



S42 DRAFT DEVELOPMENT CONSENT ORDER (DCO)

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

November 2018

S42 Consultation Draft Development Consent Order November 2018

An initial draft Development Consent Order has been provided for the purposes of S42 consultation, primarily to demonstrate the expected structure of the DCO which will form part of the final DCO application. The S42 DCO is then also intended to allow consultees and interested parties the opportunity to identify principal and supplementary powers which the applicant anticipates being included in the dDCO and to clarify the extent of the individual Works, as shown on the S42 Draft Works Key Plan.

20[] No.

INFRASTRUCTURE PLANNING

The Wheelabrator Kemsley (K3 Generating Station Power Upgrade) and (WKN Waste-to-Energy Facility) Order 201[]

Made - - - - - ***

Coming into force - - - - - ***

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)^(b);

The application was examined by [a single appointed person] (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010^(c);

The [single appointed person], having considered the application with the documents that accompanied it and the representations made and not withdrawn, has submitted a report with a recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the [single appointed person], has decided the application and determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make substantial changes to the proposals;

^(a) S.I. 2009/2264 as amended by S.I. 2013/522
^(b) 2008 c.29
^(c) S.I. 2010/103 amended by S.I. 2012/635

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order—

PART 1
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Wheelabrator Kemsley (K3 Generating Station Power Upgrade) and (WKN Waste-to-Energy Facility) Order and shall come into force on [] 201[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1980 Act” means the Highways Act 1980(b);

“the 1989 Act” means the Electricity Act 1989(c);

“the 1990 Act” means the Town and Country Planning Act 1990(d);

“the 1991 Act” means the New Roads and Street Works Act 1991(e);

“the 2008 Act” means the Planning Act 2008(f);

“2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(g);

“access to works plan” means the plan certified as the access to works plan by the Secretary of State for the purposes of this Order;

“authorised development” means the development and associated development described in Part 1 of **Schedule 1** (authorised development), which is development within the meaning of section 32 of the 2008 Act;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on [•] 2019;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“K3 Generating Station” means the Wheelabrator Kemsley Sustainable Energy Plant comprising two 102MWth lines, capable of processing 550,000 tonnes of waste per annum and having a permitted generating output of 49.9MWe, for which consents have been granted as follows—

- (a) planning permission KCC/SW/10/444 granted on 6 March 2012 by Kent County Council;
- (b) section 73 permission KCC/SW/14/50668 granted on 21 April 2015 by Kent County Council to vary [...];
- (c) section 73 permission KCC/SW/17/502996 granted on 23 August 2018 by Kent County Council to vary [...];

(a) 1961 c.33
(b) 1980 c.66
(c) 1989 c.29
(d) 1990 c.8
(e) 1991 c.22
(f) 2008 c.29
(g) S.I. 2016/1154

(d) section 73 permission KCC/SW/18/0103 granted on [pending] by Kent County Council to vary [...];

(e) non-material amendments to planning permission KCC/SW/10/444 dated [various].

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“maintain” includes (i) inspect, repair, adjust, alter, refurbish, improve, the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and “maintenance” is construed accordingly;

“MWe” means megawatts of electrical output;

“Order land” means the land shown on the land plan coloured [] within the Order limits and described in the book of reference;

“Order limits” means the limits shown on the works plan within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in Section 7 of the Acquisition of Land Act 1981(a);

“Project K3” means Work No 1 and any other authorised development associated with that work;

“Project WKN” means Work No 2 and any other authorised development associated with those works;

“relevant highway authority” means the highway authority for the area in which the relevant highway to which the relevant provision of this Order applies is situated;

“relevant planning authority” means the local authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirements” means those matters set out in Part 2 of **Schedule 2** (requirements) to this Order;

“statutory undertaker” means any person falling within the meaning set out in section 127(8) of the 2008 Act;

[“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways (subject to confirmation from the relevant highway authority), and includes part of a street;]

[“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;]

“tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means, subject to article 7 (Benefit of the Order) WTI/EFW Holdings Ltd. (company number 07593865);

“watercourse” includes all rivers, streams, ditches, drains, creeks, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) A reference in this Order to a “grid reference” is a reference to the map co-ordinates on the National Grid used by the Ordnance Survey.

(4) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to in **Schedule 3** (maximum building dimensions)

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

- (5) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.
- (6) The expression “includes” shall be construed without limitation.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Authorisation of the operation of the authorised development

4.—(1) The undertaker is authorised to operate the generating stations comprised in the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

Power to maintain authorised development

5. The undertaker may, at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Limits of deviation

6.—(1) In carrying out Project WKN the undertaker may deviate laterally from the lines, situations or building outlines shown on the [] plan—

- (a) within the limits of deviation relating to the buildings for that authorised development as shown on that plan;
- (b) in such a way as to reduce the size of the relevant part of the authorised development, to such extent as the undertaker considers necessary or expedient; and
- (c) in such a way as to increase the size of the relevant part of the authorised development, to the maximum extent of the limits of deviation shown on the relevant document.

(2) Paragraph (1) is subject to the following exceptions—

- (a) the width and length of each building comprised in the authorised development and listed in **Schedule 3** (maximum building dimensions) must not exceed the maximum width or length for that building specified in that Schedule;

(3) In carrying out the authorised development the undertaker may deviate vertically from the levels shown on [], in such a way as to reduce or increase the size of the relevant part of the authorised development, to such extent as the undertaker considers necessary or expedient.

(4) Paragraph (3) is subject to the following exception—

- (a) the height of each building comprised in the authorised development and listed in **Schedule 3** (maximum building dimensions) must not exceed the maximum height for that building specified in that Schedule.

Benefit of the Order

7.—(1) Except where paragraph (4) applies, the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
 - (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.
- (2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or lessee.
- (3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.
- (4) The consent of the Secretary of State is required for a transfer or grant under this article, except where—
- (a) in the case of Project K3 the transfer or grant is made to K3 CHP Limited (Company number 09240062);
 - (b) in the case of Project KWN the transfer or grant is made to Kemsley North Limited (Company number 11699563); or
 - (c) The transfer or grant is made to a licence holder within the meaning of section 4(i) of the Electricity Act 1989.

PART 3

SUPPLEMENTARY POWERS

Access to works

- 8.** The undertaker may, for the purposes of the authorised development —
- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of **Schedule []** (access to works); and
 - (b) with the approval of the relevant highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Discharge of water

- 9.—**(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.
- (2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991^(a) (right to communicate with public sewers).
- (3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.
- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

^(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

- (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior written consent of the Environment Agency.
- (6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016.
- (8) In this article—
 - (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
 - (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Authority to survey and investigate the land

- 10.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—
- (a) survey or investigate the land;
 - (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
 - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes shall be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority.
- (5) A consent for the purpose of paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.
- (6) As soon as practicable following the exercise of any powers under paragraph (1), any apparatus or equipment must be removed and the land shall be restored to the reasonable satisfaction of the owners of the land.
- (7) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Felling or lopping of trees

11.—(1) The undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.]

Statutory undertakers

12. The undertaker may extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers described in the book of reference.

Recovery of costs of new connections

13.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under **article 12** (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under **article 12** (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

14.—(1) Paragraph (2) applies where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(2) No order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—
 - (i) in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(a);
 - (ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site) or section 65 of that Act (noise exceeding registered level); or
 - (iii) in compliance with [requirement []];
- (b) relates to premises used by the undertaker for the purposes of or in connection with the operation of the authorised development and is attributable to that operation in compliance with the programme approved under requirement [] (control of noise during operational phase); or
- (c) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised development.

Application of landlord and tenant law

15.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any part to the lease of any obligation of any other party under the lease.

(a) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

Operational land for purposes of the 1990 Act

16. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Certification of plans etc

17.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference (dated []);
- (b) the land plan (drawing number [] dated []);
- (c) the works plan (drawing number [] dated []);
- (d) the access to works plan (dated []);
- (e) the environmental statement (dated []);
- (f) any other plans or documents referred to in this Order as requiring certification.

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made,

the reference in the plan or document concerned shall be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Arbitration

18. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Procedure in relation to certain approvals etc

19.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld.

(2) **Schedule 5** (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to **Schedule 2** (requirements).

Signed by authority of the [Secretary of State for Business, Energy and Industrial Strategy]

[Address]

[Name]
Head of [Unit]

Date 201[X]

Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

Nationally significant infrastructure projects as defined in sections 14 and 15 of the 2008 Act located at Kemsley, near Sittingbourne in Kent, comprising—

Project K3

Work No 1– Extension, operation and maintenance of the K3 Generating Station at an upgraded generating capacity of up to 75MWe.

Project WKN

Work No 2– An onshore electricity generating station with a gross installed generating capacity of up to 42MWe, fuelled by waste derived fuels and comprising the following works—

- (a) fuel reception and storage facilities, consisting of a tipping hall and vehicle ramps, shredder, fuel storage bunker and crane;
- (b) a combustion system housed within a boiler hall comprising two combustion lines and associated boilers;
- (c) a steam turbine and generator housed within a turbine hall;
- (d) a bottom ash handling system, including storage bunker and ash collection bay;
- (e) a flue gas treatment system, including residue and reagent storage silos and tanks;
- (f) an emissions stack and associated emissions monitoring systems;
- (g) a cooling system comprising an air cooled condenser;
- (h) a compressed air system;
- (i) diesel storage tanks;
- (j) a process effluent storage tank;
- (k) a demineralised water treatment plant;
- (l) fire water tank and fire protection facilities;
- (m) up to two auxiliary diesel generators each of up to [4MWe] output;
- (n) pipe racks and pipe runs;
- (o) an electrical switchyard, including circuit breaker and transformer;
- (p) a control and administrative building;
- (q) a workshop building; and
- (r) hardstandings, internal vehicular access roads, vehicle turning, waiting and parking areas and pedestrian and cycle facilities and routes.

Work No. 3 – Installation of new grid connection for Work No 2

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with and in addition to the nationally significant infrastructure project referred to in Work No 2 including—

Work No 4 - Alteration of existing private access road to construct, use and maintain the authorised development

Work No 5 – Temporary construction or alteration of existing private haul road for the construction of Work No 2

Work No 6 - Creation of a temporary construction compound and laydown area for the construction of Work No 2

Work No 7 - Construction and operation of a new surface water outfall for Work No 2

In connection with and in addition to Works Nos. 1, 2, 3, 4, 5, 6, and 7, to the extent that it does not otherwise form part of those works, further associated development including—

- (a) external lighting;
- (b) fencing, boundary treatment and other means of enclosure;
- (c) signage;
- (d) CCTV and other security measures;
- (e) surface and foul water drainage facilities;
- (f) potable water supply;
- (g) new telecommunications and utilities apparatus and connections;
- (h) hard and soft landscaping;
- (i) biodiversity enhancement measures;
- (j) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;
- (k) works for the protection of buildings and land affected by the authorised development;
- (l) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections;
- (m) establishment of temporary construction compounds, vehicle parking areas, materials storage and laydown areas, construction related buildings, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities;

and, to the extent that it does not form part of such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

Ref

Requirements

Interpretation

1.—(1) In this Schedule—

"bank holiday" is a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

"CEMP" means the draft construction environmental management plan approved in accordance with requirement [];

"commencement of the authorised development" means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), other than permitted preliminary works, comprised in or carried out for the purposes of the authorised development; and "commence" and other cognate expressions, in relation to the authorised development, are to be construed accordingly;

"commissioning of the authorised development" means the process of testing all systems and components of the authorised development (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and "commission" and other cognate expressions, in relation to the authorised development, are to be construed accordingly;

"construction site" means the Order land during the construction of the authorised development;

"environmental permit" means a permit granted under the 2016 Regulations authorising the operation of the authorised development;

"means of enclosure" means fencing, walls or other means of boundary treatment and enclosure;

"permitted preliminary works" means site clearance work, survey work, archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements and the provision of site security;

(2) A reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication in writing.

(3) A reference in this Schedule to details, a method statement, a plan, a programme, a scheme or any other document approved by the planning authority is a reference to that document including any amendments subsequently approved by the planning authority.

PART 1

Shared Requirements

Commencement of the authorised development

2.—(1) The authorised development must commence within five years of the date on which this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the planning authority 14 days' notice of its intention to commence the authorised development.

3.

4.

PART 2

Requirements –Project K3

5.

6.

PART 3

Requirements – Project WKN

7.

8.

SCHEDULE 3

Art 6

MAXIMUM BUILDING DIMENSIONS – Work 2

<i>Building</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Maximum height [AOD]</i>
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SCHEDULE 4
ACCESS TO WORKS

Art 8

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
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PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirement

1.—(1) Where an application has been made to a discharging authority for any agreement or approval required pursuant to requirements [] in **Schedule 2** (requirements) of this Order, the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 2 (further information), 8 weeks from the day immediately following that on which the application is received by the discharging authority;
- (b) where further information is requested under paragraph 2 (further information), 8 weeks from the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

Further information

2.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, it must, within 7 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority must issue the consultation to the requirement consultee within 1 business day of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 1 business day of receipt of such a request and in any event within 21 days of receipt of the application.

(4) If the discharging authority does not give such notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter be entitled to request further information without the prior agreement of the undertaker.

Appeals

3.—(1) The undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period as determined in paragraph 1;
- (c) on receipt of a request for further information pursuant to paragraph 2 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (2) The appeal process is as follows—
- (a) the undertaker must submit the appeal documentation to the Secretary of State, a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
 - (b) the undertaker must on the same day provide copies of the appeal documentation to the discharging authority and the requirement consultee (if applicable);
 - (c) as soon as is practicable after receiving the appeal documentation, but in any event within 10 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
 - (d) the discharging authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within 10 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person; and
 - (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to sub-paragraph (d) above.
- (3) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.
- (4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.
- (5) On an appeal under this paragraph, the appointed person may—
- (a) allow or dismiss the appeal; or
 - (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),
- and may deal with the application as if it had been made to the appointed person in the first instance.
- (6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.
- (7) The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.
- (8) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.
- (9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of **Schedule 2** (requirements) as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to

give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.

Interpretation of Schedule 11

4. In this Schedule—

“the appeal parties” means the discharging authority, the requirement consultee and the undertaker;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;

“discharging authority” means that person or body responsible for approving details pursuant to requirements in **Schedule 2** (requirements);

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises [] (company number []) to construct, operate and maintain [and upgrade] the Kemsley Sustainable Energy Plant together with all necessary and associated development. The Order provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order also grants development consent for associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in this Order and certified in accordance with **article** [] (certification of plans, etc) of this Order may be inspected free of charge at the offices of [Council offices].