



Wheelabrator
TECHNOLOGIES



Explanatory Memorandum (Clean)

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

PINS Ref: EN010083

Planning Act 2008
The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Regulation: 5(2)(c)

Document 2.2
March 2020 - Deadline 2 Version

Explanatory Memorandum

Contents

No	Heading	Pages
1.	Introduction	1
2.	The purpose of the Order	1
3.	Compulsory acquisition powers	4
4.	Part 1 of the Order: Preliminary	4
5.	Part 2 of the Order: Principal powers	5
6.	Part 3 of the Order: Supplementary powers	6
7.	Part 4 of the Order: Miscellaneous and general	7
8.	Schedules	8

1. Introduction

- 1.1 This memorandum accompanies an application for development consent (the "Application") by WTI/EFW Holdings Ltd ("the Undertaker") for two separate, but physically proximate, projects - the Wheelabrator Kemsley (K3) Generating Station ("K3") and Wheelabrator Kemsley North ("WKN") Waste-to-Energy Facility.
- 1.2 The memorandum explains the purpose and effect of each article of, and Schedule to, the draft Wheelabrator Kemsley (K3 Generating Station) and (WKN Waste-to-Energy Facility) Order 20[] (the "Order") as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.3 The Order is based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "model provisions"). Although the model provisions have no formal legal status, explanation is provided for any departures from the model provisions, and for wording derived from other DCOs, as recommended by PINS Advice Note 13 "Preparation of a draft order granting development consent and explanatory memorandum".
- 1.4 The Order does not include model provisions that are not relevant or applicable to the proposed development.
- 1.5 Terms used in the Order have the same meaning in this memorandum unless otherwise specified. A reference to 'ADR' in this document stands for Application Document Reference.

2. The purpose of the Order

- 2.1 The purpose of the Order is to grant development consent for the construction, operation and maintenance of K3 and WKN, located near Kemsley in Kent.

Nationally Significant Infrastructure Project – K3

- 2.2 The proposed K3 development is an onshore generating station with a total installed generating capacity of up to 75MW. It is therefore an NSIP by virtue of sections 14(1)(a) and 15(2) of the PA 2008. K3 is comprised of Work Nos 1, 1A and 1B of Schedule 1 of the draft Order.
- 2.3 The generating station proposed to comprise K3 was originally consented as the Wheelabrator Kemsley Sustainable Energy Plant ("SEP") pursuant to planning permission KCC/SW/10/444 granted by Kent County Council on 6 March 2012. That consent has since been varied on a number of occasions under Section 73 of the Town and Country Planning Act 1990, with the last of those being SW/19/501345 on 14 June 2019 (the "K3 SEP Planning Permission"),
- 2.4 The SEP is a generating station capable of processing 550,000 tonnes of waste per annum and having a generating output of 49.9MW. The SEP is under construction and expected to be operational by late 2019.
- 2.5 The purpose of the Order with respect to K3 is therefore, in effect, to authorise an increase in generating capacity of the existing SEP from 49.9MW to a maximum of 75MW, and to increase tonnage throughput to 657,000 tonnes per annum (the SEP thereafter to be known as "K3").

- 2.6 No external additional construction works are necessary to effect the K3 capacity increase to 75MW – this can be achieved by internal modifications to the existing turbine which is under construction.
- 2.7 As there are no external physical works involved in the generating capacity increase from SEP to K3, the project does not involve the 'extension' of a generating station for the purposes of section 15 PA 2008.
- 2.8 In order to regularise K3 as development for which consent may be granted under section 15 and 31 of the PA 2008, the application seeks consent for 'construction' de novo of K3 as a 75MW generating station.
- 2.9 The Order will supersede the SEP Planning Permission and regulate the future operation, maintenance and decommissioning of K3. On a practical level, construction-related conditions have been discharged. For this reason, no construction requirements for K3 have been included in the Order.
- 2.10 The Planning Statement (ADR4.2) sets out the conditions of the SEP Planning Permission which have been discharged, and therefore do not require transposing into the Order, and the conditions which are required for ongoing operation and maintenance, which have been transposed into requirements in the Order. These are discussed in further detail in Section 8 below.
- 2.11 The approach to environmental impact assessment for the proposed K3 development is set out in Chapter 2 of the Environmental Statement ('ES') (ADR3.1). It has incorporated, verified and built upon the findings of the SEP Planning Permission ES, and undertaken new assessments of K3 as a new-build 75MW generating station in order to validate the mitigation proposed in the Order.
- 2.12 The approach to the ES in summary is as follows:
- (a) to include the 2010 SEP ES (as amended) with this application and cross-reference to it with regard to the assessment of likely significant effects of the construction of K3. The exception to this being human health and climate change which were not assessed in 2010 and so will be addressed in the ES for this application;
 - (b) to undertake a fresh assessment (i.e. not reliant of work undertaken in 2010 given the age of this work) in each topic chapter as appropriate of the effects of the operation of K3 from 0-75MW;
 - (c) retain the assessment of K3 at 49.9 MW to 75MW in each chapter as appropriate as this reflects the true reality of the situation because construction pursuant to the Sustainable Energy Plant Planning Permission is virtually complete;
 - (d) assess WKN against a baseline where K3 is operational at 49.9MW pursuant to the Sustainable Energy Plant Planning Permission because WKN will be constructed and operational after K3.

Associated Development – K3

- 2.13 The following elements of the K3 development are associated development for the purposes of section 115 PA 2008:

- (a) Work No 1C - Alteration of existing private access road to construct, use and maintain Work No 1
- (b) Work No 1D - Creation of a temporary construction compound and laydown area for the construction of Work No 1
- (c) Work No 1E - Construction and operation of a surface water outfall for Work No 1

2.14 These elements clearly fall within the definition of associated development, are not aims in themselves and are proportionate in scale and purpose to K3. They are therefore consistent with the Guidance on associated development applications for major infrastructure projects published by the former Department for Communities and Local Government in April 2013.

2.15 Together with the SEP construction, these elements have been or will shortly be complete, and Work No 1D will cease to be required for K3 construction and will become the construction site for WKN.

2.16 Works No 1C and 1E will also be used for the proposed WKN development, becoming Works 4 and 7 respectively.

Development under Section 35 of the Planning Act 2008 – WKN

2.17 The proposed WKN development will be an onshore generating station with a total installed generating capacity of up to 42MW.

2.18 WKN is treated as development for which development consent is required pursuant to a direction by the Secretary of State for Business, Energy and Industrial Strategy under section 35 of the PA 2008 dated 27 June 2018.

2.19 The purpose of the Order with respect to WKN is to seek consent for the construction, operation and maintenance of a new-build generating station comprising Works 2 and 3 of Schedule 1 of the draft Order.

Associated Development – WKN

2.20 The following elements of the K3 development are associated development for the purposes of section 115 PA 2008:

- (a) Work No 4 - Alteration of existing private access road to construct, use and maintain Work No 2
- (b) Work No 5 – Temporary construction or alteration of existing private haul road for the construction of Work No 2
- (c) Work No 6 - Creation of a temporary construction compound and laydown area for the construction of Work No 2
- (d) Work No 7 - Construction and operation of a new surface water outfall for Work No 2

2.21 These elements clearly fall within the definition of associated development, are not aims in themselves and are proportionate in scale and purpose to WKN. They are therefore consistent with the Guidance on associated development applications for major infrastructure

projects published by the former Department for Communities and Local Government in April 2013.

Further Associated Development – K3 and WKN

- 2.22 Schedule 1 describes various further associated development in connection with and in addition to Works 1, 1A-1 E, and 2 – 7 inclusive. This consists of any other works that may be necessary or expedient for the purposes of or in connection with those Works, and which fall within the scope of the works assessed in the Environmental Statement.
- 2.23 Such works may include external lighting, fencing, signage, CCTV and other security measures, surface and foul water drainage facilities, new telecommunications and utilities apparatus and connections, hard and soft landscaping works, biodiversity enhancement measures, works for the protection of buildings and land, site establishment and preparation works and other temporary works necessary for the construction of the authorised development as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.
- 2.24 The Undertaker also considers that these elements clearly fall within the definition of associated development, are not aims in themselves and are proportionate in scale and purpose to K3. They are therefore consistent with the Guidance on associated development applications for major infrastructure projects published by the former Department for Communities and Local Government in April 2013.

3. Compulsory acquisition powers

- 3.1 All interests and rights in the Order land for K3 and WKN have been or will be acquired by private treaty, and the Undertaker does not seek any powers to acquire land or rights compulsorily.
- 3.2 The land required for K3 and WKN is in the ownership of DS Smith Paper Limited, or that of subsidiary entities controlled by it. DS Smith owns and operates the Kemsley Paper Mill on immediately adjacent land to the west.
- 3.3 The Undertaker has entered into a lease with DS Smith in respect of the Order land required for K3, under which it is granted all the interests and rights that are necessary for the construction, operation and maintenance of K3.
- 3.4 At the time of making this application, the Undertaker and DS Smith will imminently enter an agreement for lease of the Order land required for WKN, under which it will be granted a long-term lease for all the interests and rights that are necessary for the construction, operation and maintenance of WKN, should development consent be granted.
- 3.5 DS Smith and the Undertaker have also agreed various licenses as are necessary for temporary access and use of land for construction purposes that falls outside the demised lease areas but within the Order land.

4. Part 1 of the Order: Preliminary

- 4.1 *Article 1 (Citation and Commencement)* provides for the commencement and citation of the Order.

4.2 *Article 2 (Interpretation)* is based on a model provision and provides for the interpretation of the Order including the Schedules. Where appropriate some Schedules also contain definitions of terms that are used in that Schedule. Definitions to note include:

- (a) "commissioning" of the Authorised Development or a part of it: the process of testing all systems and components of the Authorised Development (including systems and components not yet but nearly installed), in order to verify that they function in accordance with the Undertaker's design objectives, specifications and operational requirements;
- (b) "K3 Sustainable Energy Plant Planning Permission" means planning permission SW/19/501345 granted on 14 June 2019 by Kent County Council (which is the last variation of planning permission KCC/SW/10/444 dated 6 March 2012 pursuant to section 73 of the 1990 Act) permitting the construction and operation of a generating station having a capacity of up to 49.9MW. This definition has been introduced for the purposes of Article 4 and for allowing the Order to supersede and replace the SEP Planning Permission. Precedent for use of a DCO for this purpose can be found in the Hinkley Point C (Nuclear Generating Station) Order 2013;
- (c) "maintain" includes (i) inspect, repair, adjust, alter, refurbish, improve, the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and "maintenance" is construed accordingly. This wording appears in various other generating station DCOs such as the Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019 and Millbrook Gas Fired Generating Station Order 2019;
- (d) "operational use" is use of the authorised development for the purposes for which it is authorised under this Order. It has been introduced for the purposes of Article 4 where it is necessary to provide a trigger for the cessation of effect of the SEP Planning Permission, but which does not preclude commissioning and other pre-operational use of the SEP for the purposes of the capacity increase to K3, while the SEP is still operational under the SEP Planning Permission;
- (e) "Project K3" means Work No 1 and any other authorised development associated with that work. It has been introduced to allow for ease of reference to K3 together with its associated development for the purposes of Articles 7 (Transfer of Benefit) and Schedule 2 (Requirements);
- (f) "Project WKN" means Work No 2 and any other authorised development associated with those works. It has been introduced to allow for ease of reference to WKN together with its associated development for the purposes of Articles 7 (Transfer of Benefit) and Schedule 2 (Requirements).

5. Part 2 of the Order: Principal powers

5.1 *Article 3 - Development consent etc. granted by the Order* provides the principal power to construct and operate the authorised development subject to the provisions of the Order, including the requirements listed in Schedule 2. This is based on the model provisions.

5.2 *Article 4 - Effect on K3 Sustainable Energy Plant Planning Permission* governs the relationship between the Order and the SEP Planning Permission. It requires the Undertaker, prior to commencing operational use of K3, to serve notice on the local planning

authority that it intends to cease operating the development as the SEP and it will henceforth be operated under and regulated by the Order. At this point the Order will supersede and replace the SEP Planning Permission. The requirements within the Order adopt the approved details and plans which are carried across from the SEP Planning Permission, and those details become approved details and plans under the Order.

Article 4(2) clarifies that it is not possible for the Undertaker to revert to operation under the SEP Planning Permission once it has given notice under this article. Precedent for use of a DCO for this purpose can be found in the Hinkley Point C (Nuclear Generating Station) Order 2013.

- 5.3 *Article 5 - Authorisation of the operation of the authorised development* authorises the Undertaker to operate the authorised development. This is not a model provision, but is intended to clarify that the undertaker is authorised to operate, as well as construct, the authorised development. It has become common wording in development consent orders, including the Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019 and Wrexham Gas Fired Generating Station Order 2017.

Article 5(2) clarifies that the undertaker is not relieved of the need to obtain any other permit or licence that may be required for the operation of a generating station.

- 5.4 *Article 6 - Power to maintain authorised development* is a model provision. A definition of "maintain" is included in Article 2 which limits the scope of powers of the Undertaker under this article.

- 5.5 *Article 7 – Benefit of the Order* is an adaption of the model provision to remove the requirement to obtain consent of the Secretary of State in three circumstances:

- (a) in respect of Project K3 only, where the proposed transfer or lease is to K3 CHP Limited, a subsidiary member of the Undertaker's corporate group;
- (b) in respect of Project WKN only, where the proposed transfer or lease is to Kemsley North Limited, a subsidiary member of the Undertaker's corporate group;
- (c) where the proposed transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989. This may be a generation, transmission, distribution, supply or interconnector licence under section 6.

6. Part 3 of the Order: Supplementary powers

- 6.1.1 *Article 8 - Access to works* is a model provision that gives the Undertaker the power to create or improve accesses to and from public highways. The Undertaker has access rights to the Order land from the public highway at Barge Way, but it is considered prudent to include this power in the event that the Undertaker or its landlord requires additional access, or remediation and reinstatement of the existing access post-construction.

- 6.2 *Article 9 – Discharge of water* is a model provision allowing the Undertaker to discharge water into any watercourse or public sewer or drain in connection with the construction or maintenance of the authorised development, subject to various conditions. Paragraph 9(5) has been added due to the proximity of the development to a main river and the works to install an outfall to The Swale.

- 6.3 *Article 10 - Authority to survey and investigate the land* is a model provision that gives the Undertaker a power to survey and investigate land within the Order limits or land which may

be affected by the authorised development. This power includes the power to make trial holes, to carry out ecological or archaeological investigations and to use and leave apparatus on the land.

6.4 *Article 11 – Removal of Human Remains* is a model provision that provides for a process for notification and identification of human remains which the Undertaker has reason to think may be disturbed by any works, as well as their re-interment or cremation at the Undertaker's expense. The Order land which will be affected by construction works under the Order (the site for WKN) has already been subject to disturbance as a construction compound for the SEP, therefore it is considered unlikely that there are human remains to which this provision would apply, but it is included as a precaution.

6.5 *Article 12 - Felling or lopping of trees* This is a model provision that gives the Undertaker the power to fell or lop any tree or shrub near any part of the Authorised Development or cut back its roots, if it reasonably believes that it is necessary to prevent obstruction or interference with the construction, maintenance or operation of the Authorised Development. The Undertaker must compensate any person who sustains loss.

7. **Part 4 of the Order: Miscellaneous and general**

7.1 *Article 13 - Defence to proceedings in respect of statutory nuisance* is a modified model provision. It provides a defence for the Undertaker to statutory nuisance proceedings under the Environmental Protection Act 1990. The model provision provides a defence only in respect of noise emitted from the Authorised Development. The provision proposed in the draft Order extends the defence to apply in the case of several other kinds of statutory nuisance (state of the premises, smoke, fumes, gases, dust, steam, smell, accumulation or deposit, insects or artificial lighting) under section 79(1) of that Act.

7.2 The Undertaker has been careful to restrict the expansion of the scope of this defence to what is necessary and consistent with the development consent to be granted under the draft Order, in the context of the potential statutory nuisances that the Authorised Development may cause and the mitigation against them to be agreed under the draft Order. A full discussion of the potential kinds of statutory nuisance, and the proposed mitigation against them, is contained in the Statement of Statutory Nuisance with the Application ("the SSN")(ADR 4.4).

7.3 In broad terms, therefore, the extended defence under this article would apply only in relation to the phases (that is, the construction, operation or maintenance) of the Authorised Development identified in the SSN as relevant to each particular kind of nuisance. The defence would arise either if the nuisance was (i) attributable to the construction, operation or maintenance of the Authorised Development (as relevant) in compliance with a relevant requirement (either on the face of the requirement itself or under a document approved by the local planning authority in accordance with the requirement) or (ii) a consequence of the construction, operation or maintenance of the Authorised Development (as relevant) and could not reasonably be avoided.

7.4 This wording appears in various other generating station DCOs such as most recently the Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019 and Millbrook Gas Fired Generating Station Order 2019.

7.5 *Article 14 - Application of landlord and tenant law* is a model provision. It provides that the general law applying to landlords and tenants does not apply in relation to any agreement for leasing to any person the whole or part of the Authorised Development or the right to construct, maintain, use or operate it.

- 7.6 *Article 15 – Operational land for purposes of the 1990 Act* is a model provision. It provides that, for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990, the development consent granted by the Order is to be treated as a specific planning permission. The effect of the provision is that the Order land is treated as “operational land” within the meaning of section 263 of the 1990 Act. As a result, permitted development rights for operational land under the Town and Country Planning (General Permitted Development) Order 2015 will apply in relation to the Authorised Development.
- 7.7 *Article 16 – Certification of plans etc* is a model provision. It requires the Undertaker, as soon as practicable after the making of the Order, to submit copies of the listed documents which are submitted with the Application to the Secretary of State for certification as true copies. The effect of certification is that the document is admissible in any proceedings as evidence of its contents.
- 7.8 *Article 17 – Arbitration* is a model provision. It requires any dispute arising under the Order to be settled by arbitration. The only adaptation to the model provision is to provide that, if the parties to a dispute fail to agree on an arbitrator, the arbitrator is to be appointed by the President of the Law Society of England and Wales. Given that disputes arising under the Order are likely to involve legal issues, that person is considered the most appropriate for such a power of appointment.
- 7.9 *Article 18 - Procedure in relation to certain approvals etc* This is not a model provision but has become commonplace in DCOs. It introduces procedures for securing a consent or approval required from the local planning authority by the requirements. The article seeks to replicate the procedure for the discharge of planning conditions contained in the Town and Country Planning Act 1990 (as amended), with particular reference to the ability for the undertaker to appeal against either the refusal or non-determination of any application for approval under the requirements.
- 7.10 The procedures are set out in Schedule 3. Schedule 3 is based on Schedule 7 to the Ferrybridge Multifuel 2 Power Station Order 2015, and similar procedures are contained in, amongst others, the Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019 and the Palm Paper Mill Generating Station Order 2016.

8. Schedules

Schedule 1 – Authorised Development

- 8.1 Schedule 1 describes the authorised development, which comprises:
- (a) Project K3 (Work No 1, 1A and 1B)
 - (b) Project K3 Associated development (Work No 1C, 1D, 1E)
 - (c) Project WKN (Work No 2 and 3)
 - (d) Project WKN Associated development (Work No 4, 5, 6, 7)
 - (e) Further associated development in connection with the above.

Schedule 2 - Requirements

- 8.2 Schedule 2 to the draft Order sets out the requirements upon which the grant of consent by article 4 is expressly made conditional.

- 8.3 Certain requirements are based on conditions from the K3 Sustainable Energy Plant Planning Permission ("K3 SEPPP"). It is considered sensible to retain these conditions wherever appropriate, reasonable and necessary given they have been assessed by and are already familiar to the relevant planning authority. In each case, the environmental impact assessment for Project K3 or WKN has considered anew whether the condition continues to constitute appropriate mitigation that can be carried across to the DCO.
- 8.4 The Order will supersede the K3 SEPPP and regulate the future operation, maintenance and decommissioning of K3. On a practical level, construction-related conditions have been discharged. For this reason, no construction requirements for K3 have been included in the Order.
- 8.5 Various requirements are based on the Ferrybridge Multifuel 2 Power Station Order 2015, which is a similar project and type of technology to both K3 and WKN, and in which the Undertaker is a joint venture partner. It is therefore considered sensible to use that project as precedent where reasonable, necessary and appropriate.
- 8.6 Another DCO which has been relied upon for precedent requirements is the Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019, which is on the adjacent site to the Authorised Development. Therefore it is considered sensible to follow them where appropriate as they will already be familiar to the relevant planning authorities.
- 8.7 The requirements are structured as follows (at the request of PINS during pre-application advice):
- (a) Interpretation of provisions used in the Schedule
 - (b) Part 1 – General Requirements that are applicable to both Project K3 and Project WKN
 - (c) Part 2 – Requirements applicable only to Project K3
 - (d) Part 3 – Requirements applicable only to Project WKN
 - (e) Part 4 – K3 Generating Station Approved Plans and Documents

Part 1 – General Requirements that are applicable to both Project K3 and Project WKN

- 8.8 **Requirement 1** introduces terms to allow the Authorised Development to be carried out in stages, and restricts it from proceeding past a certain stage until it has met its obligations under the requirements. These include:
- (a) the **permitted preliminary works**, which do not constitute “commencement” of the Authorised Development or a part of it: these are site clearance work, survey work, archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements, the provision of site security and any other works agreed by the local planning authority;
 - (b) the **commencement** of the Authorised Development or a part of it: the first construction works (apart from “permitted preliminary works”).

- 8.9 **Requirement 2** specifies the time limit for commencing each project as five years from the date on which the Order comes into force. This was included in the model provisions as requirement 2. It also requires the Undertaker to give notice of commencement of each of the K3 and WKN to the relevant planning authority within 7 days.
- 8.10 This was not included in the model provisions, but is considered to be a sensible addition given that a number of the requirements are linked to commencement.
- 8.11 **Requirement 3** requires the Undertaker to give notice of commissioning of each of K3 and WKN to the relevant planning authority within 7 days of the date on which commissioning is commenced. A further notice must be given within 7 days of completion of commissioning.
- 8.12 Again, this was not included in the model provisions but is considered to be a sensible addition as the authorised development involves the decommissioning of the existing K3 Sustainable Energy Plant and the commissioning of the new K3 generating station.
- 8.13 This requirement also appears in the Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019 and will be familiar to the relevant planning authority.
- 8.14 **Requirement 4** relates to the decommissioning of the proposed K3 and WKN generating stations and requires that decommissioning be carried out in accordance with a scheme approved by the relevant planning authority. This relates specifically to the authorised development and is not based on the model provisions.
- 8.15 **Requirement 5** relates to storage of fuel and is based on a condition from the K3 SEPPP. As a consequence of the findings of the environmental impact assessment for Project K3 it is considered to constitute appropriate mitigation that can be carried across to K3 and is also appropriate for WKN.
- 8.16 **Requirement 6** requires a rail and water transportation strategy to be submitted and approved for each of K3 and WKN. It is based on a condition from the K3 SEPPP. As a consequence of the findings of the environmental impact assessment for Project K3 and WKN it is considered to constitute appropriate mitigation that can be carried across to both K3 and WKN.
- 8.17 **Requirement 7** confirms that plans, details, schemes and other documents approved by the relevant planning authority pursuant to the requirements, or which are already approved and listed in Part 4 of Schedule 2 for K3, include any amendments that may subsequently be approved by the relevant planning authority. Any changes to the parameters specified in requirement 14 (detailed design approval) shall not be approved unless the relevant planning authority is satisfied that there will not be any materially new or different environmental effects beyond those identified in the environmental statement.
- 8.18 Requirement 7(1) is based on requirement 37 of the model. This requirement as drafted here is based on requirement 17 of the Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019 and will be familiar to the relevant planning authorities.

Part 2 – Requirements applicable only to Project K3

- 8.19 **Requirement 8** is not a model provision but is based on a requirement from Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019, which requires that no excavations may take place within 3 metres of gas apparatus belonging to Southern Gas Networks PLC unless the undertaker has first obtained their written consent. Southern Gas has requested provision for asset protection in response to consultation on the project.

- 8.20 **Requirement 9** introduces Part 4 of Schedule 2 (K3 Generating Station Approved Plans and Documents) and requires that the K3 generating station is carried out in accordance with the approved documents listed in Part 4 of Schedule 2. This requirement is necessary in order that once notice has been given under Article 4 and the K3 SEPPP permanently ceases to have effect, the K3 Generating Station will be regulated solely by the DCO and the documents and plans listed in it and certified by it.
- 8.21 **Requirement 10** relates to the numbers of heavy goods vehicle movements for the operation of K3. It is based on a condition from the K3 SEPPP. As a consequence of the findings of the environmental impact assessment for Project K3 it is considered to constitute appropriate mitigation that can be carried across to the DCO.
- 8.22 **Requirement 11** requires the approved Landscape Masterplan listed in Part 4 of Schedule 2 scheme to be implemented and maintained.
- 8.23 **Requirement 12** is based on a condition from the K3 SEPPP. As a consequence of the findings of the environmental impact assessment for Project K3 it is considered to constitute appropriate mitigation that can be carried across to the DCO.
- 8.24 **Requirement 13** is not a model provision but is based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015. It requires the undertaker to submit a strategy for alternative offtakers of heat and/or power in the event that K3 is no longer to supply heat and/or power to the adjacent Kemsley Paper Mill.

Part 3 – Requirements applicable only to Project WKN

- 8.25 **Requirement 14** is based on a model provision which requires the specific design details (which must be in accordance with noise mitigation in the environmental statement, the lateral limits of deviation shown in the WKN Parameter Plan, and the design and scale parameters set out in Table 1 of the requirement) of each of the Works comprising the Authorised Development to be submitted to and approved by the relevant planning authority, before commencement; and the Authorised Development to be constructed in accordance with those approved details.
- 8.26 The inclusion of Table 1 to provide a greater level of detail and certainty follows the approach in the Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019.
- 8.27 **Requirement 15** is a modified model provision based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015. It provides that no part of the Authorised Development may be commissioned until a detailed landscaping scheme for that part, in accordance with the Ecological Management and Enhancement Plan has been submitted to and approved by the relevant planning authority.
- 8.28 **Requirement 16** is a modified model provision based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015. It provides that each part of the Authorised Development must be carried out in accordance with the approved landscaping scheme.
- 8.29 **Requirement 17** is a modified model provision based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015. It provides that no part of the Authorised Development may commence until details of means of enclosure for that part have been submitted to and approved the relevant planning authority; that permanent means of enclosure must be completed before commercial use; that temporary means of enclosure must be removed within 12 months after first commercial use; and that the Authorised Development must be carried out in accordance with the approved details.

- 8.30 **Requirement 18** is a modified model provision based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015. It provides that no part of the Authorised Development may commence until details of the surface and foul water drainage systems for that part, in accordance with the Environmental Statement, have been submitted to and approved by the relevant planning authority; and that the systems must be constructed in accordance with the relevant approved details before commissioning of the Authorised Development.
- 8.31 **Requirement 19** is a modified model provision based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015 and Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019. It provides that no part of the Authorised Development may commence until a contamination and ground gas protection scheme for that part, in accordance with the Environmental Statement, has been submitted to and approved by the relevant planning authority; and that the Authorised Development must be constructed in accordance with all approved schemes.
- 8.32 **Requirement 20** is a modified model provision based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015 requiring that no part of the Authorised Development may commence until a scheme of archaeological investigation for that part has been submitted to and approved by the relevant planning authority, and that field work under the scheme must be carried out in accordance with it.
- 8.33 **Requirement 21** is a modified model provision based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015 requiring that an ecological management and enhancement plan in accordance with the Environmental Statement and including an implementation timetable, be submitted to and approved by the relevant planning authority, before the Authorised Development is commissioned.
- 8.34 **Requirement 22** is a modified model provision based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015 and Kemsley Mill K4 Combined Heat and Power Generating Station Order 2019 requiring that a construction environmental management plan, in accordance with the Environmental Statement, be submitted to and approved by the relevant planning authority, before commencement of the Authorised Development.
- 8.35 **Requirement 23** is a model provision requiring that requiring that an external lighting plan in accordance with the Environmental Statement be submitted to and approved by the relevant planning authority, and the lighting works constructed, before the Authorised Development is brought into operational use.
- 8.36 **Requirement 24** is a modified model provision based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015. It requires a construction traffic routing and management plan to be submitted to and approved by the planning authority, in consultation with the relevant highway authority, before commencement of the Authorised Development. It also requires notices to be erected and maintained throughout the construction period at every entrance to and exit from the construction site, indicating the approved routes for traffic entering and leaving the site.
- 8.37 **Requirement 25** is not a model provision. It is based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015 that requires an operational traffic routing and management plan in accordance with the Environmental Statement to be submitted to and approved by the planning authority, in consultation with the relevant highway authority before commissioning of the Authorised Development.

- 8.38 **Requirement 26** This is a modified model provision based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015 that requires a travel plan for operational staff in accordance with the Environmental Statement to be submitted to and approved by the planning authority, in consultation with the relevant highway authority before the Authorised Development is brought into commercial use.
- 8.39 **Requirement 27** is based on a condition from the K3 SEPPP. As a consequence of the findings of the environmental impact assessment for Project K3 it is considered to constitute appropriate mitigation that can be carried across to the DCO.
- 8.40 **Requirement 28** is not a model provision. It is based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015 that requires that no part of the Authorised Development may commence until a piling risk assessment and method statement has been submitted to and approved by the relevant planning authority.
- 8.41 **Requirement 29** is not a model provision. It is based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015 that restricts the times that impact piling may take place, in accordance with the Environment Statement.
- 8.42 **Requirement 30** is not a model provision. It is based on a requirement from the Ferrybridge Multifuel 2 Power Station Order 2015 that requires that no part of the Authorised Development may commence until a plan for employment, skills and training development opportunities for local residents been submitted to and approved by the relevant planning authority.

Part 4 of Schedule 2 – K3 Generating Station Approved Plans and Documents

- 8.43 Part 4 of Schedule 2 (K3 Generating Station Approved Plans and Documents) relates to Requirement 9, which requires that the K3 generating station is carried out in accordance with the approved documents listed in Part 4 of Schedule 2. This requirement is necessary in order that once notice has been given under Article 4 and the K3 SEPPP permanently ceases to have effect, the K3 Generating Station will be regulated solely by the DCO and the documents and plans listed in it and certified by it.

Schedule 3 - Procedure for discharge of requirements

- 8.44 Schedule 3 follows the same procedure in the Ferrybridge Multifuel 2 Power Station Order 2015. It sets out the procedures for securing a consent or approval required from the relevant planning authority as referred to in Article 18 of the draft Order.