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Dear Mr Kean

Re: Application by Wheelabrator Technologies Inc. for an Order Granting Development Consent for the Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility Development Consent Order (DCO) – Comments on the Applicant's Response to the Examining Authority's Written Questions (ExQ1A) (Ref: REP3-011.2))

Kent County Council (KCC) provides the following comments on the Applicant's Response to the Examining Authority's Written Questions (ExQ1A) (Ref: REP3-004).

Introduction

In the introductory section of its response (bullet point i.), the Applicant asserts 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*". The applicant then goes on to assert that "…*in order for the K3 project to be properly categorised and consented under the Planning Act 2008 it 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).*"

It is now clear that the only aspect of the DCO application that warrants being classed as an Nationally Significant Infrastructure Project (NSIP) is the increase in generating capacity above the 50MW threshold. This increase is not dependant on the proposed increase in throughput. Therefore, KCC continues to consider that the simple increase in throughput

proposed ought to have been dealt with as a Section 73 application to vary the existing consent, to be determined by KCC.

At bullet viii of the introductory section of the response, the Applicant asserts that "*…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*."

When the Applicant refers to "*the benefits to K3 and WKN being assessed comprehensively*" KCC considers it is apparent that given the two proposals are substantially different and entirely separate, consideration of the proposals together merely creates confusion when seeking to assess each one.

KCC maintains its view that the WKN element ought to be subject to a separate application and neither the WKN application nor the proposed increase in waste throughput of K3 actually qualifies as an NSIP when considered in isolation. Hence both proposals should be subject to applications submitted to the County Council for determination under the adopted development plan. KCC would draw the ExA's attention to the fact that it is not averse to granting permissions for such plants where appropriate, having permitted the Allington Energy Recovery Facility (ERF), the Kemsley Sustainable Energy Plant (SEP) and the Ridham Energy from Waste (EfW) plants in the past decade.

Q1A.1.2 – Applicant - SEWPAG recognises that there will be a degree of cross-boundary movement of waste and in the Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] you state the approach in Paragraphs 7.1 and 7.2 of the Memorandum of Understanding (MoU) [REP2-043] in SEWPAG's D2 submission, is not injured in any way by K3/WKN. How can the Applicant conclude this without assessing the local policy on waste management in each (or save for KCC, any) of the local policies on waste management as outlined in SEWPAG written representation [REP1-016, pp3-4]?

At paragraph 1.2.3, the Applicant refers to net self sufficiency as a "*locally derived principle*". KCC would point out that net self sufficiency is a principle that has been widely adopted by Waste Planning Authorities (WPA) in their waste local plans that has been tried and tested through independent examination by the Planning Inspectorate many times, as well as through the London Plan. It is far from a construct of KCC, or SEWPAG alone.

The Applicant then asserts that *" In terms of this local principle of net self-sufficiency, there is nothing substantial to assess"* going on to state *"…there is no limit or threshold of how much waste should move from one area to another: the authorities recognise that wastes will move from one administrative area to another and they will plan simply on the basis of the amount of waste generated in their own area."* This is an overly simplistic and limited interpretation of the principle, as its very purpose is to support each WPA in making provision for the quantity of waste produced within its boundaries. Each WPA shapes its own spatial strategy around the provision requirement and characteristics of its plan area, and

while some cross-boundary flows may be expected to occur, the fundamental approach is that provision ought to be made within each WPA's own boundaries where possible. This is particularly with respect to mixed municipal waste destined for disposal or recovery, which is also subject to the proximity principle. Hence the creation of a single large facility that may draw waste from as far afield as West London would serve to undermine the locally developed strategies of each WPA that have each undergone independent examination through the local plan system and been found to be sound.

At paragraph 1.2.5, the Applicant refers to "*An assessment appropriate to understand the impact on waste management strategies across the Study Area has been undertaken.*" but it is not apparent to KCC where this assessment is actually presented in evidence and more importantly how it informed the proposal.

Q1A.1.3 – Applicant - The Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] states K3/WKN is a merchant facility proposed in response to a recognised commercial need for additional recovery capacity to divert residual wastes from landfill, not relying on any one local authority waste contract. What proportion of waste delivered to landfill in the Study Area comprises local authority collected wastes?

KCC would like to clarify for the examination that Local Authority Collected Waste (LACW) is the waste stream for which reliable data is reported by local authorities via an online data entry platform called Wastedataflow (WDF). This is placed into the public domain by central Government (Department for Environment, Food and Rural Affairs) (DEFRA)) in its annual results tables[1]. KCC would therefore refer the ExA to the DEFRA statistics as clarified by the detailed data reports from the WDF.

It is also not apparent from the Applicant's response as to whether the data presented is intended to portray:

- the quantity of waste sent to landfill within the Applicant's chosen Study Area - including waste arising outside the Applicant's chosen Study Area - or
- the quantity of waste arising within the Applicant's chosen Study Area sent to landfill, which may include waste sent to landfill outside the Applicant's chosen Study Area.

At Paragraph 1.3.14, the Applicant appears to be attempting to claim both (i.e. waste sent outside its chosen Study Area, as well as waste managed within). This serves to perpetuate the apparent confusion and suggests that the data presented may not be reliable in assessing available feedstock to support the application.

It is noted that the Applicant now appears to be distancing itself from its own evidence presented in Table 3.10 of the Waste Hierarchy and Feedstock Assessment Report (WHFAR) by introducing a new parameter to compare the LACW landfilled as reported through Wastedataflow, against that of 'Total Household, Industrial and Commercial (HIC)

[1] https://www.gov.uk/government/statistical-data-sets/env18-local-authority-collected-waste-annual-results-tables

landfilled in Study Area' as reported in the Environment Agency's Waste Data Interrogator[2]. The results for this new parameter are presented in Table 1.3.1 of the Applicant's response.

KCC has replicated the exercise using data from the Environment Agency Waste Data Interrogator and. the results are presented in Table 1 below by receiving landfill type:

Table 1: Waste categorised as HIC sent to landfill within Applicant chosen Study Area in 2018 (tonnes)

Location of Landfill		**Landfill Type**		**Total HIC waste landfilled**
Subregion	**Host Waste Planning Authority**	**Inert**	**Non inert/non hazardous**	
East London Waste Authority	Havering		516,665	516,665
Essex	Essex	55,752	400,100	455,852
	Thurrock		450,297	450,297
Kent	Kent	23,519	162,111	185,629
South London	Sutton		192,435	192,435
West Sussex	West Sussex		59,606	59,606
	Grand Total	**79,271**	**1,781,213**	**1,860,484**

Firstly, it is apparent that waste categorised as HIC is currently reported as going to inert landfill sites within the study area and yet by its use the Applicant is asking the examination to consider the term to only capture waste suitable for acceptance at an EfW plant On closer examination of the dataset presented in Table 1, the waste types accepted at the inert landfills are as shown in Table 2:

Table 2: Waste Types Reported as Accepted at Inert Landfill under HIC categorisation (tonnes)

EWC Waste Description	**Tonnes**
100701 slags from primary and secondary production	4,279
191207 wood other than that mentioned in 19 12 06	980
191212 other wastes (including mixtures of materials) from mechanical treatment of wastes	74,012
Total	**79,271**

This reveals that tonnages of waste types that would be unsuitable for input to EfW are included in the generic category HIC. It also confirms KCC's contention that the 19 12 12 code captures waste that would not be suitable for incineration with energy recovery (See KCC comment on Paragraph 17 on p5 of KCC Deadline 3 submission and KCC Response to Q1A.1.29). In particular, being waste normally referred to as trommel fines, much would

[2] A categorisation used in the Environment Agency Waste Data Interrogator to denote non inert waste, although as the subsequent analysis shows this is not a reliable measure.

be tested to demonstrate that it has a low combustibility under the *Landfill Tax (Qualifying Fines) (No.2) Order 2015*[3].

Moreover, closer examination of waste types listed under the HIC heading accepted at non-inert landfills in the Applicant's chosen Study Area include the tonnages of wastes presented in Table 3:

Table 3: Waste Types Reported as Accepted at Non-Inert Landfills under HIC categorisation considered unsuitable for incineration with energy recovery (tonnes)

EWC Waste Description	**Tonnes**
100101 bottom ash, slag and boiler ash	1,137
190206 sludges from physico/chemical treatment other than those mentioned in 19 02 05	5,385
190703 landfill leachate other than those mentioned in 19 07 02	23,264
190805 sludges from treatment of urban waste water	6,754
191302 solid wastes from soil remediation other than those mentioned in 19 13 01	142,798
200303 street-cleaning residues	38,086
Total	**217,423**

It is evident that the use of the generic HIC categorisation as now proposed in the Applicant's submission to the examination inflates the tonnage of waste that might be available for the proposed plants. In light of this, KCC has undertaken a detailed analysis on a waste type by waste type basis for the HIC wastes accepted at non-inert landfill in 2018 at 1,000 tonnes or above. This accounts for 99% of arisings landfilled at these sites. The findings are presented in Appendix 1 of this submission.

Correction of the evidence base, by excluding waste types known to not be suited to combustion from the calculation, reduces the values of waste landfilled that might be diverted to energy from waste from 1.86 Mt to 1.56 Mt. Waste types that are of doubtful suitability for incineration with energy recovery should also be excluded on a precautionary basis. Table 4 below shows how the corrections to the starting dataset presented by the Applicant reduces the available waste to 0.65 Mt.

Table 4: Calculation of HIC waste sent to landfill that may be suitable for incineration with energy recovery

Item	**Tonnes**	**Tonnes Remaining**	**Source**
Total HIC landfilled in Study Area	-	1,860,484	Table 1
Minus HIC waste to inert landfill	79,271	1,781,213	Table 2
Minus HIC waste to non-inert landfill unsuitable for EfW	217,423	1,557,066	Table 3
Minus doubtful HIC waste inc 19 12 12 as qualifying fines	981,437	649,641	Appendix 1

[3] See https://www.gov.uk/government/publications/excise-notice-lft1-a-general-guide-to-landfill-tax/excise-notice-lft1-a-general-guide-to-landfill-tax#lower-rate-qualifying-fines

Conclusion

The County Council would like to conclude by addressing the Examining Authority's question about the proportion of potential feedstock that might theoretically be sourced from the LACW stream (as opposed to the C&I waste stream).

When compared with the tonnage of LACW sent to landfill by local authorities within the Applicant's Study Area, this indicates that LACW might actually represent at least 74% (applying the Applicant's value of 480,012 tonnes in Table 1.3.2) or up to 81% (applying the Applicant's value of 525,152 tonnes in Table 1.3.1) of the total tonnage (c650,000 tonnes) of waste landfilled suited to incineration with energy recovery in the Applicant's Study Area in 2018.

However, given that much of the management of this waste stream is governed by long term contracts (as recognised by the Applicant at paragraph 1.3.16) it would be prudent to consider that this proportion of the targeted waste stream would not in fact be available to the proposed facilities, at least in the medium term. This would leave between 124,489 and 169,629 tonnes of waste suited to incineration with energy recovery to be diverted from landfill in 2018 within the Applicant's Study Area.

It is notable that quantities of HIC waste landfilled within the Applicant's Study Area presented in the Applicant's Table 1.3.1 show a declining trend indicating that the tonnages of waste suited to incineration with energy recovery sent to landfill in 2019 and beyond may be reducing over time.

This finding supports KCC's view that the claimed carbon benefit for diversion from landfill would in fact be very limited, and the majority of material likely to be sourced would be Refuse Derived Fuel (RDF) currently offshored. As the sensitivity presented in the Applicant's own Carbon Assessment for WKN demonstrates, management of RDF through mainland Europe CHP plants presents a carbon benefit over management through waste fired power generation as proposed at WKN, so ought to be preferred when significant weight is given to carbon emission reduction opportunities.

Q1A.1.7. Please confirm whether the parts of the plan quoted represent the most important parts of that plan to consider in connection with the Proposed Development and if not what are the other parts and why?

In response to this question, at paragraph 1.7.1, the Applicant asserts that the *"..Proposed Developments are not located in Surrey, and consequently the development plan policy for that administrative area is not relevant to consider further "* However, this fails to recognise that by potentially drawing in waste from Surrey or any other WPA area, this could adversely affect the other WPAs own underlying strategy (to maximise recycling), and undermine the viability of more locally based solutions which would accord with the proximity principle (See KCC Response to Q1A.1.7 of the Examining Authority's Further Written Questions (REP4-015).

Q1A.1.10 – Applicant - The Application seeks consent for two separate EfW facilities and the dDCO separates out the two projects. WHFAR [APP-086] paragraph 1.1.5 states “There is no sensible reason to consider the waste hierarchy separately for each of K3 and WKN…”, however does this take account of the possibility that the Secretary of State may grant consent for one project but not the other, and if that is not a good reason please explain why not?

At paragraph 1.10.2 the Applicant asserts that as both projects are facilities that will recover energy from residual wastes; *"…they operate at the same level of the waste hierarchy*". This fails to recognise the nuance of the waste hierarchy that decisions taken ought to accord with lifecycle thinking[4]. Taking each proposal in turn, K3 is in two parts; firstly, to increase power output of a waste fired power generation unit that forms part of a Combined Heat and Power (CHP) plant with a direct technical link to supply heat to the adjacent Papermill and secondly, to increase throughput to that plant, while WKN is a waste fired power generation plant with no direct relationship to the adjacent Papermill. That is to say while they may both be classed as ‘Other Recovery’, subject to confirmation of their R1 status, there is sufficient difference between the proposals for each to be considered as occupying different places within the tier of Other Recovery. In particular the expansion of input to K3 figures in a higher position being CHP, to WKN. This reflects the advice in the Government Guidance on the application of the Waste Hierarchy referenced in the County Council's response to Q1.1.1 of the Examining Authority's First Written Questions (REP2-044).

Also, at paragraph 1.10.2, the Applicant asserts that *"..If just one of the projects is granted consent, the remaining fuel will (as a reasonable assumption) continue to be managed in the same way."* The key uncertainty is in what ‘way’ might that be. While management of any remaining residual waste will largely be a function of the market, KCC considers that, in the conclusion to its findings on the Applicant response to Q1A.1.3 above, that no more than c170,000 tonnes of suitable waste might be available from landfill, strongly indicates that only a quantity equivalent to that required for the proposed K3 CHP expansion (107,000 tonnes) might actually be diverted from landfill, while that required to feed the WKN incineration with energy recovery plant would have to be sourced either from RDF currently exported or waste to be recycled. Given the WKN project would be displacing the harnessing of heat currently achieved by offshore users of RDF, this would result in a net carbon burden. This is illustrated in Table 5 below.

[4] As enshrined in Waste (England & Wales) Regulations 2011

Table 5: Qualitative Assessment of Carbon Impact of K3 expansion vs. WKN incinerator

Project	Carbon impact of project v current Management route	
	Landfill	**RDF exported**
K3 CHP expansion	Likely carbon benefit but this reduces as biogenic content of waste falls.	Likely overall reduction in carbon due to reduction in transport'
WKN power only		Likely increase in carbon due to lack of heat utilisation'

Q1A.1.12 – Applicant/KCC - The Proposed Developments are referred to variously as a source of renewable/low carbon energy (or fuel source), e.g. WHFAR [APP-086] paragraph 1.2.8 and 1.3.4. Is such an appellation correct, having regard to national policies pertaining to the Waste Hierarchy? Please justify your response.

At Paragraph 1.12.5 the Applicant refers to The Renewable Energy Action Plan to justify a value of 62.5% biodegradable content for municipal waste. However, this value was derived from a study which is now ten years old that assessed the composition of MSW in Scotland. The Renewable Energy Statistics Data Sources and Methodologies BEIS July 2018 (copy provided) states *"Additional research and evidence gathering indicated that the renewable content had fallen to 50 per cent in 2014."* (p17). The BEIS data also presents historic data that shows a declining trend which when projected forward suggests a biodegradable content of between 30% and 40% (see graph in Figure 1 below). The BEIS document ascribes the reduction as follows: *"The success of recycling initiatives has gradually changed the composition of waste available for combustion and the biodegradable content, reducing the share over the years "* Given the expectation of the separate collection of food waste by 2023 it is reasonable to expect the downward trend to continue to the extent shown in Figure 1. It is notable that the Applicant's own Carbon Assessment assumes a biogenic content of 45% as its baseline - see KCC Response to Q1A.1.12 of the Examining Authority's Further Written Questions (REP4-015).

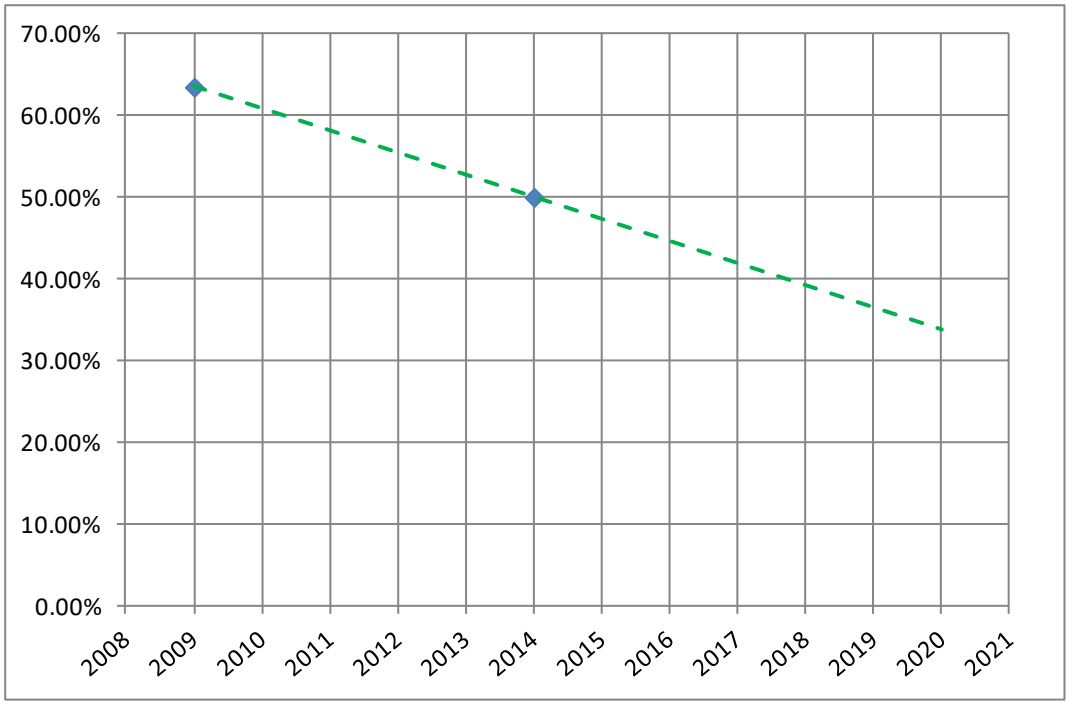

Figure 1: Biogenic/renewable content of mixed municipal waste over time (BEIS)

At Paragraph 1.12.6 the Applicant asserts that *"Modern energy from waste plants such as K3/WKN are required to meet targets for recovery established through the Waste Framework Directive (2008/98/EC) (and as amended); they are designed to recover electricity effectively and efficiently, continuously minimising emissions."* It is not clear what "recovery targets" are being referred to and KCC would suggest the Applicant be invited to further clarify this claim.

At paragraph 1.12.8 the Applicant asserts that *"Methane is the predominant greenhouse gas emitted from landfill because it is highly potent. There are real advantages to avoiding its generation, particularly through the disposal of biodegradable wastes."* At Paragraph 1.12.9 the Applicant confirms that the appellation 'renewable/low carbon', *"…is influenced by the composition of the fuel."* As illustrated in Table 5, the claimed carbon benefit depends substantially on the future biodegradable content of waste which, as illustrated in Figure 1, has declined markedly in recent years and can be expected to continue to do so. This leaves the remaining combustible waste as largely fossil fuel derived. As explained in the KCC response to ExA Q1.6 Examiner's First Written Questions (REP2-044), in the case of WKN this then leaves the comparison between a largely fossil fuel fired power only incineration plant with an alternative means of power generation, generally taken to be a conventional modern Combined Cycle Gas Turbine (CCGT). The Carbon Assessment considered by the Inspector adjudicating on the Former Wealden Brickworks Appeal Decision demonstrates that CCGT is a far more efficient means of converting the energy value of fossil fuel into electricity than its combustion in a power only incineration plant.

The Applicant also asserts that *"K3/WKN are recognised in policy as beneficial both as a supply of energy, including when this is delivering the waste hierarchy, diverting residual waste from disposal to landfill."* KCC asserts that there is no express recognition of

incineration with energy recovery as proposed at WKN as beneficial in policy, either national or local i.e. in Kent.

Finally, in response to Q.1.13, WTI suggests in paragraph 1.13.2 that the coronavirus is affecting recycling rates but there is evidence suggesting otherwise[5].

Q1A.1.16 – Applicant - In WHFAR [APP-086] paragraph 1.4.6, could the supply of steam to Kemsley Paper Mill be achieved without the WKN Proposed Development but with the K3 Proposed Development?

The applicant's response seeks to construct a scenario where WKN might be called upon to supply heat in the event of K3 being offline. However, such a need is considered unlikely to ever arise due to the availability of alternative heat sources onsite, including a dedicated CCGT plant (K4 granted a DCO in 2019), a sludge incinerator and an anaerobic digestion plant with a gas engine.

Q1A.1.17 – KCC/Applicant - WHFAR [APP-086] paragraph 1.4.7 states "…there is a carbon burden associated with the transport of fuel to the facilities…". What is the quantification of that burden and how if at all would this burden be affected if fuel were taken more locally than is envisaged in the proposed application but in accordance with KCC and SEWPAG policies? Please provide a reasoned justification for your answer including any quantification of benefit that can reasonably be assessed

At Paragraph 1.17.1 the Applicant asserts that *"If K3/WKN were not present, it is not unreasonable to consider that the fuels would have to travel further to a landfill destination or would continue to be exported overseas to the detriment of the UK energy demand."* However, KCC notes that no evidence is provided to justify the assumption that waste would have to travel further to landfill. KCC contends that this is in fact not the case and the landfill tax ought to mean that waste will travel further to be managed through routes other than landfill. Indeed, the fact that a substantial tonnage of waste travels to mainland Europe from the South East, while non-inert landfill is operational, attests to this being the case.

The Applicant recognises some of the shortcomings of the Carbon Assessment submitted and at Paragraph 1.17.2 commits to *"…preparing an assessment which quantifies the carbon burden arising from waste based on the distance it has been transported to the facility, which will allow an approximate carbon burden to be assessed based on the likely proportions of waste being delivered from different distances. That work is underway and the Applicant anticipates being able to provide that at Deadline 4."* KCC considers that for the Carbon Assessment to present a robust comparison of alternative management routes, the Applicant must explore the proposed sensitivities identified in KCC Response to Q1A.1.12 of the Examining Authority's Further Written Questions (REP4-015) (relating to recycling rates, and biogenic content) and include the burden of transporting IBA that would otherwise be processed on the WKN site via the consented recycling plant, to Hampshire for recycling.

[5] https://www.mineralandwasteplanning.co.uk/covid-19-recycling-rates-quality-surge-horsham/article/1681478?bulletin=waste-planning-bulletin&utm_medium=EMAIL&utm_campaign=eNews%20Bulletin&utm_source=20200507&utm_content=Waste%20Planning%20Bulletin%20(23)::&email_hash=

Q1A.1.18 – Applicant - WHFAR [APP-086] paragraph 2.1.6 states the Government will implement the 2018 Revised Waste Framework Directive (rWFD) in full. What is the Applicant's understanding of the current position as to such implementation?

KCC notes at Paragraph 1.18.2 that while listing various measures on which consultations have taken place, the key consultation covering the introduction of separate food waste collections is not expressly mentioned. The Government response to this consultation commits to "… legislate to ensure that every local authority provides householders with a separate food waste collection."[6] In connection with business waste the Government response also commits that "Given the strong support for having businesses separate food waste for collection we will seek to amend legislation to require this."

Q1A.1.20 – Applicant - WHFAR [APP-086] paragraph 3.1.3 states the WHFAR does not seek to specify an exact level of need for the Proposed Developments nor is that required by policy. Please could the Applicant be precise about whether and to what extent national or local policy has a role in considering surplus capacity and guiding decisions on applications such as the Proposed Developments.

At Paragraph 1.20.5 the Applicant asserts that *"Local planning policy also places no cap on energy generation."* This is incorrect. Policy CSW8 of the currently adopted Kent Minerals & Waste Plan sets an express tonnage cap for Other Recovery capacity to be permitted, and the soon to be adopted modifications to this policy (resulting from the Early Partial Review of the Plan) EPR sets a cap on the proportion of waste to be sent to Other Recovery, in Policy CSW4 as shown below:

Policy CSW 4

Strategy for Waste Management Capacity

The strategy for waste management capacity in Kent is to provide sufficient waste management capacity to manage at least the equivalent of the waste arising in Kent plus some residual non-hazardous waste from London. As a minimum it is to achieve the targets ***set out below*** for recycling and composting ***and other forms of recovery***~~., reuse and landfill diversion identified in the Kent Joint Municipal Waste Management Strategy (as amended).~~

	Milestone Year			
	2015/16	***2020/21***	***2025/26***	***2030/31***
Local Authority Collected Waste				
Recycling/composting[8]	***n/a***	***50%***	***55%***	***60%***
Other Recovery	***n/a***	***48%***	***43%***	***38%***
Remainder to Landfill	***n/a***	***2%***	***2%***	***2%***
Commercial & Industrial Waste				
Recycling/composting[9]	***n/a***	***50%***	***55%***	***60%***
Other Recovery	***n/a***	***35%***	***32.5%***	***30%***
Remainder to Landfill	***n/a***	***15%***	***12.5%***	***10%***

[6] https://www.gov.uk/government/consultations/waste-and-recycling-making-recycling-collections-consistent-in-england/outcome/consistency-in-recycling-collections-in-england-executive-summary-and-government-response

The Applicant asserts that *"The market is expected to deliver against the substantial demand and that forecast levels of need should not be used to stifle new development."* However, this ignores the clear expectation in the National Planning Policy for Waste (NPPW) that need for capacity ought to be considered where proposals do not align with recently adopted Local Plan and may undermine the objectives of a Local Plan, as evidenced by the NPPW extract reproduced below:

Determining planning applications

7. When determining waste planning applications, waste planning authorities should:

- only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. In such cases, waste planning authorities should consider the extent to which the capacity of existing operational facilities would satisfy any identified need;

- recognise that proposals for waste management facilities such as incinerators that cut across up-to-date Local Plans reflecting the vision and aspiration of local communities can give rise to justifiable frustration, and expect applicants to demonstrate that waste disposal facilities not in line with the Local Plan, will not undermine the objectives of the Local Plan through prejudicing movement up the waste hierarchy;

As maintained by KCC throughout the Examination process, the proposal clearly does not align with the Local Plan and so an assessment of need should be provided. The Applicant implicitly acknowledges this at paragraph 1.20.11 when it cites NPS EN-3 1 *'that the proposed waste combustion generating station is….of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets…'* Again, given the expected adoption of the EPR of the Kent Minerals & Waste Plan (KCC having received the Examining Inspector's Report) the proposal would be contrary to the Local Plan strategy and can be expected to prejudice achievement of the local recycling targets presented in Policy CSW4.

Given the above, the Applicant's assertion at its conclusion that *"Local policy is aligned with this position."* (paragraph 1.20.15) and *"In addition, the Proposed Developments are aligned with local policy"* (para 1.20.16) is simply not supported by any sensible reading of either the adopted Kent Minerals & Waste Plan, or the Early Partial Review of the Plan pending adoption.

Q1A.1.21 – Applicant/KCC - KCC disagrees that the Proposed Developments are compliant with national and local policy regarding the matters set out in WHFAR [APP-086]. However what is the Applicant/KCC's view as to whether local policy in all relevant respects conforms with relevant national policy?

It is noted at paragraph 1.21.1 that the applicant confirms that it considers that *"Local policy is considered to conform with national policy".* However, it goes on to qualify this acknowledgment by stating it *"..has been subject to locally focussed amendments."* While it is true to say local policy has been found to conform with national policy by virtue of the local

plan's public examination, it is not correct to say that its only significance is through *"locally focussed amendment."* Rather, it has taken a detailed consideration of local capacity need as stipulated in the NPPG and found there is no local need for capacity of the type being promoted by the applicant (i.e. Other Recovery). In any event, the modification was not '*locally focussed'* as it was made following widespread consultation with other Waste Planning Authorities, in some cases supported by Statements of Common Ground; none of which expressed concern with the Council's reassessment of 'Other Recovery' requirements.

In paragraph 1.21.1 the Applicant goes on to acknowledge that *"…the inclusion of the word 'net' in front of 'self-sufficiency', when the principle being applied is no different to that of the national policy phrase that is simply 'self-sufficiency'."* and hence is aligned with national policy. KCC welcomes this as a point of Common Ground too.

Q1A.1.23 – Applicant/KCC - If the Proposed Developments were granted consent, to operate in accordance with the dDCO, would it be feasible or desirable to include further requirements necessary for them to operate in accordance with KCC's interpretation of national and local policy, for example by restricting the sources, including the geographical locations of feedstock and if not why not?

At paragraph 1.23.1 the Applicant asserts that *"…the concept of self sufficiency does not mean that all waste has to be managed as close to its source as possible, nor require every authority individually to have all the infrastructure necessary to do so."* While KCC agrees with this observation, it would point out that the proximity principle, that applies to the disposal or recovery of mixed household waste such as is proposed to be accepted by the proposed K3 expansion and WKN plant, does include an expectation that such waste be managed at one of the nearest appropriate installations.

At paragraph 1.23.2 the Applicant refers to the Secretary of State for Business, Energy and Industrial Strategy (the 'SoS BEIS) decision on the application for the Riverside Energy Park Generating Station Order (the 'REP DCO') made by Cory Environmental Holdings Ltd. REP is located in London. It asserts that *"..the application was clear and consistent that REP was not promoted as solely to treat London's waste; fuels could be sourced from beyond London."* As KCC's response to ExAQ1A.1.19 shows, there is a significant overlap between the proposed catchment for the waste to be received by the proposal and that to be received by REP, and, given that the REP has now been consented, the waste identified as arising in the duplicated WPA areas ought not to be counted in the K3/WKN determination. To do otherwise artificially inflates the available feedstock by double counting.

At paragraph 1.23.3 the Applicant refers to Conditions 58 to 60 of Tilbury Green Power Facility consent as having formerly restricted the Facility to receive fuels from a defined catchment area. It goes on to state *"These conditions have been removed in the amendments approved under the section 90 application."* This supports KCC's position (as set out in its response to EXAQ1A.1.23) that attempts to condition limits to sourcing, as suggested by the ExA, would be of limited value as they could then be removed on subsequent application, and hence cannot be relied upon to limit the harm identified. The County Council has previous experience of the unsuccessful application of such a condition.

At paragraph 1.23.4 the Applicant asserts that *"..there is no unacceptable adverse impact caused by transporting waste to the Proposed Development from further afield than the county of Kent, not least because the transport routes are wholly appropriate for the transport of fuel to the Application Site. Consequently, there is no reasonable objection to the import of fuel to K3/WKN from outside of Kent or the Study Area."* KCC notes that, given the Applicant has accepted in its response that sources are unknown, transport impacts cannot be fully evaluated to arrive at such a definitive conclusion. Indeed, the Applicant has acknowledged this omission at Paragraph 1.17.2; undertaking to model the possible carbon impacts of transport further. KCC reserves its position on this matter until this assessment is made available, which KCC notes the Applicant says is to be by the end of Phase 4. .

KCC also notes that the Applicant is now suggesting that waste from beyond the chosen Study Area may well be accepted into the site and yet the implications of this for the Waste Local Plans for the affected WPAs has not been properly assessed. This view is reinforced by the Applicant's response to Q1A.1.25 where it states at paragraph 1.25.2 that *"The Study Area is … not presented to be either indicative or restrictive of fuel sources."* and further at paragraph 1.25.4 *"Waste does travel over substantial distances and, not least as confirmed in response to ExQ1A_1.23, there is no justified objection to fuels travelling further to reach K3/WKN."*

Q1A.1.28 – Applicant - Table 3.5 of WHFAR [APP-086] is titled Tonnes of LACW disposed of to landfill and percentage of LACW managed. The figures appear to relate only to the tonnage (and percentage) of the "managed" LACW. Please comment, providing the original source data."

Whilst it is noted that this question is for the Applicant to respond, KCC notes an error in the example presented by the Applicant in paragraph 1.28.4 – the error is shown in underlined in the text below:

"For example, in 2017/18 for the Kent sub region:

- *For Kent County Council the total LACW arisings was 708,527 tonnes (Table 1 referenced above) but the total LACW managed by Kent County Council was 717,388 tonnes, of which 7,442 tonnes was landfilled (Table 2 referenced above).*
- *For Medway Borough Council the total LACW arisings <u>was 708,527</u> tonnes (Table 1 referenced above) but the total LACW managed by <u>Kent County Council</u> was 130,573 tonnes, of which 12,543 tonnes was landfilled (Table 2 referenced above)."*

Q1A.1.33 – Applicant - In Figure 3.3 of WHFAR [APP-086], is the Total with Destinations Outside UK differentiated as to shortlisted waste types? Please also provide the source of the Figure.

KCC notes that the data presented in Table 1.33-1 shows a 13% fall in RDF exports from the peak year of 2017. This also coincides with a fall in HIC waste going to landfill (as shown in the Applicant's Table 1.3.1), indicating that the RDF has not been diverted back to landfill. The latest data indicates exports have fallen further in 2019 and 2020 as referenced in KCC Submission Q1A.1.13 and presented in the Applicant's Figure 1.35_2. It should be noted

that the Inspector examining the KCC EPR confirmed his satisfaction that *"The Council has taken into account RDF that is manufactured in Kent in its assessment of C&I waste need."* at paragraph 24 of his Report.

Q1A.1.34 – Applicant/SEWPAG - "WHFAR [APP-086] paragraph 3.4.7 states "…the future capacity, and consequent availability, of landfill facilities cannot be relied upon beyond the next ten years…". The Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] SEWPAG on page 3, states provision of the consented capacity at K3 means management of waste will be locked into incineration for at least the next 25 years, compromising the ability to prevent it in the first place or to enable it to be recycled/composted.
What local or national studies exist of which you are aware, not already referred to, that identify the optimum role for the provision of energy recovery facilities similar to the Proposed Development, to move waste up the hierarchy, based on studied projected decreases in landfill availability and projected increases in recycling?"

KCC notes that the response offered by the Applicant fails to acknowledge the existence of the WNA produced by KCC to support the EPR of the Kent MWLP – e.g. see Applicant's reference to the WNA in the reviews submitted in response to Q1A.1.46, the veracity of which the Examining Inspector of the EPR was unpersuaded.

The County Council reiterates its view of the work cited as produced by Tolvik in its response to Q1A.1.32 and supporting Appendix.

Q1A.1.35 – Applicant - With regard to export of RDF overseas, now that the UK has left the EU please provide an update, if any, of paragraph 3.4.8 in WHFAR [APP-086] , and elaborate upon paragraph 61 of Applicants comments on written representation [REP2-011], indicating what evidence indicates the export of RDF waste would be negatively affected.

At paragraph 1.35.4 the applicant seeks to explain the current decline in exports of RDF. It includes a statement as follows: *"Gate fees across European energy recovery facilities, which were actively seeking fuel, were between €30- €50 per tonne (excluding additional costs such as transport, fuel and permits). This was clearly a cost saving, that could be passed onto clients".* KCC notes that there is no evidence provided to justify the assertion regarding gate fees charged by European energy recovery facilities

At paragraph 1.35.8 the applicant asserts that *"The data shows a sustained decline in the export of RDF to mainland Europe, and this might be expected to continue, but with no certainty at what rate this will occur."* a point on which KCC concurs as Common Ground. Given that tonnages of HIC waste going to landfill have continued to fall (as shown in the Applicant's Table 1.3.1), this must raise the question of where that material is now managed and more importantly indicates that the feedstock supply is being squeezed from both directions i.e. both available waste at landfill and available RDF managed on mainland Europe are falling.

At paragraph 1.35.9 the Applicant asserts that putting RDF to beneficial use within the UK as a renewable/low carbon energy source, is *"..urgently sought in both national and local policy."* It is not evident to KCC where in local policy such a claimed urgency exists.

Certainly, from a waste management need perspective, provision for Energy from Waste capacity has been assessed to be sufficient for the whole Plan period i.e. to 2030.

Q1A.1.36 – Applicant - Would the export of RDF waste be subject to term contracts and if so should it be assessed similarly to managed LACW? If not why not?

KCC considers that the Applicant's response does not directly address the ExA question concerning whether export of RDF is subject to term contracts.

KCC also notes at paragraph 1.36.3 the Applicant asserts *"K3/WKN is responding to an identified market need for new residual waste management capacity"* and yet it has not evidenced where this claimed market need has actually been identified. Indeed, as has been shown above, waste to landfill is decreasing as are exports of RDF. Furthermore, none of the Waste Need Assessments or Annual Monitoring Reports produced by the WPAs within the Applicant's Study Area have indicated a need for additional energy from waste capacity to be provided in Kent.

The Applicant goes on to assert that *"RDF, along with LACW, is just one element of a much larger market demand."*, but demand has now been shown to be shrinking within the Applicant's Study Area and no further evidence has been provided to substantiate the claim that a larger market demand actual exists. In that context, additional capacity consented since the original WHFOR was prepared ought to also be taken into account. This is identified in KCC's response to ExAQ1A.1.37.

Q1A.1.38 – Applicant - What national or local policies if any does the Applicant regard as policies that discourage over-capacity of facilities comparable to the Proposed Developments?

At paragraph 1.38.1 the Applicant asserts that *"There is no national or local policy that discourages the over-capacity of facilities comparable to the Proposed Developments (residual waste treatment/energy recovery facilities) specifically."* KCC reiterates that Policy CSW8 of the currently adopted Kent Minerals & Waste Plan sets an express cap by tonnage for Other Recovery capacity to be permitted, and the, to be adopted EPR of the Kent Minerals & Waste Local Plan sets a cap on the proportion of waste to be sent to Other Recovery in Policy CSW4. Both policies are expressly intended to discourage over-capacity of facilities comparable to the proposed developments so as to avoid waste being locked in and no longer being available for management further up the waste hierarchy. Compliance with the waste hierarchy is enshrined in national policy and law.

Moreover, Government has said it is monitoring capacity and may seek to introduce a tax on incineration to ensure there is no over-capacity, as stated in KCC original submission (b. Waste Policy p 5). The October 2018 Budget Report[7] states that: "…the government wants to maximise the amount of waste sent to recycling instead of incineration and landfill. Should wider policies not deliver the government's waste ambitions in the future, it will consider the

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752202/Budget_2018_red_web.pdf

introduction of a tax on the incineration of waste, in conjunction with landfill tax, taking account of the possible impacts on local authorities."

The Applicant goes on to assert that *"All waste management facilities should be considered in terms of their contribution to achieving the waste hierarchy. This principle is made clear across national and local policy documents, but principally: NPS EN-3, paragraph 2.5.70; National Planning Policy for Waste, paragraph 7; and Kent Minerals and Waste Local Plan and the Early Partial Review, policy CSW2*" but in only citing Policy CSW2 of the EPR the Applicant ignores the targets presented in Policy CSW4, about which it made strenuous objection at the EPR examination as evidenced in the documentation submitted in its response to Q1A.1.46.

Q1A.1.39 – Applicant/KCC - If the principle is a valid one that the waste hierarchy is complied with as stated in paragraph 2.4.1 "…based on market forces and practical factors alone,…" of WHFAR [APP-086] WHFAR) or through "…good intentions and market forces." as stated in paragraph 2.4.7, what weight should be placed on policies of net self-sufficiency?

At paragraph 1.39.4 the Applicant asserts that *"… the Waste Framework Direct (sic) also builds in flexibility to properly consider the context of any waste management project."*

Without further explanation, it is not clear how flexibility of the nature suggested by the Applicant is built into the application of the Waste Framework Directive. If this is a reference to the application of lifecycle thinking to the waste hierarchy then the evidence presented to show how the two proposals perform in this context i.e. the Carbon Assessments does not support their provision.

At paragraph 1.39.5 the Applicant asserts that *"Net self-sufficiency is a local construct; it does not feature in either the Waste Framework Directive or national policy."* This appears to be contradicted at paragraph 1.21.1, where the Applicant considers that local policy is aligned with national policy.

Moreover, the Applicant asserts that *"…the principle of net self-sufficiency should receive less weight than the waste hierarchy."* but gives no further evidence to substantiate this position. KCC's position is that whilst the movement of waste out of landfill is a strategic priority, where it can be demonstrated to be the case, the importance of retaining the integrity of the spatial strategy underpinning its Waste Local Plan, and that of other potentially affected WPAs of which the principle of net self sufficiency is a foundation stone that should also be given substantial weight.

Q1A.1.40 – Applicant - Within the context of NPS EN-1 (paragraph 4.2.22), that intends that a framework only is provided for the market to respond to, but "in the places where it is acceptable in planning terms", what is the scope of that tailpiece for taking into account sub-national policies of net self-sufficiency or over-capacity?

At paragraph 1.40.1 the Applicant reiterates its assertion that *"… there is no policy, sub-national or otherwise, that specifies over-capacity."* However this is not the case - KCC

reiterates the actual position with reference to both the adopted KMWLP, the to be adopted EPR and the NPPW regarding need and limiting Other Recovery capacity as stated in KCCs original submission regarding consistency with the principles of Waste Planning in Kent and KCC's own response to Q1A.1.40.

At paragraph 1.40.3 the Applicant states that *"… any local policy can only ever be taken into account either through having regard to the local impact report, or as a matter that is both important and relevant in its own right."* and *"They can only be afforded less weight than national policy, namely the National Policy Statements."*

KCC notes that, in making these assertions, the Applicant acknowledges that local policy ought to be taken into account. However, it does not substantiate its assertion that it can only be afforded less weight than National Policy Statements. KCC references its responses on this matter made in its previous submission (KCC Response to Q1.1.2 of the Examining Authority's First Written Questions (REP2-044) which cites the NPS EN-1 itself on what weight it ought to be accorded in non NSIP decisions, in which it states at paragraph 1.2.1 *" In England and Wales this NPS is likely to be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent, this NPS is a material consideration will be judged on a case by case basis."* KCC would therefore suggest that a similar approach be taken in the context of this determination with significant weight accorded to the local development plan - especially in light of its currency and the relevance of the proposal to the spatial strategy. That is to say, the combined proposal directly, and significantly, impacts the spatial strategy for Kent underpinning the adopted, and to be adopted modifications, to the KMWLP.

Q1A.1.45 – Applicant - In the Applicant's comments on written representations [REP2-011] paragraph 17, please explain where, when, how and by whom the waste referred to is certified as "not suitable for recycling".

At paragraph 1.45.4 of the Applicant's response asserts that it *"…will operate checks on the wastes delivered and deal appropriately with any supplier that delivers the wrong materials."*

However, it is not clear what the applicant would consider to be *'wrong materials'*, particularly considering the almost all-embracing range of waste types identified as suitable in its assessment of HIC waste going to landfill (See comments on Applicant's response to Q1A.1.3 above and RAG Analysis presented in Appendix 1 to this response).

At paragraph 1.45.5 the Applicant asserts that: *"The generator of waste will consider whether to place that material in a container for recycling or disposal."* However, the producer's behaviour is normally dictated by the services made available by the collector, which may in turn be influenced by the final fate of material. KCC refers to its response to Q1A.1.45 of the Examining Authority's Further Written Questions (REP4-015) concerning the identified market failure for recycling services identified by the Welsh Assembly government.

The Applicant also asserts that *"In the next step of the process, the waste handler (e.g. the operator of a waste transfer station or cardboard/paper reprocessor) will be considering whether the material receives is suitable for recycling."* KCC notes that this description

suggests that the proposed facilities will only accept waste delivered from intermediate facilities, implying it does not intend to accept any direct deliveries. No evidence has been provided by the Applicant to evidence if that will in fact be the case and it is suggested that clarity be sought on this matter.

The Applicant also asserts that *"…recovery facilities treating residual wastes, K3/WKN are at the end of the waste management chain."* As stated previously, the operator of the facilities where waste is to meet its final fate can exert a substantial influence on what and how waste is presented for collection. That is to say, if a collector knows the waste is destined for incineration, there is very little incentive to separate it for recycling, particularly if pricing is volatile.

At paragraph 1.45.7 the Applicant asserts that *"In addition to this legislative provision, there is a commercial imperative to recycle materials. The paper/cardboard reprocessor will most likely make a financial return by recycling the material they receive.."* KCC would point out that this fails to account for what operators of WTS receiving mixed waste may do where recyclate pricing is volatile. The Welsh study referenced in the KCC response to Q1A.1.45 of the Examining Authority's Further Written Questions (REP4-015) identified a level of market failure that needs to be remedied to maximise recycling and notes that committing to 25 - year feedstock supply to EfW would work against such initiatives.

At 1.45.8 the Applicant refers again to decisions about what waste is recycled being *"… driven by both good intentions (compliance with legislation and understanding the benefits of recycling) and market forces (seeking to realise financial gain and reduce cost)".* KCC would reiterate the point made in its submission (KCC response to Q1A.1.39) that legal compliance goes beyond "good intentions", but also that a market failure may well exist at present.

Q1A.1.48 – Applicant - 16/507687/COUNTY was a permission for the construction and operation of an Incinerator Bottom Ash (IBA) Recycling Facility on land adjacent to the Kemsley Sustainable Energy Plant Permission which has lapsed. Please explain why it not sought to renew this permission and what alternative facilities are available and where, which the Applicant expects to use.

At paragraph 1.48.2, the Applicant refers to having entered into a contract for the management and processing of the IBA from the Kemsley (K3) facility and that this is to rely on the long distance movement of IBA to a facility in Hampshire. More local management arrangements are predicated on the positive determination of a planning application, which is currently before KCC. It would be inappropriate for KCC to comment on the likelihood of success of this application, so as to avoid pre-determination.

KCC considers that, given the inherent uncertainty in any determination process, the assumption ought to be made that IBA will continue to travel to Hampshire for processing, and this transportation ought also to be included in the revised transport modelling for carbon being undertaken by the Applicant for submission by Deadline 4.

The County Council will continue to work with the applicant and Examining Authority and welcomes the opportunity to comment on matters of detail throughout the Examination.

Should you require any additional information or clarification, please do not hesitate to contact me.

Yours sincerely

Barbara Cooper
Corporate Director – Growth, Environment and Transport

Enc.