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Dear Simone,

Re: Application by Wheelabrator Technologies Holdings Inc. for an Order Granting Development Consent for the Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility – Relevant Representation Submission

Following the Planning Inspectorate's acceptance (5 November 2019) of the application for a Development Consent Order (DCO) for Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility, Kent County Council (KCC) requests to be registered as an Interested Party at the Examination.

This letter provides a summary of the main aspects of the proposal which KCC agrees and/or disagrees with, together with an appropriate explanation, in accordance with Planning Inspectorate Advice Note 8.3. In summary, an outline of the principal submissions which KCC intends to make in relation to the application will concern:

- Highways and Transportation – as the Local Highway Authority for Kent;
- Minerals and Waste – as the Minerals and Waste Planning Authority for Kent;
- Waste – as the Waste Disposal Authority;
- Public Rights of Way – as Local Highway Authority
- Surface Water Flooding and Drainage – as the Lead Local Flood Authority for Kent;
- Heritage Conservation; and
- Biodiversity.

Highways and Transportation

The County Council, as Local Highway Authority, has provided a number of responses to this proposal direct to the applicant and the Planning Inspectorate as required. However, there has been little engagement from the applicant since a meeting in February 2019, and information requested at that time has not been received. KCC's previous statutory consultation responses dated 10 January 2019 and 10 September 2019 clearly set out the

issues of concern for KCC as Local Highway Authority. For ease of reference, these are summarised below:

Baseline conditions - The Transport Assessment (TA) will need to be amended to include information up to the date of submission in 2019.

Future Year Junction Assessments Grovehurst Road/A249 - The TA includes a 2031 (end of Local Plan) assessment, along with a 2021 interim assessment to account for construction traffic. Whilst these were appropriate at the time of submission, a committed scheme has now been approved for the Grovehurst/A249 junction following a successful Housing Infrastructure Fund application. As such, sensitivity testing should be completed for the proposed development's impact on the new junction arrangement so that this application does not undermine the housing delivery benefits for which the grant was approved.

Future Year Junction Assessments Swale Way/Barge Way - Assessments demonstrate that this junction is operating beyond capacity in all future scenarios tested, with no mitigation being proposed. This is considered unacceptable and due to the high volume of HGV's, is a safety and capacity concern.

Waste delivery options - The application fails to consider use of the adjacent operational dockyard and redundant railway siding, which is within one mile of the application site. There is a clear opportunity to deliver the large quantities of waste generated by the proposal via rail or water. With the surrounding highway network being over capacity at Junction 5 of the M2 and the Grovehurst junction, there is a strong argument for seeking alternative means of waste delivery. Without investigations into the use of the available and alternative methods of delivery, it is considered that the application is not compliant with the National Planning Policy Framework (NPPF) guidance which states that development should seek to encourage sustainable travel, lessen traffic generation and its detrimental impacts, and reduce carbon emissions and negative climate impacts.

Trip Generation - The Preliminary Environmental Impact Report (PEIR) provided some clarity as to the expected trip generations from the development. The County Council has sought explanation and evidence to justify the submitted numbers of movements. The applicant has been asked to share details of all current movements and arrival departure times for the current construction of the K3 plant to provide a basis for justifying the construction movements. Details of movements associated with the applicant's operational Ferrybridge waste to energy site have also been requested to help assess the peak hour movements from this site. However, no evidence on these matters has been forthcoming. It is therefore a reasonable assumption that the submitted operational hourly movements averaged across the day are not justified, and the impact on the extended peak hours movements has not been properly assessed.

The County Council's specific comments on the movements provided by the applicant can be summarised as follows:

K3 HGVs – submitted as 416 HGV movements. A new table should be provided to demonstrate the expected times of arrival and departure. Evidence should be submitted to justify any expectations.

K3 Staff – Whilst it is mentioned that an estimated 50 staff will operate the site, details of their expected trip generation do not appear to have been submitted for this proposal and will be required.

WKN HGVs (operational) – submitted as 250 HGV movements. The TA states that the additional 390,000 tonnes of waste per annum would generate an additional 250 HGV movements per day.

WKN Staff (operational) - An estimation of staff numbers ranges from 35 to 50 over three shift periods. Therefore, 42 car movements are expected, representing the 84% travelling by car; however, only 37 car movements appear to be accounted for in the TA. An explanation is required.

WKN Construction - The TA demonstrates that a peak of 482 staff would be on site during months 24 to 40 of construction, with 45 HGV deliveries (or 90 movements) per day during peak construction. It is requested that evidence from the existing K3 construction programme is submitted, to evaluate whether the level of HGV movements for this proposal is reasonable. It is also requested that the hourly number of deliveries is demonstrated through traffic count evidence for one week. The information would provide evidence to justify assumptions made.

Census data has been used to calculate the mode share of construction staff transport. The assessment carried out assumes 84% of staff would travel by car. This allows 409 staff accessing the site per day by car and is considered a fair assumption. The assessment, however, shows no construction staff arriving during the peak hours.

The cumulative impact of the K3 and WKN operation generates an anticipated 666 HGV two-way movements per day. Additional staff movements, yet to be clarified, will also need to be taken into account. The construction of the WKN site will bring forward a further 90 two-way HGV movements and 409 construction staff trips.

Impact and mitigation of the proposal - The PEIR suggests that the volume of development generated traffic represents only a small proportion of the current traffic flows on the adjacent highway. This statement is disputed. Taking account of the currently submitted base movements of 2000, the development generation of 666 movements clearly represents a substantial impact of the volumes of HGVs. In addition, as submitted, the completed counts would have included K3 construction HGVs which would need to be deducted and would thus increase the overall development impact.

No mitigation for this significant impact has been proposed. The County Council considers that proportionate mitigation is appropriate and that the best way to mitigate the impact would be to use alternative modes for waste transfer.

Proposed delivery timing - The scheme is proposed to be constructed during a time of constrained highway capacity. The delivery time for the proposal would be the same as when construction works are planned to take place at Junction 5 of the M2 and the A249 at the Grovehurst interchange. The highway junctions would therefore already be operating at reduced capacity, and additional traffic at this time would compound existing safety and congestion issues. The County Council recommends that ideally, no works should be commenced until both the M2 Junction 5 and A249/Grovehurst works are completed.

Minerals and Waste

Whilst not being specifically promoted as a waste management plant, the proposal would result in approximately half a million tonnes of additional waste recovery capacity being built in Kent.

The County Council would draw the Inspector's attention to the conflict of the proposed development with the Council's strategy for the management of waste as set out in the Council's Kent Minerals and Waste Local Plan (KMWLP) that is proposed for modification by the Early Partial Review (EPR). The EPR Plan is currently with the Planning Inspectorate for examination. A key driver for undertaking the Early Partial Review was the delivery of the Kemsley Waste to Energy facility, originally permitted by the County Council, which substantially meets those needs for additional recovery capacity identified by the adopted KMWLP. The Inspector's report on the EPR Plan is expected in early 2020. It should be noted that the applicant submitted representations to the EPR Plan process, including detailed evidence at the Examination Hearings. Documents relating to the Local Plan examination are available on the County Council's website¹.

It is the County Council's view that the documents submitted to support the proposed development demonstrate little consideration of the adopted and EPR versions of the KMWLP and undermine its credibility. The strategy of the adopted KMWLP is predicated on maintaining a sustainable pattern of waste management that achieves overall net self-sufficiency – the Council contends that the changes proposed by the EPR do not alter this. In the County Council's view, the proposal is not supported by robust evidence that justifies the development of increased waste recovery capacity in Kent, and it undermines the adopted KMWLP strategy of net self-sufficiency and managing waste as far up the waste hierarchy as practical.

The County Council would draw attention to two conflicting waste needs assessments in the public domain – one that underpins the Council's Local Plan Strategy (provided to support the Early Partial Review) and another prepared for Wheelabrator Technologies Holdings. Both of these evidence base arguments are currently before the Local Plan Inspector for consideration as part of the Independent Examination into the EPR of the KMWLP.

The evidence base prepared for Wheelabrator Technologies Holdings to underpin the proposal seeks to justify up to 1.3 million tonnes of additional 'other recovery' capacity. It indicates that even with the WKN/K3 Waste to Energy capacity, there will be a further unmet requirement for capacity of up to 840ktpa. This could be taken to suggest a need for additional energy from waste facilities within Kent over and above this proposal. This is not supported by national and local waste planning policy and guidance.

When viewed against the applicant's most recent Environment Agency waste data, (Waste Data Interrogator – WDI 2018²), the applicant's assessment of the need for further capacity appears to be inflated, even with the promoter's wider approach to fuel availability assessment. It is noted that the applicant's evidence identifies a range between 992,540tpa and 1,337,463tpa before provision of the additional capacity arising from the K3/WKN proposed development. Using the Environment Agency's WDI 2018 data and the applicant's methodology, this would result in fuel availability of between 123,500tpa and 420,000tpa. Given that the proposal is for 490,000tpa tonnes, the analysis of the data shows that there is no justification for the proposal at the proposed scale. This updated evidence should be brought to the Inspector's attention. Further details are set out in Appendix 1.

Furthermore, the Council raises a concern that the proposal would encourage more waste to be managed in a way that is contrary to the waste hierarchy, which places 'other recovery' at one level above landfill. Such an approach would result in a longer commitment to other recovery, which in turn could divert resources from more sustainable solutions in the hierarchy (i.e. preparation for re-use and recycling).

¹ https://consult.kent.gov.uk/portal/second_call_for_sites_2016/document_library

² <https://data.gov.uk/dataset/312ace0a-ff0a-4f6f-a7ea-f757164cc488/waste-data-interrogator-2018>

In addition, the management of waste as proposed in this scheme and its diversion of waste into the County also has the potential to undermine the wider local plan making principles of the other Waste Planning Authorities within the South East. These authorities, including KCC, are part of the South East Waste Planning Advisory Group (SEWPAG). The group has an agreed Memorandum of Understanding that commits the respective signatories to regional net self-sufficiency and that this is to be achieved and maintained as part of each authority's waste planning strategy. The proposal would result in waste being drawn into the SEWPAG area, contrary to this objective.

The County Council would also draw attention to the observations and comments made within its response to the Scoping Report (dated 5th October 2018).

Waste Management

KCC, as the Waste Disposal Authority, has a statutory duty to seek provision for dealing with domestic waste disposal arisings in Kent.

Although the Wheelabrator Kemsley Generating Station proposal offers greater disposal capacity, this is not required by KCC and nor does the Authority expect there to be a need for this beyond current arrangements and existing long term contracts.

Kent household waste tonnages are currently running at some 730,000 tonnes per annum, with some 50% being handled and converted to energy through the energy from waste plant at Allington, and the County Council does not expect capacity demand to change by more than current predictions. Therefore, additional waste capacity is not required, or expected, during the existing contract period.

Public Rights of Way

The applicant has acknowledged the existence of the Public Rights of Way (PRoW) network surrounding the site and the Saxon Shore Way promoted route that currently passes alongside Milton Creek. It is encouraging to note that the applicant has also referenced the England Coast Path. This is a new National Trail that is currently being developed by Natural England. The proposed route for the England Coast Path passes along Public Footpath ZU1 and follows the alignment of the Saxon Shore Way. Should this route be approved by the Secretary of State, the number of people walking this section of the coast is likely to increase, due to the enhanced level of promotion associated with a National Trail.

The PRoW network and its users have been considered as receptors when assessing the potential impacts of this development. On balance, the visual impacts are considered to be negligible, due to the existing industrial nature of the landscape. However, the proposed development may have a detrimental impact on path users due to deteriorating air quality and noise effects arising from the development.

Improvements to the existing PRoW network should be considered as mitigation for the potential negative impacts of the development on path users. To this end, the County Council's PRoW and Access Service would welcome engagement with the applicant to consider surfacing improvements along Public Footpath ZU1/The Saxon Shore Way which would enhance accessibility for path users. These improvements would provide positive community outcomes for the scheme and help mitigate the negative effects arising from the development.

Heritage

The County Council's archaeological team has provided advice with respect to the applicant's archaeological baseline and approach to assessment for this proposal, responding to the two statutory consultations and Scoping Report. The applicant responded to this advice appropriately in the desk-based study and the Environmental Statement (ES). The County Council agrees with the proposal set out in paragraph 13.9.2 of the ES that archaeological mitigation can be addressed through a programme of archaeological work to be secured through an appropriate requirement on the DCO. A Written Scheme of Investigation should be agreed with the KCC archaeological team.

Sustainable Urban Drainage Systems (SuDS)

The submission includes a Surface Water Management and a Foul Drainage Design Report prepared by RPS. Surface water has been appropriately managed in the proposal and therefore the County Council, as Lead Local Flood Authority, has no comments.

Biodiversity

The County Council is satisfied that sufficient information has been provided to enable the Examining Authority to assess the impact on designated sites and advises that as the competent authority, the Examining Authority will need to carry out an Appropriate Assessment.

It is understood that some of the works have already commenced or will be carried out on habitat that is unsuitable for protected/notable species. Therefore, the main consideration will be the impact on the adjacent designated sites.

KCC looks forward to working with the applicant and the Planning Inspectorate as the project progresses through the DCO process and would welcome the opportunity to comment on matters of detail throughout the Examination.

Should you require any additional information or clarification, please do not hesitate to contact me.

Yours sincerely



Barbara Cooper

Corporate Director – Growth, Environment and Transport

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- [Appendix 1](#): Comparison of WTI 2017 and WDI 2018 Data on Fuel Availability

Appendix 1: Comparison of WTI 2017 and WDI 2018 Data on Fuel Availability

	WTI submission		BPP Sensitivity	
	Calculated range using 2017 data (tonnes)		WDI 2018	
Assessment	Upper	Lower	Upper	Lower
HIC waste disposed to landfill within Study Area	1,981,358		1,194,029	
Shortlisted waste types disposed to landfill within Study Area		1,508,860		769,372
RDF removed from facilities in the Study Area and exported	1,018,592	1,018,592	889,067	889,067
Total fuel	2,999,950	2,527,452	2,083,096	1,658,439
Additional 27% recycling to achieve CEP 2035 target	809,986	682,412	809,986	682,412
Remaining fuel	2,189,963	1,845,040	1,273,110	976,027
Comparable future capacity likely to be delivered	852,500	852,500	852,500	852,500
Remaining fuel	1,337,463	992,540	420,610	123,527
Proposed capacity of K3/WKN	497,000	497,000	497,000	497,000
Remaining level of need	840,463	495,540	-76,390	-373,473