



Wheelabrator
TECHNOLOGIES



Further Submissions on ISH1 DCO Questions

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

PINS Ref: EN010083

**Document 10.5
March 2020 - Deadline 2**

Deadline 2 – Further Submissions on ISH1 DCO Questions

Applicant:	EFW/WTI Holdings Ltd (Wheelabrator Technologies Inc)
Project:	Wheelabrator Kemsley (K3 Generating Station) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO
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1.1 Purpose of this document

- 1.1.1 This Document has been prepared at Deadline 2 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 Document provides further written detail in response to the issues raised at the DCO Issue Specific Hearing (ISH1) held on 19th February 2020.

1.2 The Proposed K3 and WKN Facilities

- 1.2.1 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’).

- 1.2.2 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 during 2020. As such the K3 facility is now substantially constructed; K3 contains two 102 megawatt thermal (MWth) lines and as consented is capable of processing 550,000 tonnes of waste per annum and has a generating output of up to 49.9 megawatts (MW).
- 1.2.3 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.
- 1.2.4 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”).
- 1.2.5 Consent for the K3 and WKN Proposed Developments is being sought via a single DCO through a single application to the SoS via PINS.

1.3 The Site(s)

Wheelabrator Kemsley (K3) Site

- 1.3.1 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

- 1.3.2 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.
- 1.3.3 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.

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



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

Further Submissions on ISH1 DCO Questions – Deadline 2
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1. 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?

Does other legislation also need to be applied and/or disapplied – e.g. apply s100(1) & (2) Town and Country Planning Act 1990 ('TCPA 1990'), but disapply the other provisions of TCPA 1990 that set out procedures for a s100 Order such as the remainder of s100 and disapply s107 TCPA 1990 right to compensation? Legal submissions on this are invited.

Should the whole planning permission cease to have effect, not just the conditions?

- 1.1 Yes, it is intended that the planning permission will cease to be the operative consent, and it will be superseded by the DCO when triggered under Article 4. The wording of Article 4(2) has been amended to delete the words 'conditions of the', so that it is clear that the entire permission is disapplied.

As drafted would it be possible for the station to operate at an increased capacity under the permission without implementing DCO authorised works?

- 1.2 There is no condition of the planning permission which limits the generating capacity of the K3 Sustainable Energy Plant. However:
- 1.2.1 the development for which permission was granted was assessed for environmental impacts of a net generation of 48.5MW, and the installed turbine has a physical limiter in place which restricts gross output to 49.9MW;
- 1.2.2 the Applicant now wishes to increase the total installed capacity of K3 up to 75MW by the removal of the limiter, which would allow it to exceed the 50MW capacity threshold for development requiring consent under the Planning Act 2008.
- 1.3 The Applicant is therefore of the view that this intensification of the use of generating station should be assessed and consented against national policies for nationally significant infrastructure projects.

Does other legislation also need to be applied and/or disapplied – e.g. apply s100(1) & (2) Town and Country Planning Act 1990 ('TCPA 1990')?

- 1.4 The Applicant does not consider that the application of s100 to revoke the planning permission would be proportionate or necessary.
- 1.5 The consenting of the intensification of use of the constructed K3 station under the Planning Act 2008 would not invalidate the prior planning permission or render it improperly granted.
- 1.6 The station was lawfully constructed pursuant to the permission, which was lawfully determined by the local planning authority to be acceptable in planning terms having

- regard to local planning policies and subject to appropriate planning conditions and obligations.
- 1.7 The planning permission, and the section 106 obligations that attached to it, form part of the planning history of the facility and an important part of the baseline against which the environmental impact assessment for the increase in total capacity and tonnage throughput is being carried out for the DCO.
- 1.8 The legal effect of applying section 100 of the TCPA 1990 would be the revocation *ab initio* of the planning permission, and all of the material in support of it.
- 1.9 The section 100 power is an extension to the SOS of the local planning authority's power in section 97 to revoke planning permission where it is 'expedient' or where development has stalled. That power is [rarely used](#), and [Government Guidance](#) notes that the most common cases are planning permissions which have been dormant or never commenced, and where it is also in the public interest to revoke them.
- 1.10 Further, the revocation power can only be exercised where the development is not yet complete, whereas the K3 station is now practically complete.
- 1.11 The purpose of article 4 is simply to give certainty and finality to the consenting framework binding the development in the future. The use of the power under section 120(5) and (6) of the Planning Act 2008 to replace, modify or disapply a pre-existing planning permission is far more proportionate and appropriate to achieve this, and has precedent in several other DCOs:
- 1.11.1 The Hinkley Point C (Nuclear Generating Station) Order 2013;
- 1.11.2 The Drax Power (Generating Stations) Order;
- 1.11.3 Riverside Energy Park Order.
- 2. ISH:11 – Limits of Deviation & Regulation 5(2)(j)(ii)**
- Is the Applicant satisfied that all limits of deviation are shown on a works plan in accordance with Regulation 5(2)(j)(ii) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ('APFP')?*
- 2.1 Regulation 5(2)(j)(ii) states:
- "(j) a works plan showing, in relation to existing features—
- (ii) the limits within which the development and works may be carried out and any limits of deviation provided for in the draft order;
- 2.2 In the interests of accuracy, the Applicant is submitting amended works plans at Deadline 2 to reflect the wording of the Regulations, by changing the Legend from 'DCO Boundary' to 'Order Limits', and adding 'Limits' to each Work Area description.

- 2.3 This wording is also consistent with the existing definition of 'Order limits' in the dDCO, and satisfies Regulation 5(2)(j)(ii) by clarifying that the Works Areas limits shown in the works plans are the limits within which each of those authorised works must be carried out as provided by Article 3, Schedule 1.
- 2.4 It is not necessary or desirable to fix the sub-limits of deviation within the Work Areas themselves on the works plans. These 'sub-limits' fall entirely within the Works Areas, and are regulated by Requirement 14 in order to afford a small degree of flexibility at detailed design and construction phase.
- 2.5 Accordingly the Applicant has moved the 'parameter plan' that appeared with the works plans in Article 16(c) (reference 9812-0031-07 dated September 2019) to a separate entry in Article 16 – it now appears as 16(g) WKN Parameter Plan (drawing number 9812-0031-09 dated March 2020). This is also consistent with the nomenclature that has been used throughout the Environmental Statement.
- 2.6 This approach to works plans is common in DCOs and recent applications which followed the same approach include Manston Airport, Cleve Hill Solar Park and Abergelli Power.
- 3. ISH:14 – Progress on Acquiring Private Treaty Rights for the Order Land from DS Smith**
- 3.1 Final lease documents for the WKN Order land are at engrossment stage and a further update on execution will be provided for Deadline 3.
- 4. ISH:15 - Progress on acquisition of necessary rights by private treaty with the Port of Sheerness**
- 4.1 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 3.