Wheelabrator TECHNOLOGIES

Deadline 3: Applicant's Response to Examining Authority's Written Questions (ExQ1A)

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

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Contents

Appendices (provided separately)

Appendix 1.2/1.8 – Local Plan Policies – Recycling Targets
Appendix 1.5 – Surrey 2 Hour Drive Time Map
Appendix 1.6 - Surrey Waste Local Plan
Appendix 1.13a - UK Statistics on Wastes March 2020
Appendix 1.13b - Tilbury Green Section 36 Consent
Appendix 1.15a - Our Waste, Our Resources - A Strategy For England 2018
Appendix 1.15b - Our Waste, Our Resources - Evidence Annex
Appendix 1.32 - Tolvik 2030 Market Review
Appendix 1.34 -Cory Supplementary Benefits Report
Appendix 1.46a - WTI C&I Review and RDF Review March 2018
Appendix 1.46b - WTI LACW Review March 2018

Introduction

Purpose of this document

i. This Document has been prepared at Deadline 3 of the Examination by the Planning Inspectorate into an application by WTI/EFW Holdings Ltd (a subsidiary of Wheelabrator Technologies Inc – "WTI") under the Planning Act 2008 for a Development Consent Order (a "DCO") for the construction and operation of the Wheelabrator Kemsley ("K3") and Wheelabrator Kemsley North ("WKN") waste-to-energy generating stations on land at Kemsley, Sittingbourne in Kent.

ii. This Statement provides the response by the applicant to the Examining Authority's Further Written Questions ('ExQ1A') issued on 9th April 2020.

iii. For ease and completeness this document briefly summarises the proposed development and identifies the application site before providing each of the Questions and the Applicant's response to it.

Context

iv. The application for a Development Consent Order seeks consent for the construction and operation of a 75MW waste-to-energy facility, 'the Wheelabrator Kemsley Generating Station' ("K3") and for the construction and operation of a 42MW waste-to-energy facility, 'Wheelabrator Kemsley North' ("WKN").

v. K3 is a waste-to-energy facility located adjacent to and east of the DS Smith Kemsley paper mill, to the north of Sittingbourne, Kent. Planning permission was granted for K3 in 2012 by Kent County Council with a generating capacity of 49.9MW and a waste processing capacity of 550,000 tonnes per annum. The facility is now operational, as of Q2 2020.

vi. The applicant has identified that K3 would be capable of processing an additional 107,000 tonnes of waste per annum and, without any change to the external design, generating an additional 25.1MW of electricity. However, in order for the K3 project to be properly categorised and consented under the Planning Act 2008 the applicant is required to seek consent for the construction of K3 at its total generating capacity of 75MW (i.e. 49.9MW consented + 25.1MW upgrade), together with the separate proposed total tonnage throughput of 657,000 tonnes per annum (550,000 consented + 107,000 tonnage increase).

vii. The proposed new Waste-to-Energy plant, Wheelabrator Kemsley North (WKN), would be a single 125Mwth line facility capable of processing 390,000 tonnes of waste per annum, with a generating capacity of 42MW.

WKN is not therefore a Nationally Significant Infrastructure Project (NSIP) by virtue of its generating capacity.

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

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

The Site and its surrounding

x. 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.

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

Proposed Development

Wheelabrator Kemsley – K3

xii. Planning permission was granted for K3 in 2012 by Kent County Council under reference SW/10/444. As consented and being constructed, K3 can process up to 550,000 tonnes of waste each year and has a generation capacity of 49.9MW. K3 will export electricity to the grid and will supply steam to the DS Smith Kemsley Paper Mill. The construction of K3 began in 2016 and the facility began operation in Q2 2020.

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

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

xv. However, in order for the K3 project to be properly categorised and consented under the Planning Act 2008 the applicant is now seeking consent for the construction of K3 at its total generating capacity of 75MW (49.9MW consented + 25.1MW upgrade), together with the separate proposed total tonnage throughput of 657,000 tonnes per annum (550,000 consented + 107,000 tonnage increase).

xvi. A further consultation was undertaken in 2019 to advise S42 consultees and notify the public through a number of S48 notices that construction and operation of K3 is now being sought as part of the DCO, in the context of the K3 facility already being substantially constructed.

xvii. As the K3 facility is now operational the effect in reality of the proposed application ('the practical effect') would be the retention of the K3 facility as consented but with it generating an additional 25.1MW together with being able to process an additional 107,000 tonnes of waste per year.

Wheelabrator Kemsley North – WKN

xviii. WKN would be an entirely new and separate waste-to-energy facility on land to the north of K3, which is currently being used as the K3 construction laydown area. WKN would provide clean, sustainable electricity to power UK homes and businesses via the National Grid distribution network and would have the ability to export steam should a user for that steam become available.

xix. WKN would have a generating capacity of 42MW and a waste processing capacity of 390,000 tonnes per annum and be a self-contained and fully enclosed facility with its own reception hall, waste fuel bunker, boiler, flue gas treatment, turbine, air-cooled condensers, transformers, office accommodation, weighbridge, administration building, car parking and drainage. WKN would have its own grid connection to allow for the exporting of electricity to the national grid.

Applicant's Responses to Further Written Questions (ExQ1A)

xx. The ExQ1A are grouped into three categories; the Principle and nature of the development, including waste recovery capacity and management of waste hierarchy, Traffic and Transport and Other.

xxi. This document provides each question and the response to it by the Applicant. Where relevant reference is made to Appendices, as well as cross references made to other documents as referenced in the Examination Library.

1 ExQ1A – Principle and nature of the development, including waste recovery capacity and management of waste hierarchy

1.1 Q1A.1.1 – KCC - In Appendix 1 [REP2-009] of D2 submission - Applicant's Response to ExQ1 Energy from waste, A guide to the debate 2014, it is said that 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. Does this statement undermine your policy of net self-sufficiency and if not why not?

1.1.1 The Applicant notes that this question is directed at KCC and will review and comment on their response as appropriate.

1.2 Q1A.1.2 – Applicant - SEWPAG recognises that there will be a degree of cross-boundary movement of waste and in the Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] you state the approach in Paragraphs 7.1 and 7.2 of the Memorandum of Understanding (MoU) [REP2-043] in SEWPAG's D2 submission, is not injured in any way by K3/WKN. How can the Applicant conclude this without assessing the local policy on waste management in each (or save for KCC, any) of the local policies on waste management as outlined in SEWPAG written representation [REP1-016, pp3-4]?

1.2.1 It is important and relevant to recognise that the concept of 'net self-sufficiency' is a local construct. It is a plan-making principle that recognises wastes will move from one administrative area to another. It does not require each authority to provide all the waste management infrastructure within that administrative area, and it does not restrict waste moving across boundaries or into/out of other administrations. This is readily understood by reference to paragraph 6.3.3 of the Kent Minerals and Waste Local Plan (or 6.3.2 of the Early Partial Review) which concludes: '*The purpose in adopting the principle of net self-sufficiency is not to restrict the movement of waste as restriction of waste catchment areas could have an adverse effect upon the viability of the development of new waste facilities needed to provide additional capacity for Kent's waste arisings*.' It would be improper to ascribe equal weight to this principle as to the waste hierarchy in the assessment of planning applications. Not least, the waste hierarchy is presented as the key test for decision-making in NPS EN-3 (at paragraph 2.5.70) and it is applied within local plan policy to properly implement its definition within the Waste Framework Directive (2008/98/EC) (and as amended).

1.2.2 Paragraphs 7.1 of the MoU (presented in REP2-043) makes clear that all the authorities *'recognise that there will be a degree of cross-boundary movement of waste*.' That waste may be treated or disposed of within an administrative authority different to the one within which it was produced is a well-established and widely understood principle of waste management.

1.2.3 The MoU makes no comment about how much waste movement might be acceptable, nor when such a practice might be undesirable. Paragraph 7.1 of the MoU goes on to confirm that when using the locally-derived principle of 'net self-sufficiency' (a term that only appears in a local context; it is not used in either the Waste Framework Directive or national waste management strategy) the authorities recognise that *'it may not be possible to meet this requirement in full…*'. Paragraph 7.2 is simply stating that, consequently, each local authority just has to consider the wastes generated in their area; they will *'plan on the basis that no provision has to be made in their waste local plans to meet the needs of any other waste local plan area …*'. In terms of this local principle of net self-sufficiency, there is nothing substantial to assess, there is no limit or threshold of how much waste should move from one area to another: the authorities recognise that wastes will move from one administrative area to another and they will plan simply on the basis of the amount of waste generated in their own area.

1.2.4 The important and relevant test, not least as set out in NPS EN-3, is that of not prejudicing the waste hierarchy. This is recognised at paragraph 7.6 of the MoU, which states *'The Parties agree that the challenge to be addressed is to implement the waste hierarchy and to enable better, more sustainable, ways of dealing with waste to reduce the current dependence on landfill*.'

1.2.5 The reference by SEWPAG (and KCC) to net self-sufficiency is bound up in their objection to the Proposed Development in terms of their misconception that the Proposed Development will detract wastes generated in their administrative areas from being recycled. This has been addressed in the WHFAR [APP-086] (at section 3.4) by incorporating increased recycling within the fuel availability assessment. This sensitivity was made by looking at a current level of recycling achieved across all authorities within the Study Area to identify what further advances would need to be made to achieve the 65% recycling target sought by 2035. In this way, the WHFAR has incorporated consideration of increased recycling across the Study Area, and has not simply focussed on Kent. An assessment appropriate to understand the impact on waste management strategies across the Study Area has been undertaken.

1.2.6 In addition, Appendix 1.2/1.8 presents content from the relevant local plan documents of the authorities within the Study Area, focussing on matters of self-sufficiency and recycling. Appendix 1.2/1.8 demonstrates that none of the authorities within the Study Area seek to deliver self-sufficiency differently to that set out within the Applicant's responses, not to achieve a level of recycling that exceeds 65% by 2035.

1.3 Q1A.1.3 – Applicant - The Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] states K3/WKN is a merchant facility proposed in response to a recognised commercial need for additional recovery capacity to divert residual wastes from landfill, not relying on any one local authority waste contract. What proportion of waste delivered to landfill in the Study Area comprises local authority collected wastes?

1.3.1 There is no single source for data on the amounts of local authority collected waste that go to landfill in the Study Area. This response covers the methodology adopted by the Applicant but it should be noted that no one method is exact and amounts will always be indicative as they depend on the quality and quantity of the raw data being used.

1.3.2 Table 3.5 of the WHFAR [APP-086] presents local authority collected wastes ('LACW') as a proportion of the shortlisted wastes disposed to landfill within the Study Area; it differs across the years considered, hovering at about 40%.

1.3.3 The primary source data for the WHFAR is the Waste Data Interrogator or 'WDI'. This is the data collected by the Environment Agency of waste accepted and removed from sites with environmental permits for waste management activities. The data is used by the Environment Agency to make sure operators comply with their environmental permits and it is made available for waste planning, reporting and information purposes. This data is used by the EU, government, local councils, the waste industry and the public.

1.3.4 The WDI is consequently a useful resource, but not necessarily a complete one; not least it is reliant on accurate record keeping by those handling waste. Further, the data does not specifically identify the source organisation of the waste, or the type of organisation. Most local authority collected waste ('LACW') would be categorised under LoW[1] Code 20 03 01: Mixed municipal waste, which would include similar commercial and industrial wastes. This means the WDI cannot be used to definitively quantify the amount of LACW landfilled within the Study Area.

1.3.5 Consequently, some caution should be used in referring to Table 3.5. The tonnages presented can only be considered as indicative because:

- The proportion of LACW, as a percentage of shortlisted wastes, identified in Table 3.5 is likely to be an over-estimation. Table 3.5 reports all LACW, which includes inert wastes and other wastes that have been filtered out in calculating the shortlisted waste.
- The data is only able to tell us how much of the LACW generated by the authorities located within the Study Area was landfilled; it may not all have been landfilled within the Study Area, it may have been disposed to landfill outside the Study Area but is recorded in Table 3.5 WHFAR .
- LACW is recorded by financial year, whereas the data collected in the WDI is recorded by calendar year. LACW can be stockpiled between

[1] List of Wastes - the waste classification code, also referred to as EWC (European Waste Catalogue) code. https://www.gov.uk/how-to-classify-different-types-of-waste

financial years causing a difference between what is generated and what is managed in any one financial year. Consequently, Table 3.5 of the WHFAR refers to the percentage of LACW 'managed' each year rather than as 'arising'. As a result, there is a bit of a disconnect between comparing total waste disposed data with LACW disposal data.

- LACW from other administrations could be included in the waste landfilled in the Study Area.

[Some of these explanations are provided at paragraph 3.2.27 of the WHFAR but have been supplemented or clarified here.]

1.3.6 Table 3.5 of the WHFAR [APP-086] uses Defra's Local Authority Collected Waste Statistics and presents the tonnes of LACW disposed to landfill within the Study Area, along with a calculated proportion of the shortlisted wastes. However, as identified in the first bullet at paragraph 1.3.4, this is likely to over-estimate the proportion of LACW in the identified shortlisted wastes. Table 1.3-1 below, presents the total waste and the total HIC (Household/Industrial/Commercial) waste landfilled in the Study Area and the LACW as a proportion of these wastes; itis also updated for the most recent year for which such data is available. Considering LACW as part of total waste may be at risk of underestimating the correct proportion, primarily because of the amount of inert wastes that is likely to be within the total waste tonnage. Considering LACW against total HIC waste is likely to be provide the more accurate proportion, although this would still not necessarily account for either LACW disposed to landfill within the Study Area but generated outside of it, or LACW generated within the Study Area but disposed to landfill beyond it.

Table 1.3_1 Indicative wastes to landfill, 2015/16 to 2018/19

LACW Landfilled[a]	2015/16	2016/17	2017/18	2018/19
East London	94,125	47,247	32,117	33,567
East Sussex	18,320	17,958	18,514	14,614
Essex	259,620	179,280	105,129	148,824
Kent	60,818	34,563	19,985	26,515
South East London	8,286	18,036	3,618	36,140
South London	255,526	231,194	210,144	135,463
West Sussex	163,755	199,673	170,605	130,029
Total	**860,449**	**727,951**	**560,113**	**525,152**
All wastes landfill within the Study Area[b] (Table 3.1 WHFAR)	**2015**	**2016**	**2017**	**2018**
Total waste landfilled in Study Area	8,211,967	8,212,402	7,295,695	6,847,465
LACW landfilled by local authorities in the Study Area as a proportion of all waste delivered to landfill in the Study Area	10.5%	8.9%	7.7%	7.7%
HIC wastes landfill within the Study Area[b] (Table 3.2 WHFAR)	**2015**	**2016**	**2017**	**2018**
Total HIC landfilled in Study Area	2,271,320	1,867,934	1,981,358	1,781,213
LACW landfilled by local authorities in the Study Area as a proportion of HIC waste delivered to landfill in the Study Area	37.9%	39.0%	28.3%	29.5%

a) Source: Department for Environment, Food & Rural Affairs
Local Authority Collected Waste Statistics (LA_and_Regional_Spreadsheet_201819)
Table 2: Management of Local Authority Collected Waste, England, 2014/15 - 2018/19

b) Source: Environment Agency, WDI: 2015, 2016, 2017, 2018

WasteDataFlow Q100

1.3.7 ExQ1A_1.3 can also be answered by reference to WasteDataFlow[2] Question 100 ('Q100'), which provides a structure to allow Local Authorities to record all of their treatment and disposal activities. However, it should be noted that the completion of Q100 is complex, there can be data entry errors and the data outputs are complex to analyse.

1.3.8 Data from WasteDataFlow can be extracted by: Local Authority; reporting quarters; and question. To respond to this ExQ1A, Q100 data for the local authorities in the Study Area was extracted for the financial year 2017/18.

1.3.9 The data extract includes all wastes streams (i.e. comingled recyclate, source segregated recyclate, food waste, green waste, mixed green and food waste, residual waste) sent for treatment and disposal. The treatment and disposal routes cover all facility types (i.e. anaerobic or aerobic digestion segregated,

[2] WasteDataFlow is the web-based system for LACW data reporting by UK local authorities to government, which went live over ten years ago on 30 April 2004. Validated information held on WasteDataFlow can be downloaded by the general public.

exporter – recycling, hazardous landfill, in vessel composting, incineration with energy recovery, incineration without energy recovery, inert landfill, materials recovery facility, mechanical biological treatment (MBT), non-hazardous landfill, other method, RDF, autoclave, MHT or similar, reprocessor - recycling , residual waste MRF, reuse, windrow or other composting)

1.3.10 The data extract was filtered for disposal routes identified as non-hazardous landfill, to identify the waste sent from the local authorities in the Study Area to non-hazardous landfill sites, whether directly or following treatment (e.g. MBT). This filtering process indicates that approximately 531,600 tonnes of waste was sent to non-hazardous landfill sites by the local authorities in the Study Area in year 2017/18.

1.3.11 However, these data needed cleansing to:

- Ensure consistent naming of sites e.g. Rainham Landfill Site was variously identified as:
  - Coldharbour Lane, Off Ferry Lane, Rainham, Essex;
  - Rainham Landfill, Coldharbour Lane, Off Ferry Lane, Rainham, Essex; and
  - Rainham Recycling and Reclamation Centre, Coldharbour Lane, Off Ferry Lane, Rainham, Essex.
- Differentiate between non-hazardous waste landfills site within the Study Area and those beyond, e.g. Redhill Landfill Site in Surrey received almost 28,000 tonnes of waste from local authorities in the Study Area.
- Identify sites that had incorrectly been identified as non-hazardous waste landfill sites, including:
  - Veolia ES (UK) Empire Treatment Works in the West Midlands, which is a physical-chemical treatment facility that received incinerator fly ash from the Newhaven Energy Recovery Facility in East Sussex.
  - Recycled In Orsett Dansands Quarry in Essex, which is a physical treatment facilty that treats waste to produce soil.
  - WRG Norwood Farm Landfill, which is a restricted hazardous landfill site in Kent.

1.3.12 Table 1.3_2 presents the waste landfilled by local authorities in the Study Area at non-hazardous waste landfill sites located within the Study Area in 2017/18. The data show that 480,000 tonnes of LACW was sent to non-hazardous landfill sites in the Study Area, which is equivalent to 24.2% of the HIC wastes landfill within the Study Area in 2017.

1.3.13 In addition, it should be noted that Sutton sent approximately 35,350 tonnes of waste to Beddington Farmlands Landfill Site; however, the facility type entered in the Q100 entry was identified as Inert Landfill.

1.3.14 The local authorities in the Study Area, also sent approximately 30,350 tonnes of LACW to non-hazardous waste landfill sites outside the Study Area in 2017/18.

Table 1.3_2 LACW landfilled by local authorities in the study area at non-hazardous waste landfill sites in the Study Area, 2017/18

Local Authority	Barling Marsh Landfill	Beddington Farmlands Landfill Site	Bellhouse Landfill	Brookhurst Wood Landfill Site	Greatness Quarry Integrated Waste Management Facility	Ockendon Area II & III Landfill	Pitsea Landfill	Rainham Landfill	Shelford Landfill Site	Total
Bexley								18		**18**
Brighton and Hove						879	203	22		**1,104**
Bromley					22,166		14,112			**36,279**
Croydon		81,963								**81,963**
East London Waste Authority								27,602		**27,602**
East Sussex						1,669	8,605	71		**10,345**
Essex	1,790		71,787				2,541	10		**76,128**
Greenwich							1,148	616		**1,763**
Kent				103	75				3,819	**3,997**
Kingston upon Thames		9,402								**9,402**
Medway							12,286	28		**12,314**
Merton		46,258								**46,258**
Southend-on-Sea	6,780						65			**6,846**
Southwark								48		**48**
Thurrock							8,282			**8,282**
West Sussex				157,663						**157,663**
Grand Total	**8,570**	**137,624**	**71,787**	**157,766**	**22,242**	**2,548**	**47,242**	**28,414**	**3,819**	**480,012**

Source: Defra, WasteDataFlow

Conclusion

1.3.15 The proportion of LACW sent to landfill is not a straightforward question. The data presented in the WHFAR and above focusses on LACW that was disposed to landfill within the Study Area; it does not, of itself, confirm either that all that waste was generated in the Study Area or that all LACW generated in the Study Area and disposed of to landfill was subsequently disposed at landfill located within the Study Area.

1.3.16 LACW was considered in the WHFAR [APP-086] because it is recognised (at paragraph 3.2.26) that this waste stream is often subject to long-term contracts.

1.3.17 However, those contracts are regularly reviewed and renewed. Local authorities will be looking for new waste management solutions within the lifetimes of K3/WKN and at that point the Applicant may choose to bid for any contract that is put to tender. K3/WKN have not been submitted in response to any one LACW contract, but instead is responding to an identified market need for new residual waste management capacity that will divert residual wastes from landfill and optimise the use of RDF. LACW is just one element of a much larger market demand.

1.4 Q1A.1.4 – SEWPAG/KCC - The Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] posits the Proposed Development as a regional facility which may well draw waste in from beyond Kent and beyond the SEWPAG area. Please provide an overlay showing the Study Area and SEWPAG WPAs, and other WPAs in the South East and Greater London, as noted in KCC: written representation [REP1-010, Annex 1] Minerals and Waste Planning Authority, that have pursued a policy of net-self-sufficiency.

1.4.1 The Applicant notes that this question is directed at SEWPAG/KCC and will review and comment on their response as appropriate.

1.5 Q1A.1.5 – Applicant - Which parts of Surrey are within 2 hours drive from the Proposed Development?

1.5.1 Appendix 1.5 to this document provides a map showing those areas of Surrey which are within 2 hours drive in a HGV from the Proposed Developments.

1.6 Q1A.1.6 – Applicant - Waste arisings in Surrey, and their subsequent management, were not included in the Waste Hierarchy and Fuel Availability Report (WHFAR) [APP-086], however the Applicant states the Proposed Development wholly complies with certain parts of the Surrey Waste Plan which are quoted. Please supply the Surrey Waste Plan.

1.6.1 The extant Surrey Waste Local Plan 2008 is provided as Appendix 1.6 to this document.

1.6.2 The Applicant recognises that Surrey County Council is pursuing a revised Waste Local Plan, but this is not yet adopted.

1.7 Q1A.1.7 – Applicant/KCC - See Q1A.1.6 above. Please confirm whether the parts of the plan quoted represent the most important parts of that plan to consider in connection with the Proposed Development and if not what are the other parts and why?

1.7.1 The elements of the Surrey Waste Plan (both as adopted and as emerging) as quoted in the Applicant's responses to ExQ1 (REP2-009) are focussed on responding to the criticisms raised in relation to net self-sufficiency. The Proposed Developments are not located in Surrey, and consequently the development plan policy for that administrative area is not relevant to consider further.

1.8 Q1A.1.8 – Applicant - The Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] states the approach to self-sufficiency is expressed in similar words across development plan policy of all the authorities included within SEWPAG. Please provide a justification of this finding or state where the analysis on which this finding is based, is submitted to the ExA.

1.8.1 Appendix 1.2/1.8 demonstrates that self-sufficiency is approached in similar words across all the authorities within the Study Area.

1.9 Q1A.1.9 – Applicant - Please specify which paragraph or paragraphs of the Planning Practice Guidance are relied on to support paragraphs 4.2.39 to 4.2.42 of WHFAR [APP-086].

1.9.1 Paragraph 4.2.39 is simply introducing the guidance, with the associated footnote providing the weblink.

1.9.2 Paragraph 4.2.40 relies upon PPG paragraphs 28-004-20141016 and 28-008-20141016.

1.9.3 Paragraph 4.2.41 relies upon PPG paragraph 28-006-20141016.

1.9.4 Paragraph 4.2.42 relies upon PPG paragraph 28-007-20141016.

1.10 Q1A.1.10 – Applicant - The Application seeks consent for two separate EfW facilities and the dDCO separates out the two projects. WHFAR [APP-086] paragraph 1.1.5 states "There is no sensible reason to consider the waste hierarchy separately for each of K3 and WKN…", however does this take account of the possibility that the Secretary of State may grant consent for one project but not the other, and if that is not a good reason please explain why not?

1.10.1 Yes, this statement does take account of the possibility that the Secretary of State may grant consent for one project but not the other.

1.10.2 Both projects are facilities that will recover energy from residual wastes; they operate at the same level of the waste hierarchy. The same policy applies to both facilities and the principles relevant to the Proposed Developments can be considered as either the two facilities together or separately. The amount of fuel available (the residual waste disposed to landfill or RDF exported overseas) is the result of current waste management practice. If just one of the projects is granted consent, the remaining fuel will (as a reasonable assumption) continue to be managed in the same way.

1.10.3 The fuel availability assessment incorporates an expectation that recycling will increase to meet 65% across the Study Area, and demonstrates that there still remains a need for the capacity of both projects to divert the residual wastes from landfill or make domestic use of the RDF. This assessment demonstrates that the waste hierarchy is not being prejudiced whether just one or both of the projects is granted consent. If just one project was to be granted consent, the fuel that would have otherwise been recovered in the other project would simply remain to be disposed of to landfill or exported as RDF. This does not change the standing of either facility in terms of the waste hierarchy; either one, or both projects, is still performing a recovery role.

1.11 Q1A.1.11 – Applicant - "WHFAR [APP-086] paragraph 1.2.5 refers in parentheses to waste hierarchy compliance in the case of areas elsewhere in the UK outside the jurisdiction of the EA. Is the reception of waste from such areas ruled out for the Proposed Development and if not why not?

1.11.1 Paragraph 1.2.5 of the Executive Summary to the WHFAR is providing an overview of how compliance with the waste hierarchy is regulated.

1.11.2 Within England, the regulator is the Environment Agency, however there are different bodies across the devolved administrations: Scottish Environment Protection Agency; Natural Resources Wales; and the Northern Ireland Environment Agency. Whilst it is perhaps unlikely, residual wastes may be received at the Proposed Developments from Scotland, Wales or Northern

Ireland and so it is not ruled out. However, the Proposed Developments are located in England and so would only be regulated by the Environment Agency.

1.12 Q1A.1.12 – Applicant/KCC - The Proposed Developments are referred to variously as a source of renewable/low carbon energy (or fuel source), e.g. WHFAR [APP-086] paragraph 1.2.8 and 1.3.4. Is such an appellation correct, having regard to national policies pertaining to the Waste Hierarchy? Please justify your response.

1.12.1 The fuel for K3/WKN is residual waste and RDF; i.e. those wastes that would be disposed of to landfill or which have been prepared specifically for incineration (and are currently being exported overseas for that purpose). Those fuels will comprise a mix of materials, including those that are biodegradable, and are recognised in policy as both renewable and low carbon, hence the appellation 'renewable/low carbon' is used in relation to K3/WKN.

1.12.2 At paragraph 2.5.10, NPS EN-3 states that a proportion of biodegradable waste may be classified as renewable for the purposes of Renewable Obligation Certificates (ROCs)[3].

1.12.3 The EfW Debate Guide[4] advises (at pages 1 and 2):

[3] The Renewables Obligation (RO) was introduced by the Government in England, Wales and Scotland in 2002, to encourage the deployment of large-scale renewable electricity in the UK. The RO requires licensed UK electricity suppliers to source a specified proportion of the electricity they provide to customers from eligible renewable sources. ROCs are essentially the green certificates issued to electricity generators and bought by suppliers to show that they have fulfilled the RO. Government has undertaken a transition from ROCs to Contract for Difference (CfD) with the RO closing to new capacity on 31 March 2017.
[4] Energy from waste, A guide to the debate. Defra, February 2014 (revised edition). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284612/pb14130-energy-waste-201402.pdf

> *'The guide is mostly concerned with energy from residual waste. This is the waste that is left over when all the recycling possible has been done. This generally means the environmental or economic costs of further separating and cleaning the waste are bigger than any potential benefit of doing so.*
>
> *When we talk about residual waste we usually mean waste that is a mixture of different things. Part of this residual waste will come from things made from oil like plastics, and part from things that were recently[1] growing and are biodegradable (i.e. break down in landfill) – e.g. food, paper, wood etc.*
>
> *Only the energy generated from the recently grown materials in the mixture is considered renewable. Energy from residual waste is therefore a partially renewable energy source, sometimes referred to as a low carbon energy source.'*

1.12.4 The footnote 1 states: '*In this context by 'recent' we mean the last hundred years or so as opposed to oil, gas and coal which have been underground for millions of years'*.

1.12.5 At paragraph 39, the EfW Debate Guide indicates a level of specificity as to the proportion '*of the waste in our typical black bag, currently somewhere between one half and two thirds will contain biogenic carbon*'. The Renewable Energy Action Plan[5] estimates that municipal waste is 62.5% biodegradable content (see footnote on page 140).

1.12.6 Modern energy from waste plants such as K3/WKN are required to meet targets for recovery established through the Waste Framework Directive (2008/98/EC) (and as amended); they are designed to recover electricity effectively and efficiently, continuously minimising emissions.

1.12.7 As is made clear in the EfW Debate Guide (page 3):

[5] National Renewable Energy Action Plan for the UK, DECC, July 2010.
https://www.gov.uk/government/publications/national-renewable-energy-action-plan

'Energy from waste is not just about waste management:

- *The energy it produces is a valuable domestic energy source contributing to energy security.*
- *As a partially renewable energy source it can also contribute to our renewable energy targets which are aimed at decarbonising energy generation.*
- *It has the added advantage that it is non-intermittent, so it can complement other renewable energy sources such as wind or solar.'*

1.12.8 The Executive Summary to the CCC 2019 Report[6] (first bullet, page 12) states that '*The Resources and Waste Strategy aims to end landfilling of biodegradable waste 10 years later than the Committee have recommended (by 2035 instead of 2025)*'. One of the measures identified in Table 1 of the CCC 2019 Report, titled 'Priorities and milestones to prepare for a net-zero target', is a '*Commitment to ban landfill of biodegradable waste by 2025)*'. The focus on biodegradable wastes disposed to landfill is made because of its link with methane production. The third bullet on page 27 of the CCC 2019 Report advises that '*Total emissions from waste increased by 1% to 20.4 $MtCO_2e$ in 2017, and were 69% below 1990 levels. Almost 70% of emissions from waste were methane from the anaerobic decomposition of biodegradable waste in landfill sites.*' Methane is the predominant greenhouse gas emitted from landfill because it is highly potent. There are real advantages to avoiding its generation, particularly through the disposal of biodegradable wastes.

1.12.9 K3/WKN are recognised in policy as beneficial both as a supply of energy, including when this is delivering the waste hierarchy, diverting residual waste from disposal to landfill. The energy recovered through K3/WKN is properly described as renewable/low carbon, albeit is influenced by the composition of the fuel.

1.13 Q1A.1.13 – Applicant/KCC - Can you assess the degree of confidence with which it can be asserted that the variables in WHFAR [APP-086] paragraph 1.3.5 are unlikely to occur and if so please provide a reasoned justification.

1.13.1 The two variables raised in paragraph 1.3.5 of the Executive Summary to the WHFAR are the potential to achieve 65% recycling and for all consented capacity to become operational.

[6] Reducing UK emissions, 2019 Progress Report to Parliament. Committee on Climate Change, July 2019 https://www.theccc.org.uk/publication/reducing-uk-emissions-2019-progress-report-to-parliament/

Achieving 65% Recycling

1.13.2 It is not readily possible to assess a degree of confidence for achieving a level of 65% recycling of municipal wastes. It is a target subject to many variables (not least participation rates, infrastructure availability and global market trends) and it will require substantial investment, not least from local authorities that have endured many years of financial austerity and are currently working through special provisions for dealing with the Coronavirus pandemic. However, it is a target to which we should be aspiring and it has been incorporated in full within the WHFAR. The fuel availability assessment is a positive analysis, demonstrating that even when future increases in waste recycling are achieved, there remains a demonstrable, and demonstrated, need for the Proposed Developments.

1.13.3 Paragraph 3.4.17 of the WHFAR identifies that recycling across all the authorities in the Study Area has generally remained unchanged over the period presented; this is consistent with the pattern seen across England. Household recycling rates in England increased significantly from 11% in 2001 to 45.2% in 2017, but that rapid rate of improvement has slowed so that recycling rates have remained at 44/45% over the past few years. Defra regularly produces document titled 'UK Statistics on Waste' with the most recent being published on 19 March 20207, reporting on data collected in 2018 (provided at Appendix 1.13a). This plateau of recycling in England is shown in Figure 1 of the UK Statistics on Waste. Figure 1 also shows that whilst all countries have increased levels of recycling, Wales is the only administration to meet (and exceed) the target of 50% by 2020. Defra is currently considering how to improve levels of recycling across both households and businesses[8], but detailed plans are yet to be implemented (as noted at paragraph 3.4.20 of the WHFAR [APP-086]).

1.13.4 Rather than considering the likelihood of increased recycling, the approach taken within the WHFAR has been to assume that a level of 65% recycling *will* be achieved; this is the current target and is recognised to bring environmental benefits, so that it should be encouraged. The effect that achieving such an outcome has been calculated within the WHFAR by using household recycling rates within the Study Area as a proxy for the recycling of all waste.

1.13.5 However, this is considered to be a conservative approach, potentially over-estimating the amount of additional recycling that would be required to meet 65% overall. Not least, as noted at paragraph 3.4.22 of the WHFAR, C&I waste data is not comprehensive and cannot readily be used to identify the recycling rates across each authority in the Study Area. This is confirmed in UK Statistics on Waste (page 8) which identifies that '*C&I waste generated remains extremely difficult to estimate owing to data limitations and data gaps*.' Whilst C&I waste

7 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874265/UK_Statistics_on_Waste_statistical_notice_March_2020_accessible_FINAL_rev_v0.5.pdf

8 https://www.gov.uk/government/consultations/waste-and-recycling-making-recycling-collections-consistent-in-england/outcome/consistency-in-recycling-collections-in-england-executive-summary-and-government-response

data is not comprehensive, it is generally believed to range from 52% to 60% across England.[9] Much of the C&I waste stream would fall within the description for municipal waste; consequently, the overall increase in recycling required to meet the 2035 target of 65% across municipal wastes, is unlikely to be as great as 26%.

Potential new treatment capacity

1.13.6 The likelihood of new treatment capacity becoming operational was considered from paragraph 3.4.23 of the WHFAR, which presents the approach to this capacity in more detail than is set out in the Executive Summary. Table 3.9 of the WHFAR [APP-086] presents the capacity that is believed to have a reasonable prospect of becoming operational; i.e. construction had commenced.

1.13.7 Table 3.9 has been reviewed looking both at 2018 environmental permitting data and doing a web based search. The only facility that has been found with any substantial change is the Tilbury Green Power Facility, which has received consent under section 90 (2ZA) of the Town and Country Planning Act 1990 to vary the conditions of the deemed planning permission, originally granted under section 36 of the Electricity Act 1989 (the amended consent is provided at Appendix 1.13b).

1.13.8 Various amendments have been made to the conditions of that consent, but condition 55 is the only one relevant to the Facility's capacity. Condition 55 restricts the overall tonnage of the facility to 650,000 tpa; no change from the original consent. The key tonnage change comes in the increase in the amount of municipal waste that can be accepted, a fuel stream that was formerly limited to 40,000 tpa but is now combined with SRF/RDF/C&I the cumulation of which is limited to no more than 350,000 tpa. However, this change would only affect Phase 2 of the Facility, for which construction has not yet commenced. The presence of this consent may indicate that the developers continue to intend to pursue that element of the development, but it is not yet started and cannot be relied upon as operational capacity.

1.13.9 The WHFAR addresses Phase 1 of the Facility, which is for biomass or potentially waste wood, demonstrating that this fuel type would be different to that which would be sourced for K3/WKN. This position remains the same and consequently the Phase 1 capacity of the Tilbury Green Power Facility can continue to be discounted.

1.13.10 There is no change to the amount of other capacity that has a reasonable prospect of becoming operational, it remains at 852,500 tonnes.

[9] Waste Management Plan for England, 2013 page 18 reports that the last C&I waste survey identified a 52% recycling rate within this waste stream. It is widely believed across the industry that this has increased and generally exceeds LACW recycling.

1.14 Q1A.1.14 – KCC/SEWPAG - If the policy of net self-sufficiency is applied with the caveats stated in the MoU, and as expressed in the relevant local plan policies, would the fuel availability be fully taken up within the SEWPAG area? Is an assessment in accordance with NPS EN-3 of local as well as national waste management targets required to answer this question and if so what information is available to this end?

1.14.1 The Applicant notes that this question is directed at KCC/SEWPAG and will review and comment on their response as appropriate.

1.15 Q1A.1.15 – Applicant - Please supply the full copy of the Resources and Waste Strategy referred to in WHFAR [APP-086] if not supplied previously or provide sign-post thereto.

1.15.1 The Resources and Waste Strategy (December 2018) is provided as Appendix 1.15a to this document, with its accompanying Evidence Annex provided as Appendix 1.15b.

1.16 Q1A.1.16 – Applicant - In WHFAR [APP-086] paragraph 1.4.6, could the supply of steam to Kemsley Paper Mill be achieved without the WKN Proposed Development but with the K3 Proposed Development?

1.16.1 Under normal operating conditions, both of K3 and the Kemsley Paper mill, the steam required for the mill's operation would be provided by a combination of its on-site energy infrastructure (including K2 and the consented K4 CHP facility which is currently being constructed) and the K3 Proposed Development. WKN would be capable of providing steam to the mill via K3 during times when K3 is not operational, for instance during routine maintenance, as well as being CHP ready in order to supply heat to other customers in the area.

1.17 Q1A.1.17 – KCC/Applicant - WHFAR [APP-086] paragraph 1.4.7 states "…there is a carbon burden associated with the transport of fuel to the facilities…". What is the quantification of that burden and how if at all would this burden be affected if fuel were taken more locally than is envisaged in the proposed application but in accordance with KCC and SEWPAG policies? Please provide a reasoned justification for your answer including any quantification of benefit that can reasonably be assessed.

1.17.1 The shorter a distance that any material has to travel, will result in a reduced carbon burden. At paragraph 1.4.7, the WHFAR [APP-086] recognises that there is a carbon burden associated with transporting residual waste and RDF to K3/WKN. The least distance travelled, the least carbon burden would be generated. However, the carbon benefits gained by the efficient recovery of energy in K3/WKN materially outweighs the carbon burden of transporting the

fuels to the Proposed Development. If K3/WKN were not present, it is not unreasonable to consider that the fuels would have to travel further to a landfill destination, or would continue to be exported overseas to the detriment of the UK energy demand.

1.17.2 The carbon burden associated with the transport of fuel to the facilities cannot be accurately quantified unless the sources of waste are known. For WKN waste contracts have not yet been signed, and for K3 there will be variance in the current sources of waste. The Applicant is therefore preparing an assessment which quantifies the carbon burden arising from waste based on the distance it has been transported to the facility, which will allow an approximate carbon burden to be assessed based on the likely proportions of waste being delivered from different distances. That work is underway and the Applicant anticipates being able to provide that at Deadline 4.

1.18 Q1A.1.18 – Applicant - WHFAR [APP-086] paragraph 2.1.6 states the Government will implement the 2018 Revised Waste Framework Directive (rWFD) in full. What is the Applicant's understanding of the current position as to such implementation?

1.18.1 In December 2018, Defra published the Resources and Waste Strategy; the first significant waste policy intervention in over a decade. In the Resources and Waste Strategy, the Government confirms its intention to adopt the targets in the EU Circular Economy Package ('CEP'), stating in Section 6.1.1:

> *'The EU (Withdrawal) Act 2018 will ensure existing EU environmental law continues to have effect in UK law after we leave the EU, providing businesses and stakeholders with maximum certainty. This includes any commitments from the Circular Economy Package (CEP) in relation to waste and recycling that are part of UK legislation when we leave'.*

1.18.2 The Government's position regarding the implementation of the rWFD is effectively set out in the Resources and Waste Strategy, which is being progressed through subsequent consultations on various measures i.e. consistent collections, extended producer responsibility, deposit return scheme and plastic tax. Detailed proposals on the measures that the Government intends to pursue are expected to be released for consultation later this year.

1.19 Q1A.1.19 – Applicant/KCC - Does the allowance for future recycling targets included in the various assessment tables of the WHFAR [APP-086] take full account of the matters stated in paragraphs 2.4.3 to 2.4.5 of the WHFAR? Are there other relevant considerations of a technical nature pertaining to technical feasibility and economic viability that should be taken into account and quantified, apart from the recycling targets? If so please comment.

1.19.1 The fuel availability assessment has fully considered the achievement of current recycling targets, underpinned by the assumption that they will be achieved.

1.19.2 There are technical, feasibility and economic viability challenges associated with the achievement of these targets, e.g. the financial viability of food waste collections throughout rural authorities, technical feasibility of recycling plastic film or the availability of economically viable recycling markets following Brexit. However, the WHFAR [APP-086] has assumed such challenges will be overcome and that current recycling targets will be achieved, not least this provides the worst case position with regards to fuel availability. Further detail about the approach used in the WHFAR is provided in our response to ExQ1A-1.13.

1.20 Q1A.1.20 – Applicant - WHFAR [APP-086] paragraph 3.1.3 states the WHFAR does not seek to specify an exact level of need for the Proposed Developments nor is that required by policy. Please could the Applicant be precise about whether and to what extent national or local policy has a role in considering surplus capacity and guiding decisions on applications such as the Proposed Developments.

1.20.1 National and local policy have a role in considering surplus capacity insofar as it is necessary to establish that there is no prejudice to the waste hierarchy. Otherwise, the Proposed Developments are energy generating stations, not waste management schemes, and NPS EN-1 and EN-3 are the base for the decision.

NPS EN-1

1.20.2 At paragraph 1.1.1, NPS EN-1 makes clear that for applications such as the Proposed Developments *'this NPS, when combined with the relevant technology-specific energy NPS, provides the primary basis for decisions by the IPC*.' Paragraph 1.1.2 continues, *'The Planning Act 2008 also requires that the IPC must decide an application for energy infrastructure in accordance with the relevant NPSs except* …'. Paragraph 1.1.3 is directed at applicants, advising them to ensure that all aspects of their application *'are consistent with the instructions and guidance in this NPS, the relevant technology-specific NPS and any other NPSs that are relevant to the application in question*.' From the outset, NPS EN-1 is clear that national policy, and specifically the national policy contained within the National Policy Statements, are the principal documents in decision making on nationally significant infrastructure projects.

1.20.3 The policy is clear that nationally significant infrastructure is required to deliver energy, from a diverse range of sources, and with a focus on renewable/low carbon supply. Not least, paragraph 2.2.27 confirms the delivery of energy infrastructure is a key element of well-functioning places:

> *'The Government's wider objectives for energy infrastructure include contributing to sustainable development and ensuring that our energy infrastructure is safe. Sustainable development is relevant not just in terms of addressing climate change, but because the way energy infrastructure is deployed affects the well-being of society and the economy. For example, the availability of appropriate infrastructure supports the efficient working of the market so as to ensure competitive prices for consumers. The regulatory framework also encourages the energy industry to protect the more vulnerable.'*

1.20.4 This integrated approach is repeated in National Planning Policy for Waste ('NPPW'). The opening paragraph of which confirms that waste management makes a positive contribution to sustainable communities, sustainable development and resource efficiency.

1.20.5 NPS EN-1 places no cap on energy generation. Local planning policy also places no cap on energy generation. The market is expected to deliver against the substantial demand and that forecast levels of need should not be used to stifle new development. Not least at footnote 36, NPS EN-1 advises that it is not prudent to rely on capacity that has been consented but is not yet operational, demonstrating that the government is after certainty in achieving renewable/low carbon energy supply.

1.20.6 On 9 April 2020, the Secretary of State for Business, Energy and Industrial Strategy (the 'SoS BEIS) published his intention to grant consent for the Riverside Energy Park Generating Station Order (the 'REP DCO') made by Cory Environmental Holdings Ltd. The Riverside Energy Park incorporates an energy from waste facility, proposed with a nominal waste throughput of 655,000 tonnes per annum, but capable of operating at up to 805,920tpa. It is the most recent application of national (and local policy) in decision making on an application such as the Proposed Developments.

1.20.7 At paragraph 4.5 of his letter , the SoS BEIS confirms that he '*agrees with the ExA's conclusion that a high weighting should be given to the established need for the development of electricity generating infrastructure [ER 5.15.5], and that these local adverse effects do not outweigh the benefits of the type identified in NE-1 and therefore the case for development consent has been made and should be granted [ER 5.15.6].*'

1.20.8 At paragraph 4.14, the SoS BEIS '*accepts that for renewable energy projects, a maximum generating capacity is not required as any new technology that might be installed will be constrained by the parameters set within the Order …*'.

NPS EN-3

1.20.9 NPS EN-3 builds upon the generic principles established in NPS EN-1, to focus on renewable energy infrastructure. Paragraph 2.1.3 makes clear that '*it is for energy companies to decide what applications to bring forward and the Government does not seek to direct applicants to particular sites for renewable energy infrastructure*', other than in relation to offshore wind.

1.20.10 Part 2.5 addresses biomass and waste combustion facilities, such as the Proposed Development. Paragraph 2.5.2 recognises that:

> *'The recovery of energy from the combustion of waste, where in accordance with the waste hierarchy, will play an increasingly important role in meeting the UK's energy needs. …'*

1.20.11 As an energy generating plant that uses residual waste as its fuel, NPS EN-3 is the relevant technology-specific energy NPS. NPS EN-3 is clear, at paragraph 2.5.70, that the decision making test in terms of considering capacity is '*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 …*'. Similar advice is given at paragraph 7 of NPPW.

1.20.12 Consequently, national policy expects some consideration of capacity and for this to lead to an understanding of the outcome as a result of that development. However, NPS EN-3 paragraph 2.5.13 makes clear that *'throughput volumes are not, in themselves, a factor in the IPC decision-making … this is a matter for the applicant*.' Similarly, paragraphs 2.5.17 to 2.5.19 recognise that the commercial aspects of the proposed development are not likely to be an important matter for the decision-maker. At paragraph 3.1.8 his Report, the Examining Authority's for the REP DCO confirms this, stating '*Throughput volumes are a matter for the Applicant and not a consideration in decision takin*g.' The SoS BEIS in his letter concludes that '*the issue of whether or not the volume of waste fuel stock available will allow the Applicant to make use of the total capacity of the Development is a commercial matter for the Applicant [ER 5.2.37].*'

1.20.13 The WHFAR [APP-086] was prepared to respond to these tests, presenting a range of outcomes that demonstrate K3/WKN will not prejudice delivery of the waste hierarchy: that even incorporating increased levels of recycling beyond that currently achieved, there remains a substantial need for energy from waste capacity.

1.20.14 This is exactly the approach taken by the Examining Authority and the Secretary of State in their recent consideration of the REP DCO. At paragraph 5.2.34 of his Report, the ExA recognises that '*Projections are in their nature subject to uncertainty and, in my view, it is prudent to consider a range of outcomes as the Applicant has done*.' At paragraph 5.2.37 he concludes:

> *'Whether the volume of waste available for processing will be at the level anticipated by the Applicant allowing it to make full use of the planned*

capacity of the REP or at the lower levels projected by the GLA is, in this context, primarily a commercial matter for the Applicant. My concern in considering this aspect of the application is that the level of future waste arising should not result in the operation of the Proposed Development breaching the principles of the waste hierarchy. …'

Conclusions

1.20.15 The National Policy Statements establish the nationally important, and urgent, need for new infrastructure. They also make clear the level of expectation placed on such plant – the benefits of national significance that would be realised through REP. Local policy is aligned with this position.

1.20.16 Fundamentally, K3/WKN fully meet the policy objectives of the National Policy Statements: delivering new energy capacity, of a renewable/low carbon supply; delivering the waste hierarchy; and delivering societal benefit. In addition, the Proposed Developments are aligned with local policy.

1.20.17 National and local policy is focussed on providing the infrastructure necessary to deliver sustainable communities; of which energy provision and waste management are integral elements. Policy recognises the risks in ensuring provision of this essential infrastructure such at the relevant test is focussed on the effect on the waste hierarchy. The WHFAR demonstrates that the waste hierarchy is not prejudiced by K3/WKN and that key policy priorities will be delivered.

1.21 Q1A.1.21 – Applicant/KCC - KCC disagrees that the Proposed Developments are compliant with national and local policy regarding the matters set out in WHFAR [APP-086]. However what is the Applicant/KCC's view as to whether local policy in all relevant respects conforms with relevant national policy?

1.21.1 Local policy is considered to conform with national policy, albeit has been subject to locally focussed amendments. For example the inclusion of the word 'net' in front of 'self-sufficiency', when the principle being applied is no different to that of the national policy phrase that is simply 'self-sufficiency'.

1.22 Q1A.1.22 – KCC/SEWPAG - Does KCC seek to make the Proposed Developments predicated solely on the demands of its area or to what extent would the flexibility expressed in the MoU enable demands of a wider area to be met? (See also Q1A.1.14)

1.22.1 The Applicant notes that this question is directed at KCC/SEWPAG and will review and comment on their response as appropriate.

1.23 Q1A.1.23 – Applicant/KCC - If the Proposed Developments were granted consent, to operate in accordance with the dDCO, would it be feasible or desirable to include further requirements necessary for them to operate in accordance with KCC's interpretation of national and local policy, for example by restricting the sources, including the geographical locations of feedstock and if not why not?

1.23.1 The dDCO is considered to contain the Requirements relevant and important to the Proposed Developments and to appropriately deliver policy. A restriction on the geographical location from which fuel is sourced would not be appropriate. As demonstrated in the Applicant's response to ExQ1A_1.2 and previously in Appendix 1 [REP2-009] Applicant's Response to ExQ1, the concept of self-sufficiency does not mean that all waste has to be managed as close to its source as possible, nor require every authority individually to have all the infrastructure necessary to do so.

1.23.2 On 9 April 2020, the Secretary of State for Business, Energy and Industrial Strategy (the 'SoS BEIS) published his decision on the application for the Riverside Energy Park Generating Station Order (the 'REP DCO') made by Cory Environmental Holdings Ltd. REP is located in London, and the waste management need case for that facility was focussed on London, but the application was clear and consistent that REP was not promoted as solely to treat London's waste; fuels could be sourced from beyond London. This is the most recent determination of a development comparable to K3/WKN and it does not include any restriction regarding the source of fuels for REP.

1.23.3 Tilbury Green Power Facility recently (26 March 2020) received consent under section 90 (2ZA) of the Town and Country Planning Act 1990 to vary the conditions of the deemed planning permission, originally granted under section 36 of the Electricity Act 1989 (the amended consent is provided at Appendix 1.13b). Conditions 58 to 60 of that consent formerly restricted the Facility to receive fuels from a defined catchment area. These conditions have been removed in the amendments approved under the section 90 application.

1.23.4 These two, very recent, decisions for comparable facilities demonstrate that a restriction on the geographical location from which fuel can be sourced is not appropriate or necessary. As demonstrated in Chapter 4 of the Environmental Statement [APP-056] there is no unacceptable adverse impact caused by transporting waste to the Proposed Development from further afield than the county of Kent, not least because the transport routes are wholly appropriate for the transport of fuel to the Application Site. Consequently, there is no reasonable objection to the import of fuel to K3/WKN from outside of Kent or the Study Area.

1.24 Q1A.1.24 – KCC/SEWPAG - Is your objection to the Proposed Developments predicated on both K3 and WKN projects proceeding, or what is your position as regards any eventual consent being granted for one project but not the other, and why?

1.24.1 The Applicant notes that this question is directed at SEWPAG/KCC and will review and comment on their response as appropriate.

1.25 Q1A.1.25 – Applicant - The two-hour drive time is selected for the purposes of the Study Area only (see WHFAR [APP-086] paragraph 3.1.5) but on the basis of keeping transport costs proportionate to overall management costs. What other information if any has been submitted to the ExA which makes it likely that feedstock beyond the Study Area for the Proposed Development would be accessed by the Applicant? As the drivetime area includes West London boroughs outside the Study Area please explain why these are excluded.

1.25.1 The Proposed Developments have been submitted as merchant facilities; they are proposed to respond to market demands for residual waste management (including RDF). The source of that market demand is not yet confirmed in terms of contracts for fuel, and will not be until after planning and Environmental Permit consents have been gained.

1.25.2 The Study Area is simply a proportionate area that was reasonable to consider, presenting a balanced approach in responding to the test set within NPS EN-3; demonstrating that the Proposed Developments would not prejudice the waste hierarchy. It is not presented to be either indicative or restrictive of fuel sources.

1.25.3 A wider study area could have been drawn that (within a 2 hour drive time) would have incorporated West London boroughs, but also much of Surrey (see response to ExQ1A_1.5) Buckinghamshire and Hertfordshire. This would simply have shown a greater tonnage of available wastes.

1.25.4 Waste does travel over substantial distances and, not least as confirmed in response to ExQ1A_1.23, there is no justified objection to fuels travelling further to reach K3/WKN.

1.26 Q1A.1.26 – Applicant - Please identify, with reference to Table 3.2 of WHFAR [APP-086] for 2017, where the original WDI data is submitted or supply the same.

1.26.1 The source WDI data for 2017 can be found at https://data.gov.uk/dataset/d18fbf9a-eeca-43d7-84e3-1dea6b91425d/waste-data-interrogator-2017 as either a MS Assess Database or a MS Excel

Spreadsheet. However, in order to achieve the data presented in the WHFAR [APP-086] the WDI data needs to be subjected to queries and data manipulation for it to be presented in a usable format. This process does not change the source data, but it is sorted and filtered as necessary in order to gain the relevant information for the WHFAR.

1.27 Q1A.1.27 – Applicant - In Tables 3.4 and 3.5 of WHFAR [APP-086], should the total tonnes 2017 figure of 1,508,860 not be 1,508,869?

1.27.1 The apparent error is simply due to rounding within the numbers presented, but the total shown as 1,508,860 is correct.

- 19 12 10 combustible waste (refuse derived fuel) = 98,882.46 tonnes
- 19 12 12 other wastes (including mixtures of materials) from mechanical treatment of wastes other than those mentioned in 19 12 11 = 906,111.42 tonnes
- 20 03 01 mixed municipal waste = 479,463.36 tonnes
- 20 03 07 bulky waste = 24,222.58 tonnes
- Total = 1,508,859.82 tonnes (which is rounded up to 1,508,860)

1.28 Q1A.1.28 – Applicant - Table 3.5 of WHFAR [APP-086] is titled Tonnes of LACW disposed of to landfill and percentage of LACW managed. The figures appear to relate only to the tonnage (and percentage) of the "managed" LACW. Please comment, providing the original source data."

1.28.1 The data in Table 3.5 comes from Department for Environment, Food & Rural Affairs. LACW Statistics (LA_and_Regional_Spreadsheet_201718), Table 2: Management of Local Authority Collected Waste, England, 2014/15 to 2017/18:

https://www.gov.uk/government/statistical-data-sets/env18-local-authority-collected-waste-annual-results-tables

1.28.2 The term 'managed' is used by Defra as it relates to the quantity of waste managed by local authorities in a given year. The management methods detailed are:

- Landfilled
- Incineration with EfW
- Incineration without EfW

- Recycled- Composted
- Other
- Total
- Input to intermediate plants

1.28.3 The term 'managed' is used because the quantity of waste managed in any one year can vary slight from the arisings: waste can be arising in one year, be stockpiled for a while and managed in the following year. The footnote in the Defra data table states '*Total Local Authority collected waste managed may not match total Local Authority collected waste collected as reported in Table 1 due to stockpiling of waste between reporting periods.*'

1.28.4 For example, in 2017/18 for the Kent sub region:

- For Kent County Council the total LACW arisings was 708,527 tonnes (Table 1 referenced above) but the total LACW managed by Kent County Council was 717,388 tonnes, of which 7,442 tonnes was landfilled (Table 2 referenced above).
- For Medway Borough Council the total LACW arisings was 708,527 tonnes (Table 1 referenced above) but the total LACW managed by Kent County Council was 130,573 tonnes, of which 12,543 tonnes was landfilled (Table 2 referenced above).

1.28.5 This gives a total of 19,985 tonnes landfilled from a total of 847,961 tonnes managed, which in turn gives the 2% landfilled stated in Table 3.5 of the WHFAR [APP-086].

1.28.6 Table 1.28_1 presents LACW generated by the authorities within the Study Area, the tonnage landfilled and managed, and the corresponding percentage.

1.28.7 As in response to ExQ1A_1.3, LACW was considered in the WHFAR because it is recognised (at paragraph 3.2.26) that this waste stream is often subject to long-term contracts. However, those contracts are regularly reviewed and renewed. They are just one element of a greater market demand for new residual waste treatment capacity, such as K3/WKN.

Table 1.28_1 LACW landfilled by authorities in the Study Area, 2015/16 to 2018/19

Local Authority	2015-16			2016-17			2017-18			2018-19		
	Landfilled	Total Managed	% Landfilled	Landfilled	Total Managed	% Landfilled	Landfilled	Total Managed	% Landfilled	Landfilled	Total Managed	% Landfilled
East London	94,125	448,515	21%	47,247	466,153	10%	32,117	459,655	7%	33,567	464,330	7%
East Sussex	18,320	368,765	5%	17,958	377,943	5%	18,514	377,467	5%	14,614	370,567	4%
Essex	259,620	896,490	29%	179,280	899,483	20%	105,129	864,148	12%	148,824	870,489	17%
Kent	60,818	846,354	7%	34,563	871,919	4%	19,985	847,961	2%	26,515	855,911	3%
South East London	8,286	485,176	2%	18,036	485,865	4%	3,618	474,147	1%	36,140	490,682	7%
South London	255,526	549,047	47%	231,194	546,961	42%	210,144	535,832	39%	135,463	528,502	26%
West Sussex	163,755	447,288	37%	199,673	442,550	45%	170,605	438,532	39%	130,029	441,350	29%
Totals	**860,449**	**4,041,635**	**21%**	**727,951**	**4,090,874**	**18%**	**560,113**	**3,997,742**	**14%**	**525,152**	**4,021,831**	**13%**

1.29 Q1A.1.29 – KCC/SEWPAG - Please comment with reference to WHFAR [APP-086] paragraph 3.2.26 to 3.2.30 whether the LACW disposed to landfill or a percentage thereof should be deducted from the shortlisted combustible wastes, providing a justification for your comments.

1.29.1 The Applicant notes that this question is directed at KCC/SEWPAG and will review and comment on their response as appropriate.

1.30 Q1A.1.30 – Applicant - Given the comments in WHFAR [APP-086] paragraph 3.2.33 in the first bullet point, please explain why the 63,500 tonnes of waste cited have not been added to the shortlisted wastes.

1.30.1 Paragraph 3.2.33 of the WHFAR [APP-086] highlights potential reasons why the estimated available fuel could be an underestimate. It could well be argued that the 63,500 tonnes of waste from the Furniture, Paper and Cardboard Manufacturing Sector should be added to the shortlisted wastes. However, as the methodology in the WHFAR was based on four specific LoW codes, it was considered disingenuous to simply add this additional waste stream to the figures derived through the detailed methodology. It seemed more appropriate to highlight that other wastes are available that could be fuels for K3/WKN, in addition to the identified shortlisted wastes.

1.31 Q1A.1.31 – KCC/SEWPAG - Do you have any comments on the position regarding the nature of LACW contracts in the second bullet point of WHFAR [APP-086]?

1.31.1 The Applicant notes that this question is directed at KCC/SEWPAG and will review and comment on their response as appropriate.

1.32 Q1A.1.32 – Applicant - Please submit Tolvik's Market Review referred to in WHFAR [APP-086] or identify its location.

1.32.1 The Tolvik Market Review, 'UK Residual Waste: 2030 Market Review' (November 2017) is provided as Appendix 1.32 to this Document.

1.33 Q1A.1.33 – Applicant - In Figure 3.3 of WHFAR [APP-086], is the Total with Destinations Outside UK differentiated as to shortlisted waste types? Please also provide the source of the Figure.

1.33.1 In Figure 3 of the WHFAR [APP-086] 'Total with destinations outside UK' is referring to the RDF removed from facilities within the Study Area and exported (as shown in WHFAR Table 3.6). This material is removed from treatment facilities and directly exported overseas; it is not a subset of shortlisted wastes, that are disposed to landfill.

1.33.2 However, it can still be differentiated using the LoW classifications that are included in the shortlisted wastes to landfill, as shown in Table 1.33_1.

Table 1.33_1 LoW Codes attributable to the RDF removed from facilities within the Study Area and exported.

LoW Code	2015	2016	2017	2018
19 12 10 combustible waste (refuse derived fuel)	502,157	938,767	884,977	782,547
19 12 12 other wastes (including mixtures of materials) from mechanical treatment of wastes	93,256	61,850	133,615	106,676
Total	**595,413**	**1,000,617**	**1,018,592**	**889,224**
Source: Environment Agency, WDI, 2015, 2016, 2017, 2018 Based of wastes removed from facilities with Outside UK as the destination				

1.34 Q1A.1.34 – Applicant/SEWPAG - "WHFAR [APP-086] paragraph 3.4.7 states "…the future capacity, and consequent availability, of landfill facilities cannot be relied upon beyond the next ten years…". The Applicant's response to ExQ1.1.4 [REP2-009, Appendix 1] SEWPAG on page 3, states provision of the consented capacity at K3 means management of waste will be locked into incineration for at least the next 25 years, compromising the ability to prevent it in the first place or to enable it to be recycled/composted.

What local or national studies exist of which you are aware, not already referred to, that identify the optimum role for the provision of energy recovery facilities similar to the Proposed Development, to move waste up the hierarchy, based on studied projected decreases in landfill availability and projected increases in recycling?"

1.34.1 Whilst the WHFAR [APP-086] does not consider the future availability of landfill facilities in detail, simply noting that available void is diminishing, it does wholly incorporate the target of 65% recycling by 2035. As discussed in response to ExQ1A_1.13, it is not readily possible to quantify the likelihood of this recycling target being met; nonetheless, the fuel availability assessment has assumed that it will be.

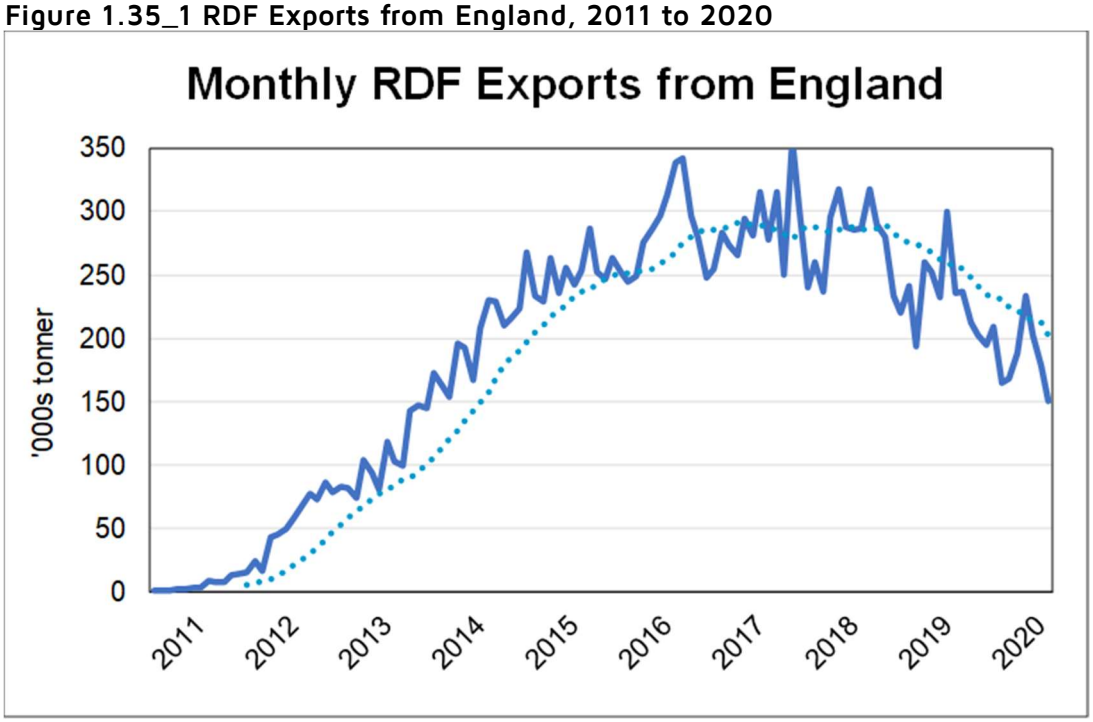
1.34.2 This approach is consistent with the fuel availability analysis undertaken for the REP DCO. Document reference 7.2.1, titled 'Supplementary Report to the Project and its Benefits Report' and provided at Appendix 1.34 includes an Appendix prepared by Tolvik Consulting (the Tolvik Appendix). The Tolvik Appendix considers both the approach set out in: the Resources and Waste Strategy (and the Evidence Annex); and various reports that Tolvik Consulting has prepared that consider the future need for new residual waste treatment capacity, incorporating consideration of landfill availability, recycling rates, and the export of RDF. This analysis include Tolvik's Market Review (supplied under response to ExQ1A_1.32) that was commissioned by the Environment Services Association as an independent review of six, third party reports relating to the residual waste market in the UK. The Tolvik Appendix concludes that new energy recovery capacity (similar to the Proposed Developments) is required, and is a part of the Resources and Waste Strategy.

1.35 Q1A.1.35 – Applicant - With regard to export of RDF overseas, now that the UK has left the EU please provide an update, if any, of paragraph 3.4.8 in WHFAR [APP-086] , and elaborate upon paragraph 61 of Applicants comments on written representation [REP2-011], indicating what evidence indicates the export of RDF waste would be negatively affected.

1.35.1 The data source for this response is available at https://data.gov.uk/dataset/5ffdf701-05c2-43b8-ba1e-e65580bbcc08/international-waste-shipments-exported-from-england.

1.35.2 The export of RDF from the UK to mainland Europe started in the early 2000s, with just a few shipments being made. The practice rapidly increased reaching just under one million tonnes by the end of 2012 and peaked at just under 3.5 million tonnes over the period 2016 to 2017. Figure 1.35_1 shows both monthly exports of RDF from England to mainland Europe (the solid line) and a rolling 12 month tonnage (the dotted line, each data point contains 12 months' worth of data) from 2011 to 2020.

Figure 1.35_1 RDF Exports from England, 2011 to 2020



1.35.3 Figure 1.35_1 shows a plateau in the tonnage exported (of around 3 million tonnes) over the three-year period March 2016 to March 2019. It also shows a general decline from 2018.

1.35.4 There are a number of reasons why this practice grew so suddenly, and is now in decline. Primarily, it made economic sense for RDF to be exported. As identified in the WHFAR [APP-086] (from paragraph 2.4.7) WRAP[10] publishes an annual Gate Fee Report[11]. Not only do these reports consistently show that gate fees at material recycling facilities and organic waste treatment facilities (e.g. anaerobic digestion facilities) which are preferred in the waste hierarchy, are significantly lower than gate fees at energy from waste plant and landfill facilities; they also show that the cost of landfill (including tax) was £76 per tonne in 2011, and rising. Gate fees across European energy recovery facilities,

[10] The Waste and Resources Action Programme. Originally set up by government (2000) and registered as a Charity in 2014, to promote sustainable waste management.

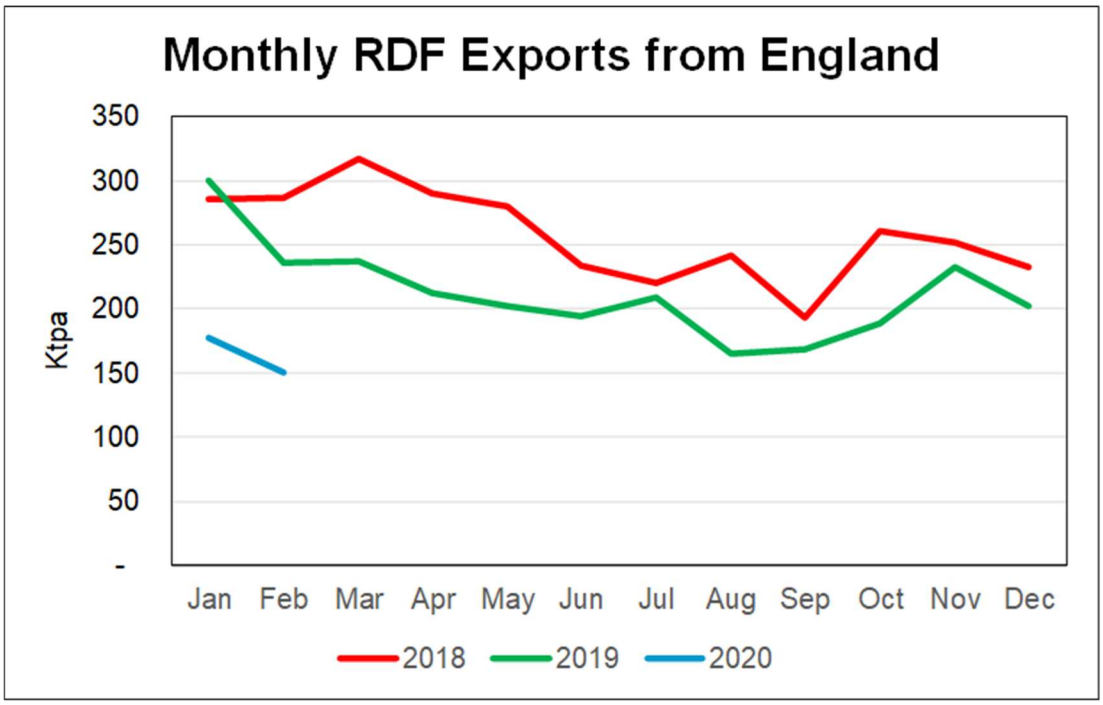
[11] http://www.wrap.org.uk/collections-and-reprocessing/recovered-materials-markets/reports/gate-fee-reports

which were actively seeking fuel, were between €30- €50 per tonne (excluding additional costs such as transport, fuel and permits). This was clearly a cost saving, that could be passed onto clients.

1.35.5 In addition, there are environmental benefits for exporting RDF to energy recovery facilities, rather than simply disposing of it to landfill. The RDF is used as an energy source that can be used for either heat/cooling or power rather. Research carried out on behalf of Dutch energy firm Afval suggested that energy recovery from RDF remains environmentally beneficial over landfill if the waste travels up to 2,300 km by boat or 1,265km by road[12].

1.35.6 Figure 1.35_2 shows the decline over years 2018 to 2020 in more detail.

Figure 1.35_2 RDF exports from England, 2018 to 2020



1.35.7 Again, there are various reasons that may be attributed to this shift. The Brexit referendum was held in June 2016 and may be attributed to starting the decline in the level of RDF exported. However, it is likely to be one reason alongside others, including: that export costs have been increasing; shipping capacity has been used for other commodities; capacity in European facilities is being filled from other sources; and the Netherlands introduced a new tax on waste sourced from outside of the country, implemented from January 2020, currently charged at around €32 per tonne.

12 https://www.clarity.eu.com/home/news/news.php?news_id=370&type_id=5&region_id=&story=Future+of+RDF+exports+to+Europe+from+the+UK

1.35.8 As with any forecasting, predicting the future of RDF exports is an uncertain art. The final outcome of Brexit is still unknown, and now compounded by the uncertainties introduced by the Coronavirus pandemic. Factors that could lead to a further decline would be a further weakening of the pound to the Euro and also a reduction in the availability of return delivery vehicles from Europe. While this cannot be evidenced at this time, the uncertainty is likely to lead importing countries to look at other RDF import opportunities. The data shows a sustained decline in the export of RDF to mainland Europe, and this might be expected to continue, but with no certainty at what rate this will occur.

1.35.9 The key point is that, having spent the time and resources within the UK recycling our waste and treating it ready for incineration, it is a missed opportunity to then remove that fuel to mainland Europe when that RDF can be put to beneficial use within the UK as a renewable/low carbon energy source; one that is so urgently sought in both national and local policy.

1.36 Q1A.1.36 – Applicant - Would the export of RDF waste be subject to term contracts and if so should it be assessed similarly to managed LACW? If not why not?

1.36.1 Whilst technically still a 'waste', RDF is appropriately considered as a product or commodity, and one that will be subject to market vagaries. Figure 1.35_1 above shows the peaks and troughs seen in the month by month export of RDF to mainland Europe. This is the result of a number of operational factors needing to be co-ordinated, not least gaining the relevant ship of waste approvals and shipping space, but also responding to market prices.

1.36.2 RDF may well be produced in a facility that operates as part of a term contract held with a local authority, with the detail of each contract determining the destination for that RDF. However, many local authority contracts include a range of outlets; not least to minimise risk for the local authority that the RDF will be disposed of to landfill. Consequently, the waste management company contracted to the local authority will be checking the market regularly to find the best outlet for the RDF. RDF is also produced from wastes generated in the C&I waste stream and will be subject to much shorter term contracts.

1.36.3 Consequently, RDF can be considered a product available on the market and generally not constrained by term contracts. As identified in response to ExQ1A_1.3, whilst LACW is subject to longer term contracts, local authorities will be looking for new waste management solutions within the lifetime of K3/WKN and at that point the Applicant may choose to bid for any contract that is put to tender. K3/WKN is responding to an identified market need for new residual waste management capacity that will divert residual wastes from landfill and optimise the use of RDF. RDF, along with LACW, is just one element of a much larger market demand.

1.37 Q1A.1.37 – Applicant/KCC - Please provide an update, if any, as to your understanding of the position regarding Table 3.9 in WHFAR [APP-086] as to the facilities specified in rows a, b, c (Phase 2), and e.

1.37.1 To the best of the Applicant's knowledge, there has been no change in the position of the facilities identified at rows a, b and e of WHFAR [APP-086] Table 3.9.

1.37.2 As described in response to ExQ1A_1.13, various amendments have been made to the conditions of the Tilbury Green Facility (WHFAR Table 3.9, row c), with condition 55 the only one relevant to the Facility's capacity. Condition 55 restricts the overall tonnage of the facility to 650,000 tpa; no change from the original consent. The key tonnage change comes in the increase in the amount of municipal waste that can be accepted, a fuel stream that was formerly limited to 40,000 tpa but is now combined with SRF/RDF/C&I the cumulation of which is limited to no more than 350,000 tpa. However, this change would only affect Phase 2 of the Facility, for which construction has not yet commenced. The presence of this consent may indicate that the developers continue to intend to pursue that element of the development, but it is not yet started and cannot be relied upon as operational capacity. The WHFAR addresses Phase 1 of the Facility, which is for biomass or potentially waste wood, demonstrating that this fuel type would be different to that which would be sourced for K3/WKN. This position remains the same and consequently the Phase 1 capacity of the Tilbury Green Power Facility can continue to be discounted.

1.37.3 There is considered to be no change to the amount of other capacity that has a reasonable prospect of becoming operational, it remains at 852,500 tonnes.

1.38 Q1A.1.38 – Applicant - What national or local policies if any does the Applicant regard as policies that discourage over-capacity of facilities comparable to the Proposed Developments?

1.38.1 There is no national or local policy that discourages the over-capacity of facilities comparable to the Proposed Developments (residual waste treatment/energy recovery facilities) specifically. All waste management facilities should be considered in terms of their contribution to achieving the waste hierarchy. This principle is made clear across national and local policy documents, but principally: NPS EN-3, paragraph 2.5.70; National Planning Policy for Waste, paragraph 7; and Kent Minerals and Waste Local Plan and the Early Partial Review, policy CSW2.

1.39 Q1A.1.39 – Applicant/KCC - If the principle is a valid one that the waste hierarchy is complied with as stated in paragraph 2.4.1 "…based on market forces and practical factors alone,…" of WHFAR [APP-086] WHFAR) or

through "…good intentions and market forces." as stated in paragraph2.4.7, what weight should be placed on policies of net self-sufficiency?

1.39.1 Whilst the principles (and associated policy) of the waste hierarchy and self-sufficiency have a relationship, they are separate objectives. Their source point, the Waste Framework Directive provides their definitions.

1.39.2 The waste hierarchy is required to '*apply as a priority order in waste prevention and management legislation and policy*' at Article 4. Member States shall make this application whilst taking *'into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts, in accordance with Articles 1 and 13.*'

1.39.3 Whilst at Article 16, Member States are required 'to take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers, taking into account best available techniques.' However, Article 16 is also clear that 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.'

1.39.4 In short, the waste hierarchy may be understood as the 'how' of waste management, with self-sufficiency being the 'where'. Whilst both have clarity in terms of principle, the Waste Framework Direct also builds in flexibility to properly consider the context of any waste management project.

1.39.5 Net self-sufficiency is a local construct; it does not feature in either the Waste Framework Directive or national policy. It was devised so that, in preparing their policy documents, each local planning authority simply had to provide a framework relevant to the amount of waste that was calculated to arise in their own area. It does not require each authority to provide all the waste management infrastructure within that administrative area, and it does not restrict waste moving across boundaries or into/out of other administrations. As a local policy with a simple, essentially practical application, the principle of net self-sufficiency should receive less weight than the waste hierarchy.

1.40 Q1A.1.40 – Applicant - Within the context of NPS EN-1 (paragraph 4.2.22), that intends that a framework only is provided for the market to respond to, but "in the places where it is acceptable in planning terms", what is the scope of that tailpiece for taking into account sub-national policies of net self-sufficiency or over-capacity?

1.40.1 It is important and relevant to note that there is no policy, sub-national or otherwise, that specifies over-capacity. With regard to the status of the principle of 'net self-sufficiency' we refer to our response to Q1A.1.2.

1.40.2 In brief, and set out in response to ExQ1A_1.20, NPS EN-1 is clear that it '*combined with the relevant technology-specific energy NPS, provides the primary basis for decisions'* on application such as the Proposed Development.

1.40.3 NPS EN-1 paragraph 1.1.1 does also identify, inter alia, *'any local impact report submitted by a relevant local authority, any relevant matters prescribed in regulations*'. Consequently, any local policy can only ever be taken into account either through having regard to the local impact report, or as a matter that is both important and relevant in its own right. They can only be afforded less weight than national policy, namely the National Policy Statements.

1.41 Q1A.1.41 – KCC - Please provide the Kent Waste Needs Assessment 2018 Capacity Requirement for the Management of Residual Non-Hazardous Waste, September 2018 update, or identify its location in the submitted documents.

1.41.1 The Applicant notes that this question is directed at KCC and will review and comment on their response as appropriate.

1.42 Q1A.1.42 – KCC - Do you agree that the Proposed Developments taken as a whole or looked at individually in terms of the K3 and WKN projects, would meet the energy recovery performance threshold (R1), or if not why not?

1.42.1 The Applicant notes that this question is directed at KCC and will review and comment on their response as appropriate.

1.43 Q1A.1.43 – KCC - In KCC's written representation [REP-010, Annex 1], Section 5 please comment on the figures given for shortlisted waste types disposed to landfill (769,372) and RDF exported overseas (889,067), explaining how and why these differ from their counterparts in the Applicant's submission.

1.43.1 The Applicant notes that this question is directed at KCC and will review and comment on their response as appropriate.

1.44 Q1A.1.44 – KCC/SEWPAG - "NPS EN-3 appears to require, where appropriate, Annual Monitoring Reports to show existing waste capacity and future waste capacity requirements. For the Proposed Developments who are the "relevant waste authorities" in paragraph 2.5.68 for these purposes?"

1.44.1 The Applicant notes that this question is directed at KCC/SEWPAG and will review and comment on their response as appropriate.

1.45 Q1A.1.45 – Applicant - In the Applicant's comments on written representations [REP2-011] paragraph 17, please explain where, when, how and by whom the waste referred to is certified as "not suitable for recycling".

1.45.1 Paragraph 17 of the Applicant's comments on written representations [REP2-011] focusses on the Environmental Permit (EP). This is granted by the Environment Agency as body that determines, and specifies within the EP, which waste types can be accepted at a facility under the terms of that EP. Waste types are categorised according to the European Waste catalogue (EWC). This codes waste both according to their nature and the process or industry that produced them. The EP is clear that the operator is only authorised to carry out the activities specified within the EP.

1.45.2 Within the K3 EP, the type and quantity of waste that can be accepted at the facility is set out in Schedule 2, Table S2.2, and the EP makes clear that wastes to be accepted at K3 is restricted to this list. Paragraph 2.3.3 of the EP states:

> *Waste shall only be accepted if:*
>
> > *(a) it is of a type and quantity listed in schedule 2 table S2.2; and*
> >
> > *(b) it confirms to the description in the documentation supplied by the producer and holder;*
> >
> > *(c) if having been separately collected for recycling, it is contaminated and otherwise destined for landfill.*

1.45.3 All of WTI's energy recovery facilities have this type of restriction in their EP and the Applicant expects that it would be included in any EP granted for WKN.

1.45.4 WTI holds fuel supply agreements with all waste suppliers to limit the waste types they are permitted to bring. Waste suppliers are also required to supply a Waste Transfer Note detailing the waste (including RDF) that is being brought to the facility. WTI will operate checks on the wastes delivered and deal appropriately with any supplier that delivers the wrong materials. This is standard operation for WTI facilities and will be in accordance with written management procedures that implement conditions of the EP.

1.45.5 However, it is important and relevant to recognise that WTI, as the operator of K3/WKN, is just one element of waste management infrastructure; many others will also be determining whether waste is suitable or not for recycling. The generator of waste will consider whether to place that material in a container for recycling or disposal. In the next step of the process, the waste handler (e.g. the operator of a waste transfer station or cardboard/paper reprocessor) will be considering whether the material receives is suitable for recycling. As recovery facilities treating residual wastes, K3/WKN are at the end of the waste management chain.

1.45.6 A Duty of Care is imposed on all those in the waste supply chain through the Environmental Protection Act 1990 (EPA 1990). Section 34(1) of the EPA 1990 imposes a duty of care on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste. The duty requires such persons to ensure that there is no unauthorised or harmful deposit, treatment or disposal of the waste, to prevent the escape of the waste from their control or that of any other person, and on the transfer of the waste to ensure that the transfer is only to an authorised person or to a person for authorised transport purposes and that a written description of the waste is also transferred. Waste handlers supplying waste to WTI's facilities must adhere to this Duty of Care.

1.45.7 In addition to this legislative provision, there is a commercial imperative to recycle materials. The paper/cardboard reprocessor will most likely make a financial return by recycling the material they receive, but will encounter a financial cost for the treatment or disposal of anything that is not suitable for recycling.

1.45.8 Consequently, a number of parties will determine whether waste is suitable for recycling, and that decision will be driven by both good intentions (compliance with legislation and understanding the benefits of recycling) and market forces (seeking to realise financial gain and reduce cost). It is not a decision left solely to WTI as the operator of energy recovery facilities.

1.46 Q1A.1.46 – Applicant - Please supply the three reviews cited in paragraph 39 of the Applicant's comments on written representations [REP2-011].

1.46.1 The three reviews sought by the ExA are presented in just two documents, provided as Appendices 1.46a (the WTI C&I Review and the WTI RDF Review) and 1.46b (The WTI LACW Review).

1.47 Q1A.1.47 – KCC - Please comment on the alleged deficiencies referred to in paragraphs 12 and 39 of the Applicant's comments on written representations [REP2-011].

1.47.1 The Applicant notes that this question is directed at KCC and will review and comment on their response as appropriate.

1.48 Q1A.1.48 – Applicant - 16/507687/COUNTY was a permission for the construction and operation of an Incinerator Bottom Ash (IBA) Recycling Facility on land adjacent to the Kemsley Sustainable Energy Plant Permission which has lapsed. Please explain why it not sought to renew this permission and what alternative facilities are available and where, which the Applicant expects to use.

1.48.1 The land on which the previously consented IBA was to be located is the same broad parcel of land on which it is now proposed to construct the WKN facility, and as such the decision was taken not to seek a fresh consent for that IBA facility.

1.48.2 As also noted in respect of Q1A.11.7, a contract has been entered into with Fortis for the management and processing of the IBA from the Kemsley (K3) facility and they are in the process of applying for planning permission to develop a new IBA facility at Ridham Docks, some 2km from the site. In the meantime they will be processing the IBA arising from K3 via their existing facility in Hampshire. The proposed new facility will have sufficient capacity to also manage any IBA also produced from WKN and negotiations regarding that are underway.

11 Q1A.11. – Highways

11.1 Q1A.11.1 – KCC - In ES Chapter 4 - Tracked [REP2-019], do you agree that the A10 land allocation does not predict traffic to be generated onto highway links assessed in paragraph 4.4.28 or if not why not?

11.1.1 The Applicant notes that this question is directed at KCC and will review and comment on their response as appropriate.

11.2 Q1A.11.2 – KCC - ES Chapter 4 Transport-Tracked [REP2-019] paragraph 4.9.1 states "No traffic growth rates have been applied as traffic generated by committed developments exceed the traffic flows generated by the assumed development growth in TEMPRO." Do you agree and what is the significance of this statement for assessing the likely significant traffic and transport effects resulting from the Proposed Developments?

11.2.1 The applicant notes that this question is directed to KCC, however, for clarity, the applicant would like to confirm that this item was discussed with KCC in our meeting dated 10 February 2020, after which KCC agreed with the methodology, as set out in paragraph 7.4 of their Local Impact Report.

11.2.2 Noting that this question is directed to KCC, the applicant feels it would be useful to comment to assist the Examining Authority. In terms of the significance of this statement for assessing the likely significant traffic and transport effects resulting from the Proposed Developments, TEMPRO growth factors include for development growth, therefore, if additional traffic from TEMPRO growth and from other developments are added together, then double counting of traffic results. In such instances the modelled future year traffic flows would be an overestimate. Therefore, adjustments to the additional traffic being added needs to be made.

11.2.3 In this instance, there are a large number of other developments identified and the additional traffic they would cumulatively generate is far in excess of the additional traffic predicted by TEMPRO (which includes for these other developments). Therefore, including the additional traffic from the other developments and not including any additional growth from TEMPRO is the appropriate adjustment to make and results in the best estimates of future year traffic flows with which to assess the significant traffic and transport effects resulting from the K3 and WKN Proposed Developments. As above, KCC agrees with this methodology, as set out in paragraph 7.4 of their Local Impact Report

11.3 Q1A.11.3 – KCC - Do you agree with the conclusions regarding the Neatscourt, Isle of Sheppey area in paragraph 4.9.8 of ES Ch 4 Transport-Tracked [REP2-019]?

11.3.1 The Applicant notes that this question is directed at KCC and will review and comment on their response as appropriate.

11.4 Q1A.11.4 – KCC - Please provide the Transport Assessment referred to in the IBA application which is noted in [REP2-048] KCC D2 Submission and [REP1-011] KCC LIR at Section 6, and state when it was received.

11.4.1 The Applicant notes that this question is directed at KCC and will review and comment on their response as appropriate.

11.5 Q1A.11.5 – Applicant - [REP2-048] KCC D2 Submission refers to an application for a new Incinerator Bottom Ash processing plant to KCC reference KCC/SW/0008/2020. Given the stated symbiotic relationship between the application and the Proposed Development please provide the information requested in the bullet points on page 2 of [REP2-048].

11.5.1 A planning application for a new Incinerator Bottom Ash (IBA) processing plant has been submitted to KCC (application reference KCC/SW/0008/2020) on land at Ridham Dock. Following the receipt of consultation responses to that application, its applicants are in discussion with KCC to provide further detail on the movement of IBA and HGV movements, the relationship to the K3 and WKN Proposed Developments and proposed planning obligations and conditions in relation to HGV movements. That information is not yet in the public domain and as such cannot be shared at this point.

11.5.2 When this information is available in the public domain, the applicant undertakes to review it and provide the relevant information at the next available deadline.

11.5.3 Notwithstanding the above, the proposed IBA processing plant does not alter the number of vehicle movements that are proposed for the K3 and WKN Proposed Development and which are subject to this Examination.

11.6 Q1A.11.6 – Applicant - Given the information in [REP2-048] please comment on the capacity of loading and unloading at Ridham Dock in relation to the Rail and Water Transportation Strategies [APP-088, APP-089]

11.6.1 The Applicant acknowledges that Ridham Dock is already physically capable of receiving waste material via barge; it can accommodate sufficiently sized vessels for that purpose and is already able to transfer materials similar to waste into

vehicles for onward transport. That ability is demonstrated by the intention, as documented within the current Ridham Dock IBA application, to export 50,000 tonnes of IBAA by barge.

11.6.2 As documented in the Rail and Water Transportation Strategies the ability of K3 or WKN to receive waste by alternative methods of transportation is dependant on a number of factors such as the fuel available and the feasibility of transporting that waste to the facilities by rail or water. At present there are no contracts in place or available which make the use of alternative methods of transportation feasible or viable. The approach set out within the Rail and Water Transportation Strategies reflects that position by proposing regular reviews of the situation, which is an approach which has been used successfully in the Ferrybridge Multifuel (FM2) and North London Heat and Power (NHLP) DCO's. Should a waste contract become available or be secured which allowed for the transportation of waste by barge then the ability of the Ridham Dock to accept that quantum of waste alongside its existing operations would need to be assessed and any upgrading of the existing facilities considered in respect of the viability of transporting that waste via water.

11.7 Q1A.11.7 – Applicant - Please could you explain what management facility or facilities exist or are planned for IBA arisings to support the Proposed Development?

11.7.1 A contract has been entered into with Fortis for the management and processing of the IBA from the Kemsley (K3) facility and they are in the process of applying for planning permission to develop a new IBA facility at Ridham Docks, some 2km from the site. In the meantime they will be processing the IBA via their existing facility at the A303 Enviropark, Barton Stacey, Nr Andover, SO21 3QS. The proposed new facility will have sufficient capacity to manage any IBA also produced from WKN and negotiations regarding that are underway.

11.8 Q1A.11.8 – Applicant - In the response to WQ1.11.9 it is understood KCC awaits information requested on time controls within waste contracts and vehicle movement data from Ferrybridge (Q1.11.7 referred). Please could you update the ExA on the position regarding this information?

11.8.1 The applicant discussed the exchange of vehicle movement data from the applicants site at Ferrybridge and the Waste to Energy site in Allington with KCC in our meeting dated 10 February 2020.

11.8.2 The applicant understands that KCC is obtaining the data from Allington whilst the applicant is obtaining data from Ferrybridge. The applicant will agree a date with KCC on which to exchange this data and are continuing to discuss that with KCC.

14 Q1A.14. – Other Matters

14.1 Q1A.14.1 – IPs - [AS-014] is an additional submission recently made by Royal Mail as an Interested Party to which reference is made in these questions, so parties (if they wish) can provide comments thereon.

14.1.1 The Applicant notes that this question is directed at IPs and has provided a response on the Royal Mail submission in Q1A.14.2.

14.2 Q1A.14.2 – Applicant - Please comment on the request made by Royal Mail in [AS-014] as to whether, and if so how, the dDCO may be amended to accommodate such request.

14.2.1 The applicant recognises Royal Mail as a major road user and has taken account of all such users in paragraph 6.14 of the Draft Construction Traffic Management Plan, which states:

> *'The construction manager will be responsible for setting up a means of communication with major road users on any construction works which may affect the local road network. This will include for any road closures or diversions that may affect travel on those routes. Full details on the means of communication will be set out in the Full Construction Traffic Management Plan, once a contractor has been appointed'.*

14.2.2 In that respect it is considered that appropriate provision has been made within the dDCO to address Points 1 and 2 of the Royal Mail submission, in that the dDCO makes provision through Requirement 24 for a CTMP to be submitted and approved and that CTMP would detail within it the methods for consulting with and informing major road users such as Royal Mail about proposed road closures, diversions, alternative access arrangements and works affecting the local highways network. The Applicant's position is that the provision made within Requirement 24 of the dDCO, that the CTMP be approved by the relevant planning authority after consultation with relevant highways authorities remains an appropriate approach to ensure that the final CTMP reflects the needs of all road users, including major road users such as Royal Mail.