



Wheelabrator
TECHNOLOGIES



**Deadline 4: Applicant's Response to Examining Authority's
Second Written Questions (ExQ2)**

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

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Introduction

Purpose of this document

- i. This Document has been prepared at Deadline 4 of the Examination by the Planning Inspectorate into an application by WTI/EFW Holdings Ltd (a subsidiary of Wheelabrator Technologies Inc – “WTI”) under the Planning Act 2008 for a Development Consent Order (a “DCO”) for the construction and operation of the Wheelabrator Kemsley (“K3”) and Wheelabrator Kemsley North (“WKN”) waste-to-energy generating stations on land at Kemsley, Sittingbourne in Kent.
- ii. This Statement provides the response by the applicant to the Examining Authority’s Second Written Questions (‘ExQ2’) issued on 6th May 2020.
- iii. For ease and completeness this document briefly summarises the proposed development and identifies the application site before providing each of the Questions and the Applicant’s response to it.

Context

- iv. The application for a Development Consent Order seeks consent for the construction and operation of a 75MW waste-to-energy facility, ‘the Wheelabrator Kemsley Generating Station’ (“K3”) and for the construction and operation of a 42MW waste-to-energy facility, ‘Wheelabrator Kemsley North’ (“WKN”).
- v. K3 is a waste-to-energy facility located adjacent to and east of the DS Smith Kemsley paper mill, to the north of Sittingbourne, Kent. Planning permission was granted for K3 in 2012 by Kent County Council with a generating capacity of 49.9MW and a waste processing capacity of 550,000 tonnes per annum. The facility is now operational, as of Q2 2020.
- vi. The applicant has identified that K3 would be capable of processing an additional 107,000 tonnes of waste per annum and, without any change to the external design, generating an additional 25.1MW of electricity. However, in order for the K3 project to be properly categorised and consented under the Planning Act 2008 the applicant is required to seek consent for the construction of K3 at its total generating capacity of 75MW (i.e. 49.9MW consented + 25.1MW upgrade), together with the separate proposed total tonnage throughput of 657,000 tonnes per annum (550,000 consented + 107,000 tonnage increase).
- vii. The proposed new Waste-to-Energy plant, Wheelabrator Kemsley North (WKN), would be a single 125Mwth line facility capable of processing

390,000 tonnes of waste per annum, with a generating capacity of 42MW. WKN is not therefore a Nationally Significant Infrastructure Project (NSIP) by virtue of its generating capacity.

- viii. Instead WTI made a formal application on the 1st June 2018 to the Secretary of State (SoS) for Business, Energy and Industrial Strategy under Section 35 of the Planning Act 2008 for a direction as to whether the project is nationally significant. The SoS issued their direction on the 27th June 2018 confirming that WKN is to be considered and treated as a development which requires development consent due to its context with other nationally significant projects in the vicinity, the benefits to K3 and WKN being assessed comprehensively through the same DCO process and the removal of the need for separate consents to be sought.
- ix. A single Development Consent Order is being sought for K3 and WKN through a single application to the Planning Inspectorate (PINS), prior to being determined by the Secretary of State (SoS) for Business, Energy and Industrial Strategy.

The Site and its surrounding

- x. The K3 and WKN sites lie to the north-east of the village of Kemsley, which itself sits at the north-eastern edge of Sittingbourne in Kent. The K3 and WKN sites lie immediately to the east of the Kemsley Paper Mill, a substantial industrial complex which is operated by DS Smith.
- xi. In April 2018 DS Smith lodged an application for a Development Consent Order (DCO) which would allow for the construction and operation of 'K4', a gas fired Combined Heat and Power Plant within the Kemsley Mill site. This DCO was granted on 5th July 2019.

Proposed Development

Wheelabrator Kemsley – K3

- xii. Planning permission was granted for K3 in 2012 by Kent County Council under reference SW/10/444. As consented and being constructed, K3 can process up to 550,000 tonnes of waste each year and has a generation capacity of 49.9MW. K3 will export electricity to the grid and will supply steam to the DS Smith Kemsley Paper Mill. The construction of K3 began in 2016 and the facility began operation in Q2 2020.
- xiii. WTI has identified that K3 would be capable of processing an additional 107,000 tonnes of waste per annum and, without any change to the external design, generating an additional 25.1MW of electricity.

- xiv. The 2018 consultation and publicity sought views from interested parties on an application for consent for that power upgrade and increased tonnage throughput, without any construction works being required, as an extension to the K3 facility under Section 15 of the Planning Act 2008.
- xv. However, in order for the K3 project to be properly categorised and consented under the Planning Act 2008 the applicant is now seeking consent for the construction of K3 at its total generating capacity of 75MW (49.9MW consented + 25.1MW upgrade), together with the separate proposed total tonnage throughput of 657,000 tonnes per annum (550,000 consented + 107,000 tonnage increase).
- xvi. A further consultation was undertaken in 2019 to advise S42 consultees and notify the public through a number of S48 notices that construction and operation of K3 is now being sought as part of the DCO, in the context of the K3 facility already being substantially constructed.
- xvii. As the K3 facility is now operational the effect in reality of the proposed application ('the practical effect') would be the retention of the K3 facility as consented but with it generating an additional 25.1MW together with being able to process an additional 107,000 tonnes of waste per year.

Wheelabrator Kemsley North – WKN

- xviii. WKN would be an entirely new and separate waste-to-energy facility on land to the north of K3, which is currently being used as the K3 construction laydown area. WKN would provide clean, sustainable electricity to power UK homes and businesses via the National Grid distribution network and would have the ability to export steam should a user for that steam become available.
- xix. WKN would have a generating capacity of 42MW and a waste processing capacity of 390,000 tonnes per annum and be a self-contained and fully enclosed facility with its own reception hall, waste fuel bunker, boiler, flue gas treatment, turbine, air-cooled condensers, transformers, office accommodation, weighbridge, administration building, car parking and drainage. WKN would have its own grid connection to allow for the exporting of electricity to the national grid.

Applicant’s Responses to Second Written Questions (ExQ2)

- xx. The ExQ2 are grouped into a number of different categories. This document provides each question and the response to it by the Applicant. Where relevant reference is made to Appendices, as well as cross references made to other documents as referenced in the Examination Library.

ExQ2A.1 – Participation in the Examination

Q2A.1.1 – All IP’s - How would you want the remainder of the Examination to be undertaken?

Q2A.1.2 – All IP’s - How much do you anticipate participating in the rest of the Examination?

Q2A.1.3 – All IP’s - Which topics at an Issue Specific Hearing, if held, are you likely to want to observe?

Q2A.1.4 – All IP’s - Which topics at an Issue Specific Hearing, if held, would you or your nominated speaker(s) like to participate in as a speaker and if so why?

Q2A.1.5 – All IP’s - If you selected a topic above, please provide reasons as to why you would like to speak at such an Issue Specific Hearing(s)?

The Applicant confirms that it is content to proceed with the Examination by means of written submissions and does not see a particular need for Hearings to be held, based on the ExQ1, ExQ1A and ExQ2 responses and matters raised by Interested Parties. Should the ExA determine that Hearings are to be held then the Applicant will engage with those fully.

Q2A.2 Your Facilities

Q2A.2.1 – All IP’s – Do you have access to a computer or tablet connected to the internet, or to a smart phone?

Q2A.2.2 – All IP’s – If you have a computer running an operating system that is not Microsoft Windows 10 or Macintosh OSX Catalina (version 10.15), please tell us the manufacturer, type and version of the operating system, for example, ‘Microsoft Windows 8’, or ‘Linux Debian 10:10.3’.

Q2A.2.3 – All IP’s – How confident are you that you could use your computer, tablet or smart phone to participate in a Hearing where you could see and be seen, speak and be spoken to, by participants in real time?

Q2A.2.4 – All IP’s – Do you have access to a telephone that you could use?

Q2A.2.5 – All IP’s – How confident are you that you could use your telephone or mobile phone to participate in a Hearing where you could speak and be spoken to by participants in real time?

The Applicant confirms, for the avoidance of doubt, that it has the necessary capabilities and a range of systems and technology to allow it to participate in virtual hearings should those be considered by the ExA to be required.

Q2A.3 How the Planning Inspectorate can help you

Q2A.3.1 – All IP’s - If your confidence in being able to participate in a Hearing by use of an electronic device is low, why is that?

Q2A.3.2 – All IP’s - As applicable, please could you provide further details of why your confidence level is low or why you do not consider that a video conference or teleconference is suitable for Hearings?

Q2A.3.3 – All IP’s - How could the Planning Inspectorate help to increase your confidence level?

Q2A.3.4 – All IP’s - Is there anything else that we should do help you to increase your confidence level or otherwise help you to engage with the rest of the Examination?

The Applicant has not identified any matters which would lead to assistance being required from the Planning Inspectorate in order for them to engage effectively in the examination.

1 ExQ2.1. – Principle and nature of the development, including waste recovery capacity and management of waste hierarchy

1.1 Q2.1.1 – Applicant - Applicant’s Response to Examining Authority’s Written Questions (ExQ1.2.5) [REP2-009] stated: “The WKN permit application will be submitted not later than the 1st July 2020.”

Please provide an update as to the progress of this application.

1.1.1 The Permit application for WKN is still scheduled to be submitted to the Environment Agency by the 1st July 2020. The final draft of the application and supporting documents are currently being produced.

2 ExQ2.2. – Environmental Impact Assessment

No Questions at ExQ2.

3 ExQ2.3 – Air Quality

- 3.1 Q2.3.1 – Applicant - Paragraph 2.7 of the MMO’s submission [REP3-017] cross-refers to paragraph 11.9.38 of the Applicants ES-Chapter 11 submission [REP2-024], where the MMO disagrees that Swale MCZ is a subtidal designated site.

On review of NE’s Conservation Advice Package, MMO found intertidal features to be present, e.g. coarse sediment, mixed sediments, sand and muddy sand. The same intertidal features were included in the Applicant’s assessments submitted as part of the marine licence application.

Will the Applicant review this statement, explain the inconsistency and describe what implications there are for the conclusions of the air quality assessment?

- 3.1.1 The applicant agrees this was a typographical error and should have read inter- and sub-tidal designated site. This does not change any of the conclusions of the air quality assessment - the nutrient status of intertidal habitats is completely dominated by the marine environment as a result of being inundated by the tide twice daily.

- 3.2 Q2.3.2 – Applicant, SDC, EA - The information currently in the draft CEMP [APP-012] is at a very high-level and appears substantially no more than in ES Chapter 5 [REP2-020].

Reference is made to the IAQM dust guidance, referring to the avoidance of site runoff, bonfires and burning of waste materials and some information provided on wheel washing. Requirement 22 of dDCO states the CEMP must accord with the ES and the draft CEMP.

ES Chapter 5 and the draft CEMP state a Dust Management Plan will be developed and implemented. Do you consider it necessary or helpful to provide a draft Dust Management Plan for consultation with IPs as part of the stated air quality mitigatory measures in paragraph 5.3.1 [APP-012]? Do you consider reference to it should be made in the dDCO and are you satisfied that the draft CEMP provides sufficient detail?

- 3.2.1 The Dust Management Plan element of the CEMP is expected to include a range of standard measures which draw on the IAQM dust guidance, such as site layout planning, the sheeting of lorries and skips, the avoidance of bonfires and the methods for recording and responding to dust and air quality complaints and as such it is not considered necessary to provide IP’s with a draft of that Plan for review within the Examination and no IP’s have requested sight of that Plan at this stage. The inclusion of dust management measures within a Dust Management Plan is recorded within the draft CEMP which ensures, through the wording of Requirement 22, that one would be required by the relevant planning authority in order for that Requirement to be discharged.

3.2.2 The full CEMP would be prepared by the contractor appointed to construct WKN. For the purposes of the Examination the Applicant’s position is that the draft CEMP provides sufficient detail to identify the areas which would be addressed within the full CEMP, which would be subject to review by the relevant planning authority for the purposes of the requirement being discharged. The draft CEMP has been amended at Deadline 4, as also discussed with in the responses to ExQ2.5.6 and ExQ2.8.2, to make clear that any measures listed within it are examples and can be expanded upon in the final CEMP.

3.2.3 The approach proposed by the Applicant broadly reflects that taken by the nearby K4 DCO (SI 2019 No.1091); an outline CEMP was provided as part of that application and the DCO, as made, requires the provision of a CEMP through Requirement 7:

Construction Environmental Management Plan

7. –(1) No part of the authorised development may be commenced until a CEMP for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority.

(2)The CEMP, which must specify measures to mitigate the impacts of construction works, must be substantially in accordance with the outline CEMP.

(3)Construction works for the authorised development must be carried out in accordance with the approved CEMP for that part.

3.2.4 Requirement 22 within the draft DCO includes further detail than that provided for by Requirement 7 in the K4 DCO by specifically mentioning elements which will be included in the full CEMP, including methods for dealing with complaints relating to dust and the methods of taking corrective action.

4 ExQ2.4. – Archaeology and Cultural Heritage

No Questions at ExQ2.

5 ExQ2.5 – Ecology

5.1 Q2.5.1 – Applicant - Please explain what if any differences exist between the Application document 6.8 Ecological Mitigation and Management Plan [APP-154] and ES Appendix 11.4 – Ecological Mitigation and Management Plan [APP-046]. Both documents state they were issued in July 2013.

5.1.1 There are no differences between the two documents; they are the same report which has been included for completeness as an ES Appendix.

5.2 Q2.5.2 – Applicant - Referring to ExA ExQ1.5.2, the MMO [REP3-017] disagree with the statement in ES Chapter 11 para 11.9.38 [REP2-024] that Swale MCZ is (solely) a subtidal designated site. NE's Conservation Advice Package indicates intertidal features are present, and such features were assessed as part of the marine licence application.

ES para 11.9.38 states that as the MCZ is sub-tidal there is no potential for disturbance of interest features during construction. Paragraph 11.9.103 notes the same for operation. However, para 11.4.15 notes it is intertidal and subtidal.

Please could you explain the inconsistency and describe any implications for the conclusions of the ecology assessment?

5.2.1 This was a typographical error; the Swale MCZ should have been referred to as both sub- and inter-tidal designated site. However, being intertidal mud/sand/stone, none of the intertidal habitat features for which the MCZ is designated are sensitive to disturbance from noise, human/vehicle movement etc. during construction/operation of the WKN Proposed development. The potential for disturbance on the features of the MCZ during construction of the outfall (as the closest activity to the designated site during construction) is assessed in Appendix 11.7 of ES Chapter 11). This was accepted by the MMO as being satisfactory in their granting of the licence. As such, there are no implications for the conclusions of the ecology assessment.

5.3 Q2.5.3 – Applicant - The MMO in its D2 submission [REP3-017] concerning ES Chapter 11 para 11.9.73 [REP2-024], notes the reference to outfall pipes and operation and advises the Applicant to consider any maintenance works

needed for the outfall pipes, and to either incorporate this into a DML or request a variation to the existing ML.

(i) The current ML does not consent operation of outfalls, nor does the MMO consent discharge of water under MCAA, and operation is not clearly defined in the ES, i.e. does it include maintenance or discharge of water only?

(ii) Could you please explain how exactly if at all the current licence would cover operation and maintenance activities and whether you now seek a variation to the ML to cover maintenance.

5.3.1 The Applicant agrees that as confirmed in its Response to Deadline 2 Submissions, submitted at Deadline 3 [REP3-003] the operation of the outfalls is not a licensable activity under the Marine and Coastal Access Act 2009. However as also noted in the response to ExQ2.5.5, the K3 Environmental Permit identifies the K3 outfall as a point source emission of uncontaminated rainwater runoff to The Swale and confirms that no parameters or limits on that outfall are set. The Applicant would expect a similar position to be taken in respect of the additional outfall to serve the WKN facility. The Applicant’s position is therefore that the current licence does not cover the operation of the K3 outfall but does not need to as that is covered as far as is necessary within the Environmental Permit for K3 and that the same approach would be taken for the WKN outfall.

5.3.2 Any maintenance works required to the outfalls which do not represent an activity requiring a Marine Licence would be able to be conducted under the DCO (provided always that they do not give rise to any materially new or different environmental effects). Should the need arise for maintenance works which did involve some form of licensable activity of a scale or nature which required a Marine Licence then that would need to be sought at the appropriate time, but maintenance works of that extent are not envisaged in the foreseeable future because they are not routinely required for what is essentially a large concrete pipe. Therefore it was not considered necessary to condition maintenance as part of the marine licence as issued, and it is still not considered necessary or appropriate to vary the licence at this stage.

5.4 Q2.5.4 – MMO/EA - What is your view of the Applicant’s statement that no DCO Requirement or environmental permit is needed in respect of operation as only clean surface water will be discharged from the outfalls?

5.4.1 The Applicant notes that this is directed at the MMO and will review and comment on any response provided as necessary.

5.5 Q2.5.5 – Applicant - Please identify where in the application documents is information about the rate and volume of the discharge from the outfalls.

- 5.5.1 As also set out in the response to ExQ2.5.3 the Environmental Permit for K3 [**Appendix A** to this document] records at Table S.3.2 the location of the K3 outfall to The Swale as a point source emission, stating that the source of the emission is uncontaminated rainwater runoff. No parameters or limits are set for the K3 outfall and it is expected that any permit issued for WKN would take the same approach with regard to the discharge of uncontaminated rainwater from the WKN site.
- 5.5.2 Condition 17 of the original K3 planning permission requires all surface water drainage from the application site discharging to a local water course to be attenuated to a 1:100 year return storm with a limited discharge of 7 litres per second. That Condition has been transposed into the dDCO as Requirement 12 for the purposes of continuing to control the surface water runoff from K3. Requirement 18 relates to WKN and requires a surface water drainage strategy to be submitted to and approved by the relevant planning authority, which would allow for a level of discharge consistent with that set in any Environmental Permit for WKN to be defined.

5.6 Q2.5.6 – Applicant - Regarding ExA ExQ1.5.9 and the Applicant’s submission [REP2-009] that the draft CEMP [APP-012] contains examples of what would be included in final CEMP rather than a comprehensive list of all means necessary (including that detailed in the HRAR).

(i) The details requested by the ExA have not been provided. What measures for example would be taken to prevent rubbish entering reedbed areas used by breeding marsh harrier, or what measures would be taken to avoid pollution incidents?

(ii) Can the Applicant provide more precision to satisfy the ExA that the detail in the dCEMP is adequate to form the basis of the final CEMP thus ensuring that appropriate measures are secured and would be implemented?

- 5.6.1 An amended version of the draft CEMP has been submitted at Deadline 4.
- 5.6.2 In respect of i) the amended draft CEMP now makes specific reference at 5.7.6 to the use of a 2.4m close boarded fence to prevent rubbish from entering the reedbed.
- 5.6.3 In respect of ii) the draft CEMP has been amended where necessary to make clear that any measures included do not form an exhaustive list. As set out in the Applicant’s response to ExQ2.3.2 the approach of using a draft CEMP is considered to be appropriate and the draft CEMP is submitted to provide sufficient detail to outline the areas to be addressed in the final CEMP, which would be reviewed by the planning authority in order to discharge Requirement 22.

- 5.7 Q2.5.7 – Applicant – Regarding ExQ1.5.12 the Applicant states at D2 [REP2-009] that paragraph 11.9.113 of ES Chapter 11 [REP2-024] should state that an updated management plan for WKN would be produced, as required by R21 dDCO [REP2-006, REP-007], similar to the EMMP produced for K3 in Appendix 11.4 [APP-046]. This WKN plan is variously titled in ES Chapter 11, and entitled 'Ecological management and enhancement plan in dDCO R21, which provides that it must be in accordance with the survey results, mitigation and enhancement measures included in ES Chapter 11.**

The ExA notes that no commitment appears to be made to producing a WKN EMMP during the Examination. The ExA is concerned that if no draft WKN EMMP is provided to the Examination this will affect the confidence with which it could be asserted that the required mitigation would be adequately secured for the Proposed Development.

Please provide a draft EMMP.

- 5.7.1 R21 of the dDCO requires the production of an Ecological Mitigation and Management Plan (EMMP), taking account of the survey results, mitigation and enhancement measures set out in Chapter 11 which, by extension, also includes those in the HRAR (which sits as an appendix to that chapter). Given the physical proximity of WKN to K3, the ecological issues that such a document would address will be largely identical to those set out in Appendix 11.4 [APP-046] with nothing 'new' required. Further, neither NE and KCC have expressed any concern that R21 does not provide sufficient certainty that the EMMP for WKN will capture what is required to ensure ecological effects of WKN are suitably mitigated. As such, it is considered that there can be high confidence that these measures would be secured and as such the Applicant’s view remains that producing a draft EMMP is not necessary at this stage – however should the ExA consider that to be necessary should NE or KCC take the position that one is required then the Applicant would prepare a draft accordingly.

- 5.8 Q2.5.8 – Applicant – Regarding ExQ1.5.13 and the Applicant’s response at [REP2-009] the dDCO [REP2-006] is amended.**

(i) The Applicant states that the restricted months are consistent with those in the ML, however the ML allows works between 1 Apr - 31 Sept. Please comment.

(ii) It is not explained why piling is acceptable in March. Please comment.

- 5.8.1 i) The ML refers to the period within which construction activities are acceptable for the outfall. R29(1) of the dDCO refers to when impact piling would be acceptable. No impact piling is necessary for the installation of the outfall.

5.8.2 ii) Disturbance effects more critical in colder weather periods, so particularly January and February. In March average temperatures are higher and any potential disturbance events would be less adverse to the waterfowl. This approach has been agreed with Natural England in the draft SoCG.

5.9 Q2.5.9 – Applicant – ML Condition 5.2.7 states that Continuous Flight Auger piling must be used where possible but that if impact piling is required a slow start must be applied. The Environmental Appraisal included with the full copy of the ML application submitted at D2 [REP2-036] states (p13) that as all sheet piling is to be installed via vibro hammer it is highly unlikely that any noise disturbance effects would occur for intertidal species.

As there appears to be no reference to piling in the description of the Proposed Development in ES Chapter 2 the method of piling to be used for construction of the 2nd outfall is unclear. Please provide the outstanding information.

5.9.1 It is confirmed that the Marine Licence makes provision for the use of either a vibro hammer or auger driven approach to install the sheet piling for the WKN outfall. The K3 outfall was constructed using the vibro hammer approach and it is therefore envisaged that method would be used to install the WKN outfall. As noted in Q.2.5.9 the Environmental Appraisal submitted to support the Marine Licence application concluded that it would be highly unlikely for any noise disturbance effects to occur for intertidal species from the use of vibro hammers and the Marine Licence requires a soft start of any vibro hammer activity.

5.10 Q2.5.10 – Applicant – Regarding ExA WQ1.5.14 and the Applicant’s reply at [REP2-009] the two points included in the Question, on habitat loss and measures that would be implemented if post-development monitoring identified any issues, have not been addressed.

Please provide the outstanding information.

5.10.1 Details of the habitat monitoring regime will be included in the EMMP, to be secured via R21. This will include details of monitoring of the habitat post development that would take place on an annual basis. The monitoring regime will flag if there are shortfalls or failures in the re-instatement and habitat creation. Any measures will be flagged in a written report to the LPA and remedial actions/amendments to the EMMP agreed. Such actions would depend on the nature of the issues identified but could include changes to the mowing regimes (increase or decrease in frequency), re-planting of plants that had failed to establish or installation of rabbit fencing to prevent rabbit grazing of newly-planted stock, for example.

5.11 Q2.5.11 – Applicant - ES Appendix 5.4: Assessment of Ecological Impacts is updated at March 2020 in D2 Submission [REP2-032, REP2-033]. This Appendix assesses air quality impacts on designated nature conservation sites and presents the results of detailed modelling at each of the sites.

(i) For Nutrient N Deposition relating to Shingle & sea cliff (dunes, shingle & machair), the PEC is 153% of the critical load and the impacts can’t be screened out. The results have been passed to the projects’ ecologist to assess the effects. Please provide an update to this assessment.

(ii) Table 5.4.11 (Predicted Nutrient N Deposition at Designated Sites) has been removed from the updated ES Appendix 5.4, although references to it remain in the updated ES Chapter 11. Please could you explain why, and provide an amended Appendix 5.4, if necessary, for Deadline 4.

5.11.1 (i) As set out in para 11.11.14 of Chapter 11 of the ES, these habitats are a considerable distance from the K3/WKN Proposed Developments (>10 km within The Swale SPA/SSSI/Ramsar) while those nearest to the site within the Medway Estuary & Marshes SPA/SSSI/Ramsar are not considered sensitive due to their nutrient status being dominated by that of the tide.

5.11.2 (ii) The information in Table 5.4.11 was removed from the updated ES Appendix 5.4 as only one interest feature could not be screened out based on the PC and PEC. This was added into a paragraph under the Nutrient N Deposition subheading in the Cumulative Impacts section of the Appendix rather than having a single row in a table.

5.12 Q2.5.12 – Applicant - ES Appendix 5.2: Stack Height Determination for WKN is updated (no date in document) at D2 Submission [REP2-030, REP2-031]. It is stated that the stack height may be subject to change and may increase as the detailed design for the WKN Proposed Development continues to evolve. The stack height will be confirmed as part of the formal submission to PINS in spring 2020.

The original submitted Stack Height Determination [APP-026] stated that the stack height would be confirmed as part of the formal submission to PINS in spring 2019.

Please explain what submission or submissions have been made that confirms the stack height within the Proposed Development.

5.12.1 Table 1 of Requirement 14 of the draft DCO provides a minimum height parameter of 90m and a maximum height parameter of 99m for Work No 2 (f) Stack. The intention is to provide some design flexibility for the height of the stack but then to ensure clarity for the purposes of the EIA by defining a lower limit for air quality modelling and an upper limit for assessing landscape and visual impacts.

6 ExQ2.6. – Greenhouse Gases and Climate Change

No Questions at ExQ2.

7 ExQ2.7. – Ground Conditions

No Questions at ExQ2.

8 ExQ2.8. – Habitats Regulations Assessment

- 8.1 Q2.8.1 – Applicant - Regarding ExQ1.8.10 and HRAR paras 3.1 and 3.11, an in-combination effects (ICE) assessment of the project together with other plans and projects should take place at both screening and AA stage. No screening ICE assessment appears to have been undertaken, as it is not presented in the screening matrices, only the integrity matrices.

Please provide a separate assessment of the ICE for the screening stage and reflect this in updated matrices.

- 8.1.1 Updated HRAR (Rev H) and matrices provided at D4. Clarification with respect to the approach to ICE within the HRAR (all LSE can be screened out) is provided. Matrices have been updated to reflect this with screening ICE added to all screening matrices and ICE removed from integrity matrices.

- 8.2 Q2.8.2 – Applicant, SDC, EA, NE - The WKN CEMP states that the listed measures will be implemented, not that they are examples, and is light on detail in Section 5.3. The measures listed in HRAR 6.6 are described as expected to be included in the CEMP, however only one of those (Water Env, para 5.6.1 - wheel washing) is included.

Are you content that there is sufficient detail in the HRA/CEMP to ensure that the necessary mitigation would be secured through the DCO and if not please explain what further detail might in your view be provided?

- 8.2.1 An amended version of the draft CEMP has been submitted at Deadline 4. The amended draft CEMP has been reworded to make clear that any measures stated are examples and are not exhaustive and now reflects the full list of measures included at Section 6.6. of the HRAR.

- 8.3 Q2.8.3 – Applicant - Regarding ExQ1.8.14 and the Applicant’s reply at REP2-009 HRAR para 6.151 has been amended but refers to dDCO R11. Is this an error and should it refer to R22?

- 8.3.1 Yes, it should refer to R22. Amended HRAR (Rev H) provided at D4.

- 8.4 Q2.8.4 – Applicant - Regarding ExQ1.8.17 and the Applicant’s reply at [REP2-009] as outlined in Appendix 1/2 of the HRAR, the matrices address the practical effect (PE) of the K3 Proposed Development (PD) along with those of the WKN PD. The updated HRAR submitted at D2 makes this explicit.

However the Applicant suggests the preamble to Appendix 1 also applies to Appendix 2, although no K3 PE likely significant effects were predicted so no

integrity matrices are required. The reference in HRAR para 6.1 to the inclusion of integrity matrices for the K3 PD in Appendix 2 has been deleted, however 'K3' has been inserted in the title of Appendix 2, which suggests the integrity matrices do apply to both K3 and WKN.

Please would you clarify the position?

8.4.1 The insertion of K3 into the title of Appendix 2 was a typographical error that has been corrected in the D4 submission. The integrity matrices do not apply to K3.

8.5 Q2.8.5 – Applicant - Please provide Word versions of the updated matrices, as requested in ExQ1.8.18.

8.5.1 These are provided at Deadline 4.

8.6 Q2.8.6 – NE, Applicant - The MMO in its submission [REP3-017] notes that saltmarsh habitats and locations were not identified in the HRAR, despite being discussed in the ML application.

What comments if any do you have on this matter, including the scope and proliferation of habitats and individual species information?

8.6.1 Saltmarsh is a supporting habitat of the various SPA/Ramsar interest features and is identified as such in the HRAR in Table 4.7.

9 Q2.9 - Landscape and Visual Impact

9.1 Q2.9.1 – Applicant - Regarding ExQ1.9.1 and the Applicant’s reply at [REP2-009] no detail of architectural treatments or surface finishes are included in the dDCO. The maximum design parameters for WKN have been modelled in the photomontages as simple grey forms.

Can the applicant explain how this fits with the good design principles set out in MHCLG’s National Design Guide (2019)?

9.1.1 The Applicant’s position is that the use of simple grey forms for the purposes of the Examination, when combined with Requirement 14 of the draft DCO which requires full details of siting, layout, scale and external appearance (including colours, materials and surface finishes) is both a necessary and appropriate approach to take in the context of this particular scheme.

9.1.2 The approach is necessary as no contractor has been appointed for the construction of the WKN facility. WTI’s experience of similar facilities ensures that they have the experience required to define a set of building parameters which reflects the required building dimensions for a facility of the scale required in order to allow for a robust assessment to be undertaken within the EIA.

9.1.3 The approach is appropriate in that Requirement 22 then provides the relevant planning authority with the opportunity to review the proposed design of the facility in full detail and will allow for an assessment of that design to be undertaken against the good design principles set out in MHCLG’s National Design Guide. Elements of the National Design Guide such as those sections addressing the Layout, Form and Scale of development are relevant to the current consideration of the grey forms used to indicate the parameters of the WKN facility and are assessed as such in respect of the Landscape and Visual Chapter of the Environmental Statement in particular. The approach taken by the WKN facility to addressing elements such as Appearance, Landscape, Materials and Detailing and other relevant Characteristics of good design set out within the National Design Guide would be considered as part of an assessment of the details submitted to address Requirement 14.

9.1.4 The position of the Applicant in respect of the WKN parameters proposed to be secured through the dDCO, in respect of the National Design Guide, is that they are appropriate in their scale and use to their context within an industrial area, adjacent to the existing K3 facility.

10 Q2.10 – Noise and Vibration

No questions at ExQ2.

11 ExQ2.11 – Traffic and Transport

- 11.1 Q2.11.1 – All IP’s - The ExA intends, subject to the latest Guidance from the SoS, to undertake USIs of locations nominated by IPs in relation to traffic and transport effects wherever possible and practicable.

However, if you have nominated locations for an ASI and submitted them at D1, do you wish to provide photographic and/or other video evidence to support your submissions?

If so please indicate when you would be in a position to submit any such evidence, indicating how you propose to verify the location(s) and date(s) in the evidence and link it to your submissions. I will take this information into consideration when determining how to proceed with the Examination.

- 11.1.1 The Applicant confirms that it would be possible to arrange for an Accompanied Site Inspection by the ExA of the K3/WKN site whilst observing necessary social distancing and health and safety measures relevant to the current COVID-19 situation, and assuming that such an approach would accord with relevant Government guidance at that time. However it accepts that such an approach is unlikely to be possible based on current Government guidance should other Interested Parties be required to attend that site visit.
- 11.1.2 The Applicant has the ability to provide up-to-date photographs from selected viewpoints to identify the features which would have been viewed on any Accompanied Site Inspection of the locations identified by the Applicant at Deadline 1. Alternatively, or in addition, the Applicant does have the ability to obtain drone footage of the K3 and WKN sites and would provide that as a video, together with an accompanying route map. The drone footage would have a date and time stamp.
- 11.1.3 The Applicant expects that they would be able to supply the aforementioned photos and drone footage by Deadline 5, currently scheduled for the 24th June 2020.

12 Q2.12. – Water Environment

No Questions at ExQ2.

13 Q2.13. – Draft Development Consent Order

13.1 Q2.13.1 – Applicant - Table of Amendments to the dDCO [REP2-008], Art 2(1) - Works plan is changed to Works plans for consistency with Art 16.

All other references in that sentence are still to ‘plan’ – do these also need to be amended?

13.1.1 The dDCO submitted at Deadline 4 has been amended accordingly, as confirmed in the Table of Amendments to the dDCO submitted at Deadline 4.

13.2 Q2.13.2 – Applicant - No decommissioning activities are permitted within the existing marine licence. Do you agree that it would appear that a licence variation would be required to include such activities, or you would need to consider decommissioning activities within a deemed Marine Licence (dML) within the DCO? How do you intend to proceed in this regard?

13.2.1 It would not be appropriate to grant any Marine Licence or Deemed Marine Licence for decommissioning at this stage as the nature and timing of those works and activities are completely unknown at this stage. In any event there is no need to duplicate regulatory regimes because those activities, if and when they are required, will need to be separately assessed and approved via a new marine licence before any work could proceed. It would be unlawful of the operator to do otherwise.

13.3 Q2.13.3 – MMO - Do you consider that the piling restrictions set out in the tracked dDCO [REP2-007], and any other mitigation included in the dDCO are consistent with those in place in the existing MMO marine licence [REP2-036] including the specific project conditions and if not why not?

13.3.1 The Applicant notes that this question is directed at the MMO and will review and respond to any response as necessary.

14 Q2.14. – Other Matters

14.1 Q2.14.1 – Applicant - The MMO submission [REP3-017] points out with regard to ES Chapter 11, Section 11.2, that the South East Inshore Marine Plan is now a material consideration following consultation with the SoS.

The MMO expects a robust and comprehensive marine plan policy assessment to form part of this application.

Please explain the extent to which and where in the Application documents you have addressed the considerations in the Marine Plan.

- 14.1.1 The Applicant notes the status as a material consideration of the ‘Draft for Consultation’ version of the South East Inshore Marine Plan (“SEIMP”) which was released in January 2020 and has reviewed that accordingly in respect of the surface water outfall elements of the proposed K3 and WKN developments.
- 14.1.2 A number of the draft policies within the SEIMP are not considered to be of direct relevance to the application sites or to the construction or operation of the outfalls, specifically those dealing with infrastructure, co-existence, aggregates, aquaculture, cables, dredging and disposal, oil and gas, ports, harbours and shipping, heritage assets, fisheries, employment, carbon capture usage and storage, air quality, marine litter, access, tourism and recreation, knowledge, understanding, appreciation and enjoyment, defence, net gain and natural capital, invasive non-native species, disturbance,
- 14.1.3 Whilst the SEIMP deals with offshore renewable technologies, draft Policy SE-REN-1 does support proposals which would enable the provision of renewable energy technologies and does therefore have some relevance in this case, given an element of the waste treated by K3 and WKN would be renewable.
- 14.1.4 Draft Policy SE-SCP-1 addresses Seascape and Landscape and requires any proposals considered to have a significant adverse impact on the seascape and landscapes of an area to be supported if they follow an avoid, minimise or mitigate strategy. In this case the outfalls would not generated any significant adverse impacts on seascapes or the landscape and are therefore in compliance with the policy.
- 14.1.5 Draft Policy SE-CC-2 requires proposals in the plan area to demonstrate that they are resilient to the impacts of climate change and coastal change and SE-CC-3 states that proposals which are likely to have significant adverse impacts on coastal change should not be supported. The outfalls form part of a sustainable drainage strategy for the K3 and WKN sites which takes account of climate change and would not have significant adverse impacts, due to their nature and scale, on coastal change and therefore comply with both of those emerging policies.
- 14.1.6 Draft Policy SE-WQ-1 states that proposals which cause deterioration of water quality must follow the avoid, minimise and mitigation approach. The K3 and WKN outfalls would only discharge clean surface water, which is controlled by the

K3 permit and would be similarly controlled by any permit issued for WKN. As such they will not create any deterioration of water quality and comply with SE-WQ-1.

- 14.1.7 Draft Policy SE-MPA-1 states that proposals which would adversely impact on the objectives of marine protected areas will need to follow the avoid, minimise and mitigation approach and draft Policy SE-MPA-2 establishes a similar approach for proposals which may have adverse impacts on an individual marine protected area’s ability to adapt to the effects of climate change. The proposals are not considered to have the potential to impact on any element of the marine protected area, specifically the Swale Ramsar and Swale Estuary Marine Conservation Zone, so comply with the emerging policy.
- 14.1.8 Emerging Policies SE-BIO-1, SE-BIO-2 and SE-BIO-3 require any proposals which have significant adverse impacts on the distribution of priority habitats and priority species, on native species or habitat adaptation or connectivity or on coastal habitats/ecosystem functioning to demonstrate that they will follow the avoid, minimise, mitigate and compensation approach. No such impacts are expected in the case of the outfalls which therefore comply with those policies.
- 14.1.9 Draft Policy SE-UWN-1 requires any proposal which would generate impulsive sound to contribute data to the UK Marine Noise Registry and SE-UWN-2 requires proposals which would result in the generation of impulsive or non-impulsive noise must demonstrate that they will follow the avoid, minimise and mitigate approach. There would be no noise effects arising from the operation of the outfalls but the construction of them using a vibro hammer technique does have the potential to create noise and a controlling condition requiring a soft start approach is therefore imposed within the Marine Licence. As such the proposals accord with SE-UWN-1 and SE-UWN-2.
- 14.1.10 In respect of SE-CE-1, there are no cumulative adverse effects identified with other proposals.
- 14.1.11 The proposals are not therefore considered to conflict with any element of the emerging SEIMP.
- 14.2 Q2.14.2 – Applicant - The Applicant’s covering letter [REP3-001] refers to continuing liaison on SoCGs. The D1 versions are still the latest version. Please provide updates on the progress of SoCGs referred to therein and Statement of Commonality of SoCGs.**
- 14.2.1 The Applicant has provided a further summary of the position of SoCG’s within the Deadline 4 Covering Letter (Document 12.1). In summary the Applicant reiterates that they acknowledge the importance of the SoCG’s and is continuing to progress discussions with KCC, Swale Borough Council and Highways England regarding their Statements of Common Ground. It is not possible to provide fixed dates for the submission of those but the Applicant will update the ExA as soon as that becomes possible and will advance those discussions as expeditiously as

possible. The SoCG’s with Natural England and the Environment Agency were submitted in draft at Deadline 1 and remain current; the intention is for those to be reviewed in the light of any revised timetable issued for the remainder of the Examination so that they can be finalised and submitted accordingly.