



Wheelabrator
TECHNOLOGIES



**Deadline 5: Applicant's Response to Examining Authority's
Further Written Questions (ExQ3)**

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

PINS Ref: EN010083

Document 13.2
June 2020 - Deadline 5

Contents

1	EXQ3.1. – PRINCIPLE AND NATURE OF THE DEVELOPMENT, INCLUDING WASTE RECOVERY CAPACITY AND MANAGEMENT OF WASTE HIERARCHY	7
2	EXQ3.2. – ENVIRONMENTAL IMPACT ASSESSMENT	10
3	EXQ3.3 – AIR QUALITY.....	12
4	EXQ3.4. – ARCHAEOLOGY AND CULTURAL HERITAGE	13
5	EXQ3.5 – ECOLOGY.....	14
6	EXQ3.6. – GREENHOUSE GASES AND CLIMATE CHANGE.....	15
7	EXQ3.7. – GROUND CONDITIONS	26
8	EXQ3.8. – HABITATS REGULATIONS ASSESSMENT	27
9	Q3.9 - LANDSCAPE AND VISUAL IMPACT	28
10	Q3.10 – NOISE AND VIBRATION.....	31
11	EXQ3.11 – TRAFFIC AND TRANSPORT	32
12	Q3.12. – WATER ENVIRONMENT.....	38
13	Q3.13. – DRAFT DEVELOPMENT CONSENT ORDER	41
14	Q3.14. – OTHER MATTERS.....	45

Introduction

Purpose of this document

- i. This Document has been prepared at Deadline 5 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 Third Written Questions (‘ExQ3’) issued on 3rd June 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 surroundings

- 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 Third Written Questions (ExQ3)

- xx. The ExQ3 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.

1 ExQ3.1. – Principle and nature of the development, including waste recovery capacity and management of waste hierarchy

- 1.1 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."

- 1.1.1 The Applicant notes that this question is directed at KCC.

- 1.2 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 taken as indicating that you agree with those comments, they have been addressed previously and appear to need no further comment.

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."

- 1.2.1 Q1A.1.4: Applicant provided consideration of policies of self-sufficiency (and recycling) in the Applicant's Response to ExA's Written Questions (ExQ1A) [REP3-004] at section 1.2 of that document and Appendix 1.2/1.8 [REP3-005].
- 1.2.2 Q1A.1.14: Applicant provided demonstration of fuel availability (and compliance with waste hierarchy) in the WHFAR [APP-086], in response to ExQ1A [REP3-004] (Q1A.1.13, section 1.13, page 19), in Applicant's Responses to Deadline 2 Submissions [REP3-003] particularly from section 2.5 (page 8), and in Applicant's Response to Local Impact Reports [REP2-010] particularly Appendices 1 and 3.
- 1.2.3 Q1A.1.29: Applicant made own case in WHFAR, with additional commentary at Applicant's Response to ExA's Written Questions (ExQ1A) [REP3-004] at sections 1.3 (page 8) and 1.28 (page 30).
- 1.2.4 Q1A.1.31: Applicant made own case in WHFAR, with additional commentary at Applicant's Response to ExA's Written Questions (ExQ1A) [REP3-004] at sections 1.3 (page 8) and 1.28 (page 30).
- 1.2.5 Q1A.1.34: Applicant also provided response to ExQ1A [REP3-004] (Q1A.1.34, section 1.34, page 34).

1.2.6 **Q1A.1.40:** Applicant also provided response to ExQ1A [REP3-004] (Q1A.1.40, section 1.40, page 39).

1.3 **Q3.1.3 – KCC – "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.**

Please supply a full copy of the WTI representation that the Applicant submitted, as referred to in the representation that the EPR was unsound."

1.3.1 The Applicant notes that this question is directed at KCC.

1.4 **Q3.1.4 – Applicant – "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.**

ii) Would such benefits justify consent being granted for the K3 Proposed Development alone and if so why?"

1.4.1 The particular benefits of the K3 Proposed Development are the ability to use a facility which already exists in physical form to generate additional electricity and to process additional waste each year through minimal modification to the existing facility. K3 also has a particular benefit of its links to the Kemsley Paper mill ensuring that it has a secured steam offtake.

1.4.2 The WKN Proposed Development would create additional waste processing and electricity generation capacity in a location which has been submitted by the Applicant as being appropriate in planning terms for that facility, with WKN having the ability to ensure a continuity of steam supply to the Kemsley Paper Mill via K3 and of supplying heat to other customers in the surrounding area.

1.4.3 Whilst the two facilities are being sought through the same application they are stand-alone facilities operationally and commercially. The Applicant’s view is that any assessment of each facility should be undertaken on the compliance of that individual proposed development with relevant policy, whilst taking account of any significant cumulative environmental effects which might arise from the proposed developments together with other proposed or consented projects in the surrounding area, including WKN in the case of K3 and K3 in the case of WKN. The Applicant submits that individually each facility meets the necessary policy tests for consent, and no significant adverse cumulative environmental impacts have been identified as arising from the two facilities being constructed and operated on adjacent sites. The particular benefits identified as arising from K3 and from WKN should be afforded positive weight within the determination of the application but it would not be appropriate, in the absence of any identified policy conflict or adverse environmental impacts, to determine the individual proposed developments by comparing their respective benefits.

1.5 Q3.1.5 – Applicant – 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?

- 1.5.1 In its response to the Examining Authority’s further written questions [REP3-019] SEWPAG responds (to ExQ1A.1.40) that the relevant development plan is ‘the Kent Minerals and Waste Local Plan to be updated by Kent County Council’s Early Partial Review.’ This response makes no reference to any other authority’s planning policy. In response to ExQ1A.1.44, SEWPAG identifies a number of authorities as the ‘relevant waste authorities’. These answers are not consistent; in one only Kent is identified as the relevant authority, and in the other a much longer list is presented.
- 1.5.2 Notwithstanding this, SEWPAG has previously suggested that all the annual monitoring reports should be considered. The Applicant addressed this suggestion in its Response to Submissions at Deadline 2 [REP3-003] (page 19, from paragraph 2.6.7, under title ‘ExQ1.1.6’). In addition, it is important and relevant to note that the choice of study area by the Applicant is unrelated to the constitution of SEWPAG; they are entirely discrete matters. Where the Applicant chooses to source fuel for the Proposed Developments from is a commercial matter, recognised in NPS EN-3 (paragraph 2.5.17) as ‘unlikely to be an important matter for IPC decision-making’.
- 1.5.3 The important and relevant matter for decision-making is set out at paragraph 2.5.70 of NPS EN-3, ‘that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England.’ This has been achieved by the Applicant through the WHFAR [APP-086] and in response to ExQ1A [REP3-004] (Q1A.1.13, section 1.13, page 19), in Applicant’s Responses to Deadline 2 Submissions [REP3-003] particularly from section 2.5 (page 8), and in Applicant’s Response to Local Impact Reports [O10] particularly Appendices 1 and 3. By contrast, paragraph 2.5.68 of NPS EN-3 identifies only that ‘it may be appropriate to refer to the Annual Monitoring Report ...’. It is not a requirement to do so.

2 ExQ3.2. – Environmental Impact Assessment

- 2.1 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?”

- 2.1.1 The CHP Assessment (Sept 2019) [APP-087] addresses the matter of Good Quality CHP and provides a summary of efficiency calculations undertaken. It states the following at Section 7.2:

CHPQA is an energy efficiency best practice programme initiative by the UK Government. CHPQA aims to monitor, assess and improve the quality of CHP in the UK. In order to prove that a plant is a ‘Good Quality’ CHP plant, a QI of at least 105 must be at the design, specification, tendering and approval stages. Under normal operating conditions (i.e. when the scheme is operational) the QI threshold drops to 100....

...The results indicate that WKN will not achieve a QI score in excess of the ‘Good Quality’ CHP threshold (QI of 105 at the design stage) for the average heat load exported to the proposed DH network and Kemsley Paper Mill (Load case 5). The highly onerous efficiency criteria set out in the latest CHPQA guidance, most notably the underpinning requirement to achieve an overall efficiency (NCV basis) of at least 70%, means that none of the load cases considered will enable heat export from WKN to be considered Good Quality.

For reference, assuming the same Z ratio as set out in the preceding section for the combination of steam export to Kemsley Paper Mill and the DH network, an annual average heat export of 80 MWth would be required for a heat network to achieve Good Quality status. It is clear that the design proposed for heat recovery is not capable of supplying a sufficient quantity of heat at the design heat conditions.

The permitted K3 has certified as “Good Quality” CHP prior to the publication of this Guidance Note 44 (Issue 7). As the permitted K3 has entered Contracts for Difference contract prior to the publication of this Guidance Note 44 (Issue 7), the X and Y values used for the previous CHPQA certification will be grandfathered. Therefore, K3 will certified as “Good Quality” under the grandfathered X and Y values used for the previous CHPQA certification. The proposed K3 extension will also be a “Good Quality” CHP under grandfathered X and Y values.’

2.2 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?

- 2.2.1 The Applicant considers that K3 should be afforded substantial additional positive weight given its direct connection to provide heat in the form of steam to the Kemsley Paper Mill.
- 2.2.2 WKN has been designed to supply steam to the Kemsley Paper mill via K3, to ensure continuity of supply at times when K3 is not operational (for instance during maintenance). WKN would be CHP ready and with minimal modification would be capable of supplying heat to other customers. The Applicant continues to engage in discussions with Kent County Council, Swale Borough Council and with other local parties to identify potential heat customers for WKN. WKN sits at the edge of the Sittingbourne urban area; Swale Borough Council are currently advancing a new Local Plan and have discussed a possible housing target of between 980 and 1,153 dwellings per year, with a number of allocations, consents and potential future strategic developments to be located around the Sittingbourne urban area and being a potential customer for the WKN heat. In addition, WKN is located close to an existing employment allocation with developments on that land also potential heat customers. The Applicant considers that substantial additional positive weight should also be given to WKN given it would be CHP ready and situated in a location where there remains a good prospect of identifying customers for the heat produced.

3 ExQ3.3 – Air Quality

No questions at ExQ3

4 ExQ3.4. – Archaeology and Cultural Heritage

No Questions at ExQ3.

5 ExQ3.5 – Ecology

5.1 **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.**

5.1.1 A draft EMMP for WKN has been submitted at Deadline 5 (Document 4.10).

5.2 **Q3.5.2 – NE, KCC, SBC - Do you consider a draft EMMP should be submitted to the Examination?**

5.2.1 The Applicant notes this question is directed at NE, KCC and SBC and will review their responses. The Applicant confirmed to those three parties in the lead up to Deadline 5 that as per the response to Q3.5.1 it intended to prepare a draft EMMP for WKN and to submit that at Deadline 5.

6 ExQ3.6. – Greenhouse Gases and Climate Change

- 6.1 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?

- 6.1.1 The ExA will be aware the Applicant answered this question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004] at section 1.3, commencing on page 8 of that document.
- 6.1.2 The WHFAR [APP-086] presents a range of the fuels available for the Proposed Developments. As is also set out in Applicant’s Response to Submissions at Deadline 3 [REP4-008] (at page 13, under title ‘Paragraph 20’) ‘The WHFAR [APP-086] indicates clearly that a far greater proportion of the fuel is expected to be derived from wastes currently disposed to landfill than from RDF exported out of facilities in Kent. This balance has the potential to change over time, as more facilities are set up to create RDF out of wastes, but the WHFAR accurately reflects the current situation.’

- 6.2 Q3.6.2 – Applicant - 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.

Do you consider this paragraph applies in the case of the WKN Proposed Development that is not a NSIP and if so why?”

- 6.2.1 Whilst WKN is not an NSIP it has been directed by the Secretary of State as requiring Development Consent on the basis that it is nationally significant. The Applicant’s response to ExQ1.1.2 sets out the Applicant’s position that EN-1 and EN-3 are the most important and relevant to WKN given the description, type, scale and nature of the WKN facility and its acknowledged national significance. Should a conflict be identified between local planning policy and an NPS in the case of WKN then the Applicant considers that the NPS’s must prevail as matters of both law and policy for the following reasons:

- (1) EN-1 and EN-3 are so germane to the assessment of the WKN application given its description, scale and nature, that it would be irrational not to give them primacy;
- (2) The question answers itself in that if the SoS considers it 'both important and relevant' per section 105(2)(c) to have regard to the NPS in the first place in order to be contemplating such a conflict, then it cannot follow that the NPS can then be subordinated to DPD documents and fetter the SoS' discretion;
- (3) Following that, if the NPS does not prevail, then neither can para 4.1.5 be applied and the DPD documents prevail by default. The NPS are either important and relevant or they are not. As a matter of logic, if the DPD documents prevail as a result of the application of para 4.1.5, then that is still in effect the NPS prevailing.
- (4) If the NPS are not relevant because of a conflict, and DPD documents prevail for the purposes of decision-making, then the application is effectively being decided as a local planning application. It renders the section 35 direction meaningless, and it would be ultra vires for the SoS to decide the application at all.
- (5) Paragraph 5 of the National Planning Policy Framework itself states that the NPS form part of the overall framework of national planning policy, and may be a material consideration in preparing local plans and making decisions on local planning applications, demonstrating that NPS take precedence over local policy and decision-making with respect to projects of national significance.

6.2.2 The Applicant’s position, as demonstrated through the application and subsequent submissions, is that the WKN Proposed Development accords with both national and local policy and has not identified any conflicts between those two tiers of policy.

6.3 Q3.6.3 – Applicant, KCC, SBC - 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?

6.3.1 The Applicant acknowledges that since the publication in 2011 of the EN-01 and EN-03 NPS’s the UK ratified the Paris Agreement in November 2016, with that Agreement seeking a more stringent control on the increase in the global average temperature than had been agreed at the United Nations Climate Change Conference in 2010. The UK Parliament declared an environment and climate emergency in May 2019 and subsequently amended the Climate Change Act 2008, through the 2050 Target Amendment, which commits the UK to

ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline (“net zero”).

- 6.3.2 The Secretary of State for Business Energy and Industrial Strategy is currently the subject of a claim for judicial review, with the claimants (Vince, Monbiot and the Good Law Project Ltd) seeking a review of the decision not to review the National Policy Statements to reflect the changes identified above. Paragraph 6 of the Statement of Facts and Grounds relating to that case [**Appendix A**] refers to the Defendants pre-action letter dated 28th April 2020 which states that the Government will be publishing their Energy White Paper by April 2021 and will at that point decide whether a review of the National Policy Statements is appropriate.
- 6.3.3 However alongside that the Riverside Energy Park DCO (EN010093) was determined on the 9th April 2020; the scheme includes a 76MW waste energy recovery facility alongside waste anaerobic digestion, battery storage and solar generation. The Secretary of State’s decision in respect of that application [**Appendix B**] confirms at Section 8.1:

‘On 2 May 2019, the Climate Change Committee recommended the UK reduce greenhouse gas emissions by net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, Government announced a new carbon reduction ‘net zero’ target for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline.

The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. He further notes that the ExA concludes that the principle of the Development is in line with the national need for secure and reliable supplies of electricity as part of the transition to a low carbon economy. As discussed above, at 4.7 and 4.10, the Secretary of State also notes that current waste policy confirms that where energy from waste does not compete with greater waste prevention, re-use or recycling, it plays an important role in diverting waste from landfill, with an acknowledged carbon equivalent benefit. The Secretary of State therefore considers that granting consent for the Application would not be incompatible with the amendment to the Climate Change Act 2008.’

- 6.3.4 The REP decision provides a very recent and relevant demonstration of the Secretary of State’s position, that to consent a proposed development which accords with the National Policy Statements does not lead to the UK being in breach of its international obligations.
- 6.3.5 The Judgement in the Drax Power Ltd case was then made on the 22nd May 2020, following the SoS granting consent for the Drax Power development against the recommendations of the Examining Inspector.

6.3.6 Section 19 of that Judgement [**Appendix C**] sets out the SoS’s conclusion in that case which was that:

“...The Secretary of State considers that the Development would be in accordance with the relevant NPSs and, given the national need for such development as set out in the relevant NPSs, the Secretary of State does not believe that its benefits are outweighed by the Development’s potential adverse impacts, as mitigated by the proposed terms of the Order. As such, the Secretary of State has decided to make the Order granting development consent

6.3.7 That position was taken by the SoS despite an acknowledged significant adverse impact arising from the amount of Greenhouse Gases which would be emitted by the proposed development. As recorded in the Judgement, at Paragraph 226, the SoS had determined the Drax case on the basis that:

- i. The policy in the NPSs had not been altered by the amendment to the CCA 2008 and still remained the basis for decision-making under the 2008 Act;
- ii. The UK’s target of an 80% reduction in GHG emissions had been taken into account in the preparation of the energy NPSs
- iii. The net zero target was not in itself incompatible with those policies, given that there was a range of potential pathways that will bring about a minimum 100% reduction in GHG by 2050
- iv. Developments giving rise to GHG emissions are not precluded by the NPSs provided that they comply with any relevant NPS policy supporting decarbonisation of energy infrastructure, such as CCR requirements. Potential pathways may rely in future on other infrastructure or mechanisms outside the planning regime to offset or limit those emissions to help achieve net zero;
- v. Accordingly, the net zero target did not justify determining the application otherwise than in accordance with the NPSs or increasing the negative weight in the planning balance given to GHG emissions from the development; and
- vi. Given that the targets in the CCA 2008 apply across many different sectors of the economy, there was no evidence that the proposed development would in itself result in a breach of that Act and so s.104(5) did not apply.

6.3.8 Paragraph 227 provides the Secretary of State’s conclusion in that case which was that:

“In the case of section 104(5), notwithstanding the ExA’s conclusions on the Development’s adverse climate change impacts, it also found that there was no evidence to suggest that granting consent for the

Development would in itself lead to the Secretary of State to be in breach of the duty set out in the CCA to ensure that the UK’s target for 2050 is met. The Secretary of State agrees with this conclusion.”

6.3.9 The Judgement dismissed all grounds of the Claimant’s case and provides a further example that the NPSs still form the policy basis for the determination of applications for nationally significant development without the UK being in breach of its international obligations.

6.4 Q3.6.4 – Applicant, SBC - 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.

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.

6.4.1 The Applicant is discussing this point with SBC in relation to the SoCG between the two parties.

6.4.2 In relation to electric vehicle charging facilities, the Applicant has confirmed to SBC that K3 already has 2 electric charging points and 4 passive electric charging spaces (with the infrastructure necessary for charging points to be installed). SBC have confirmed, as documented in the draft SoCG submitted at D5, that they are content with that level of provision given K3 is now operational.

6.4.3 The Applicant and SBC have agreed that an appropriate number and specification of electric charging points should be provided to serve WKN. The Applicant expects this will be reflected through an alteration to the dDCO to require details of that provision to be agreed with SBC during the detailed design process and will include that within the next iteration of the dDCO submitted.

6.4.4 In its response to Q1A.1.17 the Applicant indicated its intention to provide further modelling of the carbon burden arising from the transportation of waste to the facility based on the distances that waste is likely to travel. That assessment is provided as **Appendix D** and concludes that the redirection of fuel to K3 or WKN from its current baseline destination would only result in a similar or slightly increased carbon burden which would represent only a small proportion of the carbon benefits each facility would deliver.

6.4.5 The assessment is based on assumptions relating to the likely distance fuel would be transported to the site, but based on the contracts secured for K3 and the anticipated sources of waste for WKN it would include fuel already being transported through Swale Borough.

- 6.4.6 The Applicant does not therefore consider that the vehicle movements associated with K3 and WKN would have a significant adverse impact on carbon emissions within the Borough and that as such a requirement relating to the use of low or zero emission HGV’s would not be necessary or reasonable.
- 6.4.7 Furthermore, K3 is and WKN would be merchant facilities which process waste/fuel transported to the facilities by third parties. The Applicant does not therefore have any direct control over the vehicles used by those third parties to transport waste/fuel. Any vehicles used by third parties to transport waste/fuel would comply with relevant standards relating to emissions for HGV’s, such as the current EU HGV Emissions Standards which become gradually stricter and which incentivise the use of zero and low emission vehicles.

6.5 Q3.6.5 – Applicant - 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:

a) if HGV traffic would not use the A2 at all or just the localised connections referred to, and

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.

- 6.5.1 Articulated HGVs would travel to / from the K3 and WKN Proposed Developments via Waste Transfer Stations, which, given that the waste is being transferred onto articulated HGVs for the trip to minimise vehicle-kilometres, will be located such that the Strategic Road Network (i.e. the M2 and A249) will predominantly be used. The only waste vehicles travelling to / from the K3 and WKN Proposed Developments via the A2 and Castle Road may be RCVs, however, any such vehicle would be a local collection vehicle and they would be travelling on these sections of road in any event regardless of its disposal destination.
- 6.5.2 Given this, there may be some RCVs travelling on the A2 and Castle Road associated with the K3 and WKN Proposed Developments, however, these vehicles would be on these sections of road in any event, thus no effective net change in such movements.
- 6.5.3 Given the longer distance nature of articulated HGVs travelling to / from the K3 and WKN Proposed Developments, there would be an increase in both journey time and fuel use if such journeys were made via the A2 rather than via the Strategic Road Network (i.e. the M2 and A249), thus, there is no attraction or benefit for articulated HGVs to travel via the A2 or Castle Road. Therefore, monitoring of such HGVs is not necessary.
- 6.5.4 In terms of RCVs, because any such vehicle associated with the K3 and WKN Proposed Developments that may be on the A2 or Castle Road would be a local

collection vehicle, and would be on these roads in any event such that there would be no effective net change in such movements, there is similarly no requirement for monitoring of these vehicles.

6.6 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?

6.6.1 The Applicant notes that this question is directed at SBC and will review their response.

6.7 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?

6.7.1 The Applicant’s response to Q3.11.4 provides further context to the Rail and Water Transportation Strategies [APP-088 and APP-089] which form part of the application.

6.7.2 In respect of this particular question the Applicant’s position is that it would not be appropriate or feasible to progress any opportunity for infrastructure improvements at Ridham Dock at this stage. As set out within the K3 and WKN Rail and Water Transportation Strategies the opportunity to transport waste via rail or water is dictated by the waste contracts which exist, not by the presence of infrastructure (as demonstrated by the Ferrybridge example presented in the response to Q3.6.8). The appropriate time to progress the opportunity to transport waste via Ridham Dock would be at the point when a waste contract becomes available or secured which would allow for the transportation of waste using alternative means of transport to be feasible, given that would also allow for an assessment of whether that option is viable, based on the quantum and nature of the waste involved and an assessment of the infrastructure improvements required to accommodate that.

6.8 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.

6.8.1 The documents requested are provided as follows:

- Ferrybridge Multifuel 2 (FM2) Recommendation Report [**Appendix E**]

- Ferrybridge Multifuel 2 (FM2) Decision [**Appendix F**]
- North London Heat and Power Project (NHLPP) Recommendation Report [**Appendix G**]
- North London Heat and Power Project (NHLPP) Decision [**Appendix H**]

Ferrybridge Multifuel 2 (FM2)

6.8.2 Paragraph 2.2.4 of the Recommendation Report records that as part of the development of the adjacent FM1 facility an existing rail spur/siding had been upgraded and extended and infrastructure added to allow for the delivery of fuel/removal of ash by rail, with the proposed FM2 development able to make use of that facility.

6.8.3 Paragraph 4.32.33 records the Applicant’s position in the FM2 case:

‘In the Applicant’s submission at Deadline 1 [D1-011], the Applicant stated that a worst case scenario based on all waste derived fuel and consumables being transported by road had been carried out and demonstrated that there was sufficient capacity on the highway network. The Applicant also stated that it was unable to disclose discussions with fuel suppliers, due to their commercial nature, but discussions were underway. The Sustainable Fuel Transport Management Plan (draft Requirement 34 (now 35)) would be used to assess each potential supply contract against a defined set of criteria, in order to determine the most appropriate and sustainable mode of transport for that contract. Road, rail and barge were all to be included within the appraisal tool.’

6.8.4 Accordingly the Recommended Development Consent Order within the Recommendation Report includes Requirement 35, which provides for an ongoing assessment of the feasibility and viability of using alternative methods of transportation, including a five yearly review of that position.

6.8.5 The Secretary of State’s decision letter does not specifically mention alternative methods of transportation and did not make any alterations to Requirement 35.

6.8.6 The approach taken within the K3 and WKN Rail and Water Transportation Strategies and the dDCO therefore closely reflects that agreed for the FM2 facility. FM1 and FM2 are operated by as a joint venture (MEL) between Wheelabrator Technologies (the parent company of the applicant in the K3/WKN DCO application) and SSE plc. The cost of upgrading and extending the rail spur/siding as part of the FM1 development was in the region of £10M; FM1 has been in full commercial operation since July 2015 and FM2 has been in full commercial operation since December 2019 and to date neither of the facilities have processed waste delivered by rail.

North London Heat and Power (NHLP)

- 6.8.7 Paragraphs 4.8.28 to 4.8.37 provide a discussion of the ability to utilise water transport and conclude that to do so would be between 2.2. and 3.0 times more expensive than the equivalent road transport scenario. The ExA’s conclusion on that issue is provided at Paragraphs 4.8.49 to 4.8.51:

‘Representations about particular access issues have been adequately responded to by the applicant in my view. These rely heavily on the successful implementation of the CoCP, a matter which is returned to in section 4.18. The specialist study commissioned by the applicant examining the potential for transport of IBA and MSW by water using the River Lee Navigation is thorough and the conclusions are difficult to refute.

However, I have some sympathy with the views of CRT that if water-borne transport cannot be made to work economically at this location physically adjacent to the waterway, it is difficult to see where there would be better circumstances. In this regard, the applicant’s response that it will continue to work with TfL and LBE to promote future possibilities for water transport is welcome, although it is noted that such commitment is outside of the scope of the draft DCO (REP4-001).

There is no rail connection to the application site and for a direct rail connection to be provided, a new railway spur and associated loading and unloading infrastructure would be needed. The construction of any such spur would require significant investment and land take, if an appropriate alignment could be found. While waste or construction materials could be moved to a local rail transfer station, if one were available, they would still need to be transferred to the application site via road so this would not provide any benefits for the local highway network.’

- 6.8.8 The issue of alternative methods of transportation does not feature in the SoS’s Decision Letter. The Development Consent Order does not include any Requirement which provides for an ongoing review of that position. As noted by the ExA, the Applicant committed to continue to explore opportunities for alternative methods of transportation but it was considered to be outside of the scope of the draft DCO.

6.9 Q3.6.9 – Applicant, KCC

- 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 of the existing facilities at the dock to accommodate the additional freight necessary to make this a viable option?**
- ii) **How would such a requirement be made effective and proportionate?**
- iii) **What other practical difficulties militate against such a requirement?**

- 6.9.1 The Applicant’s response to Q3.11.4 provides further context to the Rail and Water Transportation Strategies [APP-088 and APP-089] which form part of the application.
- 6.9.2 The K3 and WKN Rail and Water Transportation Strategies recognise that it would be in the operator’s interest to deliver the necessary infrastructure to secure waste fuel contracts. KCC confirmed in their Committee Report in October 2018 that they were satisfied that if the applicant were able to secure appropriate waste/fuel contracts which justified the use of rail or water transport then it would take steps to enable the use of those alternative transport modes.
- 6.9.3 As illustrated by the Ferrybridge example the Applicant’s position is that it would not be appropriate or justified to require the provision of infrastructure as part of the Rail and Water Transportation Strategy. This Statement demonstrates that providing infrastructure would not in itself mean that waste would be transported to K3 or WKN by rail or water, as that would not occur unless contracts were secured which allowed those methods of transport to be used. Without knowing the quantum and form of delivery it is not possible to assess what infrastructure would be required.
- 6.9.4 Should the Applicant seek in the future to secure a contract which allowed for the transportation of waste by rail or water then the K3 and WKN Rail and Water Transportation Strategies place responsibility on the operator of those facilities to assess the infrastructure required and whether the cost of providing it is feasible against the value of the contract being pursued. It is not therefore considered that any further requirement to fund that infrastructure needs to be included within the K3 and WKN Rail and Water Transportation Strategies.

6.10 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?

6.10.1 The Applicant’s response to Q3.11.4 provides further context to the Rail and Water Transportation Strategies [APP-088 and APP-089] which form part of the application.

6.10.2 The Applicant acknowledges that the costs of providing the necessary infrastructure would need to be made available to KCC, as they would require that information in order to make an assessment of the viability of providing or not providing for rail and water transportation in relation to the value of any waste contracts which allowed those methods to be used. However, as stated in the K3 and WKN Rail and Water Transportation Strategies there are inherent commercial sensitivities relating to the securing of waste contracts and the value of those which means it would not be appropriate to make that information publicly available. The revised 2017 K3 Rail Strategy sets a directly comparable precedent in that respect, in that it included the same provision and was accepted by KCC.

7 ExQ3.7. – Ground Conditions

No Questions at ExQ3.

8 ExQ3.8. – Habitats Regulations Assessment

- 8.1 **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?**
- 8.1.1 The Applicant’s response to Q3.11.4 provides further context to the Rail and Water Transportation Strategies [APP-088 and APP-089] which form part of the application.
- 8.1.2 The Applicant has responded directly to the MMO to set out its position on this issue (as set out in Document 13.3 – Applicant’s Response Submissions at D4) which is that it would not be appropriate or indeed possible at this stage to provide a review the potential environmental impacts of using water transport, without knowing the quantum of waste being transported using water, the source of that waste, the method of transportation and any associated infrastructure required to allow for that method of transportation to be used. That information would only become available at the point when a waste contract which allowed for transportation by water was being sought, and the details of that form of transportation and any associated infrastructure would need to be considered by the operator at that point in order to undertake an assessment of the viability of using that method of transportation. The Applicant acknowledges the MMO’s points in its submissions at Deadline 4 that an assessment would need to be undertaken of the environmental impacts of using water transportation and that any associated infrastructure may include activities for which a Marine Licence would be required.

9 Q3.9 - Landscape and Visual Impact

9.1 Q3.9.1 – Applicant - 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.

How is each of the design principles set out in that document met by the Applicant?

9.1.1 The DCO application was submitted before the publication of the National Infrastructure Commission document in February 2020. However, to demonstrate that an appropriate design process has been undertaken to date, the four specific design principles have been assessed as follows;

- **Climate - Mitigate greenhouse gas emissions and adapt to climate change.** Chapter 6 of the ES has shown that the development would reduce greenhouse gas emissions, compared to landfilling waste, contributing to the UK’s trajectory to achieve net zero greenhouse gas emissions by 2050 or sooner. Measures for reducing embodied carbon and measuring whole life emissions, using a standard such as PAS2080, have been recommended as further mitigation in Chapter 6. The main risk from a changing climate is from flooding and coastal change, which has been assessed in Chapter 10 with appropriate mitigation measures provided in the design.
- **People - Reflect what society wants and share benefits widely.** A meaningful process of community and stakeholder engagement was undertaken to inform the design and planning process (see Chapter 3 of the ES [APP-070] and the Consultation Report [APP-079-081]), which demonstrated that levels of local objection to the facility are very low. The facility will not be publicly accessible; however, an appropriate and safe workspace has been designed for employees and visitors.
- **Places - Provide a sense of identity and improve our environment.** The built form, infrastructure and landscape proposals have been designed to reflect the simplicity and large scale of the coastal landscape and the industrial townscape of Sittingbourne. Landscape treatments of low level earth shaping, grassland, scrub and wetland respond to the marshland setting. Section 12.7 of the Landscape, Townscape and Visual Resources chapter of the ES defines mitigation.
- **Value - Achieve multiple benefits and solve problems well.** A multi-disciplinary team of planning and environmental consultants, architects and engineers have added value to the environment and community

through a collaborative design and assessment process. Chapter 2 of the ES sets out details of the scheme design process and primary mitigation.

9.2 Q3.9.2 – Applicant - 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.”

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.

9.2.1 The WKN facility has been designed, located and assessed in accordance with NPS EN1, NPS EN3 and NNP. The application site lies at the interface of the relatively wild coastal marshland of the Swale landscape and the extensive industrial townscape on the northern edge of Sittingbourne. The large scale buildings and infrastructure of the scheme have an obvious synergy with the industrial townscape, sharing a similar typology, scale, materials, pattern and form, particularly with the neighbouring K3 development. At the same time the large scale and simple forms of the proposed development also seek to reflect the open, large scale and often stark landscape of the adjacent Chetney and Greenborough Marshes and wider North Kent Marshes Special Landscape Area. The proposed landform that wraps around the development is low level to avoid unnecessary disruption within the flat landscape whilst seeking to screen and rationalise any low level visual clutter. The use of new tree belts and woodland as screening elements have been avoided as uncharacteristic in this landscape. The proposed grassland, scrub and wetland reference the natural habitats of the Swale coastline, described in section 12.7 of the ES.

9.2.2 The layout and scale parameters proposed within the application reflect that approach, and Requirement 14 within the dDCO then provides for the relevant planning authority to have the opportunity to ensure that those same principles are reflected in the detailed design of the WKN facility.

9.3 Q3.9.3 – KCC - 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 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.

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.

- 9.3.1 The Applicant notes that this question is directed at KCC and will review their response to it.

10 Q3.10 – Noise and Vibration

No questions at ExQ3.

11 ExQ3.11 – Traffic and Transport

11.1 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.

11.1.1 The Applicant has submitted Document 13.4 – Site Photographs and Drone Footage at Deadline 5 which provides a selection of photographs from key viewpoints. Should the ExA require any further photographs of individual site features the Applicant will provide those.

11.2 Q.3.11.2 – 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.

11.2.1 Drone footage of the K3 facility and WKN site and their surrounding context was taken on the morning of the 15th June 2020. Three drone videos have been submitted at Deadline 5, with Document 13.4 – Site Photographs and Drone Footage providing a route map for each video.

11.3 Q.3.11.3 – 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?"

11.3.1 The applicant notes that this question is directed to SBC and the applicant feels it would be useful to comment to assist the Examining Authority.

11.3.2 At the time of submitting the DCO application, improvements at the A249/Grovehurst Road interchange were not committed and therefore the applicant undertook an assessment of its existing geometries and those of an interim improved layout, which was at that time the layout proposed by another, already submitted, planning application. Since the submission of the DCO, improvement works have become 'committed' after the successful announcement of HIF (Housing Infrastructure Fund) monies.

11.3.3 The applicant met with KCC on 10th February 2020, during which there were discussions on the modelling work KCC had undertaken on the committed upgrade to the A249/Grovehurst Road interchange as part of its HIF application. There were discussions on the allowances and assumptions that the modelling

had made in terms of allocated developments and other emerging developments, for example, whether the consented K3 (consent granted in 2012) traffic flows had been included in the modelling. Although KCC were unable to advise on these assumptions during the meeting, KCC agreed to provide these details on the assumptions to the Applicant. These assumptions may assist SBC to provide a response to Q3.11.3.

- 11.3.4 Notwithstanding this, and to put the traffic flows generated by the K3 and WKN Proposed Developments in context, the applicant has added all of the estimated traffic flows that would be generated by the other allocated and emerging developments on the A249 and compared this to that generated by the K3 and WKN Proposed Developments. This comparison shows that the traffic flows generated by the K3 and WKN Proposed Developments amount to only 4% to 5% of the peak hour traffic flows that the other allocated and emerging traffic flows would generate on the A249. This demonstrates that the traffic flows generated by the K3 and WKN proposed developments is negligible in the context of the delivery of allocated sites.

11.4 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?"

- 11.4.1 The Applicant’s position is that positive weight should be afforded to that fact that due to their location, and specifically the proximity of the Swale Estuary, Ridham Dock and the Kemsley to Sheerness railway, the K3 and WKN facilities have the potential to be able to process waste which has been transported via rail or water.
- 11.4.2 However the ability to feasibly and viably transport waste via rail is dependent on the waste contracts secured for K3 and WKN and the amount of ash requiring transportation does not in itself make the use of water or rail transportation feasible without waste also being transported via those methods. The highways impacts of the K3 and WKN proposed developments are therefore assessed on a worst case scenario of all waste and ash being transported by road. However the Applicant acknowledges the benefits in environmental and highways terms of transporting waste materials and ash via rail or water, and indeed being able to utilise those methods would be commercially beneficial to the Applicant as it would provide the ability for seek waste contracts for K3 and WKN from a wider geographical area and to allow waste to be transport cost-effectively. Provision is therefore made within the dDCO to periodically review the ability to use rail and water to transport waste and ash materials, so as to introduce the benefits of using them should it become feasible and viable to do so.
- 11.4.3 That is submitted to be an appropriate response to the desire to use those transport modes, which is established in planning policies such as CP2, and is an approach which has been accepted for K3 previously and used on the Ferrybridge FM2 project. As demonstrated below that approach is one which is also considered appropriate within the context of the K3 and WKN proposed developments and reflects the approach taken originally for K3.
- 11.4.4 As demonstrated by the context provided in response to this question, it has been acknowledged by KCC that there is a commercial incentive to the operator to use alternative forms of transportation where that is feasible and viable, in order to allow them to pursue waste contracts which offer the ability to use rail or water transportation. The securing of the Rail and Water Strategies through Requirements in the DCO ensures that the Application would have to submit details of the ability to use alternative means of waste transportation at 5 yearly

intervals and allows KCC to review the position regarding the feasibility and viability of the use of rail and water transportation and then to require the use of those alternative methods if they are demonstrated to be feasible and viable.

- 11.4.5 As such the responses provided to Q3.6.7, Q3.6.8, Q3.6.9, Q3.6.10, Q3.8.1 and Q3.11.6 should be read in alongside the context provided in this response to Q3.11.4.

The K3 Consented Position

- 11.4.6 The Committee Report [Planning Statement APP-082 – Appendix C] for K3 records that *‘The applicants proposal assumes all waste would be delivered to the site by road, however they indicate that they are pursuing other options for delivery by water and/or rail should this be found to be practicable and viable’*. Swale Borough Council did not object to the application subject to the investigation of the use of rail infrastructure. KCC concluded that they did not see any justified objection on highway grounds and imposed, via Condition 6 of SW/10/444, a condition requiring a strategy to encourage the use of the railway in the vicinity of the application site as a means of transporting waste deliveries to the development to be submitted to and approved by the County Council prior to the commencement of any development.
- 11.4.7 As recorded in the K3 and WKN Rail and Water Transportation Strategies the Rail Strategy which was then approved in respect of K3 was predicated on a separate extant planning permission (SW/12/167) for the upgrading of rail infrastructure in the vicinity and at the Ridham Dock, as well as the intention for K3 to deal with waste from the North London Fuel Use Contract prior to that contract being withdrawn. A revised Rail Strategy (March 2017) was therefore submitted to KCC on the basis that it was not feasible following the withdrawal of that contract to transport available fuel to the site by rail. The 2017 Strategy notes the original intention via the improvements to the rail facility at Ridham Dock to import some 450,000 tonnes (80% of the originally consented throughput capacity of K3) via rail.
- 11.4.8 The revised 2017 Rail Strategy records the withdrawal of the North London Fuel contract and stated in respect of K3 that:
- ‘It was therefore necessary to secure alternative sources of waste for the SEP. The challenge of finding and securing sufficient waste for a merchant facility of this scale and to demonstrate to financial institutions that the development is commercial viable should not be underestimated. Accordingly, use of rail transport was a key factor in determining these contracts, given its potential to save significant transportation costs. However, having due regard to the geographical distribution of the available sources of this waste and its proximity to the necessary rail infrastructure in the quantities needed to make it viable, it is neither feasible nor viable to transport the waste to Ridham Dock by rail at present’*.
- 11.4.9 The revised 2017 Rail Strategy proposed a 5 yearly review of the ability to use rail transportation to supply K3 was approved by KCC on the 27th June 2017.

The wording of the K3 and WKN Rail and Water Transportation Strategies submitted as part of the DCO application replicate the wording used in the 2017 Rail Strategy regarding the five yearly review and the position taken within the K3 and WKN Rail and Water Transportation Strategies is therefore one which was acceptable to KCC in mid-2017.

Application SW/18/503317

11.4.10 As recorded in the Planning Statement [APP-082] a Section 73 application (SW/18/503317) was made in June 2018 to seek to increase the permitted number of HGV movements per day from 258 to 348 to reflect the increased vehicle movements which would arise from waste to be transported directly to K3 from local collection points without first being processed into larger loads at transfer stations. The application was consented on the 11th October 2018.

11.4.11 The Committee Report relating to that application is provided as **Appendix I** and contains a number of sections of relevance to the discussion of the use of rail and water transportation.

11.4.12 At Paragraph 19 the Committee Report confirms that the planning permission (SW/12/167) which provided for the refurbishment and use of existing rail sidings and site infrastructure at Ridham Docks for the purposes of K3 had lapsed. Paragraph 20 summarises the above context which is set out in this response and concludes that *‘Ultimately, whether or not non-road transportation is to be used is likely to depend on waste (fuel) sources, quantities and contractual arrangements.’*

11.4.13 Paragraph 28 summarises the Applicant’s case within the SW/18/503317 application in respect of potential alternatives to road transport, as follows:

‘In terms of potential alternatives to road transport, the applicant states that the movement of waste by rail or water requires an appropriate contract for a significant volume of waste with loading facilities at the waste source and an appropriately long contract period to allow depreciation of the rail / water capital infrastructure. It states that opportunities to use these modes typically relate to local authority tenders, but that these are limited and only occur occasionally due to the long term nature of the contracts. It further states that it is not currently involved in any suitable tender opportunities that would allow the delivery of waste by rail or water but points out that alternatives to road transport will continue to be reviewed under the approved Revised Rail Strategy.’

11.4.14 Paragraph 56 then provides a discussion of that position from the County Council’s point of view:

‘Whilst the NPPF and several development plan policies promote the use of sustainable transport modes, they do not preclude road use. Indeed, there are circumstances where road use will be the most sustainable transport mode. The most sustainable mode of transport for importing waste / fuel to facilities such as the Kemsley SEP is likely to be determined by the geographical distribution of

available sources of waste, the quantity and reliability of the waste source (related to contractual arrangements) and the proximity of both the facility and the source(s) of waste to the necessary rail or dock infrastructure. In the case of the Kemsley SEP, it was originally envisaged that a significant quantity of waste / fuel would be delivered to Ridham Docks by rail from London and then transferred to the facility along Ridham Dock Road. However, the applicant was unable to secure the waste / fuel contract on which the rail use depended and has had to establish alternative waste / fuel sources. In the absence of a similar large contract for the delivery of waste / fuel by rail (or water), the applicant has had no choice but to seek alternatives if the Kemsley SEP is to operate and provide power to Kemsley Paper Mill. In these circumstances, road transport is likely to be the most sustainable mode for the delivery of locally collected C&I Waste such as that proposed. Ensuring that the Kemsley SEP is able to accommodate waste collected locally from within Kent is also consistent with a number of the strategic objectives of the Kent MWLP. Whilst there is currently no specific obligation on the applicant relating to the use of water transport, the 2017 revised rail strategy requires potential rail use to be reviewed on a 5-yearly basis.

11.4.15 In Paragraph 56 the County Council then concludes:

'I am satisfied that this remains an appropriate mechanism for encouraging alternatives to road use. I am also satisfied that if the applicant were able to secure an appropriate waste / fuel contract(s) which justified the use rail and / or water transport that it would take steps to enable use these alternative transport modes.'

11.4.16 Paragraph 79 then further concludes:

'Given the proximity of the Kemsley SEP to potential rail and existing water transshipment facilities, it is disappointing that waste / fuel is unlikely to be delivered to the Kemsley SEP by rail or water in the near future. However, granting planning permission for the proposed variation would not preclude either delivery mode. As noted in paragraph 56 above, the most sustainable form of transport is likely to depend on factors that are largely outside the applicant's control. In the current circumstances, road transport is likely to be the most sustainable mode for the delivery of locally collected C&I Waste such as that proposed. The 2017 revised rail strategy requires potential rail use to be reviewed on a 5-yearly basis and I am satisfied that this remains an appropriate mechanism for encouraging alternatives to road use. However, it should be noted that unless the applicant is able to secure a major, longterm waste / fuel contract which can enable the viable use rail or water transport, it is likely that road transport will remain the main or only means of transporting waste / fuel to the Kemsley SEP. It should also be noted that ensuring that the Kemsley SEP is able to accommodate waste collected locally from within Kent is also consistent with a number of the strategic objectives of the Kent MWLP and that this would assist in providing a sustainable power supply for Kemsley Paper Mill. These and related issues are likely to be explored further as part of the Kemsley DCO application relating to the K3 power upgrade and throughput increase and WKN projects referred to in paragraph 21 above.'

11.4.17 The SW/18/503317 application therefore reconfirmed KCC’s position in late 2018 that the approach of reviewing the ability to use rail for the transportation of waste remained acceptable. The Applicant’s position is therefore that in that context it remains an appropriate approach for both K3 and WKN, as proposed through the DCO application.

11.5 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?

11.5.1 The applicant understands that KCC is in receipt of traffic data for the Allington Waste to Energy facility and are currently reviewing this, likewise, the Applicant is in receipt of traffic data for their operational Ferrybridge site and are currently reviewing this with a view to exchanging.

11.6 Q3.11.6 – Applicant - 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]).

Please

a) explain exactly what “upgrading” of facilities is said to be required to transport waste by water; and

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

11.6.1 The Applicant’s response to Q3.11.4 provides further context to the Rail and Water Transportation Strategies [APP-088 and APP-089] which form part of the application.

11.6.2 As reflected in the response to Q2.8.1 it is not possible at this stage to define, even indicatively, what upgrades may be required to the facilities at Ridham Dock to provide for the transportation of waste by water, or indeed whether any upgrades would be required. That assessment would only be possible when a waste contract arises which provides for the ability to use water as a method of transportation, at which point the quantum and nature of waste and the method of its delivery would be known. Those factors would need to be considered alongside other external factors, such as the operational capabilities and capacity of Ridham Docks at that time, in order to robustly assess what upgrades may be required. Should a waste contract arise which provides for the ability to transport waste via water and where the quantum of waste or the operational capacity at

the Ridham Dock, for example, allowed that to take place without any infrastructure improvements then it is likely to ensure that water can feasibly and viably be used to transport that waste.

12 Q3.12. – Water Environment

12.1 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.

12.1.1 The Applicant confirms that the WKN Environmental Permit application was submitted to the Environment Agency on the 13th June 2020.

12.1.2 The Applicant does not consider it would be appropriate to provide a copy of the WKN Environmental Permit application at this stage given the application has not yet been accepted by the Environment Agency as being duly made. Until the application is duly made it will not be publicly available via the Environment Agency. The EA could, for instance, make a request for additional information which could lead to original application documents being amended or replaced and those documents would already have been made publicly available if submitted as part of the K3/WKN DCO application.

12.1.3 Paragraph 4.10.3 of EN-1 clarifies that the IPC (now SoS) ‘*should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes...will be properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate them*’. In that respect the Applicant notes that the EA have agreed through their signed SoCG at Deadline 5 [Document 8.2] that they see no reason why a new permit for the WKN Proposed Development should not be granted.

12.2 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.

12.2.1 The Applicant took the position that the surface water outfall was the relevant element of the proposed developments in respect of the SEIMP but will review the MMO’s response to Q3.12.2 and will respond accordingly.

12.3 Q3.12.3 – MMO - Please comment on the scope and conclusions of the assessment referred to in the above question.

12.3.1 The Applicant notes that this question is directed at the MMO and will review their response accordingly.

13 Q3.13. – Draft Development Consent Order

13.1 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?”

13.1.1 The Applicant has further reviewed its requirements in terms of impact piling and accepts that R29(3) is no longer necessary in light of R29(1). It is proposed to delete R29(3) in the next dDCO to be submitted at Deadline 6.

13.2 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?

13.2.1 The Applicant notes that this question is directed at the MMO and will review their response and comment accordingly.

13.3 Q3.13.3 – Applicant - 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”

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.

Please comment and confirm whether and if so how R20 will be amended in substance as requested.

13.3.1 It is proposed to amend the definition of “permitted preliminary works” in Schedule 2 in the next dDCO to be submitted at Deadline 6 as follows:

“permitted preliminary works” means works within Work Nos 4, 5 and 6, site clearance work, survey work, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements and the provision of site security, and, subject to compliance with Requirement 20(1) of this Order, archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the diversion and laying of services, provided that no permitted preliminary works will give rise to any materially new or materially different effects from those assessed in the environmental statement;

13.4 Q3.13.4 – Applicant, IP’s - 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.

13.4.1 The Applicant has reviewed the documents required to be certified and will include the updated Outline CEMP and the Design and Access Statement in Article 16 in the next dDCO to be submitted at Deadline 6.

13.5 Q3.13.5 – Applicant - 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?

13.5.1 The Applicant has reviewed the draft WKN EMMP and agrees that it will also apply during construction and operation and will therefore amend “commissioned” to “commenced” in R21 in the next dDCO to be submitted at Deadline 6.

13.6 Q3.13.16 – Applicant - 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?

13.6.1 The Applicant has reviewed the references to the ES and/or Appendices in the requirements and it is comfortable that the references are complete and consistent. For the avoidance of doubt the dDCO will be amended at Deadline 6 by the addition of the following words to the definition of “environmental statement” in Article 2: *“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on 11 September 2019 including all appendices thereto;*

13.7 Q3.13.7 – HE - "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.

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.

- 13.7.1 The Applicant notes that this question is directed at HE but considered it useful to respond to confirm that continued discussions have been taking place during the examination of the application between the Applicant and HE. HE responded on the 4th December 2019 to the Applicant’s publicity following the acceptance of the application and provided comments on the Applicant’s response within the submitted Environmental Statement to HE’s previous comments on the application during the pre-application consultation process.
- 13.7.2 The Applicant produced a discussion note collating HE and the Applicant’s position on those matters which was then discussed at meeting between the Applicant and HE to discuss on the 28th January 2020. HE undertook to provide a response on the discussion note following that meeting which was delayed as a direct result of the COVID-19 pandemic. HE issued their response to the discussion note on the 24th March 2020. Once it became clear that due to the COVID-19 pandemic the Issue Specific Hearing scheduled for the 16th April was postponed the Applicant produced a consolidated note which removed a number of matters which had been agreed in those previous discussions, and provided that to HE on the 28th May 2020 with that note discussed in a virtual meeting between HE and the Applicant on the 18th June 2020, immediately prior to Deadline 5 (it not having been possible to arrange an earlier date ahead of Deadline 5).
- 13.7.3 It is the Applicant’s understanding following the meeting on 18th June 2020 that HE agree that K3 has the ability to operate to its consented 348 movements per day without any restrictions and that those traffic flows have been included within the HEs traffic modelling of the M2 Junction 5 (M2J5) under its current layout and operation. There is an expectation that the M2J5 and A249 Grovehurst roundabout upgrade schemes would have been completed by Q1 2025, which is the earliest point at which WKN is expected to become operational should Development Consent be granted, in which case no restrictions would be required in respect of WKN operational movements. The Applicant and HE are therefore continuing to discuss the impacts on the road network of all elements of the proposed development and any measures required to mitigate those impacts, with a focus on a) the additional 68 movements per day which would arise from the additional tonnage throughput being proposed for K3, b) from the construction of the WKN facility and c) from any operational movements arising from WKN should it become operational ahead of improvements being completed to M2J5 and/or the A249 Grovehurst Roundabout.

13.7.4 HE requires the vehicle movement data relating to the Allington and Ferrybridge EfW facilities; on receipt of the Allington EfW data from KCC, the Ferrybridge data will be provided by the Applicant to HE. It was agreed at the meeting on the 18th June 2020 that the Applicant would use their discussion note to form a SoCG with HE which the parties will then review in order to provide a draft of that SoCG to the ExA in sufficient time for its content to be considered when formulating ExQ4.

13.8 Q3.13.8 – HE, KCC - 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.

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:

a) the M2J5, A249 Key Street and A249 Grovehurst junctions

b) permitted works under the M2J5 Highways Act Examination;

c) KCC-led works to A249/A2 Key Street; and

d) KCC-led works to A249 Grovehurst junction due to be modelled/ designed/ agreed/ constructed by around 2024.

13.8.1 The Applicant notes that this question is directed at HE and KCC and will review their responses to it.

13.9 Q3.13.9 – HE, KCC - 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 about what matters are currently outstanding and ensure that they are included in the updated SoCG that the Applicant will be producing for D5.

13.9.1 The Applicant notes that this question is directed at HE and KCC and will review their responses to it.

14 Q3.14. – Other Matters

- 14.1 **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.**
- 14.1.1 The Applicant recognises the importance of the SoCG’s and has been advancing discussions with the respective parties. Final signed SoCG’s with the Environment Agency and Natural England have been submitted at Deadline 5, together with a draft SoCG with Swale BC.
- 14.1.2 The Applicant and KCC have been working towards being able to submit a draft SoCG at Deadline 5. It is understood that KCC have experienced delays which have meant that is not possible, however the Applicant and KCC will continue to progress their discussions in order for that SoCG to be submitted as soon as possible.
- 14.1.3 The Applicant continues to discuss the application with Highways England. The Applicant’s response to Q3.13.7 summarises those discussions.

14.2 Q3.14.2 – Applicant – 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.

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:

- detail the structure of each SoCG document and provide an up to date list of SoCGs (for each Examination deadline);**
- provide an update on the status of each SoCG;**
- set out the commonality between SoCGs and a summary of the principal matters outstanding; and**
- provide a summary on specific areas where matters are identified as being ‘subject to ongoing discussion’ or ‘not agreed’.**

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.

14.2.1 The Applicant has provided a Statement of Commonality at Deadline 5 which reflects the final SoCG’s agreed with the EA and NE and the draft SoCG prepared with SBC. An updated Statement of Commonality will be submitted alongside the KCC draft SoCG as soon as it is possible to submit that, as well as in due course to reflect the SoCG with HE and any other changes to the other SoCG’s which have been prepared.