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BY EMAIL ONLY

Your reference: EN010083

23 March 2020

Dear Mr. Kean,

Re: Application by Wheelabrator Technologies Inc. for an Order Granting Development Consent for the Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility Development Consent Order (DCO) – First Written Questions

Kent County Council (KCC) provides the following response to the first written questions published by the Planning Inspectorate on 26 February 2020.

Q1.1. Principle and nature of the development, including waste recovery capacity and management of waste hierarchy

Q1.1.1 - KCC's Additional Submission of 4 December 2019 [AS-010] asserts a conflict in policy terms between the Proposed Developments and the Council's strategy for management of waste in the Kent Minerals and Waste Local Plan (KMWLP) proposed for modification by the Early Partial Review (EPR). The EPR Plan is said to be currently with the Planning Inspectorate for examination.

Please identify which documents relating to the Local Plan examination available on the Council web site you consider to be important and relevant to this matter, explaining the significance of the alleged conflict(s) in each case, and provide copies not already submitted in this examination.

KCC Response

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.

As the waste planning authority for Kent, Kent County Council (KCC) is responsible for planning for the management of waste within the County. It has made representations regarding the combined K3/WKN proposal before this examination and drawn attention to its objection that the proposal is in conflict with the Council's Waste Planning Strategy. It considers that there is no evidenced need for the additional waste management capacity offered by the proposal and its provision would undermine waste planning principles within Kent and the wider South East. The County Council refers to the earlier representations as set out in its responses to the scoping consultation and both statutory consultations, KCC letter dated 26 September 2019, KCC submission dated 4 December 2019 and KCC submission dated 2 March 2020 and accompanying Annex.

In assessing the merits of the combined K3/WKN proposal, attention is drawn to the conflict with waste planning strategy and the Examining Authority (ExA) is asked to consider the implications upon waste planning policy in the County and the wider region. In doing so, attention is drawn to the following considerations.

The combined K3/WKN proposal seeks to provide an additional capacity to manage 497k tpa of waste over and above the 550k tpa already consented to be managed at the K3 Sustainable Energy Plant (SEP). The table below sets out the documents that detail the County Council's position as Waste Planning Authority on the planning strategy for waste in Kent and how the need for additional 'Other Recovery' capacity, as represented by the combined K3/WKN proposal, has already been satisfied for the foreseeable future.

These documents form part of the library relating to the examination of the Kent Minerals and Waste Local Plan and the Early Partial Review of the Kent Minerals and Waste Local Plan which are considered relevant to the DCO ExA. The Inspector's report to the Early Partial Review examination is expected this Spring.

KCC document and conflict with proposal

Conflict of proposal with adopted Kent MWLP

Kent Minerals and Waste Local Plan 2013-30

This is the adopted Waste Local Plan for Kent that originally set out a strategy for providing for waste management capacity on the basis of the waste hierarchy and net self-sufficiency.

Compliance with the Waste Hierarchy is enshrined in Policy CSW2, which requires the management of waste in Kent to be in accordance with the Waste Hierarchy.

National policy requires compliance with the waste hierarchy¹. That is, waste that can't be prevented is to be dealt with through either (preparation for) reuse, recycling or composting before it is to be subject to energy from waste processes - referred to as 'Other Recovery', and ultimately disposal either by incineration that does not meet the energy efficiency test of the R1 formula or landfill. The waste hierarchy is set out at Article 4 of the revised Waste Framework (Directive 2008/98/EC) and was transposed into UK law by *The Waste (England and Wales) Regulations 2011*. These regulations place a duty on all parties in control of waste to comply with the hierarchy, and a duty on planning authorities to produce waste management plans that amongst other matters expressly apply the waste hierarchy in a priority order (Schedule 1). Hence inclusion of, and compliance with, policy CSW2 of the adopted KMWLP is a legal obligation.

Hence the statement in the proposer's own Waste Hierarchy & Fuel Availability Assessment that " 1.2.6 The waste hierarchy is delivered both through good intentions and market forces." fails to recognise the legal weight that compliance with the hierarchy carries and hence is in direct conflict with the statutory basis of the determination.

The Waste Hierarchy is based on an assessment of the overall environmental impacts of waste management methods, taking into account a range of factors including greenhouse gas emissions through applying a method called life cycle assessment.

The latest guidance produced by Government on the matter ² displays in priority order by material the preferred methods for management of different waste streams (diagram p6). In the case of residual 'black bag' waste, that is waste remaining after recycling has been maximised (recycling being further up the hierarchy), it identifies the following hierarchy of management in priority order:

1. Solid recovered fuel derived from mechanical heat treatment (MHT) or mechanical biological treatment (MBT) where it replaces coal

¹ *National Planning Policy for Waste* DCLG October 2014 (para 3) & *The Waste Management Plan for England* DEFRA December 2013 (p11).

² Guidance on applying the waste hierarchy June 2011 <https://www.gov.uk/government/publications/guidance-on-applying-the-waste-hierarchy>

2. Energy recovery, all technologies (Heat Only)
3. Energy recovery, all technologies (CHP)
4. Energy Recovery all technologies (Electricity Only)
5. MBT or MHT outputs used as fuel (but do not replace coal) or
6. Disposal (incineration without energy recovery that meets the standard required by R1 formula or landfill)

Given that the WKN proposal is only for an electricity generation station it falls to tier 4 of the hierarchy options above i.e. Energy Recovery all technologies (Electricity Only). The proposers have presented a Carbon Assessment³ that not only fails to make the case using life cycle thinking to deviate from the Waste Hierarchy, but also actually presents an alternative option for management of the proposed feedstock that provides a superior carbon performance, that of export to EfW using CHP.

Under such circumstances, the WKN proposal cannot be considered to be in compliance with either Policy CSW2 of the adopted Plan or the wider requirement for compliance with the Waste Hierarchy conferred by the regulations on determining authorities for the current combined K3/WKN application. Moreover, even given the CHP potential of the K3 proposal, provision of the additional capacity to manage Kent's waste poses the risk to meeting the Waste Hierarchy objectives by pulling waste that might otherwise be recycled down the hierarchy. Notably this risk is expressly recognised in national policy which refers to the need when determine planning applications for planning authorities to expect applicants to "...demonstrate that waste disposal facilities not in line with the Local Plan, will not undermine the objectives of the Local Plan through prejudicing movement up the waste hierarchy." (NPPW para 7 bullet 2). Finally as presently proposed there is no certainty that either proposal will achieve R1 status (Kemsley SEP not having achieved it yet⁴) and therefore it may be argued that assessment of both proposals ought to start from the basis that they are incineration without energy recovery that meets the standard required by R1 formula i.e. at the very bottom of the Waste Hierarchy, unless or until proven otherwise.

Given the above, and the fact that the Regulations require that when applying the waste hierarchy, determining authorities must ensure that it:

- (a) *encourages the options that deliver the best overall environmental outcome, which may require specific waste streams to depart from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste; (Schedule 1 (Part 1))*

Regulation 17 defines the meaning of planning functions for the purposes of the application of the requirement, and 17(1)(i) expressly refers to deciding whether to make a development consent order under section 104 or 105 of the 2008 Act. Hence that is where the requirement enshrined in the NPS EN-3 at paragraph 2.5.66 to examine the conformity of proposals with

³ Document 3.1 – ES Volume 2 Appendix 6.2: WKN Proposed Development Carbon Assessment Wheelabrator Kemsley (K3 Generating Station) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO September 2019 -Submission Version PINS ref: EN010083

⁴ R1 status of incinerators in England 07 February 2020 <https://data.gov.uk/dataset/8287c81b-2288-4f14-9068-52bfda396402/r1-status-of-incinerators-in-england>

the waste hierarchy emanates. The proposal cannot be said to be in compliance with the Waste Hierarchy and in failing to be so, the determining authority would be failing in its duty to secure compliance if it were to approve the proposal.

Policy CSW4 of the adopted Plan specifies the key objective underlying the Plan Strategy of achieving net self-sufficiency while meeting relevant targets.

Article 16 of the revised Waste Framework Directive establishes the principle of 'proximity'. This is within the context of the requirement on Member States to establish an integrated and adequate network of waste disposal installations for recovery of mixed municipal waste collected from private households. The requirement includes where such collection also covers waste from other producers.

The network must enable waste to be disposed of, or be recovered, in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.

The Directive also requires that the network be designed in such a way as to enable Member States to move towards the aim of self-sufficiency in waste disposal and the recovery of waste. However, Member States must take into account geographical circumstances or the need for specialised installations for certain types of waste and the Directive makes it clear that each Member State does not have to possess the full range of final recovery facilities.

The revised Waste Framework (Directive 2008/98/EC). was transposed into UK law by *The Waste (England and Wales) Regulations 2011*. These regulations place a duty on planning authorities to bring the principles of self-sufficiency and proximity into effect when formulating waste management plans ⁵ National policy also states that "*This principle must be applied when decisions are taken on the location of appropriate waste facilities.*"(emphasis added)⁶ Hence inclusion of, and compliance with, policy CSW4 of the adopted KMWLP is also a legal obligation.

Regulation 17 defines the meaning of planning functions for the purposes of the application of the requirement, and 17(1)(i) expressly refers to deciding whether to make a development consent order under section 104 or 105 of the 2008 Act. Hence that is where the requirement enshrined in the NPS EN-3 at paragraph 2.5.66 & 2.5.67 to examine the effect of DCO proposals on the relevant waste plan or plans where a proposal is likely to involve more than one local authority emanates.

However, the proposer's own Fuel Availability Assessment extends its scope well beyond the boundaries of Kent to source mixed municipal waste. **This would mean that waste would be drawn in by the proposer's assumptions from up to two hours travelling time from the facility, which itself being located at the northern extremity of Kent would mean the proposer articulates an intention to process waste from out of county, this being contrary to the application of the proximity principle for mixed municipal waste arising from the source authorities.** In identifying 21 Waste Planning Authorities as potential

⁵ See Schedule 1, Part 1, paragraph 4 of The Waste (England and Wales) Regulations 2011 (S.I 2011/988)

⁶ *The Waste Management Plan for England* DEFRA December 2013 (p30).

sources of waste, this also highlights the fact that the proposer's own Waste Hierarchy & Fuel Availability Assessment has failed to fulfil the stated requirement in NPS EN-3 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 or plans where a proposal is likely to involve more than one local authority (emphasis added)."

As it does not address the implications of the provision of the plans of the other twenty authorities, let alone adequately address the impact for Kent the proposal is in conflict with both national policy for waste (NPPW) and energy (NPS-EN3), but also local policy (KMWLP).

The Spatial Vision for the KMWLP is set out in chapter 3 of the Plan. Paragraph 3.0.2 states the main aims of the Plan

“are to drive waste up the Waste Hierarchy enabling waste to be considered as a valuable resource,”. It further states that “It will also ensure that requirements such as a Low Carbon Economy (L:CE) and climate change issues are incorporated into new development for mineral and waste management development in Kent.”

The Spatial Vision recognises that waste development shall:

“Encourage waste to be used to produce renewable energy incorporating both heat and power, if it cannot be re-used or recycled.” (Spatial Vision 10)

Policy CSW7 of the Plan specifies that permission will be granted for Energy from Waste facilities (EfW) where (amongst other things):

"3. energy recovery is maximised (utilising both heat and power)"

Policy CSW9 also specifies that applications for combined heat and power, not involving immediate use of heat, should both be located in proximity to potential heat users and that a planning agreement to market heat should be entered into plus an annual public report be produced on progress towards finding heat users.' This demonstrates the emphasis placed on EfW proposals to be CHP schemes.

Given that the papermill's process heat needs are met by K3 and K2, K4 and a heat supply pipeline from another EfW plant at Ridham, there is little or no prospect of the WKN plant heat being utilised even on a back-up basis. Hence the WKN component of the current proposal is not expected to operate as a CHP scheme and therefore would not be in compliance with this policy.

In reality, if a plant of the type proposed for WKN is to be built, it should be in a location where there is reasonable prospect of the heat produced being fully exploited thereby

maximising the calorific value of the fuel, as it is intended at the K3 SEP and is now to be expected of EfW facilities⁷

[Sustainability Appraisal of the Kent Minerals and Waste Local Plan - Non-technical Summary July 2014](#)

Page 5 of the Sustainability Appraisal (SA) questions

"... the preferred approach in relation to a small number of key issues. In particular -

- Support is provided to Energy from Waste (EfW) facilities despite EfW not being 'at the top' of the waste hierarchy."*

It goes on to explain

"... This policy support for EfW reflects the urgent need to make provision for new capacity to enable a step change in C&I waste management practices, with a major reduction in reliance on landfill for this waste stream. Importantly, policy is set that

1) requires EfW facilities to produce both heat and power; and

2) restricts the capacity of EfW that will be permitted to a maximum of 437,000 tonnes (until such time as annual monitoring shows that the restriction would result in the loss of remaining non-hazardous landfill in the county before the end of the plan period)."

And furthermore

"The 'capping' of EfW will have the effect of ensuring that recycling and composting operations, which are more preferable in terms of the waste hierarchy, are also encouraged." It therefore concludes with a caveated endorsement "The policy approach is probably appropriate."

Given that the need for landfill diversion capacity has now been met (through provision of K3 SEP as original consented by KCC), the urgent need identified in the adopted KMWLP no longer exists. Therefore, the Early Partial Review provides opportunity to more closely align the planning strategy with the SA objectives of moving waste up the hierarchy, adopting more ambitious recycling targets and in doing so overcoming the SA reservation with EfW provision expressed above. This approach confirms the County Council's commitment to complying with the Waste Hierarchy which underpins its desire to avoid provision of no more EfW capacity

⁷ Section 3.2.1 Driving greater efficiency of Energy from Waste (EfW) plants by encouraging use of the heat the plants produce p77) OUR WASTE, OUR RESOURCES: A STRATEGY FOR ENGLAND HJM Government December 2018

than is absolutely necessary to manage Kent's waste given the risk such provision poses to meeting the objectives of the Plan by drawing in waste that might otherwise be recycled.⁸

The provision of additional EfW capacity as proposed in the K3/WKN proposal cannot therefore be said to be aligned with a sustainable strategy and therefore it cannot be considered sustainable development.

[Strategic Approach to Distribution of Land for Built Waste Management Facilities to be Allocated in the Sites Plan – May 2015](#)

This document explains the spatial strategy underpinning the adopted Plan, emphasising the need for the right facilities to be built at the right time, in the right place in order that a balanced and accessible network of modern facilities exists across Kent, reflecting the UK Government ambition stated in *The Waste Management Plan for England*⁹. This document was produced at the express request of the Inspector examining the KMWLP in 2016.

It is apparent from the analysis that the K3/WKN proposal is not consistent with the spatial strategy as it proposes establishing a concentration of waste management capacity approaching 1 million tpa in a single location in the extreme north of the county, bordering a different WPA area (Medway).

Moreover, there is no need for the plant to be located within Kent given that the waste recovery capacity is already well catered for by K3 (as current) and another EfW facility located at Allington. An alternative location outside Kent where the heat produced can be fully exploited as now expected of all EfW facilities and which the proposer's own Carbon Assessment¹⁰ demonstrates to be preferred, and where it can serve to meet an identified capacity gap e.g. Surrey (as set out in the emerging Surrey Waste Local Plan) ought to be identified by the promoter, WTI.

Conflict of proposal with to be adopted EPR Kent MWLP¹¹

[Kent Waste Consultation Response Summary](#) - September 2017

This document includes comments made by WTI contesting the reliability of the KCC initial draft Waste Needs Assessment document that concluded there was no substantive capacity gap for 'other recovery' of residual waste.

There are currently two sets of divergent waste data in the public domain – that prepared by the County Council to support the examination of the Early Partial Review of the KMWLP and

⁸ The Sustainability Appraisal was adopted by Kent County Council on July 2016. See here [Sustainability Appraisal Adoption Statement](#)

⁹ DEFRA December 2013 (p29).

¹⁰ Document 3.1 – ES Volume 2 Appendix 6.2: WKN Proposed Development Carbon Assessment Wheelabrator Kemsley (K3 Generating Station) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO September 2019 -Submission Version PINS ref: EN010083

¹¹ subject to the Inspector's report – anticipated Spring 2020.

that prepared to support the combined K3/WKN proposal. In the absence of indications to the contrary, the likelihood is that the Inspector examining the EPR Plan will find the Local Plan sound before the ExA of the combined K3/WKN proposal has been completed, **Under this scenario there will be a direct conflict between a dataset underpinning a recently adopted plan (endorsed by PINs) and the dataset underpinning the case for the K3/WKN proposal. Moreover, the veracity of the WTI feedstock assessment has also been brought into question on examination against the best available data.** See analysis in Annex 1 of KCC submission dated 2 March 2020 and related Appendix.

Early Partial Review of the KMWLP - Pre-submission Draft 2018 – Jan 2018

Policy CSW2 (Waste Hierarchy) remains unchanged in the Early Partial Review, hence the conflict identified above in relation to that policy as it appears in the adopted Kent Minerals & Waste Local Plan stands.

Policy CSW4 (Strategy for Waste Management Capacity) was amended but the objective of net self-sufficiency for Kent (plus some provision for a reducing quantity of London's waste) remains. Therefore, the conflict identified above in relation to that policy, as it appears in the adopted Kent Minerals & Waste Local Plan stands. Moreover, the introduction of additional 'other recovery' capacity of the scale proposed will serve to put at risk achievement of the proposed revised recycling/composting targets presented which would also be in conflict with National Planning Policy for Waste.

Policy CSW 7 (Waste Management for Non-hazardous Waste) has been modified to remove the requirement for provision of additional other recovery capacity in light of the findings of the updated Waste Needs Assessment. It has also been modified to emphasise the authority's desire to ensure that provision of recycling/composting capacity is not in anyway constrained, ensuring that the Plan drives waste up the waste hierarchy in the manner that National Planning Policy for Waste requires. **Given the proposer has failed to demonstrate that its proposal, will not prejudice movement up the waste hierarchy, it would undermine the objectives of the Local Plan and therefore be in conflict with National Planning Policy for Waste. Policy CSW7 retains the emphasis that energy recovery be maximised (utilising both heat and power) which the combined proposal has already been established to be in conflict with, given WKN is a 'power only' proposal.**

Policy CSW8 (Other Recovery Facilities for Non-hazardous Waste) has been modified to remove the requirement for provision of additional other recovery capacity in light of the findings of the updated Waste Needs Assessment **so the same conflict as identified with CSW7 prevails.** Policy CSW8 has also been strengthened regarding the need to ensure that "*...Proposals for additional recovery capacity will need to be designed to harness the maximum practicable quantity of energy produced.*" **Given that the WKN proposal is for an electricity generation station only, it cannot be said to meet this requirement and hence approval would also be in conflict with this policy.**

The proposal has no bearing on the other changes to policy proposed.

Residual Non-Hazardous Waste Management Needs Assessment Nov 2018

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 above Waste Needs Assessment (WNA) prepared to support the EPR. Once the consented capacity at K3 SEP 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' capacity. 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, reused, 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.

Given that the identified need for Other Recovery capacity has already been met, contrary to the statement in the proposer's own Waste Hierarchy & Fuel Availability Assessment that " 1.4.5 Locally, K3/WKN will deliver the waste hierarchy within Kent.....", it is considered that this inconsistency with the Local Plan, will undermine its objectives by prejudicing movement up the waste hierarchy and is therefore also in direct conflict with national policy (NPPW para 7 bullet 2).

Moreover, whilst being fully cognisant of the findings of the latest Waste Needs Assessment the proposer has chosen to ignore its content in preparation of the Feedstock Assessment presented, and has therefore failed to fulfil the stated requirement in NPS EN-3 that:

" 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."

and the expectation that applicants refer to updated estimates of existing waste management capacity and future waste management capacity requirements where available. (para 2.5.68 for "Annual Monitoring Report" read "Waste Needs Assessment" in this case)

Kent County Council Response to Matter 2 – September 2019

This is the County Council's response to the matters and issues raised by the Inspector examining the modifications proposed to the Kent Minerals and Waste Local Plan by the Early Partial Review. Of particular relevance is the response to question 41 which gives detailed explanation of the reasons KCC decided not to progress production of a Waste Sites Plan with emphasis on the identification of the 'other recovery' requirement having been met by the K3 SEP (having been 'built out'). It should be noted that the proposer took the position that the proposed modifications were neither justified nor sound and that a Waste Sites Plan ought to

be produced. That is, its preference was for the Kent MWLP to remain unchanged even though K3 SEP had been built, stating in its representations that

"...the EPR fails to recognise the benefits to be gained from the incineration of residual wastes."¹²

And yet paragraph 1.4.9 of its Waste Hierarchy and Fuel Availability Report states that:

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

Clearly both statements of position cannot be correct.

<https://consult.kent.gov.uk/file/5525024 - November 2019>

Proposed Main Modifications to the Early Partial Review

Given that there are no substantive changes proposed to policies CSW2, CSW4, CSW7 and CSW8, the conflicts with respect to these policies identified above remain.

Q1.1.2 - In view of the fact that the WKN Proposed Development is not an NSIP how if at all should this affect the consideration which the ExA should give to the NPSs in contrast to the K3 Proposed Development?

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

KCC Response

The Authority supports the ExA approach to making a distinction between the K3 and WKN proposals in its determination. As there is no meaningful connection or interdependency between K3 and WKN, each proposal ought to be considered on its own merits and demerits. It is purely coincidental that they are proposed to be located in proximity to each other, and in the case of WKN, in proximity to the Kemsley Paper Mill at all. This is a position the Authority has held throughout and representations were made to that affect in the earlier stages of the application process.¹³ However the County Council was given no opportunity to make representations on the proposed co-joining of the proposals into a DCO and explain its concerns prior to the Secretary of State for BEIS making the decision.

KCC notes that the promoter describes the K3 proposal in its application as the Wheelabrator Kemsley Generating Station (consented as the Sustainable Energy Plant) and the Wheelabrator Kemsley North (WKN) proposal as a 'waste to energy facility'. It is also of

¹² WTI representation on Proposed Modifications at <https://consult.kent.gov.uk/file/5588498>

¹³ KCC responses to the scoping consultation and both statutory consultations, KCC letter dated 26 September 2019, KCC submission dated 4 December 2019 and KCC submission dated 2nd March 2020/

note that despite the inclusion of the WKN facility within the DCO examination, the WKN facility is not a Nationally Significant Infrastructure Project as its proposed generating capacity of 42mw is below the 50MW threshold. This is recognised by WTI. Since the WKN proposal does not qualify as NSIP, the proposal ought to be determined in accordance with the development plan as required by the Town and Country Planning Act 1990 (as amended) regardless of the fact that the proposer has chosen to promote the scheme under the DCO mechanism. Given the proposal is for a waste management development it ought to be assessed against local waste policy enshrined in the Kent Minerals and Waste Local Plan (as modified by the proposed by the Early Partial Review anticipated to be adopted in Summer 2020), plus the Swale Borough Local Plan 2017, along with national planning policy and guidance as contained in the NPPF, NPPW and Planning Practice Guidance as material considerations where relevant. The County Council is of the view that the WKN element of the DCO should be an application made to the County Council for determination under the Town and Country Planning Act . Given that NPSs are not part of the statutory development plan for the purposes of the town and country planning regime¹⁴ but may be a material consideration in decision making on relevant applications that fall under the Town and Country Planning Act 1990 (as amended),¹⁵ the weight to be accorded to them in this determination ought to be low by comparison to the development plan which is extant and current.

Given the above we would suggest compliance against the following policies be considered:

Kent Minerals and Waste Local Plan 2013-30 (July 2016) (Appendix 1)

The following adopted Plan policies are relevant. Policies CSW1(Sustainable Development), CSW2 (Waste Hierarchy), CSW4 (Strategy for Waste Management Capacity), CSW6 (Location of Built Waste Management Facilities), CSW7 (Waste Management for Non-Hazardous Waste), CSW8 (Recovery Facilities for Non-Hazardous Waste), CSW16 (Safeguarding of Existing Waste Management Facilities), DM1 (Sustainable Design), DM2 (Environmental and Landscape Sites of International, National and Local Importance), DM3 (Ecological Impact Assessment), DM5 (Heritage Assets), DM8 (Safeguarding Waste Management Facilities), DM10 (Water Environment), DM11 (Health and Amenity), DM12 (Cumulative Impact), DM13(Transportation of Minerals and Waste), DM14 (Public Rights of Way), DM15(Safeguarding of Transport Infrastructure) and DM16 (Information Required in Support of an Application).

Early Partial Review of the Kent Minerals and Waste Local Plan 2013-30 (undergoing examination) (Appendix 2)

The Early Partial Review proposes changes to (amongst others) policies CSW4 (Strategy for Waste Management Capacity, CSW6 (Location of Built Waste Management Facilities), CSW7 (Waste Management for Non-hazardous Waste), CSW8 (Other Recovery Facilities for Non-hazardous Waste) and (DM8 Safeguarding Minerals Management, Transportation, Production & Waste Management Facilities) which are relevant considerations. Following the Examination hearings in October 2019 the Inspector's report is expected this coming

¹⁴ para 14 of Annex A to the letter to Chief Planning Officers issued by the Department for Communities and Local Government (CLG) on 9 November 2009.
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1376507.pdf>

¹⁵ Whether, and to what extent, is to be judged on a case by case basis Para 1.2.3 National Policy Statement for Renewable Energy Infrastructure (EN-3)

Spring. One of the reasons for the Early Partial Review was to update the assumptions about waste management capacity underlying policies CSW7 and CSW8 to reflect the fact that the Kemsley SEP planning permission has been implemented and ensure that the permitted 550,000tpa capacity is taken into account.

Bearing Fruits 2031: The Swale Borough Local Plan (July 2017) Appendix 3)

Policies ST1 (Delivering sustainable development in Swale), CP1 (Building a strong, competitive economy), CP2 (Promoting Sustainable Transport), CP7 (Conserving and enhancing the natural environment), DM6 (Managing transport demand and impact), DM14 (General development criteria), DM21 (Water, flooding and drainage) and DM28 (Biodiversity and geological conservation).

National Planning Policies

National Planning Policies relevant to the proposal are set out in the [National Planning Policy Framework \(2019\)](#), the [National Planning Policy for Waste \(NPPW\) October 2014](#) and the [National Planning Practice Guidance](#). In particular attention is drawn to those requirements to deliver development that is sustainable, complies with the waste hierarchy, supports the transition to a low carbon future given the challenges and commitments to address climate change, conserves and enhances the natural environment, delivers high quality design and creates development that adds to the overall quality of the life. In addition, the development should demonstrate that it is acceptable in terms of highway safety, the impact upon the transport network and takes appropriate opportunities to promote sustainable transport. [NPPW Appendix B](#) sets out the criteria that decision makers should apply in considering the impact on local environment and amenity.

Should the Examining Authority determine that the [National Policy Statement on Renewable Energy NPS-EN3](#), should be a material consideration then particular attention is drawn to the requirements of paragraphs 2.5.67- 2.5.70 relating to the necessity compliance with the Waste Hierarchy and conformity with local plans discussed earlier while also having regard to the concerns raised in our response on Q1.6 in relation to the need for the NPS to give greater weight to the carbon contribution of specific proposals.

It should be noted that the waste fuelled K3 plant for which consent for additional power output over and above the consented 49Mw, was originally granted conditional planning consent by the County Council as a 'sustainable energy plant' (SEP)¹⁶. In doing so, the planning merits of the plant were considered against policies in the adopted local waste plan and national waste planning policies extant at the time¹⁷.

It is questionable whether the addition of generating capacity means the whole plant ought to be considered a NSIP as in reality the application is only to increase generating capacity by 25.1Mw. In such a situation this proposal would be determined in accordance with the development plan as above.

¹⁶ This was granted jointly to the operator of the papermill. St Regis Paper & Co Ltd and an entity of E.ON, the operator of onsite energy plants supplying heat and power to the papermill at the time.

¹⁷ It is notable that this has been superseded, with in particular the South East Plan having been revoked and the Kent Waste Local Plan having revised as the Kent M&WLP July 2016.

Q1.1.3 - Please supply, if not provided to the ExA, the Memorandum of Understanding of the South East Waste Planning Advisory Group (SEWPAG) that is said to commit the respective signatories to regional net self-sufficiency to be achieved and maintained as part of each authority's waste planning strategy, and comment on its planning status

KCC Response

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

Available at [South East Waste Planning Advisory Group Memorandum of Understanding](#)

The SEWPAG MoU is to all intents and purposes a 'Statement of Common Ground' as envisaged by Paragraph 27 of the National Planning Policy Framework. The MoU documents waste management as a cross-boundary matter and, as such how it is being addressed through cooperation between the Waste Planning Authorities (WPAs) in the South East. The MoU recognises that waste crosses administrative boundaries for management and, to ensure its management is adequately provided for, the principle of net self-sufficiency should be applied when WPAs are planning for its management.

Q1.1.4 Please comment on KCC's claim [AS-010] that the Proposed Development would result in waste being drawn into the SEWPAG area, contrary to the objectives of SEWPAG.

The proposer's Fuel Availability Assessment document (Document 4.6 July 2019) - Submission Version identifies a Study Area covering 21 waste planning authorities (grouped into 7 areas). The table below indicates how all of these areas are planning on the basis of net self-sufficiency.

| Waste Planning Area | Regional Entity | Commitment to Net Self Sufficiency |
|---|-----------------|---|
| East Sussex, including Brighton and Hove; | SEWPAG | 7.1 The Parties recognise that there will be a degree of cross-boundary movement of waste. In light of this, the Parties will plan on the basis of net self-sufficiency which assumes that within each waste local plan area the planning authority or authorities will plan for the management of an amount of waste which is equivalent to the amount arising in that plan area. <i>Memorandum of Understanding between the Waste Planning Authorities of the South East of England April 2017</i> |
| Kent, including Medway; | | |
| West Sussex. | | |
| South East London, comprising Bexley, | Greater London | "Policy 5.16 Waste net self-sufficiency |

| | | |
|---|--------------------------------------|---|
| Greenwich, Lewisham and Southwark; | Authority and the London Plan | A The Mayor will work with London boroughs and waste authorities, the London Waste and Recycling Board (LWaRB), the Environment Agency, the private sector, voluntary and community sector groups, and neighbouring regions and authorities to: a manage as much of London's waste within London as practicable, working towards managing the equivalent of 100% of London's waste within London by 2026 b create positive environmental and economic impacts from waste processing c work towards zero biodegradable or recyclable waste to landfill by 2026." Plus requirement to provide capacity to meet Borough level apportionments to manage household and commercial and industrial waste within each area. |
| South London , comprising Bromley, Croydon, Merton, Kingston-upon-Thames and Sutton. | | |
| East London , comprising Barking and Dagenham, Havering, Newham and Redbridge; | | |
| Essex , including Southend-on-Sea and Thurrock; | East of England | "5.2 The Plan is based on the principle of net self-sufficiency, where practicable. This means having sufficient waste transfer, recycling, recovery, and disposal capacity within the Plan area to manage the amount of waste generated, with only limited cross border movements with other authorities." <i>Essex and Southend-on-Sea Waste Local Plan Adopted July 2017</i> |

As shown in the above table all the target waste planning authorities are committed to the pursuit of net self-sufficiency. It should also be noted that the county of Surrey is not included in the proposer's study area but that this too is within the applicant's indicative catchment for the facility (being within two hours travel time). The current Surrey Waste Plan plans on the basis of net self-sufficiency, as does the replacement Surrey Waste Local Plan (SWLP) that is currently at examination. The SWLP includes Strategic Objective 1 that states: 'Net self-sufficiency: to make sure enough waste management capacity is provided to manage the equivalent amount of waste produced in Surrey.'

Significantly, since submission of the DCO application an appeal against refusal of planning permission has been upheld in connection with an EfW plant in West Sussex. (Appeal decision attached). This not only reduces the potential feedstock supply for the K3/WKN proposal by c180,000 tpa but also confirms concerns in relation to greenhouse gas emissions from EfW plants and the questionable carbon benefits of the DCO proposal. These have been articulated in our response to Q1.6 below for the ExA benefit.

Q1.1.6 Surrey County Council in its RR [RR-007] state that it and other planning authorities in the south east are planning for waste on the basis of net self sufficiency and not on the

basis that Surrey's requirements will be met by facilities in Kent. What are the implications of this policy for the Applicant's strategy to take in a significant proportion of waste fuel from the south-east region?

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

Somewhat surprisingly, given that parts of Surrey are closer to Kent than West Sussex, Surrey is not expressly identified as part of the target area from which the combined proposal would seek to source waste. However, the question remains relevant to consideration of the effect of the application on all the target authorities' ability to achieve/maintain net self-sufficiency. In order to follow through with their commitment, were the proposed plant to be consented and built, each would need to seek to provide alternative capacity to compensate for the outgoing flows to K3/WKN. Given that the K3/WKN flow takes place, for such capacity to be utilised it would be necessary to draw in waste from other areas beyond their jurisdiction, all other things being equal. Hence this demonstrates that creation of such a massive point of demand distorts the plans, strategies and markets across the applicant's chosen study area and beyond (i.e. the wider South East).

Given that the proposer's own need case articulated in the *Waste Hierarchy & Feedstock Availability Report* states at paragraph 1.5.4:

"K3/WKN is located within Kent but proposed as a regional facility and not to be constrained to only accepting waste from within Kent. "

It is apparent that provision of the additional combined capacity would also be contrary to the proximity principle to which National Waste Planning Policy (NPPW) gives express encouragement with regard to the recovery of mixed municipal waste.¹⁸

Q1.4 Archaeology and Cultural Heritage

Q1.4.1 - Does Requirement 20 of the dDCO adequately secure archaeological mitigation through a programme of archaeological work? Please comment on whether the definition of "permitted preliminary works" (apart from the archaeologically related works described therein) which can be undertaken in advance of commencement of the authorised development, is compatible with the approval of the WSI which under Requirement 20 may be later in time?

KCC Response

Within the County Council's Written Representation, submitted 2 March 2020, KCC proposed amendments to the wording of Requirement 20 to ensure that the Requirement adequately secures archaeological mitigation through a programme of archaeological work. The County Council expects that this amended wording will be incorporated into the revised

¹⁸ See Section 2. Consistency with the Principles of Waste Planning in Kent Annex 1 to KCC letter dated 2 March 2020 Kent County Council Written Statement as Minerals and Waste Planning Authority

Development Consent Order, which it is understood will be submitted by the applicant at Deadline 2 on 18 March 2020.

As drafted, Requirement 20 could allow for a possibility that permitted works could take place before archaeological works are undertaken. There could be works, such as the remedial work in respect of contamination, investigations for the purpose of assessing ground conditions and diversion and laying of services. These types of works may impact on archaeology, dependent on location and scale.

The County Council therefore recommends further amendments to the Requirement – to read as follows; *“No authorised development or permitted preliminary works (unless agreed with the relevant planning authority) shall commence”*

Q1.6 Greenhouse Gases and Climate Change

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

KCC notes that the ExA indicates they currently have no queries in relation to greenhouse gases and climate change (Q1.6). However, KCC would draw the concerns raised above in connection with the proposal's net carbon burden to the ExA's attention.

Significantly, since submission of the combined K3/WKN application an appeal against refusal of planning permission has been upheld in connection with an EfW plant in West Sussex. ([Former Wealden Brickworks – Appeal Decision 27 February 2020](#)) This confirms concerns in relation to greenhouse gas emissions and the questionable carbon benefits of the DCO proposal. Paras 88-92 in particular is drawn to the ExA's attention which include the following:

1. *“..., electricity generated by a Combined Cycle Gas Turbine in baseload mode would represent a lower carbon source of electricity than the proposal. Viewed solely in that context, the low carbon credentials of the proposal would appear to be relatively poor.”* (paragraph 89)

It is notable that the Inspector in the appeal case gave this consideration little weight as the appeal scheme was being considered as a waste management facility not an energy generating scheme, and therefore the National Policy Statements were given little weight (para 92). In contrast to the Brookhurst Wood proposal, the K3/WKN proposal is being promoted as an energy scheme through the DCO process rather than a waste management facility through the established local waste planning process. This approach is confirmed by the fact that the proposer's own policy compliance case presented in the Waste Hierarchy and Fuel Availability Report leads with the NPS, referring to the local waste plan as something of an afterthought stating at para 1.5.5:

“K3/WKN is demonstrated to be wholly in accordance with the waste hierarchy and not prejudicial to either national or local policy or strategy. The Proposed Development will deliver both the aspirations of the NPS and the adopted and

emerging development plan for waste management and renewable/low carbon energy supply." (emphasis added)

Given that the statement concerning the adopted and emerging development plan is based on the knowingly unfounded assertion¹⁹ at paragraph 1.4.9 of its Waste Hierarchy and Fuel Availability Report that: "*The Proposed Development is wholly compliant with both the adopted and the proposed modifications to Kent waste policy.*" it is clear that the primary policy support the proposal is relying upon, must be meeting the aspirations of the NPS, as if it were indeed relying on compliance with the emerging Waste Plan it would clearly fail to meet its policy tests.

However, given Q 1.1.2 above compliance with National Policy Statements ought only to be given greater weight with respect to consideration of the K3 expansion proposal.

Paragraph 91 of the appeal decision states:

2. "*...this particular comparison between landfilling and the proposed process is anyway of limited relevance in this case. Diversion of the residual waste, which would otherwise be subject to the proposed energy recovery from waste route, to landfill would be contrary to the aims of the up to date WLP and national policy, which seeks to drive the management of waste up the Waste Hierarchy...*" and "*...Furthermore, if not handled at the proposed facility it appears more likely that residual waste would be exported for recovery, rather than being sent to landfill.*" (paragraph 91),

This accepts that any suggestion that potential feedstock will go to landfill is unfounded and that export as RDF is the more appropriate comparator than landfilling. However, it seems that the appeal application did not have the benefit of the carbon assessment for export of RDF that is presented Section 4.2 of the carbon assessment²⁰ submitted in support of the K3/WKN proposal which clearly demonstrates that export of RDF is a lower carbon outcome than the proposal regardless of transport savings. Hence the Inspector in the Brookhurst Wood case arrived at the conclusion that "*..it would be likely to deliver carbon savings when a wider view is taken.*" However, in the current determination the ExA will be fully aware that this would not in fact be the case given the proposer's own evidence, so the alternate conclusion ought to be arrived at. i.e. the proposal will not deliver carbon savings when compared with viable alternatives.

On this basis, following the same logic applied by the Inspector in the Brookhurst Wood appeal we arrive at different conclusions with regard to the current K3/WKN proposal which are as follows:

1. When considered as an electricity production scheme fired by fuel primarily consisting of fossil derived material, the current proposal has poor carbon credentials

¹⁹ Given WTI made repeated representations against the proposed changes in the Early Partial Review and appeared at the examination hearings to convey these objections to the Inspector. See for example WTI representation on Proposed Modifications at <https://consult.kent.gov.uk/file/5588498>

²⁰ Document 3.1 – ES Volume 2 Appendix 6.2: WKN Proposed Development Carbon Assessment Wheelabrator Kemsley (K3 Generating Station) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO September 2019 -Submission Version PINS ref: EN010083

as compared with other energy generators such as CCGT (Brookhurst Wood appeal decision letter): and

2. when considered as a waste management scheme it too has poor carbon credentials as compared with export of RDF, the acknowledged alternative waste management solution for the proposed feedstock (Brookhurst Wood appeal decision letter).

Hence either way the combined proposal fails in demonstrating compliance with either national policy commitments with respect to carbon emission reduction or the local waste plan objectives of securing low carbon solutions.

The County Council would request that the Inspector has due consideration of the recent Court of Appeal judgement on Heathrow expansion (R (FRIENDS OF THE EARTH) v SECRETARY OF STATE FOR TRANSPORT AND OTHERS). The County Council notes that the judgement relates to the formulation of the '*Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England*'. However, the County Council would request that the Court's judgement is considered in the determination of the K3 / WKN application, in particular, the impact of carbon emissions.

Q1.11 Traffic and Transport

Q1.11.9 - Please detail what information requested from the Applicant at the meeting in February 2019 referred to in the additional submission dated 4 December 2019 [AS-010] and not covered in these Questions, has not been received, but relates to an important and relevant matter to consider, and why.

KCC Response

The following information has been requested, but has not been provided:

“WTI to provide evidence of time controls within waste contracts” - The applicant claimed that the peak hours would be avoided, due to such time controls being in place. KCC would like to see evidence of such clauses in the contracts, so be able to assess this properly.

“WTI to seek vehicle movement data from Ferrybridge” (this relates to question Q1.11.7). - KCC sought to evidence the arrival and departure times from the applicant's operational site. The applicant had contested that whilst they did not agree that they would provide comparable data they did agree to provide it, but have not to date. KCC has also requested similar data from an operational Waste to Energy site in Allington and is awaiting receipt of this. KCC considers that this data would help to inform whether or not the applicant's assumptions are robust.

Q1.12 Water Environment

Q1.12.3 - In Article 18(4) dDCO should the authorised development not be commissioned until the surface and foul water drainage systems have been constructed and approved by the relevant planning authority?

KCC Response

Within the County Council's Written Representation, dated 2 March 2020, KCC confirmed that surface water has been adequately managed in relation to proposed operations, as set out in the Surface Water Management and Foul Drainage Design Report prepared by RPS.

It is standard practice for the County Council to request a verification report to be submitted prior to occupation of residential development to confirm that the drainage system has been installed as approved - it would not be unusual to request verification that the system has been constructed as approved prior to commissioning of the plant.

The County Council will continue to work with the applicant and Examining Authority and welcomes the opportunity to comment on matters of detail throughout the Examination.

Should you require any additional information or clarification, please do not hesitate to contact me.

Yours sincerely,



Barbara Cooper
Corporate Director – Growth, Environment and Transport