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Published Only

Your Ref:

Our Ref: EN010083

Date: 10 February 2020

Dear Sir/ Madam

The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) 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

Examining Authority's Agenda for Issue Specific Hearing 1 (ISH1) into the draft Development Consent Order

Further to the procedural decisions made in my Rule 6 letter of 21 January 2020, notifying you of the time, date and location for the Issue Specific Hearing into the draft Development Consent Order, I am now providing my agenda for my first Issue Specific Hearing (ISH1) to be held at the Hempstead House Hotel, London Road, Bapchild Sittingbourne, Kent, ME9 9PP from 1.00pm on Wednesday 19 February 2020.

The agenda included at **Annex A**, identifies the Applicant (WTI/EFW Holdings Ltd) and other Interested Parties (IPs) that I have invited to attend ISH1. Any IPs who wish to be heard on the subject matters set out in my agenda for ISH1 may also participate in the hearing.

Any IPs that wish to participate in the ISH1 should notify the Planning Inspectorate indicating the issues that they wish to speak about no later than **midday on Wednesday 12 February 2020** using the contact details above.

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

- whether you wish to speak at the hearing and on which agenda items, listing points you wish to make; and
- of any special needs you may have (e.g. disabled access, hearing loop).

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

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

The Planning Inspectorate staff will be available at the venue for half an hour before the hearing commences. It is helpful if intending participants make themselves known to staff during this time. The ISH1 will be open to the public and anyone wishing to attend to observe may do so.

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. Every effort will be made to ensure that the items in the agenda at **Annex A** and the issues in the 'Table of Examining Authority's Issues and Questions relating to the draft Development Consent Order' at **Table 1** will be discussed on the day.

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.

The Examination timetable provides for the possible holding of further Issue Specific Hearings (ISH) into the draft Development Consent Order on 17 April and 18 June 2020. If I decide to proceed with these further ISHs, I will write to you separately to provide formal notice. Agendas for any further hearings that I might hold would be provided for, at least 1 week in advance of such hearings and published on the project page for the Wheelabrator Kemsley (K3) Generating Station and the Wheelabrator Kemsley North (WKN) waste to energy facility National Infrastructure website, which can be accessed via the following link:

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

If you have any further queries, please do not hesitate to contact the case team using the above address, email address or telephone number.
Yours faithfully

Grahame Kean

Grahame Kean
Examining Authority

Annex A Agenda for Issue Specific Hearing into the draft Development Consent Order

Table 1 Table of Examining Authority Issues and Questions relating to 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.

Wheelabrator Kemsley K3 and WKN - Issue Specific Hearing 1 (ISH1) into the draft Development Consent Order

This document sets out the agenda for Issue Specific Hearing 1 (ISH1) into the draft Development Consent Order (dDCO), which I notified all Interested Parties (IPs) of in my Rule 6 letter of 21 January 2020.

Date: 19 February 2020
Time: 10.00am, room opens from 9.30am
Venue: Hempstead House Hotel, London Road,
Bapchild, Sittingbourne, Kent ME9 9PP
Access and Parking: Free parking available on site

Purpose of Issue Specific Hearing 1 (ISH1)

ISH1 is being held for the following purposes:

- To enable the ExA to inquire into the Applicant's ongoing development of and changes to the dDCO.
- To enable IPs to raise any specific concerns that they might have about the provisions of the dDCO, arising from the application documents, the Applicant's additional submissions, and representations and submissions made to date by IPs.

ExA Table of Issues and Questions for ISH1

The ExA has prepared a table of issues and questions for ISH1, which has been published to the project page of the National Infrastructure website for Wheelabrator Kemsley K3 and WKN. A copy of this table can be found below.

Issues and questions from the Applicant and IPs that arise from this table will also be heard.

Participation, conduct and management of hearing

This is the first ISH into the dDCO to be held in this Examination.

Provision has been made for further ISHs into the dDCO to be held 17 April (ISH3) and on 18 June 2020 (ISH5). Please note that these will only proceed if they are required.

If all necessary oral investigations are completed before these times they will not proceed. For these reasons, it is important that any IP with objections to provisions in the dDCO who wishes to be heard should attend this hearing. The Applicant and any IPs with objections that relate to matters on this agenda are invited to attend the hearing. The business of an ISH is limited to the matters identified in the agenda. Oral submissions on other subject matters or from persons who are not IPs may only be heard at the discretion of the ExA.

Agenda for Issue Specific Hearing 1: 19 February 2020 at 1.00pm

It is strongly preferable that any such issues arising from IPs are brought to the Open Floor Hearing (OFH), scheduled for the evening of 15 April 2020 where there is no subject matter agenda and IPs may raise any relevant and important matter.

Participation is subject to the ExA's power to control the hearing.

Invited Participants

The ExA requests that the following bodies attend and participate in ISH1:

- **WTI/EFW Holdings Ltd (the Applicant)** - including representatives of the Applicant who are in a position to discuss the matters on the agenda;
- **Kent County Council (KCC);**
- **Swale Borough Council (SBC);**
- **Any other IPs** - with an interest in the drafting of the DCO, the implementation or discharge of proposed articles, requirements or other provisions

The ExA requests that invited participants who wish to make oral representations attend at the appointed start time of 1.00pm.

Hearing Guidance

Participants may be legally represented if they wish, but the hearing will be conducted to ensure that legal representation is not required.

Guidance under the Planning Act 2008 (PA 2008) and the Infrastructure Planning (Examination Procedure) Rules 2010 provide that it is the ExA that will probe, test and assess the evidence through direct questioning of persons making oral representations at hearings. Questioning at the hearing will be led by the ExA.

Cross-questioning of the person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure representations are adequately tested or that a person has had a fair chance to put their case.

The hearing will run until all IPs have made their representations and responded to the ExA's exploration of the matters in accordance with the agenda. The following agenda is indicative and may be amended by the ExA at the start of the hearing session. Furthermore, the ExA may wish to raise other matters arising from submissions and pursue lines of inquiry in the course of the discussion which are not on the agenda.

Key relevant documents that might be referred to include:

- 1.2 - **S51 Application Guide** [AS-001]
- 2.1 - **S51 Draft Development Consent Order** [AS-002]
- 2.3 - **DCO Validation Report** [AS-003]
- 2.2 - **Explanatory Memorandum** [APP-006]

Agenda for Issue Specific Hearing 1: 19 February 2020 at 1.00pm

**Agenda for Issue Specific Hearing 1 (ISH1)
into the draft Development Consent Order**

1. Welcome, introductions and arrangements for Issue Specific Hearing 1 (ISH1)

2. Statement by the Applicant: structure and content of the dDCO

The ExA will ask the Applicant to introduce the dDCO, summarising the key elements and effect of the provisions set out in the draft order.

The Applicant will be invited to explain the effect of changes to the dDCO in response to advice received under s51 PA2008 as referred to in 7.1 – S51 Covering Letter [AS-009].

The Applicant will be invited to state any further changes proposed to the dDCO since submission of the application.

The ExA will invite submissions from Interested Parties (IPs) who wish to raise matters in relation to these matters. The Applicant will be provided with a right of reply.

3. Interested Parties' Issues

The ExA will seek submissions from IPs in attendance to identify whether any further changes to dDCO drafting are sought and the justification for any changes sought by IP's.

The ExA may ask questions of IPs and the Applicant about matters arising from written and oral submissions. The Applicant will be provided with a right of reply.

4. ExA's Issues and Questions for ISH1

These are set out in the attached table. The ExA will review the issues raised in the table. Responses from the Applicant will be sought on all questions.

Any IP in attendance and wishing to speak in relation to matters arising from the published table will be invited to put oral submissions to the ExA. The Applicant will be provided with a right of reply.

5. Review of issues and actions arising

The ExA will review how and by when any actions placed on the Applicant or other IPs are to be met.

6. Next steps

7. Closure of the hearing

Application by Application by WTI/EFW Holdings Ltd for Wheelabrator Kemsley (K3) Generating Station and the Wheelabrator Kemsley North (WKN) waste to energy facility

Table of Examining Authority Issues and Questions relating to the draft Development Consent Order

The issues and questions set out below expand on the Examining Authority’s (ExA’s) identification of matters for examination in the draft Development Consent Order (dDCO) as submitted [APP-002]. They will be referred to in the first issue specific hearing (ISH1) into the dDCO on **Wednesday 19 February 2020**. The issues are principally addressed to the Applicant but observations from other interested parties (IPs) attending the hearing are welcome.

Abbreviations Used

PA2008	<i>The Planning Act 2008 as amended</i>	MP	<i>Model Provision (in the MP Order)</i>
Art	<i>Article</i>	MP Order	<i>The Infrastructure Planning (Model Provisions) (England & Wales) Order 2009</i>
dDCO	<i>Draft DCO [AS-002]</i>	NPS	<i>National Policy Statement</i>
EM	<i>Explanatory Memorandum [APP-006]</i>	NSIP	<i>Nationally Significant Infrastructure Project</i>
ES	<i>Environmental Statement</i>	R	<i>Requirement</i>
ExA	<i>Examining authority</i>	RR	<i>Relevant Representation</i>
LIR	<i>Local Impact Report</i>	SI	<i>Statutory Instrument</i>
LPA	<i>Local planning authority</i>	SoS	<i>Secretary of State</i>

The Examination Library

References in these questions set out in square brackets (eg [APP-010]) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link which will be updated as the examination progresses:

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

Table 1**Citation of Questions**

Questions/issues in this table should be cited as follows:

Hearing reference: question number, eg **ISH1:1** – refers to question 1 in this table.

Q No.	Part of DCO	Drafting example (where relevant)	Question
ISH1:1	Article 2 Interpretation	<i>"Environmental Statement"</i>	Why is there a blank space? This definition will need to be kept updated by the Applicant throughout the examination.
ISH1:2	Interpretation		Singular 'plan' here but in article 16 it's plural. Should this be amended for consistency?
ISH1:3	Article 2(3)		Can the Applicant be more specific as to exactly which Requirement(s) contain parameters not intended to be approximate?
ISH1:4	Article 2(4)		Would it be better if this referred to works numbered in "Schedule 1"?
ISH1:5	Article 4 Effect on K3 planning permission		Should the whole planning permission cease to have effect, not just the conditions? As drafted would it be possible for the station to operate at an increased capacity under the permission without implementing DCO authorised works? Does other legislation also need to be applied and/or disapplied – e.g. apply s100(1) & (2) Town and Country Planning Act 1990 ('TCPA 1990'), but disapply the other provisions of TCPA 1990 that set out procedures for a s100 Order such as the remainder of s100 and disapply

Table 1

			s107 TCPA 1990 right to compensation? Legal submissions on this are invited.
ISH1:6	Article 6 Access to Works		Are all the intended access works shown on the Works Plan or elsewhere at identified locations within the Order limits?
ISH1:7	Article 7 Benefit of the Order		Please explain the references to K3 CHP Limited and Kemsley North Limited which do not appear in 2.6 - Summary of Applicants Structure and Standing [AS-006].
ISH1:8	Article 10 Authority to survey and investigate the land	<i>Article 10(6)</i>	Should vehicles should also be removed?
ISH1:9	Article 12 Felling/lopping of trees	<i>Article 12(3)</i>	Are there any relevant tree preservation orders ('TPO')? If so, how will the relevant trees protected by them be listed in the DCO and appropriateness of allowing works to them assessed?
ISH1:10	Article 13 Defence to proceedings in respect of statutory nuisance	<i>Article 13(2) and (3)</i>	Is the reference to section 65 COP1974 necessary in light of its repeal?

Table 1

ISH1:11	Article 16 Certification of plans		How will the Applicant identify supplementary 'environmental information' supplied during the Examination which affects the findings in the ES and consider whether such information should also form part of the certification of the ES?
ISH1:12	Article 16 Works plans		Is the Applicant satisfied that all limits of deviation are shown on a works plan in accordance with Regulation 5(2)(j)(ii) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ('APFP').
ISH1:13	Article 18 Procedure for approvals	Article 18(1)	Should "the Order" be "this Order"? In "may not be unreasonably withheld" in what circumstances is it envisaged that withholding approval would be unreasonable?
ISH1:14	Article 24		How does the dDCO provide for the requests made by Royal Mail (3.1 - ES Appendix 3.6 - S42 Consultation Letter and Responses [APP-018]) as to pre-consultation for road closures, alternative access arrangements etc and information for major road users of works affecting the local network?
ISH1:15	Schedule 1		Will all interests and rights in the Order land for K3 and WKN have been acquired by private treaty before the end of the examination of the application?
ISH1:16	Schedule 1	<i>Work No 1E - Construction and operation of a surface water outfall for Work No 1, and Work No 7 - Construction and operation of a new surface water outfall for Work No 2</i>	re Plots 17 and 18, please provide an update progress on acquisition of necessary rights by private treaty with the Port of Sheerness.

Table 1

ISH1:17	Schedule 1	<i>(k) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;</i>	No protective provisions are included within the dDCO, can the Applicant confirm that none such have been requested, or if they have been, how such requests have been responded to? Attention is drawn to paragraph 4.2 of the Planning Inspectorate's Advice Note 15: Drafting Development Consent Orders.
ISH1:18	Schedule 2 Para 2 Interpretation		"Permitted preliminary works" – have these been assessed within the ES? What facilities for example, for the use of the contractor would not be within Work No 6 (temporary construction compound)?
ISH1:19	Requirements		<p>In Parts 2 and 3 is 'authorised development' always correct? If intended to apply only to the generating station named in the heading under which they appear, does the applicant need to replace "authorised development" in those requirements with a more precise definition of exactly which Work numbers each requirement relates to?</p> <p>Is 'Commence' in article 4(1) within the Schedule 2 definition given that the latter relates to Schedule 2 only?</p>
ISH1:20		<i>"Commissioning"</i>	<p>Should this definition be moved to article 2(1) due to the definitions of "K3 Generating Station" and "operational use" in article 2(1)?</p> <p>Should the definition of 'construction site' appear as part of 'commissioning' if it is already repeated as a stand-alone definition below.</p>

Table 1

ISH1:21	Requirement 2 Commencement of authorised development		Why are only Work No 1 and Work No 2 included rather than all Works?
ISH1:22	Requirement 4, Decommissioning		KCC seek an early review of the Decommissioning Management Plan and that they are subject to approval of the Local Highway Authority.
ISH1:23		Article 4(1) – decision to decommission	<p>What is meant by “decides”? Should this be more precisely defined by reference to a resolution of the Board of a company or similar and does it need to be notified to the relevant LPA at the time it is made so that the LPA knows when the 6 month period starts running from?</p> <p>Should there be an additional requirement to decommission if e.g. the undertaker ceases to operate the generating station(s) at any time (except under article 4), coupled with a requirement to notify the LPA of any such cessation at the time it occurs?</p>
ISH1:24	Requirement 6 Rail and water transportation strategy	Para 6(2)	Should these definitions be moved to R1?
ISH1:25	Requirement 7 Amendments to approved plans		Should Approved Plans be defined in R1 and then that definition be used in both R7 and R9 and elsewhere where appropriate?

Table 1

ISH1:26	Requirement 8 Works in the vicinity of gas apparatus		Has Southern Gas confirmed to the Applicant that the wording of this requirement is acceptable and that no other protective provisions should be provided for in the DCO?
ISH1:27	Requirements 9 - 13 (K3 Requirements)		Is the Applicant satisfied that the K3 requirements transpose all relevant conditions from the K3 planning permission into the DCO? Are all the approved plans and documents relating to the K3 facility listed within the DCO for certification?
ISH1:28	Requirement 11 Trees		Is there an inconsistency of definitions between R11(1) and R11(3)? Would it be better to move the definition in R11(3) to R1 instead?
ISH1:29	Requirement 13 Combined heat and power		A definition of Kemsley Paper Mill is required. Should the CHP strategy definition be moved to R1 instead?
ISH1:30	Requirement 14 Detailed design approval (WKN)		At what stage is the detailed design of matters within this requirement currently at?
ISH1:31		R14(4)	Duplication of "(4)" Should this definition of "WKN parameter plan" be moved to R1 instead, or to Article 2(1) if it is to be included in the definition of 'works plan'?
ISH1:32	Requirement 16 Implementation and maintenance of landscaping	Article 16(4)	Is it intended that the annual landscaping maintenance plan be approved by the relevant planning authority?

Table 1

ISH1:33	Requirement 22, Construction environmental management plan		3.1 - ES Appendix 3.6 - S42 Consultation Letter and Responses [APP-018]. To comment on the KCC request that a Construction Management Plan and Framework Travel Plan will need to be provided for the WKN site in line with that of K4 and will need be approved by the County Council as the Local Highway Authority.
ISH1:34	Requirements 16, 24, 25, 26 & 30		Requirements 16, 24, 25, 26 & 30 refer to 'planning authority', but the defined term in article 2(1) is 'relevant planning authority'.
ISH1:35	Requirement 22, Construction environmental management plan		A reference is required in R22(2)(d)
ISH1:36	Schedule 3		<p>This shoulder note does not refer to an article as an 'operative provision' of the DCO bringing it into effect. Would it be better for the whole of Schedule 3 to be moved to become instead Part 4 of Schedule 2?</p> <p>The existing shoulder note to Schedule 2 (i.e. article 3) would not require amendment as this would be part of the Requirements referred to in article 3.</p> <p>Then, in turn, all current references in the DCO to Schedule 3 would need to be amended to Part 4 of Schedule 2, and all subsequent Schedule numbers would change (and references to them throughout the DCO would need to change).</p>
ISH1:37	Schedule 3		Is 'Revision' the correct title for column (3) in relation to all (rather than some of the) documents listed in it? i.e. is it the case that ones that don't have a 'Reference' in column (2) were never revised?

