



**Wheelabrator**  
TECHNOLOGIES



## Statement of Common Ground between the Applicant and Kent County Council

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

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## Statement of Common Ground between Wheelabrator Technologies Inc. and Kent County Council

Applicant: **WTI/EFW Holdings Ltd (Wheelabrator Technologies Inc)**  
Project: **Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO**  
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# 1 Introduction

1.1.1 Wheelabrator Technologies Inc. (“the Applicant”) has made an application to the Secretary of State for Business, Energy and Industrial Strategy (SoS) for a Development Consent Order (DCO) for the construction and operation of the Wheelabrator Kemsley (K3) generating station and for a new waste-to-energy facility called Wheelabrator Kemsley North (‘WKN’) on adjacent land.

## 1.2 The Role of Kent County Council

1.2.1 Kent County Council (KCC) is the minerals and waste planning authority, the local highway authority and the lead local flood authority and waste management authority within the area of the proposed K3 and WKN developments. KCC is the planning authority that granted planning permission in 2012 under the Town and Country Planning Act 1990 and subsequent revisions and non- material amendments for the Sustainable Energy Plant (SEP) referred to as K3 in this DCO application.

1.2.2 At the pre-application stage KCC submitted a response to the Planning Inspectorate’s EIA Scoping exercise on the 5<sup>th</sup> October 2018 and provided comments on the applicant’s Statement of Community Consultation on the 10<sup>th</sup> October 2018. It was formally consulted by the applicant under S42 of the Planning Act 2008 in December 2018 and July 2019 and KCC provided S42 responses on the 10<sup>th</sup> January 2019 and the 10<sup>th</sup> September 2019.

1.2.3 The applicant and KCC met to discuss the proposals at the following points:

- (a) 7<sup>th</sup> September 2018 – initial meeting to provide a tour of the K3 facility and an overview of the proposed developments;
- (b) 12<sup>th</sup> February 2019 – to discuss KCC’s S42 response and to have an initial review of waste and highways matters;
- (c) 16<sup>th</sup> July 2019 – to review the reasons for a second S42 consultation being required (the change in the description of the proposed development);
- (d) 10<sup>th</sup> February 2020 – to discuss the principles of a SoCG.

## 1.3 The Application Site(s)

1.3.1 The K3 project site is located on land immediately to the east of the Kemsley Paper Mill, located 0.8km east of Kemsley, a residential suburb in the north of Sittingbourne in Kent. It lies adjacent to the Swale Estuary to its east, with the Isle of Sheppey beyond. To the south of the site lies a capped former landfill site which lies adjacent to the confluence between Milton Creek and the Swale Estuary.

1.3.2 The WKN site (hereafter the “WKN Site”) is located on land immediately north of the permitted SEP facility. The WKN Site is currently being used by the Applicant as a laydown and parking area for the construction of the adjacent SEP facility. It has been cleared of vegetation and laid to concrete or hardcore with a perimeter fence.

1.3.3 To the east of the WKN Site lies the Swale Estuary with the Isle of Sheppey beyond. Immediately to the north lie the Kemsley Marshes beyond which lies the Kemsley Paper Mill anaerobic digester treatment works and to the north east a jetty operated by Knauf for the import of gypsum by barge.

1.3.4 The nearest statutory designation with regard to ecological interest is the Swale Special Protection Area and Site of Special Scientific Interest (SSSI) which lies approximately 100m east of the Sites at its closest point. Milton Creek Local Wildlife Site (LWS) is also less than 400m and 550m respectively from the K3 and WKN Sites.

#### **1.4 Wheelabrator Kemsley (“K3”)**

1.4.1 Planning permission under the Town and Country Planning Act 1990 was granted by Kent County Council on 6<sup>th</sup> March 2012 for a Sustainable Energy Plant (SEP) under planning reference SW/10/444. This facility is referred to as K3 in this DCO application.

1.4.2 Various amendments/variations have been made to the original planning permission. The planning history relating to the K3 site has been documented by KCC in its S42 responses and by the applicant in its Planning Statement (Document 4.2 – Section 3.3 and Appendix A).

1.4.3 Construction of the plant began in July 2016. As consented the SEP will have two 102 megawatt thermal (MWth) lines, be capable of processing 550,000 tonnes of waste per annum and have a generating output of 49.9 megawatts (MW). The facility became operational in Q2 2020. It supplies steam to the DS Smith Kemsley Paper Mill and exports electricity to the grid.

1.4.4 As per the conditions on the current planning permission, HGV movements to and from the plant are not to exceed a combined total of 348 movements per day save for movements originated from and returning to the railway depot at Ridham Docks via Ridham Dock Road.

1.4.5 Consent is being sought to upgrade the consented plant so it is capable of generating up to 75MW of electricity (by derestricting the flow of steam to the steam turbine) and separately, of processing up to 657,000 tonnes of waste per annum (increased from the 550,000 tonnes currently permitted).

1.4.6 The Planning Act 2008 states that the construction or extension of an onshore generating station with a capacity of more than 50MW in England or Wales is considered by Section 14(1)(a) and Section 15 of the Act to be a ‘nationally significant infrastructure project’ (NSIP) and as such requires an application for a DCO to be made to the Planning Inspectorate (PINS) and approved by the Secretary of State.

1.4.7 In order to properly categorise and consent the K3 project under the Planning Act 2008, Development Consent is being sought for the construction and operation of K3 to a generating capacity of up to 75MW. The applicant is also applying for the permitted annual waste throughput capacity to be up to 657,000 tonnes.

1.4.8 The ‘practical effect’ of the K3 element of the application would be the SEP facility, as currently consented and built, being capable of generating up to an additional 15.1MW

of electricity, and of processing up to an additional 107,000 tonnes of waste per annum.

## **1.5 Wheelabrator Kemsley North (“WKN”)**

1.5.1 The WKN Proposed Development is to construct and operate a new waste-to-energy facility on adjacent land called Wheelabrator Kemsley North (‘WKN’). WKN would be capable of generating up to 42MW of electricity and would have a processing capacity of up to 390,000 tonnes of waste per annum.

1.5.2 The WKN Proposed Development is not therefore a NSIP as its generating capacity is below 50MW. WTI made a formal application on the 1st June 2018 to the SoS under Section 35 of the Planning Act 2008 for a direction as to whether the WKN Proposed Development together with any matters associated with it can be treated as development for which Development Consent is required. The SoS issued his direction on the 27th June 2018 confirming that WKN is to be treated as development for which Development Consent is required and accordingly Development Consent is being sought.

1.5.3 WKN would export electricity to the grid and would be capable of providing steam to DS Smith via K3, at times when the SEP (K3) is not operational. WKN would be capable of supplying additional heat to other yet to be identified customers and would therefore be CHP ready although would not qualify as 'Good Quality' CHP'.

## 2 Matters Agreed

### 2.1 The Impacts of the K3 proposed development

2.1.1 The DCO application does not seek any change to the physical design of the consented facility from that which has planning permission. The practical effect of the K3 project from that currently permitted would result in changes to:

- the amount of electricity that can be generated (subject to the heat demand of the adjacent mill),
- the amount of waste that can be processed,
- the number of vehicle movements associated with the operation of the plant; and
- the amount/nature of emissions from the plant including process waste arisings such as bottom ash and air pollution control residues

when considered against the scheme as proposed through the original planning application and as amended/varied by subsequent applications since.

### 2.2 Planning Policy Context

2.2.1 The parties agree that:

- (a) The key element of national planning policy in respect of Waste Management for Nationally Significant Infrastructure Projects is set out at Paragraphs 2.5.64 to 2.5.70 of National Policy Statement EN-3.
- (b) The appropriate test for the determination of that part of the application that may be deemed to be a NSIP is set out at paragraph 2.5.70 of EN-3, which states:

*‘The IPC should be satisfied, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England and local, regional or national waste management targets in Wales. Where there are concerns in terms of a possible conflict, evidence should be provided to the IPC by the applicant as to why this is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy.’*

2.2.2 The parties do not agree on the status of EN-3 in the determination of the WKN part of the application, nor of the increase in throughput of proposed K3 and this is reflected in the Matters Not Agreed section of this SoCG.

### 2.2.3 The parties agree that:

- (a) The relevant development plan at the point of the application being submitted was the Kent Minerals and Waste Local Plan 2013 – 30 (adopted July 2016) and the Swale Borough 'Bearing Fruits 2031' Local Plan (adopted in July 2017).
- (b) KCC has undertaken an Early Partial Review (EPR) of the Kent Minerals and Waste Local Plan (KMWLP), which has been found sound with the addition of main modifications. The parties agree that the relevant local waste plan would be the Kent Minerals and Waste Local Plan Early Partial Review, should that be adopted by KCC prior to the application being determined. In advance of adoption, increasing weight ought to be given to the EPR, given it has now been approved by the Examining Inspector.
- (c) K3 and WKN are both facilities proposed for the incineration of waste with energy recovery, which on achieving R1 status would represent 'other recovery' facilities for the purposes of the waste hierarchy which sit above 'disposal'. The decision whether R1 status is achieved or not is a matter for the Environment Agency. The parties disagree on the current position of K3 in the waste hierarchy, with their respective positions set out in the Matters Not Agreed section.

## 2.3 Highways and Transportation

### 2.3.1 The following matters are agreed between the parties:

- (a) The following sections of the Environment Statement (ES) Transport Statement:
  - (1) The description of the existing transport situation as set out in Section 2 of the Transport Assessment and Section 4.4 of the ES;
  - (2) A description of the relevant transport related policies as set out in Section 3 of the Transport Assessment and Section 4.2 of the ES;
  - (3) The mode share of all staff set out in Table 6.3 of the Transport Assessment;
  - (4) The trip distribution and assignment estimates for all staff and HGVs set out in Section 6 of the Transport Assessment;
  - (5) The traffic flows generated by other committed and cumulative development sites and their incorporation into the assessments as set out in Section 5 of the Transport Assessment and Section 4.5 of the ES;
- (b) That condition 3 of SW/19/501345 states that the SEP as consented shall have a maximum of 348 HGV movements to and from the application site per day, save for movements to and from the Ridham Docks in accordance with Condition 5 of that consent. That represents 174 HGVs arriving at and leaving K3 each day;

- (c) That the practical effects of the K3 project would not result in any construction related vehicle movements. It is agreed that the practical effects of the K3 project would not result in any additional operational staff movements over those assessed when planning permission was granted for the SEP (K3).
- (d) That the Baseline conditions used in the Transport Assessment's traffic modelling are acceptable and that the appropriate TEMPro growth and committed development schemes have been included.

## **2.4 Archaeology and Cultural Heritage**

- 2.4.1 The parties agree that archaeological mitigation can be achieved through Requirement 20 (Archaeology), which secures an appropriate programme of archaeological work, subject to the wording changes proposed by KCC in its Written Representation of the 2<sup>nd</sup> March 2020 and to the further change proposed by KCC in its Deadline 3 submission of 24<sup>th</sup> April 2020 (specifically, the inclusion of the term '**and reporting** of the results of archaeological field work').

## **2.5 Ecology**

- 2.5.1 The parties agree the footprint of the proposed development is unsuitable for protected species.

## 3 Matters under discussion

### 3.1 The Development Consent Order

#### *SEP Approved Plans and Documents*

- 3.1.1 Schedule 3 of the draft DCO (dDCO) lists the Approved Plans and Documents that relate to the consented SEP facility. The list of plans set out within the schedule, which form part of the DCO application, reflects the list of plans set out by KCC in the schedule to planning permission SW/19/501345.
- 3.1.2 The Applicant's position is that the list of approved plans and documents as set out in Schedule 3 of the dDCO reflects the consented plan/document set relating to the SEP (K3) facility.
- 3.1.3 Article 16 of the dDCO lists particular plans which would be certified should Development Consent be granted. With specific reference to the K3 project, the Applicant's position is that the following documents/plans would require certification:
- (a) the book of reference (dated October 2019);
  - (b) the land plan (drawing number 9812-0057-006 dated October 2019);
  - (c) the works plans (drawing numbers 9812-0059-005, 9812-0060-006 and 9812-0031-07 dated September 2019);
  - (d) the environmental statement (dated September 2019);
    - (i) 16315-A1-P-0100 4.3D Proposed Site Layout Rev U dated November 2009;
    - (ii) 16315-A1-P-0110 4.4D South East Elevation Rev U dated November 2009;
    - (iii) 16315-A1-P-0111 4.5D North East Elevation Rev T dated November 2009;
    - (iv) 16315-A1-P-0112 4.6D South West Elevation Rev U dated November 2009;
    - (v) 16315-A1-P-0113 4.7D North West Elevation Rev T dated November 2009;
    - (vi) 16315-A1-4.21 Landscape Masterplan Rev M dated June 2013;
  - (e) the K3 rail and water transportation strategy (dated September 2019);
- 3.1.4 KCC is satisfied these are the consented SEP approved plans and documents.

### **Section 106 agreement (S106)**

- 3.1.5 The SEP (referred to in the DCO application as K3) planning permission is the subject of a S106 agreement between Kent County Council, EoN Energy from Waste UK Limited, DS Smith Paper Limited (including its subsidiaries SRP New Thames Limited and Grovehurst Energy Limited) and the Royal Society for the Protection of Birds.
- 3.1.6 The Applicant's position on the status of the three elements of the original S106 is as follows:
- (1) **Reedbed habitat creation** – in accordance with the S106 an area of reedbed was created within the Harty Marshes on the Isle of Harty. The site is now the responsibility of the RSPB, who under the terms of the S106 is to maintain the land in accordance with the Maintenance Scheme set out within the S106. The Applicant's position is that this element of the S106 has been satisfied and does not need to be transferred through to the DCO;
  - (2) **Employment Strategy** – those elements of the Employment Strategy which address the construction of SEP have been dealt with. The Employment Strategy has been reproduced and is included as part of the DCO application so that it will be included as an approved plan for the purposes of the DCO. The Applicant's position is that will ensure it continues to apply to the operation of the plant if consent is granted;
  - (3) **Relocation scheme** – the relocation scheme element of the S106 provides for measures including habitat creation and management to secure mitigation relating to reptiles, nesting and foraging birds, protection of bird breeding habitats, habitat creation for invertebrates and mitigation for Beard Grass. The latest version of the Ecological Mitigation and Management Plan, subjected pursuant to application SW/10/444/R is included as an approved document within the DCO and the Applicant's position is that it will ensure the necessary mitigation measures are included within the DCO.
- 3.1.7 KCC is satisfied with the Applicant's statement as set out in Paragraph 3.1.6.

### **Requirements/Conditions**

- 3.1.8 The dDCO contains requirements which apply to both the K3 and WKN facilities as well as requirements which apply solely to SEP (K3).
- 3.1.9 The Applicant's position is that the requirements as drafted are sufficient and appropriate to control the operation of the K3 facility in its proposed form, should Development Consent be granted. KCC has provided comment on the dDCO throughout the Examination.

## **3.2 Waste Management**

### **3.3 Local Policy Principles**

- 3.3.1 The Applicant's position is that:

- (a) the key change between the Kent Minerals and Waste Local Plan and the Early Partial Review is to remove reference within policy CSW 7 both to: specific waste management capacity needs (including that for additional recovery capacity); and the commitment to prepare a Waste Sites Plan identifying the preferred locations for delivery of this infrastructure.
- (b) the Early Partial Review remains in support of proposals for the development of facilities for the recovery of energy from residual waste where they divert waste from landfill.
- (c) that, as part of helping Kent to move its waste management up the waste hierarchy, the Early Partial Review does not restrict the movement of waste into or out of the county.

3.3.2 The County Council's position is that:

- (a) the key change between the KMWLP and the EPR to introduce management targets in EPR policy CSW4 for the different waste streams for the Plan period, in preference to set tonnages for identified waste management capacity needs (including that for additional recovery capacity) set out in MWLP policy CSW 7. Removal of the commitment to prepare a Waste Sites Plan identifying the preferred locations for delivery of this infrastructure flows from this. The revised targets have been incorporated into EPR Policy CSW4 to aid annual monitoring of the Plan (through the Annual Monitoring Report (AMR)) and identify whether shortfalls may exist; providing clear guidance to developers and the Authority on the need for proposals for additional capacity where it involves management through methods that fall below recycling, composting or reuse in the Waste Hierarchy. In order to avoid overprovision of 'other recovery' capacity, which may discourage the development of recycling and composting capacity further up the waste hierarchy, MWLP policies CSW 7 and CSW 8, are to be modified to eliminate the stated waste recovery requirement to be planned for.
- (b) The EPR remains in support of proposals for the development of facilities for the recovery of energy from residual waste where they demonstrably divert Kent waste from landfill and/or move Kent waste up the hierarchy, maximise recovery of by-products and residues (in accordance with the Waste Hierarchy), maximise energy recovery including heat and power, and meet an identified need indicated by monitoring against the targets proposed for inclusion in EPR policy CSW 4.
- (c) The EPR version of the Plan does not restrict the movement of waste into or out of the county providing the overall objective of net self sufficiency is being achieved. Paragraph 6.3.1 states "*Proposals that would result in more waste being managed in Kent than is produced may be acceptable if it was demonstrated that these would result in waste produced in Kent being managed at a higher level of the waste hierarchy.*"

### **Waste Hierarchy**

- 3.3.3 The Applicant's position is that, operating within the legislative framework, there is a financial imperative (alongside good intentions) for wastes to be recovered via other material recovery facilities rather than treated at energy recovery facilities or disposed of via landfill.
- 3.3.4 Each party involved in waste management has a duty to implement the waste hierarchy; compliance lies with each holder of waste in the chain.
- 3.3.5 The Applicant's position is that a mix of facility type and sizes are required to deliver the waste hierarchy, not least as is recognised at paragraph 6.5.1 of the Kent Minerals and Waste Local Plan (both as adopted and emerging). Consequently, the Applicant's position is that energy recovery facilities are just one element of a network of facilities necessary to ensure the sustainable management of wastes.
- 3.3.6 The County Council's position is as follows:
- 3.3.7 The revised Waste Framework Directive enshrines compliance with the waste hierarchy into law. This was transposed by The Waste (England and Wales) Regulations 2011 into English law. This places an obligation on any entity which imports, produces, collects, transports, recovers or disposes of waste, or which as a dealer or broker has control of waste to take "all such measures available to it as are reasonable in the circumstances to apply the ..waste hierarchy as a priority order". They may depart from the priority order where this is justified by life-cycle thinking on the overall impacts of the generation and management of the waste so as to achieve the best overall environmental outcome. Hence compliance is a legal obligation. Moreover the fact the hierarchy is to be considered in a priority order emphasises that it is to be considered from the top down, rather than the bottom up. That is to say, the question to be asked is, "why can't this waste be reused, or, failing that, recycled?" rather than "how can we divert this waste from landfill? The burden is clearly on the promoter of a waste incineration facility to demonstrate that use of the proposed feedstock waste as a fuel is preferable to recycling it, or that such use is neither technically or economically feasible. Otherwise, compliance with the waste hierarchy must prevail.
- 3.3.8 It also notes that the paragraph referenced by the Applicant relates to variable sizing of facilities rather than the mix of type of facilities. Given that the latest Waste Needs Assessment (WNA) demonstrates provision of Other Recovery capacity within the county in the form of Allington EfW and the Kemsley SEP (the consented K3) and recycling/composting capacity should be sufficient to meet the proposed targets, there is no identified need for new capacity. However, given the need to apply the waste hierarchy in priority order, as stated in paragraph 3.3.7, the EPR is supportive in principle of the provision of new capacity for management of waste through recycling or preparation of waste for reuse or recycling, or for the provision of additional capacity for green and/or kitchen waste treatment.

## **3.4 Highways and Transportation**

- 3.4.1 The Applicant's position is as follows:

- (a) The future year baseline traffic flow scenarios set out in and Section 4.5 of the ES, Section 5 of the Transport Assessment and then calculated in paragraph 6.107 of the Transport Assessment;
- (b) The assessment scenarios set out in paragraph 6.107 of the Transport Assessment.
- (c) During the construction of the WKN Proposed Development there would be a peak of 45 daily HGV deliveries and 480 construction staff on site each day. The WKN Proposed Development would generate movements relating to between 35 to 50 staff working in shifts and generating up to 72 car movements per day as set out in Table 6.5 of the Transport Assessment and Table 4.18 of the ES.
- (d) The practical effects of the K3 project would be a further 68 HGV movements to and from the facility each day (34 HGVs arriving at and then leaving the facility). Accordingly, draft Requirement 10 – Heavy Goods Vehicles, specifies a maximum amount of movements of 416 to and from the K3 site each day, and transposes the same provision in respect of the Ridham Docks as set out within Condition 5 of SW/19/501345. The Applicant is providing KCC with further details on the calculation of these HGV movements with a view to agreeing these.
- (e) The WKN Proposed Development would generate 250 HGV movements per day when operational (125 HGVs arriving at and then leaving the facility). The Applicant is providing KCC with further details on the calculation of these HGV movements with a view to agreeing these.
- (f) That the content of the Draft Construction Traffic Management Plan and Travel Plan are appropriate.

3.4.2 The County Council's position is as follows:

3.4.3 In response to 3.4.1, KCC does not agree with the trip generation that has been submitted in the Transport Assessment, as it has not been demonstrated that the figures provided represent a realistic profile of vehicle movements. Evidence has been requested to justify the current number of movements in respect to arrival and departure times, and records from existing Waste to Energy facilities have been requested to provide this information. An existing operational Waste to Energy plant at Allington was granted consent for 582 HGV movements per day for annual waste deliveries of 500,000 tonnes. The applicant has proposed considerably fewer daily movements (416) for a facility processing 157,000 more tons of waste than that at Allington. KCC as the Local Highway Authority therefore suggests that the application cannot be presenting a robust evidence base.

3.4.4 The consented SEP development has a condition (condition 3) which restricts movements, permitting 348 movements which were deemed applicable at that time. Since that condition was placed the traffic on the surrounding network has significantly deteriorated and it is conceivable that less movements would have been consented if applied for now. The Applicant's proposals seek to override the current restrictions by increasing them, thus undermining the decisions on the SEP application.

The County Council maintains that the SEP (K3) development in any form should retain the current condition restricting movements to 348. Whilst the SEP application was separate application to this DCO, the condition relates to the same building and location. The County Council therefore considers it to be entirely justified. The Section 73 variation was to allow for local movement of Refuse Collection Vehicles promoted by the applicant as already being on the network from the neighbouring Countrystyle site.

- 3.4.5 KCC does not agree with the trip generation that has been submitted in the Transport Assessment, as it has not been demonstrated that the figures provided represent a realistic profile of vehicle movements. Evidence has been requested to justify the current number of movements in respect to average weights, arrival and departure times, and records from existing Waste to Energy facilities have been requested to provide this information. Whilst the evidence from the existing facilities has been provided, no calculations to demonstrate the breakdown of movements within the submitted Transport Assessment has been forthcoming. There is therefore no evidence presented to justify the trip generation.
- 3.4.6 In response to 3.4.1 f) - KCC agrees that the general principles contained within the documents, however they will be subject to a more thorough review at the point of formal submission for discharging the relevant conditions.
- 3.4.7 KCC has suggested that the restriction of HGVs should remain as was intended for the K3 development in condition 3 at 348 movements. Any change on this would undermine the intention of the original condition as part of the consented K3 development if further mitigation is not provided. As the capacity of the highway network has deteriorated, KCC does not consider there to be justification for increasing movements that were deemed necessary for the original K3 consent. Further detail is found in Chapter 4 – Matters Not Agreed.
- 3.4.8 In addition, the following matters are being reviewed by the parties:
- (a) The Applicant and KCC are currently obtaining HGV movement data at the Ferrybridge and Allington Waste to Energy facilities respectively. This data will be used to validate the Applicants assumptions on temporal HGV movements with a view to reaching agreement.
  - (b) The estimations of daily HGV movements and their temporal distribution throughout the day inform the operational assessments. These matters are under discussion between the Applicant and KCC and as a consequence the operational assessments are also under discussion between the Applicant and KCC.
  - (c) KCC has asked the Applicant to undertake sensitivity testing of the A249 Grovehurst junction improvements secured via KCC's Housing Infrastructure Fund (HIF) application. The Applicant has asked KCC for details on the assumptions within KCC's modelling and KCC provided modelling information to the Examination at Deadline 5.

### **3.5 Energy production**

3.5.1 The Applicant's position is that:

3.5.2 National Planning Policy Statement EN-1 is directly applicable to the K3 project, as K3 is a nationally significant infrastructure project by virtue of its proposed generating capacity. EN-1 makes clear the urgent need within the UK for all types of energy infrastructure, which includes generating stations using waste to generate energy. The Applicant's position is that the ability of K3 to generate additional electricity without any change to its design and without any increase in waste throughput is a significant benefit of the K3 proposed scheme.

3.5.3 WKN is not a Nationally Significant Infrastructure Project by virtue of its generating capacity, but needs Development Consent by virtue of the S35 Direction issued by the Secretary of State. National Policy Statement EN-1 does not directly relate to WKN, as it addresses developments with generating capacity of 50MW or above. The Applicant's position is that, as confirmed by the Secretary of State in the S35 Direction, WKN is nationally significant and that EN-1 remains a key material consideration in the determination of the WKN element of the proposed scheme and within that context the 42MW of electricity which would be generated by WKN is a significant benefit of the facility.

3.5.4 The County Council's position is that:

3.5.5 National Planning Policy Statement EN-1 is directly applicable to determination of Nationally Significant Infrastructure Projects. This makes clear the urgent need within the UK for energy infrastructure to speed the transition to a low carbon economy. This includes generating stations that use waste only where the waste cannot be re-used or recycled with less environmental impact and would otherwise go to landfill (para 3.4.3). It also goes on to recognise that "The energy produced from the biomass fraction of waste is renewable" and therefore that portion of the energy output attributed to non biomass based waste input cannot be considered renewable. This means such plants may only be considered partially renewable at best. It should be noted that as the composition of waste changes, and biodegradable food waste extracted for separate collection in accordance with Government Plans by 2023, the composition of residual waste can be expected to change with the biomass content potentially reducing further still.

3.5.6 The County Council also notes that the stated position of the Applicant is that the ability of the proposed K3 project to generate additional electricity without any change to its design and without any increase in waste throughput is a significant benefit of the K3 proposed scheme. The Applicant has now clarified that this proposed change is independent to the stated intention to increase throughput. Given it is the increase in generating capacity that triggered the application to be a NSIP, KCC considers that only this aspect of the application ought to be the focus of the Examining Authority's determination against EN-1. That is to say, the increase in throughput of SEP (K3) ought to be considered in the same way as set out below for WKN.

3.5.7 WKN is not a Nationally Significant Infrastructure Project and therefore National Policy Statement EN-1 does not directly relate to WKN. The County Council's position is that the WKN application ought to be determined against the development plan and EN-1

as a material consideration if appropriate. Within that context, the power produced by WKN is a benefit to be considered in the overall planning balance, which would include consideration of harm to the County Council's strategy that underpins its Waste Local Plan.

### **3.6 Flood Risk and Water Resources**

3.6.1 The parties agree that Requirement 18 – Surface Water Drainage is consistent with usual advice and appropriate for the development proposed, in that it requires specific details (a Surface Water Drainage Strategy, a Drainage Maintenance Plan, a Flood Management Plan, an Emergency Spillage Management Plan, a Water Quality Monitoring Plan and a Flood Evacuation Plan). KCC will review the detail of those documents as part of the discharge of Requirements prior to the commencement of the development.

### **3.7 Construction Environmental Management Plan (CEMP)**

3.7.1 The Applicant's position is that Requirement 22 – Construction Environmental Management Plan, within the dDCO is sufficient to require the provision of an appropriate CEMP prior to the commencement of the authorised development and that the scope of the outline CEMP contained in Appendix 2.1 to the Environmental Statement is sufficient. KCC has provided commentary on the CEMP as required during the Examination.

## 4 Matters Not Agreed

### 4.1 Relevance of National Policy Statements to WKN

4.1.1 The Applicant's position is that EN-1 and EN-3 are both 'important and relevant' to the Secretary of State's decision; firstly, because of the fact that Project WKN is the 'construction of a generating station', and were it to have 8MW more capacity, there would be no question that EN-1 and EN-3 would have effect. Secondly, notwithstanding its generating capacity, the function, scale and nature of impacts of the WKN development are similar to that of K3 project, and it has been accepted by the Secretary of State as being nationally significant through the S35 direction and to be treated as development for which development consent is required. Therefore EN-1 and EN-3 and the matters they address remain equally important and relevant considerations in any assessment of the WKN proposed development as they do to the K3 project, and that the WKN proposed development should be decided as such by the SoS.

4.1.2 The County Council's position is that part of the development that is not a NSIP ought to be determined in accordance with the relevant development plan. This covers both the expansion of throughput at the SEP, (K3) as it is independent of the expansion of its generating capacity, and the construction of WKN which is essentially a waste incinerator with power generation.

### 4.2 Waste Hierarchy

4.2.1 There remain Matters Not Agreed between the parties in respect of the waste hierarchy. These are documented by submissions made by the Applicant and the County Council to the ExA during the examination, and summarised below:

#### ***R1 status***

4.2.2 Where an Energy from Waste (EfW) plant that has not achieved R1 status is positioned on the waste hierarchy.

4.2.3 The Applicant's position is that there is no requirement within planning policy to achieve R1 status. It is a measure set out within the Waste Framework Directive to ensure energy recovery facilities achieve an appropriate level of efficiency and is an industry standard that the Applicant is pleased to meet, and exceed. The fuel for the Proposed Developments incorporates residual wastes that are currently sent to landfill; using these wastes instead to recover energy (even before the facilities achieve R1 status) will deliver the waste hierarchy.

4.2.4 KCC's position is that the management of waste at a plant simply able to recover some energy from waste does not automatically qualify as 'other recovery' rather than 'disposal'. KCC considers that the fact that landfills can recover energy via landfill gas engines and yet are always to be defined as disposal facilities demonstrates that. The key test is that an incineration plant taking mixed waste needs to be accredited to R1 status to not be regarded as disposal. That was the purpose of introducing the R1 formula. Therefore, until such time a plant achieves R1 status, any such plant ought to be regarded as a disposal facility. Policy CSW8 of Kent MWLP provides the

requirement within planning policy to achieve R1 status. Policy CSW8 states "Facilities using waste as a fuel will only be permitted if they qualify as recovery operations as defined by the Revised Waste Framework Directive" which by virtue of the footnote refers to the need for such plants to achieve R1 status (Annex II of WFD). This clause remains unchanged by EPR.

### **Carbon Balance**

- 4.2.5 The level of carbon benefit impact relating to the proposal is disputed. The reliability of any claimed benefit in terms of reduced carbon emissions is disputed.
- 4.2.6 Applicant's position:
- 4.2.7 K3 in its current operational state is defined as Good Quality CHP and would continue to be defined as such at its proposed increased generating capacity and increased tonnage throughput. The changes to efficiency criteria in the latest CHPQA guidance mean that WKN would not be considered as Good Quality CHP. However, the Applicant's Carbon Assessment is conservative in that it models an electricity only facility and the Applicant's position is that positive weight can continue to be afforded 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.
- 4.2.8 As set out in the Applicant's Waste Hierarchy and Fuel Available Report (WHFAR) a far greater proportion of the fuel for K3/WKN is expected to be derived from residual wastes currently disposed to landfill than from Refuse Derived Fuel (RDF). Even with an assumption that recycling will increase in the future, the Applicant's position is that both wastes currently disposed to landfill and RDF exported to Europe will continue to be available to K3/WKN. K3/WKN therefore provide the opportunity for waste sent to landfill to be diverted and for RDF currently exported to mainland Europe to be managed domestically and therefore are to be recognised as renewable/low carbon energy generating stations which contribute to meeting the urgent identified need for all types of energy generation within the UK which would sit alongside other forms of renewable/low carbon electricity generation.
- 4.2.9 The Applicant has submitted a robust Carbon Assessment that incorporates a conservative approach in assuming a biodegradable content of 45%. Across its submissions, the Applicant has demonstrated that K3/WKN represents the modern, efficient, well-run recovery facility type that both the NPS and the Resources and Waste Strategy are seeking.
- 4.2.10 KCC's position is that:
- 4.2.11 the assumptions contained within the Applicant's Carbon Assessments are over-optimistic in terms of assumed biogenic content which skews the results, making the plant performance appear more favourable, in terms of avoided carbon. The absence of a sensitivity analysis that takes a more conservative view in light of forthcoming changes in waste management practice is a flaw in the assessment presented and raises concerns related to the robustness of the Applicant's evidence base.
- 4.2.12 The lack of guaranteed heat utilisation in WKN demonstrates the combined proposals do not represent Good Quality CHP and therefore consenting it would be contrary to

national energy policy. The absence of evidence to indicate that the additional throughput to SEP(K3) will contribute any additional heat over and above that supplied by the already consented SEP means the same can be said of that proposal if taken as a stand alone matter.

- 4.2.13 In-depth analysis of the most current evidence indicates that the majority of waste is likely to come from onshoring RDF currently exported to CHP plants that would be classed as Good Quality. The Applicant's own Carbon Assessment demonstrates that this management route is preferable to burning the waste in a plant in the UK (in this case Kent) that will not be operating as Good Quality CHP as demonstrated by the Applicant's own evidence/CHP assessment.
- 4.2.14 The carbon contribution of waste incineration plants is identified as a focus of action by the statutory Climate Change Committee's most recent report to Parliament. From the above, and the lack of any carbon capture or storage proposals, the County Council considers that consenting the proposals would be contrary to the most current standing advice to national government on meeting the statutory carbon emission reduction targets of the Climate Change Act. It would also be contrary to the Government Resources and Waste Strategy that includes a specific action to improve the efficiency of EfW plants by encouraging use of the heat the plants produce.

#### ***Kent Minerals and Waste Local Plan Policy CSW4***

- 4.2.15 Within Local Plan policy, the waste hierarchy is directly addressed at policies CSW2 and CSW4. Policy CSW2 of the Early Partial Review (EPR) remains unchanged from that within the adopted Kent Minerals and Waste Local Plan (KMWLP). However, within the EPR, policy CSW4 has been revised to incorporate targets for the management of waste within Kent. The Applicant and KCC disagree that the Proposed Developments accord/conflict with these policies of the Kent Minerals and Waste Local Plan and the Early Partial Review.
- 4.2.16 The Applicant's position is that the Proposed Developments will deliver policies CSW2 and CSW4 (both as set out in the adopted KMWLP and the EPR) for the reasons set out in our submissions. In summary, this is demonstrated through the WHFAR [APP-086] which demonstrates that, even assuming 65% recycling is achieved (a higher target than that set out in either KMWLP or EPR) there remains a need for the Proposed Developments. The Proposed Developments are demonstrated to enable more of Kent's waste to move up the hierarchy, out of landfill and into recovery.
- 4.2.17 KCC's position is that:
- 4.2.18 When the targets of modified Policy CSW4 are considered against the most current capacity assessment contained in the supporting Waste Needs Assessment there is a surplus of capacity already consented as 'Other Recovery' in Kent. Given the quantities of waste produced in Kent (as identified in the Waste Needs Assessment), and the practical limitations on diversion of all waste from landfill by virtue of its unsuitability for use as feedstock, it is considered that the Other Recovery targets in modified Policy CSW4 have already been exceeded. Any additional waste management capacity developed in Kent that is intended to target waste going to landfill ought therefore to be positioned in the recycling/composting tier (or above) reflecting the application of the hierarchy in priority order (as set out in Policy CSW2).

### **4.3 Highways and Transportation**

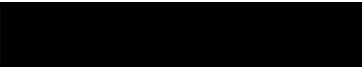
- 4.3.1 The interpretation of the impact of the K3 project and WKN Proposed Developments as set out in Section 14 of the Transport Assessment is not agreed, and continues to be discussed by the parties.
- 4.3.2 The Applicant's position is that Condition 6 of SW/10/444 states that a strategy to encourage the use of the railway in the vicinity of the consented SEP as a means of transporting waste deliveries to SEP (K3) as consented shall be submitted and thereafter implemented in accordance with the approved strategy. The Applicant's position is that this strategy has been implemented.
- 4.3.3 The County Council's position is that an appropriate condition restricting HGV movements other than to and from Ridham Dock would assist the applicant to meet with the desired national policies on sustainable transport solutions. KCC's position is that it is within the Applicant's ability to work in greater collaboration with waste suppliers to provide local waste collection points to facilitate the transfer of waste by rail or barge, and as such this matter remains not agreed.

### **4.4 Public Rights of Way (PROW)**

- 4.4.1 KCC's position, as set out in its Written Representation, is that the proposed development may have a significant impact on users of the Saxon Shore Way Public Right of Way due to deteriorating air quality and noise effects arising from the development.
- 4.4.2 The Applicant does not consider that the proposed development would give rise to detrimental impacts in air quality or noise terms on users of the public right of way particularly given they would have a transitory short-term presence. The Applicant's view is therefore that a contribution towards footpath improvements would not be necessary to make the development acceptable in planning terms.

## 5 Signatures

- 5.1.1 The parties to this SoCG confirm that their respective positions are as documented within this Statement of Common Ground:

Signed.....  .....

Name and position..... *David Harvey, Director, DHA Planning Ltd* .....

**On behalf WTI/EFW Holdings Ltd (Wheelabrator Technologies Inc.)**

Date..... *12 August 2020* .....

Signed



Name and position **Barbara Cooper, Corporate Director**

**On behalf of Kent County Council**

Date: 12 August 2020

