



Wheelabrator
TECHNOLOGIES



Deadline 1: Written Submission of Oral Case made by the Applicant at Issue Specific Hearing 1: draft DCO

Wheelabrator Kemsley (K3 Generating Station) and Wheelabrator Kemsley North (WKN) Waste to Energy facility Development Consent Order

PINS Ref: EN010083

**Document 9.4
March 2020 - Deadline 1**

fieldfisher





Deadline 1 – Written Submission of Oral Case made by the Applicant at ISH1: dDCO

**Applicant: EFW/WTI Holdings Ltd
(Wheelabrator Technologies Inc)**

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

Date: March 2020

Reference: EN010083 – Document 9.4

Author: Yohanna Weber, Field Fisher

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

Tel: 01622 776226
Email: info@dhaenvironment.co.uk
Web: www.dhaenvironment.co.uk
Twitter: www.twitter.com/dhagroup

Part of the DHA Group
Planning | Urban Design | Transport | Environment

Contents

1	INTRODUCTION	2
1.1	Purpose of this document	2
2	THE PROPOSED K3 AND WKN FACILITIES	3
2.2	The Site(s)	3
3	THE WRITTEN STATEMENT OF THE ORAL CASE MADE BY THE APPLICANT AT ISH1:DDCO	5
3.1	Structure and Content of the dDCO	5
3.2	Interested Parties Issues	5
3.3	ExA's Issues and Questions for ISH1	6

1 Introduction

1.1 Purpose of this document

- 1.1.1 This Statement has been prepared at Deadline 1 of the Examination by the Planning Inspectorate into an application by WTI/EFW Holdings Ltd (a subsidiary of Wheelabrator Technologies Inc – “WTI”) under the Planning Act 2008 for a Development Consent Order (a “DCO”) for the construction and operation of the Wheelabrator Kemsley (“K3”) and Wheelabrator Kemsley North (“WKN”) waste-to-energy generating stations on land at Kemsley, Sittingbourne in Kent.
- 1.1.2 This Statement provides the written submission of the oral case made by the Applicant at Issue Specific Hearing 1 on the 19th February 2020 on the draft Development Consent Order.
- 1.1.3 For ease and completeness this document briefly summarises the proposed development and identifies the application site before providing the applicant’s written case. The Agenda to ISH1 contained a table of specific points raised by the Examining Authority regarding the dDCO and that table has been replicated within this document together with the Applicant’s response to those individual queries.

2 The Proposed K3 and WKN Facilities

- 2.1.1 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').
- 2.1.2 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 Q2 2020. 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).
- 2.1.3 This application seeks a DCO which, in practical terms, would permit K3 as constructed to generate an additional 25.1MW 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.
- 2.1.4 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").
- 2.1.5 Consent for the K3 and WKN Proposed Developments is being sought via a single DCO through a single application to the SoS via PINS.

2.2 The Site(s)

Wheelabrator Kemsley (K3) Site

- 2.2.1 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

- 2.2.2 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.

2.2.3 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.

2.2.4 The location of the K3 and WKN sites is shown in Figure 1.



Figure 1: Location of the K3 (yellow) and WKN (green) sites

3 The Written Statement of the Oral Case made by the Applicant at ISH1:dDCO

3.1 Structure and Content of the dDCO

3.1.1 The Applicant provided an overarching summary of the structure and content of the dDCO which is summarised as follows:

3.1.2 The hierarchy of precedent on which the Order is based is:

- (a) the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "model provisions"). Although the model provisions have no formal legal status, it is adopted as best practice and explanation is provided for any departures from the model provisions as recommended by PINS Advice Note 13;
- (b) the Ferrybridge Multifuel 2 Power Station Order 2015, which relates to an almost-identical facility developed by the Applicant in a joint venture with SSE;
- (c) the Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019, which is located on the site directly adjacent to the Order land and therefore shares local context with this project;
- (d) various other orders as considered appropriate for particular provisions, which are referenced and justified in the Explanatory Memorandum.

3.1.3 It is important to note that K3 and WKN are separate facilities in their own right, and while they share some functional features it is intended that they be capable of separate operation. The Order must therefore be separately applicable to each.

3.1.4 Requirements have therefore been organised into 3 parts in accordance with pre-application advice from PINS – in Part 1 are common requirements, in Part 2 are K3 requirements only and in Part 3 are WKN Requirements only.

3.1.5 The Requirements have been drafted in accordance with Advice Note 15, and take account of advice regarding securing mitigation, tailpieces, providing flexibility and meeting the tests for reasonableness, necessity and proportionality.

3.1.6 Chapter 14 of the Environmental Statement (Document 3.1) contains the required table cross-referencing mitigation with the relevant requirement securing its performance.

3.2 Interested Parties Issues

3.2.1 The Applicant noted that no matters were raised at the ISH by Interested Parties regarding the dDCO and therefore did not make any comments under this agenda item. The Applicant will review any submissions made by Interested Parties at

Deadline 1 regarding the dDCO and will consider and provide a response to those at Deadline 2.

3.3 ExA's Issues and Questions for ISH1

- 3.3.1 This Statement replicates the table produced by the ExA and included within the agenda for ISH1:dDCO, together with a written summary of the responses provided by the Applicant to those points. Where appropriate the Applicant has identified when revised documents or new information will be provided to address the individual points raised.

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
ISH:1	Article 2 Interpretation	"Environmental <i>Statement</i> "	Why is there a blank space? This definition will need to be kept updated by the Applicant throughout the examination.	This will be corrected in the revised dDCO submitted for Deadline 2.
ISH:2	Interpretation		Singular 'plan' here but in article 16 it's plural. Should this be amended for consistency?	The definition of 'work plan' will be corrected in the revised dDCO submitted for Deadline 2.
ISH:3	Article 2(3)		Can the Applicant be more specific as to exactly which Requirement(s) contain parameters not intended to be approximate?	This reference is to the parameters in Requirement 14 (Detailed Design Approval) which is intended to give certainty as to the maximum limits set out therein. This will be clarified in the revised dDCO submitted for Deadline 2.
ISH:4	Article 2(4)		Would it be better if this referred to works numbered in "Schedule 1"?	This will be corrected in the revised dDCO submitted for Deadline 2.
ISH: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?	Yes it is intended that the whole planning permission will cease to have effect and be superseded by the DCO when triggered under Art 4. It is not possible for the station to operate at an increased capacity without implementing the DCO works because the works involve the

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
			Does other legislation also need to be applied and/or disappplied – 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 s107 TCPA 1990 right to compensation? Legal submissions on this are invited.	physical removal of a limiter. The Applicant does not consider that the application of s100 would be appropriate or necessary and will provide detailed submissions on this point at Deadline 2, including with respect to a similar provision in the Hinkley Point C Order (2013), where section 100 was not applied.
ISH: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?	Yes.
ISH: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].	These entities are also wholly-owned subsidiaries of Wheelabrator Technologies Inc and have been created especially for the purposes of operating the authorised developments. The Applicant will update the Summary of Applicants Structure and Standing [AS-006] and Explanatory Memorandum [APP-006] for Deadline 2.

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
ISH:8	Article 10 Authority to survey and investigate the land	Article 10(6)	Should vehicles should also be removed?	The Applicant intends to remove all vehicles. This will be corrected in the revised dDCO submitted for Deadline 2.
ISH:9	Article 12 Felling/lopping of trees	Article 12(3)	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?	No.
ISH:10	Article 13 Defence to proceedings in respect of statutory nuisance	Article 13(2) and (3)	Is the reference to section 65 COP1974 necessary in light of its repeal?	This will be corrected in the revised dDCO submitted for Deadline 2.
ISH: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?	The Applicant will bring any such information to the attention of the Examining Authority in the course of written and oral submissions in the examination and add it to the list in Article 16 as necessary.
ISH:12	Article 16 Works plans		Is the Applicant satisfied that all limits of deviation are shown on a works plan in accordance with	The Applicant will review and correct the nomenclature as required in order to satisfy Regulation 5(2)(j)(ii).

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
			Regulation 5(2)(j)(ii) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ('APFP').	
ISH: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?	This will be corrected in the revised dDCO submitted for Deadline 2. This is standard wording which reiterates the duty of Wednesbury reasonableness on the part of any decision-maker.
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?	Para 6.14 of the draft CTMP (3.1 - Appendix 4.2) states: 'The construction manager will be responsible for setting up a means of communication with major road users on any construction works which may affect the local road network. This will include for any road closures or diversions that may affect travel on those routes. Full details on the means of communication will be set out in the Full Construction Traffic Management Plan, once a contractor has been appointed.'

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
				The submission and approval of a final CTMP is provided for by Requirement 24.
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?	Final lease documents for the WKN Order land are at engrossment stage and a further update on execution will be provided for Deadline 2.
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.	Heads of Terms have been exchanged with the Port of Sheerness and Peel Water Services Limited for the right to discharge from the site. The Heads of Terms are to be signed and form the basis for the Deed of Grant, which will enable the construction and use of the surface water outfall. A further update on execution will be provided for Deadline 2.
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	The Consultation Report [AS-007] at sections 11.9 and 17.8 addresses AN15 para 4.2.

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
			4.2 of the Planning Inspectorate's Advice Note 15: Drafting Development Consent Orders.	
ISH: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)?	<p>"Permitted preliminary works" are by their nature <i>de minimis</i> and will not give rise to likely significant effects. It is therefore not necessary to assess them. Further, survey work, archaeological fieldwork and contamination surveys/remediation are assessments in themselves, and are proposed as Requirements to the DCO through the topic specific assessments.</p> <p>Table 2.1 page 7 of Chapter 2 of the ES and "Construction facilities" in section 2.10 clearly sets out what construction activities will happen in each of the Work Nos 4 -6 areas. This includes construction site offices, canteen, welfare and support facilities, parking and storage of machinery, materials, fabrication, assembly and equipment testing.</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
				The effects of the construction activities relating to each Work No. that are required to be assessed have been addressed in the ES topic chapters where relevant/necessary.
ISH: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>	<p>This will be checked and any clarifications made in the revised dDCO submitted for Deadline 2.</p> <p>Yes.</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
ISH:20		"Commissioning"	Should this definition be moved to article 2(1) due to the definitions of "K3 Generating Station" and "operational use" in article 2(1)? Should the definition of 'construction site' appear as part of 'commissioning' if it is already repeated as a stand-alone definition below.	This will be changed in the revised dDCO submitted for Deadline 2. This is a typographical error and will be corrected in the revised dDCO submitted for Deadline 2.
ISH:21	Requirement 2 Commencement of authorised development		Why are only Work No 1 and Work No 2 included rather than all Works?	This will be changed in the revised dDCO submitted for Deadline 2.
ISH: 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.	The Applicant is discussing this issue with KCC as part of SOCG discussions and will provide an update as part of that process.
ISH: 23		Article 4(1) – decision to decommission	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?	This will be reviewed and any clarifications made in the revised dDCO submitted for Deadline 2.

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
			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?	
ISH: 24	Requirement 6 Rail and water transportation strategy	Para 6(2)	Should these definitions be moved to R1?	This will be changed in the revised dDCO submitted for Deadline 2.
ISH: 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?	This will be changed in the revised dDCO submitted for Deadline 2.
ISH: 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?	The Applicant will confirm with Southern Gas Networks that it is aware of the inclusion of Requirement 8 and nothing further is required.
ISH: 27	Requirements 9 – 13 (K3 Requirements)		Is the Applicant satisfied that the K3 requirements transpose all relevant conditions from the K3 planning	The Applicant is discussing this issue with KCC as part of SOCG discussions and will provide an

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
			permission into the DCO? Are all the approved plans and documents relating to the K3 facility listed within the DCO for certification?	update as part of that process.
ISH: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?	This will be corrected in the revised dDCO submitted for Deadline 2.
ISH: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?	This will be changed in the revised dDCO submitted for Deadline 2.
ISH:30	Requirement 14 Detailed design approval (WKN)		At what stage is the detailed design of matters within this requirement currently at?	The detailed design of the WKN facility would be finalised following the appointment of a contractor. The application is based on design parameters which in turn have been based on expected building dimensions which draw on WTI's delivery of similar facilities.
ISH: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	These will be corrected in the revised dDCO submitted for Deadline 2.

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
			included in the definition of 'works plan'?	
ISH: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?	The annual landscaping maintenance plan will be approved as part of the landscaping scheme under Requirement 15. This will be clarified in the revised dDCO submitted for Deadline 2.
ISH: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.	It is agreed that a CTMP and Travel Plan will be provided for the WKN site; 3.1 Appendix 4.2 provides a draft CTMP and Appendix 4.3 provides a draft Travel Plan. Requirement 24 provides for a CTMP and Requirement 25 provides for a written operational traffic routing and management plan (to be in accordance with the operational travel plan framework) to be submitted and approved by the planning authority after consultation

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
				with the Highways Authority.
ISH: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'.	This will be corrected in the revised dDCO submitted for Deadline 2.
ISH:35	Requirement 22, Construction environmental management plan		A reference is required in R22(2)(d)	This will be corrected in the revised dDCO submitted for Deadline 2.
ISH:36	Schedule 3		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? 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	This will be corrected in the revised dDCO submitted for Deadline 2.

Q No.	Part of DCO	Drafting example (where relevant)	Question	Applicant's Response
			<p>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>	
ISH:37	Schedule 3		<p>Is 'Revision' the correct title for column (3) in relation to all (rather than some of the) documents listed in it?</p> <p>i.e. is it the case that ones that don't have a 'Reference' in column (2) were never revised?</p>	<p>"is it the case that ones that don't have a 'Reference' in column (2) were never revised?" – this is correct and the references in the Revision column in these cases will be moved to Reference column.</p>