



**Application by WTI/EFW Holdings Ltd for Wheelabrator Kemsley K3 and WKN**

**The Examining Authority's further written questions and requests for information (ExQ3)**

**Issued on 3 June 2020**

In accordance with the Government's measures to reduce the infection, which includes stopping all gatherings of more than two people in public and requiring people to stay at home, I confirmed in my letter of 22 May 2020 that further written questions would be issued on 3 June 2020.

Table **ExQ3** sets out the Examining Authority's (ExA's) further written questions and requests for information by named parties. Column 2 of the table indicates which Interested Parties (IPs) and other persons each question is directed to.

The ExA would be grateful if persons named could answer all questions directed to them, providing a substantive response, or explaining why the question is not relevant to them. Other IPs and other persons may comment on questions which are not directed to them.

As a result of ongoing Government guidance relating to the Coronavirus (COVID-19), our office at Temple Quay House is now closed and any submissions sent by post will be subject to delay.

You are welcome to respond by email with attached documents, as needed. If you would like this table in MS Word format please contact the Case Team: [WheelabratorKemsley@planninginspectorate.gov.uk](mailto:WheelabratorKemsley@planninginspectorate.gov.uk).

Please put 'ExQ3 - Wheelabrator Kemsley K3 and WKN' in the subject line of the email.

Responses are due by **Deadline 5: 19 June 2020**.

**Abbreviations used**

<b>PA2008</b>	The Planning Act 2008	<b>km</b>	kilometre
<b>µg.m-3</b>	Microgram per cubic meter	<b>KMWLP</b>	Kent Joint Municipal Waste Management Strategy
<b>AC</b>	Ambient Concentration	<b>LAQM.TG16</b>	Local Air Quality Management Technical Guidance
<b>APIS</b>	Air Pollution	<b>LSE</b>	Likely Significant Effects
<b>CEMP</b>	Construction Environment Management Plan	<b>LVIA</b>	Landscape and Visual Impact Assessment
<b>DCO</b>	Development Consent Order	<b>m</b>	metres
<b>dDCO</b>	draft DCO	<b>MCZ</b>	Marine Conservation Zone
<b>EA</b>	Environment Agency	<b>ME&amp;M SPA</b>	Medway Estuary and Marshes Special Protection Area
<b>EAL</b>	Environmental Assessment Level	<b>MMO</b>	Marine Management Organisation
<b>EIA</b>	Environmental Impact Assessment	<b>NE</b>	Natural England
<b>ELV</b>	Emission Limit Value	<b>NH3</b>	Ammonia
<b>EMMP</b>	Environmental Mitigation and Management Plan	<b>NOx</b>	Nitrogen Oxide
<b>EPR</b>	Early Partial Review	<b>NPPF</b>	National Planning Policy Framework
<b>EM</b>	Explanatory Memorandum	<b>NSIP</b>	National Significant Infrastructure Project
<b>EfW</b>	Energy from waste	<b>SoS</b>	Secretary of State
<b>ES</b>	Environmental Statement	<b>PC</b>	Parish Council
<b>EU</b>	European Union	<b>PD</b>	Proposed Development
<b>ExA</b>	Examining Authority	<b>PEC</b>	Predicted Environmental Concentrations
<b>ExQ1</b>	ExA's First Written Questions	<b>PEIR</b>	Preliminary Environmental Impact Report
<b>HE</b>	Highways England	<b>PINS</b>	Planning Inspectorate
<b>HGV</b>	Heavy Goods Vehicle	<b>PRoW</b>	Public Right of Way
<b>HRA</b>	Habitats Regulation Assessment	<b>RIS</b>	Ramsar Information Sheet
<b>HRAR</b>	Habitats Regulation Assessment Report	<b>RR</b>	Relevant Representation
<b>IAQM</b>	Institute of Air Quality Management	<b>s</b>	Section
<b>IBA</b>	Incinerator Bottom Ash	<b>SAC</b>	Special Area of Conservation
<b>IED</b>	Industrial Emissions Directive	<b>SEWPAG</b>	South East Waste Planning Advisory Group
<b>IP</b>	Interested Party	<b>SO2</b>	Sulphur Dioxide
<b>IPPC</b>	Integrated Pollution Prevention and Control		

**ISH** Issue Specific Hearing  
**K3** Kemsley 3  
**KCC** Kent County Council  
**KJMWMS** Kent Joint Municipal Waste Management Strategy  
**TE&M** Thames Estuary and Marshes Special Protection Area  
**WFD** Water Framework Directive  
**WKN** Wheelabrator Kemsley North  
**WR** Written Representation  
**WSI** Written Scheme for the Investigation  
**ZOI** Zone of Influence

**SPA** Special Protection Area  
**SRN** Strategic Road Network  
**SSSI** Site of Special Scientific Interest  
**TA** Transport Assessment

## The Examination Library

References to questions in Table ExQ3 set out in square brackets (eg [APP-010]) are to documents catalogued in the Examination Library. The [Examination Library](#) is available on the NI website, and updated as the examination progresses.

## Citation of Questions

Each question has a unique reference number which starts with ExQ3 and then has a question number. For example:

- The first question under Air Quality is ExQ3.3.1

Please start your answer by quoting the unique reference number. Please provide your answers in tabular form following the template below.

Responses to these questions will be published following the deadline.

<b>ExQ3</b>	<b>Question to:</b>	<b>Question:</b>
<b>Q3.1.</b>	<b>Principle and nature of the development, including waste recovery capacity and management of waste hierarchy</b>	
Q3.1.1	KCC	In reply to ExQ1A.1.3 you refer to the Inspector's decision letter on the Brookhurst Wood EfW plant, this is not given in full although a hyperlink to the full decision is included in the text of the reply to ExQ1.6 [REP2-044]. Please supply a full copy of the decision letter so that it may be properly be entered into the examination library.
Q3.1.2	Applicant	In paragraph 3.1.2 of your response to D3 submissions, you state not all of the comments made by SEWPAG are responded to, this should not be

<b>ExQ3</b>	<b>Question to:</b>	<b>Question:</b>
		<p>taken as indicating that you agree with those comments, they have been addressed previously and appear to need no further comment.</p> <p>For the avoidance of doubt please state clearly in relation to SEWPAG's responses to ExQ1A [REP3-019] exactly where, in relation to each of the comments not responded to, the comments have been addressed previously.</p>
Q3.1.3	KCC	<p>KCC's response under ExQ1.6 [REP2-044] (Footnote 19) notes that the Applicant made repeated representations against the proposed changes in the Early Partial Review (EPR) and appeared at the examination hearings to convey these objections to the Inspector. A link is provided to a WTI representation on Proposed Modifications.</p> <p>Please supply a full copy of the WTI representation that the Applicant submitted, as referred to in the representation that the EPR was unsound.</p>
Q3.1.4	Applicant	<p>i) Are there any particular benefits in relation to the K3 Proposed Development that would not obtain in relation to the WKN Proposed Development? If so, please explain what these are.</p> <p>ii) Would such benefits justify consent being granted for the K3 Proposed Development alone and if so why?</p>
Q3.1.5	Applicant	<p>In response to ExQ1A.1.44 [REP2-043] SEWPAG suggests that the annual monitoring reports of all the waste planning authorities within the SEWPAG area should be considered. You state this is inconsistent with their response to ExQ1A.1.40. Please explain why you consider that the reports are not important and relevant matters to consider given the extent of the correlation between your choice of study area and the SEWPAG WPAs?</p>

<b>ExQ3</b>		
<b>Question to:</b>	<b>Question:</b>	
<b>Q3.2.</b>	<b>Environmental Impact Assessment</b>	
Q3.2.1	Applicant	NPS ENS-1 states at paragraph 4.6.3 "The Government has therefore committed to promoting Good Quality CHP, which denotes CHP that has been certified as highly efficient under the CHP Quality Assurance programme." Would the eventual CHP element of the Proposed Development qualify as highly efficient under this programme?
Q3.2.2	Applicant KCC	NPS EN-1 4.6.8 states "To encourage proper consideration of CHP, substantial additional positive weight should therefore be given...to applications incorporating CHP." What weight should be accorded to the Applicant's proposals for CHP in the context of each of the K3 and WKN Proposed Developments taken separately?
<b>Q3.3.</b>	<b>Air Quality</b>	
Q3.3.1		None at this time
<b>Q3.4.</b>	<b>Archaeology and Cultural Heritage</b>	
Q3.4.1		None at this time

<b>ExQ3</b>		
	<b>Question to:</b>	<b>Question:</b>
<b>Q3.5.</b>	<b>Ecology</b>	
Q3.5.1	Applicant	The ExA requested the Applicant to provide a draft EMMP for WKN because of its concern that if no draft 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. The reply was ambiguous as to whether you will only prepare a draft if NE or KCC require it. Please explain and confirm whether a draft EMMP will be provided to the ExA.
Q3.5.2	NE KCC SBC	Do you consider a draft EMMP should be submitted to the Examination?
<b>Q3.6.</b>	<b>Greenhouse Gases and Climate Change</b>	
Q3.6.1	Applicant	KCC states in its reply to ExQ1A.1.3 [REP4-015] that without knowing how much of the feedstock is anticipated to come from landfill as opposed to exported refuse-derived fuel (RDF), it is not possible to determine whether the claimed carbon benefits of the WKN Proposed Development - in particular, those based upon avoided emissions from landfill - will actually materialise.  Has the Applicant provided information as to how much of the feedstock is anticipated to come from landfill as opposed to exported refuse-derived fuel (RDF) and where can this be found?

<b>ExQ3</b>	<b>Question to:</b>	<b>Question:</b>
Q3.6.2	Applicant	<p>Para 4.1.5 of NPS EN-01 states "In the event of a conflict between these [DPD documents] or any other documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure."</p> <p>Do you consider this paragraph applies in the case of the WKN Proposed Development that is not a NSIP and if so why?</p>
Q3.6.3	Applicant KCC SBC	<p>Circumstances related to climate change may be said to have changed since the publication in 2011 of NPS EN-01 or NPS EN-03. What if any changes do you consider are sufficiently important and relevant to the question of whether deciding the application in accordance with any relevant NPS is likely to lead to the United Kingdom being in breach of its international obligations and why?</p>
Q3.6.4	Applicant SBC	<p>SBC in its D4 submission [REP4-025] is concerned that the scheme would have significant adverse impacts upon carbon emissions within the Borough and requests that a condition/requirement should be included in the dDCO to require the use of low or zero emission HGVs to negate air quality impacts.</p> <p>Please consider whether and if so how the dDCO could be amended to provide for such a requirement, particularly with respect to the use of LNG vehicles and electric vehicle charging facilities, or related matters.</p>
Q3.6.5	Applicant	<p>Regarding the statement in Section 4.4.29 of the Traffic and Transport chapter of the Environmental Statement [APP-056] that no HGVs will travel directly from the A2 to the site please clarify:</p>



<b>ExQ3</b>		
	<b>Question to:</b>	<b>Question:</b>
		<p>a) if HGV traffic would not use the A2 at all or just the localised connections referred to, and</p> <p>b) how HGV travel patterns can be monitored and enforced to ensure the A2 is not used by HGVs, even if the intention is that this route will not be utilised.</p>
Q3.6.6	SBC	What enforcement powers are available to you (or other agencies) to prevent an increase in HGV movements through AQMAs where found to be necessary in the interests of air quality?
Q3.6.7	Applicant Network Rail	The WKN Rail and Water Transportation Strategy [APP-089] refers to other land potentially available within Ridham Dock or its vicinity from which it may be feasible to develop a rail freight terminal to serve the waste-to-energy generating station at K3 and the WKN site, subject to viability. How has this opportunity been progressed?
Q3.6.8	Applicant	Please provide the Decisions and Recommendation Reports for Ferrybridge Multifuel 2 (FM2), and the North London Heat and Power (NHLP) which are said to support no requirement in the DCO in respect of the transportation of waste fuel or ash by non-road modes, and identify the relevant sections/paras in each document.
Q3.6.9	Applicant KCC	<p>i) Do you consider, notwithstanding what is said by the Applicant as to non-viability of non-road modes of transport, there is a case to be made as part of the Rail and Water Transportation Strategy for a requirement to fund or fund in part the provision of necessary infrastructure for transportation by rail or the upgrade</p>

<b>ExQ3</b>		
	<b>Question to:</b>	<b>Question:</b>
		<p>of the existing facilities at the dock to accommodate the additional freight necessary to make this a viable option?</p> <p>ii) How would such a requirement be made effective and proportionate?</p> <p>iii) What other practical difficulties militate against such a requirement?</p>
Q3.6.10	Applicant KCC	Why, in a periodic review of the Rail and Water Transportation Strategy, should the costs of providing the necessary infrastructure to transport the fuel to the site by rail or water and a viability appraisal be regarded as confidential as opposed to an exercise that should be undertaken on an open book basis? Are there comparable precedents for such a review?
<b>Q3.7.</b>	<b>Ground Conditions</b>	
Q3.7.1		None at this time
<b>Q3.8.</b>	<b>Habitats Regulations Assessment (HRA)</b>	
Q3.8.1	Applicant	Has the Applicant responded to the MMO's suggestion in its D4 submission [REP4-028] that you review the potential environmental impacts of using water transport, including an assessment of the potential impacts of the Proposed Development including vessel movement, on adjacent sites and if not why not?

<b>ExQ3</b>	<b>Question to:</b>	<b>Question:</b>
<b>Q3.9.</b>	<b>Landscape and Visual Impact</b>	
Q3.9.1	Applicant	<p>The National Infrastructure Commission has recently published Design Principles for National Infrastructure, February 2020, to guide the planning and delivery of major projects in respect of climate, people, places and value. It states the principles should guide the projects which will upgrade and renew the UK's infrastructure system and be applied to all economic infrastructure, including waste. The ExA considers this to be an important and relevant matter to take into account in the Examination.</p> <p>How is each of the design principles set out in that document met by the Applicant?</p>
Q3.9.2	Applicant	<p>NPS ENS-1 states at paragraph 4.5.3 that "Whilst the applicant may not have any or very limited choice in the physical appearance of some energy infrastructure, there may be opportunities for the applicant to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation."</p> <p>Please describe how opportunities have been taken in the design of the WKN Proposed Development in terms of siting relative to existing landscape character, landform and vegetation as described in NPS ENS-1.</p>
Q3.9.3	KCC	<p>The Applicant's Design and Access Statement [APP-083] states "The core approach taken to WKN, in order to define the parameters for the DCO application, reflects the approach taken to K3 in terms of the building</p>

<b>ExQ3</b>	<b>Question to:</b>	<b>Question:</b>
		<p>appearing as a linked set of individual buildings, rather than having elements of the facility located within an overall 'shell'. It would then be possible to use colour to make the WKN facility cohesive as a whole. In terms of the approach taken to the colour and cladding of the buildings there remains the option with WKN to take a similar design approach to K3, or to pursue an alternative design approach if that is considered appropriate...KCC takes the approach of using a combination of graduated panels in colours which reflect the local palette, to ensure that K3 can become something of a landmark building within the area; an approach which was taken to avoid attempting to hide the K3 facility when the scale of it means that it is likely to be visible in any case."</p> <p>Please comment on whether you agree with this design approach and whether R22 in the dDCO adequately secures your design objectives or how, if at all it should be amended.</p>
<b>Q3.10.</b>	<b>Noise and Vibration</b>	
Q3.10.1		None at this time
<b>Q3.11.</b>	<b>Traffic and Transport</b>	
Q3.11.1	Applicant	Please provide up-to-date photographs from selected viewpoints to identify the features which would have been viewed on an Accompanied Site Inspection of the locations identified by the Applicant at D1.

<b>ExQ3</b>	<b>Question to:</b>	<b>Question:</b>
Q3.11.2	Applicant	In accordance with the Applicant's offer in reply to ExQ2.11 [REP4-006], please supply drone footage of the K3 and WKN sites and provide that as a video, together with an accompanying route map and date and time stamps.
Q3.11.3	SBC	In your submission at D4 [REP4-025] you refer to lack of modelling of the effect on the committed upgrade to the A249/Grovehurst Road interchange and your concern if delivery of major housing allocations in the adopted Plan were undermined by the Application. Please can you describe which of the allocations are relevant to consider in this context and why?
Q3.11.4	Applicant	The Application site is in close proximity to Ridham Dock and the rail network. However you assert in paragraph 1.5 of the WKN Rail and Water Transportation Strategy [APP-089] that it is not currently feasible or viable to transport the available fuel to the site by rail or water. Given the need for example in Policy CP2 of the Swale Local Plan to improve the transport network in the most sustainable way, provide access to rail transport, and facilitate greater use of waterways for commercial traffic, how can it be said that the Proposed Development takes advantage of these options? Is the proposal to review this position in five years, set out in dDCO R6, realistic, and how would you be incentivised to commit to such infrastructure at a later date rather than at application stage?

<b>ExQ3</b>		
	<b>Question to:</b>	<b>Question:</b>
Q3.11.5	Applicant KCC	What further assessments have been made arising from the exchange of vehicle movement data from the Applicant's site at Ferrybridge and the Waste to Energy site in Allington?
Q3.11.6	Applicant	<p>The Applicant acknowledges that Ridham Dock is already physically capable of receiving waste material via barge and can accommodate sufficiently sized vessels for that purpose and transfer materials similar to waste into vehicles for onward transport (response to ExQ1A.11.6 [REP3-004]).</p> <p>Please</p> <ol style="list-style-type: none"> <li>a) explain exactly what "upgrading" of facilities is said to be required to transport waste by water; and</li> <li>b) justify the assertion that transportation of waste by barge at Ridham Dock would require upgrading of the existing facilities, for example by providing technical studies that analyse the logistics of such transport, taking into account the current facilities and positing a given amount of waste alongside existing operations and the viability of transporting that waste via water.</li> </ol>
<b>Q3.12.</b>	<b>Water Environment</b>	
Q3.12.1	Applicant	The Environmental Permit application is due to be submitted by 1.7.20 [REP4-006]. Please provide an update for D5 and confirm that a copy of the application will be provided to the Examination upon its submission.

<b>ExQ3</b>		
	<b>Question to:</b>	<b>Question:</b>
Q3.12.2	Applicant MMO	The assessment provided in respect of the South East Inshore Marine Plan (SEIMP) is only for the surface water outfall elements of K3 & WKN in the Applicant's response to Q2.14.1 [REP4-006]. Please review what other matters if any need to be considered and comment.
Q3.12.3	MMO	Please comment on the scope and conclusions of the assessment referred to in the above question.
<b>Q3.13.</b>	<b>Draft Development Consent Order</b>	
Q3.13.1	Applicant	R29(1) of the dDCO [REP4-003] refers to when impact piling would be acceptable. In reply to ExQ2.5.8 and regarding ExQ1.5.13 and the Applicant's response at [REP2-009] the dDCO [REP2-006] is amended. Project WKN Work mostly comprises Work No 2. Therefore when R29(3) states "this requirement does not restrict impact piling associated with the Project WKN authorised development between the months of March and October inclusive", is that not inconsistent with R29(1) which purports to prevent impact piling associated with Work No 2 in January, February, and between April and August inclusive? What is the Applicant's intention regarding these matters and how can they be better expressed in the dDCO?
Q3.13.2	MMO	Are you content that the outfall maintenance works are covered by provisions in the dDCO and if not how should the dDCO be amended?

<b>ExQ3</b>	<b>Question to:</b>	<b>Question:</b>
Q3.13.3	Applicant	<p>In its reply to ExQ1.4.1 [REP2-044] KCC requested amendments to R20 for WKN: "No authorised development or permitted preliminary works (unless agreed with the relevant planning authority) shall commence ...."</p> <p>As currently drafted R20 could allow permitted works before archaeological works are undertaken, such as the remedial work in respect of contamination, and investigations for the purpose of assessing ground conditions and diversion and laying of services, which may impact on archaeology, dependent on location and scale.</p> <p>Please comment and confirm whether and if so how R20 will be amended in substance as requested.</p>
Q3.13.4	Applicant IPs	<p>Article 16 dDCO deals with the certification of various documents. Please review what other documents require certification, for example the Design and Access Statement [APP-083], updated outline CEMP.</p>
Q3.13.5	Applicant	<p>The K3 EMMP covers construction and operation and it is assumed the WKN EMMP will also. Therefore in dDCO R21 should "commissioned" read "commenced" as for example in R22?</p>
Q3.13.6	Applicant	<p>There appears to be some inconsistency in the way some Requirements refer to compliance by reference to the Environmental Statement and/or specified Appendices attached thereto (for example R21 and R22). Please could you review the dDCO to ensure consistency or otherwise amend the dDCO to make it clear that a reference to the Environmental Statement includes a reference to any of its Appendices?</p>



<b>ExQ3</b>	<b>Question to:</b>	<b>Question:</b>
Q3.13.7	HE	<p>Your reply to Q2.3.2 [REP4-029] does not address the issue of what if any amendments to the dDCO you consider are necessary. Please clarify.</p> <p>The ExA notes you will seek to cover off this matter via the “proposed” SoCG, however an updated draft SoCG between the Applicant and HE should be provided by the Applicant by D5 with the appropriate input from HE that makes clear among other things exactly what matters are currently outstanding and disputed.</p>
Q3.13.8	HE KCC	<p>The ExA acknowledges HE’s willingness to assist in an ASI to include Strategic and Local Road Networks during the AM and PM peaks and at other times.</p> <p>Pending any eventual ASI that might be possible, please provide the transport modelling evidence referred to in your reply to ExQ2.11.1 [REP4-029] by D5 that shows the current and forecast positions for:</p> <ul style="list-style-type: none"> <li>a) the M2J5, A249 Key Street and A249 Grovehurst junctions</li> <li>b) permitted works under the M2J5 Highways Act Examination;</li> <li>c) KCC-led works to A249/A2 Key Street; and</li> <li>d) KCC-led works to A249 Grovehurst junction due to be modelled/ designed/ agreed/ constructed by around 2024.</li> </ul>
Q3.13.9	HE KCC	<p>The ExA notes that HE, subject to the outcome of discussions with KCC and the Applicant, is likely to seek “Grampian conditions” to be applied to this application. Such conditions are not appropriate to a DCO however please would you address the issue of precisely how you wish to see the substance of such conditions feature in any additional or amended Requirements in the dDCO. Again, the respective parties should be clear</p>

<b>ExQ3</b>	<b>Question to:</b>	<b>Question:</b>
		about what matters are currently outstanding and ensure that they are included in the updated SoCG that the Applicant will be producing for D5.
<b>Q3.14.</b>	<b>Other Matters</b>	
Q3.14.1	Applicant	Please provide an updated SoCG for D5 in each case where one has been requested or agreed to be undertaken. Even if you consider that matters may be resolved shortly, at this stage it is important to the ExA to have up to date draft versions of each SoCG so that matters in dispute can be very clearly highlighted and explained.
Q3.14.2	Applicant	<p>To date, despite a request to provide one, no statement of commonality of SoCGs has been provided. The ExA clarified at the preliminary meeting that it would be helpful to provide this document and keep it up to date as the Examination progresses.</p> <p>Please will the Applicant provide such a statement by D5 using the example document suggested in tabular form. Please highlight areas of difference between parties structuring the document into sections in the following manner:</p> <ul style="list-style-type: none"> <li>- detail the structure of each SoCG document and provide an up to date list of SoCGs (for each Examination deadline);</li> <li>- provide an update on the status of each SoCG;</li> <li>- set out the commonality between SoCGs and a summary of the principal matters outstanding; and</li> <li>- provide a summary on specific areas where matters are identified as being 'subject to ongoing discussion' or 'not agreed'.</li> </ul>

<b>ExQ3</b>	<b>Question to:</b>	<b>Question:</b>
		This should be done so as to be clear about precisely which matters are agreed, subject to discussion, or not agreed at the present time.