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BY EMAIL ONLY

Your reference: EN010083

5 August 2020

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) – Kent County Council’s Response to Applicant’s Response to ExAQ3 (REP5-011)

Kent County Council (KCC) provides the following submission at Deadline 7, which responds to the Applicant’s response to ExAQ3 (REP5-011).

Q3.1.4 (Applicant) - "i) Are there any particular benefits in relation to the K3 Proposed Development that would not obtain in relation to the WKN Proposed Development? If so, please explain what these are.
ii) Would such benefits justify consent being granted for the K3 Proposed Development alone and if so why?

Applicant Response (Extracted from REP5-011)

1.4.3 Whilst the two facilities are being sought through the same application, they are stand-alone facilities operationally and commercially. The Applicant’s view is that any assessment of each facility should be undertaken on the compliance of that individual proposed development with relevant policy, whilst taking account of any significant cumulative environmental effects which might arise from the proposed developments together with other proposed or consented projects in the surrounding area, including WKN in the case of K3 and K3 in the case of WKN. The Applicant submits that individually each facility meets the necessary policy tests for consent, and no significant adverse cumulative environmental

impacts have been identified as arising from the two facilities being constructed and operated on adjacent sites. The particular benefits identified as arising from K3 and from WKN should be afforded positive weight within the determination of the application but it would not be appropriate, in the absence of any identified policy conflict or adverse environmental impacts, to determine the individual proposed developments by comparing their respective benefits.

KCC Response

KCC notes that the Applicant explicitly acknowledges that the Proposed Developments "are stand-alone facilities operationally and commercially" and hence no interdependency exists between the facilities being considered within the DCO application. The County Council considers therefore that there is potential for each facility to be considered independently of each other. Furthermore, KCC considers that there is potential that the proposal to increase generating capacity of the Sustainable Energy Plant (SEP) K3), which triggered the NSIP, if appropriate, could be considered separately to the proposal to increase its throughput too.

The County Council disagrees that individually each facility meets the necessary policy tests for consent. Neither the proposal for the standalone WKN plant, nor the proposal to increase throughput of SEP(K3) is in line with the Strategy for Waste Management Capacity articulated in Early Partial Review (EPR) Policy CSW4 of the 'to be adopted' EPR¹ regarding the balance of capacity to be sought in Kent. Moreover, without R1 status, confirmation the Proposed Development could be classed as disposal rather than recovery; and hence provision would not be in compliance with the waste hierarchy; a legally binding requirement.

Q3.1.5 (Applicant) - In response to ExQ1A.1.44 [REP2-043] SEWPAG suggests that the annual monitoring reports of all the waste planning authorities within the SEWPAG area should be considered. You state this is inconsistent with their response to ExQ1A.1.40. Please explain why you consider that the reports are not important and relevant matters to consider given the extent of the correlation between your choice of study area and the SEWPAG WPAs?

Applicant Response (Extracted from REP5-011)

1.5.2 Notwithstanding this, SEWPAG has previously suggested that all the annual monitoring reports should be considered. The Applicant addressed this suggestion in its Response to Submissions at Deadline 2 [REP3-003] (page 19, from paragraph 2.6.7, under title 'ExQ1.1.6'). In addition, it is important and relevant to note that the choice of study area by the Applicant is unrelated to the constitution of SEWPAG; they are entirely discrete matters. Where the Applicant chooses to source fuel for the Proposed Developments from is a commercial matter, recognised in NPS EN-3 (paragraph 2.5.17) as 'unlikely to be an important matter for IPC decision-making'.

¹ <https://www.kent.gov.uk/about-the-council/strategies-and-policies/environment-waste-and-planning-policies/planning-policies/minerals-and-waste-planning-policy#tab-3>

KCC Response

Whilst the Applicant's final sentence in paragraph 1.5.2 may be true, it is reasonable to expect that a rational and consistent approach is taken to this. The exclusion of Surrey and West London (that fall within a 2 hour isochrone from the proposed facility location) does not make sense and no proper explanation has been provided for their omission. On that basis, a question could be raised on the reliability of the Waste Hierarchy and Fuel Availability Report (WHFAR) with regard to sourcing of feedstock. This uncertainty could mean that, were permission to be granted, waste might end up being imported from much further afield than has been indicated in the Applicant's WHFAR, incurring additional carbon emissions and being contrary to the proximity principle. It is notable in this regard that the recent decision relating to refusal of the Waterbeach facility expressly identified long distance transport as being contrary to the proximity principle (please see the County Council's Additional Submission regarding the Waterbeach Decision, submitted at Deadline 7).

Q3.2.2 (Applicant, KCC) - "NPS EN-1 4.6.8 states "To encourage proper consideration of CHP, substantial additional positive weight should therefore be given...to applications incorporating CHP."

What weight should be accorded to the Applicant's proposals for CHP in the context of each of the K3 and WKN Proposed Developments taken separately?

Applicant Response (Extracted from REP5-011)

2.2.1 The Applicant considers that K3 should be afforded substantial additional positive weight given its direct connection to provide heat in the form of steam to the Kemsley Paper Mill.

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

KCC Response

It is not apparent from the application documentation what effect an increase in electrical output (which rendered the SEP (K3) application an NSIP) might have on the heat supplied to the Paper Mill. The Applicant has advised during the course of the preparation of the Statement of Common Ground (SoCG) that meeting the heat demand comes before the

electrical output. Therefore, if the heat demand of the Mill remains constant, it should not be assumed that the increase in electrical output or the increase in throughput of the SEP(K3) will make any additional contribution towards the heat currently available for supply to the Mill. Hence the proposal relating to SEP(K3) plant offers no CHP benefit over and above the currently consented arrangement and no weight ought to be afforded to this aspect of the DCO application.

It is also worth noting that K4 (a gas fired CHP plant at Kemsley) has recently been granted DCO consent and when this comes on stream, it may in fact reduce the current demand for heat from SEP.

KCC's view on WKN and CHP is reflected in the SoCG between the parties, which, in summary, is that WKN offers no benefit as a CHP. It offers no immediate prospect of heat utilisation and is expressly acknowledged by the Applicant in its own CHP Assessment (Sept 2019) [APP-087] not to achieve Good Quality CHP status. Hence, no positive weight ought to be attached to this. On the contrary, this ought to attract weight against the project given this presents the loss of potential calorific value of the finite waste feedstock. That is to say, if the target feedstock were to be used in a plant with a ready heat load, the energy would be utilised more efficiently producing an associated reduction in carbon emissions achieved. This is reflected in the results of the Carbon Assessment sensitivity analysis on RDF utilisation in continental Europe referenced in the County Council's Additional Submission at Deadline 7.

Q3.6.1 (Applicant) KCC states in its reply to ExQ1A.1.3 [REP4-015] that without knowing how much of the feedstock is anticipated to come from landfill as opposed to exported refuse-derived fuel (RDF), it is not possible to determine whether the claimed carbon benefits of the WKN Proposed Development - in particular, those based upon avoided emissions from landfill - will actually materialise.
Has the Applicant provided information as to how much of the feedstock is anticipated to come from landfill as opposed to exported refuse-derived fuel (RDF) and where can this be found

Applicant Response (Extracted from REP5-011)

6.1.2 The WHFAR [APP-086] presents a range of the fuels available for the Proposed Developments. As is also set out in Applicant's Response to Submissions at Deadline 3 [REP4-008] (at page 13, under title 'Paragraph 20') 'The WHFAR [APP-086] indicates clearly that a far greater proportion of the fuel is expected to be derived from wastes currently disposed to landfill than from RDF exported out of facilities in Kent. This balance has the potential to change over time, as more facilities are set up to create RDF out of wastes, but the WHFAR accurately reflects the current situation.'

KCC Response

The analysis presented in the Appendix to KCC Submission dated 26.06.2020 (REP5-042) demonstrates that, contrary to what is stated, the available feedstock going to landfill is

substantially less than the RDF currently exported. Therefore, the Applicant's statement does not stand up to scrutiny.

Q3.6.2 (Applicant) - Para 4.1.5 of NPS EN-01 states "In the event of a conflict between these [DPD documents] or any other documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure. Do you consider this paragraph applies in the case of the WKN Proposed Development that is not a NSIP and if so why?"

Applicant Response (Extracted from REP5-011)

(4) If the NPS are not relevant because of a conflict, and DPD documents prevail for the purposes of decision-making, then the application is effectively being decided as a local planning application. It renders the section 35 direction meaningless, and it would be ultra vires for the SoS to decide the application at all.

(5) Paragraph 5 of the National Planning Policy Framework itself states that the NPS form part of the overall framework of national planning policy, and may be a material consideration in preparing local plans and making decisions on local planning applications, demonstrating that NPS take precedence over local policy and decision-making with respect to projects of national significance.

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

KCC Response

KCC agrees that the applications ought to be determined against the development plan, with the NPS given weight as a material consideration. KCC, as Minerals and Waste Planning Authority, remains of the view that the applications for additional throughput at SEP(K3) and WKN ought to be determined by the local planning authority, the County Council, while the proposed increase in generating capacity is the only matter that ought to be determined under the DCO. It should be noted that KCC was given no opportunity to input to the Secretary of State's original decision to co-join these three matters.

Should the ExA choose to do so, the application for WKN (and increased throughput to SEP) could be left to be determined by the local planning authority against the development plan, as KCC considers ought to be the case.

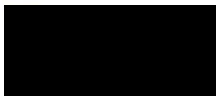
It seems to KCC there is a contradiction in the Applicant's position on this matter, as it states that NPS may be a "material consideration" i.e. subordinate to the local development plan, which is at odds with its statement that the NPS "take(s) precedence".

KCC remains of the view there is a conflict, in particular with EPR Policy CSW4 of the 'to be adopted' Kent Minerals and Waste Local Plan.

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