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Your Ref:

Our Ref: EN010090

Date: 18 June 2017

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Dear Sir/ Madam

**Planning Act 2008 (as amended) – Section 88 and the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 6**

**Application by DS Smith Paper Ltd for an Order Granting Development Consent for The Kemsley Mill K4 Combined Heat and Power Generating Station**

**Appointment of the Examining Authority**

I write to you following my appointment by the Secretary of State as the Examining Authority (ExA) to carry out an examination of the above application by DS Smith Paper Ltd ('the Applicant'). A copy of the appointment letter can be viewed at:

<http://infrastructure.planninginspectorate.gov.uk/document/EN010090-000312>

**Invitation to the Preliminary Meeting**

This letter is an invitation to the Preliminary Meeting (PM) to discuss the examination procedure and contains a number of supporting annexes. I would like to thank those of you who submitted Relevant Representations. These representations have assisted me when preparing my proposals regarding how to examine this application.

**Date of meeting:** **Tuesday, 17 July 2018**

**Seating available from:** **09.30am**

**Meeting begins:** **10.00am**

**Venue:** **Kemsley Community Village Hall  
The Square, Ridham Avenue, Kemsley,  
Sittingbourne, ME10 2SF**

**Access and parking:** Free parking available at venue

Given the volume and frequency of letters the Planning Inspectorate needs to send to Interested Parties (IP) during an Examination, the Planning Inspectorate aims to communicate with people by email wherever possible, as electronic communication is more environmentally friendly and cost effective for the Planning Inspectorate as a Government agency. If you are able to receive communications by email, please confirm this with us by **midday (12 noon), 10 July 2018**.

## **Purpose of the Preliminary Meeting**

The purpose of the PM is to enable views to be put to me about the way in which the application is to be examined. At this stage, I am looking at the procedure for the Examination, and not the merits of the application. The merits of the application will only be considered once the Examination starts, which is after the PM has closed.

I wish to run a fair, efficient and effective meeting so that all relevant views can be heard. As such, I strongly encourage groups of individuals who have similar views on the procedure to choose one representative to speak for the group.

The agenda for the PM is in **Annex A**. This has been set following my Initial Assessment of the Principal Issues arising on the application. That assessment is set out in **Annex B**. As a result of this assessment I wish to hear at the meeting from the Applicant, IPs, Statutory Parties and Local Authorities where they consider changes may be needed to the draft Examination Timetable set out in **Annex C**.

Up to date information about the Kemsley Paper Mill (K4) CHP Plant project and its Examination can be obtained on the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/kemsley-paper-mill-k4-chp-plant/?ipcsection=overview>

This is the project website address from which I will make copies of all future communications and Examination documents available to the public. You can use this page to track progress of the Examination and access all relevant documents and correspondence from the links it contains. As the examination process makes substantial use of electronic documents, it will be useful to become familiar with this resource.

If you wish to receive an email notification when relevant documents and correspondence are published you can register on the project website to do so. Further information on the examination process is given in [Advice Note 8.4](#), which is available on the Planning Inspectorate's website.

## **Attendance at the Preliminary Meeting**

If you wish to attend the PM please contact Emré Williams, the Case Manager using the details set out at the top of this letter. Please confirm this by **midday (12 noon), 10 July 2018**.

It will help the management of the meeting and benefit everyone if you also:

- Tell us whether you wish to speak at the meeting and on which agenda items (**Annex A**), listing points you wish to make; and

- Notify us of any special requirements you may have (eg disabled access, hearing loop etc).

The PM provides a useful introduction to the examination process. I will use it to make Procedural Decisions that will affect everyone participating in the Examination. The meeting provides you with an opportunity to have your say about procedural issues before these decisions are finalised. If you intend to play an active part in the Examination or you have questions about procedure it is useful to attend the meeting. However, please note that you are not required to attend the PM in order to participate in the Examination.

If you are an IP you will still be able to make written representations and participate in any hearings that are arranged. Should you no longer wish to be an IP and do not wish to be involved in the examination process, you can notify the Case Manager of this in writing.

### **After the Preliminary Meeting**

After the PM you will be sent a letter setting out the timetable for the Examination. An audio recording and a note of the meeting will also be published on the project page of the National Infrastructure Planning website.

Interested Parties have the right to request an Open Floor Hearing (OFH) and those persons affected by any request for Compulsory Acquisition or Temporary Possession of their land or rights may request a Compulsory Acquisition Hearing. The draft timetable at **Annex C** indicates the date reserved for an OFH, should this be requested. As no Compulsory Acquisition or Temporary Possession matters have been raised in this application I have not reserved any dates to hold a Compulsory Acquisition Hearing.

Any other Issue Specific Hearings (ISH) are at the discretion of the ExA and will be arranged if I feel that consideration of oral representations would ensure an issue is adequately considered. My initial suggestions for ISHs are set out in the draft timetable at **Annex C** with the particular topic indicated, although you will see further below that I have made a Procedural Decision to proceed with my first ISH (ISH1) into the draft Development Consent Order (dDCO) shortly after the close of the PM on **Tuesday, 17 July 2018 at 1.00pm.**

My Examination will comprise consideration of Written Representations about the proposal and any oral representations made at the hearings. It will also consider the application documents, policy and legal positions, site inspections and any other matters I consider to be relevant and important.

All relevant and important matters will be taken into account when I make a recommendation to the Secretary of State for Business, Energy and Industrial Strategy, who will take the final decision in this case.

### **Procedural decisions made by the ExA under ss89(3) and 91(1) of the Planning Act 2008**

I have made some preliminary Procedural Decisions under section (s)89(3) of the Planning Act 2008 (PA2008) which include the setting of dates for action.

These include:

- the setting of deadlines for the submission of:
  - comments on Relevant Representations (RRs);
  - Written Representations (WRs);
  - summaries of any representations exceeding 1500 words;
  - agreements and submissions of Statement of Common Grounds (SoCG);
  - comments on any updated application documents submitted by the Applicant;
- the notification by IPs of their wish to be heard at an OFH;
- the notification by IPs of their wish to attend an Accompanied Site Inspection (ASI) and their nomination of locations including justifications for the consideration of the ExA for their nominations;
- the notification by Statutory Parties, or certain Local Authorities of their wish to be considered as an IP by the ExA; and

These preliminary Procedural Decisions are set out in full at **Annex E** and should be read carefully alongside the draft Examination timetable at **Annex C**. Some of my Procedural Decisions provide you with the opportunity to take action before the PM and/or set dates that require you to take action shortly after that date. If you have questions or wish to discuss any aspect of these decisions, please attend the PM. I will give careful consideration to all matters raised there before confirming my timetable and Procedural Decisions for this Examination.

I have also set out the need in that annex for completed matrices to be submitted, in accordance with the processes under the Habitats Regulations 2017, as amended.

### **Notification of hearing**

I have made a Procedural Decision under s91 of the PA2008 to hold an early ISH into the dDCO on **Tuesday, 17 July 2018** at **1.00pm** shortly after the close of the PM.

Important information about this ISH is provided at **Annex F** with an Agenda provided at **Annex G** and a Schedule of the ExA's Issues and Questions relating to the dDCO included in **Table 1**.

### **Your status in the Examination**

This letter has been sent to you because you (or the body you represent) fall within one of the categories in s88(3) of the PA2008.

If you have made a RR, have a legal interest in the land affected by the application, or are a relevant Local Authority (reference number beginning with '2001', 'KEM4-AFP' or 'KEM4-S57'), you have a formal status as an IP in the Examination.

Interested Parties will receive notifications from the Planning Inspectorate about the Examination throughout the process and may make written and oral submissions regarding the application.

If you are a prescribed consultee (ie body specified in the relevant regulations supporting the PA2008) but have not made a RR (reference number beginning with '2001') you will not automatically be an IP. However, following the PM, you will have a

further opportunity to notify the Planning Inspectorate that you wish to be treated as an IP (see **Annex C**, Deadline 1).

If you are not sure whether you are an IP, please contact the Case Manager using the details at the top of this letter. Information regarding the formal status of IPs and how you can get involved in the process is set out in the Planning Inspectorate Advice Note 8 Series on the National Infrastructure Planning website: <http://bit.ly/1zdsVW5>.

### **Award of Costs**

I also draw your attention to the possibility of the Award of Costs against Interested Parties who behave unreasonably. You should be aware of the relevant cost guidance "Awards of costs; examinations of applications for development consent orders" which applies to National Infrastructure projects. This guidance is available at: <http://bit.ly/1ODUUFi>

### **Management of Information**

The Planning Inspectorate has a commitment to transparency. Therefore, all information submitted for this project (if accepted by the ExA) and any record of advice which has been provided, is published and available within the Examination Library:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010090/EN010090-000344-K4%20Internal%20Examination%20Library%20-%20PDF%20Version.pdf>

All Examination documents can also be viewed electronically at the locations listed in **Annex D**. Physical copies of some documents are available at some locations and these are identified in the annex.

The privacy of any other personal information has been protected in accordance with the Planning Inspectorate's Information Charter.

I look forward to working with all parties in the examination of this application.

Yours faithfully

*Kevin Gleeson*

**Kevin Gleeson**  
**Examining Authority**

## Annexes

- A** Agenda for the Preliminary Meeting
- B** Initial Assessment of Principal Issues
- C** Draft timetable for examination of the Application
- D** Availability of Examination documents
- E** Procedural Decisions made by the Examining Authority
- F** Notification of Issue Specific Hearing into the draft Development Consent Order
- G** Agenda for Issue Specific Hearing into the draft Development Consent Order

## Tables

- Table 1** Schedule of Examining Authority Issues and Questions relating to the draft Development Consent Order

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

## Agenda for the Preliminary Meeting

**Date:** 17 July 2018  
**Seating available from:** 09.30am  
**Start Time:** 10.00am

**Venue:** Kemsley Community Village Hall  
 The Square, Ridham Avenue, Kemsley,  
 Sittingbourne, ME10 2SF

<b>09.30am</b>	Registration opens
<b>Item 1 (10.00am)</b>	<b>Welcome and introductions</b>
<b>Item 2</b>	The <b>Examining Authority's (ExA) remarks</b> about the examination process
<b>Item 3</b>	<b>Initial Assessment of Principal Issues</b> – see <b>Annex B</b>
<b>Item 4</b>	<b>Draft timetable</b> for the examination – see <b>Annex C</b>
<b>Item 5</b>	<p><b>Deadlines for submission of:</b></p> <ul style="list-style-type: none"> <li>• Comments on Relevant Representations;</li> <li>• Written Representations;</li> <li>• Statements of Common Ground;</li> <li>• Comments on post-application submissions from the Applicant;</li> <li>• Local Impact Reports;</li> <li>• Responses to the ExA's Written Questions;</li> <li>• Notifications relating to any hearings;</li> <li>• Nominations of suggested locations with justifications for site inspections; and</li> <li>• Procedural requests relating to these items that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting (PM) by <b>10 July 2018</b>.</li> </ul>
<b>Item 6</b>	<p>Hearings and Accompanied Site Inspection (ASI):</p> <ul style="list-style-type: none"> <li>• Procedure, matters and issues for Issue Specific Hearing (ISH) into the draft Development Consent Order on 17 July 2018, see <b>Annexes F, G and Table 1</b>;</li> <li>• Date reserved and arrangements for an ASI;</li> <li>• Date reserved and arrangements for an Open Floor Hearing;</li> <li>• Dates reserved and arrangement for other ISHs; and</li> <li>• Procedural requests relating to these items that have been submitted to the Planning Inspectorate in advance of the PM by <b>10 July 2018</b>.</li> </ul>
<b>Item 7</b>	<b>Any remaining procedural questions or submissions</b> not set out in the agenda that have been submitted to the Planning Inspectorate in advance of the PM by <b>10 July 2018</b> .
<b>Item 8</b>	<b>Any other matters</b>
	<b>Close of the Preliminary Meeting</b>

**Please note:** Please register and be available from the start and throughout the meeting. The agenda is subject to change at the discretion of the ExA. The ExA will conclude the meeting as soon as all relevant contributions have been made. If there are any additional matters to be dealt with or submissions take a considerable amount of time the ExA may change the order of the agenda items and may introduce breaks in the proceedings.



**Initial Assessment of Principal Issues**

This is the initial assessment of the Principal Issues arising from consideration by the Examining Authority (ExA) of the application documents and Relevant Representations (RRs) received. It is not a comprehensive or exclusive list of all relevant matters; regard will be had to all important and relevant matters in reaching a recommendation after the Examination is concluded. The list of identified Principal Issues should not be taken to imply an order of importance.

The policy and consenting requirements and documents associated with the Planning Act 2008 (PA2008) are an integral part of the Examination and are therefore not set out as separate Principal Issues. In addition, it should be noted that a number of these Principal Issues set out below have an interrelationship and overlap and these will be reflected in the Examination.

**1. Environmental Impact Assessment** including issues related to:

- The assessment of potential effects of the Proposed Development including design options for the CHP plant
- The approach to flexibility in adopting the principle of the 'Rochdale Envelope'
- The parameters of the Proposed Development
- The approach to decommissioning
- Cumulative and in-combination effects on and with other major projects and proposals
- Mitigation measures including the content of the Construction Environmental Management Plan

**2. Air Quality** including issues related to:

- Baseline assessment
- Construction impacts including dust and the application of the Institute of Air Quality Management guidance
- Operational impacts on human and ecological receptors

**3. Archaeology and Cultural Heritage** including issues related to:

- Effects on archaeological interests
- Effects on the setting of listed buildings

**4. Ecology** including issues related to:

- Baseline assessment
- The effects on habitats and species

**5. Habitats Regulations Assessment** including issues related to:

- Effects on European sites and their qualifying features, including the approach to mitigation following the ECJ Judgment C-323/17

**6. Ground Conditions** including issues related to:

- Effects on human health and groundwater during construction

- 7. Landscape and Visual Impact** including issues related to:
  - Design of the Proposed Development
  - Construction Effects
  - Operational Effects including the height and location of the proposed stacks
  
- 8. Noise and Vibration** including issues related to:
  - Baseline assessment
  - Construction effects
  - Operational effects
  
- 9. Traffic and Transport** including issues related to:
  - Construction effects on the surrounding road network including the management of abnormal indivisible loads and the scope of the Construction Transport Management Plan
  - Co-ordination with other major construction projects
  - Operational effects
  
- 10. Water Environment** including issues related to:
  - The extent to which construction and operation of the Proposed Development would impact on waterbodies
  - Water abstraction and drainage
  - Compliance with the requirements of the Water Framework Directive
  
- 11. Draft Development Consent Order (dDCO)** including issues related to:
  - The structure of the dDCO
  - The appropriateness of proposed provisions
  - Relationships with other consents
  - Protective provisions

### Draft timetable for examination of the application

The Examining Authority (ExA) is under a duty to complete the examination of the application by the end of the period of six months beginning with the day after the close of the Preliminary Meeting.

The ExA however may close the examination before the end of the six month period if he is satisfied that all relevant matters have been addressed and discussed.

My examination of the application primarily takes the form of the consideration of written submissions. The ExA will also consider any oral representations made at Hearings.

<b>Item</b>	<b>Matters</b>	<b>Due Dates</b>
1	<b>Preliminary Meeting (PM)</b>	<b>Tuesday 17 July 2018 (morning)</b>
2	<b>Issue Specific Hearing 1 (ISH1)</b> ISH1 on the draft Development Consent Order (dDCO)	<b>Tuesday 17 July 2018 (afternoon)</b>
3	<b>Issue by ExA of:</b> <ul style="list-style-type: none"> <li>• Examination timetable</li> <li>• ExA's Written Questions (ExQ1)</li> </ul>	<b>As soon as practicable following the PM</b>
4	<b>Deadline 1 (D1)</b> Deadline for receipt of: <ul style="list-style-type: none"> <li>• comments on any updates to application documents submitted by the Applicant before or at the PM;</li> <li>• comments on Relevant Representations (RR);</li> <li>• summaries of all RRs exceeding 1500 words;</li> <li>• Written Representations (WRs) by all Interested Parties (IP);</li> <li>• summaries of all WRs exceeding 1500 words;</li> <li>• Statements of Common Ground (SoCG) requested by ExA – see <b>Annex E</b>;</li> <li>• response to any further information requested by the ExA for this deadline;</li> <li>• post-hearing submissions including written submissions of oral cases;</li> <li>• notification by Statutory Parties of their wish to be considered as an IP by the ExA;</li> <li>• notification of wish to speak at any subsequent Issue Specific Hearings (ISH);</li> <li>• notification of wish to speak at an Open Floor Hearing (OFH);</li> <li>• provision of suggested locations and justifications for site inspections for consideration by the ExA;</li> <li>• notification of wish to attend an Accompanied Site Inspection (ASI); and</li> </ul>	<b>Tuesday 31 July 2017</b>

	<ul style="list-style-type: none"> <li>notification of wish to have future correspondence received electronically.</li> </ul>	
5	<p><b>Deadline 2 (D2)</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>comments on WRs;</li> <li>comments on any SoCG;</li> <li>Local Impact Reports (LIRs) from any Local Authorities;</li> <li>responses to ExQ1;</li> <li>comments on any additional information/ submissions received by D1; and</li> <li>responses to any further information requested by the ExA for this deadline.</li> </ul>	<b>Tuesday 14 August 2018</b>
6	<p><b>Accompanied Site Inspection</b></p> <p>Date reserved to hold an ASI (if required)</p>	<b>Wednesday 12 September 2018</b>
7	<p><b>Open Floor Hearing</b></p> <p>Date reserved to hold an OFH (if required)</p>	<b>Wednesday 12 September 2018 (Evening)</b>
8	<p><b>Issue Specific Hearing 2 (ISH2)</b></p> <p>ISH2 on Environmental matters, Landscape &amp; Visual, Ecology, Air Quality and Other matters</p>	<b>Thursday 13 September 2018</b>
9	<p><b>Issue Specific Hearing 3 (ISH3)</b></p> <p>ISH3 on the dDCO.</p>	<b>Friday 14 September 2018</b>
10	<p><b>Deadline 3 (D3)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>post-hearing submissions including written submissions of oral cases;</li> <li>comments on LIRs;</li> <li>comments on responses to ExQ1;</li> <li>any revised/ updated SoCG (if any);</li> <li>the Applicant's revised dDCO;</li> <li>comments on any additional information/ submissions received by D2; and</li> <li>responses to any further information requested by the ExA for this deadline.</li> </ul>	<b>Thursday 20 September 2018</b>

11	<p><b>Deadline 4 (D4)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• comments on the Applicant’s revised dDCO;</li> <li>• comments on any revised/ updated SoCG (if any);</li> <li>• comments on any additional information/ submissions received by D3; and</li> <li>• responses to any further information requested by the ExA for this deadline.</li> </ul>	<p><b>Friday 28 September 2018</b></p>
12	<p><b>Publication by ExA of:</b></p> <ul style="list-style-type: none"> <li>• Further Written Questions (ExQ2) (if required);</li> <li>• Consultation on the ExA’s preferred DCO (if required); and</li> <li>• Report on the Implications for European Sites (RIES) (if required).</li> </ul>	<p><b>Monday 22 October 2018</b></p>
13	<p><b>Issue Specific Hearing 4 (ISH4)</b> (if required)</p> <p>Date reserved to hold ISH4 on any Outstanding Issues</p>	<p><b>Tuesday 6 November 2018</b></p>
14	<p><b>Issue Specific Hearing 5 (ISH5)</b> (if required)</p> <p>Date reserved to hold ISH5 on the dDCO.</p>	<p><b>Wednesday 7 November 2018</b></p>
15	<p><b>Deadline 5 (D5)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• post-hearing submissions including written submissions of oral cases (if required);</li> <li>• any revised/ updated SoCG;</li> <li>• response to ExQ2 (if required);</li> <li>• comments on the ExA’s preferred DCO (if required);</li> <li>• comments on the ExA’s RIES (if required);</li> <li>• comments on any additional information/ submissions received by D4;</li> <li>• responses to any further information requested by the ExA for this deadline.</li> </ul>	<p><b>Tuesday 13 November 2018</b></p>
16	<p><b>Deadline 6 (D6)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• comments on any revised/ updated SoCG;</li> <li>• comments on responses to ExQ2 (if required);</li> <li>• the Applicant’s Final preferred DCO in the Statutory Instrument (SI) template validation report;</li> <li>• comments on any additional information/ submissions received by D5; and</li> <li>• responses to any further information requested by the ExA for this deadline.</li> </ul>	<p><b>Tuesday 20 November 2018</b></p>

17	<p><b>Deadline 7 (D7)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• comments on the Applicant’s Final preferred DCO;</li> <li>• comments on any additional information/ submissions received by D6; and</li> <li>• responses to any further information requested by the ExA for this deadline.</li> </ul>	<p><b>Wednesday 28 November 2018</b></p>
18	<p>The ExA is under a duty to complete the Examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.</p>	<p><b>Thursday 17 January 2019</b></p>

### Publication Dates

All information received will be published on the project website as soon as practicable after the deadline for submissions. An Examination Library will be kept up to date throughout the Examination and can be accessed via the project page. Each document will be afforded a unique reference. These references will be used by the ExA during the Examination.

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010090/EN010090-000344-K4%20Internal%20Examination%20Library%20-%20PDF%20Version.pdf>

### Hearing Agendas

Please note that we will aim to publish a detailed draft agenda for each hearing on the project website at least five working days in advance of the hearing date; but the actual agenda on the day of each hearing may be subject to change at the discretion of the ExA.

### Report on the Implications for European Sites (RIES)

Where the applicant has provided a No Significant Effects Report or a Habitats Regulations Assessment (HRA) Report with the DCO application, the ExA may decide to issue a RIES during the Examination. The RIES is a factual account of the information and evidence provided to the ExA on HRA matters during the Examination up to the date of the publication of the RIES, for the purposes of enabling the Secretary of State, as competent authority, to undertake its HRA. It is not the ExA’s opinion on HRA matters. Comments on the RIES will be invited by the ExA and any received will be taken into account as part of the ExA’s Recommendation to the relevant Secretary of State.

The Secretary of State may rely on the consultation on the RIES to meet its obligations under Regulation 63(3) of the Habitats Regulations and/ or Regulation 28 of the Offshore Marine Regulations.

## Availability of Examination documents

All application documents including Relevant Representations and application documents are available to view electronically at the locations listed below via the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/kemsley-paper-mill-k4-chp-plant/?ipcsection=overview>

Please note that you may need to bring a form of ID to use the computer at these locations.

Furthermore, the deposit locations listed below will also have available in hard copy format **the Applicant's application documents only** as submitted to the Planning Inspectorate for Acceptance on 6 April 2018. These hard copy documents will be available until the date the Secretary of State issues a Decision on the application.

## Deposit Locations

Full hard copies of the application documents only are available for inspection free of charge at the following locations and times:

Address		Opening Hours
The Site Office, DS Smith Kemsley Paper Mill, ME10 2TD Phone: 01622 776 226		Monday to Friday (not on Bank Holidays) 9.00 to 17.00
<b>Printing Costs</b>		Photocopying can be provided. A copying charge will apply.
Swale Borough Council Offices, East Street, Sittingbourne, ME10 3HT		Monday to Thursday 8:45 to 5, Friday 8:45 to 4:30 (not on Bank Holidays)
<b>Printing Costs</b>		<b>No photocopying available.</b>
Sittingbourne Library, Central Avenue, Sittingbourne, ME10 4AH		Monday to Wednesday and Friday 9.00 to 18.00 Thursday 9.00 to 20.00 Saturday 9.00 to 17.00 Sunday Closed
<b>Printing Costs</b>	<b>Black and White</b>	<b>Colour</b>
<b>A4</b>	10p	£1.00
<b>A3</b>	15p	
<b>Link to council library locations:</b>		
<a href="mailto:sittingbournelibrary@kent.gov.uk">Sittingbourne Library</a> – <a href="mailto:sittingbournelibrary@kent.gov.uk">sittingbournelibrary@kent.gov.uk</a>		

The Application documents can also be viewed online at the following locations and times, using the web address provided above; please note that you may need to bring a form of identification to use the computers at these locations:

**Annex D**

<b>Address</b>		<b>Opening Hours</b>
The Site Office, DS Smith Kemsley Paper Mill, ME10 2TD Phone: 01622 776 226		Monday to Friday (not on Bank Holidays) 9.00 to 17.00
<b>Printing Costs</b>		Photocopying can be provided. A copying charge will apply.
Sittingbourne Library, Central Avenue, Sittingbourne, ME10 4AH		Monday to Wednesday and Friday 9.00 to 18.00 Thursday 9.00 to 20.00 Saturday 9.00 to 17.00 Sunday Closed
<b>Printing Costs</b>	<b>Black and White</b>	<b>Colour</b>
<b>A4</b>	10p	£1.00
<b>A3</b>	15p	
<b>Link to council library locations:</b>		
<a href="mailto:sittingbournelibrary@kent.gov.uk">Sittingbourne Library</a> - <a href="mailto:sittingbournelibrary@kent.gov.uk">sittingbournelibrary@kent.gov.uk</a>		



## **Procedural decisions made by the Examining Authority (ExA)**

The ExA has made the following procedural decisions under Section (s) 89(3) of the Planning Act 2008 (PA2008):

### **1. Issue Specific Hearing into the draft Development Consent Order**

I have made a Procedural Decision to commence oral examination of the draft Development Consent Order (dDCO) by holding my first Issue Specific Hearing (ISH1) shortly after the close of the Preliminary Meeting (PM) on 17 July 2018. **Annex F** provides notice of this decision.

For the purposes of Rule 13(1) and (6) of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) (the EPR), the periods of not less than 21 days with reference to which I must provide notice of a hearing and the Applicant must publicly notify and advertise the hearing arrangements no later than **Monday 25 June 2018**. This is a date before the start of the Examination, but it ensures that the required statutory 21 days' notice period has been provided for this hearing.

In light of this ISH commencing shortly after the PM, I have also decided that any person intending to participate in this ISH must notify the Case Manager of their intention to attend by **midday (12 noon), 10 July 2018**, as advised in **Annex F**.

### **2. Deadline for comments on Relevant Representations**

I have made a Procedural Decision to seek comments on Relevant Representations (RR) by **Tuesday 31 July 2018** being **Deadline (D) 1**.

The RRs were published by 14 June 2018 and so there is sufficient time for them to have been read and responded to by the deadline I propose to set.

### **3. Deadline for submission of Written Representations**

I have made a Procedural Decision to seek Written Representations (WRs) by **Tuesday 31 July 2018 (D1)**. WRs provide Interested Parties (IP) with the opportunity to amplify and provide evidence for the matters set out in their RRs.

For the purposes of Rule 10(2) of the EPR, the 'period of 21 days' with reference to which I must provide notice for the submission of WRs commences on 18 June 2018 (as dated on the cover of the Rule 6 letter). This is a date before the start of the Examination, however as the deadline for submission of WRs as set for 31 July 2018 is more than the statutory requirement of 21 days' notice, I am satisfied that IPs have been permitted sufficient time in which to draft and submit WRs.

By providing early notice, I am ensuring that all IPs will have a reasonable time period in which to draft their WRs, before the deadline for submission.

#### 4. Deadline for summaries of Representations

My Procedural Decisions (2) and (3) above also seek the early submission of summaries pertaining to RRs and WRs exceeding 1500 words. It is normal for ExAs to request that summaries are provided of RRs, comments to RRs and WRs, where these original representations exceed 1500 words in length. I have therefore also made a Procedural Decision to request the submission of summaries by **Tuesday 31 July 2018 (D1)**.

#### 5. Notification by Statutory Parties, or certain Local Authorities<sup>1</sup> of their wish to be considered as an Interested Party

I have made a procedural decision that, in order to facilitate a timely start to the examination, Statutory Parties and certain Local Authorities<sup>1</sup> must have decided whether they wish to be considered as an IP and notified the Planning Inspectorate of their decision by **Tuesday 31 July 2018 (D1)**.

**Note:**

*If persons attending the Preliminary Meeting (PM) seek additional time to be provided for in any of my procedural decisions made above (2 to 5) for good reasons, I will consider the reasons for any such requests before I decide whether to confirm these decisions. I will provide oral advice on my concluded decisions before the close of the PM.*

#### 6. Accompanied Site Inspection – Nominations, Requests and intent to attend

The Applicant, IPs and other persons will be provided with an opportunity to provide comments to me on the approach that I should take to site inspections at the PM. Subject to this discussion, they are invited to nominate sites that I should inspect, the features that I should observe there and whether the inspection should be on an accompanied or an unaccompanied basis, by **Tuesday 31 July 2018 (D1)**.

Site inspections can be carried out on an accompanied or an unaccompanied basis. In principle, inspections need to be carried out on an accompanied basis in the following circumstances:

- where the land is private and consent is required for the ExA to enter it;
- where there are health and safety or other regulatory considerations that require any visitor to a location to be accompanied; and / or
- where there are particular features that an IP wishes to ensure are pointed out to the ExA.

Where these considerations do not apply, it will normally be appropriate for a site inspection to be carried out by the ExA on an unaccompanied basis.

Before agreeing to hold site inspections at particular locations, I will consider the degree to which it is necessary to visit a site that has been nominated for an inspection to inform me about the application. I may decide not to visit nominated locations where I may have already visited the location or I

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<sup>1</sup> a Local Authority without direct responsibility in the proposed development area.

consider that it is not necessary to see the features to be observed there. I may decide not to hold an Accompanied Site Inspection (ASI) if all relevant features can be observed and understood from locations in the public domain on an Unaccompanied Site Inspection (USI).

Provisional arrangements for ASIs are included in the Examination Timetable, but these will only proceed should it appear that such inspections are necessary.

## **7. Statements of Common Ground**

In relation to some of the preliminary Initial Assessment of Principal Issues identified in **Annex B**, the ExA would be assisted by the preparation of Statement of Common Grounds (SoCG) between the Applicant and certain IPs. The draft timetable for the Examination therefore provides a deadline for submission of SoCGs. This is **Tuesday, 31 July 2018, being D1**.

The aim of a SoCG is to agree factual information and to inform the ExA and all other parties by identifying where there is agreement and where the differences lie at an early stage in the examination process. It should provide a focus and save time by identifying matters which are not in dispute or need not be the subject of further evidence. It can also usefully state where and why there may be disagreement about the interpretation and relevance of the information. The reasons for the differences and interpretation of the implications of a difference can then be expanded in the evidence.

Unless otherwise stated or agreed, the SoCG should be agreed between the Applicant and the other relevant interested party or parties, and submitted by the Applicant.

The SoCG are requested to be prepared by:

### **A. The Applicant and Swale Borough Council** to include:

- Development Consent Order
- Environmental Impact Assessment, including issues related to:
  - The adequacy of the assessment and its potential effects
  - Cumulative effects
- Noise and disturbance including construction, operational and decommissioning
- Landscape and visual impact
- Air quality
- Ecology, habitats and nature conservation effects
- Highways and transport
- Construction Environmental Management Plan.

### **B. The Applicant and the Environment Agency** to include:

- Development Consent Order
- Environmental Permits
- Combined Heat and Power

- Water environment effects including abstraction and discharge, drainage, flooding and the Water Framework Directive
- Contaminated land
- Construction Environmental Management Plan

**C. The Applicant and Natural England** to include:

- Development Consent Order
- Ecology, habitats and nature conservation, including issues related to:
  - Protected sites
  - Protected species
  - European sites and features relevant to Habitat Regulations Assessment
  - The need for and means of securing mitigation including the effect of the ECJ Judgment C-323/17
- Air quality
- Water Quality

**D. The Applicant and Kent County Council** to include:

- Development Consent Order
- Traffic and transport including Public Rights of Way
- Archaeology and cultural heritage
- Ecology, habitats and nature conservation effects
- Water environment including surface water flooding and drainage
- Construction Environmental Management Plan

**E. The Applicant and Network Rail** to include:

- Protective provisions

The SoCGs should cover the following topics where relevant:

- Methodology for Environmental Impact Assessment including assessment of cumulative effects
- Data collection methods
- Baseline data
- Data/ statistical analysis, approach to modelling and presentation of results (including forecast methodologies)
- Full expression of expert judgements and assumptions
- Identification and sensitivity of relevant features and quantification of potential impact
- Likely effects (direct and indirect) on special interest features of sites designated or notified for any nature conservation purpose
- Feasible and deliverable mitigation and method for securing such mitigation within the Development Consent Order

**8. Habitats Regulations 2017 (as amended)**

The Examination must include a process that provides sufficient information to enable the Secretary of State for Business, Energy and Industrial Strategy to meet his statutory duties as the competent authority under the Habitats

Regulations 2017 (as amended) relating to European protected sites. In order to inform the ExA's Report and Recommendation to the Secretary of State on this application and to provide stand-alone information for the Secretary of State, the Applicant is requested to complete matrices, to:

- Summarise the likely significant effects for each European protected site assessed, and
- Summarise the implications for the integrity of each European protected site assessed, where a likely significant effect either alone or in combination with other plans and projects has been identified

Templates for these matrices are available to download from the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/09/Advice-note-10-HRA.pdf>

The date by which the completed matrices must be received from the applicant will be discussed at the Preliminary Meeting.

### **9. Post-submission application documents**

Following the acceptance of the application, the Applicant submitted correspondence on 14 June 2018 [[AS-013](#)] to the Planning Inspectorate in response to s51 advice [[PD-001](#)] issued on 26 April 2018.

The letter provided by the Applicant outlines the revised documents submitted in response to the matters raised in advice issued by the Planning Inspectorate. I made a Procedural Decision on 15 June 2018 to accept the documentation, which have now been published to the project page of the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/kemsley-paper-mill-k4-chp-plant/>

The revised/amended documents submitted by the Applicant are as follows:

- Doc 4.4 - Works Plans – Key Plan [[AS-003](#)]
- Doc 4.5 - Work No.1 – Works Plan with limits of deviation for horizontal tube boiler [[AS-004](#)]
- Doc 4.7 - Illustrative Elevation cross sections – Horizontal Tube Boiler [[AS-005](#)]
- Doc 4.8a - Site Context – 3d Visual – Horizontal Tube Boiler (view a) [[AS-006](#)]
- Doc 4.8b - Site Context – 3d Visual – Horizontal Tube Boiler (view b) [[AS-007](#)]
- Doc 4.9 - Work No.1 – Works Plan with limits of deviation for Vertical tube boiler [[AS-008](#)]
- Doc 4.11 - Illustrative Elevation cross sections – Vertical Tube Boiler [[AS-009](#)]
- Doc 4.12a - Site Context – 3d Visual – Vertical Tube Boiler (view a) [[AS-010](#)]

- Doc 4.12b - Site Context – 3d Visual – Vertical Tube Boiler (view b) [[AS-011](#)]
- Doc 4.13 – Works No.2 – Tie-ins to existing site facilities (illustrative) [AS-012]
- Doc 3.1 – Appendix 10.2 – Habitats Regulation Assessment (June 2018) [[AS-002](#)]
- Doc 1.2 – Application Guide [[AS-001](#)]

Interested Parties are asked to submit any comments they may have on any of the revised documents submitted by the Applicant on 14 June 2018, by **Tuesday 31 July 2018 (D1)**.

I will consider procedural questions arising from these documents by the Applicant at the PM at Agenda Item 5 (see **Annex A**).

## Notification of Hearing under Section 91 of the Planning Act 2008

The first Issue Specific Hearing (ISH1) will be held as follows:

Date	Hearing	Starting Time	Venue	Access and Parking
Tuesday, 17 July 2018	Issue Specific Hearing into the draft Development Consent Order (dDCO) (ISH1)	1.00pm	Kemsley Community Village Hall The Square, Ridham Avenue, Kemsley, Sittingbourne, ME10 2SF	Free parking available at venue

The agenda for this initial hearing is included at **Annex G**.

Those Interested Parties (IPs) who wish to speak at the hearing should notify the Case Manager (Emré Williams) at the postal or email address in the covering letter by **midday (12 noon), 10 July 2018**.

It would help with the management of the hearing if by the same date you can let the Case Manager know:

- whether you wish to speak at the hearing and on which agenda items, listing points you wish to make; and
- of any special needs you may have (e.g. disabled access, hearing loop).

Please ensure that you include your IP reference number in your correspondence.

The hearing venue will be open 30 minutes prior to the start of the hearing to enable a prompt start. Hearings will finish as soon as the Examining Authority (ExA) deems that all those present have had their say and all necessary issues have been covered.

Every effort will be made to ensure that the items in the agenda at **Annex G** and the issues in the 'Schedule of the ExA's Issues and Questions relating to the dDCO' at **Table 1** will be discussed on the day.

Depending on the number of parties wishing to speak, it may be necessary to limit the time allocated to each speaker.

The ExA reserves the right to rearrange the agenda for this hearing on the day. If discussion of an issue takes longer than anticipated, it may have to be completed at a later date or responded to by the relevant deadline date within the Examination Timetable.

## **Agenda for the Issue Specific Hearing into the draft Development Consent Order**

This document sets out the agenda for my initial Issue Specific Hearing (ISH1) into the draft Development Consent Order (dDCO) that was notified by the Examining Authority (ExA) in **Annex F**.

**Date:** Tuesday 17 July 2018  
**Time:** 1.00pm, room opens from 12:30pm  
**Venue:** **Kemsley Community Village Hall**  
The Square, Ridham Avenue, Kemsley  
Sittingbourne, ME10 2SF

**Access and Parking:** Free parking available at venue

### **Background**

This early hearing on the dDCO is being held to address matters, issues and questions identified by the ExA during the Initial Assessment of Principal Issues as listed in **Annex B**. The ExA will not examine matters arising from the content of individual Relevant Representations (RRs) at this hearing. These are matters that will be the subject of consideration as the examination progresses, in writing or orally as required, following the submission of Written Representations (WRs).

The ExA considers that it is expedient to examine some matters, issues and questions orally at the outset of the examination in order to ensure that technical and legal matters arising from the dDCO are identified and considered as early as possible. This hearing, and any subsequent hearings, will be held without prejudice to the ExA's consideration of the broader planning merits of the Application.

The ExA requests that the following attendees participate in the hearing into the Scope of the DCO Application:

- **DS Smith Paper Ltd (the Applicant)** - including representatives of the Applicant who are in a position to discuss the matters on the agenda;
- **Swale Borough Council (SBC);**
- **Environment Agency (EA);**
- **Natural England;**
- **Kent County Council;**
- **Network Rail; and**
- **Any other Interested Parties (IPs)** - with an interest in the drafting of the DCO, the implementation or discharge of proposed articles, requirements or other provisions.

Participants may be legally represented if they wish, but the hearing will be conducted to ensure that legal representation is not required.

Guidance under the Planning Act 2008 (PA 2008) and the Infrastructure Planning (Examination Procedure) Rules 2010 provide that it is the ExA that will probe, test and assess the evidence through direct questioning of persons



making oral representations at hearings. Questioning at the hearing will be led by the ExA.

Cross-questioning of the person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure representations are adequately tested or that a person has had a fair chance to put their case.

The hearing will run until all IPs have made their representations and responded to the ExA's exploration of the matters in accordance with the agenda set.

The following agenda is indicative and may be amended by the ExA at the start of the hearing session. Furthermore, the ExA may wish to raise other matters arising from submissions, and pursue lines of inquiry in the course of the discussion which are not on the agenda.

### **Purpose of the Issue Specific Hearing**

The ExA will examine the dDCO within the framework of the matters set out below to consider:

- How the draft responds to the project definition;
- The approach taken to principal, associated and ancillary development;
- The Applicant's response to guidance in PINS Advice Notes, particularly AN13 and AN15<sup>1</sup>;
- The justification for any changes from established practice;
- The need for changes to other legislative provisions; and
- Whether the policy tests for planning conditions relevant to requirements are met.

In addition to the matters identified above, the ExA will review detailed issues and questions about individual dDCO provisions that have been identified and included in **Table 1: Schedule of ExA Issues and Questions relating to the dDCO** which is attached. Additional issues and questions arising from Interested Parties (IPs) that have not been identified in the schedule will not be discussed at this time. However these will be considered as the examination progresses, in writing or orally as required.

The questions in Table 1 were prepared prior to the receipt of the Applicant's post submission application documents (see item 9 of Annex E). As a consequence they do not necessarily reflect the Applicant's latest proposals. Nevertheless, in responding to the ExA's questions at ISH1 parties will be asked to comment with reference to the revised/amended documents.

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<sup>1</sup> The Planning Inspectorate's Advice Notes can be found at:  
<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

## Agenda

### 1. **Welcome, introductions and arrangements for the Issue Specific Hearing**

### 2. **Purpose of the Hearing**

### 3. **The function and structure of the submitted dDCO**

The ExA will ask the Applicant about:

- a) the proposed articles;
- b) the proposed project (Schedule 1);
- c) the proposed requirements (Schedule 2);
- d) whether the proposed development can be undertaken without the need for land acquisition or acquiring rights over land;
- e) the potential need for protective provisions for the protection of the interests, statutory role and functions of electricity, gas water or sewerage undertakers;
- f) the means of recording documents to be certified;
- g) whether the draft DCO is consistent with the Applicant's approach to flexibility in adopting the principle of the 'Rochdale Envelope' in the Environmental Statement;
- h) the need for and progress on any other consents and/or permits; and
- i) progress on Statements of Common Ground relevant to the DCO.

### 4. **Discharge of requirements and conditions, appeals and disputes**

The ExA will ask IPs and particularly the agencies and Swale Borough Council whether they have any significant concerns in principle with the proposed approaches taken to the discharge of requirements, or for managing appeals or disputes under the dDCO.

### 5. **Specific issues and questions bearing on the dDCO, raised by the ExA**

A schedule of issues and questions is attached to this agenda (see **Table 1**). Questions will be put to the Applicant and views will be sought from IPs. Where they are relevant to the discussions under matters 3 and 4 above, the questions in Table 1 may be drawn out within those matters. Any remaining questions that have not been addressed there will be examined individually here.

### 6. **Review of issues and actions arising**

The ExA will address how any actions placed on the Applicant are to be met and consider the approaches to be taken to the examination of the dDCO and any changes to it, in the light of issues raised in this hearing.

### 7. **Next Steps**

### 8. **Any other business**

### 9. **Closure of the Hearing**



The Planning Inspectorate

## Application by DS Smith Paper Limited for The Kemsley Mill K4 Combined Heat and Power Generating Station

### Schedule of Examining Authority Issues and Questions relating to the draft Development Consent Order

The issues and questions set out below expand on the Examining Authority's (ExA's) identification of the draft Development Consent Order (DCO) as submitted [APP-005] as a matter for examination in the initial assessment of principal issues. They will be referred to in the first issue-specific hearing (ISH1) into the dDCO on **Tuesday 17 July 2018**. They are principally addressed to the Applicant but observations from other interested parties (IPs) attending the hearing are welcome.

#### Abbreviations Used

<b>PA2008</b>	<i>The Planning Act 2008 as amended</i>	<b>MP</b>	<i>Model Provision (in the MP Order)</i>
<b>Art</b>	<i>Article</i>	<b>MP Order</b>	<i>The Infrastructure Planning (Model Provisions)(England &amp; Wales) Order 2009</i>
<b>dDCO</b>	<i>Draft DCO [APP-005]</i>	<b>NPS</b>	<i>National Policy Statement</i>
<b>EM</b>	<i>Explanatory Memorandum [APP-006]</i>	<b>NSIP</b>	<i>Nationally Significant Infrastructure Project</i>
<b>ES</b>	<i>Environmental Statement [APP-008-036]</i>	<b>R</b>	<i>Requirement</i>
<b>ExA</b>	<i>Examining authority</i>	<b>SI</b>	<i>Statutory Instrument</i>
<b>LIR</b>	<i>Local Impact Report</i>	<b>SoS</b>	<i>Secretary of State</i>
<b>LPA</b>	<i>Local planning authority</i>		

#### The Examination Library

References in these questions set out in square brackets (eg [APP-010]) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010090/EN010090-000344-K4%20Internal%20Examination%20Library%20-%20PDF%20Version.pdf>

It will be updated as the examination progresses.

#### Citation of Questions

Questions in this table should be cited as follows:

Hearing reference: question number, e.g. **ISH1:1** – refers to question 1 in this table.

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**Agenda for ISH1: Table 1 to Annex G**

<b>Q No.</b>	<b>Part of DCO</b>	<b>Drafting example (where relevant)</b>	<b>Question</b>
<b>1.</b>	<b>General: Order Format and Tracking of Changes</b>		<p>The Applicant is asked to supply subsequent versions of the draft Development Consent Order (dDCO) [APP-005] submitted after the application version in both .pdf and Word formats and in two versions, the first forming the latest consolidated draft and the second showing changes from the previous version in tracked changes, with comments outlining the reason for the change.</p> <p>The consolidated draft version in Word is to be supported by a report validating that version of the dDCO as being in the SI template.</p>
<b>2.</b>	<b>General: Plan or Document Changes and Revision Numbers</b>		<p>The Applicant is asked to ensure that all application or subsequent plans and documents referred to in the dDCO in whatever provision are identified by Drawing or Document and Revision Numbers in subsequent versions of the dDCO. Where revisions are prepared to plans and documents, these should be reflected in the latest version of the dDCO.</p> <p>The Applicant should undertake a final audit of plans and documents referred to in the dDCO prior to submitting its final preferred dDCO to the Examination.</p> <p>Where it is necessary to refer to document numbers the Applicant should use the Examination Library system.</p>

## Agenda for ISH1: Table 1 to Annex G

<b>3.</b>	<b>General: drafting approach to ancillary, further and associated development</b>		<p>Schedule 1 of the dDCO describes the authorised development set out in Works Nos. 1-5. This is followed by a description of 'further development' (a)-(f) with (f) describing works 'for purposes ancillary to the construction of the authorised development'. The application form [APP-003] and paragraph 2.6.3 of the Planning Statement [APP-058] indicate that there would be no associated development proposed or required as part of the application. No explanation is provided in the EM [APP-006] for this approach and therefore the Applicant is asked to clarify the drafting approach to ancillary, further and associated development. This should be done with reference to section 115(2) of PA2008 and the DCLG Guidance on associated development.<sup>1</sup></p> <p>In addition, the Applicant is requested to prepare a table, itemising all proposed works (Works Nos. 1-5 and items (a)-(f) following Work No 5 listed in Schedule 1) and categorising each in the following terms:</p> <ul style="list-style-type: none"> <li>• Principal development;</li> <li>• Ancillary development; or</li> <li>• Associated development.</li> </ul> <p>See also Q9, Q40 and Q43.</p>
<b>4.</b>	<b>General: signature of the dDCO</b>	<p><i>Name</i></p> <p><i>Position</i></p> <p><i>Department</i></p>	<p>The Applicant is requested to supply subsequent versions of the dDCO as follows:</p> <p><i>Signed</i></p> <p><i>Title</i></p> <p><i>Department</i></p> <p>A completed signature block is added to a DCO at the time of the Secretary of State's decision to grant development consent by making the Order.</p>

<sup>1</sup> Planning Act 2008, Guidance on associated development applications for major infrastructure projects, DCLG, April 2013

## Agenda for ISH1: Table 1 to Annex G

<b>5.</b>	<b>Preamble</b>	<i>“the application was examined by a [single examining inspector]...”</i>	The Applicant is asked to draft the Preamble to the next version of the dDCO to confirm that the application has been examined by a single appointed person appointed by the Secretary of State by removing the square brackets.
<b>6.</b>	<b>Art 2(1)</b>	<i>“In this Order <u>except where provided otherwise</u>”</i>	<b>Article 2: Interpretation</b>  The Applicant is asked to explain why it is necessary to include the phrase ' <i>except where provided otherwise</i> ' which is not usual in other DCOs.
<b>7.</b>	<b>Art 2(1)</b>	<i>“the 1991 Act” means the New Roads and Street Works Act 1991;</i>	Does the Interpretation need to make reference to the New Roads and Street Works Act? Where is this Act addressed in the Order?
<b>8.</b>	<b>Art 2(1)</b>	<i>“address” includes any number or address for the purposes of electronic transmission;</i>	Should the interpretation of 'address' be ' <i>include any number or address used for the purposes of electronic transmission</i> '?
<b>9.</b>	<b>Art 2(1)</b>	<i>“authorised development” means the development and associated development described in Schedule 1 (authorised development);</i>	The Applicant is asked to clarify the use of the term ' <i>associated development</i> ' in Schedule 1 together with the terms ' <i>further development</i> ' and ' <i>ancillary works</i> ' which occur after the description of Work No.5.  Should ' <i>ancillary works</i> ' be defined in Art 2(1)? Please respond with reference to section 32 of PA2008.
<b>10.</b>	<b>Art 2(1)</b>	<i>“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act)...</i>	Should the reference be to section 155 of the 2008 Act as occurs in other DCOs including Knottingley?

## Agenda for ISH1: Table 1 to Annex G

<b>11.</b>	<b>Art 2(1)</b>	<p><i>“commence” means ...other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements...</i></p>	<p>Notwithstanding the Applicant’s comments about the definition in the EM [APP-006], how are these exclusions from the statutory definition of commencement justified?</p> <p>Is such flexibility necessary? If so, please provide reasons and consider whether these matters need to be considered in a separate requirement relating to preliminary works.</p> <p>As restrictions on commencement of development are commonly used in requirements, there are often conflicts with the definition of commence. For example, R14 secures an archaeological scheme of investigation before commencement. How would this work when archaeological investigations are currently excluded from the definition of commencement?</p> <p>See also Q60.</p>
<b>12.</b>	<b>Art 2(1)</b>	<p><i>“maintain” includes inspect, repair, adjust, alter, remove, reconstruct or replace in relation to the authorised development”</i></p>	<p>The Applicant is asked to confirm whether the impacts of the various activities listed have all been assessed in the ES?</p>
<b>13.</b>	<b>Art 2(1)</b>	<p><i>“maintain” includes...reconstruct or replace <u>in relation to</u> the authorised development...</i></p>	<p>The Applicant is asked to consider whether the highlighted phase should be replaced by <i>‘any part, but not the whole of’</i>.</p>
<b>14.</b>	<b>Art 2(1)</b>	<p><i>“maintain” includes...provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement</i></p>	<p>The ExA is concerned that the wording potentially allows materially new or different environmental effects as long as it is unlikely that they will arise. Please comment.</p> <p>Would a wording similar to the Wrexham DCO be more appropriate? This allows the activities <i>‘to the extent assessed in the environmental statement’</i>.</p>
<b>15.</b>	<b>Art 2(1)</b>	<p><i>“Order limits” means the limits shown on the land plan within which the authorised development may be carried out;</i></p>	<p>The Land Plan [APP-039] contains a red line boundary which the key describes as the <i>‘application boundary’</i>. Should this reflect the definition of Order limits in the dDCO?</p> <p>A number of other DCO’s have defined the Order limits with reference to the Works Plans. The Applicant is asked to comment.</p>



## Agenda for ISH1: Table 1 to Annex G

<b>16.</b>	<b>Art 2(1)</b>	<i>“relevant planning authority” means the local planning authority for the <u>land in question</u>;</i>	The Applicant is asked to consider replacing ' <i>land in question</i> ' with a phrase which provides greater clarity such as ' <i>area in which the authorised development is situated</i> '.
<b>17.</b>	<b>Art 2(1)</b>	<i>“requirement” means a <u>requirement</u> set out in Schedule 2...</i>	The Applicant is asked to consider replacing ' <i>a requirement</i> ' which simply repeats the original term with ' <i>those matters</i> '.
<b>18.</b>	<b>Art 2(5)</b>	<i>... jurisdiction <u>in relation to</u> the authorised development</i>	Would the replacement of ' <i>in relation to</i> ' by ' <i>over</i> ' provide greater clarity?
<b>19.</b>	<b>Art 3</b>		<p><b>Article 3: Development consent etc. granted by the Order</b></p> <p>At present the dDCO does not specify that the numbered works within the Works Plans (eg Work No. 1 d) Heat Recovery Steam Generator) need to be undertaken within the areas defined on the Works Plans.</p> <p>The Applicant is asked to consider whether, in the interests of providing greater clarity regarding the authorised development, it is necessary to include a new sub-article 3(2) as follows:</p> <p><i>'(2) Subject to paragraph (3) each numbered work must be situated within the numbered area shown on the works plan.'</i></p> <p>If such a change were accepted, sub-article (2) would become sub-article (3).</p>
<b>20.</b>	<b>Art 3(1)</b>		Paragraph 3.10 of the EM [APP-006] notes that Schedule 1 describes the authorised development. Would it be appropriate to reference Schedule 1 in Art 3(1)?
<b>21.</b>	<b>Art 3(2)</b>	<i>In <u>constructing or maintaining a work</u> the undertaker...</i>	As ' <i>constructing</i> ' is not a defined term in Art 2 and ' <i>maintain</i> ' is addressed in Art 4 the Applicant is asked to consider replacing the term highlighted with ' <i>carrying out the authorised development</i> '.
<b>22.</b>	<b>Art 3(2)</b>		Is it necessary to define ' <i>limits of deviation</i> ' in Art 2?

## Agenda for ISH1: Table 1 to Annex G

<b>23.</b>	<b>Art 3</b>		<p>As drafted, Art 3 would allow the undertaker to deviate laterally, recognising that some degree of flexibility may be needed to allow for any ground conditions or other engineering challenges encountered during construction. Notwithstanding the flexibility provided by Art 3(2), is it necessary to consider the inclusion of downwards deviation insofar as is necessary, as has been included in the Knottingley DCO?</p> <p>The Applicant is also asked to confirm that the placement of the works anywhere within the numbered areas within the Works Plans would not affect the conclusions of the ES or Habitats Regulations Assessment (HRA).</p>
<b>24.</b>	<b>Art 5(2)</b>	<i>...to obtain a permit or licence under any legislation...</i>	<p><b>Article 6: Operation of generating station</b></p> <p>The Applicant is asked to consider whether this phrase should be more specific in stating '<i>to obtain <u>any</u> permit or licence <u>or any obligation</u> under any legislation</i>'. Such wording was included in the Wrexham DCO.</p>
<b>25.</b>	<b>Art 7(4)</b>	<i>"...or to a licence holder within the meaning of section 64(1) of the Electricity Act 1989;"</i>	<p><b>Article 7: Consent to transfer benefit of Order</b></p> <p>The corresponding Article in the Wrexham DCO refers to section 6 of the Act. The Applicant is requested to confirm whether the section quoted is correct.</p>
<b>26.</b>	<b>Art 8(1)</b>	<i>"...nuisance falling within paragraph (a), (c), (d), (fb) or (g) of section 79(1) (statutory nuisances and inspections therefor)..."</i>	<p><b>Article 8: Defence to proceedings in respect of statutory nuisance</b></p> <p>Paragraph 3.24 of the EM [APP-006] states that only those nuisances which may be of relevance to the authorised development have been included in the Order. Both the Knottingley and Wrexham DCOs only provide for nuisances within paragraph (g) of section 79(1).</p> <p>Why is it necessary to include other nuisances in this case? How are these defences justified?</p> <p>Usually, the defences are limited to those types of nuisance which are explicitly controlled by requirements. Is this the case here?</p>

## Agenda for ISH1: Table 1 to Annex G

<b>27.</b>	<b>Art 8(2)</b>		Should reference also be made to section 65(8) of the Control of Pollution Act which relates to a corresponding provision in relation to consent for registered noise level to be exceeded?. Such a provision is included in both the Wrexham and Knottingley DCOs.
<b>28.</b>	<b>Art 9(3)</b>	<i>“except with the consent of the person to whom it belongs;...”</i>	<p><b>Article 9: Discharge of water</b></p> <p>Kent County Council as Lead Local Flood Authority for Kent has suggested in their RR an amendment to Art 9(3) adding '<i>or the consent of the authority which has consenting authority</i>' after the highlighted phrase. Would the Applicant comment on the proposed amendment.</p>
<b>29.</b>	<b>Art 9(7)</b>	<i>“This article does not authorise a groundwater activity or a water discharge activity <u>within the meaning of the Environmental Permitting (England and Wales) Regulations 2016</u>”</i>	The Applicant is asked to consider whether the highlighted words should be replaced with ' <i>for which an environmental permit would be required under regulation 12</i> ' in order to provide greater clarity.
<b>30.</b>	<b>Art 9(8)</b>		Should Art 9(8) reflect the fact that the Homes and Communities Agency was replaced by Homes England in January 2018?
<b>31.</b>	<b>Art 9(9)</b>	<i>“...fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval”</i>	Is this 28-day deemed approval period appropriate? If so, why?
<b>32.</b>	<b>Art 12(1)(e)</b>	<i>“the works plans (document reference 4.4[4.5] and [4.9]); Drawing Nos: 10392-0026-006 [10392-0029-009] [10392-0039-007];”</i>	<p><b>Article 12: Certification of plans, etc.</b></p> <p>As set out in PINS' section 51 advice of 26 April there are some discrepancies regarding the Works Plans drawing numbers. The Applicant is advised to carry out a full review to ensure that any plans to be certified are referenced accurately.</p> <p>The Applicant is requested to clarify its position in relation to the alternative plans and to confirm whether it is proposed to construct a horizontal tube boiler or a vertical tube boiler.</p> <p>In addition the applicant is asked to confirm whether the illustrative layouts, elevations and 3D visuals for each alternative [APP-042, 043, 044 and 045 or APP-047, 048, 049 and 050] should be certified.</p>

**Agenda for ISH1: Table 1 to Annex G**

33.	<b>Art 14</b>	<i>“...and unless otherwise agreed between the parties...”</i>	<p><b>Article 14: Arbitration</b></p> <p>Should any agreement between the parties be in writing?</p>
34.			<p><b>Protective Provisions</b></p> <p>The dDCO does not contain any protective provisions. The Applicant is asked to explain why this is the case when connections to the electricity grid and gas grid are required, notwithstanding that there are existing connections.</p> <p>Have discussions taken place with the local Distribution Network Operator or Southern Gas Networks? If they have, please provide a commentary; if not, why not?</p> <p>The Applicant is asked to comment on Network Rail’s request in their RR for a protective provision.</p>
35.	<b>Schedule 1</b>		<p><b>Schedule 1: Authorised development</b></p> <p>Reference is made to Articles 2, 3 and 4. As the authorised development describes the construction, operation and maintenance of a nationally significant infrastructure project, should Article 5 also be referenced?</p> <p>Paragraphs 2.4.2 and 2.4.3 of the ES describe the main plant items and ancillary plant items which have been assessed in the ES and which correspond to Work Nos. 1 and 2 of the dDCO. No explanation is provided in the EM for the inclusion of Work Nos. 3-5 or for the further development described. The Applicant is asked to confirm whether Works 3, 4 and 5 have also been fully assessed through the ES and HRA.</p> <p>As set out in PINS’ section 51 advice of 26 April there are some discrepancies regarding the Works Plans. Details are not repeated here but the Applicant is advised to address these matters for ISH1.</p>

## Agenda for ISH1: Table 1 to Annex G

<b>36.</b>	<b>Schedule 1</b>	<i>“The construction, operation and maintenance of a nationally significant infrastructure project...”</i>	Is the highlighted wording necessary? Such wording does not occur in a number of other DCOs including Wrexham and Knottingley.
<b>37.</b>	<b>Schedule 1</b>	<i>‘Work No. 1 —</i>	<p>Paragraph 4.2 of the EM states that two different possible locations for Work Nos. 1(e) and 1(g) have been provided. It also states that the dDCO does not currently include any provisions relating to the two possible locations.</p> <p>The Applicant is asked to confirm the proposed location and revise the dDCO accordingly or explain why it is not possible to provide a final design at this stage, confirm when it will be available and indicate how the dDCO would be revised based on either option.</p>
<b>38.</b>	<b>Schedule 1</b>	<i>‘Work No. 1 — e) a 70m high heat recovery steam generator stack; j) a 35m high package boiler stack.’</i>	<p>Why is it necessary to refer to the height of these elements when no other measurements are provided in Schedule 1 and the heights are provided in Table 1 of Schedule 2?</p> <p>See also Q48</p>
<b>39.</b>	<b>Schedule 1</b>	<i>‘Work No. 1 — g) a <u>CHP</u> pipe bridge...connecting <u>the plant with the paper mills and the existing electricity substation</u>.’</i>	<p>The abbreviation CHP has not been used previously within the Order although the Order itself refers to Combined Heat and Power. For completeness, should it be set out in full here?</p> <p>Does the reference to <i>‘the plant’</i> provide suitable clarity? Is it necessary to refer to the connection in Work No 1 when Work No. 2 provides for the connection into existing items?</p>
<b>40.</b>	<b>Schedule 1</b>		Why is a distinction drawn between main plant items and ancillary plant items? What is the basis of this distinction in terms of the DCLG Guidance?
<b>41.</b>	<b>Schedule 1</b>		Reference is made in Schedule 1 to K2 and K1. Should these terms be defined in Article 2?
<b>42.</b>	<b>Schedule 1</b>	<i>‘Work No. 2 — (b) K1 package boilers (six <u>off</u>)</i>	Should this reference be <i>‘of’</i> ?

## Agenda for ISH1: Table 1 to Annex G

<p><b>43.</b></p>	<p><b>Schedule 1</b></p>	<p>(a ) <i>the strengthening or alteration of any building;</i></p> <p>(b) <i>foundations...and <u>lighting</u>;</i></p> <p>(d) <i>works to alter the position of apparatus...</i></p> <p>(e) <i>construction compounds...</i></p> <p>(f) <i>such other works...for the purposes of, or for purposes ancillary to, the construction of the authorised development'.</i></p>	<p>After Work No.5, further development is described. As set out in Q3 the term '<i>further development</i>' should relate to the DCLG Guidance. Other terms within (a)-(f) require justification / clarification as follows:</p> <p>(a) This power would apply to any building within the Order limits. What would be the likely resultant physical form of such works? Have the potential impacts been assessed in the ES?</p> <p>(b) Is it appropriate to address lighting as part of '<i>further development</i>' when it has a specific requirement (R9)?</p> <p>(d) Apparatus is defined in Art 2 with the definition being that as set out in the 1991 Act. In this case any works to alter the position of apparatus would be within the Order limits and therefore on private land. Please comment.</p> <p>(e) How does (e) relate to Work No. 5? Is there duplication?</p> <p>(f) Clarification is required about the meaning of '<i>ancillary to the authorised development</i>'. How does this relate to items (k)-(w) of Work No. 1?</p> <p>In addition, is it necessary for this clause to be qualified, as was done in the Wrexham DCO, removing '<i>authorised development</i>' and adding '<i>works in Schedule 1 but only insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement</i>'?</p> <p>In the event that the further development gives rise to materially different environmental impacts from those assessed in the ES, how would the impact be assessed and what mitigation might be necessary?</p>
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## Agenda for ISH1: Table 1 to Annex G

<b>44.</b>	<b>Schedule 2, R1</b>	<i>“Commissioning”</i>	<p><b>R1: Interpretation</b></p> <p>Is there a need for the definition to relate to the authorised development?</p>
<b>45.</b>	<b>Schedule 2, R5(1)(a)</b>	<i>“the layout, design, external appearance, dimensions and floor levels of all permanent buildings and structures”</i>	<p><b>R5: Detailed design</b></p> <p>Would ‘siting’ be a more appropriate term than ‘layout’ based on the type of development proposed?</p> <p>Should the reference to permanent buildings and structures be preceded by ‘new or modified’ to provide clarity? Alternatively, would ‘all buildings and structures comprising the authorised development which are to be retained following commissioning’ achieve the same objective?</p> <p>Would it be appropriate to add ‘including fencing or other means of enclosure, which are to be retained following commissioning’ in view of fencing being included in Schedule 1 under ‘further development’?</p>
<b>46.</b>	<b>Schedule 2, R5(1)(b)</b>	<i>“the colour, materials and surface finishes of <u>all permanent buildings and structures</u>”</i>	<p>Would it be appropriate to replace the highlighted text with ‘those buildings and structures referred to in paragraph (a)’ for clarity?</p>
<b>47.</b>	<b>Schedule 2, R5(2)(a)</b>	<i>“be in accordance with the design and access statement”</i>	<p>Paragraph 10.4 of the Design and Access Statement (DAS) [APP-058] states that the Work Plans provide flexibility for the location of those key plant items by setting limits of deviation of 5 metres in any direction.</p> <p>Whilst the DAS would be certified and therefore form part of the DCO, how would the 5 metre limitation relate to Art 3(2) and the comment in EM paragraph 3.12 which indicates that development would be allowed anywhere within the prescribed limits of deviation?</p>
<b>48.</b>	<b>Schedule 2, R5 Table 1</b>	<i>Building or Structure</i>	<p>In column 2 is it necessary to refer to the heights of structures 1(e) and 1(j) when they are specified in column 4?</p> <p>Would the diameter for 1(e) be more appropriately expressed as 4.0? The Applicant is asked to confirm that the dimensions in Table 1 are maximums which have been assessed through the ES and HRA.</p>

**Agenda for ISH1: Table 1 to Annex G**

<p><b>49.</b></p>	<p><b>Schedule 2, R6</b></p>		<p><b>R6: Decommissioning of existing generating station</b></p> <p>Reference is made to 'the paper mill' whilst Work No. 1(g) refers to 'the paper mills'. Please ensure consistency. Does either need to be defined in Art 2?</p> <p>How would the requirement be enforced? What sanction would there be if the undertaker ceased to operate the existing generating station? Why does R6(2) not require the undertaker to demolish any part of the existing generating station?</p>
<p><b>50.</b></p>	<p><b>Schedule 2, R7</b></p>	<p><i>"...until a CEMP for that part has been submitted to and approved by the relevant planning authority"</i></p>	<p><b>R7 Construction Environmental Management Plan</b></p> <p>Is there a need for the CEMP to be approved in consultation with the relevant highway authority?</p> <p>Questions about the need for, and scope of, individual elements of the CEMP will need to be discussed in later written questions and hearings, once the content of WRs is known. However, the Applicant is requested to give preliminary consideration to the following question:</p> <ul style="list-style-type: none"> <li>• Are any particular environmental features, performance measures, standards or subject matter of the CEMP of such importance that they should be individually specified in this or another requirement?</li> </ul>
<p><b>51.</b></p>	<p><b>Schedule 2, R8</b></p>		<p><b>R8: Construction traffic management plan</b></p> <p>Is the highway authority content that the CTMP adequately addresses vehicular and pedestrian access during construction? In their RR, Kent County Council as the highway authority indicated that a separate travel plan for contractors would be required. Why has the issue of a travel plan not been addressed?</p>



## Agenda for ISH1: Table 1 to Annex G

52.	<b>Schedule 2, R9</b>		<p><b>R9: External lighting</b></p> <p>Does R9 as currently drafted adequately address the issue raised by the Environment Agency in their RR that the impact of lighting on species in the ditch network near the development site needs to be covered?</p>
53.	<b>Schedule 2, R9(2)</b>	<i>“The scheme must be implemented as approved</i>	<p>For clarity, should the reference be to the scheme for external lighting, or alternatively the scheme approved in paragraph (1)? Furthermore, should the scheme <i>‘be implemented and maintained as approved’</i>?</p>
54.	<b>Schedule 2, R10(1)</b>		<p><b>R10: Construction hours</b></p> <p>No provision is made for the carrying out of works on public holidays. Should this be the case?</p>
55.	<b>Schedule 2, R10(3)</b>	<i>“... notified to the relevant planning authority within 72 hours”</i>	<p>On what basis is the notification period 72 hours?</p>
56.	<b>Schedule 2, R11(1)</b>	<i>“...until written details of the surface and foul water drainage system for that part have been submitted to and approved by the relevant planning <u>authority</u>”</i>	<p><b>R11: Surface and foul water drainage</b></p> <p>This requirement is based on MP14 but that provision includes <i>‘(including means of pollution control)’</i> after <i>‘system’</i>. Why has this phrase not been included in this case?</p> <p>Should the approval of the relevant planning authority be subject to consultation with the Lead Local Flood Authority and/or the Internal Drainage Board?</p> <p>Typo at the end of <i>‘authority’</i>.</p>
57.	<b>Schedule 2, R11(2)</b>	<i>“... must include the plans and strategies referred to in table 9-17 of the environmental statements”</i>	<p>Are the Environment Agency, Lead Local Flood Authority and Internal Drainage Board content that the scope of these items is appropriate?</p>
58.	<b>Schedule 2, R10(1) and R11(3)</b>	<i>“... unless otherwise agreed [] by the relevant planning authority”</i>	<p>Both of these requirements contain this phrase. The ExA is concerned that the term is imprecise and allows for alterations without adhering to the requirement. Please explain why the phrase is necessary.</p>

## Agenda for ISH1: Table 1 to Annex G

<b>59.</b>	<b>Schedule 2 R12</b>		<p><b>R12: Contaminated land and groundwater</b></p> <p>The EM states that the proposed requirement is based on MP15, requirements in previous orders and is tailored to take account of the nature of the site and areas considered to require further assessment.</p> <p>The Applicant is asked to explain the need for and the scope of the piling risk assessment and ground gas protection measures which do not form part of the MP.</p>
<b>60.</b>	<b>Schedule 2, R13</b>		<p><b>R13: Archaeology</b></p> <p>See Q11 on definition of 'commence', above. How is this requirement effective when archaeological investigations are currently excluded from the definition of commencement?</p> <p>Does R13 make adequate provision to assess the impacts of the scheme on buried archaeology as highlighted by Kent County Council in their RR?</p>
<b>61.</b>	<b>Schedule 2, R5(1), R7(1), R9(1), R10(1), R11(1) and R(13(1)</b>	<i>"... submitted to and approved by the relevant planning authority"</i>	<p>A number of requirements state that details should be submitted to and approved by the relevant planning authority. MP36 which has been used in a number of recent DCOs including Knottingley provides for approval to be given in writing. Would such a requirement be appropriate in this case?</p>
<b>62.</b>	<b>Schedule 2, R5(1), R7(1), R11(1) and R13(1)</b>	<i>"...for that part"</i>	<p>Given the limited scale of the proposed development and its general siting, why is it necessary for requirements to be addressed as a number of individual parts of the development? How would 'part' be determined?</p>
<b>63.</b>			<p>The dDCO makes no provision for decommissioning when the generating station for which consent is being sought, has ceased operation. Should a requirement be included to address decommissioning?</p>
<b>64.</b>	<b>Explanatory Note</b>		<p>For completeness, should the explanatory note indicate that the Order authorises DS Smith Paper Limited to 'construct, operate and maintain a new combined heat and power generating station'?</p>