



Statement of Common Ground between the Applicant and the Environment Agency

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

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Client:	Wheelabrator Technologies Inc.
Project:	Wheelabrator Kemsley (K3 Generating Station) and Wheelabrator Kemsley North (WKN) Waste to Energy facility Development Consent Order
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Author:	Tim Spicer BSc MSc PIEMA (For and on behalf of Wheelabrator Technologies Inc.)

Contents

1	INTRODUCTION.....	2
1.2	The Application Site(s)	3
1.3	The Proposed Development.....	3
1.4	The role of the Environment Agency.....	4
2	MATTERS AGREED BETWEEN THE PARTIES	6
2.1	Overarching principles	6
2.2	Flood Risk.....	6
2.3	Biodiversity	6
2.4	Pollution prevention, land contamination and groundwater.....	7
2.5	Environmental Permitting including emissions to air	9
3	MATTERS WHERE DISCUSSIONS ARE ONGOING	11
4	MATTERS NOT AGREED.....	12

1 Introduction

- 1.1.1 Wheelabrator Technologies Inc. ("the Applicant") has made an application to the Secretary of State for Business, Energy and Industrial Strategy (SoS) for a Development Consent Order ('DCO') for the construction and operation of the Wheelabrator Kemsley ('K3' Generating Station) and the construction and operation of a waste-to-energy facility on adjacent land called Wheelabrator Kemsley North ('WKN').
- 1.1.2 Planning permission was granted under the Town and Country Planning Act 1990 by Kent County Council in 2012 for a sustainable waste-to-energy facility (K3). Construction of the plant began in July 2016 and is expected to be completed with the plant fully operational by the end of quarter two 2020. K3 as consented is permitted to process 550,000 tonnes of waste per annum and has a generating capacity of 49.9 megawatts (MW).
- 1.1.3 The Planning Act 2008 states that the construction or extension of an onshore generating station with a capacity of more than 50MW in England or Wales is considered by Section 14(1)(a) and Section 15 of the Act to be a 'nationally significant infrastructure project' (NSIP) and as such requires an application for a DCO to be made to the Planning Inspectorate (PINS) for determination and approval by the SoS.
- 1.1.4 The applicant has identified that K3 would be capable of processing an additional 107,000 tonnes of waste per annum and, without any change to the external layout or design, generate an additional 25.1MW of electricity.
- 1.1.5 However, in order for the K3 project to be properly categorised and consented as the construction of a generating station under the Planning Act 2008 (the changes sought do not qualify as an 'extension' under the Act) the applicant is seeking consent for 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) (the 'K3 Proposed Development'). Notwithstanding this the 'practical effect' of the K3 Proposed Development would simply be K3, as constructed under its existing permission, permitted to generate an additional 25.1MW and to process an additional 107,000 tonnes of waste per annum without any change to the external layout or design.
- 1.1.6 Development Consent is also being sought for a proposed new waste-to-energy facility, capable of processing 390,000 tonnes of waste per annum, with a generating capacity of 42MW ("the WKN Proposed Development"). The WKN Proposed Development is not therefore an NSIP as its generating capacity is below 50MW. Instead WTI made a formal application on the 1st June 2018 to the SoS under Section 35 of the Planning Act 2008 for a direction as to whether the WKN Proposed Development together with any matters associated with it can be treated as a development for which Development Consent is required. The SoS issued his direction on the 27th June 2018 confirming that WKN is to be treated as development for which Development Consent is required.

- 1.1.7 Consent for the K3 and WKN Proposed Developments has therefore been sought under a single application to the SoS via PINS for a single DCO.

1.2 The Application Site(s)

Wheelabrator Kemsley (K3) Site

- 1.2.1 The site is located on land immediately to the east of the Kemsley Paper Mill, located 0.8km east of Kemsley, a residential suburb in the north of Sittingbourne in Kent (hereafter the 'K3 Site'). It lies adjacent to the Swale Estuary 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 Estuary.

Wheelabrator Kemsley North (WKN) Site

- 1.2.2 The site is located on land immediately north of the permitted 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.
- 1.2.3 To the east of the WKN Site lies the Swale Estuary with the Isle of Sheppey beyond. Immediately to the north lie the Kemsley Marshes beyond which lies the Kemsley Paper Mill anaerobic digester treatment works and to the north east a jetty operated by Knauf for the import of gypsum by barge.
- 1.2.4 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.

1.3 The Proposed Development

- 1.3.1 The Applicant has made an application to the SoS for a DCO for the construction and operation of the K3 and WKN Proposed Developments.
- 1.3.2 A full description of the K3 and WKN Proposed Developments is provided within the Environmental Statement (Doc 3.1).
- 1.3.3 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&b) submitted with the application.
- 1.3.4 The different elements of the works pertaining to the K3 and WKN Proposed Developments are set out in the Table below.

Table 1: Works 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
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)
3- Installation of a grid connection WKN Proposed Development
4- Alteration of existing private access road to construct, use and maintain Work No 2
5- Temporary construction or alteration of existing private haul road for the construction of Work No 2
6- Creation of a temporary construction compound and laydown area for the construction of Work No 2
7- Construction and operation of a new surface water outfall for Work No 2

1.4 The role of the Environment Agency

1.4.1 The Environment Agency has multiple roles as an environmental regulator, an environmental operator and an environmental advisor. Specifically, their remit regarding this application covers the following areas:

- (1) Flood Risk;
- (2) Wetland and riparian biodiversity;
- (3) Pollution prevention and land contamination;
- (4) Water resources;
- (5) Environmental Permitting.

1.4.2 The Environment Agency has been formally consulted by the applicant with regard to the K3 and WKN Proposed Developments in November 2018 and July 2019 and provided responses on the 18th January 2019 and the 28th August 2019

1.4.3 The Environment Agency submitted a Relevant Representation in December 2019 which is available as part of the online public register. This Statement of Common

Ground has been prepared pursuant to this representation and seeks to agree all matters raised.

2 Matters agreed between the parties

2.1 Overarching principles

- 2.1.1 It is agreed that the principal pathways for potential effects from the K3 and WKN Proposed Developments are flood risk, biodiversity including lighting, pollution and land contamination, emissions to air and Environmental Permitting.

2.2 Flood Risk

- 2.2.1 The tidally dominated Swale lies to the east of the K3 and WKN Sites and presents the greatest flood risk. It is agreed that there is no discernible flood risk associated with the Sites from other sources.
- 2.2.2 It is agreed that the ES and Flood Risk Assessment have been produced using an appropriate methodology, are based on an appropriate baseline and that as a result it makes an appropriate judgement regarding the likely significant residual impacts in terms of the flood risk relating to the proposed schemes.
- 2.2.3 K3 as constructed and the WKN Proposed Development have/will 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.
- 2.2.4 Flood risk associated with the construction accesses and laydown areas is considered acceptable.
- 2.2.5 It is agreed that the K3 and WKN Proposed Developments are acceptable and compatible to the flood risk of the locality.

2.3 Biodiversity

Lighting

K3 Proposed Development

- 2.3.1 A lighting scheme for K3 as consented was approved under Condition 21 of its extant planning permission from KCC. No changes to this lighting scheme pursuant to the practical effect of K3 Proposed Development are required. The approved lighting strategy forms a certified document of the DCO for the K3 Proposed Development. Any amendments to the certified lighting strategy would require consent from the planning authority pursuant to Requirement 7 of the DCO.

WKN Proposed Development

- 2.3.2 It is agreed that subject to the implementation of Requirement 23 (external lighting) that the WKN Proposed Development will not have a detrimental effect on biodiversity.

2.4 Pollution prevention, land contamination and groundwater

Surface water and The River Swale

Construction

K3 Proposed Development

- 2.4.1 K3, as consented, is at an advanced stage of construction and was the subject of its own assessment as part of the 2010 ES and consented with conditions pursuant to the protection of surface water. No further construction is required pursuant to the practical effect of K3 Proposed Development and therefore no further effects on the water environment will occur.

WKN Proposed Development

- 2.4.2 An outline Construction Environmental Management Plan (CEMP) has been produced in support of the DCO application and incorporates the mitigation measures required to safeguard the water environment during the construction period as set out in Chapter 10, Water Environment of the ES. The CEMP is to be finalised pending approval of the application and appointment of the construction contractor. It will be submitted to the local planning authority and agreed in writing prior to the commencement of development in accordance with Requirement 22 of the draft DCO.
- 2.4.3 The best practice measures set out in Table 10-14 of Chapter 10 including good practice guidance and pollution prevention measures, and in addition to those specified in Table 10.17 including a Surface Water Management Strategy and Flood Management Plan will form part of the CEMP and it is agreed that they will reduce the risk of contamination to surface water during construction as far as reasonably practically possible.

Operation

K3 and WKN Proposed Developments

- 2.4.4 A surface water management scheme was created for the K3 facility as consented and forms a certified document of the DCO for the K3 Proposed Development. No process or dirty water will be discharged to the swale. Clean Surface water will be stored in an onsite lagoon and discharged at a controlled rate into the Swale Estuary.
- 2.4.5 No alterations to the approved drainage scheme are required pursuant to the practical effect of the K3 Proposed Development. Any alteration to the certified surface water management strategy would require consent from the planning authority pursuant to Requirement 7 of the DCO.
- 2.4.6 A surface water outfall has been constructed to the east of the K3 Site for the K3 facility in the intertidal area between Mean High Water and Mean Low Water. This outfall controlled by a Marine Management Licence (licence number MLA/2017/00316).

- 2.4.7 For the WKN Proposed Development a surface water drainage system has been designed and it is agreed that subject to the standard operational and management measures set out in Table 10-15 of Chapter 10 of the ES and Table 10-18 including a Drainage Maintenance Plan, Emergency Spill Management Plan and Water Quality Monitoring Strategy that the risk of contamination to surface water from on-site drainage during operation will be reduced as far as reasonably practically possible. These measures are secured through Requirement 18 of the DCO.
- 2.4.8 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.
- 2.4.9 This variation to the MMO licence was granted by the Marine Management Organisation in April 2019 (ref: L/2017/00482/2) and subject to the tests of the Habitats Regulations, Water Framework Directive and Marine Conservation Zone assessment to which the Environment Agency are a consultee.
- 2.4.10 It is therefore agreed that the K3 and WKN Proposed Developments do not pose a risk to surface water quality and the River Swale subject to the controls set out.

Decommissioning

K3 and WKN Proposed Development

- 2.4.11 It is agreed that subject to standard construction practice and the decommissioning procedures to be agreed as part of the future DEMP (Requirement 4) that the risk of contamination of surface water will be as low as reasonably possible during the decommissioning of K3 and the WKN Proposed Development.

Land Contamination and groundwater

K3 Proposed Development

- 2.4.12 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. K3 as consented is at an advanced stage of construction and due to be fully operational by the end of quarter two 2020. 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).
- 2.4.13 Additional assessment of ground conditions will be undertaken after operational activities under the environmental permit (or as amended by way of consequence of the K3 Proposed Development). All demolition/decommissioning works will be undertaken in accordance with a DEMP (Requirement 4).
- 2.4.14 It is therefore agreed that the K3 Proposed Development does not pose a risk to groundwater.

WKN Proposed Development

- 2.4.15 It is agreed that the ES has been produced using an appropriate methodology, is based on an appropriate baseline and that as a result makes an appropriate judgement regarding the likely significant residual impacts in terms of contamination regarding the proposed scheme.
- 2.4.16 The WKN Site's geological setting is on strata that is not of significant sensitivity for groundwater protection.
- 2.4.17 It is agreed that Requirements 28 (piling risk assessment) and 19 (contaminated land and groundwater) of the draft DCO ensures 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.
- 2.4.18 It is agreed that the draft DCO should be amended such that the Title of Requirement 19 states "Land Contamination and groundwater".
- 2.4.19 All demolition/decommissioning works will be undertaken in accordance with a DEMP (Requirement 4).

2.5 Environmental Permitting including emissions to air

K3 and WKN Proposed Developments

- 2.5.1 The Environment Agency (EA) is the competent authority for environmental permitting in England. Prior to issuing an Environmental Permit the EA must be satisfied that the installation will not cause adverse effects on the environment.
- 2.5.2 The K3 facility as consented will operate in accordance with its permit (permit no. EPR/JP3135DK) issued in accordance with Schedule 1 of the EPR which controls emissions to land, air and water associated with the waste-to-energy process with regard to the environment and human health.
- 2.5.3 In accordance with Schedule 1 of The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018, an amended Environmental Permit will be required in order to operate K3 in accordance with the K3 Proposed Development proposals.
- 2.5.4 The WKN Proposed Development will require an environment permit to operate. The Applicant will need to demonstrate how the new plant will meet BAT requirements as outlined in the LCP BREF.
- 2.5.5 An application to vary the K3 Permit was submitted to the Environment Agency in September 2019
- 2.5.6 An application for the WKN Environmental Permit is anticipated to made in April 2020.

- 2.5.7 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.
- 2.5.8 It is agreed that the draft DCO should remove reference to the Environmental Permitting Regulations 2016 and be replaced with The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018.

3 Matters where discussions are ongoing

- 3.1.1 The parties to this SoCG confirm that there are currently no matters where ongoing discussion is required.

4 Matters Not Agreed

- 4.1.1 The parties to this SoCG confirm that there are currently no matters which have not been agreed.

Signed.....

Name and position.....

On behalf Wheelabrator Technologies Inc.

Date.....

Signed.....

Name and position.....

On behalf of the Environment Agency

Date.....