



Wheelabrator
TECHNOLOGIES



Deadline 5: Applicant's Response to Submissions at Deadline 4

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

PINS Ref: EN010083

**Document 13.3
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Contents

1	INTRODUCTION	3
1.1	Purpose of this document	3
1.2	Context.....	3
1.3	The Site and its surroundings	4
1.4	Proposed Development.....	4
	Wheelabrator Kemsley – K3	4
	Wheelabrator Kemsley North – WKN.....	5
2	DEADLINE 4 SUBMISSIONS FROM INTERESTED PARTIES.....	6
2.2	Swale Borough Council (20 th May 2020).....	6
2.3	Minster-on-Sea Parish Council (20 th May 2020).....	7
2.4	Medway Council (20 th May 2020)	7
2.5	Marine Management Organisation (20 th May 2020).....	8
	Responses to ExQ2.....	8
	3. Comments on Written Representations	10
2.6	Kent County Council (20 th May 2020)	14
	Introduction.....	14
	ExQ1A.1	14
	Q1a.1.1	14
	Q1a.1.2	14
	Q1a.1.3	14
	Q1a.1.4	15
	Q1a.1.6 and Appendix 3 [REP4-018]	15
	Q1a.1.7	16
	Q1a.1.11	16
	Q1a.1.12	16
	Q1a.1.13	17
	Q1a.1.16	18
	Q1a.1.17	18
	Q1a.1.19	19
	Q1a.1.23	19
	Q1a.1.29	19
	Q1a.1.31	19
	Q1a.1.34	20
	Q1A.1.37	20
	Q1a.1.39	21
	Q1a.1.40	21
	Q1a.1.43	21
	Q1a.1.45	21
	Q1a.1.47	21
	Q1a.11.1	21
2.7	Environment Agency (20 th May 2020)	23
2.8	SEWPAG (21 st May 2020).....	23
2.9	Natural England (21 st May 2020).....	23
2.10	Highways England (21 st May 2020).....	24

1 Introduction

1.1 Purpose of this document

- 1.1.1 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.
- 1.1.2 This Document provides the response by the applicant to the Deadline 4 submissions made to the Examining Authority by Interested Parties.
- 1.1.3 For ease and completeness this document briefly summarises the proposed development and identifies the application site before providing the applicant’s response to relevant Deadline 4 submissions. The Deadline 4 submissions are not replicated within this document but can be viewed on the project page of the Planning Inspectorate’s website:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/wheelabrator-kemsley-generating-station-k3-and-wheelabrator-kemsley-north-wkn-waste-to-energy-facility/?ipcsection=docs>

1.2 Context

- 1.1.1 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”).
- 1.1.2 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 became operational in Q2 2020.
- 1.1.3 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).

- 1.1.4 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.
- 1.1.5 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.
- 1.1.6 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.

1.3 The Site and its surroundings

- 1.3.1 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.
- 1.3.2 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.

1.4 Proposed Development

Wheelabrator Kemsley – K3

- 1.4.1 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 it became operational in Q2 2020.
- 1.4.2 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.
- 1.4.3 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.

- 1.4.4 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).
- 1.4.5 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 was now being sought as part of the DCO, in the context of the K3 facility already being substantially constructed at that time.
- 1.4.6 As the K3 facility is now operational the effect in reality of the proposed application ('the practical effect') would be the K3 facility as consented but generating an additional 25.1MW, together with being able to process an additional 107,000 tonnes of waste per year.

Wheelabrator Kemsley North – WKN

- 1.4.7 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.
- 1.4.8 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.

2 Deadline 4 submissions from Interested Parties

2.1.1 Deadline 4 submissions were made by the following Interested Parties:

- Swale Borough Council (20th May 2020);
- Minster-on-Sea Parish Council (20th May 2020);
- Medway Council (20th May 2020);
- Marine Management Organisation (20th May 2020);
- Kent County Council (20th May 2020);
- Environment Agency (20th May 2020)
- SEWPAG (21st May 2020);
- Natural England (21st May 2020)
- Highways England (21st May 2020).

2.1.2 Each of those submissions is addressed in turn within this Statement.

2.2 Swale Borough Council (20th May 2020)

2.2.1 The Applicant notes the submission by the Borough Council and have continued to discuss the application with them in respect of the Statement of Common Ground between the two parties, which has been submitted in draft at Deadline 5. The Statement of Commonality (Document 8.6) documents the ongoing discussions between the parties.

2.2.2 The Applicant notes those issues where SBC do not raise any objection, which are also recorded as such within the draft SoCG (such as Landscape and Visual Impact, Noise and Vibration, Ground Conditions, Air Quality in respect of on site construction activities and cultural heritage). The acknowledgement of the benefits created by the WKN scheme in respect of construction and operational jobs is welcomed.

2.2.3 The Applicant continues to discuss highways matters with Highways England and Kent County Council and will document its position through submissions to the examination and SoCG’s with those parties. The Applicant has provided responses to the ExQ3 questions which deal with the use of rail and water transportation to serve K3 and WKN.

- 2.2.4 In respect of climate change the Applicant has stated its position on waste in the submissions made on waste matters throughout the examination. The Applicant’s response to ExQ3.6.5 addresses the matter of vehicle movements on local roads such as the A2 which pass through Air Quality Management Areas.
- 2.2.5 The Applicant has discussed with the Borough Council the use of a requirement to require waste to be transported in low or zero emission HGVs. The Applicant’s position is that K3/WKN would process waste and/or fuel transported to them by other companies or contractors and do not therefore own or operate any delivery vehicles themselves. The vehicles which transport waste will be governed by relevant Euro Emission Standards set for the companies which own and operate them and which are being made progressively more stringent. It is understood that the Borough Council have agreed that position and are no longer seeking a requirement on that basis.
- 2.2.6 As documented in the SoCG the Applicant and the Borough Council have discussed and agreed on the level of active and passive electric charging points installed at K3 and that appropriate provision be made within the dDCO to require details of active and passive electric charging points for WKN to be agreed with the Borough Council.

2.3 Minster-on-Sea Parish Council (20th May 2020)

- 2.3.1 The Applicant notes the Parish Council’s comments on the procedural matters relating to the examination and has no comment on their submission. The Applicant has set out its position on those concerns reiterated by the Parish Council within the application and its subsequent submissions.

2.4 Medway Council (20th May 2020)

- 2.4.1 The submission confirms that Medway Council have no objection to the application and no comment on procedural matters relating to the application and as such the Applicant has no comment on the submission.

2.5 Marine Management Organisation (20th May 2020)

2.5.1 The Applicant provided a note by email to the MMO on the 11th June 2020 which responded to the various points raised in their Deadline 4 submission and which offered the opportunity to discuss those points and followed that with a further email on the 17th June 2020 to check the first had been received. The Applicant did not receive any response to those emails. The Applicant has therefore provided a response to the various points made within the MMO’s Deadline 4 submission as follows (MMO’s comment in normal text and the Applicant’s response in italics):

Responses to ExQ2

2.5.2 With regard to Q2.3.1 and Q2.5.2 which consider the inconsistency in information provided for the Swale MCZ. The MMO advise that the applicant make use of Natural England’s (“NE”) Conservation Advice Package and Advice on Operations. This provides useful information on pressures and standard nomenclature that should be used.

The Applicant provided responses at Deadline 4 to confirm that the issues identified in ExQ2.3.1 and ExQ2.5.2 were typographical errors.

2.5.3 2.2. With regard to Q.2.5.3 the MMO welcome engagement from the applicant with regard to whether a marine licence variation is required to cover maintenance activities following the matters discussed in previous MMO responses.

The Applicant responded to ExQ2.5.3 to set out the position that any standard maintenance works would be expected to be able to be carried out under the DCO but that should the need arise for maintenance works to the outfall which did require some form of licensable activity then a marine licence variation would be sought at that time. As the form that those works might take is unknown at this stage the Applicant’s view is that it would be appropriate to seek a licence for that at the appropriate time rather than now.

2.5.4 2.3. In response to Q2.5.4, the discharge of water through outfalls is not within the MMO’s remit under the Marine and Coastal Access Act, 2009 (“the 2009 Act”)1. The MMO advises that an environment permit may be required from the Environment Agency (“EA”). The MMO defer further comment to the EA.

This is noted; K3 has an existing Environmental Permit and a permit would be sought for WKN. The K3 permit makes reference to the discharge of clean water to the Swale from the K3 outfall and it is expected that any license granted for WKN would do similar.

2.5.5 2.4. With regard to Q2.5.9 the MMO believe that the construction activities for the second outfall are yet to be completed. The MMO would like to highlight that the activities in the DCO must be consistent with, and not contrary to, the existing marine licence (L/2017/00482/2).

The construction activities for the second outfall have not been completed and the Applicant notes the need to be consistent with the existing marine licence in undertaking those.

- 2.5.6 2.5. With regard to Q2.8.1 the MMO agree that an in-combination effects (ICE) assessment of the project is required.

The Applicant’s submission at Deadline 4 confirmed the following:

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

- 2.5.7 2.6. With regard to Q.2.13.2 the MMO welcome engagement from the applicant with regard to whether a marine licence variation or deemed marine licence (“dML”) is required to cover decommissioning activities.

The Applicant’s position is that it would not be appropriate to seek any Marine Licence or Deemed Marine Licence for decommissioning at this stage as the nature and timing of those works and activities are unknown at this point and as such an assessment of the required works would need to be undertaken at the appropriate point in the future and the necessary consents and licenses sought at that time.

- 2.5.8 2.7. In response to Q2.13.3 the MMO note that the draft DCO (“dDCO”) only specifies impact piling within the piling and penetrative foundation design, however the existing marine licence specifies that “Continuous Flight Auger piling must be used where possible”, and that soft start piling must be used if impact piling is required. Neither of these conditions are included within the dDCO.

The K3 outfall was constructed using continuous flight auger piling and as such it is expected that work on the WKN outfall would be undertaken using the same method. The Applicant’s position is that the dDCO makes provision for impact piling generally for WKN and the Marine Licence then imposes further controls on the use of piling associated with the installation of the WKN outfall and as such there is no inconsistency between the two documents.

- 2.5.9 2.8. In response to Q2.13.3 The MMO would also like to highlight that the marine licence (L/2017/00482/2) states within the programme of works that “Works may only take place between 1 April and 31 September in any given year.” This timing was based on the method statement submitted by the Applicant and attached to the licence as a schedule (licence schedule 3). The dDCO specifies that “No impact piling associated with Work No 2 shall take place in the months of January, February, or between April and August inclusive”. The combination of both restrictions will only allow impact piling and associated activities within the month of September inclusive. The dDCO also

states that “No more than ten days of impact piling associated with the Project WKN authorised development, whether consecutive or otherwise, shall take place in the months of November and December”, which contradicts the timing restriction within the marine licence, as no works are to take place outside of 1 April – 31 September in any given year.

As noted in the previous response, whilst the DCO sets controls for piling across the various WKN works areas the Marine Licence then imposes additional controls in respect of the WKN outfall. It would not be possible to undertake piling works on the WKN outfall which are outside those allowed for by the Marine Licence.

- 2.5.10 2.9. With regard to Q2.14.1 the MMO look forward to the consideration of the South East Inshore Marine Plan. Please refer to point 2.1 of the MMO’s deadline 3 response for further guidance.

The Applicant has responded to Q3.12.2 to confirm its position that it is appropriate in this case to limit the assessment to only the surface water outfall elements.

3. Comments on Written Representations

- 2.5.11 Applicant’s Response to (ExQ1A) Appendix 1.13b – Tilbury Green Section 36 Consent – 26th March 2020

3.1. The Applicant notes that “Commencement of Phase 2 of the Development shall not take place until an investigation has been carried out into the potential opportunities for the utilisation of river transport for the transportation...”, the MMO wish to highlight that if activities (such as alteration or improvement of existing structures) are required in the marine environment, this would likely be licensable under the 2009 Act. The MMO encourage early engagement from the applicant on this matter.

The Applicant has provided clarification to the MMO that reference was made to the Tilbury Green Section 36 Consent but that is not the scheme which is the subject of the current application. The Applicant has provided responses to the ExQ3 questions at Deadline 5 which deal with the matter of rail and water transportation.

- 2.5.12 3.2. The Applicant noted in sections 48 – Protection and Mitigation for Birds that “Breeding birds are protected under the Wildlife and Countryside Act 1981 (as amended)”. The MMO wish to highlight that breeding birds are also protected under. The Wild Birds Directive (1979); The Conservation of Habitats and Species Regulations (2017) and The Offshore Marine Conservation (Natural Habitats &c) Regulations (2007). The MMO refer to our deadline 3 response for further comment on the mitigation measures.

It is noted that this comment appears to be directed at the Tilbury Green Section 36 consent.

- 2.5.13 3.3. With regard to section 76 – ‘Bridge over Botney Channel’, the Applicant notes that “...the commencement of Phase 2 of the Development shall not take place until there has been submitted to, approved in writing by, and deposited with the Relevant Planning Authority, in consultation with the Environment Agency, a scheme for the construction of the bridge over the Botney Channel.” The MMO remind the Applicant that if this construction is to take place over Mean High-Water Springs (“MHWS”), then a marine licence or dML may be required. The MMO request the applicant confirm the location of the channel, and whether the works would take place within/over MHWS. Guidance regarding the jurisdiction of the MMO is available on our website.

As noted previously, this scheme was provided as an example. For the avoidance of doubt no bridges are proposed as part of the K3/WKN schemes.

- 2.5.14 3.4. In regard to Q1A.11.6 the MMO encourage the applicant to review the potential environmental impacts of using water transport. This must include an assessment of the potential impacts of the project, including vessel movement, on adjacent design sites. This has not been considered within the HRA completed for the marine licence and should be considered within the HRA for the DCO. As stated above, if any licensable activities are required under the 2009 Act, then the MMO encourage engagement from the Applicant.

The Applicant has dealt with points relating to water and rail transportation in its responses to ExQ3.

- 2.5.15 3.5. In response to 2.4.1 the MMO has not yet received any further engagement from the applicant regarding previous submissions made by the MMO. The MMO looks forward to hearing from the applicant.

The Applicant set out its position prior to Deadline 3 via email on the 22nd April 2020 and have further sought to clarify their position to the MMO ahead of Deadline 5.

- 2.5.16 3.6. With regard to section 2.4.2 the MMO have comment to make on the following points:

3.6.1. The Applicant states “The licensable activity for the purpose of the Marine and Coastal Access Act 2009 is the construction of the outfalls. Under that Act, construction includes maintenance”. The MMO as regulator for the 2009 Act agrees that ‘Construction’ means to build or make something and could include ‘maintenance’, ‘alteration’ and ‘improvement’ activities. However, the existing marine licence only permits the construction of the two outfalls, and the methodology on the licence does not detail any maintenance activities. Furthermore, no maintenance activities were included in the assessments completed during the application process. The MMO request that the applicant fully details what maintenance activities will include. If these activities are outside of what was assessed, then the MMO advise that a variation to the existing marine licence may be required. The applicant should engage directly with the MMO to discuss this matter further.

As per the Applicant’s response to ExQ2.5.3 the outfalls for K3 and WKN are effectively large concrete pipes and as such any routine maintenance to that structure is expected to be minimal and would not represent a licensable activity. Should maintenance works be required which are beyond the typical maintenance works expected and which do form a licensable activity then the Applicant notes that the existing licence does not reference any maintenance activities and as such a variation to the license would need to be sought at that time.

- 2.5.17 3.6.2. “The existing marine licence (L/2017/00482/2), which has been varied to allow for the K3 and WKN outfalls has already been issued separately to the DCO. It is not necessary to included deemed marine licences in the DCO”; Further to the above – the MMO note that decommissioning activities are not covered by the existing marine licence and acknowledge that the applicant will approach the MMO at a later date for a marine licence for decommissioning activities. However, as stated above a variation to the current marine licence may be required to include proposed maintenance activities

The Applicant’s position on maintenance and decommissioning has been set out in responses to previous points.

- 2.5.18 3.6.3. “Licence conditions and other environmental regulatory regimes do not need to be replicated in the DCO as requirements or otherwise”; Further to points 2.5 and 2.6 of this response, the MMO wish to highlight that the conditions on any DCO should not contradict the conditions on the existing marine licence as this would make compliance by the applicant impossible.

This is noted and no contradictions have been identified by the Applicant.

- 2.5.19 3.6.4. “The operation of the outfalls is not a licensable activity under the MCAA 2009”; The MMO takes this to mean that operation means the discharge of water and does not include maintenance activities. If so the MMO concur with this statement as outlined in earlier deadline responses and point 2.3 of this response. The MMO do not licence the discharge of water – the MMO recommend engagement with the EA on this matter.

This is noted, as set out in this response and in submissions to the ExA the Applicant considers the operation to be the discharge of water; as that is clean water it does not need to be included in the Environmental Permit but is referenced in the Permit for K3 and is expected to be referenced in any permit issued for WKN.

- 2.5.20 3.6.5. “The original K3 planning permission included provision for the first outfall, which has now been constructed. Both that outfall and the second outfall to serve WKN are contained in the DCO as part of works 1E and 7 and will be regulated as required by the relevant requirements such as design details and construction methodology”; As noted above, the existing marine licence does not consent maintenance activities. Further to point 3.6 of this response the MMO require clarification on what the maintenance would include.

The Applicant notes this comment and has responded to the issue of maintenance in respect of earlier points.

- 2.5.21 3.6.6. “The quality of water the water being discharged will be such that it does not require either an operational requirement under the DCO or environmental permitting... the licence amendment application (L/2017/00482/2) was accompanied by a Marine Conservation Zone assessment ...which concluded no likely significant effects on water quality” As stated above, the MMO defer to the EA for comment on the environmental permits required for the discharge of water. The MMO would like to highlight that maintenance activities for the outfalls are not considered within the MCZ assessment completed for the marine licence.

Noted; the Applicant’s responses to the points raised by the MMO clarifies its position our position in respect of water discharge and maintenance activities.

- 2.5.22 3.6.7. “The decommissioning of the outfall will be licensed separately under the MCAA 2009 as required and under the planning regime.” The MMO are happy to engage with the applicant when a marine licence application is required for decommissioning activities.

Noted; the Applicant has clarified its position on decommissioning through the responses to earlier points.

- 2.5.23 3.7. With regard to point 2.4.3 the MMO may disagree that “no changes are needed to either the DCO or to the Marine Licence” as already discussed, maintenance activities are not be covered by the current marine licence, and a variation may be required.

This is noted and has been addressed in the course of other responses to earlier points.

2.6 Kent County Council (20th May 2020)

Introduction

- 2.6.1 In its Deadline 4 Submission [REP3-015] KCC responds to the ExQ1a. KCC’s Deadline 4 Submission [REP3-015] uses the ExQ1a numbers and this response has been similarly structured.
- 2.6.2 As in the Applicant’s Response to Submissions at Deadline 3 [REP4-008] not all of the comments made by KCC are responded to within this submission. Any such omission should not be taken as indicating that the Applicant agrees with the comments made by KCC; it is simply considered the comment needs no further response.

ExQ1A.1

Q1a.1.1

- 2.6.3 The Applicant is pleased to read that KCC agrees that the proper application of the proximity principle does not conflict with the proper application of the principle of self-sufficiency.
- 2.6.4 KCC is also correct to note that the Energy from Waste Guide is just that; guidance issued by Government. It can expect to receive the same level of weight as that attributed to the guidance on applying the waste hierarchy relied upon by KCC in its response at ExQ1a.1.12.

Q1a.1.2

- 2.6.5 The Examining Authority (ExA) will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004] submitted on 22nd April 2020, at Deadline 3. The response is given at section 1.2, commencing on page 6 of that document.

Q1a.1.3

- 2.6.6 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004] at section 1.3, commencing on page 8 of that document.
- 2.6.7 The Waste Hierarchy and Fuel Availability Report (‘WHFAR’) [APP-086] presents a range on 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 the 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.’*

Q1a.1.4

- 2.6.8 KCC claims that fuel for the Proposed Developments ‘can only come from either Kent waste that would otherwise be recycled ... or from beyond the borders of Kent, putting the Plans and strategies of other WPAs at risk...’. Again, KCC offers no explanation for these statements beyond reliance upon the Inspector’s Report of the Early Partial Review (EPR IR) [REP4-016].
- 2.6.9 The EPR IR is very short; just 20 pages with only four directly considering waste policy matters. At paragraph 20, the EPR IR references the work commissioned by KCC to assess the need for new residual waste management capacity (referring to this as the ‘CRRNH’). The EPR IR makes no mention of any third party submissions, appearing to simply take the CRRNH at face value.
- 2.6.10 At paragraph 23 the EPR IR concludes:
- ‘Table 9 of the CRRNH shows that there is no gap in capacity for other recovery treatment of residual non-hazardous waste throughout the Plan period and demonstrates that the Kemsley facility together with the existing Allington facility will provide a surplus of other recovery capacity. On this basis there is no need to allocate sites. However, Policies CSW6 and CSW7 provide flexibility in that they are permissive policies that would allow for other recovery facilities to be developed should they be required.’*
- 2.6.11 The EPR IR concludes that policies CSW6 and CSW7 are permissive and provide the necessary flexibility for new facilities to come forward. It is reasonable to conclude that this position means that, working at the plan making level, he did not need to consider the detail in the numbers. This position does not mean that that EPR IR can, appropriately, be used to validate otherwise unsubstantiated statements.
- 2.6.12 KCC’s suggestion that there is a risk of ‘double-counting’ fuel availability with the Riverside Energy Park has been previously addressed in Applicant’s Response to Submissions at Deadline 3 [REP4-008] (at page 15, under title ‘Paragraph 34’).

Q1a.1.6 and Appendix 3 [REP4-018]

- 2.6.13 The ExA will be aware that the Applicant supplied the Surrey Waste Plan at Deadline 3 [REP3-007].
- 2.6.14 KCC can find clarity in regard to the inclusion, or not, of Surrey in Applicant’s Response to Examining Authority’s Written Questions (ExQ1) [REP2-009]. In response to ExQ1.1.6 (at paragraph 1 of Appendix 2) the Applicant states:

‘Waste arisings in Surrey, and their subsequent management, were not included in the Waste Hierarchy and Fuel Availability Report [Document

4.6, reference APP-086, the 'WHFAR']; simply as a result of how the Study Area was defined.'

- 2.6.15 Appendix 3 to KCC’s Deadline 4 Submission [REP4-018] does not entirely make sense to the Applicant. In any event, it is irrelevant as both the Appendix and its accompanying text on page 5 of the main Submission continue to misapply the proximity principle, which does not require waste to go to the closest facility. Instead, Article 16 of the Waste Framework Directive 2008 (Directive 2008/98/EC on waste, this not part is not affected by the 2018 amendments) states:

'3. The network shall enable waste to be disposed of or waste referred to in paragraph 1 to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.

4. The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State.'

- 2.6.16 The Waste Regulations 2011, at Schedule 1, Objective 4 makes essentially the same requirement.
- 2.6.17 What Appendix 3 to KCC’s Deadline 4 Submission [REP4-018] does show, is just how well the market is responding to the demand for recovery capacity across the south east, and that fuels are, effectively and efficiently, moving to whatever is considered to be one of the nearest appropriate installations available to it.

Q1a.1.7

- 2.6.18 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.7, on page 15 of that document.

Q1a.1.11

- 2.6.19 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.11, commencing on page 16 of that document.

Q1a.1.12

- 2.6.20 In response to this question, KCC states that the with future waste management practices, the proportion of the non-biogenic fraction 'will increase accordingly'. The Applicant would suggest that it is not possible to be so certain about the future. Not least, one should recognise the growing number of plant-based plastics and plastic alternatives that are being developed to replace those

produced from fossil fuels. The future may bring an increase in the biogenic fraction of waste.

- 2.6.21 The Applicant’s Response to Submissions at Deadline 3 [REP4-008] (at page 13, under title ‘Paragraph 20’) addresses KCC’s concerns regarding the Carbon Assessment.
- 2.6.22 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.12, commencing on page 17 of that document.
- 2.6.23 As an update, the Applicant would refer to a new report titled ‘UK Energy from Waste Statistics - 2019’ published by Tolvik Consulting in May 2020 (‘EfW Statistics 2019’, a copy is provided at **Appendix A** to this response). EfW Statistics 2019 identifies (fourth bullet on page 3) that during ‘2019 EfWs in the UK exported 6,700GWh of electricity – circa 2% of the UK total power generation – together with just under 1,400GWh of heat.’ The incineration of residual waste with energy recovery is making an important and relevant contribution to UK energy supply.
- 2.6.24 On page 7 (and Appendix 2) EfW Statistics 2019 reports upon the improved efficiencies of modern EfW facilities in the UK, delivering reduced parasitic loads and with net energy outputs comparable to plant operating in mainland Europe. Figure 26 (page 12) shows an overall net benefit from energy recovery facilities in England, whilst Figure 29 (page 14) shows reduced emissions from such plant with 40%+ consistently achieving an A rating in OPRA scores from 2016 (Figure 30, page 15).
- 2.6.25 These are the modern, efficient, well-run recovery facilities that the Resources and Waste Strategy is seeking. The Applicant (WTI and working with SSE as Multi-Fuel Energy, reported as ‘MFE’ in EfW Statistics 2019) is identified as one of the top five operators (Figure 10, page 6); with Ferrybridge FM1 identified as an optimal performing plant in exporting the highest level of power for three consecutive years (page 7).
- 2.6.26 In addition to the export of energy, EfW Statistics 2019 evidences the role of EfW facilities in delivering the circular economy. On page 10, the authors’ research confirms that ‘almost all IBA is now recycled rather than landfilled’ and that ‘in 2019 it was estimated that around 35% of APCr was recycled. The previous estimate, for 2017, was of a figure nearer 20%.’ Again, these statistics are applicable to the Proposed Developments, with the resultant IBA being confirmed to be taken off-site for treatment and recovery and with options for APCr recovery being explored, and increasingly becoming available.

Q1a.1.13

- 2.6.27 KCC refers to its provision of updated figures for 2018. The Applicant believes KCC to be referring to the data analysis presented in KCC’s Written Representation [REP-010, Annex 1]. Unfortunately, the analysis presented in

REP-010, Annex 1 is incorrect and to date KCC has provided no explanation for this.

- 2.6.28 This is discussed in some detail in Applicant’s Response to Submissions at Deadline 2 [REP3-003] from paragraph 2.5.17 and in Document 11.2 - Appendix A - Summary of WHFAR July 2019, BPP Sensitivity and WDI 2018 update.
- 2.6.29 The Applicant discusses the decline in RDF exported to mainland Europe in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004] at section 1.35, commencing on page 34 of that document. However, in just the first three months of this calendar year, over 550,000 tonnes of RDF have been exported to mainland Europe, a material missed opportunity to put a renewable/low carbon energy source to beneficial use within the UK.
- 2.6.30 EfW Statistics 2019 also documents that decline in RDF export from England, on page 5. Figure 7 shows the increase in EfW capacity successfully sits alongside decreases in disposal to landfill and RDF exports.
- 2.6.31 The Proposed Developments are located in England and the national targets as set out in the RWS are relevant to its determination; consequently a recycling rate of 65% is incorporated into the WHFAR [APP-086]. The fuel availability assessment is presented on the basis that this outcome has already occurred; it is applied to current waste data.
- 2.6.32 However, this level of recycling is not targeted to occur until 2035, another fifteen years into the future.
- 2.6.33 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.13, commencing on page 19 of that document.

Q1a.1.16

- 2.6.34 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.16, on page 22 of that document.

Q1a.1.17

- 2.6.35 Appendix D of Document 13.2 (The Applicant’s Response to ExQ3) contains the assessment of the Carbon Burden arising from the transportation of waste to the K3 and WKN facilities, as first discussed in the Applicant’s response to ExQ1A.
- 2.6.36 The Applicant’s understanding of the EPR IR is presented above, in commenting on KCC’s response to ExQ1a.1.4. There is no need to revisit the WHFAR [APP-086].

Q1a.1.19

- 2.6.37 In response to Q1a.1.19, KCC criticises the WHFAR [APP-086] for using ‘data that is now nearly two years old.’ The WHFAR was submitted in July 2019, nearly one year ago, using the most complete year of data available at that time. It is not data that should be considered out of date. Not least, it provides important and relevant context to the more recent data that is now available.
- 2.6.38 To which end, the data presented in the WHFAR is updated by the Applicant in Applicant’s Response to Submissions at Deadline 2 [REP3-003] at paragraph 2.5.18 and in Document 11.2 - Appendix A - Summary of WHFAR July 2019, BPP Sensitivity and WDI 2018 update.
- 2.6.39 As confirmed previously (not least above in response to Q1a.1.13) the fuel availability assessment is presented on the basis that 65% recycling has occurred/is occurring. Within the RWS, this level of recycling is not targeted to occur until 2035, another fifteen years into the future. This level of recycling does not appear in the EPR.
- 2.6.40 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.19, on page 24 of that document.

Q1a.1.23

- 2.6.41 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.23, commencing on page 28 of that document.

Q1a.1.29

- 2.6.42 KCC’s concern with the validity of the Applicant’s data has been addressed above, in commenting on KCC’s response to ExQ1a.1.19.
- 2.6.43 The Applicant’s Response to Submissions at Deadline 3 [REP4-008] (at page 12, under title ‘Paragraph 17’) addresses KCC’s concerns regarding the suitability of the wastes included in the WHFAR [APP-086].
- 2.6.44 Further, the Applicant observes that EfW Statistics 2019 agrees with the Applicant’s choice of shortlisted wastes. In the introduction EfW Statistics 2019 identifies residual waste as primarily those falling within the European Waste Catalogue as 19 12 10, 19 12 12 and 20 03 01 (fourth paragraph, page 1). These are three of the four codes used by the Applicant in the WHFAR, which is supplemented only by 20 03 07 (bulky waste).

Q1a.1.31

- 2.6.45 The final commentary on page 5 of EfW Statistics 2019 observes that whilst the majority of inputs to energy recovery facilities was from residual LACW in 2018,

the shift to treating commercial and industrial waste through merchant facilities is expected to ‘rapidly increase in the next few years as more “merchant” EfW capacity in the UK becomes operational.’

- 2.6.46 This is exactly the approach intended for K3 and WKN; both are proposed as merchant facilities, open to market rather than predicated on LACW contracts. Consequently, the duration of LACW contracts is not an important matter.

Q1a.1.34

- 2.6.47 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.34, commencing on page 34 of that document.
- 2.6.48 KCC refers to its own study, stating that the ‘findings were rigorously tested’ and presenting (at its Appendix 4) document titled ‘Kent Minerals and Waste Local Plan Early Partial Review Sensitivity Testing of Preferred Scenario’ (the KCC Sensitivity Testing’).
- 2.6.49 As has been demonstrated above (commenting on KCC’s response to ExQ1a.1.4, there are just four pages of the EPR IR dedicated to waste policy matters. In his Matters, Issues and Questions for the Examination of the EPR, the Inspector did not probe KCC’s analysis or explore any of the criticisms of it raised by WTI. KCC’s own study of future waste management capacity requirements has not been rigorously tested.
- 2.6.50 The KCC Sensitivity Testing is a new document to the Applicant; WTI has not seen this before, despite being wholly engaged in the EPR Examination. A quick check on KCC’s website providing the EPR Examination Library does not include this document.
- 2.6.51 In any event, the KCC Sensitivity Testing does not change matters. All it does is tweak the proportions of waste attributed to a waste management method; it does not consider the potential for different amounts of waste to be generated in the first place and it does not address the criticisms in this regard raised by WTI.

Q1A.1.37

- 2.6.52 The Applicant’s response to this question is in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.37, commencing on page 38 of that document.
- 2.6.53 The consents granted for Thames Gateway and Rivenhall facilities may have been implemented; it is relatively easy and certainly cost-effective, to do. However, to the Applicant’s knowledge, construction has not commenced at either project.

2.6.54 The Riverside Energy Park and 3Rs Facility have only recently gained planning permission (the latter being the Britanniacrest Facility that KCC raised in its Response to First Written Questions [REP2-044, see response to Q1.1.4 (page 15) and 1.6). To the Applicant’s knowledge, neither have gained an Environmental Permit, nor started construction. The Grundon project gained planning permission back in 2014; the project has not commenced construction.

2.6.55 The Applicant does not believe any of these facilities require further consideration.

Q1a.1.39

2.6.56 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.39, commencing on page 38 of that document.

Q1a.1.40

2.6.57 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.40, commencing on page 39 of that document.

Q1a.1.43

2.6.58 The ExA will be aware, from the Applicant’s Response to Submissions at Deadline 2 [REP3-003] at paragraph 2.5.18 and in Document 11.2 - Appendix A - Summary of WHFAR July 2019, BPP Sensitivity and WDI 2018 update, that the figures provided by KCC are believed to be incorrect.

Q1a.1.45

2.6.59 The ExA will be aware the Applicant answered his question in its Response to Examining Authority’s Written Questions (ExQ1A) [REP3-004]. The response is given at section 1.45, commencing on page 41 of that document.

Q1a.1.47

2.6.60 KCC’s response to this question is incorrect. It has not provided a rebuttal to the deficiencies demonstrated in its need assessments. Unfortunately, the EPR Inspector did not investigate them either.

Q1a.11.1

2.6.61 In response to Q1A.11.1. (In ES Chapter 4 - Tracked [REP2-019], do you agree that the A10 land allocation does not predict traffic to be generated onto highway links assessed in paragraph 4.4.28 or if not why not?), KCC stated *‘it is likely that traffic would use the strategic network and impact upon Links 4, 5, 9, 10 and 11. As such, the statement within this question is not agreed.*

Applicants Response:

- 2.6.62 This question relates to allocation A10 not being included as part of the committed development traffic flows. This is set out in Table 4.7 of ES Chapter 4 - Tracked [REP2-019], which states '*The application does not predict traffic to be generated onto the highway links assessed within paragraph 4.4.28. Not included in committed flows*'. To assist, the wording in Table 4.7 has been expanded upon to provide further information and clarity.
- 2.6.63 In terms of '*The application*', this relates to the planning application that was granted consent for allocation A10 and, specifically, the Transport Assessment that was prepared in its support.
- 2.6.64 That Transport Assessment (for allocation A10) set out estimates of the traffic that would be generated by allocation A10 and set out details of these traffic flows along the local highway network surrounding allocation A10.
- 2.6.65 In terms of development related traffic, in simple terms, as traffic associated with a development travels away from that development, it dissipates across the highway network such that it reduces on parts of the highway network the further it is from the development. When defining study areas on which to assess the impact of development traffic, judgements are made on the point at which traffic flows are sufficiently dissipated on the highway network such that they are negligible and do not require assessment.
- 2.6.66 In the case of the Transport Assessment for allocation A10, it identified that the development traffic it would generate would be sufficiently dissipated and negligible by the time it reached the A249 and the M2 (i.e. links 4, 5, 9, 10 and 11 of the study area of this DCO application to which KCC refer to in their response). Thus, the Transport Assessment for allocation A10 did not detail its development traffic flows on the A249 or the M2 and did not undertake any assessment for these parts of the network.
- 2.6.67 Allocation A10 will generate some traffic onto the A249 and the M2, however, its planning application determined this would be negligible to the extent that it was not worthy of assessment. This was accepted by Highways England in their consultation response to the submission of the planning application for allocation A10. Although the consultation response by Kent County Council is not available, there was no highways objection.
- 2.6.68 On this basis, the planning application for allocation A10 and the consultation responses to it determined that the traffic flows it generated onto the A249 and the M2 (i.e. the parts of the highway network that form part of the study area for this DCO application - links 4, 5, 9, 10 and 11 as referred to by KCC in their response to Q1A.11.1) were negligible.
- 2.6.69 On this basis, Table 4.7 of ES Chapter 4 - Tracked [REP2-019] sets out that allocation A10 does not need to be included in the committed traffic flows.

2.7 Environment Agency (20th May 2020)

2.7.1 The Applicant notes the reference by the EA to the need for and scope of the Environment Permit in respect of its responses to Q2.3.2, Q2.5.4 and Q2.8.2. The Applicant has nothing further to add to those points; it responded to Q2.3.2 and Q2.8.2 at Deadline 4 and has at Deadline 5 provided a signed version of the SoCG between the Applicant and the EA which confirms the position of the respective parties.

2.8 SEWPAG (21st May 2020)

2.8.1 In the covering letter to SEWPAG’s Deadline 4 Submission [REP4-032] SEWPAG refers to ExQ1a.1.2, seeking clarity on the assessment referred to by the Applicant in its response [REP3-004] in the final sentence of paragraph 1.2.5.

2.8.2 The ‘*assessment appropriate to understand the impact on waste management strategies across the Study Area*’ is that presented in the WHFAR [APP-086].

2.8.3 In addition, the Applicant provided Appendix 1.2/1.8 [REP3-005] which presented content from the relevant local plan documents of the authorities within the Study Area, focussing on matters of self sufficiency and recycling. Appendix 1.2/1.8 demonstrates both that none of the authorities within the Study Area seek:

- to deliver self-sufficiency differently to that set out within the Applicant’s responses; nor
- recycling at a level that exceeds that assumed within the WHFAR.

2.8.4 Consequently, it has been consistently demonstrated that the Proposed Developments will not prejudice the achievement of local or national waste management targets in England.

2.9 Natural England (21st May 2020)

2.9.1 The Applicant has provided at Deadline 5 a signed version of the SoCG with NE which confirms the position of the respective parties. The Applicant concurs with NE’s response to Q2.8.2 and at Deadline 4 provided an amended CEMP which replicated the best practice measures provided in the HRAR to avoid/minimise dust.

2.10 Highways England (21st May 2020)

- 2.10.1 The Applicant is continuing to discuss the K3 and WKN Proposed Developments within Highways England and has provided a summary of those discussions by way of a response to ExQ3.13.7 in Document 13.2. The Applicant and HE will continue to advance those discussions in order to agree a SoCG.