

Annex B

Scoping Opinion



Department
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Your ref:
Our ref:

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Dear Nick,

**ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT)
REGULATIONS 2000**

**THE ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS)
(ENGLAND AND WALES) REGULATIONS 2013**

**KEADBY II COMBINED CYCLE GAS GENERATING STATION, KEADBY,
LINCOLNSHIRE**

1. I refer to the e-mail of 18 March 2015 from Ben Hampson at Dalton Warner Davis requesting a scoping opinion under regulation 7 of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 and enclosing a scoping report dated 17 March 2015. The scoping report sets out the further environmental information that Keadby Developments Limited intend to provide in support of the proposed variation to the consent for a Combined Cycle Gas Turbine (CCGT) generating station of about 710MW generating capacity which was granted by the Secretary of State on 10 September 1993 under section 36 of the Electricity Act 1989.
2. It is noted that the proposed variation is for a CCGT plant with a generating capacity of 800MW. The requested variation also seeks changes to other provisions in the section 36 consent.



Section 36 Variation Application

3. Your attention is drawn to DECC's public guidance note on varying consents under section 36 of the Electricity Act 1989 for generating stations in England and Wales:

<https://www.gov.uk/government/publications/varying-consents-granted-under-section-36-of-the-electricity-act-1989-for-generating-stations-in-england-and-wales>

4. Regulation 3 of The Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 also sets out the information that must be included in a section 36 variation application:

<http://www.legislation.gov.uk/uksi/2013/1570/contents/made>

EIA Scoping Opinion

5. The Secretary of State notes the length of time that has elapsed since the grant of consent for the project under the Electricity Act in 1993 and the current request for a variation. However, she notes from section 1.1 of the Scoping Report that material operations comprised in the development were carried out in 1998 and that North Lincolnshire Council confirmed the development permitted by the Deemed Planning Permission had been commenced for the purposes of section 56 of the Town and Country Planning Act 1990. She is aware that, as a result, the Consent and the Deemed Planning Permission are extant.
6. The time that has elapsed between the grant of consent and the request for a scoping opinion also means it is imperative that a thorough assessment of changes between then and now is undertaken to ensure that the information supplied in support of any variation application is fit for purpose. It is noted that section 1.4 of the Scoping Report sets out that any application for a variation will be accompanied by a new Environmental Statement. The main reasons for this are that:
 - (a) since the 1992 Environmental Assessment ("the 1992 EA"), the environmental baseline has changed;
 - (b) since 1992, Environmental Impact Assessment (EIA) regulatory requirements have changed introducing new aspects to be considered in EIA such as flood risk assessment and habitats regulations assessment; and,
 - (c) assessment methodologies and criteria have developed since 1992.



Department
of Energy &
Climate Change

7. The Secretary of State notes that the new Environmental Statement would report its likely significant effects, and also include an analysis of the main matters in which the likely significant effects on the environment would differ from those described in the 1992 EA, and thereby allow a comparison with the effects associated with the Consented Development. She believes that such an approach would be helpful.
8. The Secretary of State has carried out an EIA scoping consultation exercise and received responses from the Highways Agency, the Health and Safety Executive, the Environment Agency, Natural England, Historic England, the Civil Aviation Authority, North Lincolnshire Council, NATS, the Met Office, the Ministry of Defence, the Lincolnshire Wildlife Trust, the National Grid and Anglian Water. The responses are attached to this letter.
9. The Secretary of State considers that the key issues, which have been identified in the scoping report should properly be included in the further environmental information document (or, as appropriate, also covered in the section 36 variation application).
10. Comments are based on consultation responses and observations. All comments are detailed under specific topic headings.

Structure of an Environmental Statement/Further Environmental information

11. Criteria used to establish impact magnitude and significance should be clearly defined within the environmental information submitted in support of the variation application. Tabular presentation should be used to summarise key direct and indirect impacts. It is important for all mitigating measures that:
 - they are clearly stated;
 - they are fully described with accuracy;
 - they are assessed for their environmental effects;
 - they are assessed for their effectiveness;
 - their implementation should be fully described;
 - it is explained how commitments will be monitored and by whom;
 - and
 - if necessary, it is explained how mitigation or compensatory measures relate to any consents or conditions.
12. Please note: 'monitoring', 'mitigation and 'compensation' are distinct processes:
 - `monitoring` measures the significance of environmental effects;



Department
of Energy &
Climate Change

- `mitigation` avoids or reduces a significant effect; and
 - `compensation` is recompense for the loss or reduction of a resource. Compensation should be provided *before* the loss or reduction of a resource.
13. Responsibility for monitoring, mitigation and compensation should be clearly set out within the ES.
14. I would also draw your attention to DECC's Environmental Impact Assessment guidance available at the links provided below:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43575/Electricity_Works_Regulations_-_guidance.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43576/Electricity_Works_EIA_Regulations_-_guidance.pdf

COMMENTS ON ENVIRONMENTAL IMPACT ASSESSMENT (EIA) SCOPING REPORT

Highways

15. The Highways Agency points out that the guidance referenced in the Scoping Report, `Guidance on Transport Assessments` ("GTA") has been superseded by Planning Practice Guidance on "Travel Plans, Transport Assessments and Statements in decision-taking", although some principles in the GTA will still be relevant. The Agency also expects the principles set out in Circular 02/13, `The Strategic Road Network and the Delivery of Sustainable Development` to be taken into consideration in any environmental statement that may be submitted.
16. North Lincolnshire Council also offered comments on the highways section of the Scoping Report and noted that a Transport Statement and Construction Phase Traffic Management Plan will be required to support any variation application.

Water Resources

17. The Environment Agency makes a number of comments on the Water Resources section of the Scoping Report. These comments should be noted and acted upon as necessary.

Water Framework Directive ("WFD")

18. The Environment Agency recommends that an assessment of the potential impacts of the development (both during construction and



Department of Energy & Climate Change

operation) on the watercourses located in the vicinity of the site is undertaken and notes that this is of particular importance with regard to abstractions and discharges, but also includes more ecological concerns including invertebrates and fish.

Flood Risk Assessment

19. Your attention is drawn to the Environment Agency's comments that the site of the development is located in Flood Zone 3, a high risk area of flooding. The Agency notes that its 2013 Flood Risk Assessment will be reviewed by the applicant and that the latest flood risk modelling should be utilised in the review.
20. The Agency recommends that the platform level should be raised above the resulting level of the Isle of Axholme Critical Flood Level which would protect against the risk of flooding from the inland drainage network. Alternatively, there may be scope for contributing to flood risk management infrastructure in the area. It is also noted that the Environment Agency believes that there may be opportunities for partnership working to improve the level of protection in the area.
21. Anglian Water highlighted that section 5.6 of the Scoping Report made reference to an `engineered drainage solution` increasing the risk of flooding on neighbouring land following development. However, it pointed out that the use of Sustainable Drainage Methods (SuDS) would form part of the proposals outlined in Table 4.1 of the Report. Anglian Water indicated it would be helpful if the environmental statement considered the environmental effects of SuDS.

Environmental Permitting

22. The Environment Agency points out that the proposed development will require an environmental permit from the Agency and sets out what will be required of developers to improve the chances of securing the grant of such a permit. (However, the Agency states that its comments on the Scoping Report should not be taken as being a pre-determination of its position in relation to any application for an environmental permit that might be submitted to it.)
23. You should further note that the consenting authority will require a written indication from the Environment Agency (EA) that the EA can regulate the operational process prior to a section 36 variation decision being taken, specifically in relation to: atmospheric emissions (i.e. Pollution Prevention and Control Permit) and water abstraction (water abstraction licence) where these are relevant considerations.

Ecology and Nature Conservation



Habitats Regulations Assessment

24. Natural England sets out that the Environmental Statement should thoroughly assess the potential for the proposed development to affect designated sites. It has been pointed out that the following Natura 2000 sites (i.e. Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites) are within reasonably close proximity of the proposed development:
- Humber Estuary SSSI, Special Area of Conservation (SAC) and Ramsar site; and,
 - Thorne Moor SAC.
25. If a scheme is likely to have an effect on a Natura 2000 site, then it falls within the Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations').
26. DECC is the competent authority under the terms of the Habitats Regulations in respect of the proposed Keadby II variation request. Consent may only be granted if it can be shown that the development will not have an adverse effect on the integrity of a European Site or Species (Regulation 61(5)). Regulation 61(6) provides that when considering whether the proposed development will adversely affect the integrity of a European Site or Species, the competent authority can take into account measures proposed to mitigate such impacts provided those mitigation measures are embedded within the application.¹
27. Keadby Developments Limited is required to provide sufficient information to inform any Habitats Regulation Assessment (HRA). This should detail distances of designated sites from the proposed project area both in tabular and graphic format. For the purposes of the HRA, please check with Natural England that up-to-date information (Regulation 35 advice) is available and incorporated within the Environmental Statement or other environmental information.
28. Natural England indicated that the Environmental Statement (or other relevant information) that accompanies any variation application should assess the impacts of all phases of the proposal on protected species (including, for example, great crested newts, reptiles, birds, water voles, badgers and bats). Sufficient information on likely impacts should be provided to enable the Secretary of State to discharge his duties under the Habitats Regulations, the Wildlife and Countryside Act 1981 and his biodiversity duty under the Natural Environment and Rural Communities

¹ 'Dilly Lane' Judgement available at <http://www.bailii.org/ew/cases/EWHC/Admin/2008/1204.html>
(Accessed 26/01/09)



Department of Energy & Climate Change

Act 2006. North Lincolnshire Council also indicated that the applicant should consider the potential impacts of the proposed development on otter.

29. With respect to protected species, a Phase 1 Habitat Survey should include any species that occupies adjoining land, but which may use the proposed development site. If the Phase 1 Habitat Survey indicates the need for additional survey work, then we would expect this to be carried out.
30. North Lincolnshire Council also raised a number of points in relation to ecological assessment and these should be read alongside the comments from Natural England and the Environment Agency.
31. The Lincolnshire Wildlife Trust also offered comments about the ecology section of the Scoping Report and suggested the inclusion of additional information on non-statutory designated sites within the sensitivity mapping sections of the environmental statement. The Trust also suggested that consideration should be given to the assessment of habitats against the Local Wildlife Site criteria for Lincolnshire and any impacts on them that might be caused by the proposed development.

Other Matters

32. Natural England also drew attention to the need to consider a number of issues in relation to heritage landscapes, access and recreation, rights of way, access land, coastal access and national trails, soil and agricultural land quality, air quality, climate change adaptation and cumulative and in-combination effects. We note the points made by Natural England and would agree the need for suitable assessment of these matters where it is appropriate to do so.

Aviation

33. The Civil Aviation Authority (CAA) raised a number of issues as being suitable for assessment in any environmental statement that accompanied a variation application. We note the points made by the CAA and would agree the need for suitable assessment of these matters where it is appropriate to do so. (NATS had no comment to make on the Scoping Report. The Ministry of Defence commented that the proposal relates to a site outside its safeguarding area.)

Environmental Health

34. North Lincolnshire Council recommended that any assessment of noise and vibration should be undertaken with reference to a number specific guidance documents. The Council did agree with the proposed locations



Department of Energy & Climate Change

for the assessment of noise impacts and suggested that both Keadby Phase 1 and Phase 2 should be assessed in considering the cumulative impacts of the plant. The Council asked that sufficient information should be provided in respect of the construction, demolition and site clearance of

the project to enable suitable noise limits for these activities to be agreed. The Council also requested that, despite it being scoped out of the Scoping Report, any EIA should include an assessment of possible vibration effects if only to exclude the need for any detailed assessment.

35. North Lincolnshire Council also requested that the environmental statement should include discussion of the potential contamination of the proposed site and any impacts arising from it and include any mitigation measures where appropriate.
36. On air quality and control of dust during construction, North Lincolnshire Council confirmed a dust mitigation plan would be needed and accepted the proposed methods for assessing impacts.
37. On light pollution, the Council asked for a discussion of light emissions from construction compounds to be included in the environmental assessment.

Archaeology

38. Historic England pointed out that the proposed scheme was in close proximity to a scheduled monument and a Grade 1 listed building and that any impacts on these structures would need to be assessed. In addition, Historic England advised there were a number of considerations that would need to be taken into account in framing the environmental statement. The organisation also requested that photomontages and wireframes should be produced for key viewpoints concerning cultural heritage.
39. North Lincolnshire Council also suggested some topics for inclusion in the environmental statement which should be considered alongside those mentioned by Historic England.

National Grid Assets

40. National Grid indicated that some of its infrastructure was located within or in close proximity to the proposed development and that any potential impacts should be assessed in the environmental statement. National Grid also pointed out the protective provisions that would need to be in place to protect its assets.

Carbon Capture Readiness (CCR)



Department
of Energy &
Climate Change

41. I draw your attention to the CCR guidance on the DECC website available at the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

Combined Heat and Power (CHP)

42. I draw your attention to the CHP Guidance on the DECC website available at the following link:

<https://www.gov.uk/consents-and-planning-applications-for-national-energy-infrastructure-projects#exploring-combined-heat-and-power-chp>

General

43. You will also wish to note and take account of the other comments from consultees (i.e. including those from: the Civil Aviation Authority on aviation matters; Historic England on archaeological and heritage assets; the EA and Natural England where these are not referenced above) and I am copying this letter to those listed below for information
44. Please do not hesitate to contact me should you have any queries about the opinion expressed above.

Yours sincerely,

KEITH WELFORD
Case Manager, National Infrastructure Consents

cc: Annette Hewitson Environment Agency
James Walsh Natural England
Andrew Taylor North Lincolnshire Council
Elisa Atkinson The Highways Agency
David Walsh Historic England
Sacha Rossi NATS
Mark Smalles CAA
Laura Nokes Ministry of Defence
Tim Allott Met Office
Dave Adams HSE
Stewart Patience Anglian Water