



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Wheelabrator Kemsley Generating Station (K3)

and

**Wheelabrator Kemsley North (WKN) Waste to Energy
Facility**

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Department for Business, Energy & Industrial Strategy

Examining Authority

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19 November 2020

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OVERVIEW

File Ref: EN010083

The Applicant, WTI/EFW Holdings Ltd (WTI), made an application under section 37 of the Planning Act 2008 which was received in full by The Planning Inspectorate on 11 September 2019 (the Application).

The Application was accepted for examination on 8 October 2019.

The examination of the Application began on 19 February 2020 and was completed on 19 August 2020.

The Proposed Development comprises two projects. The first is to increase the generating capacity of Wheelabrator Kemsley (K3) generating station up to 75MW with a tonnage throughput of up to 657,000 tonnes per annum ("K3 Proposed Development" or "Project K3"). Secondly, Wheelabrator Kemsley North (WKN) would be a waste-to-energy generating station with a generating capacity of up to 42MW and an annual through put of up to 390,000 tonnes of waste. ("WKN Proposed Development" or "Project WKN"). The Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) made a direction under Section 35 of the Planning Act 2008 to treat the Proposed Development as one for which development consent is required.

Together the two projects are referred to as the Proposed Development. It would be located adjacent to the DS Smith Paper Mill to the north of Kemsley in Sittingbourne, Kent.

The K3 grid connection is constructed as part of the construction of the K3 facility and both Project K3 and Project WKN would connect to an existing UK Power Networks electricity substation located within the DS Smith Paper Mill site.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should grant consent for the K3 Generating Station only and should make the Order in the form attached at Appendix D.

The Examining Authority recommends that the Secretary of State should withhold consent for the WKN generating station. If, however the Secretary of State decides to give consent, then the Examining Authority recommends that the Order should be in the form attached at Appendix E.

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**ERRATA SHEET – Wheelabrator Kemsley Generating Station (K3) and
Wheelabrator Kemsley North (WKN) Waste to Energy Facility – Ref. EN010083**

**Examining Authority’s Recommendation to the Secretary of State for the
Department for Business, Energy and Industrial Strategy dated 19 November
2020**

Corrections agreed by the Examining Authority prior to a decision being made:

Page No.	Paragraph	Error	Correction
1	1.1.4	“However, all references to the 2019 ES unless stated otherwise.”	“However, all references are to the 2019 ES unless stated otherwise.”
2	1.4.4	“...Hempstead House Hotel, London Road, ME9 9PP...”	“...Hempstead House Hotel, London Road, Sittingbourne ME9 9PP...”
3	1.4.7	“...exactly which matters are not agreed as well as those that are agreed...”	“...exactly which matters are not agreed as well as those that are agreed...”
3	1.4.11	“...but due to the outbreak of Covid 19 had to be cancelled.”	“...but, due to the outbreak of Covid 19, it had to be cancelled.”
3	1.4.14	“...Hempstead House Hotel, London Road, ME9 9PP...”	“...Hempstead House Hotel, London Road, Sittingbourne ME9 9PP...”
6	1.4.29	“Matters concerning MMO are dealt with...”	“Matters concerning the MMO are dealt with...”
9	1.6.1	“...for which a Habitats Assessment Regulations (HRA) Report has been provided.”	“...for which a Habitats Regulations Assessment (HRA) Report has been provided.”
11	1.8.2	“...to amend the K3 EP...”	“...to amend the K3 Environmental Permit (EP)...”
11	1.8.3	“and that “An application for the WKN Environment Permit is anticipated to be made in April 2020”...”	“and that “An application for the WKN Environment Permit is anticipated to be made in April 2020”...”
18	2.4.8	“...an area is fenced off area containing...”	“...an area is fenced off containing...”
25	3.3.18	“Paragraph 2.5.9 notes that waste to energy generating stations would take fuel (waste) that would otherwise be sent or landfill...”	“Paragraph 2.5.9 notes that waste to energy generating stations would take fuel (waste) that would otherwise be sent for landfill...”
29	3.4.17	“Article 6 of the rFWD...”	“Article 6 of the rWFD...”
29	3.4.18	“Article 6 of the rFWD...”	“Article 6 of the rWFD...”

37	3.6.2	Formatting error	
43	4.4.5	“These documents the principle of...”	“These documents set out the principle of...”
49	4.10.2	Formatting error - shouldn't have a paragraph number.	
49	4.10.6	Formatting error - shouldn't have a paragraph number.	
50	4.10.7	“Member States of the EU are required by Article 4(1) of the to apply the hierarchy...”	“Member States of the EU are required by Article 4(1) of the Waste Framework Directive to apply the hierarchy...”
51	4.10.15	Formatting error - shouldn't have a paragraph number and should be italicised.	
61	4.10.68	“...not least as the data (except for local authority collected waste, or 'LACW'),...”	“...not least as the data (except for local authority collected waste, or 'LACW'), is very uncertain and is dependent on the accuracy of waste generators, carriers, operators and the regulator when completing relevant forms recording the amount of waste and its end destination.”
62	4.10.70	“...the focus of Tolvik Review 2017...”	“...the focus of the Tolvik Review ...”
63	4.10.74	Formatting error	
67	4.10.90 (second sub bullet)	“...Committee of Climate Change's latest advice...”	“...UK Committee on Climate Change's latest advice...”
67	4.10.92	“In particular in the Applicant made comments [REP5-022] on Responses to D4 submissions...”	“In particular, the Applicant made comments [REP5-022] in reply to Responses to D4 submissions...”
68	4.10.98	“...the waste strategy and plans examined would nonetheless appropriate...”	“...the waste strategy and plans examined would nonetheless be appropriate...”
68	4.10.98	“...if the view were taken that Proposed Development provides too much waste capacity...”	“...if the view were taken that the Proposed Development provides too much waste capacity...”
74	4.10.129	Formatting error - shouldn't have a paragraph number.	

75	4.10.131	"It was found to sound by the EPR Inspector."	"It was found to be sound by the EPR Inspector."
75	4.10.133	"...travelling time from the facility, would also be contrary to..."	"...travelling time from the facility, it would also be contrary to..."
97	4.14.8	Formatting error - shouldn't have a paragraph number.	
97	4.14.12	"...to reduce greenhouse gas emissions s,..."	"...to reduce greenhouse gas emissions,..."
97	4.14.12	"(paragraphs 2.2.5 and 2.2.6)"	"(paragraphs 2.2.5 and 2.2.6)."
101	4.14.35	"... is predicted by WRATE be a GHG emissions reduction..."	"... is predicted by WRATE to be a GHG emissions reduction..."
102	4.14.43	"...since publication in 2011 of NPS EN-01 or NPS EN-03..."	"...since publication in 2011 of NPS EN-1 and NPS EN-3..."
106	4.14.60	"...in relation to the WKN Proposed Development neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations..."	"...in relation to the WKN Proposed Development, while neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations..."
125	4.17.27	"...in the DCO would comply with NPS EN-1, NPS EN-2 and the NPPF..."	"...in the DCO would comply with NPS EN-1, NPS EN-3 and the NPPF..."
139	4.18.79	"...used in the TA the Ratio of Flow to Capacity (RFC) and queue."	"...used in the TA were the Ratio of Flow to Capacity (RFC) and queue."
142	4.19.6	"NPS EN-2..."	"NPS EN-3..."
148	4.19.47	"NPS EN-2..."	"NPS EN-3..."
170	6.2.57	"...would comply with NPS EN-1, NPS EN-2 and the NPPF..."	"...would comply with NPS EN-1, NPS EN-3 and the NPPF..."
171	6.2.62	"... to impose a further restriction in these HGV movements."	"... to impose a further restriction on these HGV movements."
172	6.2.68	"...in accordance with EN-1, EN-2, the NPPF..."	"...in accordance with EN-1, EN-3, the NPPF..."
180	7.2.25	"Responses to the EXA's Preferred Changes..."	"Responses to the ExA's Preferred Changes..."
182	7.3.12	"In section 4.20 of this Report..."	"In section 4.18 of this Report..."
183	7.3.20	Formatting error - shouldn't have a paragraph number.	

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility (the Proposed Development) EN010083 was submitted by the Applicant to the Planning Inspectorate on 11 September 2019 under section 31 of the Planning Act 2008 (PA2008) and accepted for Examination under section 55 of the PA2008 on 8 October 2019.

1.1.2. The Proposed Development comprises:

- Consent to realise a generating capacity of 75MW and total tonnage throughput of 657,000 tonnes per annum at K3, a waste to energy facility. The physical works necessary for this facility have been completed and would not require a change to the external design;
- Wheelabrator Kemsley North (WKN) a new waste to energy plant, capable of processing 390,000 tonnes of waste per annum with a generating capacity of 42MW;
- Each facility would require: tipping hall, waste fuel bunker, boiler hall, flue gas treatment building, turbine hall housing steam turbine and generator, air cooled condenser, stack and associated emissions monitoring system, electricity substation, stores and utilities, administration office, fire water tanks, stores, weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps and diesel generators;
- Installation of grid connection;
- Construction of surface water outfalls; and
- Construction and alteration of private access and haul roads.

1.1.3. The completed K3 facility was commissioned on 16 July 2020 pursuant to planning permission Ref SW/19/501345 granted on 14 June 2019 by Kent County Council (KCC) pursuant to section 73 Town and Country Planning Act 1990 (TCPA1990) permitting the construction and operation of a generating station having a capacity of up to 49.9MW. This consented facility is known as the Consented K3 Facility in this Report.

1.1.4. The location of the Proposed Development is shown in the Environmental Statement (ES) Chapter 3.1 [APP-055] an updated version submitted at D2 [REP2-015], and Land Plans, an updated version of which was received as Additional Submission [AS-008]. The site lies within the administrative areas of KCC and Swale Borough Council (SBC) and is wholly in England. It should be noted that due to the nature of the Application comprising Project K3 and Project WKN an earlier version of the ES was submitted in respect of the former. However all references to the 2019 ES unless stated otherwise.

1.1.5. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) in its decision to accept the Application for Examination in accordance with section 55 PA2008 [PD-003].

- 1.1.6. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [APP-003] that the Proposed Development is an NSIP as it is for the construction of a generating station (K3), in England, is within s15 PA2008, and so requires development consent in accordance with s31 PA2008. The Proposed Development as a whole therefore meets the definition of an NSIP set out in s14(1)(a) PA2008.
- 1.1.7. Project WKN would not meet the requirements to be an NSIP due to the generating capacity of up to 42MW. The Secretary of State exercised their powers under s35 PA2008 to make a decision that this would be treated as development for which development consent is required under the PA2008 (see S55 Checklist, Item 2 [PD-003]).

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 31 October 2019, Grahame Kean was appointed as the Examining Authority (ExA) for the application under s61 of PA2008 [PD-004].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

- 1.3.1. The persons involved in the Examination were:
- Persons who were entitled to be Interested Parties (IPs) because they had made a Relevant Representation (RR) or were a statutory party who requested to become an IP.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.4.1. The Examination began on 19 February 2020 and concluded on 19 August 2020.
- 1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

The Preliminary Meeting

- 1.4.3. On 21 January 2020, The ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EP Rules) (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) and any other early hearing [PD-006], outlining:
- the arrangements and agenda for the PM;
 - notification of hearings to be held in the early stage of the Examination;
 - an Initial Assessment of the Principal Issues (IAPI);
 - the draft Examination Timetable;
 - availability of RRs and application documents; and
 - the ExA's procedural decisions.
- 1.4.4. The PM took place on 19 February 2020 at Hempstead House Hotel, London Road, Kent. An audio recording [EV-001] and a note of the

meeting [EV-002] were published on the Planning Inspectorate National Infrastructure website¹.

- 1.4.5. The ExA's procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-007], dated 26 February 2020.

Key Procedural Decisions

- 1.4.6. The procedural decisions set out in the Rule 8 Letter related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 Letter [PD-007] and so there is no need to reiterate them here.

- 1.4.7. However it is relevant to record here that insofar as the procedural decisions requested timely completion of the various Statements of Common Ground (SoCG) with the Applicant, that with Highways England (HE) was delayed to the end of the examination and was not completed. The concerns I expressed about this matter during the Examination can be seen in my commentary contained within ExQ3.13.7, ExQ3.13.9, ExQ3.14.1 and ExQ3.14.2. I explained that it was important to the ExA to have up to date draft versions of each SoCG so that matters in dispute could be clearly highlighted and explained. Finally, I stated in ExQ4.11.13:

"The intention in requesting such documents is not that parties should hold back from submitting them until they have agreed matters, but to assist the ExA by providing a continuous and candid explanation of exactly which matters are not agreed as well as those that are agreed. Please provide for D7 a SoCG with HE that fulfils this role"

- 1.4.8. The failure to produce a SoCG on traffic and transport matters had a material effect on the conduct of the Examination in rendering it more difficult for me to extrapolate the essential matters in dispute and how if at all such matters might be resolved.

Site Inspections

- 1.4.9. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.10. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/wheelabrator-kemsley-generating-station-k3-and-wheelabrator-kemsley-north-wkn-waste-to-energy-facility/?ipcsection=overview>

technical considerations and / or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.

- 1.4.11. The ExA included an initial date for an ASI in its Rule 8 timetable issued on 15 April 2020 but due to the outbreak of Covid 19 had to be cancelled. An ASI (and further hearings) were scheduled for June 2020 but due to Covid 19 restrictions these events also had to be cancelled, and an amended Examination timetable was communicated to IPs on 22 May 2020 [PD-013].
- 1.4.12. The ExA has had regard to the information and impressions obtained during the Examination in all relevant sections of this Report.

Hearing Processes

- 1.4.13. Hearings are held in PA2008 Examinations in two main circumstances:
- To respond to specific requests from persons who have a right to be heard - in summary:
 - where persons affected by compulsory acquisition (CA) and/or temporary possession proposals object and request to be heard at a Compulsory Acquisition Hearing (CAH); and / or
 - where IPs request to be heard at an Open Floor Hearing (OFH).
 - To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.
- 1.4.14. The ExA held an Issue Specific Hearing (ISH) under s91 PA2008 on the "s51" version of the draft Development Consent Order (dDCO) [AS-002], at Hempstead House Hotel, London Road, ME9 9PP which is approximately 4 miles from the proposed site.
- 1.4.15. As is made clear in the Explanatory Memorandum (ExMemo) [APP-006, REP2-004] the land required for the Proposed Development is in the ownership of DS Smith Paper Limited (DS Smith), or that of subsidiary entities controlled by it. DS Smith owns and operates the Kemsley Paper Mill on immediately adjacent land to the west. Therefore no compulsory acquisition or temporary possession of land or interests is sought in connection with the application, and no Compulsory Acquisition Hearings were held.
- 1.4.16. There were no requests to be heard at an Open Floor Hearing.

Written Processes

- 1.4.17. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the Application and arising from the Examination. All this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets []. For this reason, this Report does not contain

extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.

1.4.18. Key written sources are set out further below.

Relevant Representations

1.4.19. Nine RR were received by the Planning Inspectorate [RR-001 to RR009]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in Chapters 4 and 5 of this Report.

Written Representations and Other Examination Documents

1.4.20. The Applicant and IPs were provided with opportunities to:

- make written representations (WRs) (Deadline (D)1) 2 March 2020);
- comment on WRs made by the Applicant and other IPs (D2 18 March 2020);
- summarise their oral submissions at hearings in writing (D3 22 April 2020);
- make other written submissions requested or accepted by the ExA; and
- comment on documents issued for consultation by the ExA including:
 - A Report on Implications for European Sites (RIES) [PD-018] published on 15 July with comments by D7 5 August 2020;
 - The Schedule of Examining Authority's preferred changes to the Applicant's Development Consent Order [PD-017] published on 15 July with comments by D7 5 August 2020; and
 - Examining Authority's Draft K3 Development Consent Order [PD-016] published on 15 July with comments by D7 5 August 2020; and
- reply to the ExA's Written Questions and comment thereon.

1.4.21. All WRs and other examination documents have been fully considered by the ExA. The issues that they raise are considered in all relevant Chapters of this Report.

Local Impact Reports

1.4.22. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 PA2008.

1.4.23. LIRs have been received by the ExA from the following relevant local authorities:

- Kent County Council [REP1-011].
- Swale Borough Council [REP1-012].

1.4.24. The LIRs have been taken fully into account by the ExA in all relevant Chapters of this Report.

Statements of Common Ground

1.4.25. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them as well as matters in dispute.

1.4.26. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:

- Environment Agency (EA) dated 30 June 2020 [REP7-012] – Final;
- Natural England (NE) dated 5 August 2020 [REP7-014] – Final;
- Kent County Council (KCC) dated 12 August 2020 [REP8-013] – Final.

1.4.27. SoCGs that were submitted but unsigned or incomplete were as follows:

- Swale Borough Council [REP5-006] – Draft submitted at D5.

1.4.28. A SoCG was initially requested to be completed between the Applicant and, respectively Network Rail (NR). In its covering letter to submissions at D1 [REP1-001] the Applicant stated it was not aware of any direct impacts arising from the Proposed Development on NR assets or of any NR rights or covenants affected by the Application. Therefore, the Applicant did not consider a SoCG with NR was necessary. As set out in the Statement of Commonality of SoCGs [REP8-014], NR confirmed on 6 March 2020 that no SoCG was required as they did not believe they would be affected by the applied for and did not request any Protective Provisions to be included in the DCO.

1.4.29. Although one was not requested by the ExA the Applicant considered the need for a SoCG with the Marine Management Organisation (MMO), but concluded it was unnecessary. Matters concerning MMO are dealt with in Chapters 4 and 5 of this Report.

The SoCG with Highways England (HE)

1.4.30. In its covering letter sent at D7 [REP7-001] the Applicant acknowledged the importance to the ExA of receiving SoCGs between it and HE.

1.4.31. In its covering letter sent at D8 the Applicant stated it remained in discussion with HE regarding its SoCG; it had provided an update on those discussions in the Statement of Commonality of SoCGs [REP8-014] and in its responses to submissions at D7 and "*intended to provide a full position [sic] as soon as possible following Deadline 8*". In the event no further submissions were made until 1655hrs on the last day of the Examination. For the reasons set out in its letter to the Applicant dated 21 August 2020 [PD-019] the ExA declined to accept these late submissions. No draft SoCG with HE whatsoever had been provided to the ExA prior to the time and date aforesaid. This matter is dealt with further in Chapter 4.

- 1.4.32. A Statement of Commonality of SoCGs which summarised the progress relating to the various SoCGs was last submitted at D8 [REP8-014]. This and the SoCGs and draft SoCG with SBC have been taken fully into account by the ExA in all relevant Chapters of this Report, and weight accorded to them as appropriate in the circumstances.

Written Questions

- 1.4.33. Due to the continuing restrictions related to the Covid 19 pandemic I consulted all IPs on 6 May 2020 when issuing ExQ2 Further Written Questions, [PD-012] regarding the process to be adopted in this Examination in light of the exceptional circumstances that have arisen due to the outbreak of Covid-19. The responses demonstrated a clear preference that the written procedure should be used in place of further Hearings. Taking all circumstances into account, I decided it would be expedient to follow the written process going forward.
- 1.4.34. The ExA asked 5 rounds of written questions, setting deadlines for replies and for comments thereon as follows.
- The ExA's first Written Questions (ExQ1) [PD-008] published on 26 February 2020: by D2 18 March 2020 with comments by D3 22 April 2020;
 - ExQ1a [PD-010] published on 9 April 2020: by D3 22 April 2020 with comments by D4 20 May 2020;
 - ExQ2 [PD-012] published on 6 May 2020: by D4 20 May 2020 with comments by D5 19 June 2020;
 - ExQ3 [PD-014] published on 3 June 2020: by D5 19 June 2020 with comments by D6 29 June 2020; and
 - ExQ4 [PD-015] published on 15 July 2020: by D7 5 August 2020 with comments by D8 12 August 2020.
- 1.4.35. All responses to the ExA's written questions have been fully considered and taken into account in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

- 1.4.36. The following persons who were not already IPs requested that the ExA should enable them to join the Examination at or after the PM. In each case the request was granted for the summary reasons given as follows:
- South East Waste Planning Advisory Group (SEWPAG) on 1 March 2020 by its submission at D1 [REP1-016] requested to be an IP.
 - Its concern focussed on the Proposed Development's compliance with NPS EN-3 by reference to relevant waste strategies and plans, as 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.
 - Royal Mail Group Limited made an additional submission [AS-014] and was accepted as an IP.

- Its concern was to protect its future ability to provide an efficient mail sorting and delivering service to the public, in light of the potential for the Proposed Development to cause disruption, road closures that might affect operations.
- Allyson Spicer made an additional submission [AS-015] and was accepted as an IP.
 - Her concern focused on the traffic impacts of the Proposed Development and was accepted as an IP. The matters she raised are considered further in Chapters 3 and 5.
- John C Twistleton made a submission at D1 [REP1-017] and was accepted as an IP.
 - His concern focussed on the impacts of the Proposed Development on the highway network.

1.4.37. During the Examination, as a consequence of discussion at hearings and/or discussions between relevant IPs/Other Persons and the Applicant, the following persons wrote to the ExA stating that their issues were settled, and their representations were withdrawn:

- On 19 June 2020 Royal Mail reached agreement with the Applicant regarding the Construction Traffic Management Plan (CTMP) [REP8-005] and withdrew its representation to the Examination. Royal Mail remained an IP for the duration of the Examination.

1.4.38. No other person wrote to me to formally record the settlement of their issues and the withdrawal of their representations.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

1.5.1. An Environmental Impact Assessment (EIA) was undertaken as both the K3 Proposed Development and WKN Proposed Development are of a type listed in part 10 Schedule 1 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (hereafter the EIA Regulations). The EIA assesses potential significant effects the Proposed Development is likely to have on the environment to ensure these are fully taken into account before development may proceed. The findings of the EIA are summarised in the Non-Technical Summary (NTS) [APP-068] and reference is also made to the 2010 NTS [APP-069].

1.5.2. The 2010 ES was submitted in support of the original K3 planning application in 2010. The EIA for the Proposed Development comprises both the 2010 and 2019 ESs, as documented in the 2019 ES, given development consent is sought for the construction and operation of Project K3. The 2010 NTS [APP-069] summarises the findings of the 2010 ES.

1.5.3. Following the approval of the original consent for the K3 application non-material amendments and variations were made resulting in three addendums to the 2010 ES. These were: ES Addendum (Air Quality) (June 2013) [APP-076 ES]; ES Addendum (Hydrology and Flood Risk) (May 2017) [APP-077]; and ES – Addendum (May 2018) [APP-078].

- 1.5.4. On 11 October 2018 Condition 3 of the original planning permission for the Consented K3 Facility granted in 2012 Ref SW/10/444 (K3 Planning Permission) was varied to increase the number of heavy goods vehicle (HGV) movements permitted for the Consented K3 Facility to result in the 348 movements currently consented. The May 2018 ES Addendum was included with that application and includes an assessment of the transport and air quality implications of that change. These documents form part of the ES.
- 1.5.5. On 7 September 2018, the Applicant submitted a Scoping Report [APP-013] to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion (a Scoping Opinion) about the scope of the information in the ES. On 18 October 2018 the Planning Inspectorate provided a Scoping Opinion [APP-014]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES.
- 1.5.6. On 9 December 2019 the Applicant provided the Planning Inspectorate with certificates confirming that the requirements of s56 and s59 PA2008 and Regulation 16 of the EIA Regulations had been met [OD-002].
- 1.5.7. Consideration is given to the adequacy of the ES and matters arising in Chapter 4 of this Report. The potential environmental effects have been assessed and set out in the ES. The ES includes details of measures proposed to mitigate likely significant effects identified by the Applicant.
- 1.5.8. I am satisfied that the ES met the requirements of Schedule 4 of the EIA Regulations and, together with the environmental information provided during the Examination, forms an adequate basis for decision making.

1.6. HABITATS REGULATIONS ASSESSMENT

- 1.6.1. The Proposed Development is development for which a Habitats Assessment Regulations (HRA) Report has been provided.
- 1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 5 of this Report.
- 1.6.3. Under Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations), where required, an application must be accompanied with sufficient information to enable the relevant SoS to meet their statutory duties as the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) (as amended).
- 1.6.4. The RIES summarised the available environmental information [PD-018]. It compiled, documented and signposted information provided within the application and subsequent information submitted throughout the Examination by both the Applicant and IPs, up to D6, 29 June 2020.

1.6.5. The RIES was issued on 15 July 2020 to all IPs. Comments on the RIES were requested for D7, 5 August 2020, as set out in the last iteration of the Examination timetable [PD-013].

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. The original planning permission for the Consented K3 Facility granted in 2012 Ref SW/10/444 (the K3 Planning Permission) is the subject of a s106 agreement (Appendix B, Planning Statement [APP-082]) between KCC, EoN Energy from Waste UK Limited, DS Smith (including its subsidiaries SRP New Thames Limited and Grovehurst Energy Limited) and the Royal Society for the Protection of Birds (RSPB). There are 3 main elements, summarised in the SoCG between the Applicant and KCC [REP8-013]:

- Reedbed habitat creation within the Harty Marshes on the Isle of Harty, now the responsibility of RSPB to maintain in accordance with the Maintenance Scheme as set out in 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;
- Employment Strategy, 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;
- Relocation scheme providing 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 (EMMP) pursuant to Application ref SW/10/444/R is included as an approved document within the DCO. The Applicant's position is that it will ensure the necessary mitigation measures are included within the DCO.

1.7.2. KCC is recorded in the SoCG as being satisfied with the Applicant's positions as set out in relation to each of these 3 elements of the s106 agreement.

1.7.3. By the end of the Examination, there were no other matters subject to any separate undertakings, obligations and / or agreements. All relevant considerations are addressed in this Report as bearing on the DCO.

1.8. OTHER CONSENTS

1.8.1. In addition to the consents required under PA2008 (which is the subject of this report), the Applicant identified in section 24 of the Application Form [APP-003] the following consents that the Proposed Development must obtain to construct operate and maintain the Proposed Development and would be sought separately.

- Amendment to existing Environmental Permit (K3);
- Environmental Permit (WKN); and
- MMO Licence amendment (WKN).

- 1.8.2. Section 10 of the Planning Statement [APP-082] refers to these matters. It stated applications to amend the K3 EP to reflect the K3 Proposed Development and to seek an EP for WKN would be submitted alongside the DCO application. In the ExA's Q3.12.1 [PD-014] it was noted the EP application was due to be submitted by 1 July 2020 [REP4-006], an update was requested for D5 and confirmation that a copy of the application would be provided to the Examination upon its submission.
- 1.8.3. In reply to Q3.12.1 [PD-014] the Applicant stated the WKN EP application was submitted to the EA on 13th June 2020 but declined to supply a copy as it had *"not yet been accepted by the Environment Agency as being duly made"*. The EA in the completed SoCG with the Applicant [REP7-012] stated that they *"see no reason why a new permit for the WKN Proposed Development should not be granted"* and that *"An application for the WKN Environmental Permit is anticipated to made in April 2020"* (despite the SoCG being signed and dated 30 June 2020). However it also stated:
- "The Environment Agency does not currently have any concerns about permitting and based on the information provided in the ES (including noise and air emissions) see no reason why a varied permit for the K3 Proposed Development and a new permit for the WKN Proposed Development should not be granted."*
- 1.8.4. In ExQ2 the ExA requested an update as to the progress of the WKN permit application which was by now expected to be submitted not later than 1 July 2020.
- 1.8.5. An MMO licence already exists for the discharge of clean surface water from the K3 lagoon into the Swale via an outfall which has already been constructed. No change is needed to that licence for the K3 Proposed Development. An additional outfall pipe would be added to discharge clean surface water from the proposed WKN lagoon, with an MMO licence already granted for that discharge activity.
- 1.8.6. In its submissions made at D5 [REP5-030] MMO stated:
- "2.15. With regard to section 5.6.8 – the Marine Licence was varied to include a second outfall. As mentioned in previous deadline responses the discharge of water is not a licensable activity under the 2009 Act and MMO has encouraged engagement with the EA. However, the MMO require further elaboration on why there will be no LSE from the discharge of water (using a worst-case scenario for the volumes that could be discharged). As noted above the introduction of freshwater into the marine environment may disturb sediment and alter the salinity of the area. This could have an adverse impact on the surrounding saltmarsh and/or mussel beds."*
- 1.8.7. In its submissions made at D6 [REP6-012] at paragraph 2.1 MMO stated:
- "2.1 With regard to point 2.4.6 - the MMO advises that the applicant incorrectly references the application reference (MLA/2017/00316) as the licence number. The applicant should amend this to the correct licence"*

reference (L/2017/00482/2). The MMO regulate compliance with the marine licence and do not control the outfall."

2.2. With regard to point 2.4.8. The MMO would like to highlight that the discharge of water is not a licensable activity under that Marine and Coastal Access Act ,2009 ("the 2009 Act"). The MMO advise that the applicant change the wording of the following section to clarify that the variation was for the construction of the outfall - "The MMO licence for the K3 outfall has been varied to permit the discharge of clean water from the WKN Proposed Development through a separate outfall to be located adjacent to the existing K3 outfall."

1.8.8. In its submissions made at D7 [REP7-033] MMO stated at paragraph 3.3 *"With regard to Schedule 2 (Part 1 – 4) – the MMO acknowledge that the applicant has confirmed that the decommissioning of the outfalls will be applied for by way of a separate marine licence and have no other comments to raise."*

1.8.9. In relation to the outstanding consents recorded above, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the K3 Proposed Development or the WKN Proposed Development should the SoS grant consent for either or both the K3 Proposed Development and WKN Proposed Development.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the Application and the processes used to carry out the Examination and make this Report;
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects;
- **Chapter 3** records the legal and policy context for the SoS's decision;
- **Chapter 4** sets out the planning issues that arose from the Application and during the Examination;
- **Chapter 5** considers effects on European Sites and Habitats Regulations Assessment (HRA);
- **Chapter 6** sets out the balance of planning considerations arising from Chapter 4, in the light of the factual, legal and policy information in Chapters 1 to 3;
- **Chapter 7** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO); and
- **Chapter 8** summarises all relevant considerations and sets out my recommendations to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Events;
- **Appendix B** – the Examination Library;
- **Appendix C** – List of Abbreviations;

- **Appendix D** – the DCO as recommended by the ExA to be made by the SoS (the Recommended DCO); and
- **Appendix E** - the DCO as recommended to be made by the SoS should consent be granted for the K3 Proposed Development and WKN Proposed Development (the Alternative Recommended DCO).

1.9.3. Given that the application and Examination material have been published online, this report does not contain extensive summaries of all the representations although regard has been had to them in my conclusions. I have considered all important and relevant matters and set out my recommendations to the SoS against the PA2008 tests.

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

2.1.1. The Applicant submitted an application which is described in the Application Form [APP-003] as:

"the construction and operation of the Wheelabrator Kemsley (K3) and Wheelabrator Kemsley North (WKN) waste to energy generating stations in Kemsley, Sittingbourne, Kent.

Planning permission was granted for the K3 facility in 2012 by KCC and the facility is being constructed and is expected to be operational in late 2019, with a consented generating capacity of up to 49.9 MW and an annual throughput of up to 550,000 tonnes of waste. WTI have identified that K3 is capable, through internal efficiencies and upgrades, of generating an additional 25.1MW and through increased operational availability of the facility is capable of processing an additional 107,000 tonnes of waste per annum.

No physical works would be required to K3 to facilitate either the proposed increased generating capacity or the proposed increased waste tonnage throughput. The project cannot therefore be categorised as the extension of an existing generating station under the Planning Act 2008...consent is therefore being sought for the construction and operation of the K3 facility with a generating capacity of up to 75MW and a tonnage throughput of 657,000 tonnes per annum...

Wheelabrator Kemsley North (WKN) is a proposed waste to energy generating station with a generating capacity of up to 42MW and an annual throughput of up to 390,000 tonnes of waste. WKN is therefore not a nationally significant infrastructure project under...the Planning Act 2008. However on 27 June 2018 the Secretary of State for Business Energy and Industrial Strategy exercised his power under Section 35 of the Planning Act 2008 to direct that WKN is nationally significant and is therefore to be treated as a development for which development consent is required. The WKN development proposed is similar to that described in the WTI Section 35 request submitted to the Secretary of State and accordingly this application also seeks consent for the WKN project."

2.1.2. The location of the Proposed Development is identified as land at Kemsley, Sittingbourne, Kent, ME10 2TD.

2.2. THE APPLICATION AS EXAMINED

Principal Works

2.2.1. A full description of the K3 and WKN Proposed Developments is provided within ES Chapter 2 - Site Description and Proposed Development [APP-054]. The K3 and WKN Proposed Developments are split into a number of key works within the DCO boundary including areas where ancillary works are required for the construction and operation of the key works. A plan showing the DCO boundary and location of the key works are

provided as Doc 5.5 (a and b) submitted with the application [APP-094, APP-95].

- 2.2.2. The Proposed Development comprises the construction of K3 at its total generating capacity of up to 75MW (49.9MW consented + 25.1MW upgrade) together with its proposed tonnage throughput of up to 657,000 tonnes per annum (550,000 consented + 107,000 tonnage increase). It would combust post-recycled solid recovered fuel waste, commercial and industrial waste and pre-treated municipal solid waste to produce electricity which is exported to the national grid and steam which is supplied to the adjacent DS Smith Kemsley Paper Mill for use in the papermaking process. The Consented K3 Facility has been under construction and is now commissioned with effect from 16 July 2020.
- 2.2.3. Development consent is also sought for the proposed new WKN waste-to-energy facility, capable of processing 390,000 tonnes of waste per annum, with a generating capacity of 42MW. The electricity produced would be exported to the distribution network, owned and operated by UK Power Networks. The grid connection would be via the existing substation located within the DS Smith paper mill site to the immediate west.
- 2.2.4. The Applicant anticipates that (subject to a DCO being granted and a final investment decision being made) work would commence in 2021, with construction of the WKN Proposed Development expected to take 40 months.
- 2.2.5. The K3 and WKN Proposed Developments would each be expected to have an operating life of up to 50 years (paragraph 2.13.1, ES Chapter 2 [APP-054]).
- 2.2.6. The effect in reality of the K3 Proposed Development ('the practical effect') would retain the Consented K3 Facility but generate an additional 25.1MW together with being able to process an additional 107,000 tonnes of waste per year.
- 2.2.7. Throughout this Examination therefore the following terms are used to distinguish the two elements of the Proposed Development, namely the K3 Proposed Development and the WKN Proposed Development. In the DCO they are referred to as "Project K3" meaning Work No 1 and any other authorised development associated with that work; and "Project WKN" meaning Work No 2 and any other authorised development associated with those works, as defined in the DCO versions submitted.
- 2.2.8. Depending on the context of the particular assessment undertaken by the Applicant, the "Practical Effects" of the K3 Proposed Development are assessed alongside the effects of the WKN Proposed Development.
- 2.2.9. As described in the ES: Site Description and Proposed Development [APP-054] together with the Planning Statement [APP-082] and Works Plans [APP-094, APP-095] and the submission version of the dDCO [AS-003] the main plant items were:

- Work No 1 – Construction and operation of an onshore generating station with a generating capacity of up to 75MW and permissible waste throughput of 657,000tpa (the K3 Proposed Development);
 - 1A - Installation of grid connection for Work No 1;
 - 1B- Installation of steam connection for Work No 1;
 - 1C- Alteration of existing private access road to construct, use and maintain Work No 1;
 - 1D- Creation of a temporary construction compound and laydown area for the construction of Work No 1;
 - 1E- Construction and operation of a surface water outfall for Work No 1;
- Work No 2- Construction and operation of a waste-to-energy facility capable of processing 390,000 tonnes of waste per annum, with a generating capacity of up to 42MW (the WKN Proposed Development);
- Work No 3- Installation of a grid connection for Work No 2;
- Work No 4- Alteration of existing private access road to construct, use and maintain Work No 2;
- Work No 5- Temporary construction or alteration of existing private haul road for the construction of Work No 2;
- Work No 6- Creation of a temporary construction compound and laydown area for the construction of Work No 2; and
- Work No 7- Construction and operation of a new surface water outfall for Work No 2.

2.3. THE APPLICATION AT THE CLOSE OF THE EXAMINATION

2.3.1. Following the acceptance of the application the Applicant was provided with advice under s51 PA2008 (s51 Advice) by the Planning Inspectorate. A submission of amended documents was made on the 18 October 2019, prior to the expiry period for Relevant Representations, to address the points raised in the s51 Advice. A covering letter [AS-009] detailed the changes made to the application documents.

2.3.2. The following documents were submitted as part of the S51 pack and the Application Guide updated to reflect the latest versions of those documents where necessary:

- S51 Application Guide [AS-001];
- S51 Draft Development Consent Order [AS-002];
- S51 DCO Validation Report [AS-003];
- S51 Book of Reference (BoR) [AS-004];
- S51 Summary of Land Interests and Rights (replaces Statement of Reasons) [AS-005];
- S51 Summary of Applicant's Structure and Standing (replaces Funding Statement) [AS-006];
- Consultation Report [AS-007]; and
- S51 Land Plan (9812-0057-005) [AS-008].

2.3.3. At the request of the ExA on a without prejudice basis and to provide appropriate plans should only Project K3 be recommended for development consent, alternative plans and BoR were submitted (dealt with further in Chapter 7) as follows:

- ExA's K3 Alternative DCO Works Plan [REP7-024];
- ExA's K3 Alternative DCO Land Plan [REP7-025]; and
- BoR [REP7-009];

2.4. DESCRIPTION OF THE APPLICATION SITE AND SURROUNDING AREA

2.4.1. 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 Paper Limited (DS Smith).

2.4.2. Unless the context otherwise requires "Application Site" or the "Site" refers to the K3 site and WKN site within the DCO boundary on the Site Location Plan [APP-090].

Wheelabrator Kemsley (K3) Site

2.4.3. The site is located on land immediately to the east of the Kemsley Paper Mill, 0.8km east of Kemsley, a residential suburb in the north of Sittingbourne in Kent (hereafter the 'K3 Site'). It lies adjacent to The Swale to its east, with the Isle of Sheppey beyond and within the administrative areas of Kent County Council (KCC) and Swale Borough Council (SBC). To the south of the K3 Site lies a capped former landfill site which lies adjacent to the confluence between Milton Creek and The Swale.

Wheelabrator Kemsley North (WKN) Site

2.4.4. The site is located on land immediately north of the Consented K3 Facility (hereafter the "WKN Site"). The WKN Site is currently being used by the Applicant as a laydown and parking area for the construction of the adjacent K3 facility. It has been cleared of vegetation and laid to concrete or hardcore with a perimeter fence. To the east of the WKN Site lies The Swale 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.

2.4.5. The nearest statutory designation in proximity to the Sites 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.

2.4.6. The WKN Site is currently is use as a car park, office and construction lay down area for K3 being constructed immediately to the south. The

proposed construction laydown area for the WKN Proposed Development to the north-east currently comprises an open area of rough vegetation and crushed gravel. An existing access lies to the west of the WKN Site (Work No.4) and is to be used as the site access during operational. An existing haul road lies to the north of the WKN Site and is to be utilised during construction for access (Work No. 5) to the construction laydown area (Work No. 6).

- 2.4.7. The majority of the WKN Site comprises a car park with a generally level surface primarily covered by hardstanding but with some areas covered by gravel. Along the western and southern border of the WKN Site are temporary construction offices and containers associated with the construction of K3 to the south.
- 2.4.8. A ditch runs along the northern boundary of the WKN Site. In the south western corner, an area is fenced off area containing a remote mixing station for mortar.
- 2.4.9. The smaller, eastern area of the WKN Site is separated from the car park by fencing and comprises a construction lay down area. This area appears to comprise of made ground and gravel/rubble although it is largely covered by construction materials and plant. No hardstanding is present in this area. The southern area of this eastern part of the WKN Site comprises an access track for plant to the K3 Site.

2.5. RELEVANT PLANNING HISTORY

- 2.5.1. The full planning history of the K3 and WKN development sites is provided in Appendix A of the Applicant's Planning Statement [APP-082]
- 2.5.2. The K3 development site does not have a planning history prior to consent first being obtained for the K3 facility in 2012, under reference SW/444/10. Appendix B [APP-082] contains the original decision notice and s106 obligation relating to that application, with the committee report provided as Appendix C to this Statement.
- 2.5.3. Subsequently the K3 site has an extensive planning history relating to a series of non-material amendments, applications to vary the terms of the original K3 Planning Permission and to discharge conditions relating to it. Separately the access road serving the K3 site, which runs along the eastern side of the Kemsley paper mill, was the subject of its own planning permission granted in 2012 which has also been the subject of further amendments.
- 2.5.4. The current operational consent for the K3 facility is SW/19/501345, granted on 14 June 2019. It resulted from an application to remove a planning condition under s73 TCPA1990, specifically Condition 11 which had required the provision and management of a buffer zone to the west of the K3 site. The decision notice is at Appendix D of the Applicant's Planning Statement [APP-082].
- 2.5.5. The only consent associated directly with the WKN proposal site was that granted in 2017 for the construction and operation of an incinerator

bottom ash recycling facility on the WKN site. That consent expired in February 2020.

- 2.5.6. An anaerobic digester was granted planning permission in 2012 to serve the DS Smith Kemsley Paper mill and is constructed on land to the north of the Jetty Road which would be used to access the WKN construction laydown area. DS Smith obtained development consent in July 2019 for the construction and operation of 'K4', a gas fired combined heat and power (CHP) plant within the Kemsley Paper Mill site to replace an existing CHP plant ('K1') and provide heat and steam to the paper mill.

2.6. CUMULATIVE EFFECTS

- 2.6.1. As set out in paragraph 1.2.6 ES Chapter 1 - Introduction [APP-053], the Applicant's formal Environmental Impact Assessment (EIA) of the K3 and WKN Proposed Developments in winter 2018 to summer 2019 considered the likely significant effects of the K3 and WKN Proposed Developments individually as well as cumulatively with each other and with other relevant consented and planned projects.
- 2.6.2. Cumulative effects with other projects in the locality are considered in Chapter 3 of the ES [APP-055] which also explains the approach to addressing such matters. Figures 3.2 a and b [APP-055] map projects which were considered for the purpose of assessing the effects of the Proposed Development with other schemes which are under construction, consented or for which planning permission is being sought.
- 2.6.3. ES Chapter 14 - Summary Tables [APP-066] provides a summary of the likely significant cumulative effects predicted to result from the K3 and WKN Proposed Developments in combination with other committed/proposed developments as set out in Chapter 3 ES [APP-055]:
- Table 14.5 - Baseline + K3 Proposed Development + other relevant cumulative developments within the zone of influence of the K3 Proposed Development;
 - Table 14.6 - Baseline + WKN Proposed Development + other relevant cumulative developments within the zone of influence of the WKN Proposed Developments; and
 - Table 14.7 - Baseline + K3 Proposed Development + WKN Proposed Development + other relevant cumulative developments within the zone of influence of the K3 and WKN Proposed Developments.
- 2.6.4. The methodology used in the cumulative assessment of projects was not in issue except partially in regard to the traffic and transport implications of the Proposed Development which are considered in Chapter 4.
- 2.6.5. Overall, and as set out in the ES – Non-Technical Summary [APP-069] following the implementation of the mitigation measures described in the relevant ES chapters, the K3 and WKN Proposed Development in combination with the other cumulative developments identified would result in a significant adverse effect on sequential views along the Saxon Shore Way public right of way, an inevitable effect of the quantum of

development permitted or proposed in this locality. However, the K3 and WKN Proposed Development is considered to make a slight contribution to the cumulative effect.

- 2.6.6. I consider that the projects listed in the assessment as described above are appropriate for consideration as part of any cumulative assessment. The issue of cumulative effects is considered further in the relevant sections of Chapter 4.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

- 3.1.1. This Chapter sets out the relevant legal and policy context for the application. I have taken this into account in the Examination of the Proposed Development and in presenting findings and making recommendations to the Secretary of State (SoS).
- 3.1.2. The legal and policy context, as understood by the Applicant, is described in Sections 11, 12 and 13 of the Planning Statement [APP-082]. There is set out an assessment of the Proposed Development against the policy requirements of National Policy Statements (NPSs) EN-1 and EN-3. Individual chapters of the ES provide specific background relating to particular topics.
- 3.1.3. The Local Impact Reports (LIRs) of KCC and Swale Borough Council (SBC) [REP1-011, REP1-012] set out the local authorities' respective positions with regard to development plan policies.

3.2. THE PLANNING ACT 2008

- 3.2.1. Inasmuch as the Proposed Development includes the K3 Proposed Development the Application is for a Nationally Significant Infrastructure Project (NSIP), qualifying under the Planning Act 2008 (PA2008). It is for the construction, operation and maintenance of the K3 Generating Station with a gross installed capacity of up to 75MW. It is thus an onshore generating station in England having a capacity of more than 50MW pursuant to section s14(1)(a) and s15(2) of PA2008.
- 3.2.2. The Application also comprises the WKN Proposed Development, to construct, operate and maintain the WKN Waste-to-Energy Facility with a gross installed capacity of up to 42MW. The Secretary of State for Business, Energy and Industrial Strategy (SoSBEIS) made a direction under Section 35 PA2008 to treat the WKN Proposed Development as one for which development consent is required.
- 3.2.3. Section 104 PA2008 applies to the Proposed Development because it is:
"in relation to an application for an order granting development consent [where] a national policy statement has effect in relation to development of the description to which the application relates".
- 3.2.4. Section 104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary, these include:
- any NPS which has effect in relation to development of the description to which the application relates (a '*relevant national policy statement*');
 - any LIR (within the meaning given by s60(3) of PA2008) submitted to the SoS before the specified deadline for submission;
 - the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009;

- any matters prescribed in relation to the development of the description to which the application relates; and
 - any other matters which the SoS considers are both important and relevant to the decision.
- 3.2.5. Due to the “hybrid” nature of the Proposed Development consisting of two main projects only one of which is a nationally significant infrastructure project, it is necessary to examine the provisions of s104 in a little more detail.
- 3.2.6. Section 104 PA2008 applies to an application for an order granting development consent, specifically “*if a national policy statement has effect in relation to development of the description to which the application relates*”.
- 3.2.7. In such a case not only must the SoS have regard to any relevant NPS but under s104(3) “*must decide the application in accordance with any relevant national policy statement*” except to the extent that the SoS is satisfied that one or more of subsections (4) to (8) applies, namely that, in summary, doing so:
- would lead to the United Kingdom being in breach of its international obligations;
 - would lead to the SoS being in breach of any duty imposed on him under any enactment;
 - would be unlawful by virtue of any enactment;
 - the adverse impact of the proposed development would outweigh its benefits; or
 - would meet any condition prescribed for deciding an application otherwise than in accordance with a NPS.
- 3.2.8. For decisions in cases where no national policy statement has effect, that is if s104 does not apply in relation to the application, then by s105 the SoS must have regard to:
- any LIR duly submitted;
 - any matters prescribed in relation to development of the description to which the application relates; and
 - any other matters which the SoS thinks are both important and relevant to the decision.
- 3.2.9. An NPS sets out national policy “in relation to one or more specified descriptions of development” (s5 PA2008). By s5(5) among other things, the policy in an NPS may in particular relate specifically to “a specified description of development”.
- 3.2.10. The WKN Proposed Development falls short of the threshold for it to be examined as a nationally significant infrastructure project. The fact that the SoS made a direction under s35 PA2008 to treat the Proposed Development as one for which development consent is required, does not alter the position in that respect. Neither NPS EN-1 nor NPS EN-3 appear to be worded to include a project subject to a s35 direction.

3.2.11. However it has been held (in *The Queen (oao David Gate on behalf of Transport Solutions Fop Lancaster and Morecambe) v The Secretary of State for Transport v Lancashire County Council [2013] EWHC 2937 (Admin)*) that:

"common sense would in any event dictate, that the decision maker is not precluded from taking into account matters incorporated within national policy statements which are not directly applicable to the development so long as he considers that they are both important and relevant to his decision"

3.2.12. Therefore, although the WKN Proposed Development does not meet the threshold for a nationally significant infrastructure project, matters in NPS EN-1 and NPS EN-3 may be taken into account in relation to that element of the application according to the extent that those matters are both important and relevant to the SoS' decision. The s35 direction is relevant to assessing such importance and relevance.

3.2.13. Neither NPS EN-1 nor NPS EN-3 has been reviewed by the Government under s6 PA2008. However, also pertinent to the importance and relevance of an NPS to a project the subject of a s35 direction (in which s104(3) does not apply), would appear to be the degree to which there has been a significant change in circumstances between the time the statement was designated, on the basis of which the policies set out therein were formulated, and the time of making the decision whether to grant consent. Whether or not the SoS has undertaken a formal review of policies, such an eventual change in circumstances could be potentially capable of being relevant and important factors to take into account.

3.2.14. The remainder of this Chapter addresses the identification and application of relevant NPSs and the LIR, and identifies other legal and policy matters that are capable of being important and relevant considerations.

3.3. NATIONAL POLICY STATEMENTS

3.3.1. NPSs set out Government policy on different types of national infrastructure development. NPSs which are relevant to this application are:

- NPS EN-1: Overarching National Policy Statement for Energy; and
- NPS EN-3: National Policy Statement for Renewable Energy Infrastructure

3.3.2. These NPSs were produced by the Department of Energy and Climate Change (DECC), (now the BEIS) and designated by the SoS for Energy and Climate Change in July 2011.

K3 Proposed Development

3.3.3. In relation to the K3 Proposed Development these NPSs form the primary policy context for this Examination given the statutory duties placed on the decision maker by s104 PA2008. The purpose and broad content of these NPSs is summarised here with subject specific consideration of

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policy arising from them provided in the remainder of this Report, particularly in Chapter 4.

WKN Proposed Development

- 3.3.4. In relation to the WKN Proposed Development the NPSs are important and relevant matters to take into account in the view of the ExA, however the statutory duties as to the applicability of the NPSs do not apply in the same way as for development which is a nationally significant infrastructure project. The primary policy context is nevertheless found in the PA2008, namely s105 which requires the SoS to have regard to LIRs, matters prescribed by regulations in relation to development of the description to which the application relates; and other matters considered important and relevant which will include so far as relevant, the NPSs.

NPS EN-1: Overarching National Policy Statement for Energy

- 3.3.5. NPS EN-1 sets out the Government's policy for delivery of major energy infrastructure projects. Paragraph 3.1.1 states:
- "the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions"*.
- 3.3.6. It also states that applications for development consent should be assessed *"on the basis that the Government has demonstrated that there is a need for those types of infrastructure"* (paragraph 3.1.3). Paragraph 3.1.4 indicates that the SoS *"should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008"*.
- 3.3.7. Section 3.6 of NPS EN-1 acknowledges that fossil fuel generation plays a vital role in providing reliable energy supplies and providing flexibility in response to changes in supply and demand and diversity in energy mix. Government policy is that they must be constructed and operate in line with increasingly demanding climate change goals.
- 3.3.8. Paragraph 4.1.2 of NPS EN-1 indicates that the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs, and that the presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. This presumption is subject to the requirements of s104(3) PA2008.
- 3.3.9. As set out in paragraph 4.1.3 of NPS EN-1, account should be taken of the potential benefits of the proposed development to meeting the need for energy infrastructure, job creation and any longer term or wider benefits. Account should also be taken of potential adverse impacts, including any long term and cumulative ones, as well as measures to avoid, reduce or compensate for them.

- 3.3.10. Whilst other policies, including those contained in the development plan for the area may constitute matters that the SoS may regard as important and relevant to the decision, the primacy of NPSs for NSIPs is clear. In the event of a conflict between policies contained in any other document and those in an NPS, those in the NPS prevail for the purposes of decision making on nationally significant infrastructure (NPS EN-1, paragraph 4.1.5).
- 3.3.11. The presumption in favour of granting consent to applications for energy NSIPs is acknowledged in the NPS itself (paragraph 4.1.2) to be predicated on “the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS”. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.
- 3.3.12. The urgency of the need for new electricity capacity is explained in terms of (paragraph 3.3.15) meeting our obligations for 2050, particularly low carbon energy, whilst it is noted (paragraph 3.3.16) that a failure to decarbonise and diversify energy sources could result in becoming locked into a system of high carbon generation, making it very difficult and expensive to meet 2050 carbon reduction target.
- 3.3.13. Paragraph 3.3.24 states that it is not the Government’s intention to set targets or limits on any new generating infrastructure to be consented in accordance with the energy NPSs.

NPS EN-3: – National Policy Statement for Renewable Energy Infrastructure

- 3.3.14. EN-3 sets out the specific policies relating to renewable energy infrastructure including energy from waste infrastructure. It covers generating stations that generate electricity using waste, including non-renewable sources of waste, as a fuel and that generate more than 50MW of electricity.
- 3.3.15. Paragraph 2.1.2 states that the starting point for decisions is that the need for the infrastructure covered by EN-3 has been demonstrated. Paragraph 2.3.3 states energy from waste generating stations are likely to require significant water resources and should consider how the plant will be resilient to increased risk of flooding and increase risk of drought affecting river flows as part of their ability to adapt to climate change.
- 3.3.16. Section 2.4 deals with good design for energy infrastructure.
- 3.3.17. Paragraph 2.5.2 recognises that the recovery of energy from the combustion of waste will play an increasingly important role in meeting the UK’s energy needs that will form an important element of waste management strategies in England.
- 3.3.18. Paragraph 2.5.9 notes that waste to energy generating stations would take fuel (waste) that would otherwise be sent or landfill and this waste can come from municipal or commercial and industrial sources.

- 3.3.19. Paragraph 2.5.10 states a proportion of the biodegradable waste may be classed as “renewable” for the purposes of Renewable Obligation Certificates (ROCs) eligibility but this is not an issue of relevance to the decision maker. Paragraphs 2.5.12 and 2.5.13 2.5.12 state the fuel throughput capacity of the combustion plant may vary widely. Throughput volumes are not, in themselves, a factor in decision-making but the increase in traffic volumes, any change in air quality, and any other adverse impacts as a result of the increase in throughput should be considered in accordance with the NPS and balanced against the net benefits of the combustion of waste and biomass described in paragraph 2.5.2 and in Section 3.4 of EN-1.
- 3.3.20. EN-3 identifies assessment principles specific to energy from waste (EfW) generating stations, however, these overlap with the generic impacts of EN1: national designations – relating to biodiversity and geological conservation, landscape and visual and historic environment; Green Belts – not relevant to the proposed developments; and Other Locational Considerations.
- 3.3.21. EN-3 also provides details on the potential impacts that are specific to energy from waste generating stations, which expand on some of the generic impacts of EN-1: Air Quality and Emissions; Landscape and Visual; Noise and Vibration; Odour, Insect and Vermin Infestation; Waste Management; Residue Management; and Water Quality and Resources.

3.4. EUROPEAN LAW AND RELATED UK REGULATIONS

Leaving the European Union (EU)

- 3.4.1. The UK has left the EU. The European Union (Withdrawal) Act 2018 provides that, subject to defined exceptions, EU law which is extant up to the point of exit will remain in force and be incorporated into UK law. This report has been drafted on the basis that relevant EU law (primarily environmental law) will be incorporated into UK law at the point when the SoS decides this application.
- 3.4.2. The UK government’s Guidance: Upholding environmental standards from 1 January 2021, states the government is committed to:

“maintaining environmental standards and international obligations [sic] from 1 January 2021. The UK will continue its aim set out in the 25 Year Environment Plan to be the first generation to leave the natural environment in a better state than it inherited it. Existing EU environmental laws will continue to operate in UK law. The following will also continue:

- *the UK’s legal framework for enforcing domestic environmental legislation by UK regulatory bodies or court systems*
- *environmental targets currently covered by EU legislation - they are already covered in UK legislation*
- *permits and licences issued by UK regulatory bodies*

From 1 January 2021, current legislation will be changed to:

- *remove references to EU legislation*
- *transfer powers from EU institutions to UK institutions*
- *make sure the UK meets international agreement obligations”*

The EIA Directive

- 3.4.3. Council Directive 2011/92/EU, amended by 2014/52/EU, on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) defines the procedure by which information about the environmental effects of a project is collated and taken into account by the relevant decision-making body before consent is granted for a development. It applies to a wide range of defined public and private projects.
- 3.4.4. The Proposed Development falls to be considered under the UK legislation related to 2011/92/EU: The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations)

- 3.4.5. The Proposed Development falls within Schedule 2 paragraph 3(a) of the EIA Regulations. The location, scale and nature of the Proposed Development may have the potential to give rise to significant effects on the environment and is considered to be EIA development. The DCO application is therefore required to be accompanied by an ES prepared in accordance with the EIA Regulations.

Revised Waste Framework Directive (rWFD)

- 3.4.6. The rWFD came into force on 12 December 2008, establishing the overarching framework for the management of waste across the EU.
- 3.4.7. Article 4 of the revised EU Waste Framework Directive (Directive 2008/98/EC) sets out five steps for dealing with waste, ranked according to environmental impact - the 'waste hierarchy'. The definitions of each of the stages can be found in Article 3. It gives top priority to preventing waste. When waste is created, it gives priority to preparing it for re-use, then recycling, then recovery, and last of all disposal (e.g. landfill). A very key principle in the backdrop to the hierarchy is to pursue efficient use of resource.
- 3.4.8. Responsibility for compliance with the waste hierarchy lies with processors of waste whose compliance therewith is regulated and monitored by the Environment Agency (EA) (or other permitting authority if located elsewhere in the UK) through their respective Environmental Permits (EPs).
- 3.4.9. The rWFD enshrines compliance with the waste hierarchy into law, transposed into English law by the Waste (England and Wales) Regulations 2011 (2011 Regulations). Any entity which imports, produces, collects, transports, recovers or disposes of waste, or which as

a dealer or broker has control of waste is obliged 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.

- 3.4.10. The revised hierarchy inherent in the rWFD points up the preference for waste prevention. It also confirms that waste treatment involving energy generation is a recovery operation provided it achieves energy recovery efficiency expressed as R1 of 0.65 or more. The way in which the R1 criterion is calculated is set out in the rWFD. The Government has published guidance "Waste incinerator plant: apply for R1 status" on 4 October 2016.
- 3.4.11. To provide a consistent approach to report recycling rates at UK level under the rWFD Waste from Households was first published by the Department for Environment, Food and Rural Affairs (DEFRA) in May 2014, and includes waste from: Regular household collection, Civic amenity sites, 'Bulky waste' 'Other household waste'. It does not include street cleaning/sweeping, gully emptying, separately collected healthcare waste, or asbestos waste. It is a narrower measure than 'municipal waste' and 'council collected waste'.
- 3.4.12. Ratification of the Circular Economy Package (CEP) across the Member States means that a revised legislative framework on waste came into force on 4 July 2018, including changes to the rWFD, as set out in Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (the '2018 Revised WFD'). The objectives of CEP measures are among other matters to reduce the adverse impacts of waste generation and the overall impacts of resource use by ensuring appropriate application of waste hierarchy by placing restrictions for landfilling and incineration, specifically:
- waste separately collected for preparing for re-use and recycling should not be landfilled or incinerated, with the exception of waste resulting from subsequent treatment operations of the separately collected waste for which incineration or landfill is the best environmental outcome.
- 3.4.13. Member States have two years in which to transpose the agreed amendments. The UK Government has indicated it will implement the changes in full. On 30 July 2020 it published its statement setting out the approach the UK will take to transposing the EU's 2020 Circular Economy Package (EU CEP) measures.
- 3.4.14. On 30 July 2020 the government re-affirmed its commitment to recycling 65% of municipal waste by 2035 and set out its approach to transposing the EU CEP into domestic law. It would be mainly the same as the EU CEP, including targets such as sending no more than 10% municipal waste to landfill by 2035. The EU CEP was approved in April 2018 but will no longer apply in the UK following Brexit.

- 3.4.15. Notwithstanding that the Government has in effect published its own CEP there is still a legal obligation to transpose rWFD because the measures became EU law before the UK left the EU. On 25 August 2020 the Waste (Circular Economy) (Amendment) Regulations 2020 were made which are intended in effect to transpose the 2020 CEP in England and Wales.
- 3.4.16. Specifically regarding the waste hierarchy the rWFD added a paragraph requiring Member States to make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy (rWFD Annex IVa). In responding to this requirement the Government asserted in its Circular Economy Package Statement (Annex I – Summary of 2020 CEP measures and proposed approaches to transposition) that *“this will be delivered through existing provisions and, where relevant, measures will be included in Waste Prevention Programmes”, therefore “no new measures are proposed”*.
- 3.4.17. Article 6 of the rFWD specifies when and how end of waste is achieved, as amended under the CEP set out in Our Waste, Our Resources: A Strategy for England 2018 (WRS). A condition found in the rWFD is that Municipal Waste must be collected separately unless it is not “technically, environmentally and economically practicable” (TEEP) to do so. This is transposed by the 2011 Regulations, in particular Regulation 13.
- 3.4.18. Article 10(4) rFWD requires that waste separately collected for preparing for re-use or recycling is not to be incinerated. This is a new addition that requires Member States to ensure that waste materials collected separately for preparing for re-use or recycling must not be incinerated, except for waste resulting from subsequent treatment operations of the separately collected waste for which incineration delivers the best environmental outcome. Measures must be taken to achieve this.
- 3.4.19. The precise proposed approach to meet this requirement is unclear but CEP Policy Statement 30 July 2020, Annex I – Summary of 2020 CEP measures and proposed approaches to transposition states that it:
- 3.4.20. *“Includes legislative changes to prevent waste separately collected for preparing for reuse or recycling from being accepted at waste incinerators”, whilst noting that “This approach will have a positive impact on recycling rates and help to deliver on ambitions ranging from the 25 YEP to climate change commitments.”*

Industrial Emissions Directive (IED)

- 3.4.21. The Industrial Emissions Directive (IED) 20/75/EU applies to all incinerators and other energy-from-waste (EfW) facilities. The directive has been implemented by the Environmental Permitting (England and Wales) Regulations 2016 (as amended) (EP Regulations). Incineration includes treatment techniques such as pyrolysis, gasification or plasma processes, and the use of waste as a fuel or for energy recovery.
- 3.4.22. The IED provides operational limits and controls which plant must meet, including emission limit values (ELVs) for pollutant releases to air. The K3 Proposed Development would fall under the Large Combustion Plant WHEELABRATOR KEMSLEY GENERATING STATION (K3) AND WHEELABRATOR KEMSLEY NORTH (WKN) WASTE TO ENERGY FACILITY: EN010083
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(LCP) requirements of the IED, being greater than 50MW in capacity. In addition, European Best Available Technique (BAT) reference documents (BREF) are published for each industrial sector regulated under the IED, and they include BAT-Achievable Emission Values to be met through the application of BAT. These values may be the same as those published in the IED, or they may be more stringent.

- 3.4.23. The application is considered against the EU Directive and other legislation relating to air quality matters in the relevant sections of Chapter 4 of this Report.

The Birds Directive

- 3.4.24. Council Directive 2009/147/EC on the conservation of wild birds (Birds Directive) is a European nature conservation legislative measure for the protection for all wild bird species naturally occurring in the EU. The Directive places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

The Habitats Directive

- 3.4.25. Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) is a European nature conservation legislative measure.
- 3.4.26. Habitat types requiring the designation of Special Areas of Conservation (SACs) are listed in Annex I of the Directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 network of protected sites. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species.

The Habitats Regulations

- 3.4.27. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are the principal means by which the Habitats Directive and the Birds Directive are transposed into the law of England and Wales. Assessment processes taking place pursuant to these regulations are referred to as Habitats Regulations Assessment (HRA).
- 3.4.28. The types of European site relevant to the Application are as follows:
- SACs designated pursuant to the Habitats Directive;
 - SPAs designated pursuant to the Birds Directive; and
 - Ramsar sites designated under the Ramsar Convention on Wetlands of International Importance.
- 3.4.29. These Directives and Regulations are relevant to this application in view of the presence of European sites within the region of 10km distance

from the Application Site. Chapter 5 gives further detailed consideration to these matters.

The Air Quality Directive

- 3.4.30. Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the Air Quality Directive) requires Member States to assess ambient air quality with respect to sulphur dioxide (SO₂), nitrogen dioxide (NO₂), oxides of nitrogen (NO_x), particulate matter (PM₁₀ and PM_{2.5}), lead, benzene, carbon monoxide and ozone. The Directive aims to protect human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollutants. It sets legally binding concentration-based limit values (LVs) as well as target values to be achieved for the main air pollutants and establishes control actions where these are exceeded. It is transposed into UK statute through the Air Quality Standards Regulations 2010 made under the Environment Act 1995 (EA1995).

The UK Air Quality Strategy

- 3.4.31. EA1995 established a requirement for the production of an Air Quality Strategy (AQS) for improving ambient air quality. The AQS establishes a long-term vision for improving air quality and offers options to reduce the risk to health and the environment from air pollution. It sets UK air quality standards and objectives for the pollutants in the Air Quality Standards Regulations.
- 3.4.32. Individual plans prepared beneath the AQS provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by local authorities aimed at reducing levels of the relevant pollutant.
- 3.4.33. As a consequence of decisions taken over a number of years to broadly promote the growth of diesel vehicles as a proportion of national fleets, combined with a divergence between regulatory and real environment outcomes in the testing of emissions from diesel vehicles, a number of European countries including the UK now experience issues with the achievement of NO₂ LV compliance. NSIP proposals giving rise to air emissions from combustion plant or significant changes to the volume or location of vehicle movements may have implications for the achievement of NO₂ LV compliance.
- 3.4.34. In response to litigation a revised draft Air Quality Plan for NO₂ was published by DEFRA on 26 July 2017² (AQP2017). This refers to Zone Plans for action in a large number of localities³. However, a High Court

² [Air quality plan for nitrogen dioxide \(NO₂\) in the UK](#), DEFRA (2017)

³ [Air Quality Plans for tackling roadside nitrogen dioxide concentrations in Tyneside](#) (UK Zone Plans), DEFRA (2017)

Order was made on 21 February 2018⁴ (ClientEarth No 3), providing that whilst the AQP2017 remains in force, it and its supporting Zone Plans are unlawful because they do not contain measures sufficient to ensure substantive compliance with the Air Quality Directive (AQD) in a number of local authority areas.

- 3.4.35. The remedy required was the production of a supplement to the 2017 plan ensuring necessary information and feasible compliance measures are in place. Following a consultation on possible measures to be included in this supplement in identified locations in May 2018⁵, the Government published the final version of its Clean Air Strategy in January 2019⁶.

The Water Framework Directive

- 3.4.36. Council Directive 2000/60/EC (as amended) establishing a framework for Community action in the field of water policy (the Water Framework Directive (WaterFD)) establishes a framework for water policy, managing the quality of receiving waters. Amongst other objectives, it seeks to prevent the deterioration of and to improve aquatic ecosystems by progressively reducing pollution and mitigating the effects of floods.
- 3.4.37. In implementing the WaterFD, NPS EN-1 states at paragraph 5.15.3 that an ES should describe existing physical characteristics of the water environment affected by the proposed project and any impact of physical modifications to these characteristics. It should also address any impacts of the proposed project on water bodies or protected areas under the WaterFD.
- 3.4.38. The WaterFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. This matter is addressed in the relevant sections of Chapter 4.

Environmental Permitting Regulations

- 3.4.39. The EP Regulations apply to all new installations and implement the EU Directive 2008/1/EC concerning Integrated Pollution Prevention and Control (the IPPC Directive). They define activities that require the operator to obtain an EP from the EA and transpose the requirements of the EU IED into UK legislation. As the Proposed Development falls within s1 Combustion Activity under the EP Regulations, an EP would be required before the Proposed Development commences operation.
- 3.4.40. The EP Regulations provide a regulatory system to ensure a high level of protection of environmental and health impacts, secured by

⁴ [R oao ClientEarth v SoS EFRA, SoST and Welsh Ministers](#) (ClientEarth No 3)

⁵ Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations: [a consultation](#), May 2018, DEFRA and DfT

⁶ Clean Air Strategy, January 2019, BEIS, DEFRA, DfT, DoHSC, HM Treasury, MHCLG.

demonstrating that the proposed approach used adopts BAT to prevent or minimise the effects of the activity on the environment, taking account of relevant local factors. Generating stations exceeding 50MW are covered by the IED and the EP Regulations.

- 3.4.41. As set out in section 1.8 of this Report, the Applicant has confirmed that an amendment to the existing Environmental Permit (K3) would be required, as would an Environmental Permit (WKN); and MMO Licence amendment (WKN) to construct, operate and maintain the Proposed Development and would be sought separately. This matter is addressed further in Chapter 4

3.5. OTHER LEGAL PROVISIONS

United Nations Environment Programme (UNEP) Convention on Biological Diversity 1992

- 3.5.1. Responsibility for the UK contribution to the Convention on Biological Diversity lies with DEFRA who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.5.2. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the UNEP Convention on Biological Diversity has to be taken into account in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation. The provisions on EIA and transboundary matters with regard to impacts on biodiversity referred to in this Chapter, satisfies the requirements of Article 14 of the Convention (Impact Assessment and Minimising Adverse Impacts).

The Wildlife and Countryside Act 1981

- 3.5.3. The Wildlife and Countryside Act 1981 (WACA1981) is the primary legislation which protects certain habitats and species in the UK. It provides for and protects wildlife, nature conservation, countryside protection, National Parks, and Public Rights of Way (PRoWs) including for the notification, confirmation, protection and management of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies (SNCBs) in the UK. The SNCB for England is Natural England (NE).
- 3.5.4. WACA1981 contains provisions relevant to Ramsar sites, National Nature Reserves and Marine Nature Reserves. If a species protected under the Act is likely to be affected by the development, a protected species licence will be required from NE. Sites protected under the Act (including SSSIs) which are affected by the proposed development must also be considered. The effects of development on the PRoW network are also relevant.

- 3.5.5. WACA1981 is relevant to the application in view of the sites and species identified in relevant sections of the ES [APP-063, REP2-024, REP2-032]. Relevant considerations are discussed in Chapter 4 of this Report.

Natural Environment and Rural Communities Act 2006

- 3.5.6. The Natural Environment and Rural Communities Act 2006 (as amended) (the NERC Act) makes provision for bodies concerned with the natural environment and rural communities, including in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions have regard, so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with the biodiversity duty, regard must be had to the UNEP Convention on Biological Diversity.

- 3.5.7. I have had regard to the NERC Act and the biodiversity duty in all relevant sections of Chapters 4 and 5 of this Report.

National Parks and Access to the Countryside Act 1949

- 3.5.8. The National Parks and Access to the Countryside Act 1949 provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty. It also establishes powers to declare National Nature Reserves and for local authorities to establish Local Nature Reserves (LNRs).

The Countryside and Rights of Way Act 2000

- 3.5.9. The Countryside and Rights of Way Act 2000 (as amended) includes provisions in respect of PRow and access to land. The Act also improved provisions for the protection and management of SSSIs and other designations under the Wildlife and Countryside Act 1981.

The Planning (Listed Buildings and Conservation Areas) Act 1990

- 3.5.10. The Planning (Listed Buildings and Conservation Areas) Act 1990 empowers the SoS to maintain a list of built structures of historic or architectural importance and sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.
- 3.5.11. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest which it possesses as set out in Chapter 4.

Ancient Monuments and Archaeological Areas Act 1979

- 3.5.12. The Ancient Monuments and Archaeological Areas Act provides for Scheduled Monuments to be protected and for the maintenance of a list of Scheduled Monuments. It also imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a designated Scheduled Monument. For non-designated archaeological assets, protection is afforded through the development management process as established both by the Town and Country Planning Act 1990 and the National Planning Policy Framework.

Marine and Coastal Access Act 2009

- 3.5.13. The Marine and Coastal Access Act 2009 (MCAA2009) introduced the production of marine plans and the designation of Marine Conservation Zones (MCZ) in United Kingdom waters. MCAA2009 provides for the preparation of the Marine Policy Statement (MPS) and Inshore and Offshore Marine Plans. PA2008 s104, subsection (2)(aa) requires the SoS to have regard to the appropriate marine policy documents (if any), determined in accordance with s59 of MCAA2009. The relevant policies for the purposes of s59 are the MPS and any marine plan adopted by the relevant SoS within the policy framework set by the MPS.
- 3.5.14. In 2013 the SoS for Environment, Food and Rural Affairs designated 27 MCZs, including The Swale Estuary MCZ. The implications of the Proposed Development on the MCZ are addressed in Chapters 4 and 5.

Environmental Protection Act 1990

- 3.5.15. Section 79(1) of the Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. Article 14 dDCO [REP7-003] contains provisions relating to proceedings in respect of statutory nuisance, discussed further in Chapter 7 of this Report.

Control of Pollution Act 1974

- 3.5.16. The Control of Pollution Act 1974 (CoPA) provides the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the local planning authority with instructions to cease work until specific conditions to reduce noise have been adopted. Section 61 of the CoPA provides a means for applying for prior consent to carry out noise generating activities during construction. Once prior consent has been agreed under s61, a s60 notice cannot be served provided the agreed conditions are maintained on-site. The legislation requires Best Practicable Means to be adopted for construction noise on any given site.

Noise Policy Statement for England

- 3.5.17. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise.

- 3.5.18. The Explanatory Note within the NPSE provides further guidance on defining 'significant adverse effects' and 'adverse effects'. One such concept identifies 'Lowest Observable Adverse Effect Level (LOAEL)', which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: Significant Observed Adverse Effect Level (SOAEL), which is the level above which significant adverse effects on health and quality of life occur, and No Observed Effect Level (NOEL), which is the level below which no effect can be detected.
- 3.5.19. When assessing the effects of development on noise matters, the aim should firstly be to avoid noise levels above the SOAEL, and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

Water Resources Act 1991, Flood and Water Management Act 2010, Water Acts 2003 and 2014, Land Drainage Act 1991

- 3.5.20. The above Acts set out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures, discharge and pollution, and for drainage management related to non-main rivers. The application is considered against such matters in Chapter 4 of this Report.

The UK Biodiversity Action Plan

- 3.5.21. Priority habitats and species are listed in the UK Biodiversity Action Plan. The plan is relevant to the application given the biodiversity and ecological matters discussed in Chapters 4 and 5 of this Report.

Climate Change

- 3.5.22. PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. This duty has been addressed throughout Chapter 4 of this Report. The Climate Change Act 2008 (CCA2008) also establishes statutory climate change projections and carbon budgets.

The Public Sector Equality Duty

- 3.5.23. The Equalities Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share and who do not share a protected characteristic. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making.

3.6. MADE DEVELOPMENT CONSENT ORDERS

3.6.1. The Applicant responded to a written question ExQ3.6.8 [PD-014] by referring to and supplying copies of the following made DCOs to support their position:

- Ferrybridge Multifuel 2 (FM2) Recommendation Report to Secretary of State, D5 Submission - Applicant's Response to ExA's Further Written Questions (ExQ3) Appendix E – [REP5-016];
- Ferrybridge Multifuel 2 (FM2) Decision of Secretary of State, D5 Submission - Applicant's Response to ExA's Further Written Questions (ExQ3) Appendix E –[REP5-017];
- North London Heat and Power Project (NLHPP) Recommendation Report to Secretary of State, D5 Submission, Applicant's Response to the ExA's Further Written Questions (ExQ3) Appendix G [REP5-018]; and
- North London Heat and Power Project (NLHPP) Decision of Secretary of State, D5 Submission, Applicant's Response to the ExA's Further Written Questions (ExQ3) Appendix G [REP5-019].

3.6.2. In addition the Applicant [REP2-009] in reply to Q1.1.2. [PD-008] referred to other applications where a direction was made under s35 PA2008:

- Triton Knoll Electrical System (offshore wind farm connection);
- Nautilus Interconnector (submarine electricity cable); and
- Aquind Interconnector (submarine electricity cable).

3.7. TRANSBOUNDARY EFFECTS

3.7.1. Under Regulation 32 of the EIA Regulations and on the basis of the information available from the Applicant, the SoS is not of the view that the Proposed Development is likely to have significant effects on the environment in another European Economic Area (EEA) state.

3.7.2. In reaching this view the SoS has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 – Transboundary Impacts and Process). Transboundary issues consultation under Regulation 32 of the EIA Regulations was therefore not considered necessary. It is stated in paragraph 6.2.12 of the Scoping Report [APP-013] that it was not considered that there is any potential for significant transboundary effects to occur as a result of the project.

3.7.3. The Inspectorate's Scoping Opinion [APP-014], paragraph 3.3.18, noted that the Scoping Report [APP-013] did note that for some chapters "*the matter will be reviewed following the results of the modelling exercises, which is welcomed. The final position should be clearly stated in the ES.*" The Response to PINS Scoping Opinion [APP-015] merely restated the views of the Inspectorate's Scoping Opinion. Although the final position does not appear to be clearly stated as requested, there is no evidence that the Proposed Development would be likely to have significant effects on another EEA State.

3.8. OTHER RELEVANT POLICY STATEMENTS

- 3.8.1. Other policies that give rise to important and relevant considerations for the SoS are referred to in Chapter 4 in the sections on policy considerations relevant to the particular issues examined.

3.9. THE NATIONAL PLANNING POLICY FRAMEWORK

- 3.9.1. The National Planning Policy Framework (NPPF) was originally published in 2012. A revised NPPF was published on 19 February 2019, which is an important and relevant matter. Paragraph 213 of the revised NPPF states that due weight should be given to existing policies according to their degree of consistency with the NPPF with the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.
- 3.9.2. The NPPF, together with the accompanying Planning Practice Guidance (PPG), contains statements of planning policy and practice and how these are expected to be applied. Paragraph 5 of the NPPF notes that it is not a source of individual or project-specific policy for NSIP decision-making.

3.10. LOCAL IMPACT REPORTS

- 3.10.1. Section 104(2) of PA2008 states that in deciding an application for development consent where a NPS has effect the SoS must have regard to any LIR within the meaning of s60(3) submitted to the SoS before the deadline specified in a notice under s60(2). By s105 and for decisions in cases where no national policy has effect, a similar duty applies.
- 3.10.2. Under s60(2) of PA2008 there is a requirement to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given in the Rule 8 Letter [PD-007].
- 3.10.3. LIRs were submitted at D1 by SBC [REP1-012] and KCC [REP1-011]. Their contents are considered in Chapter 4 of this Report.

3.11. THE DEVELOPMENT PLAN

- 3.11.1. As outlined in the Applicant's Planning Statement [APP-057] and the LIR [REP2-036], for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004, the development plan for the area of the Application Site comprises the Kent Minerals and Waste Local Plan 2013-30 (July 2016) (KMWLP) and Bearing Fruits 2031: The Swale Borough Local Plan (July 2017) (Swale Local Plan).
- 3.11.2. Development plan policies relevant to the Proposed Development are referred to in the various planning matters dealt with under Chapter 4.
- 3.11.3. Policies from neighbouring development plans are touched upon in the context of the Waste Hierarchy, considered further in Chapter 4. Apart from these issues, I consider that the Proposed Development would not give rise to important and relevant impacts in neighbouring local authority areas.

- 3.11.4. Paragraph 4.1.5 of NPS EN-1 states that if there is any conflict between development plan documents and an NPS then the NPS prevails “*given the national significance of the infrastructure*”. Where an NPS has effect in relation to development of the description to which the application relates, this precedence is given statutory effect in the PA2008.
- 3.11.5. However where an NPS does not have effect (in the case of the WKN Proposed Development) primacy should be accorded to the development plan as discussed further in Chapter 6 of this Report.
- 3.11.6. The SoCG between the Applicant and KCC [REP8-013] identified conflicts of views over compliance with development plan documents, and the draft SoCG between the Applicant and SBC [REP5-006] identify disputes related to air quality, traffic and transportation and climate change which potentially involve conflicts with development plan documents. These matters are considered further in Chapter 4.
- 3.11.7. Other non-statutory planning policy documents identified as relevant to the consideration of this application include:
- Memorandum of Understanding (SEWPAG) Appendix to [REP3-019]);
 - Local Transport Plan 4: Delivering Growth without Gridlock (2016-2031) section 4.2.36, ES Chapter 4 [APP-056]; and
 - SBC Climate and Ecological Emergency Action Plan (EEAAP) D4 Submission, Appendix 1 - Climate & Ecological Emergency Action Plan [REP4-026].

3.12. THE SECRETARY OF STATE’S POWERS TO MAKE A DCO

- 3.12.1. Consideration as been given throughout the Examination of whether changes to the application have rendered it a different application and whether the SoS would have power under s114 of PA2008 to make a DCO having regard to the development consent applied for.
- 3.12.2. The document entitled ‘*Planning Act 2008: examination of applications for development consent*’, (March 2015) published by the former Department for Communities and Local Government, provides guidance at paragraphs 109 to 115 in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act, 2011 was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms in which it can be made.
- 3.12.3. Being mindful of this context during the Examination, I am satisfied that there are no resulting material changes to that which was applied for. I am therefore of the view that the SoS has the power to make a DCO as recommended in Chapter 7 to this report.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

- 4.1.1. As required by section s88 of PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EP Rules), as Examining Authority (ExA) I made an Initial Assessment of the Principal Issues (IAPI) arising from an initial assessment of the application and of the Relevant Representations (RRs) received. This was done within 21 days of the day after receipt of the s58 certificate of compliance with s56 of PA2008 provided by the Applicant [OD-002].
- 4.1.2. Annex B of the Rule 6 Letter published on 21 January 2020 [PD-006] set out the IAPI. The issues identified, which did not intend to imply an order of importance, were as follows:
- Environmental Impact Assessment
 - Air Quality
 - Archaeology and Cultural Heritage
 - Ecology
 - Habitats Regulations Assessment
 - Greenhouse Gases and Climate Change
 - Ground Conditions
 - Landscape and Visual Impact
 - Noise and Vibration
 - Traffic and Transport
 - Water Environment
 - Draft Development Consent Order (dDCO)
- 4.1.3. On 26 February 2020 in the Rule 8 - notification of timetable for the examination [PD-007], following the request of KCC at the Preliminary Meeting I decided to treat as important and relevant issues for the Examination matters relating to:
- Waste recovery capacity, management of waste hierarchy and related policy matters.
- 4.1.4. In addition to the planning issues arising from the IAPI, the remainder of this Chapter addresses other relevant matters that arose during the Examination. For each issue, the effect of the Proposed Development on that particular issue and any mitigation measures proposed are summarised. Comments are made on matters raised in RR, Written Representations (WR), Statements of Common Ground (SoCGs) and the Local Impact Reports (LIRs) on the planning issues. Where relevant, the Applicant's response to those comments are reported and conclusions drawn.
- 4.1.5. Matters relating to the dDCO are addressed in this Chapter within the framework of the individual planning issues to which they relate. The DCO itself is reported on in Chapter 7 of this Report.
- 4.1.6. In addition to the planning issues, this Chapter also addresses the following topics arising from the conduct of the Examination:
- issues arising in written and oral submissions;
 - issues arising in the LIR;
 - conformity with NPSs;

- conformity with the development plan;
- the application of other policies;
- the principle of development;
- consideration of previously made DCOs;
- Environmental Impact Assessment (EIA);
- HRA; and
- Environmental Permitting Regime.

4.1.7. Having set out responses to these matters in broad terms between Sections 4.2 to 4.9 of this Chapter, the planning issues identified in paragraph 4.1.2-3 above and the matters of detail arising from them are considered in Sections 4.10 to 4.19.

4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

Introduction

4.2.1. The application resulted in community concern exemplified by the relevant representations of individuals noted below in this section, and the submissions of Minster-on-Sea Parish Council (MSPC) the closest elected tier of local government to the community representing the interests of approximately 17,000 residents [REP1-018, REP4-024].

4.2.2. MSPC objected to the application on grounds of impact on traffic flow, what it saw as the effective doubling of the current level of waste coming into the area and the knock on effect on the highway network, especially Grovehurst A249 Junction and M2 junction during peak periods. Concern was also raised as to the public health implications of associated vehicular exhaust emissions plus air-borne toxic flue gas emissions.

4.2.3. John C Twiselton CEng MIMechE, a former MSPC councillor lodged independently a written submission [REP1-017] supporting MSPC's concerns at what was alleged would be an increase in traffic congestion at the two major pinch points, the Grovehurst A249 Junction and M2 junction.

4.2.4. Representations were received from KCC and SEWPAG contending that the Proposed Development was inappropriate in policy terms and opposition to it was maintained throughout the Examination.

Relevant Representations (RRs)

4.2.5. RRs [RR-001 to RR-009] were submitted as follows.

- Environment Agency [RR-001]
- Health and Safety Executive [RR-002]
- Public Health England [RR-003]
- Highways England [RR-004]
- Historic England [RR-005]
- Natural England [RR-006]
- Surrey County Council (SCC) [RR-007]
- Michael Vick [RR-008]
- Donna Clarke [RR-009]

4.2.6. SCC commented that it and other planning authorities in the south east are planning for waste on the basis of net self-sufficiency and not on the basis that Surrey's requirements will be met by facilities in Kent. It was producing a new Surrey Waste Local Plan (SWLP) with its Examination in Public in September 2019 and would be consulting on Main Modifications in January 2020. At D3 the Applicant in its Response to the Examining Authority's Further Written Questions (ExQ1A) provided Appendix 1.6 – Surrey Waste Plan 2008 [REP3-007] and Appendix 1.5, the Surrey 2 Hour Drive Time Map [REP3-006].

4.3. ISSUES ARISING IN THE LOCAL IMPACT REPORTS

4.3.1. Section 104(2) of PA2008 requires the SoS to consider the contents of an LIR when making a decision on an application.

4.3.2. SBC produced a LIR [REP2-036] which was submitted at D2. SBC had no adverse comments relating to the Proposed Development. However in referring to its LIR in further submissions made at D4 [REP4-025] SBC made further representations dated 5 May 2020, taking into account in particular the detailed submissions made by KCC. On the issues of highways impact and climate change, SBC therefore:

- supported KCC's objections relating to the highways impacts and the strategy for reviewing use of rail and water as alternative means for transportation; and
- in light of the SBC Climate and Ecological Emergency Action Plan (EEAAP) being approved by the Council's Cabinet on 22 April 2020 [REP4-026], is concerned that the Proposed Development would have significant adverse impacts upon carbon emissions within the Borough and is not required to meet waste requirements in the latest Waste Needs Assessment, which was based upon the policy of providing self-sufficiency for the disposal of waste in Kent;
- supported KCC's objection that the Proposed Development would not be compatible with its waste hierarchy and promotion of recycling; and
- is concerned HGV movements could increase through AQMAs and worsen air quality, contrary to Policy DM6 of the adopted Swale Local Plan.

4.3.3. In its LIR [REP1-011] KCC as the Local Highway Authority objected to the application, that:

- the Transport Assessment (TA) did not present a robust assessment of the traffic profile;
- the operation of the K3 Proposed Development and the construction and operation of WKN Proposed Development would not have a significant impact on the highway network and the lack of any mitigation proposed to redress the impacts
- therefore sought a requirement that no works to the WKN Proposed Development are commenced until both the M2 Junction 5 and A249/Grovehurst Road improvement works are completed.

- 4.3.4. In respect of mitigation of transport impacts as a government aim for sustainable development, KCC also noted the Applicant was in control of the contracts it accepts, and whilst waste would arrive from larger commercial waste operators, there should be greater collaboration with waste suppliers to provide local waste collection points to facilitate the sustainable transfer of waste.
- 4.3.5. As Waste Planning Authority (WPA) for the county of Kent, the Kent Minerals and Waste Local Plan (KMWLP) policy framework was predicated on a principle of 'net self-sufficiency' and the management of waste in accordance with the Waste Hierarchy, an approach found sound following independent examination by the Planning Inspectorate. The capacity gap identified in the adopted KMWLP was met with the implementation of planning permission SW/10/444 and the waste capacity to feed the K3 plant. The LIR looked forward to the Planning Inspector's report on the Early Partial Review) of the KMWLP (subsequently published and submitted by KCC at D4 [REP4-016].

4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS (NPSs)

Introduction

- 4.4.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with the relevant NPSs, identified in Chapter 3 above as being NPS EN-1 and NPS EN-3.
- 4.4.2. A distinction is drawn within the Proposed Development between Project K3 and Project WKN in terms of whether the application must be determined in accordance with any relevant NPSs. As I have set out in Chapter 3, whilst this is true of Project K3, there is no such obligation in relation to Project WKN.
- 4.4.3. Of relevance to the consideration of NPSs, and applicable to the Proposed Development, is the effect of s106 PA2008 by which the SoS has a discretion, if they consider that representations including evidence relate to the merits of a NPS, to disregard such representations or evidence.
- 4.4.4. In Section 3.2 of this Report I have set out the relationship between s104 and s105 PA2008 as they apply to the Proposed Development. In this section I assess whether in principle the Application conforms with the NPSs, however this is subject to the detailed considerations and weighing the balance of any adverse effects against benefits in Section 6 of this Report.

NPS EN-1 and NPS EN-3

- 4.4.5. The Applicant analysed the performance of the Proposed Development against relevant policies in NPS EN-1 and NPS EN-3 within its Planning Statement [APP-082]. These documents the principle of, and need for, the Proposed Development within the framework provided by NPSs.

- 4.4.6. NPS EN-1 makes clear that there is a need for the UK to move away from fossil fuels for electricity generation. Nevertheless, it recognises the urgent need for energy infrastructure to achieve energy security with substantial weight being given to the contribution which projects would make towards satisfying this need. Paragraphs 3.6.1 and 3.6.2 of NPS EN-1 state that there is also a need for a mix of energy sources including fossil fuels to meet demand in a flexible manner.
- 4.4.7. However and, as concluded in Chapter 7 of this Report, the assessment provided by the Applicant of conformity of the Proposed Development with the waste hierarchy is insufficiently robust, does not take into account Annual Monitoring Reports (AMRs) of relevant WPAs and consequently fails to demonstrate that it would not be contrary to the application of the waste hierarchy in Kent as required by NPS EN-3.

Conclusion on NPS Policy

- 4.4.8. The compliance of the Proposed Development has been examined against policy detail and tests applicable to individual planning issues as set out in relevant NPS paragraphs, and this analysis is carried out in sections 4.10 to 4.19 below.
- 4.4.9. Taking all relevant documents and policies into account, the need for the K3 Proposed Development is established through the NPSs. The WKN Proposed Development generally conforms to high-level policy in NPS EN-1 and NPS EN-3. In Sections 4.10 to 4.19 of this Report I analyse the generic impacts of the Proposed Development in light, amongst other things, of the NPS policies.

4.5. CONFORMITY WITH THE MARINE POLICY STATEMENT AND MARINE PLANS

- 4.5.1. Where a NPS has effect, the SoS in making their decision, must have regard to the appropriate marine policy documents (if any) determined in accordance with Section 59 of the Marine and Coastal Access Act 2009.
- 4.5.2. The MMO submission [REP3-017] pointed out that the South East Inshore Marine Plan (SEIMP) is now a material consideration following consultation with the SoS and the MMO expected a robust and comprehensive marine plan policy assessment to form part of this application. In ExQ2 [PD-012] I asked the Applicant to explain the extent to which and where in the application documents the Marine Plan had been addressed.
- 4.5.3. The Applicant responded [REP4-006], noting the status as a material consideration of the 'Draft for Consultation' version of the SEIMP which was released in January 2020. In its response the Applicant reviewed that accordingly in respect of the surface water outfall elements of the Proposed Development.
- 4.5.4. The review is set out at paragraphs 14.1.2 to 14.1.11 of [REP4-006], noting that the outfalls would not generate any significant impacts on

seascapes or the landscape under draft Policy SE-SCP-1, and draft Policy SE-CC-2 would be complied with in that the Proposed Development would be resilient to the impacts of climate change and coastal change. As the K3 and WKN outfalls would only discharge clean surface water draft Policy SE-WQ-1 would be complied with in that no deterioration of water quality would result, and would be controlled by any permit issued for WKN and amendment to the K3 permit.

- 4.5.5. Draft Policy SE-MPA-1 would be complied with as the Proposed Development was not considered to have the potential to impact on any element of the marine protected area, specifically the Swale Ramsar and Swale Estuary Marine Conservation Zone. Draft Policies SE-BIO-1, SE-BIO-2 and SE-BIO-3 were considered as to possible impacts on the distribution of priority habitats and priority species, on native species or habitat adaptation or connectivity or on coastal habitats/ecosystem functioning to demonstrate that they will follow the avoid, minimise, mitigate and compensation approach, however no such impacts were expected in the case of the outfalls.
- 4.5.6. Draft Policy SE-UWN-1 requires any proposal which would generate impulsive sound to contribute data to the UK Marine Noise Registry and SE-UWN-2 requires proposals which would result in the generation of impulsive or non-impulsive noise must demonstrate that they will follow the “avoid, minimise and mitigate” approach. There would be no noise effects arising from the operation of the outfalls but the construction of them using a vibro hammer technique does have the potential to create noise and a controlling condition requiring a soft start approach is therefore imposed within the Marine Licence. As such the proposals would accord with SE-UWN-1 and SE-UWN-2.
- 4.5.7. In respect of draft Policy SE-CE-1, there were no cumulative adverse effects identified with other proposals. It was concluded that the Proposed Development is not considered to conflict with any element of the emerging SEIMP.
- 4.5.8. In its D5 submission at point 2.30 [REP5-030] the MMO welcomed the Applicant’s consideration of the SEIMP. Matters of detail concerning the outfall are considered in Chapters 4 and 7, however no issue was taken by the MMO or other IP on the conformity of the draft SEIMP policies. Insofar as they are to be considered under s59 MCAA2009 or otherwise, I am satisfied the Proposed Development would generally be in conformity therewith.

4.6. CONFORMITY WITH DEVELOPMENT PLAN

- 4.6.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with relevant development plan policies.
- 4.6.2. Sections 4.10 to 4.19 of this Report identify the development plan policies described by the Applicant in its Planning Statement [APP-082] and KCC and SBC in their LIRs [REP1-011, REP1-012] as relevant to the

assessment of the Proposed Development. The Examination was not referred to any relevant plan policies arising from Neighbourhood Plans.

4.6.3. I have reviewed the development plan policies thus identified. There are instances of policy support for the Proposed Development in relation to sustainable development and the drive towards a strong competitive economy. Furthermore, no instances of unaddressed policy conflict have been identified in respect of the relevant requirements of environmental protection, water quality, biodiversity conservation, landscape, transportation and archaeology policies which are met.

4.6.4. There are no issues arising from development plan policies that necessarily conflict with relevant policy directions arising from NPSs. Whilst NPSs are the primary source of policy for a decision on an NSIP under PA2008 such as Project K3, development plan policies take precedence for a decision on Project WKN. None of the development plan policies indicate against the directions set in NPS EN-1 or NPS EN-3 and it follows that effect can be given to all relevant development plan policies in a manner which reinforces and adds local context and detail to NPS compliance where the NPSs apply.

4.7. APPLICATION OF OTHER POLICIES

4.7.1. Other relevant sources of policy that give rise to important and relevant considerations for the SoS include policies raised and referred to by KCC and SBC in its LIRs [REP1-011, REP1-012], SEWPAG's Memorandum of Understanding (MoU) [REP2-043] and by the Applicant in its Planning Statement [APP-082].

4.7.2. Whilst NPSs are the primary source of policy for a decision on an NSIP under PA2008, such as Project K3 within the Proposed Development, other local policies are capable of being important and relevant considerations.

4.7.3. Project WKN within the Proposed Development is not an NSIP, so the NPSs are considered together with other policies. The Applicant's Planning Statement [APP-082] states at paragraph 13.1.2:

"In decisions made under Section 105, the presumption in favour of determining the application in accordance with the NPS is absent and the relevant NPS is considered to be important and relevant alongside other national and local policies."

4.7.4. However primacy is given to the statutorily adopted development plan in respect of the WKN Proposed Development.

4.7.5. Nothing arising from these or other relevant policies referred to that necessarily conflicts with relevant policy directions arising from NPSs and it follows that effect can be given to all relevant policies where they are applicable to the particular element of the Proposed Development.

4.8. ENVIRONMENTAL IMPACT ASSESSMENT

Introduction

- 4.8.1. This section addresses the documents comprising the ES. During the Examination the ES was amended and those changes that relate to the content of the ES are considered to constitute '*any other information*' as defined by the EIA Regulations. I have concluded that the amendments are relatively minor alterations, and that the overall environmental information submitted is sufficient for the SoS to take into consideration before making a decision in compliance with the EIA Regulations.
- 4.8.2. This section also records the environmental management documents proposed to be used by the Applicant in tandem with DCO provisions to secure the construction and operation of the Proposed Development and the application of mitigation within the worst-case parameters (the Rochdale Envelope) assessed in the ES.

The Submitted ES

- 4.8.3. An ES was provided as part of the application submission. The documents submitted are:
- Chapter 1 – Introduction;
 - Chapter 2 – Site Description, Proposed Development and Alternatives;
 - Chapter 3 – Methodology;
 - Chapter 4 – Traffic and Transport;
 - Chapter 5 – Air Quality;
 - Chapter 6 – Climate Change;
 - Chapter 7 – Human Health;
 - Chapter 8 – Noise and Vibration;
 - Chapter 9 – Ground Conditions;
 - Chapter 10 – Water Environment;
 - Chapter 11 – Ecology;
 - Chapter 12 – Landscape and Visual Impact;
 - Chapter 13 – Cultural Heritage;
 - Chapter 14 – Summary Tables;
 - Chapter 15 – Glossary;
- 4.8.4. The ES is accompanied by non-technical summaries [APP-068, APP-069] and appendices which supports the content and findings of the EIA:
- APP-020 Appendix 4.1 Transport Assessment Part 1
 - APP-021 Appendix 4.2 Transport Assessment Part 2
 - APP-022 Appendix 4.3 Transport Assessment Part 3
 - APP-023 Appendix 4.2 Draft Construction Traffic Management Plan
 - APP-024 Appendix 4.3 – Draft Travel Plan
 - APP-025 Appendix 5.1 – Air Quality – Construction Assessment Methodology
 - APP-026 Appendix 5.2 – Air Quality – Stack Height Determination
 - APP-027 Appendix 5.3 – Air Quality – Baseline
 - APP-028 Appendix 5.4 – Air Quality – Assessment of Impacts on Ecological Receptors
 - APP-029 Appendix 5.5 – Air Quality – Traffic Impacts
 - APP-030 Appendix 5.6 - Odour Assessment Methodology

- APP-031 Appendix 6.1 - Proposed Development Carbon Assessment
- APP-032 Appendix 6.2 - Proposed Development Carbon Assessment
- APP-033 Appendix 6.3 - Practical Effect Carbon Assessment
- APP-034 Appendix 7.1 - Noise Survey Results
- APP-035 Appendix 7.2 – Proposed Development Construction Noise Model Input Data
- APP-036 Appendix 7.3 - Proposed Development Construction Noise and Vibration Assessment
- APP-037 Appendix 7.4 - Operational Noise Model
- APP-038 Appendix 7.5 - Operational Noise Assessment
- APP-039 Appendix 8.1 – Human Health Baseline
- APP-040 Appendix 9.1 – Desk Study Ground Conditions Preliminary Risk Assessment
- APP-041 Appendix 10.1 – Flood Risk Assessment
- APP-042 Appendix 10.2 – Drainage Design Philosophy
- APP-043 Appendix 11.1 - Kemsley Ornithological Surveys
- APP-044 Appendix 11.2 – Habitats Regulation Assessment Report
- APP-045 Appendix 11.3 – Ecological Baseline Surveys 2007 - 2009
- APP-046 Appendix 11.4 – Ecological Mitigation and Management Plan
- APP-047 Appendix 11.5 – Ecological Mitigation Report
- APP-048 Appendix 11.6 – Natural England Discretionary Advice
- APP-049 Appendix 11.7 - Marine Licence Surface Water Outfall to Swale
- APP-050 Appendix 11.8 - External Lighting
- APP-051 Appendix 12.1 - LVIA Scoping Correspondence with KCC
- APP-052 Appendix 13.1 - Desk Based Heritage Assessment

4.8.5. Updated ES docs (which superseded the application versions) were submitted throughout the Examination; and Addendums [APP-069 to APP-078].

4.8.6. During the Examination there were no submissions raising concerns about the overall adequacy of the EIA process and the ES. Individual submissions raising subject-specific issues bearing on individual planning issues are addressed in 4.10 to 4.19 below as necessary.

4.8.7. The ES and associated information submitted by the Applicant during the Examination have provided an adequate assessment of the environmental effects of the Proposed Development which meets the requirements of the EIA Regulations. The ES adequately describes the Rochdale envelope approach to the Proposed Development and secures its delivery within that envelope through the DCO. Full account has been taken of all environmental information in the assessment of the application and in the recommendation to the SoS.

4.9. HABITATS REGULATIONS ASSESSMENT

4.9.1. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects on European sites and is therefore subject to HRA. It is a convention in ExA recommendation reports to inform SoS decisions prepared under the PA2008, with a separate record of considerations relevant to HRA to be provided. This has been set out in Chapter 5 of this Report below.

4.9.2. However it is appropriate here to record that I have considered all documentation relevant to HRA as required by Section 4.3.1 of NPS EN-1 and have taken it into account in the conclusions reached here and in the case for development consent (Chapter 6 below). There are no matters relevant to the HRA which require to be considered as part of the reasoning in respect of planning issues set out in this Chapter. Further, project design and mitigation proposals included in the ES and secured in the Recommended DCO and Alternative Recommended DCO have been fully considered for HRA purposes.

4.10. WASTE HIERARCHY AND FUEL AVAILABILITY

Policy Considerations

National Policy Statements

- 4.10.1. The NPS, both EN-1 and EN-3 identify energy from waste as a type of infrastructure that is needed. Paragraph 2.2.4 NPS EN-1 states that the:
- 4.10.2. *“role of the planning system is to provide a framework which permits the construction of whatever Government – and players in the market responding to rules, incentives or signals from Government – have identified as the type of infrastructure we need in the places where it is acceptable in planning terms.”*
- 4.10.3. At paragraph 2.5.64, NPS EN-3 makes clear that waste combustion generating stations *“need not disadvantage reuse or recycling initiatives where the proposed development accords with the waste hierarchy.”* NPS EN-3 makes clear that for waste combustion generating stations, there should be an *“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”* (Paragraph 2.5.69).
- 4.10.4. The assessment should according to NPS EN-3 paragraphs 2.5.66-69.
- examine the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plan or plans where a proposal is likely to involve more than one local authority.
 - 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.
 - 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
- 4.10.5. NPS EN-3 paragraph 2.5.70 requires that the ExA should be satisfied, with reference to the relevant waste strategies and plans, that:
- 4.10.6. *“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 [ExA] 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."

- 4.10.7. Member States of the EU are required by Article 4(1) of the to apply the hierarchy in a priority order 'in waste prevention and management legislation and policy'. This requirement remains following EU-wide agreement on the Circular Economy Package (CEP), see 2.1.4 Waste Hierarchy and Fuel Availability Assessment (WHFAA) [APP-086].

Government review of waste policy in England 2011

- 4.10.8. This document published on 4 June 2011 contains actions and commitments which together set a clear direction towards a zero-waste economy. It acknowledges that:

- 4.10.9. *"...while energy from waste has the potential to deliver carbon and other environmental benefits over sending waste to landfill, energy recovery also produces some greenhouse gas emissions. It is important to consider the relative net carbon impact of these processes, and this will depend on the composition of feedstocks and technologies used"*

Waste and Resources Strategy 2018 (WRS)

- 4.10.10. The WRS and the Evidence Annex [REP3-010, REP3-011] set out "how our stock of material resources by minimising waste, promoting resource efficiency and moving towards a circular economy". It aims to maximise the value of resource use and minimise waste and its impact on the environment. There are five strategic ambitions (page 17) to:

- Work towards all plastic packaging placed on the market being recyclable, reusable or compostable by 2025;
- Work toward eliminating food waste to landfill by 2030;
- Eliminate avoidable plastic waste over the lifetime of the 25 Year Environmental Plan;
- Double resource productivity by 2050; and
- Eliminate avoidable waste of all kinds by 2050.

- 4.10.11. And it recognises that

"Energy from waste (EfW) technologies include the controlled combustion of municipal waste or products derived from municipal waste in specialised plant specifically to generate power and/or heat from waste feedstock. (fn21 p20)."

- 4.10.12. Among the aims to promote UK-based recycling and export less waste to be processed abroad, is to "drive greater efficiency of Energy from Waste (EfW) plants". This includes a commitment (p77) to ensure all future EfW plants achieve recovery status. 'R1' Recovery status acts as a proxy for the energy-generating efficiency of facilities. Facilities which achieve the status are classed as a recovery operation for the purposes of the waste hierarchy and so are a level up from the bottom rung of 'disposal'.

- 4.10.13. WRS welcomes further market investment in residual waste treatment infrastructure" (p79). The "food surplus and waste hierarchy" (p103) places EfW as second bottom in preferences for treating food waste which are: redistribution for people to eat; production of animal feed or bio-material processing; or recycling by anaerobic digestion or composting.
- 4.10.14. Specific and relevant examples are eliminating biodegradable waste to landfill, recognising that "*growth in energy from waste (EfW) and alternative residual waste treatment infrastructure will divert further waste from landfill.*" (WRS p20)
- 4.10.15. "Recycling makes the *material* content of products that can no longer be repaired or reused available to be used in new products. It spares the environment the carbon impacts of extracting and processing virgin materials, and of managing wastes through energy recovery or landfill." (WRS p68)
- 4.10.16. The WRS at paragraph 8.1.6, p137 states:

"Ensuring data on the composition of residual waste is regularly updated Residual waste is the mixed material that is typically incinerated for energy recovery or landfilled. Much of the products and materials contained in this waste could have been prevented, reused or recycled. This is inefficient not only because materials that hold value are being lost, but also incineration and landfill are the most expensive ways to treat waste."

Waste Management Plan for England

- 4.10.17. The Waste Management Plan for England ('WMPE') December 2013 supports efficient energy recovery from residual waste of materials which cannot be reused or recycled ("*to get the most energy out of waste, not to get the most waste into energy recovery*"). Particular attention should be given to the location of the plant to maximise opportunities for heat use, and landfill or incineration without energy recovery should be the last resort for waste, particularly biodegradable waste.

EfW Debate Guide

- 4.10.18. Energy from Waste, A Guide to the Debate, 2014 (EfW Debate Guide) reflects that EfW needs to support, not compete with diversion from landfill and increased recycling, whilst not compromising waste reduction and reuse. Paragraph 150 states that in considering whether EfW is to be part of a waste strategy a key question is whether this would require new infrastructure or if sufficient capacity exists elsewhere. In relation to the "proximity principle" paragraph 152 states:

"The proximity principle arises from Article 16, "Principles of self sufficiency and proximity", of the revised Waste Framework Directive (2008/98/EC), the EU legislation that governs waste management. The principle is often over-interpreted to mean that all waste has to be managed as close to its source as possible to the exclusion of other considerations, and that local authorities individually need the

infrastructure required to do so. This is not the case. Indeed the final part of the Article itself states, "The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State". Clearly if not even the entire country needs to have the full range of facilities, a specific local authority does not have to. While there is an underlying principle of waste being managed close to its source, there is no implication of local authorities needing to be self-sufficient in handling waste from their own area."

- 4.10.19. The EfW Debate Guide notes that "typical conversion efficiency of waste fuel into usable electricity is 25% compared to >70% for natural gas to electricity in CCGT" (fn 80).
- 4.10.20. The 2014 revisions to the EfW Debate Guide stated principles that are likely to continue as key considerations for both government and the sector in the future. The first principle is "Energy from waste must support the management of waste in line with the waste hierarchy" so EfW should at least constitute recovery not disposal, and to be classed as recovery, EfW facilities must meet requirements set out in WFD, for example through attainment of R1 status such that an incineration plant taking mixed waste needs to be accredited to R1 status to not be regarded as "disposal". Further, the need to maintain economic energy from waste operation should not impede continuing improvements in prevention, reuse and recycling of the host community.
- 4.10.21. The National Planning Policy for Waste October 2014 highlights that positive planning plays a pivotal role in among other things, driving waste management up the waste hierarchy, and encourages co-location of waste management facilities utilisation of the heat produced as an energy source in close proximity to suitable potential heat customers.
- 4.10.22. Planning Practice Guidance (PPG) on Waste, October 2015, states (paragraph: 007 Reference ID: 28-007-20141016) that the aim of the self-sufficiency and proximity principles is for each WPA to manage all of its own waste, although there is no expectation that each local authority should deal solely with its own waste to meet these principles. Each WPA should manage its own waste, recognising that the ability to source waste from a range of locations/organisations:
- "..helps ensure existing capacity is used effectively and efficiently, and importantly helps maintain local flexibility to increase recycling without resulting in local overcapacity."*
- 4.10.23. Information on the available waste management capacity in the relevant area informs forward planning in local plans of waste infrastructure required to meet the future needs of the area. This requires an assessment of future requirements for additional waste management infrastructure, with reference to forecasts for future waste arisings.

Kent Minerals and Waste Local Plan (KMWLP)

4.10.24. The potential for waste management proposals to contribute towards local energy supply is expressly acknowledged in the KMWLP and specific policies address this:

- Policy CSW6 applies to all proposals for built waste management facilities and expects: "*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, 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. 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.*"

4.10.25. The above policies ensure any additional capacity that produces energy maximises the calorific value (CV) of the waste, harnessing as much of the energy produced as possible, as soon as possible. They remain unchanged by the Early Partial Review (EPR) of MWLP.

4.10.26. Policy CSW4 is proposed to be updated to incorporate revised recycling targets. The proposed revised policy states:

"The strategy for waste management capacity in Kent is to provide sufficient waste management capacity to manage at least the equivalent of the waste arising in Kent plus some residual non-hazardous waste from London. As a minimum it is to achieve the targets set out below for recycling and composting and other forms of recovery."

4.10.27. Other relevant policy extracts are set out in EPR of the KMWLP - Pre-Submission Draft 2018 [REP2-046]. In particular paragraph 6.3.1 of the EPR is proposed to be redrafted to state:

"Kent currently achieves net self-sufficiency in waste management capacity. I.e. the annual capacity of the waste management facilities (excluding transfer) in Kent is sufficient to manage the equivalent quantity of waste to that predicted to arise in Kent. The continued achievement of net self-sufficiency and the management of waste close to its source are key Strategic Objectives of the Kent MWLP, because it shows that Kent is not placing any unnecessary burden on other WPAs to manage its waste. Net self-sufficiency recognises that existing (and future) waste management capacity within Kent may not necessarily be for the exclusive management of Kent's waste. Proposals that would result in more waste being managed in Kent than is produced may be acceptable if it is demonstrated that these would result in waste

produced in Kent being managed at a higher level of the waste hierarchy. Achievement of net self-sufficiency can be monitored on an annual basis and will provide an indicator as to whether the policies in the Plan need to be reviewed."

- 4.10.28. The waste hierarchy is addressed at Policies CSW2 and CSW4. Policy CSW2 in the EPR is unchanged from the adopted KMWLP. It states that in order to deliver sustainable waste management solutions for Kent, proposals for waste management must demonstrate how waste is being driven to ascend the waste hierarchy. Policy CSW4 is revised to incorporate targets for management of waste in Kent.
- 4.10.29. The Kent Joint Municipal Waste Management Strategy (KJMWMS) identifies a requirement to reduce the amount of untreated waste in order to meet ever stricter EU Directives, Government targets and Best Value Performance Indicators. The KJMWMS also promotes the use of waste as a resource.
- 4.10.30. NPPF at paragraph 27 advises that in order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more Statements of Common Ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these.

The Applicant's case

- 4.10.31. The Applicant's position is that the Proposed Development is wholly in accordance with the waste hierarchy, and not prejudicial to the achievement of national or local waste management targets.
- 4.10.32. In the WHFAA [APP-086] a travel time of about two hours for residual wastes is assumed in order to maintain viability of transport costs. This is applied to the Proposed Development to identify a study area (Study Area) for the purposes of the assessment.
- 4.10.33. In its WHFAA [APP-086] the Applicant sets out that operation of the Proposed Development would accord with the waste hierarchy in that it would move the management of residual wastes, predominantly arising in the south of England, away from landfill and up to recovery category. Further, it would address the lost opportunity to use refuse derived fuel (RDF) exported from the Study Area to generate renewable/low carbon energy within the UK.
- 4.10.34. Level of availability is identified by considering the shortlisted waste types disposed of to landfill in the Study Area (over 1.5m tonnes) and adding to it all the RDF removed from facilities in the Study Area that is exported overseas (over 1m tonnes), as shown in Table 3.7 WHFAA [APP-086]. Thus there is in the region of 2.5 million tonnes of fuel available to the Proposed Development and if the local authority collected waste (LACW) were discounted, there would still remain c.2 million tonnes of residual wastes and RDF available "as a renewable/low carbon fuel source" (WHFAA, Table ES1, paragraph 1.3.4). However the Applicant states (paragraph 3.4.2) that these wastes are suitable for

combustion in energy generating stations comprising the Proposed Development.

- 4.10.35. With 992,500 to 1.98 million tonnes of fuel available to the Proposed Development, the latter would not prejudice delivery of the waste hierarchy, or the future circular economy. (WHFAA [APP-086] paragraph 5.3.4, Table ES2, Summary of Fuel Availability Assessment and sensitivities).
- 4.10.36. Applying all the sensitivities (focussing on specific waste types, assuming very high additional recycling, and relying on non-operational facilities) there would still remain 495,500 tonnes of fuel available beyond that sought for the Proposed Development. It is unlikely that all of these variables would occur to the extent considered in the WHFAA so this outcome is considered to be very conservative (paragraph 3.5.5). However, it demonstrates there is substantial fuel availability to be sourced from wastes that would otherwise be disposed of to landfill or exported overseas. The Proposed Development would not prejudice options preferred in the waste hierarchy, and would play an important and appropriate role in delivering sustainable waste management.
- 4.10.37. New municipal waste recycling targets form a key element of the CEP up to 2030 that seek to achieve: 55% by 2025; 60% by 2030; and 65% by 2035. (paragraph 3.4.13). Household waste recycling data over the past seven years show that for all authorities significant improvement would need to be made to reach 65% recycling by 2035 (paragraph 3.4.16) and would need (paragraph 3.4.19) defined performance targets and substantial funding from central government. A conservative sensitivity test is applied, assuming the current recycling rate achieved for municipal waste in the Study Area is 38% (the commonest household recycling rate achieved within the Study Area). To reach 65% would require an additional 27% of wastes to be recycled, which (paragraph 3.4.21) would take some 682,500 tonnes out of the available fuel (Table 3.7) at 2017, thus reducing availability to over 1.8 million tonnes. However as much of the Commercial and Industrial (C&I) waste stream falls within the CEP description for municipal waste, the overall increase in recycling required to meet the CEP 2035 target of 65% across municipal wastes, is unlikely to be as great as 27%.
- 4.10.38. New treatment capacity potentially able to become operational in the Study Area could reduce the availability of fuels to the Proposed Development. The Environment Agency's (EA's) Waste Management 2017 in England Data Tables identify recovery facilities with an Environmental Permit, but not yet operational. Table 3.9 WHFAA [APP-086] shows those located in the Study Area, a total new capacity pipeline of over 2m tonnes.
- 4.10.39. Table 3.9 takes account of those facilities with a "reasonable prospect to become operational", namely the Consented K3 Facility and Beddington Energy Recovery Facility (Beddington ERF). Other facilities cannot "credibly be considered as likely to be delivered" (paragraph 3.4.26). Phase 1 Tilbury Green Power Ltd, noted at Annex D [APP-086] is an EfW

facility but permitted to receive 270,000 tonnes of waste wood, not a comparable project as a substantial amount of waste wood available for it can be gained from waste types not considered in assessing the fuel availability for the Proposed Development.

4.10.40. Assuming this new capacity takes wastes from the Study Area this would reduce the availability of fuels to nearly 1m tonnes (paragraph 3.4.21 [APP-086]) leaving 1,845,040 tonnes in 2017 after applying the CEP sensitivity. Subtracting 852,500 tonnes would leave 992,540 tonnes. Thus the "worst case scenario" is that there would still be 992,540 tonnes of fuel available to the Proposed Development (paragraph 3.4.33). This is illustrated in Tables 3.10 and ES2. With some 992,500 (row h) to 1.98m (row a) tonnes of fuel available to it, the Proposed Development, would not prejudice delivery of the waste hierarchy or the future circular economy.

4.10.41. The Proposed Development is appropriately located at the Application Site, making optimal use of a site already in use for waste management. The supply of steam to the Kemsley Paper Mill is a clear advantage in locating it at the Application Site and bringing waste to it. WHFAA at paragraph 4.2.14 states

"there is a demonstrated heat demand located adjacent to the Application Site. K3 will provide steam to the Kemsley Paper Mill, and WKN could provide back up and contingency energy as required, for example during maintenance. Further heat demands are being explored to expand WKN's role in the future."

4.10.42. The Study Area used in the WHFAA [APP-086] paragraph 3.1.5 comprises the following authority areas:

- East London, comprising Barking and Dagenham, Havering, Newham and Redbridge;
- East Sussex, including Brighton and Hove;
- Essex, including Southend-on-Sea and Thurrock;
- Kent, including Medway;
- South East London, comprising Bexley, Greenwich, Lewisham and Southwark;
- South London, comprising Bromley, Croydon, Merton, Kingston-upon-Thames and Sutton; and
- West Sussex.

4.10.43. The Carbon Assessment Reports [APP-031, APP-032, APP-033, APP-149, REP5-015] conclude that the carbon burden associated with the transport of fuel to the facilities is small compared to the overall benefits of diverting waste from landfill. In any event, transport related carbon burdens would be generated whichever final destination the fuels take. The Transport Assessment in ES Chapter 4.1 [APP-020, APP-021, APP-022], shows there is no unacceptable adverse impact caused by transporting waste to the Proposed Development from further afield than the county of Kent, as the transport routes are considered appropriate for the transport of fuel to the Application Site. Consequently there could

be no reasonable objection importing fuel to the Application Site from outside Kent (WHFAA, paragraphs 5.4.5-6).

- 4.10.44. In summary the Proposed Development would deliver key objectives of national and local policy through delivering the waste hierarchy; contributing to self-sufficiency (in terms of both energy recovery and sustainable waste management) at the national level; and being part of a network of facilities from which value would be recovered from appropriate residual wastes.

Examination

- 4.10.45. The ExA posed a number of questions mainly to the Applicant, KCC and SEWPAG, but with an opportunity for all IPs to comment thereon and on the respective responses, concerning waste recovery capacity and management of the waste hierarchy, including whether or not the Proposed Development could be regarded as compliant with national and/or local policies.
- 4.10.46. KCC and SEWPAG provided the principal objections to the Proposed Development.
- 4.10.47. SEWPAG's objections are set out in its initial submission [REP1-016], which was added to at D2 by its responses [REP2-043, REP3-019, REP4-032, REP7-036] to questions posed at ExQ1, ExQ1a ExQ2 and ExQ4 [PD-008, PD-010, PD-012, PD-015] in which it had an interest. In addition it made further comments [REP5-035] on the Applicant's response [REP4-008] to its own reply to ExQ1A [REP3-019].
- 4.10.48. SEWPAG seeks to co-ordinate the planning of waste management within the south east and includes the following WPA members:
- Bracknell Forest Council
 - Brighton & Hove City Council
 - Buckinghamshire County Council
 - East Sussex County Council
 - Hampshire County Council (incorporating Southampton City, Portsmouth City and New Forest National Park Waste Planning Authorities)
 - Isle of Wight Council
 - KCC
 - Medway Council
 - Milton Keynes Council
 - Oxfordshire County Council
 - Reading Borough Council
 - Royal Borough of Windsor and Maidenhead
 - Slough Borough Council
 - South Downs National Park Authority
 - Surrey County Council
 - West Berkshire Council
 - West Sussex County Council
 - Wokingham Borough Council

- 4.10.49. SEWPAG's objection to the Proposed Development, based on its submissions as noted above can be summarised:
- WHFAA [APP-086] does not consider the local policy on waste management in any of the areas of its members, whereas each has its own local waste planning policy concerned with arranging for an equivalent amount of waste arising in its area, and follows the MoU that includes the expectation that each WPA in the south east will plan for the management of waste on the basis of 'net self-sufficiency'.
 - Waste Local Plan (WLP) policies allocate suitable sites and the need for additional facilities in each WLP takes account of the need to manage waste in accordance with the Waste Hierarchy. AMRs provide the latest information on arisings and waste management capacity in each area. The WHFAA does not consider the WLPs of the areas from where waste will be sourced and does not meet the requirements of NPS EN-3 by adequately assessing "*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.*"
 - Without any assessment in accordance with EN-3 it is unclear whether the facility would result in excessive recovery capacity that would prejudice the achievement of recycling as planned for in WLPs. The WHFAA should clarify the source of the waste and assess impacts on affected WPA areas and the related WLP requirements for new waste infrastructure (including that needed to meet minimum recycling targets).
 - Member WPAs should be specifically consulted on the eventual detailed assessment which should show this proposal is consistent with their adopted and emerging WLPs.
- 4.10.50. KCC in its additional submission dated 4 December 2019 [AS-010] objected that there was a conflict of the Proposed Development with the Council's strategy for the management of waste in its KMWLP. It considered the proposal is not supported by robust evidence that justifies the development of increased waste recovery capacity in Kent, and undermines the adopted KMWLP strategy of net self-sufficiency and managing waste as far up the waste hierarchy as practical.
- 4.10.51. KCC further noted two conflicting waste needs assessments in the public domain, that supporting the Council's local plan strategy to support the EPR and another prepared for the Applicant (WHFAA [APP-086]), both of which were before the Inspector independently examining the EPR.
- 4.10.52. The term Other Recovery is commonly used to cover operations within the recovery class other than recycling or composting. For residual non-hazardous waste Other Recovery normally means thermal treatment with energy recovery i.e. EfW.
- 4.10.53. KCC noted that the WHFAA [APP-086] sought to justify up to 1.3m tonnes of additional Other Recovery waste capacity and that even with the Proposed Development capacity, there would be a further unmet requirement for capacity of up to 840ktpa, suggesting a need for

additional energy from waste facilities within Kent over and above this proposal, not supported by national or local waste planning policy. The Applicant's assessment of need for further capacity appeared inflated, even allowing for the Applicant's wider approach to fuel availability assessment, since using the EA's Waste Data Interrogator (WDI) 2018 data and the Applicant's methodology, this would result in fuel availability of between 123,500tpa and 420,000tpa. As the proposal was for 490,000tpa tonnes, the analysis of the data shows that there is no justification for the proposal at the proposed scale. (WHFAA [APP-086] and Appendix 1, [AS-010]).

- 4.10.54. Further, KCC state the Proposed Development would encourage more waste to be managed contrary to the waste hierarchy, which places Other Recovery at one level above landfill, resulting in a longer commitment to Other Recovery, diverting resources from more sustainable solutions such as preparation for re-use and recycling.
- 4.10.55. In addition, the diversion of waste into the County had the potential to undermine the wider local plan making principles of other WPAs in the South East, part of SEWPAG whose MoU commits the WPAs to regional net self-sufficiency to be achieved and maintained as part of each authority's waste planning strategy.
- 4.10.56. KCC is also a waste disposal authority (WDA) with a statutory duty to seek provision for dealing with domestic waste disposal arisings in Kent. The WKN Proposed Development offered greater disposal capacity but this was not required by KCC nor did it expect there to be a need for this beyond current arrangements and existing long-term contracts. Kent household waste tonnages were running at 730,000 tonnes per annum, with some 50% being handled and converted to energy through the EfW at Allington, and the Council did not expect capacity demand to change by more than current predictions. Therefore, additional waste capacity is not required, or expected, during the existing contract period.
- 4.10.57. Written questions were put to the Applicant and other IPs in ExQ1, ExQ1A, ExQ2, ExQ3 and ExQ4 on various matters related to the waste hierarchy and relevant national and local planning policies eliciting points as follows.
- 4.10.58. Other DCO applications cited by the Applicant (Section 3.6 of this Report) noted that although the SoS had directed those projects were to be treated as development for which development consent is required, s104 does not apply and therefore there is not a designated NPS that has effect in relation to development of those descriptions.
- 4.10.59. Although not an adopted local plan document the SEWPAG MoU Appendix to [REP3-019]) is in effect a Statement of Common Ground envisaged by Paragraph 27 of the NPPF, dealing with waste management as a cross-boundary matter addressed through cooperation between WPAs in the South East. It recognises that waste crosses administrative boundaries for management and, to ensure its management is adequately provided

for, the principle of net self-sufficiency should be applied when WPAs are planning for its management.

4.10.60. The Applicant's Study Area is analysed by KCC [REP2-044] showing each waste planning area's commitment to net self-sufficiency, including the county of Surrey, not included in the Study Area but in the Applicant's indicative catchment for the facility (ie within two hours travel time). By extending its scope well beyond Kent boundaries to source mixed municipal waste, waste would be drawn in from up to two hours travelling time from the facility, which being located at the northern extremity of Kent would result in processing waste from out of county, contrary to the application of the proximity principle for mixed municipal waste arising from the source authorities.

4.10.61. The Applicant disputes this would be contrary to SEWPAG objectives as it states there is no policy that restricts waste from any one area going to another. It concludes (Appendix 1, [REP2-009]):

"as a regional facility K3/WKN may well draw waste in from beyond Kent and beyond the SEWPAG area. This is a positive strategy, designed to deliver the waste hierarchy within the south east and to provide for the sustainable recovery of residual wastes, enabling their diversion from landfill."

4.10.62. Additional capacity in the area is provided for by an appeal decision granting planning permission for an EfW plant in West Sussex, reducing the potential feedstock supply by c180,000 tpa (27 February 2020 APP/P3800/W/18/3218965, Brookhurst Wood EfW plant [REP5-039]).

4.10.63. SCC in its RR [RR-007] states that it and other authorities in the south east plan for waste on the basis of net self-sufficiency, not that its requirements will be met by facilities in Kent. I asked the Applicant about the implications of this policy for the Applicant's strategy to take in a significant proportion of waste fuel from the south-east region who replied (Appendix 2, Response to ExQ1.1.6 [REP2-009]) that essentially there was no policy requiring all planning authorities to provide all waste management needs within its area, so nothing to prevent facilities such as those proposed to be provided within other administrative areas.

4.10.64. ExQ1A.1.10 [PD-010] queried the WHFAA [APP-086] where it stated at paragraph 1.1.5 that there was no sensible reason to consider the waste hierarchy separately for each of Project K3 and Project WKN. The Applicant [REP3-004] stated both facilities would recover energy from residual wastes, operate at the same level of the waste hierarchy, are subject to similar policies and can be considered together or separately. If just one of the projects were granted consent, the remaining fuel would, it assumed, continue to be managed in the same way. The WHFAA [APP-086] assumes recycling will increase to meet 65% across the Study Area, demonstrating a need for the capacity of both projects to divert the residual wastes from landfill or make domestic use of the RDF. If just one project were granted consent, the fuel that would have otherwise been recovered in the other would remain to be disposed of to landfill or exported as RDF.

4.10.65. KCC responded [REP5-038] that whilst Project K3 would increase the power output of a waste fired power generation unit forming part of a combined heat and power (CHP) plant with a direct technical link to supply heat to the adjacent paper mill, and increase throughput to that plant, Project WKN is a waste fired power generation plant with no direct relationship to the adjacent paper mill. Both may be classed as Other Recovery, subject to confirmation of their R1 status, but there is sufficient difference between the proposals for each to be considered as occupying different places within the tier of Other Recovery. The expansion of input to the Consented K3 Facility merited a higher position being CHP, to WKN, reflecting guidance on applying the waste hierarchy June 2011, as set out in reply to ExQ1.1.1 [REP2-044].

SEWPAG

4.10.66. At D3 in responding to EXQ1A [PD-010] SEWPAG [REP3-019] considered the Applicant had not answered the issues posed at ExQ1.1.4 [REP2-009] namely how the approach in paragraphs 7.1 and 7.2 of the MoU [REP2-043] could be said not to be undermined by the Proposed Development without assessing the local policy on waste management in each (or save for KCC, any) of the local policies on waste management. In the final sentence of paragraph 1.25 the Applicant stated: "An assessment appropriate to understand the impact on waste management strategies across the Study Area has been undertaken." However no reference is provided to this assessment and SEWPAG was not aware of the submission of such an assessment.

4.10.67. At D7 SEWPAG provided figures for comparable additional recovery capacity in the south east (other than in KCC's area) permitted since 2017, relating to some areas not included in the Study Area but within a two-hour travel time:

- Hampshire: 4,300 tpa
- Milton Keynes: MK Waste Recovery Park, Wolverton Application 13/00861/FULEIS approved on 12.07.2013 and operational since March 2018;
- Oxfordshire: Cassington/Worton Farm, Anaerobic Digestion (AD) Kitchen/Green Waste 22,500tpa (now 48,500tpa) Permanent; Wallingford, AD Kitchen / Green Waste 20,000tpa (now 45000tpa) Permanent; and Ardley Energy Recovery Facility EFW incinerator, Residual Waste 26,300tpa (now 326,300tpa) end date 2049;
- Surrey: Charlton Lane EcoPark – 55,000tpa – currently being commissioned; and
- West Sussex: 320,000 tonnes of permitted recovery Efw capacity at Ford (not yet constructed) with an application being considered (WSCC/036/20) which, if permitted, would increase recovery capacity by an additional 135,000 tonnes.

4.10.68. The WHFAA did not seek to specify an exact level of need for the Proposed Development as "*this is not required by policy and would be a level of spurious precision that cannot be achieved, not least as the data (except for local authority collected waste, or 'LACW')*", but uses publicly available data to identify the availability of fuels appropriate for

combustion in the Proposed Development, considering wastes disposed to landfill and exported from the UK.

4.10.69. The WRS refers (fn 112) to the Evidence Annex and the UK Residual Waste: 2030 Market Review Final November 2017 (Tolvik Review) [REP3-012] which (p78 evidence annexe) advises that significant additional residual waste energy recovery capacity "*would not necessarily be needed*" and that the Tolvik Review concluded that there would not be a gap in incineration capacity by 2030. The Applicant points (WHFAA, paragraph 4.2.18 [APP-086]) to uncertainty in forecasting future events, and states the views are consistent with NPS EN-1 in that that energy projects that have gained consent but not yet started construction cannot be relied upon and "*government policy consequently seeks to deliver a minimum level (of 59 GW) of new electricity capacity*".

4.10.70. I note that the focus of Tolvik Review 2017 [REP3-012] is upon the UK market as a whole and detailed modelling of regional differences was beyond the scope of the review. Section 7.3 states that as larger scale EfW plants are developed and regional variations in landfill capacity arise, quality data on the geographical source of waste accepted at locations to which waste is removed is key to analysing the geographical need for all forms of additional waste treatment capacity, including EfW. In general the review highlights the sensitivity of the Residual Waste market to recycling assumptions and that future recycling levels will depend upon a complex range of factors.

4.10.71. The Applicant's responded at D3 [REP3-004] to the ExA's questions ExQ1A [PD-010] supplying Appendix 1.13a – UK Statistics on Waste, 19 March 2020 [REP3-008]. Key findings were:

- UK recycling rate for waste from households (WfH) including incinerator bottom ash (IBA) metal was 45.0% in 2018, decreasing from 45.5% in 2017. There is an EU target for the UK to recycle at least 50% of household waste by 2020;
- The recycling rate for WfH decreased in all UK countries save Northern Ireland in 2018. The recycling rate for England was 44.7%, compared with 47.7% in Northern Ireland, 42.8% in Scotland, and 54.1% in Wales. The reduction for England was driven primarily by a reduction in 'other organics' such as green garden waste sent for recycling, linked to adverse weather conditions for plant growth;
- UK biodegradable municipal waste (BMW) sent to landfill has fallen from approximately 7.4 million tonnes in 2017 (21% of the baseline 1995 value) to around 7.2 million tonnes in 2018 (20% of the baseline 1995 value). The UK was therefore still on track to meet the EU target to restrict BMW landfilled to 35% of the 1995 baseline by 2020;
- Figures for 2017 show that 70.0% of UK packaging waste was either recycled or recovered compared to 71.4% in 2016. This exceeds the EU target to recycle or recover at least 60% of packaging waste;
- Estimated generation of C&I waste in 2016 was 41.1m tonnes, of which 33.1m tonnes (around four fifths) was generated in England. The latest estimates for England only indicate that C&I waste

generation was around 36.1 million tonnes in 2017 and 37.2 million tonnes in 2018; and

- UK generated 221.0 million tonnes of total waste in 2016, with England responsible for 85% of the UK total.

4.10.72. Also, (p12 [REP3-008]), *“energy recovery showed the largest percentage change in tonnage, with the 2016 figure of 7.3 million tonnes being almost four times the 1.9 million tonnes treated in 2014. Larger tonnages of waste are now treated at energy recovery facilities than at incineration without energy recovery, coinciding with policies to divert waste away from landfill. While overall waste to landfill has not shown a corresponding decrease, the underlying Environment Agency (EA) data shows that increases in landfilled waste have largely come from materials such as soil and stone waste. However, local authority managed municipal waste to landfill has declined as more waste is diverted to other treatments higher up the waste hierarchy”*.

4.10.73. The WRS at p20 states:

“we have increased our rates of recovery and recycling and generated much more energy from waste. We want to shift away from waste towards resource efficiency, and will do this by focusing not just on managing waste, but, on managing the resources which become waste”.

Matters outstanding at close of Examination

SoCG with KCC

4.10.74. The Applicant submitted at D8 a completed SoCG with KCC [REP8-013] dealing with several matters as follows.

Local Policy Principles

4.10.75. The Applicant notes a change between the KMWLP and EPR in removing references in Policy CSW7 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. Accordingly the EPR remains in support of proposals for recovery of energy from residual waste where they divert waste from landfill; and as part of helping Kent to move its waste management up the waste hierarchy, the EPR does not restrict the movement of waste into or out of the county.

4.10.76. KCC point to a key change between the KMWLP and the EPR to introduce management targets in revised 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. Revised targets are incorporated into EPR Policy CSW4 to aid annual monitoring of the Plan (the Annual Monitoring Report (AMR)) so to identify shortfalls and provide clear guidance to developers and the WPA 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. 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.

- 4.10.77. 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. It does not restrict the movement of waste into or out of the county provided the overall objective of net self-sufficiency is being achieved. EPR at 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

- 4.10.78. The Applicant states there is a financial imperative for wastes to be recovered via other material recovery facilities rather than be treated at energy recovery facilities or disposed of via landfill. Each party involved in waste management has a duty to implement the waste hierarchy; compliance lies with each holder of waste in the chain; and a mix of facility type and sizes are required to deliver the waste hierarchy, recognised at paragraph 6.5.1 of the KMWLP (adopted and emerging). Consequently, energy recovery facilities are just one element of a network of facilities necessary to ensure the sustainable management of wastes.
- 4.10.79. KCC emphasises compliance as a legal obligation that should be considered from the top down, rather than the bottom up, asking in effect why waste cannot be reused or recycled, rather than how can it be diverted from landfill. Therefore the burden is 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 not technically or economically feasible.
- 4.10.80. It also notes that given that the latest Waste Needs Assessment (WNA) demonstrates provision of Other Recovery capacity within the county in the form of the Allington EfW plant and the Consented K3 Facility, and that recycling/composting capacity should be sufficient to meet the proposed targets, there is no identified need for new Other Recovery capacity. However, given the need to apply the waste hierarchy in priority order, as stated in p11 [REP8-013], the EPR supports 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.

Energy Production

- 4.10.81. The Applicant regards NPS EN-1 as directly applicable to Project K3 it being an NSIP due to 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. Therefore the ability of Project 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
- 4.10.82. The Applicant accepts Project WKN is not an NSIP by virtue of its generating capacity, but needs development consent due to the s35 Direction. Therefore the Applicant says it is still nationally significant, EN-1 remains a key material consideration in its determination, and within that context the 42MW of electricity which would be generated by WKN is a significant benefit.
- 4.10.83. KCC accepts NPS EN-1 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 (paragraph 3.4.3 [REP8-013]). However it also states:
- "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."*
- 4.10.84. With regard to generating additional electricity without changes to the design of the Consented K3 facility and without any increase in waste throughput, KCC regards this as clarification that such a proposed change is independent to the stated intention to increase throughput. Given that the increase in generating capacity triggered the application as an NSIP, KCC considers that only this aspect of the application ought to be examined against EN-1, such that the increase in throughput ought to be considered in the same way as for Project WKN.
- 4.10.85. As to Project WKN it is not a NSIP and so KCC considers it ought to be determined against the development plan with EN-1 as a material consideration if appropriate. Seen in that context, the power produced by Project WKN would be a benefit to be considered in the overall planning balance, which would include consideration of harm to KCC's strategy underpinning its WLP.

Relevance of NPSs to WKN Proposed Development

- 4.10.86. The Applicant states EN-1 and EN-3 are both important and relevant to the SoS's decision since 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, the function, scale and nature of impacts of the WKN development are similar to that of Project K3, and it has been accepted by the SoS as 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.
- 4.10.87. KCC maintains that as part of the Proposed Development is not an NSIP, that part ought to be determined in accordance with the relevant development plan, as should the proposed expansion of throughput at the Consented K3 Facility, it being independent of the expansion of its generating capacity and independent of the construction of Project WKN which is essentially a waste incinerator with power generation.

Kent Minerals and Waste Local Plan Policy CSW4 and need and capacity issues

- 4.10.88. The Applicant asserts that the Proposed Development would deliver KMWLP Policies CSW2 and CSW4 (both as set out in the adopted KMWLP and the EPR) as demonstrated through the WHFAA [APP-086] which shows 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 WKN Proposed Development and K3 Proposed Development. Both projects enable more of Kent's waste to move up the hierarchy, out of landfill and into recovery.
- 4.10.89. KCC states that, considering the targets of modified Policy CSW4 against the most current capacity assessment in the supporting WNA, there is a surplus of capacity already consented as Other Recovery in Kent. Given the quantities of waste produced in Kent identified in the WNA, and the practical limitations on diversion of all waste from landfill by virtue of its unsuitability for use as feedstock, 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.
- 4.10.90. KCC objected that the Proposed Development as summarised in its closing statement at D8 [REP8-016]:
- is for the wrong type of capacity being incineration that doesn't qualify as Good Quality CHP;
 - is in the wrong place, with no guaranteed heat offtake and in a county with more than ample EfW capacity provision;

- is brought forward at the wrong time in light of:
 - the WRS 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 Carbon Capture and Storage (CCS); and
 - imminent adoption of the EPR.
- 4.10.91. The Applicant maintained its position that there was a need for both the K3 Proposed Development and WKN Proposed Development that would deliver the waste hierarchy and contribute to self-sufficiency at the national level. Its evidence was that there remained 300,000 to 700,000 tonnes of fuel even after considering the combined capacity proposed for K3/WKN7 (Appendix A to the Applicant's comments [REP3-003] on responses to D2 Submissions).
- 4.10.92. In particular in the Applicant made comments [REP5-022] on Responses to D4 submissions, with regard to KCC's reply [REP4-015 and Appendices 1 to 7 [REP4-016, REP4-017, REP4-018, REP4-019, REP4-020, REP4-021, REP4-022], to ExQ1A.1.4 [PD-010] as to whether an assessment in accordance with NPS EN-3 is needed of local as well as national waste management targets and what information was available. In essence the Applicant criticised KCC's reliance on the Inspector's Report of the EPR [REP4-016] and that the need for new residual waste management capacity was taken at face value. The Applicant said that the Inspector "*working at the plan making level...did not need to consider the detail in the numbers*".
- 4.10.93. The Applicant's and KCC's analyses are presented alongside each other, by the Applicant in [REP3-003] at: Document 11.2 - Appendix A - Summary of WHFAR July 2019, BPP Sensitivity and WDI 2018 update. The Applicant notes a discrepancy in applying the correct recycling tonnage to the BPP Sensitivity tonnages such that KCC's analysis results in an excessive deduction but in any event states an additional 24% of wastes to be recycled should be substituted for the 27% calculated at paragraph 3.4.20 WHFAR [APP-086]. However the key divergence between the BPP Sensitivity and the Applicant's review of the 2018 WDI data is in rows a and b, leading to a difference of some 520,000 to 590,000 tonnes.

Conclusion

Introductory matters

- 4.10.94. Primacy is given to the statutorily adopted development plan in respect of the WKN Proposed Development. This matter is discussed further in Section 6.6 of this Report.
- 4.10.95. PPG on Waste, October 2015 (see paragraph 4.10.22 of this Report) implicitly recognises as an aim of that policy, to encourage local flexibility to increase recycling "*without resulting in local overcapacity*".

- 4.10.96. In terms of the core decision-making section of NPS EN-3 (paragraph 2.5.70) it must be clear, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station would be 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. I am not satisfied that this is the case with reference to the WKN Proposed Development because the increase in capacity which it would bring about would significantly increase the capacity gap already identified by KCC. For such provision to be made at this time for an additional 390,000 tonnes of waste per annum over the 50-year lifetime of the development would present a significant risk to meeting the waste hierarchy objectives set out in KMWLP as revised by the EPR, by pulling Kent waste that might otherwise be recycled down the hierarchy.
- 4.10.97. The EPR of the KMWLP has been found sound and 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 KCC. Applying an assessment based on these values to the Proposed Development, the ExA is satisfied 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
- 4.10.98. The Applicant has not accepted that there is a possible conflict and therefore does not provide evidence as to why this would not be the case or why a deviation from the waste strategy and plans examined would nonetheless appropriate and in accordance with the waste hierarchy. However in reply [REP4-006] to ExQ4.13.1 [PD-015] the Applicant stated that if the view were taken that Proposed Development provides too much waste capacity in conflict with the waste hierarchy as set out in local plan policy, that is not a conflict which would result in either Project K3 or Project WKN being in conflict with the development plan as a whole, any adverse impacts arising from such a conflict would not outweigh the clear benefits of the facilities under NPS EN-1 and NPS-3.
- 4.10.99. Such a risk is recognised in national policy which refers to the need when determining 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." (National Planning Policy for Waste, para 7 bullet 2).*
- 4.10.100. In the context of a non-NSIP proposal such as the WKN Proposed Development where the NPSs do not apply as such, this more recent national policy that sets out detailed waste planning policies is at least as important and relevant to consider than the NPSs.

Relevance of NPSs to Project WKN and the increased throughput proposed in Project K3

- 4.10.101. In my view the WKN Proposed Development is not subject to NPS EN-1 and EN-3 in the same way as the K3 Proposed Development. Neither NPS directly relates to Project WKN, as it is not a development with generating capacity of 50MW or above. That it is 8MW short of this threshold cannot make the NPSs apply in the same way as they do to those projects that meet or surpass the threshold. The effect of this as far as concerns the WKN Proposed Development must be considered firstly in relation to NPS EN-1 and then NPS EN-3.
- 4.10.102. Also, since the NPSs, a significant change in circumstances has been the UK's ratification of the Paris Agreement seeking stronger controls on the increase in global average temperature than agreed at the 2010 UN Climate Change Conference, as is the UK Parliament's declaration of an environment and climate emergency in May 2019 and changes to CCA2008 ensuring the UK carbon account for 2050 will be net zero.
- 4.10.103. NPS EN-1 does not set out any definitional, presumed need for EfW projects as such, which might otherwise override relevant development plan policies but does set out a presumption that there is a significant need for new major energy infrastructure generally which is undisputed.
- 4.10.104. However NPS EN-3 at paragraph 2.1.2 requires the decision-maker to act on the basis that the need for infrastructure covered by EN-3 has been demonstrated. Clearly this cannot apply to the WKN Proposed Development except in a generalised way. Further, paragraph 2.5.10 would remove from the decision-maker the ability to consider what if any proportion of biodegradable waste to be used, may be classed as "renewable" for the purposes of Renewable Obligation Certificates (ROCs). Although such matters are important and relevant to consider, in my view the prescriptive and presumptive elements of these policies must yield, where circumstances merit, to the matters listed in s105 PA2008, including where important and relevant, other national or local policies.
- 4.10.105. In this connection I note that at paragraph 2.5.65 of NPS EN-3 national, local and municipal strategies provide policy expectations for waste management at geographical levels and local authorities "will be responsible for providing an informative framework for the amount of waste management capacity sought". This informative function does not in my view preclude consideration of adopted development plan policies pertaining to the acceptability of EfW proposals in light of capacity and related issues.
- 4.10.106. Turning to the proposed increase in throughput to the Consented K3 Facility, I note that EN-3 at paragraph 2.5.13 states that throughput volumes are not, in themselves, a factor in decision-making as there are no specific throughput limits for different technologies or levels of electricity generation. This is a matter for the Applicant although the adverse impacts of increases in throughput should be considered and balanced against the net benefits of the combustion of waste and biomass.

4.10.107. Therefore, whilst it is true in a sense that expansion of throughput at the Consented K3 Facility would not in itself constitute a trigger for classification as an NSIP, the context of the Application so far as it concerns Project K3, clearly takes account of throughput. Any adverse impacts can be considered without qualifying the application of NPSs, but also taking account of other matters listed in s105 PA2008 such as LIRs, and other important and relevant matters including specific local policies germane to the issues.

Local Policy Principles

4.10.108. The 2018 WNA [REP4-020] recognised that for the K3 Proposed Development it was intended that the majority of the waste would be sourced from within Kent, with the balance from the South East and elsewhere in the UK including London. The EPR Report [REP4-016] at paragraph 18 recognises that part of the strategy for waste management capacity in the KMWLP is to maintain net self-sufficiency so sufficient facilities are provided in Kent to manage the equivalent quantity of waste as is produced in Kent with some provision for a reducing amount of London's waste. This recognises that in reality waste does cross county boundaries in accordance with the operation of the market. However the net self-sufficiency policy ensures that any outward flow of waste is offset by an inward flow so that each WPA manages an equivalent amount to that produced in its area. This is illustrated in KCC's reply to ExQ1A.1.1 [PD-010] whereby waste may travel from Surrey to Kent for management, as it does for EfW yet SCC is still expected to make provision for management of an equivalent waste in its WLP.

4.10.109. The adverse effects are likely to be drawing waste in from much further afield than indicated in the Applicant's WHFAA, the locking in of waste that may otherwise be recycled into several years supply contrary to the waste hierarchy, and the undermining of investment plans for the development of local facilities, by drawing away waste so that a critical mass cannot be guaranteed to justify the business case for building a smaller plant to serve a more local catchment (contrary to the proximity principle).

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

4.10.111. Thus the creation of such a significant point of demand would undermine the plans, strategies and markets across the Applicant's Study Area and the South East generally, undermining the net self-sufficiency and proximity principles set out in the development plan.

- 4.10.112. The strategy for provision of waste facilities in the EPR seeks to meet the area's objectively assessed needs. It is informed by agreements with other authorities and is positively prepared. A key question is, assuming there is surplus capacity, what would be the effects of permitting other recovery facilities to be developed where there is no demonstrable need arising within Kent and after making allowance for the need for other recovery capacity as described in the development plan? And what would be the effect on the wider strategic process adopted by the WPAs of whom, in the Inspector's words it is said:

"there has been active engagement on waste matters through the South East Waste Planning Advisory Group (SEWPAG). This has informed the EPR process through a greater understanding of cross-boundary movements of waste in the south-east" (paragraph 10 [REP4-016])

- 4.10.113. I find that the whilst the EPR version of the KMWLP would not specifically restrict movement of waste across county areas, it would support proposals for recovery of energy from residual waste where they divert waste from landfill and move waste management in the area up the waste hierarchy by maximising recovery of by-products and residues and maximise energy recovery including by CHP, and meet an identified need indicated by monitoring against the targets proposed for inclusion in EPR policy CSW4. It is an important consideration that the EPR would dispense with the preparation of a Waste Sites Plan. This has been accepted by the EPR Examining Inspector and is a consequence of new management targets in Policy CSW4 for different waste streams for the Plan period, in preference to set tonnages for identified waste management capacity needs. The purpose is clearly to avoid overprovision of Other Recovery capacity that could discourage development of recycling and composting capacity further up the waste hierarchy.
- 4.10.114. The revised targets are included in Policy CSW4 and AMRs are used to identify shortfalls. Thus clear guidance is given 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.

Energy production

- 4.10.115. NPS EN-1 directly applies to Project K3 due to its proposed generating capacity and makes clear the urgent need within the UK for all types of energy infrastructure, which includes EfW generating stations. The ability of Project K3 to generate additional electricity without change to its design or increase in waste throughput would be a significant benefit of the K3 proposed scheme.
- 4.10.116. Further, the generation of 42MW of electricity which the WKN Proposed Development would bring about, would be a significant benefit in itself having regard to the emphasis placed on the need for all types of energy infrastructure by NSP EN-1. That said, NPS EN-1 also highlights the urgent need to speed the transition to a low carbon economy and that (paragraph 3.4.3) only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be

used for energy recovery. It is not disputed that the portion of energy output attributed to non-biomass based waste input in either Project K3 or Project WKN cannot be considered renewable and therefore the plants would be partially renewable at best.

- 4.10.117. Clearly with the greater emphasis placed on changing the composition of waste for separate collection in accordance with policies that post-date the NPSs, the biomass content potentially reduces further. Particularly important in my view are the aims of the WRS to commit to ensure future EfW plants achieve 'R1' recovery status and to eliminate biodegradable waste to landfill. Residual waste is the mixed material typically incinerated for energy recovery but is inefficient as materials that hold value are being lost, and it is an expensive way to treat waste.
- 4.10.118. Assuming both projects in the Proposed Development achieve R1 status they would be classed as a recovery operation in the waste hierarchy and so be one level up from the bottom rung of 'disposal'. If not they would not be permitted as contrary to KMWLP Policy CSW 8 (and EPR) which requires that facilities using waste as fuel will only be permitted if they qualify as recovery operations defined by rWFD.
- 4.10.119. The Applicant in reply to ExQ4.1.3 [PD-015] said that R1 accreditation could not be gained at this time. As is clear from the Government's guidance on applications for R1 status, an application can be made based on design data, and before the plant is commissioned including before planning approval is sought or an Environmental Permit (EP) is applied for. I asked (Q1A.1.42 [PD-010]) whether the K3 and WKN projects, would meet this energy recovery performance threshold (R1). KCC noted the EA listing of qualified plants showed that the Consented K3 Facility currently undergoing commissioning trials was not included. The Applicant stated it has not operated long enough and, as a CHP plant delivering steam to the DS Smith facility, it would achieve R1 status. The response to ExQ4 [PD-015] Appendix A - K3 CHP R1 Supporting Information April 2019 [REP7-017] was based on assumptions on its design and performance used for the purposes of the R1 calculation which indicated energy recovery efficiency value was over 0.65.
- 4.10.120. Generally the power produced by both projects would be a benefit to be considered in the overall planning balance.
- 4.10.121. However in the case of the WKN Proposed Development, the electricity generation is allied to the sourcing of some 390,000 tpa of waste fuel which is a significant amount in itself, the composition of which should be scrutinised to see whether overall the proposed generation is justified by reference to such matters as the biogenic to fossil carbon ratio and its energy content, the confidence that can be placed on the assumed biogenic content, comparisons with other methods of electricity generation, and whether avoided emissions from landfill would actually materialise. Within that process, consideration of harm to KCC's strategy that underpins its WLP is not excluded.

KMWLP Policy CSW4 and need and local capacity issues

- 4.10.122. I am not persuaded that even assuming 65% recycling is achieved (which is acknowledged to be a higher target than is set out in the KMWLP or EPR) there remains a need for the Proposed Developments in particular Project WKN. The WHFAA [APP-086] sets out in Table ES2 Summary of Fuel Availability Assessment and sensitivities, a projected surplus in the remaining fuel available in the Study Area compared to future capacity likely to be delivered, including taking account of both projects within the Proposed Development.
- 4.10.123. There is an obvious difference between the lower and upper estimates. This is predominantly due to the substitution of shortlisted waste types disposed to landfill rather than all Household/Industrial/Commercial (HIC) waste disposed to landfill. Clearly in my view the use of the former category is more appropriate since, as is clarified in the WHFAA, the HIC category in the WDI contains certain waste types that would be inappropriate for combustion in the Proposed Development, the use of which would result in an over-estimation of available fuel. Thus, under the WHFAA one arrives at a remaining level of fuel availability to the tune of 992,540 tpa, which would be taken up by the Proposed Development leaving a shortfall in capacity of facilities equivalent to processing the remaining figure of 495,540 tpa.
- 4.10.124. However KCC's alternative calculation, based on the same methodology, including an allowance of 27% recycling to achieve the CEP 2035 target, and using the EA's WDI 2018 data as set out in [AS-010] would result in fuel availability of between 420,000tpa and 123,500tpa, which latter figure takes account of shortlisted waste types disposed to landfill within Study Area. Applying the proposed capacity of both projects within the Proposed Development, one arrives at negative figures whether shortlisted waste types or HIC waste disposed of to landfill are applied, indicating a surplus capacity of facilities in the Study Area. I find it significant that KCC's waste needs assessment has underpinned the EPR under which the development of increased waste recovery capacity follows a sustainable pattern of waste management to achieve overall net self-sufficiency, an approach found to be sound in the Examination of the EPR [REP4-016].
- 4.10.125. Moreover when account is taken of KCC's Appendix 4 KMWLP EPR Sensitivity on Recovery Requirement 08 10 2019 v5 [REP4-019] it is clear that KCC's strategic approach would withstand substantially lesser achievement in recycling without compromising the net self-sufficient management capacity for the equivalent tonnage of Kent residual waste. This is primarily attributable to the Other Recovery capacity operating in Kent in the form of Allington EfW (500ktpa) and (during 2020) at the Consented K3 Facility (525ktpa). I also note that (WHFAA [APP-086] Table 4), in the South East region 60 per cent of all local authorities increased their household recycling rate, which is significantly more than all other regions save for the south west.
- 4.10.126. Turning to the Applicant's criticism of the Inspector's EPR Report [REP4-016] there is no reason to suppose that the Inspector did not properly examine the evidence on the capacity requirement for non-hazardous

waste. The Applicant made several representations against the proposed changes in the EPR based on the evidence and appeared at the examination hearings to convey these objections to the Inspector. I asked for these representations which were supplied in full [REP5-040]. They clearly show that the Applicant was critical of the evidence base underpinning the EPR, however the Applicant accepted (p2 [REP5-040]), that its own representations were:

"not submitted as in-depth need assessments for waste management in Kent; this is a task for KCC in preparing its development plan policy."

- 4.10.127. The Inspector's reference to Table 9 is to the table that can be found on p17 the WNA 2018 Residual NHW Management Needs Sept 2018 Update v1.4 [REP4-020]. If it were assumed that the projected management requirements for London Residual Waste Imports (Table 8) were also to be managed at EfW facilities rather than disposed of to landfill, then it could still be accommodated at consented EfW capacity, as illustrated in Table 10 [REP4-020]. The report states at paragraph 21:

"21. The CRRNH considers the capacities of existing consented facilities and the extent to which they would satisfy identified need. A permitted facility at Barge Way has not been built. Irrespective of whether there is any uncertainty as to whether that facility will be provided, the strategy for waste management capacity does not depend on its provision."

- 4.10.128. Paragraph 23 of the Inspector's Report [REP4-016] accepts that the "CRRNH" (Capacity Requirement for the Management of Residual Non-Hazardous Waste) shows that there is no gap in capacity for other recovery treatment of residual non-hazardous waste throughout the Plan period and demonstrates that the "Kemsley facility" (ie the Consented K3 Facility") together with the existing Allington facility will provide a surplus of other recovery capacity. Paragraph 23 ends:

- 4.10.129. *"Policies CSW6 and CSW7 provide flexibility in that they are permissive policies that would allow for other recovery facilities to be developed should they be required".* (My emphasis).

- 4.10.130. I also note that the BPP report, Waste Topic Report 8 concluded the following on the need for Energy from Waste (EfW) capacity: "...sufficient sites should be identified such that new capacity in EfW could be provided for an additional 562,000 tpa. However, only 437,500 tpa new EfW capacity should be permitted until monitoring indicates that the provision of only this amount of EfW capacity would result in non-hazardous landfill capacity in Kent being used up before the end of the plan period. This will need one site to be identified in Kent that would not need to be developed until the long term, if at all." This conclusion underpins Policies CSW 7 and CSW 8 of KWMLP.

- 4.10.131. KCC's analysis and data are also more focussed on the particular geographical source of waste accepted at locations to which waste is removed, as well as a more localised approach to investigating capacity, which in my view is important to analysing the geographical need for EfW

additional waste treatment capacity. It was found to sound by the EPR Inspector.

- 4.10.132. On balance I prefer KCC's assessment in KCC WNA 2018, Capacity Requirement for the Management of Residual Non Hazardous Waste [REP4-020] of fuel availability and future capacity likely to be delivered, to that of the Applicant. This does not imply that in general future treatment capacity would no longer be necessary, however in the case of the WKN Proposed Development to grant consent for an additional 390,000 tpa throughput would in my judgement seriously undermine the local and regional strategy for managing waste development in Kent and the south east region. This would be contrary to KMWLP Policies CSW2, CSW4, CSW6, CSW7 and CSW8.
- 4.10.133. By sourcing mixed municipal waste well beyond Kent boundaries and up to two hours travelling time from the facility, would also be contrary to the proximity principle and SEWPAG objective for mixed municipal waste arising from the source authorities.

Waste hierarchy

- 4.10.134. The Applicant has made it clear throughout the Examination that its view is that the waste hierarchy is delivered both through good intentions and market forces. In my view this approach fails sufficiently to recognise that compliance with the waste hierarchy is a legal obligation under the rWFD, as well as set out in NPS EN-3, notably in paragraph 2.5.66 (Section 4.10.4 of this Report) requiring an assessment of conformity of the scheme with the hierarchy and its effect on relevant waste plan or plans. Compliance is also a requirement of local policy and addressed in KMWLP Policies, including in Policy CSW2, unchanged in the EPR, requiring the proposal to demonstrate how it will help drive waste to ascend the Waste Hierarchy whenever possible.
- 4.10.135. As with other parties involved in waste management the Applicant has a duty to implement the waste hierarchy. The Proposed Development would be two projects among a mix of facility type and sizes required to deliver the waste hierarchy, as recognised in the KMWLP, and energy recovery facilities are among a network of other facilities that ensure sustainable management of wastes.
- 4.10.136. The Applicant's Response to Submissions at D7 [REP8-015] at paragraph 3.3.1 et seq, makes a case that KCC's assertion that "most" waste going to landfill by definition is not suitable for use as a feedstock in the proposed plants, is untenable. However there are several uncertainties in coming to any firm conclusion as to the exact proportion of waste that might be diverted from landfill. In the first place clearly there are some waste types unsuitable for combustion, this is amply demonstrated by the Applicant's WHFAA [APP-086]. Then there are uncertainties over what future proportion of waste arising could be expected to be recycled. And the future status of either the K3 Proposed Development or WKN Proposed Development is not guaranteed. There is no reliable information about the particular composition of feedstock used in the Consented K3 Facility in terms of post-recycled solid recovered fuel

waste, commercial and industrial waste and pre-treated municipal solid waste. The Applicant is unwilling to carry over into a DCO from the K3 Planning Permission as varied, a requirement for a minimum amount of annual waste throughput to be pre-treated.

- 4.10.137. With uncertainties come risks which in this case are twofold, namely the risk of underestimating the future capacity requirements to treat waste arisings necessary and desirable to be treated by EfW facilities, and the risk that by over providing facilities a more sustainable management of waste would be prejudiced for many years to come. The waste hierarchy has to be applied from the top down. The evidence does not lead me to conclude that there is a capacity gap clearly sufficient to justify assuming the risk of prejudicing a successful outcome to the implementation of the key development plan policies. Therefore the Proposed Development would be in conflict with KMWLP Policy CSW6 which requires it to be: "demonstrated that waste will be dealt with further up the hierarchy... and where such uses are compatible with the development plan" and Policy CSW7 "provided that: 1. it moves up the Waste Hierarchy".
- 4.10.138. Given that the latest WNA demonstrates provision of Other Recovery capacity within the county in the form of Allington EfW and the Kemsley Consented K3 Facility 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.

Overall conclusion as to waste hierarchy related matters: K3

- 4.10.139. The evidence underpinning KCC's revised development plan policies which was independently compiled, points to a capacity gap which at both the upper and lower ranges of estimates, produces a negative level of need to manage waste fuel available in Kent, even taking into account the capacities of the Proposed Development. This would be 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.
- 4.10.140. However, although the Applicant's position is that both Project K3 and Project WKN are important, relevant and appropriate infrastructure projects that would meet net zero emissions goals and ensure waste is managed efficiently, there are differences between the two. Project K3 is a CHP facility, connected to the Kemsley Paper Mill with the benefits of increased heat export. That the WKN Proposed Development would provide a sustainable source of steam/heat to local customers for industry and housing within the area is uncertain as there is no clear agreement with any customer for this purpose, except perhaps arguably with DS Smith for the very limited occasions when K3 is undergoing maintenance. Therefore whilst the benefits of co-location of both facilities

to provide steam to the paper mill, remain unclear, increased weight should be given to the K3 Proposed Development in this respect.

- 4.10.141. The need for infrastructure covered by NPS EN-3 is assumed and must be accorded significant weight. Further, the increased capacity provided by the K3 Proposed Development would be a more modest increase than that of Project WKN, therefore the risk of prejudice to the principles of proximity and net self-sufficiency in local and regional strategies and plans is reduced. The ability to generate additional electricity without change to its design or increase in throughput would be an additional benefit.

Overall conclusion as to waste hierarchy related matters: WKN

- 4.10.142. The generation of 42MW electricity would be a significant benefit having regard to the need for all types of infrastructure set out in NPS EN-1, although the energy generated would be partially renewable at best.
- 4.10.143. However the Applicant has not provided a robust argument that justifies a concentration of a new waste management facility that would increase the capacity gap at this time. Although put forward as a regional facility, given that the waste recovery capacity is well catered for by the Consented K3 Facility and the EfW facility located at Allington, there is no proven need for the plant to be located in Kent. An alternative location outside Kent where the heat produced can be more effectively utilised, would appear to better serve the strategic purposes of member authorities of SEWPAG in order to comply with the aims set out in their respective WLPs, and in particular the KMWLP. Therefore in this respect I find the WKN Proposed Development inconsistent with the KMWLP and EPR. Such a finding would be in accordance with upholding the role of the planning system as found in NPS EN-1 to provide a framework which permits construction of what Government as well as the market identify as the type of infrastructure needed "in the places where it is acceptable in planning terms (paragraph 2.2.4)."
- 4.10.144. Further, the introduction of additional Other Recovery capacity of the scale proposed at this time with respect to the WKN Proposed Development would put at risk achievement of the revised recycling and composting targets in the revised KMWLP which would also be in conflict with National Planning Policy for Waste.

4.11. AIR QUALITY

Policy Considerations

- 4.11.1. NPS EN-1 at paragraph 5.2.1, states that infrastructure development can have adverse effects on air quality. The construction, operation and decommissioning phases can involve emissions to air which could lead to adverse impacts on health, on protected species and habitats, or on the wider countryside. Air emissions include particulate matter (for example dust) up to a diameter of ten microns (PM10) as well as gases such as sulphur dioxide, carbon monoxide and nitrogen oxides (NOx). Levels for pollutants in ambient air are set out in the Air Quality Strategy which in

turn embodies EU legal requirements. The SoS for the Environment Food and Rural Affairs is required to make available up to date information on air quality to any relevant interested party.

- 4.11.2. NPS EN-1 notes that emissions from combustion plants are generally released through exhaust stacks. Therefore the design of stacks, particularly height, is the primary driver in achieving optimal dispersion of emissions. It is assumed that the relevant pollution controls will be applied for and enforced and the NPS does not seek to duplicate those regimes in the decision making process.
- 4.11.3. Paragraph 5.2.10 of NPS EN-1 advises that account must be taken of any relevant statutory air quality limits. Air quality considerations are to be given substantial weight where a project would lead to a deterioration in air quality in an area, new breaches of national air quality limits or substantial changes in air quality levels even where no breaches occur.
- 4.11.4. NPS EN-3 provides details on the potential impacts that are specific to energy from waste generating stations, including air quality and emissions.
- 4.11.5. NPS EN-3 states that CO₂ will be assessed against the requirements of NPS EN-1. Compliance with the Waste Incineration Directive (WID) (subsequently replaced by the Industrial Emissions Directive) and the Large Combustion Plant Directive (LCPD) is controlled through the environmental permitting regime by the EA. Paragraph 2.5.43 states that where a waste combustion facility meets the requirements of the WID and will not exceed local air quality standards the SoS should not regard the proposed waste generating station as having adverse impacts on health.
- 4.11.6. Paragraph 181 of NPPF states that planning decisions should sustain and contribute to compliance with relevant limit values or national objectives for pollutants and the cumulative impacts from individual sites in local areas.
- 4.11.7. Policy ST1 of the Swale Local Plan seeks to achieve sustainable development, addressing the challenge of climate change through a range of measures including the management of emissions and efficient use of natural resources.

The Applicant's Case

- 4.11.8. Chapter 5 of the ES [REP2-020] provides a detailed assessment of the anticipated air quality impacts arising from the Proposed Development.

The 'practical effect' of the K3 Proposed Development

- 4.11.9. The 'practical effect' of the K3 Proposed Development would simply be K3, as constructed under its existing permission, being capable of generating an additional 25.1MW and processing an additional 107,000 tonnes of waste per annum. Granting development consent would not result in any additional external physical changes to K3 as consented and

the layout and appearance of the facility would remain as per its consented design.

WKN Proposed Development – Construction

- 4.11.10. The potential emissions of construction traffic in relation to the annual-mean NO₂, PM₁₀ and PM_{2.5} concentrations are assessed with the conclusion that the impacts from construction traffic were negligible and the impacts arising from dust emissions being low. A Construction Environmental Management Plan (CEMP) would contain best practices, including guidance provided by Institute of Air Quality Management (IAQM), to be followed and a Dust Mitigation Plan would be produced as part thereof. Whilst the impacts of dust emissions are low without mitigation, a number of mitigation measures would be included in the CEMP to ensure impacts remain low.

WKN Proposed Development – Operation

- 4.11.11. The WKN Proposed Development would operate in accordance with the Industrial Emissions Directive (IED) which sets limits for a range of pollutants. A Stack Height Determination (SHD) assessment [REP2-030] was undertaken as part of the ES to determine the minimum height of the stack which balances the need to achieve acceptable environmental performance against the costs and benefits of implementing it. It confirmed that a 90m stack would be required to ensure pollutant concentrations would be adequately dispersed before reaching ground level. Consequently air quality impacts as a result of the WKN Proposed Development would not be significant.
- 4.11.12. Dispersion modelling assumes that the higher the stack the less impact there is on air quality but the stack height is considered against the cost of building a taller stack and other environmental issues such as landscape and visual impact. Detailed design stage and appointment of an engineering, procurement and construction (EPC) contractor has not been reached. To enable flexibility in the DCO, a 9m buffer has been settled upon of between 90m and 99m. The ES assessments are based on a stack height of 90m and thus any changes in stack height would mean reassessing the environmental issues that it affects such as air quality and landscape and visual impact.
- 4.11.13. The exhaust emissions would be monitored by a Continuous Emissions Monitoring System (CEMS) strictly controlled and regulated by the EA under an Environmental Permit. An Operations and Management Team would ensure both facilities adhere to the regulations and would establish a planned preventative maintenance programme.
- 4.11.14. Operational traffic has been assessed as having a negligible impact.
- 4.11.15. Dust generating activities would include the delivery, sorting and handling of waste. Waste is deposited into the tipping hall where it is sorted, stored and handled within the building. The accepted best practice approach for the primary control of dust releases is containment within the building. Any potential dust would be drawn into the

combustion process along with the air in the building. Dust levels in the building would be in accordance with health and safety regulations.

4.11.16. The nearest high sensitivity receptor comprises residential properties on Swale Way, 770m to the south west of the site and upwind, therefore the risk of dust impacts is considered low.

4.11.17. R9 of the Preferred dDCO [REP7-003] would ensure details of the K3 Planning Permission are carried over into the dDCO and apply as approved. For the WKN Proposed Development R14 would secure the parameters of the stack between 90m and 99m until the final design is submitted for approval. R21 and R24 would require respectively the submission of a CEMP and a Construction Management Plan (CTMP).

Examination

4.11.18. Written questions were put to the Applicant and other IPs at ExQ1.3.1 to 1.3.24; and ExQ2.3.1 to 2.3.2. Key areas examined in this way were:

- agreement as to no sensitive ecological receptors within 50m of the Application Site boundary or the site traffic routes;
- the potential for air quality effects on the Swale Marine Conservation Zone (MCZ) arising from the WKN Proposed Development;
- use of the UK Air Pollution Information System (APIS) and potential increases in concentrations resulting from other plans or projects that have become operational since the last APIS update;
- implications of assessment findings in relation to the tern population in the Medway Estuary & Marshes Special Protection Area (SPA);
- categories of effect considered to constitute a significant effect for all construction dust and traffic-related emissions;
- agreement as to interpretation of modelling results rendering effects as not significant for:
 - arsenic concentration Environmental Assessment Level (EAL) predicted to be exceeded in respect of the K3 Proposed Development, the K3 Practical Effect and WKN;
 - nickel concentration EAL predicted to be exceeded due to the K3 Practical Effect; and
 - IED short-term emission limit values (ELVs) in respect of stack emissions from WKN during operation, Table 5.38 [APP-057] indicating that the 15-minute averaging period SO₂ PC would equate to 10% of the relevant EAL which would be considered to represent a significant effect unless the 15-minute mean SO₂ is added to the 'future AC' of 56.5 µg.m⁻³, then the PEC would be 82.3µg.m⁻³, which is below the relevant EAL of 266 µg.m⁻³;
- methodology applied to determine the level of pollutants emitted during operation;
- why impacts associated with wet acid deposition are not assessed in Appendix 5.4 [APP-028];
- need for further assessment given NO_x concentrations at the Medway Estuary and Marshes SPA and Ramsar site, the K3 and WKN PC

equate to 1% of the Critical Level (CL) and the PEC equates to 83% of the CL (Table 5.4.1 [APP-028]);

- the extent of any change in location of the maximum impact of the plume due to parameters set for the location of buildings and stack (that could vary by 5m);
- reconciliation of differences in the number of developments considered in the cumulative air quality and traffic assessments; and
- the need to provide a draft Dust Management Plan for consultation with IPs as part of the stated air quality mitigatory measures.

4.11.19. In its SoCG with the Applicant completed and submitted at D7 [REP7-014] Natural England (NE) agreed that the principal potential pathways for effects resulting from the K3 and WKN Proposed Developments are air quality from the stacks and vehicles, noise, water quality, recreation, visual disturbance and light spill during the construction, operational and decommissioning phases of the developments.

4.11.20. The SoCG [REP7-014] also agreed no likely significant effects from the construction of the K3 facility given its advanced stage of construction and that it was subject to its own assessment as part of the 2010 ES and consented with conditions, including an Ecological Mitigation and Management Plan (EMMP) and Construction Method Statement to protect adjacent habitats. It is agreed that "all relevant conditions of the extant planning permission have been discharged and complied with".

4.11.21. Subject to best practice construction methods to minimise dust, secured through R22 Preferred DCO, and in light of air quality modelling with regard to traffic emissions, NE further agreed the WKN Proposed Development would be unlikely to cause an adverse effect on the integrity of the Swale designations during construction.

4.11.22. As to the operation of K3 and WKN Proposed Developments, the issues raised by NE in their RR have been addressed as noted in the SoCG with the Applicant [REP7-014].

4.11.23. It is stated in para 4.4.1 of the SoCG with KCC [REP8-013] that KCC considered the Proposed Development might have a significant impact on users of the Saxon Shore Way Public Right of Way (PRoW) due to deteriorating air quality.

4.11.24. Further, the draft SoCG between the Applicant and SBC [REP5-006] was not completed by the end of the Examination. SBC highlighted its concern with the potential for operational traffic to pass through surrounding AQMAs, as set out in paragraph 3.1.6 [REP5-006]. In particular SBC was concerned as to the effect on AQMAs on the A2, fearing a worsening of air quality conditions in these areas which included the Newington, East Street, and Ospringe AQMA's, and a new AQMA currently under consideration at Keycol Hill, to the west of the junction with the A249 (Key Street).

4.11.25. However there was no evidence put forward that the WKN Proposed Development or the K3 Proposed Development would result in exceedances in local Air Quality Objectives in accordance with the Air

Quality Standards (England) Regulations 2010 alone or in-combination with other relevant proposed development. NPS EN-3 (paragraph 2.5.43) states that where a proposed waste combustion generating station would meet the requirements of WID and would not exceed the local air quality standards, the proposed waste generating station should not be regarded as having adverse impacts on health.

Conclusion

- 4.11.26. I am satisfied that, in terms of air quality, there would be no significant effects caused by the construction or decommissioning of the Proposed Development and a CEMP, secured through R22 of the Preferred DCO, would provide appropriate mitigation for the WKN Proposed Development to manage the dust impacts during construction. CO2 emissions are dealt with separately in Section 4.14 of this Report.
- 4.11.27. Emissions from the Proposed Development would be controlled by the EP regime, and would not be expected to exceed objectives or standards even when based on the worst-case assumptions within the assessment model. I am satisfied with the Applicant's determination of and reasoning for the height of the stack as set out in ES Appendix 5.2, Stack Height Determination [REP2-030].
- 4.11.28. Therefore ES Chapter 5 [REP2-020] and its Appendices [APP-025, REP2-030, APP-027, REP2-032, APP-029, APP-030] have robustly assessed the air quality as a result of the K3 and WKN Proposed Developments and appropriately concluded there would be no significant impacts arising. The IAQM guidance would be followed with regard to dust management and the dispersion modelling for the stack emissions of both K3 and WKN Proposed Developments demonstrate that the predicted contributions and environmental contributions of all pollutants would be negligible.
- 4.11.29. The ES assessed the impacts of the K3 and WKN Proposed Developments cumulatively with other developments both together and alone, concluded there would be no significant effects on air quality. Therefore, both the K3 and WKN Proposed Developments accord with both national and local policies with regard to air quality.

4.12. ARCHAEOLOGY AND CULTURAL HERITAGE

Policy Considerations

- 4.12.1. Paragraph 5.8.2 of NPS EN-1 describes the historic environment as including all aspects of the environment resulting from the interaction between people and places through time. It recognises that heritage assets are those elements of the historic environment that hold value through their historic, archaeological, architectural or artistic interest which may be any building, monument, site, place, area or landscape. The sum of an asset's heritage interest is referred to as its significance.
- 4.12.2. Paragraphs 5.8.8 to 5.8.10 require the applicant to assess the significance of the heritage assets affected by the proposed development.

The applicant should also ensure that the extent of the impact can be adequately understood from the application and supporting documents.

- 4.12.3. The NPS sets out a presumption in favour of conservation of designated heritage assets commensurate with the level of their significance. As set out in paragraph 5.8.18, where a proposed development may affect the setting of a heritage asset applications which preserve those elements of the setting that make a positive contribution to the significance of the asset, should be treated favourably.
- 4.12.4. Where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest NPS EN-1 states that the applicant should carry out appropriate desk-based assessments and if necessary, a field evaluation. Consideration should also be given to requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction.
- 4.12.5. The NPPF describes the setting of a heritage asset as the surroundings in which a heritage asset is experienced. A core planning principle in the NPPF is to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations (paragraph 184). When considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and the more important the asset, the greater should be that weight (paragraph 193). Any harm or loss of designated heritage assets requires clear and convincing justification (paragraph 194). An application should demonstrate all less harmful alternatives have been considered. If a proposal cannot be amended to avoid all harm, and the harm is less than substantial, this can be weighed against the public benefits of the proposal (paragraph 196).
- 4.12.6. Policies ST1, CP7, CP8 and DM14 of the Swale Local Plan seek to conserve and enhance the historic environment, whilst Policy DM34 seeks to prevent development which would adversely affect a Scheduled Monument and / or its setting.

The Applicant's case

- 4.12.7. Chapter 13 of the ES [APP-065] examines the effect of the Proposed Development on archaeology and cultural heritage. The assessment methodology identifies the study area and the effect on such heritage assets from the construction, operation and decommissioning of the Proposed Development.
- 4.12.8. The ES states that there are no designated heritage assets within the Application Site itself. The assessment, for the purpose of buried archaeology, focused on a study area of 1km around the Proposed Development Site and for the purpose of the setting of heritage assets a study area of 3km from the Site.

- 4.12.9. The ES identified no listed buildings or conservation areas within 1km of the Site and 15 listed buildings located between 1km and 2km of the DCO boundary, of these, 13 are listed at Grade II and two, the Church of the Holy Trinity and the Church of all Saints are listed at Grade I. Milton Regis High Street conservation area is located some 2.3 km south west of the DCO boundary.
- 4.12.10. There is one Scheduled Monument (SM) located within 1km of the DCO boundary, this is the Castle Rough medieval moated site, and one SM (Murston Old Church) between 1km and 2km of the DCO boundary.
- 4.12.11. The Site lies within a landscape which generally has a high potential to contain archaeological remains although the potential is low for the survival of significant coherent archaeological remains. The ES states that any buried remains are at most likely to be of low significance and the impact magnitude on any surviving remains is assessed as being high. As a result, the effect of the Proposed Development on buried remains would be minor adverse and not significant.
- 4.12.12. Castle Rough is some 500m south west of the DCO boundary and assessed as being of highest significance. It derives its significance from the rectangular earthwork island surrounded on four sides by a moat, and buried remains of the SM. There would be no physical impact on the SM from the Proposed Development and any impact would be on the setting.
- 4.12.13. Castle Rough is low lying and not readily visible from any distance away, although trees growing on it are seen, notably from the south-west against the background of the K3 built development and Paper Mill complex. The ES notes perception of the operational noise from the WKN Proposed Development is unlikely significantly to change existing ambient noise levels from Kemsley Paper Mill at the SM. Any additional lighting would be experienced in the context of an industrial site with external lighting.
- 4.12.14. Therefore, given the location and scale of the existing paper mill buildings, the impact magnitude on the SM is assessed as negligible. The significance of effect of the WKN Proposed Development on the SM would be minor adverse in the long term.
- 4.12.15. Of the two other SMs within 3km of the DCO boundary, High Street Old Church is some 1.6 km south of the DCO boundary and a WW2 anti-aircraft gun site (Thames South 2) is 3km north-west of the DCO boundary. The significance of effect of the WKN Proposed Development and Works No. 3 - 7 on the SM would be no change. In both cases, the impact magnitude is assessed as being no change and significance of effect of the WKN Proposed Development and Works No. 3 - 7 would be no change (paragraphs 13.8.17 and 13.8.46 [APP-065]).
- 4.12.16. In terms of the effects of the Proposed Development on listed buildings the ES indicates that no listed buildings within 3km of the Site would experience any greater than a minor adverse impact. Similarly, the ES

assesses the impact magnitude of the Proposed Development on Milton Regis High Street conservation area as negligible with the effect being minor adverse resulting in an effect that is not significant (paragraph 13.8.62 [APP-065]).

- 4.12.17. The ES [APP-065] states that the location, nature and design of the Proposed Development would help to mitigate any effects on the setting of designated heritage assets and accordingly no specific mitigation measures are required. In respect of the archaeological resource of the Site being unknown although unlikely to be significant, a programme of archaeological fieldwork to investigate and record any surviving archaeological remains is proposed by way of mitigation for construction effects. The ES envisages that there would be no significant adverse effects as a result of the Proposed Development following the implementation of the mitigation measures proposed.
- 4.12.18. The ES also assessed seriatim, the cumulative effects of the K3 Proposed Development, the WKN Proposed Development and both projects considered together with other relevant developments, concluding that whilst there may be some cumulative impacts on heritage assets as a result of the interaction of the proposed developments with other development schemes, these are not considered to be significant (paragraph 13.12.6 [APP-065]).

Examination

- 4.12.19. No significant matters of concern were raised by IPs in RRs and WRs in respect to archaeology and cultural heritage matters.
- 4.12.20. Through initial Written Questions (ExQ1) [PD-008] clarification was sought about Requirement 20 of the dDCO and whether the definition of “permitted preliminary works” (apart from the archaeologically related works described therein) which can be undertaken in advance of commencement of the authorised development, is compatible with the approval of the Written Statement of Investigation (WSI) which under Requirement 20 may be later in time.
- 4.12.21. In reply [REP2-009] the Applicant stated that largescale ground disturbance associated with permitted preliminary works would be contained substantially within modern made ground of no archaeological interest. The permitted preliminary works therefore had minimal potential to affect hitherto unrecorded archaeology. Nevertheless, an overarching WSI would be agreed with KCC before any permitted preliminary works took place, allowing archaeological fieldwork to be integrated with other preliminary works and for the potential effects of such work to be offset as far as reasonably practicable, in line with the mitigation proposed in ES Chapter 13 [APP-065].
- 4.12.22. In its RR [RR-005] Historic England (HistE) noted that the development was likely to be visible across a large area and could, as result, affect the significance of heritage assets at some distance. It previously identified that insufficient information had been submitted to assess the impacts of

the development on heritage assets, and with its particular remit of advising on designated heritage assets, it advised that further assessment of significance and impact would be required. Having reviewed the supporting information provided with the application HistE stated that ES chapters 12 (Landscape and Visual) and 13 (Archaeology and Cultural Heritage) [APP-064,APP-065], provide an appropriate assessment of the significance of designated heritage assets within the study areas with supporting baseline information and descriptions; and that an appraisal of the Proposed Development on the setting of heritage assets has been undertaken in accordance with HistE's guidelines on setting (GPA3 - The setting of heritage assets 2nd edition 2017).

- 4.12.23. The ES indicates that some impacts to designated heritage assets will occur, and although the new development would be visible from a number of designated heritage assets, HistE agreed with the ES that the impact would constitute a low level of harm to their intrinsic heritage significance. There would be some harm to designated heritage assets from construction of the Proposed Development through development within their setting, this impact would be of a low level and might therefore be found to be outweighed by the public benefit of the development scheme.
- 4.12.24. In their RR [AS-010] KCC confirmed its agreement with the proposal in paragraph 13.9.2 of Chapter 12 ES [APP-064] that archaeological mitigation could be addressed through a programme of archaeological work secured by an appropriate requirement in the DCO. KCC suggested that a Written Scheme of Investigation should be agreed with the KCC archaeological team.
- 4.12.25. A Requirement relating to archaeology was included in the submission version of the dDCO [APP-005]. The ExMemo [REP2-004] explained that the Requirement provided for a WSI to be submitted to and approved by the Relevant Planning Authority (RPA) prior to commencement of any part of the authorised development.

ExA Conclusion

- 4.12.26. This section has had regard to the likely significant effects resulting from the Proposed Development on heritage assets including buried archaeological sites, historic buildings and areas, and historic landscapes. It has considered the effects in terms of the potential for direct physical disturbance and indirect effects on settings in terms of the overall effect and the significance of the predicted effects.
- 4.12.27. Matters raised in HistE's comments prior to the submission of the application and by KCC in their RR and WR, as well as HistE's RRs, have been investigated.
- 4.12.28. The consent sought in respect of Project K3 would not result in any external changes to the facility currently permitted and I am satisfied that the 2010 ES which concluded that no significant effects would result from the completed K3 Proposed Development, remains valid. The

locality in which the Site lies has recognised potential to contain archaeological remains, although the specific characteristics of the Site suggest that potential for significant archaeological remains is unlikely. However, and in light of the submissions made by Highways England (HE) and KCC, it is appropriate to make provision for a suitable programme of archaeological works to take place to ensure that potentially significant adverse effects would be comprehensively mitigated. This would be effectively secured through R20 of the Applicant's Preferred DCO [REP7-003] as it relates to the WKN Proposed Development.

- 4.12.29. There would be no significant archaeological or cultural heritage related effects from the construction, operation or decommissioning of the Proposed Development either physically or on the setting of any SM, listed building or other designated heritage asset in the surrounding area. Consequently, there would be no harm to the significance of heritage assets. Similarly, there would be no significant cumulative archaeological or cultural heritage effects as a result of the Proposed Development.
- 4.12.30. On the basis of the evidence and the proposed mitigation as secured via the Preferred DCO [REP7-003], all impacts have been addressed in a manner that complies with the Historic Environment elements of NPS EN-1 and the development plan.

4.13. ECOLOGY

Introduction

- 4.13.1. This section considers the effect of the Proposed Development on biodiversity, ecology and the natural environment.
- 4.13.2. The effects on European sites in the context of the Habitats Regulations are considered in Chapter 5 of this Report. This section examines other potential biodiversity effects of the Proposed Development and the effects on European sites insofar as they relate to the EIA, including the effects of lighting on ecology.

Policy Considerations

- 4.13.3. NPS EN-1 sets out in paragraph 5.3.3 that where the development is subject to EIA the Applicant should ensure the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The SoS should ensure that appropriate weight is attached to these matters.
- 4.13.4. Paragraph 5.3.7 of NPS EN-1 recognises that development should aim to avoid significant harm to biodiversity interests including through mitigation and consideration of reasonable alternatives. The Applicant is also required to show how the project has taken advantage of opportunities to conserve and enhance biodiversity interests.

- 4.13.5. NPS EN-1 recognises that the most important sites for biodiversity are those identified through international conventions and European Directives with the Habitats Regulations providing statutory protection for them and with Ramsar sites receiving the same protection.
- 4.13.6. MCZs introduced under the Marine and Coastal Access Act 2009 are areas designated to conserve marine flora or fauna and marine habitats. Protected features are set out in the designation order which provides statutory protection, and duties in relation to MCZs need to be addressed as noted in NPS EN-1.
- 4.13.7. Paragraph 5.3.18 of NPS EN-1 indicates that the applicant should include appropriate mitigation measures as an integral part of the proposed development. It should ensure that construction activities are confined to the minimal area required and that best practice is followed to minimise the risks of disturbance or damage to species or habitats.
- 4.13.8. Section 5.6 of NPS-EN-1 deals with a range of emissions arising from energy infrastructure including artificial light indicating that the aim should be to keep impacts to a minimum and at a level that is acceptable.
- 4.13.9. The NPPF advises that the planning system should contribute to and enhance the natural and local environment including by minimising impacts on biodiversity. Paragraph 180 aims to ensure that new development is appropriate for its location taking into account the effects on the natural environment. The impact of light pollution from artificial light on nature conservation should be limited.
- 4.13.10. The KMWLP 2011-2031, Policy DM 2 sets out the protection for sites of international, national and local importance with waste developments required to ensure that there are no unacceptable adverse impacts on biodiversity interests.
- 4.13.11. Policy ST 1.11 of the Swale Local Plan seeks to achieve sustainable development through conserving and enhancing the natural environment. Policy CP7 seeks to ensure that there are no adverse effects from development on the integrity of Special Areas of Conservation (SACs), SPAs or Ramsar sites either alone or in combination. Policy DM28 requires proposals to conserve, enhance and extend biodiversity. The policies underpin the Swale Landscape Character and Biodiversity Appraisal published in 2011 as a Supplementary Planning Document.

The Applicant's case

- 4.13.12. The Applicant's case was set out principally in ES Chapter 11 – Ecology [APP-063] and has been updated at D2 in clean and tracked versions [REP2-024, REP2-025]. This is supplemented by ES Appendix 5.4: Assessment of Ecological Impacts [REP2-032, REP2-033].
- 4.13.13. The Application Site is some 0.16km east from The Swale SPA and Ramsar internationally designated ecological sites. There are a further six internationally designated sites with 10km of the Site as follows:

WHEELABRATOR KEMSLEY GENERATING STATION (K3) AND WHEELABRATOR KEMSLEY NORTH (WKN) WASTE TO ENERGY FACILITY: EN010083
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- Medway Estuary and Marshes SPA and Ramsar site;
 - Thames Estuary and Marshes SPA and Ramsar site;
 - Outer Thames Estuary SPA; and
 - Queendown Warren Special Area of Conservation.
- 4.13.14. The nearest nationally designated sites are: Swale Estuary Marine Conservation Zone (MCZ) some 0.02km to the south east, Swale Site of Special Scientific Interest (SSSI) approximately 0.13km south east, and Elmley National Nature Reserve (NNR) some 0.4km to the north east.
- 4.13.15. SSSI sites within 1km of the Site are:
- Medway Estuary and Marshes SSSI;
 - South Thames Estuary and Marshes SSSI;
 - Sheppey Cliffs and Foreshore SSSI; and
 - Queendown Warren SSSI.
- 4.13.16. The Milton Creek Local Wildlife Site (LWS) is a non-statutorily designated site within 2km of the Site.
- 4.13.17. The Proposed Development would not be within any designated sites and therefore there would be no direct impacts arising therefrom in terms of loss of habitat.
- 4.13.18. A Phase 1 Habitat Survey of the Site and its surrounds was undertaken and the results are presented in Figure 11.3.2 of ES Appendix 11.3 – Ecological Baseline Surveys 2007 - 2009 [APP-045] with the habitat types and descriptions recorded. As the Consented K3 Facility is operational this and its consented landscaping scheme (yet to be implemented) is taken as the baseline for the assessment.
- 4.13.19. For the WKN Proposed Development, the site is occupied by the K3 laydown area. In the absence of any consent for WKN that laydown area would be restored to its previous condition. Therefore, the ES is informed by previous surveys undertaken in 2007 and 2009 as part of the initial K3 application which assesses the worst-case scenario prior to the loss of habitat as part of the original site clearance for the WKN site.

The practical effect of the K3 Proposed Development

- 4.13.20. The practical effect of the K3 Proposed Development would be to generate additional electricity and process additional waste. The increase in emissions due to the increased tonnage throughput and vehicle movements is assessed as not resulting in any adverse impacts on designated sites or ecology in non-designated areas. The practical effect of the K3 Proposed Development would therefore not have any ecological impacts.

Effects of WKN construction

- 4.13.21. For the effects of construction of the WKN Proposed Development the ES assesses the likely effects on international sites within 10km from the Site. The ES concludes that at this distance there would not be any likely significant effects on the Medway Estuary and Marshes SPA and Ramsar

site, the Thames Estuary and Marshes SPA and Ramsar site and the Outer Thames Estuary SPA and Queendown Warren SAC. Therefore, the ES assesses the effects arising from the construction of WKN on The Swale SPA and Ramsar site.

- 4.13.22. The construction of the WKN development would not cause any direct impact on The Swale SPA and Ramsar site via habitat loss, given no part of either designated site falls within the site boundary.
- 4.13.23. Once construction commences, all hardstanding areas would drain eastward into a storage pond. Activities or items that may contaminate water entering The Swale SPA would be located more than 20m from the Site boundary and a strict waste management system would be established to avoid leachates. These measures, to be secured through the CEMP, would ensure there would be no adverse impacts on the SPA in relation to drainage and surface water.
- 4.13.24. A lighting scheme would be submitted as part of the CEMP that would follow best practice and ensure no direct lighting of any designated areas, use flood defences to prevent light spill, use low directional lighting where possible, and ensure construction compounds are appropriately located.
- 4.13.25. The Saxon Shore Way footpath is close to the Site. It is not anticipated that construction staff would access The Swale SPA/Ramsar site for recreational purposes, therefore, no impacts would be expected from recreational disturbance during construction.
- 4.13.26. Noise generated from piling, HGV movements and other construction activities would potentially disturb birds wintering in The Swale SPA/Ramsar site. The ES models noise impacts from the loudest activities (impact piling) which would be received by birds in the SPA/Ramsar site as 61.5 dB L_{Amax} , covering an area of some 9.6 ha within the 6,514 ha designated site. This is below the max 80 dB L_{Amax} threshold associated with the greatest disturbance to birds but above the screening threshold of 55 dB L_{Amax} . To mitigate this impact R28 and R29 Preferred dDCO [REP7-003] stipulates a piling risk assessment approved by the RPA consulting the EA, and prevents impact piling in January, February, or between April and August inclusive, with no more than 10 days of impact piling during November and December. Works for a new outfall into The Swale (Work No. 7) would follow methods and timing restrictions set out in the original Marine Licence to avoid disturbance impacts. No noise and vibration impacts which would have a significant effect on the designated sites are expected to arise from construction vehicles.

Disturbance from people and plant movements

- 4.13.27. Movement of people and plant in the construction phase may be visible to a small part of The Swale SPA/Ramsar site. However, the ES concludes that any disturbance would be limited as bird species are likely to be habituated to people due to the Knauf Jetty to the north of the Site,

the public footpath along the sea wall and the other industrial sites that are located in proximity to The Swale SPA/Ramsar site.

- 4.13.28. The Marsh Harrier is considered to be susceptible to disturbance, especially during breeding season. The ES states the population of the Marsh Harrier has increased in north Kent and they now occupy sites previously considered as unsuitable, such as the reedbed to the north of the Site. 2009 and 2016 surveys noted the Marsh Harrier used this reedbed despite the operation of the Knauf Jetty and during the construction of the K3 facility and the DS Smith AD Plant. The s106 agreement at the time of the K3 Planning Permission required the creation of a new reedbed at Harty Fen on the Isle of Sheppey to provide alternative habitat for the Marsh Harrier, completed in October 2018. Further, a 2.4m closed-board wooden fence would be erected around the laydown area as part of the mitigation in the original K3 application. Therefore the impacts from disturbance from people and/or plant are considered to have a slight effect that is not significant.
- 4.13.29. Overall, no likely significant effects on biodiversity in internationally designated sites would be expected during the construction of Project WKN.
- 4.13.30. The Swale MCZ is located approximately 15m to the east of the Application Site with the laydown area being the closest point, therefore the impacts on the MCZ would be similar as for The Swale SPA/Ramsar site.
- 4.13.31. The Swale SSSI covers the same area as The Swale SPA/ Ramsar site whilst the Elmley NNR occupies a smaller area within The Swale SPA/Ramsar site on the Isle of Sheppey. Given the conclusions made on The Swale SPA/Ramsar site there are no significant impacts identified on these sites.
- 4.13.32. The Milton Creek LWS, over 400m to the south east of the Application Site is the only regional or local site in proximity thereto. It comprises a mix of habitat types and could be considered an informal extension of The Swale SPA. The ES has concluded no likely significant impacts on the LWS as a result of construction of Project WKN.
- 4.13.33. The WKN Proposed Development would not affect any ancient woodland or protected trees.

Breeding Birds

- 4.13.34. Surveys undertaken for the original K3 application show no evidence of breeding birds on the WKN site. Its development would result in the loss of some landscaping proposed by the original K3 application that was to replace breeding bird habitat on the K3 site. In addition, some vegetation would be cleared to make way for the WKN laydown area and construction access road although this would be temporary.
- 4.13.35. The reedbed north of the WKN site has no international, national or local designation but supports three Schedule 1 breeding birds – Marsh

Harrier, Bearded Tit and Cetti's Warbler. The following impacts on this reedbed are considered:

- Drainage – to avoid any accidental release of pollutants to the reedbed all activities/items involving refuelling and maintenance of machines, oil storage tanks, chemical or fuel storage and on-site concrete batching plants would be located more than 20m from the site boundary;
- Light Spill – The construction lighting scheme submitted as part of the CEMP would minimise the lighting of the reedbed. The key reedbed is 50m from the WKN Proposed Development boundary at its nearest point so the impact of appropriately designed lighting would be low;
- Disturbance from people and plant movements – the disturbance to nesting birds is considered negligible given they generally nest towards the middle of the reedbed; and
- Noise – The loudest noise activity, impact piling, is restricted to certain times of the year by R29 to avoid the nesting bird season. The ES demonstrates that noise associated with HGV movements would be below the level where NE suggest further investigation is required.

Reptiles

- 4.13.36. The WKN Proposed Development site originally comprised a mix of habitats that may have supported reptiles cleared from the site prior to construction of the Consented K3 Facility. This habitat was due to be restored and therefore, to mitigate the habitat loss by the WKN Proposed Development new habitat will be created at the eastern end of the WKN site.
- 4.13.37. Reptile-proof fencing would be erected during the entire construction phase after which reptiles would colonise the new habitat. Therefore, it is considered that impacts on reptiles are temporary with enhanced habitat being created to replace the habitat that has been lost.

Operational impacts of WKN

- 4.13.38. For the operational effects of the WKN Proposed Development the ES assesses the likely effects on international sites up to 10km away. The ES concludes that due to the distance between the WKN Proposed Development and the designated sites there would not be any likely significant effects on the Medway Estuary and Marshes SPA and Ramsar site, the Thames Estuary and Marshes SPA and Ramsar site and the Outer Thames Estuary SPA and Queendown Warren SAC. Therefore, the ES only assesses the WKN operational effects on The Swale SPA and Ramsar site.

Operational Impacts: Drainage

- 4.13.39. The WKN Proposed Development would have two separate drainage systems. The first would collect clean surface water runoff, eg from building roof areas, storing it in the lagoon. The second would collect 'dirty' runoff, eg from the Flue Gas Treatment Plant (FGT) area, storing it in the 'dirty' water tank to be used as required, eg for ash quenching. The clean water in the lagoon would top up the 'dirty' water tank. If the

lagoon reaches the maximum acceptable capacity it would be discharged at a controlled rate into The Swale, as for K3. These measures would ensure that no adverse impacts in relation to drainage and surface water would affect the SPA.

4.13.40. Other operational impacts assessed are:

- Light Spill – an operational lighting scheme secured by R22 dDCO would ensure an ecologically sensitive lighting scheme is installed;
- Disturbance from people and plant movements would be of limited impact as bird species feeding on the intertidal areas of the SPA/Ramsar site are habituated to people using the public footpath and the existing industrial activity, screened by the sea wall, buildings and topographical features;
- Recreational disturbance would not be likely to be significant given a maximum of 50 operational staff at any one time and due to the Site's industrial nature access to the Saxon Shore Way and Swale Estuary would be restricted; and
- Noise and vibration – Operational noise would have a minimal impact on birds in the SPA/Ramsar site as operational noise levels would not be expected to exceed the 55 dB threshold.

4.13.41. Overall, no likely significant effects on biodiversity in internationally designated sites are expected at the operational stage of WKN.

4.13.42. For the reasons given in assessing the construction related impacts of the WKN Proposed Development, there would not be any likely significant effects arising from that development on The Swale MCZ, The Swale SSSI and the Elmley NNR, when operational. Similar conclusions are reached regarding the LWS and any ancient woodland or protected trees.

WKN Operational effects: Species

4.13.43. Without mitigation the operation of the WKN Proposed Development has the potential to impact breeding birds due to light spillage, disturbance, operational noise and mismanagement.

4.13.44. Although the 24 hour operating times means there is potential for light spill to impact nesting birds, the lighting scheme for the operational phase would ensure lighting on the site boundary would be appropriately sensitive to ecological receptors. The level of disturbance arising from people and plant movements would not be expected to be sufficient to disturb breeding birds, given they typically nest in the centre of the reedbed. The ES concludes that the operational noise would not have a significant impact on breeding birds within the reedbed. Therefore the ES assesses the impacts on Schedule 1 breeding birds to be negligible.

4.13.45. The main harm to reptiles would be from vehicle movements. Whilst reptiles may move across the site foraging and basking, the low speed of the vehicles and vibrations would enable reptiles to avoid vehicles. Therefore, operational impacts on reptiles would be low.

Biodiversity enhancement

- 4.13.46. The parameter plan [REP2-039] demarcates an area to be used to provide a surface water attenuation pond, hard and soft landscaping and biodiversity enhancement measures.
- 4.13.47. The approved landscaping plan for the Consented K3 Facility includes the planting of some 5,000 trees and shrubs. In addition, pursuant to the s106 obligation for the K3 Planning Permission a new bird nesting habitat on the Isle of Sheppey has been created, managed by the Royal Society for the Protection of Birds (RSPB); and creation of reptile translocation areas adjacent to the K3 site has taken place. The WKN site is smaller than the K3 site but would provide an element of landscaping in the eastern part of the site. R21 dDCO [REP7-003] would require a written ecological management and enhancement plan (EMEP) to be approved for the WKN site. (This has been retitled "Ecological Mitigation and Management Plan" (EMMP) in recommended changes to the DCO, see Section 7.3.50 of this Report).

dDCO Requirements

- 4.13.48. R9 dDCO would ensure details of the K3 Planning Permission are carried over into the DCO and apply as approved, including the K3 EMMP and Landscape Masterplan. R10 would provide for maintenance of the K3 landscaping and R21 would require the EMEP to be approved for the WKN site. (This has been retitled "Ecological Mitigation and Management Plan" (EMMP) in recommended changes to the DCO, see Section 7.3.50 of this Report). R15 provides for landscaping on the WKN site and R16 stipulates its retention and maintenance. Other Requirements deal with elements of WKN that could have effects on ecology such as R22, on the CEMP, R23 on external lighting and R29 on the timing of piling. R5 controls the storage of fuel on the K3 and WKN sites and R18 deals with surface water drainage.
- 4.13.49. Overall, therefore the ES has not identified any significant effects on designated sites, protected species and habitats or other species considered to be of principal importance for the conservation of biodiversity as a result of the K3 or WKN Proposed Developments.

Examination

- 4.13.50. In ExQ3.5 I requested the Applicant to provide a draft EMMP for the WKN Proposed Development due to concern that lack of such provision would affect the confidence with which it could be asserted that the required mitigation would be adequately secured and it appeared the Applicant would only prepare a draft if NE or KCC required it.
- 4.13.51. In ExQ4.5.1 I requested NE's view on the dEMMP [REP5-005]. NE responded [REP7-034]:

"The draft WKN Ecological Management and Mitigation Plan provides sufficient information on the measures that will be undertaken to avoid and mitigate impacts on relevant protected species. In particular, the document is helpful in setting out the mitigation measures to minimise impacts on breeding marsh harriers and wintering birds, which are

features of the nearby European sites. These measures accord with advice that Natural England has previously given in relation to the Habitats Regulations assessment of the proposals.”

- 4.13.52. In its SoCG with the Applicant [REP7-014] NE agreed that the Proposed Development would not compromise the conservation objectives of the identified Natura 2000 sites and would not result in adverse effects on the respective sites’ integrity.
- 4.13.53. NE agreed further that subject to best practice construction methods to minimise noise, secured by R4 dDCO and in the absence of impact piling (required for construction only), no adverse effect on the integrity of the Swale designations would occur during decommissioning of the facilities.
- 4.13.54. KCC in its SoCG with the Applicant [REP8-013] agreed with the position set out by the Applicant related to the status of the ecological elements of the original s106, thus:

“Reedbed habitat creation – in accordance with the S106 an area of reedbed was created within the Harty Fen on the Isle of Sheppey. 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; and

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.”

Conclusion

- 4.13.55. In considering ecology the ES did not identify any significant effects on designated sites, protected species and habitats or other species of principal importance for the conservation of biodiversity.
- 4.13.56. Various construction phase mitigation measures have been proposed which would be secured by Requirements set out within the Recommended DCO which in respect of Project K3 are carried forward from the K3 Planning Permission and approved variations.
- 4.13.57. The effect of the proposed mitigation measures would be that no residual likely significant effects are anticipated on any of the ecological receptors identified. Accordingly, both the K3 Proposed Development and the WKN Proposed Development would not result in significant harm to biodiversity conservation interests and would meet the aims of NPS EN-1, the NPPF and relevant development plan policies.

4.14. GREENHOUSE GASES AND CLIMATE CHANGE

Policy Considerations

- 4.14.1. The CCA2008 (as amended) commits the UK government to reducing greenhouse gas emissions by at least 100% of 1990 levels by 2050 (a net zero carbon target for the UK).
- 4.14.2. The 2011 Carbon Plan (Carbon Plan) is the UK's national strategy under CCA2008 for delivering emissions reductions through Carbon Budgets (2023-27) and preparing for further reductions to 2050. The Third, Fourth and Fifth Carbon Budgets, set through the Carbon Budget Orders 2009, 2011 and 2016, are set out in paragraph 6.2.2 of ES Chapter 6 [APP-058].
- 4.14.3. The Carbon Plan, pp93-99 describes a three-pronged strategy of: preventing waste arising; reducing methane emissions from landfill; and efficient energy recovery from residual waste. Paragraphs 2.130-2.132 describe energy from waste as a sustainable biomass source and low carbon heat source for large-scale CHP opportunities. Paragraph 2.224 states that "*efficient energy recovery from waste prevents some of the negative greenhouse gas impacts of waste in landfill and helps to offset fossil fuel power generation*".
- 4.14.4. The Waste Management Plan for England, December 2013 (WMPE) states that the Government prioritises efforts to manage waste in line with the waste hierarchy and reduce the carbon impact of waste, and supports efficient energy recovery from residual waste – of materials which cannot be reused or recycled – to deliver environmental benefits, reduce carbon impact and provide economic opportunities.
- 4.14.5. The Clean Growth Strategy for the UK, 2017 (CGS) notes significant progress made in decreasing Greenhouse Gas (GHG) emissions from waste going to landfill and adopts goals of being a 'zero avoidable waste economy' by 2050 and diverting all food waste from landfill by 2030.
- 4.14.6. Although not adopted national policy the National Infrastructure Assessment, 2018 (NIA) recommends that more use of alternative treatment for food waste and plastic in particular is encouraged to reduce GHG emissions. On page 34 it states:

"The successful delivery of a low cost, low carbon energy and waste system requires... encouraging more recycling, and less waste incineration."
- 4.14.7. The UK Committee on Climate Change (UK CCC) has a statutory role to advise government under CCA2008. The Committee's 2017 and 2018

reports to Parliament⁷ identify significant policy gaps for meeting carbon budgets. On page 8 in the 2017 report, the Committee stated that:

- 4.14.8. *"New policies are needed across the economy. By 2030, current plans would at best deliver around half of the required reduction in emissions, 100-170 MtCO₂e per year short of what is required by the carbon budgets."*
- 4.14.9. The latest advice to Government regarding necessary actions for the UK to achieve the carbon emission reductions enshrined in law via the CCA2008 is the UK CCC's report: Reducing UK emissions: Progress Report to Parliament, was laid before Parliament on 25 June 2020 (June 2020 CCC Progress Report) [REP7-030]. 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:
- "New plants (and plant expansions) above a certain scale should only be constructed in areas confirmed to soon have CO₂ infrastructure available and should be built "CCS1 ready" [Carbon Capture and Storage] or with CCS".*
- 4.14.10. Chapter 7 of the sectoral scenarios report from the UK CCC, p201 lists "incineration with energy recovery" among technology options for landfill waste diversion, as noted in [ES Chapter 6 [APP-058] paragraph 6.2.16.
- 4.14.11. The UK CCC's 2019 report states that electricity generation needs to be almost fully decarbonised by 2050 and that industry will require greater deployment of carbon capture, utilisation and storage (CCUS), use of hydrogen, and electrification. As to waste management it suggests that no biodegradable waste should be landfilled after 2025 and that recycling rates of 70% should be targeted, further reducing residual waste.
- 4.14.12. NPS EN-1 states that while:
- "the UK economy is reliant on fossil fuels, and they are likely to play a significant role for some time to come... the UK needs to wean itself off such a high-carbon energy mix: to reduce greenhouse gas emissions, and to improve the security, availability and affordability of energy through diversification" (paragraphs 2.2.5 and 2.2.6)".*
- 4.14.13. Paragraph 2.2.4 states that not all aspects of Government energy and climate change policy will be relevant to NSIP decisions or planning decisions by local authorities, and the planning system is only one of several vehicles that helps to deliver Government energy and climate change policy.

⁷ Committee on Climate Change (2017): Meeting Carbon Budgets: Closing the policy gap. 2017 Report to Parliament, London: Committee on Climate Change. Committee on Climate Change (2018): Reducing UK emissions. 2018 Progress Report to Parliament, London: Committee on Climate Change.

- 4.14.14. Paragraph 3.4.3 notes only that the energy produced in EfW facilities “from the biomass fraction” of residual waste is regarded as renewable. Section 4.6 supports CHP for thermal generating stations including (paragraph 4.6.8) on the grounds of the efficiency of displacing conventional fossil-fuelled separate heat and electricity generation.
- 4.14.15. Paragraph 5.2 states that:
- “CO2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). However, given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies aimed at decarbonising electricity generation such as EU ETS (see Section 2.2 above), Government has determined that CO2 emissions are not reasons to prohibit the consenting of projects which use these technologies or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR and, for coal, CCS requirements). Any ES on air emissions will include an assessment of CO2 emissions, but the policies set out in Section 2, including the EU ETS, apply to these emissions. The [decision making body] does not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets and this section does not address CO2 emissions or any Emissions Performance Standard that may apply to plant.”*
- 4.14.16. The EU emissions trading scheme (ETS) does not apply to waste combustion installations and paragraph 3.51 of the Budget 2018 states *“In the unlikely event no mutually satisfactory agreement can be reached and the UK departs from the EU ETS in 2019, the government would introduce a Carbon Emissions Tax to help meet the UK’s legally binding carbon reduction commitments under the Climate Change Act. The tax would apply to all stationary installations currently participating in the EU ETS from 1 April 2019”*.
- 4.14.17. Low-carbon technologies are defined in the NPPF as “...those that can help reduce emissions (compared to conventional use of fossil fuels).” A core planning principle of the NPPF is that the planning system should *“...support the transition to a low carbon future in a changing climate”*. Paragraph 154 states that in determining planning applications for renewable and low carbon development:
- “local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.”*
- 4.14.18. KCC’s MWLP states in its spatial vision at paragraph 3.0.2 that it aims to drive waste up the Waste Hierarchy and *“ensure that requirements such as a Low Carbon Economy (LCE) and climate change issues are incorporated into new development.”* A strategic objective is to:
- “Ensure minerals and waste developments contribute towards the minimisation of, and adaptation to, the effects of climate change. This*

includes helping to shape places to secure radical reductions in greenhouse gas emissions and supporting the delivery of renewable and low carbon energy and associated infrastructure."

4.14.19. Policy DM 1 requires design proposals for waste development to minimise greenhouse gas emissions and other emissions. In addition the notes to Policy DM 12 state that climate change should be considered in the evaluation of significant cumulative effects on the environment.

4.14.20. SBC's Local Plan at paragraph 4.1.50 indicates the need to move beyond adaptation to the impacts of climate change, reducing greenhouse gas emissions where possible, by among other things:

"Encouraging the use of renewables and energy efficiency improvements (inc. micro-renewable energy and free-standing projects), identifying the potential for decentralised, renewable or low carbon energy supplies and for co-locating heat customers and suppliers."

4.14.21. Policy DM20 is generally permissive of development of renewable and low carbon energy sources subject to various environmental, planning and social criteria. Policy CP4 seeks to maximise opportunities for including sustainable design and construction techniques including the use of recycled and recyclable materials, sustainable drainage systems, carbon reduction and minimising waste.

4.14.22. Policy DM19.2 promotes waste reduction, re-use, recycling and composting, where appropriate, during both construction and the lifetime of the development and the location and design of development:

"to take advantage of opportunities for decentralised, low and zero carbon energy, including passive solar design, and, connect to existing or planned decentralised heat and/or power schemes".

4.14.23. Policy DM19 encourages measures to address and adapt to climate change, including:

"c. Recognition that retaining and upgrading existing structures may be more sustainable than building new whilst making the most of opportunities to improve water and energy efficiency in the existing stock."

The Applicant's case

4.14.24. ES Chapter 6 [APP-058] assesses the likely significant effects resulting from the K3 and WKN Proposed Developments as a consequence of GHG emissions and the resultant impact on climate change. It is supported by ES Appendices 6.1, 6.2 and 6.3 containing details of the GHG emissions calculations for respectively, the K3 Proposed Development, WKN Proposed Development and Practical Effect of K3 Proposed Development [APP-031, APP-032, APP-033].

4.14.25. The likely significant effects of GHG emissions from the K3 and WKN Proposed Developments have been assessed in ES Chapter 6 [APP-058]. The global atmospheric mass of relevant GHGs and consequent warming

potential, expressed in CO₂-equivalents, is considered a high sensitivity receptor affected by each of the K3 and WKN Proposed Developments.

- 4.14.26. Net total GHG emissions from operation of the K3 and WKN Proposed Developments have been calculated based on their waste throughput, combustion processes and treatment of residues. A particular feature of the assessment of these emissions is a comparison to baseline GHG emissions from landfill disposal of waste and from conventional electricity and heat generation.
- 4.14.27. Construction and decommissioning stage impacts have also been evaluated and are considered not to be material to the total GHG emissions over the K3 and WKN Proposed Developments' lifetimes, which are dominated by the combustion of waste and generation of energy. The K3 Proposed Development is in any case already largely constructed.
- 4.14.28. The significance of the impact of "net" GHG emissions from the K3 and WKN Proposed Developments has been evaluated with regard to change from the baseline and in the context of climate change and waste policy.
- 4.14.29. All calculations of GHG emissions were undertaken with the waste sector life-cycle analysis software tool 'WRATE'. The WRATE calculations are found in ES Appendices 6.1, 6.2 and 6.3. [APP-031, APP-032, APP-033]
- 4.14.30. Key uncertainties and limitations to the assessment concern the estimate of GHG emissions from landfill in the baseline scenario, the carbon intensity of marginal electricity generation in the baseline that is displaced, and the characteristics of the waste managed (its biogenic to fossil carbon ratio and its energy content), which affect both the baseline and the K3 and WKN Proposed Development scenarios.
- 4.14.31. The K3 Proposed Development is predicted by the WRATE analysis to cause total emissions of approximately 255 thousand tonnes of fossil carbon-dioxide equivalent (ktCO₂e) per year of operation. However, compared to the baseline of impacts from landfill waste disposal and electricity generation that it would avoid, the net effect of the K3 Proposed Development as a whole is predicted to be a reduction in GHG emissions of 232 ktCO₂e/annum, which would be a beneficial effect that is considered significant.
- 4.14.32. The practical effect of the K3 Proposed Development, increasing the energy output of the Consented K3 Facility and also increasing its waste throughput by 130,000 tonnes per annum, is predicted by the WRATE analysis to cause a net total GHG emissions reduction of approximately 60 ktCO₂e per year of operation. This is the balance of process emissions from waste combustion, transport and facility operation compared to the baseline of impacts from landfill waste disposal and electricity generation that it would avoid. The predicted 60 ktCO₂e per annum net GHG emission reduction would be a beneficial effect that is considered significant.
- 4.14.33. Although unavoidable uncertainties in the estimation of baseline waste management and displaced electricity generation emissions, limit the
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certainty with which the net benefits of the K3 Proposed Development's practical effect (increases to the Consented K3 Facility waste throughput and electricity generation) can be predicted, the K3 Proposed Development as a whole can be said with higher confidence to perform well in GHG emission terms, due to its efficiency as CHP facility.

- 4.14.34. The WKN Proposed Development is predicted by the WRATE analysis to cause a total of approximately 163 ktCO₂e per year of operation.
- 4.14.35. However, compared to the baseline of landfill waste disposal and electricity generation that it would avoid, the net effect of the WKN Proposed Development is predicted by WRATE be a GHG emissions reduction of approximately 64 ktCO₂e per annum. This predicted 64 ktCO₂e per annum net GHG emission reduction would be a beneficial effect of the WKN Proposed Development that is considered significant.
- 4.14.36. There are unavoidable uncertainties in the estimation of baseline waste management and displaced electricity generation emissions which could affect the net GHG balance predicted for the WKN Proposed Development. Based on the WRATE analysis, a net GHG emissions reduction is considered more probable than a net emissions increase compared to the baseline, but the amount can only be stated with limited confidence as it is highly sensitive to the assumptions applied.
- 4.14.37. In the case of both the K3 and WKN Proposed Developments, potential further mitigation measures have been considered, but no additional mitigation for the operational phase, within the Applicant's control at the development site, has been proposed or is considered to be required.
- 4.14.38. Although construction-and-decommissioning stage emissions would be limited, good-practice measures to reduce GHG emissions are recommended for the WKN Proposed Development, consistent with guidance from the Institute of Environmental Management and Assessment (IEMA)
- 4.14.39. As GHG impacts are global, all cumulative sources are relevant: this is taken into account in the defined 'high' sensitivity of the receptor and statement that any additional GHG emissions may be considered significant. Additional cumulative effects of greater significance than reported, due to other specific local development projects or the combination of the K3 and WKN Proposed Developments, are not predicted.

Examination

- 4.14.40. In its ExQ3 questions [PD-014] and replies from the Applicant [REP5-011] KCC [REP5-036] and SBC [REP5-027] the ExA clarified the following matters. KCC also replied [REP7-027] to the Applicant's Response to ExAQ3 [REP5-011].
- 4.14.41. KCC states in its reply to ExQ1A.1.3 [REP4-015] that without knowing how much of the feedstock is anticipated to come from landfill as opposed to exported RDF, it is not possible to determine whether the

claimed carbon benefits of the WKN Proposed Development - in particular, those based upon avoided emissions from landfill - would actually materialise.

- 4.14.42. The table in the Appendix to KCC D5 Submission [REP5-042] suggests that the available feedstock going to landfill is substantially less than the RDF currently exported. This is said to be supported by the analysis set out by KCC in its D5 Comments [REP5-038] on the Applicants Response to ExQ1A.1.3 and D5 Response [REP5-036] to ExQ3, demonstrating for example that tonnages of waste types unsuitable for input to EfW are included in the generic category HIC, confirming that waste types are captured that would not be suitable for incineration with energy recovery, inflating the tonnage of waste that might be available for the proposed plants. Corrections to the starting dataset presented by the Applicant reduces the available waste to 0.65 Mt. (pages 3-6 [REP5-038]). Thus it was argued that the claimed carbon benefit for diversion from landfill would in fact be very limited, and the majority of material likely to be sourced would be RDF currently offshored.
- 4.14.43. As to whether there had been any circumstances related to climate change that had changed since publication in 2011 of NPS EN-01 or NPS EN-03 and the consequences thereof, the Applicant acknowledged the UK's ratification of the Paris Agreement in November 2016, seeking a more stringent control on the increase in the global average temperature than was agreed at the 2010 UN Climate Change Conference. The UK Parliament's declaration of an environment and climate emergency in May 2019 and amendment of the CCA2008 to ensure the net UK carbon account for 2050 is at least 100% lower than the 1990 baseline ("net zero").
- 4.14.44. In addition, the Applicant noted the Riverside Energy Park DCO (EN010093) granted on 9 April 2020 [REP5-013] showed that a development that accorded with the NPSs did not lead to the UK being in breach of its international obligations. Further, that *R (Client Earth) v The Secretary of State for Business, Energy and Industrial Strategy [2020] EWHC 1303 (Admin)* [REP5-014] confirms that the SoS is entitled to grant development consent for major energy projects, notwithstanding that they might have significant impacts in terms of greenhouse gas emissions.
- 4.14.45. SBC requested that a Requirement be included in the DCO to ensure the use of low or zero emission HGVs to negate air quality impacts. The Applicant and SBC then agreed that an appropriate number and specification of electric charging points should be provided to serve the WKN Proposed Development, to be reflected via an alteration to the dDCO. Further modelling of the carbon burden from the transportation of waste to the site [REP5-015] prompted the Applicant to reply that a significant adverse impact on carbon emissions in SBC's area was not considered likely, and so a requirement for the use of low or zero emission HGVs would not be necessary or reasonable and in any event there would be no direct control over vehicles used by transporters of the

waste fuel who had to comply with current EU HGV Emissions Standards which incentivise the use of zero and low emission vehicles.

- 4.14.46. KCC in its D2 Submission of 23 March 2020 [REP2-044] drew attention to the Brookhurst Wood appeal decision [REP5-039] in contrast to which the Proposed Development 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 appeal decision noted the precise mix of feedstock the scheme would handle could not be known, there was significant uncertainty around the credentials of the facility in terms of a low carbon technology. Electricity generated by a Combined Cycle Gas Turbine (CCGT) in baseload mode would represent a lower carbon source of electricity than the proposal and the low carbon credentials of the proposal were of little weight as the scheme was a waste management facility not an energy generating scheme, therefore NPSs were given little weight. The Inspector also noted that if not handled at the proposed facility, residual waste would likely be exported for recovery, not sent to landfill. Thus, KCC argues that as the WKN Proposed Development is not an NSIP, compliance with NPSs ought only to be given greater weight with respect to consideration of Project K3.
- 4.14.47. SBC in its LIR [REP1-012] supported objections by KCC that the Proposed Development was not necessary to meet waste requirements for Kent, and conflicted with policies of self-sufficiency and promotion of recycling. SBC is concerned that the development would result in significant carbon impacts and draw substantial HGV traffic into the borough with negative effects on climate change.
- 4.14.48. SBC in its D4 Submission dated 5 May 2020 and Appendix 1 - Climate & Ecological Emergency Action Plan [REP4-025, REP4-026], commented on climate change and potential air quality impacts arising from lorry routing. SBC declared a climate and ecological emergency in June 2019 and the Climate and Ecological Emergency Action Plan was approved by Cabinet on 22 April 2020, containing short and long term actions to achieve carbon reduction and borough-wide net zero carbon by 2030. SBC accepts the Proposed Development is a form of renewable energy under NPS EN-3, however states that it would have "significant adverse impacts upon carbon emissions" within the Borough, citing KCC's view as WPA that the development on the scale proposed is not required to meet waste requirements in the latest WNA, based on the policy of providing self-sufficiency for the disposal of waste in Kent. SBC supports KCC's objections and submits that the Proposed Development would result in unnecessary HGV movements into the borough and the wider Kent area on a significant scale, with subsequent negative effects on climate change. It supports KCC concerns relating to the carbon impacts arising from the development that the development is not compatible with its waste hierarchy and promotion of recycling.
- 4.14.49. Other outstanding matters at the close of the Examination appear from the Applicant's SoCG with KCC [REP8-013], primarily that the level of carbon benefit impact relating to the proposal is disputed and the

reliability of any claimed benefit in terms of reduced carbon emissions is disputed.

- 4.14.50. As to carbon balance the Applicant notes that the Consented K3 Facility in its operational state is a Good Quality CHP and would continue as such, at the increased generating capacity and tonnage throughput. Changes to efficiency criteria in the latest CHPQA guidance mean that the WKN Proposed Development would not be considered as Good Quality CHP. However, the Applicant's Carbon Assessment conservatively models an electricity only facility and the Applicant states that positive weight should be given to Project WKN given it would be CHP ready and located where there remains a good prospect of identifying customers for the heat produced. The Applicant states its carbon assessments adopt a conservative approach in assuming a biodegradable content of 45% and maintains that a far greater proportion of fuel for the Proposed Development would be derived from residual wastes currently disposed to landfill than from RDF.
- 4.14.51. KCC's position is that the carbon assessments are overoptimistic 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 flaws the assessment.
- 4.14.52. Further, the lack of guaranteed heat utilisation in Project WKN shows that the combined projects would not represent Good Quality CHP and therefore to grant consent would be contrary to national energy policy. The absence of evidence to indicate that the additional throughput to the Consented K3 Facility would contribute any additional heat over and above what could be supplied by that facility as permitted, means the same could be said of that proposal if taken as a stand-alone matter. 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.
- 4.14.53. Finally, 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 CCA2008. 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.
- 4.14.54. The June 2020 CCC Progress Report 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 CO₂ infrastructure available and should be built "CCS1 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.

4.14.55. The Applicant also maintains there is no planning policy requirement to attain R1 status; it is a measure within the WFD to ensure energy recovery facilities achieve an appropriate level of efficiency and an industry standard that the Applicant meets and exceeds. The fuel for the Proposed Developments incorporates residual wastes currently sent to landfill and using these wastes instead to recover energy (even before the facilities achieve R1 status) would deliver the waste hierarchy.

4.14.56. KCC argues that management of waste at a plant simply able to recover some energy from waste does not automatically qualify as Other Recovery rather than disposal. For example landfills can recover energy via landfill gas engines yet are always defined as disposal facilities. 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 a plant achieves R1 status, it ought to be regarded as a disposal facility. The EPR leaves unchanged MWLP Policy CSW8 which 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).

4.14.57. KCC also cited in its closing submissions [REP8-016] the Court of Appeal judgement on Heathrow expansion *R (Friends of the Earth) v Secretary of State for Transport and Others [2020] EWCA Civ 214*, concerned with the formulation of the 'Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England'. KCC considered it relevant in the context of the impact of carbon emissions that would result from the Proposed Development. However in that case it was held:

"We have not found that a national policy statement supporting this project is necessarily incompatible with the United Kingdom's commitment to reducing carbon emissions and mitigating climate change under the Paris Agreement, or with any other policy the Government may adopt or international obligation it may undertake"

Conclusion

4.14.58. Considering SBC's request for a new Requirement in the DCO to ensure the use of low or zero emission HGVs, I am persuaded by the Applicant's arguments that given the difficulty in enforcing such a requirement against third party contractors and the existing standards of emissions to which HGV operators are held, this would not be necessary or

reasonable. Otherwise, the Applicant has included in its Preferred DCO that an appropriate number and specification of electric charging points should be provided to serve the WKN Proposed Development which is suitable for the purpose

4.14.59. It is not in dispute that Project K3 and Project WKN are both facilities proposed for the incineration of waste with energy recovery, which if they achieved 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 EA. I cannot with a high level of confidence assume that either project within the Proposed Development would achieve R1 status.

4.14.60. As noted elsewhere and in particular Section 3.11 and Section 6.6 of this Report, in relation to the WKN Proposed Development neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations but primacy is given to the development plan.

Level of carbon benefit

4.14.61. The conclusions of the Applicant's modelling of the practical effects of the K3 Proposed development claim that treatment of an additional 130ktpa of waste would:

- deliver carbon benefits over the current management methods due to increased diversion from landfill and improved energy efficiency performance of the facility;
- avoid a net burden of between c59.5 and 63.3ktCO₂e in 2020 (depending on the composition and CV of the waste diverted from Landfill);
- transporting process residues has a carbon burden but a small impact on the overall carbon benefits of diverting waste from landfill; and
- Treatment of 657kt of waste would help minimise waste to landfill and generate additional renewable energy in heat for the DS Smith Kemsley Paper Mill and electricity for export to the national grid.

4.14.62. However it is inappropriate to take into account the full 657kt of waste in respect of the K3 Proposed Development since it is only the additional 130ktpa that would be processed as a result of an eventual successful application. An avoided carbon burden of 17.7ktCO₂e (or 26.9ktCO₂e applying the sensitivity analysis) associated with the processing of 527kt of waste at the Facility is presented as a net benefit but in reality this is an existing impact that is associated with the already Consented K3 Facility. Nevertheless there would, in the Applicant's terms be a net benefit to be derived from the additional 130ktpa that would result from the approval of the application.

4.14.63. Similar conclusions are found by the Applicant for the WKN Proposed Development in respect of the proposed treatment of an additional 390ktpa of waste at the Facility, save that the net avoided carbon burden is said to be between c63.8 and 98.3ktCO₂e in 2020. However it appears from the relevant carbon assessment [APP-032] that the more relevant figures to be taken forward for overall assessment of the WKN Proposed

Development are the burden of between 31.6ktCO₂e to 50.1ktCO₂e (paragraphs 4.1.2 and 3.2.1) associated with the processing of 390kt of waste at the Facility, itself a significant carbon burden, to which is added emissions from onward transportation of process residues from the facility, making an overall carbon burden of between c33.7ktCO₂e and c52.8ktCO₂e. For the K3 Proposed Development the practical effect of consent would be a carbon burden including an onward transportation burden, of between c15.6ktCO₂e and c24.4ktCO₂e.

- 4.14.64. The netting off of a proportion of GHG is not an unreasonable approach where there is a clear baseline alternative from which like can be compared with like with a high degree of confidence. However the levels of carbon benefit impact relating to the Proposed Development, as the Applicant accepts, is subject to several key uncertainties and limitations, such as the estimate of GHG emissions from landfill, the carbon intensity of marginal electricity generation and the proportions of waste types to be managed. All the available evidence casts considerable doubt on whether the "net benefit" can be ascertained with any great certainty, given it is highly sensitive to the assumptions applied.
- 4.14.65. It should also be borne in mind that (notwithstanding any definitional need for the facilities found in NPSs) if the Proposed Development is not necessary to meet waste requirements for Kent or the area covered by SEWPAG, the carbon burden resulting from the proposed facilities would needlessly increase that burden to no particular purpose. Yet at the same time it would contribute to an increased risk of failure to meet international commitments. This is obviously more so in the case of the WKN Proposed Development than in the case of Project K3, which on the Applicant's own analysis would be predicted to cause a total of approximately 163 ktCO₂e each year of operation from waste combustion and transport. This would be a considerably significant regular discharge of greenhouse gas in its own right over the lifetime of the development, expected to have an operating life of up to 50 years.
- 4.14.66. CO₂ emissions can be a significant adverse impact of waste combustion. Overall I conclude that given the level of uncertainty as to whether and if so what level of "net carbon benefit" would obtain in respect of the Proposed Development this should be accorded little weight. However there are material differences between the effects of the WKN Proposed Development and the practical effect of the K3 Proposed Development such that whilst the combined proposal would be inherently energy inefficient, the significant weight that should be given to the environmental burden of the WKN Proposed Development should not apply to the K3 Proposed Development.

Limited nature of diversion from landfill

- 4.14.67. The comparative scenario relating to landfilling of all waste that would otherwise be managed through the proposed facilities is also concerning, as KCC point out. The waste would arise in Kent where a significant proportion would be diverted from recycling rather than landfill, or further afield where it will have been planned for through Local Plan making processes. It is also commonly understood that emissions from WHEELABRATOR KEMSLEY GENERATING STATION (K3) AND WHEELABRATOR KEMSLEY NORTH (WKN) WASTE TO ENERGY FACILITY: EN010083
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fossil sources would not occur with plastic waste stored in landfill which would not break down and result in GHG emissions for a considerable time, whereas recycling would ensure the carbon stored in fossil sources is not immediately emitted.

- 4.14.68. The RDF export scenario modelled as a sensitivity found that "*...carbon impacts could be up to circa 13ktCO₂e 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 ES Appendix 6.2 – WKN Proposed Development Carbon Assessment [APP-032]). Reviewing the available evidence I see no good reason why the Proposed Development would necessarily have a significantly lesser carbon impact than if the waste were managed via the European RDF export route or supplied to domestic EfW plants with CHP. By the same token it seems to me just as likely that without the Proposed Development, rather than waste being landfilled, it would compete with management through other routes, including other EfW plants and export as RDF.

Level of guaranteed heat utilisation: WKN Proposed Development

- 4.14.69. The Brookhurst Wood appeal decision [REP5-039] is significant because although consent was granted for an EfW plant with 230,000 tpa of C&I and/or Municipal Solid Waste (MSW) of which 50,000 tpa would be recycled, and 180,000 tpa residual waste being combusted to generate electricity and potentially heat, the Inspector found that as an electricity production scheme fired by fuel that is primarily fossil-derived material, it had poor carbon credentials, compared with other energy generators such as CCGT, and as a waste management scheme it had poor carbon credentials compared with export of RDF, the accepted alternative waste management solution for the proposed feedstock. This would suggest that the Proposed Development would struggle to demonstrate compliance with NPS commitments on carbon emission reduction or WLP objectives of securing low carbon solutions.
- 4.14.70. In turn this would make it difficult to adhere to the views concerning climate change adaptation expressed in NPS EN-1 (paragraph 4.8.1) and EN-3 (paragraph 2.3.1) that if new energy infrastructure is not sufficiently resilient against the possible impacts of climate change, it will not be able to satisfy the energy needs as outlined in the NPS.
- 4.14.71. Some matters of climate change adaptation overlap with other principal issues, and in Section 6.19 of this Report I have considered flood risk including in the context of climate change.
- 4.14.72. Neither facility is certain to meet the R1 energy efficiency test. However KMWLP policy, unchanged by the EPR, aims to secure that any additional capacity that produces energy maximises the CV of the waste, harnessing as much of the energy produced as possible, as soon as possible. Taking together both projects within the Proposed Development the proposal would be inherently energy inefficient, not meeting the test of Good Quality CHP, and not making best use of the CV of the proposed feedstock.

- 4.14.73. The need for the UK to continue to transition to a low-carbon electricity market is underlined by the 2015 United Nations Framework Convention on Climate Change (“UNFCCC”) Paris Agreement and the importance of this cannot be overestimated. The June 2020 Progress Report, in confirming that the Government Contract for Difference support scheme to renewables is only available to EfW plants with CHP, is also a significant indicator that plants without CHP should not be regarded as supplying renewable energy.
- 4.14.74. However despite the uncertainties inherent in calculating the net carbon benefit of the K3 Proposed Development’s practical effect, I recognise that the K3 Proposed Development as a whole could be said with higher confidence to perform better in GHG emission terms, due to its greater efficiency as a CHP facility. This is a positive benefit.
- 4.14.75. It would also comply with Swale Local Plan Policy DM19.c, concerned with adaptation to climate change, by retaining and upgrading an existing structure rather than building new.

4.15. GROUND CONDITIONS

Policy Considerations

- 4.15.1. In addressing land use matters Section 5.10 of NPS EN-1 notes that the reuse of previously developed land for new development can make a major contribution to sustainable development. It also advises that for developments on previously developed land applicants should ensure that they have considered the risk posed by land contamination.
- 4.15.2. Paragraph 178 of the revised NPPF states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities. The Framework also encourages the use of previously developed land. At the local level Swale Local Plan Policy ST1 applies national policy in respect of contaminated, unstable and previously developed land.

The Applicant’s Case

- 4.15.3. Chapter 9 of the ES [APP-061] assessed the effect of the Proposed Development on ground conditions. The assessment was based on information relating to the history, geology, hydrology and hydrogeology of the Site as well as ground investigations previously undertaken in the vicinity of the Site.
- 4.15.4. No significant issues were raised by the key consultees as a result of the scoping exercise in relation to ground conditions. No specific ground investigation supported the WKN Proposed Development; the information used to determine the significance of potential effects of the Proposed Development focused on ES Appendix 9.1, Desk Study Ground Conditions

Preliminary Risk Assessment [APP-040], the 2010 EIA for the TCPA1990 K3 application and previous ground investigation data for the WKN and K3 Site [APP-073].

- 4.15.5. The ground conditions in relation to the construction of K3 were assessed as part of the EIA completed for the original TCPA application for the facility. No likely significant effects were identified in relation to ground conditions. All works pursuant to construction of the K3 and planning conditions in relation to ground conditions have been completed and discharged, including adherence to a CEMP. No further external construction work is required by way of consequence of the Practical Effect of the K3 Proposed Development. In the absence of any change in built form associated with the K3 Proposed Development, it is anticipated that there is no potential for further ground condition related effects.

Examination

- 4.15.6. No RRs or WRs received during the Examination raised concerns about ground conditions or land contamination issues. The EA's RRs [RR-001] included that baseline ground conditions have been addressed for the site previously under earlier permissions from KCC and under the relevant IED permit for energy plant; that additional assessment of ground conditions would be undertaken before, during and after operational activities under a new permit if/when issued; that the site geological setting is on strata that is not of significant sensitivity for groundwater protection and provided surface management and materials handling are undertaken in accordance with permit requirements, ground quality and associated controlled waters should not be at significant risk.
- 4.15.7. In the SoCG between the Applicant and EA, supplied at D7 [REP7-012], it was agreed that the K3 Proposed Development would not pose a risk to groundwater. K3 as consented was the subject of its own desk study and preliminary risk assessment and consented with conditions pursuant to the protection of groundwater from any existing land contamination. It was further agreed that all planning conditions of relevance to ground conditions have been discharged. Baseline ground conditions were also addressed for the K3 Site under the IED permit issued (permit no. EPR/JP3135DK). Additional assessment of ground conditions would be undertaken after operational activities under the environmental permit (or as amended by way of consequence of the K3 Proposed Development).
- 4.15.8. For the WKN Proposed Development it was agreed that the ES used an appropriate methodology with an appropriate baseline and makes an appropriate judgement as to the likely significant residual impacts in terms of contamination. The WKN Site's geological setting is on strata that is not of significant sensitivity for groundwater protection.
- 4.15.9. It is also agreed that R28 (piling risk assessment) and 19 (contaminated land and groundwater) of the Applicant's Preferred dDCO [REP7-003] would ensure the appropriate ongoing management of any contamination that might be present and that the risk of consequential environmental

impact is adequately mitigated and any risk as low as reasonably practical.

- 4.15.10. All demolition/decommissioning works for the Proposed Development would be undertaken in accordance with a Decommissioning Environmental Management Plan (DEMP) secured under R4 dDCO [REP7-003].
- 4.15.11. The dDCO as submitted with the application [APP-005] provided in R19 that ground investigations and other preliminary works may not take place until details of capping layer and ground gas protection measures have been submitted and approved by the RPA. R19 also makes provision for any contaminated land not previously identified to be dealt with appropriately.
- 4.15.12. In addition to R19 of the dDCO [REP7-003] dealing with land contamination and groundwater, other requirements of relevance to ground conditions comprise R22 which provides for a CEMP and R28 and R29 which relate to piling.

ExA Conclusion

- 4.15.13. I am satisfied that the Proposed Development accords with all relevant legislation and policy requirements and that ground condition matters are adequately provided for and secured in the DCO.

4.16. LANDSCAPE AND VISUAL IMPACT

Policy Considerations

- 4.16.1. Paragraph 5.9.1 of NPS EN-1 notes that the landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development. Exhaust stacks and their plumes are described as having the most obvious impact on landscape and visual amenity for thermal combustion generating stations. Paragraph 5.9.5 requires the applicant to carry out a landscape and visual assessment.
- 4.16.2. NPS EN-1 notes that virtually all nationally significant energy infrastructure projects will have effects on the landscape, and that projects need to take account of the potential impact. Having regard to siting, operational and other relevant constraints, the aim should be to minimise harm, providing reasonable mitigation where possible and appropriate.
- 4.16.3. Paragraph 5.9.18 of NPS EN-1 recognises that all proposed energy infrastructure is likely to have visual effects for many visual receptors around proposed sites and therefore it is necessary to judge whether the effects outweigh the benefits of the project.
- 4.16.4. Section 5.9 states:

"The landscape and visual assessment should include reference to any landscape character assessment and associated studies as a means of assessing landscape impacts relevant to the proposed project. The applicant's assessment should also take account of any relevant policies based on these assessments in local development documents in England and local development plans in Wales. The applicant's assessment should include the effects during construction of the project and the effects of the completed development and its operation on landscape components and landscape character. The assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity. This should include light pollution effects, including on local amenity, and nature conservation (Department of Energy and Climate Change (DECC), 2011a)."

- 4.16.5. Section 10(3)(b) PA2008 requires the SoS to have regard, in designating an NPS, to the desirability of good design. Section 4.5 of EN-1 sets out the principles of good design that should be applied to all energy infrastructure.
- 4.16.6. NPS EN-3 states at paragraph 2.4.2: *"Proposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity, and in the design of the project to mitigate impacts such as noise and effects on ecology."*
- 4.16.7. NPS EN-3 states at paragraph 2.5.52: *"The IPC should expect applicants to seek to landscape waste/biomass combustion generating station sites to visually enclose them at low level as seen from surrounding external viewpoints. This makes the scale of the generating station less apparent, and helps conceal its lower level, smaller scale features. Earth bunds and mounds, tree planting or both may be used for softening the visual intrusion and may also help to attenuate noise from site activities (DECC, 2011b)."*
- 4.16.8. The KMWLP 2013 – 2030 was adopted in July 2016. Policy DM1, concerned with sustainable development, states that proposals should demonstrate that they have been designed to 'protect and enhance the character and quality of the Site's setting'.
- 4.16.9. The Swale Local Plan was adopted in July 2017. Policy ST1, 9e seeks to maintain the individual character, integrity, identities and settings of settlements, and 11b envisages using landscape character assessments to protect, and where possible, enhance, the intrinsic character, beauty and tranquillity of the countryside, with emphasis on the estuarine, woodland, dry valley, down-land and horticultural landscapes that define the landscape character of Swale.
- 4.16.10. SBC Local Plan Policy ST1 seeks to achieve sustainable development in Swale including protecting and where possible enhancing the intrinsic character and beauty and tranquillity of the countryside. Policy ST5 sets a strategy for Sittingbourne aiming to improve the quality of landscapes and ensure that development is appropriate to landscape character and

quality whilst Policy CP4 requires good design and Policy DM24 requires valued landscapes to be conserved.

The Applicant's Case

- 4.16.11. An assessment of the likely significant landscape, townscape and visual resource effects of K3 as consented was undertaken as part of the ES completed in 2010 pursuant to the K3 Planning Permission (2010 ES Non-Technical Summary, ES Chapter 8, and Appendices for ES Chapters 1 - 8 [APP-069, APP-070, APP-072]). This determined that there would be no significant impacts on landscape or townscape character or views. The effect of the completed development was considered to be minor adverse and not significant on both landscape and townscape character. Views of the K3 facility were considered to be prominent in near views, becoming barely discernible within the existing industrial context in mid to long distance views. The overall visual effect of the completed development was considered to be moderate/minor adverse and not significant.
- 4.16.12. Non-material amendments made since the K3 Planning Permission was granted included changes to the site layout, removal of the Incinerator Bottom Ash (IBA) facility and repositioning of surface water ponds, together with applications to form and improved access road and discharge planning conditions which did not change the overall conclusions of the assessment of effects on landscape, townscape and visual resources as found in the 2010 ES [APP-069, APP-070, APP-072]. The 2010 design and access statement for K3 as consented [APP-148] was also submitted
- 4.16.13. No structural modifications to the K3 facility are required pursuant to the practical effect of the K3 Proposed Development and therefore no additional effects are anticipated on landscape, townscape and visual resources beyond that identified previously. The effects from the K3 Proposed Development are not assessed further, however a cumulative scenario including the K3 Proposed Development is assessed.
- 4.16.14. ES Chapter 12 - Landscape and Visual Effects [APP-064] assesses the likely significant landscape and visual effects resulting from the WKN Proposed Development. Also of relevance in this context is the submitted Landscape Masterplan - Rev M [APP-124] and Site Photographs and Drone footage [REP5-021] and Drone videos [REP5-024, REP5-025 REP5-026]. See also the Design and Access Statement [APP-083].
- 4.16.15. ES Chapter 12 [APP-064] sets out the principal objectives of the assessment:
- to describe, classify and evaluate the existing landscape and townscape likely to be affected by the WKN Proposed Development during its construction, operational and future decommissioning development phases;

- to identify visual receptors with views of the WKN Proposed Development; and
 - to identify the likely significant effects on landscape, townscape and views, considering measures proposed to reduce or avoid any effects.
- 4.16.16. The WKN Site currently comprises hardstanding and forms the K3 Site compound and storage area for the construction phase of K3. Large scale industrial buildings, energy infrastructure and chimneys form the southern and western site boundaries, separating the location from the residential districts of Sittingbourne to the west. This urban area is defined as the Sittingbourne Industrial/Commercial townscape character area. The urban character area has a poor quality and condition due to the extensive industrial buildings and infrastructure and the presence of disused and derelict land resulting in a low value.
- 4.16.17. There are no designated landscapes lying within the WKN Site. The North Kent Marshes Special Landscape Area (Area of High Landscape Value) (AHLV) (Kent Level) extends over the Swale and neighbouring coastal landscape. This area includes the Chetney and Greenborough Marshes which lie next to the WKN Site and extend along Milton Creek. This area is valued for the open character of its landscape. A further AHLV (Swale Level) lies inland of the marshes and includes the Teynham Fruit Belt.
- 4.16.18. The WKN Site is currently not visible in views from the majority of the settlement of Sittingbourne due to industrial development on the edge of the town and the restored landfill mound to the east on the banks of the Swale. To the east and north-east of the WKN Site the channel of the Swale and low-lying landscape of the Isle of Sheppey allow more open, longer distance views. Key visual receptors of high sensitivity and susceptibility to change in view as a result of the WKN Proposed Development include walkers using the Saxon Shore Way long distance footpath (ZU1/2) beside the Swale and Milton Creek. People using this path form the closest high sensitivity receptors and will ultimately form part of a national route, the England Coast Path. The greatest number of visual receptors with views towards the WKN Site would be occupiers of vehicles travelling on Swale Way.

Effects on Landscape and Townscape Character

- 4.16.19. In terms of effects on landscape and townscape character, the new buildings and infrastructure which form the WKN Proposed Development, although large in scale, would form an extension of the existing character of neighbouring development at Kemsley Paper Mill and the K3 development as consented. The townscape character of the WKN Site would be of low sensitivity to change through redevelopment. There would be no significant adverse, direct effects on townscape character during construction or when completed, either during the day or at night.
- 4.16.20. The surrounding rural landscape character areas of the Swale and the Isle of Sheppey are generally in good condition and have an intrinsically high value. There would be no direct effects on these rural and wild landscapes and their sensitivity to change through the indirect influence of the WKN Proposed Development would be medium or low. There

would be no significant adverse, indirect effects on landscape character during construction or operation during the day or at night.

Effects on Visual Receptors

- 4.16.21. Walkers using the Saxon Shore Way would experience a sequence of views that would include a more heavily developed cluster of energy infrastructure at Kemsley Paper Mill within a journey between Milton Creek and Ridham Docks. The assessment of individual viewpoints concludes that there would be either a moderate, slight or negligible effect on receptors at each individual location, which is not significant. The magnitude of change in view for receptors is reduced by the existing context of large-scale industrial development, particularly the neighbouring K3 which will obscure views of the WKN Proposed Development in many views. The expectation of a receptor using the Saxon Shore Way is that large scale industrial buildings will be encountered near the route, defining the character and nature of view towards Sittingbourne. Moderate adverse effects would be experienced by walkers using a relatively short section of the Saxon Shore Way located to the north of the WKN Site where K3 is likely to form a slightly larger group of buildings and infrastructure as a backdrop to the proposals.
- 4.16.22. As a result, the combined sequential effects on walkers is not considered sufficiently adverse to constitute a significant sequential visual effect. Plans to establish the England Coast Path by 2020 on the alignment of the Saxon Shore Way in the vicinity of the WKN Site, whilst not leading to an increase in the level of effect, could lead to an increase in numbers of walkers experiencing these effects in the future. There would also be no significant adverse effects on any other visual receptors within the study area during construction or when development is completed, during the day or at night.

Mitigation

- 4.16.23. The mitigation of effects on landscape, townscape and visual resources is generally achieved as set out in ES Ch 12, paragraph 12.7.1 [APP-064] through:
- provision of hard and soft landscape proposals to enhance the scheme and to screen it in views from neighbouring areas and the wider landscape; and
 - the design of the built environment and infrastructure to minimise the scale and massing of development, the appropriate use of form, surface materials and colours and the use of an appropriate lighting strategy.
- 4.16.24. Landscape proposals would form an integral part of the WKN Proposed Development to provide treatments for the perimeter and internal green spaces. A detailed landscape proposal scheme does not form part of the DCO application but will be secured by way of a Requirement attached to the DCO.

- 4.16.25. The architectural form of the WKN Proposed Development is largely dictated by its function. The stack height and diameter, the buildings scale and mass and the arrangement of infrastructure to achieve the energy generation process are determined through an iterative engineer lead design process. Maximum parameters have been identified for all elements of infrastructure. A lighting assessment has been undertaken to determine the likely type, number and location of luminaires. Detailed design of the WKN Proposed Development will take place following the DCO process.

Cumulative Effects on Landscape and Townscape Character

- 4.16.26. The proposed WKN Proposed Development and many of the relevant cumulative developments lie within the same urban character type comprising the Sittingbourne Industrial/Commercial townscape character area. The existing Kemsley Paper Mill site, neighbouring K3 and nearby industrial developments together with nine cumulative schemes would form a more developed context into which the WKN Proposed Development would be placed. The industrial and commercial characteristics of the northern part of Sittingbourne adjoining the Swale would be intensified within this townscape character area as a result of the addition of the 12 cumulative schemes and the WKN Proposed Development however, the intrinsic character and qualities of the area would remain the same. There would be a medium magnitude of change, leading to a slight adverse level of cumulative townscape effect in the day and at night. The WKN Proposed Development would make a negligible contribution to this cumulative effect.
- 4.16.27. The large cumulative business developments south of Kemsley Mill would lie predominantly within the neighbouring Chetney and Greenborough Marshes character area, considerably changing this landscape character area to that of urban Sittingbourne Industrial/Commercial. The direct cumulative effects of the business park and the indirect effects of the WKN Proposed Development would result in substantial adverse and significant cumulative effects during the day. The large residential schemes east and south of Iwade and west of Sittingbourne would change the rural character of the Iwade Arable Farmlands to an urban townscape of Sittingbourne Residential. The direct cumulative effects of the residential schemes and the indirect effects of the WKN Proposed Development would result in substantial adverse and significant cumulative effects during the day. The WKN Proposed Development would make a negligible contribution to these significant cumulative effects, which would occur even in the absence of the WKN Proposed Development.
- 4.16.28. When considered in combination the K3 and WKN Proposed Developments and the relevant cumulative developments within the Sittingbourne Industrial/Commercial townscape character area would result in a slight adverse level of cumulative townscape effects in the day and at night. The K3 and WKN Proposed Developments, due to their greater combined scale, would make a slight contribution to this cumulative effect. The indirect effects that the combined K3 and WKN

Proposed Developments would make to other landscape and townscape character areas within the study area would not be significant.

Cumulative Effects on Visual Receptors

- 4.16.29. Visual receptors within the study area would generally gain views of a more intensively developed industrial/commercial townscape within the same angle of view as the WKN Proposed Development. The scale and nature of the cumulative schemes would change the nature and character of some views, resulting in a more developed context at Kemsley for walkers using the Saxon Shore Way near Sittingbourne. Walkers using the Saxon Shore Way are receptors of high sensitivity. The magnitude of change in view in some locations would be medium and long term in nature, leading to a substantial adverse level of cumulative effect, which is significant. However, the WKN Proposed Development would make a slight or negligible adverse contribution to this cumulative effect.
- 4.16.30. The anaerobic digester facility and the wind farm on the ridge of high land within the centre of the Isle of Sheppey would be visible as distant, although prominent features on the skyline in successive cumulative views. These viewpoint locations are likely to coincide with the Saxon Shore Way (England Coast Path) and public rights of way within the marshes and the Swale bridge crossings. The cumulative schemes would also be prominent foreground features in views from the central high point on the Isle of Sheppey when looking towards the WKN Proposed Development. Many of these receptors would be of high sensitivity and would experience a negligible to large magnitude of change in view, depending on their proximity to the cumulative developments, resulting in a negligible to substantial adverse cumulative effect during the day and negligible to slight effect at night, which is significant. The WKN Proposed Development would make a negligible to slight adverse contribution to these cumulative effects.
- 4.16.31. When considered in combination the K3 and WKN Proposed Developments and the relevant cumulative developments would create a more intensively developed industrial/commercial townscape leading to substantial adverse levels of cumulative effect for high sensitivity walkers using the Saxon Shore Way, which is significant. However, the K3 and WKN Proposed Developments would make a moderate or slight adverse contribution to this cumulative visual effect.

Examination

- 4.16.32. No significant matters of concern were raised by IPs in RRs and WRs in respect to landscape or visual impact matters.
- 4.16.33. Through initial Written Questions (ExQ1) [PD-008] the following matters were examined:
- design specifications used to inform the assessment of likely significant effects;

- assumptions applied in assessment of visual impacts with regard to building materials and aesthetics; and in relation to the design, and with reference to relevant measures, how these assumptions will be secured in the DCO;
- clarification on construction activities, lighting and plumes and how potential effects resulting from these impacts have been assessed.
- seasonal variations in the visibility of the WKN Proposed Development, and visual representation thereof in the ES;
- conflict between no identification of significant landscape and visual residual effects in ES Chapter 12 with information contained in Table 14.7 in ES Chapter 14 [APP-066], where significant residual cumulative effects are identified;
- how visible plumes have been assessed and the potential for interaction with air quality, considered in ES Chapter 5 [APP-057]. considering the industrial nature of the surrounding developments, how have combined visual effects on receptors from plumes been considered within the assessment, and if they have not, please justify their omission from such assessment;
- lighting could have an effect on ecology, considered in ES Chapter 11 Ecology [APP-063];
- how the final operational lighting scheme would be secured in the DCO and how mitigation for effects of the lighting scenarios required throughout each of the different phases of the development would be secured in the DCO;
- confirmation that the LVIA is based on the parameters and dimensions in ES Chapter 2 [APP-054] and that this is reflected in the dDCO;
- clarity on discrepancies and omissions in the list of cumulative developments;
- how the proposed landscaping would mitigate the effects on landscape and visual receptors, and how if at all the landscaping proposals would serve other purposes such as biodiversity improvements, how these effects would change as the proposed planting matures, clarity on agreement on the planting specification/species mix with the relevant consultation bodies;
- need for summary of effects for Viewpoint 11;
- information on proposed maintenance of trees and shrubs for a period of 5 years under R11 dDCO, and proposed monitoring and remedial measures;
- in ES Appendix 12.1, LVIA Scoping Correspondence with KCC [APP-051], Viewpoints 13, 14 and 15 were agreed to be omitted from the assessment as unlikely to provide clear visibility of the proposals when the K3 Facility was completed. Please explain the reference to a view from Conyer which KCC considered more relevant and whether this has been included in the viewpoints and if not why not.

4.16.34. In ExQ2 the following issues were addressed:

- absence from the dDCO of architectural treatments or surface finishes; and

- how the maximum design parameters for the WKN Proposed Development, modelled as simple grey forms, fit with the good design principles set out in MHCLG's National Design Guide (2019).

4.16.35. In ExQ3 the following issues were addressed:

- how the Design Principles for National Infrastructure, February 2020, considered to be an important and relevant matter to take into account in the Examination, have been met by the Applicant;
- how opportunities have been taken to demonstrate good design of the WKN Proposed Development in terms of siting relative to existing landscape character, landform and vegetation as described in NPS ENS-1; and
- the approach in the WKN Design and Access Statement [APP-083] to have the building appear as a linked set of individual buildings, rather than elements located in an overall 'shell', and whether a similar design approach to that taken for K3, and R22 dDCO adequately secures the design objectives.

LIRs

4.16.36. As noted by SBC in its LIR [REP1-012] the external appearance of the K3 Proposed Development would be unchanged, its stack height is 90m and other elements of the building extend to just over 50m in height.

4.16.37. SBC's LIR [REP1-012] also states the Application Site is wholly in the Sittingbourne urban area and outside any landscape character area and therefore has no landscape character status. It is immediately surrounded by large scale buildings and stacks which sometimes have visible emissions. The open landscapes of the marsh and mudflats are sensitive to vertical built elements such as the proposed generating station and associated stack. As the Application Site is also within flat open ground, any middle or distant views towards the development from farm land and fruitbelt landscapes could render the building and stack visible. Sensitive receptors include users of the Saxon Shore Way and of other rights of way within Elmley National Nature Reserve and occupiers of some residential properties. The Proposed Development would be likely to be highly visible to these sensitive receptors, however (paragraph 6.1.10) the existing five stacks and existing large-scale buildings would render the Proposed Development as a part of the existing industrial scene.

4.16.38. No changes to scale, mass or external appearance are required pursuant to the practical effect of K3 Proposed Development. The approved plans denoting the form and appearance of the Consented K3 Facility are certified documents in the dDCO for the K3 Proposed Development. Any amendments to the approved plans would require consent from KCC under R7, dDCO.

4.16.39. The final height of the stack of the WKN Proposed Development is not determined. Table 1 of Requirement 14 of the dDCO provides a minimum height parameter of 90m and a maximum height parameter of 99m for Work No 2 (f) Stack. The intention is to provide some design flexibility

for its height whilst ensuring clarity for the purposes of the EIA by defining a lower limit for air quality modelling and an upper limit for assessing landscape and visual impacts.

- 4.16.40. The draft SoCG between the Applicant and SBC [REP5-006] submitted at D5, is not signed or dated by either party. It is clearly drafted by the Applicant. It states that the Applicant and SBC are in discussions regarding the application of Building Research Establishment Environmental Assessment Method (BREEAM) standards as an appropriate Requirement of the dDCO. Under Matters in Dispute, it states "Currently a number of matters remain under discussion between the parties. There are no matters which have not been agreed."
- 4.16.41. However SBC noted in its D4 submission [REP4-025] that it does not disagree with the conclusions in ES Chapter 12 [APP-064] that the development would be unlikely to result in significant adverse visual or landscape character effects.

Lighting

- 4.16.42. ES Chapter 12 [APP-064] paragraph 12.6.32, states lighting proposals are likely to include approximately 30 luminaires mounted on 6 or 8m high columns and 13 building mounted luminaires. This would extend existing well-lit conditions provided by lighting columns on adjacent industrial land at Kemsley Paper Mill into an unlit site but within the wider context of the existing building and tower mounted lights and lighting columns in industrial areas north of Sittingbourne and high-level mast mounted lights at Ridham Docks.
- 4.16.43. The lighting at the WKN Site would not change the existing character of the area, particularly given the measures adopted to ensure lighting is directional and that spillage is therefore controlled as far as practicable. There would be a negligible magnitude of change on a low sensitivity receptor. The significance of night-time effects on the existing and future baseline situation of the Sittingbourne Industrial/Commercial Area character area would be negligible adverse in the long term.
- 4.16.44. In respect of the K3 Proposed Development a lighting scheme for K3 as consented was approved under Condition 21 of the K3 Planning Permission, no changes are proposed, and the scheme forms a certified document in the dDCO. Amendments would require consent from KCC under R7, dDCO.
- 4.16.45. The large scale of the WKN Proposed Development and the lighting at night would be apparent as an intensification of baseline conditions in the context of similar infrastructure at the existing CHP facility (K1) and Consented K3 Facility.

Conclusion

- 4.16.46. An assessment of the likely significant landscape, townscape and visual resource effects of the Consented K3 Facility was undertaken as part of the ES completed in 2010 pursuant to the K3 Planning Permission

(Document 3.3 submitted with the Application [APP-070]). I am satisfied that there would be no significant impacts on landscape or townscape character or views. The effect of the completed development was considered to be minor adverse and not significant on both landscape and townscape character. Views of the K3 plant were considered to be prominent in near views, becoming barely discernible within the existing industrial context in mid to long distance views. The overall visual effect of the completed development was considered to be moderate/minor adverse and not significant.

- 4.16.47. Non-material amendments since the original consent have changed the site layout, removed the IBA facility and relocated the surface water ponds, which did not change the overall conclusions of the assessment of effects on landscape, townscape and visual resources originally stated in the 2010 ES. No structural modifications to the Consented K3 Facility are required and therefore no additional effects are anticipated on landscape, townscape and visual resources beyond those identified previously.
- 4.16.48. The assessment of the effect of the WKN Proposed Development on landscape character and visual receptors uses an appropriate methodology as set out in the Guidelines for Landscape and Visual Impact Assessment (GLVIA3) 2013 and accurately represents the potential effects of the WKN Proposed Development.
- 4.16.49. The proposed buildings and structures would only be visible in the context of being in front of or in the backdrop of existing large-scale industrial buildings at Kemsley Paper Mill and therefore the significance of any effect will be seen in that context.
- 4.16.50. Accordingly I consider that the conclusions of the landscape and visual assessment presented in ES Chapter 12 [APP-064] are an accurate reflection of the likely significant effects of the WKN Proposed Development both alone and in combination with the K3 Proposed Development and other developments taken into account.
- 4.16.51. For the WKN Proposed Development subject to the implementation of R23 dDCO (external lighting) the WKN Proposed Development will not have a detrimental visual effect pursuant to external lighting.
- 4.16.52. Moderate (not significant) adverse effects would be experienced by walkers using a relatively short section of the Saxon Shore Way located to the north of the WKN Site. I conclude there would be no significant landscape effects that would arise as a result of the WKN Proposed Development during the construction, operational or decommissioning phases.
- 4.16.53. Detailed design approval of the WKN Proposed Development would be effectively secured through R14 dDCO, [REP7-003]: *"No part of Work No 2 may commence until written details of: (a) the siting, layout, scale and external appearance (including colours, materials, and surface finishes) of all permanent buildings and structures have been submitted to and approved by the relevant planning authority"*

4.17. NOISE AND VIBRATION

Policy Considerations

- 4.17.1. Section 5.11 of NPS EN-1 refers to the Government's policy on noise as set out in the Noise Policy Statement for England (NPSE), recognising that excessive noise can have impacts on the quality of human life, health, and the use and enjoyment of areas of value and areas with high landscape quality. Noise resulting from a proposed development can also have adverse impacts on wildlife and biodiversity.
- 4.17.2. Factors which will determine noise impact include the operational noise from a development and its characteristics, the proximity of the development to noise sensitive premises and the proximity to quiet places and to designated biodiversity sites.
- 4.17.3. Paragraph 5.11.8 of NPS EN-1 requires projects to demonstrate good design through the selection of the quietest cost-effective plant available; containment of noise within buildings wherever possible; optimisation of plant layout to minimise noise emissions; and, where possible, utilise landscaping, or noise barriers to reduce noise transmission.
- 4.17.4. NPS EN-3 advises in addition, specific considerations to apply to biomass and EfW generating stations. Sources of noise and vibration may include:
- delivery and movement of fuel and materials;
 - processing waste for fuel at EfW generating stations;
 - the gas and steam turbines that operate continuously during normal operation; and
 - external noise sources such as externally-sited air-cooled condensers that operate continuously during normal operation.
- 4.17.5. NPS EN-3 also advises that the Applicant's ES should include a noise assessment of the impacts on amenity in case of excessive noise from the project as described in Section 5.11 in NPS EN-1.
- 4.17.6. Paragraph 180 of the revised NPPF advises that new development should take account of the likely effects of pollution on health, living conditions and the natural environment and in doing so should mitigate and reduce to a minimum adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life.
- 4.17.7. Planning Practice Guidance (PPG) – Noise, which reiterates guidance on noise policy and assessment methods, notes that:

"the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation".
Paragraph: 006 Reference ID: 30-006-20190722

The Applicant's Case

- 4.17.8. ES Chapter 7 - Noise and Vibration [APP-059] provides an assessment for the noise and vibration emissions from the construction and operation of the K3 Proposed Development; the practical effect of the K3 Proposed Development; and the WKN Proposed Development. The assessment is supported by:
- Appendix 7.1 - Noise Survey Results [APP-034];
 - Appendix 7.2 – Proposed Development Construction Noise Model Input Data [APP-035];
 - Appendix 7.3 - Proposed Development Construction Noise and Vibration Assessment [APP-036];
 - Appendix 7.4 - Operational Noise Model [APP-037]; and
 - Appendix 7.5 - Operational Noise Assessment [APP-038].
- 4.17.9. Table 7.10 [APP-059] indicated representative baseline sound levels determined from the 2016 survey to provide levels indicative of the quieter times during the survey period. This is considered to be a robust approach. The minimum representative daytime and night-time levels are used: for background sound levels: 39 dB $L_{A90,day}$ and 35 dB $L_{A90,night}$; and for the ambient sound levels: 47 db $L_{Aeq,day}$ and 45 dB $L_{Aeq,night}$.
- 4.17.10. No significant vibration is transmitted beyond the footprint of the neighbouring industrial buildings, so existing vibration levels across the site and wider area are considered to be negligible. Assessment of vibration effects are compared against the absolute thresholds provided in Table 7.4 [APP-059], rather than vibration level change. Therefore, no measurement of baseline vibration is required.
- 4.17.11. Assumed traffic growth for the area, and traffic flow data for the existing measured baseline (2016) and assessment baseline year (2021) scenarios, predict sound levels to increase by less than 0.5 dB due to the natural increase in traffic flows on the local road network. This is not considered a significant change to the assessment procedure or representative baseline sound levels.

Examination

- 4.17.12. In ExQ1.5.4 clarification was sought on correct references and document locations in relation to modelling of HGV noise during construction, see Figures 11.5 and 11.5a (paras 11.6.10 and 11.7.21 ES Chapter 11 [APP-063]).
- 4.17.13. In ExQ1.8.14 clarity was sought on the means of securing mitigation measures for potential adverse effects from noise and/or visual disturbance on the integrity of features of The Swale SPA and Ramsar site.
- 4.17.14. In ExQ1.14.1 the ExA sought to clarify what if any potential negative impacts of the Proposed Development would be on Public Footpath ZU1/The Saxon Shore Way.
- 4.17.15. In ExQ2.5.9 the ExA sought to clarify the method of piling to be used for construction of the 2nd outfall.

- 4.17.16. The draft SoCG between the Applicant and SBC [REP5-006] addressed noise and disturbance effects during construction, operation and decommissioning.
- 4.17.17. For the K3 Proposed Development it states that it is agreed that no further construction is required pursuant to the practical effect of the K3 Proposed Development and therefore no further effects will occur. The practical effect of the K3 Proposed Development would not have any effect on the operational noise levels of the facility except for road noise which has been demonstrated to be negligible.
- 4.17.18. For the WKN Proposed Development it states that it is agreed that a draft CEMP [APP-012] (updated at D4 [REP4-013]) incorporates mitigation measures required to safeguard the noise environment during the construction period as set out in ES Chapter 7 [APP-059]. The CEMP would be finalised on appointment of the construction contractor and submitted to the RPA prior to commencement of development in accordance with R22 dDCO. Accordingly pursuant to the implementation of the CEMP no likely significant effects on the noise environment would occur.
- 4.17.19. The dSoCG also agrees the cumulative effect of the Proposed Development with other local development would not be significant pursuant to this mitigation, and the risk of significant noise effects during decommissioning will be as low as reasonably practical and will not be significant for the K3 and WKN Proposed Developments individually or in the unlikely event that decommissioning occurred concurrently.
- 4.17.20. Although the dSoCG was not completed in its response at D4 [REP4-025] SBC noted the content in ES Chapter 12 [APP-064] and stated it "*raised no objection, subject to the control measures relating to construction as set out in the draft DCO*".
- 4.17.21. In its LIR [REP1-012] SBC noted the Local Plan policy DM 14 included a requirement (8) to cause no significant harm to amenity or to other sensitive uses or areas, and stated that "*the assessment of noise and vibration impacts in the applicant's submission is noted, and the Council has no adverse comments on it.*"

Conclusion

- 4.17.22. I find that the assessment methodology for noise is acceptable [APP-059] and the residential noise sensitive receptors identified as representative of the wider area are appropriate.
- 4.17.23. No specific mitigation was identified in the ES as required to reduce the effects of construction noise or vibration. However the adoption of best practicable means and adherence to the CEMP would be secured through R22 Preferred DCO. I am satisfied that noise and vibration emissions would be minimised as far as reasonably practicable. R24 of the Preferred DCO requires the CTMP to be approved to manage the impact of construction traffic on the surrounding area.

- 4.17.24. R14(2) Preferred dDCO [REP7-003] requires detailed design to be approved and to be in accordance with the noise mitigation measures in ES Chapter 7 [APP-059] and R22(2)(e) [REP7-003] requires the CEMP to include a scheme for handling complaints from local residents, business and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.
- 4.17.25. In addition R27 Preferred dDCO [REP7-003] specifies the hours for the construction of the WKN authorised development with exceptions for work associated with concrete laying and internal process works relating to mechanical and/or electrical equipment installation.
- 4.17.26. I find that noise and vibration arising from on-site construction activities, construction vehicle movements or decommissioning works are not expected to give rise to any significant effects for sensitive receptors.
- 4.17.27. No significant effects are predicted from vibration at any time or from noise during normal operating conditions. I conclude that a requirement for post construction noise and vibration monitoring is not necessary and has not been requested by any IP. The proposed controls regarding construction, secured through Requirements in the DCO would comply with NPS EN-1, NPS EN-2 and the NPPF in respect of noise and vibration.

4.18. TRAFFIC AND TRANSPORT

Policy Considerations

- 4.18.1. NPS EN-1 states that the transport of materials, goods and personnel to and from a project, during all project phases can have a variety of impacts on the surrounding transport infrastructure. At paragraph 5.13.2, it states that the consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development. Paragraphs 5.13.3 and 5.13.4 state that the Applicant should undertake a TA for any project likely to have a significant transport implication, and where appropriate the Applicant should prepare a Travel Plan (TP).
- 4.18.2. Where proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels requirements should be considered to mitigate the adverse impacts. Paragraph 5.13.8 advises that where mitigation is needed, possible demand management measures must be considered if feasible and operationally reasonable as a first measure. Water-borne or rail transport is also preferred over road transport at all stages of the project where cost-effective.
- 4.18.3. Paragraph 5.13.11 indicates that requirements may be attached to a consent including to control numbers of HGVs movements to and from the site in a specified period during its construction.
- 4.18.4. NPS EN-3 states at paragraph 2.5.13 that throughput volumes are not, in themselves, a factor in decision-making as there are no specific minimum

or maximum fuel throughput limits for different technologies or levels of electricity generation. However:

"the increase in traffic volumes, any change in air quality, and any other adverse impacts as a result of the increase in throughput should be considered by the IPC in accordance with this NPS and balanced against the net benefits of the combustion of waste...."

- 4.18.5. NPPF at paragraph 109 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 4.18.6. KCC's fourth Local Transport Plan (LTP4) covering the period 2016 to 2031 states that the A249 provides a primary north, south route for Kent. Capacity issues at M2 Junction 5 (M2J5), where the A249 meets, is a major barrier to growth in the Borough. HE is evaluating options to improve the M2J5 and consultation with the wider public on final proposed options was proposed for early 2017. A corridor study of the A249 was needed to define what improvements to the principal junctions (Grovehurst, Key Street and Bobbing) would be required to support the new allocations in the Swale Local Plan, with the A249/Grovehurst Road Junction already identified.
- 4.18.7. Swale Local Plan Policy CP2 promotes sustainable transport and Policy DM6 seeks to manage transport demand and impact. Local Transport Plan 4 aims to ensure that Swale delivers growth in a sustainable way.
- 4.18.8. The draft Swale Transportation Strategy 2014 – 2031 (dSTS) identifies key transport challenges for Swale relevant to the Application Site as:
- Congestion at M2 Junction 5 (M2J5) as a barrier to development;
 - Capacity improvements required at A49 Key Street and Grovehurst interchanges;
 - Public transport tends to be inaccessible for the mobility impaired;
 - Traffic congestion with school / employment commuting into Sittingbourne, causing rural rat runs in the south of town, and air quality issues;
 - Transport interchange between cycle routes, bus services, and train services is poor, therefore encouraging the use of cars to rail stations, which add to problems with parking and congestion; and
 - Constrained viability of new development to provide significant infrastructure contributions.
- 4.18.9. Target 1 of the dSTS states that Grovehurst Road traffic flows should be maintained at 15,400 vehicles per day.

The Applicant's Case

- 4.18.10. ES Chapter 4 Transport [APP-056] was updated at D2 [REP2-018]. It assesses the likely significant traffic and transport effects of each of the K3 Proposed Development, the practical effects of the K3 Proposed Development and the WKN Proposed Development, in terms of their

construction, operation and decommissioning, together with effects during their operation plus other cumulative sites.

- 4.18.11. The local policy documents refer to mitigation and in this sense a draft Travel Plan (dTP) ES Appendix 4.3 [APP-024] supported the Application and a draft Construction Traffic Management Plan (dCTMP) for the WKN Proposed Development was submitted as ES Appendix 4.2 [APP-023] and updated at D5 [REP5-003] and D8 [REP8-005].
- 4.18.12. Guidelines of the Institute of Environmental Assessment (IEA) (now IEMA) state the assessment of development traffic impacts should include 1: highway links where traffic flows will increase by more than 30% (or the number of HGVs will increase by more than 30%); and 2: other sensitive areas where total traffic flows have increased by 10% or more. These thresholds are referred to as Rule 1 and Rule 2.
- 4.18.13. Some roads are typically at or near capacity during the weekday AM (07:30 to 08:30) and PM (16:30 to 17:30) peak hours. These and other sources of driver delay for non-development traffic are considered and the magnitude of impact identified using professional judgement and the advice provided in IEMA guidance.
- 4.18.14. The traffic surveys, Department for Transport (DfT) and HE data for 2015, 2016 and 2017 are considered representative of current conditions. The route to be used by the Proposed Development (Barge Way, Swale Way, A249, M2) is an established HGV route. Construction details are informed by construction contractors and thus there is low uncertainty about some of the construction parameters adopted. The highway networks are described in paragraphs 4.4.2 to 4.4.8 of [APP-056] and Figure 4.1.
- 4.18.15. There is a good network of footways allowing pedestrians access between the Application Site and surrounding residential areas. The Saxon Shore Way is a long-distance footpath which follows the shore of the Swale to the east of the Kemsley Paper Mill and north to Chertney Marshes and Gillingham. To the south it links into Sittingbourne and continues east towards Faversham. The route is not lit and is not generally surfaced.
- 4.18.16. The Site is close to on and off-road cycle routes linking to the wider Kemsley and Sittingbourne area. The National Cycle Network Route 1 is a long-distance cycle route passing along the B2005 Grovehurst Road between Sittingbourne and Kemsley. National Cycle Network Route 174 links Route 1 to the Isle of Sheppey. Combined footway / cycleways on Barge Way and Swale Way provide cycle routes to surrounding areas.
- 4.18.17. Bus services near the Site are summarised in Table 4.5 [APP-056], the nearest stops are located on Ridham Avenue, c1km away, providing a direct link to Sittingbourne town centre. The journey time from Kemsley to Sittingbourne is approximately 20 minutes and the service operates 4 buses per hour throughout the day and 3 buses per hour on a Saturday. More bus stops are on Grovehurst Road some 2km from the Site.

- 4.18.18. Kemsley Railway Station is c 2km west of the Application Site on Grovehurst Road, having direct services to London with a journey time of approximately 1 ½ hour. Additional services to London require a change at Sittingbourne Railway Station with frequent train services to London Victoria, London St Pancras International, Ramsgate and Dover Priory.
- 4.18.19. Traffic flows were assessed along eleven links described in paragraph 4.4.28 and in Figure 4.1. The HGV route to the Application Site would be from the A249 to Swale Way and then Barge Way. No HGVs would route directly from the A2 using Castle Road and Swale Way south of the Barge Way roundabout; therefore, no assessment of the links on Castle Road has been undertaken. The complete traffic flow data is included within the Transport Assessment [APP-020, APP-021, APP-022].
- 4.18.20. Sections 7 - 13 TA Part 1 set out assessments of junction performance and impact at the following junctions:
- Swale Way / Barge Way Roundabout;
 - Fleet End / Barge Way Roundabout;
 - Barge Way / Site Access Roundabout; and
 - A249 / Grovehurst Road / Swale Way / B2005 Grade Separated Dumbbell Junction.
- 4.18.21. The assessments show that the Fleet End / Barge Way Roundabout and the Barge Way / Site Access Roundabout both currently operate within their design capacity and would do so in all assessment scenarios, so there are no concerns with the operation of these roundabouts. However the Swale Way / Barge Way roundabout and the A249 / Grovehurst Road / Swale Way / B2005 Grade Separated Dumbbell junction are predicted to operate in excess of their design capacity in some scenarios.
- 4.18.22. All road links are assessed against the Rule 1 threshold. The baseline for the K3 Proposed Development is 2021 when it is operational, and for the WKN Proposed Development it is 2021 for the construction phase and 2024 when the facility would become operational.
- 4.18.23. A future year baseline traffic scenario of 2021 / 2024 / 2031 for the K3 Proposed Development and WKN Proposed Development considers committed traffic only i.e. developments with planning permission but not yet generating traffic on the network. These developments and their highway and transport schemes are treated as committed within any future year scenarios. Other developments emerging at the same time are assessed against the baseline scenario for their cumulative impact and their cumulative highway and transport mitigation requirements.
- 4.18.24. Growth rates allow for background traffic growth and development growth and, in some cases, the application of growth rates and the addition of traffic flows from committed developments plus cumulative developments. The DfT Trip End Model Presentation Program (TEMPRO) is applied to understand the assumptions used for household and employment growth. As committed development is greater than the assumptions within TEMPRO, growth rates have not been applied to the surveyed traffic flows.

- 4.18.25. Table 4.7 [APP-056] shows local committed developments with planning permission (operational, or likely to be operational in the timescales of the Proposed Development) to see whether traffic generated by the developments would already be present in the surveys undertaken for each of Project K3 and Project WKN, or whether they should be added as committed developments in future baseline assessments.
- 4.18.26. The traffic flows generated by the committed developments are taken from their own TAs and set out in the TA at ES Chapter Appendix 4.1. The committed development traffic flows are added to the 2021 and 2024 base traffic and the resultant 2021 and 2024 baseline scenarios are at ES Appendix 4.1 [APP-020, APP-021, APP-022].
- 4.18.27. The assessments predict that the K3 Proposed Development, the practical effect of the K3 Proposed Development or the WKN Proposed Development would result in effects that are not significant, as would be the case with these elements combined, or if taken cumulatively with other emerging developments.
- 4.18.28. The combined Practical Effects of the K3 Proposed Development plus WKN Proposed Development are summarised in terms of their total two-way AM and PM peak hour traffic flow movements, by link, in Table 6.6 of Appendix 4.1 [APP-020]. It shows on Barge Way between Swale Way and Fleet End and Barge Way east of Fleet End:
- for the K3 Proposed Development the highest two-way vehicle movements would be 42 during each of the peak hours;
 - For the Practical Effects of the K3 Proposed Development the increase in two-way vehicle movements would be an additional 5 in the peak hours; and
 - For the WKN Proposed Development the highest two-way vehicle movements are predicted at 19 vehicle movements in the AM peak hour and 25 vehicle movements in the PM peak hour.

Effects of the construction and operation traffic flows generated by K3 Proposed Development

- 4.18.29. Condition 3 of the K3 Planning Permission was varied on 11 October 2018, Ref SW/18/503317 increasing HGV movements to 348. An ES Addendum included with that application assessed transport and air quality implications of the change [APP-078]. Flexibility was required in the size/type of vehicles importing the waste under "waste contracts secured to accommodate local refuse". There were no proposed changes to the throughput tonnage or operating capacity of the plant.
- 4.18.30. As to the effects of the operational traffic flows generated by the Practical Effects of the K3 Proposed Development, the modelling indicates that there would be only a small effect on the capacity of the roundabout and that the committed development traffic is having the greatest effect.

Construction and operational traffic flows from WKN Proposed Development

- 4.18.31. The modelling results indicate that the WKN Proposed Development has a minimal effect on the capacity of the roundabout and that the committed development traffic is having the greatest effect.

Operational traffic flows from K3 Proposed Development in conjunction with the construction and operational traffic flows from WKN Proposed Development

- 4.18.32. ES Appendix 4.1 - Transport Assessment Part 1 [APP-020] at Section 10 finds that the addition of the K3 Proposed Development operational traffic flows to the WKN Proposed Development construction traffic flows, leads to only a minor increase in the total vehicle traffic flow and thus the combined traffic flows would also not affect the operation of the roads of junctions along the access route.

Practical Effects of K3 Proposed Development and construction and operational traffic flows from WKN Proposed Development

- 4.18.33. To consider the effects of the traffic generated an assessment of traffic flow increases was undertaken to provide a context and an assessment of junction performance on the local junctions between the northern access and the A249 (Section 11 [APP-020]). The number of HGVs and the number of total vehicles associated with both the Practical Effects of the K3 Proposed Development operational and WKN Proposed Development construction traffic flows are shown to have a minimal impact on Swale Way. The addition of the Practical Effects of the K3 Proposed Development operational traffic flows to the WKN Proposed Development construction traffic flows leads to only a minor increase in the total vehicle traffic flow and thus the combined traffic flows would not affect the operation of the roads of junctions along the access route.
- 4.18.34. Table 11.7 [APP-020] shows further the predicted HGV movements generated by the K4 peak construction, K3 Proposed Development and WKN Proposed Development. Although all three are or would be accessed from Barge Way, K4 will have a different internal access road to the K3 Proposed Development and the WKN Proposed Development. Facilities are designed to be as efficient as possible so as to minimise vehicular queuing and delay. Tipping halls have sufficient bays to accommodate multiple waste vehicles simultaneously, whilst weighbridge layouts and procedures are designed to minimise processing time. Therefore operational queuing of the combined K3 Proposed Development, WKN Proposed Development and K4 within the site would not overspill onto Barge Way

K3 Proposed Development, Practical Effects, WKN Proposed Development and all identified cumulative developments

- 4.18.35. Section 12 [APP-020] assesses operational traffic flows generated by the K3 Proposed Development and the Practical Effects and the operational traffic flows generated by WKN Proposed Development and all cumulative developments identified above. KCC and SBC are completing a Housing Infrastructure Fund bid for the Grovehurst junction which will directly

enable delivery of some 6,341 homes phased for 2022-31 (paragraph 12.53 [APP-020]).

- 4.18.36. Overall, therefore the TA at Appendix 4.1 [APP-020] undertakes operational assessments of key junctions on the highway network. It concludes that the impact of the increased traffic flows as a result of any combination of the Practical Effects of the K3 Proposed Development, K3 Proposed Development and WKN Proposed Development are negligible upon junction performance and driver delay. However, when cumulative development traffic flows are added into the A249 Grovehurst roundabouts, whether on the 2024 or 2031 baseline scenarios, the performance of the junctions deteriorate and there is an increase in driver delay. The shift away from a negligible change is solely as a result of the cumulative development. The Swale Local Plan sets out improvements required to the A249 Grovehurst roundabouts to accommodate the cumulative developments, which would reduce driver delay to at best minimal amounts or to levels that are similar to those currently experienced. This is characterised as no change, ie negligible adverse.
- 4.18.37. Consequently, the analysis of the traffic volumes and impact demonstrates that the K3 Proposed Development and / or the WKN Proposed Development would not result in an unacceptable or severe impact on the operation of the transport network.

Examination

- 4.18.38. HE in its RR [RR-004] noted the potential for the Proposed Development to impact the safe and efficient operation of the strategic road network (SRN), particularly the A249 and the M2 in the vicinity of Sittingbourne.
- 4.18.39. Written questions were put to the Applicant and other parties at ExQ1 [PD-008], ExQ1a [PD-010], ExQ2 [PD-012], ExQ3 [PD-014], and ExQ4 [PD-015]. The Applicant's responses were supplied at D2, D3, D4 D5 and D7 respectively: [REP2-009, REP3-004, REP4-006, REP5-011, REP7-016].
- 4.18.40. ExQ1 questions explored the sensitivity testing for impacts on the Grovehurst/A249 junction as KCC noted in its Additional Submissions [AS-010]. The Future Year Junction Assessments for Swale Way/Barge Way showed this junction was operating beyond capacity in all future scenarios tested, with no mitigation being proposed and over capacity of the surrounding highway network was being experienced at J5 of the M2 and the Grovehurst junction. Details were sought of current movements and arrival/departure times for the current construction of the K3 plant as well as movements associated with the Applicant's operational Ferrybridge EfW facility, and the assumptions applied for assessing HGV trip generation.
- 4.18.41. ExQ1A questions explored: Trip End Model Presentation Program (TEMPRO). Including the additional traffic from committed developments but not additional growth from TEMPRO avoids double counting and the

methodology is agreed by KCC as set out in paragraph 7.4 of its LIR. Further, exchange of vehicle movement data with KCC was requested, as to the Applicant's site at Ferrybridge and the EfW facility in Allington

- 4.18.42. It emerged from the Applicant's reply to ExQ1A.11.7 that a contract has been entered with Fortis to manage and process IBA from the Consented K3 Facility and an application was being made for permission to develop a new IBA facility at Ridham Docks, 2km from the site. In the meantime they will be processing the IBA via their existing facility at the A303 Enviropark near Andover. The proposed new facility would have sufficient capacity to manage any IBA also produced from Project WKN.
- 4.18.43. Regarding the IBA facility application KCC [REP2-048] sought information from the Applicant on the consented number of IBA export movements and tonnage from K3, assumed to cater for 165,000 tonnes and how they were accounted for in that application, the expected IBA export movements and tonnage from the proposed K3 expansion and how they were accounted for in the application, the expected IBA export movements and tonnage from the WKN Proposed Development and how they were accounted for in the application, and the net expectation of export movements from all above sites that would now be assumed to come to this application as imports.
- 4.18.44. The Applicant in its reply to ExQ1A.11.5 declined to provide that information as it was not in the public domain but when so available it *"would review it and provide the relevant information at the next available deadline"*. However it considered the proposed IBA facility would not alter numbers of vehicle movements proposed for the K3 Proposed Development and WKN Proposed Development.
- 4.18.45. KCC had also pointed out that the applicant for the new IBA facility would use the Ridham Dock to export 50,000 tonnes of incinerator bottom ash aggregate (IBAA) metals which was welcomed but conflicted with paragraph 7.4 of the rail and water transportation strategy (RWTS) which stated an upgrade of facilities at the dock was needed *"to accommodate the additional freight necessary to make this a viable option and this would require significant investment."*
- 4.18.46. The Applicant stated there were no contracts in place making alternative means of transportation feasible or viable so regular reviews of the RWTS is appropriate and was used in the Ferrybridge Multifuel 2 (FM2) and North London Heat and Power (NLHPP) DCOs. *"Should a waste contract become available or be secured"* that allowed for waste transport by barge the use of Ridham Dock would *"need to be assessed and any upgrading of the existing facilities considered in respect of...viability"*.
- 4.18.47. ExQ2 and ExQ3 questions explored possible locations for my USI in relation to traffic and transport effects and possible provision of photographic and/or other video evidence to support IP's submissions. Other ExQ3 questions explored how HGV travel patterns could be monitored and enforced to ensure the A2 is not used by HGVs, and what

enforcement powers prevented an increase in HGV movements through AQMAs necessary in the interests of air quality.

- 4.18.48. The WKN RWTS [APP-089] notes land is potentially available in or around Ridham Dock from which a rail freight terminal might serve the EfW generating station at K3 and the WKN site, subject to viability. In ExQ3.6.9 and ExQ3.6.10 I enquired how an upgrade of the facilities might be progressed through requirements in a DCO. The Applicant said it should not be required to fund infrastructure, as the commercial sensitivities in waste contracts made it inappropriate to make information publicly available on any review of costs in providing such infrastructure. The Applicant also stated in reply to ExQ3.6.7 that the time to progress transport of waste via Ridham Dock would not be until *"a waste contract becomes available or secured which would allow for the transportation of waste using alternative means of transport to be feasible."*
- 4.18.49. ExQ4 questions explored how completion of any necessary highway improvement works before commencement, commissioning or as the case may be, operation of any part of the authorised development could be secured in the DCO. This related to possible restrictions on the WKN Proposed Development as to traffic flows generated during weekday peak hours or specified hours around peak hours, in advance of completion of (i) the M2/J5 and (ii) A249 Grovehurst improvement works.
- 4.18.50. In reply to ExQ3.6.8 the Applicant supplied the reports to and decisions of the Secretary of State in respect of the made DCOs (see Section 3.6 of this Report) for Ferrybridge Multifuel 2 (FM2) [REP5-016, REP5-017] and North London Heat and Power Project (NLHPP) [REP5-018, REP5-019]. They supported the Applicant's position in that they contained no requirement for transportation of waste fuel or ash by non-road modes.

Timing and volume of waste movements

- 4.18.51. KCC accepted that the explanations as to assumptions made within the baseline assessment have been clarified by the Applicant and now accepts the evidence presented. However it does not agree with the trip generation data submitted in the Applicant's TA ES Appendix 4.1 - Transport Assessment Part 1 [APP-020], as it has not been demonstrated that it represents a realistic profile of vehicle movements.
- 4.18.52. Time evidence reviewed from the existing EfW plants at Allington and Ferrybridge 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 demonstrated by the Applicant in its Additional Submission - Ferrybridge HGV Movements dated 2 July 2020 [AS-019] in a graph showing the profile of HGV movements throughout the day, in particular that entitled Weekday Average. The profile of movements is not flat, as presented in the TA, therefore the impact on the morning peak would be expected to be significantly greater than has been presented.
- 4.18.53. The weight of waste arrivals is dependent on the contracts in place at any point in time. The data reviewed from the existing operations

suggests this could range from anywhere between 3 and 27 tonnes. The TA uses 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. Detailed calculations demonstrating the average “assumed” loads used to calculate the expected movements remained outstanding.

HE’s position

- 4.18.54. HE in its RR [RR-004] points out the SRN is a critical national asset and, is concerned with proposals that could impact its safe and efficient operation, particularly the A249 and the M2 near Sittingbourne. HE’s position was to continue to engage with the Applicant to be satisfied either that there were no severe impacts (as per DfT C2/13 and NPPF) or that mitigation was agreed.
- 4.18.55. An “offline” dialogue between the Applicant and HE ensued towards the end of the Examination, HE’s position being reflected in its D7 submission in response [REP7-032] to questions at ExQ4 [PD-015] and the Applicant’s AS dated 2 July 2020 [AS-018]:
- The K3 Proposed Development would generate 550ktpa waste and 348 HGV movements per day when operational. The consented K3 traffic flows were factored into HEs modelling and HE do not seek restrictions to be applied to these (the existing consent restricts these movements to 348 HGV movements per day);
 - The K3 Proposed Development would generate increased tonnage of +107ktpa and 68 HGV movements per day. HE seeks peak hour and ‘shoulder’ restrictions to these HGVs until the M2J5 and Grovehurst improvements are complete;
 - WKN construction would generate up to 90 HGV movements per day with construction staff working hours outside of peak hours. HE seeks peak hour and ‘shoulder’ restrictions to these HGVs until the M2J5 and Grovehurst improvements are complete; and
 - WKN 390ktpa would generate 250 HGV movements per day plus up to 11 staff car movements during the peak hours. HE seeks peak hour and ‘shoulder’ restrictions to these vehicle movements until the M2J5 and Grovehurst improvements are complete.
- 4.18.56. The Applicant sees the mechanism to secure such restrictions as inherent in the WKN CTMP and TPs for the K3 and WKN projects within the Proposed Development submitted and agreed with the Highway Authorities, and secured by R24 (CTMP) and R10 and R26 (TPs) in its Preferred dDCO [REP7-003]. Such restrictions would be inserted to the outline CTMP and outline TPs during the Examination.
- 4.18.57. The Applicant also stated in [AS-018] journey time and/or traffic flow data could show that a half hour ‘shoulder’ on each side of the peak hours is sufficient to avoid the peak hour, and would accept such a restriction as opposed to an hourly ‘shoulder’.
- 4.18.58. In reply [REP4-029] to ExQ 2.14.2 asking again for a SoCG, HE referred to an email trail covering discussions with the Applicant and KCC and that

“the matter is now with the applicant”. The email trail is within HE’s Summary of on-going discussions involving applicant, Highways England and Kent County Highways [REP4-030], submitted at D4 and dated 20 May 2020 but the most recent of the email exchanges with the Applicant was 22 and 23 April 2020. (HE met with the Applicant on 28 January 2020 and promised a response to the issues discussed, not given until 24 March 2020). It reveals the following outstanding points:

- Some large allocations outwith the Swale Local Plan have been granted consent at appeal so HE needed to be satisfied that the figures used in the modelling are robust. All relevant sites that would impact the A249 needed to be considered;
- To clarify paragraph 6.53 of the TA [APP-020] stating “*a reasonable estimate of construction activity at the WKN Proposed Development will be 75% of that of the K3 construction*” and how vehicular trips relate to the construction of both facilities;
- HE agrees with KCC’s response re WKN Construction that “*The TA demonstrates that a peak of 482 staff would be on site during months 24-40 of construction. 45 HGV deliveries or 90 movements. We request evidence from the existing K3 construction programme to evaluate that the level of HGV movements for that application are robust. Further to that, we request that the hourly number of deliveries is demonstrated through traffic count evidence for one week. The information will provide evidence that the assumptions that have been made are justifiable*”.
- As to KCC’s view that the submitted operational hourly movements averaged across the day had no justification, HE stated the SRN (particularly at the A249 Grovehurst and M2J5) is particularly sensitive to even small traffic increases so it is vital that the worst case situation is fully understood and evidenced. Given the potential peak hour impact of this proposal on the SRN, HE could not understand the potential peak hour impact without a fully evidenced breakdown of annual and daily inputs and outputs making it difficult to sense check the trip generation figures. Without this further evidence HE would concur with KCC conclusions and “*would potentially require a cap related to peak hour traffic generation*”.

4.18.59. Subsequently HE’s D5 submission Response to ExQ3.6.5 [REP5-029] confirms that from discussions with the Applicant, it is likely that the majority of site traffic will use the SRN ie M2 and then A249 to Grovehurst. However, traffic normally uses the most convenient route so some traffic could potentially use the KCC A2 between Medway and Sittingbourne to join HE A249 at Key Street and then leave at A249 Grovehurst. Equally if the M2 or A249 are congested or closed, traffic is likely to divert to other routes such as the A2. HE considers the final TP should include routing and monitoring details.

4.18.60. In reply to ExQ3.11.5 HE awaited data/analysis of exchange of vehicle movement data from the Applicant’s site at Ferrybridge and the EfW site in Allington, to assist in assessing the application and agreement as to any required mitigation. At a telecon on 18 June, the Applicant indicated

that they had their information and were awaiting to exchange theirs with that being provided by KCC in the very near future.

- 4.18.61. In its reply to ExQ3.13.7 HE stated it had been working with the Applicant and KCC but there was still no agreed TA for the application. Therefore it was unable to determine whether the application with or without any requirements/ mitigation is capable of demonstrating that it complies with national policy and standards set out in DfT Circular 02/2013 (C2/13) and MHCLG NPS/NPPF. Our telecon on 18/6 provided a general update and agreed way forward to provide the up-to-date and hopefully complete TA via which mitigation and requirements can be agreed.
- 4.18.62. Pressed in ExQ3.13.9 to address precisely how HE wished to see its concerns secured in the DCO, it stated in its reply at D5 on 19 June 2020 [REP5-029] that given the M2J5 and A249 Grovehurst junctions have exceeded the limits of their practical capacity HE had had to recommend Grampian Conditions precluding occupation of sites until the planned improvements are open to traffic, as it was during AM and PM peaks that safety and congestion concerns most apply.
- 4.18.63. HE noted operational traffic for the Consented K3 Facility was accounted for in local traffic models but needed to understand the final figures for the WKN Proposed Development and K3 DCO uplift traffic and how the AM/PM SRN peaks could be protected until the M2/J5 and Grovehurst improvements were in place. It also noted the Applicant was considering if they could agree to prohibiting entry/exit from their sites during peak hours and a period either side so it could be guaranteed that site associated traffic would not be on the SRN during peak hours. It would *"look to agree requirements to be added to the DCO"* and awaited the updated TA and SoCG from the Applicant to cover all these matters.
- 4.18.64. ExQ4 questions requested any new requirement desired by HE to be inserted into the DCO, to secure the completion of highway improvement works before commencement, commissioning or operation of any part of the authorised development, to be precisely formulated and preferably agreed. In its D7 submission [REP7-032] HE proposed wording, considered further in Chapter 7.
- 4.18.65. HE was clear that the safety and congestion issues justifying the RIS1 improvement remain and the construction and operational phases of the Proposed Development if not mitigated, would impact on the safety, reliability and/or operation of the M2/J5. Together with SBC and KCC it applies a "Grampian approach" to applications to prevent occupation prior to the opening of the M2/J5 improvement to traffic. It added:

"Without a prohibition that is agreeable to Highways England ie one that protects the peak periods/shoulders on a daily basis, it will be necessary for the applicant to demonstrate an absence of harm to the SRN in accordance with DfT C2/13 and MHCLG NPPF2019 policy. Currently, although the submitted and addended TA is fulsome in length and highly detailed, much of the detail is not relevant, key aspects of evidence such

as assessing the impacts of the development on M2J5 are missing, and many elements that are relevant are not agreed. Hence the TA is not, as at 5/8/2020, agreed by Highways England. In contrast, our own assessment and experience tells us that if the prohibitions as proposed by Highways England are put in place, the SRN safety, reliability and operational efficiency will be secured, and the absence of an agreed TA will not be an issue for us."

- 4.18.66. HE states in its response at D7, 5 August 2020 [REP7-032], to ExQ4 [PD-015], that the transport evidence demonstrated (Inspector's Report paras 97-98) that the Local Plan would require mitigation of, inter alia, the A249 Key Street and Grovehurst junctions. The viability of development generally in the Borough cast doubt on any mitigation being fully funded through development contributions/ Community Infrastructure Levy (CIL). A successful bid led by SBC/KCC and supported by HE was made to the Housing Infrastructure Fund (HIF). Works at Key Street Phase 1 have commenced while Phase 2 is in design and expected to be agreed shortly. Grovehurst is in design, with it likely to be agreed in the next few months. All HIF funded improvements are required to be in place by 2024 ie prior to the forecast completion/ start of full operation of the WKN/K3 sites.

KCC's Position

- 4.18.67. KCC as Local Highway Authority maintained its objection to the Proposed Development including the expansion of capacity at the Consented K3 Facility, on grounds including that it 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.
- 4.18.68. KCC's position at the end of the Examination [REP8-016] was that the practical effects of the Proposed Development would be 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. It disputed the conclusions drawn in paragraphs 6.47, 6.69 and 6.94 of the TA that suggest the operation of K3 Proposed Development and the construction and operation of WKN Proposed Development would not have a severe impact on the highway network. Traffic modelling to assess the junction capacity for nodes along the local highway network shows that some junctions are predicted to operate in exceedance of their capacity in future years 2024 and 2031 baseline scenarios with committed development.
- 4.18.69. KCC therefore considered that mitigation was required at the Swale Way/Barge Way roundabout and A249/Grovehurst interchange. It considered that in the case of the A249/Grovehurst Road interchange, sensitivity testing of the Future Year Junction Assessments for the committed upgrade to the A249/Grovehurst Road interchange is required so as not to jeopardise the delivery of housing allocated in the Swale

Local Plan. The upgrade is possible due to the successful Housing Infrastructure Fund bid, which is targeted at enabling the delivery of this housing.

- 4.18.70. The TA shows 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 (for example Table 13.4 TA Part 1 [APP-020]). KCC therefore state that any development adding traffic to the junction should not proceed prior to guaranteed delivery of the improvements. KCC was unaware at the date of its closing submissions of any mitigation or restrictions on HGV movements proposed by the Applicant. As such its position was largely overtaken by the "offline" dialogue taking place between HE and the Applicant.

USI

- 4.18.71. I carried out a tour of the strategic and local road networks during the AM and PM peaks to get a first-hand experience of the scale and type of congestion prevalent. My inspection [EV-005] was undertaken by car and on foot. Visits to the highways network at locations the subject of representations from interested parties, were made during the peak hours period in the evening of 30 June and in the morning of 1 July. My observations can only be a general impression of conditions at the relevant locations visited, which was that there was a great deal of congestion at M2/J5, A249 Key Street and A249 Grovehurst junctions. Nothing in what I observed caused me to question the findings from the data that the junctions are all at or nearing their respective safety led capacities.

Matters outstanding at close of Examination

- 4.18.72. The Applicant and HE failed to agree a SoCG. The matters outstanding between them at the end of the Examination were however highlighted in their own clean and (where submitted) tracked versions of draft travel and construction management plans submitted at D8 as follows:
- WKN Draft Construction Traffic Management Plan - Applicant [REP8-003, REP8-004]
 - WKN Draft Construction Traffic Management Plan - HE [REP8-005, REP8-006]
 - Draft Travel Plan - K3 - Applicant [REP8-007]
 - Draft Travel Plan - K3 - HE [REP8-008]
 - WKN Draft Travel Plan - Applicant [REP8-009, REP8-010]
 - WKN Draft Travel Plan - HE [REP8-011, REP8-012].
- 4.18.73. HE's position as set out in its D7 submissions was that without mitigation the operation of Project K3 and the construction and operation of Project WKN would adversely affect the safety, reliability and/or operation of the M2 Junction 5 and the A249 Grovehurst Roundabout. The Applicant, as accepted by HE considers it possible to monitor and manage the access and egress of HGV traffic for both projects within the Proposed

Development so that the operation of those junctions would not be detrimentally affected.

- 4.18.74. The mitigation proposed by the Applicant would be to prohibit entry or egress of HGVs at peak hours on the additional K3 movements, and the WKN movements with a half hour 'shoulder' either side of the peak hours. This would result in a restriction of such movements between 07:30 to 09:30 and 16:30 to 18:30. It can be seen from the Applicant's and HE's respective versions of the dCTMP and dTP listed above, that it is disputed whether such restrictions should operate daily, as HE request, or on weekdays only as the Applicant maintains.
- 4.18.75. The methods of monitoring and managing vehicle movements in the management and travel plans would permit weekday and weekend movements to be differentiated and the Applicant considers the capacity issues identified on the M2J5 and A249 Grovehurst junctions occur during weekdays so it would be inappropriate to apply peak hour restrictions at weekends.
- 4.18.76. HE in its D7 submissions predict that both junctions would be upgraded prior to 2025, when Project WKN would become operational. The Applicant therefore states that on completion of the upgrades, peak hour restrictions should be removed, whereas HE state the restrictions should remain in place following the upgrading of those junctions, until any residual capacity and the impact of the operation of the Proposed Development on those junctions can be reviewed.
- 4.18.77. HE then state that Project K3's increased tonnage of +107ktpa which would generate 68 HGV movements per day should be the subject of peak hour and 'shoulder' restrictions such time as the M2J5 and Grovehurst improvements are complete. In response the Applicant revised Requirement 10 in its Preferred DCO [REP7-003] so that approval of the operational routing and travel plans is required before the additional 68 K3 movements can commence. However the need for restrictions on HGV movements generated by the Practical Effects of the K3 Proposed Development is disputed.
- 4.18.78. Finally HE appeared to maintain a request for specific wording in the DCO to secure the peak hour restrictions on HGV movements whereas the Applicant considered this was unnecessary in light of the content of the revised dCTMP and dTPs.

Conclusion

- 4.18.79. The primary outputs of the junction modelling suite used in the TA the Ratio of Flow to Capacity (RFC) and queue. The former measures demand traffic flow against predicted capacity, whereby a value of 1.0 means that traffic demand is equal to capacity. The results clearly show significant increases over RFC of 1.0, for example with the cumulative 2031 traffic added to the K3 Proposed Development, WKN Proposed Development and K3 Proposed Development plus WKN Proposed Development operational flows the Swale Way West arm reports

respective RFCs of 1.20, 1.20, 1.21, 1.22 and 1.22 in the AM peak hour and in the PM peak hour maximum RFC's were reported on the Swale Way South arm of 0.90, 0.90, 0.91, 0.91 and 0.91.

- 4.18.80. The Applicant's defence of the impact is that the junction modelling is unreliable due to the junction being over capacity. That may be so, however the junction is clearly unable to facilitate additional traffic without severe impacts to congestion and safety.
- 4.18.81. The prohibition approach advocated by HE and partially agreed by the Applicant would protect the safety, reliability and operational efficiency of the M2/J5 and A249 Grovehurst junctions in perpetuity regardless of the contracts entered into or the origin or destination of any imports or exports from the WKN/K3 sites. The 'shoulders' proposed would ensure there would be no associated vehicle movements leaving / arriving on site outside of the peak hours, but travelling through the M2J5 or Grovehurst during the peak hour. The junction improvements are aimed solely at providing capacity to aid housing delivery, so they cannot be relied upon by the Applicant and as HE point out, a new Swale Local Plan is due to be adopted in 2022 with the possibility that there would be a further uplift in housing delivery (p22 of HE's reply to ExQ4 [REP7-032]).
- 4.18.82. With the prohibition applying until the Roads Investment Strategy M2/J5 improvement and Housing Infrastructure Fund A249 Grovehurst improvement are open to traffic, I am satisfied that the Proposed Development would not give rise to severe or unacceptable effects on the SRN.
- 4.18.83. With regard to the days on which HGV movements should be restricted at and around peak hours as discussed, it is generally accepted that background traffic levels are lower at weekends than on a typical weekday. Therefore the greatest percentage impact on the junctions under scrutiny has been assessed as on a Sunday, which increase is primarily related to the cumulative development taken into account. Whilst the capacity issues highlighted can be confidently predicted during weekdays, the overall effects outside these days is less clear. The Future Year Junction Assessments for Swale Way/Barge Way is that this junction is operating beyond capacity in all future scenarios tested, with no mitigation being proposed. This is unacceptable and due to the high volume of HGVs is a safety and capacity concern. In light of all the evidence I consider it is reasonable and proportionate to impose a daily restriction on HGV movements as requested by HE at least until the position can be effectively reviewed in accordance with the TP and CTMPs for the Proposed Development.
- 4.18.84. Secondly, for mitigation to apply effectively I agree that the prohibitions should continue to apply unless or until the Applicant demonstrates an absence of unacceptable impact on the SRN. This can only be tested and demonstrated once the SRN improvements have been open to traffic and the Proposed Development is operational for a sufficient period for any evidence to be robust. I agree that a minimum 12 months period would allow for seasonal or other variations and traffic flows to become

apparent. Residential development relies on the Trip Rate Information Computer System (TRICs) data and so forth to provide robust supporting evidence regarding trip rates and impacts, but the waste industry has no equivalent, making it sensible and appropriate in my view to have 12 months of actual evidence before making any decision regarding whether the prohibition should apply in perpetuity.

- 4.18.85. Thirdly, as to the Practical Effects of the K3 Proposed Development HE appeared to be in agreement that HGV movements associated with the implemented and operational 550,000 tonnes annual throughput of K3 would not be subject to any peak hour restrictions (HE's D7 submission). Moreover the IBA facility was permitted to have a total of 84 HGV movements per day without further restrictions. The permitted increase in HGV movements relating to the Consented K3 Facility, from 258 to 348 per day, was not objected to by HE, and it has now been commissioned and is operational from 16 July 2020. In the circumstances it would not be reasonable to impose a further restriction in these HGV movements.
- 4.18.86. However as for the K3 increased tonnage of +107k tpa which would generate 68 HGV movements per day, HE seeks daily peak hour and 'shoulder' restrictions until the M2J5 and Grovehurst improvements are complete, which appears to me a reasonable approach. Therefore the HE version of the K3 dTP [REP8-008] is to be preferred.
- 4.18.87. Fourthly, Requirements 10, 24, 25 and 26 of the Applicant's Preferred dDCO [REP7-003] taken together with the detailed content of the revised dTPs and dCTMP, would in my view effectively support the prohibition approach, and with the monitor and manage regime set out in the latter documents, the final form of which must be approved by the RPA, would constitute an effective and enforceable package of controls.
- 4.18.88. Otherwise the provision for the submission and approval of an Operational Traffic Routing and Management Plan and Travel Plan for Project K3 and a CTMP and Travel Plan for Project WKN is appropriate in relation to matters such as the movement of staff, visitors and waste vehicle movements during the operational phases, including minimising single occupancy vehicle movements by staff, seeking to avoid HGV movements during the peak hours and seeking to utilise existing HGV routes.
- 4.18.89. The CTMP appropriately deals with the main concerns of construction traffic, dust and dirt migrating onto the highway, wheel cleaning facilities, a regular programme of road cleaning and inspection of the site entrance and highway in the vicinity of the site.
- 4.18.90. With these measures and DCO Requirements in place, I am satisfied that the Proposed Development would accord with the requirements of NPSs, the development plan and other policies, and traffic management issues.

4.19. WATER ENVIRONMENT

Introduction

- 4.19.1. This section addresses the water environment effects of the Proposed Development in terms of flood risk and water quality and resources.

Policy Considerations

- 4.19.2. Section 5.7 of NPS EN-1 states that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. All applications for energy projects of 1 ha or greater in Flood Zone 1 (FZ1) and all proposals for energy projects located in FZs 2 and 3 in England should be accompanied by a flood risk assessment (FRA).
- 4.19.3. Paragraphs 5.7.13 to 5.7.16 of NPS EN-1 set out the need for development to pass a Sequential Test, then an Exception Test if development is to be considered permissible in a high-risk Flood Zone area.
- 4.19.4. Section 5.15 of NPS EN-1 addresses water quality and resources recognising that infrastructure development can have adverse effects on groundwater, inland surface water, transitional waters and coastal waters. The possibility of adverse impacts on health or on protected species and habitats could arise and result in a failure to meet environmental objectives established under the Water Framework Directive (WaterFD). Activities that discharge to the water environment are subject to pollution control whilst the abstraction licensing regime regulates activities that take water from the water environment.
- 4.19.5. Where the project is likely to have effects on the water environment applicants should undertake an assessment addressing water quality, water resources and physical characteristics of the water environment according to paragraph 5.15.2 of NPS EN-1.
- 4.19.6. NPS EN-2 specifically refers to the need for the assessment referenced in paragraph 5.15.2 of NPS EN-1 to demonstrate that appropriate measures will be put in place to avoid or minimise adverse impacts of abstraction and discharge of cooling water.
- 4.19.7. Paragraphs 148 to 165 of the NPPF outline the development requirements in terms of climate change and flood risk confirming the requirement for a site-specific FRA. Paragraph 155 confirms that inappropriate development should be avoided in areas at the highest risk of flooding and where development is necessary in those areas it should be made safe without increasing flood risk elsewhere. These principles are also set out in Policy DM1 of the Swale Local Plan.

The Applicant's Case

- 4.19.8. Chapter 10 of the ES addressed the water environment and included an assessment of flood risk [APP-062]. A separate FRA was provided as Appendix 10.1 of the ES [APP-041] in respect of the WKN Proposed

Development. The FRA in respect of the Consented K3 Facility was also provided to the Examination [APP-153].

- 4.19.9. The ES noted that the majority of the WKN Proposed Development lies within FZ2, assessed as having between a 1 in 100 and 1 in 1,000 annual probability of river flooding (1% – 0.1%), or between a 1 in 200 and 1 in 1,000 annual probability of sea flooding (0.5% – 0.1%) in any year. A small area in the eastern extent of the WKN Site is within FZ3 ('High Probability'). The area around the western extent of the WKN Site is in FZ1, having a 'low probability' (less than 1 in 1,000 years) annually of flooding.
- 4.19.10. However, subsequent to the publication of the EA flood maps a ground profiling exercise of the Site was undertaken, raising the ground level to 6.30m Above Ordnance Datum (AOD), c.0.30m above the worst-case flood event. This results in the land being equivalent to FZ1 and therefore sequentially appropriate.
- 4.19.11. The construction access road and laydown area are located within FZ3 and have a 'high' probability of tidal flooding. The southern extent of the access road is located within FZ1 with less than 1 in 1,000 annual probability of flooding from river or sea in any year. The WKN Site access roads and laydown area are assessed to remain flood free for a present day 0.5% (1 in 200 year event) and 0.5% event occurring in 2070. The area is assessed to be at risk of residual flooding from the overtopping of flood defences, which are assumed to remain at current crest levels, in 2115. The laydown area and construction access is only required up to 2024 from which point the land will be restored.
- 4.19.12. The ES assessed the likely effects on water resources taking account of the impacts of the Proposed Development on the prevailing hydrological, surface water drainage, flooding and water quality environments.
- 4.19.13. Climate change: Since the K3 Planning Permission was granted the EIA Regulations were updated in 2017 emphasising the need for EIAs to consider potential future impacts of climate change. The EA have assessed the K3 Site as being situated in FZs 1, 2 and 3, however due to land elevation the K3 Site now identifies as FZ1, and therefore considered to be at low risk of flooding from all sources. This would remain the case for the EA modelled period 2115.
- 4.19.14. The construction access road is shown to be situated within Flood Zone 1, 2 and 3 and therefore at 'low to high' risk of flooding from The Swale. The existing Kemsley access road has its own surface water drainage system with two retention ponds which treats the surface water before discharging to local watercourses.
- 4.19.15. In the absence of the WKN Proposed Development, the current K3 Proposed Development construction laydown area would be restored to grassland and/or scrubland similar to that prior to use as a laydown area.
- 4.19.16. The WKN Site was assessed as being in FZ2, however due to land elevation it now identifies as FZ1, and therefore considered to be at low

risk of flooding from all sources. This would remain the case for the EA modelled period 2115 (see Drainage Design Philosophy, ES Appendix 10.2 [APP-042]).

- 4.19.17. The potential environmental impacts arising from the construction of the Proposed Development were identified in the ES [APP-062] at paragraph 10.6.3. These were temporary in nature as follows:
- impacts which may affect temporary (construction) flood risk;
 - impacts of construction on surface water resources; and
 - impacts of construction on on-site drainage network.
- 4.19.18. In each case the significance of impacts upon hydrology and flood risk receptors was assessed.
- 4.19.19. Standard construction mitigation measures to be adopted during the construction of the WKN Proposed Development would include drainage works to be constructed to relevant statutory guidance and approved via the Lead Local Flood Authority (LLFA) prior to the commencement of construction; and consultation with the EA to be ongoing throughout the construction period to promote best practice and implement proposed mitigation measures.
- 4.19.20. The overall significance of the effect of construction on flood risk, surface water resources and on-site drainage network based on the situation which includes the integration of construction measures adopted in Table 10.14 and Table 10.15 [APP-062] is assessed as minor adverse, which is not significant.
- 4.19.21. The effects of the operation and maintenance of the WKN Proposed Development in relation to hydrology and flood risk were identified in the ES. The longer-term impacts assessed were the impact of operation on flood risk; impact of operation on surface watercourses; and impact on water resources.
- 4.19.22. Standard mitigation measures to be adopted as part of the WKN Proposed Development for operation and maintenance would incorporate measures to prevent pollution and increased flood risk:
- Emergency spill response procedures;
 - Clean up and remediation of contaminated water run-off;
 - Operational drainage gullies to prevent run-off from site;
 - Drainage strategy including surface water management plan, maintenance and/or monitoring procedures of drains and gullies; and
 - Operational management plan (including site storage procedures)
- 4.19.23. Applying the standard mitigation measures the significance of effects of the WKN Proposed Development on flood risk and surface water quality is assessed as minor adverse and not significant.
- 4.19.24. Decommissioning impacts which would occur due to the decommissioning of the WKN Proposed Development and associated infrastructure were assessed in relation to flood risk and surface watercourses. The

decommissioning impacts have been determined to be similar and no worse than construction impacts in relation to hydrology and flood risk, and therefore are at worst minor adverse and unlikely to be significant subject to implementation of standard construction practice and the DEMP as set out in Table 10.14 [APP-062].

Examination

- 4.19.25. No concerns were raised during the Examination about the approach to or findings of the FRA.
- 4.19.26. In their RR [RR-001] the EA stated it had no objection to the FRA, flood mitigation in the form of land raising had been maintained as per the previous application, considered appropriate here for the type of development, and the flood levels used in the FRA remain the same in the updated modelling. It noted the permit application for Project K3 submitted to increase waste input from 550 000 Tpa to 657 000 Tpa as a substantial variation and that the modelling assessments would be done during the permitting process. The WKN Proposed Development would require an environmental permit.
- 4.19.27. The EA added [RR-001] that groundwater and contaminated land baseline conditions were addressed for this site previously under earlier permissions from KCC and under the IED permit. Additional assessment of ground conditions would be undertaken before, during and after operational activities under any new permit issued. The site's geological setting is on strata that is not of significant sensitivity for groundwater protection and provided surface management and materials handling are undertaken in accordance with permit requirements, ground quality and associated controlled waters should not be at significant risk.
- 4.19.28. In the SoCG between the EA and the Applicant [REP7-012] it is noted the tidally dominated Swale to the east of the Application Site presents the greatest flood risk and it is agreed there is no discernible flood risk associated with the Site from other sources. It is also agreed that the ES and FRA have used an appropriate methodology, are based on an appropriate baseline and make an appropriate judgement regarding the likely significant residual impacts in terms of the flood risk relating to the proposed schemes. The Consented K3 Facility as constructed and the WKN Proposed Development would be set above the predicted flood levels for the area taking into account climate change and raised above the 1 in 200-year (2115) flood level. Flood risk associated with the construction accesses and laydown areas is considered acceptable and it is agreed that the Proposed Developments would be compatible with the flood risk of the locality.
- 4.19.29. The SoCG [REP7-012] also agrees that the Proposed Development does not pose a risk to surface water quality and the River Swale subject to the controls set out in the mitigation measures, the dCEMP and secured through R18 of the DCO.

- 4.19.30. With respect to land contamination and groundwater it is agreed within the SoCG [REP7-012] that the K3 Proposed Development would not pose a risk to groundwater. Regarding the WKN Proposed Development it is agreed that R28 (piling risk assessment) and R19 (contaminated land and groundwater) of the dDCO would ensure the appropriate ongoing management of any contamination that might be present and that the risk of consequential environmental impact is adequately mitigated and any risk would be as low as reasonably practical.

Questions

- 4.19.31. Written questions relating to the water environment were addressed to the Applicant and KCC, namely ExQ1.12.1 to ExQ1.12.4; and ExQ3.12.1 to ExQ3.12.3.
- 4.19.32. ExQ1.12.1 asked how the specifications in the Surface Water Management and Foul Drainage Design Philosophy Statement [APP-152] would be captured in the DCO and it was noted this is included as a certified document and as such addressed by R9 dDCO which states that the K3 authorised development must be carried out in accordance with the approved plans and documents in Schedule 3.
- 4.19.33. In response to ExQ1.12.3 concerning R18(4) dDCO [AS-002] the Applicant considered that the Requirement appropriately ensured that commissioning would not take place until the surface and foul water drainage systems had been constructed in accordance with details which had to be approved by the RPA under R18(1).
- 4.19.34. ExQ1.12.4 sought to clarify Options A and B for the surface water outfalls, in ES Appendix 11.7: Marine Licence Surface Water Outfall to Swale [APP-049]. The Applicant responded that Option A reflected the original option to discharge clean surface water from K3 and Option B was the amended approach now allowing for discharge of clean surface water from both Project K3 and Project WKN, a benefit over the previous position that would have allowed discharge from K3 and the previously consented IBA facility. If consent were granted for Project WKN Option B would be implemented. The ES did not consider the outfall, given consent has been granted for that by the MMO.
- 4.19.35. In reply to ExQ3.12.1 the Applicant confirmed the WKN EP application was submitted on 13 June 2020. However it declined the ExA's request to supply a copy to the Examination, on the basis that amended information might be requested by the EA which would then amend or replace the original information made public through this Examination.
- 4.19.36. In reply to ExQ1.2.8 it was clarified that the Surface Water and Foul Drainage Philosophy [APP-152] included in Appendix B drawings: 16315/A1/P/0100 Rev U (Proposed Site Layout), 16315/A0/0250 Rev J (Site Sections) and 16315/A0/0301 Rev J (Proposed Drainage Layout), match the references for those plans at Schedule 3 dDCO.
- 4.19.37. The intertidal area of the Swale where the second surface water outfall would be located was surveyed in 2017. This is referred to in ES

Appendix 11.7 [APP-049] where full details of the intertidal habitats can be found. However this referred to the 2017 Marine Licence, which was varied on 10 May 2019 to allow for construction and operation of a second outfall. Asked (ExQ1.5.2) to clarify the correct location of the information, the Applicant then supplied the full marine licence application documents [REP2-036] which contains a full assessment of effects on marine interest features.

- 4.19.38. ExQ1.8.12 sought clarity over whether the marine licences authorised both construction and operation. MMO responded [REP2-041] that under the MCAA2009 a marine licence is required for specific activities in the UK marine area such as construction activity, but MMO does not licence the operation of activities such as outfalls. Consent required for the discharge of water from infrastructure constructed via a marine licence, ie a discharge permit, would be obtained from the relevant authority (e.g. EA). Marine licence L/2017/00482/2 consents the construction of two outfalls, one to serve the Kemsley Generating Station and one to serve the WKN Proposed Development. The licence does not consent the operation, maintenance or decommissioning of such structures.
- 4.19.39. 'Work No 1E' and 'Work No 7' in Schedule 1 (authorised development) dDCO refer to those activities consented under this existing marine licence. MMO queried whether matters arising from the works in the marine area should be dealt with by requirements in the dDCO or conditions on the marine licence. It considered that matters in the scope of the 2009 Act could be regulated by such conditions or through a Deemed Marine Licence (DML) within a DCO.
- 4.19.40. ExQ2.5.3 explored the reference to outfall pipes and operation in MMO's D2 submission [REP3-017] concerning ES Chapter 11, paragraph 11.9.73 [REP2-024], and any maintenance works needed for the outfall pipes, to either incorporate this into a DML or request a variation to the existing ML.
- 4.19.41. ExQ2.5.4. asked the MMO and EA whether a DCO Requirement or environmental permit is needed in respect of operation as only clean surface water will be discharged from the outfalls.
- 4.19.42. ExQ2.5.5 sought information about the rate and volume of the discharge from the outfalls.
- 4.19.43. The Applicant's response [REP4-006] to ExQ2.14 gave information on the scope and conclusions of the assessment in respect of the SEIMP relating to the surface water outfall elements of the Proposed Development. The outfalls for Project K3 and Project WKN would not generate significant impacts on seascapes or the landscape and would only discharge clean surface water so that no deterioration of water quality would result. The process would be controlled by any permit or amended permit issued for the Proposed Development which was not considered to have the potential to impact on any element of the marine protected areas, specifically the Swale Ramsar site and Swale Estuary Marine Conservation Zone. There would be no noise effects arising from the

operation of the outfalls but their construction using a vibro hammer would have the potential to create noise. Therefore a controlling condition requiring a soft start approach would be imposed within the Marine Licence. No cumulative adverse effects were identified with other proposals. It was concluded that the Proposed Development was not considered to conflict with any element of the emerging SEIMP.

Conclusion

- 4.19.44. Although having both options of conditions on a current marine licence and a DML risks inconsistency, and duplication of conditions, I agree with MMO's view that it is open to an applicant to apply for a variation to their existing licence to incorporate all licensable activities in the UK marine area in which case the DCO contains no licensable activities. Alternatively an applicant might incorporate a DML in their DCO including all licensable activities within the UK marine area. I see nothing wrong in the approach adopted by the Applicant in pursuing the marine licence option.
- 4.19.45. I conclude that in terms of flood risk, the Proposed Development would be acceptable, compatible with the flood risk of the area and would comply with NPS EN-1, the NPPF, and development plan policies. The Applicant has demonstrated compliance with the WaterFD and that there would be no impact upon The Swale Estuary MCZ or other designated sites.
- 4.19.46. In respect of the WKN Proposed Development and hydrology and flood risk, potential impacts to the water environment would be avoided where practicable through implementation of a number of industry standard mitigation measures, and careful consideration of the drainage design, construction techniques and operational best practice of the WKN Proposed Development. The construction mitigation measures are included in the dCEMP [REP4-013].
- 4.19.47. Subject to the controls provided through R12 Preferred dDCO [REP7-003] in respect of the K3 Proposed Development, or R18 in respect of the WKN Proposed Development, surface water run-off would be securely managed during construction, operation and decommissioning, as the case may be, of the Proposed Development, and there would not be any detrimental impact on water quality. As a result, I find that in respect of water quality and resources the Proposed Development would be in accordance with NPS EN-1, NPS EN-2, the NPPF and the development plan and emerging SEIMP policies.

5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

5.1. INTRODUCTION

- 5.1.1. This chapter of the Report sets out my analysis and conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the SoSBEIS,

as the competent authority, in performing their duties under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) ('the Habitats Directive') and Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC), as transposed in the UK through The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

- 5.1.2. Regulation 63 of the Habitats Regulations states that if a plan or project is likely to have a significant effect on a European site designated under the Habitats Regulations (either alone or in-combination with other plans or projects), then the competent authority must undertake an appropriate assessment (AA) of the implications for that site in view of its conservation objectives. As a matter of policy, the Government applies the same procedures to a number of other internationally designated sites, including Ramsar sites; these are all referred to in this report hereafter as European sites. Consent can only be granted if the AA concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).
- 5.1.3. Evidence has been sought during the Examination from the Applicant and the relevant Interested Persons (IPs) through written questions and Issue Specific Hearings (ISHs), with the aim of ensuring that the SoS has such information as may reasonably be required to carry out their duties as the competent authority.
- 5.1.4. In accordance with the process set out in Planning Inspectorate Advice Note 10 (AN10), submitted evidence in respect of HRA matters was drawn together during the Examination into a Report on the Implications for European Sites (RIES) [PD-018]. The purpose of the RIES was to compile, document and signpost information provided in the application and submitted by the Applicant and IPs during the Examination (up to and including D6) in relation to potential effects on European sites. The RIES was published on the Planning Inspectorate's website on 15 July 2020. IPs, including Natural England (NE), were notified and consultation was undertaken between 15 July and 5 August 2020.
- 5.1.5. The RIES was issued to ensure that IPs, including NE as the statutory nature conservation body, had been consulted formally on Habitats Regulations matters. This process may be relied upon by the SoS for the purposes of Regulation 63(3) of the Habitats Regulations. The consultation raised no new relevant or important issues or concerns. The Applicant confirmed at D7 [REP7-001] that they had no comments on the RIES. NE stated at D7 that it reflected an accurate representation of their advice throughout the Examination [REP7-035] and the MMO stated at D8 that they agreed with NE's conclusion on the content of the RIES [REP8-018].
- 5.1.6. The Applicant submitted a final version of their HRA Report (HRAR) at D7 [REP7-010], after the RIES had been published. Having reviewed it I find that the change does not affect the content of the RIES.

5.2. PROJECT LOCATION

K3 PROPOSED DEVELOPMENT

- 5.2.1. As described in Chapter 2 above, the Proposed Development comprises, firstly, the construction and operation of Wheelabrator Kemsley Generating Station (K3), a waste to energy facility with a generating capacity of up to 75 megawatts (MW) (49.9MW previously consented plus a 25.1MW upgrade) and a total waste throughput of up to 657,000 tonnes per annum (550,000 tonnes previously consented plus a 107,000 tonnage increase). K3 would combust post-recycled solid recovered fuel waste, commercial and industrial waste and pre-treated municipal solid waste to produce electricity which is exported to the national grid and steam which is supplied to the adjacent paper mill. The grid connection would be via the existing substation located within the DS Smith paper mill site located to the immediate west of the Application Site.
- 5.2.2. The K3 waste facility consented under the Town and Country Planning Act 1990 (TCPA1990) has been constructed and was commissioned with effect from 16 July 2020.

WKN PROPOSED DEVELOPMENT

- 5.2.3. The Proposed Development also comprises the construction and operation of Wheelabrator Kemsley North (WKN), a new waste-to-energy facility with a generating capacity of 42MW and capable of processing 390,000 tonnes of waste per annum. The electricity produced would be exported to the national grid. The grid connection would be via the existing substation located within the DS Smith paper mill site located to the immediate west of the Application Site.

K3 and WKN

- 5.2.4. As both K3 and WKN would be located within the Application Site the same European sites were identified and considered by the Applicant in respect of each of the Proposed Developments, consequently the commentary below equally applies to both K3 and WKN unless indicated otherwise.
- 5.2.5. The Order Limits of K3 and WKN do not overlap with any European site. The nearest European sites, The Swale Special Protection Area (SPA) and Swale Ramsar site, are located approximately 160m away from the Application Site at their closest point.
- 5.2.6. The Applicant identified European sites within 10km of the Application Site boundary, and accordingly considered the following eight European sites (and features), for which the UK is responsible, for inclusion within the HRA:

- Swale SPA;
- Swale Ramsar site;
- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;

- Thames Estuary and Marshes Ramsar site;
- Queendown Warren Special Area of Conservation (SAC); and
- Outer Thames Estuary SPA.

5.2.7. No other European sites or features were identified by NE or any other IP.

5.2.8. The Applicant did not identify any potential significant effects on European sites in any other European Economic Area State.

5.2.9. I am satisfied that the Applicant has correctly identified all the relevant European sites and qualifying features/interests for consideration within the HRA.

5.3. HRA IMPLICATIONS OF THE PROJECT

5.3.1. The Proposed Developments are not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment.

5.3.2. The Applicant concluded that there was potential for likely significant effects from the Proposed Developments on eight European sites. Therefore a HRAR was provided with the application entitled 'Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO: Habitats Regulations Assessment Report' [APP-044], together with screening and integrity matrices ('the 2019 HRAR'). This provides an assessment of the operational and decommissioning effects arising from the K3 Proposed Development and the construction, operational and decommissioning effects arising from WKN.

5.3.3. The construction effects of the K3 Proposed Development are assessed in the 2010 HRAR for K3 as consented under the TCPA1990. This assessment is included in the Development Consent Order (DCO) application documents, contained within the 2010 Environmental Statement (ES) Appendix 9.6: Information for an Appropriate Assessment [APP-073] ('the 2010 HRAR').

5.3.4. In response to ExA questions and representations made by IPs during the Examination, the Applicant provided an updated 2019 HRAR incorporating updated screening and integrity matrices at D2 [REP2-034] and D4 [REP4-010]. In response to comments made by the Marine Management Organisation (MMO) at D5 the Applicant provided an updated 2019 HRAR at D6 [REP6-008]. In response to ExQ4.8.1 [PD-015] the Applicant provided an updated 2019 HRAR at D7 [REP7-010] to incorporate text that had been omitted from Evidence Note c to the Integrity Matrices in Appendix 2. All subsequent references to the 2019 HRAR in this report are to the D7 version unless otherwise stated.

5.3.5. The study area for the assessment of effects on European sites is not identified in the 2019 HRAR. It was clarified in the Applicant's response [REP2-009] to ExQ1.5.3 [PD-008] as being 10km from the Application Site boundary. Paragraph 2.12 of the 2019 HRAR states that the eight

European sites considered in the HRAR were selected on the basis of the nature of the Proposed Developments and the findings of the technical chapters of the ES.

- 5.3.6. In their response to ExQ1.8.22 [PD-010] NE did not identify any other UK European site or European site features that could be affected by the Proposed Developments and confirmed that they agreed that the correct sites and features had been considered in the 2019 HRAR [REP2-042].
- 5.3.7. I sought clarification from the Applicant in ExQ1A [PD-008] and ExQ2 [PD-012] on a number of apparent discrepancies and omissions in the 2019 HRAR (Q1.8.1 – Q1.8.22 and Q2.8.1 – Q2.8.6, respectively). The questions included in ExQ1 related to the features of the European sites, the Applicant's approach to the in-combination assessment, the securing of the proposed mitigation and discrepancies in the matrices. I also asked NE to confirm whether they agreed that the correct sites and features were considered in the HRA and whether they agreed with its conclusions (ExQ1.8.22). The HRA-related questions included in ExQ2 related to the in-combination assessment, the mitigation contained within the Draft Construction Environmental Management Plan (dCEMP), changes made to the preamble to the matrices in the updated 2019 HRAR and the MMO's comment in their D3 submission [REP3-017] that saltmarsh habitats and locations were not identified in the 2019 HRAR. A number of these questions were also directed at NE, the Environment Agency (EA) and Swale District Council (SDC).
- 5.3.8. The Applicant responded to ExQ1 and ExQ2 at D2 and D4 [REP2-009 and REP4-006] and submitted updated versions of the 2019 HRAR at D2 and D4 [REP2-034 and REP4-010]. The Applicant's approach to the in-combination assessment was clarified in the D4 version of the 2019 HRAR. The revised text in Section 7 confirmed that it had been concluded that the K3 and WKN Proposed Developments would not give rise to likely significant effects on any European sites in combination with other plans and projects. The matrices in Appendices 1 and 2 were revised to reflect this by the inclusion of in-combination effects in the screening matrices and their removal from the integrity matrices. This was subsequently reversed in the screening and integrity matrices contained in the D7 version of the HRAR [REP7-016]. Evidence Note h to the integrity matrices states that the in-combination assessment concluded that there would be no adverse effects on the integrity (AEoI) of designated sites either because there were no ecological pathways or because the in-combination modelling results did not exceed the (relevant) maximum thresholds.
- 5.3.9. NE requested in their Relevant Representation (RR) [RR-006] that the Swale Local Plan was included in the in-combination effects assessment of other plans or projects. The updated 2019 HRAR [REP2-034] submitted for D2 included an assessment of the potential in-combination effects of the Swale LP together with K3 and WKN and concluded no likely significant effects. NE subsequently confirmed [REP3-018] that the updated text addressed their comments and that they had no further comments on the updated HRAR. The final Statement of Common

Ground (SoCG) between the Applicant and NE [REP5-008], submitted at D5, confirmed that all matters, including those related to HRA, were agreed.

- 5.3.10. Following a request by the ExA in ExQ3 (Q3.5.1) [PD-014] the Applicant submitted a 'Draft WKN Ecological Mitigation and Management Plan' (dEMMP) [REP5-005] that contained details of the measures proposed to address potential ecological impacts on species. This includes species that are also features of European sites considered in the HRA such as the Swale SPA, Swale Ramsar site, Medway Estuary and Marshes SPA and Medway Estuary and Marshes Ramsar site.
- 5.3.11. The MMO, in their D3 submission [REP3-017], commented that saltmarsh habitats and locations had not been identified in the 2019 HRAR despite being considered in the marine licence application [REP2-036]. ExQ2.8.6 [PD-012] contained a request to the Applicant and NE to provide their comments on this point for D4. The Applicant responded [REP4-006] that saltmarsh is a supporting habitat of the various SPA/Ramsar site interest features and is identified in the HRAR in Table 4.7. NE responded [REP4-031] that "*..whilst saltmarsh habitats and locations are not explicitly identified in the HRAR [REP2-034], saltmarsh is considered as a supporting habitat of the SPAs in the vicinity. The Swale Ramsar site is also included and the saltmarsh plants that form part of the designated interest are noted.*". NE also commented that the HRA for the marine licence application for the outfall considered implications for intertidal habitats, including any required mitigation measures, and those conclusions are referred to in the 2019 HRAR.
- 5.3.12. In their D4 response [REP4-028] the MMO referred to ExQ1A.11.6 [PD-010]. They encouraged a review of the potential environmental impacts of the Proposed Developments using water transport and commented that it must include an assessment of the potential impacts on adjacent designated sites and that this should be considered within the HRA.
- 5.3.13. In their D5 response [REP5-011] the Applicant confirmed that a direct response had been provided to the MMO setting out their position. They were of the view that it would not be appropriate or possible at this stage to provide a review of the potential impacts of using water transport without knowing the quantum of waste being transported using water, the source of that waste, the method of transportation and any associated infrastructure required. They stated that this information would only become available when a waste contract which allowed for transportation by water was being sought and acknowledged the MMO's point in its D4 submission that an assessment would need to be undertaken of the environmental impacts of using water transportation. The MMO's D5 submission [REP5-030] welcomed the Applicant's engagement and reiterated that they encouraged a robust assessment of the potential impacts of transporting material by barge, including emissions and noise from the additional marine traffic passing through protected areas.

- 5.3.14. The MMO also raised concerns in their D5 submission about potential impacts of the discharge of water from the outfall on mussel beds and/or saltmarsh. They considered that it could lead to changes in salinity and turbidity which, depending on the location of the mussel beds in relation to the location of the outfall, could have significant effects, and requested further elaboration from the Applicant as to why there would be no significant effects resulting from the discharge.
- 5.3.15. The Applicant submitted an updated version of the 2019 HRAR [REP6-008] at D6, which contained minor revisions to address points raised by the MMO in their D5 submission. They responded to the MMO's points about salinity changes and water transportation in their D6 response to the D5 submissions [REP6-010], as set out below.
- 5.3.16. In respect of salinity, the Applicant commented that the original application for a marine licence was accompanied by a full ES. The ES dealt with the potential impacts of both construction and operation of up to two outfalls and the issue of localised changes to salinity due to discharge of 'pure' water from the outfalls. They explained that the assessment scope was determined in consultation with the MMO, it was concluded that there would be no likely significant effects on any interest feature/supporting habitat of any of the designated sites within the Swale, and that was accepted by the MMO in their granting of the marine licence. They stated that the scope of the Environmental Appraisal that accompanied the request to vary the original marine licence to allow for the construction of a second outfall to serve WKN was also determined in discussion with the MMO (set out in Section 1.2 of the Environmental Appraisal [REP2-036]). They explained that the MMO agreed that the assessment should focus on impacts related to the construction of the second outfall only, with no further assessment necessary of other activities on the basis that they had all been assessed in the original licence application, including the issue of changes to salinity. They considered that this was subsequently confirmed by the granting by the MMO of the licence variation in May 2019.
- 5.3.17. In their D7 response [REP7-016] to ExQ4.8.2 [PD-015] the Applicant stated that they had asked the MMO on 31 July 2020 if they had any questions about the impacts of the Proposed Developments on the mussel beds and that the MMO had not raised any issues with them to date. The MMO, in their D7 response [REP7-033], acknowledged the inclusion of water quality impacts in relation to appropriate assessment in the 2019 HRAR and that all existing discharges were regulated by the EA and the consents subject to their own HRA.
- 5.3.18. NE, in their D7 submission [REP7-035], stated that in relation to the MMO's comments about potential effects on the Swale SPA and Ramsar site arising from water quality impacts they considered that the mitigation measures described in Chapter 10 of the ES (Water Environment) [APP-062] were sufficient to avoid adverse effects on the sites' integrity. They were of the view that the sustainable drainage systems as illustrated on the Drainage Layout plan [APP-127] would allow any silt in the surface water run-off to settle out and would treat

any other pollutants before discharge to The Swale. They considered that discharging freshwater to the site at no greater than greenfield run-off rates was not likely to significantly affect the features of the site as a gradient in salinity was appropriate in an estuarine system. NE concluded that, as set out in the agreed SoCG [REP7-014] submitted at D7, the evidence before the SoS was sufficient to support a conclusion of no AEoI of the Swale SPA and Ramsar site.

- 5.3.19. In respect of the MMO's comments about water transportation, the Applicant stated in their D6 submission [REP6-010] that they would review the D6 responses from IPs and provide responses to those and any questions in ExQ4 which addressed this issue at D7. In their D6 response [REP6-012] the MMO acknowledged the Applicant's D5 response [REP5-011] to ExQ3.8.1 about water transportation and referred back to their D5 submission [REP5-030] but did not comment further in relation to HRA specifically.
- 5.3.20. In their D7 response the Applicant stated that their position on water transportation remained the same as set out in their response [REP5-011] to the questions contained in ExQ3 [PD-014] in respect of that matter.
- 5.3.21. In the MMO's D7 submission [REP7-033] they acknowledged the Applicant's statement in their ExQ3 response [REP5-011] that transport by water was not feasible. They highlighted that points 1.1, 1.3 & 1.5 of their D6 response [REP6-012] contained information about the requirement to consider any activities which may be licensable under s66 of the Marine and Coastal Access Act 2009 and the requirement to consider operational impacts if transport by water is required. No further comments were made on this matter by any party at D8.
- 5.3.22. In their D7 response to ExQ4.5.1 [PD-015] the MMO set out their view that if impact piling was required during construction soft start measures should be implemented and suggested wording that could be inserted in Requirement 28 (R28) of the dDCO. They reiterated this point in their D8 submission [REP8-018].
- 5.3.23. In their D8 submission [REP8-015] the Applicant stated that dDCO R28 provided timing restrictions across a calendar year on impact piling, which they considered sufficient to avoid impacts on bird species; the SoCG with NE confirmed that NE were satisfied that those measures were sufficient; and NE confirmed at D7 in their comments on the RIES [REP7-035] that the evidence was sufficient to support a conclusion of no AEoI for the Swale SPA and Ramsar site. They confirmed that any impact piling undertaken to construct the WKN outfall would be done under the control of the marine licence [APP-049], Section 5.2.7 of which requires a soft start to be made for any impact piling. They expressed their view that it was not necessary for that provision to be replicated within the Ecological and Mitigation Management Plan (EMMP) [REP5-005] or DCO.

5.3.24. In their D7 response [REP7-033] the MMO stated that they had no further comments to make on the 2019 HRAR and deferred to NE for all further comments.

5.3.25. No other IPs raised any concerns about the Applicant's approach to undertaking the HRA or its conclusions.

5.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

CONSENTED K3 FACILITY

5.4.1. The Applicant's screening assessment of K3 as consented, contained in the 2010 HRAR [APP-073], concluded that it would have no likely significant effects during construction, operation and decommissioning, either alone or in-combination with other plans or projects, on the qualifying features of the Outer Thames Estuary SPA. It was concluded that K3 as consented was likely to give rise to significant effects during construction, operation and decommissioning, either alone or in-combination with other plans or projects, from urbanisation, operational air quality, hydrological changes and noise and lighting disturbance on qualifying features of the seven European sites listed below:

- Swale Special SPA;
- Swale Ramsar site;
- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;
- Thames Estuary and Marshes Ramsar site; and
- Queendown Warren Special Area of Conservation.

K3 PROPOSED DEVELOPMENT AND WKN PROPOSED DEVELOPMENT

5.4.2. The Applicant's assessment of likely significant effects of K3 and WKN on the eight European sites considered in the HRA is contained in Section 5 of the 2019 HRAR and reflected in the screening matrices in Appendix 1. The evidence notes to the matrices cross-reference to the relevant information contained in the HRAR.

5.4.3. The Applicant has addressed potential in-combination effects of K3 and WKN within Section 7 of the 2019 HRAR. Paragraph 7.3 identifies 10 projects considered in the in-combination assessment carried out by the Applicant. A discrete assessment of the in-combination effects of emissions to air is provided in the 2019 HRAR paragraphs 7.7 – 7.15. All other potential in-combination effects are considered in HRAR paragraphs 7.16 – 7.38. NE, in their RR [RR-006], suggested that traffic movements generated by proposals in the Swale Local Plan should additionally be included in the in-combination effects (ICE) assessment. The Applicant provided this assessment in the updated 2019 HRAR submitted for D2. It concluded that only one road would carry traffic associated with both the Proposed Developments and proposals within the Swale LP (the A249) and that the habitats in that location were not sensitive to changes in air

quality. NE confirmed in their D3 submission [REP3-018] that the updated assessment addressed their comments and that they had no further comments on the HRAR. The scope of the ICE assessment was not disputed by any other IP.

K3 PROPOSED DEVELOPMENT

- 5.4.4. The Applicant's screening assessment contained in the updated 2019 HRAR (Section 5) considered that the environmental pathways through which there was the potential for K3 to have LSEs on the European sites were air quality and disturbance due to increased traffic noise. All other pathways were excluded on the basis that there were no construction activities required for the Proposed Development and no changes proposed to its physical form. Potential air quality and disturbance effects are assessed in the HRAR. In relation to air quality, regard was had to the information available on the Air Pollution Information System (APIS) website. Cross-reference is made to the air quality modelling results contained in ES Appendix 5.4 [REP2-032], from which it was concluded that the relevant maximum pollutant thresholds were not exceeded and therefore not significant. In respect of disturbance it was concluded that the potential for disturbance due to traffic noise was highly limited as a result of the distance between the traffic and the designated sites (about 100m from the grazing marsh habitats of the nearest European sites) and because the absolute increase in average annual daily traffic would be extremely small (<2%) with a correspondingly small increase in absolute noise.
- 5.4.5. It was concluded that the operation and decommissioning of the K3 Proposed Development would have no likely significant effect, either alone or in-combination with other plans or projects, on the qualifying features of any of the eight European sites.
- 5.4.6. The IPs did not dispute the Applicant's conclusion of no likely significant effects on these European sites and their qualifying features during the Examination. I am satisfied that the screening conclusions are appropriate.

WKN PROPOSED DEVELOPMENT

- 5.4.7. The Applicant's screening assessment in respect of WKN is set out in Section 5 of the HRAR. Paragraph 5.20 identifies the environmental pathways through which it was considered WKN could have a significant effect on the European sites. These are as follows:
- direct loss or damage of habitats within a designated site or nearby areas used by interest species;
 - change in management regimes of habitats within a designated site or nearby areas used by interest species;
 - loss of future space to allow for managed realignment to avoid coastal squeeze;
 - urbanisation that results in over shadowing, reduction of sight lines or which hinders flight paths;
 - air quality;

- water quality;
- hydrological changes, including in the balance of saline and non-saline conditions;
- disturbance (activity, recreation, noise and lighting); and
- introduction or spread of non-native invasive species.

5.4.8. An assessment of the potential effects of each of these pathways is provided in paragraphs 5.21 – 5.73 of the HRAR. It was concluded that WKN would have no likely significant effects during construction, operation and decommissioning, either alone or in-combination with other plans or projects, on the qualifying features of the six European sites listed below:

- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;
- Thames Estuary and Marshes Ramsar site;
- Queendown Warren Special Area of Conservation; and Outer Thames Estuary SPA.

5.4.9. The IPs did not dispute the Applicant’s conclusion of no likely significant effects on these European sites and their qualifying features during the Examination.

5.4.10. It was concluded that WKN was likely to give rise to significant effects on the qualifying features of the Swale SPA and Swale Ramsar site as a result of impacts on air and water quality and through recreational, lighting, noise and visual disturbance. The MMO raised a number of questions during the Examination about the Applicant’s assessment of effects on these sites and their qualifying features (see Section 6.3 above).

5.4.11. I am satisfied that the screening conclusions are appropriate.

5.5. CONSERVATION OBJECTIVES

5.5.1. The conservation objectives for all of the European sites taken forward for an assessment of effects on integrity and discussed in this section of the report were provided by the Applicant in Section 4 of the 2019 HRAR.

5.6. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

CONSENTED K3 FACILITY

5.6.1. Paragraphs 9.311 – 9.323 of the 2010 HRAR [APP-073] contain information on proposed measures to mitigate the potential effects of K3 as consented, including industry standard and good practice measures. These include:

- provision of areas within the Application Site to support qualifying plant species that may be present on land beyond the site boundary that will be lost;
- minimisation of construction dust;

- treatment and pollution prevention measures;
- surface water drainage incorporating sustainable urban drainage system features to provide attenuation and storage;
- a 'soft start' to the piling operation and limited night-time construction or operational activity that could produce 'startling' noise; and
- directional lighting.

5.6.2. The Applicant concluded in the 2010 HRAR that K3 as consented would not adversely affect the integrity of the seven European sites, and their features, that were taken forward for assessment.

WKN PROPOSED DEVELOPMENT

5.6.3. Section 6 of the 2019 HRAR contains the Applicant's assessment of the potential effects of WKN on the integrity and features of the eight European sites considered in the HRA, which is reflected in the integrity matrices contained in Appendix 2. The potential effects arising from visual disturbance during construction, operation and demolition and noise disturbance during construction and demolition are considered for each bird species that are a feature of the Swale SPA and Swale Ramsar site.

5.6.4. Information on proposed measures to mitigate the potential effects of WKN, including industry standard and good practice measures, is contained in Section 6 of the 2019 HRAR and the Evidence Notes to the Integrity Matrices in Appendix 2. Cross-reference is made from Section 6 to proposed measures contained in other DCO application documents, such as the 2019 ES Chapter 10: Water [APP-062], the WKN Construction Environmental Management Plan (CEMP) [REP4-013], the varied Marine Licence [REP2-036], and the WKN external lighting strategy set out in the 2019 ES Appendix 11.8 [APP-050]. The Evidence Notes to the matrices describe the proposed mitigation and cross-reference to the relevant information in the main text of the HRAR. The dEMMP [REP5-005] submitted by the Applicant at D5 also describes measures to protect species which could be affected by WKN, some of which are also features of European sites considered in the HRA.

5.6.5. Proposed measures in respect of WKN include:

- those contained within the CEMP in relation to construction dust, including damping down, vehicle wheel and body washing, and sheeting of vehicles carrying material;
- a site-wide surface water pollution prevention system to prevent the discharge of any contaminated surface water from the site;
- a palisade fence, a minimum of 2m high, around much of the WKN site boundary to avoid disturbance effects. This is in addition to a 2.4m fence that was erected along part of the K3 site boundary for the K3 construction works that has been retained and is located on the northern boundary of the WKN site;
- restrictions on impact piling to avoid disturbance effects; and
- lighting to be designed according to best practice standards to ensure that no additional light spill would occur.

- 5.6.6. The dDCO includes Requirements that secure the implementation of the proposed measures, such as R17 (fencing), R18 (drainage), R21 (dEMMP), R22 (CEMP), R23 (lighting) and R28 (piling).
- 5.6.7. The Applicant concluded in the 2019 HRAR that following the implementation of the proposed mitigation measures WKN would not adversely affect the integrity of the Swale SPA and Swale Ramsar site. I am satisfied that this conclusion is appropriate.
- 5.6.8. The Applicant's conclusions in relation to the effects on the integrity of the European sites that were taken forward for assessment were not disputed by NE [REP3-018] [REP4-031] [REP5-008] or any other IPs.

5.7. HRA CONCLUSIONS

- 5.7.1. My understanding of HRA matters in relation to the Proposed Development is drawn from the information provided in the application, with reference to the 2010 and 2019 HRARs and the ES, and taking full account of the responses to relevant questions that I raised.
- 5.7.2. On the basis of the information before me I consider that the Proposed Development would have no adverse effect, subject to the controls set out in the dDCO, either alone or in-combination with other plans or projects, on the integrity of any European site and its features.
- 5.7.3. I am also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment and discharge his obligations under the Habitats Regulations.

6. CONCLUSIONS ON THE CASE FOR DEVELOPMENT CONSENT

6.1. INTRODUCTION

6.1.1. The ExA has considered the issues that were raised by all Interested Parties (IPs) in their various representations. They were examined during the Hearing and through the ExA's written questions. The Principal Issues are set out at Section 4.1 of this Report and I have made findings in relation to these matters. The policy context and the ExA's findings on individual matters are set out in the preceding Chapters 4 and 5. The overall planning balance is summarised in Section 6.3 below.

6.2. CONSIDERATIONS IN THE OVERALL PLANING BALANCE

Application of NPSs and development plan to the Proposed Development

6.2.1. The designated National Policy Statements (NPSs) NPS EN-1 and NPS EN-3 provide the primary basis for the Secretary of State (SoS) to make decisions on development consent applications for energy based Nationally Significant Infrastructure Projects (NSIPs) in England, which includes the K3 Proposed Development.

6.2.2. In terms of Project WKN the NPSs may be considered "alongside" other national and local policies, however as the adopted local plan for waste matters, I consider the development plan and in particular the Kent Minerals and Waste Local Plan (KMWLP) to be the primary policy against which this element of the Proposed Development should be determined. The presumption in favour of determining the application in accordance with the NPS is absent here although the relevant NPSs are important and relevant matters to be considered.

6.2.3. I disagree with the Applicant's response [REP5-011] to ExQ3.6.2 [PD-014] that EN-1 and EN-3 are so germane to the assessment of the WKN Proposed Development that it would be irrational not to give them primacy for the reasons they give. As to the reasons given for this proposition, the NPPF is not dispositive of the issue, and the s35 direction does not override s105(2)(c) PA2008. S105 PA2008 does not stipulate that the NPSs take precedence viz a viz local plan policies (although as *The Queen (oao David Gate on behalf of Transport Solutions Fop Lancaster and Morecambe) v The Secretary of State for Transport v Lancashire County Council* [2013] EWHC 2937 (Admin) would suggest they are capable of being important and relevant matters).

6.2.4. The Applicant suggested further in its reply [REP5-011] to ExQ3.6.2 [PD-014], that local plan policies would otherwise take precedence by default. Indeed, whatever the reason behind the lack of definitive statutory or judicial clarity over the issue, it would be sensible in my view to apply the statutorily adopted development plan as the primary consideration to

a project that, but for the s35 Direction, would have fallen to be considered on that basis.

- 6.2.5. That said, conclusions on the case for development consent set out in the application are reached in the context of the policies contained in the NPSs, according to how important and relevant are the matters contained therein.

Issues arising in the Local Impact Reports (LIRs)

- 6.2.6. KCC's LIR [REP1-011] deferred to Swale Borough Council (SBC) on matters concerning economic development, landscape and visual impact, noise, air quality, ground contamination and cultural heritage. It deferred to Natural England (NE) on matters concerning biodiversity and to Historic England (HistE) on the impacts the Proposed Development may have on the Scheduled Monument - Castle Rough. As Lead Local Flood Authority KCC found acceptable the Flood Risk Assessment and Surface Water Management Design and Foul Drainage Design Philosophy Statement submitted by the Applicant, noting details of surface water drainage would require approval by the relevant planning authority (RPA) before commencement of development.
- 6.2.7. KCC considered the Proposed Development may have a significant impact on path users along Public Footpath ZU1 due to air quality and noise effects arising from the development. Given the potential for its increased use, KCC requested the Applicant to contribute to the improvement of the Public Right of Way (PRoW) surrounding the Application Site.
- 6.2.8. Otherwise, KCC's LIR made two fundamental objections to the Proposed Development respectively as Waste Planning Authority (WPA) and as Local Highway Authority. These are detailed in the relevant sections of Chapter 4.
- 6.2.9. SBC's LIR [REP1-012], whilst deferring to the views of other IPs or statutory authorities on certain specific issues, raised no fundamental objection to the Proposed Development. It emphasised that its LIR was not intended to repeat or contradict KCC's views on matters relating to ecology, flood risk / sustainable urban drainage, highway safety, cultural heritage, archaeology, public rights of way, public health, or minerals and waste planning. Taking into account mitigation factors, SBC's LIR concluded there would be no significant adverse impacts from the Proposed Development on landscape character and visual impacts, residential amenity, noise and vibration, air quality, and land contamination.
- 6.2.10. On economic impacts, SBC welcomed the anticipated job creation of "up to 482 staff" during the construction period and "35 to 49 staff" once the WKN plant would be operational. It deferred to HistE in respect of cultural heritage impacts.

Need for and benefits of the Proposed Development

Project K3

- 6.2.11. In relation to NPS EN-1 and NPS EN-3 which apply to the K3 Proposed Development I find that the need for infrastructure covered by these national policies is assumed and must be accorded significant weight. The recovery of energy from the combustion of waste forms an important element of waste management strategies in England. Furthermore, the ability to generate an increased amount of electricity without change to the design of the Consented K3 Facility is an additional benefit, as is the potential to generate that amount without necessarily increasing the throughput of waste feedstock. The adverse impacts as a result of increase in throughput are considered separately.
- 6.2.12. Although there are marked uncertainties as to what if any net carbon benefit would be achieved by comparison to other forms of waste management, it is reasonable to assume that it would perform better in Greenhouse Gas (GHG) emission terms than had it not been linked to an integrated CHP facility to serve the adjoining DS Smith Paper Mill. This is a further positive benefit that would align with the aspirations of NPS EN-1 and EN-3.

Project WKN

- 6.2.13. Although the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, the generation of up to 42MW of electricity would be in accordance with those national policies and would be a benefit as such. As a fossil fuel generated supply it could be brought on line quickly when demand is high and shut down when demand is low, but the supply generated is not significantly high and the benefits would therefore be limited.
- 6.2.14. The economic impacts of the Proposed Development would be an additional acknowledged benefit, principally in the form of the anticipated job creation of up to 482 staff during the construction period and between 35 to 49 staff once the WKN Proposed Development is operational and would be a positive factor in support of the WKN Proposed Development.
- 6.2.15. Achievement of R1 recovery status is not guaranteed and would only be a positive factor insofar as the SoS considers it likely that R1 status would be achieved. The energy produced from the biomass fraction of waste is regarded as renewable under EN-3 although there is uncertainty as to the proportion of waste fuel that would be derived from this component.
- 6.2.16. However, recognising that EfW facilities have an important role to play in waste management, the key important and relevant matter contained in the relevant NPSs as far as concerns the WKN Proposed Development, is under EN-3: whether, with reference to the relevant waste strategies and plans, the proposed waste combustion generating station would be 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.

- 6.2.17. I find on this issue that, as described in Chapter 4 and summarised further below, it has not been demonstrated that there is a need for the Proposed Development having regard to the WPA's Need Assessments and other evidence that has underpinned the formulation of KCC's revised development plan. The statutorily adopted development plan and relevant policies discussed, form part of the overall planning system adverted to in NPS EN-3, the role of which is to identify the types of infrastructure needed in the places where it is acceptable in planning terms.

Conformity with the Development Plan

- 6.2.18. As a preliminary matter it should be noted that it is likely that a final decision on adoption of the changes proposed by the EPR will have been taken by KCC at some point after the close of the Examination (see p2 KCC Closing Statement [REP8-016] which referred to its proposed meeting on 10 September 2020). Therefore the SoS may wish to consider whether to confirm with KCC whether the changes discussed in this Report have been incorporated into the development plan and have now attained the same status as other development plan policies.
- 6.2.19. Both the K3 and the WKN Proposed Development would be in conflict with fundamental policies of the development plan, namely KMWLP Policy CSW6 which requires it to be: *"demonstrated that waste will be dealt with further up the hierarchy... and where such uses are compatible with the development plan"* and Policy CSW7 which would be permissive of new capacity to manage waste *"provided that: 1. it moves up the Waste Hierarchy"*.
- 6.2.20. In addition, KMWLP Policy CSW4 as revised through the EPR, incorporates revised targets for management of waste in Kent, however waste recovery capacity is sufficiently met by the Consented K3 Facility and the EfW facility at Allington, and there is no proven need for the plant to be located in Kent. This presents a serious risk of prejudice to the principles of proximity and net self-sufficiency which underpin Policy CSW4, and the wider regional strategy in SEWPAG's Memorandum of Understanding (MoU)/"Statement of Common Ground" would clearly be undermined through any significant increase in the capacity gap located in Kent.
- 6.2.21. The weight attached to the harm thereby caused is however assessed in light of the specific circumstances pertaining to each of the two projects. The increased capacity provided by the K3 Proposed Development would be markedly less than that of Project WKN.

Environmental Impact Assessment

- 6.2.22. No submissions were made which raised concerns about the overall adequacy of the Environmental Impact Assessment (EIA) or the Environmental Statement (ES). The ES and associated information

submitted by the Applicant during the Examination provided an adequate assessment of the environmental effects of the Proposed Development which meets the requirements of The Infrastructure Planning (EIA) Regulations 2017 (the EIA Regulations). It is sufficient to describe the Rochdale Envelope for it and to secure its delivery within that envelope through the DCO.

Habitat Regulations Assessment (HRA) considerations

- 6.2.23. Information on HRA matters in relation to the Proposed Development is drawn from the application, with reference to the 2010 and 2019 Habitat Regulations Assessment Reports (HRARs) and the ES, taking full account of the responses to relevant questions that I raised. On the basis of the information before me I consider that the Proposed Development would have no adverse effect, subject to the controls set out in the dDCO, either alone or in-combination with other plans or projects, on the integrity of any European site and its features.
- 6.2.24. I am also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment and discharge his obligations under the Habitats Regulations.

Waste Hierarchy

- 6.2.25. The evidence underpinning KCC's revised development plan policies which was independently compiled, points to a capacity gap which at both the upper and lower ranges of estimates, produces a negative level of need to manage waste fuel available in Kent, even taking into account the capacities of the Proposed Development. This would be 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.
- 6.2.26. Therefore the Proposed Development would be in conflict with KMWLP Policy CSW6 which requires it to be: "demonstrated that waste will be dealt with further up the hierarchy... and where such uses are compatible with the development plan" and Policy CSW7 "provided that: 1. it moves up the Waste Hierarchy".
- 6.2.27. However, although the Applicant's position is that both Project K3 and Project WKN are important, relevant and appropriate infrastructure projects that would meet net zero emissions goals and ensure waste is managed efficiently, there are differences between the two. Project K3 is a CHP facility, connected to the Kemsley Paper Mill with the benefits of increased heat export. That the WKN Proposed Development would provide a sustainable source of steam/heat to local customers for industry and housing within the area is uncertain as there is no clear agreement with any customer for this purpose, except perhaps arguably with DS Smith for the very limited occasions when K3 is undergoing maintenance.

- 6.2.28. Therefore whilst the benefits of co-location of both facilities to provide steam to the paper mill, remain unclear, increased weight should be given to the K3 Proposed Development in this respect.
- 6.2.29. The need for infrastructure covered by NPS EN-3 is assumed and must be accorded significant weight. Further, the increased capacity provided by the K3 Proposed Development would be a more modest increase than that of Project WKN, therefore the risk of prejudice to the principles of proximity and net self-sufficiency in local and regional strategies and plans is reduced. The ability to generate additional electricity without change to its design or increase in throughput would be an additional benefit.
- 6.2.30. As to the WKN Proposed Development, the generation of 42MW electricity would be a benefit having regard to the need for all types of infrastructure set out in NPS EN-1, although the energy generated would be partially renewable at best.
- 6.2.31. However the Applicant has not provided a robust argument that justifies a concentration of a new waste management facility that would increase the capacity gap at this time. Although put forward as a regional facility, given that the waste recovery capacity is well catered for by the Consented K3 Facility and the EfW facility located at Allington, there is no proven need for the plant to be located in Kent. An alternative location outside Kent where the heat produced can be more effectively utilised, would appear to better serve the strategic purposes of member authorities of SEWPAG in order to comply with the aims set out in their respective WLPs, and in particular the KMWLP.
- 6.2.32. Therefore I find that the WKN Proposed Development would be inconsistent with the KMWLP and EPR. Such a finding would be in accordance with upholding the role of the planning system as found in NPS EN-1 to provide a framework which permits construction of what Government as well as the market identify as the type of infrastructure needed "in the places where it is acceptable in planning terms (paragraph 2.2.4)."
- 6.2.33. Further, the introduction of additional Other Recovery capacity of the scale proposed at this time with respect to the WKN Proposed Development would justifiably put at risk achievement of the revised recycling and composting targets in the revised KMWLP which would also be in conflict with National Planning Policy for Waste.

Air Quality

- 6.2.34. There would be no significant effects on air quality caused by the construction or decommissioning of the Proposed Development and a Construction Environment Management Plan (CEMP), secured through R22 of the Preferred DCO would provide appropriate mitigation for the WKN Proposed Development to manage the dust impacts during construction.

- 6.2.35. Emissions from the Proposed Development would be controlled by the Environmental Permitting (EP) regime, and would not be expected to exceed objectives or standards even when based on the worst-case assumptions within the assessment model. I am satisfied with the Applicant's determination of and reasoning for the height of the stack as set out in ES Appendix 5.2, Stack Height Determination [APP-026].
- 6.2.36. ES Chapter 5 [APP-057] robustly assessed air quality impacts as a result of the K3 and WKN Proposed Developments and appropriately concluded there would be no significant impacts arising. The IAQM guidance would be followed with regard to dust management and the dispersion modelling for the stack emissions of both K3 and WKN Proposed Developments demonstrate that the predicted contributions and environmental contributions of all pollutants would be negligible.
- 6.2.37. The ES assessment of impacts of the K3 and WKN Proposed Developments cumulatively with other developments both together and alone, concluded there would be no significant effects on air quality. Therefore, both the K3 and WKN Proposed Developments accord with both national and local policies with regard to air quality.

Archaeology and cultural heritage

- 6.2.38. Matters raised in HistE's Relevant Representation (RR) and in KCC's RR and WR have been examined. I have concluded that there would be no significant archaeological or cultural heritage related effects from the construction, operation or decommissioning of the Proposed Development either physically or on the setting of any Scheduled Monument (SM), listed building or other designated heritage asset in the surrounding area. Consequently, there would be no harm to the significance of heritage assets. Similarly, there would be no significant cumulative archaeological or cultural heritage effects as a result of the Proposed Development.
- 6.2.39. The locality in which the Site lies has recognised potential to contain archaeological remains and it is appropriate to make provision for a programme of archaeological works to ensure that potentially significant adverse effects would be comprehensively mitigated. This would be effectively secured through R20 of the Applicant's Preferred dDCO [REP7-003].
- 6.2.40. On the basis of the evidence and the proposed mitigation secured as above, all impacts have been addressed in a manner that would comply with the Historic Environment elements of NPS EN-1 and the development plan.

Ecology

- 6.2.41. The ES has not identified any significant effects on designated sites, protected species and habitats or other species of principal importance for the conservation of biodiversity. Various construction phase mitigation measures are proposed by the Applicant to be secured by Requirements set out within the Recommended DCO. In respect of

Project K3 these are carried forward from the K3 Planning Permission and approved variations thereto.

- 6.2.42. The effect of the proposed mitigation measures would be that no residual likely significant effects are anticipated on any of the ecological receptors identified. Accordingly, both the K3 Proposed Development and the WKN Proposed Development would not result in significant harm to biodiversity conservation interests and would meet the aims of NPS EN-1, the NPPF and relevant development plan policies.

Greenhouse Gases and Climate Change

- 6.2.43. Project K3 and Project WKN are both facilities proposed for the incineration of waste with energy recovery, which if they achieved R1 status, would represent Other Recovery facilities for the purposes of the waste hierarchy which sit above 'disposal'. However this is a matter for the EA. I cannot with a high level of confidence assume that either project within the Proposed Development would achieve R1 status.
- 6.2.44. In relation to the WKN Proposed Development neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations, but primacy is given to the development plan.
- 6.2.45. The levels of carbon benefit impact relating to the Proposed Development is subject to many fundamental uncertainties and limitations, for example the estimate of GHG emissions from landfill, the carbon intensity of marginal electricity generation and the proportions of waste types to be managed. The available evidence casts considerable doubt on whether a net benefit can be ascertained, given it is highly sensitive to the assumptions applied.
- 6.2.46. Further, if the Proposed Development is not necessary to meet waste requirements for Kent, the carbon burden resulting from the proposed facilities would needlessly increase to no particular purpose but at the same time contribute to an increased risk of failure to meet international commitments. This would be particularly concerning for the WKN Proposed Development, which would result in some 163 ktCO₂e each year of operation from waste combustion and transport. This would be a considerably significant regular discharge of greenhouse gas in its own right over the lifetime of the development, expected to have an operating life of up to 50 years.
- 6.2.47. In that scenario, the Proposed Development would risk being insufficiently resilient against the impacts of climate change and not be able to satisfy the energy needs in such a way that the NPSs contemplate. This concern is accentuated in light of the June 2020 CCC Progress Report identifying for the first time the need to address emissions from waste incineration, and the warning against the continued 'dash for incineration'.
- 6.2.48. The comparative scenario related to landfill has limitations as an alternative baseline scenario. From the available evidence I see no good reason why without the Proposed Development, the landfill option would

not compete with management through other routes such as through other EfW plants with CHP or export as RDF.

6.2.49. The claimed “net carbon benefit” of the Proposed Development is not proven given the lack of robustness of the Applicant’s baseline alternative scenarios. Assessing the degree of GHG emissions that would actually be produced as a factor in its own right, the degree of harm clearly varies such that under Project K3 the practical effect would result in a lesser degree of GHG emissions. The harm thereby caused falls to be assessed against the benefits of and the assumed need for the increase in capacity of the Consented K3 Facility.

6.2.50. Indeed, despite the uncertainties inherent in calculating the net carbon benefit of the K3 Proposed Development’s practical effect, I recognise that as a whole it could be said with higher confidence to perform better in GHG emission terms, due to its greater efficiency as a CHP facility. This would be a positive benefit.

Ground Conditions

6.2.51. I have concluded that the Proposed Development accords with all relevant legislation and policy requirements and that ground condition matters are adequately provided for and secured in the Recommended DCO and Alternative Recommended DCO.

Landscape and Visual Impact

6.2.52. The assessment of the effect of the WKN Proposed Development on landscape character and visual receptors uses an appropriate methodology and accurately represents the potential effects of the proposal in this regard. The proposed buildings and structures would only be visible in front of or against the backdrop of existing large-scale industrial buildings at Kemsley Paper Mill and therefore the significance of any effect would be seen in that context.

6.2.53. I have concluded that the landscape and visual assessment presented in ES Chapter 12 [APP-064] presents an accurate reflection of the likely significant effects of the WKN Proposed development both alone and in combination with the Consented K3 Facility and with other developments taken into account. Subject to the implementation of R23 dDCO the WKN Proposed Development would not have a detrimental visual effect pursuant to external lighting. Detailed design approval of the WKN Proposed Development would be effectively secured through R14 dDCO.

6.2.54. I conclude there would be no significant landscape effects that would arise as a result of the Proposed Development during the construction, operational or decommissioning phases. Moderate adverse construction effects would be experienced by walkers using a relatively short section of the Saxon Shore Way located to the north of the WKN Site.

Noise and Vibration

6.2.55. I find that the assessment methodology for noise is acceptable [APP-059] and the residential noise sensitive receptors assessed are representative

of the wider area. No specific mitigation was identified in the ES as required to reduce the effects of construction noise or vibration. However the adoption of best practicable means and adherence to the CEMP would be secured through R22 Preferred dDCO [REP7-003]. I am satisfied that noise and vibration emissions would be minimised as far as reasonably practicable. R24 Preferred dDCO [REP7-003] provides for a Construction Traffic Management Plan (CTMP) to manage the impact of construction traffic on the surrounding area.

- 6.2.56. R14(2) dDCO requires detailed design to be approved and to be in accordance with the noise mitigation measures in ES Chapter 7 [APP-059] and R22(2)(e) requires the CEMP to address complaints relating to emissions of noise, odour or dust construction of Project WKN, including remedial action relating to emissions of noise. In addition R27 specifies the hours for the construction of the WKN Proposed Development with exceptions for work associated with concrete laying and internal process works relating to mechanical and/or electrical equipment installation.
- 6.2.57. Noise and vibration arising from on-site construction activities, construction vehicle movements or decommissioning works are not expected to give rise to any significant effects for sensitive receptors. No significant effects are predicted from vibration at any time or from noise during normal operating conditions. A requirement for post construction noise monitoring is not necessary and has not been requested by any IP. The proposed controls regarding construction, secured through Requirements in the DCO would comply with NPS EN-1, NPS EN-2 and the NPPF in respect of noise and vibration.

Traffic and Transport

- 6.2.58. Junction modelling results clearly show significant increases of RFC over 1.0, for example with the cumulative 2031 traffic added to the K3 Proposed Development, WKN Proposed Development and K3 Proposed Development plus WKN Proposed Development operational flows the Swale Way West arm reports respective RFC's of 1.20, 1.20, 1.21, 1.22 and 1.22 in the AM peak hour and in the PM peak hour maximum RFCs were reported on the Swale Way South arm of 0.90, 0.90, 0.91, 0.91 and 0.91. The junction is clearly unable to facilitate additional traffic without severe impacts to congestion and safety.
- 6.2.59. The prohibition approach advocated by Highways England (HE) and partially agreed by the Applicant would protect the safety, reliability and operational efficiency of the M2/J5 and A249 Grovehurst junctions in perpetuity regardless of the contracts entered into or the origin or destination of any imports or exports from the WKN/K3 sites. The 'shoulders' proposed would ensure there would be no associated vehicle movements leaving / arriving on site outside of the peak hours, but travelling through the M2J5 or Grovehurst during the peak hour. The junction improvements are aimed solely at providing capacity to aid housing delivery, so they cannot be relied upon by the Applicant and as HE point out, a new Swale Local Plan is due to be adopted in 2022 with the possibility that there would be a further uplift in housing delivery (p22 of its reply to ExQ4 [REP7-032]).

- 6.2.60. With the prohibition applying until the Roads Investment Strategy M2/J5 improvement and Housing Infrastructure Fund A249 Grovehurst improvement are open to traffic, I am satisfied that the Proposed Development would not give rise to severe or unacceptable effects on the strategic road network (SRN).
- 6.2.61. The capacity issues highlighted can be confidently predicted during weekdays, but whilst effects outside these days is less clear, in light of all the evidence I consider it is reasonable and proportionate to recommend a daily restriction be placed on HGV movements as requested by HE, until the position can be effectively reviewed in accordance with the Travel Plan (TP) and Construction Travel Management Plans (CTMPs) for the Proposed Development. I also recommend that the prohibitions should continue to apply unless or until the Applicant demonstrates an absence of unacceptable impact on the SRN. This can only be tested and demonstrated once the SRN improvements have been open to traffic and the Proposed Development is operational for a minimum 12 months period.
- 6.2.62. As to the Practical Effects of the K3 Proposed Development the permitted increase in HGV movements relating to the Consented K3 Facility, from 258 to 348 per day, was not objected to by HE, and it has now been commissioned and is operational from 16 July 2020. In the circumstances it would not be reasonable to impose a further restriction in these HGV movements.
- 6.2.63. Requirements 10, 24, 25 and 26 of the Applicant's Preferred dDCO [REP7-003] taken together with the detailed content of the revised draft TPs (dTPs) and draft CTMP (dCTMP), would in my view effectively support the prohibition approach, with the monitor and manage regime set out in the latter documents, without the need for additional drafting to be adopted in the DCO.
- 6.2.64. Overall adequate mitigating provision would be made via the Operational Traffic Routing and Management Plan and Travel Plan for Project K3 and a CTMP and Travel Plan for Project WKN such as the movement of staff, visitors and waste vehicle movements, minimising single occupancy movements by staff, restricting HGV movements during and around peak hours and seeking to utilise existing HGV routes. Similarly, the CTMP would appropriately deal with the main concerns of construction traffic, dust and dirt migrating onto the highway, wheel cleaning facilities, a regular programme of road cleaning and inspection of the site entrance and highway in the vicinity of the site.
- 6.2.65. With these measures and DCO Requirements in place, I am satisfied that the Proposed Development would accord with the requirements of NPSs, the development plan and other policies, and traffic management issues.

Water Environment

- 6.2.66. In terms of flood risk, the Proposed Development would be acceptable, compatible with the flood risk of the area and would comply with NPS EN-1, the NPPF and development plan policies. The Applicant has

demonstrated compliance with the WaterFD and that there would be no adverse impact on The Swale Estuary MCZ or other designated sites.

- 6.2.67. In respect of the WKN Proposed Development and hydrology and flood risk, potential impacts to the water environment would be avoided where practicable through implementation of a number of industry standard mitigation measures, and careful consideration of the drainage design, construction techniques and operational best practice. Adequate construction mitigation measures are included in the draft Construction and Environmental Management Plan (dCEMP) [REP4-013].
- 6.2.68. Subject to the controls provided through R12 Preferred dDCO [REP7-003] in respect of the K3 Proposed Development, or R18 in respect of Project WKN, surface water run-off would be securely managed during construction, operation and decommissioning, as the case may be, of the Proposed Development, and there would not be any detrimental impact on water quality. As a result, I find that in respect of water quality and resources the Proposed Development would be in accordance with NPS EN-1, NPS EN-2, the NPPF and the development plan.

Other considerations

- 6.2.69. Taking all other relevant documents and policies drawn to my attention into account, no other matters have arisen which affect the identification in Sections 4.1 – 4.19 above, of the planning matters that are required to be balanced by the SoS or taken into account in the DCO decision.

6.3. OVERALL CONCLUSIONS ON THE PLANNING BALANCE

- 6.3.1. In reaching conclusions on the case for the Proposed Development, I have had regard to NPS EN-1 and NPS EN-3 as the relevant NPSs, the Development Plan, the NPPF, the LIRs and all other matters which I consider are both important and relevant to the SoS's decision.
- 6.3.2. My conclusions on the case for Project K3 and for Project WKN are considered separately.
- 6.3.3. I have further considered whether the determination of this application in accordance with the relevant NPSs would lead the UK to be in breach of any of its international obligations where relevant. I conclude that this would be unlikely in the case of the K3 Proposed Development or the WKN Proposed Development.

Project K3

- 6.3.4. The public benefits of the Proposed Development can be identified in the context of NPS EN-1's recognition of the need for energy generating infrastructure and the presumption in favour of granting consent for energy NSIPs whilst recognising that Energy from Waste (EfW) facilities play a vital role in providing reliable energy supplies.

- 6.3.5. The potentially adverse impacts of Project K3 and the concerns raised in submissions on the application have been considered. The ES identifies that the practical effect of the K3 Proposed Development would have no significant effects from construction, operation and decommissioning activities on the environment, or that the potentially significant effects identified can be mitigated as far as practicable by the package of controls that are appropriately secured in the Recommended DCO.
- 6.3.6. I have found that, as with the WKN Proposed Development the Applicant has not provided a sufficiently robust assessment of fuel availability in relation to assessed capacity in facilities for its treatment. Nevertheless, taking account of the positive benefits of Project K3 as described above, and mindful of the limited harms identified, I find that it would generally accord with the waste hierarchy and would be of an appropriate type and scale so as not to significantly prejudice the achievement of local or national waste management targets. Therefore, all harmful effects would be within the scope envisaged in the relevant NPSs as policy compliant.
- 6.3.7. In conclusion, I find that the identified harms in relation to the K3 Proposed Development would be outweighed by the benefits from the provision of energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised above.
- 6.3.8. No HRA effects have been identified and there is no reason for HRA matters to prevent the making of the Order.
- 6.3.9. For the reasons set out in the preceding chapters and summarised above, I conclude that the K3 Proposed Development is acceptable, and that development consent should be granted therefor. This conclusion is taken forward in light of identified minor changes required to the DCO, described in Chapter 7 below.

Project WKN

- 6.3.10. Although the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, the generation of up to 42MW of electricity would be in accordance with those national policies and would be of some benefit. In addition there would be some positive economic advantages through job creation during the construction and operational phases of the facility.
- 6.3.11. However the prospect of Project WKN becoming a viable CHP facility is uncertain. The lack of a clear and immediate sustainable source of steam/heat to local customers contrasts unfavourably with Project K3. With no guaranteed heat offtake the proposed incineration would not qualify as Good Quality CHP. In my view this is an important and relevant factor to weigh in the balance, not least having regard to the need to transition to a low-carbon electricity market, as underlined by the UNFCCC Paris Agreement and the June 2020 Progress Report which indicates that plants without CHP should not be regarded as supplying renewable energy.

- 6.3.12. Moreover, the Applicant's assessment of fuel availability in relation to assessed capacity for its treatment, compares unfavourably with the Waste Planning Authority's own assessments of need and capacity that underpin its strategy in revising targets within the KMWLP which aim to ensure that new facilities demonstrate that waste will be dealt in a manner that clearly moves its management further up the waste hierarchy. Therefore the WKN Proposed Development would be in conflict with key policies of KMWLP including Policy CSW4, Policy CSW6 and Policy CSW7.
- 6.3.13. I have had regard to the other benefits of the WKN Proposed Development set out by the Applicant that may comply with other provisions of the development plan including both the Swale Local Plan and KMWLP. However my conclusion is that the provision of too much waste capacity in conflict with the waste hierarchy, represented by the WKN Proposed Development, is a serious conflict that would result in conflict with the development plan as a whole, the adverse impacts arising from which in my view would clearly outweigh the benefits of the facility.
- 6.3.14. It would also be in conflict with National Planning Policy for Waste (NPPW) which expects applicants to demonstrate that waste disposal facilities not in line with the Local Plan, would not undermine its objectives through prejudicing movement up the waste hierarchy. The WKN Proposed Development is a non-NSIP proposal and where the NPSs do not apply as such, the more recent NPPW that sets out detailed waste planning policies should in my view carry considerable weight.
- 6.3.15. I have had regard to NPS EN-1 at paragraph 5.2, that CO2 emissions are not reasons to place more restrictions on projects in the planning policy framework than are set out in the energy NPSs. However as I have found that there is no need for the WKN Proposed Development, the GHG emissions would be an additional harm that would result, whether or not a conclusion could have been reached as to any net carbon benefit that would result.
- 6.3.16. To conclude, I find that the identified harms in relation to the WKN Proposed Development would outweigh its benefits from the provision of energy and by the other benefits of the application as summarised above.
- 6.3.17. For the reasons set out in the preceding chapters and summarised above, I therefore conclude that the WKN Proposed Development should not proceed at this time, and that development consent should not be granted therefore.
- 6.3.18. However, should the SoS consider that the advantages of Project WKN outweigh the harm caused by the adverse effects as I have described, and is minded to grant consent, then consideration should be given to the Alternative Recommended DCO set out at Appendix E, which is the subject of minor changes required to the Applicant's Preferred DCO, and as described in Chapter 7 below.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. A draft Development Consent Order (dDCO) [APP-005] and Explanatory Memorandum (ExMemo) [APP-006] were submitted by the Applicant as part of the application for development consent. The ExMemo describes the purpose of the dDCO as originally submitted, with each of its articles and schedules.
- 7.1.2. The submission version dDCO [APP-005] was broadly based on the Model Provisions (MPs) (the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) (Model Provisions Order) adapted to draw on drafting used in made DCOs for energy development under the PA2008. MPs provide a starting point for the consideration of the DCO, whilst the use of successive precedents is also generally apposite. The submission version dDCO [APP-005] and subsequent iterations are in the form of a statutory instrument as required by section s117(4) PA2008.
- 7.1.3. This Chapter provides an overview of the changes made to the dDCO during the Examination process, between the submission version dDCO and the Applicant's Preferred dDCO submitted at D7 [REP7-003] (Preferred DCO). It then considers changes made to the Preferred dDCO in order to arrive at my Recommended DCO in Appendix D to this Report (Recommended DCO).
- 7.1.4. The Recommended DCO is based on my recommendation that only the K3 Proposed Development should be granted consent. Should the Secretary of State nevertheless consider that the Proposed Development should be granted consent as applied for, that is to say for both the K3 Proposed Development and the WKN Proposed Development, Appendix E sets out the recommended form of DCO.
- 7.1.5. The following sections of this Chapter:
- report on the structure and functions of the dDCO;
 - report on the processes used to examine the dDCO and its progress through the Examination;
 - summarise changes made to the dDCO during the Examination;
 - set out final changes proposed, consequent on the Examining Authority's (ExA's) consideration of the evidence and to address matters of drafting convention;
 - address the relationship between the DCO and other consents; and
 - address the provision of a defence against nuisance in the DCO.

7.2. THE DCO AS APPLIED FOR

- 7.2.1. This section records the structure of the dDCO which is based on the Applicant's preferred dDCO [REP7-003] at D7 and is as follows:

- Part 1: Article 1 sets out how the Order may be cited and when it comes into force; Article 2 sets out the meaning of various terms used in the Order;
- Part 2: Articles 3 to 6 provide for the grant of development consent for the Proposed Development, and allow it to be carried out, maintained and operated; Article 7 sets out who has the benefit of the powers of the Order and how those powers can be transferred.
- Part 3: Articles 8 to 12 provide for supplementary powers, consisting of access to works, discharge of water, authority to survey and investigate the land, Removal of Human Remains, and felling or lopping of trees;
- Part 4: Articles 13 to 18 make miscellaneous provisions, for a defence to proceedings in respect of statutory nuisance; application of landlord and tenant law, treatment of operational land for the purposes of T CPA1990, certification of plans, arbitration and the procedure for approvals under the DCO and discharge and variation of Requirements.

7.2.2. There are 3 Schedules to the Order providing for: the description of the Authorised Development (Schedule 1); the Requirements applying to Project K3 and Project WKN, the K3 Generating Station approved plans and documents (Schedule 2); and the procedure for discharge of Requirements (Schedule 3).

7.2.3. I find that the structure of the DCO is fit for purpose and no changes to the structure as outlined above are recommended.

THE EXAMINATION OF THE DCO

7.2.4. My review of the application versions of the dDCO [APP-005] and the ExMemo [APP-006] commenced before the Preliminary Meeting (PM). There were a number of technical and drafting matters which were desirable to address early in the Examination. These were matters which did not particularly relate to the interests of Interested Parties (IPs) and therefore it was appropriate to address them before the relationship between IP issues, planning merits and the dDCO was examined in any detail.

7.2.5. In addition, and subsequent to the application being accepted for Examination on 8 October 2019, the Applicant amended various documents to address the advice under s51 PA2008 [PD-002] and submitted them to the Planning Inspectorate on 18 October 2019, ahead of the period during which Relevant Representations (RR) could be made.

7.2.6. The s51 advice [PD-002] in relation to the DCO was for the Applicant to:

- undertake a full check of the draft DCO and other application documents, in particular the Land Plan and those plans the Applicant considers to be Works Plans submitted under Reg 5(2)(j) of the APFP Regulations, to ensure consistency; and
- also review Article 16 (Certification of Plans) of their draft DCO and ensure consistency when referencing application documents

associated to the Proposed Development, to avoid any uncertainty during the Examination.

- 7.2.7. These matters were addressed in the "S51 DCO" [AS-002].
- 7.2.8. Matters arising from the application versions of the dDCO and ExMemo were documented during the pre-examination period, as part of preparation for the PM. Consequently, the first (and only) hearing (described in Chapter 1 above) related to the dDCO. The Rule 6 Letter of 21 January 2019 [PD-006] was accompanied by notice of Issue Specific Hearing (ISH) 1 on the DCO (Annex F). An Agenda and a Schedule of the ExA's Issues and Questions relating to the dDCO was issued on 10 February [EV-003]. This provided adequate notice to the Applicant and IPs before the start of the Examination that it was intended to hold an early ISH into the DCO giving them notice of the matters that would be raised.
- 7.2.9. As a consequence of the initial Procedural Decisions, ISH1 into the dDCO was held on 19 February 2020 on the same day as the PM. An audio recording of the hearing was subsequently put on the project website [EV-004].
- 7.2.10. In Table 1 annexed to the Agenda issued for ISH1 [EV-003] a number of questions were posed principally in respect to the wording and provisions within the s51 dDCO [AS-002]. The Applicant responded to these questions with a Written Submission of Oral Case made by the Applicant at ISH1 dDCO at D1 [REP1-007]. It then produced a further dDCO [REP2-006] (clean copy) and [REP2-007] (tracked changes) which included changes which the Applicant agreed were necessary, as well as resulting from discussions with IPs, and the correction of typographical errors it had found.
- 7.2.11. In the Agenda I set out that the Applicant would be invited to explain the effect of changes to the dDCO in response to advice received under s51 PA2008 [PD-002]. The Applicant had summarised the changes in its covering letter [AS-009] accompanying submission of amended documents to address the points raised in the S51 advice. I also invited the Applicant to state any further changes proposed to the dDCO. I invited submissions from IPs who wished to speak in relation to these matters and the Applicant had a right of reply.
- 7.2.12. In my initial Written Questions (ExQ1) [PD-008] issued on 26 January 2020 I requested responses to matters addressed in Table 1 annexed to the Agenda issued for ISH1 [EV-003] by D1 (2 March 2020) and comments on any matters raised in those submissions by D2 (18 March 2020).
- 7.2.13. In ExQ1 I set out that IPs who participated in ISH1 and consider that their issues have already been drawn to the ExA's attention did not need to reiterate their issues in responses to the questions. IPs were requested to review the D1 written submissions arising from ISH1 before responding to the questions. I advised that matters set out in the D1 written submissions arising from ISH1 were best responded to in D2

comments rather than in responses to the questions, which aimed to capture matters not raised at ISH1.

- 7.2.14. Matters for examination arising from the DCO and progress on them were tracked throughout the Examination with further written questions. Owing to the onset of Covid 19 no further hearings were held (see the notice of variation to the Timetable, 22 May 2020 [PD-013]) and the written process was used to complete the Examination.
- 7.2.15. Accordingly, further written questions were made relating to the dDCOs, and the Applicant updated the dDCO several times during the Examination, responding to issues raised in questions, to WRs and additional submissions. At each revision, the Applicant submitted a clean copy and a copy showing tracked changes from the previous clean copy version. The versions of the dDCO submitted by the Applicant were as follows:
- Submission version [APP-005] and DCO Validation Report [APP-007];
 - Section 51 version [AS-002] and DCO Validation Report [AS-003];
 - D2 version: (Clean) [REP2-006] (Tracked) [REP2-007]
 - D4 version: (Clean) [REP4-003] (Tracked) [REP4-004]
 - D6 version: (Clean) [REP6-003] (Tracked) [REP6-004]
 - D7 version: (Clean)[REP7-003] (Tracked) [REP7-004]
- 7.2.16. The ExA's preferred changes to the DCO in the event consent were given for both K3 and WKN Projects within the Proposed Development, was published on 15 July 2020 (Schedule of Examining Authority's preferred changes to the Applicant's Development Consent Order) [PD-017] (The Preferred Changes). The Preferred Changes were to the most recent version submitted at D6 [REP6-003].

ExA's Draft K3 DCO

- 7.2.17. As set out in ExQ4.13.1 the ExA considered there were benefits to the K3 and WKN Proposed Developments being assessed comprehensively, however given the two proposals are in effect separate projects, the possible outcomes of the Application had to be clear to all, which were: consent or refusal in respect of both projects, consent for the K3 Proposed Development only, or consent for the WKN Proposed Development only.
- 7.2.18. It was thus important that the dDCO separated out the two projects so that any eventual recommendation or decision to consent one only of the Proposed Developments was clearly set out in terms of a recommended DCO or DCOs. It followed that alternative sets of plans and drawings that show items and boundaries applicable only to K3 and its associated development, and an amended Book of Reference (BoR) should also be available to the Secretary of State. This request, made to the Applicant for the amended documents for the K3 Project only, was for them to be submitted in the alternative without prejudice to further consideration of both Projects within the Examination.

- 7.2.19. Accordingly, I issued an alternative proposed version of the dDCO (the "K3 DCO") [PD-016] on 15 July 2020 based on an eventual consent for the K3 Proposed Development only. I also issued a Schedule of Preferred Changes to the Applicant's DCO [PD-017] which highlighted in a separate table the changes to reflect the dDCO (K3) [PD-016]. I emphasised that no conclusions had been reached on the desirability of one alternative outcome over another at that stage of the Examination and requested IPs to consider and comment as appropriate on both alternatives.
- 7.2.20. I also made clear my view in ExQ4.13.1 that it would be unlikely on the evidence then available, that any recommendation to grant consent for the WKN Proposed Development would not also justify consent for the K3 Proposed Development, but if any IP considered consent should be granted for the WKN Proposed Development only they were requested to clarify their position and explain their reasoning.
- 7.2.21. In relation to the K3 dDCO [PD-017] I requested the Applicant to consider:
- which if any of the requirements 14 to 30 (proposed to be deleted in the K3 DCO [PD-017]) should nevertheless apply to the K3 Proposed Development, and if so why;
 - which if any of the detailed items of associated development for Works Nos. 1, 2, 3, 4, 5, 6, and 7 described in Schedule 1 should be included in the K3 authorised development and if so why; and
 - how some of the documents listed in Article 16 K3 dDCO [PD-017], would need to change to new ones not yet submitted into the examination, namely alternative versions of the BoR, the Land Plan and the Works Plan.

Response to the ExA's K3 dDCO

- 7.2.22. Responses to the ExA's K3 dDCO [PD-016] were sought by D7, 5 August 2020. In response the Applicant produced at D7:
- ExA's K3 Alternative DCO K3 Works Plan [REP7-024];
 - ExA's K3 Alternative DCO Land Plan [REP7-025]; and
 - K3 Book of Reference [REP7-009].
- 7.2.23. In reply to ExQ4.13.2 the Applicant confirmed that the Consented K3 Facility became fully operational on 16 July 2020. However since a K3 DCO would make provision for the construction and operation of the K3 Proposed Development in its entirety, the Applicant considers it appropriate that the following elements of Associated Development be retained within a K3 DCO:
- Work No1C; Alteration of existing private access road to construct, use and maintain Work No 1;
 - Work No1D; Creation of a temporary construction compound and laydown area for the construction of Work No 1;
 - Work No1E; Construction and operation of a surface water outfall for Work No 1; and
 - Further Associated Development items (a) to (n).

- 7.2.24. The Applicant considers that none of Requirements 14 to 30 should apply to a K3 Proposed Development.

Response to ExA's Preferred Changes

- 7.2.25. Responses to the ExA's Preferred Changes [PD-017] as they related to an eventual DCO granted for both Project K3 and Project WKN were also sought by D7, 5 August 2020. At D7 [REP7-008] the Applicant provided its Comments on the ExA's "preferred DCO" (ie on the ExA's preferred changes to the Applicant's DCO) [REP7-023]. An updated Table of Amendments to the DCO was also produced at D7 [REP7-008].

7.3. CHANGES DURING EXAMINATION

- 7.3.1. In this section I do not comment on every change made to the dDCO in the updated versions, as many were as a result of typographical errors, or slight revisions of the wording following dialogue between the Applicant and relevant IPs or from their WRs, or as a result of written questions (ExQ1) [PD-008], ExQ1A [PD-010], (ExQ2) [PD-012], ExQ3 [PD-014] and ExQ4 [PD-015]. I do however comment on those changes made during the Examination which I consider to be significant because of their effect or because they were subject to further consideration after ISH1. Numbers for Articles and Requirements are based on the submission version unless otherwise referenced.

Matters outstanding at Close of Examination

- 7.3.2. The Applicant acknowledged in its D7 Response to Examining Authority's Further Written Questions (ExQ4) [REP7-016] the possible outcomes of the Application as set out within Q4.13.1. It agreed there was unlikely to be a situation where there is justification to grant consent for the WKN Proposed Development but not the K3 Proposed Development "*given the existing K3 is now an established operational facility under its own planning permission*".
- 7.3.3. The Applicant stated that both elements would deliver priorities for energy recovery, diverting waste from landfill and contribute to meeting the urgent need for all types of electricity generation in the UK, in an appropriate location where significant environmental impacts would be avoided or mitigated. It added that even if the ExA considered that the Proposed Development would provide too much waste capacity in conflict with the waste hierarchy in local plan policy, there was no conflict with the development plan as a whole. Any adverse impacts from such a conflict would not outweigh the clear benefits of the facilities under NPS EN-1 and EN-3. No matters justified consent to be granted for one of the facilities in the absence of the other.
- 7.3.4. However for the reasons set out in my conclusions on the case for development consent in Chapter 6 of this Report I have found that the WKN Proposed Development should not be granted.
- 7.3.5. KCC made further suggested changes to the Applicant's Preferred DCO in its submissions at D7 [REP7-038] as follows.

Part 1 – Preliminary - 3. Interpretation - Relevant planning authority (RPA)

7.3.6. Due to different planning functions of KCC and SBC it was suggested that definitions should be provided for each and the “RPA” is specifically referenced in the relevant sections of the DCO.

7.3.7. However, it is not usual for DCOs to identify which authority is meant by the RPA which is the terminology used in the Model Provisions Order. Areas of jurisdiction may change over time, the more appropriate recourse in the event of a dispute would be to invoke the procedure for discharge of Requirements set out in Schedule 3. Accordingly, it is unnecessary to amend Article 4 or other provisions in this connection, as requested by KCC.

Schedule 1 - Article 3 - Authorised Development Work No 3 – Installation of grid connection for Work No 2

7.3.8. KCC questioned whether this article should be referenced as Work No 2a, given its association with Work No 2. However, the description of Work No. 3 is self-explanatory and used throughout the application, documents and plans within the Application, therefore no change is recommended.

Schedule 2 - Article 3 - Requirements – Project WKN Requirement 14 (b) electric vehicle charging points

7.3.9. KCC questioned why the provision for electric car charging would only be provided at WKN and not K3. The Applicant confirmed in the draft SoCG with SBC [REP5-006] that Project K3 has 2 electric charging points fitted and 4 passive electric charging spaces where charging points could be fitted. The ExA is satisfied that is a sufficient level of provision given the Consented K3 Facility is now operational.

Explanatory Note

7.3.10. Given the restrictions currently in place KCC stated to the Planning Inspectorate that it could not currently commit to holding the various documents referred to in the Order at its offices for public inspection. KCC suggested a pragmatic approach be taken in respect of this requirement should public inspection not be possible.

7.3.11. The current restrictions due to the state of emergency that exists arising from the outbreak of Covid-19 may change, including at short notice, from time to time. The ExA understands the need for a pragmatic approach to the public inspection of documents but defers to the SoS as to what changes if any might be required to address the situation as it obtains at the time of the SoS’s decision.

Peak hour and ‘shoulder’ restrictions requested by Highways England (HE)

7.3.12. Despite the Applicant’s Response to Submissions at D7 [REP8-015] to the effect that peak hour and ‘shoulder’ restrictions requested by HE had been agreed, no consequential amendment had been made to the

Applicant's Preferred DCO. In Section 4.20 of this Report, I concluded that it was necessary for such restrictions to be placed on HGV movements to achieve the objective of protecting the M2 Junction 5 and the A249 Grovehurst junctions during the peak hours before their improvement schemes are completed.

7.3.13. In its reply to ExQ4 questions HE set out at its D7 submission [REP7-032] justification and a precise form of wording to be inserted into the DCO as follows:

- *"No part of the authorised development shall commence (including site clearance or preparation) until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Construction Management Plans for the WKN and K3 (additional development) sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The prohibition will apply throughout the construction period, and any subsequent period until the authorised development is occupied"; and*
- *"No part of the authorised development shall be occupied until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Travel Plans for the WKN and K3 sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The Travel Plans shall also include such details as are necessary to set out the agreed means by which, should they choose to do so, the applicant/operator of an authorised development may seek to end the prohibition. Any application to end the prohibition may only be submitted once the SRN improvements have been open to traffic and the WKN/K3 authorised developments have been operational for a sufficient period for any evidence to be robust. The "sufficient period" shall be a minimum 12 months."*

7.3.14. These matters were considered in some detail in Section 4.18 of this Report. The wording is imprecise to achieve the purpose for which it was drafted. However, Requirements 10, 24, 25 and 26 of the Applicant's Preferred dDCO [REP7-003] taken together with the detailed content of the revised draft Travel Plans (dTPs) and draft Construction Traffic Management Plan (dCTMP), would in my view effectively support the prohibition approach, with the monitor and manage regime set out in the latter documents. Although the wording suggested by HE could be redrafted so as to make the proposed new requirements precise and enforceable, I consider that to be unnecessary, as taken together the

existing package of controls would have a sufficient degree of precision to render them enforceable and would achieve the desired objective.

KCC Comments on the Applicant's K3 Conditions Tracker

- 7.3.15. Several matters were raised by KCC in relation to the updated Conditions Tracker [REP7-039]. These revolved around the extent to which, if at all, specific conditions should be carried forward into Requirements within the DCO in addition to the Approved Plans and Documents listed in Part 4 of Schedule 2 in accordance with which the Project K3 authorised development must be carried out.
- 7.3.16. The "Access Road - Proposed Internal Access Layout Plan" is included in the Approved Plans and Documents. No condition relating to SW/12/1001 or SW/13/1257 needs to be transposed as they relate to construction or land outside the K3/WKN DCO boundary.

Condition 3 – maximum number of HGVs

- 7.3.17. R10(5) stipulates a maximum number of HGV movements to and from the K3 Generating Station not to exceed 416 movements per day. KCC considers this would undermine the previous condition and be unacceptable in highway terms. No increase should be permitted other than those to and from the Ridham Dock to encourage the Applicant to pursue more sustainable options in accordance with national and local policy.
- 7.3.18. The Applicant set out its position on this matter in its SoCG with KCC and generally during the Examination. KCC's response to ExQ4.13.8 discuss an increase to the number of HGV movements associated with Project K3 and the Applicant responded at D8 [REP8-015] (Paragraphs 3.3.41 et seq).
- 7.3.19. In response to Q4.13.8, KCC's D5 Submission - Highways Response to dDCO R10 – HGVs [REP5-037], disputes the figure of 416 movements per day. KCC proposes:
- 7.3.20. *"K3 movements should be conditioned to be split equally between the day and night, with further restrictions on the peak hour and shoulders. A suggestion could be to restrict to 400 per day with a minimum of 200 movements to be at night between 19:00 and 07:00 and no arrivals between 07:00 and 09:00 and 16:00 and 18:00."*
- 7.3.21. There is merit in the Applicant's response [REP8-015] that evidentially it is difficult to justify this approach, the figure of 400 movements per day may result in operational issues with waste delivery associated with the tonnage throughput and affect the overall performance of the facility.
- 7.3.22. The ExA notes however that the comments from KCC and HE on junction performance relate to protecting the peak hours and the agreed peak hour and 'shoulder' restrictions with HE would achieve the objective of protecting the M2 Junction 5 and the A249 Grovehurst junctions during the peak hours before their respective improvement schemes are

completed. The ExA prefers this approach, therefore the condition/ requirement proposed by KCC is not accepted.

R6 - K3 Rail and Water Transportation Strategy (K3 RWTS)

- 7.3.23. The rail strategy approved by the WPA under planning reference SW/10/444/RVAR on 27 June 2017 has to be implemented as approved unless otherwise approved beforehand in writing by the WPA. However, R6 would now require the K3 facility to be operated in accordance with the K3 RWTS. KCC objects that the current strategy is not effective since the Applicant has repeatedly requested increases in HGV movements from the original K3 Planning Permission. KCC proposes that the original condition be replicated with a requirement for a new strategy to be written and approved by the Highway Authority that includes penalties unless increasing levels of waste delivery through sustainable means is evidenced.
- 7.3.24. The Applicant responded on the subject of the RWTS for Project K3 and Project WKN. In particular, its responses to ExQ3.6.9 and ExQ3.11.4 [REP5-011] were that to require the provision of infrastructure as part of the RWTS would not result in waste being transported by rail or water unless contracts were secured which allowed those methods of transport to be used and without knowing the quantum and form of delivery it was impossible to assess what infrastructure would be required. Commercial sensitivities on the value of waste contracts would prevent information on the viability of providing infrastructure for rail and water transportation.
- 7.3.25. I accept there are commercial sensitivities involved, as demonstrated by the rail strategy in respect of the Consented K3 Facility, predicated on a separate permission (SW/12/167) to upgrade rail infrastructure in the vicinity and at the Ridham Dock, prior to the North London Fuel Use Contract being withdrawn and the strategy being revised. The RWTS for Project K3 and Project WKN as contained in the Applicant's Preferred DCO replicate the wording which was acceptable to KCC in mid-2017. Therefore, I see no compelling justification for a requirement to rewrite the strategy as now suggested by KCC.

The Surface Water Management and Foul Drainage Philosophy (SWMFDP)

- 7.3.26. The SWMFDP December 2016 referred to in the Condition is certified within the DCO. KCC request clarity on where this is certified within the DCO.
- 7.3.27. Article 16 lists The Surface Water Management and Foul Drainage Design Philosophy Statement [APP-152] dated on its face 13 December 2016, pertains to Project K3. It has clearly been updated since then and contains the drawings Site Sections Drawing No 16315 A0 0250 including Rev J dated 31.8.18, and Proposed Drainage Layout Drawing No 16315 A0 0301 including Rev J dated 7.9.18. The revisions including preceding revisions refer back to the matters included in Condition 16 described in the Conditions Tracker. These provide among other things for detailed

mitigation measures to be constructed and operational prior to the acceptance of waste by the development. In addition, the Proposed Drainage Layout 16315/A0/0301 Rev J and Site Sections 16315/A0/0250 Rev J are individually listed among the Approved Plans and Documents in Schedule 2, Part 4.

Condition 22 of permission SW/19/501345– minimum 20% of annual waste throughput to be pre-treated

7.3.28. Condition 22 reads:

"Other than waste arising from within Kent all waste used as a fuel in the Sustainable Energy Plant hereby permitted shall be pre-treated. Unless otherwise agreed in writing by the Waste Planning Authority no less than 20% of the annual waste throughput shall be pre-treated waste sourced from within the area defined as Hinterland shown on the plan attached to the letter from RPS dated 17 March 2011 entitled KENT & HINTERLAND and which includes Kent, Tandridge, Thurrock and Medway."

7.3.29. KCC maintain this condition is still required for the Proposed Development to be sustainable and the waste proximity principle to be met. Its rationale was to ensure that sourcing of waste processed at the plant is consistent with the waste proximity principle and to secure waste management capacity sufficient to achieve net regional and sub-regional self-sufficiency.

7.3.30. The Applicant points out this is a contrary position to KCC's previous submissions, noting its submission [REP4-015] (page 11):

"Given that it is acknowledged that waste will travel beyond administrative boundaries, it is not the sourcing of waste in itself that is problematic to KCC and its Kent Minerals and Waste Local Plan. It is simply that the quantum of capacity proposed is far above that which could ever be required to meet Kent's needs or to 'compensate' for flows of Kent waste beyond its borders."

7.3.31. In its Comments on the Applicant's Response to ExQ1A [REP5-038] (page 13) KCC references the removal of a catchment area condition that had been applied to the Tilbury Green Power Facility, stating:

"This supports KCC's position (as set out in its response to EXAQ1A.1.23) that attempts to condition limits to sourcing, as suggested by the ExA, would be of limited value as they could then be removed on subsequent application, and hence cannot be relied upon to limit the harm identified. The County Council has previous experience of the unsuccessful application of such a condition."

7.3.32. I note this matter is not taken up by KCC in its Closing Statement [REP8-016] or directly in its SoCG with the Applicant [REP8-013] although the quotations provided by the Applicant do not of themselves undermine a position that a minimum amount of annual waste throughput should be pre-treated. That said, it is not explained how such a requirement would be precisely quantified, for example in the definition of "pre-treated" or that any environmental effects of a smaller percentage that the WPA may

approve, which (on this wording) could be as low as a zero percentage, have been assessed within the scope of the ES. Consequently, I find that such a requirement would not be justified.

Key changes made by the Applicant during the Examination

7.3.33. Table 1 sets out the key changes made by the Applicant during the Examination, contained in its preferred dDCO [REP9-007], and which the ExA recommends should remain if the SoS decides to grant consent for both Project K3 and Project WKN. The changes followed discussion at ISHs and in response to written questions and submissions from interested persons. I am satisfied that these changes are justified by the evidence I have examined and recommend they are included in the DCO if the development consent is granted.

7.3.34. In my Preferred Changes [PD-017] I invited the Applicant to consider whether in R25(1) “commissioned” should be replaced with “commenced” to reflect a need to have the Operational Traffic Routing and Management Plan (OTRMP) approved in a timely fashion. The Applicant responded that as the OTRMP applies to the WKN Proposed Development it is appropriate to require the plan to be submitted and approved prior to commissioning of the WKN facility, rather than prior to commencement. I agree that in doing so both R24 and R25 would ensure that WKN construction traffic is appropriately managed and controlled.

Table 1: Changes made by the Applicant during the Examination

Provision	Examination Issue	ExA comment
Article 2 Interpretation:	Date of submission version of Environmental Statement to be inserted.	Amended in response to the ExA's question ISH1:1 [EV-003]
Article 2 Interpretation:	The definition of 'works plan' changed to 'works plans' for consistency with article 16.	Amended in response to the ExA's question ISH1:2 [EV-003]
Article 2 Interpretation:	The words 'Requirement 14 (Detailed Design Approval) have been inserted before 'of Schedule 2'.	Amended in response to the ExA's question ISH1:3 [EV-003]

Provision	Examination Issue	ExA comment
Article 2 Interpretation:	The words 'Schedule 1 of' have been inserted after 'authorised by'.	Amended in response to the ExA's question ISH1:4 [EV-003]
Article 2 Interpretation:	Remaining references to 'plan' to be changed to 'plans' for consistency with the defined term 'works plans' and article 16	Amended in response to the ExA's question 2.13.1 [PD-012]
Article 2 Interpretation:	In the definition of "environmental statement", addition of the words "including all appendices thereto" following words "submitted with the application on 11 September 2019"	Amended in response to the ExA's question 3.13.16. [PD-014]
Article 2 Interpretation:	The definition of "K3 Generating Station" has been amended to read "a generating station authorised by the Order as having a capacity of up to 75MW, which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 4 of Schedule 2"	For clarity, and also to complete the date of commissioning of the K3 Sustainable Energy Plant.
Article 4(1) Effect on K3 planning permission	The word 'commence' has been replaced by 'start'.	Amended in response to the ExA's question ISH1:8 [EV-003] to avoid any confusion between the defined term 'commence' in

Provision	Examination Issue	ExA comment
		relation to works, and 'commence' in relation to operational use.
Article 4(2) Effect on K3 planning permission	The words 'the conditions of' have been deleted before 'K3 Sustainable Energy Plant Planning Permission'.	Amended in response to the ExA's question ISH1:5 [EV-003] to clarify that the whole planning permission will cease to have effect, not just the conditions.
Article 10(6) Authority to survey and investigate the land	The word 'vehicles' has been inserted before 'apparatus'.	Amended in response to the ExA's question ISH1:8 [EV-003]
Article 13(2) and (3) Defence to proceedings in respect of statutory nuisance	The references to section 65 Control of Pollution Act 1974 have been deleted.	Amended in response to the ExA's question ISH1:10 [EV-003]
Article 16(g) Certification of plans etc	The reference of the WKN parameter plan has been moved from 16(c) to 16(g).	For consistency with the definition in requirement 1 and in response to the ExA's first written questions 1.2.2 [PD-008]. Further information is provided in the Applicant's Further Submissions [REP2-014] on ISH1 DCO Questions – Deadline 2
Article 16 Certification of plans etc	The WKN draft construction environmental management plan dated May 2020 and the Design and Access Statement [APP-083] have been added	In response to the ExA's question 3.13.4 [PD-014]

Provision	Examination Issue	ExA comment
Article 16 Certification of plans etc	The addition of "(m) draft ecological management and enhancement plan".	In response to the ExA's question 4.13.7 [PD-015].
Article 16 Certification of plans etc	The addition of "(o) draft K3 travel plan"	As a result of the addition of requirements in requirement 10 as referred to below.
Article 18(1) Procedure for approvals	"The Order" changed to "this Order"	Amended in response to the ExA's question ISH1:13 [EV-003].
Schedule 2, Parts 2 & 3 Requirements	Various references to the relevant project or works number have been added.	To clarify to which work each requirement relates
Schedule 2 Interpretation	The definition of "commissioning" has been moved to Article 2(1) Interpretation	Amended in response to the ExA's question ISH1:20 [EV-003].
Schedule 2 Interpretation	The definition of "permitted preliminary works" is amended to clarify that archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the diversion and laying of services are all subject to compliance with Requirement 20(1).	Amended in response to the ExA's question 3.13.3 [PD-014]

Provision	Examination Issue	ExA comment
Schedule 2 Requirement 2 Commencement of authorised development	The words 'Work No 1 and Work No 2' have been replaced by 'Project K3 and Project WKN'	Amended in response to the ExA's question ISH1:20 [EV-003].
Schedule 2 Requirement 4(1) – Decommissioning	The word "decides" has been replaced by "notifies the relevant planning authority that it intends to".	Amended in response to the ExA's question ISH1:23 [EV-003]. A requirement to decommission has not been included as cessation of use may be temporary or subject to approval of refurbishment plans. Any physical decommissioning works will in any event be subject to their own assessment under the planning and EIA regimes.
Schedule 2 Requirement 6(2) Rail and water transportation strategy	Rail and water transportation strategy definition moved to Requirement 1.	Amended in response to the ExA's question ISH1:24 [EV-003]
Schedule 2 Requirement 7 Amendments to approved plans	The definition of 'Approved plans' has been moved to Requirements 1 and used in requirements 7 and 9 and elsewhere as appropriate.	Amended in response to the ExA's question ISH1:25. [EV-003]
Schedule 2 Requirement 10 Heavy goods vehicles	The name of the requirement has been changed, and additional requirements added with respect to the approval of	As a result of discussions with HE in relation to the regulation of the additional movements associated with the K3

Provision	Examination Issue	ExA comment
	operational traffic routing and management plan and travel plan for K3	authorised development
Schedule 2 Requirement 11 Trees	Definition of 'approved Landscape Masterplan' moved to Requirement 1 and reference to it in 11(1) has been corrected for clarity.	Amended in response to the ExA's question ISH1:28 [EV-003].
Schedule 2 Requirement 13 Combined heat and power	A definition of Kemsley Paper Mill has been added to Requirement 1.	Amended in response to the ExA's question ISH1:29 [EV-003]. The definition of the CHP strategy in this requirement has not been moved because the purpose of the requirement is to define the CHP strategy. Therefore a separate definition in requirement would simply refer back to this requirement, making it a circular definition
Schedule 2 Requirement 14 Detailed Design Approval – Table 1	The maximum height of Work No 2(j) Administration Office has been corrected to 30m to be consistent with Table 2.3 of the ES.	Amended in response to the ExA's first written questions 1.2.4 [PD-008].
Schedule 2 Requirement 14(4) Detailed Design Approval	Duplication of "(4)" deleted. Definition of "WKN parameter plan" moved to requirement 1.	Amended in response to the ExA's question ISH1:31 [EV-003]

Provision	Examination Issue	ExA comment
Schedule 2 Requirement 14 Detailed design approval	The addition of paragraph 14(1)(a) requiring the approval of details for the provision of electric vehicle charging point for WKN	Amended as agreed with Swale Borough Council, as referred to in the Applicant's response [REP5- 011] to the ExA's question 3.6.4 [PD-014].
Schedule 2 Requirement 15 Provision of landscaping	The word 'commissioned' is replaced by 'commenced'.	Amended in response to the ExA's question 4.13.5 [PD-015].
Schedule 2 Requirements 16, 24, 25, 26 & 30	The word 'relevant' has been added before 'planning authority'.	Amended in response to the ExA's question ISH1:34 [EV-003].
Schedule 2 Requirements 19 Land contamination and groundwater	Title 'Contaminated Land and groundwater' changed to 'Land contamination and groundwater'	Amended in response to the ExA's first written questions 1.13.4 [PD-008].
Schedule 2 Requirement 20 Archaeology	The words 'and reporting' inserted after the word 'analysis' in paragraph 20(2).	Inserted as requested by KCC's D3 submission dated 24 April 2020 [REP3-020]
Schedule 2 Requirement 20 Archaeology	Amended to provide for field work and post-field work analysis and recording	Amended as requested by KCC's submission dated 2 March 2020 [REP1-009]
Schedule 2 Requirement 21 Ecological management and enhancement plan	The word 'commissioned' is replaced by 'commenced'.	Amended in response to the ExA's question 3.13.15 [PD-014].

Provision	Examination Issue	ExA comment
Schedule 2 Requirement 21 Ecological management and enhancement plan	Paragraph 21(2)(a) has been amended to read "be in accordance with the ecological management and enhancement plan certified by the Secretary of State under article 16"	Amended in response to the ExA's question 4.13.6 [PD-014].
Schedule 2 Requirement 22 Construction environmental management plan	The correct reference has been added to the environmental statement in 22(2)(d)	Amended in response to the ExA's question ISH1:35 [EV-003].
Schedule 2 Requirement 22 Construction environmental management plan	Sub-paragraph 22(2)(a) has been amended to reflect the certification of the draft construction environmental management plan in Article 16.	Amended for consistency with the change to Article 16.
Schedule 2 Requirement 29(1) Piling and penetrative foundation design	Corrected to reflect the restrictions in para 11.9.21 of the ES on impact piling between January and February inclusive and April to August inclusive.	Amended in response to the ExA's first written questions 1.5.13 [PD-008].
Schedule 2 Requirement 29 Piling and penetrative foundation design	Paragraph 29(3) has been deleted in its entirety.	Amended in response to the ExA's question 3.13.1 [PD-014].
Schedule 2 Requirement 30 Employment, skills and training program	The words "in consultation with the Economic Development Officer at Swale Borough Council" have been	At the request of SBC at paragraph 6.8.2 of its LIR [REP1-012] dated 2 March 2020.

Provision	Examination Issue	ExA comment
	inserted after "by the relevant planning authority".	
Schedule 3	The whole of Schedule 3 has been moved to Part 4 of Schedule 2. All references in the DCO to Schedule 3 have as a consequence been amended to Part 4 of Schedule 2, and subsequent Schedule numbers and references changed.	Amended in response to the ExA's question ISH1:36 [EV-003]
Schedule 3	'Revision' numbers have been moved to the 'Reference' column where those documents were never revised and retain their original date.	Amended in response to the ExA's question ISH1:37 [EV-003].

7.3.35. In its D7 submission [REP7-032], HE proposed wording for a Requirement in the DCO to provide for the completion of road improvements discussed in Chapter 4 of this Report, as follows.

"No part of the authorised development shall commence (including site clearance or preparation) until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Construction Management Plans for the WKN and K3 (additional development) sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The prohibition will apply throughout the construction period, and any subsequent period until the authorised development is occupied"; and

"No part of the authorised development shall be occupied until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Travel Plans for the

WKN and K3 sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The Travel Plans shall also include such details as are necessary to set out the agreed means by which, should they choose to do so, the applicant/operator of an authorised development may seek to end the prohibition. Any application to end the prohibition may only be submitted once the SRN improvements have been open to traffic and the WKN/K3 authorised developments have been operational for a sufficient period for any evidence to be robust. The "sufficient period" shall be a minimum 12 months."

7.3.36. I have considered carefully whether, subject to amendments to clarify the drafting of such provisions the proposed Requirement is necessary, however in light of the detailed content of the dCTMP and dTPs for the Proposed Development, together with the existence of Requirements 10 and 24, the restrictions desired by HE will be effectively tied into the Proposed Development. Therefore it is unnecessary to consider the proposed new Requirement further.

Summary of ExA Recommended Changes

7.3.37. In the event that the SoS is minded to grant consent for Project K3 and Project WKN within the Proposed Development, I recommend that the Applicant's Preferred DCO at D7 be amended to:

- Amend Article 16 to refer to Highways England's versions of the WKN dCTMP, WKN dTP and K3 dTP;
- Amend Article 16 (m) (certification of plans) to insert "draft" before "ecological management and enhancement plan dated June 2020";
- Amend R21(2)(a) to insert "draft" before "ecological management and enhancement plan"; and
- Other minor drafting and typographical amendments.

7.3.38. These recommended changes are set out below in Table 2.

Table 2: Recommended changes to Applicant's Preferred DCO should SoS grant consent for Project K3 and Project WKN

Provision	Examination Issue	ExA Comment
Article 16(h)	Delete and replace with "the draft WKN construction traffic management plan – Highways England version (dated 7 August 2020);"	7.3.39. To reflect restrictions on HGV movements

Provision	Examination Issue	ExA Comment
Article 16(i)	Delete and replace with "the draft WKN travel plan - Highways England version (dated 7 August 2020);"	7.3.40. To reflect restrictions on HGV movements
Article 16 (o)	Delete and replace with "the draft K3 travel plan – Highways England version (dated 7 August 2020)"	7.3.41. To reflect restrictions on HGV movements
Article 16 (m)	Insert "draft" immediately before "Ecological" and after "plan" insert "dated June 2020"	7.3.42. Responds to submitted draft EMMP
Schedule 1, Part 2 General Requirements Requirement 7(2)	Insert immediately before "paragraph (1)" "sub-"	7.3.43. Improve drafting
Schedule 1, Part 2 General Requirements Requirement 21(2)(a)	Insert "draft" immediately before "ecological"	7.3.44. Responds to submitted draft EMMP
Explanatory Note 2nd paragraph	Delete "for" before "associated development"	7.3.45. Improve drafting

ExA's recommended final DCO

7.3.46. The key changes which I am proposing in the Recommended DCO which differ from the Applicant's Preferred D7 version [REP7-003], consist of

those changes necessary to omit the WKN Project from the Proposed Development.

- 7.3.47. No party commented on the wording of the ExA K3 dDCO [PD-016] save as described above.
- 7.3.48. It should however be noted that since the ExA K3 dDCO [PD-016] was published the Applicant updated its dDCO at D7 (Applicant's Preferred DCO) in the manner set out in its Table of Amendments to the DCO [REP7-008]. Some of these are relevant to a K3 DCO, namely to:
- Amend the definition of "K3 Generating Station"; and
 - Add requirements to R10 (HGVs);
- 7.3.49. The additional requirements in Schedule 2 R10 (Heavy goods vehicles) with respect to the approval of operational traffic routing and management plan, were added as a result of discussions with HE in relation to the regulation of the additional movements associated with the K3 authorised development.
- 7.3.50. I have considered these updated changes at D7 made by the Applicant in respect of its Preferred DCO and consider that they should also be incorporated into a K3 only DCO with the exception of the change to R21 (ecological management and enhancement plan). At ExQ2.5.7 I noted the various titles of this plan in ES Chapter 11 and requested that the Applicant commit to produce an EMEP referred to in dDCO R21. This was submitted under the title draft Ecological Mitigation and Management Plan (EMMP) [REP5-005]. It is this plan that should be tied to the DCO in the sense that it should be certified under Article 16 and the final plan be in accordance therewith. Therefore R21(2)(a) of the Applicant's Preferred DCO [REP7-003] should be amended to replace "ecological management and enhancement plan" with "draft Ecological Mitigation and Management Plan dated June 2020".
- 7.3.51. These amendments are incorporated into the Recommended DCO at Appendix D.
- 7.3.52. Further amendments recommended are in respect of:
- The new Work Plan and Land Plan drawing numbers and dates, and Book of Reference in Article 16;
 - Reinstating the items of Associated Development so far as they should apply to Work No. 1; and
 - Minor drafting and typographical amendments.
- 7.3.53. These recommended amendments, together with those necessary to omit Project WKN from the DCO as tabled in [PD-017], are included in Table 3 below.

Table 3: DCO Provisions Recommended to be Changed from the Applicant's Preferred DCO (ExA's final recommended form of DCO)

Provision	Examination Issue	Recommendations
Title and Contents		
Title	Change title of Order to "The Wheelabrator Kemsley K3 Generating Station Order 20[]"	7.3.54. Remove references to Project WKN and consequential amendments
Contents, Schedules, Schedule 2, Part 1	Delete "GENERAL"	7.3.55. Remove references to Project WKN and consequential amendments
Contents, Schedules, Schedule 2, Part 2	Delete "PROJECT K3 REQUIREMENTS" and insert "K3 GENERATING STATION APPROVED PLANS AND DOCUMENTS"	7.3.56. Remove references to Project WKN and consequential amendments
Contents, Schedules, Schedule 2	Delete PART 3 and PART 4	7.3.57. Remove references to Project WKN and consequential amendments
Articles		
Article 1	Delete "and (WKN Waste-to-Energy Facility)"	7.3.58. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Article 2(1) "commissioning"	Delete "each of" and "and Work No 2"	7.3.59. Remove references to Project WKN and consequential amendments
Article 2(1) "K3 Generating Station"	Delete definition and replace with: "means a generating station authorised by the Order as having a capacity of up to 75MW, which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 2 of Schedule 2;"	7.3.60. Insert date of commissioning of K3 and consequential amendments to removal of references to Project WKN
Article 2(1) "K3 Generating Station"	Delete "Part 4" and insert "Part 2"	7.3.61. Remove references to Project WKN and consequential amendments
Article 2 (1) "operational use"	Where "development" first occurs, replace with "developments", and delete "they are" and replace with "it is"	7.3.62. Remove references to Project WKN and consequential amendments
Article 2(1)	Delete this definition	7.3.63.

Provision	Examination Issue	Recommendations
"Project K3"		Remove references to Project WKN and consequential amendments
Article 2(1) "Project WKN"	Delete this definition	7.3.64. Remove references to Project WKN and consequential amendments
Article 2(1) "WKN Waste-to-Energy Facility"	Delete this definition	7.3.65. Remove references to Project WKN and consequential amendments
Article 2(3)	Delete ", save in respect of the parameters referred to in Requirement 14 (Detailed Design Approval) of Schedule 2"	7.3.66. Remove references to Project WKN and consequential amendments
Article 7(4)(a)	Delete "in the case of Project K3" and after "(Company number 09240062);" insert "or"	7.3.67. Remove references to Project WKN and consequential amendments
Article 7(4)(b)	Delete "in the case of Project WKN the transfer or grant is made to Kemsley North Limited (Company number 11699563); or"	7.3.68. Remove references to Project WKN and consequential amendments
Article 7(4)(c)	Delete.	7.3.69.

Provision	Examination Issue	Recommendations
		Remove references to Project WKN and consequential amendments
Article 16(a)	Delete "October 2019" and insert "August 2020"	7.3.70. Remove references to Project WKN and consequential amendments
Article 16(b)	Delete "9812-0057-006 " and replace with "9812-0071-02"; and delete "October 2019" and replace with "July 2020"	7.3.71. Remove references to Project WKN and consequential amendments
Article 16(c)	Replace "works plans" with "work plan"; and replace "drawing numbers 9812-0059-005 and 9812-0060-007 dated March 2020" with "drawing number 9812-0072-02 dated July 2020"	7.3.72. Remove references to Project WKN and consequential amendments
Articles 16 (g) to (k)	Delete sub-paragraphs (g) to (k) inclusive and (m) and add: "(g) the Design and Access Statement dated September 2019"	7.3.73. Remove references to Project WKN and consequential amendments
Article 16 (i)	Delete (i) (K3 travel plan) and replace with "the draft K3 travel plan – Highways England	7.3.74. To reflect consistency with

Provision	Examination Issue	Recommendations
	version (dated 7 August 2020)"	Alternative Recommended DCO
Schedules/Requirements		
Schedule 1	After "in the County of Kent-" delete "Project K3"	7.3.75. Remove references to Project WKN and consequential amendments
Schedule 1	After "water outfall for Work No 1." Delete everything up to and including "surface water outfall for Work No. 2"	7.3.76. Remove references to Project WKN and consequential amendments
Schedule 1	Delete "In connection with and in addition to Works Nos. 1, 2, 3, 4, 5, 6, and 7" and replace with "In connection with and in addition to Work No. 1"	7.3.77. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "approved Landscape Masterplan"	Delete "4" and insert" 2"	7.3.78. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "approved plans"	Delete "4" and insert" 2"	7.3.79. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Schedule 2, Paragraph 1 "permitted preliminary works"	Delete "works within Work Nos 4, 5 and 6," and delete ", subject to compliance with Requirement 20(1) of this Order,"	7.3.80. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "rail and water transportation strategy"	Delete "relevant"	7.3.81. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "WKN parameter plan"	Delete definition	7.3.82. Remove references to Project WKN and consequential amendments
Schedule 2, PART 1, title	Delete "GENERAL"	7.3.83. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 2 (R2)	Delete "Each of Project K3 and Project WKN"	7.3.84. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 3 (R3)	In both sub-paragraphs (1) and (2) delete "each of" and "and Work No 2"	7.3.85. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Schedule 2, paragraph 4 (R4)	In sub-paragraph (1) delete "either" and delete "or the WKN Waste-to-Energy Facility"	7.3.86. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 6 (R6)	Delete "and the WKN Waste-to-Energy Facility" and delete "for that project"	7.3.87. Remove references to Project WKN and consequential amendments
Schedule 2, PART 2, title	Delete "PART 2 PROJECT K3 REQUIREMENTS"	7.3.88. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 7 (R7(2))	Insert immediately before "paragraph (1)" "sub-"	7.3.89. Improve drafting
Schedule 2, paragraph 9 (R9)	Delete "Project K3", and delete "4" and insert "2"	7.3.90. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 12 (R12)	Delete "Project K3"	
Schedule 2, PART 3, title and Part 3	Delete "PART 1 PROJECT WKN REQUIREMENTS" and everything that follows to the end of Part 3	7.3.91. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Schedule 2, Part 4, title	Delete "4" and insert "2"	7.3.92. Remove references to Project WKN and consequential amendments
Explanatory Note		
1st paragraph	Delete ", and to construct, operate and maintain the WKN Waste-to-Energy Facility with a gross installed capacity of up to 42MW"	7.3.93. Remove references to Project WKN and consequential amendments
2nd paragraph	Delete "for" before "associated development"	7.3.94. Improve drafting

7.4. LEGAL AGREEMENTS AND OTHER CONSENTS

7.4.1. Other than the s106 agreement (Appendix B, Planning Statement [APP-082] discussed in Section 1.7 of this Report, there are no development consent obligations pursuant to the TCPA1990 or equivalent undertakings or agreements of which the SoS needs to be aware or to take into account in the decision.

7.5. NUISANCE

7.5.1. Regulation 5(2)(f) of the APFP Regulations requires that an application must be accompanied by...*"a statement whether the proposal engages one or more of the matters set out in section 79(1)...of the Environmental Protection Act 1990 and, if so, how the applicant proposes to mitigate or limit them"* This obligation has been discharged in the Statement of Statutory Nuisance (SSN) submitted with the application [APP-084].

7.5.2. The SSN reviews the scope of statutory nuisance potentially arising from the Proposed Development. It identifies the potentially engaged areas of statutory nuisance as follows:

- any premises in such a state as to be prejudicial to health or a nuisance (s79(1)(a) Environmental Protection Act 1990 (EPA1990);
- fumes or gases emitted from premises (s79(1)(c) EPA1990);

- any dust, steam, smell or other effluvia arising on industrial, trade or business premises (s79(1)(d) EPA1990);
- any insects emanating from premises (s79(1)(fa) EPA1990);
- artificial light from premises (s79(1)(fb) EPA1990);
- noise emitted from premises or a vehicle, machinery or equipment in a street (s79(1)(g) and (ga) EPA1990); or
- any other matter declared by any enactment to be a statutory nuisance (s79(1)(h) EPA1990).

7.5.3. The DCO seeks defence against proceedings in respect of statutory nuisance through a combination of the effect of section 158 PA2008 and Article 13. Based on the conclusions of the ES and the Requirements proposed within the DCO, I am satisfied that approach is justified and appropriate, as with appropriate mitigation the development proposal would not have the potential to cause a statutory nuisance, during either its construction or operation, of the types identified under Section 79(1) of the Environmental Protection Act 1990.

7.6. CONCLUSIONS

7.6.1. I have considered all versions of the dDCO provided by the Applicant, from the submission version [APP-005] to the Applicant's Preferred DCO [REP7-003]. Excepting the issue of whether consent should be granted for Project WKN within the Proposed Development, the Applicant's Preferred DCO addressed outstanding matters save for the minor recommended changes contained in Table 2 of this Chapter. These are included in the Alternative Recommended DCO in Appendix E of this Report.

7.6.2. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, if the SoS is minded to make the DCO, it is recommended to be made in the form set out in Appendix D.

7.6.3. However in the event that the SoS is not minded to follow the recommendation of the ExA but to grant consent for both the Project K3 and Project WKN the recommended form of DCO is set out in Appendix E.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

- 8.1.1. Before summarising my findings it would be useful to highlight a matter which the Secretary of State (SoS) may wish to pursue further, namely to seek confirmation from KCC that the formal adoption of changes to the Kent Minerals and Waste Local Plan (KMWLP) through the EPR has by now taken place, thus making the EPR changes formally part of the development plan.

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

K3 Proposed Development

- 8.2.1. Section 104(1) of the Planning Act 2008 has effect for the K3 Proposed Development contained within the Application
- 8.2.2. Having regard to s104 PA2008 (PA2008), I conclude that making the Recommended Development Consent Order (DCO) would be in accordance with National Policy Statements (NPSs) NPS EN-1 and NPS EN-3. It would also accord with the development plan and other relevant policy, all of which have been taken into account in this report. I have also had regard to the Local Impact Reports produced by Kent County Council and Swale Borough Council in reaching my conclusion.
- 8.2.3. Whilst the SoS is the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) (as amended), and will make the definitive assessment, I conclude that the K3 Proposed Development would not be likely to have significant effects on European sites, and I have taken this finding into account in reaching my recommendation.
- 8.2.4. I have had regard to the Public Sector Equality Duty (PSED) throughout the Examination and in producing this report. The K3 Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED.
- 8.2.5. With regard to all other matters and representations received, I have found no important and relevant matters that would individually or collectively lead to a different recommendation to that below. Therefore there is nothing to indicate that the Application insofar as it concerns the K3 Proposed Development, should be decided other than in accordance with the relevant NPSs.
- 8.2.6. With the mitigation proposed through the Recommended DCO, there are no adverse impacts arising from the K3 Proposed Development that would outweigh its benefits.

8.2.7. For all of the above reasons, and in the light of my findings and conclusions on important and relevant matters set out in the report, I recommend that the SoS for Business, Energy and Industrial Strategy makes The Wheelabrator Kemsley K3 Generating Station Order in the form recommended at Appendix D to this Report.

WKN Proposed Development

8.2.8. I have found that the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, albeit that generation of up to 42MW of electricity would be in accordance with those national policies and of some benefit. There would be some positive economic advantages through job creation during the construction and operational phases of the facility.

8.2.9. However with no guaranteed heat offtake the proposed incineration would not qualify as Good Quality CHP and the prospect of its becoming a viable CHP facility is uncertain given there is no immediate sustainable source of steam/heat to local customers, unlike Project K3. This is an important and relevant factor to weigh in the balance, also considering the need to transition to a low-carbon electricity market, underlined by the UNFCCC Paris Agreement and the June 2020 Progress Report which indicates that plants without CHP should not be regarded as supplying renewable energy.

8.2.10. In addition, the Applicant's assessment of fuel availability and capacity for its treatment, compares unfavourably with the WPA's own assessments of need and capacity that underpin its strategy in revising targets within the KMWLP so to ensure that new facilities demonstrate the management of the waste clearly moves further up the waste hierarchy. Therefore the WKN Proposed Development would be in conflict with key policies of KMWLP including Policy CSW2, Policy CSW4, Policy CSW6 and Policy CSW7.

8.2.11. Having regard to other benefits of the WKN Proposed Development set out by the Applicant that may comply with other provisions of the development plan including both the Swale Local Plan and KMWLP, my conclusion is that the provision of too much waste capacity in conflict with the waste hierarchy, represented by the WKN Proposed Development, would result in conflict with the development plan as a whole, the adverse impacts arising from which I consider to be serious and which would clearly outweigh the benefits of the facility.

8.2.12. It would also be in conflict with National Planning Policy for Waste (NPPW) which expects applicants to demonstrate that waste disposal facilities not in line with the development plan, would not undermine its objectives through prejudicing movement up the waste hierarchy. The WKN Proposed Development is a non-NSIP proposal and where the NPSs do not apply as such, and the more recent NPPW that sets out detailed waste planning policies should in my view carry considerable weight.

8.2.13. I have had regard to NPS EN-1 at paragraph 5.2, that CO2 emissions are not reasons to place more restrictions on projects in the planning policy

framework than are set out in the energy NPSs. However as I have found that there is no need for the WKN Proposed Development, the GHG emissions would be an additional harm that would result, whether or not a conclusion could have been reached as to any net carbon benefit that would result.

- 8.2.14. The identified harms in relation to the WKN Proposed Development would outweigh its benefits from the provision of energy and by the other benefits of the application as summarised above. Therefore for the reasons set out in the preceding chapters of this Report and summarised above, I conclude that the WKN Proposed Development should not proceed at this time, and that development consent should not be granted therefor.
- 8.2.15. However, if the SoS concludes that development consent should be granted for both Project K3 and Project WKN the ExA has examined the form of the Applicant's Preferred DCO [REP7-003] and recommended minor changes thereto in the form of Appendix E to this Report.

Other matters

- 8.2.16. As noted in Section 7 of this Report, in ExQ4.13.1 [PD-015] I made clear to all Interested Parties (IPs) my view that it would be unlikely on the evidence then available, that any recommendation to grant consent for the WKN Proposed Development would not also justify consent for the K3 Proposed Development, but if any IP considered consent should be granted for the WKN Proposed Development only, they were requested to clarify their position and explain their reasoning.
- 8.2.17. I received no representations that advocated consent for the WKN Proposed Development only and have not considered consent for WKN only as an option.
- 8.2.18. Reference is made in Section 1.4.31 of this Report to submissions that were made by the Applicant received by the Planning Inspectorate at 1655hrs on the last day of the Examination, and my letter sent to the Applicant dated 21 August 2020 [PD-019] declining to accept these late submissions, for the reasons given therein. I consider that no new evidence was disclosed as a result of those submissions, however the matter is raised for the SoS to consider if necessary.

8.3. RECOMMENDATION

- 8.3.1. For all of the above reasons, and in the light of its findings and conclusions on important and relevant matters set out in this Report, the ExA, under the Planning Act 2008 (as amended), recommends that the Secretary of State for Business, Energy and Industrial Strategy makes The Wheelabrator Kemsley K3 Generating Station Order in the form recommended at Appendix D to this Report.
- 8.3.2. However, if the SoS concludes that development consent should be granted for both Project K3 and Project WKN the ExA has examined the

form of the Applicant's Preferred DCO [REP7-003] and recommended minor changes thereto in the form of Appendix E to this Report.

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APPENDIX A: THE EXAMINATION

Examination Timetable as held

Item	Matters	Due Dates
1	Preliminary Meeting	Wednesday 19 February 2020 (morning)
2	Issue Specific Hearing 1 (ISH1) ISH1 on the draft Development Consent Order (dDCO)	Wednesday 19 February 2020 (afternoon)
3	Issue by ExA of: <ul style="list-style-type: none"> • Examination timetable • ExA's Written Questions (ExQ1) 	As soon as practicable following the PM
4	Deadline 1 (D1) Deadline for receipt of: <ul style="list-style-type: none"> • comments on any updates to application documents submitted by the Applicant before or at the PM; • comments on any additional submissions received before or at the PM; • comments on Relevant Representations (RR); • summaries of all RRs exceeding 1500 words; • Written Representations (WRs) by all Interested Parties (IP); • summaries of all WRs exceeding 1500 words; • Statements of Common Ground (SoCGs) requested by ExA; • Local Impact Reports (LIRs) from any Local Authorities; • response to any further information requested by the ExA for this deadline; • post-hearing submissions including written submissions of oral cases; <ul style="list-style-type: none"> • notification by Statutory Parties of their wish to be considered as an IP by the ExA; • notification of wish to speak at any subsequent Issue Specific Hearings (ISH); • notification of wish to speak at an Open Floor Hearing (OFH); 	Monday 2 March 2020 (midday)

	<ul style="list-style-type: none"> • provision of suggested locations and justifications for site inspections for consideration by the ExA; • notification of wish to attend an Accompanied Site Inspection (ASI); and • notification of wish to have future correspondence received electronically. 	
5	<p>Deadline 2 (D2)</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • comments on WRs; • comments on any SoCG; • comments on any LIRs • responses to ExQ1; • Applicant's revised dDCO; • comments on any additional information/submissions received by D1; and • responses to any further information requested by the ExA for this deadline. 	<p>Wednesday 18 March 2020</p>
	<p>Added – publication of ExQ1a</p>	<p>Thursday 9 April 2020</p>
6	<p>Accompanied Site Inspection 1 (ASI1)</p> <p>Date reserved to hold an ASI1 (if required)</p>	<p>Wednesday 15 April 2020</p>
7	<p>Open Floor Hearing 1 (OFH1)</p> <p>Date reserved to hold an OFH (if required)</p>	<p>Wednesday 15 April 2020 (evening)</p>
10	<p>Deadline 3 (D3)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • post-hearing submissions including written submissions of oral cases; • comments on responses to ExQ1; • comments on Applicant's revised dDCO; • comments on any additional information/submissions received by D2; and • responses to any further information requested by the ExA for this deadline. 	<p>Wednesday 22 April 2020</p>
11	<p>Issue by ExA of:</p> <ul style="list-style-type: none"> • Further Written Questions (ExQ2) (if required); 	<p>Wednesday 6 May 2020</p>
12	<p>Deadline 4 (D4)</p> <p>Deadline for receipt by the ExA of:</p>	<p>Wednesday 20 May 2020</p>

	<ul style="list-style-type: none"> • responses to ExQ2 (if required); • Applicant's revised dDCO; • Any revised/updated SoCGs; • comments on any additional information/submissions received by D3; and • responses to any further information requested by the ExA for this deadline. 	
	ExQ3 added	Wednesday 3 June
16	<p>Deadline 5 (D5)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Responses to ExQ3 if required • comments on responses to ExQ2 (if required); • comments on Applicant's revised/updated dDCO; • comments on any revised/updated SoCGs; • comments on any additional information/submissions received by D4; and • responses to any further information requested by the ExA for this deadline. 	Wednesday 19 June 2020
	Deadline 6 Comments on ExQ3 etc.	29 June
17	<p>Publication by ExA of:</p> <ul style="list-style-type: none"> • ExQ4 if needed • Consultation on the ExA's preferred DCO (if required); and • Report on the Implications for European Sites (RIES) (if required). 	Wednesday 15 July 2020
18	<p>Deadline 7 (D7)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Responses to ExQ4, if required • comments on the ExA's preferred DCO (if required); • comments on the ExA's RIES (if required); • Applicant's Final preferred DCO in Statutory Instrument (SI) template validation report; • Any revised/updated SoCGs; • comments on any additional information/submissions received by D5; and 	Wednesday 5 August 2020

	<ul style="list-style-type: none"> • responses to any further information requested by the ExA for this deadline. 	
19	<p>Deadline 8 (D8)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • comments on any revised/ updated SoCG; • comments on the Applicant's Final preferred DCO in the Statutory Instrument (SI) template validation report; • comments on any additional information/ submissions received by D6; and • responses to any further information requested by the ExA for this deadline. 	Wednesday 12 August 2020
20	The ExA is under a duty to complete the Examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.	Wednesday 19 August 2020

Alterations to the Exam Timetable

When	Status	What	Date of original event
26 March 2020	Added	A date was added for the publication of ExQ1a of 9 April 2020	
	Postponed	Issue specific Hearing 2 (ISH2) ISH2 into Environmental issues, including traffic and transport	16 April 2020
	Postponed	Issue specific Hearing 3 (ISH3) ISH3 on the dDCO	17 April 2020
22 May 2020	Cancelled	Accompanied Site inspection 2 (ASI2)	16 June 2020
	Cancelled	Issue Specific Hearing 4 (ISH4)	17 June 2020
	Cancelled	Issue Specific Hearing 5 (ISH5)	18 June 2020
	Added	A date for the publication of ExQ3 on 3 June 2020	
	Altered	Deadline 5: was moved to 19 th June 2020	24 June 2020
	Added	Deadline 5: added 'Responses to ExQ3 if required'	19 June 2020

	Added	A date for Deadline 6 Comments on ExQ3 etc was added on 29 June 2020	
	Added	Text was added to allow publication by ExA of ExQ4 on 15 th July 2020	
	Added	Text was added to Deadline 7: to allow responses to ExQ4 on 5 August 2020	

APPENDIX B: EXAMINATION LIBRARY

Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility

Examination Library

Updated – 18 August 2020

This Examination Library relates to the Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first

EN010083 – Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility

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Category	Reference
<p>Application Documents</p> <p>Application documents as submitted, and any amended versions received before the PM. (Amended versions received during the examination stage are saved under the relevant deadline)</p>	APP-xxx
<p>Adequacy of Consultation responses</p>	AoC-xxx
<p>Relevant Representations</p>	RR-xxx
<p>Procedural Decisions and Notifications from the Examining Authority</p> <p>Includes Examining Authority's questions, s55, and post acceptance s51</p>	PD-xxx
<p>Additional Submissions</p> <p>Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination including responses to Rule 6 and Rule 8 letters</p>	AS-xxx
<p>Events and Hearings</p> <p>Includes agendas for hearings and site inspections, audio recordings, responses to notifications and applicant's hearing notices</p>	EV-xxx
<p>Representations – by Deadline</p>	
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<p>Deadline 3:</p>	REP3-xxx

Deadline 4:	REP4-xxx
Deadline 5:	REP5-xxx
Deadline 6:	REP6-xxx
Deadline 7:	REP7-xxx
Deadline 8:	REP8-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

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APP-004	WTI/EFW Holdings Ltd 1.4 - Copies of Newspaper Notices
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APP-143	WTI/EFW Holdings Ltd External Lighting Drawing
APP-144	WTI/EFW Holdings Ltd Lighting Discharges Report
APP-145	WTI/EFW Holdings Ltd External Lighting Technical Submission
APP-146	WTI/EFW Holdings Ltd Proposed Internal Access Layout - Rev 01
APP-147	WTI/EFW Holdings Ltd 6.1 - 2010 Planning Supporting Statement
APP-148	WTI/EFW Holdings Ltd 6.2 - 2010 Design and Access Statement
APP-149	WTI/EFW Holdings Ltd 6.3 - 2010 Carbon Assessment
APP-150	WTI/EFW Holdings Ltd 6.4 - 2010 Sustainability Appraisal
APP-151	WTI/EFW Holdings Ltd 6.5 - Supplementary Biodiversity Information
APP-152	WTI/EFW Holdings Ltd 6.6 - Surface Water Management and Foul Drainage Design Philosophy Statement
APP-153	WTI/EFW Holdings Ltd 6.7 - Flood Risk Assessment
APP-154	WTI/EFW Holdings Ltd 6.8 - Ecological Mitigation and Management Plan
APP-155	WTI/EFW Holdings Ltd 6.9 - Employment Strategy
Adequacy of Consultation Responses	
AoC-001	Kent County Council Adequacy of Consultation Representation
AoC-002	Swale Borough Council Adequacy of Consultation Representation
Relevant Representations	

RR-001	Environment Agency
RR-002	Health And Safety Executive
RR-003	Public Health England
RR-004	Highways England
RR-005	Historic England
RR-006	Natural England
RR-007	Surrey County Council
RR-008	Michael Vick
RR-009	Donna Clarke
Procedural Decisions and Notifications from the Examining Authority	
PD-001	Notification of Decision to Accept Application
PD-002	Section 51 advice to the Applicant
PD-003	Section 55 Checklist
PD-004	Notice of Appointment of Single Examiner
PD-005	Procedural decision following issue of acceptance decision
PD-006	Rule 6 letter - Notification of the preliminary meeting and matters to be discussed
PD-007	Rule 8 - notification of timetable for the examination
PD-008	Examining Authority's First Written Questions (ExQ1)
PD-009	Variation to Timetable – Rule 8(3)
PD-010	Examining Authority's Further Written Questions (ExQ1A)
PD-011	Notification of Procedural Decision - Rule 9
PD-012	Examining Authority's Further Written Questions (ExQ2)
PD-013	Variation to Timetable – Rule 8(3)
PD-014	Further Written Questions and Requests for Information (ExQ3)
PD-015	Examining Authority's Further Written Questions and Requests for Information (ExQ4)
PD-016	Examining Authority's Draft K3 Development Consent Order
PD-017	Schedule of Examining Authority's preferred changes to the Applicant's Development Consent Order
PD-018	Report on the Implications for European Sites (RIES) Issued by the Examining Authority - 15 July 2020
PD-019	Procedural Decision - Rule 9
Additional Submissions	
AS-001	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority - 1.2 - S51 Application Guide

AS-002	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority - 2.1 - S51 Draft Development Consent Order
AS-003	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority - 2.3 - DCO Validation Report
AS-004	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority - 2.4 - S51 Book of Reference
AS-005	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority - 2.5 - Summary of Land Interests and Rights
AS-006	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority - 2.6 - Summary of Applicants Structure and Standing
AS-007	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority 4.1 - S51 Consultation Report
AS-008	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority - 5.4 - S51 Land Plan
AS-009	WTI/EFW Holdings Ltd Additional Submissions - Accepted at the discretion of the Examining Authority - 7.1 - S51 Cover Letter
AS-010	Kent County Council Additional Submission prior to Preliminary Meeting - Accepted at the discretion of the Examining Authority – 15 January 2020
AS-011	Kent Fire and Rescue Service Additional Submission prior to Preliminary Meeting - Accepted at the discretion of the Examining Authority – 30 January 2020
AS-012	Natural England Additional Submission accepted at the discretion of the Examining Authority – 7 February 2020
AS-013	Marine Management Organisation Additional Submission accepted at the discretion of the Examining Authority – 14 February 2020
AS-014	Royal Mail Group Limited Additional Submission accepted at the discretion of the Examining Authority – 8 April 2020
AS-015	Allyson Spicer Additional Submission accepted at the discretion of the Examining Authority
AS-016	WTI/EFW Holdings Ltd Additional Submission accepted at the discretion of the Examining Authority - Applicant's Post Deadline 6 Submission

AS-017	WTI/EFW Holdings Ltd Additional Submission accepted at the discretion of the Examining Authority - 14.3 Post Deadline 6 - Applicant's Response to Kent County Council's Submissions at Deadline 5
AS-018	WTI/EFW Holdings Ltd Additional Submission accepted at the discretion of the Examining Authority - Email from Applicant to Highways England on 02-07-20
AS-019	WTI/EFW Holdings Ltd Additional Submission accepted at the discretion of the Examining Authority - Ferrybridge HGV Movements
Events and Hearings	
Preliminary Meeting –	
EV-001	Recording of Preliminary Meeting - 19 February 2020
EV-002	Preliminary Meeting Note
Issue Specific Hearing 1 – 19 February 2020	
EV-003	Agenda for Issue Specific Hearing 1 (ISH1) into the draft Development Consent Order
EV-004	Recording of Issue Specific Hearing 1 (ISH1) into the draft Development Consent Order - 19 February 2020
Unaccompanied Site Inspection – 30 June and 1 July 2020	
EV-005	Note from Unaccompanied Site Inspection - Undertaken on 30 June and 1 July 2020
Representations	
Deadline 1 – 02 March 2020	
Deadline for receipt by the ExA of:	
<ul style="list-style-type: none"> • Comments on any updates to Application Documents submitted by Applicant before or at PM • Comments on any additional submissions received before or at the PM • Comments on Relevant Representations (RR) • Summaries of all Relevant Representations (RR) exceeding 1500 words • Written Representations (WR) by all Interested Parties (IP) • Written Representations (WR) - Summaries of WRs exceeding 1500 words • Statement of Common Ground (SoCG) requested by ExA - see Annex E • Local Impact Reports (LIR) from any Local Authorities • Responses to any further information requested by ExA for this deadline • Post-hearing submissions including written submissions of oral cases • Any updated documents/submissions • Notification by Statutory Parties of their wish to be considered as an IP by the ExA 	

	<ul style="list-style-type: none"> • Notification of wish to speak at any subsequent Issue Specific Hearings (ISH) • Notification of wish to speak at an Open Floor Hearing (OFH) • Provision of suggested locations and justifications for site inspections for consideration by the ExA • Notification of wish to attend an Accompanied Site Inspection (ASI) • Notification of wish to have future correspondence received electronically
REP1-001	WTI/EFW Holdings Ltd Deadline 1 Submission - Cover Letter
REP1-002	WTI/EFW Holdings Ltd Deadline 1 Submission - Application Guide
REP1-003	WTI/EFW Holdings Ltd Deadline 1 Submission - Draft Statement of Common Ground between the Applicant and the Environment Agency
REP1-004	WTI/EFW Holdings Ltd Deadline 1 Submission - Draft Statement of Common Ground between the Applicant and Natural England
REP1-005	WTI/EFW Holdings Ltd Deadline 1 Submission - Applicant's Response to Relevant Representations
REP1-006	WTI/EFW Holdings Ltd Deadline 1 Submission - Applicant's Response to Additional Submissions
REP1-007	WTI/EFW Holdings Ltd Deadline 1 Submission - Written Submission of Oral Case made by the Applicant at Issue Specific Hearing 1: draft DCO
REP1-008	WTI/EFW Holdings Ltd Deadline 1 Submission - Applicant's suggestions of locations for the Accompanied Site Inspection
REP1-009	Kent County Council Deadline 1 Submission - Written Representation
REP1-010	Kent County Council Deadline 1 Submission - Annex 1 Written Representation as Minerals and Waste Planning Authority
REP1-011	Kent County Council Deadline 1 Submission - Local Impact Report
REP1-012	Swale Borough Council Deadline 1 Submission - Local Impact Report
REP1-013	Environment Agency Deadline 1 Submission - Written Representation and Statement of Common Ground
REP1-014	Marine Management Organisation Deadline 1 Submission - Written Representation and Comments on Relevant Representation
REP1-015	Natural England Deadline 1 Submission - Written Representation

REP1-016	South East Waste Planning Advisory Group Deadline 1 Submission - Written Representation - Submission received by a Non-Interested Party and accepted at the discretion of the Examining Authority
REP1-017	John C Twiselton Deadline 1 Submission - Written Representation - Submission received by a Non-Interested Party and accepted at the discretion of the Examining Authority
REP1-018	Minster-on-Sea Parish Council Deadline 1 Submission - Late Submission accepted at the discretion of the Examining Authority
<p>Deadline 2 – 18 March 2020</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on WR • Comments on any SoCGs • Comments on Local Impact Reports • Responses to ExQ1 • Applicant's revised draft Development Consent Order • Comments on any additional information/submission received by D1 • Response to any further information requested by the ExA for this deadline • Any updated documents/submissions 	
REP2-001	WTI/EFW Holdings Ltd Deadline 2 Submission - Cover Letter
REP2-002	WTI/EFW Holdings Ltd Deadline 2 Submission - Application Guide - Deadline 1 Version
REP2-003	WTI/EFW Holdings Ltd Deadline 2 Submission - Application Guide - Deadline 2 Version
REP2-004	WTI/EFW Holdings Ltd Deadline 2 Submission - Explanatory Memorandum (Clean)
REP2-005	WTI/EFW Holdings Ltd Deadline 2 Submission - Explanatory Memorandum (Tracked)
REP2-006	WTI/EFW Holdings Ltd Deadline 2 Submission - Draft Development Consent Order (DCO) - Clean
REP2-007	WTI/EFW Holdings Ltd Deadline 2 Submission - Draft Development Consent Order (DCO) - Tracked
REP2-008	WTI/EFW Holdings Ltd Deadline 2 Submission - Table of Amendments to the Development Consent Order (DCO)
REP2-009	WTI/EFW Holdings Ltd Deadline 2 Submission - Applicant's Response to Examining Authority's Written Questions (EXQ1)

REP2-010	WTI/EFW Holdings Ltd Deadline 2 Submission - Applicant's Response to Local Impact Reports
REP2-011	WTI/EFW Holdings Ltd Deadline 2 Submission - Applicants Comments on Written Representations
REP2-012	WTI/EFW Holdings Ltd Deadline 2 Submission - Summary of Applicant's Structure and Standing (Clean)
REP2-013	WTI/EFW Holdings Ltd Deadline 2 Submission - Summary of Applicant's Structure and Standing (Tracked)
REP2-014	WTI/EFW Holdings Ltd Deadline 2 Submission - Further Submissions on ISH1 DCO Questions
REP2-015	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 2
REP2-016	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 3 Methodology-Clean
REP2-017	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 3 Methodology-Tracked
REP2-018	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 4 Transport-Clean
REP2-019	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 4 Transport-Tracked
REP2-020	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 5 Air Quality-Clean
REP2-021	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 5 Air Quality-Tracked
REP2-022	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 8 Human Health-Clean
REP2-023	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 8 Human Health-Tracked
REP2-024	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 11 Ecology-Clean
REP2-025	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 11 Ecology-Tracked
REP2-026	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 12 LVIA-Clean
REP2-027	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 12 LVIA-Tracked
REP2-028	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 14 Summary Tables- Clean
REP2-029	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 14 Summary Tables-Tracked
REP2-030	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.2-Clean

REP2-031	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.2-Tracked
REP2-032	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.4 Ecology-clean
REP2-033	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.4 Ecology-Tracked
REP2-034	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 11.2 Habitats Regulations Assessment Report -Clean
REP2-035	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 11.2 Habitats Regulations Assessment Report -Tracked
REP2-036	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 11.7 MMO Licence
REP2-037	WTI/EFW Holdings Ltd Deadline 2 Submission - K3 Works Plan
REP2-038	WTI/EFW Holdings Ltd Deadline 2 Submission - WKN Works Plan
REP2-039	WTI/EFW Holdings Ltd Deadline 2 Submission - WKN Parameter Plan
REP2-040	Environment Agency Deadline 2 Submission - Responses to Examining Authority's First Written Questions
REP2-041	Marine Management Organisation Deadline 2 Submission - Response to Deadline 2
REP2-042	Natural England Deadline 2 Submission - Responses to Examining Authority's First Written Questions
REP2-043	South East Waste Planning Advisory Group Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to Examining Authority's First Written Questions
REP2-044	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to Examining Authority's First Written Questions
REP2-045	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 1 Kent Minerals and Waste Local Plan - relevant policy extracts
REP2-046	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 2 Early Partial Review of the KMWLP - Pre Submission Draft 2018 relevant policy extracts

REP2-047	Kent County Council Deadline 2 Submission - Late submission accepted at the discretion of the Examining Authority - Appendix 3 Bearing Fruits 2031 The Swale Borough Local Plan - relevant policy extracts
REP2-048	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Submission regarding IBA Facility
<p>Deadline 3 – 22 April 2020</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Post-hearing submissions including written submissions of oral cases • Comments on responses to ExQ1 • Comments on Applicant’s revised draft Development Consent Order • Comments on any additional information/submission received by D2 • Response to any further information requested by the ExA for this deadline • Any updated documents/submissions 	
REP3-001	WTI/EFW Holdings Ltd Deadline 3 Submission - Cover Letter
REP3-002	WTI/EFW Holdings Ltd Deadline 3 Submission - Application Guide - Deadline 3 Version
REP3-003	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant’s Responses to Deadline 2 Submissions
REP3-004	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant’s Response to Examining Authority’s Written Questions (ExQ1A)
REP3-005	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ1A) Appendix 1.2 & 1.8 – Local Plan Policies
REP3-006	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ1A) Appendix 1.5 - Surrey 2 Hour Drive Time Map
REP3-007	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ1A) Appendix 1.6 – Surrey Waste Plan 2008
REP3-008	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ1A) Appendix 1.13a – UK Statistics on Waste – 19th March 2020

REP3-009	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.13b – Tilbury Green Section 36 Consent – 26th March 2020
REP3-010	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.15a – Our Waste, Our Resources: A Strategy For England 2018
REP3-011	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.15b - Our Waste, Our Resources - A Strategy For England 2018 – Evidence Annex
REP3-012	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.32 – Tolvik Review 2017 – UK Residual Waste – 2030 Market Review
REP3-013	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.34 – Riverside Energy Park – Supplementary Report to the Project and its Benefits Report
REP3-014	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.46a – WTI C&I Review and RDF Review - Hendeca
REP3-015	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.46b – WTI LACW Review - Hendeca
REP3-016	Environment Agency Deadline 3 Submission - Comments on ExQ1 responses, additional information, the Applicants revised dDCO and responses to ExQ2
REP3-017	Marine Management Organisation Deadline 3 Submission - Comments on responses to ExQ1 and Comments on Applicant's revised draft Development Consent Order
REP3-018	Natural England Deadline 3 Submission - Written Representation
REP3-019	South East Waste Planning Advisory Group Deadline 3 Submission - Response to the Examining Authority's Further Written Questions and requests for information (ExQ1A)
REP3-020	Kent County Council Deadline 3 Submission - Late Submission accepted at the discretion of the Examining Authority

Deadline 4 – 20 May 2020

Deadline for receipt by the ExA of:

- Responses to ExQ2 (if required)
- Applicant's revised dDCO
- Any revised/updated SoCGs
- Comments on any additional information/submissions received by D3
- Responses to any further information requested by the ExA for this deadline

REP4-001	WTI/EFW Holdings Ltd Deadline 4 Submission - Cover Letter
REP4-002	WTI/EFW Holdings Ltd Deadline 4 Submission - Application Guide - Deadline 4 Version
REP4-003	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's revised Draft Development Consent Order - Clean
REP4-004	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's revised Draft Development Consent Order - Tracked
REP4-005	WTI/EFW Holdings Ltd Deadline 4 Submission - Table of Amendments to the Development Consent Order (DCO)
REP4-006	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to Examining Authority's Second Written Questions (ExQ2)
REP4-007	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to the Examining Authority's Second Written Questions (ExQ2) - Appendix 1 – Environmental Permit for K3
REP4-008	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to Submissions received at Deadline 3
REP4-009	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to Submissions at Deadline 3 - Appendix 1 - Digest of Waste and Resources Statistics 2018, DEFRA
REP4-010	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 – ES Volume 2 Appendix 11.2- Habitats Regulation Assessment Report -Clean
REP4-011	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 11.2- Habitats Regulation Assessment Report - Tracked
REP4-012	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 11.2- Habitats Regulation Assessment Report Matrices - also included in REP4-010 and REP4-011

REP4-013	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 2.1- Draft Construction Environmental Management Plan (CEMP) for WKN - Clean
REP4-014	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 2.1- Draft Construction Environmental Management Plan (CEMP) for WKN - Tracked
REP4-015	Kent County Council Deadline 4 Submission - Response to the Further Written Questions published on 9 April 2020
REP4-016	Kent County Council Deadline 4 Submission - Appendix 1 Kent EPR and MSP Inspector Report
REP4-017	Kent County Council Deadline 4 Submission - Appendix 2 Status of WPAs counted within Study Area with regards to net self sufficiency
REP4-018	Kent County Council Deadline 4 Submission - Appendix 3 WPAs counted within Study Area for DCOs
REP4-019	Kent County Council Deadline 4 Submission - Appendix 4 KMWLP EPR Sensitivity on Recovery Requirement 08 10 2019 v5
REP4-020	Kent County Council Deadline 4 Submission - Appendix 5 BPP Consulting Kent WNA 2018 Residual NHW Management Needs Sept 2018 Update v1.4 05.09.2018
REP4-021	Kent County Council Deadline 4 Submission - Appendix 6 Transport Statement
REP4-022	Kent County Council Deadline 4 Submission - Appendix 7 JNY10115-04a Transport Technical Note April 2020
REP4-023	Medway Council Deadline 4 Submission - Response to Deadline 4
REP4-024	Minster-on-Sea Parish Council Deadline 4 Submission - Responses to ExQ2
REP4-025	Swale Borough Council Deadline 4 Submission - Response to Deadline 4
REP4-026	Swale Borough Council Deadline 4 Submission - Appendix 1 - Climate & Ecological Emergency Action Plan
REP4-027	Environment Agency Deadline 4 Submission - Responses to ExQ2
REP4-028	Marine Management Organisation Deadline 4 Submission - Responses to ExQ2 and comments on Written Representations
REP4-029	Highways England Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ2

REP4-030	Highways England Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Summary of on-going discussions involving applicant, Highways England and Kent County Highways
REP4-031	Natural England Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ2
REP4-032	South East Waste Planning Advisory Group Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ2
Deadline 5 – 19 June 2020	
Deadline for receipt by the ExA of:	
<ul style="list-style-type: none"> • Responses to ExQ3 • Comments on responses to ExQ2 • Comments on Applicant's revised/updated dDCO • Comments on any revised/updated SoCGs • Comments on any additional information/submissions received by D4 • Responses to any further information requested by the ExA for this deadline 	
REP5-001	WTI/EFW Holdings Ltd Deadline 5 Submission - Cover Letter
REP5-002	WTI/EFW Holdings Ltd Deadline 5 Submission - Application Guide - Deadline 5 Version
REP5-003	WTI/EFW Holdings Ltd Deadline 5 Submission - 3.1 – ES Volume 2 Appendix 4.2 - Draft Construction Traffic Management Plan (CTMP) for WKN - Clean
REP5-004	WTI/EFW Holdings Ltd Deadline 5 Submission - 3.1 – ES Volume 2 Appendix 4.2 - Draft Construction Traffic Management Plan (CTMP) for WKN - Tracked
REP5-005	WTI/EFW Holdings Ltd Deadline 5 Submission - 4.10 - Draft WKN Ecological Mitigation and Management Plan
REP5-006	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.1 Draft Statement of Common Ground between the Applicant and Swale Borough Council
REP5-007	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.2 Statement of Common Ground between the Applicant and the Environment Agency
REP5-008	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Clean
REP5-009	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Tracked

REP5-010	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.6 Statement of Commonality
REP5-011	WTI/EFW Holdings Ltd Deadline 5 Submission – 13.2 Applicant’s Response to Examining Authority’s Further Written Questions (ExQ3)
REP5-012	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ3) Appendix A – Energy NPS Judicial Review Statement of Facts and Grounds
REP5-013	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ3) Appendix B – Riverside Energy Park Secretary of Statement Decision
REP5-014	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ3) Appendix C – Drax Judgement
REP5-015	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ3) Appendix D – Carbon Burden from Waste Transportation
REP5-016	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ3) Appendix E – Ferrybridge Multifuel 2 (FM2) Recommendation Report to Secretary of State
REP5-017	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ3) Appendix F – Ferrybridge Multifuel 2 (FM2) Secretary of State Decision
REP5-018	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ3) Appendix G – North London Heat and Power Project (NLHPP) Recommendation Report to Secretary of State
REP5-019	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ3) Appendix H - North London Heat and Power Project (NLHPP) Secretary of State Decision
REP5-020	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant’s Response to the Examining Authority’s Further Written Questions (ExQ3) Appendix I - SW/18/503317 Committee Report

REP5-021	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.3 Site Photographs and Drone footage
REP5-022	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.3 Applicant's Response to Submissions at Deadline 4
REP5-023	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.3 Applicant's Response to Submissions at Deadline 4 Appendix A - Tolvik UK Energy from Waste Statistics 2019
REP5-024	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.5 Drone video 1
REP5-025	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.6 Drone video 2
REP5-026	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.7 Drone video 3
REP5-027	Swale Borough Council Deadline 5 Submission - Response to ExQ3
REP5-028	Environment Agency Deadline 5 Submission - Response to Deadline 5
REP5-029	Highways England Deadline 5 Submission - Response to ExQ3
REP5-030	Marine Management Organisation Deadline 5 Submission - Response to ExQ3, Comments on Written Representations and Response to Applicant
REP5-031	Natural England Deadline 5 Submission - Response to ExQ3
REP5-032	Royal Mail Group Limited Deadline 5 Submission - Response to Deadline 5
REP5-033	Royal Mail Group Limited Deadline 5 Submission - Draft Construction Traffic Management Plan - Clean
REP5-034	Royal Mail Group Limited Deadline 5 Submission - Draft Construction Traffic Management Plan - Tracked
REP5-035	South East Waste Planning Advisory Group Deadline 5 Submission - Responses to any further information requested by the ExA for this deadline
REP5-036	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to ExQ3
REP5-037	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Highways Response to Draft Development Consent Order

REP5-038	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on the Applicants Response to the Examining Authority's Written Questions (ExQ1A)
REP5-039	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 1 Brookhurst Wood EfW Appeal Decision
REP5-040	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 2 WTI Representation
REP5-041	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 3 Junction Modelling
REP5-042	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 1 - RAG Analysis of 1,000tonne plus wastes types that fall under HIC Waste Going to Landfill within Applicant Chosen Study Area (WDI 2018)
REP5-043	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Waste Planning article: Covid-19: Recycling rates and quality surge for Horsham
REP5-044	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - BEIS Renewable Energy Statistics, Data Sources and Methodologies (July 2018)
<p>Deadline 6 – 29 June 2020</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on responses to ExQ3 • Comments on Applicant's revised/updated dDCO • Comments on any revised/updated SoCGs • Comments on any additional information/submissions received by D5 • Responses to any further information requested by the ExA for this deadline 	
REP6-001	WTI/EFW Holdings Ltd Deadline 6 Submission - Cover Letter
REP6-002	WTI/EFW Holdings Ltd Deadline 6 Submission - Application Guide - Deadline 6 Version

REP6-003	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.1 Draft Development Consent Order (DCO) - Clean
REP6-004	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.1 Draft Development Consent Order (DCO) - Tracked
REP6-005	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.2 Explanatory Memorandum - Clean
REP6-006	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.2 Explanatory Memorandum - Tracked
REP6-007	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.7 Table of Amendments to the Development Consent Order (DCO)
REP6-008	WTI/EFW Holdings Ltd Deadline 6 Submission - 3.1 - ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Clean
REP6-009	WTI/EFW Holdings Ltd Deadline 6 Submission - 3.1 – ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Tracked
REP6-010	WTI/EFW Holdings Ltd Deadline 6 Submission - 14.2 Applicant's Response to Submissions at Deadline 5
REP6-011	Environment Agency Deadline 6 Submission - Response to Deadline 6
REP6-012	Marine Management Organisation Deadline 6 Submission - Comments on responses to ExQ3 and Comments on any revised/updated Statements of Communal Ground
<p>Deadline 7 – 5 August 2020</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Responses to ExQ4 (if required) • Comments on the ExA's preferred DCO (if required) • Comments on the ExA's RIES (if required) • Applicant's Final preferred DCO in Statutory Instrument (SI) template validation report • Any revised/updated SoCGs • Comments on any additional information/submissions received by D6 • Responses to any further information requested by the ExA for this deadline 	
REP7-001	WTI/EFW Holdings Ltd Deadline 7 Submission - Cover Letter

REP7-002	WTI/EFW Holdings Ltd Deadline 7 Submission - Application Guide - Deadline 7 Version
REP7-003	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.1 Draft Development Consent Order (DCO) - Clean
REP7-004	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.1 Draft Development Consent Order (DCO) - Tracked
REP7-005	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.1 Draft Development Consent Order (DCO) - Validation Report
REP7-006	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.2 Explanatory Memorandum - Clean
REP7-007	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.2 Explanatory Memorandum - Tracked
REP7-008	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.7 Table of Amendments to the Development Consent Order (DCO)
REP7-009	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.8 K3 Book of Reference
REP7-010	WTI/EFW Holdings Ltd Deadline 7 Submission - Document 3.1 - ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Clean
REP7-011	WTI/EFW Holdings Ltd Deadline 7 Submission - Document 3.1 - ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Tracked
REP7-012	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.2 Statement of Common Ground between the Applicant and the Environment Agency - Clean
REP7-013	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.2 Statement of Common Ground between the Applicant and the Environment Agency - Tracked
REP7-014	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Clean
REP7-015	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Tracked
REP7-016	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to Examining Authority's Further Written Questions (ExQ4)
REP7-017	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix A - Kemsley K3 CHP R1 Supporting Information April 2019

REP7-018	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix B - FM1 R1 Accreditation 2018 and FM1 R1 Revalidation 2019
REP7-019	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix C - WKN Construction HGV Profile
REP7-020	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix D - FM1 Site Location Plan
REP7-021	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix E - Norfolk County Council Cabinet Report - 6th July 2020
REP7-022	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.3 Applicant's Response to Submissions at Deadline 6
REP7-023	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.4 Applicant's Comments on the ExA's preferred DCO
REP7-024	WTI/EFW Holdings Ltd Deadline 7 Submission - ExA's K3 Alternative DCO K3 Works Plan
REP7-025	WTI/EFW Holdings Ltd Deadline 7 Submission - ExA's K3 Alternative DCO Land Plan
REP7-026	Kent County Council Deadline 7 Submission - Responses to ExQ4
REP7-027	Kent County Council Deadline 7 Submission - Response to Applicant's Response to ExAQ3
REP7-028	Kent County Council Deadline 7 Submission - Additional Submission at Deadline 7
REP7-029	Kent County Council Deadline 7 Submission - Appendix 1 CCC Progress Report to Parliament June 2020
REP7-030	Kent County Council Deadline 7 Submission - Appendix 2 Waterbeach EfW Appeal SoS Refusal June 2020
REP7-031	Environment Agency Deadline 7 Submission - Response to Deadline 7
REP7-032	Highways England Deadline 7 Submission - Responses to ExQ4
REP7-033	Marine Management Organisation Deadline 7 Submission - Response to Deadline 7

REP7-034	Natural England Deadline 7 Submission - Responses to ExQ4
REP7-035	Natural England Deadline 7 Submission - Comments on the ExA's RIES
REP7-036	South East Waste Planning Advisory Group Deadline 7 Submission - Responses to ExQ4
REP7-037	Swale Borough Council Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ4
REP7-038	Kent County Council Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on the draft DCO (REP6-003)
REP7-039	Kent County Council Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on K3 Planning Permission - Planning Conditions Tracker
<p>Deadline 8 – 12 August 2020</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on responses to ExQ4 (if required) • Comments on any revised/updated SoCG • Comments on the Applicant's Final preferred DCO in the Statutory Instrument (SI) template validation report • Comments on any additional information/submissions received by D7 • Responses to any further information requested by the ExA for this deadline 	
REP8-001	WTI/EFW Holdings Ltd Deadline 8 Submission - Cover Letter
REP8-002	WTI/EFW Holdings Ltd Deadline 8 Submission - Application Guide - Deadline 8 Version
REP8-003	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.11 Draft Construction Traffic Management Plan - WKN - Applicant - Clean
REP8-004	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.11 Draft Construction Traffic Management Plan - WKN - Applicant - Tracked
REP8-005	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.12 Draft Construction Traffic Management Plan - WKN - Highways England - Clean
REP8-006	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.12 Draft Construction Traffic Management Plan - WKN - Highways England - Tracked
REP8-007	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.13 Draft Travel Plan - K3 - Applicant
REP8-008	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.14 Draft Travel Plan - K3 - Highways England

REP8-009	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.15 Draft Travel Plan - WKN - Applicant - Clean
REP8-010	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.15 Draft Travel Plan - WKN - Applicant - Tracked
REP8-011	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.16 Draft Travel Plan - WKN - Highways England - Clean
REP8-012	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.16 Draft Travel Plan - WKN - Highways England - Tracked
REP8-013	WTI/EFW Holdings Ltd Deadline 8 Submission - 8.4 Statement of Common Ground between the Applicant and Kent County Council
REP8-014	WTI/EFW Holdings Ltd Deadline 8 Submission - 8.6 Statement of Commonality
REP8-015	WTI/EFW Holdings Ltd Deadline 8 Submission - 16.2 Applicant's Response to Submissions at Deadline 7
REP8-016	Kent County Council Deadline 8 Submission - Closing Statement
REP8-017	Environment Agency Deadline 8 Submission - Response to Deadline 8
REP8-018	Marine Management Organisation Deadline 8 Submission - Comments on Deadline 7 Submissions
Other Documents	
OD-001	WTI/EFW Holdings Ltd Section 56 Notice
OD-002	WTI/EFW Holdings Ltd Certificates of compliance

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
µg.m-3	Microgram(s) per cubic metre of air
2009 Act	Marine and Coastal Access Act 2009
2011 Regulations	Waste (England and Wales) Regulations 2011
2018 Revised WFD	revised legislative framework on waste as set out in Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste
2019 HRAR	Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO: Habitats Regulations Assessment Report, together with screening and integrity matrices
25 YEP	25 Year Environment Plan
AA	Appropriate Assessment
AD	Anaerobic Digestion
AEoI	Adverse effects on (the) integrity
AHLV	Area of High Landscape Value
Alternative Recommended DCO	DCO as recommended to be made by the SoS should consent be granted for the K3 Proposed Development and WKN Proposed Development
AMR(s)	Annual Monitoring Report(s)
AN10	Planning Inspectorate Advice Note 10
AOD	Above Ordnance Datum
APFP Regulations	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
APIS	UK Air Pollution Information System
Applicant	WTI/EFW Holdings Ltd
Application	Application made by the Applicant under section 37 of the PA2008 which was received in full by the Planning Inspectorate on 11 September 2019
Application Site	K3 site and WKN site within the DCO boundary on the Site Location Plan (unless context otherwise requires)
AQD	Air Quality Directive
AQMA(s)	Air Quality Management Area(s)
AQP2017	revised draft 'Air Quality Plan for NO ₂ ' published by DEFRA on 26 July 2017
AQS	Air Quality Strategy
ASI	Accompanied Site Inspection

BAT	Best Available Technique
Beddington ERF	Beddington Energy Recovery Facility
BEIS	(Department for) Business, Energy and Industrial Strategy
Birds Directive	Council Directive [2009/147/EC] on the Conservation of Wild Birds
BMW	Biodegradable municipal waste
BoR	Book of Reference
BREEAM	Building Research Establishment Environmental Assessment Method
BREF	BAT reference document(s)
C&I	Commercial and Industrial
C2/13	DfT Circular 02/2013
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
Carbon Plan	2011 Carbon Plan
CCA2008	Climate Change Act 2008
CCGT	Combined Cycle Gas Turbine
CCR	Carbon Capture Readiness
CCS	Carbon Capture and Storage
CCUS	Carbon Capture, Utilisation and Storage
CEMP	Construction Environmental Management Plan
CEMS	Continuous Emissions Monitoring System
CEP	Circular Economy Package
CGS	Clean Growth Strategy for the UK, 2017
CHP	Combined Heat and Power
CHPQA	CHP Quality Assurance
CIL	Community Infrastructure Levy
CL	Critical level
CO ₂	Carbon dioxide
Consented K3 Facility	Completed K3 facility commissioned on 16 July 2020 pursuant to planning permission Ref SW/19/501345 granted on 14 June 2019 by KCC pursuant to section 73 TCPA1990 permitting the construction and operation of a generating station having a capacity of up to 49.9MW
CoPA	Control of Pollution Act 1974
CRRNH	Capacity Requirement for the Management of Residual Non-Hazardous Waste
CTMP(s)	Construction Traffic Management Plan(s)

CV	Calorific value
D (number)	(Examination) Deadline (see Appendix A for a list)
dCEMP	draft Construction Environmental Management Plan
DCO	Development Consent Order
dCTMP(s)	draft Construction Traffic Management Plan(s)
dDCO	draft Development Consent Order
DECC	(Former) Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
dEMMP	draft WKN Ecological Mitigation and Management Plan
DEMP	Decommissioning Environmental Management Plan
DfT	Department for Transport
DML	Deemed Marine Licence
dSoCG	draft Statement of Common Ground
DS Smith	DS Smith Paper Limited
dSTS	draft Swale Transportation Strategy 2014 – 2031
dTP(s)	draft Travel Plan(s)
EA	Environment Agency
EA1995	Environment Act 1995
EAL	Environmental Assessment Level
EEA	European Economic Area
EEAAP	(SBC) Climate and Ecological Emergency Action Plan
EfW	Energy from waste
EfW Debate Guide	Energy from Waste, A Guide to the Debate, 2014
EIA(s)	Environmental Impact Assessment(s)
EIA Directive	Council Directive 2011/92/EU, amended by 2014/52/EU, on the assessment of the effects of certain public and private projects on the environment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations, 2017
ELV(s)	Emission limit value(s)
EMEP	Ecological Management and Enhancement Plan
EMMP	Ecological Mitigation and Management Plan
EP	Environmental Permit
EPA1990	Environmental Protection Act 1990
EPC	Engineering, procurement and construction
EPR	Early Partial Review
EP Regulations	Environmental Permitting (England and Wales) Regulations 2016 (as amended)

EP Rules	Infrastructure Planning (Examination Procedure) Rules 2010
ES(s)	Environmental Statement(s)
EU	European Union
EU CEP	EU's 2020 Circular Economy Package
EU ETS	EU Emissions Trading System
EWCA Civ	Court of Appeal (Civil Division)
ExA	Examining Authority
ExMemo	Explanatory Memorandum
ExQ1	ExA's first Written Questions
ExQ1A	ExA's Further Written Questions
ExQ2	ExA's Further Written Questions
ExQ3	ExA's Further Written Questions
ExQ4	ExA's Further Written Questions
FGT	Flue Gas Treatment Plant
FM2	Ferrybridge Multifuel 2
fn	Footnote
FRA	Flood Risk Assessment
FZ	Flood Zone
FZ1	Flood Zone 1
FZ2	Flood Zone 2
FZ3	Flood Zone 3
GHG	Greenhouse Gas
GLVIA	Guidelines for Landscape and Visual Impact Assessment
GLVIA3	Guidelines for Landscape and Visual Impact Assessment 2013
GW	Gigawatt(s)
ha	Hectare
Habitats Directive	Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
Habitats Regulations	Conservation of Habitats and Species Regulations 2017
HE	Highways England
HGV(s)	Heavy goods vehicle(s)
HIC	Household/Industrial/Commercial
HIF	Housing Infrastructure Fund
HistE	Historic England
HRA	Habitats Regulations Assessment
HRAR	HRA Report

I-API	Initial Assessment of the Principal Issues
IAQM	Institute of Air Quality Management
IBA	Incinerator Bottom Ash
IBAA	Incinerator bottom ash aggregate
ICE	In-combination effects
IEA	(Former) Institute of Environmental Assessment
IED	Industrial Emissions Directive
IEMA	Institute of Environmental Management and Assessment
Inspectorate	Planning Inspectorate
IP(s)	Interested Party(ies)
IPC	Infrastructure Planning Commission
IPPC Directive	EU Directive 2008/1/EC concerning Integrated Pollution Prevention and Control
ISH(s)	Issue Specific Hearing(s)
J5	Junction 5
June 2020 CCC Progress Report	Reducing UK emissions: Progress Report to Parliament (June 2020)
K1	Existing CHP plant
K3	Wheelabrator Kemsley (Generating Station)
K3 Planning Permission	Original planning permission for the Consented K3 Facility granted in 2012 Ref SW/10/444
K3 Proposed Development	Proposal to increase the generating capacity of the K3 generating station up to 75MW with a tonnage throughput of up to 657,000 tonnes per annum
K3 RWTS	K3 rail and water transportation strategy
K3 Site	Site of K3 being land immediately to the east of the Kemsley Paper Mill, 0.8km east of Kemsley
K4	Proposed CHP facility to replace K1
KCC	Kent County Council
KJMWMS	Kent Joint Municipal Waste Management Strategy
km	Kilometre
KMWLP	Kent Minerals and Waste Local Plan 2013-30 (July 2016)
kt	Kilotonne(s)
ktCO ₂ e	Thousand tonnes of fossil carbon dioxide equivalent
ktpa	Kilo-tonnes per annum
LACW	local authority collected waste
LCE	Low Carbon Economy

LCP	Large Combustion Plant
LCPD	Large Combustion Plant Directive
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LNR(s)	Local Nature Reserve(s)
LOAEL	Lowest Observable Adverse Effect Level
LP	Local Plan
LSE	Likely Significant Effects
LTP4	KCC's fourth Local Transport Plan (2016-2031)
LV(s)	Limit value(s)
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
m	Metre(s)
M2J5	M2 Junction 5
MCAA2009	Marine and Coastal Access Act 2009
MCZ(s)	Marine Conservation Zone(s)
MHCLG	Ministry of Housing, Communities and Local Government
MK	Milton Keynes
MMO	Marine Management Organisation
Model Provisions Order	Infrastructure Planning (Model Provisions) (England and Wales) Order 2009
MoU	Memorandum of Understanding
MP(s)	Model Provision(s)
MPS	Marine Policy Statement
MSPC	Minster-on-Sea Parish Council
MSW	Municipal Solid Waste
Mt	Megatonne(s)
MtCO ₂ e	Million tonnes of fossil carbon dioxide equivalent
MW	Megawatt(s)
MWLP	Minerals and Waste Local Plan
NE	Natural England
NERC Act	Natural Environment and Rural Communities Act 2006 (as amended)
NIA	National Infrastructure Assessment, 2018
NLHPP	North London Heat and Power Project
NNR	National Nature Reserve
NO ₂	Nitrogen dioxide

NO _x	Oxides of nitrogen
NOEL	No Observed Effect Level
NPPF	National Planning Policy Framework
NPPW	National Planning Policy for Waste
NPS(s)	National Policy Statement(s)
NPSE	Noise Policy Statement for England
NPS EN-1	Overarching NPS for Energy (EN-1)
NPS EN-3	NPS for Renewable Energy Infrastructure (EN-3)
NR	Network Rail
NSIP(s)	Nationally Significant Infrastructure Project(s)
NTS	Non-Technical Summary
OFH	Open Floor Hearing
OTRMP	Operational Traffic Routing and Management Plan
p(pp)	Page(s)
PA2008	Planning Act 2008
para(s)	Paragraph(s)
PC	Process contribution
PEC	Predicted environmental concentration
PINS	Planning Inspectorate
PM	Preliminary Meeting
PM _{2.5}	Particulate matter up to a diameter of 2.5 microns
PM ₁₀	Particulate matter up to a diameter of 10 microns
PPG	Planning Practice Guidance
Practical Effect(s)	Effect(s) in reality (of the K3 Proposed Development)
Preferred Changes	ExA's preferred changes to the DCO in the event consent
Preferred DCO	Applicant's preferred dDCO submitted at D7
Project K3	Proposal to increase the generating capacity of the K3 generating station up to 75MW with a tonnage throughput of up to 657,000 tonnes per annum
Project WKN	Proposed waste-to-energy generating station with a generating capacity of up to 42MW and an annual through put of up to 390,000 tonnes of waste
Proposed Development(s)	Project K3 and Project WKN
PRoW(s)	Public Right(s) of Way
PSED	Public Sector Equality Duty
R (number 2 onwards)	Requirement of a DCO
R1 (status)	Recovery operation status

Ramsar	Ramsar Convention on Wetlands
RDF	Refuse derived fuel
Recommended DCO	DCO as recommended by the ExA to be made by the SoS
Rev	Revision
RFC(s)	Ratio(s) of Flow to Capacity
RIES	Report on the Implications for European Sites
ROC(s)	Renewable Obligation Certificate(s)
RPA	Relevant Planning Authority
RR(s)	Relevant Representation(s)
RSPB	Royal Society for the Protection of Birds
Rule 6 Letter	Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8 Letter	Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
rWFD	revised Waste Framework Directive
RWTS	Rail and water transportation strategy
s (number)	Section of a statute
s106 (agreement)	Planning obligations under Section 106 of the TCPA1990
s51 Advice	Advice provided by the Planning Inspectorate under s51 PA2008
SAC(s)	Special Area(s) of Conservation
SBC	Swale Borough Council
SCC	Surrey County Council
Scoping Opinion	Opinion provided by the Planning Inspectorate about the scope of the information in the ES
SDC	Swale District Council
SEIMP	South East Inshore Marine Plan
SEP	Sustainable Energy Plant
SEWPAG	South East Waste Planning Advisory Group
SHD	Stack Height Determination
Site	K3 site and WKN site within the DCO boundary on the Site Location Plan (unless context otherwise requires)
SM	Scheduled Monument
SNCB(s)	Statutory nature conservation body(ies)
SO ₂	Sulphur dioxide
SOAEL	Significant Observed Adverse Effect Level
SoCG(s)	Statement(s) of Common Ground

SoS	Secretary of State
SoSBEIS	Secretary of State for Business, Energy and Industrial Strategy
SPA(s)	Special Protection Area(s)
SRN	Strategic road network
SSN	Statement of Statutory Nuisance
SSSI(s)	Site(s) of Special Scientific Interest
Swale Local Plan	Bearing Fruits 2031: The Swale Borough Local Plan (July 2017)
Swale LP	Swale Local Plan
SWLP	Surrey Waste Local Plan
SWMFDP	Surface Water Management and Foul Drainage Philosophy
TA	Transport Assessment
TCPA1990	Town and Country Planning Act 1990
TEEP	Technically, environmentally & economically practicable
TEMPRO	Trip End Model Presentation Program
Tolvik Review	UK Residual Waste: 2030 Market Review Final November 2017
TP	Travel Plan
tpa	Tonnes per annum
UK	United Kingdom
UK CCC	UK Committee on Climate Change
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
USI	Unaccompanied Site Inspection
WACA1981	Wildlife and Countryside Act 1981
WaterFD	Water Framework Directive
WDA	Waste disposal authority
WDI	Waste Data Interrogator
WFD	Waste Framework Directive
WfH	Waste from households
WHFAA	Waste Hierarchy and Fuel Availability Assessment
WID	Waste Incineration Directive
WKN	Wheelabrator Kemsley North

WKN Proposed Development	Waste-to-energy generating station with a generating capacity of up to 42MW and an annual through put of up to 390,000 tonnes of waste
WKN Site	Site of WKN being land immediately north of the Consented K3 Facility
WLP	Waste Local Plan
WMPE	Waste Management Plan for England, December 2013
WNA	Waste Needs Assessment
WPA(s)	Waste Planning Authority(ies)
WR(s)	Written Representation(s)
WRATE	Waste and Resources Assessment Tool for the Environment
WRS	Our Waste, Our Resources: A strategy For England 2018 / Waste and Resources Strategy 2018
WSI	Written Statement of Investigation
WtE	Waste to energy
WTI	Applicant (WTI/EFW Holdings Ltd)

APPENDIX D: THE RECOMMENDED DCO

202[] No.

INFRASTRUCTURE PLANNING

The Wheelabrator Kemsley K3 Generating Station Order 20[]

Made - - - - ***

Coming into force - - ***

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)^(b);

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010^(c);

The single appointed person, having considered the application with the documents that accompanied it and the representations made and not withdrawn, has submitted a report with a recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the single appointed person, has decided the application and determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make substantial changes to the proposals;

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order:

PART 1
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Wheelabrator Kemsley (K3 Generating Station) Order and shall come into force on [] 201[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961^(d);

(a) S.I. 2009/2264 as amended by S.I. 2013/522.
(b) 2008 c.29.
(c) S.I. 2010/103 as amended by S.I. 2012/635.
(d) 1961 c.33.

“the 1980 Act” means the Highways Act 1980(a);

“the 1989 Act” means the Electricity Act 1989(b);

“the 1990 Act” means the Town and Country Planning Act 1990(c);

“the 1991 Act” means the New Roads and Street Works Act 1991(d);

“the 2008 Act” means the New Roads and Street Works Act 1991(e);

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(f);

“authorised development” means the development and associated development described in Schedule 1 (authorised development), which is development within the meaning of section 32 of the 2008 Act;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“commissioning” means the process of testing all systems and components of Work No 1 (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and “commission” and other cognate expressions are to be construed accordingly;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on 11 September 2019 including all appendices thereto;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“K3 Generating Station” means a generating station having a capacity of up to 75MW, which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 2 of Schedule 2;

“K3 Sustainable Energy Plant Planning Permission” means planning permission SW/19/501345 granted on 14 June 2019 by Kent County Council pursuant to section 73 of the 1990 Act permitting the construction and operation of a generating station having a capacity of up to 49.9MW;

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“maintain” includes (i) inspect, repair, adjust, alter, refurbish, improve, the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and “maintenance” is construed accordingly;

“MW” means megawatts of electrical output;

“operational use” of the development comprising the authorised development means operational use for the purposes for which it is authorised under this Order but not including commissioning;

“Order land” means the land shown on the land plan within the Order limits and described in the book of reference;

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- (a) 1980 c.66.
 - (b) 1989 c.29.
 - (c) 1990 c.8.
 - (d) 1991 c.22.
 - (e) 2008 c.29.
 - (f) S.I. 2016/1154.

“Order limits” means the limits shown on the works plan within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in Section 7 of the Acquisition of Land Act 1981(a);

“relevant highway authority” means the highway authority for the area in which the relevant highway to which the relevant provision of this Order applies is situated;

“relevant planning authority” means the local authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“statement undertaker” means any person falling within the meaning set out in section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways (subject to confirmation from the relevant highway authority), and includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means, subject to article 7 (Benefit of the Order) WTI/EFW Holdings Ltd. (company number 07593865);

“watercourse” includes all rivers, streams, ditches, drains, creeks, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“works plans” means the plans certified as the works plans by the Secretary of State for the purposes of the Order.

(2) A reference in this Order to a “grid reference” is a reference to the map co-ordinates on the National Grid used by the Ordnance Survey.

(3) All distances, directions and lengths referred to in this Order are approximate.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by Schedule 1 of this Order.

(5) The expression “includes” shall be construed without limitation.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3. Subject to the provisions of this Order and to the requirements in Schedule 2 the undertaker is granted development consent for the authorised development.

Effect of the Order on the K3 Sustainable Energy Plan Planning Permission

4.—(1) The undertaker may not start operational use of the K3 Generating Station under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate the K3 Sustainable Energy Plant under the K3 Generating Station Planning Permission.

(2) Upon service of the notice under paragraph (1) the K3 Sustainable Energy Plant Planning Permission will cease to have effect.

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 c.34. There are other amendments to the 1981 Act which are not relevant to this Order.

Authorisation of the operation of the authorised development

5.—(1) The undertaker is authorised to operate the generating stations forming part of the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

Power to maintain authorised development

6. The undertaker may, at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Benefit of the Order

7.—(1) Except where paragraph (4) applies, the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with sub-paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where—

- (a) the transfer or grant is made to K3 CHP Limited (Company number 09240062); or
- (b) the transfer or grant is made to a licence holder within the meaning of section 6(1) of the Electricity Act 1989.

PART 3

SUPPLEMENTARY POWERS

Access to works

8. The undertaker may with the approval of the relevant highway authority, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Discharge of water

9.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior written consent of the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

Authority to survey and investigate the land

10.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under sub-paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2016/1154.

(c) 1991 c.57.

(4) No trial holes shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) A consent for the purpose of sub-paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.

(6) As soon as practicable following the exercise of any powers under paragraph (1), any vehicles, apparatus or equipment must be removed and the land shall be restored to the reasonable satisfaction of the owners of the land.

(7) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of Human Remains

11.—(1) Before the undertaker carries out any development or works which it has reason to think will or may disturb any human remains in the Order land it must remove those remains, or cause them to be removed, from the Order land in accordance with the following provisions of this article.

(2) Before any such remains are removed the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of a deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of his or her intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4) and the remains in question can be identified, that person may cause the remains to be—

- (a) removed and re-interred in a burial ground or cemetery in which burials may legally take place, or
- (b) removed to, and cremated in, a crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that a person giving notice under sub-paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of a deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land, or

- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days, or
- (c) within 56 days after an order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains, or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article the undertaker must send—

- (a) a certificate of re-interment or cremation to the Registrar General, giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) to the relevant planning authority.

(11) The removal of the remains of a deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

Felling or lopping of trees

12.—(1) The undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(a) 1857 c.81.

PART 4
MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

13.—(1) Paragraph (2) applies where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

(2) No order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—
 - (i) in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(b);
 - (ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site); or
- (b) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974(c) does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised development.

Application of landlord and tenant law

14.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

(c) 1974 c.40.

- (c) restrict enforcement (whether by action for damages or otherwise) by any part to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

15. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Certification of plans etc

16. The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference (dated August 2020);
- (b) the land plan (drawing number 9812-0071-02 dated July 2020);
- (c) the work plan (drawing number 9812-0072-02 dated July 2020);
- (d) the environmental statement (dated September 2019);
- (e) the K3 Generating Station approved plans as follows:
 - (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;
- (f) the K3 rail and water transportation strategy (dated September 2019);
- (g) the Design and Access Statement dated September 2019;
- (h) the draft K3 operational traffic routing and management plan; and
- (i) the draft K3 travel plan – Highways England version (dated 7 August 2020)

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

17. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in writing by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Procedure in relation to certain approvals

18.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld.

(2) Schedule 3 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to Schedule 2 (requirements).

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Signed
Title

Date

Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Kent—

Work No 1- An electricity generating station (the K3 Generating Station) with a gross installed generating capacity of up to 75MW comprising the following works—

- (a) tipping hall;
- (b) waste fuel bunker;
- (c) boiler hall;
- (d) flue gas treatment building;
- (e) turbine hall housing steam turbine and generator;
- (f) air cooled condenser;
- (g) stack and associated emissions monitoring system;
- (h) electricity substation;
- (i) stores and utilities;
- (j) administration office;
- (k) fire water tanks;
- (l) stores;
- (m) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No. 1A – Installation of grid connection for Work No 1.

Work No. 1B – Installation of steam connection for Work No 1.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 1C - Alteration of existing private access road to construct, use and maintain Work No 1.

Work No 1D - Creation of a temporary construction compound and laydown area for the construction of Work No 1.

Work No 1E - Construction and operation of a surface water outfall for Work No 1.

In connection with and in addition to Work No. 1 to the extent that it does not otherwise form part of that work, further associated development including—

- (n) pipe racks and pipe runs;
- (o) external lighting;
- (p) fencing, boundary treatment and other means of enclosure;
- (q) signage;
- (r) CCTV and other security measures;
- (s) surface and foul water drainage facilities;
- (t) potable water supply;

- (u) new telecommunications and utilities apparatus and connections;
- (v) hard and soft landscaping;
- (w) biodiversity enhancement measures;
- (x) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;
- (y) works for the protection of buildings and land affected by the authorised development;
- (z) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections;
- (aa) establishment of temporary construction compounds, vehicle parking areas, materials storage and laydown areas, construction related buildings, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities;

and, to the extent that it does not form part of such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

Interpretation

19.—(1) In this Schedule—

“approved Landscape Masterplan” means the K3 Generating Station approved Landscape Masterplan listed in Part 2 of Schedule 2;

“approved plans” means any approved plans or other plans, details, schemes or other documents which require approval by the relevant planning authority pursuant to any requirement or which are already approved and listed in Part 2 of Schedule 2;

“bank holiday” is a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

“commencement” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), other than permitted preliminary works, comprised in or carried out for the purposes of the authorised development; and “commence and other cognate expressions are to be construed accordingly;

“construction site” means the Order land during the construction of the authorised development;

“Kemsley Paper Mill” means the paper mill on the land immediately adjacent to the Order land at Sittingbourne, Kent operated by DS Smith Limited;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

“permitted preliminary works” means site clearance work, survey work, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements and the provision of site security, and archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the diversion and laying of services, provided that no permitted preliminary works will give rise to any materially new or materially different effects from those assessed in the environmental statement;

“rail and water transportation strategy” means the rail and water transportation strategy certified by the Secretary of State under article 16.

(2) A reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication in writing.

(3) A reference in this Schedule to details, a method statement, a plan, a programme, a scheme or any other document approved by the planning authority is a reference to that document including any amendments subsequently approved by the relevant planning authority.

PART 1 REQUIREMENTS

Commencement of the authorised development

20. The authorised development must commence within five years of the date on which this Order comes into force.

Notice of commissioning

21.—(1) Notice of commencement of commissioning of Work No 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

(2) Notice of completion of commissioning of Work No 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

Decommissioning

22.—(1) Within six months after it notifies the relevant planning authority that it intends to decommission the K3 Generating Station, the undertaker must submit to the relevant planning authority for its approval a written decommissioning environmental management plan for that generating station.

(2) Decommissioning works must not be carried out until the relevant planning authority has approved the scheme.

(3) The decommissioning environmental management plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) all measures necessary for the protection from the potential environmental effects pursuant to decommissioning;
- (e) any restoration works to restore the Order land to a condition agreed with the relevant planning authority;
- (f) the phasing of any restoration works;
- (g) a timetable for the implementation of the scheme.

(4) The undertaker must implement the scheme as approved and is responsible for the costs of the decommissioning works.

Fuel storage

23.—(1) All fuels, oils and other liquids with the potential to contaminate the Order land shall be stored in a secure bonded area in order to prevent any accidental or unauthorised discharge to the ground.

(2) The area for storage shall not drain to any surface water system.

(3) Where it is proposed to store more than 200 litres of any type of oil must be stored in accordance with the provisions of the Control of Pollution (Oil Storage) (England) Regulations 2001(a).

(4) Where a drum or barrel has a capacity less than 200 litres a drip tray capable of retaining 25% of the maximum capacity of the drum or barrel may be used in lieu of storing the drum or barrel in the secure bonded area.

Rail and water transportation strategy

24. The K3 Generating Station must be operated in accordance with the approved rail and water transportation strategy.

(a) S.I. 2001/2954.

Amendments to approved plans, etc.

25.—(1) With respect to any approved plans, the undertaker may submit to the relevant planning authority for approval any amendments to the approved plans and following any such approval by the relevant planning authority the approved plans are to be taken to include the amendments approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 14 below must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

Works in the vicinity of gas apparatus

26.—(1) No work involving excavations shall take place within 3 metres of gas apparatus belonging to Southern Gas Networks PLC unless the undertaker has first obtained written consent from Southern Gas Networks PLC for those works to proceed.

(2) The undertaker shall provide such information as Southern Gas Networks PLC may reasonably require in order for it to respond to a request for consent under sub-paragraph (1).

Approved details

27. The authorised development must be carried out in accordance with the K3 Generation Station approved plans and documents as listed in Part 2 of this Schedule.

Operational traffic and travel plans

28.—(1) The number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed 348 movements per day until the following have been submitted to and, after consultation with the relevant highway authority, approved by the relevant planning authority:

- (a) a written operational traffic routing and management plan; and,
- (b) a written travel plan for operational staff.

(2) The plan submitted and approved under sub-paragraph (1)(a) must be in accordance with the draft K3 operational traffic routing and management plan certified by the Secretary of State under article 16.

(3) The plan submitted and approved under sub-paragraph (1)(b) must be in accordance with the draft K3 travel plan certified by the Secretary of State under article 16.

(4) The plans referred to in sub-paragraphs (1)(a) and (1)(b) must be implemented as approved.

(5) The total maximum number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed a combined total of 416 movements per day subject to any prior written variation as approved by the relevant planning authority

(6) Sub-paragraphs (1) to (5) do not apply to waste deliveries originating from and returning to the railway depot at Ridham Docks accessing and egressing the K3 Generating Station by the use of Ridham Dock Road.

Trees

29.—(1) All trees and shrubs planted under the approved Landscape Masterplan shall be maintained for a period of 5 years.

(2) Any trees or shrubs that either die, are lost, damaged or become diseased during this 5 year period shall be replaced with a tree or shrub of the same species within the next available planting season.

Surface water drainage

30. All surface water drainage from the authorised development discharging to a local water course shall be attenuated for a 1:100 year return storm with a limited discharge of 7 litres per second per hectare or the equivalent run off from a greenfield site for a 1:2 storm.

Combined heat and power

31.—(1) Within 12 months of ceasing to supply heat and/or power to the Kemsley Paper Mill, the undertaker must submit to the relevant planning authority for its approval a strategy (“the CHP strategy”).

(2) The CHP strategy submitted and approved must—

- (a) consider the opportunities that reasonably exist at the time of submission for the export of heat and/or power from the K3 Generating Station to other users; and
- (b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the K3 Generating Station to other users.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP strategy.

Part 2

K3 GENERATING STATION APPROVED PLANS AND DOCUMENTS

<i>(1)</i> <i>Title</i>	<i>(2)</i> <i>Reference</i>	<i>(3)</i> <i>Revision</i>
Environmental Statement	March 2010	
ES Addendum (Air Quality)	June 2013	
ES Chapter 10 – Hydrology and Flood Risk – Supplementary Report	May 2017	
ES Addendum	May 2018	
Design and Access Statement	March 2010	
Surface Water Management and Foul Drainage Design Philosophy	December 2016	
Ecological Mitigation and Management Plan	JPP1804-MP-001d	July 2013
Flood Risk Assessment	May 2019	
Proposed (Permitted) Site Location Plan	16315/A0/P/0060	Rev N
Proposed Site Layout	16315/A1/P/0100	Rev U
Proposed Building Layout	16315/A0/P/0105	Rev L
Boundary Treatment	16315/A0/P/0106	Rev R
South East Elevation	16315/A1/P/0110	Rev U
North East Elevation	16315/A1/P/0111	Rev T
South West Elevation	16315/A1/P/0112	Rev U
North West Elevation	16315/A1/P/0113	Rev T
Proposed Structure for Air Cooled Condenser (URC) Elevations	16315/A1/P/0121	Rev N
Main Building – Proposed South East Elevation	16315/A0/P/0125	Rev K

Main Building – Proposed North East Elevation	16315/A1/P/0126	Rev K
Main Building – Proposed South West Elevation	16315/A1/P/0127	Rev L
Main Building – Proposed North West Elevation	16315/A0/P/0128	Rev K
Site Layout and Access	16315/A1/P/0160	Rev K
Typical Office and Staff Amenities Building (UYA) Floor Plans	16315/A1/P/0171	Rev H
Proposed Gatehouse Floor Plan	16315/A2/P/0172	Rev L
Site Sections	16315/A0/0250	Rev J
Proposed Drainage Layout	16315/A0/0301	Rev J
Proposed Levels Site Plan	16315/A1/0600	Rev H
Illustrative Visual 1 of 7	16315/P/0150	Rev R
Illustrative Visual 2 of 7	16315/P/0151	Rev P
Illustrative Visual 3 of 7	16315/P/0152	Rev O
Illustrative Visual 4 of 7	16315/P/0153	Rev Q
Illustrative Visual 5 of 7	16315/P/0154	Rev O
Illustrative Visual 6 of 7	16315/P/0155	Rev O
Illustrative Visual 7 of 7	16315/P/0156	Rev R
Landscape Masterplan	16315/A1/4.21	Rev M
Fuel Bunker Level +2.0000m	16315/A1/P/0220	Rev D
Fuel Bunker Level +20.000m and Level +36.000m	16315/A1/P/0221	Rev E
Fuel Bunker Section A-A	16315/A1/P/0222	Rev C
Fuel Bunker Section B-B	16315/A0/P/0223	Rev C
Tipping Hall Layout Level +2.000m	16315/A1/P/0201	Rev E
Tipping Hall Section A-A	16315/A1/P/0202	Rev D
Overall Roof Layout Comparison Drawing	16315/A1/P/0200	Rev H
Lighting Discharges Report	20020117LXI0019	Rev C
External Lighting Technical Submission	20020117LXJ0922	Rev I
External Lighting Drawing	20020117LXG0907	Rev H
K3 External Lighting Strategy	ECO00047 Fig1	-
Access Road - Proposed	9163-0135-01-JNY9060	Rev 01
Proposed Internal Access Layout		
K3 Employment Strategy	March 2012	

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Application of this Schedule

32. This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as “the authority”) for an approval, consent or agreement required by any of the requirements.

Decision Period

33.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In sub-paragraph (1), “the decision period” means—

- (a) where the authority does not give written notice under paragraph 34(1) or (2) requiring further information, the period of eight weeks from the later of—
 - (i) the day immediately following the day on which the authority receives the application, and
 - (ii) the day on which the authority receives the fee payable under paragraph 4; or
- (b) where the authority gives written notice under paragraph 34(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or
- (c) such longer period as may be agreed in writing by the undertaker and the authority.

Further information

34.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a “consultee”) in relation to the application—

- (a) the authority must consult the consultee within five business days from the day on which it receives the application;
- (b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and
- (c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under sub-paragraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with sub-paragraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

Fees

35.—(1) The undertaker must pay the authority a fee of £116, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under sub-paragraph (1) to the undertaker, within the relevant period, if it—

- (a) rejects the application as being invalidly made;
- (b) fails to give the written notice required by paragraph 33(1).

(3) Sub-paragraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In sub-paragraphs (2) and (3) “the relevant period” means the period of eight weeks from, as the case may be—

- (a) the day on which the authority rejects the application as being invalidly made;
- (b) the day after the day on which the decision period expires.

Appeal to the Secretary of State (procedure)

36.—(1) The undertaker may appeal to the Secretary of State against—

- (a) the authority’s refusal of an application;
- (b) the authority’s grant subject to conditions of an application;
- (c) the authority’s failure to give the written notice required by paragraph 33(1);
- (d) a written notice given by the authority under paragraph 34(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

- (a) its grounds of appeal;
- (b) a copy of the application submitted to the authority;
- (c) any supporting documentation which it wishes to provide.

(3) In sub-paragraph (2), “the relevant day” means—

- (a) in the case of an appeal under sub-paragraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;
- (b) in the case of an appeal under sub-paragraph (1)(c), the day after the day on which the decision period expires;
- (c) in the case of an appeal under sub-paragraph (1)(d), the day on which the undertaker receives the authority’s notice.

(4) At the same time as it sends the documents mentioned in sub-paragraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) As soon as reasonably practicable following receipt of the documents mentioned in sub-paragraph (2), the Secretary of State must—

- (a) appoint a person (referred to in this Schedule as “the appointed person”) to determine the appeal on his behalf;
- (b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person’s address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under sub-paragraph (5)(b), the authority and any consultee—

- (a) may submit written representations in respect of the appeal to the appointed person; and
- (b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.

(7) Within 10 business days from the last day on which representations are submitted to the appointed person under sub-paragraph (6), any party—

- (a) may make further representations to the appointed person in response to the representations of another party; and
- (b) must, at the same time, send a copy of any such further representations to each other party.

Appeal to the Secretary of State (powers of the appointed person)

37.—(1) The appointed person may—

- (a) allow or dismiss the appeal;
- (b) reverse or vary any part of the authority's decision, irrespective of whether the appeal relates to that part;
- (c) make a decision on the application as if it had been made to the appointed person in the first instance.

(2) The appointed person—

- (a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;
- (b) if he gives such a notice, must—
 - (i) at the same time send a copy of it to each other party, and
 - (ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.

(3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

Appeal to the Secretary of State (supplementary)

38.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to sub-paragraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under sub-paragraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for WTI/EFW Holdings Ltd (company number 07593865) to construct, operate and maintain the K3 Generating Station with a gross installed capacity of up to 75MW.

The Order also authorises associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in this Order and certified in accordance with article 16 (certification of plans, etc) of this Order may be inspected free of charge during working hours at the offices of Kent County Council, Sessions House, County Hall, Maidstone, Kent ME14 1XQ.

APPENDIX E: THE ALTERNATIVE RECOMMENDED DCO

2018 No.

INFRASTRUCTURE PLANNING

**The Wheelabrator Kemsley K3 Generating Station and
Wheelabrator Kemsley North Waste-to-Energy Facility Order
20[]**

Made - - - - ***

Coming into force - - ***

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SCHEDULE 3 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)^(b);

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010^(c);

The single appointed person, having considered the application with the documents that accompanied it and the representations made and not withdrawn, has submitted a report with a recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the single appointed person, has decided the application and determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make substantial changes to the proposals;

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order:

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the Wheelabrator Kemsley (K3 Generating Station) and (WKN Waste-to-Energy Facility) Order and shall come into force on [] 201[].

(a) S.I. 2009/2264 as amended by S.I. 2013/522.

(b) 2008 c.29.

(c) S.I. 2010/103 as amended by S.I. 2012/635.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1980 Act” means the Highways Act 1980(b);

“the 1989 Act” means the Electricity Act 1989(c);

“the 1990 Act” means the Town and Country Planning Act 1990(d);

“the 1991 Act” means the New Roads and Street Works Act 1991(e);

“the 2008 Act” means the New Roads and Street Works Act 1991(f);

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(g);

“authorised development” means the development and associated development described in Schedule 1 (authorised development), which is development within the meaning of section 32 of the 2008 Act;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“commissioning” means the process of testing all systems and components of each of Work No 1 and Work No 2 (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and “commission” and other cognate expressions are to be construed accordingly;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on 11 September 2019 including all appendices thereto;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“K3 Generating Station” means a generating station having a capacity of up to 75MW which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 4 of Schedule 2;

“K3 Sustainable Energy Plant Planning Permission” means planning permission SW/19/501345 granted on 14 June 2019 by Kent County Council pursuant to section 73 of the 1990 Act permitting the construction and operation of a generating station having a capacity of up to 49.9MW;

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“maintain” includes (i) inspect, repair, adjust, alter, refurbish, improve, the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and “maintenance” is construed accordingly;

“MW” means megawatts of electrical output;

-
- (a) 1961 c.33.
 - (b) 1980 c.66.
 - (c) 1989 c.29.
 - (d) 1990 c.8.
 - (e) 1991 c.22.
 - (f) 2008 c.29.
 - (g) S.I. 2016/1154.

“operational use” of the developments comprising the authorised development means operational use for the purposes for which they are authorised under this Order but not including commissioning;

“Order land” means the land shown on the land plan within the Order limits and described in the book of reference;

“Order limits” means the limits shown on the works plan within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in Section 7 of the Acquisition of Land Act 1981(a);

“Project K3” means Work No 1 and any other authorised development associated with that work;

“Project WKN” means Work No 2 and any other authorised development associated with those works;

“relevant highway authority” means the highway authority for the area in which the relevant highway to which the relevant provision of this Order applies is situated;

“relevant planning authority” means the local authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“statement undertaker” means any person falling within the meaning set out in section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways (subject to confirmation from the relevant highway authority), and includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means, subject to article 7 (Benefit of the Order) WTI/EFW Holdings Ltd. (company number 07593865);

“watercourse” includes all rivers, streams, ditches, drains, creeks, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“works plans” means the plans certified as the works plans by the Secretary of State for the purposes of the Order;

“WKN Waste-to-Energy Facility” means the Wheelabrator Kemsley North Waste-to-Energy Facility, a generating station having a generating capacity of up to 42MW which is treated as development for which development consent is required pursuant to a direction by the Secretary of State for Business, Energy and Industrial Strategy under section 35 of the 2008 Act dated 27 June 2018;

(2) A reference in this Order to a “grid reference” is a reference to the map co-ordinates on the National Grid used by the Ordnance Survey.

(3) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to in Requirement 14 (Detailed Design Approval) of Schedule 2.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by Schedule 1 of this Order.

(5) The expression “includes” shall be construed without limitation.

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 c.34. There are other amendments to the 1981 Act which are not relevant to this Order.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2 the undertaker is granted development consent for the authorised development.

Effect of the Order on the K3 Sustainable Energy Plan Planning Permission

4.—(1) The undertaker may not start operational use of the K3 Generating Station under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate the K3 Sustainable Energy Plant under the K3 Generating Station Planning Permission.

(2) Upon service of the notice under paragraph (1) the K3 Sustainable Energy Plant Planning Permission will cease to have effect.

Authorisation of the operation of the authorised development

5.—(1) The undertaker is authorised to operate the generating stations forming part of the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

Power to maintain authorised development

6. The undertaker may, at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Benefit of the Order

7.—(1) Except where paragraph (4) applies, the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where—

- (a) in the case of Project K3 the transfer or grant is made to K3 CHP Limited (Company number 09240062);
- (b) in the case of Project WKN the transfer or grant is made to Kemsley North Limited (Company number 11699563); or
- (c) the transfer or grant is made to a licence holder within the meaning of section 6(1) of the Electricity Act 1989.

PART 3

SUPPLEMENTARY POWERS

Access to works

8. The undertaker may with the approval of the relevant highway authority, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Discharge of water

9.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior written consent of the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

Authority to survey and investigate the land

10.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2016/1154.

(c) 1991 c.57.

- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) A consent for the purpose of sub-paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.

(6) As soon as practicable following the exercise of any powers under paragraph (1), any vehicles, apparatus or equipment must be removed and the land shall be restored to the reasonable satisfaction of the owners of the land.

(7) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of Human Remains

11.—(1) Before the undertaker carries out any development or works which it has reason to think will or may disturb any human remains in the Order land it must remove those remains, or cause them to be removed, from the Order land in accordance with the following provisions of this article.

(2) Before any such remains are removed the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of a deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of his or her intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4) and the remains in question can be identified, that person may cause the remains to be—

- (a) removed and re-interred in a burial ground or cemetery in which burials may legally take place, or
- (b) removed to, and cremated in, a crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of a deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land, or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days, or
- (c) within 56 days after an order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains, or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article the undertaker must send—

- (a) a certificate of re-interment or cremation to the Registrar General, giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) to the relevant planning authority.

(11) The removal of the remains of a deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

(a) 1857 c.81.

Felling or lopping of trees

12.—(1) The undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

13.—(1) Paragraph (2) applies where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

(2) No order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—
 - (i) in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(**b**);
 - (ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site); or
- (b) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974(**c**) does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised development.

Application of landlord and tenant law

14.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

(c) 1974 c.40.

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict enforcement (whether by action for damages or otherwise) by any part to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

15. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Certification of plans etc

16. The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (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 and 9812-0060-007 dated March 2020);
- (d) the environmental statement (dated September 2019);
- (e) the K3 Generating Station approved plans as follows:
 - (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;
- (f) the K3 rail and water transportation strategy (dated September 2019);
- (g) the WKN parameter plan (drawing number 9812-0031-10 dated March 2020);
- (h) the draft WKN construction traffic management plan – Highways England version (dated 7 August 2020);
- (i) the draft WKN travel plan - Highways England version (dated 7 August 2020);
- (j) the WKN rail and water transportation strategy dated September 2019;
- (k) the WKN draft construction environmental management plan dated May 2020;
- (l) the Design and Access Statement dated September 2019;
- (m) the draft ecological management and enhancement plan;
- (n) the draft K3 operational traffic routing and management plan; and
- (o) the draft K3 travel plan – Highways England version (dated 7 August 2020)

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

17. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in writing by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Procedure in relation to certain approvals

18.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld.

(2) Schedule 3 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to Schedule 2 (requirements).

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

*Signed
Title*

Date

Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Kent—

Project K3

Work No 1- An electricity generating station (the K3 Generating Station) with a gross installed generating capacity of up to 75MW comprising the following works—

- (a) tipping hall;
- (b) waste fuel bunker;
- (c) boiler hall;
- (d) flue gas treatment building;
- (e) turbine hall housing steam turbine and generator;
- (f) air cooled condenser;
- (g) stack and associated emissions monitoring system;
- (h) electricity substation;
- (i) stores and utilities;
- (j) administration office;
- (k) fire water tanks;
- (l) stores;
- (m) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No. 1A – Installation of grid connection for Work No 1.

Work No. 1B – Installation of steam connection for Work No 1.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 1C - Alteration of existing private access road to construct, use and maintain Work No 1.

Work No 1D - Creation of a temporary construction compound and laydown area for the construction of Work No 1.

Work No 1E - Construction and operation of a surface water outfall for Work No 1.

Project WKN

Work No 2– An electricity generating station (the WKN Waste-to-Energy Facility) with a gross installed generating capacity of up to 42MW comprising the following works—

- (n) raised tipping hall (with demineralised water treatment plant beneath);
- (o) waste fuel bunker;
- (p) boiler hall;

- (q) flue gas treatment building;
- (r) turbine hall housing steam turbine and generator;
- (s) air cooled condenser;
- (t) stack and associated emissions monitoring system;
- (u) electricity substation;
- (v) stores and utilities;
- (w) administration office;
- (x) fire water tanks;
- (y) stores;
- (z) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No 3 – Installation of grid connection for Work No 2.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 4 - Alteration of existing private access road to construct, use and maintain Work No 2.

Work No 5 – Temporary construction or alteration of existing private haul road for the construction of Work No 2.

Work No 6 - Creation of a temporary construction compound and laydown area for the construction of Work No 2.

Work No 7 - Construction and operation of a new surface water outfall for Work No 2.

In connection with and in addition to Works Nos. 1, 2, 3, 4, 5, 6, and 7, to the extent that it does not otherwise form part of those works, further associated development including—

- (aa) pipe racks and pipe runs;
- (bb) external lighting;
- (cc) fencing, boundary treatment and other means of enclosure;
- (dd) signage;
- (ee) CCTV and other security measures;
- (ff) surface and foul water drainage facilities;
- (gg) potable water supply;
- (hh) new telecommunications and utilities apparatus and connections;
- (ii) hard and soft landscaping;
- (jj) biodiversity enhancement measures;
- (kk) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;
- (ll) works for the protection of buildings and land affected by the authorised development;
- (mm) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections;
- (nn) establishment of temporary construction compounds, vehicle parking areas, materials storage and laydown areas, construction related buildings, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities;

and, to the extent that it does not form part of such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

Interpretation

19.—(1) In this Schedule—

“approved Landscape Masterplan” means the K3 Generating Station approved Landscape Masterplan listed in Part 4 of Schedule 2;

“approved plans” means any approved plans or other plans, details, schemes or other documents which require approval by the relevant planning authority pursuant to any requirement or which are already approved and listed in Part 4 of Schedule 2;

“bank holiday” is a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

“commencement” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), other than permitted preliminary works, comprised in or carried out for the purposes of the authorised development; and “commence and other cognate expressions are to be construed accordingly;

“construction site” means the Order land during the construction of the authorised development;

“Kemsley Paper Mill” means the paper mill on the land immediately adjacent to the Order land at Sittingbourne, Kent operated by DS Smith Limited;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

“permitted preliminary works” means works within Work Nos 4, 5 and 6, site clearance work, survey work, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements and the provision of site security, and, subject to compliance with Requirement 20(1) of this Order, archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the diversion and laying of services, provided that no permitted preliminary works will give rise to any materially new or materially different effects from those assessed in the environmental statement;

“rail and water transportation strategy” means the relevant rail and water transportation strategy certified by the Secretary of State under article 16;

“WKN parameter plan” means the plan certified by the Secretary of State as the WKN parameter plan under article 16;

(2) A reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication in writing.

(3) A reference in this Schedule to details, a method statement, a plan, a programme, a scheme or any other document approved by the planning authority is a reference to that document including any amendments subsequently approved by the relevant planning authority.

PART 1

GENERAL REQUIREMENTS

Commencement of the authorised development

20. Each of Project K3 and Project WKN must commence within five years of the date on which this Order comes into force.

Notice of commissioning

21.—(1) Notice of commencement of commissioning of each of Work No 1 and Work No 2 must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

(2) Notice of completion of commissioning of each of Work No 1 and Work No 2 must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

Decommissioning

22.—(1) Within six months after it notifies the relevant planning authority that it intends to decommission either the K3 Generating Station or the WKN Waste-to-Energy Facility, the undertaker must submit to the relevant planning authority for its approval a written decommissioning environmental management plan for that generating station.

(2) Decommissioning works must not be carried out until the relevant planning authority has approved the scheme.

(3) The decommissioning environmental management plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) all measures necessary for the protection from the potential environmental effects pursuant to decommissioning;
- (e) any restoration works to restore the Order land to a condition agreed with the relevant planning authority;
- (f) the phasing of any restoration works;
- (g) a timetable for the implementation of the scheme.

(4) The undertaker must implement the scheme as approved and is responsible for the costs of the decommissioning works.

Fuel storage

23.—(1) All fuels, oils and other liquids with the potential to contaminate the Order land shall be stored in a secure bonded area in order to prevent any accidental or unauthorised discharge to the ground.

(2) The area for storage shall not drain to any surface water system.

(3) Where it is proposed to store more than 200 litres of any type of oil must be stored in accordance with the provisions of the Control of Pollution (Oil Storage) (England) Regulations 2001(a).

(a) S.I. 2001/2954.

(4) Where a drum or barrel has a capacity less than 200 litres a drip tray capable of retaining 25% of the maximum capacity of the drum or barrel may be used in lieu of storing the drum or barrel in the secure bonded area.

Rail and water transportation strategy

24. The K3 Generating Station and the WKN Waste-to-Energy Facility must be operated in accordance with the approved rail and water transportation strategy for that project.

Amendments to approved plans, etc.

25.—(1) With respect to any approved plans, the undertaker may submit to the relevant planning authority for approval any amendments to the approved plans and following any such approval by the relevant planning authority the approved plans are to be taken to include the amendments approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 14 below must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

Works in the vicinity of gas apparatus

26.—(1) No work involving excavations shall take place within 3 metres of gas apparatus belonging to Southern Gas Networks PLC unless the undertaker has first obtained written consent from Southern Gas Networks PLC for those works to proceed.

(2) The undertaker shall provide such information as Southern Gas Networks PLC may reasonably require in order for it to respond to a request for consent under sub-paragraph (1).

PART 2

PROJECT K3 REQUIREMENTS

Approved details

27. The Project K3 authorised development must be carried out in accordance with the K3 Generation Station approved plans and documents as listed in Part 4 of this Schedule.

Operational traffic and travel plans

28.—(1) The number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed 348 movements per day until the following have been submitted to and, after consultation with the relevant highway authority, approved by the relevant planning authority:

29. (a) a written operational traffic routing and management plan; and,

30. (b) a written travel plan for operational staff.

31. (2) The plan submitted and approved under sub-paragraph (1)(a) must be in accordance with the draft K3 operational traffic routing and management plan certified by the Secretary of State under article 16.

32. (3) The plan submitted and approved under sub-paragraph (1)(b) must be in accordance with the draft K3 travel plan certified by the Secretary of State under article 16.

33. (4) The plans referred to in sub-paragraphs (1)(a) and (1)(b) must be implemented as approved.

34. (5) The total maximum number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed a combined total of 416 movements per day subject to any prior written variation as approved by the relevant planning authority.

35. (6) Sub-paragraphs (1) and (5) do not apply to waste deliveries originating from and returning to the railway depot at Ridham Docks accessing and egressing the K3 Generating Station by the use of Ridham Dock Road.

Trees

36.—(1) All trees and shrubs planted under the approved Landscape Masterplan shall be maintained for a period of 5 years.

(2) Any trees or shrubs that either die, are lost, damaged or become diseased during this 5 year period shall be replaced with a tree or shrub of the same species within the next available planting season.

Surface water drainage

37. All surface water drainage from the Project K3 authorised development discharging to a local water course shall be attenuated for a 1:100 year return storm with a limited discharge of 7 litres per second per hectare or the equivalent run off from a greenfield site for a 1:2 storm.

Combined heat and power

38.—(1) Within 12 months of ceasing to supply heat and/or power to the Kemsley Paper Mill, the undertaker must submit to the relevant planning authority for its approval a strategy (“the CHP strategy”).

(2) The CHP strategy submitted and approved must—

- (a) consider the opportunities that reasonably exist at the time of submission for the export of heat and/or power from the K3 Generating Station to other users; and
- (b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the K3 Generating Station to other users.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP strategy.

PART 3

PROJECT WKN REQUIREMENTS

Detailed design approval

39.—(1) No part of Work No 2 may commence until written details of:

- (a) the siting, layout, scale and external appearance (including colours, materials, and surface finishes) of all permanent buildings and structures; and
- (b) the provision of electric vehicle charging points throughout the Project WKN authorised development;

have been submitted to and approved by the relevant planning authority.

(2) The details to be submitted for approval under sub-paragraph (1) must be in accordance with:

- (a) the noise mitigation measures referred to in chapter 7 (Noise and Vibration) of the environmental statement;
- (b) the lateral limits of deviation for each of the works comprising Work No 2 as shown on the WKN parameter plan;
- (c) the height parameters specified in table 1 below.

Table 1

<i>Building structure</i>	<i>or</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum height (metres)</i>	<i>Maximum height (metres)</i>
Tipping hall (Work No 2(a))		45	36	-	30
Waste fuel bunker (Work No 2(b))		35	36	-	44
Boiler hall (Work No 2(c))		50	36	-	58
Flue gas treatment plant (Work No 2(d))		45	35	-	44
Turbine hall (Work No 2(e))		40	25	-	30
Air-cooled condensers (Work No 2(f))		45	30	-	40
Stack (Work No 2(g))		-	4	90	99
Electricity substation (Work No 2(h))		45	30	-	15
Stores & Utilities (Work No 2(i))		20	10	-	15
Administration office (Work No 2(j))		30	15	-	30
Fire water tanks (Work No 2(k))		-	7.2	-	15
Stores (Work No 2(l))		40	35	-	15
Supporting infrastructure (Work No 2(m))		-	-	-	10

(3) The Project WKN authorised development must be carried out in accordance with the approved details.

Provision of landscaping

40.—(1) No part of Work No 2 may be commenced until a written detailed landscaping scheme has been submitted to and approved by the relevant planning authority.

(2) Each scheme submitted and approved must include details of all proposed hard and soft landscaping works, including—

- (a) the treatment of hard surfaced areas;
- (b) earthworks, including the proposed levels and contours of landscaped areas;
- (c) the seed mix for areas of grassland;

- (d) shrub planting, including the height, size and species and the density of distribution;
- (e) the management of existing and new areas of grassland and tree and shrub planting;
- (f) an implementation timetable for the phasing and completion of the landscaping works.

(3) Each scheme submitted and approved must be in accordance with the ecological management and enhancement plan approved under requirement 46.

Implementation and maintenance of landscaping

41.—(1) All landscaping works must be carried out in accordance with the relevant landscaping scheme (including the implementation timetable) approved under requirement 40.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

(3) Any area of grassland planted as part of an approved landscaping scheme that, within a period of five years after planting, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be reseeded in the first available planting season with the same seed mix as that originally planted.

(4) The undertaker must implement and maintain the approved landscaping scheme during the construction, operation and decommissioning of the WKN Waste-to-Energy Facility.

Fencing and other means of enclosure

42.—(1) No part of Work No 2 may be commenced until written details of all proposed means of enclosure have been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the Project WKN authorised development must remain securely fenced at all times during construction of the Project WKN authorised development.

(3) Any approved temporary means of enclosure must be removed within 12 months after the Project WKN authorised development is brought into commercial use.

(4) The Project WKN authorised development must not be brought into commercial use until any approved permanent means of enclosure has been completed.

(5) The Project WKN authorised development must be carried out in accordance with the approved details.

Surface water drainage

43.—(1) No part of the surface and foul water drainage systems may commence until written details have been submitted to and approved by the relevant planning authority.

(2) The details submitted and approved must be in accordance with the principles and strategy set out in chapter 10 of the environmental statement and its relevant appendices including:

- (a) surface water drainage strategy;
- (b) drainage maintenance plan;
- (c) flood management plan;
- (d) emergency spillage management plan;
- (e) water quality monitoring plan;
- (f) flood evacuation plan.

(3) The surface and foul water drainage systems must be constructed in accordance with the relevant approved details.

(4) The Project WKN authorised development must not be commissioned until the surface and foul water drainage systems have been constructed.

Land contamination and groundwater

44.—(1) No Project WKN authorised development may be commenced, and no archaeological investigations, investigations for the purpose of assessing ground conditions or remedial work in respect of contamination or other adverse ground conditions may take place, until details of capping layer and ground gas protection measures for that part, or for those activities to the extent they may be required, have been submitted to and approved by the relevant planning authority.

(2) Construction works for the Project WKN authorised development must be carried out in accordance with the approved measures.

(3) If contamination not previously identified is found during the construction of the Project WKN authorised development, no further works for the authorised development may be carried out in the affected area until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contamination is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(4) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph (3) must be carried out in accordance with the approved scheme.

Archaeology

45.—(1) No Project WKN authorised development shall commence until a written scheme for the investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority.

(2) The scheme shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found. The scheme should also detail measures for post-field work processing, assessment, analysis and reporting of the results of archaeological work and the deposition of the archive.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme unless otherwise agreed in writing with the relevant planning authority.

Ecological management and enhancement plan

46.—(1) The Project WKN authorised development must not be commenced until a written ecological management and enhancement plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must—

- (a) be in accordance with the draft ecological management and enhancement plan certified by the Secretary of State under article 16; and
- (b) include an implementation timetable and details relating to maintenance and management.

(3) The plan must be implemented as approved.

Construction environmental management plan

47.—(1) The Project WKN authorised development must not commence until a written construction environmental management plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must—

- (a) be in accordance with the draft construction environmental management plan certified by the Secretary of State under article 16;
- (b) include measures for the protection of any protected species found to be present on the Order land during construction;
- (c) include the mitigation measures included in chapter 14 of the environmental statement;
- (d) identify the consideration given to greenhouse gas emissions reduction measures during construction referred to in chapter 6 of the environmental statement and the measures that have been included;
- (e) incorporate a scheme for handling complaints received from local residents, business and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.

(3) In sub-paragraph (2)(b), a “protected species” means a species protected under the Wildlife and Countryside Act 1981(a) or the Conservation of Habitats and Species Regulations 2017(b).

(4) All construction works associated with the Project WKN authorised development must be carried out in accordance with the approved construction environmental management plan.

External lighting

48.—(1) No part of the external lighting may be commenced until a scheme for all permanent external lighting to be installed during the operation of the Project WKN authorised development has been submitted to and approved by the relevant planning authority.

(2) The details submitted and approved must be in accordance with the principles and strategy set out in chapter 11 of the environmental statement and be designed to avoid any consequential adverse impacts on biodiversity.

(3) The external lighting must be constructed in accordance with the relevant approved details.

(4) The Project WKN authorised development must not be brought into operational use until the external lighting has been constructed in accordance with an approved external lighting scheme.

Construction traffic management plan

49.—(1) The Project WKN authorised development must not commence until a written construction traffic routing and management plan has been submitted to and, after consultation with the relevant highway authorities, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 4 of the environmental statement and the draft construction traffic management plan contained in Appendix 4.2 to the environmental statement.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;
- (c) the construction programme;
- (d) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers’ plant and equipment and any temporary removal of street furniture;

(a) 1981 c. 69.

(b) S.I. 2017/1012.

- (e) measures to promote the use of sustainable transport modes by construction personnel in order to minimise the overall traffic impact and promote sustainable transport modes;
- (f) details of parking for construction personnel within the construction site; and
- (g) details of a co-ordinator to be appointed to manage and monitor the implementation of the plan, including date of appointment, responsibilities and hours of work.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved.

Operational traffic routing and management plan

50.—(1) Work No 2 must not be commissioned until a written operational traffic routing and management plan has been submitted to and, after consultation with the relevant highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 4 of the environmental statement and the operational travel plan framework contained in Appendix 4.3 to the environmental statement.

(3) The plan submitted and approved must include details of the routes to be used for the transport of fuel, consumables and combustion by-products to and from the authorised development.

(4) The plan must be implemented as approved.

Travel plan – operational staff

51.—(1) Work No 2 must not be brought into commercial use until a written travel plan for operational staff has been submitted to and, after consultation with the relevant highway authorities, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 4 of the environmental statement and the operational travel plan framework contained in Appendix 4.3 to the environmental statement.

(3) The plan submitted and approved must include—

- (a) details of the travel plan budget;
- (b) measures to promote the use of sustainable transport modes to and from the WKN Waste-to-Energy Facility by operational staff;
- (c) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (d) a monitoring and review regime.

(4) The approved plan must be implemented within six months after Work No 2 is brought into commercial use and must be maintained throughout the operation of Work No 2.

Construction hours

52.—(1) With the exception of construction using the concrete slip-forming method, construction using constant pour methods for concrete laying and internal process works relating to mechanical and/or electrical equipment installation, construction activities shall only take place between 07:00 and 19:00 hours Monday to Friday inclusive and 07:00 and 16:00 hours on Saturday and Sunday with no construction activities to take place on Bank or Public Holidays.

Piling and penetrative foundation design

53.—(1) No part of Work No 2 may commence until a piling risk assessment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) Construction works for the Project WKN authorised development must be carried out in accordance with the approved piling method and agreed risk management for that method as set out in the approved piling risk assessment.

(3) All piling and penetrative foundation works must be carried out in accordance with the relevant approved method statement.

54.—(1) No impact piling associated with Work No 2 shall take place in the months of January, February, or between April and August inclusive.

(2) No more than ten days of impact piling associated with the Project WKN authorised development, whether consecutive or otherwise, shall take place in the months of November and December.

Employment, skills and training program

55.—(1) Work No 2 may not commence until a written plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to and approved by the relevant planning authority in consultation with the Economic Development Officer at Swale Borough Council.

(2) The approved plan must be implemented and maintained during the construction and operation of Work No.2.

Part 4

K3 GENERATING STATION APPROVED PLANS AND DOCUMENTS

<i>(1)</i> <i>Title</i>	<i>(2)</i> <i>Reference</i>	<i>(3)</i> <i>Revision</i>
Environmental Statement	March 2010	
ES Addendum (Air Quality)	June 2013	
ES Chapter 10 – Hydrology and Flood Risk – Supplementary Report	May 2017	
ES Addendum	May 2018	
Design and Access Statement	March 2010	
Surface Water Management and Foul Drainage Design Philosophy	December 2016	
Ecological Mitigation and Management Plan	JPP1804-MP-001d	July 2013
Flood Risk Assessment	May 2019	
Proposed (Permitted) Site Location Plan	16315/A0/P/0060	Rev N
Proposed Site Layout	16315/A1/P/0100	Rev U
Proposed Building Layout	16315/A0/P/0105	Rev L
Boundary Treatment	16315/A0/P/0106	Rev R
South East Elevation	16315/A1/P/0110	Rev U
North East Elevation	16315/A1/P/0111	Rev T
South West Elevation	16315/A1/P/0112	Rev U
North West Elevation	16315/A1/P/0113	Rev T

Proposed Structure for Air Cooled Condenser (URC) Elevations	16315/A1/P/0121	Rev N
Main Building – Proposed South East Elevation	16315/A0/P/0125	Rev K
Main Building – Proposed North East Elevation	16315/A1/P/0126	Rev K
Main Building – Proposed South West Elevation	16315/A1/P/0127	Rev L
Main Building – Proposed North West Elevation	16315/A0/P/0128	Rev K
Site Layout and Access	16315/A1/P/0160	Rev K
Typical Office and Staff Amenities Building (UYA) Floor Plans	16315/A1/P/0171	Rev H
Proposed Gatehouse Floor Plan	16315/A2/P/0172	Rev L
Site Sections	16315/A0/0250	Rev J
Proposed Drainage Layout	16315/A0/0301	Rev J
Proposed Levels Site Plan	16315/A1/0600	Rev H
Illustrative Visual 1 of 7	16315/P/0150	Rev R
Illustrative Visual 2 of 7	16315/P/0151	Rev P
Illustrative Visual 3 of 7	16315/P/0152	Rev O
Illustrative Visual 4 of 7	16315/P/0153	Rev Q
Illustrative Visual 5 of 7	16315/P/0154	Rev O
Illustrative Visual 6 of 7	16315/P/0155	Rev O
Illustrative Visual 7 of 7	16315/P/0156	Rev R
Landscape Masterplan	16315/A1/4.21	Rev M
Fuel Bunker Level +2.0000m	16315/A1/P/0220	Rev D
Fuel Bunker Level +20.000m and Level +36.000m	16315/A1/P/0221	Rev E
Fuel Bunker Section A-A	16315/A1/P/0222	Rev C
Fuel Bunker Section B-B	16315/A0/P/0223	Rev C
Tipping Hall Layout Level +2.000m	16315/A1/P/0201	Rev E
Tipping Hall Section A-A	16315/A1/P/0202	Rev D
Overall Roof Layout Comparison Drawing	16315/A1/P/0200	Rev H
Lighting Discharges Report	20020117LXI0019	Rev C
External Lighting Technical Submission	20020117LXJ0922	Rev I
External Lighting Drawing	20020117LXG0907	Rev H
K3 External Lighting Strategy	ECO00047 Fig1	-
Access Road - Proposed Proposed Internal Access Layout	9163-0135-01-JNY9060	Rev 01
K3 Employment Strategy	March 2012	

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Application of this Schedule

56. This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as “the authority”) for an approval, consent or agreement required by any of the requirements.

Decision Period

57.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In sub-paragraph (1), “the decision period” means—

- (a) where the authority does not give written notice under paragraph 58(1) or (2) requiring further information, the period of eight weeks from the later of—
 - (i) the day immediately following the day on which the authority receives the application, and
 - (ii) the day on which the authority receives the fee payable under paragraph 4; or
- (b) where the authority gives written notice under paragraph 58(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or
- (c) such longer period as may be agreed in writing by the undertaker and the authority.

Further information

58.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a “consultee”) in relation to the application—

- (a) the authority must consult the consultee within five business days from the day on which it receives the application;
- (b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and
- (c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under sub-paragraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with sub-paragraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

Fees

59.—(1) The undertaker must pay the authority a fee of £116, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under sub-paragraph (1) to the undertaker, within the relevant period, if it—

- (a) rejects the application as being invalidly made;
- (b) fails to give the written notice required by paragraph 57(1).

(3) Sub-paragraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In sub-paragraphs (2) and (3) “the relevant period” means the period of eight weeks from, as the case may be—

- (a) the day on which the authority rejects the application as being invalidly made;
- (b) the day after the day on which the decision period expires.

Appeal to the Secretary of State (procedure)

60.—(1) The undertaker may appeal to the Secretary of State against—

- (a) the authority’s refusal of an application;
- (b) the authority’s grant subject to conditions of an application;
- (c) the authority’s failure to give the written notice required by paragraph 57(1);
- (d) a written notice given by the authority under paragraph 58(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

- (a) its grounds of appeal;
- (b) a copy of the application submitted to the authority;
- (c) any supporting documentation which it wishes to provide.

(3) In sub-paragraph (2), “the relevant day” means—

- (a) in the case of an appeal under sub-paragraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;
- (b) in the case of an appeal under sub-paragraph (1)(c), the day after the day on which the decision period expires;
- (c) in the case of an appeal under sub-paragraph (1)(d), the day on which the undertaker receives the authority’s notice.

(4) At the same time as it sends the documents mentioned in sub-paragraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) As soon as reasonably practicable following receipt of the documents mentioned in sub-paragraph (2), the Secretary of State must—

- (a) appoint a person (referred to in this Schedule as “the appointed person”) to determine the appeal on his behalf;
- (b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person’s address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under sub-paragraph (5)(b), the authority and any consultee—

- (a) may submit written representations in respect of the appeal to the appointed person; and
- (b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.

(7) Within 10 business days from the last day on which representations are submitted to the appointed person under sub-paragraph (6), any party—

- (a) may make further representations to the appointed person in response to the representations of another party; and
- (b) must, at the same time, send a copy of any such further representations to each other party.

Appeal to the Secretary of State (powers of the appointed person)

61.—(1) The appointed person may—

- (a) allow or dismiss the appeal;
- (b) reverse or vary any part of the authority's decision, irrespective of whether the appeal relates to that part;
- (c) make a decision on the application as if it had been made to the appointed person in the first instance.

(2) The appointed person—

- (a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;
- (b) if he gives such a notice, must—
 - (i) at the same time send a copy of it to each other party, and
 - (ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.

(3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

Appeal to the Secretary of State (supplementary)

62.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to sub-paragraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under sub-paragraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for WTI/EFW Holdings Ltd (company number 07593865) to construct, operate and maintain the K3 Generating Station with a gross installed capacity of up to 75MW, and to construct, operate and maintain the WKN Waste-to-Energy Facility with a gross installed capacity of up to 42MW.

The Order also authorises for associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in this Order and certified in accordance with article 16 (certification of plans, etc) of this Order may be inspected free of charge during working hours at the offices of Kent County Council, Sessions House, County Hall, Maidstone, Kent ME14 1XQ.