually circumnavigate the English coastline. The applicant has not highlighted the coast path in the draft ES and should be aware that the trail is scheduled for completion in 2020 and is likely to increase the number of people walking this section of the coast."

Chapter 11 of the ES has been amended to reflect the future change in status of the Saxon Shore Way and the increase it its use.

Health and Safety Executive	
HSE's land use planning advice	
<p>"Will the proposed development fall within any of HSE's consultation distances?</p> <p>The redline boundary of the development does not fall within the consultation zones of any major accident hazard site with Hazardous Substances Consent (HSC).</p> <p>There are currently no major accident hazard pipelines within the development. If in the intervening period we are notified of a change to this situation, the developer would need to seek advice from us.</p> <p>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.</p>	
<p>The Proposed Development does not fall within the remit of the Regulations identified.</p>	
Royal Mail	
<p>"Royal Mail has operational facilities in Sittingbourne, Rainham, Medway and Sheerness. Royal Mail's Delivery Office in Sittingbourne (Central Avenue. Sittingbourne MEID 4AA) is only 3 miles from the proposal site.</p> <p>In exercising its statutory duties, Royal Mail uses all of the main roads in the vicinity of the proposed K4 CHP Plant at Kemsley Paper MILL on a daily basis. The adjacent Wheelabrator Kemsley Generating Station (K3) Power Upgrade planning permission and DCO proposal together with other nearby planned major developments creates potential for cumulative traffic impact during the construction and operation phases.</p>	
<p>It is not considered that the level of traffic generated during construction is likely to materially impact on Royal Mail's daily operations and therefore such a requirement is not deemed necessary.</p>	

Therefore Royal Mail is concerned that its future ability to provide an efficient mail sorting and delivery service to the public in accordance with its statutory obligations may be adversely affected by the construction of this new Power Station.

Royal Mail's consultant BN Paribas Real Estate has reviewed the section 42 consultation documents including ES Chapter 04- Transport. It is noted that a CTMP will be prepared and agreed with the Local Highways Authority Officers prior to commencement of construction works. However, the documents do not appear to formally acknowledge the need to ensure that major road users such as Royal Mail are not disrupted though full advance consultation by the applicant at the appropriate time in the development process.

In order to address this. Royal Mail requests that

1. The forthcoming DCO application offers a requirement that Royal Mail is pre-consulted by DS Smith Paper Ltd on any proposed road closures/ diversions/ alternative access arrangements, hours of working and the content of the final CTMP
2. The forthcoming DCO application offers a requirement that the final CTMP includes provision for a mechanism to inform major road users about works affecting the Local network (with particular regard to Royal Mails distribution facilities in the vicinity of the DCO application site)."