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Your reference: EN010083

12 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) – Closing Statement at Deadline 8**

Kent County Council (KCC), as Local Highway Authority and Waste Planning Authority, provides the following Closing Statement at Deadline 8 of this Examination. The purpose of this Statement is to provide the Examining Authority with a summary of the County Council's position at the end of the Examination Stage. The Statement is submitted in support of all prior submissions made by the County Council for this Proposed Development. This includes the Statement of Common Ground agreed for submission between KCC and the Applicant, also at Deadline 8.

For the reasons set out below, Kent County Council (as Waste Planning Authority and Local Highway Authority) confirms its objection to the Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO, comprising a new waste to energy facility (WKN), and the expansion of capacity at the consented Sustainable Energy Plant (SEP) facility (K3).

In summary, the County Council is objecting to this DCO proposal for the following reasons:

- The development is for the wrong type of capacity being incineration that doesn't qualify as Good Quality Combined Heat and Power (CHP);

- The development is in the wrong place, with no guaranteed heat offtake and in a county with more than ample EFW capacity provision;
- The development is being brought forward at the wrong time following release of the national Resource & Waste Strategy Monitoring Report warning that a “substantial amount of material” is going into residual waste when it should be handled higher up the waste hierarchy, release of the standing Committee of Climate Change's latest advice warning against further development of waste incineration capacity without CCS and imminent adoption of the Early Partial Review of the Kent Minerals & Waste Local Plan; and
- The development would have an unnecessary, significant and severe impact upon the highway network with inadequate consideration of mitigation impacts, contrary to policy and the objective of sustainable development.

## **Waste**

*Kent County Council has been supported by BPP Consulting in the preparation of this Statement. BPP Consulting supported the County Council through examination and adoption of the Kent Minerals & Waste Local Plan in 2016 and the preparation and examination of the Early Partial Review of the Kent Minerals and Waste Local Plan from 2017 to the present.*

The following summarises Kent County Council's (KCC) position as the Waste Planning Authority (WPA) for Kent on the combined K3/WKN DCO proposal. It updates KCC's opening Written Representation, reflecting the evidence submitted and clarification gained of the detail of the proposal during the course of the Examination, as well as the changing policy context. It essentially reiterates the points made throughout the Examination and brings together the evidence that has emerged during the course of it, as a summary to aid the Examining Authority in deliberations on the project.

The policy context has been very fluid as summarised below.

- In July 2016, KCC adopted updated planning policy for waste management in Kent in the form of the Kent Minerals and Waste Local Plan (KMWLP). Soon after the Plan's adoption, some of the policies were considered out of date and so KCC embarked on an 'Early Partial Review' (EPR) of these policies. Since the commencement of this examination the changes to the Plan have been found sound by the independent Inspector examining the Plan (Mr Nicholas Palmer) and the County Council is now in the process of adopting the changes proposed by the EPR and the examination process. The final decision on adoption will be taken at the Council's meeting on 10 September 2020.
- The UK Climate Change Committee Progress Report entitled *Reducing UK emissions Progress Report to Parliament* was laid before Parliament 25 June 2020. This represents the latest advice to Government regarding necessary actions for the UK to achieve the carbon emission reductions enshrined in law via the Climate Change Act. Its content has been summarised in KCC Submission (REP7-030) but in

brief it identifies for the first time the need to address emissions from waste incineration, warning against the continued 'dash for incineration' as it competes with recycling, and expressly advises that "*New plants (and plant expansions) above a certain scale should only be constructed in areas confirmed to soon have CO<sub>2</sub> infrastructure available and should be built "CCS<sup>1</sup> ready' or with CCS".* It also confirms that the Government Contract for Difference support scheme to renewables is only available to Waste to Energy plants with CHP indicating that plants without should not be regarded as supplying renewable energy.

- The Secretary of State has ruled on a number of proposals for Waste to Energy plants which create a context to this determination and in some cases provide pointers on approaches to key matters of relevance. In particular:
  - the decision to refuse the appeal against refusal of planning permission for Waterbeach Waste Management Park issued 15 June 2020;
  - the decision to uphold the appeal against refusal of planning permission for the 3Rs plant in West Sussex in February 2020; and
  - the decision to grant a DCO to the Riverside Energy Park in April 2020
- The Kemsley Sustainable Energy Plant (SEP) subject to planning permission KCCSW/10/444 has been built. It is understood it has commenced providing heat to the adjacent Kemsley Paper Mill and is supplying electricity to the grid. It has not achieved R1 status.
- The operator of another existing Waste to Energy plant at Allington in Kent is preparing a DCO application to expand their existing plant by 350,000 tonnes per annum. This would be competing for the same feedstock the current combined K3/WKN application seeks to divert from export abroad. Like the current application, it too would not qualify as Good Quality CHP, so similar concerns to those in relation to this application arise. Therefore, this determination may be seen to set a precedent for this future determination.
- The release of the National Resources and Waste Strategy progress report<sup>2</sup> in August 2020 includes an assessment of progress in reducing avoidable residual waste. The national Resources and Waste Strategy commits to eliminating all avoidable waste by 2050. This found that "*... a substantial quantity of material appears to be going into the residual waste stream, where it could have at least been recycled or dealt with higher up the waste hierarchy.*" This reinforces KCC's view that there is a current market failure in meeting the waste hierarchy and as a result the combined proposals would lock in such avoidable waste through to 2050 were they to be consented. Relying on financial incentives and good intentions alone as suggested by the Applicant will frustrate achievement of our national goal.

Throughout this examination, KCC has highlighted its concern at the conflict of the combined DCO proposals with waste planning policy at national and local level and with national energy and climate change policy. It considers that the combined proposal is in

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<sup>1</sup> Carbon Capture and Storage

<sup>2</sup> *Resources and waste strategy: monitoring progress report* <https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england-monitoring-and-evaluation>

conflict with the Council's Early Partial Review (EPR) KMWLP (expected to be adopted September 2020), the underlying strategy for Kent and the strategies of the WPAs in the wider South East and is also out of step with the direction of travel of national policy on the management of waste as resources. This conflict has become more apparent during the course of the examination as the Applicant's case has been probed by the Examining Authority and representor submissions.

The County Council remains concerned that joint consideration of entirely independent proposals together, the increase in generating capacity of SEP, the increase in throughput of SEP (to create K3) and the construction of an entirely separate incineration plant (WKN), attempts to conflate three distinct proposals, that on their own, have very different merits and demerits. It is clear that the Examining Authority recognises this fact through the questions raised and KCC would recommend that the Inspector continues to consider each proposal separately. KCC stands ready to determine any consequential application that may arise from his decision. KCC would remind the Examining Authority that KCC has a proven track record in determining applications for such plants, and so has demonstrated its capacity and competence in this area.

Moreover, provision of a significant additional waste capacity would so severely undermine the strategy that underpins the Kent Minerals & Waste Plan (MWLP), that the requirement to reduce waste and increase recycling in accordance with national waste policy and law would be compromised. Whilst the contribution of existing Waste to Energy facilities is acknowledged within the strategy, there is no justification for additional Waste to Energy capacity (of the quantum proposed), nor any other justification in the public interest that warrants the harm that will be caused to the strategy.

KCC would also point out that, given the absence of evidence that demonstrates the additional throughput to the existing plant (SEP) would give rise to any additional heat supply to the mill, the status of that addition may not in itself classify as Good Quality CHP either. Moreover, the increase in generating capacity sought might even have an adverse effect on the current heat supply to the mill by diverting heat for use in power generation instead.

In short, the case to override the apparent policy harm is even less convincing than at the outset, and as a consequence KCC's position has hardened, particularly with respect to the proposal to increase throughout of the existing consented plant SEP(K3).

At the opening of the examination KCC drew attention to the following concerns:

1. Prematurity;
2. Consistency with the principles of waste planning in Kent;
3. Consistency with the principles of waste planning in South East;
4. Consistency with national Government policy on waste management;
5. Need for the facility (feedstock supply);
6. Energy efficiency and carbon impacts; and,
7. Environmental and amenity impacts

This section updates the Examining Authority on KCC's position, in its role as Minerals and Waste Planning Authority for Kent, in light of developments during the course of the examination.

## **1. Prematurity**

The adopted KMWLP sets out the strategic and development management policy framework to be used in determining planning applications for waste management facilities in Kent. This policy framework is founded on a strategy based on the principles of 'net self-sufficiency' and the management of waste in accordance with the Waste Hierarchy. This approach was found sound following independent examination by the Planning Inspectorate in 2016.

The KMWLP committed KCC to preparing a 'Waste Sites Plan' that would allocate land considered suitable for accommodating waste facilities required to fill an identified waste recovery 'capacity gap'. As part of the work to develop the subsequent Waste Site Plan, a review was undertaken to confirm the predicted capacity gap for waste management in Kent. This review established<sup>1</sup>, amongst other matters, that, with the commissioning of a consented 550,000 tonne waste recovery facility at Kemsley (i.e. the K3 plant at the 49.5 MW capacity referred to as a "sustainable energy plant"), the capacity gap for the management of non-hazardous residual waste identified in the KMWLP would be satisfied to the end of the Plan period (2031). The capacity of this facility had not been counted in the original needs assessment underpinning the KMWLP because at that time there was insufficient certainty that the project would go ahead. The EPR seeks to address this change in capacity requirements by removing the commitment to prepare a Waste Sites Plan.

At the time the DCO examination commenced, the Inspector examining the EPR was still to report his findings, and hence making a decision on the DCO was considered to be premature and contrary to the established plan making process.

**The Inspector to the examination of the EPR has now reported.**

**The Inspector found that the entirety of the proposed changes are sound and legally compliant, in the face of very lengthy representations from the current Applicant. In short the Applicant's alternative data case has been firmly rejected, and KCC's evidence base confirmed to be robust.**

## **2. Consistency with the Principles of Waste Planning in Kent**

The principles underpinning planning for waste are established in national policy and practice. They include the application of the waste hierarchy in priority order and the proximity principle for mixed municipal waste. These principles emanate from legal requirements and are reflected in adopted policy in the KMWLP. The Inspector's findings on the EPR confirm that these principles still prevail.

The combined Kemsley DCO proposal would result in a further half million tonnes of waste incineration capacity per annum being provided in Kent. This is far in excess of the

requirements for both Kent and London indicated by the latest Waste Needs Assessment (WNA) that was tested during the EPR examination and found to be robust. Provision of this capacity would mean that management of such waste will be locked into incineration for at least the next 25 years, compromising its management by methods further up the Waste Hierarchy e.g. by being prevented in the first place, or recycled/composted.

Consenting of this capacity would be in breach of the legal requirement to apply the waste hierarchy in priority order. Moreover, it has become apparent during the course of the examination that the Applicant fully intends to import waste from wherever it may arise. Such movement would be contrary to the proximity principle as it applies to mixed municipal waste. And yet national policy states that "*This principle must be applied when decisions are taken on the location of appropriate waste facilities.*"<sup>3</sup> The Applicant's responses to the Examining Authority shows an apparent contempt for the Kent strategy that provides for the equivalent of Kent's waste plus a reducing amount of London's waste, that was found sound by an Inspector in 2015 and again this year, stating that the proposal is "unashamedly" for a regional facility.

**The County Council considers that approval of the DCO would therefore be contrary to the principles of waste planning in Kent, as set out in the adopted KMWLP and to be adopted EPR. It would undermine the county-wide spatial strategy<sup>4</sup> referenced in KCC submission dated 23 March 2020 to drive waste up the hierarchy while observing the proximity principle, within the overall objective of maintaining net self-sufficiency for the duration of the Plan period.**

**In short the combined proposal drives 'a coach and horses' through the local waste plan making process that Kent County Council has been assiduously engaged in for the past decade, the outputs of which have been found sound and legally compliant by independent Planning Inspectors twice in the past five years.**

### **3. Consistency with the Principles of Waste Planning in the wider South East**

For the combined DCO not to compromise the movement of waste produced in Kent up the Waste Hierarchy, it is now evident that the proposed facilities would need to source all their waste from far beyond the boundaries of Kent. This would undermine the wider local Plan-making efforts of the other Waste Planning Authorities within the wider South East. Each having devised their own spatial strategies for capacity provision appropriate to the particular geography, distribution and connectivity of their own Plan areas.

Furthermore, other WPAs around the wider South East (i.e. those included in the East of England and Greater London as well as the South East) are also pursuing similar strategies and the combined Kemsley DCO proposal, which by its own assessment is "unashamedly regional", would disrupt the realisation of these local strategies and plans being pursued which have been developed with political commitment, public resource and local support.

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<sup>3</sup> *The Waste Management Plan for England* DEFRA December 2013 (p30).

<sup>4</sup> Strategic Approach to Distribution of Land for Built Waste Management Facilities to be Allocated in the Sites Plan – May 2015

Approval of the DCO would be contrary to the underlying strategies and underpinning principles reflected in the Plans developed by Waste Planning Authorities across the wider South East.

KCC is aware that SEWPAG (the South East Waste Planning Advisory Group) has made its own representations to the examination on this matter, as have individual WPAs in the South East. These all confirm and reinforce KCC's view that the combined proposal is for the wrong facility, in the wrong place, at the wrong time.

#### 4. Consistency with Government Policy

##### a. Energy Policy

Notwithstanding that by the Applicant's own evidence the input fuel is not expected to be predominately biogenic, it is taken that the *National Policy Statement for Renewable Energy Infrastructure (EN-3)* will apply. This expressly states, in connection with the assessment of proposal for Waste to Energy plants under the DCO regime, that:

*"2.5.66 An assessment of the proposed waste combustion generating station should be undertaken that examines the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plan.....*

*2.5.67 The application should set out the extent to which the generating station and capacity proposed contributes to the recovery targets set out in relevant strategies and plans, taking into account existing capacity.*

*2.5.68 It may be appropriate for assessments to refer to the Annual Monitoring Reports published by relevant waste authorities which provide an updated figure of existing waste management capacity and future waste management capacity requirements.*

*2.5.69 The results of the assessment of the conformity with the waste hierarchy and the effect on relevant waste plans should be presented in a separate document to accompany the application to the IPC.*

*2.5.70 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.... 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.<sup>6</sup>"*

KCC disputes the robustness and veracity of the assessment provided by the Applicant that could be taken to address the National Policy Statements (NPS) paragraphs listed above (see detailed comments in Section 5.0 below). Furthermore, the Applicant's assessment of conformity with the waste hierarchy and the effect on relevant waste plans, presented in *Waste Hierarchy and Fuel Availability Assessment*, states at paragraph 1.4.9:

*"The Proposed Development is wholly compliant with both the adopted and the proposed*

modifications to Kent waste policy." (emphasis added)

The Applicant has presented no compelling evidence to demonstrate the proposal would not be contrary to the application of the waste hierarchy in Kent when KCC's evidence base supporting the EPR is accepted, nor the underpinning Kent strategy, as is required by NPS EN-3. The Inspector examining the Kent EPR was unpersuaded by the Applicant's alternative evidence base during that examination, and KCC's scrutiny of the evidence base presented in the Waste Hierarchy and Fuel Availability Assessment (WHFAA) document to this examination has shown it to be found wanting too.

In short, the combined proposal places reliance on either the diversion of combustible waste from landfill that KCC has demonstrated does not actually exist within the Study Area, or the onshoring of RDF currently managed through plants in mainland Europe that would be classed as Good Quality CHP which by its own evidence would result in a worse outcome from a carbon emission point of view. The Applicant has failed to justify a "*deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy*" and hence the test laid out in NPS EN-3 has not been met.

Moreover, the Applicant has failed to justify deviation from compliance with the waste hierarchy through the use of lifecycle assessment. In fact, the Applicant's Carbon Assessment referred to above applies life cycle assessment principles and found the proposal wanting in that regard as well.

b. Waste Policy

The Government's Resource and Waste Strategy (RWS)<sup>5</sup> (published in December 2018) set out that adoption of the recycling rates enshrined in the adopted EU Circular Economy package (reflected in the targets proposed in the revised Kent Minerals and Waste Local Plan – the EPR), meant there was no need for additional incineration capacity nationally. Government has introduced the prospect of an incineration tax to prevent provision of such capacity locking in otherwise recyclable waste or drawing non-recyclable waste from so far afield that the transport impacts are unacceptable. In effect, such a tax would be seeking to internalise impacts of incineration that are currently externalised. Currently the adverse effects from Carbon emissions are spread across the public realm without the producer taking responsibility for it. This is contrary to the 'polluter pays' principle that forms a cornerstone of UK environmental policy. It is this particular concern that the very recent report of the standing Committee on Climate Change has flagged an urgent need to address, before any further incineration capacity is consented in the UK.

It should be noted that the Government's proposals to bring measures forward to promote recycling, as stated in the RWS, are about to commence passage through Parliament in the shape of the Environment Bill. Moreover, a revised Waste Management Plan for England and updated National Planning Policy for Waste are still awaited and, to be consistent with

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<sup>5</sup> <https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england>



RWS, these will likely provide a different emphasis in policy direction, particularly in relation to the expectation that all future Waste to Energy capacity supply heat as Combined Heat and Power (CHP) to make the most of the fossil content of the feedstock as a minimum. In that regard the NPS itself is somewhat dated.

The release of the national Resources and Waste Strategy progress report<sup>6</sup>; in August 2020 includes an assessment of progress in reducing avoidable residual waste which the national Resources and Waste Strategy commits to eliminating all avoidable waste by 2050. This found that "... a substantial quantity of material appears to be going into the residual waste stream, where it could have at least been recycled or dealt with higher up the waste hierarchy." This reinforces KCC's view that there is a current market failure in meeting the waste hierarchy and as a result the combined proposals would lock in such avoidable waste through to 2050, were they to be consented. Relying on financial incentives and good intentions alone as suggested by the Applicant will frustrate achievement of our national goal.

**The Government has just announced it intends to adopt the Circular Economy Package by way of a Policy Statement<sup>7</sup>. This affirms its commitment to a 65% recycling target as a minimum for UK as a whole by 2035. while recognising the policy commitment of Wales to a 70% recycling target by 2025. Given the targets enshrined in Policy CSW4 are minima too, KCC requested that a scenario testing a 70% recycling rate against the Kent arisings values, now confirmed by the EPR examination Inspector, be provided as a sensitivity analysis of the Waste Hierarchy and Fuel Availability Assessment but that has not been forthcoming. The failure to test the boundaries of viability of the proposal proves that the analysis presented in the WHFAA is not robust and cannot be relied upon to support a decision to consent.**

**The lack of a guaranteed heat offtake for the WKN facility, along with the lack of certainty as to whether the additional proposed throughput to SEP (K3) will actually contribute additional heat, and indeed if the increase in generating capacity might have an adverse effect on current heat supply all means that neither proposal ought to be regarded as good quality CHP as is expected of additional Waste to Energy capacity. The absence of a guaranteed heat offtake was taken by the Inspector ruling on the Waterbeach decision to mean little or no weight ought to be attached to claimed benefits of heat supply is his decision,. The view that without firm supply arrangements, heat use cannot be taken for granted, is reinforced by the EU guidance on the application of the R1 formula which states that "*Exported heat shall only be counted (in  $E_p$ ) if the operator can prove commercial use by means of valid contracts with third parties*" (page 13). Without such contracts any claimed benefits of heat usage is based on unsound principles.**

**Moreover contrary to the Applicant's claim concerning the alignment of the proposal with the Kent waste policy as modified, KCC's Submission REP1-009, explains how**

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<sup>6</sup> Resources and waste strategy: monitoring progress <https://www.gov.uk/government/publications/resources-and-waste-strategy-for-england-monitoring-and-evaluation>

<sup>7</sup> <https://www.gov.uk/government/publications/circular-economy-package-policy-statement/circular-economy-package-policy-statement>

consenting the proposal would cause the targets promoting the movement of Kent waste up the waste hierarchy enshrined in Policy CSW4 to be breached (when read alongside Policy CSW2) if it is intended for the plants to manage waste arising from Kent as claimed.

## **5. Need for the Facility**

It is considered that the combined Kemsley DCO proposal is not supported with robust evidence that justifies the development of an additional half million tonnes per annum of non-recycling or composting capacity in Kent. The evidence base prepared for the Applicant to underpin the combined DCO proposal seeks to justify the development in the context of a perceived capacity gap of up to 1.3 million tonnes in Kent. It indicates that even with the WKN/ K3 capacity, there will be a further unmet capacity requirement of 870ktpa in Kent. This is contrary to the Waste Needs Assessment produced by KCC to support the EPR which has now been found sound by the examining Inspector. This evidence base found no need exists in Kent for additional capacity for the Plan period. Provision of the additional capacity proposed poses the risk to meeting the Waste Hierarchy objectives by pulling Kent waste that might otherwise be recycled down the hierarchy. Notably this risk is expressly recognised in national policy which refers to the need when determine planning applications for planning authorities to 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."* (NPPW para 7 bullet 2).

**During the course of the examination, KCC has undertaken further analysis of the data presented by the Applicant in support of its case and found that the quantity of waste reported as going to landfill that may be suitable for incineration is a lot less than claimed. The Applicant has recognised that the evidence presented does not represent the best available data, being at least three years out of date, and that the more recent 2018 dataset shows a significant reduction in arisings that may require diversion from landfill. No compelling evidence has been presented by the Applicant to address or overcome the doubt over the suitability or combustibility of waste targeted through the Applicant's assessment, particularly with respect to the waste classified under EWC code 19 12 12. KCC has established that the majority of this waste identified as going to landfill is not suitable for combustion and will not therefore be diverted from landfill as claimed. That then leaves onshoring of RDF currently exported to Good Quality CHP plants elsewhere in Europe, or drawing waste in from much further afield than indicated in the Applicant's WHFAA report.**

**Given the EPR of the Kent Minerals & Waste Plan has now been found sound the supporting Waste Needs Assessment is taken to be robust, and the arisings and forecasts are now reflected in the most recent Authority Monitoring Report released by the County Council. Any proposal ought therefore to be assessed against these values. If this were done, it would be clear that the need for the additional capacity proposed to maintain net self-sufficiency in Kent throughout the Plan period while making reduced provision for London's waste, does not exist.**

## 6. Energy Efficiency and Carbon Impacts

### a. Energy Efficiency

While the combined DCO proposal is being promoted as an energy supply facility, and is proposed to be assessed against the relevant National Policy Statement (NPS), it should be noted that the potential for waste management proposals to contribute towards local energy supply is expressly acknowledged within the adopted KMWLP and specific policies address this. In particular:

- Policy CSW6, which applies to all proposals for built waste management facilities, includes an expectation that: "*g. for energy producing facilities - sites are in proximity to potential heat users.*";
- Policy CSW7, relating to the provision of additional capacity, expects: "*3. energy recovery is maximised (utilising both heat and power)*"; and
- Policy CSW8, relating to provision of additional energy recovery capacity, refers to: "*Facilities using waste as a fuel will only be permitted if they qualify as recovery operations as defined by the Revised Waste Framework Directive. <sup>(90)</sup> When an application for a combined heat and power facility has no proposals for use of the heat when electricity production is commenced, the development will only be granted planning permission if:*
  - 1. the applicant and landowner enter into a planning agreement to market the heat and to produce an annual public report on the progress being made toward finding users for the heat.*"

The above policies were adopted to ensure any additional capacity that produces energy maximise the calorific value of the waste, harnessing as much of the energy produced as possible, as soon as possible. They remain unchanged by the EPR.

**While the local development plan has policies and safeguards in place to ensure that Waste to Energy plants are designed and built to maximise energy recovered, KCC remains unconvinced by the Applicant's case in that respect. The combined proposal would be inherently energy inefficient, not meeting the test of Good Quality CHP, and not making best use of the calorific value of the proposed feedstock. Neither facility is certain to meet the R1 energy efficiency test either.**

### b. Carbon Impacts

The submitted Carbon Assessment raises concerns in a number of respects:

The comparative scenario adopted relates to the landfilling of all waste that would otherwise be managed through the proposed plant. Given that the waste will either arise in Kent (in which case a significant proportion would be diverted from recycling rather than landfill) or further afield (in which case it will have been otherwise planned for through the Local Plan making processes and receipt of which would be in breach of the proximity

principle), it is simply not the case that without this facility, waste will be landfilled.

In reality, the proposals would be competing with management through other routes, including other Waste to Energy plants and export as Refuse Derived Fuel (RDF). Importantly, the RDF export scenario modelled as a sensitivity found that "...carbon impacts could be up to circa 13ktCO<sub>2</sub>e lower than the Proposal. This is predominately associated with the fact that the European WtE is modelled as CHP, whereas the Facility is conservatively modelled as electricity only." (page 15)". This essentially means that the proposal will have a substantially greater carbon impact than if the waste were managed via the European RDF export route (that may currently be followed) and/or supplied to Waste to Energy with CHP in the UK.

This presumes that the heat generated by WKN will actually be utilised, but no firm evidence has been provided to substantiate this. In fact, the promoter's own CHP assessment concludes that:

*"...it is considered that the proposed heat network does not yield an economically viable scheme in its current configuration, but this will be reassessed in the future when there is more certainty over heat loads and considering any subsidies that might be available at that time that support the export of heat".*

Without ongoing supply agreements and a heat network in place, it must be assumed that the plant will operate in electricity-only mode and any benefit of heat displacing the use of gas for space heating should be ignored. It is noted that this is acknowledged on Page 9 which states " ...the Facility will generally operate in electricity only mode,..."

It is therefore unsurprising that the carbon assessment concludes that "*Even accounting for the carbon benefits associated with electricity generation and the recycling of incinerator bottom ash with metals recovery, the facility demonstrates an overall carbon burden.*" (emphasis added). In short, it is only by comparing the proposal with a worst-case scenario of 100% of inputs coming from landfill that a carbon 'benefit' is indicated. As stated above, such a benefit will not materialise in practice, because the alternative outlets for the target fuel are unlikely to include landfill.

The submitted Carbon Assessment demonstrates that the utilisation of the heat produced by burning residual waste is essential to a beneficial carbon balance being realised.

A key factor in KCC's decision to grant planning permission for the existing consented (SEP/K3) plant was the benefit to the adjacent Paper Mill that came from provision of a stable low cost heat and power supply by conferring a greater degree of energy supply security. This need will be met through provision of the consented SEP (K3) plant, as well as a combustor incinerating paper production wastes to produce circa 25MW steam (K2) and a recently consented replacement gas fired CHP plant producing circa 80 MW of electricity and 200 tonnes per hour of steam plus 72 tonnes of low pressure steam (K4) (see paragraph 2.4.8 Inspector's Report of K4 DCO). It is worth noting in this regard that part of the case for the provision of the K4 plant to replace the existing K1 plant involved deliberately downsizing capacity for the stated reason that "... it was sized originally to

*provide energy to the now redundant Sittingbourne Mill... and it is therefore inefficient"* (Para 2.3.5 Environmental Statement Vol 1 August 2018). The improvement in efficiency and consequent reduction in associated emissions, greenhouse gas and local air, was a material consideration in the grant of the DCO (See paragraph 4.4.5 of the K4 Inspector's report). Hence, any suggestion that the heat and power produced by WKN is needed by the Paper Mill, even if it were to be supplied, is not supported by the evidence presented to support the K4 determination made only last year.

**No overall map of heat loads supplying the Paper Mill has been provided, despite it being requested by KCC. Without such a map it is not possible to ascertain the true effect that each aspect of the combined DCO proposal might have on heat supply. Given the absence of evidence that demonstrates the additional throughput to the existing plant (SEP) would give rise to any additional heat supply to the mill, the status of that addition may not in itself classify as Good Quality CHP either. Moreover, the increase in generating capacity sought might even have an adverse effect on the current heat supply to the mill by diverting heat for use in power generation instead.**

**Given the recent consenting of K4, a modern gas fired CCGT plant, this establishes the baseline against which carbon emissions from the incineration plants might be measured. In that regard the Inspector's report on the 3R plant appeal against refusal of planning permission has been upheld in connection with an EfW plant in West Sussex. (Former Wealden Brickworks – Appeal Decision 27 February 2020) found that:**

***"..., electricity generated by a Combined Cycle Gas Turbine in baseload mode would represent a lower carbon source of electricity than the proposal. Viewed solely in that context, the low carbon credentials of the proposal would appear to be relatively poor." (paragraph 89)***

**It is notable that while the Inspector in the appeal case gave this consideration little weight as the appeal scheme was being considered as a waste management facility not an energy generating scheme, and therefore the National Policy Statements were given little weight (para 92). In contrast to the Brookhurst Wood proposal, the K3/WKN proposal is being promoted as an energy scheme through the DCO process rather than a waste management facility through the established local waste planning process.**

**The above finding, combined with the findings of the Applicant's own Carbon Assessment for waste feedstock going to plants without CHP being worse than its continued export to CHP plants elsewhere in Europe, means any claims that the proposals provide any carbon benefit whatsoever is still to be proven.**

The overarching *National Policy Statement on Energy* states "In developing proposals for new thermal generating stations, developers should consider the opportunities for CHP from the very earliest point and it should be adopted as a criterion when considering locations for a project." (paragraph 4.6.7 page 52). It goes on to state "To encourage proper consideration of CHP, substantial additional positive weight should therefore be given by

*the IPC to applications incorporating C"P."* (paragraph 4.6.8 page 52) and by the same token, it may be inferred that no or even negative weight ought to be given where site choice limits CHP potential, as is the case here.

The importance of maximising CHP opportunities from waste fired plants is emphasised in the more recently published national Resource and Waste Strategy, which confirms Government's intention that soon to be released Government policy will "...*consider how to ensure... that future plants are situated near potential heat customers*" so that the heat off take is harnessed as occurs elsewhere in continental Europe (Section 3.2.1). Plants that generate both electricity and supply heat typically achieve efficiencies of circa 40% while electricity only plant efficiency is circa 27%, meaning an ongoing loss of circa 13% of the calorific value of every tonne of waste fuel burnt.

The assessment has assumed that the biogenic fraction of input feedstock would only be 45%. Therefore, the majority of electricity generated by the proposed plant would not be renewable. While a sensitivity analysis has been undertaken for an increase in the biogenic fraction to 53%, an analysis to test whether the biogenic fraction should be assessed to be less than 45% has not. Given the national drive to separate out food waste and shifts in composition anticipated by other Government initiatives, the biogenic fraction may well fall further with the result that the carbon burden will be increased. This would mean that energy from the proposal would primarily be derived from fossil-fuel sources, such as plastics that would not contribute to decarbonising the economy or renewable energy supply.

**The evidence submitted by the Applicant demonstrates that the plant will be a net carbon producer, and any claimed benefit only emerges with assumptions around landfilling and other factors that are still to be substantiated. The evidence presented demonstrates that without full heat usage the proposed combined proposal will perform poorly against alternatives available to the market today. Consenting of the combined proposal where a proximate reliable ongoing heat user is yet to be identified means the proposal fails to make the most of the feedstock's calorific value, resulting in a loss of energy that ought to be harnessed. As a result, it would not be aligned with Government policy on the matter and will have poor carbon credentials.**

## **7 Environmental and Amenity Impacts**

The proposal will give rise to environmental impacts the acceptability or otherwise of which will need to be considered as part of the DCO process. In considering the merits of the Sustainable Energy Plant (for 49mw of energy with a feedstock of 555,000tpa) in 2011, the County Council as the Waste Planning Authority was satisfied in granting conditional planning permission that the development was in accordance with planning policy in force at the time and was sustainable. In doing so the impacts of proposal including traffic, air quality, water quality and flood risk, landscape, nature conservation and ecology (including a separate Appropriate Assessment in accordance with Regulation 61 of the Habitats Directive), noise and employment were considered against the policies in the *Kent Waste Local Plan Saved Policies (Adopted March 1998)*. This included policy that expressly

identified the K3 site as being suitable in principle for a Waste to Energy plant. Since the KCC decision on the Sustainable Energy Plant, this Plan is no longer in force (having been superseded by the adopted Kent MWLP 2016), and the national policy context has also changed.

In considering the merits of the expansion of the permitted Sustainable Energy Plant and the construction of the additional WKN plant, the DCO Inspector will need to be satisfied that the environmental impacts of those elements are acceptable within the overall planning balance including cumulative impacts from both the K3 plant but also the recently consented K4 plant. Given the conflict with waste planning policy it is considered that the environmental impacts of such additional development are not justified.

### **Waste Conclusion**

For the reasons above, Kent County Council (as Waste Planning Authority) confirms its objection this Development Consent Order.

In short, the County Council considers that the proposal is for:

- the wrong type of capacity being incineration that doesn't qualify as Good Quality CHP;
- in the wrong place, with no guaranteed heat offtake and in a county with more than ample EfW capacity provision;
- at the wrong time following release of the national Resource & Waste Strategy emphasising the importance of heat utilisation, release of the standing Committee of Climate Change's latest advice warning against further development of waste incineration capacity without CCS and imminent adoption of the Early Partial Review of the Kent Minerals & Waste Local Plan.

### **Highways and Transportation**

KCC, as the Local Highway Authority, has been engaged with this Proposed Development through the pre application and Examination stages and would like to provide the following commentary as set out.

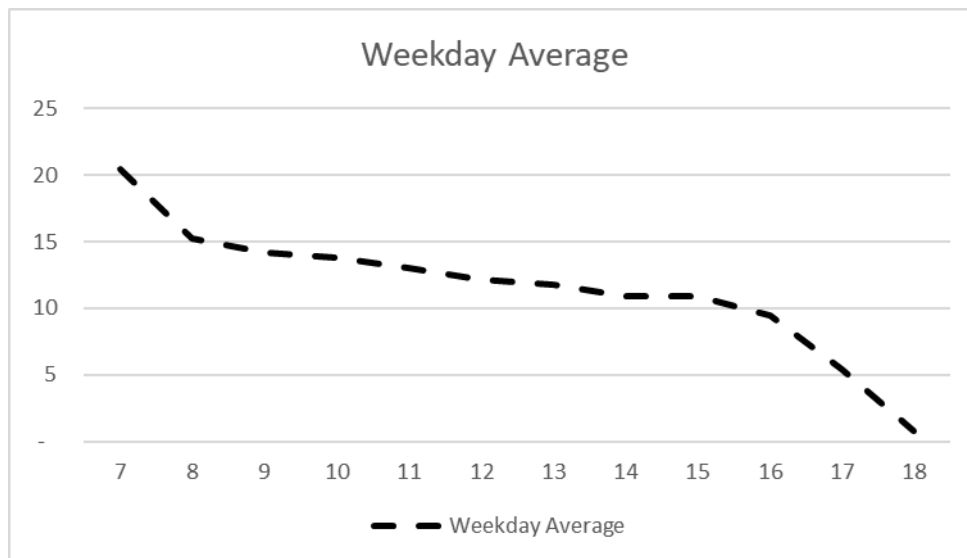
#### *Baseline Conditions*

Explanations as to assumptions made within the baseline assessment have been clarified by the Applicant and KCC now accepts the evidence presented.

#### *Trip Generation*

KCC does not agree with the trip generation that has been submitted in the Applicant's Transport Assessment, as it has not been demonstrated that the figures provided represent a realistic profile of vehicle movements.

In respect of movements, time evidence has been reviewed from the existing waste to energy plants at Allington and Ferrybridge. The evidence reviewed suggests that movements are generally between 07:00AM to 18:00PM with an evident larger proportion of movements in the AM and reducing in the PM. This was very helpfully demonstrated by the Applicant in as received by KCC on 2 July, in a graph showing the movements profile, demonstrated below.



It is acknowledged that implemented planning conditions impact HGV movements, however the data clearly demonstrates that the profile of movements is not flat, as presented in the submitted Transport Assessment. The impact on the morning peak would therefore be expected to be significantly greater than has been presented.

With regard to imported waste loads, an explanation as to how these have been accounted for remains unanswered in the Transport Assessment. What can be understood from the existing facilities is that Incinerator Bottom Ash (IBA) export waste arisings tend to be on average 27 tonnes. The weight of waste arrivals, however, are entirely dependent on the contracts in place at any given point in time. The data reviewed from the existing operations would suggest that this could range from anywhere between three and 27 tonnes. The Transport Assessment has used the expected trip generation from estimations and assumptions, even though there are similar operational facilities that could have been used to provide justification of loads. It should be questioned why evidence from existing facilities has not been presented in support of the original Transport Assessment. Further to that, it is questioned why detailed calculations demonstrating the average “assumed” loads used to calculate the expected movements remain outstanding.

With respect to the above points, KCC does not consider that a robust and justifiable representation of the expected timing and volume of movements has been presented in the Applicant’s submission and thus impact on the highway network, has not been presented to the Examination.



### *Impact on the Existing Highway Network*

KCC disputes the conclusions drawn in paragraphs 6.47, 6.69 and 6.94 of the Transport Assessment that suggest the operation of K3 Proposed Development and the construction and operation of WKN Proposed Development will not have a severe impact on the highway network.

All traffic modelling undertaken to date to assess the junction capacity for nodes along the local highway network show that some junctions are predicted to operate in exceedance of their capacity in both the future year 2024 and 2031 baseline scenarios with committed development. As such, mitigation is required at the Swale Way/Barge Way roundabout and the A249/Grovehurst interchange.

In the case of the Swale Way/Barge Way roundabout, the applicant's defence of the impact is that the junction modelling presented is unreliable, due to the junction being over capacity. Irrespective of how this is calculated, or the modelling presented, the junction is clearly unable to facilitate additional traffic without severe impacts to congestion and safety.

In the case of the A249/Grovehurst Road interchange, it remains that sensitivity testing of the Future Year Junction Assessments for the committed upgrade to the A249/Grovehurst Road interchange is outstanding. This upgrade is required to ensure that this proposal does not jeopardise the delivery of housing allocated in the adopted Swale Local Plan. The upgrade of the junction has been made possible following the successful Housing Infrastructure Fund bid, which is targeted at enabling the delivery of this housing. This application seeks to make use of improvements achieved from the delivery of mitigation provided by through the Housing and Infrastructure Fund (HIF) to the potential detriment of housing delivery.

The assessment provided for in the Transport Assessment demonstrates that the existing junction is exceeding its capacity on five of the seven arms of the junction in the AM peak and three in the PM peak. Queues in the PM peak are of such severity that they extend for over 362 vehicles. In the AM peak, the South A249 slip has queues of 23 vehicles introducing significant safety concern. It is clear therefore that any development affecting this junction would be required to provide mitigation and that until such mitigations are complete that any development which adds traffic to the junction should not proceed prior to guaranteed delivery of improvements.

The practical effects of the Applicant's proposal are to increase the levels of waste delivery by road by 497,000 tonnes of waste per year, additional to the 550,000 tonnes already consented. With a highway network already operating over capacity without the full impact of the consented 348 daily HGV movements, it is inconceivable that a near doubling of that level of required daily HGVs would not have a significant and severe impact upon the network.

### *Mitigation*

No mitigation or restrictions on HGV movements have so far been proposed by the Applicant.

### *Rail and Water Transportation Strategy*

Given the possible direct access of the application site to rail and water transport options and given that the source of the waste material to be brought to the WKN and K3 proposed development would be from further afield than Kent, KCC asserts that more commitment towards these more sustainable modes of transport are required.

In order to comply with national policy, the NPPF states that development should seek to encourage sustainable travel, lessen traffic generation and its detrimental impacts and reduce carbon emissions and climate impacts. It is suggested that the proposed application is in direct conflict with national policy for sustainable transport, climate change and waste management. The application therefore places unnecessary burdens on highway infrastructure already suffering from severe congestion, particularly when more sustainable waste transport options could be made available.

National Planning Policy Statement EN1 – The overarching NPS for Energy sets out that the consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development (paragraph 5.13.2), and that water-borne or rail transport is preferred over road transport at all stages of the project, where cost-effective (paragraph 5.13.10). The National Planning Policy for Waste (2014) sets out that waste planning authorities should assess the suitability of sites and/or areas for new or enhanced waste management facilities against a number of criteria including the capacity of existing and potential transport infrastructure to support the sustainable movement of waste and products arising from resource recovery, seeking when practicable and beneficial to use modes other than road transport. In conclusion, the location of the proposal offers the opportunity to comply with policy, however the waste transport strategy is not.

Questions were raised during the Examination as to what measures the County Council might seek to improve the prospect of water and rail facilities being used. It is suggested that the current condition under the K3 consent restricting HGV movements should be retained and that any additional generating output could be achieved by allowing unrestricted movements to and from the dock, which in turn would assist the developer in meeting policy requirements. It is further suggested that penalties be introduced to the Rail and Water Transportation Strategy if targets for increased movement of waste by sustainable means have not been achieved. This would provide KCC as the Local Highway Authority with some comfort that the strategy will be a key mechanism to ensure that the transportation of waste is by sustainable transport means.

### **Highways and Transportation Conclusion**

In summary, the proposal would have an unnecessary, significant and severe impact upon the highway network with inadequate consideration of mitigation impacts, contrary to policy

and the objective of sustainable development

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I trust that the above is helpful to 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