This article follows recent experience by DHA when coordinating an EIA and producing parameter plans for the construction and operation of a gas fired combined heat and power (CHP) plant.

Our client wished to seek permission for a new gas-fired CHP plant with a nominal power output of 68-73MW to be operated by them and/or other companies to supply electricity and steam to their existing Paper Mill in Kent with any excess power being exported to the National Grid.

The Planning Act 2008 states that the construction or extension of an onshore generating station of more than 50MW electrical output in England or Wales is considered by Section 14(1)(a) and Section 15 of the Act to be a ‘nationally significant infrastructure project’ (NSIP) and as such requires an application for a Development Consent Order (DCO) to be made to the Planning Inspectorate (PINS) and approved by the Secretary of State (SoS) for Business, Energy and Industrial Strategy.

The applicant was without extensive planning and EIA knowledge and with an engineering team in place who similarly had no to very little experience with the approach of using parameters plans this proved a challenged.

For anyone who works regularly with engineers you will be familiar with their focus on detail and function and often slight ambivalence for the somewhat more conceptual process of planning.

In these circumstances we had to hold several workshops explaining the concept of parameter plans, and their benefit, as well making the case for the necessity for an appropriate amount of flexibility at the outline stage to safeguard the project once consent has been granted.

For matters relating to building heights, dimensions or locations this is not too onerous a task and simply involves creating a larger ‘envelope’ in which movement in location or growth in size can be accompanied at the final design stage.

However, setting a parameter for the height of a stack proves somewhat more complicated. The determination of stack height does not simply rely on the variation of technology pursuant to different suppliers or the amount of floor space needed to satisfy its purpose but is a direct consequence of the process, the technology and pollutant concentrations.

When the complication of the inflexibility of the DCO process is added this has the potential to cause a significant problem.

Amendments to DCO’s are famously laborious and the mere suggestion makes even the most experienced lawyer wince at the thought. The degree of change required determining whether PINS deem it a material or non-material change. To date non-material changes have proved onerous taking well in excess of six months to secure.
No one has either needed to or been brave enough to make a material amendment to a DCO to date. Either way it makes the S73 procedure associated with the normal Town and Country Planning application seem reasonable.

At the time of making the DCO application our client did not have an EPC contractor on board and therefore assumptions were pulled together to which the applicant was confident would provide a worst-case basis on which to determine stack height.

On this basis a stack height was determined and embedded into the ES and DCO as part of the application and well into the examination of the of the application.

It was not until late in the examination process that two potential technology providers were involved in the tendering process for the CHP Plant and it came to light that the values used to inform the stack height exercise were in fact different and concentrations of NOx would be significantly higher than predicted.

Fortunately, the remodeling exercise identified that the stack height would need to vary by no more than three metres, and the Inspector was content to allow that degree of change to be made prior to the closure of the examination, as the opportunity remained to consult interested parties on the change.

DHA are now involved with a new client seeking a DCO for an energy from waste facility with a similar application team and no EPC contractor yet on board.

Following the adage of once bitten twice shy we are undertaking a full sensitivity analysis with regard to stack height determination and intend to embed the maximum stack height pursuant to this into the DCO on that basis.