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14 May 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) – Further Written Questions

Kent County Council (KCC) provides the following response to the Further Written Questions published by the Planning Inspectorate on 9 April 2020.

Q1A.1. Principle and nature of the development, including waste recovery capacity and management of waste hierarchy

Q1A.1.1. - In Appendix 1 [REP2-009] of D2 submission - Applicant's Response to ExQ1 Energy from waste, A guide to the debate 2014, it is said that while there is an underlying principle of waste being managed close to its source, there is no implication of local authorities needing to be self-sufficient in handling waste from their own area.

Does this statement undermine your policy of net self-sufficiency and if not why not?

How if at all have any changes in national policy since its publication affected the position?

KCC Response

The "Energy from Waste: A Guide to the Debate 2014" document is a guide and not a statement of policy from Government, nor is it practice guidance. Updated policy and guidance - National Planning Policy for Waste (NPPW) (Oct 2014) and National Planning

Policy Guidance (NPPG) (Oct 2015) - have been published since the document's release in February 2014 and should therefore take precedence in any determination. The guide carries little, if any, weight.

The County Council considers that the statement within this question does not undermine the policy of net self-sufficiency. The very purpose of the principle of self-sufficiency being applied on a 'net' basis is to recognise that local authorities do not need to handle all waste from their own areas, within those areas. It acknowledges that waste flows across administrative boundaries, normally to the nearest suitable facility. The principle seeks to ensure that any outward flow is offset by an inward flow so that each Waste Planning Authority (WPA) makes provision for the management of an equivalent amount of waste to that produced within its area. As such, even though a tonne of waste may travel from Surrey to Kent for management, as it already does for Energy from Waste (EfW), Surrey County Council is still expected to make provision for management of a tonne of waste in its Waste Local Plan.

A simple example taken from the forthcoming Kent Annual Monitoring Report (AMR) 2018/19 is presented below to illustrate the point:

		Tonnes
Kent waste managed	Kent waste exported for management	1,432,081
Managed in Kent	Kent waste managed in Kent	4,724,764
	Waste imported into Kent	1,540,867

Some 6.2 million tonnes of waste were reported as being managed at Kent waste management facilities in 2018. This compares with around 1.4 million tonnes of waste arising in Kent being managed outside the county. As the export is more than offset by imports of waste from outside Kent, taking a simple balance, Kent remains net self-sufficient[1].

Q1A.1.2. - SEWPAG recognises that there will be a degree of cross-boundary movement of waste and in the Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] you state the approach in Paragraphs 7.1 and 7.2 of the Memorandum of Understanding (MoU) [REP2-043] in SEWPAG's D2 submission, is not injured in any way by K3/WKN.

How can the Applicant conclude this without assessing the local policy on waste management in each (or save for KCC, any) of the local policies on waste management as outlined in SEWPAG written representation [REP1-016, pp3-4]?

KCC Response

One possible way in which the Applicant's stated position can be verified is through it undertaking a proper assessment of all the relevant plans and associated Annual Monitoring Reports (AMRs).

[1] This presents a crude approximation, as net self-sufficiency is actually a measure of arisings against consented capacity i.e. the ability of a Plan area to manage a certain quantity of waste.

Q1A.1.3. - The Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] states K3/WKN is a merchant facility proposed in response to a recognised commercial need for additional recovery capacity to divert residual wastes from landfill, not relying on any one local authority waste contract.

What proportion of waste delivered to landfill in the Study Area comprises local authority collected wastes?

KCC Response

In addition to understanding the anticipated proportion of Local Authority Collected Waste (LACW) expected to be diverted from landfill, it would also be helpful to know how much of the feedstock is anticipated to actually come from landfill as opposed to refuse derived fuel (RDF) currently exported. Without such an assessment, it is not possible to determine whether the claimed carbon benefits of the WKN project - in particular, based upon avoided emissions from landfill - will actually materialise. The County Council refers back to KCC's response to the Examiner's First Written Questions (REP2-044) and in particular, question ExA Q1.1.6, and the reference to the Inspector's decision letter on the Brookhurst Wood EfW plant.

Q1A.1.4. - The Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] posits the Proposed Development as a regional facility which may well draw waste in from beyond Kent and beyond the SEWPAG area.

Please provide an overlay showing the Study Area and SEWPAG WPAs, and other WPAs in the South East and Greater London, as noted in KCC: written representation [REP1-010, Annex 1] Minerals and Waste Planning Authority, that have pursued a policy of net-self-sufficiency.

KCC Response

As the Applicant states at paragraph 23 of its comments on Written Representations (REP2-011) "K3/WKN are, unashamedly, submitted as regional facilities; they are not focussed on only treating 'Kent's waste'."

The Council's own waste needs assessment (of which a summary has been submitted in response to Q1A.1.41), has now been accepted by the Inspector examining the Early Partial Review (EPR) of the Kent Minerals and Waste Local Plan (KMWLP). The assessment demonstrates there is sufficient capacity within Kent to deal with the projected arisings. Therefore, the required feedstock for the proposed plant can only come from either Kent waste that would otherwise be recycled, thereby compromising both the recycling targets to be enshrined into the adopted Kent Minerals and Waste Plan and the movement of waste up the hierarchy; or from beyond the borders of Kent, putting the Plans and strategies of other WPAs at risk. A copy of the examining Inspector's Report is attached to this submission (Appendix 1).

The County Council's response to the Examining Authority's First Written Questions - Q1.1.4 (REP2-044) includes a table that lays out how each of the target WPAs are committed to the achievement of net self-sufficiency; or in the case of the London authorities, net self-sufficiency plus the waste apportionments of the London Plan. Importantly, it should be noted that the apportionments can only be demonstrated to have been met by provision of such capacity within London meaning this is a stricter test to meet[2]. The Table is reproduced in Appendix 2, along with an overlay map requested by the Examining Authority in this question.

Therefore, the capacity provided in London, such as the Riverside Energy Park, is likely to be a preferred facility by London authorities, as opposed to export outside London as may be considered likely to happen if the K3 extension and WKN proposal were to be approved. Hence, the recently consented Riverside Energy Park could eliminate exports arising from London, leaving feedstock arising from the WPAs identified in the Study Area as Essex, Kent, East Sussex and West Sussex. These may not be available sources, as demonstrated below:

- Kent - Energy Recovery Facility (ERF) capacity operating with over one million tonnes per annum (tpa), c250,000tpa capacity excess of predicted net self-sufficiency requirement. Net importer of waste to ERF already and a diminishing requirement to provide for London's waste.
- Essex - consented ERF capacity 595,000 tpa substantially in excess of predicted net self-sufficiency requirement.
- East Sussex - ERF capacity operating of 210,000 tpa. Net importer of waste to ERF already.
- West Sussex - Consented ERF capacity of 320, 000 tpa plus operational ERF 60,000tpa

Following the examination of the EPR of the Kent Minerals and Waste Local Plan, the Planning Inspector has issued his report recommending that the Plan is sound, subject to the modifications considered as part of the examination process. His report was issued 23rd April 2020. The NPPF recognises that decision makers should give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan and that the more advance its preparation, the greater the weight that may be given. Work is currently in hand by the County Council to adopt the Local Plan this summer and therefore the Council considers that significant weight should be afforded to the EPR by decision makers.

[2] It is stricter because the London Borough's cannot simply rely on offsetting exports of waste subject to apportionment by imports of other waste on a simple net self sufficiency basis.

Q1A.1.6. - Waste arisings in Surrey, and their subsequent management, were not included in the Waste Hierarchy and Fuel Availability Report (WHFAR) [APP-086], however the Applicant states the Proposed Development wholly complies with certain parts of the Surrey Waste Plan which are quoted. Please supply the Surrey Waste Plan.

KCC Response

The Applicant has stated that the omission of Surrey from the study area is intentional, however there has been no justification offered as to its omission - despite the proximity to the application site. The 2018 Environment Agency dataset shows that around 77,000 tonnes of waste travelled from Surrey to Kent's operational EfW in 2018; it is therefore unclear as to why Surrey has not been included in the study area.

The County Council notes that Surrey has been identified as a target source of feedstock for the recently consented Riverside Energy Park. To provide clarity on this matter, a comparative table of WPAs included in the feedstock study area of each application project is included in Appendix 3. A number of WPAs identified as potential sources of feedstock appear in both studies, and hence the waste has effectively been double counted. The Table in Appendix 3 also shows that the K3 extension and WKN facility would not represent the nearest available facility for many of the proposed sources.

Q1A.1.7.- See Q1A.1.6 above. Please confirm whether the parts of the plan quoted represent the most important parts of that plan to consider in connection with the Proposed Development and if not what are the other parts and why?

KCC Response

The County Council has taken that the Examining Authority is referring to paragraph 9 of the Applicant's response to ExQ1.1.6 (Appendix 2).

It is suggested that paragraph 5.1.1 Policy 1 – Need for Waste Development, which states at 5.1.1.3 that, “The WPAs aim is for Surrey to be net self-sufficient, that is, the county has enough waste management capacity to deal with the equivalent amount of waste to that which it generates." is also relevant.

It is considered that it is for Surrey County Council (SCC) to determine what elements of the plan are of most importance (and ought to be given most weight) in connection with the scope of adverse effect of the combined application on its strategy.

KCC considers that the key adverse effects, in principle, are likely to be the locking in of waste that may otherwise be recycled into 25 years supply (contrary to the waste hierarchy), and the undermining of investment plans for the development of local facilities, by drawing away waste so that a critical mass cannot be guaranteed to justify the business case for building a smaller plant to serve a more local catchment (contrary to the proximity principle).

Q1A.1.11. - WHFAR [APP-086] paragraph 1.2.5 refers in parentheses to waste hierarchy compliance in the case of areas elsewhere in the UK outside the jurisdiction of the EA.

Is the reception of waste from such areas ruled out for the Proposed Development and if not why not?

KCC Response

All entities in control of waste across the whole UK are subject to the requirement to comply with the waste hierarchy; it is not simply a matter to be left to the Environmental Permit to bring into effect.

Q1A.1.12. - The Proposed Developments are referred to variously as a source of renewable/low carbon energy (or fuel source), e.g. WHFAR [APP-086] paragraph 1.2.8 and 1.3.4. Is such an appellation correct, having regard to national policies pertaining to the Waste Hierarchy? Please justify your response.

KCC Response

The renewable or low carbon energy status of the plant will depend both on the composition of incoming feedstock (which is likely to change over time); and the efficiency of the plant in converting the calorific value of the fossil-based feedstock to energy that is put to use.

There is a national policy expectation in the Resources and Waste Strategy[3] that food waste will be separately collected by 2023; therefore, the biogenic fraction of feedstock can be expected to fall - and the proportion of the non-biogenic, and predominately fossil based fraction will increase accordingly.

KCC notes that the Applicant has assumed a 45% biogenic content as the baseline in the Carbon Assessment reports submitted in support of the combined project - Document 3.1 – ES Volume 2 Appendix 6.2: WKN Proposed Development Carbon Assessment and Document 3.1 – ES Volume 2 Appendix 6.1: K3 Proposed Development Carbon Assessment; and then modelled a scenario where it increases to 53% as a sensitivity. As expected, this shows a bigger carbon saving.

That this shows a bigger carbon saving comes as no surprise, and the exercise cannot be referred to as a sensitivity test, as in choosing to increase the biogenic content, the exercise is not testing the tolerance limits of the Lifecycle Assessment findings, which is the purpose of undertaking sensitivity analysis. To undertake a true sensitivity analysis, KCC recommends that a scenario is considered where the biogenic content falls below that modelled as a baseline i.e. sub 45%. Modelling should be undertaken to determine the point where the benefit is negligible, and then an explanation offered as to why such a scenario is not credible/ would not come about.

[3] https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england

Conversely, as the WKN facility will only be a power production plant, its performance in producing electricity from fossil input component of the feedstock is likely to be poor when compared with a traditional modern Combined Cycle Gas Turbines (CCGT) plant.

The combined effect of the low biogenic content of feedstock, and the inefficiency of the plant to capture the full energy value of the fossil component, means that the electricity produced can only be regarded as partially renewable, and the low carbon appellation would not be correct. The waste hierarchy itself does not address such refinement, but the Government guidance on its application[4] cited in the County Council's response to Q1.1.1 of the Examining Authority's First Written Questions (REP2-044) demonstrates the necessity of considering such specifics to determine the appropriate placing of a waste management proposal within the hierarchy, as it requires the application of life-cycle thinking.

Q1A.1.13. Can you assess the degree of confidence with which it can be asserted that the variables in WHFAR [APP-086] paragraph 1.3.5 are unlikely to occur and if so please provide a reasoned justification.

KCC Response

With regard to the confidence around the feedstock data, KCC has already presented updated figures for 2018 which show available feedstock to be reduced to the extent that the additional capacity proposed is not justified.

Furthermore, the Environment Agency data shows exports of RDF have fallen in 2019 by between 15% and 20% on the previous year, which also raises a question on the reliability of the asserted value for RDF exported.

The National Resource and Waste Strategy[5] commits to the following national targets:

- At least 65% of municipal waste by weight to be recycled by 2035;
- No more than 10% of municipal waste ending up in landfill; and
- Eliminating food waste to landfill by 2030.

Therefore, it is appropriate that a 65% recycling rate ought to be considered as the baseline position, and not simply a sensitivity to test. To do otherwise is to plan to miss the national target.

Given that a 70% recycling target by 2025 is set in Wales (see response to Q1A.1.45), KCC contends this ought to be considered within the sensitivity analysis instead.

[4] Guidance on applying the waste hierarchy June 2011 https://www.gov.uk/government/publications/guidance-on-applying-the-waste-hierarchy
[5] https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england

Q1A.1.14. - If the policy of net self-sufficiency is applied with the caveats stated in the MoU, and as expressed in the relevant local plan policies, would the fuel availability be fully taken up within the SEWPAG area?

Is an assessment in accordance with NPS EN-3 of local as well as national waste management targets required to answer this question and if so what information is available to this end?

KCC Response

The fuel availability would not necessarily be entirely taken up by provision within WPA's own areas, given that the principle relates to net self-sufficiency, and therefore allows for the movement of waste from WPA areas. However, long distance movement of mixed municipal waste would be contrary to the proximity principle - when nearer available plants exist. This is demonstrated in Appendix 3 of this response.

Without a proper assessment of the local plans affected and stipulated by NPS EN-3 (paragraphs 2.5.66 to 2.5.69), it is not possible to provide a definitive answer to this question. AMRs, Waste Local Plans and supporting Waste Needs Assessments exist for most authorities identified as falling within the combined proposal catchment.

Q1A.1.16. - In WHFAR [APP-086] paragraph 1.4.6, could the supply of steam to Kemsley Paper Mill be achieved without the WKN Proposed Development but with the K3 Proposed Development?

KCC Response

KCC considers that, given the numerous sources already available, including K4, neither the expansion of K3 nor the WKN proposed development are considered to be necessary for the steam supply to be maintained to the Paper Mill.

Q1A.1.17. - WHFAR [APP-086] paragraph 1.4.7 states "…there is a carbon burden associated with the transport of fuel to the facilities…".

What is the quantification of that burden and how if at all would this burden be affected if fuel were taken more locally than is envisaged in the proposed application but in accordance with KCC and SEWPAG policies?

Please provide a reasoned justification for your answer including any quantification of benefit that can reasonably be assessed.

KCC Response

The assessment of the carbon burden of transportation of residues from the facility is presented in Carbon Assessment reports submitted in support of the combined project.

However, neither of the submissions consider the carbon burden of incoming waste. This is ostensibly on the basis that the waste would have travelled to its alternative outlet (assumed to be landfill), so there are no additional waste miles travelled. However, this assumption fails to take account of the proposal being expressly promoted as a regional facility and therefore can be expected to draw waste in from much further afield than would normally be the case.

Were the combined projects to rely on waste to be drawn from within Kent, then there would be a risk of locking in waste that could be recycled, given the current provision of over one million tonnes of built EfW (aka Other Recovery) capacity in Kent.

As explained in the response to Q1A.1.4, the case made by the County Council that existing Other Recovery capacity in Kent is sufficient to 2031 (end of the Local Plan period) has now been accepted by the Planning Inspector that examined the Early Partial Review of the Kent Minerals and Waste Local Plan.

It should also be noted that the Inspector found no flaw in the data reports produced to support the EPR, and expressly accounts for the assessment of RDF arising in Kent to be provided for at paragraph 24 of his report. In particular, this confirms that no further waste is forecast to be available within Kent as a feedstock. On that basis, the fuel availability assessment ought to be revisited to ensure it aligns with the EPR Inspector's finding.

Q1A.1.19. Does the allowance for future recycling targets included in the various assessment tables of the WHFAR [APP-086] take full account of the matters stated in paragraphs 2.4.3 to 2.4.5 of the WHFAR?

Are there other relevant considerations of a technical nature pertaining to technical feasibility and economic viability that should be taken into account and quantified, apart from the recycling targets? If so please comment.

KCC Response

Paragraph 2.4.4 of the WHFAR claims that the possible effect of provision of the expansion of K3 and the WKN facility on recycling has been tested in Section 3.4. This section includes a sub section entitled 'Future impact of the circular economy' and presents a discussion based upon local authority recycling performance data that is now nearly two years old.

It is also significant to note that the London authorities that have been considered were also counted within the catchment supplying feedstock to the Riverside Energy Park, and therefore ought not to be assumed as supplying feedstock to this proposal as well. That leaves the counties of Essex, Kent and East Sussex and West Sussex - all of which are already achieving higher levels of recycling and already have consented EfW capacity.

KCC considers, that regardless of the specifics, the national commitment is to achieve recycling levels of 65% and that is to be assumed to apply across the Study Area. Indeed, this level will now be enshrined in the new policy targets included in the Kent Minerals and Waste Plan, as amended by the to be adopted EPR. The Applicant's WHFAR, at section 3.4,

paragraph 3.4.22, states that, "*Much of C&I waste would fall within the CEP description for municipal waste, and consequently the overall increase in recycling required to meet the CEP 2035 target of 65% across municipal wastes, is unlikely to be as great as 27%*". This therefore appears to be recognising that the 65% is entirely achievable and ought to be taken as the baseline when calculating the available feedstock.

As stated in KCC's response to Q1A.1.13, given that a 70% recycling target by 2025 is set in Wales (see response to Q1A.1.45), KCC contends this ought to be considered within the sensitivity analysis instead.

Q1A.1.21.- KCC disagrees that the Proposed Developments are compliant with national and local policy regarding the matters set out in WHFAR [APP-086]. However what is the Applicant/KCC's view as to whether local policy in all relevant respects conforms with relevant national policy?

KCC Response

Updates to relevant local planning policy, as set out in the EPR, were found sound by the Inspector on 23 April 2020. Soundness is considered in the context of current national waste and planning policy as articulated in NPPW (2014) and guided by NPPG (2016). It can therefore be concluded that the policy approach taken by KCC is consistent with national policy.

Q1A.1.22. - Does KCC seek to make the Proposed Developments predicated solely on the demands of its area or to what extent would the flexibility expressed in the MoU enable demands of a wider area to be met? (See also Q1A.1.14)

KCC Response

The adopted KMWLP makes express provision for the management of a diminishing quantity of waste from London, recognising the limitations that London faces with regard to providing facilities, particularly landfill. However, the Riverside Energy Park located in the London Borough of Bexley, will add 800,000 tpa of consented capacity of the type proposed by these applications, and this capacity has not been accounted for in the Applicant's assessment. Given this additional capacity, considered alongside the reduced arisings based on the 2018 data presented in Appendix 1 of the KCC Written Statement as Minerals & Waste Planning Authority annexed to KCC Response to Written Representation dated 02.03.2020, the waste is unlikely to actually materialise as feedstock.

Q1A.1.23. - If the Proposed Developments were granted consent, to operate in accordance with the dDCO, would it be feasible or desirable to include further requirements necessary for them to operate in accordance with KCC's interpretation of national and local policy, for example by restricting the sources, including the geographical locations of feedstock and if not why not?

KCC Response

Given that it is acknowledged that waste will travel beyond administrative boundaries, it is not the sourcing of waste in itself that is problematic to KCC and its Kent Minerals and Waste Local Plan. It is simply that the quantum of capacity proposed is far above that which could ever be required to meet Kent's needs or to 'compensate' for flows of Kent waste beyond its borders. The proposal presents such fundamental concern to its waste planning strategy that the County Council, as Minerals and Waste Planning Authority, considers identifying conditions which would be effective and enforceable (once such major investment has been undertaken) is simply not possible to provide the necessary protection for the lifetime of the development.

To bring waste in from outside of the County that does not accord with policy would therefore place a further and unnecessary burden on the Counties highway network in an area where junctions are currently operating well beyond their capacity.

Q1A.1.24. - Is your objection to the Proposed Developments predicated on both K3 and WKN projects proceeding, or what is your position as regards any eventual consent being granted for one project but not the other, and why?

KCC Response

The County Council, as Minerals and Waste Planning Authority considers that neither the expansion of K3, or the WKN facility, are required to meet Kent's projected waste management needs. This has now been confirmed by the finding of the Inspector of the EPR of the Kent Mineral and Waste Local Plan. However, the Council notes that the K3 proposal is an expansion of an existing facility, which was itself consented by the County Council and is one that is to supply heat to the adjacent paper mill which plays an important role in the local economy. Whilst not tested through the planning process, the K3 expansion is within the development footprint previously consented by the County Council and its limited increase of feedstock has been argued by the Applicant to be a contingency provision for the changing calorific value of the feedstock supplying heat as well as power. Therefore, subject to satisfying other planning considerations, particularly those related to Highways and Transportation matters, the K3 expansion is more in line with local and national policy than the WKN proposal. The WKN proposal is a standalone proposal for a power only waste incineration plant and is not supported.

Q1A.1.29. - Please comment with reference to WHFAR [APP-086] paragraph 3.2.26 to 3.2.30 whether the LACW disposed to landfill or a percentage thereof should be deducted from the shortlisted combustible wastes, providing a justification for your comments.

KCC Response

It should be noted that the data is nearly two years out of date. In particular, the tonnages shown as being sent to landfill for South London have reduced with the commissioning of the Beddington EfW plant in 2019. Similarly, the tonnage sent to landfill in West Sussex is now largely diverted due to the void space in the landfill adjacent to the Mechanical and Biological Treatment (MBT) plant producing the RDF now being full. A consent has recently been granted for an EfW plan to process 180,000 tpa, on land adjacent to this landfill site to the company contracted to manage the RDF.

As a wider point, the County Council doubts that a significant proportion of the target waste identified as having been landfilled in 2017/18 (Table 3.4) would actually be suitable for use as a feedstock. This is because much of the waste classed under EWC code 19-12-12 is actually trommel fines which are, by definition, a low calorific value waste generated at sites mechanically separating the contents of skips. Much of this waste is actually sent to landfill as 'inactive waste' (which qualifies for a lower rate of landfill tax) having passed a 'loss-on-ignition' test. The tonnage of this type of waste relied upon is shown as being 906,111 tonnes in Table 3.4 in the WHFAR, which represents 60% of the tonnage of the shortlisted waste types identified within the Study Area as going to landfill in 2017.

Q1A.1.31. - Do you have any comments on the position regarding the nature of LACW contracts in the second bullet point of WHFAR [APP-086]?

KCC Response

We assume this is asking if KCC can confirm the claim regarding shorter term contracts becoming the norm for the management of LACW.

For the County Council, the residual waste management contract runs until 2030, with a tonnage supply to the Allington EfW plant of up to 374,000 tpa.

KCC understands the following position applies to county authorities in the Study Area:

- East Sussex - contract runs to 2033 supplying the ERF at Newhaven.
- Essex and Southend of Sea Councils entered into a 25-year contract with UBB Waste (Essex) in 2012 - to 2037.
- Medway Council has a contract until 2035 with an option to extend by five years.

It is not considered that any of the examples provided above substantiate the claimed trend towards shorter term contracts for LACW management.

Q1A.1.32. - Please submit Tolvik's Market Review referred to in WHFAR [APP-086] or identify its location .

KCC Response

It should be noted that Tolvik is a commercial consultancy that produces reports primarily for waste management facility providers or funders according to the client profile displayed on its website and should therefore not be seen as a neutral commentator on need in the South East[6]. In that regard it is notable that the evidence annex document to the National Resource and Waste Strategy[7] while referring to the Tolvik report, relies upon the Government's "own internal analysis." (p78).

Q1A.1.34. - WHFAR [APP-086] paragraph 3.4.7 states *"…the future capacity, and consequent availability, of landfill facilities cannot be relied upon beyond the next ten years…"*. The Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] SEWPAG on page 3, states provision of the consented capacity at K3 means management of waste will be locked into incineration for at least the next 25 years, compromising the ability to prevent it in the first place or to enable it to be recycled/composted.

What local or national studies exist of which you are aware, not already referred to, that identify the optimum role for the provision of energy recovery facilities similar to the Proposed Development, to move waste up the hierarchy, based on studied projected decreases in landfill availability and projected increases in recycling?

KCC Response

The recycling targets set in the Circular Economy Package adopted at EU level were based on an assessment of the contribution that recycling could make over the management of municipal waste through Other Recovery and associated carbon emission reduction benefits[8].

The most relevant study is that undertaken as part of the Kent Early Partial Review Evidence base, which considered projected decreases in landfill availability within Kent and projected increases in recycling. This concluded that the targets to be included in the Kent M&WLP via the EPR present a realistic profile given national targets to be met. These targets set Other Recovery at a maximum rate of 40% in 2020/21, reducing to 36% in 2025/26 (as recycling rates increase) and then 33% as recycling rates hit 60% in 2030/31. The peak predicted Other Recovery capacity requirement is 794,000 tonnes in 2020/1 This is more than adequately catered for by the one million tpa plus capacity offered by the existing capacity at Allington EfW and Kemsley SEP.

The study undertaken as part of the Early Partial Review concluded that for demand for additional Other Recovery capacity to exist for Kent waste, the requirement would have to

[6] https://www.tolvik.com/expert-advice/
[7] Our Waste, Our Resources: A Strategy for England Evidence Annex December 2018 Defra
[8] EEA Report No 3/2011 Waste opportunities Past and future climate benefits from better municipal waste management in Europe

exceed 1,025,000 tpa (the combined capacity of existing EfW plants). This tonnage represents 46% of peak tonnage of non-inert residual waste projected to arise in Kent which stands at 2.2 mt in 2031. Provision of capacity above this level would clearly conflict with achievement of the target recycling rate of 60% in 2030/31 i.e. 46%, plus 60% would exceed 100%. Given that a proportion of waste would neither be suitable for recycling or other recovery and would therefore continue to require landfilling (approximated at 7% in 2031), the overall recycling rate would have to fall substantially below 47% (100% minus (46%+7%)) for additional EfW capacity to be justified in Kent if the net self-sufficiency strategic objective of the adopted development plan for Kent is to be respected.

These findings were rigorously tested through examination of the EPR. The Kent Minerals and Waste Local Plan Early Partial Review Sensitivity Testing of Preferred Scenario is provided within Appendix 4. The County Council would like to draw the Examining Authority's attention to the sensitivity assessment presented at page 8 of the document.

Q1A.1.37. - Please provide an update, if any, as to your understanding of the position regarding Table 3.9 in WHFAR [APP-086] as to the facilities specified in rows a, b, c (Phase 2), and e.

KCC Response

a. Thames Gateway Waste to Energy Ltd 200ktpa (other recovery) Dagenham: Environmental Permit Granted. Pre-commencement conditions have been discharged and the planning permission has been implemented.

b. Rivenhall Integrated Waste Management Facility: Permission implemented. Environmental Permit granted 2017. Variation to allow lower stack to be issued imminently (May 2020). New funding partner to develop.

c. Tilbury Green Power Ltd. Phase 1 commenced operation Jan 2019. Status of Phase 2 unknown.

In addition to the above facilities, permitted capacity at Riverside Energy Park Bexley, the 3Rs (Recycling, Recovery and Renewable) facility in Warnham, West Sussex and Grundon at Ford Circular Technology Park, West Sussex ought to also be taken into account.

Q1A.1.39. - If the principle is a valid one that the waste hierarchy is complied with as stated in paragraph 2.4.1 "…based on market forces and practical factors alone,…" of WHFAR [APP-086] WHFAR) or through "…good intentions and market forces." as stated in paragraph2.4.7, what weight should be placed on policies of net self-sufficiency?

KCC Response

The approach taken by the applicant does not consider that compliance with the waste hierarchy has a statutory basis in law via Regulation 12 of the Waste England and Wales Regulations.

However, there is no direct relationship between compliance with the hierarchy and net self-sufficiency. Net self-sufficiency stands as a separate principle in the adopted development plan of Kent, and most other WPAs from whom waste is to be sourced as feedstock.

Each principle should be given significant weight in any planning determination. Local need to which net self sufficiency relates, is expressly identified in the NPPW in the first two bullets of the section concerning the determination of planning applications (section 7).

Q1A.1.40. - Within the context of NPS EN-1 (paragraph 4.2.22), that intends that a framework only is provided for the market to respond to, but “in the places where it is acceptable in planning terms”, what is the scope of that tailpiece for taking into account sub-national policies of net self-sufficiency or over-capacity?

KCC Response

"Acceptable in planning terms" is a broad clause that must include both local impacts that would normally be addressed by development management policies, and strategic impacts. Strategic impacts affect the underlying strategy for capacity provision enshrined in a Waste Local Plan that forms the core part of the development plan against which waste applications are required to be determined.

This is evidenced by NPPW, which includes a section on “Determining planning applications”. The NPPW provides two points considering the strategic implications of capacity provision reiterating the need for applicants to demonstrate the "…quantitative or market need for new facilities where proposals are not consistent with an up-to-date Local Plan." and the expectation that "…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." This is then followed at point 3 on the need to consider the likely impact on the local environment and on amenity.

Q1A.1.41. - Please provide the Kent Waste Needs Assessment 2018 Capacity Requirement for the Management of Residual Non-Hazardous Waste, September 2018 update, or identify its location in the submitted documents.

KCC Response

The Waste Needs Assessment 2018 Capacity Requirement for the Management of Residual Non-Hazardous Waste, September 2018 is provided in Appendix 5.

Q1A.1.42. - Do you agree that the Proposed Developments taken as a whole or looked at individually in terms of the K3 and WKN projects, would meet the energy recovery performance threshold (R1), or if not why not?

KCC Response

The County Council has no basis to determine if either development would qualify. A check of the Environment Agency listing of R1[9] qualified plants shows that the Kemsley Sustainable Energy Plant (SEP) currently undergoing commissioning trials is not included.

Q1A.1.43. - In KCC's written representation [REP-010, Annex 1], Section 5 please comment on the figures given for shortlisted waste types disposed to landfill (769,372) and RDF exported overseas (889,067), explaining how and why these differ from their counterparts in the Applicant's submission.

KCC Response

The values presented relate to the 2018 WDI dataset, which has been available for some time. The expectation of NPPG is that the "best available data" is used and KCC considers this to be the best available data.

Q1A.1.44 - NPS EN-3 appears to require, where appropriate, Annual Monitoring Reports to show existing waste capacity and future waste capacity requirements.

For the Proposed Developments who are the "relevant waste authorities" in paragraph 2.5.68 for these purposes?

KCC Response

The County Council considers this to be the WPAs from whom waste is targeted by the Study. However, it is notable that in this regard, that WPAs not included in the Study Area would also fall within the 2-hour drive time isochrone. It is not clear why these other WPAs have been omitted, and if waste is to travel from as far afield as 2 hour drive-time, then the risk of the proposal to their strategies ought also be considered.

Q1A.1.45. - In the Applicant's comments on written representations [REP2-011] paragraph 17, please explain where, when, how and by whom the waste referred to is certified as "not suitable for recycling".

KCC Response

The current recycling levels being achieved are at around 45%, and the expectation is that recycling rates will increase to 65% by 2035 This suggests that at least 20% by weight of

[9] R1' Recovery status acts as a proxy for the energy-generating efficiency of facilities. Facilities which achieve the status are classed as a recovery operation for the purposes of the waste hierarchy and so are considered to be a level up from the bottom rung of 'disposal'.

waste currently disposed of as residual waste has the potential for being suitable for recycling - given provision of the appropriate collection and management infrastructure.

In that regard, food waste is considered to represent around 20% by weight of residual waste and with the introduction of separate collection by 2023, this will remove weight but also reduce contamination (and despoliation) of recyclable materials enabling higher rates of recycling to be achieved.

It is also notable that the Welsh Government has adopted targets for the recycling of 70% of waste from households and commercial and industrial businesses by 2025. The 70% recycling target was partly based on an assessment of the composition of residual waste from commercial and industrial sources. This found that up to 75% of this material is recyclable[10].

Moreover, research commissioned by the Welsh Government concluded that there is a market failure in the provision of separate waste collection services for non-domestic premises such as business and the public sector. Therefore, the Welsh Government is now proposing to introduce bans on landfilling or incineration of loads of separately collected recyclable materials by July 2020.[11] KCC notes this could illustrate both what is technically possible and what measures might be forthcoming restricting the supply of feedstock to incineration plants such as that being proposed under this application.

Q1A.1.47. - Please comment on the alleged deficiencies referred to in paragraphs 12 and 39 of the Applicant's comments on written representations [REP2-011].

KCC Response

KCC has already rebutted each of the alleged deficiencies identified. It is alsop highlighted that the Inspector examining the EPR in finding it and its supporting evidence base sound, found that the concerns raised by the Applicant to have no substance.

Q1A.11 Traffic and Transport

Q1A.11.1. - In ES Chapter 4 - Tracked [REP2-019], do you agree that the A10 land allocation does not predict traffic to be generated onto highway links assessed in paragraph 4.4.28 or if not why not?

KCC Response

In respect of the local highway network, it is unlikely that the A10 land allocation would generate any significant traffic along Swale Way or through the Grovehurst/A249 junction. It is located on the B2006, with direct access to the A249 via the Bobbing interchange.

[10] Composition analysis of Commercial and Industrial waste in Wales WRAP Cymru January 2020

[11] Increasing Business Recycling in Wales Proposals for Statutory Instruments under Part IV of the Environment (Wales) Act 2016 and the Waste (Wales) Measure 2010 Welsh Government Consultation Document September 2019

However, it is likely that traffic would use the strategic network and impact upon Links 4.5.9, 10 and 11. As such, the statement within this question is not agreed.

Q1A.11.2. - Chapter 4 Transport-Tracked [REP2-019] paragraph 4.9.1 states "No traffic growth rates have been applied as traffic generated by committed developments exceed the traffic flows generated by the assumed development growth in TEMPRO." Do you agree and what is the significance of this statement for assessing the likely significant traffic and transport effects resulting from the Proposed Developments?

KCC Response

The County Council agrees with the statement in this question. The predicted growth from the committed developments represent significant traffic increases above those observed in the base test. TEMPRO, being a strategic assessment of growth over large geographical areas, can underestimate the impact upon smaller areas of the local highway network, as would appear to be the case for this application. The significance is that the higher level of development traffic movements associated with the already committed developments result in the appearance that the proportion of cumulative impact from this application will appear less than if it had been compared to just TEMPRO.

Q1A.11.3. - Do you agree with the conclusions regarding the Neatscourt, Isle of Sheppey area in paragraph 4.9.8 of ES Ch 4 Transport-Tracked [REP2-019]?

KCC Response

The County Council agrees with the conclusions regarding the Neatscourt, Isle of Sheppey area in paragraph 4.9.8 of the ES.

Q1A.11.4 - Please provide the Transport Assessment referred to in the IBA application which is noted in [REP2-048] KCC D2 Submission and [REP1-011] KCC LIR at Section 6, and state when it was received.

KCC Response

The IBA application was validated on 10 January 2020. The Transport Assessment is available as an appendix (Appendix 6), and a Technical Note (Appendix 7).

As Minerals and Waste Planning Authority, the County Council would like to highlight that the following is required to test the robustness of the proposal:

- Establish the minimum proportion of waste that would have to come from landfill to yield a net positive carbon benefit given that export of RDF is shown to be more beneficial (Response to Q1A.1.3)

- Decrease the biodegradability content below 45% to e.g. 30% or less (Response to Q1A.1.12)
- Feedstock Availability Assessment
- Increase recycling rate to 70% at 2030 and rising. (Response to Q1A.1.13);
- Revise data for Kent in light of approval of EPR evidence base by Inspector (Response to Q1A.1.17;
- Revise data for London authorities given grant of Riverside Energy Park DCO (Response to Q1A.1.6); and
- Update assessment in light of 2018 data (Response to Q1A.1.13).

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

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Appendix 1: Kent EPR and MSP Inspector Report
Appendix 2: Status of WPAs counted within Study Area with regards to net self sufficiency
Appendix 3: WPAs counted within Study Area for DCOs
Appendix 4: KMWLP EPR Sensitivity on Recovery Requirement 08 10 2019 v5
Appendix 5: BPP Consulting Kent WNA 2018 Residual NHW Management Needs Sept 2018 Update v1.4 05.09.2018
Appendix 6: Transport Assessment in respect of IBA Facility.
Appendix 7: Technical Note in respect of IBA Facility.