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18 March 2020

Examination Representor Reference: KEM3-OP0

Mr Grahame Kean
Examining Inspector
National Infrastructure Planning
Temple Quay House
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Bristol, BS1 6PN

By email: WheelabratorKemsley@planninginspectorate.gov.uk

Dear Mr Kean,

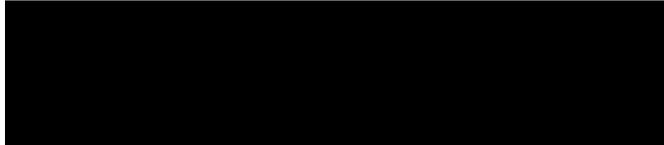
**Application by WTI/EFW Holdings Ltd for an Order Granting Development Consent for the Wheelabrator Kemsley (K3) Generating Station and the Wheelabrator Kemsley North (WKN) waste to energy facility
Response from the South East Waste Planning Advisory Group to the Examining Authority's written questions and requests for information (ExQ1)**

This response is submitted on behalf of the South East Waste Planning Advisory Group (SEWPAG). The response focusses on those questions in which SEWPAG has a particular interest, that is questions 1.1.2, 1.1.3, 1.1.4 and 1.16 listed under Q1.1 'Principle and nature of the development, including waste recovery capacity and management of waste hierarchy'. To assist the ExA a separate page is used for each response. SEWPAG would welcome an opportunity to discuss these matters further at the Issue Specific Hearings.

In light of the fact that SEWPAG only recently registered its interest in this application, on behalf of SEWPAG I would like to take this opportunity record our thanks to the Examining Authority for allowing SEWPAG to participate in the examination.

Please contact me if you have any queries regarding these responses or about attendance at the hearings.

Yours sincerely,



Ian Blake

Chair, South East Waste Planning Advisory Group

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?

In view of the fact that the WKN Proposed Development is not an NSIP, the ExA should approach this application as though it were a proposal for a non-nationally significant waste management facility (as this is the development's main purpose) rather than a nationally significant energy generating station (unlike the K3 development). If the ExA were to approach the application on this basis then it should determine the application in accordance with the Development Plan for the area in accordance with paragraph 47 of the NPPF.

Important policies pertaining to this application included in the local Development Plan are those set out in the Kent Minerals and Waste Local Plan which consider how and where waste should be managed in Kent. SEWPAG is aware that this Plan is being updated via an 'Early Partial Review' which is currently at examination with an Inspector's Report due in the near future. Individual SEWPAG waste planning authorities were consulted on the EPR and none raised objections to the proposed changes.

Other material considerations that may be taken into account are policies included in the National Planning Policy Framework and National Planning Policy for Waste. NPSs may also be taken as material considerations.

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.

The Memorandum of Understanding of the South East Waste Planning Advisory Group is appended to the response to this question. The MoU commits the respective signatories to net self sufficiency in paragraphs 7.1 to 7.3 which state:

'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. All parties accept that when using this principle to test policy, it may not be possible to meet this requirement in full, particularly for hazardous and other specialist waste streams.'

7.2 In keeping with the principle of net self-sufficiency for each waste local plan area, the Parties will plan on the basis that no provision has to be made in their waste local plans to meet the needs of any other waste local plan area which are basing their waste policies on achieving the principle of net self-sufficiency.'

7.3 There may be cases where some waste will not be planned to be managed within a waste plan area because of difficulty in delivering sufficient recovery or disposal capacity. Provision for unmet requirements from other authority areas may be included in a waste local plan, in line with paragraph 182 of the NPPF, but any provision for facilities to accommodate waste from other authorities that cannot or do not intend to achieve net self-sufficiency will be a matter for discussion and agreement between authorities and is outside the terms of this Memorandum.'

It should be noted that SEWPAG is currently updating the MoU and redrafting it for agreement as a 'Statement of Common Ground' in accordance with the National Planning Policy Framework (See paragraph 27) and related Planning Practice Guidance.

For ease of reference, NPPF paragraph 27 states:

'In order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.'

The latest draft Statement of Common Ground includes the following statements on net self-sufficiency:

'2.1 The Parties agree that they will plan for 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. For the avoidance of doubt, **the Parties agree** that they will plan on the basis that no provision has to be made in their waste local plans to meet the needs of any other waste local plan area which are basing their waste policies on achieving the principle of net self-sufficiency.

2.2 **The Parties accept** that when using this principle to test policy, it may not be possible to meet this requirement for all waste streams, particularly where a specialist facility is required to manage specialist waste streams such as hazardous waste.

2.3 **The Parties agree** that they will therefore prepare plans which provide for the development of facilities that will manage waste produced within, and beyond, their areas based on net self-sufficiency and in accordance with the waste hierarchy.

2.4 **The Parties recognise that** there may be cases where, despite assessing reasonable options, some waste will not be planned to be managed within a waste plan area because of difficulty in delivering sufficient recovery¹ or disposal capacity (E.g. Due to certain designations e.g. Green Belt, AoNB, National Park (see sections below)). **The Parties agree** that provision for unmet requirements from other authority areas may be included in a waste local plan but any provision for facilities to accommodate waste from other authorities that cannot or do not intend to achieve net self-sufficiency will be a matter for discussion and agreement between authorities and is outside the terms of this SCG.

2.5 **The Parties note** that, despite assessing reasonable options, there may be some kinds of waste requiring specialist treatment that cannot be managed within their own plan area, either in the short term or within the relevant plan period. These may include hazardous wastes and radioactive wastes. Where provision for the management of these wastes will be planned for in a different waste planning authority area, this will need to be considered between the relevant authorities. **The Parties agree** that provision for some kinds of wastes, including hazardous and radioactive waste, from other authority areas may be included in a waste local plan but that any provision for facilities to accommodate this waste from other authorities that cannot or do not intend to achieve net self-sufficiency will be a matter for discussion and agreement between authorities and is outside the terms of this SCG.'

¹ 'Recovery' includes recycling.

**Memorandum of Understanding
between the Waste Planning Authorities
of the South East of England**

April 2017

1. Introduction

1.1 The Waste Planning Authorities of the South East of England comprise the following authorities:

- Bracknell Forest Council
- Brighton & Hove City Council
- Buckinghamshire County Council
- East Sussex County Council
- Hampshire County Council (incorporating Southampton City, Portsmouth City and New Forest National Park Waste Planning Authorities)
- Isle of Wight Council
- Kent County Council
- Medway Council
- Milton Keynes Council
- Oxfordshire County Council
- Reading Borough Council
- Royal Borough of Windsor and Maidenhead
- Slough Borough Council
- South Downs National Park Authority
- Surrey County Council
- West Berkshire Council
- West Sussex County Council
- Wokingham Borough Council

1.2 These authorities are each responsible for planning for sustainable waste management in their areas and in particular for the preparation of waste local plans. A waste local plan can cover the area of a single waste planning authority or a larger area administered by more than one waste planning authority where they decide to act together.

1.3 Section 110 of the Localism Act sets out a duty to cooperate in relation to planning of sustainable development, under which planning authorities are required to engage constructively, actively, and on an ongoing basis in any process where there are cross-boundary issues or impacts. This includes the preparation of development plan documents so far as relating to a “strategic matter” such as waste management. This duty to cooperate therefore applies to the preparation of waste local plans.

1.4 In addition, the National Planning Policy Framework (NPPF) refers to planning authorities having a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to strategic priorities defined in paragraph 156 which includes waste management infrastructure. The NPPF expects local planning authorities “to demonstrate evidence of

having effectively cooperated to plan for issues with cross-boundary impacts” (paragraph 181). The ‘tests of soundness’ (paragraph 182) also require planning authorities to work with their neighbours: to be “positively prepared” a plan should seek to meet “unmet requirements from neighbouring authorities where it is reasonable to do so”; and to be “effective” a plan should be “based on effective joint working on cross-boundary strategic priorities”.

2. **Purpose**

2.1 The purpose of this Memorandum is to underpin effective cooperation and collaboration between the Waste Planning Authorities of the South East of England in addressing strategic cross-boundary issues that relate to planning for waste management.

2.2 It sets out matters of agreement, reflecting the spirit of co-operation between the Parties to the Memorandum. It is, however, not intended to be legally binding or to create legal rights.

3. **Parties**

3.1 The Memorandum is agreed by the following Councils: (to be completed as agreements are confirmed).

4. **Aims**

4.1 The memorandum has the following broad aims:

- to ensure that planned provision for waste management in the South East of England is co-ordinated, as far as is possible, whilst recognising that provision by waste industry is based on commercial considerations; and
- to ensure that the approach to waste planning throughout the South East is consistent between authorities.

5. **Limitations**

5.1 The Parties to the Memorandum recognise that there will not always be full agreement with respect to all of the issues on which they have a duty to cooperate. For the avoidance of doubt, this Memorandum shall not fetter the discretion of any of the Parties in relation to any of its statutory powers and duties, and is not intended to be legally binding.

5.2 The Parties recognise that for a majority of existing waste management facilities, there are no restrictions on the handling of waste that has arisen outside their authority area.

6. **Background**

6.1 The disposal of waste to land (both landfill and landraise) is at the bottom of

the Waste Hierarchy as defined in the “National Planning Policy for Waste” 2014 (NPPW) and associated Planning guidance. It is the least desirable form of waste management in environmental terms.

- 6.2 National Planning Policy for Waste recognises that there will be a need for new waste management facilities and that these need to be planned for. It states that:

“Positive planning plays a pivotal role in delivering this country’s waste ambitions through:

- delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste management up the waste hierarchy (see Appendix A);

- ensuring that waste management is considered alongside other spatial planning concerns, such as housing and transport, recognising the positive contribution that waste management can make to the development of sustainable communities;

- providing a framework in which communities and businesses are engaged with and take more responsibility for their own waste, including by enabling waste to be disposed of or, in the case of mixed municipal waste from households, recovered, in line with the proximity principle;

- helping to secure the re-use, recovery or disposal of waste without endangering human health and without harming the environment; and

- ensuring the design and layout of new residential and commercial development and other infrastructure (such as safe and reliable transport links) complements sustainable waste management, including the provision of appropriate storage and segregation facilities to facilitate high quality collections of waste.

- 6.3 There will, however, continue to be a need for some landfill capacity to deal with waste in the South East, particularly in the short and medium term before new recycling and treatment facilities are built and become operational.

- 6.4 Paragraph 263 of the Government Review of Waste Policy in England 2011 states that “there is the need for councils to work together and look at waste management needs across different waste streams and across administrative boundaries.” It further states that “There is no requirement for individual authorities to be self-sufficient in terms of waste infrastructure and transporting waste to existing infrastructure to deliver the best environmental solution should not be considered a barrier.”

7. Agreement between the Parties

- 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. All parties accept that when using this principle to test policy, it may not be possible to meet this requirement in full, particularly for hazardous and other specialist waste streams.

- 7.2 In keeping with the principle of net self-sufficiency for each waste local plan area, the Parties will plan on the basis that no provision has to be made in their waste local plans to meet the needs of any other waste local plan area which are basing their waste policies on achieving the principle of net self-sufficiency.
- 7.3 There may be cases where some waste will not be planned to be managed within a waste plan area because of difficulty in delivering sufficient recovery or disposal capacity. Provision for unmet requirements from other authority areas may be included in a waste local plan, in line with paragraph 182 of the NPPF, but any provision for facilities to accommodate waste from other authorities that cannot or do not intend to achieve net self-sufficiency will be a matter for discussion and agreement between authorities and is outside the terms of this Memorandum.
- 7.4 The parties note that there may be some kinds of waste that cannot be managed within their own plan area, either in the short term or within the relevant plan period. These may include hazardous wastes and radioactive wastes. Where provision for the management of these wastes will be planned for in a different waste planning authority area, this will need to be considered between the relevant authorities.
- 7.5 The Parties will work together in the consideration of how to plan for the implications arising from the management of waste from London and any other authority areas that are not party to this Memorandum.
- 7.6 The Parties agree that the challenge to be addressed is to implement the waste hierarchy and to enable better, more sustainable, ways of dealing with waste to reduce the current dependence on landfill.
- 7.7 The Parties agree to continue to positively plan to meet any shortfalls in recovery and disposal capacity in their areas and to enable the delivery of new facilities. This includes making appropriate provision in their local plans, including, as required, the allocation of sites for new recycling and other recovery facilities.
- 7.8 The Parties recognise that private sector businesses (and, therefore, commercial considerations) will determine whether new merchant waste management recycling and treatment facilities will be built and what types of technology will be used.

8. Actions and Activities

- 8.1 The Parties to this Memorandum will continue to share knowledge and information relevant to strategic cross-boundary issues relating to waste planning including the matters set out in the Agreement in Section 7.
- 8.2 The Parties will seek to ensure that the matters in the Agreement are reflected in the waste local plans that they prepare (including, in the case of unitary authorities, any local plans that include waste policies); this includes the allocation of sites.
- 8.3 The Parties will take account of the matters in the Agreement in the consideration of planning applications for waste management.
- 8.4 The Parties will continue to liaise with each other in relation to the general matters set out in the Agreement, in particular, the implications of the decline in permitted landfill capacity in the region.

9. Liaison

- 9.1 Appropriate officers of each Party to this Memorandum will liaise formally through the South East Waste Planning Advisory Group (SEWPAG) which normally meets four times a year. As appropriate, the Memorandum will be formally discussed at SEWPAG meetings and any decisions and actions relating to it will be recorded in the minutes.

10. Timescale

- 10.1 The Memorandum of Understanding is for a three-year period to 31st December 2020.
- 10.2 It will be reviewed annually by the Parties to establish how effective it has been and whether any changes are required. The results of the review will be reported at SEWPAG meetings and recorded in the minutes.

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.

KCC's claim that waste would be drawn into the SEWPAG area is based on the following:

- KCC's assessment that the requirement for waste management capacity in Kent of the type proposed by the K3/WKN development (497,000 tonnes per annum) has already been met in Kent. This is evidenced by the Early Partial Review of the Kent Minerals and Waste Local Plan (KMWLP) which suggests that the original capacity gap identified in the KMWLP has been met by the new K3 facility currently being commissioned at Kemsley.
- The WTI Waste Hierarchy and Fuel Availability Assessment which indicates that waste will be sourced from areas within a two hour travel time from the development and identifies areas beyond the SEWPAG area including those in London and Essex.
- All WPAs in the SEWPAG area are planning on the basis of net self-sufficiency. This means that each authority in the SEWPAG area has made provision in its Waste Local Plan for the development of additional 'other recovery'² capacity to meet the need for the management of waste equivalent to the quantity arising in its area. This approach ensures that, overall, the SEWPAG area is net self-sufficient in waste management.

The provision of additional other recovery capacity in Kent, in excess of its own needs, essentially risks creating a surplus of capacity that will attract waste into the SEWPAG area and/or, waste that could have been recycled is diverted to energy from waste which is lower down the waste hierarchy.

The 'Waste Hierarchy and Fuel Availability Report' is intended to meet the requirements in the National Policy Statement on Renewable Energy (NPS EN-3) by providing for an analysis of existing capacity and waste plans. However, the report only mentions the KMWLP and does not consider the capacity gap and strategy for the management of waste included in other waste plans for the areas from which the development is expected to source waste. In any event, although the report recognises that local policy is set out in the KMWLP and emerging Early Partial Review, it does not consider the latest capacity gap assessment which would seem to be the obvious starting point when assessing the need for the additional capacity.

² 'Other recovery' is recovery of waste by means other than recycling. 'Other recovery' is above disposal and below recycling in the Waste Hierarchy.

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?

SEWPAG concurs with SCC's view that it and other planning authorities in the south east are planning for waste on the basis of net self-sufficiency.

The applicant proposes that the K3/WKN development is intended to serve a wider regional need for waste management and identifies areas (at least five Waste Planning Authority areas that fall within SEWPAG's area: East Sussex, Brighton & Hove, Medway, West Sussex and Kent) from where waste will be sought (albeit with the apparent erroneous exclusion of Surrey).

However, the applicant has not assessed the implications of receiving waste from such an area by taking account of waste local plans within that area and the most recent monitoring of waste management capacity requirements undertaken by related WPAs (reported in Annual Monitoring Reports and Waste Needs Assessments). Without such an assessment it is not possible to conclude how this proposal might impact, however impacts could include a surplus of other recovery capacity which results in waste being drawn into the SEWPAG area, contrary to the proximity principle and/or waste that might otherwise be recycled being used as a fuel to feed energy from waste facilities contrary to the waste hierarchy (as set out in legislation³, NPPW and NPS EN-3).

³ The Waste (England and Wales) Regulations 2011