

Application by WTI/EFW Holdings Ltd for Wheelabrator Kemsley K3 and WKN
The Examining Authority's further written questions and requests for information (ExQ2)
 Issued on 6 May 2020

Responses From: Highways England (IP Reference 20023079)

Date: 20 May 2020

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Q2A.1.	Participation in the Examination		Highways England comments
<p><i>Please provide the ExA with an indication of your anticipated level of participation during the rest of the Examination. This information will help the ExA to plan appropriately. Formal notifications of a request to speak or observe any Hearings (if necessary) will be requested later</i></p>			
Q2A.1.1.	All Interested Parties	<p>How would you want the remainder of the Examination to be undertaken?</p> <ul style="list-style-type: none"> i. By means of written submissions ii. By means of oral submissions at Hearings iii. By means of written submissions and limited oral submissions at Hearings 	
Q2A.1.2.	All Interested Parties	<p>How much do you anticipate participating in the rest of the Examination?</p> <ul style="list-style-type: none"> i. I am unlikely to make any further submissions ii. I may look at written submissions made by others iii. I may make further written submissions iv. I am likely to make further written submissions 	

v. I may access recordings of Hearings (if held)

vi. I would like to follow any Hearings in real time (if held)

vii. I may wish to speak at a Hearing (if held)

viii. I am likely to want to speak at a Hearing (if held)

Q2A.1.3.	All Interested Parties	<p>Which topics at an Issue Specific Hearing, if held, are you likely to want to observe?</p> <ul style="list-style-type: none"> i. Principle of development, recovery capacity and waste hierarchy ii. Transport networks and traffic iii. Other environmental matters (please specify) iv. Draft Development Consent Order v. None of the above 	
Q2A.1.4.	All Interested Parties	<p>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?</p> <ul style="list-style-type: none"> i. Principle of development, recovery capacity and waste hierarchy ii. Transport networks and traffic iii. Other environmental matters (please specify) iv. Draft Development Consent Order v. None of the above 	
Q2A.1.5.	All Interested Parties	<p>If you selected a topic above, please provide reasons as to why you would like to speak at such an Issue Specific Hearing(s)?</p>	

Q2A.2.	Your Facilities	
<p>Please give an indication of the facilities that you have available to you. This information will help the ExA to decide what arrangements should be made for any Hearings (if necessary) the ExA decides to hold. When answering, please assume that the Planning Inspectorate will provide you with reasonable advice and support.</p>		
Q2A.2.1.	All Interested Parties	<p>Do you have access to a computer or tablet connected to the internet, or to a smart phone?</p> <ul style="list-style-type: none"> i. A computer running Microsoft Windows 10 ii. A computer running Macintosh OSX Catalina iii. An Apple iPad iv. An Android tablet v. An Android smart phone vi. An Apple iPhone vii. Another type of smart phone (not Android or Apple) viii. None of the above
Q2A.2.2.	All Interested Parties	<p>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'.</p>
Q2A.2.3.	All Interested Parties	<p>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?</p> <ul style="list-style-type: none"> i. Highly confident ii. Confident iii. Reasonably confident iv. Not at all confident v. I do not have a suitable computer, tablet or smart phone


Q2A.2.4.	All Interested Parties	<p>Do you have access to a telephone that you could use?</p> <ul style="list-style-type: none"> i. A land line telephone ii. A mobile phone other than a smart phone iii. None of the above 	
Q2A.2.5.	All Interested Parties	<p>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?</p> <ul style="list-style-type: none"> i. Highly confident ii. Confident iii. Reasonably confident iv. Not at all confident v. I do not have a suitable telephone or mobile phone 	
Q2A.3.	How the Planning Inspectorate can help you		
<i>Considering your current circumstances, please help us to identify how we can help you to engage with the rest of the Examination.</i>			
Q2A.3.1.	All Interested Parties	<p>If your confidence in being able to participate in a Hearing by use of an electronic device is low, why is that?</p> <ul style="list-style-type: none"> i. The internet in my area is slow or intermittent ii. The equipment available to me has performance issues iii. I am not confident with this type of technology iv. A video conference is not suitable for Hearings v. A teleconference is not suitable for Hearings vi. Not applicable: I am confident in being able to participate 	

Q2A.3.2.	All Interested Parties	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 Interested Parties	How could the Planning Inspectorate help to increase your confidence level?	
Q2A.3.4.	All Interested Parties	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?	
Q2.1.	Principle and nature of the development, including waste recovery capacity and management of waste hierarchy		
Q2.1.1.	Applicant	Applicant's Response to Examining Authority's Written Questions (ExQ1.2.5) [REP2-009] stated: " <i>The WKN permit application will be submitted not later than the 1st July 2020.</i> " Please provide an update as to the progress of this application.	
Q2.2.	Environmental Impact Assessment		
Q2.2.1.		See related questions below	
Q2.3.	Air Quality		
ExQ2	Question to:	Question:	
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?	
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.	Highways England will wish to be consulted on the CEMP and its relationship with the Travel Plan to cover a range of matters that could affect the Strategic Road Network such as <ul style="list-style-type: none"> • Numbers of construction workers and their means/timing of travel • Numbers/type/timing of construction vehicles • Numbers/ type/timing of any abnormal load deliveries We will seek to cover off this matter via the proposed SoCG, but reserve the right to make separate representaitons.

		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?	
Q2.4.	Archaeology and Cultural Heritage		
Q2.4.1.		None at this time	
ExQ2	Question to:	Question:	
Q2.5.	Ecology		
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.	
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.	

		<p>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.</p> <p>Please could you explain the inconsistency and describe any implications for the conclusions of the ecology assessment?</p>	
Q2.5.3.	Applicant	<p>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.</p> <p>(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</p>	
ExQ2			
	Question to:	Question:	
		<p>defined in the ES, i.e. does it include maintenance or discharge of water only?</p> <p>(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.</p>	

Q2.5.4.	MMO EA	<p>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?</p>	
Q2.5.5.	Applicant	<p>Please identify where in the application documents is information about the rate and volume of the discharge from the outfalls.</p>	
Q2.5.6.	Applicant	<p>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).</p>	
		<p>(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?</p>	
		<p>(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?</p>	
		Q2.5.7.	Applicant
			

ExQ2	Question to:	Question:	
		<p>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.</p> <p>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.</p> <p>Please provide a draft EMMP.</p>	
Q2.5.8.	Applicant	<p>Regarding ExQ1.5.13 and the Applicant's response at [REP2-009] the dDCO [REP2-006] is amended.</p> <p>(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.</p> <p>(ii) It is not explained why piling is acceptable in March. Please comment.</p>	

Q2.5.9.	Applicant	<p>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</p>	
ExQ2			
	Question to:	Question:	
Q2.5.10.	Applicant	<p>is to be installed via vibro hammer it is highly unlikely that any noise disturbance effects would occur for intertidal species.</p> <p>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.</p>	
Q2.5.11.	Applicant	<p>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.</p> <p>Please provide the outstanding information.</p> <p>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.</p>	

		<p>(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.</p> <p>(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.</p>	

ExQ2			
	Question to:	Question:	
Q2.5.12.	Applicant	<p>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.</p> <p>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.</p> <p>Please explain what submission or submissions have been made that confirms the stack height within the Proposed Development.</p>	

Q2.6.	Greenhouse Gases and Climate Change	
Q2.6.1.		None at this time
Q2.7.	Ground Conditions	
Q2.7.1.		None at this time
Q2.8.	Habitats Regulations Assessment (HRA)	
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.
Q2.8.2.	Applicant SDC	The WKN CEMP states that the listed measures will be implemented, <u>not</u> that they are examples, and is light on detail in Section 5.3. The measures

ExQ2	Question to:	Question:
	EA NE	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?
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?	
Q2.8.4.	Applicant	<p>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.</p> <p>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.</p> <p>Please would you clarify the position?</p>	
Q2.8.5.	Applicant	Please provide Word versions of the updated matrices, as requested in ExQ1.8.18.	

ExQ2		Question to:	Question:
Q2.8.6.	NE Applicant	<p>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.</p> <p>What comments if any do you have on this matter, including the scope and proliferation of habitats and individual species information?</p>	
Q2.9.	Landscape and Visual Impact		

Q2.9.1.	Applicant	<p>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.</p> <p>Can the applicant explain how this fits with the good design principles set out in MHCLG's National Design Guide (2019)?</p>	
Q2.10.		Noise and Vibration	
Q2.10.1.		None at this time	
Q2.11.		Traffic and Transport	
Q2.11.1.	All Interested Parties	<p>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.</p> <p>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?</p> <p>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)</p>	<p>The M2J5, A249 Key Street and A249 Grovehurst junctions are all at or nearing their respective safety led capacities.</p> <p>The M2J5 Highways Act Examination due to commence on 28 April 2020 has been postponed until further notice due to Covid19. But subject of its outcome, any permitted works are due to be completed around 2022.</p> <p>Kent County Council led works to A249/A2 Key Street are due to commence around 1 June 2020, with further works to be modelled/ designed/ agreed/ constructed by around 2024.</p> <p>KCC are also leading on works to A249 Grovehurst junction due to be modelled/ designed/ agreed/ constructed by around 2024.</p>

Without these respective works, Highways England will be obliged to constrain (by way of Grampian conditions) or object to any developments impacting on these junctions.

Highways England have been applying Grampian conditions to applications in this manner since around 2018. They have either limited occupations or prohibited any occupations until such time as the required road improvements are open to the public.

Highways England, subject to the outcome of our discussions with KCC and the applicant, is likely to seek similar Grampian conditions to be applied to this application.

Therefore, while transport modelling evidence will be submitted showing the current and forecast positions, we would recommend that the ExA carries out a tour of the Strategic and Local Road Networks during the AM and PM peaks and at other times to get first hand experience of the scale and type of congestion currently prevalent.

Most of the tour, we suspect, could be conducted unaccompanied, but we stand

			ready to accompany the ExA if they wish. Equally, we stand ready to make arrangements for the ExA to be able to safely observe the operation of M2J5 if a simple drive through is insufficient.
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ExQ2			
	Question to:	Question:	
		in the evidence and link it to your submissions. I will take this information into consideration when determining how to proceed with the Examination.	
Q2.12.	Water Environment		
Q2.12.1.		None at this time	
Q2.13.	Draft Development Consent Order		
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?	
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?	
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?	
Q2.14.	Other Matters		
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.	

ExQ2			
	Question to:	Question:	
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.	<p>Highways England continue to work with KCC and the applicant to agree either a joint or separate SoCGs covering all traffic and transport matters.</p> <p>We have submitted separately an email trail covering our discussions and state of progress. The matter is now with the applicant.</p>