The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

KEMSLEY MILL K4 COMBINED HEAT AND POWER GENERATING STATION

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Business, Energy and Industrial Strategy

Examining Authority

Kevin Gleeson BA MCD MRTPI

8 April 2019

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The Planning Inspectorate

ERRATA SHEET – Kemsley Paper Mill (K4) Combined Heat and Power Generating Station - Ref. EN010090

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Business, Energy and Industrial Strategy, dated 8 April 2019

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
10	2.1.1	"….52 – 57 Megawatts nominal power, waste heat recovery boilers…..."	"….52 – 57 Megawatts nominal power output, waste heat recovery boilers…."
19	3.3.7	"….atmospheric emissions of carbon monoxide…."	"….atmospheric emissions of carbon dioxide…."
30	3.11.1	"….development plan polices…."	"….development plan policies…."
50	4.10.39	"….Stack Height Determination [APP-019]…."	"….Stack Height Determination [APP-025]…."
80	5.2.1	"…..a gas turbine of 52 – 67 megawatts (MW)…."	"….a gas turbine of 52 – 57 megawatts (MW)…."
89	6.2.16	"….Stack Height Determination [APP-019]…."	"….Stack Height Determination [APP-025]…."

OVERVIEW

File Ref: EN010090

The application, dated 6 April 2018, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on the same date.

The Applicant is DS Smith Paper Limited.

The application was accepted for examination on 26 April 2018.

The examination of the application began on 17 July 2018 and was completed on 8 January 2019.

The development proposed comprises the construction and operation of a Combined Heat and Power (CHP) Plant ('K4') to supply electricity and steam to the Kemsley Paper Mill in Sittingbourne, Kent. The K4 CHP plant is intended to replace an existing CHP plant ('K1') which currently supplies electricity and steam to the mill. The K4 CHP plant would be gas fired and would comprise a gas turbine of 52-57 Megawatts nominal power, waste heat recovery boilers providing 105 Megawatt Thermal steam and a steam turbine of 16 Megawatts nominal power output.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for The Kemsley Mill K4 Combined Heat and Power Generating Station (the Project or the Proposed Development) (Examination Library reference [APP-001 to APP-060]) was submitted by DS Smith Paper Ltd (DS Smith or the Applicant) to the Planning Inspectorate on 6 April 2018 under section (s)31 of the Planning Act 2008 (PA2008).

1.1.2. The Proposed Development comprises the decommissioning of an existing gas fired combined heat and power (CHP) plant known as K1, and the construction, operation and maintenance of a new gas fired combined cycle generating station referred to as K4 with a nominal power output of 68-73 megawatts (MW) on land at Kemsley, Sittingbourne, Kent, ME10 2TD. The Proposed Development would be operated by DS Smith and / or other companies to supply electricity and steam to the existing Kemsley Paper Mill (the Paper Mill or the Mill), with excess electricity being exported to the grid.

1.1.3. The location of the Proposed Development is shown within the Environmental Statement (ES) [APP-008 to APP-036] and the Land Plan, [REP1-013]. The Paper Mill lies entirely within the administrative district of Swale within the county of Kent.

1.1.4. The application site (the Site) is as set out within the Land Plan whilst the Works Plans – Key Plan [AS-003] identifies Work No. 1 which is the site for the proposed K4 generating station. It is within the wider Paper Mill industrial complex which comprises a number of large industrial buildings, flue emission stacks, concrete hardstanding and other related development. The Site is entirely contained by the security fence for the Mill with the proposed location for K4 in the south east corner of the Mill site. It is roughly triangular in shape and consists almost entirely of existing concrete hardstanding.

1.1.5. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for what is now the Ministry of Housing Communities and Local Government (MHCLG) in its decision to accept the application for Examination in accordance with s55 of PA2008 [PD-003].

1.1.6. The Planning Inspectorate agreed with the Applicant's view stated in the application form [APP-003] that the Proposed Development is an NSIP as it comprises an onshore generating station with a capacity of more than 50MW and so requires development consent in accordance with s31 of PA2008. The Proposed Development therefore meets the definition of an NSIP set out in s14(1)(a) and s15(2) of PA2008.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

On 8 May 2018 Kevin Gleeson was appointed by the SoS as the Examining Authority (ExA) for the application under s78 and s79 of PA2008 [PD-004].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

1.3.1. The persons involved in the Examination were persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

The Examination began on 17 July 2018 and concluded on 8 January 2019.

1.4.1. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

The Preliminary Meeting

1.4.2. On 18 June 2018, I wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (the Rule 6 Letter) inviting them to the Preliminary Meeting (PM) and the first Issue Specific Hearing (ISH1) [PD-005], outlining:

- the arrangements and agenda for the PM;
- notification of and an agenda for ISH1;
- an Initial Assessment of the Principal Issues (IAPI);
- the draft Examination Timetable; and
- the availability of RRs and application documents.

1.4.3. The Rule 6 Letter also contained procedural decisions made under s89(3) and s91(1) of PA2008 related to:

- The ISH into the draft Development Consent Order (dDCO);
- The deadlines for the submission of or comments on specified documents;
- The notification by IPs of their wish to be heard at an Open Floor Hearing (OFH);
- The notification by IPs of their wish to attend an Accompanied Site Inspection (ASI) and related arrangements;
- A request for a number of Statements of Common Ground (SoCGs) between the Applicant and other parties;
- Matters relating to The Conservation of Habitats and Species Regulations 2017; and
- Post-submission application documents.

1.4.4. The PM was held on 17 July 2018 at Kemsley Community Village Hall, The Square, Ridham Avenue, Kemsley, Sittingbourne ME10 2SF. An

audio recording and note of the meeting were published on the National Infrastructure pages of the Planning Inspectorate website[1] on 19 July 2018 and 24 July 2018 respectively [EV-007 and EV-008].

Further Procedural Decisions

1.4.5. On 24 July 2018 I wrote to all IPs, Statutory Parties and Other Persons under Rule 8 of the EPR (the Rule 8 Letter) [PD-006]. This formalised the Examination timetable and set out further procedural decisions made in respect of the Examination timetable, my Written Questions, SoCGs, Local Impact Reports (LIRs), the Habitats Regulations Assessment (HRA) and the ASI. It was published alongside my initial Written Questions (ExQ1) [PD-006a].

Site Inspections

1.4.6. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.

1.4.7. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and / or there are requests made to accompany an inspection, an ASI is held.

1.4.8. I held the following USIs:

- USI1 on Wednesday 4 July 2018 for which a note [EV-001] was published. This was undertaken to enable me to become familiar with the context within which the Paper Mill site exists.
- USI2 was undertaken in the afternoon of 12 September 2018 primarily to consider the noise environment in the vicinity of Eleanor Drive, Milton Regis for which a note was also published [EV-001a].

1.4.9. In accordance with the Examination Timetable as set out in the Rule 8 Letter [PD-006] an ASI took place in the morning of 12 September 2018 in the presence of the Applicant, Swale Borough Council (SBC) and the Environment Agency (EA). The ASI was focused on the application site and the remainder of the Paper Mill complex. The itinerary [EV-003] and a briefing note prepared by the Applicant [EV-004] were published in advance and adhered to. This enabled me to access land and features, relevant to the consideration of the application and its effects. A note of the ASI was published [EV-017].

1.4.10. I have had regard to the information and impressions obtained during the site inspections in all relevant sections of this Report.

[1] https://infrastructure.planninginspectorate.gov.uk/projects/south-east/kemsley-paper-mill-k4-chp-plant/

Hearing Processes

1.4.11. Hearings are held in PA2008 Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard - in summary terms:
  - where persons affected by Compulsory Acquisition and / or Temporary Possession object and request to be heard at a Compulsory Acquisition Hearing; and / or
  - where IPs request to be heard at an OFH.
- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

1.4.12. Hearings, under s91 and s93 of PA2008, were undertaken to ensure a thorough examination of the issues raised by the application as follows:

- An ISH on the dDCO was held on 17 July 2018 at Kemsley Community Village Hall (ISH1);
- An OFH was held in the evening of 12 September 2018 at the Coniston Hotel, 70 London Road, Sittingbourne ME10 1NT;
- An ISH on Environmental Matters was held on 13 September 2018 at the Coniston Hotel (ISH2); and
- A second ISH on the dDCO was held on 14 September 2018 at the Coniston Hotel (ISH3).

1.4.13. Both hearing locations were within 4km of the Site and within the built-up area of Sittingbourne. Audio recordings of all hearings were published [EV-009 to EV-013].

1.4.14. Annex A of the Rule 8 Letter [PD-006] set out the timetable for the Examination which included ISH4 on outstanding matters and ISH5 on the dDCO to be held on 6 and 7 November 2018 respectively, if required. On 5 October 2018 I confirmed in writing to all IPs that those ISHs were not required.

1.4.15. At the OFH all IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

1.4.16. The following principal matters were identified in a letter dated 5 September 2018 [EV-005] for discussion at the ISH on Environmental Matters (ISH2):

- Environmental Impact Assessment;
- Air Quality;
- Ecology (including HRA);
- Landscape and Visual Impact;
- Noise and Vibration; and
- Other Matters.

1.4.17. The matters for discussion at the second ISH into the dDCO (ISH3) were also set out in a letter from me of 5 September 2018 [EV-006].

1.4.18. As the Proposed Development would be undertaken entirely within the boundary of DS Smith owned land no compulsory acquisition or temporary possession was sought and therefore no Compulsory Acquisition Hearings were held.

1.4.19. The Examination was closed at 11.59pm on 8 January 2019. This was communicated to IPs in my letter of 9 January 2019 [PD-010].

Written Processes

1.4.20. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All of this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets [].

1.4.21. Key written sources are set out further below.

Relevant Representations

1.4.22. The registration of IPs began on 2 May 2018 and was scheduled to end on 8 June 2018, but the deadline was extended to 13 June 2018 in respect of notifications which were not delivered by Royal Mail and had to be issued electronically.

1.4.23. Eight RRs were received by the Planning Inspectorate [RR-001 to RR-008]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. I have fully considered all RRs and the issues that they raise are addressed in Chapter 4 of this Report.

Written Representations and Other Examination Documents

1.4.24. The Applicant and IPs were provided with opportunities to:

- make written representations (WRs) (Deadline (D)1);
- comment on WRs made by IPs (D2);
- summarise their oral submissions at hearings in writing (D1 and D3);
- make other written submissions requested or accepted by the ExA; and
- comment on documents issued for consultation by the ExA including:
    - A Report on the Implications for European Sites (RIES) [OD-003] published on 22 October 2018, by D5; and
    - A schedule of amendments to the dDCO [PD-009] published on 22 October 2018, by D5.

1.4.25. I have fully considered all WRs and other examination documents and the issues that they raise are considered in Chapter 4 of this Report.

Local Impact Report

1.4.26. A LIR is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been submitted to the ExA under s60 of PA2008.

1.4.27. I received one LIR from SBC [REP2-036] and the matters raised in it are discussed in all relevant Chapters of this Report. I have fully taken them into account.

Statements of Common Ground

1.4.28. A SoCG is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them.

1.4.29. The Applicant concluded three SoCGs over the course of the Examination, with one further SoCG unsigned. These were between the Applicant and the following parties:

- Natural England (NE), submitted as a draft version at D1 [REP1-002] whilst a signed version dated 10 October 2018 was submitted between D4 and D5 [AS-023];
- SBC, submitted as a signed version at D1 [REP1-008];
- EA, submitted as a signed version at D1 [REP1-014] and revised at D5 [REP5-009];
- Kent County Council (KCC), submitted as a draft version at D1 [REP1-017].

1.4.30. In addition to the SoCGs identified above, through a procedural decision set out in the Rule 6 Letter [PD-005] a SoCG was requested to be agreed between the Applicant and Network Rail in order to address Network Rail's request for Protective Provisions. At D3 it was confirmed that Network Rail has withdrawn its comments in relation to the application having determined that the Proposed Development would have no impact on railway infrastructure [REP3-016]. The need for the SoCG therefore fell away.

1.4.31. I have fully taken into account the completed SoCGs in all relevant Chapters of this Report.

Written Questions

1.4.32. I undertook two rounds of written questions:

- Initial Written Questions (ExQ1) [PD-006a] were provided as part of the Rule 8 Letter [PD-006], dated 22 July 2018; and
- Further Written Questions (ExQ2) [PD-007] were issued on 22 October 2018.

1.4.33. A request for further information and comments under Rule 17 of the EPR was issued on 12 December 2018 [PD-008]. This sought comments on amended documents submitted by the Applicant in relation to a proposed change to increase the maximum height of the gas turbine

building [AS-025 to AS-035]. Comments were sought by 24 December 2018.

1.4.34. All responses to my written questions and the Rule 17 request have been fully considered and taken into account in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

1.4.35. There were no requests to join the Examination by persons who were not already IPs under s102A, s102B and s102ZA of PA2008 at or after the PM.

1.4.36. Apart from Network Rail as noted above, no persons wrote to me to formally record the settlement of their issues and the withdrawal of their representations.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

1.5.1. On 14 June 2018 the Applicant certified compliance with s56 of PA2008, with Regulation 10 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations) and Regulation 16 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 572) (the EIA Regulations) [OD-002].

1.5.2. Previously, on 17 August 2017, the Applicant had submitted to the Planning Inspectorate a Scoping Report [APP-012] under Regulation 10 of the EIA Regulations. This requested an opinion as to the scope and level of detail of the information to be provided in the ES (a Scoping Opinion). The Applicant notified the Secretary of State that it proposed to provide an ES in respect of the Project, in accordance with Regulation 8(1)(b) of the EIA Regulations.

1.5.3. On 28 September 2017 the Planning Inspectorate provided a Scoping Opinion [APP-013]. In accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be development for which an EIA is required (EIA development), and the application was accompanied by an ES [APP-008 to APP-036].

1.5.4. Consideration is given to the adequacy of the ES and matters arising from it. The potential environmental effects have been assessed and set out in the ES. The ES includes details of measures proposed to mitigate likely significant effects identified by the Applicant.

1.5.5. I am satisfied that the ES met the requirements of Schedule 4 of the EIA Regulations and, together with the environmental information provided during the Examination, forms an adequate basis for decision making.

1.6. HABITATS REGULATIONS ASSESSMENT

1.6.1. The Proposed Development is development for which a HRA Report (HRAR) has been provided.

1.6.2. Consideration is given to the adequacy of the HRAR, associated information and evidence and the matters arising from it in Chapter 5 of this Report.

1.6.3. Under Regulation 5(2) of the APFP Regulations, where required, an application must be accompanied with sufficient information to enable the relevant SoS to meet their statutory duties as the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

1.6.4. The RIES summarised the available environmental information [OD-003]. It compiled, documented and signposted information provided within the application and subsequent information submitted throughout the Examination by both the Applicant and IPs, up to 12 October 2018.

1.6.5. The RIES was issued on 22 October to all IPs. Comments on the RIES were requested for D5, 13 November 2018, as set out in the Examination timetable [PD-006].

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. By the end of the Examination, there were no matters subject to any separate undertakings, obligations and / or agreements. All relevant considerations are addressed in this Report as bearing on the DCO.

1.8. OTHER CONSENTS

1.8.1. In addition to the consents required under PA2008 (which is the subject of this report), the Applicant confirmed in section 24 of the Application Form [APP-003] that an Environmental Permit (EP) would be required to construct operate and maintain the Proposed Development and would be sought separately.

1.8.2. In relation to the matter of an EP, I have considered the available information bearing upon this and, without prejudice to the exercise of discretion by future decision-makers, have concluded that there are no apparent impediments to the implementation of the Proposed Development, should the SoS grant the application.

1.9. STRUCTURE OF THIS REPORT

1.9.1. This report provides the SoS for Business, Energy and Industrial Strategy (BEIS) with the ExA's findings and conclusions in respect of the application for development consent for the Kemsley Mill K4 Combined Heat and Power Generating Station under s74(2)(b)(i) of PA2008. The report is structured as follows:

- **Chapter 1** introduces the reader to the application, and the processes used to carry out the Examination and produce this Report;
- **Chapter 2** describes the Site and its surrounds, the Proposed Development, its planning history and that of related projects;
- **Chapter 3** provides an outline of the legal and policy context applicable to consideration of the application;

- **Chapter 4** sets out the planning issues that arose from the application and during the Examination;
- **Chapter 5** provides findings and conclusions in relation to the effects on European Sites and the Habitats Regulations;
- **Chapter 6** sets out the balance of planning considerations arising from Chapters 4 and 5, in the light of the factual, legal and policy information in Chapters 1 to 3;
- **Chapter 7** considers the implications of the matters arising from the preceding chapters for the DCO; and
- **Chapter 8** summarises all relevant considerations and sets out my recommendation to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – details the main events occurring during the Examination and the main procedural decisions taken;
- **Appendix B** – contains the Examination Library which lists the documents submitted by the Applicant and others, and identifies the references used in this report;
- **Appendix C** – is a list of abbreviations used in this report; and
- **Appendix D** – contains the DCO as recommended to be made by the SoS (the ExA's Recommended DCO).

1.9.3. Given that the application and Examination material has been published online, this report does not contain extensive summaries of all the representations although regard has been had to them in my conclusions. I have considered all important and relevant matters and set out my recommendations to the SoS against the PA2008 tests.

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

2.1.1. The Applicant submitted an application which is described in the Application Form [APP-003] as:

'the construction and operation of a Combined Heat and Power (CHP) Plant ('K4') to supply electricity and steam to the Kemsley Paper Mill in Sittingbourne, Kent. The K4 CHP plant is intended to replace an existing CHP plant ('K1') which currently supplies electricity and steam to the mill. The K4 CHP plant would be gas fired and would comprise a gas turbine of 52-57 Megawatts nominal power, waste heat recovery boilers providing 105Mwth [Megawatt Thermal] steam and a steam turbine of 16 Megawatts nominal power output'.

2.1.2. The location of the Proposed Development is identified as land at Kemsley, Sittingbourne, Kent, ME10 2TD and the Applicant is DS Smith Paper Ltd.

2.2. THE APPLICATION AS EXAMINED

Principal Works

2.2.1. As described in the Environmental Statement (ES) Non-Technical Summary [APP-036] K4 will be a CHP plant which would work by burning gas to fire gas turbines and create mechanical energy to produce electricity. The process generates excess heat used to heat water and create high-pressured steam which is fed through a second turbine to generate further electricity thereby maximising electricity generation. The steam produced is described as providing an energy efficient way of producing electricity and steam for the paper making process.

2.2.2. Chapter 2 of the ES: Site Description and Proposed Development [AS-030] together with the Planning Statement [APP-057] and Works Plans – Key Plan [AS-003] and Schedule 1: Authorised Development, of the Recommended DCO (Appendix D) describe the main components of the Project which can be summarised as:

- Work No. 1 – comprises the construction of the K4 CHP plant which would take place on an existing area of hardstanding within the south-east part of the Mill site. Ten key items of plant were defined in the dDCO as submitted [APP-005], together with a number of other plant items described as ancillary;
- Work No. 2 – would make provision for the K4 CHP plant to connect into various existing infrastructure and systems within the Mill complex, such as gas, electricity and water. The tie-ins would take place throughout the south-eastern part of the Mill complex and extend to an existing electricity substation to the south of the hardstanding storage area in the northern part of the Site;
- Work No. 3 – would allow for the creation of a construction compound and laydown area which would be located on existing hardstanding in the northern part of the Mill site;

- Work No. 4 – would allow for the retention and continued use of an internal access and haulage road which runs along the eastern side of the Mill site and which would link the K4 site with the construction compound;
- Work No. 5 – would provide for the decommissioning of the existing K1 plant which is located within the eastern part of the Mill site. The decommissioning would involve making the K1 plant inoperable, but it is not proposed to demolish any part of the K1 plant through the DCO.

2.2.3. As described in the submission version of the dDCO [APP-005] the main plant items were:

- local equipment room and control (Work No. 1(a));
- a generator (Work No. 1(b));
- a gas turbine (Work No. 1(c));
- a Heat Recovery Steam Generator (HRSG) (Work No. 1(d));
- HRSG stack (Work No. 1(e));
- a turbine hall including steam turbine (Work No. 1(f));
- a CHP pipe bridge including pipes and cables (Work No. 1(g));
- a dump condenser (Work No. 1(h)),
- a fin fan cooler (Work No. 1(i)); and
- a package boiler stack (Work No. 1(j)).

2.2.4. The HRSG and turbine hall would be located at the western end of the CHP plant site with the pipe bridge connecting into the Mill to the north. The other main elements of the CHP plant would sit to the east of the HRSG and turbine hall. The dDCO as submitted [APP-005] described a number of other structures, plants and machinery as being ancillary plant (Work No. 1 (k) to 1 (w)). These would be located where necessary around the plant items (a) to (j).

2.2.5. The submission version of the dDCO [APP-005] drew a distinction between main plant items and ancillary plant items indicating that the latter were less substantial than the former rather than using ancillary as the term was defined in the now withdrawn Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the Model Provisions). Following ISH1 the Applicant removed the distinction from the dDCO [REP1-004].

2.2.6. When the application was made the design of the proposed CHP plant was still to be finalised. Two technical approaches were being assessed namely a vertical tubed boiler and a horizontal tubed boiler. Each would result in different implications for the size of the HRSG building and the location of the HRSG stack. In turn, this would affect the route of the pipe bridge. As a result, the application contained a Works Plan with Limits of Deviation and Illustrative Layout Plans, Elevations and 3D Visuals for both options [APP-041 to APP-045 and APP-046 to APP-050].

2.2.7. Whilst the dDCO and Works No. 1 Plans [APP-040] made provision for flexibility in the design, scale and siting of the main CHP structures and other equipment and machinery the height of the HRSG stack and package boiler stack were fixed in the dDCO as submitted [APP-005] at 70m and 35m respectively.

2.2.8. The Applicant intends to decommission the K1 plant after the successful commissioning of the K4 plant. Consequently, there would be a period during which K1 and K4 would operate simultaneously. The Applicant expects this operation to be intermittent and would not involve both plants operating at full capacity.

2.2.9. As K4 is largely a replacement for the existing K1 plant the application describes similar tie-ins to existing facilities and services as for K1. As a consequence, no off-site infrastructure is proposed. An illustrative plan showing the location of the required facilities and services within the Paper Mill to which K4 would connect is provided at Figure 2.12 of the ES [APP-008 / AS-030]. All physical tie-ins would be within the DCO Order Limits and are described in section 2.7 of the ES. These are as follows:

- Gas supply – K4 would connect to the existing gas station and would include its own gas conditioning equipment;
- Electricity – There would be a connection to the existing Distribution Network Operator (DNO) 132Kilovolt (KV) grid connection for both the importation of power (in the event of planned or unplanned shutdown) and export of electricity;
- Process water – The Paper Mill is served by process water extracted off-site and piped to the Mill complex via pipeline to open lagoons located immediately to the south of the proposed K4 site where it is stored. The process water pumping station abstracts the water and transfers it to the water treatment plant (WTP) where it would be used for the operation of the K4 plant;
- Water treatment plant – A new WTP to replace the existing K1 WTP is currently under construction and will be used to supply demineralised water to K4;
- Process water drainage – Excess water from the K4 process would flow into a dedicated sump for neutralisation where necessary, and onwards to the Paper Mill's existing waste water treatment facility;
- Surface water outfall – All surface water runoff would be conveyed into the existing surface water drainage network and discharged at an existing outfall;
- Facility control room – K4 would be connected to and controlled from the existing K1 control room. This would continue to use the existing foul sewer mains connection. Potable water would be taken from the existing site distribution system; and
- Package boilers – The six existing package boilers would be retained and used in the event of planned or unplanned shutdowns of other energy sources to supplement the steam supply and support any deficit.

2.2.10. The Proposed Development would be undertaken entirely within the boundaries of land owned by DS Smith. Consequently, no Book of Reference, Statement of Reasons or Funding Statement was provided within the application as no compulsory acquisition or rights over statutory undertakers' equipment have been sought.

2.2.11. The application as originally submitted comprised the following:

- Covering letter [APP-001];

- Application guide [APP-002];
- Application form [APP-003];
- Copies of newspaper notices [APP-004];
- The DCO, Explanatory Memorandum (EM) and Draft Order Validation Report [APP-005 to APP-007];
- The ES, Appendices and Non-Technical Summary [APP-008 to APP-036];
- Context site location plan and site location plan (aerial photos) [APP-037 to APP-038];
- Land Plan [APP-039];
- Works Plans - Key Plan, Limits of Deviation, Illustrative Layout, Illustrative Elevation and Site Context 3D Visuals for both Horizontal and Vertical Tube Boilers [APP-040 to APP-050];
- Work No. 2 – Tie-ins to existing site facilities illustrative [APP-051];
- Nature conservation and other designations, habitats, water bodies and heritage plans [APP-052 to APP-055];
- Other reports and statements namely Consultation, Planning, Design and Access, Statutory Nuisance and Regulation 6 – Grid and Gas Statement [APP-056 to APP-060].

2.3. THE APPLICATION AT THE CLOSE OF THE EXAMINATION

2.3.1. A number of statements and plans were updated during the course of the Examination following discussion at Hearings, in response to my initial Written Questions (ExQ1) [PD-006a] and Further Written Questions (ExQ2) [PD-007] and as a result of discussions and correspondence between the Applicant and other parties.

2.3.2. Following Deadline (D)7 the Applicant identified a discrepancy with one of the parameters included in Table 1 of the dDCO requiring an increase in the maximum height of the gas turbine building (Work No1(c)) from 9.9m to 14.5m. As a result, a number of additional submissions were made. These were addressed through a procedural decision and change to the timetable as notified through my letter of 12 December 2018 under Rule 17 and Rule 8(3) of the Planning Act 2008 (PA2008) and The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) [PD-008].

2.3.3. The changes to the application can be summarised as follows:

- The DCO, updated throughout the Examination with the final version submitted between D7 and D8 [AS -027] and revised DCO Validation Report [AS-029];
- Chapter 2 of the ES, Site Description and Proposed Development, updated a number of times during the Examination with the final version submitted between D7 and D8 [AS-030];
- Figures 2.2a – 2.2c of the ES, updated and submitted at D3 [REP3-010 to REP3-012];
- Figures 2.2a – 2.2f of the ES, updated and submitted at D2 [REP2-004 to REP2-009];

- Appendix 2.1 of the ES, the Outline Construction Environmental Management Plan (CEMP) updated during the Examination with a final version submitted at D5 [REP5-004];
- Figure 4.1 of the ES, updated and submitted at D2 [REP2-010];
- Chapter 5 of the ES, Air Quality, updated and submitted between D7 and D8 [AS-032];
- Appendix 5.4 of the ES, Air Quality Assessment of Ecological Impacts, updated and submitted at D2 [REP2-011];
- Figures 10.1a – 10.1m of the ES, updated and submitted at D2 [REP2-012 to REP2-024];
- Figure 10.3 of the ES, updated and submitted at D2 [REP2-025];
- Appendix 10.2 of the ES, HRA Report, updated during the Examination with a final version submitted at D6 [REP6-005];
- Chapter 13 of the ES, Summary Tables, updated twice with a final version submitted at D3 [REP3-013];
- Land Plan, updated and submitted at D1 [REP1-013];
- Works Plans - Key Plan, updated twice with a final version submitted at D1 [REP1-003];
- The removal of plans / drawings / sections showing the horizontal tube boiler option, between D4 and D5 [AS-004, AS-005, AS-006, AS-007 and APP-042];
- Work No. 1, Works Plan with Limits of Deviation for Vertical Tube Boiler, updated and submitted prior to D1 [AS-008];
- Illustrative elevation cross sections – vertical tube boiler, updated and submitted prior to D1 [AS-009];
- Site context – 3D visual vertical tube boiler (view a), updated and submitted prior to D1 [AS-010];
- Site context – 3D visual vertical tube boiler (view b), updated and submitted prior to D1 [AS-011];
- Work No. 2 Plan – tie-ins to existing site facilities (illustrative) updated and submitted prior to D1 [AS-012];
- Design and Access Statement, updated and submitted between D7 and D8 [AS-034];
- Statement of Statutory Nuisances, updated and submitted at D2 [REP2-027]; and
- The Application Guide, updated throughout the Examination with the final version submitted at D9 [REP9-001].

2.3.4. At D5 the Applicant also submitted a Site Level Plan [REP5-007] for consideration alongside Schedule 2 Table 1 of the Recommended DCO.

2.4. DESCRIPTION OF THE APPLICATION SITE AND SURROUNDING AREA

2.4.1. The Site is described in Chapter 2 of the ES: Site Description and Proposed Development [AS-030]. The entire Site lies within the administrative boundary of Kent County Council (KCC) and Swale Borough Council (SBC), the latter being also the relevant planning authority (RPA). In response to ExQ1.11.1, the Applicant confirmed that the area of land within the Order Limits covered 6.67 hectares [REP2-030] whilst the Application Form states that the proposed K4 CHP construction site comprises an area of 1.4ha [APP-003].

2.4.2. The Kemsley Paper Mill lies to the north-east of the residential suburb of Kemsley which forms part of the wider urban area of Sittingbourne. The town centre is approximately 2.5km south of the Site. The nearest residential properties to the Site are approximately 600m away. The land to the north and east of Sittingbourne and the south-western part of the Isle of Sheppey beyond is predominantly flat low-lying grazing and marsh land.

2.4.3. The Paper Mill complex has evolved since it was originally built in 1924. It now comprises a number of large industrial buildings, flue emission stacks, concrete hardstanding and other associated structures. An extensive area of hardstanding to the north of the Mill complex is used to store raw materials. The height of the existing K1 stack is 75m whilst that of K2 is 72m as confirmed by the Applicant in response to ExQ1.6.15 [REP2-030].

2.4.4. The Site is accessed from the A249 via Grovehurst Road, Swale Way and Barge Way providing access from the north. An internal access road provides access to the proposed location of Work No. 1. The main access to the Paper Mill complex is from the west with a large staff and visitor car park in the south-western part of the complex. The A249 runs north from the M2 motorway and provides an arterial route through the area to serve both Sittingbourne and the Isle of Sheppey.

2.4.5. Immediately to the east of the Paper Mill is the construction site of the Wheelabrator Kemsley Generating Station (K3) plant, an energy from waste plant which from 2019 will supply steam to the Paper Mill and provide electricity for export to the grid. Beyond the K3 plant, some 600m from the Site is the Swale estuary and beyond that is the Isle of Sheppey. Immediately to the south of the K3 plant is a former landfill site whilst to the south of the Paper Mill is the Sittingbourne and Kemsley Light Railway beyond which are areas of open grazing land, the Milton Creek Country Park and Milton Creek. To the north of the Paper Mill are a number of commercial and industrial operations and DS Smith is also currently constructing an anaerobic digester to replace an existing aerobic digester in this area.

2.4.6. The Site is as shown on the Works Plans – Key Plan [REP1-003]. It comprises the construction zone / site of the proposed K4 CHP plant together with existing gas, electricity and water tie-ins, internal access roads leading to the access on Barge Way to the north of the Mill complex and an area of hardstanding within the northern part of the Mill complex which is intended to be used as a laydown area during construction.

2.4.7. The K4 CHP plant site itself is identified by Work No. 1 on the Works Plans – Key Plan [REP1-003] and is within the south-east corner of the existing Paper Mill site. It comprises an area of hardstanding which is used for various purposes including paper storage, and which contains a vehicle weighbridge, a truck wash area, a vehicle refuelling point and a hazardous waste storage area.

2.4.8. The energy demands of the Paper Mill are currently met by the K1 gas turbine CHP plant and six ancillary package boilers which provide electricity and steam to the Mill, and K2 which is a steam generator which uses waste plastic and sludge as a source to provide steam to the Mill. The K3 site will incorporate a stack of up to 90m in height as confirmed by the Applicant in response to ExQ1.6.15 [REP2-030]. The proposed K4 plant is intended as a replacement to the K1 plant which would be decommissioned with the six package boilers retained in use.

2.5. RELEVANT PLANNING HISTORY

2.5.1. Planning permission was granted in March 1993 for the K1 CHP plant. In the Planning Statement [APP-057] the Applicant noted that there have been no planning applications covering the actual K4 plant site within the past five years. Nevertheless, the Planning Statement details historic applications relating to the K4 CHP plant site and the surrounding area.

2.5.2. Planning permission was granted by KCC in March 2012 for the development of a sustainable energy plant to serve the Paper Mill complex. This is the K3 plant which is currently under construction.

2.5.3. Since the application was submitted SBC has granted planning permission for a new internal access road within the Mill site with details provided by the Applicant at D3 [REP3-015]. This is proposed to run through the south-eastern part of the Mill complex to the south-east of the proposed K4 plant site.

2.6. CUMULATIVE EFFECTS

2.6.1. Cumulative effects with other projects in the locality are considered in Chapter 3 of the ES [APP-008] which also explains the approach to addressing such matters. Figure 3.2 [APP-008] maps 21 projects which were considered for the purpose of assessing the effects of the Proposed Development with other schemes which are under construction, consented or for which planning permission is being sought.

2.6.2. In their SoCG with the Applicant [REP1-008] SBC confirmed that it was agreed that the projects listed in paragraph 3.9.1 of the ES [APP-008] are appropriate for consideration as part of any cumulative assessment. Notwithstanding that the SoCG between the Applicant and KCC [REP1-017] was not completed and signed, at D1 the draft SoCG also confirmed that the projects listed in paragraph 3.9.1 of the ES were appropriate for consideration as part of any cumulative assessment and therefore not an issue between the parties. The issue of cumulative effects is considered further in the relevant sections of Chapter 4.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

3.1.1. This Chapter sets out the relevant legal and policy context for the application. I have taken this into account in the Examination of the Proposed Development and in presenting findings and making recommendations to the Secretary of State (SoS).

3.1.2. The legal and policy context, as understood by the Applicant, is described in Section 6 of the Planning Statement [APP-057]. This sets out an assessment of the Proposed Development against the policy requirements of National Policy Statements (NPSs) EN-1 and EN-2. Individual chapters of the ES provide specific background relating to particular topics.

3.1.3. The Local Impact Report (LIR) [REP2-036] of Swale Borough Council (SBC) sets out the local authority's position with regard to development plan policies.

3.2. THE PLANNING ACT 2008

3.2.1. The application is for a Nationally Significant Infrastructure Project (NSIP), qualifying under the Planning Act 2008 (PA2008). It is for the construction of an onshore generating station in England having a capacity of more than 50MW pursuant to section (s)14(1)(a) and s15(2) of PA2008. The Applicant is seeking development consent for the NSIP comprising the decommissioning of an existing gas fired Combined Heat and Power (CHP) plant K1, and the construction and operation of a replacement CHP plant K4, with a nominal power output of 68-73MW.

3.2.2. Section 104 of PA2008 applies to the Proposed Development because it is:

'in relation to an application for an order granting development consent [where] a national policy statement has effect in relation to development of the description to which the application relates'.

3.2.3. Section 104(3) of PA2008 requires the SoS to decide an application for development consent in accordance with any relevant NPS, except to the extent that the SoS is satisfied that, in summary, doing so:

- would lead to the United Kingdom being in breach of its international obligations;
- would lead to the SoS being in breach of any duty imposed on him under any enactment;
- would be unlawful by virtue of any enactment;
- the adverse impact of the proposed development would outweigh its benefits; or
- would fail to comply with any prescribed condition for deciding the application otherwise than in accordance with the NPS.

3.2.4. Section 104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary, these include:

- any relevant NPS which has effect in relation to development of the description to which the application relates (a '*relevant national policy statement*');
- any LIR (within the meaning given by s60(3) of PA2008) submitted to the SoS before the specified deadline for submission;
- the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009;
- any matters prescribed in relation to the development of the description to which the application relates; and
- any other matters which the SoS considers are both important and relevant to the decision.

3.2.5. The remainder of this Chapter addresses the identification and application of relevant NPSs and the LIR, and identifies other legal and policy matters that are capable of being important and relevant considerations.

3.3. NATIONAL POLICY STATEMENTS

3.3.1. NPSs set out Government policy on different types of national infrastructure development. NPSs which are relevant to this application are:

- NPS EN-1: Overarching National Policy Statement for Energy; and
- NPS EN-2: Fossil Fuel and Electricity Generating Infrastructure.

3.3.2. These NPSs were produced by the Department of Energy and Climate Change (DECC), (now the Department for Business, Energy and Industrial Strategy (BEIS)) and designated by the SoS for Energy and Climate Change in July 2011.

3.3.3. These NPSs form the primary policy context for this Examination. The purpose and broad content of these NPSs is summarised here with subject specific consideration of policy arising from them provided in the remainder of this Report, particularly in Chapter 4.

NPS EN-1: Overarching National Policy Statement for Energy

3.3.4. NPS EN-1 sets out the Government's policy for delivery of major energy infrastructure projects. At paragraph 3.1.1 it states that:

'the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions'.

3.3.5. It also states that applications for development consent should be assessed *'on the basis that the Government has demonstrated that there is a need for those types of infrastructure'* (paragraph 3.1.3). Paragraph 3.1.4 indicates that the SoS *'should give substantial weight to the*

contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008'.

3.3.6. Section 3.6 of NPS EN-1 acknowledges that fossil fuel generation plays a vital role in providing reliable energy supplies and providing flexibility in response to changes in supply and demand and diversity in energy mix. Government policy is that they must be constructed and operate in line with increasingly demanding climate change goals.

3.3.7. Recognising that the use of fossil fuels to generate electricity produces atmospheric emissions of carbon monoxide the Government has established a requirement for fossil fuelled power stations over 300MW to be constructed Carbon Capture Ready to facilitate the adoption of Carbon Capture and Storage once it is available. As the Proposed Development would be below the 300MW threshold such a requirement would not apply in this case.

3.3.8. Paragraph 4.1.2 of NPS EN-1 indicates that the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs, and that the presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. This presumption is subject to the stipulations of s104(3) of PA2008.

3.3.9. As set out in paragraph 4.1.3 of NPS EN-1, account should be taken of the potential benefits of the proposed development to meeting the need for energy infrastructure, job creation and any longer term or wider benefits. Account should also be taken of potential adverse impacts, including any long term and cumulative ones, as well as measures to avoid, reduce or compensate for them.

3.3.10. Whilst other policies, including those contained in the development plan for the area may constitute matters that the SoS may regard as important and relevant to the decision, the primacy of NPSs is clear. In the event of a conflict between policies contained in any other document and those in an NPS, those in the NPS prevail for the purposes of decision making on nationally significant infrastructure (NPS EN-1, paragraph 4.1.5).

NPS EN-2: Fossil Fuel and Electricity Generating Infrastructure

3.3.11. NPS EN-2 provides the primary basis for decisions on applications for nationally significant fossil fuel electricity generating stations. It sets out the factors which should influence the development of sites and the criteria which Government requires to be met by them. These include explanations of the Government's approach to subject matters raised by this application, including the selection of gas combustion technology and CHP. In terms of the impacts of fossil fuel generating stations, NPS EN-2 reiterates the policy in NPS EN-1 and provides additional policy on air

quality and emissions, landscape and visual, noise and vibration and water quality and resources among other matters.

3.4. EUROPEAN LAW AND RELATED UK REGULATIONS

Leaving the European Union

3.4.1. The UK is in the process of negotiating departure from the European Union (EU).

3.4.2. The European Union (Withdrawal) Act provides that, subject to defined exceptions, European Union law which is extant up to the point of exit will remain in force and be incorporated into UK law. This report has been drafted on the basis that relevant European Union law (primarily environmental law) will be incorporated into UK law at the point when the SoS decides this application.

The EIA Directive

3.4.3. Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) defines the procedure by which information about the environmental effects of a project is collated and taken into account by the relevant decision-making body before consent is granted for a development. It applies to a wide range of defined public and private projects.

3.4.4. The Proposed Development falls to be considered under the UK legislation related to 2011/92/EU: The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations).

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

3.4.5. The Proposed Development falls within Schedule 2 paragraph 3(a) of the EIA Regulations. The location, scale and nature of the Proposed Development may have the potential to give rise to significant effects on the environment and is considered to be EIA development. The DCO application is therefore required to be accompanied by an Environmental Statement (ES) prepared in accordance with the EIA Regulations. The Applicant has provided an ES [APP-008 to APP-036] as part of their submitted application.

Industrial Emissions Directive (IED)

3.4.6. The IED (2010/75/EU) provides operational limits and controls with which plant must comply, including Emission Limit Values for pollutant releases to air. The Proposed Development will fall under the Large Combustion Plant (LCP) requirements of the IED, since it will be greater than 50MW in capacity. In addition, European Best Available Technique (BAT) reference documents (BREF) are published for each industrial sector regulated under the IED, and they include BAT-Achievable Emission Values which are expected to be met through the application of

BAT. These values may be the same as those published in the IED, or they may be more stringent.

3.4.7. The application is considered against the EU Directive and other legislation relating to air quality matters in the relevant sections of Chapter 4 of this Report.

The Birds Directive

3.4.8. Council Directive 2009/147/EC on the conservation of wild birds (the Birds Directive) is a European nature conservation legislative measure for the protection for all wild bird species naturally occurring in the EU. The Directive places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

The Habitats Directive

3.4.9. Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) is a European nature conservation legislative measure.

3.4.10. Habitat types requiring the designation of Special Areas of Conservation (SACs) are listed in Annex I of the Directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 network of protected sites. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species.

The Habitats Regulations

3.4.11. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are the principal means by which the Habitats Directive and the Birds Directive are transposed into the law of England and Wales. Assessment processes taking place pursuant to these regulations are referred to as Habitats Regulations Assessment (HRA).

3.4.12. The types of European site relevant to this process are as follows:

- SACs designated pursuant to the Habitats Directive;
- SPAs designated pursuant to the Birds Directive; and
- Ramsar Sites designated under the Ramsar Convention on Wetlands of International Importance.

3.4.13. These Directives and Regulations are relevant to this application in view of the presence of eight European sites within the region of 10km distant from the Proposed Development Site. Chapter 5 gives further detailed consideration to these matters.

The Air Quality Directive

3.4.14. Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the Air Quality Directive) requires Member States to assess ambient air quality with respect to sulphur dioxide (SO_2), nitrogen dioxide (NO_2), oxides of nitrogen (NO_x), particulate matter (PM_{10} and $PM_{2.5}$), lead, benzene, carbon monoxide and ozone. The Directive aims to protect human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollutants. It sets legally binding concentration-based limit values (LVs) as well as target values to be achieved for the main air pollutants and establishes control actions where these are exceeded. It is transposed into UK statute through the Air Quality Standards Regulations 2010 made under the Environment Act 1995 (EA1995).

The UK Air Quality Strategy

3.4.15. EA1995 established a requirement for the production of an Air Quality Strategy (AQS) for improving ambient air quality. The AQS establishes a long-term vision for improving air quality and offers options to reduce the risk to health and the environment from air pollution. It sets UK air quality standards and objectives for the pollutants in the Air Quality Standards Regulations.

3.4.16. Individual plans prepared beneath the AQS provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by local authorities aimed at reducing levels of the relevant pollutant.

3.4.17. As a consequence of decisions taken over a number of years to broadly promote the growth of diesel vehicles as a proportion of national fleets, combined with a divergence between regulatory and real environment outcomes in the testing of emissions from diesel vehicles, a number of European countries including the UK now experience issues with the achievement of NO_2 LV compliance. NSIP proposals giving rise to air emissions from combustion plant or significant changes to the volume or location of vehicle movements may have implications for the achievement of NO_2 LV compliance.

3.4.18. The environmental non-governmental organisation ClientEarth has brought various proceedings against the UK Government for breaching the AQD. Successive judgments by the Supreme Court[2] have ordered the SoS for Environment, Food and Rural Affairs (SoS EFRA) to prepare new air quality plans to achieve NO_2 LV compliance as soon as possible.

[2] R oao ClientEarth v SoS EFRA, SoST and Welsh Ministers (ClientEarth No 1) and R oao ClientEarth v SoS EFRA, SoST and Welsh Ministers (ClientEarth No 2)

3.4.19. A revised draft *'Air Quality Plan for NO_2'* in response to this litigation was published by Department for Environment, Food and Rural Affairs (DEFRA) on 26 July 2017[3] (AQP2017). This refers to Zone Plans for action in a large number of localities[4]. However, a High Court Order was made on 21 February 2018[5] (ClientEarth No 3), providing that whilst the AQP2017 remains in force, it and its supporting Zone Plans are unlawful because they do not contain measures sufficient to ensure substantive compliance with the AQD in a number of local authority areas.

3.4.20. The remedy required was the production of a supplement to the 2017 plan ensuring necessary information and feasible compliance measures are in place. Following a consultation on possible measures to be included in this supplement in identified locations in May 2018[6], the Government published the final version of its Clean Air Strategy in January 2019[7].

The Water Framework Directive

3.4.21. Council Directive 2000/60/EC (as amended) establishing a framework for Community action in the field of water policy (the Water Framework Directive (WFD)) establishes a framework for water policy, managing the quality of receiving waters. Amongst other objectives, it seeks to prevent the deterioration of and to improve aquatic ecosystems by progressively reducing pollution and mitigating the effects of floods.

3.4.22. In implementing the WFD, NPS EN-1 states at paragraph 5.15.3 that an ES should describe existing physical characteristics of the water environment affected by the proposed project and any impact of physical modifications to these characteristics. It should also address any impacts of the proposed project on water bodies or protected areas under the WFD.

3.4.23. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. This matter is addressed in the relevant sections of Chapter 4.

Environmental Permitting Regulations

3.4.24. The Environmental Permitting (England and Wales) Regulations 2016 (as amended) (the EP Regulations) apply to all new installations and implement the EU Directive 2008/1/EC concerning Integrated Pollution Prevention and Control (the IPPC Directive). They define activities that require the operator to obtain an Environmental Permit (EP) from the

[3] Air quality plan for nitrogen dioxide (NO2) in the UK, DEFRA (2017)
[4] Air Quality Plans for tackling roadside nitrogen dioxide concentrations in Tyneside (UK Zone Plans), DEFRA (2017)
[5] R oao ClientEarth v SoS EFRA, SoST and Welsh Ministers (ClientEarth No 3)
[6] Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations: a consultation, May 2018, DEFRA and DfT
[7] Clean Air Strategy, January 2019, BEIS, DEFRA, DfT, DoHSC, HM Treasury, MHCLG.

Environment Agency (EA) and transpose the requirements of the EU IED into UK legislation. As the Proposed Development falls within s1 Combustion Activity under the EP Regulations, an EP would be required before the Proposed Development commences operation.

3.4.25. The EP Regulations provide a regulatory system to ensure a high level of protection of environmental and health impacts secured through the demonstration that the approach to be used adopts BAT to prevent or minimise the effects of the activity on the environment taking account of relevant local factors. Generating stations exceeding 50MW thermal input are covered by the IED and the EP Regulations.

3.4.26. As set out in section 1.8 of this Report, the Applicant has confirmed that an EP would be required to construct, operate and maintain the Proposed Development and would be sought separately. This matter is addressed further in Chapter 4.

3.5. OTHER LEGAL PROVISIONS

United Nations Environment Programme (UNEP) Convention on Biological Diversity 1992

3.5.1. Responsibility for the UK contribution to the Convention on Biological Diversity lies with the Department for Environment, Food and Rural Affairs (DEFRA) who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.

3.5.2. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the UNEP Convention on Biological Diversity has to be taken into account in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation. The provisions on EIA and transboundary matters with regard to impacts on biodiversity referred to in this Chapter, satisfies the requirements of Article 14 of the Convention (Impact Assessment and Minimising Adverse Impacts).

The Wildlife and Countryside Act 1981

3.5.3. The Wildlife and Countryside Act 1981 (WACA1981) is the primary legislation which protects certain habitats and species in the UK. It provides for and protects wildlife, nature conservation, countryside protection, National Parks, and Public Rights of Way (PRoWs) including for the notification, confirmation, protection and management of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies (SNCBs) in the UK. The SNCB for England is Natural England (NE).

3.5.4. WACA1981 contains provisions relevant to Ramsar sites, National Nature Reserves and Marine Nature Reserves. If a species protected under the Act is likely to be affected by the development, a protected species licence will be required from NE. Sites protected under the Act (including

SSSIs) which are affected by the proposed development must also be considered. The effects of development on the PRoW network are also relevant.

3.5.5. WACA1981 is relevant to the application in view of the sites and species identified in the ES [APP-018 to APP-039]. Relevant considerations are discussed in Chapter 4 of this Report.

Natural Environment and Rural Communities Act 2006

3.5.6. The Natural Environment and Rural Communities Act 2006 (as amended) (the NERC Act) makes provision for bodies concerned with the natural environment and rural communities, including in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions have regard, so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with the biodiversity duty, regard must be had to the UNEP Convention on Biological Diversity.

3.5.7. I have had regard to the NERC Act and the biodiversity duty in all relevant sections of Chapters 4 and 5 of this Report.

National Parks and Access to the Countryside Act 1949

3.5.8. The National Parks and Access to the Countryside Act 1949 provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty. It also establishes powers to declare National Nature Reserves and for local authorities to establish Local Nature Reserves (LNRs).

The Countryside and Rights of Way Act 2000

3.5.9. The Countryside and Rights of Way Act 2000 (as amended) includes provisions in respect of PRoW and access to land. The Act also brought in improved provisions for the protection and management of SSSIs and other designations under the Wildlife and Countryside Act 1981.

The Planning (Listed Buildings and Conservation Areas) Act 1990

3.5.10. The Planning (Listed Buildings and Conservation Areas) Act (LBCA Act) empowers the SoS to maintain a list of built structures of historic or architectural importance and sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.

3.5.11. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest which it possesses as set out in Chapter 4.

Ancient Monuments and Archaeological Areas Act 1979

3.5.12. The Ancient Monuments and Archaeological Areas Act provides for Scheduled Monuments to be protected and for the maintenance of a list of Scheduled Monuments. It also imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a designated Scheduled Monument. For non-designated archaeological assets, protection is afforded through the development management process as established both by the Town and Country Planning Act 1990 and the National Planning Policy Framework.

Marine and Coastal Access Act 2009

3.5.13. The Marine and Coastal Access Act 2009 (MACAA2009) introduced the production of marine plans and the designation of Marine Conservation Zones (MCZ) in United Kingdom waters. MACAA2009 provides for the preparation of the Marine Policy Statement (MPS) and Inshore and Offshore Marine Plans. PA2008 s104, subsection (2)(aa) requires the SoS to have regard to the appropriate marine policy documents (if any), determined in accordance with s59 of MACAA2009. The relevant policies for the purposes of s59 are the MPS and any marine plan adopted by the relevant SoS within the policy framework set by the MPS.

3.5.14. In 2013 the SoS for Environment, Food and Rural Affairs designated 27 MCZs. One such MCZ is The Swale Estuary MCZ, and the implications of the Proposed Development on the MCZ are addressed in Chapter 4.

Environmental Protection Act 1990

3.5.15. S79(1) of the Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. This is discussed further in Chapter 4 of this Report.

Control of Pollution Act 1974

3.5.16. The Control of Pollution Act 1974 (CoPA) provides the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the local planning authority with instructions to cease work until specific conditions to reduce noise have been adopted. Section 61 of the CoPA provides a means for applying for prior consent to carry out noise generating activities during construction. Once prior consent has been agreed under s61, a s60 notice cannot be served provided the agreed conditions are maintained on-site. The legislation requires Best Practicable Means be adopted for construction noise on any given site.

Noise Policy Statement for England

3.5.17. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise.

3.5.18. The Explanatory Note within the NPSE provides further guidance on defining *'significant adverse effects'* and *'adverse effects'*. One such concept identifies *'Lowest Observable Adverse Effect Level (LOAEL)'*, which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: Significant Observed Adverse Effect Level (SOAEL), which is the level above which significant adverse effects on health and quality of life occur, and No Observed Effect Level (NOEL), which is the level below which no effect can be detected.

3.5.19. When assessing the effects of development on noise matters, the aim should firstly be to avoid noise levels above the SOAEL, and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

Water Resources Act 1991, Flood and Water Management Act 2010, Water Act 2003 and 2014, Land Drainage Act 1991

3.5.20. The above Acts set out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures, discharge and pollution, and for drainage management related to non-main rivers. The application is considered against such matters in Chapter 4 of this Report.

The UK Biodiversity Action Plan

3.5.21. Priority habitats and species are listed in the UK Biodiversity Action Plan. The plan is relevant to the application in view of the biodiversity and ecological considerations discussed in Chapters 4 and 5 of this Report.

Climate Change

3.5.22. PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. This duty has been addressed throughout Chapter 4 of this Report. The Climate Change Act 2008 also establishes statutory climate change projections and carbon budgets.

The Public Sector Equality Duty

3.5.23. The Equalities Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the Examining Authority (ExA) in the conduct of this Examination and reporting and to the SoS in decision-making.

3.6. MADE DEVELOPMENT CONSENT ORDERS

3.6.1. The Applicant's responses to initial Written Questions ExQ1 [REP2-030] and Further Written Questions ExQ2 [REP5-010], to ISH1 on the dDCO

[REP1-004] and to the ExA's schedule of amendments to the dDCO [REP5-011], made reference to the following made DCOs to support their position:

- The M20 Junction 10a Development Consent Order 2017;
- The Silvertown Tunnel Order 2018;
- The National Grid (Richborough Connection Project) Development Consent Order 2017;
- The Keuper Underground Gas Storage Facility Order 2017;
- The Glyn Rhonwy Pumped Storage Generating Station Order 2017;
- The North London Heat and Power Generating Station Order 2017;
- The Triton Knoll Electrical System Order 2016;
- The East Anglia Three Offshore Wind Farm Order 2017;
- The Wrexham Gas Fired Generating Station Order 2017;
- The Palm Paper Mill Generating Station Order 2016; and
- The Port Talbot Steelworks Generating Station Order 2015.

3.6.2. In ExQ1 [PD-006a] and ExQ2 [PD-007] I made reference to The Wrexham Gas Fired Generating Station Order 2017 and The Knottingley Power Plant Order 2015 to support questions in respect of recommended changes to the DCO. These matters are commented on further in Chapter 7 of this Report.

3.7. TRANSBOUNDARY EFFECTS

3.7.1. Under Regulation 32 of the EIA Regulations and on the basis of the information available from the Applicant, the SoS is not of the view that the Proposed Development is likely to have significant effects on the environment in another European Economic Area (EEA) state.

3.7.2. In reaching this view the SoS has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 – Transboundary Impacts and Process). Transboundary issues consultation under Regulation 32 of the EIA Regulations was therefore not considered necessary. I agree with this conclusion [OD-001].

3.8. OTHER RELEVANT POLICY STATEMENTS

3.8.1. Other policies that give rise to important and relevant considerations for the SoS include the following:

- The Carbon Plan, 2011;
- Clean Growth Strategy, 2017; and
- National Infrastructure Commission: Draft National Infrastructure Priorities, 2017.

3.9. THE NATIONAL PLANNING POLICY FRAMEWORK

3.9.1. The National Planning Policy Framework (NPPF) was originally published in 2012. During the Examination, on 24 July 2018, the Government published a revised NPPF which is an important and relevant matter. Paragraph 213 of the revised NPPF states that due weight should be given to existing policies according to their degree of consistency with

the NPPF with the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

3.9.2. In view of the publication of the revised Framework the Applicant and all Interested Parties (IPs) were asked a question at ISH2 (ISH2:20) as to whether the revised NPPF was materially different from the previous version in respect of the scope of the DCO application.

3.9.3. In their response [REP3-015] the Applicant confirmed their position that there was no material difference between the July 2018 and the March 2012 versions in respect of the DCO application in question. The Applicant noted that the golden thread of sustainability and the core planning principles contained in the 2012 version were missing from the revised NPPF. However, it was noted that the status of the Framework in respect of NSIP projects had not changed and the broad stance of the NPPF and its position in relation to the topic-specific matters addressed in the Planning Statement [APP-057] had not altered. I consider this position to be reasonable. No comments on this matter were received from IPs.

3.9.4. An update to the revised NPPF was published on 19 February 2019 after the close of the Examination. It included an update to paragraph 177 prompted by the judgement of the European Union Court of Justice in the case of People Over Wind and Sweetman vs Coillte Teoranta (C-323/17) (People Over Wind). In their Written Representation (WR) [REP1-015] which followed submission of the June 2018 version of the HRAR [AS-002], NE also stated that the HRAR was procedurally correct in the light of this judgement. Consequently, I consider that the matters which the judgement and the revised NPPF raise have been dealt with.

3.9.5. The NPPF, together with the accompanying Planning Practice Guidance (PPG), contains statements of planning policy and practice and how these are expected to be applied. Paragraph 5 of the NPPF notes that it is not a source of individual or project-specific policy for NSIP decision-making.

3.10. LOCAL IMPACT REPORT

3.10.1. Section 104(2) of PA2008 states that in deciding an application for development consent where a NPS has effect the SoS must have regard to any LIR within the meaning of s60(3) submitted to the SoS before the deadline specified in a notice under s60(2). Under s60(2) of PA2008 there is a requirement to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given in the Rule 8 Letter [PD-006].

3.10.2. A LIR was submitted by Swale Borough Council (SBC) at Deadline (D)2 [REP2-036]. Its content is considered in Chapter 4 of this Report.

3.11. THE DEVELOPMENT PLAN

3.11.1. As outlined in the Applicant's Planning Statement [APP-057] and the LIR [REP2-036], for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004, the development plan for the area of the application

Site comprises the Swale Borough Local Plan 2017 and the Kent County Council (KCC) Minerals and Waste Local Plan 2013-30. The following development plan polices were cited by SBC as being relevant to the proposed development:

- Local Plan Policy ST1 – Sustainable Development;
- Local Plan Policy ST5 – Sittingbourne Area Strategy;
- Local Plan Policy CP1 – Strong, Competitive Economy;
- Local Plan Policy CP4 – Good Design;
- Local Plan Policy DM14 – General Development Criteria;
- Local Plan Policy DM28 - Biodiversity and Geological Conservation; and
- Local Plan Policy SM34 – Scheduled Monuments and Archaeological Sites.

3.11.2. In their submission at D3 [REP3-017] SBC confirmed that Policy CSM5 of the KCC Minerals and Waste Plan was relevant to the application because it identifies safeguarded sites within Swale.

3.11.3. The Applicant's Planning Statement [APP-057] referred to the Swale Landscape Character and Biodiversity Appraisal, published as a Supplementary Planning Document which was taken into account within the landscape and visual impact assessment within the ES. It also cited a number of Local Plan policies in addition to those identified by SBC as follows:

- Local Plan Policy ST3 – identifies Sittingbourne as the primary focus for growth in the Borough;
- Local Plan Policy CP2 – promotes sustainable transport;
- Local Plan Policy CP7 – relates to the conservation and enhancement of the natural environment;
- Local Policy CP8 – makes provision for the conservation and enhancement of the historic environment, to sustain and enhance the significance of designated and non-designated heritage;
- Local Plan Policy DM1 – seeks to avoid inappropriate development in areas at risk of flooding or where development would increase flood risk elsewhere;
- Local Plan Policy DM6 – seeks to manage transport demand and impact and requires a Transport Assessment to be prepared if development proposals would generate a significant amount of transport movements;
- Local Plan Policy DM19 – deals with sustainable design and construction and promotes waste reduction and re-use and recycling during construction and the lifetime of the development; and
- Local Plan Policy DM24 – requires valued landscapes to be conserved with the scale, layout, built and landscape design of development to be informed by landscape and visual assessment.

3.11.4. Other non-statutory planning policy documents identified by SBC as being relevant to the consideration of this application comprise:

- Kent Environment Strategy, 2016. This includes the themes of Building the Foundations for Delivery, Making Best Use of Existing

Resources and Towards a Sustainable Future. It considers energy use and emissions and how better use of resources can reduce unnecessary usage and waste, proving the focus for a priority which aims to improve resource efficiency;
- Kent and Medway Growth and Infrastructure Framework. This recognises the evolution of future requirements for energy generation with a focus towards more sustainable forms of energy production;
- Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031. This considers local priorities in Swale and necessary improvements to the highway network; and
- Kent Waste Disposal Strategy. One of the priorities is to work and learn from other organisations to enhance services provided.

3.11.5. I consider that the Proposed Development would not give rise to important and relevant impacts in neighbouring local authority areas and therefore policies from any neighbouring development plans have not been considered.

3.11.6. As stated in paragraph 4.1.5 of NPS EN-1 if there is any conflict between development plan documents and an NPS then the NPS prevails because of the national significance of the infrastructure. The SoCG between the Applicant and SBC [REP1-008] and the draft SoCG between the Applicant and KCC [REP1-017] do not identify any conflict with the development plan.

3.12. THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

3.12.1. I have remained aware throughout the Examination of the need to consider whether changes to the application have changed it to a point where it became a different application and whether the SoS would have power therefore under s114 of PA2008 to make a DCO having regard to the development consent applied for.

3.12.2. The document entitled '*Planning Act 2008: examination of applications for development consent'*, (March 2015) published by the former Department for Communities and Local Government, provides guidance at paragraphs 109 to 115 in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act, 2011 was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms in which it can be made.

3.12.3. Having considered this context throughout the Examination, I am content that the changes to the application, primarily consisting of technical revisions to the DCO as applied for, and an amendment to the height of the gas turbine building, have not resulted in any material change to that which was applied for. I am therefore of the view that the SoS has the power to make the DCO as recommended in Chapter 8 and provided in Appendix D to this report.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. As required by section (s)88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), as Examining Authority (ExA) I made an Initial Assessment of the Principal Issues (IAPI) arising from an initial assessment of the application and of the Relevant Representations (RRs) received. This was done within 21 days of the day after receipt of the s58 certificate of compliance with s56 of PA2008 provided by the Applicant [OD-002]. The Applicant's certification was dated 14 June 2018 and Annex B of the Rule 6 Letter [PD-005] setting out the IAPI was dated 18 June 2018, clearly within the 21-day period. The issues identified in the IAPI, which was not intended to imply an order of importance, were as follows:

- Environmental impact assessment;
- Air quality;
- Archaeology and cultural heritage;
- Ecology;
- Habitats Regulations Assessment (HRA);
- Ground conditions;
- Landscape and visual impact;
- Noise and vibration;
- Traffic and transport;
- Water environment; and
- Draft Development Consent Order (dDCO).

4.1.2. The IAPI was discussed at the Preliminary Meeting (PM) [EV-007 and EV-008]. No matters were raised at the PM that required amendment to the IAPI.

4.1.3. The planning issues arising from the IAPI have been re-ordered from that in which they were set out in Annex B of the Rule 6 Letter [PD-005]. The order is based on their importance to the decision and their relationship with other topics.

4.1.4. In addition to the planning issues arising from the IAPI, the remainder of this Chapter addresses other relevant matters that arose during the Examination. For each issue, the effect of the Proposed Development on that particular issue and any mitigation measures proposed are summarised. Comments are made on matters raised in RR, Written Representations (WR), Statements of Common Ground (SoCGs) and the Local Impact Report (LIR) on the matters at hand. Where relevant, the Applicant's response to those comments are reported and conclusions drawn.

4.1.5. It follows that the planning issues are dealt with in this Chapter in the following order:

- Air quality;
- Ecology;
- Landscape and visual impact;

- Traffic and transport;
- Water environment;
- Noise and vibration;
- Ground conditions;
- Archaeology and cultural heritage; and
- Other considerations.

4.1.6. Matters relating to the dDCO are addressed in this Chapter within the framework of the individual planning issues to which they relate. The DCO itself is reported on in Chapter 7 of this Report.

4.1.7. In addition to the planning issues, this Chapter also addresses the following topics arising from the conduct of the Examination:

- issues arising in written and oral submissions;
- issues arising in the LIR;
- conformity with NPSs;
- conformity with the development plan;
- the application of other policies;
- the principle of development;
- consideration of previously made DCOs;
- Environmental Impact Assessment (EIA);
- HRA; and
- Environmental Permitting Regime.

4.1.8. Having set out responses to these matters in broad terms between Sections 4.2 to 4.9 of this Chapter, the planning issues identified in paragraph 4.1.5 above and the matters of detail arising from them are considered in Sections 4.10 to 4.18.

4.2. ISSUES ARISING IN WRITTEN AND ORAL SUBMISSIONS

Introduction

4.2.1. The application resulted in very little community concern and representations related largely to matters of detail in mitigation. There were no representations suggesting that the Proposed Development was inappropriate in policy terms and the only objection to the Proposed Development was recorded after Deadline (D)7 in response to amended proposals relating to the height of the gas turbine building.

Relevant Representations (RRs)

4.2.2. The issues arising from RRs [RR-001 to RR-008] can be summarised as follows:

- Ashford Borough Council [RR-001] raised no objection to the proposals;
- The Environment Agency (EA) identified where further work, clarification or mitigation was required to ensure that the Proposed Development had no detrimental impact on the environment. Specifically, the EA raised concerns in relation to the Water

Framework Directive (WFD) assessment and to eels and elver which they considered needed to be addressed before development consent could be granted [RR-002];

- As Local Highway Authority, Minerals and Waste Planning Authority and Lead Local Flood Authority for the county and with other responsibilities in relation to heritage and biodiversity, Kent County Council (KCC) had considerable interests in the application [RR-003]. These related to the construction traffic impacts, clarification of watercourse responsibilities, how the impacts of the scheme on buried archaeology would be addressed and the effect of the Proposed Development on designated heritage assets;
- The only local resident to submit a RR was Mr. Michael Vick [RR-004]. He expressed *'no real objection'* to the replacement of an existing facility but was concerned about noise beyond the site boundary. Subsequently Mr Vick objected to the scheme in response to the Applicant's amended proposal [REP8-003];
- In their RR [RR-005] Natural England (NE) commented that in relation to identified nature conservation interests there was no fundamental reason why the project should not be permitted. Nevertheless, the need for further information was identified in order to establish that the proposal would not have adverse effects on nearby designated sites in terms of noise, air quality and water quality. NE also indicated that the No Significant Effects Habitats Regulations Assessment (HRA) Report should be revisited in the light of a recent Court of Justice of the European Union ruling;
- As a statutory undertaker with responsibility for railway infrastructure Network Rail commented that the application was not sufficiently detailed to fully assess the impacts of the scheme on the railway and indicated that it would be seeking protection from compulsory acquisition powers through Protective Provisions [RR-006]. As set out in paragraph 1.4.30 above, Network Rail subsequently confirmed that the Proposed Development would have no impact on railway infrastructure;
- Public Health England confirmed in their RR [RR-007] that they had no additional comments to make; and
- Swale Borough Council (SBC) initially submitted a RR [RR-008] but following questions at the PM the Council stated that the original comments were submitted in error. The Council confirmed its position that it had no objections or significant concerns in respect of the Proposed Development and considered that it would not give rise to significant impacts over and above existing circumstances [REP2-035].

Written Representations (WRs)

4.2.3. Participants in the Examination were provided with the opportunity to make WRs. WRs submitted by the EA [REP1-012], NE [REP1-015] and KCC [REP1-016] amplified their earlier positions as set out in RRs and presented updated positions where possible. The WR submitted by Mr Michael Vick [REP1-011] reiterated his previous comments about noise and also raised concerns about the use of the Wheelabrator Kemsley Generating Station (K3) plant.

Other Written Submissions

4.2.4. Participants were provided with an opportunity to comment on RRs at D1 with both the Applicant [REP1-010] and EA [REP1-012] providing responses. At D2 the Applicant commented on WRs [REP2-029] but there were no comments on WRs from any other participants. At D2 participants were also invited to respond in writing to initial Written Questions (ExQ1) [PD-006a] with responses provided by the Applicant [REP2-030 and REP2-031], the EA [REP2-032], KCC [REP2-033] and NE [REP2-034].

4.2.5. Responses to Further Written Questions (ExQ2) [PD-007] were received from the Applicant [REP5-010], the EA [REP5-012], KCC [REP5-015], SBC [REP5-016] and NE [REP5-017] at D5.

4.2.6. SoCGs were provided throughout the Examination. A list of those which were signed is set out in paragraph 1.4.29 of Chapter 1 of this Report. The matters raised in RRs, WRs, responses to the ExA's questions and in SoCGs have been addressed in relation to particular issues set out in sections 4.10 to 4.18 below and are taken into account in the remainder of this Report to the extent that they are important and relevant.

4.2.7. As set out in paragraph 4.2.2 above, Mr Vick recorded an objection in principle to the Proposed Development submitted at D8 [REP8-003]. This was on the basis that the changes to the Proposed Development meant that it was no longer a replacement for an existing installation but one which would be much larger and have greater impacts. I do not consider that the extent of revisions would result in a change of any material significance and in the remainder of this Chapter I consider the impacts of the proposed changes.

Oral Representations

4.2.8. No Interested Parties (IPs) spoke at Issue Specific Hearing (ISH)2 or ISH3 and there was little involvement by IPs in the PM or ISH1. Two people attended the Open Floor Hearing (OFH) with one speaking and a response was provided orally by the Applicant [EV-010]. The issues raised are dealt with in relevant sections of this Chapter below but generally few new issues were raised in oral representations which were not addressed in written submissions.

4.3. ISSUES ARISING IN THE LOCAL IMPACT REPORT

4.3.1. SBC produced a LIR [REP2-036] which was submitted at D2. Section 104(2) of PA2008 requires the SoS to consider the contents of an LIR when making a decision on an application.

4.3.2. The LIR provided information on the following matters:

- Site Location;
- Neighbouring Development;
- Swale Borough Local Plan 2017;
- KCC Adopted Policies;

- Residential Amenity;
- Landscape / Visual;
- Highways;
- Ecology;
- Scheduled Monuments / Archaeology; and
- The dDCO.

4.3.3. As recorded in Chapter 3 above, the LIR identified that the development plan in force for the area comprises the Swale Borough Local Plan 2017 and the Kent Minerals and Waste Local Plan 2013-30.

4.3.4. In summary the LIR [REP2-036] concluded that the Proposed Development:

- would not give rise to any significant amenity concerns for local residents over and above those associated with the existing Mill and the existing surrounding land uses;
- would not be prominent or give rise to any significant visual impacts or additional significant harm to the wider landscape over and above that arising from the existing circumstances;
- would not give rise to any serious concerns in respect of highway safety and amenity, whilst SBC would defer to the views of KCC;
- would raise no serious concerns with regard to the potential impact on The Swale Site of Special Scientific Interest (SSSI) / Special Protection Area (SPA) by way of noise and emissions, but SBC would defer to NE and KCC;
- would raise no significant concerns in respect of the impact on the special character or setting of Castle Rough, a Scheduled Monument (SM), although SBC would defer to the views of Historic England and KCC; and
- raises no significant concerns in respect of the dDCO subject to a minor alteration to wording within Schedule 1 which was subsequently addressed by the Applicant.

4.3.5. Furthermore, the LIR did not identify harm against, or conflict with, the development plan.

4.3.6. No specific comments on the LIR were submitted by the appropriate deadline D3. Where relevant considerations arising from the LIR are identified as bearing on a particular Chapter or section of this Report, they are dealt with there.

4.3.7. The Applicant and SBC signed a SoCG which was submitted at D1 [REP1-008] agreeing all matters in respect of the effects of the Proposed Development, and that appropriate mitigation had been proposed and could be secured through the DCO. No matters of disagreement exist between them.

Conclusion on LIR Issues

4.3.8. The acknowledgment by the host local authority, SBC, that the Proposed Development would not give rise to any specific concerns has been noted and taken into account. Analysis of detailed matters raised by the LIR is

addressed in the relevant Chapters and sections of this Report to ensure that they are considered as required by the Secretary of State (SoS).

4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS (NPSs)

Introduction

4.4.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with the relevant NPSs, identified in Chapter 3 above as being NPS EN-1 and NPS EN-2. Prior to doing so it is appropriate to acknowledge that none of the exceptions set out in s104(3) of PA2008 (see paragraph 3.2.3 above) apply and therefore the application must be determined in accordance with any relevant NPSs.

NPS EN-1 and NPS EN-2

4.4.2. The Applicant analysed the performance of the Proposed Development against relevant policies in NPS EN-1 and NPS EN-2 within its Planning Statement [APP-057]. This documents the principle of, and need for, the Proposed Development within the framework provided by NPSs.

4.4.3. NPS EN-1 makes clear that there is a need for the UK to move away from fossil fuels for electricity generation. Nevertheless, it recognises the urgent need for energy infrastructure to achieve energy security with substantial weight being given to the contribution which projects would make towards satisfying this need. Paragraphs 3.6.1 and 3.6.2 of NPS EN-1 state that there is also a need for a mix of energy sources including fossil fuels to meet demand in a flexible manner, with gas, being recognised as the cleanest and most reliable fossil fuel, continuing to play an important role in the electricity sector to support an increasing amount of low-carbon generation.

4.4.4. The need for the development should also be seen in the context of the Paper Mill's operation. This requires large amounts of electricity and heat which is currently provided by the existing K1 Combined Heat and Power (CHP) plant. According to the Applicant, given its age it would require considerable investment to extend its operational life, as well as to meet lower emission limits set to be introduced by the Industrial Emissions Directive (IED) in 2020. The Applicant has also indicated that the K1 plant is oversized in operational capacity terms for serving the Paper Mill.

4.4.5. DS Smith has considered modification and upgrading of the K1 plant but concluded that it would not represent the Best Available Technology and on the evidence available I consider that would not be a realistic alternative to the Proposed Development. In addition, a new CHP plant would be likely to create lower greenhouse gas (GHG) emissions and emissions to air than could be achieved by upgrading the existing plant.

4.4.6. Section 4.6 of NPS EN-1 is clear in its support for CHP given that it is technically feasible for all types of thermal generating stations and given the reductions in emissions, particularly carbon dioxide (CO_2), which

result from using less fuel to generate the same amount of heat and power. NPS EN-1 recognises that CHP is only likely to be economically viable when generating stations are located close to customers with heat demands with intensive users such as paper mills identified as one such suitable customer. Paragraph 4.6.8 of NPS EN-1 is clear in stating that *'substantial additional positive weight should therefore be given…to applications incorporating CHP'.*

4.4.7. Paragraph 4.4.1 of NPS EN-1 states that there is no general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, paragraph 4.4.2 indicates that applicants are obliged to include within their Environmental Statement (ES) information about the main alternatives they have studied and explain the main reasons for the applicant's choice. In some cases, there is also a need to consider alternatives under the Habitats Directive whilst sections of NPS EN-1 dealing with biodiversity, flood risk and landscape and visual impacts also raise the issue of alternatives.

4.4.8. In the context of the need to decommission the K1 plant, its replacement with another CHP plant would be beneficial in providing an economic, flexible and secure form of infrastructure which is suited to paper mills and preferable to importing electricity from the grid which would still need the heat demands of the Mill to be addressed. Moreover, the ES concluded that CHP technology was the most feasible option in terms of reliability, flexibility, cost and emissions. Consequently, the alternatives to providing a new CHP plant were not seen as realistic by the Applicant and I agree, noting that the Proposed Development does not conflict with the relevant NPSs in terms of need. Moreover, no RR or WR was received which questioned the issue of need.

4.4.9. The Applicant acknowledged the weight to be afforded in support of K4 is limited by the fact that the project is replacing an existing CHP plant and is to meet the needs of a particular industrial user. Nevertheless, K4 would prevent some increased demand for grid electricity and would be capable of exporting some electricity to the grid and therefore I attach some weight to the proposal in that respect.

4.4.10. Part 2 of NPS EN-2 sets out various factors which are expected to influence the selection of sites by developers for fossil fuel NSIPs, namely land use, transport infrastructure, water resources and grid connection. Recognising that the context for the Proposed Development is to meet the specific needs of the Paper Mill addresses the land use criteria. The transport infrastructure already exists and in operational terms would not result in fuel being transported by road whilst waste arising from the K4 plant would be minimal. Similarly, the Proposed Development would utilise the existing water resource systems with a relatively low demand for water and no need for direct cooling water. Grid connections are already established from the Mill.

4.4.11. In addition to the appropriate form of technology the other key alternative considered by DS Smith was the location of the new plant.

Key factors in determining the most appropriate location for the new K4 facility were identified in paragraph 2.11.8 of the ES [AS-030] as:

- The location of the steam and other key tie-ins to the Mill operations;
- The location of tie-ins required for a new CHP plant; and
- Aesthetics in terms of location.

4.4.12. Within the Paper Mill site the northern and western sides of the Mill were discounted due to landscape character and visual impacts considerations. Such locations would result in the introduction of stacks into areas where no stacks currently exist and would extend the existing line of built development of the Mill. Furthermore, these locations were identified as requiring greater infrastructure works to connect K4 to its needed tie-ins than the proposed location.

4.4.13. The proposed location for K4, adjacent to K1 was chosen on the basis of limiting construction work required to provide supporting infrastructure. It would also relate best to the layout of the Mill, located within an area where stacks are already a characteristic feature resulting in the least obtrusive extension to the Mill in landscape and visual terms. Additionally, development in this location would be largely on existing hardstanding.

4.4.14. No RRs or WRs from any party questioned the location proposed by the Applicant for the Proposed Development.

Conclusion on NPS Policy

4.4.15. Taking all relevant documents and policies into account, I conclude as follows:

- No instances of non-compliance with NPSs were identified by IPs.
- The need for the Proposed Development is established through the NPSs.
- The Proposed Development generally conforms to high-level policy in NPS EN-1 and NPS EN-2.
- The compliance of the Proposed Development has been examined against policy detail and tests applicable to individual planning issues as set out in relevant NPS paragraphs, and this analysis is carried out in sections 4.10 to 4.18 below.

4.5. CONFORMITY WITH THE DEVELOPMENT PLAN

4.5.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with relevant development plan policies.

4.5.2. Section 3.11 of this Report identifies the development plan policies which were identified by the Applicant in its Planning Statement [APP-057] and the host local authority SBC in its LIR [REP2-036] as relevant to the assessment of the Proposed Development. In response to my question at ISH2 (ISH2:21) [EV-005] a subsequent submission from SBC at D3 [REP3-017] provided me with the scope of relevant policies.

4.5.3. I have reviewed the development plan policies identified in the LIR. There are instances of policy support for the Proposed Development in relation to sustainable development and the drive towards a strong competitive economy. Furthermore, no instances of unaddressed policy conflict have been identified with relevant requirements of environmental protection, water quality, biodiversity conservation, landscape, transportation and archaeology policies met.

4.5.4. There are no issues arising from development plan policies that conflict with relevant policy directions arising from NPSs. Whilst NPSs are the primary source of policy for a decision under PA2008, development plan policies are important and relevant considerations. None of them indicate against the directions set in NPS EN-1 or NPS EN-2 and so it follows that effect can be given to all relevant development plan policies in a manner which reinforces and adds local context and detail to NPS compliance.

4.5.5. It should be noted that the Examination was not referred to any relevant plan policies arising from Neighbourhood Plans.

4.6. APPLICATION OF OTHER POLICIES

4.6.1. Other relevant sources of policy that give rise to important and relevant considerations for the SoS include policies raised and referred to by SBC in its LIR [REP2-036] (as set out in paragraph 3.11.4 above) and by the Applicant in its Planning Statement [APP-057] (paragraph 3.11.3 above).

4.6.2. Nothing arising from these policies has been found that conflicts with relevant policy directions arising from NPSs. Whilst NPSs are the primary source of policy for a decision under PA2008, other local policies are capable of being important and relevant considerations. None of them indicate against the directions set in NPSs and so it follows that effect can be given to all relevant policies.

4.6.3. Consequently, I find that the Proposed Development generally conforms with other relevant policies identified above and as there are no conflicts between NPS EN-1 or NPS EN-2 and other relevant policies, those policies would be addressed by a decision that is in accordance with NPSs.

4.7. ENVIRONMENTAL IMPACT ASSESSMENT

Introduction

4.7.1. This section addresses the documents comprising the ES [APP-008 – APP-036]. During the course of the Examination the ES was amended and those changes that relate to the content of the ES are considered to constitute *'any other information'* as defined by The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). I have concluded that the amendments are relatively minor alterations, and that the overall environmental information submitted is sufficient for the SoS to take into consideration before making a decision in compliance with the EIA Regulations.

4.7.2. This section also records the environmental management documents proposed to be used by the Applicant in tandem with DCO provisions to secure the construction and operation of the Proposed Development and the application of mitigation within the worst-case parameters (the Rochdale Envelope) assessed in the ES.

The Submitted ES

4.7.3. An ES was provided as part of the application submission. The documents comprising the ES are:

- ES – Content and Chapters 1-3 [APP-008];
- ES – Technical Chapters 4-14 [APP-009];
- Appendix 1.1 ES Author CVs [APP-010];
- Appendix 2.1 Outline Construction Environmental Management Plan (CEMP) [APP-011];
- Appendix 3.1 Scoping Report [APP-012];
- Appendix 3.2 Scoping Opinion [APP-013];
- Appendix 3.3 Response to PINS Scoping Opinion [APP-014];
- Appendix 3.4 S42 Consultation Letter and S42 Responses [APP-015];
- Appendix 3.5 Applicant Response to S42 Consultation [APP-016];
- Appendix 4.1 Transport Assessment [APP-017];
- Appendix 4.2 5 Year Personal Injury Accident Plan [APP-018];
- Appendix 4.3 2019 Baseline Link Flows [APP-019];
- Appendix 4.4 Average and Peak Construction Traffic Link Flows [APP-020];
- Appendix 4.5 2019 Baseline and Average and Peak Construction Traffic Link [APP-021];
- Appendix 4.6 2019 Cumulative Link Flows [APP-022];
- Appendix 5.1 Air Quality Consultation [APP-023];
- Appendix 5.2 Construction Dust Assessment Methodology [APP-024];
- Appendix 5.3 Stack Height Determination [APP-025];
- Appendix 5.4 Air Quality Assessment of Ecological Impacts [APP-026];
- Appendix 6.1 Greenhouse Gas Calculations [APP-027];
- Appendix 7.1 Noise Baseline Survey Results [APP-028];
- Appendix 8.1 Ground Conditions Desk Study and Preliminary Risk Assessment [APP-029];
- Appendix 9.1 Flood Risk Assessment [APP-030];
- Appendix 9.2 Environment Agency Flood Risk Data [APP-031];
- Appendix 10.1 Consultation with KCC Ecology [APP-032];
- Appendix 10.2 No Significant Effects HRA Report [APP-033];
- Appendix 11.1 Correspondence with KCC Landscape [APP-034];
- Appendix 12.1 Desk Based Heritage Assessment [APP-035]; and
- ES Non-Technical Summary [APP-036].

Addendum to the ES

4.7.4. Following the submission and Acceptance of the application various amendments were made to the ES with the final version of the ES at the close of the Examination comprising the following:

- Chapter 2: Site Description and Proposed Development [AS-030];
- Figures 2.2a – 2.2c [REP3-010 to REP3-012];

- Figures 2.2a – 2.2f [REP2-004 to REP2-009];
- Appendix 2.1: the Outline CEMP [REP5-004];
- Figure 4.1 [REP2-010];
- Chapter 5: Air Quality [AS-032];
- Appendix 5.4: Air Quality Assessment of Ecological Impacts [REP2-011];
- Figures 10.1a – 10.1m [REP2-012 to REP2-024];
- Figure 10.3 [REP2-025];
- Appendix 10.2: HRA Report [REP6-005]; and
- Chapter 13: Summary Tables [REP3-013].

4.7.5. The ES states that the assessment which it presents follows published guidance, information on best practice and Planning Inspectorate Advice Notes. It aims to identify the changes or impacts that may occur to the receiving environment as a result of the Proposed Development, and to compare the existing environmental conditions (the baseline) with those that would occur in absence of the Proposed Development (future baseline).

4.7.6. The EIA process involves the identification of sensitive receptors that may be affected by impacts resulting from the Proposed Development and assesses the extent to which these receptors may experience significant environmental effects as a result. Where significant effects are identified, the ES proposes mitigation measures to avoid, reduce, or offset the significance of the effects. The remaining effects after taking into account mitigation are expressed as *'residual effects'.*

4.7.7. The environmental impacts of the Proposed Development are assessed at key stages in its construction, operation, and to the extent possible and where relevant, the eventual decommissioning. Existing baseline conditions have been defined based on desk-based studies and site surveys.

Environmental Management Documents

4.7.8. The ES is supported by the following environmental management documents:

- The outline CEMP [REP5-004]; and
- The Construction Traffic Management Plan (CTMP).

4.7.9. At D5 the outline CEMP was amended to include a Register of Environmental Actions and Commitments (REAC). As this forms part of the outline CEMP which is a certified document it is secured through the DCO and defined in Article 2(1).

4.7.10. Requirement (R)7 of the Recommended DCO provides that 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 (RPA) in consultation with the highway authority. It also requires that construction works for the authorised development must be carried out in accordance with the approved CEMP for that part.

4.7.11. R8 of the Recommended DCO also provides that no part of the authorised development may be commenced until a CTMP for that part has been submitted to and approved by the RPA in consultation with the highway authority. It goes on to specify that the CTMP must specify measures to mitigate the impacts of construction traffic, must be substantially in accordance with Section 4.8 of the ES and must include a Travel Plan for contractors specifying measures to control the arrival and departure of construction staff during peak travel times.

Conclusions on the Environmental Impact Assessment and the Environmental Statement

4.7.12. During the Examination there were no submissions raising concerns about the overall adequacy of the EIA process and the ES. Individual submissions raising subject-specific issues bearing on individual planning issues are addressed in 4.10 to 4.18 below as necessary.

4.7.13. The ES and associated information submitted by the Applicant during the Examination have provided an adequate assessment of the environmental effects of the Proposed Development which meets the requirements of the EIA Regulations. It is sufficient to describe the Rochdale Envelope for it and to secure its delivery within that envelope through the DCO. Full account has been taken of all environmental information in the assessment of the application and in the recommendation to the SoS.

4.8. HABITATS REGULATIONS ASSESSMENT

4.8.1. The Proposed Development is one that that has been identified as giving rise to the potential for likely significant effects on European sites and is therefore subject to HRA. It is a convention in ExA recommendation reports to inform SoS decisions prepared under the PA2008 for a separate record of considerations relevant to HRA to be provided. This has been set out in Chapter 5 of this Report below.

4.8.2. Nevertheless, it is necessary at this point to record that I have considered all documentation relevant to HRA as required by Section 4.3 of EN-1 and have taken it into account in the conclusions reached here and in the case for development consent (Chapter 6 below). There are no matters germane to the HRA which require to be considered as part of the reasoning in respect of planning issues set out in this Chapter. Further, project design and mitigation proposals included in the ES and secured in the Recommended DCO have been fully considered for HRA purposes.

4.9. ENVIRONMENTAL PERMITTING REGIME

4.9.1. As stated above in Chapter 3 of this Report, the Proposed Development falls under the Environmental Permitting (England and Wales) Regulations 2016 (the EP Regulations). As a result, elements of the Proposed Development will require an Environmental Permit (EP). This is made separately and independently to the EA, who are the competent

authority to issue EPs and to regulate them. For the purposes of this Report, the process of applying for the EP is identified as the EP regime.

4.9.2. In the SoCG between the Applicant and the EA [REP5-009] it was confirmed that the new K4 plant would require an EP to operate. The SoCG stated that it would need to be demonstrated that the new plant would meet Best Available Technique (BAT) requirements as outlined in the Large Combustion Plant Best Available Technique reference documents (LCP BREF). Agreement was reached between the Applicant and the EA that the existing EP for the K1 plant (LCP 206, 207, 208) could be varied to include the K4 plant as a new combustion activity.

4.9.3. The SoCG confirmed that the EP variation application would be prepared by E.ON and submitted to the EA during 2019. At the same time DS Smith, having responsibility for the land within the installation boundary for the EP, would transfer responsibility for the land on which K4 would be located to E.ON through a partial permit transfer. The transfer application would also be submitted to the EA in 2019.

4.9.4. The SoCG confirmed that the EA did not currently have any concerns about permitting and based on the information provided saw no reason why a varied permit should not be granted.

4.9.5. In responding to ExQ1.1.6 the EA [REP2-032] confirmed that in its pre-application discussions with the Applicant they were comfortable with the proposal in respect of:

- The general principles of the proposals (proposed technology, abatement and emission limits);
- A permitting strategy on how to incorporate the K4 plant and K1 upgrades into the permit whilst maintaining operational plant to continue to serve the Mill; and
- Transitional requirements for IED compliance in the form of impending IED Chapter III Emission Limit Values (ELVs) and forthcoming BREF BAT associated emission levels (AELs) as well as the proposed approach to baseline ground conditions.

4.9.6. The EA also confirmed that no technical determination had been undertaken with respect to the impact on environmental receptors which would be assessed as part of the permit application.

4.9.7. In their response to ExQ2.11.3 which asked the Applicant and EA to provide an update as to progress with the EP application the EA reiterated their understanding that work on the application would commence in January 2019 with the permit expected to be granted by April 2020 which should fit in with the commissioning of the K4 plant [REP5-012].

4.9.8. In their response to ExQ2.11.3 the Applicant generally confirmed the timetable for the submission and commented that the January 2019 date had been selected to ensure that the project design was sufficiently mature to inform the application process but still provide sufficient time

for the EP application to be developed, determined and granted prior to commissioning of the K4 plant [REP5-010].

4.10. AIR QUALITY

Introduction

4.10.1. This section addresses the following effects:

- construction emissions with a bearing on air quality including dust;
- Nitrogen Oxide (NO_x) and particulate emissions; and
- carbon emissions.

Policy Considerations

4.10.2. Paragraph 4.10.2 of NPS EN-1 sets out the different functions of the planning and pollution control systems in relation to air quality matters. It confirms that the planning system is concerned with the development and use of land in the public interest and in improving the natural environment, public health and safety and amenity. Pollution control is concerned with the use of measures to prohibit or limit the releases of substances to the environment to the lowest practicable level.

4.10.3. As set out in paragraph 4.10.3 of NPS EN-1 the SoS is required to focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. It also indicates that the SoS is entitled to assume that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced and that the SoS should seek to complement but not duplicate them.

4.10.4. Paragraph 5.2.1 of NPS EN-1 notes that infrastructure development can have adverse effects on air quality involving emissions to air which can lead to adverse impacts on health, protected species and habitats. Levels for pollutants in ambient air are set out in the Air Quality Strategy.

4.10.5. NPS EN-1 notes that emissions from combustion plants are generally released through exhaust stacks and therefore the design of stacks, particularly height, is the primary driver for the delivery of optimal dispersion of emissions.

4.10.6. The SoS should give air quality considerations substantial weight where a project would lead to a deterioration in air quality in an area, new breaches of national air quality limits or substantial changes in air quality levels even where no breaches occur. Paragraph 5.2.10 of NPS EN-1 advises that account must be taken of any relevant statutory air quality limits.

4.10.7. Paragraph 2.5.3 of NPS EN-2 notes that fossil fuel generating stations are likely to emit NO_x and sulphur oxides (SO_x) and that to meet the requirements of the LCP Directive and IED a range of mitigation must be applied, regulated through the EP Regulations.

4.10.8. In respect of climate change, Section 2.2 of NPS EN-1 makes clear the Government's legally binding commitment to cut GHG emissions, notwithstanding that the UK economy is reliant on fossil fuels whilst paragraph 4.8.6 of NPS EN-1 specifically identifies that applicants should have regard to climate change. Paragraphs 5.2.2 of NPS EN-1 and 2.5.2 of NPS EN-2 also recognise that CO_2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided, that individual applications do not need to be assessed in terms of carbon emissions against carbon budgets and CO_2 emissions are not a reason to prohibit the consenting of projects.

4.10.9. Paragraph 181 of the revised NPPF confirms that planning decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants and the cumulative impacts from individual sites in local areas. Paragraphs 149-154 address climate change and seek to ensure that new development would avoid increased vulnerability to the range of impacts arising from climate change and help to reduce GHG emissions.

4.10.10. Policy ST1 of the Swale Local Plan seeks to achieve sustainable development in Swale, addressing the challenge of climate change, amongst other factors through a range of measures including the management of emissions and the efficient use of natural resources. Other Local Plan policies also support measures to reduce carbon emissions in line with the Plan's core objectives.

The Applicant's Case

4.10.11. In Chapter 5 of the ES [APP-009] the Applicant noted that the adverse effects of dust emissions during construction if not mitigated would be on human health, on vegetation and fauna at sensitive habitat sites and annoyance due to soiling of surfaces.

4.10.12. Although the amount of dust generated by construction would be potentially large, based on the distance between the Site and potential receptors, the ES assessed the dust impact risk to be low. Mitigation measures based on Institute of Air Quality Management (IAQM) Guidance[8] were included in the CEMP which would be secured through R7 of the Recommended DCO.

4.10.13. Consideration of air quality impacts arising from operational traffic based on four additional employees accessing the site on a daily basis and occasional maintenance vehicle movements concluded that the exhaust emissions would be very limited. Consequently they were not assessed.

4.10.14. To predict ground level concentrations arising from emissions to atmosphere during the operation of the K4 plant modelling was

[8] Guidance on the assessment of dust from demolition and construction, IAQM 2014.

undertaken using an atmospheric dispersion modelling system incorporating a number of worst-case assumptions.

4.10.15. The ES assessment was based on a 70m high heat recovery steam generator (HRSG) stack and a 35m high boiler stack. With the decision to proceed with a vertical boiler configuration post D4 the Applicant also confirmed an amendment to the dDCO [AS-021] to provide flexibility to allow for any minor variations in emissions that might occur pursuant to final design. Accordingly, the dDCO was amended to show a minimum HRSG stack height of 70m (79m Above Ordnance Datum (AOD)) and a maximum height of 73m (82m AOD).

4.10.16. In proposing a greater maximum stack height than originally assessed in the ES the Applicant indicated that this would have beneficial effects on ambient air quality due to greater atmospheric dispersion. It was argued that the flexibility sought would not result in any materially new or different effects on air quality than those assessed but, in any event, would be subject to the EP regime.

4.10.17. The assessment of operational impacts from K4 focused on the modelling of both short term and long-term Process Contributions (PC) of NO_2 and CO against the relevant Air Quality Assessment Level (AQAL) as set by the Air Quality Standards Regulations 2010.

4.10.18. The modelling predicted that the maximum short-term PC of either NO_2 or CO was 2% of the relevant AQAL which is considered to be a negligible increase in concentration. In addition, an impact of 2% or less was modelled at sensitive receptors around the site which was also assessed to be negligible and not significant.

4.10.19. The long-term effect of NO_2, which is assessed in terms of a Predicted Environmental Concentration (PEC), is derived from the PC for K4 added to the background Ambient Concentration (AC) and the modelled contributions from K2 and K3. The 1% PC as a percentage of the AQAL was also assessed in the ES as being negligible and not potentially significant. Moreover, the highest concentration would not occur in a location where the public would be exposed to it.

4.10.20. In terms of the impact of air quality on ecological receptors the ES indicated that for all pollutants and habitat sites the operational effects would be insignificant.

4.10.21. On the basis that the predicted concentrations of pollutants from the Proposed Development were assessed to meet all relevant air quality standards and objectives no mitigation was proposed.

4.10.22. The ES also assessed the potential for cumulative effects to occur, either from cumulative dust generation during the construction stage or cumulative combustion-related pollutants from other projects. In each case no significant cumulative air quality effects were predicted.

4.10.23. The likely significant effects (LSE) of GHG emissions from the Proposed Development were assessed in the ES. No significant impacts on carbon

emissions were predicted to arise from the construction of K4. Compared to the future baseline without the Proposed Development reductions in carbon dioxide equivalent of 16% in its first operating year and 12% over its lifetime were predicted. The ES indicated that this beneficial effect was significant.

4.10.24. Potential mitigation measures to reduce GHG emissions for the operational phase were considered but were not seen as feasible particularly as the K4 proposal is significantly below the Carbon Capture and Storage (CCS) threshold of 300MW net capacity. Nevertheless, construction stage good-practice measures to reduce GHG emissions including the use of lean / efficient design, the reuse of materials from K1 where possible and reducing air pollutant emissions from construction plant were proposed.

Examination

4.10.25. In its RR NE commented on air quality impacts [RR-005]. It noted that Appendix 5.4 of the ES: Air Quality Assessment of Ecological Impacts [APP-026] concluded that there would be no significant impacts of air quality on The Swale SPA. However, NE noted that the assessment did not consider the habitat types for which the Ramsar sites were designated. NE therefore recommended that ES Appendix 5.4 was updated to address the supporting habitats of the relevant SPAs and Ramsar sites. In addition, further clarity was requested about the calculation of the PC and PEC.

4.10.26. NE also agreed that the emissions from vehicles could be screened out of the assessment and that with the adoption of best construction practice measures the adverse effects from dust could be avoided. A draft SoCG between the Applicant and NE confirmed the view that there would be no adverse effect on the integrity of The Swale designations during construction [REP1-002].

4.10.27. Taking account of NE's queries about the calculation of the PC and PEC, at ISH2 I sought clarification from the Applicant regarding their answers to ExQ1.2.5 - ExQ1.2.11 including the methodology adopted in respect of the effects of the Proposed Development on air quality during the operational phase (ISH2:7 and ISH2.8). As confirmed at ISH2 and subsequently [REP3-015] the intention was to conclude the air quality modelling following the selection of the boiler specification.

4.10.28. Following the Applicant's confirmation that it would be proceeding with a vertical boiler configuration [AS-019], an updated signed version of the SoCG between the Applicant and NE was submitted Post D4 [AS-023]. This confirmed the view that the revised Appendix 5.4 [REP2-011] provided data regarding the PC of the Proposed Development to the critical loads and levels of the habitat types for which the Ramsar site in addition to the SPA was designated. It was also confirmed that the PC from the Proposed Development was less than (<)1% and therefore the effects on the habitats which support the species for which the Ramsar site was designated could be considered not significant.

4.10.29. In my Further Written Questions (ExQ2.2.2) I sought clarification about an apparent discrepancy between the IAQM Guidance and EA Guidance[9] regarding the need for further assessment. As the Applicant had indicated in response to ExQ1.4.39 the IAQM Guidance indicated that the threshold for consideration of an effect is greater than (>)1%, not greater than or equal to (≥)1%, and as such a PC of exactly 1% would not be considered significant. I questioned whether this advice was inconsistent with the Guidance of the EA which indicated that no further assessment was needed as long as the PC was <1%. The Applicant confirmed that it agreed with the position stated by the IAQM [REP5-010].

4.10.30. In its response NE commented that consideration of PECs for those European sites where the PC for nutrient nitrogen and acid deposition is listed as 1% of the critical load was not necessary. This was because the percentages had been rounded up to 1, following IAQM Guidance and in which case the threshold for further assessment was >1%, not ≥1%.

4.10.31. The EA's response to ExQ2.2.2 [REP5-012] confirmed its position that the approach to screening out emissions from further assessment was based on indications that the long-term PC was <1% and the short-term PC was <10%. With reference to the critical load for deposition on European sites the EA confirmed that where the short-term PC was <10% and long-term PC <1% they would be screened out as insignificant. The second stage screening would be based on calculated PEC and no further assessment would be necessary on sites where the PC was >1% and the PEC was <70% of the long-term standard.

4.10.32. At D6 the Applicant commented on the D5 submissions [REP6-008]. For NO_x concentrations the maximum K4 NO_x PC was identified as <1% of the critical level for all designated sites except The Swale SPA, Ramsar and SSSI and therefore the effects could be screened out as insignificant. When the PC for K2 and K3 was added to the PC for K4 and the AC, the PEC was only 47% of the critical level which was well below the 70% critical level thereby allowing The Swale also to be screened out as insignificant.

4.10.33. The maximum nutrient nitrogen (N) deposition PC and maximum acid deposition PC modelled were both less than 1% of the critical load across all sites although rounded to 1% in line with the IAQM Guidance. Accordingly, the effects in each case were screened out as insignificant.

4.10.34. In my Further Written Questions, I sought the views of IPs in respect of the Applicant's proposal to provide flexibility in the height of the HRSG stack (ExQ2.1.4) [PD-007]. NE had no comment to make regarding the impact of stack height on matters other than ecology [REP5-017] whilst the EA noted that although it had not made a detailed review of the proposed additional contributions of additional air pollutants it anticipated that overall, mass emissions of NO_x would decrease whilst recognising

[9] Air emissions risk assessment for your environmental permit, DEFRA / EA 2016.

that any requirement for reduced NO_x contributions would come from stack height increases [REP5-012].

4.10.35. As set out in a submission following D7 the Applicant identified a change to the height of the gas turbine building [AS-025]. The Applicant took the view that the increased height was unlikely to significantly change the magnitude of the predicted concentrations and highly unlikely to change the conclusions of the air quality assessment. In response to the consultation on the proposed change the EA commented that it had no major concerns but that the ExA needed to be satisfied that it would make no material difference to the air quality assessment and the effective stack height assessment [REP8-002]. NE also commented on the revised submission stating that it was satisfied that the proposed changes would not change the conclusions of the air quality modelling and that the potential air quality impacts on designated nature conservation sites remained unchanged.

4.10.36. In response to ExQ1.1.14, R5 of Version 1 of the dDCO [APP-005] was amended at D2 to ensure that the detailed design of K4 gave consideration to the inclusion of climate change mitigation measures referred to in Table 13-1 of the ES.

ExA Conclusion

4.10.37. I am satisfied that, in terms of air quality, there would be no significant effects caused by the construction or decommissioning of the Proposed Development and a CEMP which would be secured through R7 of the Recommended DCO would provide appropriate mitigation to manage the dust impacts during construction.

4.10.38. Emissions from the Proposed Development would be controlled by the EP regime, but the Applicant would expect lower levels of pollutants to be emitted than the existing CHP plant. In any event, emissions would not be expected to exceed objectives or standards even when based on the worst-case assumptions within the assessment model. On this basis the Applicant has not proposed air quality monitoring, no IP has requested it and therefore I see no reason for such monitoring.

4.10.39. Air quality impacts have been addressed through a stack height assessment in order to mitigate the impacts of emissions. As set out in the Recommended DCO there is some flexibility in the height of the HRSG stack, but I am satisfied with the Applicant's determination of and reasoning for the height as set out in the ES [APP-009], Stack Height Determination [APP-019] and Post D7 Covering Letter [AS-025].

4.10.40. As the Proposed Development would not conflict with any national or local air quality limits and would only have a very small effect on air quality, I find that it would comply with the air quality sections of NPS EN-1 and NPS EN-2 as well as the NPPF and relevant development plan policies.

4.10.41. In reducing CO_2 emissions the Proposed Development would have a beneficial effect which can be afforded some weight, but that weight is

limited by the advice in NPS EN-1 and NPS EN-2 which state that individual applications for NSIPs are not to be assessed against carbon budgets.

4.11. ECOLOGY

Introduction

4.11.1. This section considers the effect of the Proposed Development on biodiversity, ecology and the natural environment.

4.11.2. The effects on European sites in the context of the Habitats Regulations are considered in Chapter 5 of this Report. This section examines other potential biodiversity effects of the Proposed Development and the effects on European sites insofar as they relate to the EIA. The effects of emissions on ecology are addressed in section 4.10 whilst the effect of lighting on ecology is addressed in this section.

Policy Considerations

4.11.3. Paragraph 5.3.3 of NPS EN-1 states that where the development is subject to EIA, the applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. In decision-making the SoS should ensure that appropriate weight is attached to these matters.

4.11.4. Paragraph 5.3.7 of NPS EN-1 recognises that development should aim to avoid significant harm to biodiversity interests including through mitigation and consideration of reasonable alternatives. The Applicant is also required to show how the project has taken advantage of opportunities to conserve and enhance biodiversity interests.

4.11.5. NPS EN-1 recognises that the most important sites for biodiversity are those identified through international conventions and European Directives with the Habitats Regulations providing statutory protection for them and with Ramsar sites receiving the same protection.

4.11.6. Marine Conservation Zones (MCZs) introduced under the Marine and Coastal Access Act 2009 are areas designated to conserve marine flora or fauna and marine habitats. Protected features are set out in the designation order which provides statutory protection, and duties in relation to MCZs need to be addressed as noted in NPS EN-1.

4.11.7. Paragraph 5.3.18 of NPS EN-1 indicates that the applicant should include appropriate mitigation measures as an integral part of the proposed development. It should ensure that construction activities are confined to the minimal area required and that best practice is followed to minimise the risks of disturbance or damage to species or habitats.

4.11.8. Section 5.6 of NPS-EN-1 deals with a range of emissions arising from energy infrastructure including artificial light indicating that the aim

should be to keep impacts to a minimum and at a level that is acceptable.

4.11.9. The revised NPPF states that the planning system should contribute to and enhance the natural and local environment including by minimising impacts on biodiversity. Paragraph 180 aims to ensure that new development is appropriate for its location taking into account the effects on the natural environment. It indicates that the impact of light pollution from artificial light on nature conservation should be limited.

4.11.10. Policy ST1 of the Swale Local Plan seeks to achieve sustainable development through conserving and enhancing the natural environment. Policy CP7 seeks to ensure that there are no adverse effects from development on the integrity of Special Areas of Conservation (SAC), SPA or Ramsar sites either alone or in combination whilst Policy DM28 requires proposals to conserve, enhance and extend biodiversity.

The Applicant's Case

4.11.11. Chapter 10 of the ES [APP-009] assesses the likely impacts of the Proposed Development on ecological receptors. A 10km zone of influence was assumed for sites of international importance, identifying eight internationally designated sites, and a 2km radius assumed for nationally designated sites. Four sites were identified within the 2km radius, namely The Swale MCZ, The Swale SSSI, the Medway Estuary and Marshes SSSI and the Elmley National Nature Reserve (NNR). In addition, one non-statutory designated site was identified as being within 2km of the application site, namely the Milton Creek Local Wildlife Site (LWS). The Applicant's assessment also recorded the location of protected species within 2km of the Site. None of the designated sites extend as far as the application site and therefore there would be no direct effects in terms of the loss of habitat.

4.11.12. A Phase 1 Habitat Survey of the Site and its surrounds recorded that it comprises almost exclusively hardstanding, buildings and infrastructure with a small area of improved grassland and an area of dense scrub. None of the buildings were considered to have any bat roost potential. Off-site survey work indicated that The Swale, adjacent to the Mill site, was of particular importance for intertidal bird species.

4.11.13. The ES indicated that in overall terms no LSEs were expected to arise in respect of biodiversity in relation to internationally designated sites either at the construction or operational stage of K4.

4.11.14. The assessment of The Swale SSSI and Medway Estuary and Marshes SSSI, which share the same areas as the respective SPA and Ramsar sites, and the Elmley NNR indicated that no LSEs were expected to arise. Subject to the implementation of good practice pollution control measures and a strict waste management system no LSEs on The Swale Estuary MCZ were predicted from changes to surface water or pollutants during the construction and operation phases.

4.11.15. In respect of the Milton Creek LWS the ES indicated that the movement of people and construction equipment could lead to limited disturbance to bird species in the area but noise from construction would be below the threshold at which there is potential for disturbance to arise. No LSEs on the LWS were predicted during the operational phase apart from in relation to noise. The operation of the emergency release valve would achieve a noise level close to the threshold where an impact would be expected but the event would only be expected to occur in emergency situations.

4.11.16. With regard to lighting, the ES states that although detailed design was still to be undertaken lighting would be minimal and designed to reduce spill. As a result, disturbance and nuisance to visual receptors was not expected to result in a significant adverse effect.

Examination

4.11.17. In their RR the EA expressed concern that the temperature of the discharges from the works would adversely affect the water temperature of The Swale [RR-002]. Whilst acknowledging that the matter would be looked at in more detail as part of the EP application the EA noted that in the ES the focus had been on protected species and had failed to take account of ditches in the area containing eel.

4.11.18. R9 of the dDCO (Version 1) [APP-005] provides for the management and mitigation of artificial light emissions. The EA sought to have R9 amended to ensure that the impact of lighting on eels and elvers that might be found in ditches was considered as part of the approved design.

4.11.19. NE, in its RR [RR-005], commented that there was no fundamental reason of principle why the project should not be permitted but that the Applicant had provided insufficient evidence to establish that it would not have adverse effects on nearby designated sites.

4.11.20. With regard to noise, NE noted that the birds for which The Swale SPA, Ramsar and SSSI were designated are susceptible to disturbance, commenting that loud intermittent noise, for example produced by percussive piling, is particularly disturbing to birds. NE commented that in its view the noise impacts during operation would not be significant and would not require mitigation.

4.11.21. NE also made reference in its RR to Figure 10.5 of the ES which modelled construction noise and showed that within The Swale SPA, Ramsar and SSSI peak noise levels would reach 65-75 dB LA_{max} and would affect an area of around 20ha. The ES concluded that the small proportion of the SPA affected, and the short temporal period of the piling works would mean that the potential for disturbance was limited. However, NE sought further information on bird activity at the mouth of Milton Creek, affected by higher noise levels during piling operations. In addition, NE recommended that avoidance measures were considered in terms of timing the piling works outside of the core wintering period of November to February and that within the months of November and December the

total number of days when piling could take place would be restricted to 10. The signed SoCG between the Applicant and NE [AS-023] confirmed that this approach was acceptable. R16 of the Recommended DCO makes provision for this.

4.11.22. With regard to visual disturbance, NE agreed with the finding of the ES that there would be no LSE to coastal waterbirds from visual disturbance and that with the use of best available technology lighting would be unlikely to lead to adverse impacts on designated sites.

4.11.23. There is no need for a Requirement for further site-specific ecological survey work based on the lack of ecological receptors within the Site. Mitigation measures in respect of off-site ecological receptors have either been embedded within the design or included in other Requirements within the Recommended DCO including dust suppression during the construction stage secured through R7, external lighting secured through R9, drainage secured through R11 and the approval of an appropriate piling method through R15.

4.11.24. In their LIR SBC commented that being adjacent to The Swale SPA and SSSI the development had the potential to impact these protected areas by way of noise and emissions [REP2-036]. It noted that the K4 CHP would replace an existing plant, K1, and therefore SBC had no serious concerns, but would defer final comment on this matter to the relevant statutory authorities.

ExA Conclusion

4.11.25. In considering ecology the ES did not identify any significant effects on designated sites, protected species and habitats and other species of principal importance for the conservation of biodiversity.

4.11.26. Various construction phase mitigation measures have been proposed which would be secured by Requirements set out within the Recommended DCO. The effect of those mitigation measures would be that no residual likely significant effects are anticipated on any of the ecological receptors identified. Accordingly, as the Proposed Development would not result in significant harm to biodiversity conservation interests it would be compliant with the aims of NPS EN-1, the NPPF and relevant development plan policies.

4.12. LANDSCAPE AND VISUAL

Policy Considerations

4.12.1. Paragraph 5.9.1 of NPS EN-1 notes that the landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development. Exhaust stacks and their plumes are described as having the most obvious impact on landscape and visual amenity for thermal combustion generating stations. Paragraph 5.9.5 requires the applicant to carry out a landscape and visual assessment.

4.12.2. NPS EN-1 notes that virtually all nationally significant energy infrastructure projects will have effects on the landscape, and that projects need to take account of the potential impact. Having regard to siting, operational and other relevant constraints, the aim should be to minimise harm, providing reasonable mitigation where possible and appropriate.

4.12.3. Paragraph 5.9.18 of NPS EN-1 recognises that all proposed energy infrastructure is likely to have visual effects for many visual receptors around proposed sites and therefore it is necessary to judge whether the effects outweigh the benefits of the project.

4.12.4. Section 2.6 of NPS EN-2 also deals with landscape and visual matters. It recognises that the main structures for a fossil fuel generating plant are large and will have an impact on the surrounding landscape and visual amenity, with the overall size of the development dependent upon technology and design. It also recognises that night time lighting for continuous operation will also have an impact on visual amenity.

4.12.5. Paragraph 2.6.4 advises the applicant to consider the design of the plant, including the materials to be used, and the visual impact of the stack in the context of the local landscape recognising that it is not possible to eliminate the visual impacts associated with a fossil fuel generating station. Recognising the statutory and technical requirements which inform plant design, paragraph 2.6.10 states that if the location is appropriate for the project and it has been designed sensitively to minimise harm to landscape and visual amenity, the visibility of a fossil fuel generating station should be given limited weight.

4.12.6. SBC Local Plan Policy ST1 seeks to achieve sustainable development in Swale including protecting and where possible enhancing the intrinsic character and beauty and tranquillity of the countryside. Policy ST5 sets a strategy for Sittingbourne aiming to improve the quality of landscapes and ensure that development is appropriate to landscape character and quality whilst Policy CP4 requires good design and Policy DM24 requires valued landscapes to be conserved.

The Applicant's Case

4.12.7. The Site of the Proposed Development comprises an area of hardstanding set within the operational land forming the Paper Mill. The Mill site is dominated by large scale industrial buildings and infrastructure including a number of emission stacks.

4.12.8. The Site and its immediate surrounds are not within a designated landscape. The nearest nationally designated landscape is the Kent Downs Area of Outstanding Natural Beauty which is approximately 6.5km to the south. At the local level, the North Kent Marshes Special Landscape Area extends to the east and south of the Site over The Swale and neighbouring coastal landscape, valued for its open character.

4.12.9. The Site lies within the Greater Thames Estuary National Character Area whilst at the county level it is within the Swale Marshes Character Area.

According to the Swale Landscape Character Assessment and Guidelines the Site is entirely within the Sittingbourne urban area and within the Sittingbourne Industrial / Commercial Area.

4.12.10. The industrial and commercial area within which the Mill lies is considered to be of poor quality and condition although the wider estuarine and coastal landscapes have a high value. Similarly, the large industrial features create a poor scenic quality and low value, contrasting with the open expanse of The Swale, Milton Creek and the Isle of Sheppey which are landscapes of high value.

4.12.11. The Site is not particularly visible from most of Sittingbourne due to industrial development on the edge of town and the restored landfill mound to the east. The low-lying landscape of the Isle of Sheppey and the channel of The Swale allow more open longer distance views. The ES identified key visual receptors of high sensitivity and susceptibility to change as a result of the Proposed Development comprising walkers using the nearest Public Right of Way (PRoW) to the Site, namely the Saxon Shore long distance footpath (ZU1/2).

4.12.12. The ES describes the proposed new buildings as being large in scale but forming an extension to the existing character of the neighbouring development at Kemsley. The townscape character of the area would be of low sensitivity to change and as a result there would be no significant adverse effect on townscape character during construction or when operational.

4.12.13. During the construction stage any effects on the surrounding landscape are expected to be slight or negligible, with similar visual impacts due to the distance to sensitive receptors and the existing industrial context. Demolition / dismantling during the decommissioning phase was identified as being comparable to the construction phase in reverse in terms of the nature and level of effects on landscape, townscape and visual receptors.

4.12.14. The ES found that there would be no direct effects on the surrounding high value rural landscape character areas of The Swale and Isle of Sheppey as a result of the Proposed Development during the construction or operational phases.

4.12.15. In terms of visual impact, the ES found that during the operational phase walkers using the Saxon Shore Way would experience a sequence of views that would include a more heavily developed cluster of energy infrastructure at the Paper Mill in walking between Milton Creek and Ridham Docks. The assessment of individual viewpoints concluded that there would be no significant effects on receptors at each individual location. However, when the series of views of a more heavily developed cluster of energy infrastructure are combined into a journey, walkers using the Saxon Shore Way would experience a significant adverse visual impact. There would be no significant adverse effects on other visual receptors in the area during construction or operation. The proposed change to the height of the gas turbine building would not result in any

additional significant adverse effects on landscape, townscape or visual receptors over those identified in the original ES.

4.12.16. In cumulative terms, the Proposed Development when assessed with nine other consented and planned developments locally would have a slight adverse effect on townscape character but the K4 CHP plant would make a negligible contribution to this cumulative effect during both the construction and operational phases. A substantial effect on landscape and visual receptors was predicted to which, in the case of landscape, K4 would make a negligible contribution. Due to the proximity to the Saxon Shore Way the Proposed Development would make a slight adverse contribution to the significant adverse effect on visual receptors both during the construction and operational phases.

4.12.17. No landscape mitigation has been proposed, based on the Applicant's view that it would not achieve a meaningful reduction in landscape, townscape and visual effects. In that respect the form of K4 would largely be dictated by function and detailed design matters which would be agreed following the DCO process.

Examination

4.12.18. There were no RR or WR submissions which dealt directly with landscape or visual impact matters. In their LIR SBC noted that the Saxon Shore Way affords views of the wider Mill complex [REP2-036]. It recognised that there are also long-distance views of the Mill from numerous locations including on the Isle of Sheppey. Nevertheless, the LIR considered that the Proposed Development would be viewed against the context of the existing Mill which includes large industrial style buildings, outbuildings, vehicle parking areas and tall chimneys. The LIR concluded that it was not expected that the Proposed Development would be prominent or give rise to any significant visual impacts or additional significant harm to the wider landscape over and above that arising from the existing circumstances.

4.12.19. Chapter 11 of the ES envisages that the new infrastructure will be clad in non-reflective materials and generally pale grey or similar in colour to help minimise scale and bulk when viewed against the skyline and the context of the existing Kemsley Mill.

4.12.20. R5 of the Recommended DCO commits the Applicant to submit details for approval to the local planning authority of the layout, design, external appearance, colour and materials etc of the Proposed Development prior to development commencing. R9 requires details of lighting at all stages of the Proposed Development to be agreed with the RPA whilst R17 makes provision for approval to be sought for amendments to the approved plans from the RPA.

ExA Conclusion

4.12.21. There are no significant landscape effects considered to arise as a result of the Proposed Development during the construction, operational or decommissioning phases. However, the proposed K4 CHP plant would

contribute to a cumulative significant residual adverse effect on landscape receptors during both construction and operation albeit the contribution of the K4 plant would be negligible. In addition, I find that a significant landscape effect would be likely to occur individually during the construction phase.

4.12.22. A significant residual adverse visual effect has been identified at the operational stage to arise from sequential views along the Saxon Shore Way as a result of the Proposed Development, and a cumulative significant residual adverse visual effect has been identified during the construction and operational stages.

4.12.23. NPS EN-2 makes it clear that it is not possible to eliminate all the visual impacts associated with a fossil-fuel generating station. The design details agreed for K4 under R5 of the Recommended DCO will seek to reduce visual impacts as much as possible by using an appropriate design approach for the context of the Site, but a residual impact is still anticipated.

4.12.24. Given the nature and magnitude of that impact it is not considered that the visual and cumulative effects would outweigh the benefits of the Project.

4.13. TRAFFIC AND TRANSPORT

Policy Considerations

4.13.1. NPS EN-1 recognises that the transport of materials, goods and personnel to and from a project, during all project phases can have a variety of impacts on the surrounding transport infrastructure. At paragraph 5.13.2, it states that the consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development. Paragraphs 5.13.3 and 5.13.4 go on to indicate that the Applicant should undertake a Transport Assessment (TA) for any project likely to have a significant transport implication, and where appropriate the Applicant should prepare a Travel Plan (TP).

4.13.2. Where proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels requirements should be considered to mitigate the adverse impacts. Paragraph 5.13.8 advises that where mitigation is needed, possible demand management measures must be considered if feasible and operationally reasonable as a first measure. Water-borne or rail transport is also preferred over road transport at all stages of the project where cost-effective.

4.13.3. Paragraph 5.13.11 indicates that requirements may be attached to a consent including to control numbers of Heavy Goods Vehicles (HGVs) movements to and from the site in a specified period during its construction.

4.13.4. SBC Local Plan Policy CP2 promotes sustainable transport with Policy DM6 seeking to manage transport demand and impact. Local Transport Plan 4 aims to ensure that Swale delivers growth in a sustainable way.

The Applicant's Case

4.13.5. Chapter 4 of the ES [APP-009] assessed the effects of the Proposed Development on traffic and transport. In line with NPS EN-1 the ES included a Transport Assessment [APP-017].

4.13.6. The ES notes that construction of the Proposed Development will utilise the existing accesses to the Mill from the M2 and A249 via Swale Way and Barge Way to the northern entrance or via Swale Way to the western entrance. The northern access which leads to the trailer park for the existing Mill would provide vehicular access to the construction site (Work No. 4). It would also provide access to Work No. 3, the construction lay-down area. The western access, which is outside the DCO Order Limits leads to the Mill's car park, main entrance and weighbridges for HGV access.

4.13.7. During construction it is estimated that there would be an average of 100 staff on site with a peak of up to 200 staff during early groundworks and foundation works.

4.13.8. The Proposed Development is estimated to generate an average of 25-30 HGV deliveries per day (50-60 HGV movements per day) throughout the 20-month construction period with a peak of up to 40 HGV deliveries (80 movements) per day during early groundworks and foundation works. An estimated 15 abnormal indivisible loads would be delivered to site which are included in these estimates. The ES estimated that there would be an average of 85 construction staff arriving and departing via car per day to K4 with at peak times up to 170 construction staff arriving and departing by car.

4.13.9. Construction activities would be undertaken during working hours of 07.00 and 19.00 on weekdays and 07.00 to 16.00 on Saturdays with occasional working on Sundays. Construction staff would typically arrive between 06.00 and 07.00 and depart between 19.00 and 20.00 on a weekday and between 16.00 and 17.00 at weekends. Construction hours would be controlled through R10 of the Recommended DCO. The ES states that HGV movements may occur during these hours and would typically be spread fairly equally in terms of hourly movements.

4.13.10. Based on the percentage increase in traffic over existing flows arising from the Proposed Development the ES predicted that construction traffic would have a negligible to slight impact on the adjacent highway network and nearby receptors. Accordingly, it was predicted that the construction traffic would not result in any significant effects. Nevertheless, in order to ensure that any effects are minimised a Construction Traffic Management Plan (CTMP) was proposed to be prepared and secured through R8 of the Recommended DCO.

4.13.11. Taking account of the effect of the traffic generated by the Proposed Development alongside that generated by cumulative sites the ES assessment calculated that the combined effect would result in a negligible to slight impact on the adjacent highway network and nearby receptors. As a result, it was predicted that the cumulative traffic would not result in any significant effects. The ES separately assessed the effects of abnormal indivisible loads concluding that there would not be any adverse environmental effects.

4.13.12. The ES indicates that when K4 is operational, there would be no regular traffic generated with only ad-hoc maintenance vehicles required, whilst traffic generation during decommissioning is predicted to be lower than during construction. On that basis it drew the conclusion that the operational and decommissioning traffic would also not result in any significant effects.

Examination

4.13.13. No significant matters of concern were raised by IPs in RRs and WRs in respect of traffic and transport. KCC as local highway authority confirmed in their RR [RR-003] that they were content with the study area used for the assessment and the collection of data and that because of the minimal staffing and maintenance requirements during the operational phase of the development the TA was only required to assess the impacts from the construction phase.

4.13.14. KCC accepted the principle of HGV traffic being directed to use the northern access and staff using the western access. KCC did not object to the principle of up to 40 HGV deliveries per day as a peak during the construction phase or a maximum of eight HGV movements in the peak hour.

4.13.15. On the basis of the predicted times construction workers would arrive at and leave the Site, KCC agreed that the associated traffic movements would occur outside of the identified highway network peaks although the outline CEMP indicated that the working hours were still to be finalised. On this basis KCC sought details to be confirmed and to be controlled through the CTMP and separate TP.

4.13.16. In their RR [RR-003] and WR [REP1-016] KCC sought a final TA to be required to provide justification for the predicted number of HGV movements and a clear indication as to the length of time that the peak number of staff would be expected to be on site. In addition, the number of remaining staff expected for the construction period was sought in order for the true impacts and parking needs to be assessed. These issues were also identified in the draft SoCG between the Applicant and KCC submitted at D1 [REP1-017] as matters where discussion was ongoing.

4.13.17. KCC noted that a Construction Management Plan would be agreed prior to commencement but identified as a concern that the outline CEMP did not appear to provide control measures to ensure the arrivals and

departures of construction staff were outside of the identified highway network peak traffic times, as assessed.

4.13.18. In response to ExQ1.8.13 KCC commented that it would be preferable for conditions to be set to limit movements of delivery traffic to outside of the usual peak hours and that contractors should be able to provide estimates of delivery times. KCC sought this information as part of a TA in order to fully evaluate the suitability of HGV movements.

4.13.19. In ExQ2.8.1 I sought clarification about the mechanism whereby the Applicant would provide a final TA and how this would be secured through the DCO, questioning whether R8 and the revised CEMP [REP3-009] provided for the preparation of a final TA as sought by KCC.

4.13.20. KCC's response [REP5-015] confirmed that a final TA should be prepared through a Requirement attached to the DCO which should provide for traffic counters to generate data for KCC and for R8 to be amended to restrict arrival and departure during peak hours.

4.13.21. The Applicant's response [REP5-010] argued that no mechanism to provide a further TA was necessary as one was provided at Appendix 4.1 of the ES [APP-017]. This would be a certified document under R12 of the Recommended DCO. In responding to KCC's comments the Applicant also argued that the other proposals from KCC could be addressed through the CTMP and its associated TP with R8 making provision for both of those to be submitted and approved by the RPA in consultation with the highway authority before the commencement of development [REP6-008].

ExA Conclusion

4.13.22. Having taken account of concerns of KCC about the impacts of construction traffic I find that the measures sought could be addressed through R8 which would take account of further information when it is available from the contractor. In addition, I consider that because R8 already requires the submission and approval of a TP, no specific amendment is necessary to restrict arrival or departure during peak times as specified in R8.

4.13.23. I am satisfied that the ES has adequately assessed traffic effects during the construction, operation and decommissioning phases of the Proposed Development. Furthermore, the Proposed Development would accord with the requirements of NPSs, the development plan and other policies, and traffic management issues are adequately secured through the Recommended DCO.

4.14. WATER ENVIRONMENT

Introduction

4.14.1. This section addresses the water environment effects of the Proposed Development in terms of flood risk and water quality and resources.

Policy Considerations

4.14.2. Section 5.7 of NPS EN-1 indicates that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. All applications for energy projects of 1 hectare or greater in Flood Zone 1 and all proposals for energy projects located in Flood Zones 2 and 3 in England should be accompanied by a flood risk assessment (FRA).

4.14.3. Paragraphs 5.7.13 to 5.7.16 of NPS EN-1 set out the need for development to pass a Sequential Test, then an Exception Test if development is to be considered permissible in a high-risk Flood Zone area.

4.14.4. Section 5.15 of NPS EN-1 addresses water quality and resources recognising that infrastructure development can have adverse effects on groundwater, inland surface water, transitional waters and coastal waters. The possibility of adverse impacts on health or on protected species and habitats could arise and result in a failure to meet environmental objectives established under the Water Framework Directive (WFD). Activities that discharge to the water environment are subject to pollution control whilst the abstraction licensing regime regulates activities that take water from the water environment.

4.14.5. Where the project is likely to have effects on the water environment the applicant should undertake an assessment addressing water quality, water resources and physical characteristics of the water environment according to paragraph 5.15.2 of NPS EN-1.

4.14.6. NPS EN-2 specifically refers to the need for the assessment referenced in paragraph 5.15.2 of NPS EN-1 to demonstrate that appropriate measures will be put in place to avoid or minimise adverse impacts of abstraction and discharge of cooling water.

4.14.7. Paragraphs 148 to 165 of the NPPF outline the development requirements in terms of climate change and flood risk confirming the requirement for a site-specific FRA. Paragraph 155 confirms that inappropriate development should be avoided in areas at the highest risk of flooding and where development is necessary in those areas it should be made safe without increasing flood risk elsewhere. These principles are also set out in Policy DM1 of the Swale Local Plan.

The Applicant's Case

4.14.8. Chapter 9 of the ES addressed the water environment and included an assessment of flood risk [APP-009]. A separate FRA was provided as Appendix 9.1 of the ES [APP-030].

4.14.9. The ES noted that the proposed K4 plant lies within Flood Zone 1 and is therefore at a low risk of flooding from all sources. This would remain the case for the modelled period to 2115 based on the EA Flood Risk Data which takes into account changes caused by climate change [APP-031].

Furthermore, the FRA considered the potential impact of the Proposed Development on surface water run-off rates, and appropriate mitigation measures to attenuate surface water run-off were presented in accordance with EA requirements.

4.14.10. The construction access road is shown to be located within Flood Zones 1, 2 and 3 and therefore at *'low'* to *'high'* risk of flooding whilst the laydown area is within Flood Zones 2 and 3 and therefore at *'medium to high'* risk of flooding. Existing flood defences comprising raised walls and embankments are located approximately 400m to the east of the Site.

4.14.11. The ES assessed the likely effects on water resources taking account of the impacts of the Proposed Development on the prevailing hydrological, surface water drainage, flooding and water quality environments.

4.14.12. Three potential environmental impacts arising from the construction of the Proposed Development were identified in the ES [APP-009]. The first was the impact on flood risk due to a temporary increase in the less permeable area leading to an increase in site specific run-off rates.

4.14.13. The second potential impact was that of construction on surface water resources with the accidental discharge of untreated run-off whilst the development was being constructed. The final potential construction impact was on the on-site drainage network with construction having the potential to remove or disrupt the network, in turn increasing flood risk. In each case the adoption of construction mitigation measures set out in Table 9-14 of the ES would result in a minor adverse effect.

4.14.14. Four effects of the operation and maintenance of the K4 plant in relation to hydrology and flood risk were identified in the ES. The impact of the operation on flood risk was seen in the context of an area at low risk of tidal flooding with no increase in the permanent area of low permeability surfaces. The Proposed Development would utilise the existing surface water drainage regime and with the implementation of standard mitigation measures set out in Table 9-15 of the ES the Proposed Development would have a minor effect on flood risk.

4.14.15. Secondly, during the operation of K4 surface water quality could be affected by a number of potential pollutants present on site as a result of normal operations and emergency or accidental spillage. Although the sensitivity of the receiving watercourse, The Swale, is high the provision of operational measures including on-site drainage controls to ensure quality of discharge would reduce the potential effects to minor adverse.

4.14.16. During operation, hot water would be produced as part of the CHP process which if discharged to The Swale could give rise to adverse water quality and ecological effects. The Applicant indicated that the discharge would operate in accordance with the existing EP with the K4 plant being smaller and more efficient than K1 thereby producing a lower volume of waste water. With operational management measures including a limit on the temperature of discharges the ES predicted a minor adverse effect on off-site water temperature.

4.14.17. The final operational effect identified was the impact on groundwater resources. The Proposed Development would use abstracted groundwater, but on the assumption that K4 was more efficient than K1 it would use less water and therefore have no adverse impact on groundwater levels. Consequently, the Proposed Development would have a slight beneficial effect on groundwater resources compared to the existing K1 facility.

4.14.18. Decommissioning impacts were predicted to be similar to and no worse than construction impacts in relation to hydrology and flood risk and when standard construction practices were implemented would have at worst a minor adverse impact.

Examination

4.14.19. No concerns were raised during the Examination about the approach to or findings of the FRA. In their RR, the EA confirmed that the developed area of the Site was at low risk from flooding [RR-002]. The EA also confirmed [REP2-032] that it was satisfied that the Applicant was appropriately protecting groundwater and surface water and that impacts during operation of the plant would be assessed as part of the EP application.

4.14.20. The SoCG between the Applicant and the EA [REP5-008] accepted that the risk of contamination to surface water during construction would be reduced as far as reasonably practical incorporating a range of measures as part of the CEMP. These would be secured through R7 of the Recommended DCO.

4.14.21. The SoCG went on to confirm that the Proposed Development would be set above the predicted flood levels for the area taking onto account climate change with details of floor levels to be provided pursuant to R5 of the Recommended DCO. Flood risk associated with the construction access and laydown area was considered acceptable and there was no discernible flood risk associated with the Site from other sources.

4.14.22. R11 in Version 1 of the dDCO [APP-005] addressed surface and foul water drainage requiring drainage details to be subject to the approval of the RPA prior to commencement. It also made reference to the need to submit plans and strategies referred to in Table 9-17 of the ES to manage the risk of flooding at each stage and ensure water quality is maintained. KCC as lead local flood authority [REP1-016] and the EA [REP1-012] confirmed that they were satisfied with the mitigation measures as proposed within Table 9-17.

4.14.23. In their RR the EA commented that there was no evidence of a WFD assessment having been carried out despite the intention to discharge cooling water into The Swale, identified as a transitional WFD body [RR-002].

4.14.24. A WFD scoping assessment was included as Appendix 1 of the SoCG between the Applicant and the EA [REP5-009]. On that basis the parties agreed that the Proposed Development would not affect The Swale's

compliance with the requirements of the WFD. Moreover, the SoCG also agreed that subject to the standard operational and management measures set out in Tables 9-15 and 9-17 of the ES the risk of contamination to surface water from on-site drainage during operation would be reduced as far as practically possible. The same conclusions were confirmed in a SoCG between the Applicant and NE [AS-023].

4.14.25. With respect to process water being discharged to The Swale in compliance with the existing EP, NE queried whether the permit was issued before or after The Swale Estuary MCZ was designated and therefore recommended that a MCZ assessment of the discharge was carried out [RR-005].

4.14.26. In their response to ExQ1.9.18 the Applicant confirmed that an MCZ Assessment had been carried out which concluded that there would be no effect on the MCZ as there was no pathway for such an effect to occur. An MCZ Screening Assessment was submitted as part of the SoCG with NE following D2 [AS-023]. Consequently, it was concluded that the Proposed Development would not result in a significant adverse effect on The Swale Estuary MCZ.

4.14.27. The SoCG between the Applicant and NE [AS-023] also agreed that subject to standard pollution prevention measures incorporated into a CEMP and secured through R7 of the dDCO the risk to The Swale SPA and Ramsar site would be as low as reasonably practical. Consequently, an adverse effect on the integrity of the site during construction could be avoided. The outline CEMP [REP5-004] includes elements relating to the control and management of surface water drainage during the construction phase.

4.14.28. The submission version of the dDCO [APP-005] included a Requirement (R12) to address contaminated land and groundwater. An amended version has been included in the Recommended DCO.

4.14.29. An amendment to Article 9: Discharge of Water was proposed by the Applicant at D3 [REP3-004] in response to KCC's RR to ensure that the Requirement covered all water course responsibilities beyond those of the Internal Drainage Board.

ExA Conclusion

4.14.30. In terms of flood risk, I find the Proposed Development acceptable, compatible with the flood risk of the area and in compliance with NPS EN-1, the NPPF and development plan policies. The Applicant has demonstrated compliance with the WFD and that there would be no impact upon The Swale Estuary MCZ.

4.14.31. Subject to the controls which would be secured through the Recommended DCO aimed at managing surface water run-off during construction, operation and decommissioning the Proposed Development would not have any detrimental impact on water quality. As a result, I find that in respect of water quality and resources the Proposed

Development would be in accordance with NPS EN-1, NPS EN-2, the NPPF and the development plan.

4.15. NOISE AND VIBRATION

Policy Considerations

4.15.1. Section 5.11 of NPS EN-1 refers to the Government's policy on noise as set out in the Noise Policy Statement for England, recognising that excessive noise can have impacts on the quality of human life, health, and the use and enjoyment of areas of value and areas with high landscape quality. Noise resulting from a proposed development can also have adverse impacts on wildlife and biodiversity.

4.15.2. Factors which will determine noise impact include the operational noise from a development and its characteristics, the proximity of the development to noise sensitive premises and the proximity to quiet places and to designated biodiversity sites.

4.15.3. According to paragraph 5.11.8 of NPS EN-1 projects should demonstrate good design through the selection of the quietest cost-effective plant available; containment of noise within buildings wherever possible; optimisation of plant layout to minimise noise emissions; and, where possible, utilise landscaping, or noise barriers to reduce noise transmission. NPS EN-2 advises that noise from gas turbines should be mitigated by attenuation of exhausts to reduce any risk of low frequency noise transition.

4.15.4. NPS EN-1 also advises that development consent should not be granted unless the proposals avoid significant adverse impacts and mitigate and minimise other adverse impacts, on health and quality of life from noise.

4.15.5. Specific considerations which apply to fossil fuel generating stations are set out in paragraph 2.7.1 of NPS EN-2 and include the noise from gas and steam turbines operating continuously during normal operation and external noise sources such as air-cooled condensers. NPS EN-2 also requires the extent to which operational noise will be separately controlled by the EA to be taken into account.

4.15.6. Paragraph 180 of the revised NPPF advises that new development should take account of the likely effects of pollution on health, living conditions and the natural environment and in doing so should mitigate and reduce to a minimum adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life.

4.15.7. Planning Policy Guidance (PPG) – Noise, which reiterates guidance on noise policy and assessment methods, notes that '*the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation*'.

The Applicant's Case

4.15.8. Noise and vibration are addressed in Chapter 7 of the ES [APP-009] whilst the effects of construction and operational noise on biodiversity receptors are discussed in Chapter 10.

4.15.9. The K4 plant would be sited in an area which is industrial in nature with the immediate existing noise environment characterised by industrial noise. As a consequence, the Applicant was of the view that additional industrial noise, provided that it was not too great in magnitude, would not materially change the existing noise environment.

4.15.10. The nearest residential properties to the Site are over 500 metres away and the ES therefore concluded that construction activities were unlikely to result in significant adverse effects on residents.

4.15.11. The noisiest construction activity is expected to be piling with noise levels predicted to be 40 decibel (dB) L_{aeq} in any surrounding area. This was assessed as being a negligible impact during daytime and a minor adverse impact at night time equating to a slight adverse effect on the nearest residential areas and a negligible impact on other receptors, none of which are significant impacts.

4.15.12. When modelled against existing traffic flows, construction vehicles were predicted to result in an increase of noise of less than 1dB on most of the road links to the Site. The largest increase was between Barge Way West and the Fleet End roundabout where a 5dB increase during Sunday daytime was predicted arising from the low level of vehicles using that link. Nevertheless, the link is some distance from residential properties. Combining the effect of the construction traffic arising from the Proposed Development with construction vehicles arising from various other projects in the area it was concluded that it would result in no significant cumulative effects.

4.15.13. The plant proposed to be used in the construction of K4 would only be expected to create low levels of vibration and the ES indicated that the distance to the nearest residential properties would result in there being no LSEs.

4.15.14. The Applicant proposed to manage construction noise and vibration through the CEMP which would be secured through R7 of the Recommended DCO. Construction vehicle noise would be controlled through a CTMP secured through R8 whilst hours of working would be managed through R10 of the Recommended DCO.

4.15.15. The assessment of noise levels under normal operating conditions indicated that there would be no significant effect on nearby residential receptors. An increase of no more than 0.3 dB was predicted arising from the K4 plant compared to the current baseline situation with no potential identified for significant cumulative operational effects to occur.

4.15.16. When the K4 facility is in operation but heat is not required the dump condenser array would be used for process cooling. This would cause

significant additional noise but would result in only a 1dB increase in background noise which would not have a significant effect on residential receptors.

4.15.17. In emergency situations such as the failure of the turbine, steam valve safety systems would be used to vent steam to the atmosphere. Such a process is assessed in the ES as having a major adverse impact with absolute noise levels reaching 60dB L_{aeq} at residential receptors. However, the infrequency of steam release for K4 is predicted to be less than that for K1 which historically has been 3-4 times per year, for a duration of approximately 60-90 seconds. Although the noise level created was identified as having the ability to have adverse effects on residents, the infrequency led the Applicant to conclude that this would not constitute a moderate or major significant impact and was of no more than a slight adverse impact.

4.15.18. No significant vibration effects were predicted for the operational phase due to design features to minimise vibration and the distance to sensitive receptors. The ES also predicted that the effects in relation to noise and vibration would be no worse than but likely to be similar to or less than those that occurred during the construction phase.

4.15.19. The new plant would generate no significant operational traffic. Consequently, noise arising from off-site traffic generated by the Project during operation was assessed in the ES to be none or negligible resulting in a negligible adverse effect.

4.15.20. The ES predicts that during decommissioning the effects in relation to noise and vibration would be similar to or less than those which occurred during the construction phase. In addition, no adverse impacts or adverse effects in respect of noise or vibration would occur due to the traffic associated with decommissioning or from the decommissioning of the K1 plant.

Examination

4.15.21. In response to ExQ1.7.2 SBC confirmed that the assessment methodology for noise was acceptable [REP3-017]. It also confirmed that the residential noise sensitive receptors identified as being representative of the wider area were appropriate.

4.15.22. In their RR, NE identified that the birds for which The Swale SPA, Ramsar and SSSI are designated are susceptible to disturbance from noise [RR-005] with further detail provided in their WR [REP1-015]. The effect of noise on biodiversity is addressed in section 4.11 of the Report.

4.15.23. Only one other RR raised the issue of noise. This was the RR of Mr Michael Vick [RR-004], which concerned noise beyond the Site boundary. It identified instances of noise nuisance in the past, highlighting contact with the EA on the matter. These comments were repeated in Mr Vick's WR [REP1-011] which noted that DS Smith had recorded noise generated by the Mill when monitoring from his property.

4.15.24. The EA commented on Mr Vick's RR noting that his property was some distance from the Mill and that the EA had not received complaints about noise from others in Kemsley [REP1-012]. The EA confirmed that it was working with DS Smith to understand the noise environment at the Mill. With regard to the Proposed Development the EA indicated that it would not expect noise complaints given the location of the plant and the technology proposed.

4.15.25. In its response to RRs the Applicant commented that it had been working to try to identify the cause for each of the past complaints but they were not directly relevant to the current proposal [REP1-010]. In the Applicant's comment on WRs [REP2-029] it was stated that the issues relating to noise have been the subject of a report by an acoustic consultant which was attached as an Appendix to the Applicant's Comments on RRs [REP1-010].

4.15.26. I undertook an Unaccompanied Site Inspection (USI) to observe noise in the vicinity of Mr Vick's property. Whilst acknowledging that this was a single visit during the middle of the day, the impression I took away was that the property was a considerable distance from the Proposed Development and that based on the noise predictions in the ES any effect on residents in the vicinity would be very limited indeed.

4.15.27. No specific mitigation was identified in the ES as being required to reduce the effects of construction noise or vibration. Nevertheless, through the adoption of best practicable means and adherence to the CEMP which would be secured through R7 of the Recommended DCO noise and vibration emissions would be minimised as far as reasonably practicable. R8 of the Recommended DCO provides for a CTMP to manage the impact of construction traffic on the surrounding area.

4.15.28. In addition, R10 specifies the hours for the construction of the authorised development unless otherwise agreed with the RPA. Outside the specified hours, works would be permitted for emergency purposes or where they do not cause noise that is audible at the boundary of the Order limits.

4.15.29. No specific mitigation was identified in the ES as being required to reduce noise or vibration arising from the normal operation of the K4 facility. To minimise operational noise as far as is reasonably practicable best practicable means would be adopted.

ExA Conclusion

4.15.30. Noise and vibration arising from on-site construction activities, construction vehicle movements or decommissioning works are not expected to give rise to any significant effects for sensitive receptors. When the K4 plant is operational no significant effects are predicted from vibration at any time or from noise during normal operating conditions or when the dump condenser is operating. In these circumstances a requirement for post construction noise monitoring is not necessary and has not been requested by any IP.

4.15.31. The use of the emergency steam release valve systems would create a significant adverse noise impact. However, its infrequency and the likelihood that it would represent an improvement on the existing situation would result in a limited impact.

4.15.32. Through controls over construction, secured through Requirements in the DCO, other than in emergencies, the Proposed Development would comply with NPS EN-1, NPS EN-2 and the NPPF in respect of noise and vibration.

4.16. GROUND CONDITIONS

Policy Considerations

4.16.1. In addressing land use matters Section 5.10 of NPS EN-1 notes that the reuse of previously developed land for new development can make a major contribution to sustainable development. It also advises that for developments on previously developed land applicants should ensure that they have considered the risk posed by land contamination.

4.16.2. Paragraph 178 of the revised NPPF states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities. The Framework also encourages the use of previously developed land. At the local level Swale Local Plan Policy ST1 applies national policy in respect of contaminated, unstable and previously developed land.

The Applicant's Case

4.16.3. Chapter 8 of the ES [APP-009] assessed the effect of the Proposed Development on ground conditions. The methodology was based on an assessment of information relating to the history, geology, hydrology and hydrogeology of the Site as well as ground investigations previously undertaken in the vicinity of the Site.

4.16.4. The ES indicated that during the construction phase there would be potential minor adverse effects on human health from the presence of ground gas, shallow groundwater, deep groundwater and ecological receptors. With the completion of the development the ES predicted potential moderate significant adverse effects to human health from the presence of ground gas with minor potential adverse effects to human health, deep groundwater, surface water quality and ecological receptors.

4.16.5. A number of mitigation measures were proposed during the construction phase to mitigate effects to human health and controlled waters. These included the provision of a CEMP, measures to address waste and the storage of hazardous materials during construction, ground gas protection measures and the undertaking of a piling risk assessment to identify the most appropriate piling techniques to minimise any downward migration of contamination. Similarly, a range of measures to mitigate the effects of ground gas and the effects of soil contamination to

human health and shallow groundwater were proposed upon completion of the development. Upon the implementation of such measures a minor adverse effect on human health was predicted.

4.16.6. The assessment indicated that there would be no significant residual effects and no cumulative impacts with other developments taking account of the mitigation measures proposed.

Examination

4.16.7. No RRs or WRs received during the Examination raised concerns about ground conditions or land contamination issues. The EA commented that Chapter 12 of the ES dealing with contaminated land and groundwater satisfied its matters of interest [RR-002].

4.16.8. I posed a number of initial Written Questions about ground conditions (ExQ1) to which the Applicant adequately responded [REP2-030].

4.16.9. A signed SoCG between the Applicant and the EA [REP1-014] confirmed that in terms of land contamination the ES had been produced using an appropriate methodology, was based on an appropriate baseline and as a result made an appropriate judgement regarding the likely significant residual impacts in terms of contamination. The SoCG also agreed that R12 of the dDCO (Version 1) [APP-005] ensured appropriate ongoing management of any contamination, and that the risk of consequential environmental impact was adequately mitigated, and any risk was as low as reasonably practical.

4.16.10. At D5 a revised SoCG between the Applicant and the EA was submitted [REP5-014]. This noted that following ongoing discussions during the Examination and subsequent iterations of the dDCO the EA indicated that the reference to the EA in R12(1) of the ExA's Consultation Draft DCO [PD-009] should be deleted. This was on the basis that ground gas protection measures do not fall within the remit of the EA and therefore they are not the appropriate authority to approve such measures. The Applicant agreed that the dDCO could be amended to reflect this change and included it in Version 4 of the dDCO [REP6-002].

4.16.11. The EA was also of the view that the design of ground gas protection measures relied on adequate ground investigations and monitoring activities. It therefore considered that the dDCO should state that such measures should be approved after ground investigation and archaeological investigation activities. The Applicant also argued that ground investigations should be allowed to take place before ground gas protection measures were approved. However, the dDCO was amended at D3 [REP3-004] to provide that ground investigations and other preliminary works may not take place until details of the ground gas protection measures have been submitted and approved by the RPA. Accordingly, although not necessarily agreeing with it, the Applicant and EA accepted the wording of R12(1) in my preferred DCO [PD-009] in respect of ground gas protection measures. R12 also makes provision for

any contaminated land not previously identified to be dealt with appropriately.

4.16.12. In addition to R12 of the Recommended DCO dealing with land contamination and groundwater, other requirements of relevance to ground conditions comprise R7 which provides for a CEMP and R15 which relates to piling.

ExA Conclusion

4.16.13. I am satisfied that the Proposed Development accords with all relevant legislation and policy requirements and that ground condition matters are adequately provided for and secured in the Recommended DCO.

4.17. ARCHAEOLOGY AND CULTURAL HERITAGE

Policy Considerations

4.17.1. Paragraph 5.8.2 of NPS EN-1 describes the historic environment as including all aspects of the environment resulting from the interaction between people and places through time. It recognises that heritage assets are those elements of the historic environment that hold value through their historic, archaeological, architectural or artistic interest which may be any building, monument, site, place, area or landscape. The sum of an asset's heritage interest is referred to as its significance.

4.17.2. Paragraphs 5.8.8 to 5.8.10 require the applicant to assess the significance of the heritage assets affected by the proposed development. The applicant should also ensure that the extent of the impact can be adequately understood from the application and supporting documents.

4.17.3. The NPS confirms a presumption in favour of the conservation of designated heritage assets commensurate with the level of significance. As set out in paragraph 5.8.18, where a proposed development may affect the setting of a heritage asset applications which preserve those elements of the setting that make a positive contribution to the significance of the asset should be treated favourably.

4.17.4. Where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest NPS EN-1 indicates that the applicant should carry out appropriate desk-based assessment and if necessary, a field evaluation. Furthermore, consideration should be given to requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction.

4.17.5. The NPPF describes the setting of a heritage asset as the surroundings in which a heritage asset is experienced. It recognises the need to conserve heritage assets in a manner appropriate to their significance to which great weight is given.

4.17.6. Together Policies ST1, CP7, CP8 and DM14 of the Swale Local Plan seek to conserve and enhance the historic environment whilst Policy DM34

seeks to prevent development which would adversely affect a Scheduled Monument and / or its setting.

The Applicant's Case

4.17.7. Chapter 12 of the ES [APP-009] examines the effect of the Proposed Development on archaeology and cultural heritage. The assessment methodology identifies the study area and the effect on such heritage assets from the construction, operation and decommissioning of the Proposed Development.

4.17.8. The ES states that there are no designated heritage assets within the application site itself. The assessment, for the purpose of buried archaeology, focused on a study area of 1km around the Project Site and for the purpose of the setting of heritage assets a study area of 3km from the Site.

4.17.9. The ES identified no listed buildings or conservation areas within 1km of the Site and 11 listed buildings located between 1km and 2km of the Site with nine listed as Grade II and two listed as Grade I. A further 91 listed buildings are located between 2km and 3km from the Site of which 87 are Grade II, three are Grade II* and one Grade I. Three conservation areas are located within 2-3km of the Site.

4.17.10. One Scheduled Monument (SM), Castle Rough, is located within 1km of the Site with two others within 3km. The ES records that there are no World Heritage Sites, Protected Wrecks, registered battlefields or registered parks and gardens located within 3km of the Site.

4.17.11. The Site lies within a landscape which generally has a high potential to contain archaeological remains although the potential for the survival of significant coherent archaeological remains is low. The ES indicates that any buried remains are likely to be of at most low significance and the impact magnitude on any surviving remains is assessed as being high. As a result, the effect of the Proposed Development on buried remains would be minor adverse and not significant.

4.17.12. Castle Rough, located approximately 230m south west of the Site is assessed as being of highest significance. It derives its significance from the rectangular earthwork island surrounded on four sides by a moat, and buried remains of the SM. There would be no physical impact on the SM from the Proposed Development and any impact would be on the setting.

4.17.13. Castle Rough is low lying and not particularly visible from any distance away, although trees growing on it are seen, particularly from the south west against the background of the existing Paper Mill complex. Similarly, the ES notes the perception of operational noise from K4 would be unlikely to significantly change the existing noise levels experienced at the SM whilst construction traffic would result in a temporary impact of at most minor adverse magnitude. Any additional lighting would be experienced in the context of an industrial site with external lighting.

4.17.14. As a result, the impact magnitude on the SM was assessed in the ES as being negligible and the effect of the Proposed Development would be minor adverse resulting in an indirect effect which would not be significant.

4.17.15. The effect of the Proposed Development on the two other SMs within 3km of the Site is described as no change in the first instance and neutral in the second.

4.17.16. In terms of the effects of the Proposed Development on listed buildings the ES indicates that no listed buildings within 3km of the Site would experience any greater than a minor adverse impact. Similarly, the ES assesses the impact magnitude of the Proposed Development on all three conservation areas as being negligible with the effect in each case being minor adverse resulting in an indirect effect that is not significant.

4.17.17. The ES states that the location, nature and design of the Proposed Development would help to mitigate any effects on the setting of designated heritage assets and accordingly no specific mitigation measures are required. In respect of the archaeological resource of the Site being unknown although unlikely to be significant, a programme of archaeological fieldwork to investigate and record any surviving archaeological remains is proposed.

4.17.18. The ES envisages that there would be no significant adverse effects as a result of the Proposed Development following the implementation of the mitigation measures proposed. The ES also assessed the effects of the Proposed Development cumulatively with other planned schemes, concluding that there would be no significant effect on heritage assets. On that basis it was stated that any cumulative effects would not be significant.

Examination

4.17.19. No significant matters of concern were raised by IPs in RRs and WRs in respect to archaeology and cultural heritage matters.

4.17.20. Through initial Written Questions (ExQ1) [PD-006a] clarification was sought about the exclusion of one listed building within 1-2 km of the Site from the commentary in paragraphs 12.6.19 – 12.6.37 of the ES [APP-009]. This had been identified as being the closest listed building in the summary presented at Appendix 12.1 [APP-035]. In their response the Applicant acknowledged that the building should have been included within the commentary and stated that there would be no change to the magnitude of impact and the effect of the Proposed Development on the listed buildings [REP2-030].

4.17.21. In their RR [RR-003] KCC indicated that it agreed with Historic England (HE) that there would be no physical impact upon designated heritage assets and that visual impacts on the setting of SMs would be negligible, given the massing of the existing Mill complex. KCC noted that HE had some concerns about the assessment of the effects of noise, lighting and traffic on Castle Rough and would defer to HE to advise whether it was

satisfied with the assessment and the negligible scale of impact described.

4.17.22. Through ExQ1 the Section 42 consultation response of HE concerning the adequacy of the assessment of the impact of the Proposed Development on Castle Rough was highlighted. The views of HE, KCC and SBC were sought on the ES's conclusion that there would be a minor adverse impact on Castle Rough which would not be significant.

4.17.23. In their response [REP2-033] KCC noted that whilst not leading on advice in relation to the impact in relation to Castle Rough, it was of the view that there would be no physical impact on the SM, and visual impacts on its setting would be negligible due to massing of the Mill.

4.17.24. HE did not register as an IP but confirmed that the effects of the Proposed Development on heritage significance were fully assessed in the final ES and that the ES satisfactorily addressed their previous comments. The HE response is provided as Appendix B of the Applicant's Written Case at ISH2 [REP3-015].

4.17.25. In their RR KCC confirmed that it was satisfied that the ES adequately set out the archaeological background of the area and its high potential [RR-003]. KCC noted that given the previous use of the site, there was likely to have been an impact on the archaeology. KCC also agreed that there was low potential for archaeology on the site and that adequate mitigation could be secured through a Requirement for a programme of archaeological works to assess the impacts. KCC's position was that should potential archaeological impacts be subsequently confirmed as a result of the evaluation, then provision should be made for further investigation and reporting.

4.17.26. A Requirement relating to archaeology was included in the application version of the dDCO [APP-005]. The EM [APP-006] explained that the Requirement provided for a written scheme of investigation (WSI) to be submitted to and approved by the RPA prior to commencement of any part of the authorised development.

4.17.27. ISH1:60 questioned whether the Requirement made adequate provision to assess the impacts of the scheme on buried archaeology as highlighted by KCC in their RR [RR-003]. The Requirement was subsequently revised with the D3 version incorporating changes to ensure that no part of the authorised development and no archaeological investigations or other specified works would commence until a WSI of areas of archaeological interest had been submitted to and approved by the RPA in consultation with KCC.

4.17.28. The Post Deadline 4 version of the dDCO [AS-021] included further changes to R13 which expanded the scope of the WSI including specifying the need for a scheme of post-investigation assessment, analysis and reporting of the results. KCC confirmed that these changes were acceptable in correspondence with the Applicant set out in Appendix A to the Applicant's letter submitted following D4 [AS-019].

ExA Conclusion

4.17.29. This section has had regard to the likely significant effects resulting from the Proposed Development on heritage assets including buried archaeological sites, historic buildings and areas, and historic landscapes. It has considered the effects in terms of the potential for direct physical disturbance and indirect effects on settings in terms of the overall effect and the significance of the predicted effects.

4.17.30. Matters raised in HE's comments prior to the submission of the application and by KCC in their RR and WR as well as HE comments submitted at D4 have been investigated.

4.17.31. Whilst the area within which the Site is located has considerable potential to contain archaeological remains the specific characteristics of the Site suggest that the potential for significant archaeological remains is unlikely. Nevertheless, particularly taking account of the submissions made by HE and KCC, it is appropriate to make provision for a suitable programme of archaeological works to take place to ensure that potentially significant adverse effects would be comprehensively mitigated. This would be effectively secured through R16 of the Recommended DCO.

4.17.32. There would be no significant archaeological or cultural heritage related effects from the construction, operation or decommissioning of the Proposed Development either physically or on the setting of any SM, listed building or other designated heritage asset in the surrounding area. Consequently, there would be no harm to the significance of heritage assets. Similarly, there would be no significant cumulative archaeological or cultural heritage effects as a result of the Proposed Development.

4.17.33. On the basis of the evidence and the proposed mitigation as secured via the Recommended DCO, all impacts have been addressed in a manner that complies with the Historic Environment elements of NPS EN-1 and the development plan.

4.18. OTHER CONSIDERATIONS

Introduction

4.18.1. This section of the Report addresses any remaining policy topics and important and relevant considerations that need to be taken into account in the planning balance including:

- civil and military aviation and defence interests;
- waste management;
- cumulative effects; and
- all other legislative and policy considerations drawn to the ExA's attention.

Civil and Military Aviation and Defence Interests

4.18.2. Civil and military aviation and defence interests are relevant matters. Section 5.4 of NPS EN-1 indicates that such interests can be affected by new energy development. It also confirms that the military Low Flying system enables low flying activities nationally as low as 75m.

4.18.3. The Applicant's dDCO (Version 5) [AS-027] indicated that the proposed HRSG stack would have a minimum height of 70m (79m AOD) and a maximum height of 73m (82m AOD). The Civil Aviation Authority were consulted as part of the Applicant's statutory pre-submission s42 consultation. They confirmed that they had no concerns as there were already stacks within the vicinity of equal or greater height and also took account of the distance of the Proposed Development from nearby airports / aerodromes. Accordingly, I find that the considerations arising from NPS EN-1 in relation to this matter have been appropriately addressed.

Waste Management

4.18.4. Section 5.14 of NPS EN-1 sets out that Government policy on hazardous and non-hazardous waste is intended to protect human health and the environment by producing less waste and by using it as a resource wherever possible. The waste hierarchy approach to the management of waste comprising prevention, preparing for reuse, recycling, other recovery and disposal is described. It also indicates that the Applicant should set out arrangements for managing waste and should prepare a Site Waste Management Plan including information on the proposed waste recovery and disposal system. This should assess the impact of the waste on the capacity of facilities to deal with waste. Applicants are generally expected to minimise the volume of waste produced and the volume of waste sent for disposal.

4.18.5. Policy DM19 of the Swale Local Plan which deals with sustainable design and construction promotes waste reduction, reuse and recycling during construction and throughout the lifetime of the development.

4.18.6. No IPs raised concerns about waste in RRs or WRs and the matter was not a principal issue at the Examination. As set out in NPS EN-1 the EP regime will address waste management during operation. At the construction stage R7 of the Recommended DCO provides for a CEMP to be prepared which would include measures to reduce and manage waste.

4.18.7. I find that the Proposed Development would not have any significant effects arising from waste generated from construction, operation or decommissioning activities. Moreover, the Proposed Development would meet all legislative and policy requirements relating to waste management and matters relating to mitigation would be adequately provided for and secured through the Recommended DCO.

Cumulative Effects

4.18.8. Section 4.2 of NPS EN-1 provides guidance on the preparation of an ES. In relation to cumulative effects it states that the ES should provide information on how the effects of the applicant's proposal would combine and interact with the effects of other developments. Consideration should be given to how the accumulation of, and interrelationship between, effects might affect the environment, economy or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place.

4.18.9. Section 3.9 of the ES and Figure 3.2 [APP-008] identify other schemes which are under construction, consented or for which planning permission was being sought for the purpose of considering the environmental effects of the Proposed Development with other developments.

4.18.10. The draft SoCG between the Applicant and KCC [REP1-017] confirmed that the parties agreed that the consented projects listed in paragraph 3.9.1 of the ES were appropriate for consideration as part of any cumulative assessment. The signed SoCG between the Applicant and SBC [REP1-008] also agreed that those projects were appropriate.

4.18.11. Where relevant the cumulative effects have been addressed in the technical sections above. In ExQ1.1.18 I asked the Applicant to confirm that the cumulative sites identified had all been assessed in each Chapter of the ES. At D2 [REP2-030] the Applicant demonstrated how this had been undertaken.

4.18.12. The ES [APP-009] did not identify any significant effects from the cumulative effects of the Proposed Development and no concerns were raised during the Examination on this matter. Accordingly, I am satisfied that there are not likely to be any significant cumulative effects from construction, operation or decommissioning activities.

Other Policies

4.18.13. All other legislative and policy considerations drawn to the ExA's attention during the course of the Examination have been considered. However, none give rise to any issues that require to be taken into account in a manner which affects the considerations drawn out in the remainder of this Chapter, the planning balance set out in Chapter 6 or the provisions of the DCO set out in Chapter 7.

ExA Response and Conclusion on Other Important and Relevant Considerations

4.18.14. Taking all other relevant documents and policies drawn to my attention into account, no other matters have arisen which affect the identification in sections 4.1 – 4.17 above of the planning matters that require to be balanced by the SoS or taken into account in the DCO decision.

5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

5.1. INTRODUCTION

5.1.1. This Chapter of the Report sets out the analysis, findings and conclusions relevant to Habitats Regulations Assessment (HRA). It will assist the Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) as the competent authority in performing their duties under the Habitats Directive[10] and the Habitats Regulations[11].

5.1.2. The broad stages for the HRA process are outlined in the Planning Inspectorate's Advice Note 10 (AN10). Of particular importance is the process diagram set out in Figure 1.

5.1.3. Regulation 63 of the Habitats Regulations states that if an application proposal is likely to have a significant effect (either alone or in-combination with other plans or projects), then the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives.

5.1.4. Consent for the Proposed Development may only be granted if, having assessed the effects of the Proposed Development on European sites, the competent authority's appropriate assessment concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (consideration of overriding public interest).

5.1.5. Throughout the Examination process I have considered the need to ensure that the SoS has an adequate basis of information on which to carry out their duties as competent authority, for energy applications submitted under the Planning Act 2008 (PA2008). This duty is informed by and compliant with the Overarching National Policy Statement (NPS) for Energy (EN-1) paragraph 5.3.9.

5.1.6. As such, I have reviewed the evidence presented during the Examination concerning likely significant effects (LSE) on the integrity of European sites[12] potentially affected by the Proposed Development.

[10] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive).
[11] The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
[12] The term European Sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs) and candidate SACs (cSACs), Special Protection Areas (SPAs), possible SACs (pSACs), potential SPAs (pSPAs), Ramsar sites, proposed Ramsar sites, and any sites identified as compensatory measures for adverse effects on any of the above. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy.

5.1.7. In accordance with the process set out in AN10, all submitted evidence in respect of HRA matters was drawn together into a Report on the Implications for European Sites (RIES) [OD-003]. The RIES compiled, documented and signposted HRA-relevant information provided within the Development Consent Order (DCO) application and submitted throughout the Examination up to 12 October 2018.

5.1.8. The RIES was issued to ensure that I have correctly understood HRA-related factual information and the position of various parties, including Natural England (NE) as the statutory nature conservation body, and that they had been consulted formally on Habitats Regulations matters in relation to the effects of the Proposed Development on European sites. This process may be relied upon by the SoS for the purposes of Regulation 63 of the Habitats Regulations.

5.2. PROJECT LOCATION

5.2.1. As described in Chapter 2 above, the Proposed Development comprises a combined heat and power (CHP) plant incorporating a gas turbine of 52-67 megawatts (MW) nominal power, waste heat recovery boilers providing 105 megawatt thermal (Mwth) steam, and a steam turbine of 16MW nominal power output.

5.2.2. The location of the Proposed Development is the Kemsley Paper Mill in Sittingbourne. The Site is not located within or immediately adjacent to any European sites. Nevertheless, the Applicant identified eight European sites and features within 10km of the Site that could be affected by the Proposed Development, based on the nature of the Project and the findings contained within the Environmental Statement (ES) technical chapters. These were:

- The Swale Special Protection Area (SPA);
- The Swale Ramsar site;
- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;
- Thames Estuary and Marshes Ramsar site;
- Queendown Warren Special Area of Conservation (SAC);
- Outer Thames Estuary SPA

5.2.3. The Applicant stated that the 10km radius was identified to ensure that all sites of international importance that could be subject to effects from the Proposed Development were included in the assessment in line with Environment Agency (EA) guidance on the consideration of air quality effects in designated sites[13].

[13] Air emissions risk assessment for your environmental permit, DEFRA / EA 2016.

5.3. HRA IMPLICATIONS OF THE PROJECT

5.3.1. The Applicant submitted a report entitled Kemsley Mill K4 Combined Heat and Power Generating Station: No Significant Effects HRA Report (NSER) [APP-033] as part of the DCO application, which concluded that there would be no LSE on any of the eight European sites screened. The SoS for Housing, Communities and Local Government considered that the information provided in the NSER was adequate for acceptance of the application for Examination on 26 April 2018 [PD-003].

5.3.2. In response to advice under section (s)51 of PA2008 [PD-001] issued by the Planning Inspectorate following acceptance of the DCO application, and as a result of the European Union Court of Justice People Over Wind and Sweetman vs Coillte Teoranta judgement (C-323/17) (People Over Wind) the Applicant submitted a further HRA Report (HRAR) [AS-002] on 14 June 2018. This replaced and superseded the NSER submitted with the application.

5.3.3. In response to a request contained in the Rule 6 Letter [PD-005] the Applicant submitted screening matrices for the eight European sites identified, and integrity matrices for the two sites which were taken forward for appropriate assessment, namely The Swale SPA and The Swale Ramsar site [REP1-005].

5.3.4. In response to Written Questions (ExQ1 and ExQ2) and representations made by Interested Parties (IPs) during the Examination an updated HRA Report containing updated screening and integrity matrices was submitted on 12 October 2018 [AS-022]. This replaced and superseded the HRAR submitted on 14 June 2018 [AS-002]. Annex 1 of the RIES [OD-003] sets out the European sites and features which were identified in the revised HRAR and matrices of October 2018 [AS-022]. At Deadline (D)6 (20 November 2018) the Applicant submitted a further HRAR [REP6-005] in response to the ongoing discussion about a requirement about decommissioning and demolition.

5.3.5. Reference was made in the ES [APP-009] and the submitted NSER [APP-033] to both the Outer Thames Estuary SPA and the Outer Thames Estuary potential (p)SPA. The Natura 2000 Data Sheet indicated that the pSPA which was proposed as an extension to the SPA was classified as part of the SPA in 2017. In response to ExQ1.4.16 the Applicant confirmed that the pSPA designation was no longer relevant [REP2-030]. Subsequent versions of the HRAR made no reference to the pSPA.

5.3.6. In their RR [RR-005] NE did not identify any other UK European site or European site features that could be affected by the Project. The Outer Thames Estuary SPA was not included in the list of sites that NE considered should be included in the assessment.

5.3.7. In their RR [RR-005] and WR [REP1-015] NE held that the main impacts from the Proposed Development were to The Swale SPA and The Swale Ramsar site. The impacts would occur as a result of increased noise during construction causing disturbance, and increased airborne

emissions leading to impacts on air quality during operation. NE was content that impacts from lighting and increased emissions to air and water during construction were not likely to be significant. This was on the basis that best practice construction measures and standard pollution prevention measures (as part of the Construction Environmental Management Plan (CEMP)), were applied.

5.3.8. NE considered that in relation to disturbance from noise impacts, further information was required on the bird use at the mouth of Milton Creek, which is to the south east of the Site and is a tributary of The Swale. They were concerned that the modelled peak noise levels during construction could affect the bird features of The Swale SPA and Ramsar site if the 20 hectare (ha) of the SPA and Ramsar site that would experience these noise levels was used as a high tide roost or by significant numbers of birds for feeding. They requested that the Applicant provided further information on the bird use of the mouth of Milton Creek, in order to support the conclusion of the HRA that disturbance from increased noise would not compromise the objectives of The Swale SPA and Ramsar site.

5.3.9. In their WR [REP1-015] NE agreed with the conclusions reached in the ES of no significant effects from changes to air quality on the European sites in ES Appendix 5.4 (Air Quality Assessment of Ecological Impacts) [APP-026]. However, the Appendix did not address the specific habitat types for which the Ramsar sites identified in the HRAR are designated. NE requested that the Applicant provide an updated Appendix 5.4 that included this information. NE also noted that the information contained in Tables C2 and C3 (NO_x concentrations and Nutrient N deposition, respectively) in Appendix 5.4 only considered the birds for which the SPAs were designated and not the habitat types for which the Ramsar sites were designated. They requested that consideration of these habitats was additionally included in Tables C2 and C3. The Applicant provided an updated version for D2 [REP2-011].

5.3.10. In their WR [REP1-015] which followed submission of the June 2018 version of the HRAR [AS-002], NE also stated their view that the HRAR was procedurally correct in the light of the People Over Wind judgement.

5.3.11. NE, in their response to ExQ1 [REP2-034], confirmed that they considered that the correct European sites and features had been identified in the HRAR and that they agreed with the conclusions of the Applicant's in-combination assessment. They noted that the Applicant's revised HRAR acknowledged that particular impacts could result in a LSE on the features of some European sites and that mitigation measures had been prepared to avoid an adverse effect on their integrity.

5.3.12. However, in response to ExQ1.4.45 NE stated that it was still in discussion with the Applicant over air quality and noise impacts. On this basis I asked during Issue Specific Hearing (ISH)2 (ISH2:5) whether the conclusions that there were no in-combination effects was premature [EV-005]. In response NE confirmed that the scope of the assessment

was agreed but the conclusions would need to be checked in the light of further information on air quality and noise [EV-016].

5.3.13. In response to a question at ISH2, [Appendix C of REP3-015] the Applicant addressed cumulative effects from the Kemsley Mill CHP (K4) together with the Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility, for which a scoping request was received by the Planning Inspectorate in September 2018. It did not include an explicit reference to HRA in-combination effects but concluded that there was no potential for cumulative effects during the construction phase on designated sites and made specific reference to The Swale SPA and Ramsar site. It was considered that the only possible cumulative operational effect would be from emissions to air but that it was not possible to undertake an assessment as insufficient data was available in respect of emissions resulting from WKN.

5.3.14. Kent County Council (KCC) in their response to ExQ1 [REP2-033] submitted at D2 confirmed that they were satisfied on the basis of the information provided in the HRAR [AS-002], that the Project was unlikely to result in a LSE on the designated sites alone or in-combination with other developments.

5.3.15. The integrity matrix for The Swale SPA wrongly included the Avocet, Redshank and Grey Plover as qualifying features of the SPA and omitted to include the breeding bird assemblage and the waterbird assemblage (features as confirmed in NE's D4 submission [REP4-002]).

5.3.16. Decommissioning was not included in any of the matrices accompanying the HRAR [AS-022]. The Applicant commented on this point in their response to ExQ1.4.31 [REP2-030], in which it stated that decommissioning would take the form of making K4 inoperable and that they were not seeking consent to demolish either K4 or K1. The revised HRAR submitted at D5 [REP5-006] confirmed the Applicant's position with regard to decommissioning, namely that the decommissioning of K1 was not expected to have any negative LSE on any Natura 2000 site and that the decommissioning of K4 would be positive due to the removal of emissions from the facility.

5.3.17. In response to a question at ISH2 (ISH2:14) [REP4-002] NE confirmed the features of the nature conservation sites relevant to the HRAR [REP4-002] which were subsequently addressed by the Applicant [AS-022]. At D5, [REP5-017] NE confirmed that it agreed with the conclusions of the revised HRAR [AS-022] as it took account of their previous comments.

5.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

5.4.1. The Applicant described how they have determined what would constitute a *'significant effect'* within their HRAR [AS-022]. They also addressed potential in-combination effects, providing information on 22 projects which were considered in the in-combination assessment, the scope of which was agreed with NE [REP2-034].

5.4.2. A total of eight European sites were screened by the Applicant in its October 2018 HRAR [AS-022]. The Applicant concluded that there would be no LSE, either alone or in combination with other projects or plans, on six of these European sites and their qualifying features namely:

- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;
- Thames Estuary and Marshes Ramsar site;
- Queendown Warren SAC; and
- Outer Thames Estuary SPA.

5.4.3. It was confirmed in the signed Statement of Common Ground (SoCG) between the Applicant and NE [AS-023], which was submitted post D4 that NE agreed with the Applicant's conclusion of no LSE on the six European sites or their qualifying features, except the Outer Thames Estuary SPA to which no reference was made and which NE did not include in the list of sites that they considered should be included in the assessment. No other IPs disputed the Applicant's conclusion of no LSE on these sites and their qualifying features during the Examination.

5.4.4. The HRAR [AS-022] concluded that without the implementation of mitigation measures the Project was likely to give rise to significant effects, either alone or in combination with other projects or plans, on the qualifying features of the following two European sites:

- The Swale SPA
- The Swale Ramsar site.

5.4.5. Table 3.1 of the RIES [OD-003], based on the Applicant's HRAR and screening matrices [AS-022], sets out the conclusions on these European sites and their qualifying features. The IPs did not dispute the Applicant's conclusion for these European sites and their qualifying features.

5.4.6. The conservation objectives for the European sites assessed by the Applicant at the point of submission of the DCO application were set out within the Applicant's NSER [APP-033] and included in the subsequent updated versions of the HRAR submitted [AS-002 and AS-022].

5.4.7. The Applicant concluded that the project would not adversely affect the integrity of The Swale SPA or The Swale Ramsar site or any of their features, a conclusion not disputed by any IPs. It was confirmed in the signed SoCG between the Applicant and NE, submitted post D4, that NE agreed with the Applicant's conclusion of no adverse effects on the integrity of any European site, and that there were no remaining matters that had not been agreed [AS-023].

5.4.8. Section 2.4 of the SoCG identified the matters that were agreed between the Applicant and NE that informed the conclusion of no adverse effect on site integrity. These related to noise, air quality, light spill, and water quality and resources.

5.4.9. In respect of construction noise, it was agreed that a Development Consent Order (DCO) Requirement would provide that no impact piling would take place during January or February, and that no more than 10 days impact piling in total would be permissible consecutively or otherwise during November and December. This was proposed to avoid disturbance to over-wintering birds that could compromise their ability to survive as a result of increased flight responses.

5.4.10. In respect of visual disturbance, it was agreed that there would be no adverse effect due to the distance between the Proposed Development and The Swale SPA and The Swale Ramsar site and screening offered by other buildings. In addition, the Marsh Harriers that breed in the reed beds adjacent to the site access road are expected to remain there as they have remained breeding in this location despite the proximity of industrial development. As a result, they appear to have become habituated to the type of visual disturbance that could be anticipated during construction of the Proposed Development.

5.4.11. With regard to air quality it was agreed that adverse effects during construction would be avoided or reduced through the application of measures contained within the CEMP [REP5-004] and which would be secured in the DCO. It was also agreed that the data included in the updated ES Appendix 5.4 [REP2-011] demonstrated that the process contribution of the Project during operation would be less than 1% of the critical loads / levels of the Ramsar habitats and therefore, a significant effect on the Swale Ramsar site was not anticipated.

5.4.12. In respect of light spill it was agreed that appropriate lighting design to avoid adverse effects on The Swale SPA and The Swale Ramsar site would be addressed in the DCO, secured through Requirement (R)9 of the Recommended DCO.

5.4.13. It was also agreed that pollution prevention measures contained within the CEMP, which would be secured through R7 of the Recommended DCO, would avoid an adverse effect on The Swale SPA and The Swale Ramsar site during construction. Additionally, it was agreed that, following a Water Framework Directive scoping exercise undertaken by the Applicant, there would not be significant effects on The Swale SPA and The Swale Ramsar site.

5.4.14. The RIES [OD-003] was published on 22 October 2018 with comments sought by D5, 13 November 2018. The content of the RIES was not disputed by any IP although the Applicant submitted a revised HRAR at D5 [REP5-006] and a final version at D6 [REP6-005]. Having reviewed the additional versions of the HRAR I find that none of the changes affect the content of the RIES.

5.5. HRA CONCLUSIONS

5.5.1. I conclude that the Proposed Development would not have any likely significant effects on European sites once mitigation has been taken into account. I am also satisfied that the additional information and integrity

matrices submitted by the Applicant at D6 [REP6-005] taken with the ES [APP-008 to APP-036] are sufficient for the SoS to undertake an appropriate assessment of the effects of the Proposed Development on The Swale SPA and The Swale Ramsar site. The content of this Chapter, and the more detailed information contained within the RIES will assist the SoS in this task.

6. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.1. INTRODUCTION

6.1.1. This Chapter provides a balanced evaluation of the planning merits of the Proposed Development. It does so in the light of the legal and policy context set out in Chapter 3 and individual applicable legal and policy requirements identified in Chapters 4 and 5 above. The designated National Policy Statements (NPSs) NPS EN-1 and NPS EN-2 provide the primary basis for the Secretary of State (SoS) to make decisions on development consent applications for energy based Nationally Significant Infrastructure Projects (NSIPs) in England. Conclusions on the case for development consent set out in the application are therefore reached within the context of the policies contained in the NPSs.

6.2. CONCLUSIONS ON THE PLANNING ISSUES

6.2.1. I have reached a number of conclusions on the effects of the Proposed Development and its performance against relevant policy and legislation which draw on the analysis of the planning considerations in Chapter 4 and the relevant facts and issues documented in the Habitats Regulations Assessment (HRA) in Chapter 5. Of particular relevance to these conclusions have been the Applicant's *'Summary Table of Effects Prior to and Post Mitigation'* [REP2-030] and the revised Chapter 13 of the ES: Summary [REP2-026].

Issues arising in written and oral submissions

6.2.2. The only objection in principle to the Proposed Development was made at Deadline (D)8 by Mr Michael Vick [REP8-003]. Previously he had stated that he had *'no real objection'* to the Project. His objection was on the basis of the Proposed Development being significantly different from the original. As set out in Chapter 4 above I do not accept that the revisions would result in a change of any material significance.

6.2.3. There were no representations suggesting that the Proposed Development was inappropriate in policy terms and the majority of representations were related to matters of specific interest which were largely resolved during the Examination.

6.2.4. The host local authority Swale Borough Council (SBC), confirmed that it had no objections or significant concerns in respect of the Proposed Development.

Issues arising in the Local Impact Report (LIR)

6.2.5. Whilst deferring to the views of other IPs or statutory authorities, the LIR concluded that in SBC's view the Proposed Development would not give rise to significant concerns. Furthermore, the Applicant and SBC submitted a Statement of Common Ground (SoCG) agreeing all matters in respect of the effects of the Proposed Development, that the proposed

mitigation was appropriate and could be secured through the Development Consent Order (DCO) and that there were no matters of disagreement between the parties.

Conformity with National Policy Statements

6.2.6. In relation to NPS EN-1 and NPS EN-2 I find:

- no instances of non-compliance with NPSs were identified by IPs;
- the need for the Proposed Development is established through the NPSs;
- the Proposed Development generally conforms to high-level policy in NPS EN-1 and NPS EN-2; and
- the compliance of the Proposed Development has been examined against policy detail and tests applicable to individual planning issues as set out in relevant NPS paragraphs, with this analysis set out below.

Conformity with the Development Plan

6.2.7. The Proposed Development generally conforms with the development plan and no instances of unaddressed policy conflict have been identified. Moreover, there are no issues arising from development plan policies that conflict with relevant policy directions arising from NPSs so development plan policies will be fully met by a decision that is in accordance with relevant NPSs.

Application of other policies

6.2.8. I have found that the Proposed Development generally conforms with other relevant policies identified by SBC and the Applicant. Furthermore, as there are no conflicts between NPS EN-1 and NPS EN-2 and these other policies they would be addressed by a decision that is in accordance with relevant NPSs.

Environmental Impact Assessment

6.2.9. No submissions were made which raised concerns about the overall adequacy of the Environmental Impact Assessment (EIA) or the Environmental Statement (ES). The ES and associated information submitted by the Applicant during the Examination provided an adequate assessment of the environmental effects of the Proposed Development which meets the requirements of The Infrastructure Planning (EIA) Regulations 2017 (the EIA Regulations). It is sufficient to describe the Rochdale Envelope for it and to secure its delivery within that envelope through the DCO.

HRA considerations

6.2.10. The Proposed Development would not have any likely significant effects on any European sites once mitigation has been taken into account.

6.2.11. I consider that the ES together with additional information submitted by the Applicant throughout the Examination, culminating in a submission at Deadline 6 [REP6-006], provides sufficient information for the SoS to

undertake an appropriate assessment of the effects of the Proposed Development on The Swale Special Protection Area (SPA) and The Swale Ramsar site.

Environmental Permitting regime

6.2.12. The Proposed Development falls under the Environmental Permitting (England and Wales) Regulations 2016 (the EP Regulations) and therefore will require an Environmental Permit (EP). This is the only other consent which the Applicant has identified beyond those sought under the Planning Act 2008 (PA2008) in order to construct, operate and maintain the Proposed Development. The Environment Agency (EA), as the regulatory authority for EPs has confirmed that the existing EP for the K1 plant could be varied to include the K4 plant as a new combustion activity.

6.2.13. The EA has also confirmed that it is comfortable with the proposal and programme which the Applicant has set for the submission of a revised EP which was considered to provide sufficient time for the EP to be granted prior to the commissioning of the K4 plant. Consequently, without prejudice to the exercise of discretion by other decision makers, I find that there are no impediments to the implementation of the Proposed Development, should the SoS grant the application.

Air Quality

6.2.14. I am satisfied that, in terms of air quality, there would be no significant effects caused by the construction or decommissioning of the Proposed Development and a Construction Environmental Management Plan (CEMP), which would be secured through Requirement (R)7 of the Recommended DCO, would provide appropriate mitigation to manage the dust impacts during construction.

6.2.15. Emissions from the Proposed Development would be controlled by the EP regime, but the Applicant would expect lower levels of pollutants to be emitted than the existing Combined Heat and Power (CHP) plant. In any event, emissions would not be expected to exceed defined objectives or standards even when based on the worst-case assumptions within the assessment model. On this basis the Applicant has not proposed air quality monitoring, no Interested Party (IP) has requested it and therefore I see no reason for such monitoring.

6.2.16. Air quality impacts have been addressed through a stack height assessment in order to mitigate the impacts of emissions. As set out in the Recommended DCO there is some flexibility in the height of the HRSG stack, but I am satisfied with the Applicant's determination of and reasoning for the height as set out in the ES [APP-009], Stack Height Determination [APP-019] and Post Deadline 7 Covering Letter [AS-025].

6.2.17. As the Proposed Development would not conflict with any national or local air quality limits and would only have a very small effect on air quality, I find that it would comply with the air quality sections of NPS

EN-1 and NPS EN-2 as well as the National Planning Policy Framework (NPPF) and relevant development plan policies.

6.2.18. In reducing carbon dioxide ($CO_{2)}$ emissions the Proposed Development would have a beneficial effect which can be afforded some weight, but that weight is limited by the advice in NPS EN-1 and NPS EN-2 which state that individual applications for NSIPs are not to be assessed against carbon budgets.

Ecology

6.2.19. In considering ecology the ES did not identify any significant effects on designated sites, protected species and habitats and other species of principal importance for the conservation of biodiversity.

6.2.20. Various construction phase mitigation measures have been proposed which would be secured by Requirements set out within the Recommended DCO. The effect of those mitigation measures would be that no residual likely significant effects are anticipated on any of the ecological receptors identified. Accordingly, as the Proposed Development would avoid significant harm to biodiversity conservation interests it would be compliant with the aims of NPS EN-1, the NPPF and relevant development plan policies.

Landscape and Visual

6.2.21. There are no significant landscape effects considered to arise as a result of the Proposed Development during the construction, operational or decommissioning phases. However, the proposed K4 CHP plant would contribute to a cumulative significant residual adverse effect on landscape receptors during both construction and operation albeit the contribution of the K4 plant would be negligible. In addition, I find that a significant landscape effect would be likely to occur individually during the construction phase.

6.2.22. A significant residual adverse visual effect has been identified at the operational stage to arise from sequential views along the Saxon Shore Way as a result of the Proposed Development, and a cumulative significant residual adverse visual effect has been identified during the construction and operational stages.

6.2.23. NPS EN-2 makes it clear that it is not possible to eliminate all the visual impacts associated with a fossil-fuel generating station. The design details agreed for K4 under R5 of the Recommended DCO will seek to reduce visual impacts as much as possible by using an appropriate design approach for the context of the Site, but a residual impact is still anticipated.

6.2.24. Given the nature and magnitude of that impact it is not considered that the visual and cumulative landscape effects would outweigh the benefits of the Project.

Traffic and Transport

6.2.25. Having taken account of the concerns of Kent County Council (KCC) about the impacts of construction traffic I find that the measures sought could be addressed through R8 of the Recommended DCO which would take account of further information when it is available from the contractor. In addition, I consider that because R8 already requires the submission and approval of a Travel Plan, no specific amendment is necessary to restrict arrival or departure during peak times as specified in R8.

6.2.26. I am satisfied that the ES has adequately assessed traffic effects during the construction, operation and decommissioning phases of the Proposed Development. Furthermore, the Proposed Development would accord with the requirements of NPSs, the development plan and other policies, and traffic management issues are adequately secured through the Recommended DCO.

Water Environment

6.2.27. In terms of flood risk, I find the Proposed Development acceptable, compatible with the flood risk of the area and in compliance with NPS EN-1, the NPPF and development plan policies. The Applicant has demonstrated compliance with the Water Framework Directive and that there would be no impact upon The Swale Estuary Marine Conservation Zone.

6.2.28. Subject to the controls which would be secured through the Recommended DCO aimed at managing surface water run-off during construction, operation and decommissioning, the Proposed Development would not have any detrimental impact on water quality. As a result, I find that in respect of water quality and resources the Proposed Development would be in accordance with NPS EN-1, NPS EN-2, the NPPF and the development plan.

Noise and Vibration

6.2.29. Noise and vibration arising from on-site construction activities, construction vehicle movements or decommissioning works are not expected to give rise to any significant effects for sensitive receptors. When the K4 plant is operational no significant effects are predicted from vibration at any time or from noise during normal operating conditions or when the dump condenser is operating. In these circumstances a requirement for post construction noise monitoring is not necessary and has not been requested by any IP.

6.2.30. The use of the emergency steam release valve systems would create a significant adverse noise impact. However, its infrequency and the likelihood that it would represent an improvement on the existing situation would result in a limited impact.

6.2.31. Through controls over construction, secured through Requirements in the Recommended DCO, other than in emergencies, the Proposed

Development would comply with NPS EN-1, NPS EN-2 and the NPPF in respect of noise and vibration.

Ground conditions

6.2.32. I am satisfied that the Proposed Development accords with all relevant legislation and policy requirements in respect of ground conditions and that relevant matters are adequately provided for and secured in the Recommended DCO.

Archaeology and Cultural Heritage

6.2.33. Whilst the area within which the Site is located has considerable potential to contain archaeological remains the specific characteristics of the Site suggest that the potential for significant archaeological remains is unlikely. Nevertheless, particularly taking account of the submissions made by Historic England and KCC, it is appropriate to make provision for a suitable programme of archaeological works to take place to ensure that potentially significant adverse effects would be comprehensively mitigated. This would be effectively secured through the Recommended DCO.

6.2.34. There would be no significant archaeological or cultural heritage related effects from the construction, operation or decommissioning of the Proposed Development either physically or on the setting of any Scheduled Monument, listed building or other designated heritage asset in the surrounding area. Consequently, there would be no harm to the significance of heritage assets. Similarly, there would be no significant cumulative archaeological or cultural heritage effects as a result of the Proposed Development.

6.2.35. On the basis of the evidence and the proposed mitigation as secured through the Recommended DCO, all impacts have been addressed in a manner that complies with the Historic Environment elements of NPS EN-1 and the development plan.

Other considerations

6.2.36. Taking all other relevant documents and policies drawn to my attention into account, no other matters have arisen which affect the identification in sections 4.1 – 4.17 above, of the planning matters that are required to be balanced by the SoS or taken into account in the DCO decision.

6.3. THE PLANNING BALANCE

6.3.1. In reaching conclusions on the case for the Proposed Development, I have had regard to NPS EN-1 and NPS EN-2 as the relevant NPSs, the NPPF, the LIR and all other matters which I consider are both important and relevant to the SoS's decision. I have further considered whether the determination of this application in accordance with the relevant NPSs would lead the UK to be in breach of any of its international obligations where relevant. I conclude that, in all respects, this will not be the case.

6.3.2. The potential adverse impacts of the Proposed Development and the concerns raised in submissions on the application have been considered. The ES identifies that the Proposed Development would either have no significant effects from construction, operation and decommissioning activities on the environment, or that the identified potential significant effects can be mitigated as far as possible through practices which are appropriately secured in the Recommended DCO. All harmful effects are within the scope envisaged in the relevant NPSs as still being policy compliant. I concur with these findings.

6.3.3. The exception to this is in respect of landscape character and visual receptors, where likely significant effects from the construction and operation of the Proposed Development cannot be entirely mitigated. Such impacts are reflective of the scale of development which is appropriate for the industrial context of the Site. NPS EN-1 acknowledges this will be the case with large-scale infrastructure developments and a balancing exercise must be undertaken in terms of the public benefits and the harm caused.

6.3.4. The public benefits of the Proposed Development can be identified in the context of NPS EN-1's recognition of the need for energy generating infrastructure and the presumption in favour of granting consent for energy NSIPs whilst recognising that fossil fuel generation, and gas in particular, plays a vital role in providing reliable energy supplies.

6.3.5. The Site of the proposed energy infrastructure is determined by its existing industrial use and CHP is recognised as being particularly suited to paper mills. NPS EN-1 further supports CHP in indicating that substantial additional positive weight should be given to applications incorporating CHP. A new CHP plant would also result in lower Greenhouse Gas emissions than an upgrade to the existing plant. Further limited benefits of the K4 plant would occur in providing an alternative to using grid electricity and having the capability to export electricity to the grid.

6.3.6. In reducing emissions compared with the future baseline there would also be a benefit although this would be limited on the basis that NPS EN-1 states that individual applications are not to be assessed against carbon budgets.

6.3.7. In conclusion, I find that the identified harms in relation to the construction and operation of the Proposed Development are outweighed by the benefits from the provision of energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised above. I further conclude that there is no breach of NPS policy overall.

6.3.8. No HRA effects have been identified and there is no reason for HRA matters to prevent the making of the Order.

6.3.9. For the reasons set out in the preceding chapters and summarised above, I conclude that the Proposed Development is acceptable, and that development consent should be granted. I carry this conclusion forward

noting also that my reasoning above identifies the basis for a small number of changes to the DCO, documented in Chapter 7 below.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. A draft Development Consent Order (dDCO) [APP-005] and Explanatory Memorandum (EM) [APP-006] were submitted by the Applicant as part of the application for development consent. The EM describes the purpose of the dDCO as originally submitted, with each of its articles and schedules.

7.1.2. The submission version dDCO was broadly based on the Model Provisions (MPs) (the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) (the Model Provisions Order) but departed from those clauses to draw upon drafting used in made Orders for energy development under the Planning Act 2008 (PA2008). There has been a change of approach to the use of Model Provisions since the Localism Act 2011, and although they provide a starting point for the consideration of the DCO, precedent cases are generally more appropriate. The submission version dDCO [APP-005] and subsequent iterations are in the form of a statutory instrument as required by section (s)117(4) of PA2008.

7.1.3. This Chapter provides an overview of the changes made to the dDCO during the Examination process, between the original application dDCO and a preferred dDCO submitted by the Applicant following Deadline(D)7 [AS-027]. It then considers changes made to the preferred dDCO in order to arrive at my Recommended DCO in Appendix D to this Report.

7.1.4. The following sections of this Chapter:

- report on the structure and functions of the dDCO;
- report on the processes used to examine the dDCO and its progress through the Examination;
- summarise changes made to the dDCO during the Examination;
- set out final changes proposed, consequent on the Examining Authority's (ExA's) consideration of the evidence and to address matters of drafting convention;
- address the relationship between the DCO and other consents; and
- address the provision of a defence against nuisance in the DCO.

7.2. THE DCO AS APPLIED FOR

7.2.1. This section records the structure of the dDCO which is based on the Applicant's preferred dDCO [AS-027] following D6 and is as follows:

- Part 1, Articles 1 and 2 sets out how the Order may be cited and when it comes into force. Article 2 sets out the meaning of various terms used in the Order;
- Part 2, Articles 3 to 8 provide for the grant of development consent for the Proposed Development, and allow it to be carried out, maintained and operated. Articles 6 and 7 set out who has the benefit

of the powers of the Order and how those powers can be transferred. Article 8 provides a defence to proceedings in respect of statutory nuisance;
- Part 3, Article 9 provides supplemental powers relating to the discharge of water;
- Part 4, Articles 10 to 14, is concerned with miscellaneous and general matters including the procedure in relation to certain approvals under requirements, operational land under the Town and Country Planning Act 1990, the certification of plans, the serving of notices and arbitration.

7.2.2. There are 2 Schedules to the Order, providing for the description of the Authorised Development (Schedule 1) and the Requirements applying to it (Schedule 2).

7.2.3. I find that the structure of the DCO is fit for purpose and no changes to the structure as outlined above are recommended.

7.3. THE EXAMINATION OF THE DCO

7.3.1. My review of the application versions of the dDCO [APP-005] and the EM [APP-006] commenced before the Preliminary Meeting (PM). There were a number of technical and drafting matters which were desirable to address early in the Examination. These were matters which did not particularly relate to the interests of Interested Parties (IPs) and therefore it was appropriate to address them before the relationship between IP issues, planning merits and the dDCO was examined in any detail.

7.3.2. Matters arising from the application versions of the dDCO and EM were documented during the pre-examination period, as part of preparation for the PM. As a consequence of this work, the first hearing (described in Chapter 1 above) related to the dDCO. The Rule 6 Letter of 18 June 2018 [PD-005] was accompanied by notice of Issue Specific Hearing (ISH)1 on the DCO (Annex F), an Agenda (Annex G) and a Schedule of the Examining Authority's (ExA's) Issues and Questions relating to the dDCO (Table 1 to Annex G). This provided adequate notice to the Applicant and IPs before the start of the Examination that it was intended to hold an early ISH into the DCO and provided them with detailed notice of the matters that would be raised.

7.3.3. As a consequence of the initial Procedural Decisions, ISH1 into the dDCO was held on 17 July 2018 on the same day as the PM. An audio recording of the hearing was subsequently put on the project website [EV-009].

7.3.4. In Table 1 to Annex G of the Rule 6 Letter [PD-005] a number of questions were posed principally in respect to the wording and provisions within the dDCO [APP-005]. The Applicant responded to these questions with a written summary of the oral case made at ISH1 [REP1-004] and produced a further dDCO [REP3-004] (clean copy) and [REP3-003] (tracked changes) which included changes which the Applicant agreed were necessary, as well as resulting from discussions with IPs, and the correction of typographical errors it had found.

7.3.5. In my initial Written Questions (ExQ1) issued on 24 July 2018 I requested responses to matters addressed in Table 1 of Annex G of my Rule 6 letter [PD-005] by Deadline (D)1 (31 July 2018) and comments on any matters raised in those submissions by D2 (21 August 2018). ExQ1 also stated that with respect to matters raised in Relevant Representations (RRs) or Written Representations (WRs) but which were not discussed at ISH1 and which in the view of IPs required changes to the DCO then the proposed changes should be provided by D2 with an explanation of what was proposed and why.

7.3.6. Matters for examination arising from the DCO and progress on them were tracked throughout the Examination with a further ISH on the DCO, ISH3, held on 14 September 2018 [EV-013] (audio recording). The agenda (Annex A) was published on 5 September [EV-006] and included at Table 1: ExA's Issues and Questions relating to ISH3. The purpose of this table was to support efficient oral participation in ISH3. Whilst the Applicant was the only party in attendance at ISH3 the Environment Agency responded to the Table of Issues and Questions in advance of ISH3 and their comments were available to the Applicant prior to the hearing [EV-015].

7.3.7. The Applicant updated the dDCO several times during the Examination, responding to issues raised in questions, to WRs and as a consequence of the hearing processes. At each revision, the Applicant submitted a clean copy and a copy showing tracked changes from the previous clean copy version. The versions of the dDCO submitted by the Applicant were as follows:

- Version 1(Submission Version) [APP-005], April 2018;
- Version 2 (D3 Version) [REP3-004] (clean copy) and [REP3-003] (tracked changes) was submitted in response to matters raised in DCO ISH1 and DCO ISH3, and matters raised in WRs and ExQ1, September 2018;
- Version 3 (Post D4 Version) [AS-021] (clean copy) and [AS-020] (tracked changes) was submitted to address matters arising from the boiler selection process, October 2018;
- Version 4 (D6 Version) [REP6-002] (clean copy) and [REP6-003] (tracked changes), November 2018; and
- Version 5 (Post D7 Version [AS-027] (clean copy) and [AS-028] (tracked changes), December 2018.

7.3.8. The ExA's preferred DCO was published on 22 October 2018 [PD-009] with responses sought by D5, 13 November 2018. This was in the form of a Schedule of Recommended Amendments to the Applicant's draft DCO Post D4 Version (Version 3) [AS-021]. At D5 [REP5-011] the Applicant provided a commentary on the ExA's schedule of amendments to the DCO which was updated at D6 [REP6-002]. Post D7 the Applicant made a further amendment to reflect the increase in the maximum height of the gas turbine building [AS-027].

7.4. CHANGES TO THE DCO

7.4.1. In this section I do not report on every change made to the dDCO in the updated versions, as many were as a result of typographical errors, or slight revisions of the wording following dialogue between the Applicant and relevant IPs or from their WRs, or as a result of my Questions (ExQ1) [PD-006a] and (ExQ2) [PD-007]. I do however comment on those changes made during the Examination which I consider to be significant because of their effect or because they were subject to further consideration after ISH1. Numbers for Articles and Requirements are based on the Submission Version (Version 1) unless otherwise referenced.

Part 1 Article 2 Definition of Apparatus

7.4.2. The Applicant justified the inclusion of the term '*1991 Act'* on the basis that it was used in the definition of *'apparatus'*, being a term that is not limited to statutory undertakers' apparatus within a street and used in a broader sense to include apparatus present within the Order limits [REP1-004]. Subsequently, the Applicant accepted the definition of apparatus as *'has the same meaning as in [section] s105(1) of the New Roads and Street Works Act 1991'* which was included in the D3 Version of the dDCO [REP3-004].

Part 1 Article 2 Definition of Authorised Development

7.4.3. At ISH1 I questioned the definition of *'authorised development'* and specifically its use in Schedule 1 together with the terms *'further development'* and *'associated works'*.

7.4.4. The Applicant's response, [REP1-004] stated that all works described in Schedule 1 can be categorised as part of the principal development. The Applicant noted that it did not consider there to be any *'ancillary works'* (as that term was defined in Schedule 1 to the Model Provisions Order) or associated development, and that the use of the term '*further development'* was not intended to be of any statutory significance. The Applicant's use of the term *'ancillary'* was in a general sense but considered that all development was necessary to deliver the core project and therefore was not associated development.

7.4.5. Subsequently the term *'and associated development'* was deleted from the definition of *'authorised development'* in Article 2 [REP3-004]. In addition, references to *'main plant items'*, and *'ancillary plant items'* were removed from the description of Work No. 1 in Schedule 1. I support these changes as they remove any potential confusion regarding the definition of *'ancillary'* arising from previous made DCOs. The term *'further development'* has been retained in Schedule 1 and I am also content with its inclusion.

Part 1 Article 2 Definition of Commence

7.4.6. The Applicant was asked why the definition of material operation referred to s56(4) of the Town and Country Planning Act 1990 (the 1990 Act) rather than s155 of PA2008 as occurs in other DCOs including Knottingley [PD-005]. The Applicant's response noted that *'operation'* is not defined in PA2008 and therefore considered *'material operation'* to be an unhelpful definition compared to the one in s56(4) of the 1990 Act, noting the use of the latter in a number of recent DCOs and therefore preferring not to make any change to the definition [REP1-004].

7.4.7. In responding to ISH3:3 [REP3-016] the Applicant acknowledged that as the Wrexham DCO used the PA2008 definition it was appropriate to use that definition notwithstanding the Applicant's preference to retain the reference to s56(4). The change was included in Version 2 of the dDCO [REP3-004]. Subsequently the Eggborough Gas Fired Generating Station Order 2018 adopted the definition of commence based on s115 of PA2008.

7.4.8. The definition of commence in the Version 1 of the dDCO [APP-005] provided for a number of exclusions from the statutory definition of commencement. In ISH1:11 the Applicant was asked to justify the exclusions and to comment on the potential conflicts with the definition of commence achieved through restrictions on the commencement of development through Requirements. A related question (ISH1:60) asked how Requirement (R)13 would be effective in seeking to secure an archaeological scheme of investigation before commencement when archaeological investigations are currently excluded from the definition of commencement.

7.4.9. In responding to ISH1:11 [REP1-004] the Applicant referred to its position as set out in paragraph 3.5a of the EM noting that many recent DCOs had excluded minor, low impact work from the definition of *'commence'* including 8 out of 10 most recently made at that time, or in some cases more intrusive or extensive works [APP-006]. The Applicant's case was that it had struck a reasonable balance in this case in terms of the works that it was seeking to exclude.

7.4.10. In responding to ISH1:60 [REP1-004] the Applicant stated that the purpose of R13 was to require archaeological investigations to be carried out before the start of more intrusive groundworks that would be required for the substantive development, which have the potential to adversely affect any assets which may be present on the site, noting that archaeological investigations are careful methodical works that would not adversely impact on any archaeological assets. The Applicant did not therefore consider that there was any conflict with the purpose of R13 in allowing archaeological investigations to be carried out prior to the discharge of the pre-commencement requirements.

7.4.11. At ISH3 the Applicant was asked (ISH3:3), notwithstanding that *'operation'* is not defined in PA2008 and that the definition of *'commence'* has been accepted by various Secretaries of State (SoS) on previous

DCOs, as the most recent energy DCO (Wrexham) uses the PA2008 definition, would it not be more appropriate in this case. The Applicant confirmed that their preference would be to retain the reference to s56(4) but acknowledged that to be consistent with the Wrexham Order it would be appropriate to use the PA2008 definition [REP3-016]. Accordingly, this change was included in Version 2 of the dDCO [REP3-004].

Part 1 Article 2 Definition of Highway Authority

7.4.12. Version 1 of the dDCO defined the highway authority as having the same meaning as in the Highways Act 1980. In response to ExQ2.10.1 the Applicant amended the definition to '*means Kent County Council'* in order to provide consistency with the revised definition of *'relevant planning authority'* in dDCO Version 4 [REP6-002].

Part 1 Article 2 Definition of Lead Local Flood Authority

7.4.13. In response to my preferred DCO [PD-009] where I identified the need for terms used in the dDCO to be defined, and the Applicant's response [REP5-011] the definition of lead local flood authority as '*has the same meaning as in section 6 of the Flood and Water Management Act 2010'* was added in dDCO Version 4 [REP6-002].

Part 1 Article 2 Definition of Maintain

7.4.14. In ISH1:13 I asked whether the highlighted phrase within the definition of *'maintain includes… reconstruct or replace in relation to the authorised development'* should be replaced by *'any part, but not the whole of'*. The Applicant's response [REP1-004] indicated a reluctance to replace the phrase because it considered that it was important to retain for example the whole of the authorised development whilst the subsequent wording in the definition would form an appropriate safeguard to restrict the extent of permitted maintenance activities.

7.4.15. In ISH3:5 I suggested a further rewording of the definition, namely *'includes inspect, repair, adjust or alter the authorised development, and remove, reconstruct, or replace any part but not the whole of, the authorised development'*. In their response [REP3-016] the Applicant confirmed that the change was included in Version 2 of the dDCO [REP3-004].

Part 1 Article 2 Definition of Relevant Internal Drainage Board

7.4.16. In response to my preferred DCO [PD-009] in Version 4 of the dDCO [REP6-002] the Applicant added the definition of relevant internal drainage board as '*means the internal drainage board for the land in question'*.

Part 1 Article 2 Definition of Relevant Local Planning Authority

7.4.17. Version 2 of the dDCO amended the definition of Relevant Local Planning Authority to *'means Swale Borough Council'* as set out in [REP1-004] to be more specific than the original definition.

Part 1 Article 2 Definition of Southern Gas Networks PLC

7.4.18. At Version 2 of the dDCO the Applicant included a requirement (R14) to address works in the vicinity of gas apparatus belonging to Southern Gas Networks PLC. Southern Gas Networks PLC was defined in dDCO Version 4 [REP6-002].

Part 2 Article 3 Development Consent etc. Granted by the Order

7.4.19. ISH1:21 noted that *'constructing'* was not a defined term in Article 2 and maintain is addressed in Article 4. Consequently, the Applicant agreed [REP1-004] to replace *'constructing or maintaining'* with *'carrying out the authorised development'* which was confirmed in Version 4 of the dDCO [REP6-002].

Part 2 Article 5 Operation of Generating Station

7.4.20. In ISH1:24 the Applicant was asked to consider whether the phrase '*to obtain a permit or licence under any legislation'* should be amended to '*obtain <u>any</u> permit or licence <u>or any obligation</u> under any legislation'* in line with the approach adopted in the Wrexham DCO. The Applicant confirmed that it was content to make the first amendment but resisted the second on the basis that when the provision is read in full it would refer to obtaining obligations under legislation as required from time to time to authorise the operation of a generating station. I am content with the Applicant's response and the amendment made in Version 2 of the dDCO [REP4-004].

Part 1 Article 8 Defence to Proceedings in Respect of Statutory Nuisance

7.4.21. This matter is dealt with in Section 7.5 below.

Part 1 Article 9 Discharge of Water

7.4.22. In their RR Kent County Council (KCC) suggested an amendment to Article 9(3) adding *'or the consent of the authority which has consenting authority'* [RR-003]. The Applicant proposed the following amendment at D3 [REP3-004] '*or the person or body otherwise having authority to give such consent'* which I consider appropriately addresses KCC's concerns.

7.4.23. In ISH1:29 I asked the Applicant to consider whether *'within the meaning of'* should be replaced by '*for which an environmental permit*

would be required under Regulation 12 of' in Article 9(7). The Applicant accepted the need for the change [REP1-004] which was included in Version 2 of the dDCO [REP3-004].

Part 1 Article 12 Certification of Plans

7.4.24. Throughout the Examination the Applicant updated the content of Article 12 to reflect the design evolution in respect of the selection of a vertical boiler configuration and the removal of those plans which no longer form part of the application from the list in Article 12(1). Document reference numbers using the Examination Library reference were also incorporated and as documents were amended the Article was also updated.

Schedule 1

7.4.25. In Version 2 of the dDCO [REP3-004] the Applicant made reference to Article 5 in addition to Articles 2, 3 and 4 reflecting the fact that the authorised development describes the operation of a Nationally Significant Infrastructure Project (NSIP) as well as its construction and maintenance. The description of the authorised development was also amended to remove reference to its construction, operation and maintenance and to bring it in line with the convention used in other DCOs.

7.4.26. Within Work No. 1 references to main plant items and ancillary plant items were removed in Version 2 of the dDCO [REP3-004]. (See Part 1 Article 2 above.) References within Works No. 1 and 2 to K1 and K2 plants and text clarifying the purpose of the pipe bridge were also removed as being superfluous [REP3-004]. In Version 4 [REP6-002] references to the heights of Work No. 1 (e) and (j) a heat recovery steam generator stack and a package boiler stack respectively, were removed to provide flexibility in the height as set out in Table 1 of Schedule 2.

7.4.27. A revised version of the Works Plans – Key Plan was submitted at D1 [REP1-003] providing a revised boundary for Work No 1 and reflecting the limits of deviation identified on the Works Plans for both the horizontal and vertical boiler options for Work No. 1(g) and the boundaries of Works No 1(k) – (w) in particular.

7.4.28. Through ISH1:43 justification / clarification was sought in respect of items (a) to (f) described as *'further development'* after Work No. 5. In responding, [REP1-004] the Applicant indicated that as a result of further design work the deletion of (a) *'the strengthening or alteration of any building'* might be possible and was able to confirm this at D3 [REP3-002]. With regard to lighting which was identified within item (b) in Version 1 of the dDCO the Applicant justified inclusion on the basis that R9 means that any lighting proposed and authorised by Work No.1(b) would be subject to the approval of the relevant planning authority.

7.4.29. The Applicant also appropriately justified the need for Work No. 5 (e) in Version 1 relating to construction compounds and construction activities in spite of apparent duplication with Work No. 3. The former provides a

more detailed description of the activities and works included within the scope of Work No.3, also allowing for day to day construction activities to take place around the site.

7.4.30. In ISH1:43 I asked the Applicant to consider how, in the event that further development gives rise to materially different environmental impacts than those assessed in the ES, the impact would be assessed and what mitigation might be necessary. In response [REP1-004] the Applicant indicated that there was no scope for materially new or materially different environmental effects to arise as a result of carrying out works (a) to (f). Nevertheless, as set out at ISH3:9, clarification was sought from the Applicant in the event that there were possible environmental impacts which had not been assessed. Amended text was included in Version 2 of the dDCO [REP3-004] which was further amended in Version 4 [REP6-002] in response to my preferred DCO.

7.4.31. On the basis of the above comments I am content with the scope of Schedule 1.

Schedule 2 Requirement 1: Interpretation

7.4.32. In Version 2 of the dDCO [REP3-002] the definition of commissioning was amended in order to relate it to the authorised development as indicated in ISH1:44. In Version 4 [REP6-002] AOD was defined as '*above ordnance datum'* in response to ExQ2.10.2.

Schedule 2 Requirement 5: Detailed Design

7.4.33. In ISH1:45 I suggested that the term *'siting'* might be more appropriate than *'layout'* in R5(a) based on the type of development. The Applicant indicated no strong preference for either term [REP1-004] but included the change in Version 2 of the dDCO [REP3-004].

7.4.34. Table 1 has been amended to provide updated figures for Work No. 1(e) and Work No. 1(j) reflecting site levels based on AOD and a site level plan was also submitted at D5 [REP5-007]. In order to provide flexibility in the height of the HRSG stack it was specified as being between 70m and 73m high which when based on AOD was amended to 79-82m.

Schedule 2 Requirement 8: Construction Traffic Management Plan

7.4.35. As set out in section 4.13 above, KCC sought amendments to R8 to restrict the hours of arrival and departure for HGV vehicles. This amendment was presented alongside a request for a new requirement to secure the preparation of a final Transport Assessment which would also provide for the introduction of traffic counters at entrances to the Site. For the reasons set out in section 4.13 I do not consider that such changes are necessary.

Schedule 2 Requirement 12: Contaminated Land and Groundwater

7.4.36. In Version 1 of the dDCO, R12 was headed *'Contaminated Land and Groundwater'*. As set out in the EM it also required a piling risk assessment and details of ground gas protection measures to be submitted to the Relevant Planning Authority (RPA) in consultation with the Environment Agency (EA). At D4 [REP3-004] R12 was amended to address the issue of commencement resulting in the addition of a reference to investigations for assessing ground conditions and the removal of the reference to the piling risk assessment which became R15. No changes were made to the subsequent version of the dDCO [AS-021] but the EA proposed changes to R12 and R15 at D4 [REP4-001]. I addressed these changes in the ExA's Recommended Amendments to the Applicant's dDCO [PD-009] making only minimal changes and concluding that the suggestions made by the EA were not considered necessary or appropriate. At D6 the Applicant made a change to R15 to reflect my preferred DCO.

7.4.37. At D5 the EA responded to my proposed amendments [REP5-013] noting that whilst the heading of R12 refers to groundwater the main part of the requirement concerns ground gas and that EA's remit was groundwater rather than ground gas. Consequently the EA suggested that if R12 was to deal only with gas protection measures then reference to EA should be removed. Nevertheless, the EA commented that the design of gas protection measures relies on adequate ground investigations and monitoring and therefore measures should be approved prior to ground investigations or archaeological investigations. With reference to R12(3) and R12(4) the EA commented that this reflects their standard land contamination requirement for groundwater protection and on that basis they should be consulted.

7.4.38. In Version 4 of the dDCO [REP6-002] the Applicant accepted the changes in my Recommended Amendments to the Applicant's dDCO [PD-009] and removed the reference to consultation with the EA in R12(1). The Applicant had not added the EA as a consultee in relation to the investigation and remediation scheme under R12(3) based on the EA view that it only wished to be contacted in relation to groundwater protection which could be achieved by agreement between the EA and Swale Borough Council (SBC) in discharging the function as RPA under R12. Nevertheless, the Applicant did not have a strong objection to the EA being added as a consultee under R12(3) insofar as it related to groundwater protection.

7.4.39. On that basis my recommendation is to retain the title of R12 as Land Contamination and Groundwater, to remove the reference to the EA in R12(1) as proposed by the Applicant and to add *'in consultation with the Environment Agency in respect of groundwater protection'* after '*relevant planning authority'* in R12 (3). This would seem to ensure that the EA was consulted only in relation to groundwater protection as requested but that the original scope of the requirement was not unnecessarily changed. I do not accept the suggestion that the consultation on

groundwater protection could be secured by agreement between the EA and SBC because this does not give the EA the right to be consulted.

Schedule 2 Requirement 13: Archaeology

7.4.40. Changes to Version 1 Requirement 13 were made at both D3 [REP3-004] and Post D4 [AS-021]. The former was to address matters relating to the definition of *'commence'* to ensure that the requirement must be discharged prior to commencement and prior to the carrying out of any archaeological investigations.

7.4.41. To address KCC's concerns regarding the original scope of the requirement it was amended to ensure that the written scheme of investigation was to be submitted to and approved by the RPA in consultation with KCC and that its scope was amended. At D5 [REP5-015] KCC confirmed that it had no further comment on AS-021.

Schedule 2 Additional Requirement: Works in vicinity of gas apparatus

7.4.42. At D3 the Applicant included a new requirement within Version 2 of the dDCO [REP3-003]. This addressed excavations in the vicinity of the Southern Gas Network (SGN) gas main to the north of the Site. SGN confirmed it was content with the requirement as set out in the Applicant's Written Case on ISH3 [REP3-016].

Schedule 2 Additional Requirement: Piling

7.4.43. In response to the concerns from Natural England (NE) about the potential effects of noise disturbance on the bird features of the Swale Special Protection Area (SPA) and Ramsar site, the Applicant noted [REP2-029] that they had agreed with NE that a requirement restricting the total number of days that impact piling is permissible would be added to the dDCO to be submitted at D3.

7.4.44. The proposed requirement in respect of impact piling would prohibit piling in the core bird wintering period during January and February and limit piling to no more than 10 days in total across November and December. The Applicant confirmed this proposed wording in Version 5 of the dDCO [REP3-004]. I proposed a further modification to clarify that impact piling is limited to 10 days in total in November and December although the Applicant did not consider such clarification was necessary (R16 of the Recommended DCO). No IPs commented on the wording of R16 at D6.

Schedule 2 Additional Requirement: Requirement for Written Approval

7.4.45. As highlighted at ISH1, a number of requirements state that details should be submitted to and approved by the RPA. In Version 2 of the dDCO [REP3-004] the Applicant included a new requirement (R18 in the

Recommended DCO) which provides for written approval and is based on Model Provision 36.

Schedule 2 Additional Requirement: Decommissioning

7.4.46. Following my questions at ISH1 and ISH 3 about the potential need for a requirement to address decommissioning the Applicant noted that there was a trend for decommissioning / demolition requirements in recent Orders [REP3-016]. However, the Applicant also noted that the Palm Paper and Port Talbot Orders, where in each case the power station is in the context of a substantial pre-existing industrial complex as opposed to a standalone development, do not include any form of decommissioning requirement.

7.4.47. Furthermore, the Applicant identified that obligations to decommission or demolish a development are unusual in the planning system and only imposed by exception. In this case the Applicant considered that there was no clear need or justification for such a requirement given the nature of the site and the absence of a need to decommission or demolish any other part of the site in the future. It was also pointed out that the approach to the demolition of K4 was something that should be an operational question for the owner of the overall complex and would be subject to the Environmental Permitting regime relating to site closure when a permit is surrendered with the EA having a range of powers to require the removal of equipment and buildings for pollution control purposes.

7.4.48. Without prejudice to their position, the Applicant suggested the wording of a requirement to address demolition and decommissioning which it considered appropriate in the event I were minded to recommend such a requirement. This was based on a similar requirement in the Wrexham Order. I included this, without alteration in the ExA's Recommended Amendments to the Applicant's dDCO [PD-009]. At D5 the Applicant indicated that they had nothing further to add in relation to the draft requirement.

7.4.49. The Kemsley Paper Mill Site forms part of a wider industrial complex and is therefore similar to the Palm Paper and Port Talbot complexes where decommissioning requirements were not imposed. Nevertheless, in this case I consider that such a requirement is appropriate reflecting the trend in recent Orders and in order to address the need for the development to be demolished and removed to assist with restoration of the Mill site when it is no longer operational.

Summary of ExA's Changes

7.4.50. In summary the changes which I am proposing in the Recommended DCO which differ from the Applicant's final draft (Version 5) [AS-027] are as follows:

- Article 8 (1) – removal of reference to paragraphs a), c), d) and fb) of S7 9(1) of the EPA1990;
- Schedule 2 Requirement 16(2) addition of 'period consisting of the' before 'months of November and December'
- Schedule 2 Additional Requirement 19 to address decommissioning and demolition strategy.

7.5. LEGAL AGREEMENTS AND OTHER CONSENTS

7.5.1. There are no development consent obligations pursuant to the 1990 Act or equivalent undertakings or agreements of which the SoS needs to be aware or to take into account in the decision.

7.6. NUISANCE

7.6.1. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP) regulation 5(2)(f) requires that an application must be accompanied by…. '*a statement whether the proposal engaged one or more of the matters set out in section 79(1)* […] *of the Environmental Protection Act 1990* [EPA1990] *and, if so, how the applicant proposes to mitigate or limit them.'* This obligation has been discharged in the Statement of Statutory Nuisance (SSN) submitted with the application [APP-059]. At D2 the SSN was updated to correct an error in the original document and ensure consistency with the ES [REP2-027].

7.6.2. The SSN reviews the scope of statutory nuisance potentially arising from the Proposed Development. It identifies the potentially engaged areas of statutory nuisance as follows:

- any premises in such a state as to be prejudicial to health or a nuisance (s79(1)(a) EPA1990);
- fumes or gases emitted from premises (s79(1)(c) EPA1990);
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises (s79(1)(d) EPA1990);
- artificial light from premises (s79(1)(fb) EPA1990); or
- noise emitted from premises (s79(1)(g) EPA1990).

7.6.3. The remainder of this Section considers the application in the light of relevant National Policy Statement (NPS) policy, found in paragraphs 4.14.1 to 4.14.3 of NPS EN-1 in respect of statutory nuisance.

7.6.4. Article 8 of the submission dDCO (Version 1) [APP-005] sought to provide a defence to proceedings in respect of statutory nuisances falling within paragraphs (a), (c), (d), (fb) or (g) of section 79 (1). This was justified in the EM [APP-006] on the basis that only those nuisances which may be of relevance to the authorised development were included in the Order. ISH1:26 noted that both the Knottingley and Wrexham DCOs only provide for nuisances within paragraph (g) of section 79 (1) and sought justification for the inclusion of defences against other nuisances.

7.6.5. In responding, the Applicant noted that a broad defence to civil and criminal proceedings for nuisance is provided by s158 of PA2008 but

does not extend to the situation by which if someone considers that the local authority ought to be tackling a nuisance using its statutory nuisance power but is not, then an application under s82 of EPA1990 can be made. In order to address this shortcoming, the Applicant sought to restrict the application of the article so that it only applied to nuisances that had been identified as potentially resulting from the Authorised Development in the SSN [APP-059].

7.6.6. In order to benefit from the defence in Article 8 the Applicant noted that it was necessary to show that the nuisance was either attributable to the carrying out of the of the Authorised Development or that it was a consequence of the construction, maintenance or use of the Authorised Development and cannot therefore be avoided and as such is not an automatic defence. The Applicant also highlighted the SSN as providing detailed consideration of each of the possible nuisances included in the Article including the relevant requirements and other intended methods of control.

7.6.7. This matter was further addressed at ISH3 [EV-006], where the Applicant was asked on what basis was it appropriate for statutory protection provided by s158 to be provided. Furthermore, ISH3:6 pointed out that lighting would be covered through R9 of the dDCO and therefore I questioned on what basis was it appropriate to rely on the statutory defence for nuisances listed which do not appear to be covered by the dDCO.

7.6.8. In responding the Applicant acknowledged that the Model Provisions Order, whilst no longer in force, set out at Article 7 a defence to proceedings in relation to nuisance in respect of noise only which is (g) in Article 8 (1) of the dDCO [REP3-016]. The Applicant also pointed out that by virtue of s158 a default position has been established whereby NSIPs benefit from protection from nuisance claims and it is routine that s158 is not disapplied. Nevertheless, in order to progress the matter, the Applicant confirmed that it was prepared to reduce the scope of Article 8 so that it only applied to noise as per the Model Provisions Order, recognising that there was no suggestion that there should be an ongoing noise control mechanism through the DCO and the Site does not have a history of noise issues.

7.6.9. The matter was raised in the ExA's Recommended Amendments to the Applicant's dDCO [PD-009] and the Applicant confirmed that it had nothing further to add [REP5-011]. Nevertheless, I consider that the Applicant has not provided sufficient justification that the range of statutory nuisances identified in Version 1 of the dDCO should be granted defences against nuisance.

7.6.10. The SSN concludes that with the proposed and secured mitigation, the development proposed would not have the potential to cause a statutory nuisance identified under s79(1) of the EPA1990 during either its construction or operation. I accept that the risk of noise nuisance occurring has been reduced to the extent reasonably feasible and will be negligible.

7.6.11. Necessary steps to reduce the risk of nuisance events have been taken and the proposed provision in Article 8 is not a buffer against the consequences of poor practice. It is an appropriate provision against circumstances where unforeseen but unavoidable nuisance occurs. Having had regard to NPS EN-1 in the light of the information in the SSN, the mitigation security provided in the DCO and the withdrawal of the Model Provisions Order in favour of the evidence of made DCOs, I recommend the proposed defence provision based on the change identified.

7.7. CONCLUSIONS

7.7.1. I have considered all iterations of the dDCO as provided by the Applicant, from the submission version (Version 1) to the Post D7 version (Version 5) and considered the degree to which the Applicant's final version [AS-027] has addressed outstanding matters. A number of matters are the subject of recommendations in this Chapter and are included in the Recommended DCO in Appendix D of this Report.

7.7.2. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, if the SoS is minded to make the DCO, it is recommended to be made in the form set out in Appendix D.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.1.1. In relation to s104 of the Planning Act 2008 (PA2008), I conclude that making the Recommended Development Consent Order (DCO) would be in accordance with National Policy Statements (NPSs) NPS EN-1 and NPS EN-2. It would also accord with the development plan and other relevant policy, all of which have been taken into account in this report. I have also had regard to the Local Impact Report produced by Swale Borough Council in reaching my conclusion.

8.1.2. Whilst the Secretary of State (SoS) is the competent authority under the Habitats Regulations[14], and will make the definitive assessment, I conclude that the Proposed Development would not be likely to have significant effects on European sites, and I have taken this finding into account in reaching my recommendation.

8.1.3. I have had regard to the Public Sector Equality Duty (PSED) throughout the Examination and in producing this report. The Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there is no breach of the PSED.

8.1.4. With regard to all other matters and representations received, I have found no important and relevant matters that would individually or collectively lead to a different recommendation to that below.

8.1.5. With the mitigation proposed through the Recommended DCO, there are no adverse impacts arising from the Proposed Development that would outweigh its benefits.

8.1.6. Furthermore, there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs.

8.2. RECOMMENDATION

8.2.1. For all of the above reasons, and in the light of my findings and conclusions on important and relevant matters set out in the report, I recommend that the SoS for Business, Energy and Industrial Strategy makes The Kemsley Mill K4 Combined Heat and Power Generating Station Development Consent Order in the form recommended at Appendix D to this report.

[14] The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

APPENDICES

APPENDIX A: THE EXAMINATION

APPENDIX B: EXAMINATION LIBRARY

APPENDIX C: LIST OF ABBREVIATIONS

APPENDIX D: THE RECOMMENDED DCO

APPENDIX A: THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA)

Date	Examination Event
17 July 2018	**Preliminary Meeting**
17 July 2018	**Issue Specific Hearing on the draft Development Consent Order**
24 July 2018	Issue by the ExA of: • Examination timetable; • ExA's Written Questions.
31 July 2018	**Deadline 1 (D1)** Deadline for receipt of: • comments on any updates to application documents submitted by the Applicant before or at the PM; • comments on Relevant Representations (RRs); • summaries of all RRs exceeding 1500 words; • Written Representations (WRs) by all Interested Parties (IPs); • summaries of all WRs exceeding 1500 words; • Statements of Common Ground (SoCG) requested by ExA; • response to any further information requested by the ExA for this deadline; • post-hearing submissions including written submissions of oral cases; • notification by Statutory Parties of their wish to be considered as an IP by the ExA; • notification of wish to speak at any subsequent Issue Specific Hearings (ISHs); • notification of wish to speak at an Open Floor Hearing (OFH); • provision of suggested locations and justifications for site inspections for consideration by the ExA; • notification of wish to attend an Accompanied Site Inspection (ASI); and

	• notification of wish to have future correspondence received electronically.
21 August 2018	**Deadline 2 (D2)** Deadline for receipt of: • comments on WRs; • comments on any SoCG; • Local Impact Reports (LIRs) from any Local Authorities; • responses to ExQ1; • comments on any additional information/ submissions received by D1; and • responses to any further information requested by the ExA for this deadline.
12 September 2018	**Accompanied Site Inspection**
12 September 2018	**Open Floor Hearing**
13 September 2018	**Issue Specific Hearing on Environmental matters, Landscape & Visual, Ecology, Air Quality and Other matters**
14 September 2018	**Issue Specific Hearing on the draft Development Consent Order (DCO)**
20 September 2018	**Deadline 3 (D3)** Deadline for receipt by the ExA of: • post-hearing submissions including written submissions of oral cases; • comments on LIRs; • comments on responses to ExQ1; • any revised/ updated SoCG (if any); • the Applicant's revised dDCO; • comments on any additional information/ submissions received by D2; and • responses to any further information requested by the ExA for this deadline.

28 September 2018	**Deadline 4 (D4)** Deadline for receipt by the ExA of: • comments on the Applicant's revised dDCO; • comments on any revised/updated SoCG (if any); • comments on any additional information/ submissions received by D3; and • responses to any further information requested by the ExA for this deadline.
22 October 2018	Publication by the ExA of: • Further Written Questions (ExQ2); • Consultation on the ExA's preferred DCO; and • Report on the Implications for European Sites (RIES).
13 November 2018	**Deadline 5 (D5)** Deadline for receipt by the ExA of: • any revised/ updated SoCG; • response to ExQ2; • comments on the ExA's preferred DCO; • comments on the ExA's RIES; • comments on any additional information/ submissions received by D4; and • responses to any further information requested by the ExA for this deadline.
20 November 2018	**Deadline 6 (D6)** Deadline for receipt by the ExA of: • comments on any revised/updated SoCG; • comments on responses to ExQ2 (if required); • the Applicant's Final preferred DCO in the Statutory Instrument (SI) template validation report; • comments on any additional information/ submissions received by D5; and

	• responses to any further information requested by the ExA for this deadline.
28 November 2018	**Deadline 7 (D7)** Deadline for receipt by the ExA of: • comments on the Applicant's Final preferred DCO; • comments on any additional information/ submissions received by D6; and • responses to any further information requested by the ExA for this deadline.
12 December 2018	Issue by the ExA of: • Procedural Decision regarding the Applicant's proposed change to Work No. 1(c); • Request for further information; • Notification of an Examination timetable variation.
24 December 2018	**Deadline 8 (D8)** Deadline for receipt by the ExA of: • Comments on the Applicant's proposed change to Work No. 1(c).
3 January 2019	**Deadline 9 (D9)** Deadline for receipt by the ExA of: • Comments on any submissions received by D8.
8 January 2019	**CLOSE OF EXAMINATION**

APPENDIX B: EXAMINATION LIBRARY

Kemsley Paper Mill (K4) CHP Plant Examination Library

Updated – 14/1/2019

This Examination Library relates to the Kemsley Paper Mill (K4) CHP Plant application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

EN010090 – Kemsley Paper Mill (K4) CHP Plant **Examination Library - Index**	
Category	**Reference**
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
Representations – by Deadline	
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Deadline 9:	REP9-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

EN010090 - Kemsley Paper Mill (K4) CHP Plant

Examination Library

Application Documents

APP-001	1.1 - Covering Letter
APP-002	1.2 - Application Guide
APP-003	1.3 - Application Form
APP-004	1.4 - Copies of Newspaper Notices
APP-005	2.1 - Draft Development Consent Order
APP-006	2.2 - Explanatory Memorandum
APP-007	2.3 - Draft Order Validation Report
APP-008	3.1 - Environmental Statement - Contents and Chapters 1-3
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APP-017	3.1 - Appendix 4.1 - Transport Assessment
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APP-026	3.1 - Appendix 5.4 - Air Quality Assessment of Ecological Impacts
APP-027	3.1 - Appendix 6.1 - Greenhouse Gas Calculations
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APP-032	3.1 - Appendix 10.1 - Consultation with KCC Ecology
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AS-002	DS Smith Paper Ltd Doc 3.1 - Appendix 10.2 – Habitats Regulation Assessment Report (HRA)
AS-003	DS Smith Paper Ltd Doc 4.4 - Works Plans - Key Plan (May 2018)
AS-004	DS Smith Paper Ltd Doc 4.5 Work No.1 Works Plan with Limits of Deviation for Horizontal Tube Boiler (May 2018)
AS-005	DS Smith Paper Ltd Doc 4.7 - Illustrative Elevation Cross Sections - Horizontal Tube Boiler (May 2018)
AS-006	DS Smith Paper Ltd Doc 4.8a - Site Context - 3d Visual - Horizontal Tube Boiler (view a) (May 2018)
AS-007	DS Smith Paper Ltd Doc 4.8b - Site Context - 3d Visual - Horizontal Tube Boiler (view b) (May 2018)
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AS-010	DS Smith Paper Ltd Doc 4.12a - Site Context - 3d Visual - Vertical Tube Boiler (view a) (May 2018)
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AS-012	DS Smith Paper Ltd Doc 4.13 - Work No.2 Plan - Tie-ins to existing site facilities (illustrative) (May 2018)
AS-013	DS Smith Paper Ltd Doc 6.1 - S51 Advice Response Letter (June 2018)
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AS-021	DS Smith Paper Ltd Draft DCO Rev C (clean)
AS-022	DS Smith Paper Ltd Updated HRA report
AS-023	DS Smith Paper Ltd Statement of common ground with Natural England
AS-024	DS Smith Paper Ltd Updated HRA report (tracked changes)
AS-025	DS Smith Paper Ltd Covering Letter
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AS-028	DS Smith Paper Ltd Revised DCO (Tracked)
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REP1-003	DS Smith Paper Ltd 4.4 Works Key Plan
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REP2-014	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1c
REP2-015	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1d
REP2-016	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1e
REP2-017	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1f
REP2-018	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1g
REP2-019	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1h
REP2-020	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1i
REP2-021	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1j
REP2-022	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1k
REP2-023	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1l
REP2-024	DS Smith Paper Ltd ES Chapter 10 - Figure 10.1m
REP2-025	DS Smith Paper Ltd ES Chapter 10 - Figure 10.3
REP2-026	DS Smith Paper Ltd ES Chapter 13 - Summary Tables
REP2-027	DS Smith Paper Ltd Statutory Nuisance Statement
REP2-028	DS Smith Paper Ltd Covering Letter
REP2-029	DS Smith Paper Ltd Applicant's Comments on WRs

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REP2-030	DS Smith Paper Ltd Applicant's Response to ExQ1 – Part 1
REP2-031	DS Smith Paper Ltd Applicant's Response to ExQ1 - Part 2
REP2-032	Environment Agency Response to First Written Questions
REP2-033	Kent County Council Response to First Written Questions
REP2-034	Natural England Response to ExA's First Set of Questions
REP2-035	Swale Borough Council Letter of Clarification
REP2-036	Swale Borough Council Local Impact Report
Deadline 3 – 20 September 2018 • Post-hearing submissions including written submissions of oral cases • Comments on LIRs • Comments on responses to ExQ1 • Any revised/updated SoCG (if any) • The Applicant's revised draft DCO • Comments on any additional information/submission received by D2 • Responses to any further information requested by the ExA for this deadline	
REP3-001	DS Smith Paper Ltd 10.1 Covering Letter
REP3-002	DS Smith Paper Ltd 1.2 Application Guide (Version 5)
REP3-003	DS Smith Paper Ltd 2.1 Draft Development Consent Order (Tracked)
REP3-004	DS Smith Paper Ltd 2.1 Draft Development Consent Order (Clean Version)
REP3-005	DS Smith Paper Ltd 2.3 Draft Development Consent Order (Validation Report)
REP3-006	DS Smith Paper Ltd 3.1 Site description and Proposed Development - Environment Chapter 2 (Tracked Version)
REP3-007	DS Smith Paper Ltd 3.1 Site description and Proposed Development - Environment Chapter 2
REP3-008	DS Smith Paper Ltd 3.1 Appendix 2.1 - Outline Construction Environmental Management Plan (Tracked Version)
REP3-009	DS Smith Paper Ltd 3.1 Appendix 2.1 Outline Construction Environmental Management Plan
REP3-010	DS Smith Paper Ltd 3.1 ES Figure 2.2 (a) Environmental Designations (Revision A)
REP3-011	DS Smith Paper Ltd 3.1 ES Figure 2.2 (b) Scheduled Ancient Monuments - Environmental Designations (Rev A)
REP3-012	DS Smith Paper Ltd 3.1 ES Figure 2.2c Air Quality Management Area (Revision A)

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REP3-013	DS Smith Paper Ltd 3.1 Summary tables Environment Chapter 13 (Tracked Version)
REP3-014	DS Smith Paper Ltd 3.1 Appendix 5.4 Assessment of Ecological Impacts (Tracked Version)
REP3-015	DS Smith Paper Ltd 10.2 Written Case ISH2 - Environmental Matters
REP3-016	DS Smith Paper Ltd 10.3 Written Case ISH3 - Draft Development Consent Order
REP3-017	Swale Borough Council Submission submitted for Deadline 3
Deadline 4 – 28 September 2018 • Comments on the Applicant's revised draft DCO • Comments on any revised/updated SoCG • Comments on any additional information/ submissions received by D3 • Responses to any further information requested by the ExA for this deadline.	
REP4-001	Environment Agency Submission for Deadline 4
REP4-002	Natural England Submission for Deadline 4
Deadline 5 – 13 November 2018 • Post-hearing submissions including written submissions of oral cases (if required) • Any revised/ updated SoCG • Response to ExQ2 (if required) • Comments on the ExA's preferred DCO (if required) • Comments on the ExA's RIES (if required) • Comments on any additional information/ submissions received by D4 • Responses to any further information requested by the ExA for this deadline	
REP5-001	DS Smith Paper Ltd Covering Letter
REP5-002	DS Smith Paper Ltd Doc 1.2 Application Guide
REP5-003	DS Smith Paper Ltd Document 3.1 Appendix 2.1 Outline Construction Environmental Management Plan (Tracked Changes)
REP5-004	DS Smith Paper Ltd Doc 3.1 Appendix 2.1 Outline Construction Environmental Management Plan (Clean Version)
REP5-005	DS Smith Paper Ltd Doc 3.1 Appendix 10.2 No Significant Effects Habitats Regulations Assessment Report (Tracked Version)
REP5-006	DS Smith Paper Ltd Doc 3.1 Appendix 10.2 No Significant Effects Habitats Regulations Assessment Report (Clean Version)
REP5-007	DS Smith Paper Ltd Doc 4.17 Site Level Plan

REP5-008	DS Smith Paper Ltd Doc 7.3 Statement of Common Ground with Environment Agency (Tracked Changes Version)
REP5-009	DS Smith Paper Ltd Doc 7.3 Statement of Common Ground with Environment Agency (Clean Version)
REP5-010	DS Smith Paper Ltd Doc 12.2 Reponses to the ExA's Second Written Questions
REP5-011	DS Smith Paper Ltd Doc 12.3 Responses to the ExA's schedule of amendments to the draft Development Consult Order (DCO)
REP5-012	Environment Agency Responses to the ExA Second Written Questions
REP5-013	Environment Agency Comments on the ExA proposed Development Consent Order
REP5-014	Environment Agency Signed Statement of Common Ground (SoCG) with DS Smith Paper Ltd
REP5-015	Kent County Council Responses to the ExA's Second Written Questions
REP5-016	Swale Borough Council Response to the Examining Authority's Further Written Questions – Late Deadline 5 Submission accepted at the discretion of the Examining Authority
REP5-017	Natural England Response to the Examining Authority's Further Written Questions – Late Deadline 5 Submission accepted at the discretion of the Examining Authority
Deadline 6 – 20 November 2018 ● Comments on any revised/updated SoCG ● Comments on responses to ExQ2 (if required) ● The Applicant's Final preferred DCO in the Statutory Instrument (SI) template validation report ● Comments on any additional information/ submissions received by D5; and responses to any further information requested by the ExA for this deadline	
REP6-001	DS Smith Paper Ltd Doc 1.2 Application Guide
REP6-002	DS Smith Paper Ltd Doc 2.1 Preferred DCO (Clean)
REP6-003	DS Smith Paper Ltd Doc 2.1 Preferred DCO (Tracked Changes)
REP6-004	DS Smith Paper Ltd Doc 2.3 DCO Validation Report
REP6-005	DS Smith Paper Ltd Doc 3.1 App 10.2 - Habitats Regulations Assessment Report (Clean)
REP6-006	DS Smith Paper Ltd Deadline 6 Submission - Doc 3.1 App 10.2 - Habitats Regulations Assessment Report (Tracked)
REP6-007	DS Smith Paper Ltd Doc 13.1 Covering Letter

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REP6-008	DS Smith Paper Ltd Doc 13.2 Response to Deadline 5 Submissions
Deadline 7 – 28 November 2018 ● Comments on the Applicant's Final preferred DCO; ● Comments on any additional information/ submissions received by D6; and ● Responses to any further information requested by the ExA for this deadline	
	NO SUBMISSIONS
Deadline 8 – 24 December 2018 ● Comments on the Applicant's proposed change to Work No.1(c)	
REP8- 001	Harlaxton Energy Networks Ltd Response to Rule 17 Letter
REP8- 002	KSL Planning Response to Rule 17 Letter
REP8- 003	Michael J Vick Response to Rule 17 Letter
REP8- 004	Natural England Response to Rule 17 Letter
REP8- 005	Swale Borough Council Response to Rule 17 Letter
Deadline 9 – 3 January 2019 ● Comments on any submissions received by D8	
REP9-001	DS Smith Paper Ltd Doc 1.2 Application Guide
REP9-002	DS Smith Paper Ltd Doc 15.1 Covering Letter
Other Documents	
OD-001	KEM4 - Regulation 32 Transboundary Screening
OD-002	s56 and Regulation 16
OD-003	Report on the Implications for European Sites (RIES)

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APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AC	Ambient Concentration
AEL	Associated Emission Level
AN10	The Planning Inspectorate 's Advice Note 10
AOD	Above Ordnance Datum
APFP Regulations	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Applicant	DS Smith Paper Ltd
AQAL	Air Quality Assessment Level
AQAP	Air Quality Action Plan
AQMA	Air Quality Management Area
ASI	Accompanied Site Inspection
BAT	Best Available Technique
BEIS	(Department for) Business, Energy and Industrial Strategy
Birds Directive	Council Directive [2009/147/EC] on the Conservation of Wild Birds
BREF	BAT Reference Document
CCS	Carbon Capture and Storage
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
CTMP	Construction Traffic Management Plan
D (number)	(Examination) Deadline (See Appendix A for a list)
dB	Decibel
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DECC	Former Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
EA	Environment Agency
EA1995	Environment Act 1995
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations, 2017
ELV	Emission Limit Value
EM	Explanatory Memorandum
EP	Environmental Permit
EP Regulations	Environmental Permitting (England and Wales) Regulations 2016

Abbreviation or usage	Reference
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
ExA	Examining Authority
ExQ1	Examining Authority's Initial Written Questions
ExQ2	Examining Authority's Second Written Questions
FRA	Flood Risk Assessment
GHG	Greenhouse Gas
GLVIA	Guidelines for Landscape and Visual Impact Assessment
ha	Hectare
HE	Historic England
Habitats Directive	Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HGV	Heavy Goods Vehicle
HRA	Habitats Regulations Assessment
HRAR	HRA Report
HRSG	Heat Recovery Steam Generator
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
IAQM Guidance	Institute of Air Quality Management Guidance 2016
IDB	Internal Drainage Board
IED	Industrial Emissions Directive
IP/IPs	Interested Party(ies)
ISH	Issue Specific Hearing
K1	Existing CHP plant
K3	Wheelabrator Kemsley Generating Station plant currently under construction
K4	Proposed replacement CHP plant
KCC	Kent County Council
km	Kilometre
KV	Kilovolts
LCP	Large Combustion Plant
Local Plan	The Swale Borough Local Plan 2017
LIR	Local Impact Report
LOAEL	Lowest Observable Adverse Effect Level
LSE	Likely Significant Effects

Abbreviation or usage	Reference
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
MCZ	Marine Conservation Zone
Model Provisions	Infrastructure Planning (Model Provisions) (England and Wales) Order 2009
MW	Megawatt(s)
MWth	Megawatt Thermal
N deposition	Nitrogen deposition
NE	Natural England
NERCA2006	Natural Environment and Rural Communities Act 2006
NNR	National Nature Reserve
NO_2	Nitrogen Dioxide
NO_x	Oxides of Nitrogen
NOEL	No Observed Effect Level
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	Overarching National Policy Statement for Energy (EN-1)
NPS EN-2	National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
NTS	Non-Technical Summary
OFH	Open Floor Hearing
PA2008	Planning Act 2008
PC	Process Contribution
PEC	Predicted Environmental Concentration
PPG	Planning Practice Guidance
PM	Preliminary Meeting
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
pSPA	Potential Special Protection Area
Ramsar	The Ramsar Convention on Wetlands
Recommended DCO	The DCO recommended to the SoS
RIES	Report on the Implications for European Sites
RPA	Relevant Planning Authority
RR	Relevant Representations

Abbreviation or usage	Reference
Rule 6 Letter	Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8 Letter	Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 17 Letter	Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010
s (number)	Section of a Statute
SAC	Special Area of Conservation
SBC	Swale Borough Council
SM	Scheduled Monument
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
TA	Transport Assessment
TCPA1990	Town and Country Planning Act 1990
TP	Travel Plan
UK	United Kingdom
UNEP	United Nations Environment Programme
USI	Unaccompanied Site Visit
WACA1981	Wildlife and Countryside Act 1981
WFD	Water Framework Directive
WR	Written Representations
WSI	Written Scheme of Investigation
WTP	Water Treatment Plant

APPENDIX D: THE RECOMMENDED DCO

S T A T U T O R Y I N S T R U M E N T S

20[ ] No.

INFRASTRUCTURE PLANNING

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

Made - - - - ***

Coming into force - - ***

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SCHEDULES

SCHEDULE 1 — AUTHORISED DEVELOPMENT
SCHEDULE 2 — REQUIREMENTS

An application has been made to the Secretary of State under section 37 of the Planning Act 2008(**a**) ("the 2008 Act") in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**) 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(**c**).

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(**d**);

"the 1990 Act" means the Town and Country Planning Act 1990(**e**);

"the 2008 Act" means the Planning Act 2008;

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

(**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;

(**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 (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.

(**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.

(**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(**a**) (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(**b**) 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.

(**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(**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.

(**a**) 1978 c. 30.

(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

Name
Title
Date 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

Article 3

REQUIREMENTS

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

Work No.	*Building or structure*	*Maximum length (metres)*	*Maximum width (metres)*	*Minimum height (metres above site level unless otherwise stated)*	*Maximum height (metres above site level unless otherwise stated)*
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 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)(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 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 period consisting of 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.

Decommissioning and demolition strategy

19.—(1) Unless otherwise agreed with the relevant planning authority, within 24 months of the authorised development ceasing to be used for the purposes of electricity and steam generation (either actively generating or being available to generate on a standby basis), a scheme for the decommissioning, demolition and removal of Work No. 1 must be submitted to the relevant planning authority.

(2) Subject to obtaining the necessary consents and unless otherwise agreed with the relevant planning authority, the demolition and removal of Work No. 1 must be implemented in accordance with the approved scheme.

(3) On the one year anniversary of the authorised development ceasing to be used for the purposes of electricity and steam generation (either actively generating or being available to generate on a standby basis), the undertaker must notify the relevant planning authority of the same.

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.