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Infrastructure  
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All Interested Parties, Statutory Parties  
and Other Persons

Your Ref:

Our Ref: EN010083

Date: 21 January 2020

Dear Sir/ Madam

## **Planning Act 2008 (as amended) – Section 88 and the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 6**

### **Application by WTI/EFW Holdings Ltd for an Order Granting Development Consent for the Wheelabrator Kemsley (K3) Generating Station and the Wheelabrator Kemsley North (WKN) waste to energy facility**

#### **Appointment of the Examining Authority**

I write to you following my appointment by the Secretary of State as the Examining Authority (ExA) to carry out an examination of the above application by WTI/EFW Holdings Ltd ('the Applicant'). A copy of the appointment letter can be viewed at:

<http://infrastructure.planninginspectorate.gov.uk/document/EN010083-000549>

#### **Invitation to the Preliminary Meeting**

This letter is an invitation to the Preliminary Meeting (PM) to discuss the examination procedure and contains a number of supporting annexes. I would like to thank those of you who submitted Relevant Representations. These representations have assisted me when preparing my proposals regarding how to examine this application.

**Date of meeting:** **Wednesday, 19 February 2020**

**Seating available from:** **09.30am**

**Meeting begins:** **10.00am**

**Venue:** **Hempstead House Hotel, London Road, Bapchild  
Sittingbourne, Kent, ME9 9PP**

**Access and parking:** Free parking available at venue

<https://infrastructure.planninginspectorate.gov.uk>

**Note:** Given the volume and frequency of letters the Planning Inspectorate needs to send to Interested Parties (IPs) during an Examination, we aim to communicate with people by email wherever possible as electronic communication is more environmentally friendly and cost effective for the Inspectorate as a government agency. If you have received a postcard but are able to receive communications by email, please confirm this with the Case Team using the contact details at the top of this letter, by **midday (12 noon), 5 February 2020**.

## **Purpose of the Preliminary Meeting**

The purpose of the PM is to enable views to be put to me about the way in which the application is to be examined. At this stage, I am looking at the procedure for the Examination, and not the merits of the application. The merits of the application will only be considered once the Examination starts, which is after the PM has closed.

I wish to run a fair, efficient and effective meeting so that all relevant views can be heard. As such, I strongly encourage groups of individuals who have similar views on the procedure to choose one representative to speak for the group.

The agenda for the PM is in **Annex A**. This has been set following my Initial Assessment of the Principal Issues arising on the application. That assessment is set out in **Annex B**. As a result of this assessment I wish to hear at the meeting from the Applicant, IPs, Statutory Parties and Local Authorities where they consider changes may be needed to the draft Examination Timetable set out in **Annex C**.

Up to date information about the Wheelabrator Kemsley and Wheelabrator Kemsley North project and its Examination can be obtained on the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/wheelabrator-kemsley-generating-station-k3-and-wheelabrator-kemsley-north-wkn-waste-to-energy-facility/>

This is the project website address from which I will make copies of all future communications and Examination documents available to the public. You can use this page to track progress of the Examination and access all relevant documents and correspondence from the links it contains. As the examination process makes substantial use of electronic documents, it will be useful to become familiar with this resource.

If you wish to receive an email notification when relevant documents and correspondence are published you can register on the project website to do so. Further information on the examination process is given in [Advice Note 8.4](#), which is available on the National Infrastructure Planning website.

## **Attendance at the Preliminary Meeting**

If you wish to attend the Preliminary Meeting please contact the Case Team using the details set out at the top of this letter. Please confirm this by **midday (12 noon), 12 February 2020**.

<https://infrastructure.planninginspectorate.gov.uk>



It will help the management of the meeting and benefit everyone if you also:

- Tell us whether you wish to speak at the meeting and on which agenda items (**Annex A**), listing points you wish to make; and
- Notify us of any special requirements you may have (eg disabled access, hearing loop etc).

The PM provides a useful introduction to the Examination process. I will use it to make Procedural Decisions that will affect everyone participating in the Examination. The meeting provides you with an opportunity to have your say about procedural issues before these decisions are finalised. If you intend to play an active part in the Examination or you have questions about procedure it is useful to attend the meeting.

However, please note that **you are not required to attend the PM in order to participate in the Examination**. If you are an IP you will still be able to make a Written Representation and comment on the Written Representations made by other Interested Parties. You will also be able to participate in any hearings that are arranged. Should you no longer wish to be an Interested Party and do not wish to be involved in the Examination process, you can notify the Case Team of this in writing.

### **After the Preliminary Meeting**

After the PM you will be sent a letter setting out the finalised Examination Timetable. An audio recording and a note of the meeting will also be published on the project webpage of the National Infrastructure Planning website.

Interested Parties have the right to request an Open Floor Hearing (OFH). The draft timetable at **Annex C** indicates the date reserved for an OFH, should this be requested. As no Compulsory Acquisition or Temporary Possession matters have been raised in this application I have not reserved any dates to hold a Compulsory Acquisition Hearing.

Any other Issue Specific Hearings (ISHs) are at the discretion of the ExA and will be arranged if I feel that consideration of oral representations would ensure an issue is adequately considered. My initial suggestions for ISHs are set out in the draft timetable at **Annex C** with the particular topic indicated, although you will see further below that I have made a Procedural Decision to proceed with my first ISH (ISH1) into the draft Development Consent Order (dDCO) shortly after the close of the PM on **Wednesday, 19 February 2020 at 1.00pm**.

My Examination will take account of Relevant Representations, Written Representations, responses to Written Questions and any oral representations made at the hearings. In addition, I will take account of the application documents, Local Impact Report(s), policy and legal considerations, site inspections and any other matters I consider to be relevant and important.

All relevant and important matters will be taken into account when I make a recommendation to the Secretary of State for Business, Energy and Industrial Strategy, who will take the final decision in this case.

<https://infrastructure.planninginspectorate.gov.uk>

## **Procedural decisions made by the ExA under sections 89(3) and 91(1) of the Planning Act 2008**

I have made some preliminary Procedural Decisions under section (s) 89(3) of the Planning Act 2008 (PA2008) which include the setting of dates for action. These include:

- the setting of deadlines for the submission of:
  - comments on Relevant Representations (RRs);
  - Written Representations (WRs);
  - summaries of any representations exceeding 1500 words;
  - agreements and submissions of Statements of Common Grounds (SoCGs);
  - comments on any updated application documents submitted by the Applicant;
- the notification by IPs of their wish to be heard at an OFH;
- the notification by IPs of their wish to attend an Accompanied Site Inspection (ASI) and their nomination of locations including justifications for the consideration of the ExA of their nominations;
- the notification by Statutory Parties or certain Local Authorities of their wish to be considered as an IP by the ExA.

These preliminary Procedural Decisions are set out in full at **Annex E** and should be read carefully alongside the draft Examination timetable at **Annex C**. Some of my Procedural Decisions provide you with the opportunity to take action before the PM and/or set dates that require you to take action shortly after that date. If you have questions or wish to discuss any aspect of these decisions, please attend the PM. I will give careful consideration to all matters raised there before confirming my timetable and Procedural Decisions for this Examination.

### **Notification of hearing**

I have made a Procedural Decision under s91 of the PA2008 to hold an early ISH into the dDCO on **Wednesday 19 February 2020 at 1.00pm** shortly after the close of the PM.

Important information about this ISH is provided at **Annex F**.

### **Your status in the Examination**

This letter has been sent to you because you (or the body you represent) fall within one of the categories in s88(3) of the PA2008.

If you have made a RR or are a relevant Local Authority (reference number beginning with '2001' or 'KEM3-xxx'), you have a formal status as an IP in the Examination.

Interested Parties will receive notifications from the Planning Inspectorate about the Examination throughout the process and may make written and oral submissions regarding the application.

<https://infrastructure.planninginspectorate.gov.uk>



If you are a prescribed consultee (ie body specified in the relevant regulations supporting the PA2008) but have not made a RR (reference number beginning with '2001') you will not automatically be an IP. However, following the PM, you will have a further opportunity to notify the Planning Inspectorate that you wish to be treated as an IP (see **Annex C**, Deadline 1).

If you are not sure whether you are an IP, please contact the Case Manager using the details at the top of this letter. Information regarding the formal status of IPs and how you can get involved in the process is set out in the Planning Inspectorate Advice Note 8 series on the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

### **Award of Costs**

I also draw your attention to the possibility of the Award of Costs against Interested Parties who behave unreasonably. You should be aware of the relevant cost guidance 'Awards of costs; examinations of applications for development consent orders' which applies to National Infrastructure projects. This guidance is available at:

<https://www.gov.uk/government/publications/awards-of-costs-examinations-of-applications-for-development-consent-orders>

### **Management of Information**

The Planning Inspectorate has a commitment to transparency. Therefore, all information submitted for this project (if accepted by the ExA), and any record of advice which has been provided, is published and available within the Examination Library:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010090/EN010090-000344-K4%20Internal%20Examination%20Library%20-%20PDF%20Version.pdf>

All Examination documents can also be viewed electronically at the locations listed in **Annex D**. Physical copies of some documents are available at some locations and these are identified in the Annex.

The privacy of any other personal information has been protected in accordance with the Planning Inspectorate's Information Charter.

I look forward to working with all parties in the examination of this application.

Yours faithfully

*Grahame Kean*

**Grahame Kean**  
**Examining Authority**

<https://infrastructure.planninginspectorate.gov.uk>



## **Annexes**

- A** Agenda for the Preliminary Meeting
- B** Initial assessment of Principal Issues
- C** Draft timetable for examination of the application
- D** Availability of examination documents
- E** Procedural Decisions made by the Examining Authority
- F** Notification of Issue Specific Hearing into the draft Development Consent Order

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

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**Agenda for the Preliminary Meeting****Date: 19 February 2020****Seating available from: 09.30am****Start Time: 10.00am****Venue: Hempstead House Hotel, London Road,  
Bapchild Sittingbourne, Kent, ME9 9PP**

<b>09.30am</b>	Registration opens
<b>Item 1 (10.00am)</b>	<b>Welcome and introductions</b>
<b>Item 2</b>	The <b>Examining Authority's (ExA's) remarks</b> about the examination process
<b>Item 3</b>	<b>Initial Assessment of Principal Issues – see Annex B</b>
<b>Item 4</b>	<b>Procedural Decisions</b> taken by the ExA – see Annex E  Any remaining submissions regarding procedural matters not set out in the agenda that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting (PM).
<b>Item 5</b>	<b>Draft timetable</b> for the Examination – see <b>Annex C</b>  Deadlines for submission of: <ul style="list-style-type: none"> <li>• Comments on Relevant Representations (RRs);</li> <li>• Written Representations (WRs);</li> <li>• Statements of Common Ground (SoCGs);</li> <li>• Comments on post-application submissions from the Applicant;</li> <li>• Local Impact Reports (LIRs);</li> <li>• Responses to the ExA's Written Questions;</li> <li>• Notifications relating to any hearings;</li> <li>• Nominations of suggested locations with justifications for site inspections; and</li> <li>• Procedural requests relating to these items that have been submitted to the Planning Inspectorate in advance of the PM.</li> </ul>
<b>Item 6</b>	Hearings and Accompanied Site Inspection (ASI): <ul style="list-style-type: none"> <li>• Procedure, matters and issues for Issue Specific Hearing (ISH) into the draft Development Consent Order on 19 February 2020 - see <b>Annexes F</b>;</li> <li>• Date reserved and arrangements for an ASI;</li> <li>• Date reserved and arrangements for an Open Floor Hearing (OFH);</li> <li>• Dates reserved and arrangement for other ISHs; and</li> <li>• Procedural requests relating to these items that have been submitted to the Planning Inspectorate in advance of the PM.</li> </ul>
<b>Item 7</b>	<b>Any other matters</b>
	<b>Close of the Preliminary Meeting</b>

**Please note:** Please register and be available from the start and throughout the meeting. The agenda is subject to change at the discretion of the ExA. The ExA will conclude the meeting as soon as all relevant contributions have been made. If there are any additional matters to be dealt with or the submissions take longer than expected the ExA may change the order of the agenda items and may introduce breaks in the proceedings.



**Initial Assessment of Principal Issues**

This is the initial assessment of the Principal Issues arising from consideration by the Examining Authority (ExA) of the application documents and Relevant Representations (RRs) received. It is not a comprehensive or exclusive list of all relevant matters; regard will be had to all important and relevant matters in reaching a recommendation after the Examination is concluded. The list of identified Principal Issues should not be taken to imply an order of importance.

The policy and consenting requirements and documents associated with the Planning Act 2008 (PA2008) are an integral part of the Examination and are therefore not set out as separate Principal Issues. In addition, it should be noted that a number of these Principal Issues set out below have an inter-relationship and overlap and these will be reflected in the Examination.

**1. Environmental Impact Assessment** including issues related to:

- The assessment of potential effects of the Proposed Developments including the 'practical effect' of the K3 Proposed Development and design options for the WKN Proposed Development;
- The approach to flexibility in adopting the principle of the 'Rochdale Envelope';
- The parameters of the Proposed Developments;
- The approach to decommissioning;
- Cumulative effects on and with other major projects and proposals;
- Mitigation measures including the content of the Construction Environmental Management Plan

**2. Air Quality** including issues related to:

- Baseline assessment
- Construction impacts including dust and the application of the Institute of Air Quality Management guidance
- Operational impacts on human and ecological receptors

**3. Archaeology and Cultural Heritage** including issues related to:

- Effects on archaeological interests
- Effects on the setting of listed buildings

**4. Ecology** including issues related to:

- Baseline assessment
- The effects on habitats and species, including dust, external lighting and visual disturbance impacts, noise disturbance, surface water drainage
- Ecological mitigation and management plan

**5. Habitats Regulations Assessment** including issues related to:

- Effects on European sites and their qualifying features, including the approach to mitigation

6. **Greenhouse Gases and Climate Change** including issues related to:
  - Likely significant effects of greenhouse gas emissions from the Proposed Developments
  - Mitigation measures
7. **Ground Conditions** including issues related to:
  - Effects on human health and groundwater during construction
8. **Landscape and Visual Impact** including issues related to:
  - Design and construction effects of WKN Proposed Development
  - Operational Effects including the height and location of the proposed stack(s)
  - Effects on visual receptors, landscape and townscape character and cumulative effects
9. **Noise and Vibration** including issues related to:
  - Baseline assessment
  - Construction effects
  - Operational effects
10. **Traffic and Transport** including issues related to:
  - Traffic generation, traffic management and highway safety
  - Construction effects on the surrounding road network including the management of abnormal indivisible loads and Construction Traffic Management Plan
  - Co-ordination with other major construction projects
  - Operational effects and Operational Traffic Routing and Management Plan
11. **Water Environment** including issues related to:
  - Water quality and flood risk impacts including the extent to which construction and operation of the Proposed Developments would impact on waterbodies
  - Water discharge and drainage
  - Compliance with the requirements of the Water Framework Directive (or equivalent legislation)
12. **Draft Development Consent Order (dDCO)** including issues related to:
  - The structure of the dDCO
  - The appropriateness of proposed provisions
  - Relationship with other consents
  - Protective Provisions

### Draft timetable for Examination of the application

The Examining Authority (ExA) is under a duty to complete the examination of the application by the end of the period of six months beginning with the day after the close of the Preliminary Meeting (PM).

The ExA however may close the examination before the end of the six month period if he is satisfied that all relevant matters have been addressed and discussed.

My examination of the application primarily takes the form of the consideration of written submissions. The ExA will also consider any oral representations made at Hearings.

<b>Item</b>	<b>Matters</b>	<b>Due Dates</b>
1	<b>Preliminary Meeting</b>	<b>Wednesday 19 February 2020 (morning)</b>
2	<b>Issue Specific Hearing 1 (ISH1)</b> ISH1 on the draft Development Consent Order (dDCO)	<b>Wednesday 19 February 2020 (afternoon)</b>
3	<b>Issue by ExA of:</b> <ul style="list-style-type: none"> <li>• Examination timetable</li> <li>• ExA's Written Questions (ExQ1)</li> </ul>	<b>As soon as practicable following the PM</b>
4	<b>Deadline 1 (D1)</b> Deadline for receipt of: <ul style="list-style-type: none"> <li>• comments on any updates to application documents submitted by the Applicant before or at the PM;</li> <li>• comments on any additional submissions received before or at the PM;</li> <li>• comments on Relevant Representations (RR);</li> <li>• summaries of all RRs exceeding 1500 words;</li> <li>• Written Representations (WRs) by all Interested Parties (IP);</li> <li>• summaries of all WRs exceeding 1500 words;</li> <li>• Statements of Common Ground (SoCGs) requested by ExA – see <b>Annex E</b>;</li> <li>• Local Impact Reports (LIRs) from any Local Authorities;</li> <li>• response to any further information requested by the ExA for this deadline;</li> </ul>	<b>Monday 2 March 2020 (midday)</b>

	<ul style="list-style-type: none"> <li>• post-hearing submissions including written submissions of oral cases;</li> <li>• notification by Statutory Parties of their wish to be considered as an IP by the ExA;</li> <li>• notification of wish to speak at any subsequent Issue Specific Hearings (ISH);</li> <li>• notification of wish to speak at an Open Floor Hearing (OFH);</li> <li>• provision of suggested locations and justifications for site inspections for consideration by the ExA;</li> <li>• notification of wish to attend an Accompanied Site Inspection (ASI); and</li> <li>• notification of wish to have future correspondence received electronically.</li> </ul>	
5	<p><b>Deadline 2 (D2)</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• comments on WRs;</li> <li>• comments on any SoCG;</li> <li>• comments on any LIRs</li> <li>• responses to ExQ1;</li> <li>• Applicant's revised dDCO;</li> <li>• comments on any additional information/submissions received by D1; and</li> <li>• responses to any further information requested by the ExA for this deadline.</li> </ul>	<b>Wednesday 18 March 2020</b>
6	<p><b>Accompanied Site Inspection</b></p> <p>Date reserved to hold an ASI (if required)</p>	<b>Wednesday 15 April 2020</b>
7	<p><b>Open Floor Hearing 2 (OFH2)</b></p> <p>Date reserved to hold an OFH (if required)</p>	<b>Wednesday 15 April 2020 (evening)</b>
8	<p><b>Issue Specific Hearing 2 (ISH2)</b></p> <p>ISH2 into Environmental Issues, including traffic and transport</p>	<b>Thursday 16 April 2020</b>
9	<p><b>Issue Specific Hearing 3 (ISH3)</b></p> <p>ISH3 on the dDCO.</p>	<b>Friday 17 April 2020</b>

10	<p><b>Deadline 3 (D3)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• post-hearing submissions including written submissions of oral cases;</li> <li>• comments on responses to ExQ1;</li> <li>• comments on Applicant’s revised dDCO;</li> <li>• comments on any additional information/submissions received by D2; and</li> <li>• responses to any further information requested by the ExA for this deadline.</li> </ul>	<b>Wednesday 22 April 2020</b>
11	<p><b>Issue by ExA of:</b></p> <ul style="list-style-type: none"> <li>• Further Written Questions (FWQ) (if required);</li> </ul>	<b>Wednesday 6 May 2020</b>
12	<p><b>Deadline 4 (D4)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• responses to ExA’s FWQ (if required);</li> <li>• Applicant’s revised dDCO;</li> <li>• Any revised/updated SoCGs;</li> <li>• comments on any additional information/submissions received by D3; and</li> <li>• responses to any further information requested by the ExA for this deadline.</li> </ul>	<b>Wednesday 20 May 2020</b>
13	<p><b>Issue Specific Hearing 4 (ISH4)</b> (if required)</p> <p>Date reserved to hold ISH4 on any Outstanding Issues</p>	<b>Wednesday 17 June 2020</b>
14	<p><b>Issue Specific Hearing 5 (ISH5)</b> (if required)</p> <p>Date reserved to hold ISH5 on the dDCO.</p>	<b>Thursday 18 June 2020</b>
15	<p><b>Deadline 5 (D5)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• post-hearing submissions including written submissions of oral cases (if required);</li> <li>• comments on responses to ExA’s FWQ (if required);</li> <li>• comments on Applicant’s revised/updated dDCO;</li> <li>• comments on any revised/updated SoCGs;</li> </ul>	<b>Wednesday 24 June 2020</b>

	<ul style="list-style-type: none"> <li>• comments on any additional information/submissions received by D4; and</li> <li>• responses to any further information requested by the ExA for this deadline.</li> </ul>	
16	<p><b>Publication by ExA of:</b></p> <ul style="list-style-type: none"> <li>• Consultation on the ExA's preferred DCO (if required); and</li> <li>• Report on the Implications for European Sites (RIES) (if required).</li> </ul>	<b>Wednesday 15 July 2020</b>
17	<p><b>Deadline 6 (D6)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• comments on the ExA's preferred DCO (if required);</li> <li>• comments on the ExA's RIES (if required);</li> <li>• Applicant's Final preferred DCO in Statutory Instrument (SI) template validation report;</li> <li>• Any revised/updated SoCGs;</li> <li>• comments on any additional information/submissions received by D5;</li> <li>• responses to any further information requested by the ExA for this deadline.</li> </ul>	<b>Wednesday 5 August 2020</b>
18	<p><b>Deadline 7 (D7)</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• comments on any revised/ updated SoCG;</li> <li>• comments on the Applicant's Final preferred DCO in the Statutory Instrument (SI) template validation report;</li> <li>• comments on any additional information/submissions received by D6; and</li> <li>• responses to any further information requested by the ExA for this deadline.</li> </ul>	<b>Wednesday 12 August 2020</b>
19	The ExA is under a duty to complete the Examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.	<b>Wednesday 19 August 2020</b>

## **Publication Dates**

All information received will be published on the National Infrastructure Planning project webpage as soon as practicable after the deadline for submissions. An Examination Library will be kept up to date throughout the Examination and can be accessed via the project page. Each document will be afforded a unique reference. These references will be used by the ExA during the Examination.

[https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010083/EN010083-000533-Kemsley%20K3%20-%20Examination%20Library%20\(pdf%20version\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010083/EN010083-000533-Kemsley%20K3%20-%20Examination%20Library%20(pdf%20version).pdf)

## **Hearing Agendas**

Please note that for Issue Specific Hearings the ExA will aim to publish a detailed draft agenda on the project webpage at least five working days in advance of the Hearing date. However, the actual agenda on the day of each Hearing may be subject to change at the discretion of the ExA.

For Open Floor Hearings agendas will not be published unless, in consideration of the number of participants notified to the Planning Inspectorate, the ExA decides that establishing a running order will facilitate the process on the day.

## **Report on the Implications for European Sites (RIES)**

Where an applicant has provided a No Significant Effects Report (NSER) or a Habitats Regulations Assessment (HRA) Report with the application, the ExA may decide to issue a RIES during the Examination. The RIES is a factual account of the information and evidence provided to the ExA on HRA matters during the Examination up to the date of the publication of the RIES, for the purposes of enabling the Secretary of State, as competent authority, to undertake its assessment under the Habitats Regulations. It is not the ExA's opinion on HRA matters. Comments on the RIES will be invited by the ExA and any received will be taken into account as part of the ExA's Recommendation to the relevant Secretary of State.

The Secretary of State may rely on the consultation on the RIES to meet its obligations under Regulation 63(3) of the 2017 Habitats Regulations and/ or Regulation 28 of the 2017 Offshore Marine Regulations.

## Availability of Examination documents

The application documents and Relevant Representations are available on the project webpage of the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/wheelabrator-kemsley-generating-station-k3-and-wheelabrator-kemsley-north-wkn-waste-to-energy-facility/>

All further documents submitted in the course of the Examination will also be published at the above location.

For ease of navigation, please refer to the Examination Library (EL) which is accessible via a blue button under the 'Documents' tab. The EL is updated regularly throughout the Examination.

The EL records and provides a hyperlink to:

- each application document;
- each representation made to the Examination; and
- each Procedural Decision made by the Examining Authority.

Each document is given a unique reference which will be fixed for the duration of the Examination. A hyperlink to each document on the project webpage is also provided. Please use the unique reference numbers applied in the EL when referring to any Examination Documents in any future submissions that you make.

Documents can be viewed electronically, free of charge, at the following locations. Please note that you may need to bring a form of identification to use a computer at these locations.

## Electronic deposit Locations

Local authority	Library/ address	Opening hours
Kent County Council	<b>Sittingbourne Library</b> Central Avenue Sittingbourne Kent ME10 4AH	Monday: 10am – 5pm Tuesday: 10am – 5pm Wednesday: 10am – 5pm Thursday: 10am – 5pm Friday: 10am – 5pm Saturday: 10am – 5pm Sunday: Closed
Swale Borough Council	<b>Swale Borough Council Offices</b> East Street Sittingbourne ME10 3HT	Monday: 8.45am – 5pm Tuesday: 8.45am – 5pm Wednesday: 8.45am – 5pm Thursday: 8.45am – 5pm Friday: 8.45am – 4.30pm Saturday: Closed Sunday: Closed



<b>Printing costs</b>	<b>Black and white</b>	<b>Colour</b>
<b>A4</b>	15p	20p
<b>A3</b>	Photocopy only – 15p	Photocopy only – 20p
<b>Link to all council library locations</b>		
<a href="https://www.sittingbourne.me/community/local-services/sittingbourne-library">https://www.sittingbourne.me/community/local-services/sittingbourne-library</a>		
<a href="https://www.swale.gov.uk/contact-us/">https://www.swale.gov.uk/contact-us/</a>		

## **Procedural decisions made by the Examining Authority (ExA)**

The ExA has made the following Procedural Decisions under section (s) 89(3) of the Planning Act 2008 (PA2008):

### **1. Issue Specific Hearing into the draft Development Consent Order**

I have made a Procedural Decision to commence oral examination of the draft Development Consent Order (dDCO) by holding my first Issue Specific Hearing (ISH1) on **Wednesday 19 February 2020**. **Annex G** provides notice of this decision.

For the purposes of Rule 13(1) and (6) of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) (the EPR), the period of not less than 21 days, with reference to which I must provide notice of a hearing and the Applicant must publicly notify and advertise the hearing arrangements, this must be done no later than **Wednesday 29 January 2020**. This is a date before the start of the Examination, but it ensures that the required statutory 21 days' notice period has been provided for this hearing.

In light of this ISH, I have also decided that any person intending to participate in this ISH must notify the Case Manager of their intention to attend by **midday (12 noon), Tuesday 4 February 2020**, as advised in **Annex G**.

### **2. Deadline for comments on Relevant Representations**

I have made a Procedural Decision to seek comments on Relevant Representations (RR) by **Monday 2 March 2020** being **Deadline (D) 1**.

Most RRs were published by 11 December 2020 and so there is sufficient time for them to have been read and responded to by the deadline I propose to set.

I draw your attention to the RR submitted by Donna Clarke on 15 November 2019, which was not published on 11 December 2019 but on 8 January 2020. The RR was submitted before the close of the RR period of 4 December 2019. The date of publication still provides sufficient time for IPs to have read and respond to by the deadline I have set above.

### **3. Deadline for submission of Written Representations**

I have made a Procedural Decision to seek Written Representations (WRs) by **Monday 2 March 2020 (D1)**. WRs provide Interested Parties (IPs) with the opportunity to amplify and provide evidence for the matters set out in their RRs.

For the purposes of Rule 10(2) of the EPR, the 'period of 21 days' with reference to which I must provide notice for the submission of WRs commences on 21 January 2020 (as dated on the cover of the Rule 6 letter). This is a date before the start of the Examination. However, as the deadline

for submission of WRs is set for 2 March 2020 this is more than the statutory requirement of 21 days' notice, and I am satisfied that IPs have been permitted sufficient time in which to draft and submit WRs.

By providing early notice, I am ensuring that all IPs will have a reasonable time period in which to draft their WRs, before the deadline for submission.

#### **4. Deadline for summaries of Representations**

My Procedural Decisions (3) and (4) also seek the early submission of summaries pertaining to RRs and WRs exceeding 1500 words. It is normal for ExAs to request that summaries are provided of RRs, and comments on RRs and WRs, where these original representations exceed 1500 words in length. I have therefore also made a Procedural Decision to request the submission of summaries by **Monday 2 March 2020 (D1)**.

#### **5. Notification by Statutory Parties, or certain Local Authorities<sup>1</sup> of their wish to be considered as an Interested Party**

I have made a procedural decision that, in order to facilitate a timely start to the examination, Statutory Parties and certain Local Authorities<sup>1</sup> must have decided whether they wish to be considered as an IP and notified the Planning Inspectorate of their decision by **Monday 2 March 2020 (D1)**.

**Note:**

*If persons attending the Preliminary Meeting (PM) seek, for justifiable reasons, additional time to be provided for in any of my procedural decisions made above (2 to 4) I will consider the reasons for any such requests before I decide whether to confirm these decisions. I will provide oral advice on my concluded decisions before the close of the PM.*

#### **6. Accompanied Site Inspection – Nominations, Requests and intent to attend**

The Applicant, IPs and other persons will be provided with an opportunity to provide comments to me on the approach that I should take to site inspections at the PM. Subject to this discussion, they are invited to nominate sites that I should inspect, the features that I should observe there and whether the inspection should be on an accompanied or an unaccompanied basis, by **Monday 2 March 2020 (D1)**.

Site inspections can be carried out on an accompanied or an unaccompanied basis. In principle, inspections need to be carried out on an accompanied basis in the following circumstances:

- where the land is private, and consent is required for the ExA to enter it;
- where there are health and safety or other regulatory considerations that require any visitor to a location to be accompanied; and / or
- where there are particular features that an IP wishes to ensure are pointed out to the ExA.

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<sup>1</sup> a Local Authority without direct responsibility in the proposed development area.

Where these considerations do not apply, it will normally be appropriate for a site inspection to be carried out by the ExA on an unaccompanied basis.

Before agreeing to hold site inspections at particular locations, I will consider the degree to which it is necessary to visit a site that has been nominated for an inspection to inform me about the application. I may decide not to visit nominated locations where I may have already visited the location, or I consider that it is not necessary to see the features to be observed there. I may decide not to hold an Accompanied Site Inspection (ASI) if all relevant features can be observed and understood from locations in the public domain on an Unaccompanied Site Inspection (USI).

Provisional arrangements for ASIs are included in the Examination Timetable, but these will only proceed should it appear that such inspections are necessary.

### **7. Statements of Common Ground**

The ExA would be assisted by the preparation of Statements of Common Ground (SoCGs) between the Applicant and certain IPs. The draft timetable for the Examination therefore provides a deadline for submission of SoCGs. This is **Monday 2 March 2020**, being **D1**.

The aim of a SoCG is to agree factual information and to inform the ExA and all other parties by identifying where there is agreement and where the differences lie at an early stage in the examination process. It should provide a focus and save time by identifying matters which are not in dispute or need not be the subject of further evidence. It can also usefully state where and why there may be disagreement about the interpretation and relevance of the information. The reasons for the differences and interpretation of the implications of a difference can then be expanded in the evidence.

Unless otherwise stated or agreed, the SoCG should be agreed between the Applicant and the other relevant interested party or parties and submitted by the Applicant.

SoCGs are requested to be prepared by:

#### **A. The Applicant and Swale Borough Council, to include:**

- Development Consent Order
- Environmental Impact Assessment, including issues related to:
  - The predicted potential effects
  - Cumulative effects
- Noise and disturbance during construction, operation and decommissioning
- Landscape and visual effects
- Air quality
- Biodiversity
- Highways and transport
- Construction Environmental Management Plan.

**B. The Applicant and the Environment Agency, to include:**

- Development Consent Order
- Environmental Permits
- Water environment, including water quality, hydrology, discharges, drainage, flooding and the Water Framework Directive
- Air quality, ecology/habitat loss, disturbance (noise, light and visual)
- Construction Environmental Management Plan

**C. The Applicant and Natural England, to include:**

- Development Consent Order
- Biodiversity, including issues related to international and national designation, air quality, water quality and hydrological changes; lighting, construction noise and visual disturbance
- The need for and means of securing mitigation including the effect of the ECJ Judgment C-323/17
- Air quality
- Water Quality

**D. The Applicant and Kent County Council to include:**

- Development Consent Order
- Traffic and transport including Public Rights of Way
- Archaeology and cultural heritage
- Biodiversity
- Water environment including surface water flooding and drainage
- Construction Environmental Management Plan
- K3 Plans

**E. The Applicant and Network Rail to include:**

- Protective provisions

The SoCGs should cover the following topics where relevant:

- Methodology for Environmental Impact Assessment including assessment of cumulative effects
- Data collection methods
- Baseline data
- Data/statistical analysis, approach to modelling and presentation of results (including forecast methodologies)
- Full expression of expert judgements and assumptions
- Identification and sensitivity of relevant features and quantification of potential impact
- Likely effects (direct and indirect) on special interest features of sites designated or notified for any nature conservation purpose
- Feasible and deliverable mitigation and method for securing such mitigation within the Development Consent Order

The content of the SoCGs will help to inform the ExA on the need to hold any Issue Specific Hearings, and to enable the ExA and the Applicant to give notice of such Hearings at least 21 days in advance of them taking place.

## **8. Application Guide**

The ExA requests that at each deadline, the Applicant provides an updated Guide to the Application document which provides a list of the most up-to-date documents before the Examination. A final version must be submitted by the close of the Examination.

## **9. Local Impact Report**

The ExA requests Local Impact Reports (LIRs) from all host Local Authorities and welcomes LIRs from any other Authorities who may wish to submit one. All LIRs are to be submitted into the Examination no later than by **Deadline 1 on Monday 2 March 2020**.

## **10. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations)**

The Examination must include a process that provides sufficient information to enable the Secretary of State for Business, Energy and Industrial Strategy to meet his statutory duties as the competent authority under the Habitats Regulations in relation to European protected sites. In order to inform the ExA's Report and Recommendation to the Secretary of State on this application and to provide stand-alone information for the Secretary of State, the Applicant is requested to complete matrices, to:

- Summarise the likely significant effects for each European protected site assessed, and
- Summarise the implications for the integrity of each European protected site assessed, where a likely significant effect either alone or in combination with other plans and projects has been identified

Templates for these matrices are available to download from the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/09/Advice-note-10-HRA.pdf>

The date by which the completed matrices must be received from the applicant will be discussed at the Preliminary Meeting.

## **11. Post-submission application documents**

Following the acceptance of the application, the Applicant submitted correspondence on 18 October 2019 [[AS-009](#)] to the Planning Inspectorate in response to s51 advice [[PD-002](#)] issued on 9 October 2019.

The letter provided by the Applicant outlines the revised documents submitted in response to the matters raised in advice issued by the Planning

Inspectorate. I made a Procedural Decision on 5 November 2019 to accept all documentation apart from the Applicant's amended Application form; my reason for refusal thereof is provided in my Procedural letter of 13 November 2019 [PD-005]. These documents have now been published on the project page of the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/wheelabrator-kemsley-generating-station-k3-and-wheelabrator-kemsley-north-wkn-waste-to-energy-facility/?ipcsection=overview>

The accepted revised/amended documents submitted by the Applicant are as follows:

- S51 Application Guide [AS-001];
- S51 Draft Development Consent Order [AS-002];
- S51 DCO Validation Report [AS-003];
- S51 Book of Reference [AS-004];
- S51 Summary of Land Interests and Rights [AS-005];
- S51 Summary of Applicant's Structure and Standing [AS-006];
- S51 Consultation Report [AS-007]; and
- S51 Land Plan [AS-008]

Interested Parties are asked to submit any comments they may have on any of the revised documents submitted by the Applicant on 18 October 2019 by **Monday 2 March 2020 (D1)**.

I will consider procedural questions arising from these documents by the Applicant at the PM at Agenda Item 5 (see **Annex A**).

### **12. Additional Submission**

On 14 January 2020, Kent County Council submitted a document, which was intended to reflect their Relevant Representation, which was not received by 4 December 2019. I made a Procedural Decision on the same day to accept this into the Examination as an additional submission [AS-020]. This document was published on the project page on 15 January and IPs are requested to submit any comments they may have on this document by Monday 2 March 2020 (D1).

## Notification of Hearing under Section 91 of the Planning Act 2008

The first Issue Specific Hearing (ISH1) will be held as follows:

Date	Hearing	Starting Time	Venue	Access and Parking
Wednesday, 19 February 2020	Issue Specific Hearing into the draft Development Consent Order (dDCO)	1.00pm	<b>Hempstead House Hotel</b> , London Road, Bapchild Sittingbourne, Kent, ME9 9PP	Free parking available at venue

The agenda for the first Issue Specific Hearing will be published on the Wheelabrator Kemsley K3 and WKN project page at least five working days before the hearing takes place.

Those Interested Parties (IPs) who wish to speak at the hearing should notify the case team at the postal or email address in the covering letter by **midday (12 noon), Wednesday 12 February 2020**.

It would help with the management of the hearing if by the same date you can let the case team know:

- whether you wish to speak at Issue Specific Hearing (ISH1);
- what agenda items you wish to speak on at the ISH1, and list the points you wish to make; and
- of any special needs you may have (eg disabled access, hearing loop).

Please ensure that you include your IP reference number in your correspondence.

The hearing venue will be open 30 minutes prior to the start of the hearing to enable a prompt start. Hearings will finish as soon as the Examining Authority (ExA) deems that all those present have had their say and all necessary issues have been covered.

Depending on the number of parties wishing to speak, it may be necessary to limit the time allocated to each speaker. The ExA reserves the right to rearrange the agenda for this hearing on the day. If discussion of an issue takes longer than anticipated, it may have to be completed at a later date or responded to by the relevant deadline date within the Examination Timetable.