S1. My proof of evidence addresses part of the first reason for refusal given by Cornwall Council, namely the failure to meet the criterion 7 of Policy L6 of the Cornwall Waste Local Plan 2002. I also address the issue of whether or not an appropriate assessment is required.

S2. Cornwall Council assert a likelihood of significant effects from the CERC on two European sites: Breney Common and Goss and Tregoss Moor Special Area of Conservation (SAC) and St Austell Clay Pits SAC. The features of interest of the former are the Annex I habitats North Atlantic wet heaths with *Erica tetralix*, European dry heaths, transition mires and quaking bogs and populations of the Annex II species marsh fritillary (*Eurodryas aurinia*). St Austell Clay Pits supports populations of the Annex II species western rustwort (*Marsupella profunda*).

S3. At Breney Common and Goss and Tregoss Moor SAC a lack of management is causing communities to become significantly less diverse, both structurally and in terms of species richness. The virtual cessation of grazing has led to a vast increase in the spread of invasive communities to the detriment of the more desirable vegetation communities.

S4. A study of the operational effects of Indian Queens Power Station (IQPS) on vegetation communities within Goss Moor National Nature Reserve (NNR) did not find any detectable influence on the composition of sensitive plant communities or individual species.

S5. Baseline air quality information provided in the Environmental Statement (ES) shows that background rates of nitrogen deposition and acid deposition for Annex I habitats already exceed the recommended critical loads for these habitats.

S6. I have considered the stages involved in appropriate assessment and the respective roles of the two competent authorities, the Environment Agency (permit application) and until the appeal, Cornwall Council (planning application). The guidance in PPS23 is very clear that "the planning and pollution control systems are separate but complementary".

S7. In this case the appellant received no request for information from the competent authority (Cornwall Council) to inform either the consideration of likely significant effects or an appropriate assessment until November 2009. At the time of that request, Cornwall Council was no longer the competent authority for this application.

S8. No mention of the screening for appropriate assessment undertaken by the Environment Agency is included in the shadow screening assessment for appropriate assessment produced for Cornwall Council in relation to emissions from the CERC.

S9. The conclusions of the draft shadow appropriate assessment scientific report produced on behalf of Cornwall Council identify likely significant effects from nitrogen and acid deposition, in-combination with other projects, on Annex I

habitats and habitats used by Annex II species on Breney Common and Goss and Tregoss Moor SAC. Changes in rates of nitrogen deposition on St Austell Clay Pits SAC, in combination with other projects, are also identified as a likely significant effect.

S10. PPS23 would indicate that the likely significant effects identified in the shadow appropriate assessment scientific report are within the remit of the Environment Agency to assess, acting as the competent authority for the permit application. Therefore there would appear to be no reason for Cornwall Council to undertake an appropriate assessment were it still the competent authority.

S11. In a response to Natural England from the Environment Agency in January 2010 it is stated that the information in Appendix 11 (related to the permit application) allowed the Agency to "conclude no likely significant effect both alone or in combination".

S12. I have considered the likely significant effects on Breney Common and Goss and Tregoss Moor SAC related to: hydrological impacts, dust deposition, construction traffic and deposition from the CERC and associated traffic.

S13. Natural England are satisfied "that in terms of hydrological impacts there will be no adverse significant effect on the Breney Common and Goss and Tregoss Moor SAC". It is my view that the information provided to date is sufficient to determine that there will be no likelihood of significant effects.

S14. For impacts related to dust deposition I consider that with the implementation of the mitigation measures outlined in the ES there would be no likelihood of significant effects on Breney Common and Goss and Tregoss Moor SAC.

S15. No Annex I habitats or habitats potentially supporting marsh fritillary will be affected by levels of NOx in excess of 1% of the critical level associated with construction traffic. I do not consider there is the likelihood of significant effects on Breney Common and Goss and Tregoss Moor SAC.

S16. The information provided in the ES and accompanying technical appendices showed the predicted deposition rates for acid and nitrogen on the SAC were below 1% of the relevant critical loads for Annex I habitats and those habitats used by marsh fritillaries. In line with Environment Agency guidance on permit applications I conclude no likelihood of significant effects.

S17. On all these matters: hydrology, dust deposition, emissions from construction traffic and deposition of acid or nitrogen from the CERC and associated traffic I conclude that appropriate assessment is not required.

S18. Following submission of the ES, the Environment Agency requested ERM undertake further modelling work to take account of dry hydrogen chloride (HCl) deposition in the acidification contours. This work marginally increased the level of acid deposition on habitats used by marsh fritillaries.

S19. The revised modelling work for Annex I habitats showed the effects of the process contribution and traffic were still below 1% of the relevant critical load for Annex I habitats.

S20. Further information on the in-combination effects of the IQPS and CERC emissions was requested by the Environment Agency as part of a Schedule 5 request. This work considered the impacts of nutrient nitrogen and wet and dry acid deposition on Annex I habitats and habitats used by marsh fritillaries within the SAC.

S21. No likely significant effects of the deposition of nutrient nitrogen on the Annex I habitats European dry heaths and North Atlantic wet heath with *Erica tetralix* and habitats potentially supporting marsh fritillary were identified either, alone and in-combination with the IQPS, as deposition of nutrient nitrogen was below 1% of critical loads for these habitats.

S22. Deposition of nutrient nitrogen on transition mire and quaking bog found that alone the contribution of the CERC would be below 1% of the critical load for this Annex I habitat. When considered in combination with the IQPS the deposition rate would be between 1.2% and 1.5% of the critical load for this habitat.

S23. In accordance with Environment Agency guidance no likelihood of significant effects were identified as emissions from the CERC being below 1% of the

critical load, supported by evidence that the existing background levels are not affecting the composition or extent of the Annex I habitat within the SAC.

S24. The evaluation of the in-combination effects of IQPS and CERC emissions requested by the Environment Agency demonstrated that levels of acid deposition from the two projects would exceed 1% of the critical load for all three Annex I habitats and habitats capable of supporting marsh fritillary across parts of the SAC.

S25. The assessment process followed national guidelines related to permit applications. I conclude that appropriate assessment is not required for impacts, either alone or in combination, associated with acid deposition on Annex I habitats within the SAC.

S26. The potential for deposition from the CERC and from traffic associated with the CERC is considered and no likelihood of significant effects was identified. This conclusion takes into account advice issued to the competent authority from Natural England.

S27. Rates of acid deposition from the CERC and associated traffic on M23/M25 vegetation communities within part of the SAC exceed 1% of the lowest critical load figure of 0.47 keqH^+/ha/yr. A precautionary approach was adopted in the assessment. The total area of the SAC exposed to acid deposition above 1% (calculated for M23 and M25 vegetation communities) is 61.9ha, only 18.92ha of which is M23 or M25 vegetation.

S28. In an e-mail to Natural England from the Environment Agency (January 2010) it is noted that the approach adopted in SITA's assessment was over precautionary. The Environment Agency view being that the 1% threshold is not exceeded.

S29. After considering the likelihood of significant effects to occur (either alone or in combination) in view of that site's conservation objectives I conclude that the are no likely significant effects on marsh fritillary habitat as a result of acid deposition and appropriate assessment is not required.

S30. No likelihood of significant effects from acid or nitrogen deposition were identified on St Austell Clay Pits SAC and it I conclude appropriate assessment is not required.

S31. A full range of protected species surveys were undertaken during 2007 and 2008. Natural England has confirmed there are no further outstanding issues to address in relation to protected species. It is my conclusion that the baseline conditions have not changed significantly since the application was determined.

S32. On the basis of this evidence I conclude that all potential impacts on the European sites and protected species have been fully taken into account and properly assessed. I have concluded no likelihood of significant effects on the European sites and therefore appropriate assessment is not required for this

project. It is my contention that the CERC proposal is in accordance with criterion 7 of Policy L6 of the Cornwall Waste Local Plan 2002.