



Wheelabrator
TECHNOLOGIES



Statement of Commonality

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

PINS Ref: EN010083

Document 8.6
August 2020 - Deadline 8 Version



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1 Introduction

1.1 Purpose of this document

- 1.1.1 This Document has been prepared at Deadline 8 of the Examination by the Planning Inspectorate into an application by WTI/EFW Holdings Ltd (a subsidiary of Wheelabrator Technologies Inc – “WTI”) under the Planning Act 2008 for a Development Consent Order (a “DCO”) for the construction and operation of the Wheelabrator Kemsley (“K3”) and Wheelabrator Kemsley North (“WKN”) waste-to-energy generating stations on land at Kemsley, Sittingbourne in Kent.
- 1.1.2 This Document provides a Statement of Commonality for the Statements of Common Ground (SoCG’s) which have been prepared in respect of the application. It summarises the progress and status of the various SoCG’s which have and are being prepared and then records their respective position on specific issues.

1.2 Context

- 1.1.1 The application for a Development Consent Order seeks consent for the construction and operation of a 75MW waste-to-energy facility, ‘the Wheelabrator Kemsley Generating Station’ (“K3”) and for the construction and operation of a 42MW waste-to-energy facility, ‘Wheelabrator Kemsley North’ (“WKN”).
- 1.1.2 K3 is a waste-to-energy facility located adjacent to and east of the DS Smith Kemsley paper mill, to the north of Sittingbourne, Kent. Planning permission was granted for K3 in 2012 by Kent County Council with a generating capacity of 49.9MW and a waste processing capacity of 550,000 tonnes per annum. The facility became fully operational on the 16th July 2020.
- 1.1.3 The applicant has identified that K3 would be capable of processing an additional 107,000 tonnes of waste per annum and, without any change to the external design, generating an additional 25.1MW of electricity. However, in order for the K3 project to be properly categorised and consented under the Planning Act 2008 the applicant is required to seek consent for the construction of K3 at its total generating capacity of 75MW (i.e. 49.9MW consented + 25.1MW upgrade), together with the separate proposed total tonnage throughput of 657,000 tonnes per annum (550,000 consented + 107,000 tonnage increase).
- 1.1.4 The proposed new Waste-to-Energy plant, Wheelabrator Kemsley North (WKN), would be a single 125Mwth line facility capable of processing 390,000 tonnes of waste per annum, with a generating capacity of 42MW. WKN is not therefore a Nationally Significant Infrastructure Project (NSIP) by virtue of its generating capacity.

1.1.5 Instead WTI made a formal application on the 1st June 2018 to the Secretary of State (SoS) for Business, Energy and Industrial Strategy under Section 35 of the Planning Act 2008 for a direction as to whether the project is nationally significant. The SoS issued their direction on the 27th June 2018 confirming that WKN is to be considered and treated as a development which requires development consent due to its context with other nationally significant projects in the vicinity, the benefits to K3 and WKN being assessed comprehensively through the same DCO process and the removal of the need for separate consents to be sought.

1.1.6 A single Development Consent Order is being sought for K3 and WKN through a single application to the Planning Inspectorate (PINS), prior to being determined by the Secretary of State (SoS) for Business, Energy and Industrial Strategy.

1.3 The Site and its surroundings

1.3.1 The K3 and WKN sites lie to the north-east of the village of Kemsley, which itself sits at the north-eastern edge of Sittingbourne in Kent. The K3 and WKN sites lie immediately to the east of the Kemsley Paper Mill, a substantial industrial complex which is operated by DS Smith.

1.3.2 In April 2018 DS Smith lodged an application for a Development Consent Order (DCO) which would allow for the construction and operation of 'K4', a gas fired Combined Heat and Power Plant within the Kemsley Mill site. This DCO was granted on 5th July 2019.

1.4 Proposed Development

Wheelabrator Kemsley – K3

1.4.1 Planning permission was granted for K3 in 2012 by Kent County Council under reference SW/10/444. As consented and being constructed, K3 can process up to 550,000 tonnes of waste each year and has a generation capacity of 49.9MW. K3 will export electricity to the grid and will supply steam to the DS Smith Kemsley Paper Mill. The construction of K3 began in 2016 and it became fully operational on the 16th July 2020.

1.4.2 WTI has identified that K3 would be capable of processing an additional 107,000 tonnes of waste per annum and, without any change to the external design, generating an additional 25.1MW of electricity.

1.4.3 The 2018 consultation and publicity sought views from interested parties on an application for consent for that power upgrade and increased tonnage throughput, without any construction works being required, as an extension to the K3 facility under Section 15 of the Planning Act 2008.

1.4.4 However, in order for the K3 project to be properly categorised and consented under the Planning Act 2008 the applicant is now seeking consent for the construction of K3 at its total generating capacity of 75MW (49.9MW consented + 25.1MW upgrade), together with the separate proposed total tonnage

throughput of 657,000 tonnes per annum (550,000 consented + 107,000 tonnage increase).

- 1.4.5 A further consultation was undertaken in 2019 to advise S42 consultees and notify the public through a number of S48 notices that construction and operation of K3 was now being sought as part of the DCO, in the context of the K3 facility already being substantially constructed at that time.
- 1.4.6 As the K3 facility is now operational the effect in reality of the proposed application ('the practical effect') would be the K3 facility as consented but generating an additional 25.1MW, together with being able to process an additional 107,000 tonnes of waste per year.

Wheelabrator Kemsley North – WKN

- 1.4.7 WKN would be an entirely new and separate waste-to-energy facility on land to the north of K3, which is currently being used as the K3 construction laydown area. WKN would provide clean, sustainable electricity to power UK homes and businesses via the National Grid distribution network and would have the ability to export steam should a user for that steam become available.
- 1.4.8 WKN would have a generating capacity of 42MW and a waste processing capacity of 390,000 tonnes per annum and be a self-contained and fully enclosed facility with its own reception hall, waste fuel bunker, boiler, flue gas treatment, turbine, air-cooled condensers, transformers, office accommodation, weighbridge, administration building, car parking and drainage. WKN would have its own grid connection to allow for the exporting of electricity to the national grid.

2 Statements of Common Ground

2.1 SoCG's Requested

2.1.1 The Examining Authority's Rule 8 letter, dated 26th February 2020, requests that SoCG's be prepared between the Applicant and the following parties:

- Swale Borough Council
- The Environment Agency
- Natural England
- Kent County Council
- Network Rail
- Highways England

2.1.2 The Rule 8 letter specifies individual issues which the respective SoCG's are requested to cover together with a range of general topics.

2.2 Additional SoCG's

2.2.1 No additional SoCG's are being advanced beyond those listed within the Rule 8 letter.

2.3 SoCG's not advanced

2.3.1 Following correspondence between the Applicant and Network Rail, NR confirmed on the 6th March 2020 that they did not believe an SoCG is required (**Appendix A**) and on that basis one has not been advanced.

2.4 List of of SoCG's at Deadline 5

2.4.1 The status of each of the SoCG's at Deadline 8 is as follows:

SoCG	Status
Swale Borough Council	SoCG in draft
The Environment Agency	Amended SoCG in place
Natural England	Amended SoCG in place
Kent County Council	SoCG in place
Network Rail	SoCG not being advanced
Highways England	SoCG being prepared

2.5 Structure of SoCG's

- 2.5.1 The structure of the individual SoCG's reflect both the progress of discussions with the particular party and the nature of the issues being addressed.
- 2.5.2 In each case a consistent introductory section has been provided which covers the proposed development and the application sites, to ensure clarity regarding the proposed schemes, including the K3 'Practical Effect'.
- 2.5.3 The KCC and SBC SoCGs have been drafted to reflect the Applicant's and KCC's/SBC's respective positions on a number of matters, to provide clarity in that respect.
- 2.5.4 There are no matters which continue to be discussed within the NE and EA SoCG's and in those cases the SoCG's are topic led and deal with relevant issues in turn.

3 Statements of Common Ground

3.1.1 Table 3.1 illustrates the position at each Examination Deadline of the various SoCG’s being prepared.

Reference	SoCG Party	Deadline 1 2 nd March 2020	Deadline 2 18 th March 2020	Deadline 3 22 nd April 2020	Deadline 4 20 th May 2020	Deadline 5 19 th June 2020	Deadline 6 29 th June 2020	Deadline 7 5 th August 2020	Deadline 8 12 th Aug 2020
8.1	Swale Borough Council	Being prepared	Being prepared	Being prepared	Being prepared	Draft Submitted	As at Deadline 5	As at Deadline 5	As at Deadline 5
8.2	Environment Agency	Draft Submitted	As at Deadline 1	As at Deadline 2	As at Deadline 3	Final Signed Version Submitted	As at Deadline 5	Amended Signed SoCG Submitted	As at Deadline 7
8.3	Natural England	Draft Submitted	As at Deadline 1	As at Deadline 2	As at Deadline 3	Final Signed Version Submitted	As at Deadline 5	Amended Signed SoCG Submitted	As at Deadline 7
8.4	Kent County Council	Being prepared	Being prepared	Being prepared	Being prepared	Being prepared	As at Deadline 5	As at Deadline 5	Final Signed Version Submitted
8.5	Highways England	Being prepared	Being prepared	Being prepared	Being prepared	Being prepared	As at Deadline 5	As at Deadline 5	As at Deadline 5

3.2 SoCG's being prepared

Highways England

- 3.2.1 The Applicant has provided an update regarding the position with Highways England in their response at Deadline 8 to submissions by IP's at Deadline 7 (Document 16.2). That response is replicated below for ease of reference:
- 3.2.2 Highways England had provided the Applicant with a draft of its Deadline 7 representations and the Applicant and HE discussed those prior to them being submitted, alongside discussions regarding the working draft of the SoCG which the Applicant had prepared for HE and which HE submitted for information to the ExA at Deadline 7.
- 3.2.3 HE have continued to review the draft of the SoCG since Deadline 7 and provided the Applicant with a further version of the SoCG at the end of the working day on the 12th August 2020. It had previously been agreed between the Applicant and HE that no peak hour restrictions were to be imposed on the 348 daily HGV movements associated with the operation of K3 to its currently consented annual tonnage throughput. The Applicant's understanding was that the position on that matter had been agreed based on those movements having already been factored into HE's modelling of the surrounding road network and given those movements have been present on the road network during the commissioning of K3, from Q2 2020, and since K3 became fully operational on the 16th July 2020. HE had documented their position on that matter at Deadline 7 and confirmed that position as having been agreed but have now reversed their stance within the version of the SoCG provided to the Applicant on the 12th August 2020.
- 3.2.4 The Applicant is therefore reviewing the latest version of the HE SoCG and requesting further information from HE as to the justification and evidence for this reversal of their earlier agreed position. It is hoped that the parties will be able to resolve the issue, but to assist the examination as much as possible the Applicant will provide the ExA with a summary statement of the position following its discussions with HE as early as possible prior to the end of the Examination.

4 Commonality

4.1.1 Table 4.1 identifies the main topics covered in the various SoCG’s and illustrates those areas where there is commonality in the position regarding those matters for the respective parties.

	Matter Agreed
	Matter being discussed
	Matter not agreed

Issue	Swale Borough Council	Environment Agency	Natural England	Kent County Council	Highways England
Draft Development Consent Order					
Protective Provisions					
EIA Methodology					
K3 Plans					
S106					
Environmental Permits					
Air Quality					
Archaeology and Cultural Heritage					
Biodiversity					
CEMP					
Climate Change					
Flood Risk					
Ground					

contamination						
Highways and Transport						
Landscape and Visual Effects						
Light disturbance						
Noise and disturbance						
PROW's						
Water Environment						
Waste						

4.2 Current Position

4.2.1 The status of the SoCG's being prepared is set out at Section 3. For those SoCG's which are in draft or final form the position is as set out in this section.

Kent County Council

4.2.2 A signed version of the SoCG has been submitted at Deadline 8. The SoCG deals in detail with waste and highways matters in particular, with individual matters within those topics set out within Matters Agreed, Matters Under Discussion and Matters Not Agreed as appropriate. Where relevant the SoCG records KCC's and the Applicant's respective position on particular issues. For that reason those issues have been recorded in Table 4.1. as being across the three categories.

4.2.3 There is agreement between the parties in respect of Archaeology and Cultural Heritage, Ecology, the K3 SEP Approved Plans and Documents and the status of the K3 original S106 agreement. The parties disagree regarding Public Rights of Way, in addition to those specific topics within waste and highways where disagreement has been noted.

Swale Borough Council

4.2.4 A draft of the SoCG was submitted at Deadline 5 and continues to reflect the position between the two parties.

4.2.5 In particular the parties agree on the matters of noise and disturbance, landscape and visual effects, lighting and land contamination and groundwater.

- 4.2.6 SBC raise no issues in respect of the CEMP in terms of the controls it imposes on air quality around the construction site they do retain concerns regarding the impact of construction and operational traffic on Air Quality Management Areas which continue to be discussed.
- 4.2.7 SBC support the concerns raised by KCC and Highways England in their submissions to the examination regarding highways and transportation; the Applicant remains in discussions with those two parties regarding the impacts of the scheme and therefore that matter remains one being discussed in respect of SBC.
- 4.2.8 In respect of climate change SBC support KCC's concerns regarding waste matters and the contention that K3/WKN would draw additional HGV traffic into the Borough. The two parties agree in respect of the provision of active and passive electric vehicle charging points at K3 and WKN. The two parties remain in discussion regarding the applicability of BREEAM to the WKN proposed development.
- 4.2.9 The SBC SoCG addresses a number of specific elements of the draft DCO, for example in respect of Requirements relating to the CEMP, Lighting and Land Contamination.

Environment Agency

- 4.2.10 A signed version of the SoCG was submitted at Deadline 5. A revised version was then submitted at Deadline 7 to reflect comments made during the course of the Examination regarding the scope of the Marine Licence.
- 4.2.11 The parties agree on matters of Flood Risk, Biodiversity, Pollution prevention, Land contamination and groundwater, and Environmental Permitting. The EA confirm within the SoCG that they do not have any concerns regarding permitting and do not see why a varied permit for K3 or a new permit for WKN should not be granted.
- 4.2.12 On the basis that no matters remain under discussion Table 4.1 records that the EA do not have any outstanding issues regarding the draft DCO.

Natural England

- 4.2.13 A final version of the SoCG was been submitted at Deadline 5 with an amended signed version then submitted at Deadline 7 to reflect comments made during the course of the Examination regarding the scope of the Marine Licence and specific matter raised by the Marine Management Organisation during the course of the examination.
- 4.2.14 The NE SoCG considers the potential impacts of the K3 and WKN proposed developments on relevant designated sites arising from Air Quality, Noise, Water Quality and Resource, Recreation during the construction of WKN and the operation of K3 and WKN as proposed. Once relevant mitigation measures within the dDCO are taken into account no residual concerns regarding those

impacts have been identified. On that basis Table 4.1 records that NE do not have any outstanding issues regarding the draft DCO.

4.3 Protective Provisions

- 4.3.1 No parties have requested any Protective Provisions by Deadline 8 of the Examination.

Appendix A

Correspondence with Network Rail

David Harvey

From: Donoghue Nicholas <Nicholas.Donoghue@networkrail.co.uk>
Sent: 06 March 2020 11:51
To: David Harvey
Cc: Long Henry; Sprei Stephen
Subject: RE: Network Rail Section 42 Consultation Response Wheelabrator

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Hello David,

I note that we may have missed the deadline, however please see below.

I have now managed to discuss with my colleagues and as we mentioned in our s.42 response, it appears that NR are not affected by the DCO which you confirm in your previous email, therefore we do not believe a SoCG is required. However, if it is established that Network Rail does have an interest and/or any existing rights over any of the land within the DCO, these must be retained.

Many thanks,



Nick Donoghue
Town Planning Technician | Property
One Eversholt Street, London, NW1 2DN
Mobile: [REDACTED]
Email: Nicholas.Donoghue@NetworkRail.co.uk

From: David Harvey <david.harvey@dhaplanning.co.uk>
Sent: 26 February 2020 14:49
To: Donoghue Nicholas <Nicholas.Donoghue@networkrail.co.uk>
Cc: Town Planning SE <TownPlanningSE@networkrail.co.uk>; Sprei Stephen <Stephen.SPREI@networkrail.co.uk>
Subject: RE: Network Rail Section 42 Consultation Response Wheelabrator

Hello Nick

Further to my email below I am conscious that we are approaching the Inspector's first Deadline on the K3/WKN application, which is on Monday 2nd March. I am intending to provide the Inspector with an update as to the progress of any Statements of Common Ground being prepared and intend to reiterate the position I have set out below in respect of his request for a SoCG between the applicant and Network Rail. However in that respect I would be grateful if you could provide any update from your side this week if at all possible, and please do not hesitate to give me a call if it would help to discuss.

Regards

David

David Harvey
Director

Email: david.harvey@dhaplanning.co.uk
Mobile: [REDACTED]



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www.dhaplanning.co.uk

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From: David Harvey

Sent: 04 February 2020 09:04

To: Donoghue Nicholas <Nicholas.Donoghue@networkrail.co.uk>

Cc: Town Planning SE <TownPlanningSE@networkrail.co.uk>; Sprei Stephen <Stephen.SPREI@networkrail.co.uk>

Subject: RE: Network Rail Section 42 Consultation Response Wheelabrator

Dear Nick

Further to your letter of the 2nd August 2019, attached, we have now received the Rule 6 letter from the Examining Authority regarding the examination of the K3/WKN DCO application. Within that letter the Inspector requests a Statement of Common Ground between the applicant and Network Rail.

As Stephen is aware we had a similar situation a couple of years ago on the DS Smith K4 DCO application, where we agreed that given the lack of any direct impacts or the presence of any rights or covenants on the land that a SoCG with Network Rail was not required. In my view the same would apply to the current K3/WKN application; as you note in your letter there are no direct impacts given the location of the site and our searches and Book of Reference do not identify any rights or covenants relating to Network Rail. I would therefore be grateful if you can confirm your position on the SoCG and whether you need any further information at this stage in that respect. The Preliminary Meeting is taking place on the 19th February and ideally I would like to update the Inspector at that meeting as to the position regarding that SoCG.

For reference, in terms of the last point within your letter, we have submitted as part of the application two Rail and Water Transportation Strategies, one relating to K3 and one relating to WKN. At present the contracts Wheelabrator have entered into for K3 do not allow for the use of rail or water transportation, as that is dependant on the source of the waste. K3 was originally planned to deal with waste arising from a North London contract, which did allow for the potential for transportation by methods other than road but that contract was cancelled. However for both K3 and WKN the benefits of alternative methods of delivery are acknowledged if the waste being processed allows for those methods to be used, and the Rail and Water Transportation Strategies would be secured within the DCO and would require Wheelabrator to review the ability to use alternative methods of transport every five years.

I trust the above is useful and look forward to your response regarding the SoCG – please give me a call if it would help to discuss.

Regards

David

David Harvey
Director

Email: david.harvey@dhaplanning.co.uk
Mobile: [REDACTED]



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From: Donoghue Nicholas <Nicholas.Donoghue@networkrail.co.uk>
Sent: 22 August 2019 13:59
To: info@wtikemsley.co.uk
Cc: Town Planning SE <TownPlanningSE@networkrail.co.uk>; Sprei Stephen <Stephen.SPREI@networkrail.co.uk>
Subject: Network Rail Section 42 Consultation Response Wheelabrator

[External email - This message originated from outside DHA – prior to opening any attachments or opening links, please ensure their authenticity with the sender]

Dear Sir/Madam,

Please see attached letter with Network Rail’s Section 42 consultation response.

Kind regards,

Nick Donoghue
Town Planning Technician | Property
Network Rail
1 Eversholt St | London | NW1 2DN
M [REDACTED]
E Nicholas.Donoghue@networkrail.co.uk
www.networkrail.co.uk/property

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