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# 1 Introduction

## 1.1 Purpose of this document

- 1.1.1 This Document has been prepared at Deadline 6 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 5 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 5 submissions. The Deadline 5 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 5 submissions from Interested Parties

2.1.1 Deadline 5 submissions were made by the following Interested Parties:

- Swale Borough Council (22<sup>nd</sup> June 2020);
- SEWPAG (22<sup>nd</sup> June 2020);
- Royal Mail Group Limited (22<sup>nd</sup> June 2020);
- Natural England (22<sup>nd</sup> June 2020);
- Marine Management Organisation (22<sup>nd</sup> June 2020);
- Highways England (22<sup>nd</sup> June 2020);
- Environment Agency (22<sup>nd</sup> June 2020).

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

### 2.2 Swale Borough Council (22nd June 2020)

2.2.1 The Applicant has responded to Q3.5.2, Q3.6.3 and Q3.6.4 at Deadline 5 within Document REP5-011 and refers back to its submissions on those questions. The revised dDCO submitted by the Applicant at Deadline 6 includes an additional clause in Requirement 14 which requires details of electric charging points for the WKN facility to be included within the design details submitted to discharge that Requirement.

#### ***Third paragraph of Swale D5 Response to Q3.11.3***

2.2.2 Swale Borough Council state: *‘Kent County Council, as the local highway authority, have recommended that a limited amount of development across this allocation [Policy MU1 – a minimum of 1,500 dwellings on land at North West Sittingbourne] can take place without restriction (partially due to the outline nature of some applications and the need to extract brick earth prior to development – which would be likely to delay the occupation of dwellings on the site to align with the timetable for the Grovehurst improvements), but that Grampian conditions should be imposed to control housing occupations on the largest application until the improvements at Grovehurst Interchange are progressed’.*

2.2.3 The Applicant notes that Kent County Council are content for residential development to come forward without imposing a Grampian Condition that would restrict occupation prior to the A249 Grovehurst improvement works on

the basis that particular residential development is unlikely to be able to be occupied in advance of the works in any event.

- 2.2.4 This is the same scenario as the WKN Proposed Development, whereby, it is unlikely to be operational in advance of the A249 Grovehurst improvement works because of the construction period.
- 2.2.5 On this basis, for consistency, there should be no need for a restriction placed upon the WKN Proposed Development relating to traffic flows generated during the weekday peak hours in advance of the A249 Grovehurst improvement works.

***Eighth paragraph of Swale D5 Response to Q3.11.3***

- 2.2.6 At the penultimate paragraph of their letter SBC record their concern that *‘the Wheelabrator proposal would generate significant additional traffic on the highway that has not been accounted for in modelling or forecasting work for either the adopted or emerging Local Plan, and which impacts directly on the Grovehurst Interchange. Without appropriate modelling and mitigation, there is a danger that the proposal would ‘eat’ into the additional capacity that the improved Grovehurst Interchange junction would deliver, and in turn fail to achieve the capacity improvements that are essential to enable delivery of the outstanding local plan allocations.’*
- 2.2.7 The K3 planning application was submitted in 2010 and was granted consent in March 2012 under planning application reference SW/10/444. The draft Swale Local Plan (which was adopted in 2017) was submitted in April 2015, at a time when K3 was a known committed scheme and its traffic flows could be included in the traffic forecasting and traffic modelling work undertaken to inform that submission. The traffic generated by the consented K3 is therefore not additional and not unaccounted for in the adopted or emerging Local Plan.
- 2.2.8 To put the traffic flows generated by the consented K3 into context with the local plan allocations, we can refer to the North West Sittingbourne planning application (Planning Ref: 18/502190/EIHYB) (Policy MU1 of the Local Plan for a minimum of 1,500 dwellings on land at North West Sittingbourne).
- 2.2.9 The Transport Assessment prepared for its planning application (Ref: 18/502190/EIHYB) forecasts future year traffic flows by applying traffic growth rates to the base traffic flows and then adding new traffic demand generated by significant new development. Its Transport Assessment stated:

*‘SW/10/0444 Kemsley Paper Mill – A review of the 2010 ES shows only a modest level of traffic generation from the proposed Kemsley Mill development during the morning and evening peak hours. It has been considered reasonable to assume that the background traffic growth factors make an allowance for this’.*

- 2.2.10 The position adopted by the Transport Assessment for the North West Sittingbourne allocation was that K3 was not a significant traffic generator and that the K3 traffic flows did not need to be specifically accounted for within its traffic forecasting.
- 2.2.11 This was accepted by Kent County Council as a reasonable assumption in their consultation response on that application and the Transport Assessment for the North West Sittingbourne allocation considers the traffic generated by K3 in this manner.
- 2.2.12 The traffic flows generated by the Practical Effects of the K3 Proposed Development and the WKN Proposed Development are similar to that of the consented K3 (the consented K3 is predicted to generate 42 vehicle movements during the weekday peak hours, whilst the Practical Effects of the K3 Proposed Development and the WKN Proposed Development are estimated to generate up to 30 vehicle movements during the weekday peak hours).
- 2.2.13 Based on Kent County Councils view of the consented K3, it must also be the case that the Practical Effects of the K3 Proposed Development and the WKN Proposed Development are also not a significant traffic generator.
- 2.2.14 This can be further considered by analysing the cumulative development traffic flows that are predicted to be generated by other emerging developments through the A249 Grovehurst junction in future years, as set out at Appendix G of the Transport Assessment [APP-020 – APP-022] (i.e. the additional traffic flows generated by other emerging developments over and above existing traffic flows). In 2031, the additional traffic flows turning through the A249 Grovehurst junction by other cumulative development is predicted to be 836 vehicle movements during the weekday AM peak hour and 788 vehicle movements during the weekday PM peak hour.
- 2.2.15 Based upon this, the Practical Effects of the K3 Proposed Development and the WKN Proposed Development would account for up to only 3.7% of the total additional traffic flows by cumulative development through the A249 Grovehurst junction.
- 2.2.16 It is clear that the Practical Effects of the K3 Proposed Development and the WKN Proposed Development would not generate significant additional traffic on the highway in the context of other developments.
- 2.2.17 Based upon Kent County Councils position on the traffic flows generated by the consented K3 as part of the North West Sittingbourne planning application, the traffic flows generated by the Practical Effects of the K3 Proposed Development and the WKN Proposed Development would also be covered by the application of traffic growth. A review of the Swale Borough Council strategic model report, that is provided in the link Swale Borough Council kindly provided in their response to question Q3.11.3, confirms that traffic growth rates are applied within their model.

- 2.2.18 Indeed, Table 6.6 of the Swale Borough Council strategic model report sets out that the traffic growth rates applied to HGVs is 1.146 i.e. a 14.6% increase over and above existing levels.
- 2.2.19 The Swale Borough Council strategic model has been used over the years for a number of purposes, including the adopted Local Plan, the Grovehurst HIF application and now for the review of the Local Plan. In all of these, traffic growth rates are applied.
- 2.2.20 The Applicant considers that the traffic generated by the consented K3 is not additional and is not unaccounted for in the adopted or emerging Local Plan.
- 2.2.21 The Applicant also considers that the traffic flows generated by the Practical Effects of the K3 Proposed Development and the WKN Proposed Development would not be significant. The Applicant also considers they would not ‘eat’ into the additional capacity that the improved Grovehurst junction would deliver to such an extent that it would affect the delivery of the outstanding local plan allocations. Notwithstanding this, based upon previous Kent County Council views, the Applicant considers the traffic flows generated by the Practical Effects of the K3 Proposed Development and the WKN Proposed Development will have been accounted for within previous modelling by way of traffic growth rates.

### 2.3 SEWPAG (22nd June 2020)

- 2.3.1 On page 2, under title of ‘Comment on WTI’s comment on SEWPAG’s response to Q1A.1.22’, SEWPAG concludes ‘*Operators will look for opportunities to develop new capacity according to market drivers but whether those opportunities come to fruition are subject to the receipt of planning permission, with the decision to grant such permission made by the local authority taking into account its relevant local waste planning policies.*’
- 2.3.2 This is exactly the process that K3/WKN are currently going through; a market driven need has been identified by the Applicant, who has found a suitable location. There is an identified and appropriate opportunity for new capacity, and the Applicant has submitted an application to deliver this.
- 2.3.3 On pages 2 and 3, under title of ‘Comment on WTI’s comment on SEWPAG’s response to Q1A.1.24’, SEWPAG criticises the Applicant’s submissions for not referencing the Annual Monitoring Reports or recent assessments of need made by the authorities located in the Study Area. The Applicant has previously responded to this point, not least in responding to SEWPAG’s written representations (Deadline 2 Submission – Applicants Comments on Written Representations [REP2-011], Appendix 3, particularly paragraphs 6 to 9)
- 2.3.4 Further, SEWPAG criticises the WHAR [APP-086] for relying on data from years 2015 to 2017. The Applicant has previously responded to a very similar criticism

made by KCC in Applicant’s Response to Submissions at Deadline 4 [REP5-022] (at paragraphs 2.6.37 to 2.6.40)

- 2.3.5 On page 3, also under title of ‘Comment on WTI’s comment on SEWPAG’s response to Q1A.1.24’, SEWPAG explains its previous responses to the ExQ1A and continues to reiterate the need to consider Annual Monitoring Reports.
- 2.3.6 The Examining Authority will be aware that this point has been addressed previously by the Applicant, and further, that the Applicant has fully addressed policy of the EPR within the WHFAR [APP-086]. In addition, at Applicant’s Response to Submissions at Deadline 4 [REP5-022] (at paragraphs 2.6.8 to 2.6.12) considers the recently received Inspector’s Report finding the Kent County Council Early Partial Review to be sound.
- 2.3.7 The Applicant has set out its position regarding the relevant policies against which the WKN element of the application should be determined, most recently in response to ExQ3.6.2 at Deadline 5.

## **2.4 Royal Mail Group Limited (22nd June 2020)**

- 2.4.1 The Applicant notes the confirmation from Royal Mail regarding its position in the light of the amended CTMP [REP5-003] submitted at Deadline 5.

## **2.5 Natural England (22nd June 2020)**

- 2.5.1 The Applicant submitted a draft WKN EMMP at Deadline 5 [REP5-005], together with a signed SoCG with Natural England, and therefore has no further comments.

## **2.6 Marine Management Organisation (22nd June 2020)**

- 2.6.1 The Applicant contacted the MMO on the 29<sup>th</sup> June 2020, just prior to Deadline 6, to clarify that an amended HRAR report was to be submitted at Deadline 6, to provide a link to the K4 DCO application documents on the Planning Inspectorate’s website and to provide the email correspondence from the Applicant to the MMO on the 22<sup>nd</sup> April 2020. The Applicant notes that the MMO have been unable to locate the Table of Amendments to the dDCO submitted at Deadline 4; that has now in any event been replaced by a further version of the dDCO and an associated Table of Amendments submitted at Deadline 6. The Applicant will review any submissions made by the MMO at Deadline 6 and will continue to liaise with the MMO in order to seek to resolve the issues raised where appropriate.

- 2.6.2 The Applicant notes that a number of themes are present within the MMO’s Deadline 5 response and has dealt with those in turn where appropriate:

***Relationship between the dDCO and Marine Licence***

- 2.6.3 The Applicant’s position remains that it is not necessary for the Marine Licence or for a deemed Marine Licence to be included within the dDCO, and that including Work No 1E (the K3 outfall) and Work No 7 (the WKN outfall) within the dDCO does not unnecessarily duplicate the Marine Licence which exists for those outfalls.
- 2.6.4 In the case of K3 the Applicant was specifically instructed by BEIS to seek to re-consent the entire construction works for K3 via the DCO application in order for the K3 proposed development to accord with the definition of an NSIP within the Planning Act 2008. The WKN outfall has not been constructed and it is considered appropriate to include that within the dDCO so that the dDCO reflects all elements required for the facility.
- 2.6.5 Marine licencing is a separate regime both to the TCPA 1990 and the PA 2008. The Marine Licence which existed for the K3 outfall has been amended as necessary to reflect the construction of the WKN outfall; that Marine Licence remains properly made, decided and fit for purpose.

***Maintenance***

- 2.6.6 The MMO have raised the issue of the maintenance of the K3 and WKN outfall pipes during their submissions, including at Deadline 5. The Applicant confirms that typical maintenance activities would be expected to comprise the clearing of debris (leaves, twigs etc) from the outfall pipes as necessary. No physical repair works would be expected for a number of years unless an unforeseen event were to occur, in which case Wheelabrator would assess the level of repairs required and whether those works required a Marine Licence, in which case one would be sought.

***Habitats Regulation Assessment Report***

- 2.6.7 The Applicant has provided a revised version of the HRAR at Deadline 6 which addresses points 2.8, 2.10 and 2.11 of Page 4 of the MMO’s Deadline 5 response.
- 2.6.8 In respect of point 2.6 on Page 4, regarding nomenclature, the Applicant’s position is that the nomenclature within the HRAR has been consistent through consultation, submission and examination and is the same nomenclature as used within the original K3 planning application. The Applicant’s view is that to alter that nomenclature now would give potential for confusion to arise.

### ***Salinity Changes***

- 2.6.9 The original application for a marine licence (case ref MLA/2017/00316/1) was accompanied by a full ES as an addendum to the original K3 ES. The ES addendum dealt with the potential impacts of both construction and operation of up to two outfalls (one to serve K3 and one for the IBA Facility). The ES addendum was scoped in consultation with the MMO and dealt with the issue of localised changes to salinity due to discharge of ‘pure’ water from the outfalls. The conclusion was that no significant effect was likely on any interest feature/supporting habitat of any of the designated sites which fall within The Swale, a conclusion accepted by the MMO in their granting of the original Marine Licence (ref L/2017/00482/1). Subsequently, a single outfall was constructed to serve K3.
- 2.6.10 The Environmental Appraisal (EA) that accompanied the request to vary the original marine licence to allow for the construction of a second outfall to serve WKN (Appendix 11.7 of the ES - REP2-036) was also scoped in discussion with the MMO (set out in Section 1.2 of the EA). During those discussions, the MMO agreed that the assessment of effects due to the variation would focus on those during construction of the second outfall only with no further assessment necessary for other aspects on the basis that they had all been assessed in the original licence application (including the issue of changes to salinity). The MMO therefore agreed those conclusions were still valid for the variation sought. This has been subsequently confirmed by the granting by the MMO of the variation in May 2019.

### ***Piling***

- 2.6.11 The amended dDCO submitted by the Applicant at Deadline 6 removes Requirement 29 (3) to reflect Point 2.22 on Page 6 of the MMO’s Deadline 5 submission.

### ***Rail and Water Transportation***

- 2.6.12 A number of the comments within the MMO’s Deadline 5 submission relate to the use of rail and water transportation. The Applicant provided responses to the various ExQ3 questions which addressed that topic at Deadline 5 (REP5-011) and will review Deadline 6 submissions by Interested Parties and will at Deadline 7 provide responses to those and any ExQ4 which address this issue.

### ***South East Inshore Marine Plan***

- 2.6.13 The Applicant provided an assessment of the draft policies within the South East Inshore Marine Plan through its response to Q2.14.1 at Deadline 4; the Applicant does not intend to amend any documents to include that assessment but will review any comments made by the MMO on the content and scope of the assessment provided.

## **2.7 Highways England (22nd June 2020)**

- 2.7.1 The Applicant notes the comments within the Deadline 5 response by Highways England and is continuing to engage with HE to discuss the matters identified, in order to provide a Statement of Common Ground as soon as possible. The Applicant will provide an update to the ExA ahead of ExQ4 being issued (if considered necessary) on the 15<sup>th</sup> July 2020.

## **2.8 Environment Agency (22nd June 2020)**

- 2.8.1 A signed SoCG was provided by the Applicant at Deadline 5 and as such the Applicant has no comments on the EA’s Deadline 5 submission.