





## Statement of Statutory Nuisance

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Client: **Wheelabrator Technologies Inc**

Project: **Wheelabrator Kemsley (K3  
Generating Station) and  
Wheelabrator Kemsley North (WKN)  
Waste to Energy Facility DCO**

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Author: **Tim Spicer**  
BSc MSc PIEMA

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DHA  
Eclipse House  
Eclipse Park  
Sittingbourne Road  
Maidstone  
Kent  
ME14 3EN

Tel: 01622 776226  
Email: [info@dhaenvironment.co.uk](mailto:info@dhaenvironment.co.uk)  
Web: [www.dhaenvironment.co.uk](http://www.dhaenvironment.co.uk)  
Twitter: [www.twitter.com/dhagroup](https://www.twitter.com/dhagroup)

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# 1 Introduction

## 1.1 Purpose of this document

1.1.1 This Statement has been prepared on behalf of Wheelabrator Technologies Inc (WTI) in support of an application for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy, via the Planning Inspectorate, under The Planning Act 2008.

1.1.2 The purpose of this document is to comply with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, which requires an application for a DCO to be accompanied by a Statement setting out whether the development proposal could cause a statutory nuisance pursuant to Section 79(1) of the Environmental Protection Act 1990 (EPA) and if so, how the applicant proposes to mitigate or limit these statutory nuisances.

1.1.3 Section 158 of the Planning Act 2008 confers statutory authority for carrying out development consented by, or doing anything else authorised by, a development consent order and provides a defence against any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisance under Part III of the Environmental Protection Act 1990 (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised.

1.1.4 The draft DCO provides, at Article 14, defence for the developer against proceedings by an aggrieved person (i.e. not the local authority) in respect of statutory nuisance, including where it cannot reasonably be avoided when it arises a) as a consequence of the construction or maintenance of the proposed development or b) as a consequence of the use of the proposed development.

1.1.5 In accordance with the National Planning Policy Statement for Energy (EN1):

*"It is very important that, at the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the Infrastructure Planning Commission so that appropriate requirements can be included in any subsequent order granting development consent."*

1.1.6 This Statement identifies the relevant potential nuisances set out in Section 79(1) of the Environmental Protection Act (EPA) 1990 to the proposed development, sets out what (if any) mitigation is proposed to prevent the potential nuisance and concludes as to whether the proposed development could cause statutory nuisance following mitigation.

## 1.2 The Applicant

1.2.1 WTI is the second largest US waste-to-energy business and is an industry leader in the conversion of everyday residential and business waste into clean energy.

WTI currently has a platform of 25 strategically located assets across the US and UK —19 waste-to-energy facilities (three under construction), two waste fuel facilities as well as four ash monofills. WTI also recover metals for recycling at two advanced metals recovery systems and one central upgrade facility.

- 1.2.2 WTI currently has an annual waste processing capacity of over 7.2 million tonnes (8 million tons), and a total combined electric generating capacity of 732 megawatts—enough energy to power more than 671,100 US homes. WTI also recovers metals for recycling into commercial products. The company’s vision to develop, deliver and realize the potential of clean energy speaks to WTI’s ongoing commitment to the development of clean energy solutions for its customers and local communities. WTI is owned by Macquarie Infrastructure and Real Assets, a business within the Macquarie Asset Management division of Macquarie Group and a global alternative asset manager focused on real estate, infrastructure, and agriculture and energy assets.

## 2 Proposed development

2.1.1 This section briefly sets out the background to the proposed development, describes the site and outlines the development proposals. Further details are available in the 2019 Environmental Statement [Document 3.1], the Planning Statement [Document 4.2] and the Design and Access Statement [Document 4.3] submitted in support of the DCO application.

### 2.2 Proposed Development

2.2.1 WTI has made an application to the SoS for a DCO for the construction and operation of the Wheelabrator Kemsley Generating Station ('K3') and for the construction and operation of a new waste-to-energy facility on adjacent land called Wheelabrator Kemsley North ('WKN').

2.2.2 Planning permission was granted under the Town and Country Planning Act 1990 by Kent County Council in 2012 for a sustainable waste-to-energy facility (K3). Construction of the plant began in July 2016 and is expected to be completed with the plant operational by late 2019. As consented K3 will have two 102 megawatt thermal (MWth) lines, be capable of processing 550,000 tonnes of waste per annum and have a generating output of up to 49.9 megawatts (MW).

2.2.3 This application seeks a DCO which, in practical terms, would permit K3 as constructed to operate to an upgraded power generation level of up to 75MW and to process an additional 107,000 tonnes of waste per annum ("the K3 Proposed Development"). In order to properly categorise and consent those increases under the Planning Act 2008 consent is being sought for the construction and operation of K3 with a generating capacity of up to 75MW and an annual tonnage throughput of 657,000 tonnes.

2.2.4 Development Consent is also being sought for the proposed new WKN waste-to-energy facility, which would be a single 125MWth line facility capable of processing 390,000 tonnes of waste per annum, with a generating capacity of 42MW ("the WKN Proposed Development").

2.2.5 Consent for the K3 and WKN Proposed Developments is being sought via a single DCO through a single application to the SoS via PINS.

### 2.3 The Site(s)

#### Wheelabrator Kemsley (K3) Site

2.3.1 The site is located on land immediately to the east of the Kemsley Paper Mill, located 0.8km east of Kemsley, a residential suburb in the north of Sittingbourne in Kent (hereafter the 'K3 Site'). It lies adjacent to the Swale Estuary to its east, with the Isle of Sheppey beyond and within the administrative areas of Kent County Council (KCC) and Swale Borough Council (SBC). To the south of the K3 Site lies a capped former landfill site which lies adjacent to the confluence between Milton Creek and the Swale Estuary. To the north lies an area of reedbed known as Kemsley Marshes. Access to the K3 Site is obtained from Barge Way to

the north via an existing access road forming the eastern boundary of the Kemsley Paper Mill and shared with the mill operator DS Smith Ltd. The K3 Site lies in proximity to the A249 which links to both the M2 and M20 motorways to the south and with the Isle of Sheppey to the north.

Wheelabrator Kemsley North (WKN) Site

- 2.3.2 The site is located on land immediately north of the permitted K3 facility (hereafter the “WKN Site”). The WKN Site is currently being used by the Applicant as a laydown and parking area for the construction of the adjacent K3 facility. It has been cleared of vegetation and laid to concrete or hardcore with a perimeter fence.
- 2.3.3 To the east of the WKN Site lies the Swale Estuary with the Isle of Sheppey beyond. Immediately to the north lie the Kemsley Marshes beyond which lies the Kemsley Paper Mill anaerobic digester treatment works (under construction) and to the north east a jetty operated by Knauf for the import of gypsum by barge.
- 2.3.4 The location of the K3 and WKN sites is shown in Figure 1.



Figure 1: Location of the K3 and WKN sites

## 2.4 The Works Proposed

2.4.1 The K3 and WKN Proposed Developments are split into a number of key works within the DCO boundary. The different elements of the works pertaining to the K3 and WKN Proposed Developments are set out in the Table below and their spatial location illustrated in Figures 2 and 3.

Table 2.1: Works No.
1 - An electricity generating station (the K3 generating station) with a gross installed generating capacity of up to 75MW, comprising the specific works listed in the DCO.
1a - Installation of grid connection for Work No 1
1b - Installation of steam connection for Work No 1
1c - Alteration of existing private access road to construction, use and maintain Work No 1
1d - Creation of a temporary construction compound and laydown area for the construction of Work No 1.
1e - Construction and operation of a surface water outfall for Work No 1
2- An electricity generating station (the WKN Waste-to-energy facility) with a gross installed generating capacity of up to 42MW, comprising the specific elements listed in the DCO.
3- Installation of a new grid connection for Work No 2.
4- Alteration of existing private access road to construct, use and maintain Work No 2.
5- Temporary construction or alteration of existing private haul road for the construction of Work No 2.
6- Creation of a temporary construction compound and laydown area for the construction of Work No 2.
7- Construction and operation of a new surface water outfall for Work No 2.



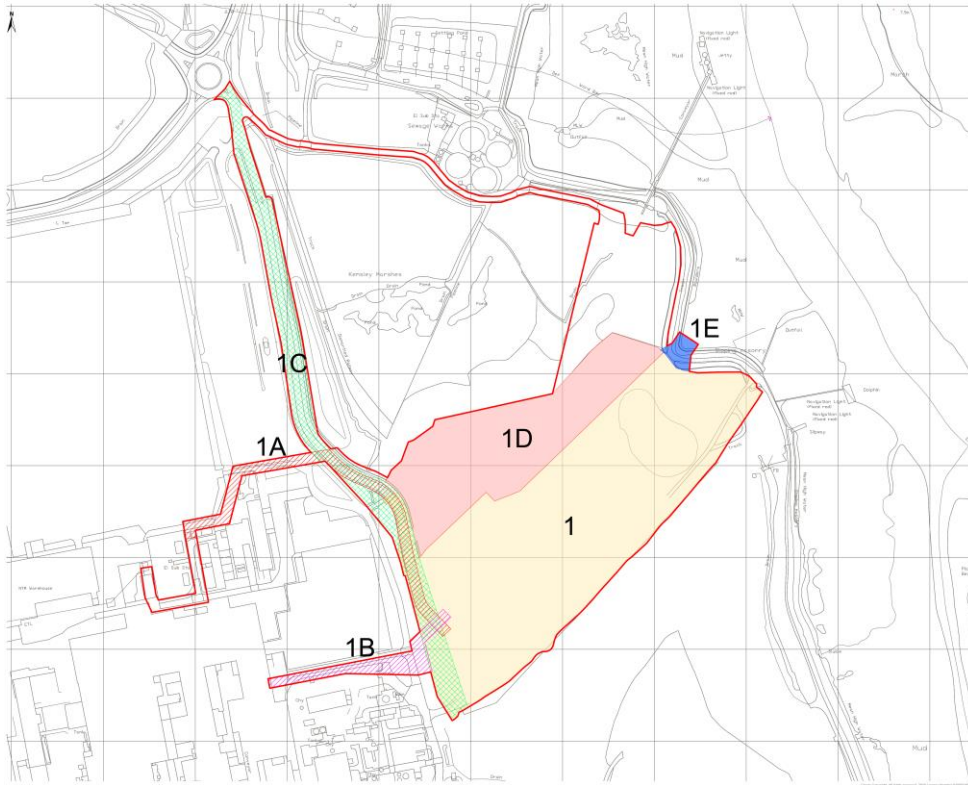


Figure 2: K3 Works Plan

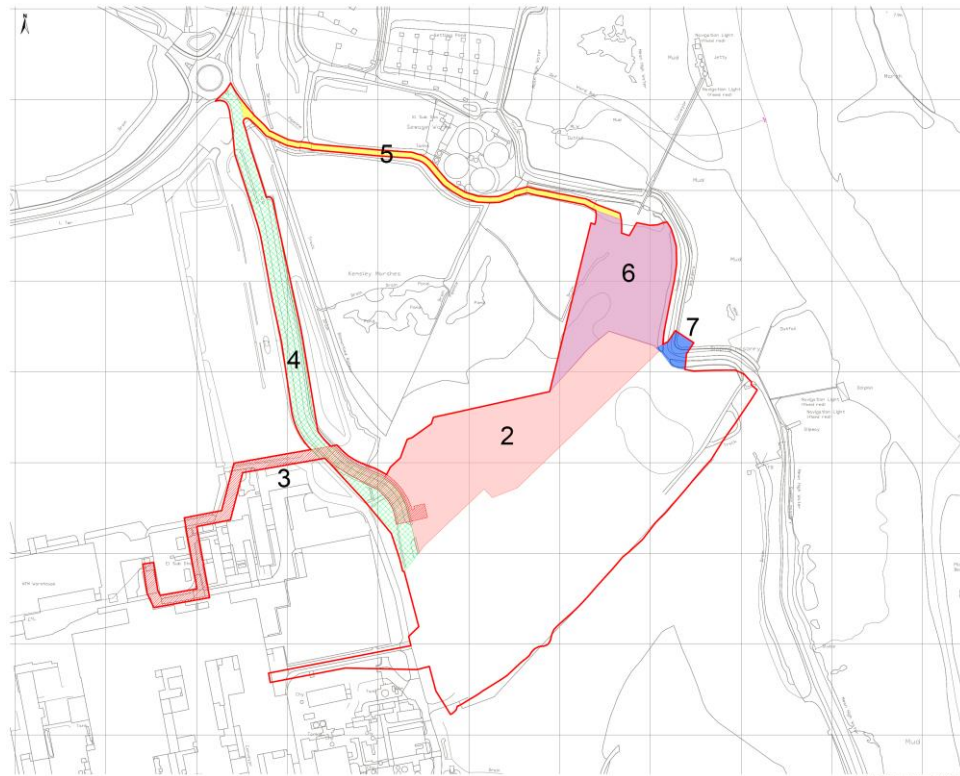


Figure 3: WKN Works Plan

### 3 Matters Considered by Section 79 of the EPA (1990)

3.1.1 Section 79(1) of the EPA 1990 identifies the following matters that are said to be 'statutory nuisances':

*(a) any premises in such a state as to be prejudicial to health or a nuisance;*

*(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*

*(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;*

*(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*

*(e) any accumulation or deposit which is prejudicial to health or a nuisance;*

*(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;*

*(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;*

*(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;*

*(g) noise emitted from premises so as to be prejudicial to health or a nuisance;*

*(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;*

*(h) any other matter declared by any enactment to be a statutory nuisance';*

3.1.2 "Noise" includes vibration for the purposes of Section 79(1) of the EPA 1990.

3.1.3 A full Environmental Impact Assessment of the K3 and WKN Proposed Developments has been undertaken in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, the results of which are presented in the 2019 Environmental Statement (ES) [Document 3.1] submitted as part of a suite of documents submitted in support the DCO application.

3.1.4 With reference to Section 79(1) of the EPA it is considered that the relevant potential nuisances to the K3 and WKN Proposed Developments relate to parts a, c, d, fa, fb, g, ga and h only.

3.1.5 This document sets out the likely nuisances the K3 and WKN Proposed Developments could potentially give rise to and how and where this has been

addressed in the ES and any mitigation measures proposed within the draft DCO [Document 2.1] to avoid or reduce this effect.

- 3.1.6 Whilst the application seeks consent for the construction of K3, the facility is already substantially constructed. The practical effect should development consent be granted would be K3 as constructed operating to an upgraded power generation level of up to 75MW and processing 657,000 tonnes of waste per annum.
- 3.1.7 In reality the increased power generation would require a series of internal operational changes to the facility and the proposed tonnage throughput increase would require an increased level of HGV movements. Neither increase would require any changes to the built form (design, size, shape or appearance) of the K3 facility as permitted (KCC/SW/10/444 as amended) or to the layout of the site. A full EIA of the facility was undertaken and submitted as part of the application pursuant to permission KCC/SW/10/444 and is resubmitted as part of the application for the DCO now being sought.
- 3.1.8 This Statement of Statutory Nuisance therefore relates to the operation of K3 to its proposed generating capacity and waste tonnage throughput. It does not include the construction phase of K3 which is substantially completed and subject to appropriate conditions to control any effects pursuant to any statutory nuisance. K3 as permitted will be fully operational by late 2019.
- 3.1.9 The effects of the WKN Proposed Development resulting from its construction and operation are addressed.
- 3.1.10 Further details on the assessment of environmental effects and mitigation measures proposed can be found in the full ES.

## 4 Assessment of Matters set out in Section 79(1) of the EPA (1990)

### 4.1 Part 1a Any premises in such a state as to be prejudicial to health or a nuisance

4.1.1 There is no definition or guidance as to the exact meaning of 'any premises in such a state as to be prejudicial to health or a nuisance' albeit it is generally considered to relate to poor management and/or housekeeping that may lead to a statutory nuisance or be detrimental to health.

4.1.2 For the construction phase of the WKN Proposed Development a draft Construction Environmental Management Plan (CEMP) has been submitted as Appendix 2.1 of the Environmental Statement [Document 3.1]. The purpose of the CEMP is to:

- Ensure compliance with current legislation and contemporary best practice;
- Effectively minimise any potential adverse environmental effects during construction including how site-specific method statements will be developed to avoid, minimise and mitigate construction effects on the environment; and
- Translate committed mitigation, set out in the ES, into committed site procedure.

4.1.3 Requirement 21 of the draft DCO requires a full detailed CEMP to be submitted to and approved in writing prior to the commencement of the development. By taking that approach the probability of statutory nuisance occurring through poor maintenance or housekeeping on the WKN Site during construction is considered negligible. Matters relating to dust and noise are addressed under the relevant headings of this report where appropriate. Similarly, provision for a Demolition Environmental Management Plan (DEMP) pursuant to any future demolition of the facility is secured through Requirement 4 of the draft DCO.

4.1.4 Both K3 and the WKN Proposed Developments will be regulated by the Environment Agency under the Environmental Permitting Regulations (England and Wales) Regulations 2016. The environmental permits will set conditions to control effects on land, water and air which by existence necessitate good management and maintenance of the facilities and their operation.

4.1.5 As part of the DCO application and to safeguard the water environment during the lifetime of the WKN Proposed Development the ES sets out that the following documents should be produced and implemented:

- Drainage maintenance plan;
- Flood management plan;
- Emergency spillage management plan;

- Water quality monitoring strategy;
  - Flood evacuation plan.
- 4.1.6 Requirement 11 of the DCO controls the rate of surface water drainage arising from the K3 site. A Flood Risk Assessment including a Surface Water Management and Drainage Philosophy was produced and agreed with the planning authority for K3 pursuant to condition 16 of permission KCC/SW/10/444. In the absence of any change to the built form of K3 resulting from the K3 Proposed Development this remains sufficient to safeguard the water environment. This document will form a Certified Document of the DCO which will become the operational permission for K3 including the K3 Proposed Development.
- 4.1.7 Requirement 17 of the draft DCO states that details of surface and foul water drainage for the WKN site are to be submitted to and approved by the planning authority and constructed in accordance with the approved details and includes reference to the elements listed above.
- 4.1.8 On the basis of the above the potential for statutory nuisance to occur through poor maintenance or housekeeping is considered negligible.
- 4.2 Part 1c Fumes or gases emitted from premises so as to be prejudicial to health or a nuisance**
- 4.2.1 Both K3 (pursuant to the K3 Proposed Development) and the WKN Proposed Development will be operated in accordance with the requirements of the Industrial Emissions Directive (2010/75/EU) which requires adherence to emission limits for a range of pollutants.
- 4.2.2 The combustion of the imported waste produces a range of potential pollutants and therefore there is a need to discharge the flue gases through an elevated stack to allow dispersion and dilution of the residual combustion emissions which remain following treatment within the K3 and WKN facilities.
- 4.2.3 A stack height determination exercise has been undertaken for the WKN Proposed Development and a stack height of at least 90m subsequently proposed to ensure that pollutant concentrations are acceptable by the time they reach ground level. A 90m stack was permitted as part of the original K3 permission and remains sufficient to accommodate the K3 Proposed Development.
- 4.2.4 Exhaust emissions from both developments will be monitored by a Continuous Emissions Monitoring System (CEMS). The operation of K3 and the WKN Proposed Development will be strictly regulated by the EA under an Environmental Permit. This will require the facilities to be operated and maintained by a dedicated Operations and Maintenance team with an established planned preventative maintenance programme.
- 4.2.5 The air quality assessment presented in Chapter 5 of the ES and associated appendices demonstrates that the K3 and WKN Proposed Development will have

a negligible effect on air quality on all identified receptors and national air quality objectives will be met across the entire zone of influence of the K3 and WKN Proposed Developments.

- 4.2.6 Fugitive emissions will be minimised through the prohibition of open burning (e.g. of waste materials) at K3 and the WKN Proposed Development and the use of negative pressure within the tipping hall, to draw air through into the combustion system.
- 4.2.7 No emission of gases or fumes prejudicial to health or likely to result in a statutory nuisance will therefore occur.

#### **4.3 Part 1d Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance**

- 4.3.1 A full construction dust risk assessment for the WKN Proposed Development has been undertaken and is set out in Chapter 5 of the ES.
- 4.3.2 The result of this assessment concludes that the predicted Dust Impact Risk is classified as low in accordance with the Institute of Air Quality Management's Guidance on the assessment of dust from demolition and construction (2016). The IAQM dust guidance lists mitigation measures for low, medium and high dust risks.
- 4.3.3 The measures listed below are based on the IAQM dust guidance 'highly recommended' measures for low risk sites. These mitigation measures are included in the outline CEMP provided as Appendix 2.1 of the ES.

##### Preparing and maintaining the site

- Plan site layout so that machinery and dust causing activities are located away from receptors, as far as is possible;
- Avoid site runoff of water or mud;
- Operating vehicle/machinery and sustainable travel;
- Ensure all vehicles switch off engines when stationary – no idling vehicles.

##### Operations

- Use enclosed chutes and conveyors and covered skips.

##### Waste management

- Avoid bonfires and burning of waste materials.



### Communications

- Display the name and contact details of person(s) accountable for air quality and dust issues on the site boundary. This may be the environment manager/engineer or the site manager;
- Display the head or regional office contact information.

### Site Management

- Record all dust and air quality complaints, identify cause(s), take appropriate measures to reduce emissions in a timely manner, and record the measures taken;
- Make the complaints log available to the local authority when asked;
- Record any exceptional incidents that cause dust and/or air emissions, either on- or off-site, and the action taken to resolve the situation in the log book.

### Monitoring

- Carry out regular site inspections to monitor compliance with a Dust Management Plan, record inspection results, and make an inspection log available to the local authority when asked.

- 4.3.4 Similarly, provision for a DEMP pursuant to any future demolition of the facilities is secured through Requirement 4 of the draft DCO.
- 4.3.5 For the operation of both K3 and the WKN Proposed Development a series of fabric filter bags are utilised in the Flue Gas Treatment Plants for the abatement of particulate emissions, together with the use of injected reagent and activated carbon.
- 4.3.6 Continuous dust monitoring will be used to monitor the filter bags for continued efficiency. Individual filter bags will be isolated and replaced as soon as any drop-in efficiency is detected.
- 4.3.7 The potential for fugitive dust emissions from elsewhere in the facilities is minimised through the enclosure of the tipping hall, silos for the collection of Flue Gas Treatment residue and a water quenching system for bottom ash.
- 4.3.8 With regard to odour the fuel reception area, incorporating the tipping halls and fuel storage bunkers, is entirely enclosed with automatic roller shutter doors. These areas are maintained under slight negative pressure to reduce the risk of odours escaping. Odour levels around the plant will be regularly monitored by site management to assess the effectiveness of the installed odour control measures.
- 4.3.9 Formal, documented fuel management procedures will be put in place that will specify the criteria for fuel acceptance, storage, management and its movement around the Sites, to minimise odour.

- 4.3.10 A qualitative risk assessment of the potential odour impact from the WKN Proposed Development has been carried out using the methodology in the IAQM Guidance<sup>1</sup> and concludes that the likely odour effect is negligible as set out in Chapter 5 of the ES. Similarly, a qualitative bioaerosol risk assessment is present in Chapter 5 of the ES and similarly concludes that the risk of bioaerosol impacts are low.
- 4.3.11 Process water and high-pressure steam in the waste-to-energy process is continually recycled and is not discharged to air. There will be a degree of residual moisture in the emissions from the stack. The concept design of K3 and the WKN Proposed Development specifies that the stack gas temperature will be maintained above 140°C, which is the temperature specified in EU Guidance as being above the dew point of the gas so as to minimise visible plume emissions.
- 4.3.12 No dust, steam, smell or other effluvia being prejudicial to health or a nuisance from K3 or the WKN Proposed Development will therefore occur.
- 4.4 Part 1(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance**
- 4.4.1 The fuel will be delivered in covered or enclosed containers, tipped inside an enclosed reception hall and stored internally. This will minimise the potential for vermin, including insects. Due to the operational nature of the Proposed Development with a high turnover of fuel in the bunker, it is not considered to be a suitable habitat for vermin based on the Applicant's experience of other similar developments.
- 4.5 Part 1fb Artificial light emitted from premises so as to be prejudicial to health or a nuisance**
- 4.5.1 The WKN Proposed Development is not yet at the detailed design stage. A detailed lighting design and specification will be prepared by a specialist lighting contractor at the detailed design stage and will be designed to best practice guidance, including British Standard EN12464-2:2014 Lighting - Lighting of Work Places, Outdoor works and Chartered Institution Building Service Engineers (CIBSE) Lighting Guide 6 - The Exterior Environment.
- 4.5.2 Contemporary lighting schemes minimise light spill and reduce lateral and vertical light spill from the source and the ability to minimise these is wholly achievable within the scope of any modern lighting scheme.
- 4.5.3 Furthermore, given the context of the site i.e. adjacent to an existing lit industrial complex and the relative distance to the nearest residential receptors the risk of

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<sup>1</sup> Institute of Air Quality Management Guidance on the assessment of dust from demolition and construction 2016.



statutory nuisance from the lighting of the proposed development is considered negligible.

- 4.5.4 Requirement 22 of the draft DCO states that a scheme for the management and mitigation of artificial light emissions for the WKN Proposed Development shall be submitted to and approved by the relevant planning authority and implemented as approved.
- 4.5.5 Provision for safeguarding nuisance from construction lighting is made within the CEMP provided as Appendix 2.1 of the ES.
- 4.5.6 A detailed lighting strategy was produced and agreed with the local planning authority for K3 pursuant to condition 21 of permission KCC/SW/10/444. In the absence of any change to the built form of K3 resulting from the K3 Proposed Development and any necessitated changes to lighting this remains sufficient to safeguard the external lighting impacts to prevent nuisance. The approved lighting strategy will form a Certified Document of the DCO which would become the operational permission for K3 including the K3 Proposed Development.

**4.6 Part 1(g) Noise emitted from premises so as to be prejudicial to health or a nuisance and Part 1(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street**

- 4.6.1 A full noise and vibration assessment for the construction and operation of the WKN Proposed Development has been undertaken and is provided in Chapter 7 of the ES submitted with the DCO application.
- 4.6.2 It is intended that the construction working hours for the WKN Proposed Development would reflect those consented for K3. With the exception of construction using the concrete slip-forming method, construction using constant pour methods for concrete laying and internal process works relating to mechanical and/or electrical equipment installation, construction activities shall only take place between 07:00 and 19:00 hours Monday to Friday inclusive and 07:00 and 16:00 hours Saturday and Sunday with no construction activities to take place on Bank or Public Holidays subject to any prior written variation as approved by the Local Planning Authority.
- 4.6.3 Even for the noisiest construction activity (impact piling), noise levels are predicted to be less than 30 dB LAeq at any surrounding residential area, as determined by the noise model.
- 4.6.4 The assessment concludes that construction works on site would not result in any significant impact within the surrounding residential area. Notwithstanding this, best practicable means to reduce construction noise impact will be implemented to minimise any potential for disturbance to the surrounding area. These are included within the relevant section of the outline CEMP provided in Appendix 2.1 of the ES.

- 4.6.5 Requirement 21 of the draft DCO requires a full detailed CEMP to be submitted to and approved in writing prior to the commencement of the development and on that basis statutory noise nuisance is not considered likely. Similarly, provision for a DEMP pursuant to any future demolition of the facilities is secured through Requirement 4 of the draft DCO.
- 4.6.6 With regard to vibration during construction the nearest residential properties are over 500 m from the main construction area of the WKN Site. With reference to BS 5228-2, vibration levels decrease rapidly with increasing distance and is also attenuated by energy absorption in the soil and by obstacles and discontinuities. Given the separation between the WKN Site and the nearest residential receptors, vibration from construction activities will be significantly below the minor significance criteria. As such, vibration is considered to have no or negligible impact magnitude and will have no significant adverse effect.
- 4.6.7 The assessment presented in Chapter 7 of the ES considers the impact from operational noise from K3 and the WKN Proposed Development including off-site HGV movements. Operational noise and HGV road traffic noise have both been identified as resulting in negligible effects.
- 4.6.8 No noise emitted from either premises so as to be prejudicial to health or a nuisance is therefore likely to occur.
- 4.7 Part 1h Any other matter declared by any enactment to be statutory nuisance**
- 4.7.1 No other matters considered likely to result in potential statutory nuisance associated with the construction and operation of the K3 and WKN proposed developments have been identified.

## **5 Summary**

- 5.1.1 This Statement has been prepared to fulfil Regulation 5(2)(f) of the Infrastructure Planning Regulations 2009, which require an application for a DCO to be accompanied by a Statement setting out whether the development proposal could cause a statutory nuisance pursuant to Section 79(1) of the Environmental Protection Act 1990 (EPA).
- 5.1.2 Detailed assessments have been undertaken to assess: the condition of the site, potential air quality impacts, noise levels, and health effects amongst others generated by the proposed development during both construction and operation. These assessments are presented in the ES submitted as part of the suite of documents which form the DCO application.
- 5.1.3 Appropriate Requirements are then proposed to take forward any mitigation measures identified into the DCO.
- 5.1.4 The DCO seeks defence against proceedings in respect of statutory nuisance through a combination of the effect of section 158 of the Planning Act 2008 and Article 8. Based on the conclusions of the ES and the Requirements proposed within the DCO that approach is considered to be justified and appropriate, as with appropriate mitigation the development proposal would not have the potential to cause a statutory nuisance, during either its construction or operation, of the types identified under Section 79(1) of the Environmental Protection Act 1990.