



Project Team  
The Planning Inspectorate

Your reference: EN010083  
Our reference: DCO/2018/00017

**By email only**

27 February 2020

Dear Sir/Madam,

**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**

**MMO Deadline 1 Response**

The Marine Management Organisation (“MMO”) received notification from the Planning Inspectorate (“PINS”) via a Rule 6 letter dated 21 January 2020, of a Preliminary Meeting, Issue Specific Hearing on the draft Development Consent Order (“DCO”) and a draft timetable for the examination of an application by WTI/EFW Holdings Ltd (the “Applicant”) for an Order Granting Development Consent for the Wheelabrator Kemsley (K3) Generating Station and the Wheelabrator Kemsley North (WKN) waste to energy facility (the “DCO Project”).

In a letter to PINS dated 12 February 2020, the MMO noted that they had not been informed by the Applicant under Section 56 of the Planning Act 2008, of the decision to accept an application for Examination for an Order Granting Development Consent. As such, the MMO has not been given the opportunity to submit relevant representations and has yet to comment on the DCO application. The MMO has approached the Applicant to commence discussions and is still awaiting engagement.

This document comprises the MMO’s deadline 1 response in respect of the above DCO Application. This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

The MMO reserves the right to modify its present advice or opinion in view of any additional matters or information that may come to our attention.

The MMO would be grateful if you could ensure that those indicated below are added to the distribution list for PINS communications for this case.

Yours faithfully,





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## 1. Written Representation

### 1.1. The MMO's role in Nationally Significant Infrastructure Projects

The MMO was established by the Marine and Coastal Access Act 2009 (the "2009 Act") to make a contribution to sustainable development in the marine area and to promote clean, healthy, safe, productive and biologically diverse oceans and seas.

The responsibilities of the MMO include the licensing of construction works, deposits and removals in English inshore and offshore waters and for Northern Ireland offshore waters by way of a marine licence<sup>1</sup>. Inshore waters include any area which is submerged at mean high water spring ("MHWS") tide. They also include the waters of every estuary, river or channel where the tide flows at MHWS tide. Waters in areas which are closed permanently or intermittently by a lock or other artificial means against the regular action of the tide are included, where seawater flows into or out from the area.

The MMO is an interested party for the examination of DCO applications for Nationally Significant Infrastructure Projects ("NSIPs") in the marine area.

As a prescribed consultee under the Planning Act 2008 (the "2008 Act"), the MMO advises developers during pre-application on those aspects of a project that may have an impact on the marine area or those who use it. In addition to considering the impacts of any construction, deposit or removal within the marine area, this also includes assessing any risks to human health, other legitimate uses of the sea and any potential impacts on the marine environment from terrestrial works.

In the case of NSIPs, the "2008 Act" enables DCO's for projects which affect the marine environment to include provisions which deem marine licences<sup>2</sup>. Where a marine licence is deemed within a DCO, the MMO is the delivery body responsible for post-consent monitoring, variation, enforcement and revocation of provisions relating to the marine environment. As such, the MMO has a keen interest in ensuring that provisions drafted in a deemed marine licence ("DML") enable the MMO to fulfil these obligations.

Alternatively, developers can look to have the marine elements of NSIP's consented via a marine licence under Part 4 of the 2009 Act. The MMO is the Licensing Authority for the purpose of Part 4 of the 2009 Act, and is also responsible for post-consent monitoring, variation, enforcement and revocation of provisions relating to the marine environment. Where a marine licence is sought under Part 4 of the 2009 Act for an NSIP, the MMO will engage with PINS throughout the DCO process to ensure that NSIPs are considered in their entirety, and do not conflict with any licence issued under Part 4 of the 2009 Act.

Further information on licensable activities can be found on the MMO's website<sup>3</sup>. Further information on the interaction between the Planning Inspectorate and the MMO can be found in our joint advice note<sup>4</sup>.

### 1.2. The DCO Project

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<sup>1</sup> Under Part 4 of the 2009 Act

<sup>2</sup> Section 149A of the 2008 Act

<sup>3</sup> <https://www.gov.uk/topic/planning-development/marine-licences>

<sup>4</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-11-v2.pdf>

The Wheelabrator Kemsley (K3) Generating Station (the “K3 Project”) will comprise an energy plant capable of processing 657,000 tonnes of waste per annum and have a generating output of 75 Megawatts (“MW”), together with associated infrastructure and all associated development. The proposed development site is located 0.8 kilometres (“km”) east of Kemsley, in the north of Sittingbourne, Kent. The site lies adjacent to the Swale Estuary to its east, and an area of reedbed known as Kemsley Marshes to its north. To the south of the site lies a capped former landfill site which lies adjacent to the confluence between Milton Creek and the Swale Estuary.

The MMO understands that planning permission was granted in March 2012 by Kent County Council for a waste-to-energy plant (the K3 Project) capable of processing 550,000 tonnes of waste per annum and have a generating output of 49.9MW. Construction commenced in summer 2016. The DCO application seeks consent for operational changes only, for the K3 Project to operate at an upgraded capacity (an additional 25.1 MW) and to process an additional 107,000 tonnes of waste per annum beyond that consented under the existing planning permission. It is understood that the design, layout, size, shape and appearance of the K3 Project will not change.

The Wheelabrator Kemsley North (WKN) waste to energy facility (the “WKN Project”) will comprise a single line facility capable of processing 390,000 tonnes of waste per annum, with a generating capacity of up to 42MW, together with associated infrastructure and all associated development. The proposed development site is located on land immediately north of the K3 Project, with the Swale Estuary to the east, Kemsley Marshes to the north, and a jetty operated by Knauf for the import of gypsum by barge to the north east.

The MMO has an interest in the DCO Project as the proposed development includes the construction of two surface water outfalls to the Swale.

### **1.3. Pre-application consultation**

The MMO was consulted on the original scoping opinion for the Project in September 2018, with a response provided later that month. The MMO’s scoping response noted that, based on the information provided within the scoping report, it appeared that the drainage network described for the WKN Project was the same as that previously consented for the K3 Project. As such, the MMO understood there to be no further licensable activities. The MMO’s scoping response added, however, that should it become apparent that there was a need for further licensable activities (such as a separate outfall for the WKN Project), then the MMO would comment further. The MMO received no further consultation from the Applicant regarding to the DCO application.

### **1.4. Marine licence**

A marine licence application was submitted in August 2017, requesting consent for the construction of an outfall into the Swale Estuary to discharge clean surface water via an attenuation pond on the site. On 21 December 2017, marine licence L/2017/00482/1 to allow the construction of the Kemsley Generating Station Outfall was issued under the 2009 Act. This permitted construction of a 600 millimetre (“mm”) diameter pipe set within a concrete head wall (approx. 3 meters (“m”) in width and 4m in depth) and installation of a 3m wide by 5m long (and 0.5m deep) reno mattress situated on the seaward side of the outfall.

In January 2019 the MMO received a request to vary licence L/2017/00482/1 to allow the construction of a second outfall to serve a new energy from waste facility known as Wheelabrator Kemsley North. On 10 May 2019, varied marine licence L/2017/00482/2 was issued under the 2009 Act. This permitted the construction of a second outfall, comprising 600mm diameter pipe set within a concrete head wall (approx. 6m in width and 4m in depth) and 5m wide by 6m long (and 0.5m deep) reno mattress situated on the seaward side of the outfall. Marine licence L/2017/00482/2 has an end date of 31 December 2060.

## **1.5. Comments on the DCO application**

The MMO assumes 'Work No 1E' and 'Work No 7' within Schedule 1 (authorised development) of the draft DCO refer to those activities consented under the existing marine licence (L/2017/00482/2). Should maintenance of the outfalls be required, such activities may be licensable under the 2009 Act. Currently, marine licence L/2017/00482/2 does not give consent for maintenance activities. The MMO would therefore encourage the Applicant to discuss the requirement for ongoing maintenance activities with the MMO, with a view to further varying marine licence L/2017/00482/2, should this be required.

The MMO notes the intention to deliver waste to the DCO Project site by road. Should delivery by sea be needed in the future, with a requirement for additional infrastructure to support this (such as construction of a jetty, other infrastructure, or any other licensable marine activity including dredging), works below MHWS may require a marine licence.

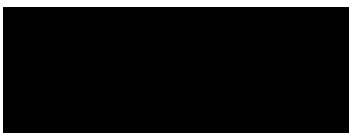
It is noted within the Environmental Statement that, at the end of its operating life, it is expected that the DCO Project would be rendered in-operable before eventually a programme of demolition is commenced. Should this decommissioning include the two outfalls consented under marine licence L/2017/00482/2, it is worth highlighting that this is not currently consented under marine licence L/2017/00482/2. Again, the MMO would encourage the Applicant to discuss this further with the MMO should this be required with a view to varying the existing marine licence. We do not recommend that decommissioning activities are included within the DML.

## **2. Comments on Relevant Representations**

### **2.1. Natural England**

Within their Relevant Representation, Natural England ("NE") noted that, should the scour protection consented under marine licence L/2017/00482/2 need to be extended due to additional flows from a second outfall, the impacts of this on the Swale Estuary MCZ will need to be considered.

The MMO would like to highlight that, should the scour protection require extending, the MMO would encourage the Applicant to discuss this further with the MMO with a view to further varying marine licence L/2017/00482/2. Should a variation to marine licence L/2017/00482/2 under the 2009 Act be required, the MMO would consult Natural England for expert advice in their position as the statutory nature conservation body.



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