



Department for
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Dear Mr Harvey

PLANNING ACT 2008

APPLICATION FOR THE WHEELABRATOR KEMSLEY K3 GENERATING STATION AND WHEELABRATOR KEMSLEY NORTH WASTE-TO-ENERGY FACILITY ORDER

1. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 19 November 2020 of the Examining Authority (“the ExA”), comprising a single examining Inspector, Grahame Kean, who conducted an examination into the application (“the Application”) submitted on 11 September 2019 by WTI/EFW Holdings Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Wheelabrator Kemsley K3 and Wheelabrator Kemsley North waste-fuelled electricity generating stations.

1.2 The Application was accepted for examination on 8 October 2019. The examination began on 19 February 2020 and was completed on 19 August 2020. The Secretary of State received the report containing the ExA’s conclusions and recommendation on 19 November 2020.

1.3 The Order as applied for would grant development consent for an increase in generating capacity from 49.9MW to 75MW and an increase in the throughput of waste that is permitted to be utilised at the operational Wheelabrator Kemsley K3 generating station (“WK3”) and permit the construction, operation and decommissioning of a new energy from waste generating station, Wheelabrator Kemsley North (“WKN”). The projects would be located on adjoining sites next to the DS Smith Paper Mill near

Sittingbourne in Kent. The WK3 and WKN sites would be within the boundary of Swale Borough Council in the County of Kent.

1.4 As applied for, WK3 and WKN would comprise (in general terms):

- **Work No 1 [WK3]** – Construction and operation of an onshore generating station with a generating capacity of up to 75MW and permissible waste throughput of 657,000 tonnes per annum;
- Work 1A – Installation of grid connection for Work No 1;
- Work 1B – Installation of steam connection for Work No 1;
- Work 1C – Alteration of existing private access road to construct, use and maintain Work No 1;
- Work 1D – Creation of a temporary construction compound and laydown area for the construction of Work No 1;
- Work 1E – Construction and operation of a surface water outfall for Work No 1;

- **Work No 2 [WKN]** – Construction and operation of a waste-to-energy facility capable of processing 390,000 tonnes of waste per annum, with a generating capacity of up to 42MW;
- Work No 3 – Installation of a grid connection for Work No 2;
- Work No 4 – Alteration of existing private access road to construct, use and maintain Work No 2;
- Work No 5 – Temporary construction or alteration of existing private haul road for the construction of Work No 2;
- Work No 6 – Creation of a temporary construction compound and laydown area for the construction of Work No 2; and
- Work No 7 – Construction and operation of a new surface water outfall for Work No 2.

1.5 No compulsory acquisition powers are sought by the Applicant.

1.6 Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings, Conclusions and Recommendation to the Secretary of State (“the ExA Report”). The main features of the development proposals, as applied for, and site are set out in section 2 of the ExA’s Report. The ExA’s findings are set out in sections 4 - 6 of the ExA Report, and the ExA’s conclusions on the terms of the Order and the case for development consent and are set out at sections 7 and 8 respectively.

2. Summary of the ExA Report and Recommendation

2.1 The ExA’s recommendation in the ‘Overview’ section of the ExA Report is as follows:

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

3. The Secretary of State's Consideration of the ExA Report

3.1 The Secretary of State notes that a total of 9 Relevant Representations (as defined in the Planning Act 2008) were received from statutory and non-statutory authorities, local councils and local residents. In addition, the Secretary of State notes that during the examination of the Application, the ExA accepted two individuals and two organisations (Royal Mail and the South East Waste Planning Advisory Group) as Interested Parties to enable their views to be heard during the examination.

3.2 The principal matters considered by the ExA, as set out in the ExA Report are:

- the principle and need for the proposed developments;
- conformity with the National Policy Statements for Energy
- conformity with Development Plan policies;
- waste hierarchy and fuel availability;
- air quality;
- archaeology and cultural heritage;
- ecology;
- greenhouse gases and climate change;
- ground conditions;
- landscape and visual impact;
- noise and vibration;
- traffic and transport;
- water environment; and
- Habitats Regulations Assessment.

3.3 The Secretary of State has considered the ExA Report and all other material considerations, including further representations received after the close of the ExA's examination ("the post-examination representations"). The Secretary of State's consideration of the ExA's Report and the post-examination representations is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"].

3.4 The Secretary of State notes that the ExA concluded [ER 8.2.7] that for WK3, with the mitigation proposed through the DCO recommended by the ExA, there would be no adverse effects that would outweigh the benefits of the project. He further notes the ExA's conclusion for WKN [ER 8.2.14] was that the identified harms did outweigh the benefits. As noted above, the ExA's overall conclusion [ER 8.3.1] was that development consent should be granted for WK3 only. The Secretary of State agrees with the ExA's conclusion.

The Principle and Need for the Development

4.1 The Planning Act 2008 sets out a process for decision-makers to follow in considering applications for nationally significant infrastructure projects. In the first instance, the decision-maker needs to consider whether the proposed nationally significant infrastructure projects are in accordance with the relevant National Policy Statement(s). WK3 is a 'Nationally Significant Infrastructure Project' as defined in

sections 14 and 15 of the Planning Act 2008 by virtue of having a generating capacity of more than 50MW.

4.2 WKN is not a nationally significant infrastructure project as defined in the Planning Act 2008 as its proposed generating capacity is 42MW. However, WKN was 'directed in' to the Planning Act regime by the Secretary of State under section 35 of the Planning Act 2008 on 27 June 2018 following a request by the Applicant. The Secretary of State considered that the project would be of national significance given that it would be located on the same site as two other projects of national significance, which together comprised a significant facility of sustainable energy supply and taking into account the fact that the WKN project would be applied for at the same time as the WK3 project. There would also be benefits from the two projects being considered together in a consistent manner.

4.3 Section 104 of the Planning Act 2008 sets out that decisions on nationally significant infrastructure projects where a National Policy Statement has effect must have regard to the relevant statement and any other matters that are both important and relevant to the decision. Any decision must be taken in accordance with the relevant National Policy Statement except where doing so would: lead to a breach of the UK's international obligations; lead to the Secretary of State being in breach of any duty imposed on him by or under any enactment; be unlawful by virtue of any enactment; or where the adverse effects of a development outweigh its benefits (the last at section 104(7) of the Act).

4.4 Section 105 of the Planning Act 2008 sets out that decisions on nationally significant infrastructure projects where a National Policy Statement does not have effect must have regard to any local impact reports, any matters prescribed in relation to development of the description to which the application refers and any other matters which the Secretary of State considers are relevant and important.

4.5 National Policy Statements EN-1 (the Overarching National Policy Statement for Energy - "NPS EN-1") and EN-3 (the National Policy Statement for Renewable energy Infrastructure "NPS EN-3") set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. NPS EN-1 sets out that the assessment of development consent applications for electricity generating infrastructure should start with a presumption in favour of granting consent. The ExA noted the strong need case for electricity generating projects that is set out in NPS EN-1 and NPS EN-3 but considered that the presumption in favour of granting consent did not apply to the WKN project because it had been directed into the Planning Act process and, therefore, did not fall to be considered under section 104 of the Planning Act 2008, but rather under section 105 of that Act. Instead, the ExA concluded that, while the National Policy Statements were important and relevant matters in the consideration of the development consent application for WKN, the primary consideration in determining the development should be the local development plan.

4.6 The Secretary of State takes the view that the Application should be treated as a whole and determined under section 104 of the Planning Act 2008. This section, and section 105 would seem to be mutually exclusive and it would not be correct to determine different parts of the Application under different provisions. It is also noted

that WKN is a type of generating station which would generally fall to be considered under EN-3 had it met the 50MW threshold by itself and was directed into the Planning Act regime on the basis of its combined significance with the WK3 project. In any event, the Secretary of State does not consider that determining the whole application under section 104 has a material impact on the overall outcome in this case. Section 104(2)(d) of the 2008 Act enables the Secretary of State to give consideration to any important and relevant matters appropriate to this aspect of the application as fully considered by the ExA.

4.7 The Energy White Paper, “Powering our Net Zero Future”, was published on 14 December 2020. The White Paper announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State’s consideration of the Application.

Consideration of Alternatives

4.8 The Applicant considered the question of alternatives in section 2.14 of Chapter 2 of its Environmental Statement that was submitted to the Planning Inspectorate as part of its application for development consent. The Applicant’s position was that, in relation to WK3, the fact that it had been constructed meant that it was not necessary to consider alternatives, while for WKN, the need to locate it next to the sister WK3 generating station and the proximity to viable feedstock also meant that it was not necessary to consider alternatives.

4.9 The ExA did not explicitly consider alternatives to the proposed developments that are the subject of the Applicant’s request for a development consent order. However, in considering the need for WKN, the ExA states at ER 6.2.20 of its Report that “there is no proven need for the plant to be located in Kent” and at ER 6.2.31 that “... an alternative location outside Kent..... would appear to better serve the strategic purposes of member authorities of SEWPAG [the South East Waste Planning Advisory Group]...in particular the KMWLP [Kent Minerals and Waste Local Plan]”.

4.10 The Secretary of State notes the ExA’s comments in this matter and has considered these in the overall ‘planning balance’ section of this decision letter.

Conformity with Development Plan Policies

4.11 The ExA considered in general terms the conformity of WK3 and WKN with policies in the relevant local development plans [ER 4.6.1 et seq]. The ExA took the view that there were supportive statements in the plans that referenced sustainability and none that were in conflict with the policy directions of the National Policy Statements. However, in its analysis of this point, the ExA again indicates that the National Policy Statements are the primary source of policy direction for WK3 but that the local development plans have primacy for WKN.

Waste Hierarchy and Fuel Availability

4.12. The ways that the waste hierarchy (a set of priorities for making efficient use of resources) and fuel availability apply to WK3 and WKN were key issues in the ExA's assessment of the development consent application for the two projects.

4.13 The National Policy Statements set out that energy from waste is a type of infrastructure that is needed. However, the National Policy Statement for Renewable Energy Infrastructure, NPS EN-3 states that an applicant for development consent must assess "the conformity with the waste hierarchy and the effect on relevant waste plans.....". NPS EN-3, notes that the decision-maker should be satisfied, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets.

4.14 The ExA notes that there are a number of national and local policies and plans that come into play in considering such applications [ER 4.10.8 et seq]. The ExA notes [ER 4.10.24 et seq] that the Kent Minerals and Waste Local Plan refers to the potential for waste management proposals to contribute towards local energy supply. The ExA also notes [ER 4.10.28 et seq] that policies within the Kent Minerals and Waste Local Plan state that, in order to deliver sustainable waste management solutions for Kent, proposals for waste management must demonstrate how waste is being driven to ascend the waste hierarchy.

4.15 The ExA considered the case made by the Applicant in support of WK3 and WKN and notes that the Applicant's starting position [ER 4.10.31] is that the projects would be wholly in accordance with the waste hierarchy and not prejudicial to the achievement of national or local waste management targets. The ExA sets out in detail the Applicant's consideration of waste capacities and sourcing of its fuel supplies which would come from a number of local authority areas in the South East of England in addition to Kent. The Applicant concluded that bringing fuel sources in from outside Kent should not be the subject of an objection. In its overall conclusion, the Applicant stated [ER 4.10.44] that WK3 and WKN would meet objectives of national and local policy through: delivering the waste hierarchy; contributing to self-sufficiency at national level; and being part of a network of facilities from which value would be recovered from appropriate residual wastes.

4.16 The ExA sets out the key issues that were considered during the examination in respect of the application. It notes [ER 4.10. 46 et seq] that both Kent County Council and the South East Waste Planning Advisory Group (an organisation which seeks to coordinate the planning of waste management within the South East of England) objected to the grant of consent for WK3 and WKN. Kent County Council stated that the projects would be counter to the waste hierarchy in diverting waste from more sustainable solutions such as preparation for re-use and recycling [ER 4.10.54]. The Council also stated that existing waste disposal capacity was sufficient to deal with capacity demand – additional waste capacity was not required or expected during the existing contract period [ER 4.10.56].

4.17 The ExA notes [ER 4.10.74 et seq] that there were several matters still outstanding in relation to Waste Hierarchy and Fuel Availability at the end of the examination: Local Policy Principles; Waste Hierarchy; Energy Production; the Relevance of the National Policy Statements to WK3; and the Kent Minerals and Waste Local Plan Policy. In its conclusion on the Waste Hierarchy and Fuel Availability, the ExA weighs up the relevant considerations that have been presented by the Applicant, Kent County Council, the South East Waste Planning Advisory Group and other Interested Parties. The ExA sums up its overall position in relation to WK3 and WKN as follows:

Wheelabrator Kemsley K3 [ER.4.10.139 et seq]

4.18 While Kent County Council submits that there is no need in Kent for additional waste capacity for the period of the Kent Minerals and Waste Local Plan (up to 2030) and that neither WK3 nor WKN should benefit from the National Policy Statements' presumption in favour of energy development infrastructure, the Applicant submits that both projects are important and relevant to meeting a number of critical national needs including on net zero and waste management. The ExA notes that WK3 would, in addition to generating electricity, also provide steam and heat to local customers which is a factor in its favour. The ExA's overall conclusion is that the need for WK3 should carry significant weight in the decision-making process and the small increase in the proposed generating capacity with related increase in waste throughput would not prejudice the principles of sourcing waste locally and aiming for self-sufficiency.

Wheelabrator Kemsley North [ER 4.10.142 et seq]

4.19 The project would contribute 42MW of electricity to the electricity grid. Whilst noting this, the ExA states that the Applicant has not provided robust arguments to support the new plant and that there is no proven need for it to be located in Kent. WKN would be inconsistent with the Kent Mineral and Waste Local Plan and the revisions to it that were the result of the 'Early Partial Review' carried out on the Plan. (The Early Partial Review is an independent report carried out by the Planning Inspectorate which checks whether local plans are 'sound'.) The ExA considered that WKN did not accord with paragraph 2.5.70 of NPS EN-3 as it was not in compliance with the Kent Minerals and Waste Local Plan and there was no evidence provided as to why an exception should be made. Following on from that, WKN would not satisfy the statement in paragraph 2.2.4 of NPS EN-1 that the planning system should provide a framework which permits the construction of the infrastructure needed in the place where it is acceptable in planning terms. Finally, the ExA noted that WKN would be in conflict with the National Planning Policy for Waste because it would put at risk the achievement of revised recycling and composting targets in the Kent Minerals and Waste Local Plan.

4.20 The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Air Quality

4.21 The ExA points out [ER 4.11.1 et seq] that the National Policy Statements and the National Planning Policy Framework include the policy considerations that should

be taken into account in determining the acceptability of proposed developments in relation to impacts on air quality. The National Policy Statements acknowledge that the construction, operation and decommissioning of energy infrastructure can lead to emissions to air which have the potential to adversely impact human health as well as protected habitats and species and the wider environment. The ExA also notes that the Swale Local Plan includes a policy which sets out to address climate change through, among other things, the management of emissions.

4.22 The ExA notes [ER 4.11.8 et seq] the Applicant provided a detailed assessment of potential air quality impacts arising from the construction and operation of WK3 and WKN as part of its application for development consent.

4.23 The Applicant assessed that during the construction of WKN, the impacts of dust emissions and emissions from construction traffic would be low as a result of mitigation and utilisation of best practices. The Applicant's assessment of potential impacts from the operation of WKN was that the design of the facility, including the use of a 90-metre-tall emissions chimney would ensure that any pollutant concentrations would be adequately dispersed before they reached ground level. A 'Continuous Emissions Monitoring System' would ensure emissions would be controlled and regulated under an Environment Agency permit. The impacts of operational traffic were assessed as being negligible.

4.24 During the examination of the Application, the ExA asked questions of the Applicant and other Interested Parties about a range of air quality and emissions topics [ER 4.11.18 et seq]. The ExA notes that the Statement of Common Ground between the Applicant and Natural England set out agreement between the two parties on the absence of significant adverse effects arising from emissions linked to the construction and operation of WK3 and WKN. However, Kent County Council and Swale Borough Council both expressed concerns about potential impacts arising from WK3 and WKN but the ExA notes that no evidence was provided about the projects exceeding local Air Quality Objectives.

4.25 In its conclusion [ER 4.11.26 et seq], the ExA states that appropriate mitigation measures would be put in place to avoid any significant adverse impacts on air quality arising from WK3 and WKN either on their own or in-combination with other developments. WK3 and WKN would, therefore, accord with national and local policies as regards to air quality. The Secretary of State sees no reasons to disagree with the ExA's conclusions in this matter.

Archaeology and Cultural Heritage

4.26 The National Policy Statements and the National Planning Policy Framework set out the policy considerations that should be taken into account in determining the acceptability of proposed developments in relation to archaeological and cultural heritage. The ExA [ExA 4.12.6] also notes the policies in the Swale Local Plan which seek to conserve and enhance the historic environment and prevent adverse effects on Scheduled Monuments and their setting.

4.27 The ExA considered the potential impacts of WK3 and WKN on archaeology and cultural heritage during the examination of the Application. The ExA notes that

there would be no external changes to WK3 and that the Applicant states there are no designated heritage assets within the site of the two projects although there are a number of listed buildings at a minimum of 1 km distance from the development site. The Applicant's Environmental Statement [ER 4.12.7 et seq] sets out that no listed buildings within 3km of the development site would experience more than a minor adverse impact [ER 4.12.16]. In addition, the Environmental Assessment set out that the in-built mitigations of WK3 and WKN projects would limit any effects on designated heritage assets. Finally, the Environmental Statement also considered the cumulative impacts of WK3 and WKN with other relevant projects and concluded there would be no significant effects.

4.28 The ExA notes that no significant concerns about impacts on cultural heritage assets were raised during the examination of the Application. However, Historic England (the statutory adviser on all matters relating to the historic environment and its heritage assets) raised the likelihood that WK3 and WKN would be visible across a wide area and could affect the significance of some heritage assets located some distance away from them. Historic England did, however, agree with the Applicant that any harm would be low level and might, therefore, be found to be outweighed by the benefits of the projects [ER 4.12.22 et seq]. Kent County Council also made representations to the examination suggesting that a Written Scheme of Investigation should be produced by the Applicant which should be agreed with the Council before any works commenced. This was included as a Requirement in the development consent order recommended to the Secretary of State by the ExA.

4.29 In assessing potential impacts on archaeological and cultural heritage, the ExA concludes [ER 4.12.29 et seq and 6.2.38 et seq] that there would be no significant effects on archaeological or heritage assets from the construction, operation or decommissioning of WK3 and WKN (including on the setting of any Scheduled Monument, listed building or other designated heritage asset). All impacts were addressed in a way which complies with the relevant sections of the National Policy Statements and the local development plan.

4.30 The Secretary of State notes the Infrastructure Planning (Decisions) Regulations 2010 set out the desirability of preserving listed buildings or scheduled monuments or their setting and require him to give substantial importance and weight to these matters. Noting the benefits of WK3 and WKN, he must be satisfied that these outweigh any harm. The Secretary of State must also agree that there is a clear and convincing justification for any harm that would result, both individually and collectively, upon designated heritage assets and that overall, historic environment matters would accord with NPSs EN-1 and EN-3 and do not weigh significantly against the Order being made. The Secretary of State believes that the position set out above meets the requirements of the regulations and that impacts on archaeology and cultural heritage have been minimised to an acceptable level. He sees no reason, therefore, to disagree with the ExA's conclusions.

Ecology

4.31 The National Policy Statements set out that energy infrastructure development should avoid significant harm to ecological interests through mitigation measures and the use of alternatives where possible. The National Policy Statements and the

National Planning Policy Framework set out a range of other considerations that are of relevance in assessing the potential impacts of energy infrastructure projects on those interests. The Kent Minerals and Waste Local Plan and the Swale Local Plan also set out the need for developments to avoid adverse impacts on ecological features.

4.32 The Applicant set out in the Environmental Statement that was submitted with the Application information about a range of international and nationally designated nature conservation sites. While there were no such sites within the boundaries of WK3 and WKN, there were a number of such sites within a reasonable distance (10km), including Swale Special Protection Area (“SPA” – originally designated under the EU Birds Directive) and Ramsar site (designated under the Convention on Wetlands of International Importance), the Medway Estuary and Marshes SPA and Ramsar site, the Thames Estuary and Marshes SPA and Ramsar site, the Outer Thames Estuary SPA and the Queendown Warren Special Area of Conservation (“SAC” – originally designated under the EU Habitats Directive). A number of the nationally designated sites (Sites of Special Scientific Interest) are within one kilometre of WK3 and WKN’s site boundaries.

4.33 The Applicant also set out its consideration of potential impacts arising from the construction and operation of WK3 and WKN projects and the mitigations that were proposed to be put in place to avoid or reduce impacts. It noted that during the construction of WKN, there were potential impacts on a number of receptors including on Schedule 1 breeding birds (including, Marsh Harrier, Bearded Tit and Cetti’s Warbler) and on reptiles [ER 4.13.17 et seq]. The Applicant also assessed possible impacts from the operation of WKN [ER 4.13.38 et seq] including from drainage run off into sensitive sites, light spill, disturbance from people and plant, recreation and noise and vibration. The Applicant’s assessment of operational impacts also covered [ER 4.13.43 et seq] potential impacts on breeding birds in the vicinity of the projects and on reptiles. Finally, the Applicant looked at the provision of habitat enhancement measures to mitigate impacts on relevant species and set out mitigation measures in its proposed development consent order [ER 4.13.48] including the approval of an ‘Environmental Mitigation and Management Plan’ and the timing of piling. The Applicant’s overall conclusion was there would be no significant effects on sites or species important for the conservation of biodiversity as a result of WK3 and WKN.

4.34 The ExA notes that during the examination, both Natural England (the Government’s statutory advisers on nature conservation matters) and Kent County Council agreed with the Applicant that WK3 and WKN would not result in adverse impact on ecological factors. The ExA concluded [ER 4.13.57] that with the mitigation measures proposed by the Applicant in place the construction and development of WK3 and WKN would result in no significant harm to biodiversity conservation interests and the aims of the National Policy Statements, the National Planning Policy Framework and relevant local development policies would be met.

4.35 The Secretary of State sees no reason to disagree with the ExA’s conclusions in this matter.

Greenhouse Gases and Climate Change

4.36 The ExA notes the many policy and legislative provisions that address the need to reduce emissions of greenhouse gases.

4.37 The ExA's Report set out that the Applicant assessed the likely significant effects resulting from WK3 and WKN resulting from greenhouse gas emissions and the resultant impact on climate change [ER 4.14.24].

4.38 The Applicant considered the direct greenhouse gas emissions from the operation of WK3 and WKN but also set these against notional emissions figures for emissions from landfill disposal of waste and from conventional electricity generation which would be avoided [ER 4.14.24 et seq]. The Applicant estimated that the annual greenhouse gas emissions from the already consented WK3 project would be 255,000 tonnes of carbon dioxide equivalent per year of operation. However, when greenhouse gas emissions from landfill were taken into account, there would be a net reduction 232,000 tonnes of carbon dioxide equivalent per year of operation. The Applicant predicted that the requested increase in generating capacity and throughput of waste capacity at WK3 would produce a reduction of 60,000 tonnes of carbon dioxide equivalent per year of operation when set against emissions from landfill and from conventional electricity generation which would be avoided. The comparable figures for WKN are 163,000 tonnes of carbon dioxide equivalent per year of operation emitted but an overall reduction in emissions of 64,000 tonnes of carbon dioxide equivalent per year of operation. It is noted [ER 4.14.36] that these reductions in emissions are based on some uncertainties but the overall assessment is that they are of significant benefit.

4.39 During the examination, Kent County Council and Swale Borough Council queried the figures provided by the Applicant because there were too many unknowns in the assessments. The ExA's Report notes [ER 4.14.47] that both councils objected to WK3 and WKN because they were not necessary to meet waste requirements for Kent and conflicted with policies for self-sufficiency and promotion of recycling. Swale Borough Council is recorded as being concerned that the projects would result in significant carbon impacts and lead to an increase in heavy goods vehicle movements within the borough and impact negatively on climate change.

4.40 The ExA's Report [ER 4.4.19 and 4.15.54] refers to the Climate Change Committee's 2020 Progress Report which expresses concerns about the proliferation of energy from waste plants because of its competition with recycling and seeks mechanisms to reduce carbon emissions from those plants.

4.41 In its conclusions [ER 4.14.58 et seq], the ExA sets out that, given the uncertainties in the Applicant's assessment of carbon benefits, the matter should carry little weight in the assessment of WK3 and WKN. However, the ExA notes that, while they are conjoined in the Application, there are differences between the two projects so that the 'environmental burden' of WKN should not apply to WK3. As far as the possibility of waste being diverted from landfill to fuel the two projects is concerned, the ExA considers that the projects would divert a significant proportion of waste from recycling rather than landfill. Finally, with respect to the level of guaranteed heat utilisation for the WK3 and WKN, the ExA considers that, taken together, neither

project is particularly energy efficient. However, the ExA goes on to say that WK3 project provides the greater benefit as a result of its better Combined Heat and Power performance. The Secretary of State sees no reason to take different view to the ExA in this matter.

Ground Conditions

4.42 As indicated above, WK3 project is already operational as an electricity generating station. The ExA, therefore concluded [ER 4.15.5] that it was anticipated that there would be no potential for ground condition-related effects for this part of the Application.

4.43 The ExA set out the Applicant's case that no significant issues had been raised by consultees during the scoping exercise for WKN. There were no concerns raised by Interested Parties during the examination of the Application. A Statement of Common Ground between the Applicant and the Environment Agency agreed that the Applicant's assessment of ground conditions and potential contamination impacts was appropriate. The Statement of Common Ground also agreed that conditions in the proposed development consent order would ensure appropriate management regimes would be put in place in the event that consent was granted.

4.44 The ExA concluded [ER 4.15.13] that WK3 and WKN were in accord with all relevant legislation and policy and that ground condition matters would be provided for and secured in the proposed development consent order. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Landscape and Visual Impact

4.45 The ExA notes [ER 4.16.5 et seq] the National Policy Statements set out that virtually all nationally significant energy infrastructure projects will have effects on the landscape but that the aim should be to minimise any harm. Any harm should be assessed against the benefits of the projects in question. The National Policy Statements also set out how assessments of landscape and visual impacts should be undertaken. The ExA also notes that the Kent Minerals and Waste Local Plan sets out that proposals for developments should aim to 'protect and enhance the character of the Site's setting'. The Swale Local Plan sets out similar ambitions for development within its area.

4.46 The ExA sets out the Applicant's assessment of the landscape and visual effects of WK3 and WKN. In respect of the WK3 project, the Applicant stated that the additional generating capacity and waste throughput for which development consent was being sought would not result in any changes to the physical structure of the already consented and constructed development and no additional visual impacts were likely. However, WK3 would be taken into account in considering any 'in-combination' impacts.

4.47 In respect of WKN, the Applicant noted that the site of the proposed development was currently an area of hard-standing which was being used for the storage of construction material for WK3. The site was not currently visible from most of the nearby town of Sittingbourne because of existing developments around the

town. The Applicant assessed that for landscape and townscape character impacts, the constructed WK3 and WKN would become an element of the existing industrial setting provided by the DS Smith Paper Mill and the constructed WK3. However, it also notes that walkers on the Saxon Shore Way (a designated long-distance footpath) would notice the introduction of another industrial element to the landscape although the Applicant's assessment is that this would only lead to a moderate adverse effect for those people. The Applicant set out mitigation measures in its environmental statement but notes that certain features are dictated by function of the development and cannot be mitigated.

4.48 As far as the cumulative visual and landscape impacts of WK3 and WKN projects are concerned, the Applicant's view is that, while there would be increased visibility with some substantial adverse impacts for walkers using the Saxon Shore Way, the contribution of the projects would vary between a moderate adverse effect to negligible.

4.49 During the examination, the ExA noted that no significant matters of concern about visual and landscape impacts were raised by Interested Parties [ER 4.16.32]. Nonetheless, the ExA did pursue a large number of matters with the Applicant and other parties [ER 4.16.33 et seq]. The ExA also considered the Local Impact Report submitted by Swale Borough Council [ER 4.16.36 et seq] which noted the possible visibility of WK3 and WKN albeit as part of a wider industrial scene. The ExA also noted the unsigned and undated draft Statement of Common Ground between Swale Borough Council and the Applicant and a submission by the Council during the examination which stated that WK3 and WKN would be unlikely to result in significant adverse visual or landscape character effects [ER 4.16.41]. Finally, the ExA considered the potential impact of the lighting at WK3 and WKN [ER 4.16.42 et seq] and noted that this would lead to an intensification of baseline conditions in the vicinity of the projects when combined with the lighting at the existing developments in the area.

4.50 The ExA's conclusions [ER 4.16 46 et seq] were that while WK3 and WKN would give rise to adverse impacts on visual and landscape receptors, the overall impact would at its worst be moderately adverse (for walkers on the Saxon Shore Way). The ExA also concluded that there would be no significant landscape effects as a result of WKN during its construction, operation or decommissioning. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Noise and Vibration

4.51 The ExA notes [ER 4.17.1 et seq] that the National Policy Statements and the National Planning Policy Framework set out relevant matters for the assessment and consideration of noise and vibration impacts from nationally significant energy infrastructure noting that excessive noise can have adverse impacts on human health as well as on wildlife and biodiversity.

4.52 The ExA also notes that the Applicant predicted that there would be no significant changes to noise emissions as a result of WK3 and WKN (including from increases in levels of traffic associated with them).

4.53 During the examination, the ExA sought to clarify the potential sources of noise, what the impacts might be and how they could be mitigated. The ExA draws attention to the draft Statement of Common Ground between Swale Borough Council and the Applicant which sets out mitigation measures that would be included in any development consent order that the Secretary of State might issue and records the Council's position of no objection to WK3 and WKN in respect of their potential noise impacts [ER 4.17.12 et seq].

4.54 In its conclusion [ER 4.17.22 et seq], the ExA sets out that it found there would be no significant impacts arising from the construction and operation of WK3 and WKN projects and that the projects would comply with the National Policy Statements and the National Planning Policy Framework in respect of noise and vibration. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Traffic and Transport

4.55 The National Policy Statements acknowledge that traffic movements into and out of nationally significant infrastructure projects during its development life cycle can have a wide variety of impacts on the surrounding transport infrastructure. However, the National Policy Statements also note that it is possible to mitigate those impacts. The National Planning Policy Framework sets out that development should only be refused on traffic and transport grounds if there would be unacceptable impacts on road safety or on the road network more generally. Both Kent County Council's fourth Local Transport Plan and Swale Borough Council's Local Plan and Swale Borough Council's draft Transportation Strategy 2014 – 2031 include matters that are potentially impacted by the increase in traffic density arising from WK3 and WKN.

4.56 The ExA notes [ER 4.18.10 et seq] that the Applicant submitted an assessment of potential traffic impacts arising from WK3 and WKN as part of the environmental statement that accompanied its application for development consent. The assessment covers a range of transport links including roads, footpaths and local rail and bus routes. The Applicant notes that WK3 and WKN, particularly if operated together would lead to an increase in traffic flow movements in the vicinity of the plants. However, the Applicant's overall conclusion was that [ER 4.18.37] WK3 and WKN would not result in an unacceptable or severe impact on the transport network.

4.57 The question of potential impacts of WK3 and WKN on traffic and transport matters with Highways England and Kent County Council (the Local Highways Authority) both raising concerns in relation to the 'Strategic Road Network' [motorways and major 'A' roads] and local routes respectively. The concerns related to the increase in the number of Heavy Goods Vehicle movements along the already congested local and strategic road network that would result from the increase in waste throughput at WK3 and the operation of the new WKN project. There would also be impacts from the transport arrangements necessary to remove Incinerator Bottom Ash from WK3 and WKN for disposal.

4.58 The ExA considered the traffic and transport issue in great detail during the examination with a number of questions being asked of the Applicant, Highways

England and Kent County Council to seek clarification on relevant issues related to potential impacts and mitigations. If both WK3 and WKN were consented and developed to their requested generating and waste throughput capacities, there would be a total increase of 318 additional Heavy Goods Vehicle movements per day in the vicinity of the projects and on the wider road network. The individual daily increases would be 68 additional movements for WK3 and 250 additional movements for WKN [ER 4.18.55]. This total would be in addition to the 348 daily movements arising from the existing consented WK3 project. It was also noted that other infrastructure developments in the vicinity of WK3 and WKN – particularly proposals for a new housing development – that would also impact on the local and strategic road networks with the potential to adversely affect road congestion (the carrying capacity at certain important road junctions would be exceeded) and road safety.

4.59 Kent County Council and Highways England considered that mitigation measures to limit the numbers of Heavy Goods Vehicles on the road network at particular points during the day was necessary to minimise impacts on congestion and road safety. These matters were outstanding at the end of the examination.

4.60 The ExA concluded [ER 4.18.79 et seq] that with a number of mitigation measures in place then WK3 and WKN would not give rise to adverse impacts on the Strategic Road Network. The mitigation measures that would apply are:

- a prohibition on the timing of Heavy Goods Vehicle movements at the M2 Junction 5 and A249 Grovehurst Road traffic junctions until such time as suitable upgrades to those junctions had been out in place;
- the prohibitions should continue to apply until the Applicant can demonstrate an absence of an unacceptable impact on the Strategic Road Network which can only happen once the road improvements are in place and WK3 and WKN have been operational for a minimum of twelve months;
- there would be no need to restrict further the existing limitation of Heavy Goods Vehicle movement numbers for WK3. However, there should be limits on the number of Heavy Goods Vehicle movements in relation to the increased generation and waste throughout for WK3 project; and
- approval for the relevant local planning authority would be needed for construction and operational travel management plans.

4.61 The ExA's overall conclusion [ER 4.18.90] is that mitigation for impacts would ensure that WK3 and WKN would accord with the requirements of the National Policy Statements, local development plan and other policies.

4.62 The ExA notes that there was no completed Statement of Common Ground between the Applicant and Highways England at the close of the examination and that this omission adversely affected the conduct of the examination by making it difficult to know which key issues were still in dispute and how those issues might be resolved. The Applicant did submit a 'working draft' of a Statement of Common Ground with Highways England to the ExA on the last afternoon of the examination along with a 'Position Statement on Highways Matters' but the documents were not accepted into

the Examination as the ExA decided that there would be no opportunity for Interested Parties to review them and provide comments.

4.63 The Applicant subsequently wrote to the Secretary of State drawing his attention to the existence of the two documents and asking that they should be taken into account in the Secretary of State's decision-making. The Applicant also asked whether it would be asked to continue to discussions with Highways England to try to seek agreement on some of the key issues. The Applicant copied its correspondence to Highways England which responded that it was unable to enter into any further discussions with the Applicant and that the draft Statement of Common Ground did not reflect Highways England's position.

4.64 The Secretary of State does not consider that the correspondence from the Applicant and the response from Highways England add any new information to that which is available to the Secretary of State from the ExA Report.

Water Environment

4.65 The National Policy Statements and the National Planning Policy Framework set out policy considerations that should be taken into account by developers and decision-makers in relation to flood risks to and arising from nationally significant energy infrastructure projects and in relation to potential impacts on water courses and other resources. In relation to flood risk, the general presumption is to avoid locating energy infrastructure in areas at highest risk of flooding: all energy projects with an area greater than 1 hectare in Flood Zone 1 and all proposals for energy projects in Flood Zones 2 and 3 should be accompanied by a Flood Risk Assessment. [The Flood Zone Level reflects the probability of a flooding event occurring over a defined geographical area, with Flood Zone 1 being the lowest risk category] [ER 4.19.2 et seq].

4.66 The ExA [ER 4.19.8 et seq] notes that the Applicant assessed that the overall location of the WK3 and WKN would fall into each of the Flood Zone categories, however much of the land on which the developments would be located had been elevated as part of previous construction work and so most of it now was categorised as Flood Zone 1. Where parts of the development site are still in Flood Zone 2 or 3, then mitigation is in place to limit the impacts of flooding on and from the proposed developments. As indicated above, the WK3 facility has already been constructed so has already been assessed for its flood risk potential. However, for WKN, the Applicant's assessment is that with mitigation measures employed, there would be a minor adverse – not significant – impact on flood risk.

4.67 The ExA notes [ER 4.19.25] that there were no concerns raised during the examination about the Applicant's Flood Risk Assessment. It also notes [ER 4.19.26 et seq] that the Environment Agency considered the potential flood risk to be acceptable and that WK3 and WKN would not pose a risk to surface water quality and the nearby River Swale provided that appropriate mitigation measures were included in any development consent order which might be granted by the Secretary of State. Similarly, the Environment Agency agreed that WK3 would not pose a risk to groundwater, while the WKN would manage any potential contamination through mitigation measures in the development consent order [ER 4.19.30].

4.68 The ExA asked a number of questions of the Applicant and other parties to the examination about the ‘water environment’ and about the mitigation measures that were being proposed by the Applicant [ER 4.19.31]. In particular, there was an exchange of information with the Marine Management Organisation and the Environment Agency about the permitting regime necessary for two water outfall pipes that would take clean water from WK3 and WKN into the River Swale. There was agreement that the existing Marine Licences that covered the two outfall pipes would remain in place (so there would be no deemed Marine Licence within any development consent order that might be issued by the Secretary of State) and discharges from the pipes would be covered by an Environmental Permit issued by the Environment Agency.

4.69 The ExA concluded [ER 4.19.44 et seq] that for flood risk, WK3 and WKN would be acceptable and would comply with relevant policies in the National Policy Statements, the National Planning Policy Framework and local development plan policies. In addition, the Applicant had demonstrated compliance with the provisions of the Water Framework Directive and that there would be no impacts on designated sites. Further, the potential impacts of WKN on the water environment would be avoided by the use of mitigation measures including the design of the project. The ExA’s overall conclusion was that WK3 and WKN would comply with all relevant national and local policy requirements. The Secretary of State sees no reason to disagree with the ExA’s conclusions in this matter.

Submissions to the Secretary of State after Receipt of the ExA’s Report

4.70 In addition to the Applicant submitting representations about traffic and transport issues to the Secretary of State after receipt of the ExA Report (see paragraphs 4.66 – 4.67 above), it also asked the Secretary of State to consider additional matters related to waste management. These matters were submitted to the ExA at the very close of the examination but as with the representations about traffic and transport, the ExA declined to accept them into the examination because Interested Parties would not have had a chance to review them or offer comments.

4.71 The Applicant also wrote to the Secretary of State on 27 January 2021 to inform him that the Environment Agency was minded to grant an Environmental Permit for WKN subject to any final comments from Natural England. (The Applicant notes that Natural England did not raise any objections to the project during the examination.)

4.72 While noting the late representations above (and the one set out at paragraphs 4.63 – 4.64 above about Traffic and Transport), the Secretary of State does not consider that these late representations materially add to the information that was already available through the ExA. The Secretary of State has not, therefore, taken them into account in the decision-making process.

5. Findings and Conclusions in Relation to Habitats Regulations Assessment

5.1 The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) require the Secretary of State to consider whether the proposed

Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any site forming part of the national site network as defined in the Habitats Regulations (a “protected site”). If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 63(1) of the Habitats Regulations to address potential adverse effects on site integrity. The Secretary of State may only agree to the project if he has ascertained that it will not adversely affect the integrity of a protected site. This process is collectively known as a Habitats Regulations Assessment.

5.2 The preparation of the Habitats Regulations Assessment (“HRA”) that is published alongside this decision letter was prepared by environmental specialists in BEIS. The HRA concludes that a likely significant effect cannot be ruled out in respect of two protected sites, the Swale SPA and Ramsar site, when considered alone. No potential in-combination likely significant effects were identified. The potential impact pathways identified were changes to air quality during construction and decommissioning, and noise and visual disturbance and changes to water quality during construction and operation. It is, then, necessary to consider whether the proposed WK3 and WKN projects alone would have an adverse effect on the integrity of those sites. An appropriate assessment was, therefore, undertaken to determine whether an adverse effect on the sites could be ruled out in light of the sites’ conservation objectives. The overall conclusion of the assessment was that the proposed Development would have no adverse effects on the integrity (“AEoI”) of any protected sites subject to the implementation of suitable mitigation. The Secretary of State does not, therefore, consider that there would be any breach of his duty under the Habitats Regulations in the event he was to grant development consent for WK3 [and WKN].

5.3 The Secretary of State also notes that the ExA also concluded that the proposed Development, subject to the inclusion of suitable mitigation in any development consent order that might be granted, would not have any AEoI on the integrity of any protected sites. The Secretary of State further notes that neither Natural England nor any other Interested Parties disagreed with the ExA in this matter [ER 5.7.1 et seq]

6. The Secretary of State’s Consideration of the Planning Balance

6.1 All nationally significant energy infrastructure developments will have some potential adverse impacts. In the case of WK3 and WKN, most of the potential impacts have been assessed by the ExA as being acceptable subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely. As set out above, the ExA determined that consent should be granted for WK3 only. The adverse impacts for the WK3 project did not outweigh the significant weight attaching to the need case established by the National Policy Statements.

6.2 However, the ExA’s consideration of all the issues, particularly in respect of arguments about where the incineration of waste stood in the waste hierarchy and how this related to adopted policies in relevant local plans, led to the conclusion that WKN, while offering some benefits (particularly from the 42MW of electricity that would be generated), did not accord with the relevant provisions in the National Policy

Statements, the National Planning Policy Framework and in relevant local plans. The ExA recommended, therefore, that WKN should not benefit from the grant of consent.

6.3 As set out in above, sections 104 and 105 of the Planning Act 2008 set out the procedures to be followed by the Secretary of State in determining applications for development consent where National Policy Statements have and do not have effect. In both cases, the Secretary of State has to have regard to a range of policy considerations including the relevant National Policy Statements and development plans and local impact reports prepared by local planning authorities in coming to a decision. However, for applications determined under section 104, the primary consideration is the policy set out in the National Policy Statements, while for applications that fall to be determined under section 105, it is local policies which are specifically referenced although the National Policy Statements can be taken into account as 'important and relevant considerations'.

6.4 The Secretary of State adopts a different approach to the ExA's in this matter and is of the view that the whole application (including the benefits and impacts of WKN) fall to be considered under section 104 of the Planning Act 2008. This means that in the consideration by the Secretary of State, more weight has been given to the National Policy Statements. However, the Secretary of State does not consider that this different approach to the planning process results in a different conclusion to that reached by the ExA, namely that development consent should not be granted for WKN and that the benefits of WKN are outweighed by the non-compliance with policies elsewhere, in particular, the policies regarding compliance with the NPS EN-1 and the policies referencing both the waste hierarchy and local waste management plans in NPS EN-3.

6.5 The determination of applications for development consent for nationally significant infrastructure projects is a balancing exercise and the weight afforded to different elements of the matrix of impacts and benefits may affect the overall conclusion. The ExA identifies that there are undoubtedly concerns that WKN would have adverse impacts on local and regional targets for moving waste up the waste hierarchy. As noted, the ExA has had regard to these matters in framing its recommendation. However, the Secretary of State is not bound to follow that recommendation if he feels that the evidence presented to him can support a different conclusion.

6.6 The Secretary of State has considered the arguments in the ExA Report together with the strong endorsement of developments of the type that is the proposed Development. He notes the ExA's comments that WK3's anticipated provision of steam to nearby industrial facilities is a further benefit in its favour. He considers that the overall planning balance supports the grant of consent for the increase in generating capacity and an increase in waste-fuel throughput at WK3. As noted, whilst taking a different approach to the application of sections 104 and 105 of the Planning Act 2008 and consequently to the application of the planning balance in considering WKN, the Secretary of State nevertheless agrees with the ExA's conclusion that even though there are benefits from WKN, these do not outweigh the adverse impacts. The Secretary of State does not, therefore, consider that development consent should be granted for WKN.

7. Other Matters

Human Rights

7.1 The Applicant has not requested powers of compulsory acquisition as part of the Application. The Secretary of State has considered the potential infringement of human rights in relation to the proposed Development and notes there were no human rights concerns raised during the Examination. He has no reason to believe, therefore, that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

Equality Act 2010

7.2 The Equality Act 2010 includes a public sector equality duty (“PSED”). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Planning Act 2008; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships¹; pregnancy and maternity; religion and belief; and race.) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.3 In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

7.4 The ExA states [ER 8.2.4] that it had due regard to the relevant provisions of the Equality Act 2010 during the examination and in writing its Report. It concluded that the WK3 project “would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic” and on that basis “there would be no breach of the PSED”.

7.5 The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing the Application and can conclude that the WK3 project will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that neither the grant nor refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

¹ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Natural Environment and Rural Communities Act 2006

7.6 The Secretary of State has considered the Secretary of State's duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006, where he is required to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

7.7 The Secretary of State is of the view that the ExA Report, together with the environmental impact analysis, considers biodiversity sufficiently to inform his decision to grant consent to the proposed Development.

Climate Change Act and the Net Zero Target

7.8 On 2 May 2019, the Climate Change Committee recommended the UK reduce greenhouse gas emissions by net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline.

7.9 The Secretary of State notes the Energy White Paper states that National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State does not consider that the amendment to the Climate Change Act 2008 has lessened the need for development of the sort represented by WK3 which is, therefore, still in accordance with the National Policy Statements.

8. Modifications to the draft Order

8.1 The ExA records that there were a number of changes to the development consent order submitted by the Applicant as part of its Application as it progressed through the examination process. Many of the changes were minor in nature but others were more substantive. All potential changes the development consent order were subject to discussion and consultation during the examination. The ExA recommended draft DCO contained at Annex D of the report is on the basis that only the K3 plant should be granted development consent. This is the version that the Secretary of State has adopted as the basis for the consented development consent order.

8.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to confirm with the current practice for statutory instruments and changes in the interests of clarity and consistency. In particular:

- an amendment to Article 3 to confirm that the undertaker is granted development consent for the authorised development within the Order limits;

- a provision (article 7) has been included confirming that the provisions for the benefit of the order have effect for the undertaker unless the benefit is transferred in accordance with article 8;
- under article 8, the undertaker must notify the Secretary of State and the relevant planning authority at least 14 days before any transfer if no consent is otherwise required;
- the provision in relation to human remains has been removed on the basis that it does not appear to be relevant or necessary in relation to WK3;
- a provision in relation to the service of notices has been added (article 19);
- a reference to the waste capacity of WK3 has been included in the description of the generating station in Schedule 1.

9. Challenge to decision

9.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

10. Publicity for decision

10.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Yours sincerely

Gareth Leigh

Gareth Leigh
Head of Energy Infrastructure Planning

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

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

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).