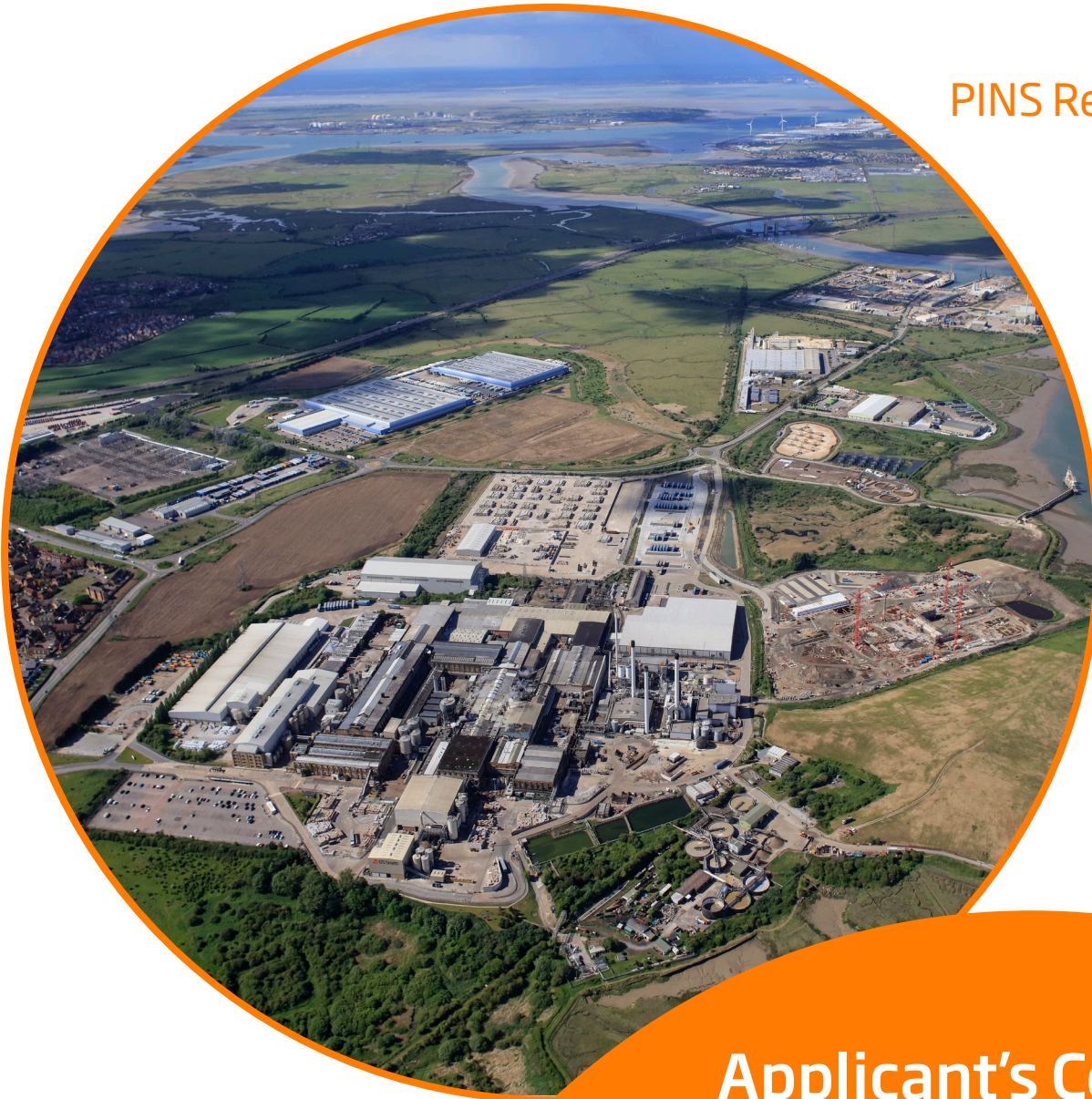




The Kemsley Mill K4 Combined Heat and Power Generating Station Development Consent Order

PINS Ref: EN010090



Applicant's Comments on the Written Representations

Document 9.2

Author: DHA Planning

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1 Introduction

1.1 Overview

- 1.1.1 This document has been prepared on behalf of DS Smith Paper Ltd (DS Smith) 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 Planning Inspectorate on behalf of Secretary of State for Business, Energy and Industrial Strategy on 26 April 2018 and given the application reference EN010090.
- 1.1.2 The application was submitted to the Inspectorate on the 6th April 2018 and was accepted by the Planning Inspectorate on the 26th April 2018. The Examination Programme set a deadline of 31st July 2018 for the receipt of Written Representations from Interested Parties.
- 1.1.3 Six Written Representations were received by that Deadline. This document provides the applicant's response to those Written Representations. It should be read in conjunction with the other documents submitted by the applicant at Deadline 2 of the Examination Timetable, particularly any Statements of Common Ground (SoCG's) which have been submitted. Reference is therefore made to those documents where relevant and an updated version of the Application Guide (AS-001- Document 1.2) lists the documents submitted by the Applicant for Deadline 2.

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 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, with excess electricity being exported to the grid.

- 1.3.2 The Proposed Development will comprise a combined cycle plant fuelled by 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 The proposed K4 plant would replace the existing K1 CHP generating station at the paper mill which is nearing the end of its operational life. The decommissioning of the K1 CHP plant comprises works to make K1 inoperable but no physical demolition of the existing K1 structure is proposed as part of this DCO.

2 Applicant's Responses to Written Representations

2.1.1 The following Table provides the reference number for each written representation received, identifies the party or organisation who have made the written representation, provides the representation itself and then the applicant's response to that representation.

Ref No	Consultee	Written Representation	Applicant's Comments
1	Mr Michael Vick	<p>I have no real objection to DS Smith replacing an existing facility, but my submission is this company have misled planners and local residents in the past and cannot be trusted.</p> <p>They with others applied for permission for a sustainable energy plant to serve Kemsley Mill. Planning application SW/10/444 This proved to be an energy from waste plant now known as the wheelabrator Kemsley Generating Station and has little to do with the mill and was never mentioned in their application. I feel this was intended to confuse gullible councillors. The planning application also stated they would investigate bringing the waste in by rail. This has not happened and was obviously never going to as there is no infrastructure on the rail network for this sort of thing. They now admit that the rubbish will come by road leading to considerable increase in traffic pollution, which I feel proves my point they cannot be trusted. I have complained to KCC about this.</p> <p>The mill was granted permission subject to numerous conditions which in my judgement they have not kept.</p> <p>They also regularly breach their Environment Agency operating licence in allowing noise from the mill to exceed the site boundary. On at least 25 occasions since January 2017 I have recorded noise nuisance from the mill. They did install monitoring equipment in my garden and the noise did show up on their equipment.</p> <p>I have reported this to the mill and Environment Agency on numerous occasions.</p> <p>Many of the points I raised at the request of planning inspectorate were concerning my original comments on this plan were redacted which I feel was unreasonable. Specifically, who I had complained to at the mill and the environment agency. I gave them the information they asked for.</p>	<p>The Applicant notes that Mr Vick does not have any objections to the replacement of the existing CHP plant, which is the purpose of the DCO application. If the a DCO were to be granted the development would be restricted to the articles, schedules and requirements of the Order.</p> <p>The issues relating to noise from the Paper Mill were discussed in the Applicant's response to Mr Vick's Relevant Representation (Document 8.2). The Applicant does not wish to duplicate the response provided to Mr Vick's Relevant Representation, but as set out within that Document the issues relating to noise have been the subject of a report by an acoustic consultant.</p>

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		<p>I have attached a copy of the granting of planning consent for their Sustainable energy plant, the front page of what is actually being built and a copy of their admitting rail will not be used to transport the waste.</p> <p>As I said at the beginning I have no real objection to the replacement of an existing facility if that is all it is going to be but given DS Smith's record I have serious doubts that this is not going to be the case and it will rapidly become something else.</p>	
<p>2 – The Environment Agency</p>			
	<p>In our previous relevant representations we raised some concerns. Since that time we have had discussions with DHA and they have provided us with additional information, which have addressed our concerns.</p> <p>Below for ease of reference are our previous comments plus our updated position following receipt of the additional information.</p> <p><u>“Environmental Statement”</u> Chapter 9, Water Environment</p> <p>There is no evidence of a Water Framework Directive (WFD) Assessment having been carried out, despite the intention to discharge cooling water into the Swale transitional WFD water body.</p> <p>We are concerned by the statement pertaining to the monitoring conditions placed on the permit stating “No limits are defined for; Flow (m3), pH, Mercury (kgs) or Cadmium (kgs)”. The WFD sets strict chemical limits (as Environmental Quality Standards: EQS's) for many chemicals, including mercury and cadmium. If mercury or cadmium are in the effluent then their concentration need to be determined when that discharge reaches WFD waters.</p> <p>Any discharges to WFD water bodies should be assessed in relation to their potential for impacts on the compliance of those receiving WFD water bodies (and any adjoining water bodies).</p>	<p>Noted.</p>	

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		<p>Whilst we appreciate that Environmental Statements have their own relative scales for magnitude and severity of potential impacts, these are subjective and cannot be considered a substitute for a WFD Assessment, where the question is necessarily a detailed one; primarily will the activities being licensed/permitted cause a failure of any of the multiple EQS concentration limits laid down in the WFD and its daughter directives, or prevent the waterbody from meeting its WFD objectives as laid down in the River Basin Management Plan. Specific consideration of the concentrations of all discharged chemicals on the WFD & EQSD lists are required before it might be concluded whether or not they meet water quality criteria for WFD.</p> <p>We suggest the applicant visits the government website where guidance on conducting a WFD assessment is provided: https://www.gov.uk/guidance/water-framework-directive-assessment-estuarine-and-coastal-waters</p> <p>Any elements of the application which require a marine licence should be WFD assessed, and the discharge permits intended to be (re-)used should be WFD compliant.</p> <p>Chapter 10, Ecology</p> <p>There remains concern that the effect of the temperature of the discharges from the works will adversely affect the water temperature of the Swale. This will be looked at in more detail as part of the Permit Variation for the site, however it should be noted that in Section 10.4.14 on Protected species, the authors have only relied on records of protected species. Many of the ditches in the area contain Eel, <i>Anguilla anguilla</i>. This should be addressed particularly in the context of the temperature of discharges, above, and light scatter from the development, which might not reach the designated sites but could affect the marshes near the proposal site."</p> <p>Environment Agency's Updated Position</p> <p>We agree that the water quality sections of the WFD scoping assessment do not indicate the discharge will cause WFD deterioration of chemical water quality.</p>	<p>Noted.</p>

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		<p>Dissolved oxygen is claimed not to be affected because it is "monitored internally and will not change", however the fact that it will not change, assuming the assertion is true, doesn't necessarily mean the discharge does not already affect dissolved oxygen levels locally, though we anticipate that this would not be of a sufficient scale to affect the dissolved oxygen WFD compliance of the waterbody as a whole.</p> <p>The existing permit carries limits for Biological Oxygen Demand (BOD) for the discharge, and we would expect this to continue. Limits on BOD will tend to preserve dissolved oxygen in the receiving waters, though higher temperature in discharge may introduce a higher risk of chemical oxygen demand and biological oxygen demand from heated sediments over which the discharge may flow, especially at low water where the receiving discharge channel would be in effect undiluted and the heat unattenuated until it reaches the water in the Swale, where mixing, cooling and dilution would occur within the mixing zone of 0.4 ha. You have stated that the temperature within the plume will not change as a result of the application, so any adverse effects that might be due to the plume (locally) must presumably already be being experienced (at a local scale) by a proportion of the biota in the Swale waterbody.</p> <p><u>"Draft Development Consent Order, Schedule 2 - Requirements</u> 9 External lighting This requirement specifies that <i>"no part of the authorised development may be commenced until a scheme for the management and mitigation of artificial light emissions during the construction, operation and decommissioning of the authorised development has been submitted to and approved by the relevant planning authority"</i>.</p> <p>When the planning authority assesses the lighting scheme, they should also consider the impact of lighting on eels and elvers that might be in the ditch network near to the development site. As stated above eels and elvers have not currently been considered in the Environmental Statement which focuses on light impacts on birds that are only reported to be found at a distance from the site."</p>	
		<p>Environment Agency's Updated Position</p>	

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	<p>As you can see from above we were concerned about the potential for the new facility to cause unnecessary light pollution and was keen for the re-development to provide an opportunity to assess it properly.</p> <p>Requirement 9 of the draft Development Consent Order specifies that there will be a scheme for the management and mitigation of artificial light emissions during the construction, operation and decommissioning of the authorised development and that it will be submitted to and approved by the relevant planning authority.</p> <p>The specified purpose of the scheme is to ensure that there are no consequential impacts on eel and elver, <i>Anguilla anguilla</i>.</p> <p>This is as we hoped when we originally responded to the application because it appeared that it had been overlooked despite their presence in the marshes around the site.</p> <p>Taking into consideration the above, we are satisfied our concerns have been fully addressed.</p>	<p>As noted it is intended that the next dDCO, submitted at Deadline 3, will include a reworded Requirement 9 which makes specific reference to eels and elver.</p>	
3 – Kent County Council			
	<p>Following the Planning Inspectorate's Rule 8 letter dated 24 July 2018, Kent County Council (KCC) submits its Written Representation. KCC wishes to be considered as an Interested Party for this application.</p> <p>KCC has set out its position in relation to the proposed development in its Relevant Representation letter dated 8 June 2018 and is engaging with the agent representing the applicant (DHA Planning) on the matters raised. A general update on the principal submissions outlined in KCC's Relevant</p>		

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	<p>Representation is provided below. The letter has been prepared in accordance with Planning Inspectorate Advice Note 8.4.</p> <p>In summary, the principal issues that KCC has made in relation to the application concern:</p> <ul style="list-style-type: none"> - Highways and transportation, as the Local Highway Authority for Kent; - Minerals and waste, as the Minerals and Waste Planning Authority for Kent; - Heritage and Conservation; and - Surface Water Flooding and Drainage. <p><i>Highways and Transportation</i></p> <p>As set out within KCC's Relevant Representation letter dated 8 June 2018, the final Transport Assessment should provide justification for the predicted number of HGV movements. It will also need to provide a clear indication as to the length of time that the peak number of staff would be expected to be on site. In addition, the number of remaining staff expected for the construction period should be made clear in order for any impact and parking need to be assessed. KCC is awaiting clarity from the applicant on this matter.</p> <p>KCC would also like to clarify that within KCC's Relevant Representation, the comments regarding the Construction Traffic Management Plan measures relate to those listed in paragraph 4.8.2 of the Traffic and Transport section of the Environmental Statement Volume 1 – April 2018, and not of the Outline Construction Environmental Management Plan.</p> <p><i>Minerals and Waste</i></p>	<p>This is an ongoing matter raised in the Relevant Representation which is being reviewed with KCC and which will be addressed within the Statement of Common Ground to be agreed between the applicant and KCC.</p> <p>Noted.</p>

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	<p>As demonstrated within KCC's Relevant Representation dated 8 June 2018, KCC, as the Minerals and Waste Planning Authority, remains of the view that the proposed development is not affecting any Mineral Safeguarding Areas and would not have any implications on existing waste management capacities. Therefore, KCC as Minerals and Waste Planning Authority for Kent has no further comments to make in relation to minerals and waste safeguarding implications.</p> <p><i>Heritage and Conservation</i></p> <p>As set out within KCC's Relevant Representation letter dated 8 June 2018, KCC considers that mitigation of the potential archaeological impacts of the scheme should include a requirement that seeks further assessment of the impacts of the scheme on buried archaeology.</p> <p>KCC recommends that this should be done initially through a review of any forthcoming geotechnical data from the site and then an informed and targeted programme of evaluation through trial trenching and possibly bore hole survey.</p> <p>Should potential archaeological impacts be subsequently confirmed as a result of the evaluation, provision should be made for further investigation and reporting. At present, the draft Requirement 13 'Archaeology' limits the works to a watching brief only, which KCC does not consider acceptable.</p> <p>KCC is working with the applicant to ensure suitable wording of Requirement 13 which will allow for a programme of archaeological evaluation to assess the impact of the scheme on the buried archaeology.</p> <p><i>Surface Water Flooding and Drainage.</i></p> <p>KCC, as Lead Local Flood Authority, is satisfied with the mitigation measures as proposed within Table 9-11 of the Environmental Statement.</p> <p>KCC welcomes the proposal from the applicant for Requirement 11 to include appropriate wording regarding the relevant consenting authority.</p>	<p>Ongoing discussions are taking place as part of the review of the SoCG with KCC towards the wording of Requirement 13 being revised in line with KCC's comments to broaden the potential scope of archaeological works which might be required.</p> <p>Noted.</p>	

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4 – Natural England			
1. INTRODUCTION			
1.1. Purpose and structure of these representations			
<p>1.1.1. These Written Representations are submitted in pursuance of rule 10(1) of the Infrastructure Planning (Examination Procedure) Rules 2010 ('ExPR') in relation to an application under the Planning Act 2008 for a Development Consent Order ('DCO') for the decommissioning of the existing gas-fired Combined Heat and Power (CHP) plant and to build a new CHP plant (K4) ('the Project') submitted by DS Smith Paper Limited ('the Applicant') to the Secretary of State.</p> <p>1.1.2. Natural England has already provided a summary of its principal concerns in its Relevant Representations, submitted to the Planning Inspectorate on 8 June 2018. This document comprises an updated detailed statement of Natural England's views, as they have developed in view of the common ground discussions that have taken place with the Applicant to date. These are structured as follows:</p> <p>Section 2.1 describes the nature conservation that may be affected by the Project and need to be considered.</p> <p>Sections 2.2 – 2.6 contain Natural England's submissions in respect of the issues that concern it.</p>			
2. NATURAL ENGLAND'S CONCERNS AND ADVICE			
2.1. Nature conservation designations that could be affected by the proposal			
<p>2.1.1. International conservation designations</p> <ul style="list-style-type: none"> • The Swale Special Protection Area (SPA) and Wetland of International Importance under the Ramsar Convention (Ramsar site) • Medway Estuary and Marshes SPA/Ramsar site 			

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		<ul style="list-style-type: none"> • Thames Estuary and Marshes SPA/Ramsar site • Queendown Warren Special Area of Conservation (SAC) <p>The interest features of the above sites are set out in section 4 of the Habitats Regulations Assessment (Document 3.1 – ES Vol. 2. Appendix 10.2. July 2018 – Deadline 1 version).</p> <p>2.1.2. National conservation designations</p> <ul style="list-style-type: none"> • The Swale Site of Special Scientific Interest (SSSI) • Medway Estuary and Marshes SSSI • South Thames Estuary and Marshes SSSI • The Swale Estuary Marine Conservation Zone (MCZ) <p>2.2. The principal issues</p> <p>2.2.1. Natural England identified the following main issues in its Relevant Representations:</p> <ol style="list-style-type: none"> a. Implications of People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17) b. Noise and visual disturbance c. Air quality d. Water quality and resources <p>These issues will be discussed in corresponding sections below along with any updates on the progress or resolution of issues.</p> <p>2.3. a. Implications of People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17)</p> <p>2.3.1. In our Relevant Representation, Natural England noted the recent ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17). The case relates to the treatment of mitigation measures at the screening stage of a Habitats Regulations Assessment (HRA) when deciding whether an appropriate assessment of a plan/project is required. The Court's Ruling goes</p>	Noted

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	<p>against established practice in the UK that mitigation measures can, to a certain degree, be taken into account at the screening stage.</p> <p>2.3.2. As a result, Natural England advised that any "embedded" mitigation relating to protected sites under the Habitat Regulations 2017 Regulation 63 (1) should be taken forward and considered at the appropriate assessment stage to inform a decision as to whether no adverse effect on site integrity can be ascertained.</p> <p>2.3.3. The applicant has provided an updated Appendix 10.2 Habitats Regulations Assessment (June 2018 – Section 51 version). Natural England's view is that this version is procedurally correct in the light of the People over Wind ruling.</p> <p>2.4. b. Noise and visual disturbance</p> <p>2.4.1. The birds for which The Swale SPA/Ramsar/SSSI are designated are susceptible to disturbance caused by noise or visual presence. If they are subject to significant disturbance, this could result in harm to the population through reduced fitness and poor survival. Loud, intermittent noises cause the most disturbance and can result in reduced feeding and/or the birds taking flight.</p> <p>2.4.2. Therefore, the applicant has modelled the predicted noise during construction and operation. In our Relevant Representation, Natural England noted that figure 10.5 of the Environmental Statement (ES) shows that peak noise levels within The Swale SPA, Ramsar and SSSI will reach 65-75 dB L_{Amax} during construction. Paragraph 6.29 of Appendix 10.2 (HRA Report June 2018 – Section 51 version) states that 20ha of the SPA/Ramsar will experience these noise levels. This may only be a small proportion of the designated site, but may have disproportionate impacts if this 20ha is used as a high tide roost (as there are fewer alternative sites), or if it is used by significant numbers of birds for feeding (suggesting that the mudflat provides a particularly important food source). Therefore, Natural England has advised the applicant's consultants to provide further information on the bird use of the mouth of</p>	<p>Following ongoing discussion with NE the applicant has agreed with NE that a requirement restricting the total number of days impact piling is permissible is to be added to the dDCO to be submitted a deadline 3. This will be reflected in the SOCG to be signed and submitted shortly.</p>

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		<p>Milton Creek, in order to support the conclusion that noise-related disturbance will not compromise the objectives of the SPA/Ramsar.</p> <p>2.4.3. Figures 7.4 and 7.5 of the ES show that during normal operation, predicted noise levels within The Swale SPA, Ramsar and SSSI are not likely to exceed 50dB LAeq. It is therefore, Natural England's view that disturbance to birds is unlikely. Noise levels are higher when the steam release valves operate. However, Chapter 7 states that this will only occur in an emergency, and due to the fitting of a dump condenser that is not fitted to the existing K1 plant, this will occur less frequently than currently (less than 4 times a year). Therefore, Natural England's view is that noise impacts during operation are not likely to be significant and will not require mitigation.</p> <p>2.4.4. Marsh harrier breed in the reedbeds adjacent to the access road. The reedbeds are not designated, but the marsh harriers are part of The Swale SPA breeding bird assemblage. Therefore, the reedbeds can be considered functionally linked land, by providing supporting habitat to SPA species. However, Natural England agrees with the conclusion of Appendix 10.2, that marsh harriers are unlikely to be significantly affected by noise or visual disturbance during construction or operation.</p> <p>2.4.5. It is Natural England's view that visual disturbance to coastal waterbirds, during construction or operation, is unlikely due to the distance to The Swale SPA/Ramsar site, and screening by existing buildings.</p> <p>Light spillage during construction and operation has the potential to cause disturbance to birds using habitats around the application site. However, given the distance to the Swale SPA/Ramsar site, screening by existing buildings, and the use of best available technology to avoid light spill, Natural England's view is that lighting is unlikely to lead to adverse effects on the designated sites.</p> <p>2.5. c. Air Quality</p> <p>2.5.1. Appendix 5.4 of the ES sets out an 'Air Quality Assessment of Ecological Impacts' and concludes no significant impacts based on the process contribution (PC) from the proposal being less than 1% of</p>	

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		<p>the critical load/level for all sites and types of pollutant, apart from the predicted PC for NOx levels at The Swale SPA. In this case the Predicted Environmental Concentration (PEC) only 47% of the critical level, and is, therefore, screened out as insignificant. Natural England agrees with the approach taken to thresholds for significance. However, whilst tables C2 and C3 in Appendix 5.4 consider the birds for which the SPAs are designated, they do not consider the habitat types for which the Ramsar sites are designated, which may have lower critical levels or loads than the bird species. Therefore, Natural England has requested that the applicant add these habitats to the tables in Appendix 5.4.</p> <p>2.5.2. During construction, air quality impacts could potentially arise from HGV movements and from dust. Natural England agrees that emissions from vehicles can be screened out as the number of HGV movements per day will not exceed 100, which is the threshold set for significant change. It is also agreed that, provided best construction practice measures are followed, adverse effects from dust can be avoided.</p> <p>2.6. d. Water quality and resources</p> <p>2.6.1. There is a risk of pollution to surface waters during construction. However, Natural England agrees that standard pollution prevention measures, as part of the Construction Environment Management Plan, and set out in Table 9.14 in the ES, are sufficient to reduce the risk to The Swale SPA/Ramsar site.</p> <p>2.6.2. During operation, process water will be discharged to the Swale via the applicant's effluent treatment works, and will continue to comply with the existing Environmental Permit. A Water Framework Directive (WFD) scoping assessment of the Permit has been carried out, which concluded that the objectives of the WFD will not be affected. As targets are aligned, it follows that the objectives of the SPA/Ramsar will likewise be unaffected. However, Natural England has recommended that a MCZ assessment is also carried out, in accordance with the Marine and Coastal Access Act 2009.</p> <p>2.6.3. As no changes to the current surface water drainage scheme for the site are proposed, Natural England agrees that there is not likely to be a significant effect from surface water flows.</p>	<p>A revised version of ES Appendix 5.4 (Air Quality Assessment of Ecological Impacts) has been submitted at Deadline 2 and addresses this point, which will also then be addressed in the SoCG to be agreed with Natural England.</p> <p>Noted – an MCZ assessment has been carried out which concludes that there will be no effect on the Swale MCZ. This is to be reviewed by NE and form the basis of the agreement on this issue in the SOCG to be signed and submitted shortly.</p>

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5 – Highways England			
		<p>Thank you for your correspondence regarding planning information at Kemsley Paper Mill, which was passed to me by the Highways England Customer Contact Centre.</p> <p>We would like to thank you for consulting us on this proposal and confirm that due to the location of the paper mill/land to be developed we have no issues or comments in relation to the A249 Trunk road.</p> <p>I hope that this has fully answered your query. However, if you require anything further, please do not hesitate to get in touch.</p>	<p>The Applicant welcomes the representation made by Highways England and that they have no objection to the proposed development. Accordingly, no response is necessary.</p>
6 – Energetics			
		<p>Thank you for submitting your recent plant enquiry.</p> <p>Based on the information provided, I can confirm that Energetics does not have any plant within the area(s) specified in your request.</p>	<p>The Applicant welcomes the representation made by Energetics and that they have no objection to the proposed development. Accordingly, no response is necessary.</p>