

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

The Examining Authority's Second Written Questions and Requests for Information (ExQ2)

Issued on 22 October 2018

The following table sets out the Examining Authority's (ExA's) Second Written Questions and requests for information – ExQ2. Responses are required by **Deadline 5 in the Examination Timetable, Tuesday 13 November 2018**. Please note that if this deadline is missed the ExA is not obliged to take account of your response.

Column 2 of the table indicates which Interested Parties (IPs) and Other Persons each question is directed to. The ExA would be grateful if all persons named could answer all questions directed to them, providing a substantive response, or indicating that the question is not relevant to them for a reason. If the answer to a question is set out in, for example, a statement of common ground (SOCG) then a cross reference to where the issue is addressed is acceptable.

This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

Each question has a unique reference number which starts with 2 (indicating that it is from ExQ2) and then has an issue number and a question number. For example, the first question on Environmental Impact Assessment is identified as ExQ2.1.1. When you are answering a question, please start your answer by quoting the unique reference number.

In some areas there may be a degree of overlap between the answers to questions and it is acceptable to provide a single answer which responds to multiple questions or answer questions individually and provide cross references between multiple answers where appropriate. If you do so, please use all number references and ensure all elements are addressed.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact K4KemsleyCHP@pins.gsi.gov.uk and include K4 Kemsley ExQ2 in the subject line of your email.

Responses are due by **Tuesday 13 November 2018.**

Abbreviations Used

Art	<i>Article</i>
dDCO	<i>Draft DCO [AS-021]</i>
ES	<i>Environmental Statement [APP-008 – APP-036]</i>
ExA	<i>Examining authority</i>
R	<i>Requirement</i>

The Examination Library

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

<https://infrastructure.planninginspectorate.gov.uk/document/EN010090-000344>

It will be updated as the examination progresses.

Citation of Questions

Questions in this table should be cited as follows:

Question reference: issue reference: question number, eg **ExQ2.1.1** – refers to question 1 in this table.

Ref No.	Respondent:	Question:
1	Environmental Impact Assessment	
Q2.1.1	Applicant Kent County Council	Section 3.7 of the Outline Construction Environmental Management Plan (CEMP) [REP3-009] provides additional guidance with regard to the scope of the Construction Traffic Management Plan (CTMP). The CTMP would be secured through R8 of the dDCO [AS-021]. Does the Outline CEMP provide sufficient guidance as to the content of the CTMP or should an outline CTMP be provided before the end of the Examination? If an outline CTMP is necessary how should this be addressed in R8 of the dDCO?
Q2.1.2	Applicant	R7 of the dDCO [AS-021] refers to the outline CEMP (defined in Art 2) and this is provided as REP3-009. Elsewhere within the Applicant's submissions (for example Table 13.1 of the ES [REP3-013] reference is made to a draft CEMP (or dCEMP). For the avoidance of doubt can references to a draft CEMP be taken to mean the outline CEMP?
Q2.1.3	Applicant	Table 13.1 of the ES [REP3-013] includes, at Page 13-9, a comment on the dust impacts on designated sites. It indicates that mitigation would be secured through section 4.1.2 of the dCEMP [REP3-009]. Should this reference be to section 4.2.2 of REP3-009 where dust mitigation measures are set out?
Q2.1.4	Interested Parties (IPs)	The Applicant's Post Deadline 4 Covering Letter [AS-019] confirms the plans for a vertical boiler configuration with the minimum height of the Heat Recovery Steam Generator (HRSG) Stack being 70m AOD and the maximum height being 73m AOD. The ES has assessed a 70m stack. The Applicant concluded that the flexibility in stack height being sought would not be material to other ES assessments, apart from air quality and landscape and visual matters which are addressed below. Do IPs agree that increasing the stack height to 73m AOD is not material to other assessments undertaken and reported in the ES? If not, please explain how the potential increase in height would have an effect on the findings of other assessments?

Ref No.	Respondent:	Question:
		Where appropriate, please cross reference your answer to Q2.2.1, Q2.6.1 and Q2.10.2.
Q2.1.5	Swale Borough Council Kent County Council Environment Agency Natural England	<p>In line with the Applicant's answer to Q1.1.16 [REP2-030] a Register of Environmental Actions and Commitments (REAC) has been provided as an Appendix to the outline CEMP [REP3-009]. This establishes the outline CEMP requirement, responsibility and date actioned.</p> <p>Does the REAC comprehensively address all the environmental actions required to deliver mitigation?</p> <p>Should the REAC be subject to any formal mechanism to ensure that the matters it addresses are satisfactorily discharged? For example the REAC establishes the need to develop a site specific Dust Management Plan whereas paragraph 4.2.2 also addresses compliance.</p>
2		
	Air Quality	
Q2.2.1	Environment Agency Natural England	<p>The Applicant's Post Deadline 4 Covering Letter [AS-019] confirms that the height of the HRSG Stack would be between 70m AOD and 73m AOD. The ES has assessed a 70m stack. AS-019 goes on to state that typically increasing stack height has beneficial effects on ambient air quality and that the flexibility sought would not result in any materially new or different effects on air quality than those in the submitted ES but would in any event be pursuant to meeting the tests of the permitting regulations.</p> <p>Do the Environment Agency (EA) and Natural England (NE) wish to comment on the Applicant's statement about air quality effects including effects on ecology, taking account of the EA's response to Q1.1.8 [REP2-032]?</p>
Q2.2.2	Applicant Environment Agency Natural England	<p>In their response to Q1.4.39 the Applicant stated that <i>'as set out in the IAQM Position Statement on this topic the threshold for consideration of an effect is >1%, not ≥1%. As such, a PC of exactly 1% would not be considered significant'</i> [REP2-030] The IAQM advice appears to be inconsistent with the guidance of the EA which is set out in revised Appendix 5.4 of the ES [REP2-011] and indicates that no further assessment is needed as long as the Process Contribution (PC) is less than 1%. Paragraph 5.37 of the revised HRAR [AS-022] reflects the position that PCs for all pollutants were 1% or less of the Environmental Quality Standard (EQS) but the Matrix Evidence Notes (g or h) state that for all the European sites that the PC is greater than 1% and/or the Predicted Environmental Contribution (PEC) is less than the long term EQS. (Note that the cross-references to</p>

Ref No.	Respondent:	Question:
		<p>paragraphs 5.35 -5.40 are not clear.)</p> <p>The Applicant, the EA and NE are asked to comment on the apparent discrepancy between the IAQM and EA guidance taking account of the fact that the EA will need to determine any permit application in line with their own guidance.</p> <p>Is consideration of PECs required for those European sites where the PC for nutrient nitrogen and acid deposition was 1% of the Critical Load, since the conclusion in revised Appendix 5.4 only relates to the PECs for the Swale SPA and Ramsar site for NO_x?</p> <p>NE is also asked to comment on the calculation of Critical Loads set out in revised Appendix 5.4 of the ES.</p>
3 Archaeology and Cultural Heritage		
		The ExA does not have any specific questions relevant to this issue at this stage but please refer to Q2.6.1 which also relates to cultural heritage.
4 Ecology including Habitats Regulations Assessment		
Q2.4.1	IPs	<p>A revised Habitats Regulations Assessment Report (HRAR) was submitted by the Applicant as a Post Deadline 4 Version [AS-022].</p> <p>All IPs are asked for their comments on the findings of the revised HRAR.</p>
Q2.4.2	Applicant	<p>Figure 1 of the revised HRAR [AS-022] (although not referenced as such) on Page 6-10 outlines four stages of HRA. Subsequent text from paragraph 3.3 -3.13 does not follow the stages identified in Table 1 and Stage 4 from the previous version of the HRAR [APP-033] has been deleted.</p> <p>The Applicant is asked to clarify the structure of Section 3 of the HRAR.</p>
Q2.4.3	Applicant	Table 4.4 of the revised HRAR [AS-022] has deleted the section headed ' <i>Regularly supporting more than 1% of the GB breeding population of an Annex 1 species in summer</i> ' which occurred in the previous version [AS-002]

Ref No.	Respondent:	Question:
		<p>Changes have also been made to the content of Tables 4.4 and 4.6.</p> <p>The Applicant is asked to explain the reason for these changes.</p>
Q2.4.4	Applicant	<p>Paragraphs 6.2-6.4 of the HRAR [AS-022] address air quality (construction dust) in terms of the appropriate assessment.</p> <p>Paragraph 6.3 states that '<i>various techniques not relating to the avoidance or reduction in effect on a European site will be implemented during the construction phase</i>'. The Applicant is asked to clarify this statement.</p> <p>Paragraph 6.4 refers to '<i>more detailed assessment and implementation of mitigation measures</i>'. Please explain the basis of this further assessment and specify the mitigation which led to the conclusion that there would be no adverse effect on site integrity of the Swale SPA/Ramsar site.</p>
Q2.4.5	Applicant	<p>Paragraphs 6.11-6.12 of the HRAR [AS-022] state that a site-wide Drainage Strategy will be developed with the aim of ensuring that surface water runoff is suitably managed.</p> <p>Would this be secured through R11 of the dDCO [AS-021]? If not, please indicate how it will be secured?</p>
Q2.4.6	Applicant	<p>Section 7 of the HRAR [AS-022] assesses the in-combination effects of the scheme with the proposed developments near the site which are currently planned or have approval but not yet constructed.</p> <p>Has the HRAR in-combination assessment addressed the in-combination impacts of the K4 scheme with the Wheelabrator Kemsley Generating Station K3 and Wheelabrator Kemsley North (WKN) Waste to Energy Facility? If so, please indicate where this is, if not, please address the matter?</p>
Q2.4.7	Applicant	<p>In their Deadline 4 submission [REP4-002] NE set out the Swale SPA features. This does not correspond with the features in the integrity matrix for the Swale SPA in the revised HRAR [AS-022]. Avocet, Redshank and Grey Plover are included whilst the breeding bird assemblage and the non-breeding bird assemblage are omitted.</p> <p>The Applicant is asked to ensure that there is consistency between the features identified by NE and the integrity matrices, and provide the information that has been omitted.</p>

Ref No.	Respondent:	Question:
Q2.4.8	Applicant	<p>Paragraph 2.4 of the HRAR [AS-022] refers to decommissioning as a key activity in the development programme. Paragraph 2.5 only refers to the decommissioning of K1. In their response to Q1.4.31 [REP2-030] the Applicant confirmed that the decommissioning of K1 and K4 would involve them both being made inoperable rather than being demolished. Whilst the latest version of the HRAR [AS-022] deletes the earlier reference to decommissioning in paragraph 5.26 it is retained in paragraph 5.1. The screening and integrity matrices do not include consideration of decommissioning.</p> <p>Nevertheless, the Applicant is asked to demonstrate how decommissioning has been addressed in the HRA, and if it has not, to provide more detailed information in support of the approach taken.</p>
Q2.4.9	Applicant	<p>In their response to Q1.4.42 [REP2-030] the Applicant commented that proposed mitigation would be secured through the CEMP and that the HRAR would be amended to reflect this.</p> <p>Please indicate where references to the CEMP and the mitigation measures contained within it are included in the HRAR with particular reference to the evidence notes in the matrices.</p>
Q2.4.10	Applicant	<p>The Applicant's answer to Q1.4.18 [REP2-030] refers to the 2.4m fence on the northern boundary constructed as a requirement of K3 to screen the reed-bed from construction traffic. It is stated that if the fence were not in place during K4 construction a similar fence line could be erected along the road on DS Smith land to ensure vehicle screening from the reed-bed.</p> <p>Has agreement been reached between the operators of K3 and K4 since the Applicant provided their answer to Q1.4.18? Otherwise, how would the fence be secured through the DCO?</p>
5		
	Ground Conditions	
	The ExA does not have any questions relevant to this issue at this stage.	
6		
	Landscape and Visual Impact	
Q2.6.1	Swale Borough Council	The Applicant's Post Deadline 4 Covering Letter [AS-019] confirms that the height of the HRSG Stack would be between 70m AOD and 73m AOD. The ES has assessed a 70m stack. AS-019 also states that an increase in

Ref No.	Respondent:	Question:
	Kent County Council	<p>stack height from 70m to 73m would represent a barely perceptible increase in the scale of the proposed development infrastructure. Consequently it is anticipated by the Applicant that any magnitude of change and level of effect identified within the ES for all landscape, townscape and visual receptors would remain the same and the conclusions within the Landscape and Visual Resources Chapter of the ES [APP-009] would remain unchanged. Similarly the increase in height would not result in any materially new or different effects on the setting of heritage assets from that assessed in the submitted ES according to the Applicant.</p> <p>Do the Councils wish to comment on the Applicant's statement about the effects of the height increase on the findings of the landscape and visual and cultural heritage assessments in the ES?</p>
7		
Noise and Vibration		
		The ExA does not have any questions relevant to this issue at this stage.
8		
Traffic and Transport		
Q2.8.1	Applicant Kent County Council	<p>In their Relevant Representation [RR-003] and Written Representation [REP1-016] Kent County Council (KCC) indicated that the final Transport Assessment should provide justification for the predicted number of HGV movements.</p> <p>What is the mechanism for the Applicant to provide a final Transport Assessment and how would this be secured through the DCO?</p> <p>Do R8(2) of the dDCO [AS-021] and the amendments proposed on page 15 of the outline CEMP [REP3-009] provide for the preparation of a final Transport Assessment? If not, what mechanism would be required to meet KCC's concerns?</p>
Q2.8.2	Applicant Kent County Council	<p>Does R8(2) of the dDCO [AS-021] adequately address the concern of KCC as expressed in REP1-016 that there is a 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 and the number of remaining staff expected for the construction period?</p>
9		
Water Environment		
Q2.9.1	Kent County Council	Paragraph 9.7.37 of the ES [APP-009] states that the EA and Medway Internal Drainage Board have not

Ref No.	Respondent:	Question:
		<p>stipulated a requirement to reduce existing run-off rates.</p> <p>Because the EA are no longer the lead for surface water drainage as set out in their response to the question at REP2-032, can KCC as Lead Local Flood Authority comment on any need to reduce existing run-off rates please?</p>
10 Draft Development Consent Order		
Q2.10.1	Applicant	<p>R7 of the dDCO [AS-021] provides for the CEMP to be approved by the relevant planning authority in consultation with the highway authority. The Highway Authority is defined in Art 2 but no reference is made to KCC. In contrast the definition of relevant planning authority in Art 2 specifically refers to Swale Borough Council.</p> <p>Is any change required to address this apparent anomaly?</p>
Q2.10.2	Applicant	<p>Table 1 of Schedule 2 of the dDCO [AS-021] states that the minimum height of the Heat Recovery Steam Generator (HRSG) Stack would be 70m AOD with the maximum height 73m AOD whilst the package boiler stack is described as having a height of 35m AOD. In the Applicant's response to ISH2:2 [REP3-015] it was stated that reference would be made to stack height relative to AOD and that a supplementary site levels plan will also be provided</p> <p>Can the Applicant please confirm the heights of the stacks with reference to AOD and provide a site level plan to confirm the site level AOD?</p> <p>Is there a need for AOD to be defined in Art 2 – Interpretation?</p> <p>As there is flexibility in the height of the HRSG Stack is it still appropriate to refer to it in Work 1€ in Schedule 1 and Table 1 of Schedule 2 of the draft DCO as a 70m stack?</p>
11 Other Matters		
Q2.11.1	IPs	As discussed at ISH2 and ISH3 the Applicant made a number of submissions after Deadline 4 but before

Ref No.	Respondent:	Question:
		<p>Deadline 5 of the Examination Timetable set out within the Rule 8 Letter of 24 July. This course of action was agreed by the ExA as a means of ensuring an efficient and effective Examination programme. A number of the documents have already been referred to in ExQ2 above.</p> <p>For all of the remaining submissions referenced as AS-018 to AS-025 IPs are invited to comment on the documents.</p>
Q2.11.2	Applicant	<p>In Table 5 of the Outline CEMP [REP3-009] construction hours are provided for Monday-Friday, Saturday and Sunday. For completeness and consistency with the dDCO [AS-021] reference should also be made to Public Holidays.</p>
Q2.11.3	Applicant Environment Agency	<p>In responding to Q1.1.6 the Applicant [REP2-030] and EA [REP2-032] made reference to the SoCG between the parties [REP1-which indicates that the EA does not currently have any concerns about permitting and based on the information provided see no reason why a varied permit should not be granted. Moreover, it is indicated that an environmental permit variation application will be submitted to the EA in 2019.</p> <p>Are the Applicant and EA able to provide an update as to progress with the environmental permit application?</p>