



Ms S Evans  
Major Applications and Plans  
The Planning Inspectorate  
3D Eagle Wing  
Temple Quay House  
Temple Quay  
Bristol  
BS1 6PN

PINS Ref: EN010090  
DHA Ref: DHA/12321

16<sup>th</sup> May 2019

Dear Ms Evans

**EN010090 – THE KEMSLEY MILL K4 COMBINED HEAT AND POWER GENERATING STATION DEVELOPMENT CONSENT ORDER**

**THE DEPARTMENT OF BUSINESS, ENERGY AND INDUSTRIAL STRATEGY LETTER, 2<sup>ND</sup> MAY 2019 – APPLICANT RESPONSE**

I write in response to the letter from the Department for Business, Energy and Industrial Strategy ('BEIS') on the 2<sup>nd</sup> May 2019. This letter provides the applicant's response to the two queries raised by BEIS and refers to a revised draft Development Consent Order which is appended.

**Electrical Generating Capacity**

The use of the term 'nominal power output' within the application reflected the potential for the electrical generating capacity of the gas turbine and steam turbine to vary depending on the final design chosen. The applicant confirms, for the avoidance of doubt, that the gross maximum installed generating capacity of the proposed development would be 73MW.

**Construction Hours**

Draft Requirement 10 was drafted to allow a flexible approach to those works which could take place outside the construction hours stated within that Requirement, by providing for activities to take place which would not be audible at the boundary of the Order limits. In that respect it was not intended either that those works would be defined or specified, or need to be approved by the relevant planning authority. Instead the intention of the applicant was to empower the relevant planning authority to make an assessment if necessary of whether particular works being undertaken outside of normal working hours were audible at the boundary of the order limits.

However having reviewed the position and the BEIS letter the applicant has proposed a change to Requirement 10, as set out in the attached revised dDCO, which is the deletion of Part 2(b) of Requirement 10 and consequent changes to the remainder of the draft Requirement to reflect the different regime being proposed to control emergency works.

As worded Requirement 10 already makes provision for construction works to take place outside the stated hours if agreed by the relevant planning authority. The result of the

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**t.** 01622 776226 **e.** [info@dhaplanning.co.uk](mailto:info@dhaplanning.co.uk) **w.** [www.dhaplanning.co.uk](http://www.dhaplanning.co.uk)

**Maidstone Office**, Eclipse House, Eclipse Park, Sittingbourne Road, Maidstone, Kent, ME14 3EN

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proposed change would be to retain that ability to carry out construction works outside the stated working hours, subsequent to the authority being notified, but the removal of the ability to conduct any works outside the stated hours if those works are not audible at the boundary. On review the applicant is content that the proposed Requirement as now worded would provide them with sufficient flexibility to undertake out of hours construction works should that need arise, whilst giving the relevant planning authority control over any such works which do take place. The regime in respect of emergency works would then remain the same, with those being able to be carried out if necessary, on the basis that the relevant planning authority would be notified within 72 hours of their commencement.

I trust these comments are useful; please do not hesitate to contact me should you or BEIS require any further clarification on these points.

Yours sincerely,

A solid black rectangular box used to redact the signature of David Harvey.

David Harvey  
Director

Direct email: [david.harvey@dhaplanning.co.uk](mailto:david.harvey@dhaplanning.co.uk)

**20[ ] No.**

**INFRASTRUCTURE PLANNING**

**The Kemsley Mill K4 Combined Heat and Power Generating  
Station Development Consent Order 201[ ]**

*Made* - - - - \*\*\*

*Coming into force* - - \*\*\*

**CONTENTS**

**PART 1**

**PRELIMINARY**

1.	Citation and commencement	1
2.	Interpretation	1

**PART 2**

**PRINCIPAL POWERS**

3.	Development consent etc. granted by the Order	3
4.	Maintenance of authorised development	3
5.	Operation of generating station	3
6.	Benefit of Order	3
7.	Consent to transfer benefit of Order	4
8.	Defence to proceedings in respect of statutory nuisance	4

**PART 3**

**SUPPLEMENTAL POWERS**

9.	Discharge of water	5
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**PART 4**

**MISCELLANEOUS AND GENERAL**

10.	Procedure in relation to certain approvals, etc. under requirements	6
11.	Operational land for the purposes of the 1990 Act	6
12.	Certification of plans, etc.	6
13.	Service of notices	7
14.	Arbitration	8

## SCHEDULES

SCHEDULE 1 — AUTHORISED DEVELOPMENT	9
SCHEDULE 2 — REQUIREMENTS	10

An application has been made to the Secretary of State under section 37 of the Planning Act 2008<sup>(a)</sup> (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(b)</sup> for an Order granting development consent.

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>(c)</sup>.

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83(1) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order:

## PART 1 PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Kemsley Mill K4 Combined Heat and Power Generating Station Development Consent Order 201[ ] and comes into force on [ ] 201[ ].

### Interpretation

2.—(1) In this Order except where provided otherwise—

“the 1980 Act” means the Highways Act 1980<sup>(d)</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(e)</sup>;

“the 2008 Act” means the Planning Act 2008;

“address” includes any number or address used for the purposes of electronic transmission;

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- (a) 2008. c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13(1) to, the Localism Act 2011 (c. 20). Section 83(1) was amended by paragraph 35 of that Schedule. Section 114 was amended by paragraph 55 of that Schedule. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13(1) to, that Act.
- (b) S.I. 2009/2264, as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.
- (c) S.I. 2010/103, amended by S.I. 2012/635.
- (d) 1980 c. 66.
- (e) 1990 c. 8.

“apparatus” has the same meaning as in section 105(1) of the New Roads and Street Works Act 1991(a);

“authorised development” means the development described in Schedule 1 (authorised development);

“building” includes any structure or erection or any part of a building, structure or erection;

“commence” means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development 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, and “commencement” is to be construed accordingly;

“decommissioning” means the process during which plant components and systems are altered so as to prevent operation but does not include demolition or removal of said plant components and systems, nor their inclusion within the operational arrangements of the authorised development;

“design and access statement” means the document certified by the Secretary of State as the design and access statement for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental statement” means the document(s) certified by the Secretary of State as the environmental statement for the purposes of this Order;

“highway authority” means Kent County Council;

“Kemsley CHP Limited” means the company of that name, company number 10082985, whose registered office is at Westwood Way, Westwood Business Park, Coventry, CV4 8LG;

“the land plan” means the plan certified by the Secretary of State as the land plan for the purposes of this Order;

“lead local flood authority” has the same meaning as in section 6 of the Flood and Water Management Act 2010(b);

“maintain” includes inspect, repair, adjust or alter the authorised development, and remove, reconstruct or replace any part but not the whole of the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of “maintain” is to be construed accordingly;

“Order land” means the land which is required for or affected by the authorised development shown on the land plan;

“Order limits” means the limits shown on the land plan within which the authorised development may be carried out;

“outline CEMP” means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“relevant internal drainage board” means the internal drainage board for the land in question;

“relevant planning authority” means Swale Borough Council;

“requirement” means those matters set out in Schedule 2 (requirements) and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Schedule with the same number;

“Secretary of State” means the Secretary of State for Business, Energy and Industrial Strategy;

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(a) 1991 c. 22.  
(b) 2010 c. 29.

“Southern Gas Networks PLC” means the company of that name, company number 05167021, whose registered office is at St Lawrence House, Station Approach, Horley, Surrey RH6 9HJ;

“the undertaker” means DS Smith Paper Limited, company number 00058614, whose registered office is at 350 Euston Road, London, NW1 3AX;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“work” means a work set out in Schedule 1; and a reference to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule;

“the works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

(2) Reference in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work are taken to be measured along that work.

(4) In this Order “includes” must be construed without limitation.

(5) References in this Order to any statutory body include that body’s successor bodies as from time to time have jurisdiction in relation to the authorised development.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

**3.**—(1) Subject to the provisions of this Order including the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) In carrying out the authorised development the undertaker may deviate laterally from the lines or situations of the authorised development within the limits of deviation relating to that work shown on the works plans.

#### **Maintenance of authorised development**

**4.**—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

#### **Operation of generating station**

**5.**—(1) The undertaker is authorised to operate the generating station for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any legislation that may be required from time to time to authorise the operation of a generating station.

#### **Benefit of Order**

**6.** Subject to article 7 (consent to transfer benefit of order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

## **Consent to transfer benefit of Order**

7.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to Kemsley CHP Limited or to a licence holder within the meaning of section 64(1) of the Electricity Act 1989(a).

## **Defence to proceedings in respect of statutory nuisance**

8.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990(b) in relation to a nuisance falling within paragraph (a), (c), (d), (fb) or (g) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(c);
- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

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(a) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c. 20). There are other amendments to the section that are not relevant to this Order.

(b) 1990 c. 43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25). There are amendments to this Act which are not relevant to this Order.

(c) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 3 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

## PART 3

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**9.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs or the person or body otherwise having authority to give such consent; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a permit granted by the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57(1) (interpretation) of the Harbours Act 1964(c), an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) 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, as the case may be.

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(a) 1991 c. 56.

(b) S.I. 2016/1154. “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

(c) 1964 c. 40.

(d) 1991 c. 57.



**PART 4**  
**MISCELLANEOUS AND GENERAL**

**Procedure in relation to certain approvals, etc. under requirements**

**10.**—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions, so far as they relate to a consent, agreement or approval of a local planning authority, apply as if the requirement were a condition imposed on a grant of planning permission—

- (a) sections 78 and 79 of the Town and Country Planning Act 1990<sup>(a)</sup> (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations that make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission,

insofar as those provisions are not inconsistent with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017<sup>(b)</sup> or any orders, rules or regulations made under the 2008 Act.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission insofar as it provides in relation to—

- (a) an application for such a consent, agreement or approval;
- (b) the grant or refusal of such an application; or
- (c) a failure to give notice of a decision on such an application.

**Operational land for the purposes of the 1990 Act**

**11.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

**Certification of plans, etc.**

**12.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the design and access statement (document number 5.3, APP-058);
- (b) the environmental statement (document number 3.1, APP-008 to APP-036);
- (c) the outline CEMP (environmental statement appendix 2.1, REP5-004);
- (d) the land plan (document number 4.3, REP1-013);
- (e) the works plans:
  - (i) document number 4.4, REP1-003; and
  - (ii) document number 4.9, AS-008; and
- (f) any other plans or documents referred to in this Order as requiring certification,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

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(a) Section 78 was amended by paragraph 21 of Schedule 12 to the Housing and Planning Act 2016 (c.22). Section 79 was amended by paragraph 23 of that Schedule.  
(b) S.I. 2017/572.

## Service of notices

13.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

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(a) 1978 c. 30.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

**Arbitration**

14. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Date

*Name*  
Title  
Department

# SCHEDULES

## SCHEDULE 1

Articles 2, 3, 4 and 5

### AUTHORISED DEVELOPMENT

#### **In the administrative areas of Kent County Council and Swale Borough Council**

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, comprising—

Work No. 1 – A combined cycle generating station comprising—

- (a) local equipment room and control including battery enclosure;
- (b) a generator;
- (c) a gas turbine;
- (d) a heat recovery steam generator;
- (e) a heat recovery steam generator stack;
- (f) a turbine hall (including steam turbine);
- (g) a combined heat and power pipe bridge, including pipes and cables for steam and electricity;
- (h) a dump condenser;
- (i) a fin fan cooler; and
- (j) a package boiler stack;
- (k) a start transformer;
- (l) a fire extinguisher cabinet;
- (m) switchgear;
- (n) a block transformer;
- (o) a transformer;
- (p) a package boiler;
- (q) a fuel gas skid;
- (r) condensate pumps;
- (s) heat recovery steam generator chemical dosing equipment;
- (t) an effluent sump;
- (u) a condensate tank;
- (v) boiler water feed pumps; and
- (w) low pressure package boiler feed pumps.

Work No. 2 – The retention of, connection into and continued use of the following existing items—

- (a) potable water;
- (b) package boilers (six of);
- (c) old water treatment plant;
- (d) feed water tanks;
- (e) gas stations;
- (f) new water treatment plant;
- (g) pumping station (process water);
- (h) low and medium pressure steam manifolds;

- (i) distribution network operator 132kV electricity grid connection;
- (j) waste water treatment plant connection;
- (k) surface water outfall;
- (l) control room;
- (m) gas pipeline to grid connection point;
- (n) diesel and electric fire water pumps;
- (o) fire water tank;
- (p) fire water ring main;
- (q) condensate return system including storage tank;
- (r) steam recovery system;
- (s) three air compressors;
- (t) cable tray for electrical connection from 33kV switchyard to grid connection point;
- (u) process effluent piping system including monitoring devices; and
- (v) roadways and walkways including lighting.

Work No. 3 – Construction compound and laydown area.

Work No. 4 – Retention and continued use of internal access and haulage road.

Work No. 5 – The decommissioning of the existing gas-fired K1 combined heat and power generating station.

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) foundations, retaining walls, barriers, parapets, drainage, fencing, culverts and lighting;
- (b) site preparation works, site clearance (including fencing and demolition of existing structures); earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (c) works to alter the position of apparatus below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus;
- (d) construction compounds and working sites, storage areas, temporary vehicle parking, ramps and other means of access, construction fencing, perimeter enclosure, security fencing, construction-related buildings, welfare facilities, construction lighting, and other buildings, machinery, apparatus, works and conveniences; and
- (e) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of the construction of the authorised development,

but only insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 3

### **Interpretation**

**1.** In this Schedule—

“AOD” means above ordnance datum;

“CEMP” means construction environmental management plan;

“commissioning” means the process during which plant components and systems forming part of the authorised development, having been constructed or modified, are made operational and are tested and verified to be in accordance with design assumptions and to have met the appropriate safety criteria;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990.

### **Time limit**

**2.** The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

### **Notice of commencement of authorised development**

**3.** Notice of commencement of the authorised development must be given to the relevant planning authority within 7 days of the date on which the authorised development is commenced.

### **Commissioning of authorised development: notice of commencement and completion**

**4.—(1)** Notice of the commencement of commissioning must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

**(2)** Notice of the completion of commissioning must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

### **Detailed design**

**5.—(1)** No part of the authorised development may be commenced until written details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, design, external appearance, dimensions and floor levels of all permanent buildings and structures;
- (b) the colour, materials and surface finishes of all permanent buildings and structures;
- (c) the durability of all cladding materials; and
- (d) the consideration given to the inclusion of the climate change mitigation measures referred to in table 13-1 of the environmental statement and the measures that have been included.

**(2)** The details to be submitted for approval under sub-paragraph (1) must—

- (a) be in accordance with the design and access statement; and
- (b) include appropriately scaled plans and sectional drawings.

**(3)** The authorised development must be carried out in accordance with the approved plans and any other approvals given by the relevant planning authority pursuant to this requirement.

**(4)** The authorised development must be carried out in accordance with the parameters specified in Table 1 below and the works plans (as the same may be amended by approval of the relevant planning authority pursuant to requirement 17).

### **Table 1**

<i>Work No.</i>	<i>Building structure or</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum height (metres above site level unless otherwise stated)</i>	<i>Maximum height (metres above site level unless otherwise stated)</i>
1(a)	Local equipment room and control	23.1	13.75	-	9.9
1(b)	Generator	5.5	4.4	-	6.6
1(c)	Gas turbine	16.5	8.8	-	14.5
1(d)	Heat recovery steam generator	30.8	16.5	-	35.2
1(e)	Heat recovery steam generator stack	-	4 diameter	79m AOD	82m AOD
1(f)	Turbine hall	25.3	19.8	-	16.5
1(g)	CHP pipe bridge	40.7	4.4	-	12
1(h)	Dump condenser	16.5	13.2	-	8.8
1(i)	Fin fan cooler	11.55	7.15	-	7.7
1(j)	Package boiler stack	-	0.8 diameter	44m AOD	44m AOD
1(k) – 1(w)	All other plant items	-	-	-	7.5

### **Decommissioning of existing generating station**

6.—(1) The undertaker must cease to operate the existing generating station as soon as reasonably practicable following service of the commencement notice referred to in requirement 4(1), having regard to the operational requirements of the paper mill, and in any event within 12 months of the date of service of the commencement notice.

(2) Sub-paragraph (1) does not require the undertaker to demolish any part of the existing generating station.

(3) In this requirement, “existing generating station” means the existing gas-fired K1 combined heat and power plant, excluding the items comprising Work No. 2.

### **Construction Environmental Management Plan**

7.—(1) No part of the authorised development may be commenced until a CEMP for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority.

(2) The CEMP, which must specify measures to mitigate the impacts of construction works, must be substantially in accordance with the outline CEMP.

(3) Construction works for the authorised development must be carried out in accordance with the approved CEMP for that part.

### **Construction Traffic Management Plan**

8.—(1) No part of the authorised development may be commenced until a Construction Traffic Management Plan for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority.

(2) The Construction Traffic Management Plan must:

- (a) specify measures to mitigate the impacts of construction traffic during the construction works;
- (b) be substantially in accordance with section 4.8 of the environmental statement; and

- (c) include a travel plan for contractors that sets out measures to control the arrival and departure of construction staff during peak travel times (08:00 to 09:00 and 17:00 to 18:00 on weekdays).

(3) Construction works for the authorised development must be carried out in accordance with the approved Construction Traffic Management Plan for that part.

### **External lighting**

**9.**—(1) 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.

(2) The scheme must be designed to avoid any consequential impact on eel and elver and other wildlife.

(3) The scheme approved under sub-paragraph (1) must be implemented and maintained as approved.

### **Construction hours**

**10.**—(1) Subject to sub-paragraph (2), no construction works are to take place except between—

- (a) 07:00 and 19:00 Monday to Friday; and
- (b) 07:00 and 16:00 on Saturdays, Sundays and public holidays,

unless otherwise agreed by the relevant planning authority.

(2) ~~The following~~ **Emergency** works are permitted outside the hours referred to in sub-paragraph (1).—

- ~~(a) emergency works; and~~
- ~~(b) works which do not cause noise that is audible at the boundary of the Order limits.~~

(3) Any emergency works carried out under sub-paragraph ~~(2)~~ **(2)(a)** must be notified to the relevant planning authority within 72 hours of their commencement.

### **Surface and foul water drainage**

**11.**—(1) No part of the authorised development may be commenced until written details of the surface and foul water drainage system (including means of pollution control) for that part have been submitted to and approved by the relevant planning authority in consultation with the lead local flood authority and the relevant internal drainage board.

(2) The details submitted under sub-paragraph (1) must include the plans and strategies referred to in table 9-17 of the environmental statement.

(3) The surface and foul water drainage system for the relevant part of the authorised development must be constructed in accordance with the approved details unless otherwise agreed in writing by the relevant planning authority following consultation with the lead local flood authority and the relevant internal drainage board.

### **Land contamination and groundwater**

**12.**—(1) No part of the authorised development may be commenced, and no archaeological investigations, investigations for the purpose of assessing ground conditions or remedial work in respect of contamination or other adverse ground conditions may take place, until details of ground gas protection measures for that part, or for those activities to the extent they may be required, have been submitted to and approved by the relevant planning authority.

(2) Construction works for the authorised development must be carried out in accordance with the approved ground gas protection measures.



(3) If contamination not previously identified is found during the construction of the authorised development, no further works for the authorised development may be carried out in the affected area until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contamination is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(4) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph (3) must be carried out in accordance with the approved scheme.

### **Archaeology**

**13.**—(1) No part of the authorised development may be commenced, and no archaeological investigations, investigations for the purpose of assessing ground conditions or remedial work in respect of contamination or other adverse ground conditions may take place, until for that part a written scheme for the investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority in consultation with Kent County Council.

(2) The scheme approved under sub-paragraph (1) must:

- (a) include details of further assessment and survey work to be undertaken to identify areas of potential archaeological interest that may be impacted by development;
- (b) identify the measures to be taken to investigate, protect, record or preserve any significant archaeological remains that may be found; and
- (c) include a scheme of post investigation assessment, analysis and reporting of the results following completion of the archaeological works.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works must be carried out in accordance with the approved scheme.

### **Works in vicinity of gas apparatus**

**14.**—(1) No work involving excavations shall take place within 3 metres of gas apparatus belonging to Southern Gas Networks PLC unless the undertaker has first obtained written consent from Southern Gas Networks PLC for those works to proceed.

(2) The undertaker shall provide such information as Southern Gas Networks PLC may reasonably require in order for it to respond to a request for consent under sub-paragraph (1).

### **Piling**

**15.**—(1) No part of the authorised development may be commenced until a piling risk assessment for that part has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) Construction works for the authorised development must be carried out in accordance with the approved piling method and agreed risk management for that method as set out in the approved piling risk assessment.

**16.**—(1) No impact piling associated with the authorised development shall take place in the months of January and February.

(2) No more than ten days of impact piling associated with the authorised development, whether consecutive or otherwise, shall take place in the months of November and December.

(3) This requirement does not restrict impact piling associated with the authorised development between the months of March and October inclusive.

### **Amendments to approved plans, etc.**

17.—(1) With respect to any plans, details, schemes or other documents which require approval by the relevant planning authority pursuant to any requirement (the “Approved Plans”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Plans and following any such approval by the relevant planning authority the Approved Plans are to be taken to include the amendments approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 5(4) above must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

### **Requirement for written approval**

18. Where under any requirement the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises DS Smith Paper Limited to construct, operate and maintain a new combined heat and power generating station at the Kemsley Mill and carry out all associated works. The Order provides for the decommissioning of the existing generating station on the site.

The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the plans, environmental statement and other documents mentioned in this Order and certified in accordance with article 12 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Kemsley Paper Mill, Sittingbourne, Kent, ME10 2TD.

**20[ ] No.**

**INFRASTRUCTURE PLANNING**

**The Kemsley Mill K4 Combined Heat and Power Generating  
Station Development Consent Order 201[ ]**

*Made* - - - - \*\*\*

*Coming into force* - - \*\*\*

**CONTENTS**

**PART 1**

**PRELIMINARY**

1.	Citation and commencement	1
2.	Interpretation	1

**PART 2**

**PRINCIPAL POWERS**

3.	Development consent etc. granted by the Order	3
4.	Maintenance of authorised development	3
5.	Operation of generating station	3
6.	Benefit of Order	3
7.	Consent to transfer benefit of Order	4
8.	Defence to proceedings in respect of statutory nuisance	4

**PART 3**

**SUPPLEMENTAL POWERS**

9.	Discharge of water	5
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**PART 4**

**MISCELLANEOUS AND GENERAL**

10.	Procedure in relation to certain approvals, etc. under requirements	6
11.	Operational land for the purposes of the 1990 Act	6
12.	Certification of plans, etc.	6
13.	Service of notices	7
14.	Arbitration	8

## SCHEDULES

SCHEDULE 1 — AUTHORISED DEVELOPMENT	9
SCHEDULE 2 — REQUIREMENTS	10

An application has been made to the Secretary of State under section 37 of the Planning Act 2008<sup>(a)</sup> (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(b)</sup> for an Order granting development consent.

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>(c)</sup>.

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83(1) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order:

## PART 1 PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Kemsley Mill K4 Combined Heat and Power Generating Station Development Consent Order 201[ ] and comes into force on [ ] 201[ ].

### Interpretation

2.—(1) In this Order except where provided otherwise—

“the 1980 Act” means the Highways Act 1980<sup>(d)</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(e)</sup>;

“the 2008 Act” means the Planning Act 2008;

“address” includes any number or address used for the purposes of electronic transmission;

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- (a) 2008. c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13(1) to, the Localism Act 2011 (c. 20). Section 83(1) was amended by paragraph 35 of that Schedule. Section 114 was amended by paragraph 55 of that Schedule. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13(1) to, that Act.
- (b) S.I. 2009/2264, as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.
- (c) S.I. 2010/103, amended by S.I. 2012/635.
- (d) 1980 c. 66.
- (e) 1990 c. 8.

“apparatus” has the same meaning as in section 105(1) of the New Roads and Street Works Act 1991(a);

“authorised development” means the development described in Schedule 1 (authorised development);

“building” includes any structure or erection or any part of a building, structure or erection;

“commence” means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development 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, and “commencement” is to be construed accordingly;

“decommissioning” means the process during which plant components and systems are altered so as to prevent operation but does not include demolition or removal of said plant components and systems, nor their inclusion within the operational arrangements of the authorised development;

“design and access statement” means the document certified by the Secretary of State as the design and access statement for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental statement” means the document(s) certified by the Secretary of State as the environmental statement for the purposes of this Order;

“highway authority” means Kent County Council;

“Kemsley CHP Limited” means the company of that name, company number 10082985, whose registered office is at Westwood Way, Westwood Business Park, Coventry, CV4 8LG;

“the land plan” means the plan certified by the Secretary of State as the land plan for the purposes of this Order;

“lead local flood authority” has the same meaning as in section 6 of the Flood and Water Management Act 2010(b);

“maintain” includes inspect, repair, adjust or alter the authorised development, and remove, reconstruct or replace any part but not the whole of the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of “maintain” is to be construed accordingly;

“Order land” means the land which is required for or affected by the authorised development shown on the land plan;

“Order limits” means the limits shown on the land plan within which the authorised development may be carried out;

“outline CEMP” means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“relevant internal drainage board” means the internal drainage board for the land in question;

“relevant planning authority” means Swale Borough Council;

“requirement” means those matters set out in Schedule 2 (requirements) and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Schedule with the same number;

“Secretary of State” means the Secretary of State for Business, Energy and Industrial Strategy;

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(a) 1991 c. 22.  
(b) 2010 c. 29.

“Southern Gas Networks PLC” means the company of that name, company number 05167021, whose registered office is at St Lawrence House, Station Approach, Horley, Surrey RH6 9HJ;

“the undertaker” means DS Smith Paper Limited, company number 00058614, whose registered office is at 350 Euston Road, London, NW1 3AX;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“work” means a work set out in Schedule 1; and a reference to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule;

“the works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

(2) Reference in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work are taken to be measured along that work.

(4) In this Order “includes” must be construed without limitation.

(5) References in this Order to any statutory body include that body’s successor bodies as from time to time have jurisdiction in relation to the authorised development.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

**3.**—(1) Subject to the provisions of this Order including the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) In carrying out the authorised development the undertaker may deviate laterally from the lines or situations of the authorised development within the limits of deviation relating to that work shown on the works plans.

#### **Maintenance of authorised development**

**4.**—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

#### **Operation of generating station**

**5.**—(1) The undertaker is authorised to operate the generating station for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any legislation that may be required from time to time to authorise the operation of a generating station.

#### **Benefit of Order**

**6.** Subject to article 7 (consent to transfer benefit of order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

## **Consent to transfer benefit of Order**

7.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to Kemsley CHP Limited or to a licence holder within the meaning of section 64(1) of the Electricity Act 1989(a).

## **Defence to proceedings in respect of statutory nuisance**

8.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990(b) in relation to a nuisance falling within paragraph (a), (c), (d), (fb) or (g) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(c);
- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

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(a) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c. 20). There are other amendments to the section that are not relevant to this Order.

(b) 1990 c. 43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25). There are amendments to this Act which are not relevant to this Order.

(c) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 3 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.



## PART 3

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**9.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs or the person or body otherwise having authority to give such consent; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a permit granted by the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57(1) (interpretation) of the Harbours Act 1964(c), an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) 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, as the case may be.

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(a) 1991 c. 56.

(b) S.I. 2016/1154. “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

(c) 1964 c. 40.

(d) 1991 c. 57.

**PART 4**  
**MISCELLANEOUS AND GENERAL**

**Procedure in relation to certain approvals, etc. under requirements**

**10.**—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions, so far as they relate to a consent, agreement or approval of a local planning authority, apply as if the requirement were a condition imposed on a grant of planning permission—

- (a) sections 78 and 79 of the Town and Country Planning Act 1990<sup>(a)</sup> (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations that make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission,

insofar as those provisions are not inconsistent with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017<sup>(b)</sup> or any orders, rules or regulations made under the 2008 Act.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission insofar as it provides in relation to—

- (a) an application for such a consent, agreement or approval;
- (b) the grant or refusal of such an application; or
- (c) a failure to give notice of a decision on such an application.

**Operational land for the purposes of the 1990 Act**

**11.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

**Certification of plans, etc.**

**12.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the design and access statement (document number 5.3, APP-058);
- (b) the environmental statement (document number 3.1, APP-008 to APP-036);
- (c) the outline CEMP (environmental statement appendix 2.1, REP5-004);
- (d) the land plan (document number 4.3, REP1-013);
- (e) the works plans:
  - (i) document number 4.4, REP1-003; and
  - (ii) document number 4.9, AS-008; and
- (f) any other plans or documents referred to in this Order as requiring certification,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

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<sup>(a)</sup> Section 78 was amended by paragraph 21 of Schedule 12 to the Housing and Planning Act 2016 (c.22). Section 79 was amended by paragraph 23 of that Schedule.  
<sup>(b)</sup> S.I. 2017/572.

## Service of notices

13.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

**Arbitration**

14. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Date

*Name*  
Title  
Department

# SCHEDULES

## SCHEDULE 1

Articles 2, 3, 4 and 5

### AUTHORISED DEVELOPMENT

#### **In the administrative areas of Kent County Council and Swale Borough Council**

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, comprising—

Work No. 1 – A combined cycle generating station comprising—

- (a) local equipment room and control including battery enclosure;
- (b) a generator;
- (c) a gas turbine;
- (d) a heat recovery steam generator;
- (e) a heat recovery steam generator stack;
- (f) a turbine hall (including steam turbine);
- (g) a combined heat and power pipe bridge, including pipes and cables for steam and electricity;
- (h) a dump condenser;
- (i) a fin fan cooler; and
- (j) a package boiler stack;
- (k) a start transformer;
- (l) a fire extinguisher cabinet;
- (m) switchgear;
- (n) a block transformer;
- (o) a transformer;
- (p) a package boiler;
- (q) a fuel gas skid;
- (r) condensate pumps;
- (s) heat recovery steam generator chemical dosing equipment;
- (t) an effluent sump;
- (u) a condensate tank;
- (v) boiler water feed pumps; and
- (w) low pressure package boiler feed pumps.

Work No. 2 – The retention of, connection into and continued use of the following existing items—

- (a) potable water;
- (b) package boilers (six of);
- (c) old water treatment plant;
- (d) feed water tanks;
- (e) gas stations;
- (f) new water treatment plant;
- (g) pumping station (process water);
- (h) low and medium pressure steam manifolds;

- (i) distribution network operator 132kV electricity grid connection;
- (j) waste water treatment plant connection;
- (k) surface water outfall;
- (l) control room;
- (m) gas pipeline to grid connection point;
- (n) diesel and electric fire water pumps;
- (o) fire water tank;
- (p) fire water ring main;
- (q) condensate return system including storage tank;
- (r) steam recovery system;
- (s) three air compressors;
- (t) cable tray for electrical connection from 33kV switchyard to grid connection point;
- (u) process effluent piping system including monitoring devices; and
- (v) roadways and walkways including lighting.

Work No. 3 – Construction compound and laydown area.

Work No. 4 – Retention and continued use of internal access and haulage road.

Work No. 5 – The decommissioning of the existing gas-fired K1 combined heat and power generating station.

In connection with the construction of any of those works, further development within the Order limits consisting of—

- (a) foundations, retaining walls, barriers, parapets, drainage, fencing, culverts and lighting;
- (b) site preparation works, site clearance (including fencing and demolition of existing structures); earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (c) works to alter the position of apparatus below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus;
- (d) construction compounds and working sites, storage areas, temporary vehicle parking, ramps and other means of access, construction fencing, perimeter enclosure, security fencing, construction-related buildings, welfare facilities, construction lighting, and other buildings, machinery, apparatus, works and conveniences; and
- (e) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of the construction of the authorised development,

but only insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 3

### **Interpretation**

1. In this Schedule—

“AOD” means above ordnance datum;

“CEMP” means construction environmental management plan;

“commissioning” means the process during which plant components and systems forming part of the authorised development, having been constructed or modified, are made operational and are tested and verified to be in accordance with design assumptions and to have met the appropriate safety criteria;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990.

### **Time limit**

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

### **Notice of commencement of authorised development**

3. Notice of commencement of the authorised development must be given to the relevant planning authority within 7 days of the date on which the authorised development is commenced.

### **Commissioning of authorised development: notice of commencement and completion**

4.—(1) Notice of the commencement of commissioning must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

(2) Notice of the completion of commissioning must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

### **Detailed design**

5.—(1) No part of the authorised development may be commenced until written details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, design, external appearance, dimensions and floor levels of all permanent buildings and structures;
- (b) the colour, materials and surface finishes of all permanent buildings and structures;
- (c) the durability of all cladding materials; and
- (d) the consideration given to the inclusion of the climate change mitigation measures referred to in table 13-1 of the environmental statement and the measures that have been included.

(2) The details to be submitted for approval under sub-paragraph (1) must—

- (a) be in accordance with the design and access statement; and
- (b) include appropriately scaled plans and sectional drawings.

(3) The authorised development must be carried out in accordance with the approved plans and any other approvals given by the relevant planning authority pursuant to this requirement.

(4) The authorised development must be carried out in accordance with the parameters specified in Table 1 below and the works plans (as the same may be amended by approval of the relevant planning authority pursuant to requirement 17).

### **Table 1**

<i>Work No.</i>	<i>Building structure or</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum height (metres above site level unless otherwise stated)</i>	<i>Maximum height (metres above site level unless otherwise stated)</i>
1(a)	Local equipment room and control	23.1	13.75	-	9.9
1(b)	Generator	5.5	4.4	-	6.6
1(c)	Gas turbine	16.5	8.8	-	14.5
1(d)	Heat recovery steam generator	30.8	16.5	-	35.2
1(e)	Heat recovery steam generator stack	-	4 diameter	79m AOD	82m AOD
1(f)	Turbine hall	25.3	19.8	-	16.5
1(g)	CHP pipe bridge	40.7	4.4	-	12
1(h)	Dump condenser	16.5	13.2	-	8.8
1(i)	Fin fan cooler	11.55	7.15	-	7.7
1(j)	Package boiler stack	-	0.8 diameter	44m AOD	44m AOD
1(k) – 1(w)	All other plant items	-	-	-	7.5

### **Decommissioning of existing generating station**

6.—(1) The undertaker must cease to operate the existing generating station as soon as reasonably practicable following service of the commencement notice referred to in requirement 4(1), having regard to the operational requirements of the paper mill, and in any event within 12 months of the date of service of the commencement notice.

(2) Sub-paragraph (1) does not require the undertaker to demolish any part of the existing generating station.

(3) In this requirement, “existing generating station” means the existing gas-fired K1 combined heat and power plant, excluding the items comprising Work No. 2.

### **Construction Environmental Management Plan**

7.—(1) No part of the authorised development may be commenced until a CEMP for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority.

(2) The CEMP, which must specify measures to mitigate the impacts of construction works, must be substantially in accordance with the outline CEMP.

(3) Construction works for the authorised development must be carried out in accordance with the approved CEMP for that part.

### **Construction Traffic Management Plan**

8.—(1) No part of the authorised development may be commenced until a Construction Traffic Management Plan for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority.

(2) The Construction Traffic Management Plan must:

- (a) specify measures to mitigate the impacts of construction traffic during the construction works;
- (b) be substantially in accordance with section 4.8 of the environmental statement; and



- (c) include a travel plan for contractors that sets out measures to control the arrival and departure of construction staff during peak travel times (08:00 to 09:00 and 17:00 to 18:00 on weekdays).

(3) Construction works for the authorised development must be carried out in accordance with the approved Construction Traffic Management Plan for that part.

### **External lighting**

**9.**—(1) 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.

(2) The scheme must be designed to avoid any consequential impact on eel and elver and other wildlife.

(3) The scheme approved under sub-paragraph (1) must be implemented and maintained as approved.

### **Construction hours**

**10.**—(1) Subject to sub-paragraph (2), no construction works are to take place except between—

- (a) 07:00 and 19:00 Monday to Friday; and
- (b) 07:00 and 16:00 on Saturdays, Sundays and public holidays,

unless otherwise agreed by the relevant planning authority.

(2) Emergency works are permitted outside the hours referred to in sub-paragraph (1).

(3) Any emergency works carried out under sub-paragraph (2) must be notified to the relevant planning authority within 72 hours of their commencement.

### **Surface and foul water drainage**

**11.**—(1) No part of the authorised development may be commenced until written details of the surface and foul water drainage system (including means of pollution control) for that part have been submitted to and approved by the relevant planning authority in consultation with the lead local flood authority and the relevant internal drainage board.

(2) The details submitted under sub-paragraph (1) must include the plans and strategies referred to in table 9-17 of the environmental statement.

(3) The surface and foul water drainage system for the relevant part of the authorised development must be constructed in accordance with the approved details unless otherwise agreed in writing by the relevant planning authority following consultation with the lead local flood authority and the relevant internal drainage board.

### **Land contamination and groundwater**

**12.**—(1) No part of the authorised development may be commenced, and no archaeological investigations, investigations for the purpose of assessing ground conditions or remedial work in respect of contamination or other adverse ground conditions may take place, until details of ground gas protection measures for that part, or for those activities to the extent they may be required, have been submitted to and approved by the relevant planning authority.

(2) Construction works for the authorised development must be carried out in accordance with the approved ground gas protection measures.

(3) If contamination not previously identified is found during the construction of the authorised development, no further works for the authorised development may be carried out in the affected area until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contamination is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(4) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph (3) must be carried out in accordance with the approved scheme.

### **Archaeology**

**13.**—(1) No part of the authorised development may be commenced, and no archaeological investigations, investigations for the purpose of assessing ground conditions or remedial work in respect of contamination or other adverse ground conditions may take place, until for that part a written scheme for the investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority in consultation with Kent County Council.

(2) The scheme approved under sub-paragraph (1) must:

- (a) include details of further assessment and survey work to be undertaken to identify areas of potential archaeological interest that may be impacted by development;
- (b) identify the measures to be taken to investigate, protect, record or preserve any significant archaeological remains that may be found; and
- (c) include a scheme of post investigation assessment, analysis and reporting of the results following completion of the archaeological works.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works must be carried out in accordance with the approved scheme.

### **Works in vicinity of gas apparatus**

**14.**—(1) No work involving excavations shall take place within 3 metres of gas apparatus belonging to Southern Gas Networks PLC unless the undertaker has first obtained written consent from Southern Gas Networks PLC for those works to proceed.

(2) The undertaker shall provide such information as Southern Gas Networks PLC may reasonably require in order for it to respond to a request for consent under sub-paragraph (1).

### **Piling**

**15.**—(1) No part of the authorised development may be commenced until a piling risk assessment for that part has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) Construction works for the authorised development must be carried out in accordance with the approved piling method and agreed risk management for that method as set out in the approved piling risk assessment.

**16.**—(1) No impact piling associated with the authorised development shall take place in the months of January and February.

(2) No more than ten days of impact piling associated with the authorised development, whether consecutive or otherwise, shall take place in the months of November and December.

(3) This requirement does not restrict impact piling associated with the authorised development between the months of March and October inclusive.

### **Amendments to approved plans, etc.**

17.—(1) With respect to any plans, details, schemes or other documents which require approval by the relevant planning authority pursuant to any requirement (the “Approved Plans”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Plans and following any such approval by the relevant planning authority the Approved Plans are to be taken to include the amendments approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 5(4) above must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

### **Requirement for written approval**

18. Where under any requirement the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises DS Smith Paper Limited to construct, operate and maintain a new combined heat and power generating station at the Kemsley Mill and carry out all associated works. The Order provides for the decommissioning of the existing generating station on the site.

The Order also makes provision in connection with the maintenance of the authorised development.

A copy of the plans, environmental statement and other documents mentioned in this Order and certified in accordance with article 12 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Kemsley Paper Mill, Sittingbourne, Kent, ME10 2TD.