

Kent County Council Written Statement as Minerals and Waste Planning Authority

Kent County Council has been supported by BPP Consulting in the preparation of this Statement. BPP Consulting has been actively engaged with the County Council in the preparation of the Early Partial Review of the Kent Minerals and Waste Local Plan.

Kent County Council (KCC) is the Waste Planning Authority (WPA) for Kent and so is responsible for planning for the management of waste within Kent. In July 2016, KCC adopted updated planning policy for waste management in Kent in the form of the Kent Minerals and Waste Local Plan (KMWLP). Soon after the Plan's adoption, some of the policies were considered out of date and so KCC embarked on an 'Early Partial Review' (EPR) of these policies. The proposed changes have been subject to consultation and independent examination. It is expected that the Inspector examining the Plan (Mr Nicholas Palmer) will report his findings on the soundness and legality of the EPR changes in Spring 2020.

In summary, the DCO proposal seeks approval for a power upgrade and increase in tonnage throughput to the existing Kemsley Generating Station (K3) to allow for generation of up to 75MW; and the construction and operation of a separate 42MW waste-to-energy facility known as Wheelabrator Kemsley North (WKN). In respect of the K3 plant, the County Council granted conditional planning permission for the erection of a Sustainable Energy Plant (SEP) to serve Kemsley Paper Mill fuelled by 550,000 tpa of waste arisings and an energy capability of 49.5 MW (planning reference KCCSW/10/444). As part of the combined DCO proposal, an expansion of this SEP plant is being promoted which seeks to increase generation capacity to 75MW of energy through increasing throughput of waste by up to 107,000 tpa. The proposed WKN plant would be fuelled by 390,000 tonnes of waste per annum.

In its previous responses as WPA, Kent County Council has highlighted its concern at the conflict between waste planning policy at national and local level and the energy policy considerations identified for the DCO examination. It considers that the WTI proposal is in conflict with the Council's adopted KMWLP and its Early Partial Review (EPR) that is currently at examination stage. This statement sets out the potential consequences of that conflict.

The County Council remains concerned that consideration of the two entirely independent proposals together, as below, risks conflating the cases that on their own have very different merits and demerits.

- the expansion of capacity at an existing facility consented by KCC with demonstrable economic benefits due to its linkage with the adjacent Paper Mill 'K3'; and
- a standalone Energy from Waste (EfW) plant 'WKN' proposed to stand on the land granted consent to process the resultant ash from K3 into aggregate

Moreover, provision of a significant additional waste capacity would so severely undermine the strategy that underpins the Kent Minerals & Waste Plan (MWLP), that the requirement to reduce waste and increase recycling in accordance with national waste policy and law would be compromised. Whilst the contribution of existing WTE facilities is acknowledged within

the strategy, there is no justification for additional WTE capacity (of the quantum proposed), nor any other justification in the public interest that warrants the harm that will be caused to the strategy.

Having considered the combined Kemsley ('K3' and 'WKN' taken together) DCO application, KCC draws attention to its concerns relating to the following:

1. Prematurity;
2. Consistency with the principles of waste planning in Kent;
3. Consistency with the principles of waste planning in South East;
4. Consistency with national Government policy on waste management;
5. Need for the facility (feedstock supply);
6. Energy efficiency and carbon impacts; and,
7. Environmental and amenity impacts

1. Prematurity

The adopted KMWLP sets out the strategic and development management policy framework to be used in determining planning applications for waste management facilities in Kent. This policy framework is founded on a strategy based on the principles of 'net self-sufficiency' and the management of waste in accordance with the Waste Hierarchy. This approach was found sound following independent examination by the Planning Inspectorate in 2016.

The KMWLP committed KCC to preparing a 'Waste Sites Plan' that would allocate land considered suitable for accommodating waste facilities required to fill an identified 'capacity gap'. As part of the work to develop the subsequent Waste Site Plan, a review was undertaken to confirm the predicted capacity gap for waste management in Kent. This reassessment established¹, amongst other matters, that, with the commissioning of a consented 550,000 tonne waste recovery facility at Kemsley (i.e. the K3 plant at the 49.5 MW capacity referred to as a "sustainable energy plant"), the capacity gap for the management of non-hazardous residual waste would be satisfied to the end of the Plan period (2031). The capacity of this facility had not been counted in the original needs assessment underpinning the KMWLP because at that time there was insufficient certainty that the project would go ahead. The EPR seeks to address this change in capacity requirements by removing the commitment to prepare a Waste Sites Plan. As noted above, the Inspector is due to report his findings on the EPR imminently.

To make a decision on the DCO before the outcome of the Examination of the Early Partial Review of the Plan is known would be premature and contrary to the established plan making process.

2. Consistency with the Principles of Waste Planning in Kent

The principles underpinning planning for waste are established in national policy and practice. They include the proximity principle for mixed municipal waste, planning for net self

¹ Kent Waste Needs Assessment 2018 Capacity Requirement for the Management of Residual Non-Hazardous Waste Report: September 2018 Update Version: 1.4 <https://consult.kent.gov.uk/file/5162975>

sufficiency and the movement of waste up the waste hierarchy. These principles emanate from legal requirements and are reflected in adopted policy in the KMWLP (including that to be modified by the EPR currently undergoing examination).

The combined Kemsley DCO proposal would result in a further half million tonnes of waste recovery capacity per annum being provided in Kent. This is far in excess of the requirements indicated by the latest Waste Needs Assessment (WNA)² prepared to support the EPR. Once the consented capacity at K3 of over half million tonnes per annum is taken into account, the WNA identifies that for the Kent strategy to be met throughout the Plan period, there is no need for a further half million tonnes per annum of 'Other Recovery' capacity³. Provision of this capacity would mean that management of waste will be locked into incineration for at least the next 25 years, compromising its management by methods further up the Waste Hierarchy e.g. by being prevented in the first place, or recycled/composted.

Approval of the DCO would therefore be contrary to the principles of waste planning in Kent, as set out in the adopted KMWLP and submitted EPR.

3. Consistency with the Principles of Waste Planning in the South East

In order for the additional capacity to not compromise the movement of waste produced in Kent up the Waste Hierarchy, the proposed facility would need to draw waste in from beyond the boundaries of Kent. This would undermine the wider Local Plan-making principles of the other Waste Planning Authorities within the South East. These authorities, including KCC, are part of the South East Waste Planning Advisory Group (SEWPAG), which has agreed a Memorandum of Understanding under the Duty to Cooperate (Section 110 Localism Act 2011) that commits the respective signatories to apply net self-sufficiency as a key principle underpinning each authority's waste planning strategy. The combined Kemsley DCO proposal would, by its own assessment⁴, disrupt the move towards net self sufficiency being pursued by authorities in the South East. Furthermore, other WPAs around the wider South East (i.e. those in the East of England) and the Greater London Authority (GLA)⁵ are also pursuing the approach of net self-sufficiency.

Approval of the DCO would be contrary to the principles of waste planning adopted and pursued in the wider South East as reflected in the Plans developed by Waste Planning Authorities and the GLA.

² Kent Waste Needs Assessment 2018 Capacity Requirement for the Management of Residual Non Hazardous Waste Report: September 2018 Update prepared to support the Early Partial of the KMWLP

³ 'Other recovery' covers waste management methods that fall below 'recycling' on the Waste Hierarchy but above disposal. Incineration plants are classed as disposal (alongside landfill) unless they meet an energy recovery performance threshold known as R1

⁴ Waste Hierarchy and Fuel Availability Assessment July 2019 WTi

⁵ Policy 5.16 Waste net self-sufficiency Chapter 5 London Plan

4. Consistency with Government Policy

a. Energy Policy

Notwithstanding that by the promoter's own evidence the input fuel is not expected to be predominately biogenic, it is taken that the *National Policy Statement for Renewable Energy Infrastructure (EN-3)* will apply. This expressly states, in connection with the assessment of proposal for Energy from Waste plants under the DCO regime, that:

"2.5.66 An assessment of the proposed waste combustion generating station should be undertaken that examines the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plan....."

2.5.67 The application should set out the extent to which the generating station and capacity proposed contributes to the recovery targets set out in relevant strategies and plans, taking into account existing capacity.

2.5.68 It may be appropriate for assessments to refer to the Annual Monitoring Reports published by relevant waste authorities which provide an updated figure of existing waste management capacity and future waste management capacity requirements.

2.5.69 The results of the assessment of the conformity with the waste hierarchy and the effect on relevant waste plans should be presented in a separate document to accompany the application to the IPC.

2.5.70 The IPC should be satisfied, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England.... Where there are concerns in terms of a possible conflict, evidence should be provided to the IPC by the applicant as to why this is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy.⁶"

KCC disputes the veracity of the assessment provided by the promoter that could be taken to address the National Policy Statements (NPS) paragraphs listed above (see detailed comments in Section 5.0 below). Furthermore, the promoter's assessment of conformity with the waste hierarchy and the effect on relevant waste plans, presented in *Waste Hierarchy and Fuel Availability Assessment*, states at paragraph 1.4.9:

"The Proposed Development is wholly compliant with both the adopted and the proposed modifications to Kent waste policy." (emphasis added)

Given that WTI made representations to the examination of the Early Partial Review of the adopted KMWLP objecting to the proposed changes, WTI is fully aware that the proposal will not be in accordance with the Local Plan or its underpinning strategy. In

⁶ It is noted that references to "IPC" should now be read as "the Planning Inspectorate".

addition to detailed written evidence, representatives on behalf of WTI gave oral evidence at the Hearing for the Early Partial Review of the MWLP.

b. Waste Policy

The Government's Resource and Waste Strategy (RWS) (published in December 2018) set out that adoption of the recycling rates enshrined in the adopted EU Circular Economy package (reflected in the targets proposed in the revised Kent Minerals and Waste Local Plan – the EPR), meant there was no need for additional incineration capacity nationally. Introduction of an incineration tax has also been proposed⁷ to prevent provision of such capacity locking in otherwise recyclable waste or drawing non-recyclable waste from so far afield that the transport impacts are unacceptable. The very real prospect of the introduction of such a tax has been demonstrated most recently in the Netherlands, where a tax has been introduced to dissuade reliance on waste incineration plants as a source of low carbon energy.

It should be noted that the Government's proposals to bring measures forward to promote recycling, as stated in the RWS, are about to commence passage through Parliament in the shape of the Environment Bill. Moreover, a revised Waste Management Plan for England and updated National Planning Policy for Waste are imminent and, to be consistent with RWS, these will likely provide a different emphasis in policy direction, particularly in relation to Combined Heat and Power (CHP) from EFW.

Approval of the DCO will be contrary to Government policy and will be premature, given the forthcoming measures to promote recycling of waste nationally, the possibility of an incineration tax and forthcoming changes to the wider strategic policy framework.

5. Need for the Facility

It is considered that the combined Kemsley DCO proposal is not supported with robust evidence that justifies the development of an additional half million tonnes per annum of 'Other Recovery' capacity in Kent. The evidence base prepared for Wheelabrator Technologies to underpin the combined DCO proposal seeks to justify the development in the context of a perceived capacity gap of up to 1.3 million tonnes in Kent. It indicates that even with the WKN/ K3 capacity, there will be a further unmet capacity requirement of 870ktpa in Kent

. While this may indicate a need for additional energy from waste capacity within the wider South East, provision of such capacity within Kent would be contrary to adopted local planning policy and the findings of the updated Waste Needs Assessment that forms part of the EPR evidence base currently undergoing examination.

Moreover, when scrutinised against the most recent Environment Agency waste dataset, (Waste Data Interrogator – (WDI) 2018), the DCO evidence base is found to present an inflated picture of capacity requirements, even when applying the promoter's method to

⁷ Budget 2018 HM Treasury October 2018

assess fuel availability⁸. It is noted that the promoter's evidence identifies additional capacity required within a range between 495,540tpa to 840,463tpa assuming provision of the additional capacity arising from the K3/WKN development. Using the Environment Agency's WDI 2018 data and the proposer's methodology, the range is actually found to fall between -76,390tpa and -373,473tpa (see Appendix 1). Such gross deviation demonstrates that the feedstock supply case made by the proposer is not robust or reliable.

Approval of the DCO is not supported by the promoter's own assessment of feedstock when replicated for the most recent year.

6. Energy Efficiency and Carbon Impacts

a. Energy Efficiency

While the combined Kemsley DCO proposal is being promoted as an energy supply facility, and is proposed to be assessed against the relevant National Policy Statement (NPS), it should be noted that the potential for waste management proposals to contribute towards local energy supply is expressly acknowledged within the adopted KMWLP and specific policies address this. In particular:

- Policy CSW6, which applies to all proposals for built waste management facilities, includes an expectation that: "*g. for energy producing facilities - sites are in proximity to potential heat users.*";
- Policy CSW7, relating to the provision of additional recovery capacity, generally expects "*3. energy recovery is maximised (utilising both heat and power)*"; and
- Policy CSW8, relating to provision of additional energy recovery capacity, refers to: "*Facilities using waste as a fuel will only be permitted if they qualify as recovery operations as defined by the Revised Waste Framework Directive. ⁽⁹⁰⁾ When an application for a combined heat and power facility has no proposals for use of the heat when electricity production is commenced, the development will only be granted planning permission if:*
 1. *the applicant and landowner enter into a planning agreement to market the heat and to produce an annual public report on the progress being made toward finding users for the heat.*"

The above policies were adopted in order to assure that additional Other Recovery capacity that produces energy are designed to operate as Waste Directive Framework compliant recovery processes, maximising the harnessing of the energy produced.

The above demonstrates that the local development plan has policies and safeguards in place to ensure that such plants are designed and built to maximise energy recovery and thereby the carbon reduction benefits. Were the Inspector to be minded to grant the DCO, KCC would look for inclusion of safeguards to maximise utilisation of energy produced within the consent order.

⁸ Waste Hierarchy and Fuel Availability Assessment July 2019 WTi

b. Carbon Impacts

The promoter's Carbon Assessment raises concerns in a number of respects:

The comparative scenario adopted relates to the landfilling of all waste that would otherwise be managed through the proposed plant. Given that the waste will either arise in Kent (in which case a proportion would be diverted from recycling) or further afield (in which case it will have been otherwise planned for through the Local Plan making processes), it is simply not the case that without this facility, waste will be landfilled. This is also supported by the fact that, in reality, the supply of landfill capacity within the feedstock catchment area identified by the proposer is dwindling⁹, so in practical terms, there is simply not enough capacity to manage the target feedstock by landfill.

In reality, WKN would be competing with management through other routes, including other EfW plants and export as Refuse Derived Fuel (RDF). Importantly, the RDF export scenario modelled as a sensitivity found that *"...carbon impacts could be up to circa 13ktCO₂e lower than the Proposal. This is predominately associated with the fact that the European WtE is modelled as CHP, whereas the Facility is conservatively modelled as electricity only."* (page 15)". This essentially means that the proposal will have a substantially greater carbon impact than if the waste were managed via the European RDF export route (that may currently be followed) and/or supplied to EfW with CHP in the UK.

The promoter's Carbon Assessment states that it is assumed that where processes generate usable heat, the heat energy is offset against the combustion of natural gas (for heating). This presumes that the heat generated by WKN will actually be utilised, but little evidence has been provided to substantiate this. In fact, the promoter's own CHP assessment¹⁰ concludes that:

"...it is considered that the proposed heat network does not yield an economically viable scheme in its current configuration, but this will be reassessed in the future when there is more certainty over heat loads and considering any subsidies that might be available at that time that support the export of heat".

Without ongoing supply agreements and a heat network in place, it must be assumed that the plant will operate in electricity-only mode and any benefit of heat displacing the use of gas for space heating should be ignored. It is noted that this is acknowledged on Page 9 which states *"...the Facility will generally operate in electricity only mode,..."*

It is therefore unsurprising that the carbon assessment concludes that *"Even accounting for the carbon benefits associated with electricity generation and the recycling of incinerator bottom ash with metals recovery, the facility demonstrates an overall carbon burden."* (emphasis added). In short, it is only by comparing the proposal with a worst-case scenario of 100% landfill that a carbon 'benefit' is indicated. As stated above, such a benefit will not

⁹ See for example *Figure 18: Remaining Capacity at Non-Hazardous Landfills in London and the South East - Combined HIC and inert waste inputs* Tolvik Residual Waste in London and the South East Where is it going to go...? October 2018.

¹⁰ Combined Heat and Power (CHP) Assessment Fichtner September 2019

materialise in practice, because the alternative outlets for the target fuel are unlikely to include landfill.

The proposer's own assessment demonstrates that heat utilisation is essential to the carbon benefits of burning residual waste being realised. A key factor in KCC's decision to grant planning permission for the existing K3 plant (KCC consent SW/10/444 issued 2012) was the benefit to the adjacent Paper Mill that came from provision of a stable low cost heat and power supply by conferring a greater degree of energy supply security, thus improving its competitive position. This need will be met through provision of the sustainable energy plant (K3), as well as a combustor incinerating paper production wastes to produce circa 25MW steam (K2) and a recently consented replacement gas fired CHP plant producing circa 80 MW of electricity and 200 tonnes per hour of steam plus 72 tonnes of low pressure steam (K4) (see paragraph 2.4.8 Inspector's Report of K4 DCO). In addition, KCC has granted consent for the construction of a 2km pipeline to supply up to 27tph of steam to the Mill from the Ridham Dock Biomass Facility (SW/16/506935). It is worth noting in this regard that part of the case for the provision of the K4 plant to replace the existing K1 plant involved deliberately downsizing capacity for the stated reason that "... it was sized originally to provide energy to the now redundant Sittingbourne Mill... and it is therefore inefficient" (Para 2.3.5 Environmental Statement Vol 1 August 2018). The improvement in efficiency and consequent reduction in associated emissions, greenhouse gas and local air, was a material consideration in the grant of the DCO (See paragraph 4.4.5 of the K4 Inspector's report). Hence, it must be concluded that any suggestion that the heat and power produced by WKN is needed by the Paper Mill is not supported by the evidence presented to support the K4 determination made only last year.

As a consequence, it can only be regarded as a waste fired power generation unit that would be a net carbon producer, approval of which would run counter to Government policy on carbon reduction for climate change mitigation.

The overarching *National Policy Statement on Energy* states "*In developing proposals for new thermal generating stations, developers should consider the opportunities for CHP from the very earliest point and it should be adopted as a criterion when considering locations for a project.*" (paragraph 4.6.7 page 52). It goes on to state "*To encourage proper consideration of CHP, substantial additional positive weight should therefore be given by the IPC to applications incorporating CHP.*" (paragraph 4.6.8 page 52) and by the same token, it may be inferred that no or even negative weight ought to be given where site choice limits CHP potential, as is the case here.

The importance of maximising CHP opportunities from waste fired plants is emphasised in the more recently published national Resource and Waste Strategy, which confirms Government's intention that soon to be released Government policy will "...consider how to ensure... that future plants are situated near potential heat customers" so that the heat off take is harnessed as occurs elsewhere in continental Europe (Section 3.2.1). Plants that generate both electricity and supply heat typically achieve efficiencies of circa 40% while electricity only plant efficiency is circa 27%, meaning an ongoing loss of circa 13% of the calorific value of every tonne of waste fuel burnt.

The assessment has assumed that the biogenic fraction of input feedstock would only be 45%. Therefore, the majority of electricity generated by the proposed plant would not be renewable. While a sensitivity analysis has been undertaken for an increase in the biogenic fraction to 53%, an analysis to test whether the biogenic fraction should be assessed to be less than 45% has not. Given the national drive to separate out food waste and shifts in composition anticipated by other Government initiatives, the biogenic fraction may well fall further with the result that the carbon burden will be increased. This would mean that energy from the proposal would primarily be derived from fossil-fuel sources, such as plastics that would not contribute to decarbonising the economy.

The modelling assumes landfilling of air pollution control residues (APCr) and it is now known that WTI has entered into a contract for the APCr to be landfilled at a facility in Northamptonshire, which is a 260-mile round trip by HGV adding an additional unquantified carbon burden.

The evidence submitted by the promoter demonstrates that the plant will be a net carbon producer, and the claimed benefit only emerges with assumptions around landfilling and other factors that are not considered justified. The evidence presented demonstrates that without full heat usage the proposed plant will actually perform poorly against alternatives available to the market today. Construction of the WKN plant in a location without a proximate reliable ongoing heat user means the proposal will fail to make the most of the feedstock's calorific value. As a result, it would not be aligned with Government policy on the matter and will have poor carbon credentials.

7 Environmental and Amenity Impacts

The proposal will give rise to environmental impacts the acceptability or otherwise of which will need to be considered as part of the DCO process. In considering the merits of the Sustainable Energy Plan (for 49mw of energy with a feedstock of 555,000tpa) in 2011, the County Council as the WPA was satisfied in granting conditional planning permission that the development was in accordance with planning policy in force at the time and was sustainable. In doing so the impacts of proposal including traffic, air quality, water quality and flood risk, landscape, nature conservation and ecology (including a separate Appropriate Assessment in accordance with Regulation 61 of the Habitats Directive), noise and employment were considered against the policies in the *Kent Waste Local Plan Saved Policies (Adopted March 1998)*. This included policy that expressly identified the K3 site as being suitable in principle for a Waste to Energy plant. Since the KCC decision on the Sustainable Energy Plant, this Plan is no longer in force (having been superseded by the adopted Kent MWLP 2016), and the national policy context has also changed.

In considering the merits of the expansion of the permitted Sustainable Energy Plant and the construction of the additional WKN plant, the DCO Inspector will need to be satisfied that the environmental impacts of those elements are acceptable within the overall planning balance including cumulative impacts from both the K3 plant but also the recently consented K4 plant. Given the conflict with waste planning policy it is considered that the environmental impacts of such additional development are not justified.

Conclusion

For the reasons above, Kent County Council objects to the combined Kemsley DCO proposal for the WTI WKN new build and expansion of capacity at the consented K3 facility.

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

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