



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

PINS Ref: EN010090



**SoCG**  
DS Smith Paper Ltd and  
Natural England

Document 7.4  
Author: DHA Planning



July 2018 - Deadline 1 Draft Version

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## Statement of Common Ground between DS Smith Paper Ltd and Natural England

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Client: **DS Smith Paper Ltd**  
Project: **The Kemsley Mill K4 CHP Generating  
Station DCO**  
Date: **July 2018**

Reference: **EN010090**  
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**(For and on behalf of DS Smith Paper  
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# 1 Introduction

- 1.1.1 DS Smith Paper Limited (“the Applicant”) is seeking permission to decommission an existing gas fired Combined Heat and Power (“CHP”) Plant (“K1”) and build a new gas-fired CHP plant (“K4”) with a nominal power output of 68-73 megawatts (the “Proposed Development”) on DS Smith owned land (“the Site”) to be operated by DS Smith and/or other companies to supply electricity and steam to their existing Kemsley Paper Mill, in Sittingbourne, Kent (“The Mill”) with any excess power being exported to the National Grid. DS Smith’s proposed operating partner for the Proposed Development is EON who currently operate K1.
- 1.1.2 The Planning Act 2008 states that the construction or extension of an onshore generating station of more than 50MW electrical output in England or Wales is considered by Section 14(1)(a) and Section 15 of the Act to be a ‘nationally significant infrastructure project’ (NSIP) and as such requires an application for a Development Consent Order (DCO) to be made to the Planning Inspectorate (PINS) and approved by the Secretary of State (SoS) for Business, Energy and Industrial Strategy. Such an application has therefore been prepared by DS Smith Paper Limited.
- 1.1.3 The Examining Authority requested that a SoCG be prepared between the applicant and the Natural England at Annex G of their Rule 6 letter of the 18<sup>th</sup> June 2018.

## 1.2 The Application Site

- 1.2.1 The Site lies in the south east corner of the existing Kemsley Paper Mill approximately 600m west of the Swale Estuary and north of Milton Creek in the Borough of Swale, Kent. The entire Site is within the security fence for the Paper Mill. The main part of the Site is roughly triangular in shape and consists almost entirely of existing concrete hardstanding. The Site lies within the wider Paper Mill industrial complex which comprises a number of existing large industrial buildings, flue emission stacks, concrete hardstanding and other associated development.
- 1.2.2 The nearest statutory designation with regard to ecological interest is the Swale Special Protection Area and Site of Special Scientific Interest which lies approximately 280m east of the Site at its closest point. The Site is also less than 200m from the Milton Creek Local Wildlife Site.

## 1.3 The Proposed Development

- 1.3.1 A full description of the Proposed Development is provided within the Environmental Statement (Doc 3.1). DS Smith is seeking permission to decommission the existing gas-fired CHP Plant (K1) and build a new gas-fired CHP plant (K4) with a nominal power output of 68-73 Megawatts to be operated by DS Smith and/or other companies to supply steam and power to their existing Kemsley Paper Mill.
- 1.3.2 The Proposed Development will comprise a combined cycle plant fuelled by natural gas comprising a gas turbine of 52-57 MW nominal power output, waste heat recovery boilers providing 105 MWth steam and steam turbine technology of around 16 MW nominal power output.

1.3.3 Natural England have been formally consulted with regard to the Proposed Development and issued their relevant representation to PINs on 8<sup>th</sup> June 2018 which is available as part of the online public register.

#### **1.4 The role of Natural England**

1.4.1 Natural England is the statutory adviser to Government on nature conservation in England and promotes the conservation of England's wildlife and natural features.

1.4.2 Natural England's role in relation to the DCO process derives from the Planning Act 2008 (the 2008 Act).

1.4.3 In the context of the Planning Act 2008 Act (the PA 2008), Natural England's main responsibilities relate to EIA, the Habitats Regulations, the regulation of SSSIs under the Wildlife and Countryside Act (WCA) 1981 and the licensing body in respect of protected species.

1.4.4 The main roles and responsibilities of Natural England fall into the following categories:

- as one of the prescribed consultees under section 42 of the 2008 Act that applicants are required to consult before submitting a NSIP application
- as one of the consultation bodies that the Planning Inspectorate must consult before a scoping opinion is adopted in relation to any EIA and as a prescribed consultee for the environmental information submitted pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- as a statutory party in the examination of DCO applications
- as a statutory nature conservation body under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) or the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007 (Offshore Regulations) in respect of the HRA
- as a consenting and licensing body/authority in respect of protected species and operations likely to damage the protected features of SSSIs pursuant to the Wildlife and Countryside Act 1981 (as amended) (WCA 1981) and in relation to European protected species under the Habitats Regulations.
- as a prescribed consultee under the Marine and Coastal Access Act (2009) for proposals within the area of the English territorial sea capable of affecting, other than insignificantly, any of the protected features of a Marine Conservation Zone (MCZ) or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

1.4.5 This Statement of Common Ground has been prepared pursuant to Natural England's relevant representation and seeks to agree all matters raised supported by the additional information issued to Natural England and agreed pursuant to this request (Document 3.1-ES Volume 2 Appendix 10.2 Habitats Regulation Assessment, August 2018 - Deadline Two Version).

## 2 Matters agreed between the parties

### 2.1 Relevant designated sites

2.1.1 It is agreed that the following sites are relevant to this application are:

- The Swale SPA, Ramsar Site and SSSI
- The Swale Estuary Marine Conservation Zone
- Medway Estuary and Marshes SPA and Ramsar site
- Thames Estuary and Marshes SPA and Ramsar site
- Queendown Warren SAC and SSSI
- South Thames Estuary and Marshes SSSI

### 2.2 People Over Wind and Sweetman vs Coillte Teoranta (ref: C323/17)

2.2.1 In response to the Section 51 advice letter from PINS DHA Environment and RPS have been in consultation with Natural England with regard to the decision by the European Courts in People Over Wind and Sweetman vs Coillte Teoranta (ref: C323/17).

2.2.2 The Habitats Regulation Assessment has been re-structured (Document 3.1- ES Volume 2 Appendix 10.2 Habitats Regulation Assessment, August 2018 - Deadline Two Version) such that integrated or additional avoidance or reduction measures are not relied on at the screening stage of the assessment.

2.2.3 It is agreed that the restructured Habitats Regulation Assessment is procedurally compliant with the above decision.

### 2.3 Overarching principles

2.3.1 The site does not lie within the boundary of any designated sites and will not result in the direct loss of habitat therein, nor does it contain any supporting habitat for the cited interested features of the designations. The Proposed Development will not affect the management regimes within the designated sites and given the context and location of the development it will not result in the loss of future space to allow for managed realignment of the estuarine habitats or have a detrimental urbanising effect given the context of its setting. It is agreed that the principal potential pathways for effects on the designated sites in question are noise, disturbance, air quality, light spill and water quality and resources during the construction, operational and decommissioning phases of the development.

## 2.4 The Swale SPA, Ramsar Site and SSSI

### Air quality

- 2.4.1 It is agreed that subject to best practice construction methods to minimise dust, secured through the CEMP (Requirement 7 of the draft DCO), and in light of the anticipated number of HGV movements (i.e. less than 100 AADT during construction as per IAQM guidance) that no adverse effect on the on the integrity of the Swale designations will occur during construction.

### Visual Disturbance

- 2.4.2 It is agreed that due to the distance to the between the site and the Swale SPA/Ramsar site and screening provided by other buildings that there will be no adverse effect on the integrity of the interest features of the designated site. Whilst Marsh harrier breed in the reed beds adjacent to the site access road it is agreed that given they remaining breeding in this location despite the proximity of the construction of the adjacent Wheelabrator Energy from Waste Facility and that these birds have therefore become habituated to the visual disturbance expected to occur from the construction of the Proposed Development.

### Light spill

- 2.4.3 It is agreed that subject to appropriate lighting design secured through Requirement 9 of the draft DCO that lighting will not lead to an adverse impact on the integrity of the Swale designations.

### Water quality and resource

- 2.4.4 It is agreed that subject to standard pollution prevention measures, secured by way of a CEMP (draft requirement 7 of the DCO) that the risk to the Swale SPA/Ramsar site is as low as reasonably practical. Therefore, an adverse effect on integrity of the sites during construction can be avoided.
- 2.5 In terms of process water i.e. water used in the CHP plant this will be self-contained within the CHP plant itself and any wastewater from the Proposed Development will be discharged in a sealed pipe to DS Smith's own effluent treatment plant (ETP) operated under permit EPR BJ7468IC-V009 as currently occurs for the existing CHP plant (K1). This is a comprehensive permit for the paper mill site and its operation and includes the treatment of wastewater from the existing K1 CHP facility.
- 2.6 Licence EPR BJ7468IC-V009 details parameters with regard to discharges to water other than sewer (which incorporates DS Smith's ETP) and point sources to sewer. All waste water associated with the paper mill operations including the CHP plant are treated and

discharged via DS Smith's ETP. Only toilet/bathroom facility waste from the paper mill is discharged to sewer and treated at Southern Water's waste water treatment works.

2.7 K4 is essentially a modern smaller version of the paper mills existing CHP plant. The chemical composition, temperature and volume of waste water from K4 will not materially alter from that of K1.

2.8 Notwithstanding this in accordance with the Environment Agency's formal representation on the application a Water Framework Directive Scoping Exercise has been undertaken to determine the potential of the development to affect the WFD Water Body (the River Swale) (provided as Appendix 1).

2.9 It is agreed between the parties that following the completion of the WFD scoping exercise that it can be concluded that the Proposed Development will not affect the River Swale's compliance with the requirements of the Water Framework Directive and consequentially will not result in significant effects on the Swale SPA/Ramsar site.

#### **2.10 Medway Estuary and Marshes SPA and Ramsar site**

2.10.1 It is agreed that the Proposed Development will not result in significant effects on the Medway Estuary and Marshes SPA and Ramsar site.

#### **2.11 Thames Estuary and Marshes SPA and Ramsar site**

2.11.1 It is agreed that the Proposed Development will not result in significant effects on the Thames Estuary and Marshes SPA, Ramsar site and SSSI.

#### **2.12 South Thames Estuary and Marshes SSSI**

2.12.1 It is agreed that the Proposed Development will not result in significant effects on the South Thames Estuary and Marshes SSSI.

#### **2.13 Queendown Warren SAC and SSSI**

2.13.1 It is agreed that the Proposed Development will not result in significant effects on the Queendown Warren SAC and SSSI.



### 3 Matters where discussions are ongoing

3.1.1 The following matters are points of discussion between the parties whereby Natural England have asked for further information to conclude on the likely significant effects of the Proposed Development.

#### 3.1 The Swale SPA, Ramsar Site and SSSI

##### Air quality

3.1.1 As part of their relevant representation Natural England requested that data be provided regarding the process contribution of the development to the critical loads and levels of the habitat types for which the Ramsar site in addition to the SPA is designated.

3.1.2 This data is being collated by the applicant and will be submitted to Natural England for their consideration shortly.

##### Noise

3.1.3 Natural England as set out previously in their Section 42 response regard 55dB as a threshold above which disturbance effects on over wintering birds can occur through consequential effects on feeding behaviour or flight stimulation.

3.1.4 The noise modelling presented in Chapter 7 of the ES identifies that noise levels during construction with percussive piling will reach 65-75dB L<sub>Amax</sub> over an area of 20ha equivalent to approximately 0.32% of the Swale's SPA and Ramsar designation.

3.1.5 Natural England's have requested that data be provided regarding the number of birds using the area of the SPA exceeding the 55dB threshold and its ecological functionality for the birds.

3.1.6 This data is being collated by the applicant and will be submitted to Natural England for their consideration shortly.

#### 3.2 The Swale Estuary Marine Conservation Zone

3.2.1 The following forms the MCZ water quality target for the Swale Estuary:

'Reduce aqueous contaminants to levels equating to High Status according to Annex VIII and Good Status according to Annex X of the Water Framework Directive, avoiding deterioration from existing levels.'

3.2.2 The conclusion of the Water Framework Directive Scoping Exercise requested by the Environment Agency demonstrates that the Proposed Development will not adversely affect water quality in the Swale Estuary.

3.2.3 Natural England have requested that a Marine Conservation Zone scoping exercise is undertaken with respect to the potential for significant effects from the Proposed Development.

- 3.2.4 This is being progressed by the applicant and will be submitted to Natural England for their consideration shortly.

## 4 Matters Not Agreed

4.1.1 The parties to this SoCG confirm that there are currently no matters which have not been agreed at this stage.

Signed.....

Name and position.....

**On behalf of DS Smith Paper Ltd**

Date.....

Signed.....

Name and position.....Patrick McKernan, Manager, Sussex and Kent Area Team.....

**On behalf of Natural England**

Date.....

## **Appendix 1- WFD Scoping Exercise Issued to the Environment Agency**