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

PINS Ref: EN010090

The Applicant's Written Case ISH1 - Draft DCO

Document 8.3

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1 INTRODUCTION

1.1.1 This Written Summary of Oral Case has been prepared on behalf of DS Smith Paper Ltd (the "Applicant") in respect of its application for a Development Consent Order (DCO) for a gas fired Combined Heat and Power Plant at the Kemsley Paper Mill in Sittingbourne, Kent. The Application was accepted for examination by the Secretary of State for Business, Energy and Industrial Strategy on 26 April 2018 and given the application reference EN010090.

1.1.2 This document provides a written summary of the Applicant's oral case at the Issue Specific Hearing ('ISH') on the draft Development Consent Order held on 17 July 2018 at Kemsley Village Hall. This document has been submitted for Deadline 1 of the Examination (31 July 2018).

1.1.3 The document is set out in relation to the Agenda of ISH1 as provided in Annex G of the Planning Inspectorate's letter (Rule 6) dated 18 June 2018.

2 WRITTEN SUMMARY OF ORAL CASE

2.1 Agenda Item 1: Welcome, introductions and arrangements for the Issue Specific Hearing

2.1.1 Mr Kevin Gleeson (the "Examining Authority") outlined the agenda of the Issue Specific Hearing (ISH1) and made introductory comments.

2.1.2 The Applicant introduced the following:

(1) Julian Boswall of Burges Salmon LLP, the solicitors for the Applicant;

(2) John Arthur of Burges Salmon LLP, the solicitors for the Applicant; and

(3) David Harvey of DHA Planning, the planning agents for the Applicant.

2.1.3 The Interested Parties introduced themselves as the following:

(1) Ross McCardle representing Swale Borough Council

(2) Francesca Potter representing Kent County Council;

(3) Francis Carpenter representing Kent County Council; and

(4) Tom Reid representing the Environment Agency.

2.1.4 The Applicant stated that it had assumed that the focus of ISH1 would be on Item 5, Table 1 and draft written responses to the questions in Table 1 had been prepared. The Examining Authority noted some overlap between the questions in Table 1 and the rest of the agenda and indicated its intention to deal with high-level issues up front. The Examining Authority noted that the Applicant could provide an overview in the early part of the agenda, before giving more detailed answers under Item 5 / Table 1. The Applicant indicated that it was content with that approach.

2.2 Agenda Item 2: Purpose of the hearing

2.2.1 The Applicant confirmed that it had been mindful of the various points mentioned by the Examining Authority. The Applicant noted the status of the PINS Advice Notes and that DCOs are frequently granted in terms that do not always fully accord with the advice existing at the time, because of the case that is made during examination.

2.3 Agenda Item 3: The function and structure of the submitted dDCO

Item a) the Proposed Articles

2.3.1 The Applicant advised that the approach adopted towards the articles, and specifically articles 2, 3 and 4, was to follow established precedent and practice. The Applicant noted

that orders continue to be drafted in the shadow of the Model Provisions, although they have been repealed for some time. The Applicant stated that although specific queries had been raised by the Examining Authority in relation to some of the draft provisions (for example the definitions of 'commence' and 'maintain'), articles 2, 3 and 4 were considered to be reasonably standard. The Applicant confirmed that it had been restrained in its approach to drafting and had sought to exclude unnecessary provisions.

Item b) the proposed project (Schedule 1)

2.3.2 The Applicant advised that the scheme has been progressed at a quicker pace than usual due to the business need which has resulted in contractors being brought onto the scheme much earlier than is usually expected. This has allowed for a much narrower Rochdale/development envelope than might often be the case for comparable schemes, which is reflected in Schedule 1 of the draft DCO and the associated plans, and as a result there are relatively few areas of flexibility that are being sought.

2.3.3 The Applicant confirmed that the reference in the draft DCO to 'ancillary development' is not related to the definition in the Model Provisions. 'Ancillary' is included in Schedule 1 in a more general sense and is intended to aid the reader and in particular members of the general public in understanding which parts of Schedule 1 comprise large aspects of the scheme and which form smaller parts. None of the development is considered to be 'ancillary' in the specific sense.

2.3.4 The Applicant confirmed that in its view Schedule 1 does not contain any associated development. The Applicant noted that previous DCOs have taken different approaches to associated development and that there is a lack of consistent practice on this point. In the Applicant's view, everything listed in Schedule 1 is required in order to deliver the core scheme and so can properly be considered to form part of the principal development. The Applicant accepted that it would be possible to find previous orders that have taken a different approach, but noted that in most cases little turns on how particular works are categorised, as they will still be included in Schedule 1 in any event. The Applicant noted that under Article 2 of the DCO the definition of 'authorised development' is to be amended to remove "and associated development".

Item c) the proposed requirements (Schedule 2)

2.3.5 The Applicant confirmed that any issues relating to the proposed requirements would be discussed under Item 5, Table 1 of the agenda.

Item d) whether the proposed development can be undertaken without the need for land acquisition or acquiring rights over land

2.3.6 The Applicant confirmed that the proposed development can be undertaken without the need for land acquisition or acquiring rights over land. The Applicant noted that it had investigated the title position very carefully. The Applicant stated that the site is within a secure perimeter and that to all meaningful extents it owns or controls all of the land within that perimeter. The Applicant noted that there are some statutory undertaker facilities within the site, but those statutory undertakers are under varying duties in

relation to the operation of their undertakings in ways which facilitate, rather than obstruct, the scheme.

2.3.7 The Applicant confirmed that it had carefully considered whether it needs to take any powers in relation to the statutory undertaker facilities and had concluded that it does not. The Applicant noted by way of example that a grid connection agreement is in place in relation to electricity and that it would therefore be unnecessary to seek compulsory powers in addition. The Applicant noted that other interests may be protected by the addition of requirements to the dDCO.

Item e) the potential need for protective provisions from the protection for the interests, statutory role and functions of electricity, gas water or sewerage undertakers.

2.3.8 The Applicant advised that if necessary protective provisions could be attached to the dDCO, but after careful consideration it had concluded that in this case protective provisions are not needed and therefore should not be included. The Applicant confirmed that this is an existing, integrated site and as a result the necessary agreements and arrangements with statutory undertakers already exist. Any potential additional or varied agreements or arrangements, particularly with SGN, are being discussed and can be addressed through the use of requirements where necessary. The Applicant noted that it is not seeking any compulsory powers in the DCO, which also weighs against the need for protective provisions.

2.3.9 With regards to Network Rail's relevant representation and its request for protective provisions, the Applicant advised that it was unsure what Network Rail apparatus Network Rail considers the scheme is affecting. The Applicant confirmed that discussions with Network Rail are ongoing but it is envisaged by the Applicant that this issue will fall away without the need to include protective provisions in the dDCO.

Item f) the means of recording documents to be certified

2.3.10 The Applicant agreed with the Examining Authority that there are a number of ways in which the DCO can provide for documents can be certified. The Applicant confirmed that draft article 12 (certification of plans etc.) makes provision for documents to be certified and that is the approach the Applicant proposes to take. The Applicant noted the comments in Table 1 regarding consistency in document referencing and confirmed that any subsequent revisions of the dDCO will refer to the document reference numbers set out in the examination library.

Item 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

2.3.11 The Applicant confirmed that its response on this point was explained earlier in the hearing (as recorded at 2.3.2 of this Statement) and that it had nothing further to add.

Item h) the need for and progress on any other consents and/or permits

2.3.12 The Applicant confirmed that a Statement of Common Ground is being progressed with the Environment Agency which is to address the timing of any permits and whether

there are any concerns over the granting of any relevant environmental permits. The Applicant noted that the environmental permits are as important as the DCO itself. The relationship between the Applicant and the Environment Agency has been constructive and there have been extensive discussions regarding the timing and detail for the application to vary the existing environmental permit. Therefore, the Applicant is content with the progress and that this is the only other consent required for the proposed development.

2.3.13 The Applicant advised there are no other connection consents required as these are already in place due to this being a replacement scheme. The only potential variations to the existing agreements are commercial and not statutory so these do not form part of the DCO or the examination.

Item i) progress on Statements of Common Ground relevant to the DCO

2.3.14 The Applicant confirmed that all Statements of Common Ground are in the same position in that a draft version has been sent to each party and progress is being made. The Applicant will endeavour to agree all Statements of Common Ground by Deadline 1, but will update the Examining Authority at Deadline 1 should that not be possible in any case.

2.3.15 The Applicant is continuing to engage with Network Rail regarding the potential for the proposed development to affect any Network Rail assets but due to the nature of those discussions it is not currently progressing a draft Statement of Common Ground. The Applicant will update the Examining Authority at Deadline 1 of the status of those discussions and whether it is still considered necessary for a Statement of Common Ground to be required.

2.4 Agenda Item 4: Discharge of requirements and conditions, appeals and disputes

2.4.1 The Applicant confirmed that it had no comments.

2.5 Agenda Item 5: Specific issues and questions bearing on the dDCO, raised by the Examining Authority

2.5.1 The Applicant advised the Examining Authority that a document had been drafted ahead of the hearing to address the specific questions raised by the Examining Authority in Table 1 to Annex G of the Rule 6 letter. The Applicant responded verbally to each of the questions.

2.5.2 The final written responses by the Applicant to the questions in Table 1 are attached in Appendix A.

2.6 Agenda Item 6: Review of issues and actions arising

2.6.1 The Applicant confirmed that it had no comments to make on the process or actions.

2.7 Agenda Item 7: Next steps

2.7.1 The Applicant had no comments on the next steps.

2.8 Agenda Item 8: Any other business

2.8.1 The Applicant confirmed that it had no other matters to raise.

Applicant's response to Examining Authority's questions for ISH1 on the DCO

Q. No	Part of DCO	Drafting example (where relevant)	Examining Authority's Question	Applicant's response
ISH1:1	General: Order Format and Tracking of Changes		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. 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.	Noted. The Applicant will provide PDF and Word versions of the revised DCO at Deadline 3 and for subsequent deadlines, in addition to a validation report.
ISH1:2	General: Plan or Document Changes and Revision Numbers		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. 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. Where it is necessary to refer to document numbers the Applicant should use the Examination Library system.	Noted. References will be checked and updated as required in revision B of the dDCO and any subsequent revisions.

ISH1:3	General: drafting approach to ancillary, further and associated development		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. 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: • Principal development; • Ancillary development; or • Associated development. See also Q9, Q40 and Q43.	The Applicant considers that all of the works described in Schedule 1 can be categorised as part of the principal development. The Applicant does not consider there to be any 'ancillary works' (as that term was defined in Schedule 1 to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) or associated development and the use of the term 'further development' is not intended to be of any statutory significance. The Applicant has used the term 'ancillary' in a general sense in various places in the dDCO (see for example the Applicant's response to ISH1:40 below), without intending it to be of any particular significance. The Applicant is content for these references to be deleted in the event the Examining Authority is unhappy with their inclusion. Regarding associated development, the Applicant's position is that there is none in this case. The Applicant recognises that there has not been consistent practice between previous DCOs on how associated development has been presented. The Applicant considers that an appropriate 'acid test' for whether a particular work constitutes associated development is whether it is needed to deliver the core project. If the answer is 'no' then in the Applicant's view that indicates that the work in question is likely to be associated development. In this case, everything in Schedule 1 is necessary to deliver the core project. The Applicant notes that in any event, very little turns on how the works are categorised, as they will be included in Schedule 1 regardless. The Applicant accepts that if a number of previous DCOs were examined then it would be possible to find some that have taken a

				different approach, but in the end all of those orders granted development consent for the works to proceed irrespective of whether they were classified as principal or associated development. The Applicant notes that there is one drafting amendment to make to the DCO to reflect its position, which is the deletion of "*and associated development*" from the definition of 'authorised development' in Article 2. That change will be included in revision B of the dDCO.
ISH1:4	General: signature of the dDCO	*Name* *Position* *Department*	The Applicant is requested to supply subsequent versions of the dDCO as follows: *Signed* *Title* *Department* 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.	Noted. This will be updated in revision B of the dDCO.
ISH1:5	Preamble	"*the application was examined by a [single examining inspector]...*"	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.	Noted. This will be updated in revision B of the dDCO.
ISH1:6	Art 2(1)	"*In this Order except where provided otherwise*"	Article 2: Interpretation The Applicant is asked to explain why it is necessary to include the phrase '*except where provided otherwise*' which is not usual in other DCOs.	This or similar wording has been included in four of the five most recently made DCOs at the time of writing (M20 J10a; Silvertown Tunnel; Richborough Connection; Keuper Underground Gas Storage). It allows for the terms defined in this article to be given a different meaning if required elsewhere in the dDCO.

				In this case the Applicant notes that some terms defined in article 2 are used in other contexts in the dDCO (e.g. "requirement" in article 5(2)) and the Applicant would therefore prefer to retain this wording.
ISH1:7	Art 2(1)	"*the 1991 Act" means the New Roads and Street Works Act 1991*	Does the Interpretation need to make reference to the New Roads and Street Works Act? Where is this Act addressed in the Order?	Yes. The defined term '1991 Act' is used in the definition of 'apparatus'. 'Apparatus' (as that term is defined in s.105(1) of the 1991 Act) is not limited to statutory undertakers' apparatus within a street and is used in a broader sense, to include the apparatus that is present within the Order limits, which may belong to statutory undertakers or to the Applicant.
ISH1:8	Art 2(1)	"*address" includes any number or address for the purposes of electronic transmission;*	Should the interpretation of '*address*' be '*include any number or address used for the purposes of electronic transmission*?	The Applicant is content to make this amendment and it will be included in revision B of the dDCO.
ISH1:9	Art 2(1)	"authorised development" means the development and associated development described in Schedule 1 (authorised development);	The Applicant is asked to clarify the use of the term '*associated development*' in Schedule 1 together with the terms '*further development*' and '*ancillary works*' which occur after the description of Work No. 5. Should '*ancillary works*' be defined in Art 2(1)? Please respond with reference to section 32 of PA2008.	Regarding associated development, further development and ancillary works, see the Applicant's response to ISH1:3. The Applicant notes that the term 'ancillary works' is not included in the dDCO.
ISH1:10	Art 2(1)	"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act)...	Should the reference be to section 155 of the 2008 Act as occurs in other DCOs including Knottingley?	The definition of 'material operation' in section 155 of the 2008 Act is: "*any operation except an operation of a prescribed description*". 'Operation' is not defined in the 2008 Act. This is considered to be an unhelpful definition compared to the one in section 56(4) of the 1990 Act. The Applicant notes that recent DCOs have referred to

				section 56(4) (see e.g. the M20 J10a and Silvertown Tunnel orders) and for these reasons would prefer to retain the current reference to section 56(4).
ISH1:11	Art 2(1)	"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...	Notwithstanding the Applicant's comments about the definition in the EM [APP-006], how are these exclusions from the statutory definition of commencement justified? 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. 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? See also Q60.	The Applicant's position is as set out in paragraph 3.5(a) of the Explanatory Memorandum (revision A April 2018, examination library document reference APP-006) (the 'EM'). The Applicant notes that excluding minor, low impact works from the definition of 'commence' is a standard approach in DCOs and that eight out of the ten most recently made DCOs at the time of writing (M20 J10a; Silvertown Tunnel; Wrexham; Richborough Connection; Glyn Rhonwy Pumped Storage; North London Heat and Power; Triton Knoll Electrical System; and East Anglia Three) have excluded these or similar works, or in some cases more intrusive or extensive works (see e.g. Glyn Rhonwy Pumped Storage, North London Heat and Power and Triton Knoll Electrical System) from the definition of 'commence'. The Applicant considers that it has struck a reasonable balance in this case in terms of the works that it is seeking to exclude. In this particular case the Applicant is working to a tight timetable, driven by the need to replace K1, and there is a desire to start the preparatory works as soon as possible. The Applicant does not consider that these matters need to be considered in a separate requirement relating to preliminary works. The Applicant has explained its view of the possibility for conflicts with the requirements in paragraph 3.5(a) of the EM and its response to ISH1:60 below.

ISH1:12	Art 2(1)	"maintain" includes inspect, repair, adjust, alter, remove, reconstruct or replace in relation to the authorised development"	The Applicant is asked to confirm whether the impacts of the various activities listed have all been assessed in the ES?	Maintenance is addressed in paragraphs 2.9.5 to 2.9.12 of Chapter 2 of the ES. As stated in paragraph 2.9.12, all technical experts have considered the maintenance activities listed in those paragraphs and have confirmed that they do not consider that any significant effects are likely to result from them. On that basis they were scoped out of further assessment. Based on the Applicant's current programme of 'known' future maintenance requirements, the most significant activity would be the replacement of a small number of wearing components of the main plant items. This is not considered to have any potential for material adverse environmental impacts. In the unlikely event that any maintenance activities were so large scale as to give rise to materially new or different environmental effects, those maintenance activities would not be permitted by the DCO due to the way in which 'maintain' has been defined..
ISH1:13	Art 2(1)	"maintain" includes…reconstruct or replace in relation to the authorised development…	The Applicant is asked to consider whether the highlighted phase should be replaced by '*any part, but not the whole of*'.	It is not anticipated that the need would ever arise to replace the entire authorised development and this is confirmed in paragraph 2.9.5 of Chapter 2 of the ES. With that in mind, the Applicant is reluctant to include the wording "*but not the whole of*" as it considers that it is important for it to retain, for example, the ability to inspect the whole of the authorised development. The Applicant understands the Examining Authority's concern, but considers that the subsequent wording in the definition of 'maintain' relating to environmental impacts forms an appropriate safeguard to restrict the extent of the permitted maintenance activities.
ISH1:14	Art 2(1)	"maintain" includes…provided such	The ExA is concerned that the wording potentially allows materially new or different	The Applicant considers that the wording of this definition is absolute. The test for permitted

		works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement	environmental effects as long as it is unlikely that they will arise. Please comment. Would a wording similar to the Wrexham DCO be more appropriate? This allows the activities '*to the extent assessed in the environmental statement*'.	maintenance activities is not that materially new or different environmental effects are 'unlikely' to arise, but rather that they will not arise. For the reasons set out in its response to ISH1:12 above, the Applicant does not consider that the wording in the Wrexham DCO would be more appropriate. The Applicant notes that the maintenance activities referred to in the ES are the 'known' activities and as such do not form an exhaustive list of all of the maintenance activities that may be required in the future. However, it is reasonable to expect any 'unknown' maintenance activities to be of a similar nature.
ISH1:15	Art 2(1)	"Order limits" means the limits shown on the land plan within which the authorised development may be carried out;	The Land Plan [App-039] contains a red line boundary which the key describes as the '*application boundary*'. Should this reflect the definition of Order limits in the dDCO? A number of other DCO's have defined the Order limits with reference to the Works Plans. The Applicant is asked to comment.	The same red line boundary is shown on the Land Plan and the Works Plans – Key Plan. The Applicant has no strong preference as to which of those plans is referred to in this definition and so will retain the reference to the Land Plan unless the Examining Authority requests that this is changed to the Works Plans – Key Plan. The Applicant has amended the Land Plan to refer to the 'order limits' and has submitted that amended plan at Deadline 1.
ISH1:16	Art 2(1)	"relevant planning authority" means the local planning authority for the land in question;	The Applicant is asked to consider replacing '*land in question*' with a phrase which provides greater clarity such as '*area in which the authorised development is situated*'.	The Applicant suggests that the definition should instead be changed to refer to Swale Borough Council, being the relevant planning authority for the area in which the authorised development is situated. The Applicant will include this amendment in revision B of the dDCO.
ISH1:17	Art 2(1)	"requirement" means a requirement set out in Schedule 2…	The Applicant is asked to consider replacing '*a requirement*' which simply repeats the original term with '*those matters*'.	The Applicant is content to make this amendment and it will be included in revision B of the dDCO.
ISH1:18	Art 2(5)	…jurisdiction in relation to the authorised	Would the replacement of '*in relation to*' by '*over*' provide greater clarity?	The Applicant does not have a strong preference as to which wording is used. It does consider that "*over*"

		development		implies some, or a greater, element of control over the authorised development, which in practice may not be the case (for example, a body that has jurisdiction over adjacent land, but not over the authorised development itself). However, the Applicant is content to make the change suggested by the Examining Authority and will include it in revision B of the dDCO.
ISH1:19	Art 3		**Article 3: Development consent etc. granted by the Order** 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. 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: '*(2) Subject to paragraph (3) each numbered work must be situated within the numbered area shown on the works plan.*' If such a change were accepted, sub-article (2) would become sub-article (3).	The Applicant considers that this is the effect of article 3(2), which permits the undertaker in constructing or maintaining a work to deviate laterally within the limits of deviation relating to that work shown on the works plans.
ISH1:20	Art 3(1)		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)?	Article 3(1) states that the undertaker "*…is granted development consent for the authorised development…*" The 'authorised development' is defined in article 2(1) as "*the development and associated development described in Schedule 1*". The Applicant does not therefore consider that it is necessary to amend article 3(1) to refer to Schedule 1.

ISH1:21	Art 3(2)	In constructing or maintaining a work the undertaker…	As '*constructing*' is not a defined term in Art 2 and '*maintain*' is addressed in Art 4 the Applicant is asked to consider replacing the term highlighted with '*carrying out the authorised development*'.	The Applicant is content to make this amendment and it will be included in revision B of the dDCO.
ISH1:22	Art 3(2)		Is it necessary to define '*limits of deviation*' in Art 2?	The Applicant does not consider that it is necessary to add a definition of 'limits of deviation' to article 2, since article 3(2) is the only place where the term 'limits of deviation' is used and the subsequent wording "*relating to that work shown on the works plans*" makes it clear where the limits of deviation are shown.
ISH1:23	Art 3		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? 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).	The Applicant has considered the question of levels and whether there is a need for downward limits of deviation, but due to the characteristics of the site is content that a downward limit of deviation is not required. Both the ES and HRA have taken the lateral limits of deviation shown on the Works Plans into account. Further submissions on that point will be made at Deadline 2 in response to the Examining Authority's First Written Questions.
ISH1:24	Art 5(2)	…to obtain a permit or licence under any legislation…	**Article 6: Operation of generating station** The Applicant is asked to consider whether this phrase should be more specific in stating '*to obtain any permit or licence or any obligation under any legislation*'. Such wording was included in the Wrexham DCO.	The Applicant is content to amend "*a permit or licence*" to "*any permit or licence*". It does not however consider that the addition of "*or any obligation*" would make sense when the provision is read in full, since it would then refer to obtaining obligations under legislation as required from time to time to authorise the operation of a generating station.

ISH1:25	Art 7(4)	"…or to a licence holder within the meaning of section 64(1) of the Electricity Act 1989;"	**Article 7: Consent to transfer benefit of Order** 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.	"Licence holder" is defined in section 64(1) of the Act. It means the holder of a licence under section 6. Section 6 confers a power on OFGEM to issue various types of licence and sets out other provisions regarding licences. As the wording in the dDCO is slightly different from that in the Wrexham DCO, and specifically includes the term 'licence holder' (which Wrexham does not), the reference to section 64(1) is considered to be correct in this case.
ISH1:26	Art 8(1)	"…nuisance falling within paragraph (a), (c), (d), (fb) or (g) of section 79(1) (statutory nuisances and inspections therefor)…"	**Article 8: Defence to proceedings in respect of statutory nuisance** 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). Why is it necessary to include other nuisances in this case? How are these defences justified? Usually, the defences are limited to those types of nuisance which are explicitly controlled by requirements. Is this the case here?	This provision is often misunderstood. A broad defence to civil and criminal proceedings for nuisance is provided by section 158 of the Planning Act 2008. However, the view taken under the NSIP regime is that section 158 does not extend to the relatively rare situation by which if somebody considers that the local authority ought to be tackling a nuisance using its statutory nuisance powers, but it is not, that person may apply to the magistrates' court under s.82 of the Environmental Protection Act 1990. Accordingly, this article is seeking to fill in a legislative loophole by extending the effect of s.158. Because s.158 does not distinguish between different types of nuisance, the logical position is that this article should also apply to all categories of nuisance. However, the Applicant accepts that as a matter of practice other schemes have been more discriminating and have asked whether there is any possibility of a statutory nuisance occurring, leading to specific types of nuisance being referred to. The Applicant has followed this approach by seeking to restrict the application of this article so that it only applies to nuisances that have been identified as potentially resulting from the

				authorised development in the Statement of Statutory Nuisances (APP-059). This ensures that the article is focused only on those nuisances that may be of relevance, whilst also reflecting the logic and correct interpretation of section 158. In order to benefit from the defence in article 8, the Applicant is required to show that the nuisance is either attributable to the carrying out of the authorised development in accordance with a notice or consent given by the relevant planning authority under the Control of Pollution Act 1974; or that it is a consequence of the construction, maintenance or use of the authorised development and cannot reasonably be avoided. It is not therefore an automatic defence. For detailed consideration of each of the possible nuisances included in this article, including the relevant requirements and other intended methods of control, see the Statement of Statutory Nuisances.
ISH1:27	Art 8(2)		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.	Section 65 of the Control of Pollution Act 1974 was repealed in October 2015.
ISH1:28	Art 9(3)	"except with the consent of the person to whom it belongs;…"	**Article 9: Discharge of water** Kent County Council as Lead Local Flood Authority for Kent has suggested in their RR an amendment to Art 9(3) adding '*or the consent of the authority which has consenting authority*' after the highlighted phrase. Would the Applicant comment on the proposed	The Applicant is content to make an amendment to reflect the comment from KCC and will include the following wording in revision B of the dDCO: "*or the person or body otherwise having authority to give such consent*".

			amendment.	
ISH1:29	Art 9(7)	"This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2016"	The Applicant is asked to consider whether the highlighted words should be replaced with '*for which an environmental permit would be required under regulation 12*' on order to provide greater clarity.	The Applicant is content to make this amendment and it will be included in revision B of the dDCO.
ISH1:30	Art 9(8)		Should Art 9(8) reflect the fact that the Homes and Communities Agency was replaced by Homes England in January 2018?	This amendment will be included in revision B of the dDCO.
ISH1:31	Art 9(9)	"…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"	Is this 28-day deemed approval period appropriate? If so, why?	The Applicant's position is as set out in paragraph 3.28 of the EM. The Applicant is prepared to consider a different period if any other party should have a particular concern about their ability to provide a response within a 28-day period.
ISH1:32	Art 12(1)(e)	"the works plans (document reference 4.4 [4.5] and [4.9]); Drawing Nos: 10392-0026-006 [10392-0029-009] [10392-0039-007];"	**Article 12: Certification of plans, etc.** 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. 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. In addition the applicant is asked to confirm whether the illustrative layouts, elevations and	As per the Applicant's response to ISH1:2, this is noted and references will be checked and updated as required in revision B of the dDCO and any subsequent revisions. The Applicant is not in a position to select an option at this stage due to an ongoing procurement process, but expects to be able to confirm which boiler option has been selected by the end of September. A delay to the process may mean that the decision is made later than that, but in any event an option will be selected before the close of the examination, allowing the minor consequential amendments to be made to the dDCO. The Applicant does not intend that the plans for each alternative will be certified, only those that are relevant

			3D visuals for each alternative [APP-042, 043, 044 and 045 or APP-047, 048, 049 and 050] should be certified.	to the chosen option. It is intended that only the plans and documents referred to in the DCO will be certified.
ISH1:33	Art 14	"…and unless otherwise agreed between the parties…"	**Article 14: Arbitration** Should any agreement between the parties be in writing?	The Applicant is content to make this amendment and it will be included in revision B of the dDCO.
ISH1:34			**Protective Provisions** 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. 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? The Applicant is asked to comment on Network Rail's request in their RR for a protective provision.	The Applicant has carefully considered whether or not protective provisions are required in this case and has concluded that they are not. Protective provisions in favour of statutory undertakers tend to be included in DCOs where the applicant is seeking the power to compulsorily acquire or interfere with statutory undertakers' interests or apparatus. The Applicant is not seeking such powers in this case. The authorised development involves creating new connections into the existing grid connection points, which are to be retained in situ. The electrical grid connection work will be carried out by the Applicant under the terms of a connection agreement, which means there is no need for protective provisions. With regard to the gas connection, there have not been any discussions with SGN on this point to date because the tie in point is via apparatus that is in the Applicant's control. SGN's pipe runs up to the gas compound, which is National Grid's. From the compound outwards, where the connection will be made, is the Applicant's responsibility. Separate discussions between the Applicant and SGN are taking place in relation to a gas main in the north of the site, which is currently proposed to be dealt with by the inclusion of an additional requirement in Schedule 2. On this basis, and because no statutory undertakers

				have expressed a need for protective provisions, the Applicant does not consider that there is any need for protective provisions in favour of electricity and/or gas undertakers in the dDCO. At the time of writing the Applicant does not consider that any protective provisions in favour of Network Rail are required. This is because, as far as the Applicant has been able to determine, Network Rail does not have any interest that is affected by the authorised development. Discussions with Network Rail regarding the content of its relevant representation are ongoing.
ISH1:35	Schedule 1		Schedule 1: Authorised development 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? 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. 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.	The Applicant is content to add a reference to article 5 and it will be included in revision B of the dDCO. The Applicant confirms that Works 3, 4 and 5 have been fully assessed in the ES and HRA. Further submissions on that point will be made at Deadline 2 in response to the Examining Authority's First Written Questions The Applicant has submitted an amended version of the Works Plans – Key Plan at Deadline 1, which contains a revised boundary for Work No. 1. That boundary reflects the limits of deviation identified on the Works Plans for both the horizontal and vertical boiler options for Work No. 1(g), and now reflects the boundary of Work No. 1(k)-(w) in particular. The Works Plan – Key Plan will be amended at the appropriate stage to reflect the boiler option that is selected.

ISH1:36	Schedule 1	"The construction, operation and maintenance of a nationally significant infrastructure project..."	Is the highlighted wording necessary? Such wording does not occur in a number of other DCOs including Wrexham and Knottingley.	The Applicant is content to delete this wording and it will be updated in revision B of the dDCO.
ISH1:37	Schedule 1	'Work No. 1 -	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. 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.	See the Applicant's response to ISH1:32 above. Once the final layout has been selected the Works Plans references in article 12 will be amended to refer only to the relevant set of plans.
ISH1:38	Schedule 1	'Work No. 1 – e) a 70m high heat recovery steam generator stack; j) a 35m high package boiler stack.'	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? See also Q48	The heights of the stacks are referred to in Schedule 1 as the Applicant considers that it is helpful in distinguishing between them. The Applicant therefore proposes to retain these references.
ISH1:39	Schedule 1	'Work No. 1 – g) a CHP pipe bridge…connecting the plant with the paper mills and the existing electricity substation;'	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? Does the reference to '*the plant*' 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?	The Applicant will replace "*CHP*" with "*combined heat and power*" in revision B of the dDCO. Although it is considered that the additional wording is helpful in clarifying the purpose of the pipe bridge, the Applicant is content to delete the wording from "*connecting*" onwards and will do so in revision B of the dDCO.
ISH1:40	Schedule 1		Why is a distinction drawn between main plant items and ancillary plant items? What is the	This distinction is not intended to have any particular significance and was considered to be helpful in

			basis of this distinction in terms of the DCLG Guidance?	communicating to the reader that some items are more substantial than others. The wording will be deleted for revision B of the dDCO.
ISH1:41	Schedule 1		Reference is made in Schedule 1 to K2 and K1. Should these terms be defined in Article 2?	The reference to K1 will be deleted in revision B of the dDCO. The reference to K2 in Work 1(w) will also be deleted for revision B of the dDCO. The description may also be revised.
ISH1:42	Schedule 1	'Work No. 2 – (b) K1 package boilers (six off)	Should this reference be '*of*'?	Yes. This amendment will be included in revision B of the dDCO.
ISH1:43	Schedule 1	(a) the strengthening or alteration of any building; (b) foundations…and lighting; (d) works to alter the position of apparatus… (e) construction compounds… (f) such other works…for the purposes of, or for purposes ancillary to, the construction of the authorised development'.	After Work No. 5, further development is described. As set out in Q3 the term '*further development*' should relate to the DCLG Guidance. Other terms within (a)-(f) require justification / clarification as follows: (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? (b) Is it appropriate to address lighting as part of '*further development*' when it has a specific requirement (R9)? (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.	(a) As a result of further design work and consideration, the Applicant may be able to delete (a) as it appears that all works to buildings would be covered by Work Nos. 1-5. Although the Applicant is not in a position to confirm that at present, it expects to be able to do so by Deadline 3 and if that is the case, (a) will be deleted in revision B of the dDCO. (b) Yes. The inclusion of requirement 9 means that any lighting proposed and authorised by Work (b) would be subject to the approval of the relevant planning authority. (d) It is correct that any apparatus in this case would be in or on land owned by the Applicant. It is common for apparatus to be within land that is privately owned. 'Apparatus' is used in a broad sense here and is not intended to be limited to statutory undertakers' apparatus. The definition of 'apparatus' in section 105(1) of the 1991 Act contains no such limitation.

			(e) How does (e) relate to Work No. 5? Is there duplication? (f) Clarification is required about the meaning of '*ancillary to the authorised development*'. How does this relate to items (k)-(w) of Work No. 1? In addition, is it necessary for this clause to be qualified, as was done in the Wrexham DCO, removing '*authorised development*' and adding '*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*'? 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?	(e) The Applicant considers that (e) provides a more detailed description of the activities and works that are included within the scope of Work No. 3. It also allows for day to day construction activities to take place around the site as required (for example, short term laydown/storage of materials immediately prior to their use; temporary fencing of specific parts of the site as required as particular works are carried out; the placing and removal of temporary ramps to help vehicles manoeuvre around the site etc.) (f) The use of this wording is not intended to have any correlation to Work Nos. 1(k)-(w). As it appears to be causing concern the Applicant will delete "*or for purposes ancillary to*" from revision B of the dDCO. Given that the works described in (a) to (f) are only authorised to the extent that they are connected with the construction of Work Nos. 1-5, and in that sense are subordinate, the Applicant does not consider it necessary for this wording to be added. The works described in (a) to (f) could not be relied upon to carry out some form of additional development that has no connection to Work Nos. 1-5. The Applicant does not consider that there is any scope for materially new or materially different environmental effects to arise as a result of the carrying out of Works (a) to (f).
ISH1:44	Schedule 2, R1	"Commissioning"	**R1: Interpretation** Is there a need for the definition to relate to the authorised development?	The Applicant is content to make this amendment and it will be included in revision B of the dDCO.
ISH1:45	Schedule 2, R5(1)(a)	"the layout, design, external appearance, dimensions and floor levels of all permanent buildings	**R5: Detailed design** Would '*siting*' be a more appropriate term than '*layout*' based on the type of development	The Applicant does not have a strong preference for either term and will make this amendment in revision B of the dDCO.

		and structures”	proposed? 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? 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*’?	As the reference to ‘permanent buildings and structures’ in (a) is preceded by a reference to the authorised development, and ‘permanent' is included in (a), the Applicant does not consider that these amendments are necessary. The Applicant considers that permanent fencing would be caught by the existing wording relating to permanent structures.
ISH1:46	Schedule 2, R5(1)(b)	“the colour, materials and surface finishes of <u>all permanent buildings and structures</u>”	Would it be appropriate to replace the highlighted text with ‘those buildings and structures referred to in paragraph (a)’ for clarity?	As the effect is the same the Applicant's preference is to retain the existing wording.
ISH1:47	Schedule 2, R5(2)(a)	“be in accordance with the design and access statement”	Paragraph 10.4 of the Design and Access Statement (DAS) [APP-058] states that the Works Plans provide flexibility for the location of those key plant items by setting limits of deviation of 5 metres in any direction. 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?	Article 3(2) allows for lateral deviation within the limits of deviation shown on the Works Plans. This is explained in paragraph 3.12 of the EM. Paragraph 10.4 of the DAS explains that the Works Plans have been drawn to allow for a 5 metre lateral deviation in any direction. The Applicant does not consider that there is any inconsistency between these documents.
ISH1:48	Schedule 2, R5 Table 1	Building or structure	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?	Regarding the inclusion of the references to heights, see the Applicant’s response to ISH1:38 above. The Applicant does not consider that adding “.0” is

			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.	necessary where whole figures are specified. The Applicant confirms that the maximum dimensions specified in Table 1 have been assessed in the ES and HRA.
ISH1:49	Schedule 2, R6		**R6: Decommissioning of existing generating station** 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? 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?	The term 'paper mills' is to be deleted as per the Applicant's response to ISH1:39 above, which will leave a single reference to 'paper mill' in Requirement 6. Given its single use, and as it is evident from the application documents which paper mill is referred to, the Applicant does not consider that a definition is necessary. The requirement would be enforced under Part 8 of the 2008 Act in the same way as any other requirement. The regime is enforced by criminal liability for failing to comply with a requirement of a DCO. Since the cessation of the operation of the existing generating station is what is required, there would be no sanction for compliance. Requirement 6(2) does not require the demolition of any part of the existing generating station because that does not form part of the development for which consent is sought. The future timing of and arrangements for demolition are commercial matters for the Applicant, but are not priority considerations at present. The current priority for the Applicant is to secure the replacement of K1 with the authorised development, to ensure the continued operation of the paper mill. The demolition of K1 would be a substantial project in its own right and would require a significant amount of planning and preparation. The Applicant would need to

				consider, for example, complex matters such as the method and timing of demolition; how each piece of equipment is to be disposed of (for example, whether it is to be scrapped or sold); who would carry out the demolition (including potentially going through procurement processes for contractors) and dispose of, or buy, the equipment; and what consents and impact assessments are required. These matters have not been considered by the Applicant at this stage. The application documents have not assessed demolition and no statutory consultee has suggested that they should. It would be not therefore be appropriate for a requirement for the existing generating station to be demolished to be added to the dDCO.
ISH1:50	Schedule 2, R7	"…until a CEMP for that part has been submitted to and approved by the relevant planning authority"	**R7 Construction Environmental Management Plan** Is there a need for the CEMP to be approved in consultation with the relevant highway authority? 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 the WRs is known. However, the Applicant is requested to give preliminary consideration to the following question: • 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?	The Applicant is content for KCC to be a consultee on the CEMP in its capacity as relevant highway authority and will include this amendment in revision B of the dDCO. At this stage, the Applicant does not consider that there are any particular environmental features, performance measures, standards or subject matter of the CEMP of such importance that they require specific mention in this or another requirement. However, the Applicant will keep this under review as the examination progresses. The Applicant is willing to consider requests from other bodies who may wish to be consulted on the CEMP in relation to particular matters, but is not aware of any such requests at the time of writing.

ISH1:51	Schedule 2, R8		**R8: Construction traffic management plan** 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?	The Applicant acknowledges the request made by KCC that a separate Travel Plan be prepared which includes measures to control the arrivals and departures of construction staff outside of highway network peak travel times. The Applicant has suggested to KCC that requirement 8 be amended slightly to include a reference to a travel plan for contractors. The agreed amendment will be included in revision B of the dDCO.
ISH1:52	Schedule 2, R9		**R9: External lighting** 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?	The Applicant and the Environment Agency have signed a Statement of Common Ground (SoCG) which confirms that it is agreed that the following wording will be added to requirement 9 to ensure that the authorised development will not have a detrimental effect on the ecology of the ditch network in relation to eels and elver: *"(2) The scheme must be designed to avoid any consequential impact on eel and elver and other wildlife."* This amendment will be included in revision B of the dDCO.
ISH1:53	Schedule 2, R9(2)	"The scheme must be implemented as approved"	For clarity, should the reference be to the scheme for external lighting, or alternatively the scheme approved in paragraph (1)? Furthermore, should the scheme '*be implemented and maintained as approved*'?	The Applicant is content to amend the dDCO to state that *"The scheme approved under paragraph (1) must be implemented and maintained as approved"*. This amendment will be included in revision B of the dDCO.
ISH1:54	Schedule 2, R10(1)		**R10: Construction hours** No provision is made for the carrying out of works on public holidays. Should this be the case?	The Applicant is content to amend this requirement so that (1)(b) refers to "*Saturdays, Sundays and public holidays*" so that the reduced working hours applicable to weekends would also apply to public holidays. This would reflect the approach taken in the Wrexham DCO. This amendment will be included in revision B of the

				dDCO.
ISH1:55	Schedule 2, R10(3)	"…notified to the relevant planning authority within 72 hours"	On what basis is the notification period 72 hours?	The Applicant selected the notification period of 72 hours to reflect a period which would be reasonable for both the Applicant and the relevant planning authority in the event that emergency works are required. A period of 72 hours would allow the Applicant sufficient time to serve the notification on the relevant planning authority within normal working hours if, for example, emergency works are required to be carried out during the weekend, particularly any bank holiday weekends. The signed Statement of Common Ground with Swale Borough Council confirms that it is agreed that the period of 72 hours is acceptable.
ISH1:56	Schedule 2, R11(1)	"…until written details of the surface and foul water drainage system for that part have been submitted to and approved by the relevant planning authority/"	**R11: Surface and foul water drainage** This requirement is based on MP14 but that provision includes '*(including means of pollution control)' after* '*system'.* Why has this phrase not been included in this case? Should the approval of the relevant planning authority be subject to consultation with the Lead Local Flood Authority and/or the Internal Drainage Board? Typo at the end of '*authority*'.	The Applicant is content to include the suggested wording and it will be included in revision B of the dDCO. This is also confirmed in the draft Statement of Common Ground with Kent County Council. The typo will be amended in revision B of the dDCO.
ISH1:57	Schedule 2, R11(2)	"…must include the plans and strategies referred to in table 9-17 of the environmental statements"	Are the Environment Agency, Lead Local Flood Authority and Internal Drainage Board content that the scope of these items is appropriate?	The Environment Agency has confirmed in the signed Statement of Common Ground that the scope of the plans and strategies referred to in table 9-17 is appropriate.

				The Applicant is seeking to address this point in the Statement of Common Ground with Kent County Council (as Lead Local Flood Authority). No concerns have been raised by the Internal Drainage Boards (Medway) in relation to surface water management.
ISH1:58	Schedule 2, R10(1) and R11(3)	"…unless otherwise agreed [] by the relevant planning authority"	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 this phrase is necessary.	This wording is intended to provide additional flexibility and is common practice in DCOs (see for example the M20 J10a, Wrexham and Richborough Connection orders). In respect of requirement 10(1), it is envisaged that it may be necessary to carry out certain works outside of permitted construction hours in limited circumstances which would not fall into the exception in 10(2). Any divergence from the permitted hours would require approval from the relevant planning authority. Without this additional wording there would be no provision in the dDCO for altering construction hours, even on a one-off basis. In respect of requirement 11(3), it is envisaged that there may be circumstances in which it will necessary to diverge from the approved surface and foul water and drainage system. The relevant planning authority is already responsible for approving the details of the drainage system and so the Applicant considers that it is reasonable to allow some flexibility in order to overcome any issues that may arise during construction, subject to further approval.
ISH1:59	Schedule 2 R12		**R12: Contaminated land and groundwater** The EM states that the proposed requirement is based on MP15, requirements in previous	This requirement reflects the conclusions of the ES: see paragraphs 8.7.4 and 8.7.7 of Chapter 8 (Ground Conditions) in relation to the need for a piling risk assessment and ground gas protection measures

			orders and is tailored to take account of the nature of the site and areas considered to require further assessment. 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.	respectively.
ISH1:60	Schedule 2, R13		**R13: Archaeology** See Q11 on definition of '*commence*', above. How is this requirement effective when archaeological investigations are currently excluded from the definition of commencement? Does R13 make adequate provision to assess the impacts of the scheme on buried archaeology as highlighted by Kent County Council in their RR?	The Applicant considers that the definition of *"commence"* is compatible with requirement 13 and that the requirement is effective. As explained in the EM (paragraph 3.5(a)), the definition of *"commence"* is intended to only exclude preparatory works that are either de minimis or have minimal potential for adverse impacts. The purpose of requirement 13 is to require archaeological investigations to be carried out before the start of the more intrusive groundworks that will be required for the substantive development, which have the potential to adversely affect any assets which may be present on the site. Archaeological investigations are by their nature careful, methodical works that will not adversely impact on any archaeological assets. The Applicant does not therefore consider that there is any conflict with the purpose of requirement 13 in allowing archaeological investigations to be carried out prior to the discharge of the pre-commencement requirements. The Applicant and Kent County Council will address the adequacy of requirement 13 in their Statement of Common Ground. It has been suggested that the County Council be added as a consultee on the written scheme of investigation and if that is agreed then an appropriate amendment will be included in revision B of the dDCO.

ISH1:61	Schedule 2, R5(1), R7(1), R9(1), R10(1), R11(1) and R(13(1)	"…submitted to and approved by the relevant planning authority"	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?	The Applicant is content to make these amendments and they will be included in revision B of the dDCO.
ISH1:62	Schedule 2, R5(1), R7(1), R11(1) and R13(1)	"…for that part"	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?	The Applicant does not intend that the authorised development be split into specific parts and the term 'part' is used here in a general sense. The wording is included to allow flexibility in the construction phase to allow one element of the authorised development to be commenced in advance of another, subject to the relevant requirements for that part being complied with. The same approach has been adopted in other recent DCOs (see for example the M20 J10a and Silvertown Tunnel).
ISH1:63			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?	As discussed during ISH1 the Applicant is giving this further consideration, although its starting point is that it is not minded to amend the DCO to include a requirement to address the decommissioning of K4, for the reasons indicated during the hearing. The Applicant will set out its position in more detail at Deadline 2.
ISH1:64			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*'?	The Applicant is content to make this amendment and it will be included in revision B of the dDCO.