

20[ ] No.

**INFRASTRUCTURE PLANNING**

The Wheelabrator Kemsley (K3 Generating Station) 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<sup>(a)</sup> for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)<sup>(b)</sup>;

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<sup>(c)</sup>;

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person], having considered the application with the documents that accompanied it and the representations made and not withdrawn, has submitted a report with a recommendation to the Secretary of State;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

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<sup>(a)</sup> S.I. 2009/2264 as amended by S.I. 2013/522  
<sup>(b)</sup> 2008 c.29  
<sup>(c)</sup> 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) 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);

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

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

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

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

“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 existing Wheelabrator Kemsley Sustainable Energy Plant [which was substantially completed on xxx/was commissioned on xxx] pursuant to the K3 Generating Station Planning Permission;

“K3 Generating Station Planning Permission” means planning permission SW/18/503317 granted on 11 October 2018 by Kent County Council (which varied planning permission KCC/SW/10/444 dated 6 March 2012 pursuant to section 73 of the 1990 Act) permitting the construction and operation of the K3 Generating Station up to a generating output of 49.9MW

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

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

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(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

“MW” means megawatts of electrical output;

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

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

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

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

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

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

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

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

“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 8 (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.

"WKN Waste-to-Energy Facility" means a new generating station having a generating capacity of up to 42MW which is treated as development for which development consent is required pursuant to a direction by the Secretary of State for Business, Energy and Industrial Strategy under section 35 of the 2008 Act dated 27 June 2018.

(2) 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 2** (Requirements)

(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.

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

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2 the undertaker is granted development consent for the authorised development.

#### **Effect of the Order on the K3 Generating Station Planning Permission**

4.—(1) The undertaker may not commence Work No 1 under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate the K3 Generating Station under the K3 Generating Station Planning Permission.

(2) Upon service of the notice under paragraph (1) the conditions of the K3 Generating Station Planning Permission will cease to have effect.

(3) Where details, plans or any other matters have been approved or agreed by the relevant planning authority pursuant to a condition of the K3 Generating Station Planning Permission in column (1) of Schedule 3 prior to the date on which the undertaker serves notice under paragraph (1) they will be deemed to have been approved for the purpose of the corresponding requirement in column (2) of Schedule 3.

#### **Authorisation of the operation of the authorised development**

5.—(1) The undertaker is authorised to operate the generating stations forming part of the authorised development.

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

#### **Power to maintain authorised development**

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

#### **Benefit of the Order**

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

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where—

- (a) in the case of Project K3 the transfer or grant is made to K3 CHP Limited (Company number 09240062);

- (b) in the case of Project WKN the transfer or grant is made to Kemsley North Limited (Company number 11699563); or
- (c) The transfer or grant is made to a licence holder within the meaning of section 6(1) of the Electricity Act 1989.

## PART 3

### SUPPLEMENTARY POWERS

#### **Access to works**

8. The undertaker may with the approval of the relevant highway authority, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

#### **Discharge of water**

9.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior written consent of the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016.

(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.

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(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.

### **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.

### **Removal of Human Remains**

**11.**—(1) Before the undertaker carries out any development or works which it has reason to think will or may disturb any human remains in the Order land it must remove those remains, or cause them to be removed, from the Order land in accordance with the following provisions of this article.

(2) Before any such remains are removed the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of a deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of his or her intention to undertake the removal of the remains.



(5) Where a person has given notice under paragraph (4) and the remains in question can be identified, that person may cause the remains to be—

- (a) removed and re-interred in a burial ground or cemetery in which burials may legally take place, or
- (b) removed to, and cremated in, a crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of a deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land, or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days, or
- (c) within 56 days after an order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains, or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article the undertaker must send—

- (a) a certificate of re-interment or cremation to the Registrar General, giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) to the relevant planning authority.

(11) The removal of the remains of a deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

### **Felling or lopping of trees**

**12.—**(1) The undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing

or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

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

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

### **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).

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

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—
  - (i) in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(**b**);

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

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

- (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.

### **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).

### **Protective Provisions**

**17.** Schedule 4 (protective provisions) to this Order has effect.

### **Certification of plans etc**

**18.** 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 plans (drawing number [ ] dated [ ]);
- (d) the environmental statement (dated [ ]);
- (e) the K3 Generating Station Planning Permission approved details, including:
  - (i) [approved as-built drawings]
  - (ii) [K3 rail and barge strategy dated [ ]];
  - (iii) [landscaping and tree planting scheme dated 27 June 2017];
  - (iv) [external lighting strategy dated [ ]];
- (f) the WKN parameter plan (drawing number dated [ ]);
- (g) the WKN construction traffic management plan (dated [ ]);
- (h) the WKN travel plan (dated [ ]);
- (i) the WKN rail and barge strategy dated [ ]

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

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

**Arbitration**

**19.** 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**

**20.**—(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 4** (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

*[Name]*  
*[Position]*

Date 20[XX]

Department for Business, Energy and Industrial Strategy

# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

In the County of Kent—

#### **Project K3**

Work No 1– An electricity generating station (the K3 Generating Station) with a gross installed generating capacity of up to 75MW comprising the following works—

- (a) tipping hall;
- (b) waste fuel bunker;
- (c) boiler hall;
- (d) flue gas treatment building;
- (e) turbine hall housing steam turbine and generator;
- (f) air cooled condenser;
- (g) stack and associated emissions monitoring system;
- (h) electricity substation;
- (i) stores and utilities;
- (j) administration office
- (k) fire water tanks;
- (l) stores;
- (m) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No. 1A – Installation of grid connection for Work No 1

Work No. 1B – Installation of steam connection for Work No 1

#### **Associated development**

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 1C - Alteration of existing private access road to construct, use and maintain Work No 1

Work No 1D - Creation of a temporary construction compound and laydown area for the construction of Work No 1

Work No 1E - Construction and operation of a surface water outfall for Work No 1

#### **Project WKN**

Work No 2– An electricity generating station (the WKN Waste-to-Energy Facility) with a gross installed generating capacity of up to 42MW comprising the following works—

- (a) Raised tipping hall (with demineralised water treatment plant beneath);
- (b) waste fuel bunker;
- (c) boiler hall;
- (d) flue gas treatment building;
- (e) turbine hall housing steam turbine and generator;
- (f) air cooled condenser;

- (g) stack and associated emissions monitoring system;
- (h) electricity substation;
- (i) stores and utilities;
- (j) administration office
- (k) fire water tanks;
- (l) stores;
- (m) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

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

**Associated development**

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 4 - Alteration of existing private access road to construct, use and maintain Work No 2

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

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

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

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

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

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

## SCHEDULE 2 REQUIREMENTS

Article 3

### **Interpretation**

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;

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

"commissioning" means the process of testing all systems and components of each of Work No 1 and Work No 2 (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and "commission" and other cognate expressions are to be construed accordingly;

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

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

"permitted preliminary works" means works within Work Nos 4, 5 and 6, site clearance work, survey work, 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 provided that these will not give rise to any materially new or materially different effects from those assessed in the environmental statement;

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

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

## PART 1 GENERAL REQUIREMENTS

### **Commencement of the authorised development**

2.—(1) Each of Work No 1 and Work No 2 commence within five years of the date on which this Order comes into force.

(2) Notice of commencement of each of Work No 1 and Work No 2 must be given to the relevant planning authority within 7 days of the date on which they are commenced.

### **Notice of commissioning**

3.—(1) Notice of commencement of commissioning of each of Work No 1 and Work No 2 must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

- (2) Notice of completion of commissioning of each of Work No 1 and Work No 2 must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

### **Decommissioning**

4.—(1) Within six months after it decides to decommission either the K3 Generating Station or the WKN Waste-to-Energy Facility, the undertaker must submit to the relevant planning authority for its approval a written decommissioning environmental management plan for that generating station.

(2) Decommissioning works must not be carried out until the relevant planning authority has approved the scheme.

(3) The decommissioning environmental management plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) all measures necessary for the protection from the potential environmental effects pursuant to decommissioning;
- (e) any restoration works to restore the Order land to a condition agreed with the relevant planning authority;
- (f) the phasing of any restoration works;
- (g) a timetable for the implementation of the scheme.

(4) The undertaker must implement the scheme as approved and is responsible for the costs of the decommissioning works.

### **Control of Operational Noise**

5.—(1) Noise levels as measured in accordance with the method described in British Standard 4142:2014 at the nearest noise sensitive receptors as set out in Figure [7.2] of Chapter 7 (Noise and Vibration) of the Environmental Statement attributable directly to either the K3 Generating Station or the WKN Waste-to-Energy Facility shall not exceed the background levels set out in Appendix [7.1] of the Environmental Statement.

### **Fuel Storage**

6.—(1) All fuels, oils and other liquids with the potential to contaminate the Order land shall be stored in a secure bunded area in order to prevent any accidental or unauthorised discharge to the ground.

(2) The area for storage shall not drain to any surface water system.

(3) Where it is proposed to store more than 200 litres of any type of oil must be stored in accordance with the provisions of the Control of Pollution (Oil Storage) (England) Regulations 2001.

(4) Where a drum or barrel has a capacity less than 200 litres a drip tray capable of retaining 25% of the maximum capacity of the drum or barrel may be used in lieu of storing the drum or barrel in the secure bunded area

### **Rail and barge strategy**

7.—(1) The K3 Generating Station and the WKN Waste-to-Energy Facility must be operated in accordance with the approved rail and barge strategy for that project.



(2) In this requirement "rail and barge strategy" means the K3 rail and barge strategy and the WKN rail and barge strategy certified by the Secretary of State as the rail and barge strategies under article 18.

## PART 2

### PROJECT K3 REQUIREMENTS

#### **Approved details**

**8.**—(1) The authorised development must be carried out in accordance with the following K3 Generating Station Planning Permission approved details except as amended by approval of the relevant planning authority pursuant to requirement [ ]:

- (a) [approved as-built drawings]
- (b) [rail and barge strategy dated 27 June 2017];
- (c) [landscaping and tree planting scheme dated 27 June 2017];
- (d) [external lighting strategy dated [ ]];
- (e) [flood risk assessment and Surface Water Drainage Philosophy dated ]

(2) In this requirement—

"[approved as-built drawings]" means the [approved as-built drawings] certified by the Secretary of State as the [approved as-built drawings] under article 18;

"landscaping and tree planting scheme" means the landscaping and tree planting scheme certified by the Secretary of State as the landscaping and tree planting scheme under article 18;

"external lighting strategy" means the external lighting strategy certified by the Secretary of State as the external lighting strategy under article 18.

#### **Heavy goods vehicles**

**9.**—(1) The maximum number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed a combined total of 348 movements per day subject to any prior written variation as approved by the relevant planning authority.

(2) Sub-paragraph (1) does not apply to waste deliveries originating from and returning to the railway depot at Ridham Docks accessing and egressing the K3 Generating Station by the use of Ridham Dock Road.

#### **Trees**

**10.**—(1) All trees and shrubs planted under the [approved scheme] shall be maintained for a period of 5 years.

(2) Any trees or shrubs that either die, are lost, damaged or become diseased during this 5 year period shall be replaced with a tree or shrub of the same species within the next available planting season.

(3) In this requirement—

"[approved tree scheme]" means the [approved tree scheme] certified by the Secretary of State as the [approved tree scheme] under article 18.

#### **Surface water drainage**

11.—(1) All surface water drainage from the authorised development discharging to a local water course shall be attenuated for a 1:100 year return storm with a limited discharge of 7 litres per second per hectare or the equivalent run off from a Greenfield site for a 1:2 storm.

### Combined heat and power

12.—(1) Within 12 months of ceasing to supply heat and/or power to the Kemsley Paper Mill, the undertaker must submit to the relevant planning authority for its approval a strategy (“the CHP strategy”).

(2) The CHP strategy submitted and approved must—

- (a) consider the opportunities that reasonably exist at the time of submission for the export of heat and/or power from the authorised development to other users; and
- (b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development to other users.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP strategy.

## PART 3 PROJECT WKN REQUIREMENTS

### Detailed design approval

13.—(1) No part of Work No 2 may commence until written details of the siting, layout, scale and external appearance (including colours, materials, and surface finishes) of all permanent buildings and structures have been submitted to and approved by the relevant planning authority.

(2) The details to be submitted for approval under sub-paragraph (1) must be in accordance with:

- (a) the lateral limits of deviation for each of the works comprising Work No 2 as shown on the WKN parameter plan;
- (b) the height parameters specified in table 1 below.

**Table 1**

<i>Building or structure</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum height (metres)</i>	<i>Maximum height (metres)</i>
Tipping hall (Work No 2(a))	45	36	-	30
Waste fuel bunker (Work No 2(b))	35	36	-	44
Boiler hall (Work No 2(c))	50	36	-	58
Flue gas treatment plant (Work No 2(d))	45	35	-	44
Turbine hall (Work No 2(e))	40	25	-	30
Air-cooled condensers (Work No 2(f))	45	30	-	40

Stack (Work No 2(g))	-	4	90	99
Electricity substation (Work No 2(h))	45	30	-	15
Stores & Utilities (Work No 2(i))	20	10	-	15
Administration office (Work No 2(j))	30	15	-	30
Fire water tanks (Work No 2(k))	-	7.2	-	15
Stores (Work No 2(l))	40	35	-	15
Supporting infrastructure (Work No 2(m))	-	-	-	10

(3) The authorised development must be carried out in accordance with the approved details.

(4) In this requirement, "WKN parameter plan" means the plan certified by the Secretary of State as the WKN parameter plan under article 18.

### **Provision of landscaping**

**14.**—(1) No part of Work No 2 may be commissioned until a written detailed landscaping scheme has been submitted to and approved by the relevant planning authority.

(2) Each scheme submitted and approved must include details of all proposed hard and soft landscaping works, including—

- (a) the treatment of hard surfaced areas;
- (b) earthworks, including the proposed levels and contours of landscaped areas;
- (c) the seed mix for areas of grassland;
- (d) shrub planting, including the height, size and species and the density of distribution;
- (e) the management of existing and new areas of grassland and tree and shrub planting;
- (f) an implementation timetable for the phasing and completion of the landscaping works.

(3) Each scheme submitted and approved must be in accordance with the ecological management and enhancement plan approved under requirement [ ].

### **Implementation and maintenance of landscaping**

**15.**—(1) All landscaping works must be carried out in accordance with the relevant landscaping scheme (including the implementation timetable) approved under requirement 14.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

(3) Any area of grassland planted as part of an approved landscaping scheme that, within a period of five years after planting, dies or becomes, in the opinion of the planning authority, seriously damaged or diseased, must be reseeded in the first available planting season with the same seed mix as that originally planted.

(4) The undertaker must implement and maintain an annual landscaping maintenance plan during the construction, operation and decommissioning of the authorised development.

### **Fencing and other means of enclosure**

**16.—**(1) No part of Work No 2 may be commenced until written details of all proposed means of enclosure have been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction of the authorised development.

(3) Any approved temporary means of enclosure must be removed within 12 months after the authorised development is brought into commercial use.

(4) The authorised development must not be brought into commercial use until any approved permanent means of enclosure has been completed.

(5) The authorised development must be carried out in accordance with the approved details.

### **Surface water drainage**

**17.—**(1) No part of the surface and foul water drainage systems may commence until written details have been submitted to and approved by the relevant planning authority.

(2) The details submitted and approved must be in accordance with the principles and strategy set out in chapter 10 of the environmental statement and its relevant appendices including:

- (a) surface water drainage strategy;
- (b) drainage maintenance plan;
- (c) flood management plan;
- (d) emergency spillage management plan;
- (e) water quality monitoring strategy;
- (f) flood evacuation plan.

(3) The surface and foul water drainage systems must be constructed in accordance with the relevant approved details.

(4) The authorised development must not be commissioned until the surface and foul water drainage systems have been constructed.

### **Contaminated land and groundwater**

**18.—**(1) No authorised development may be commenced, and no archaeological investigations, investigations for the purpose of assessing ground conditions or remedial work in respect of contamination or other adverse ground conditions may take place, until details of capping layer and ground gas protection measures for that part, or for those activities to the extent they may be required, have been submitted to and approved by the relevant planning authority.

(2) Construction works for the authorised development must be carried out in accordance with the approved measures.

(3) If contamination not previously identified is found during the construction of the authorised development, no further works for the authorised development may be carried out in the affected area until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contamination is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(4) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph (3) must be carried out in accordance with the approved scheme.

### **Archaeology**

**19.**—(1) No authorised development shall commence until a written scheme for the investigation of areas of archaeological interest [as identified in section [reference] of the environmental statement] has been submitted to and approved by the relevant planning authority.

(2) The scheme shall identify areas where a watching brief and/or field work are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

### **Ecological management and enhancement plan**

**20.**—(1) The authorised development must not be commissioned until a written ecological management and enhancement plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must—

- (a) be in accordance with the survey results and mitigation and enhancement measures included in chapter 11 of the environmental statement;
- (b) include an implementation timetable and details relating to maintenance and management.

(3) The plan must be implemented as approved.

### **Construction environmental management plan**

**21.**—(1) The authorised development must not commence until a written construction environmental management plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must—

- (a) be in accordance with the principles set out in chapters 4 to 13 of the environmental statement and the outline construction environmental management plan contained in Appendix 2.1 to the environmental statement;
- (b) include measures for the protection of any protected species found to be present on the Order land during construction;
- (c) include the mitigation measures included in chapter 14 of the environmental statement;
- (d) identify the consideration given to greenhouse gas emissions reduction measures during construction referred to in [reference] of the environmental statement and the measures that have been included;
- (e) incorporate a scheme for handling complaints received from local residents, business and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.

(3) In subparagraph (2)(b), a “protected species” means a species protected under the Wildlife and Countryside Act 1981(a) or the Conservation of Habitats and Species Regulations 2017(b).

(4) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

### **External lighting**

**22.**—(1) No part of the external lighting may be commenced until a scheme for all permanent external lighting to be installed during the operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The details submitted and approved must be in accordance with the principles and strategy set out in chapter [ ] of the environmental statement and be designed to avoid any consequential adverse impacts on biodiversity.

(3) The external lighting must be constructed in accordance with the relevant approved details.

(4) The authorised development must not be commissioned until the external lighting has been constructed.

### **Construction traffic management plan**

**23.**—(1) The authorised development must not commence until a written construction traffic routing and management plan has been submitted to and, after consultation with the relevant highway authorities, approved by the planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 4 of the environmental statement, the draft construction traffic management plan contained in Appendix 4.2 and the draft construction travel plan contained in Appendix 4.3 to the environmental statement.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;
- (c) the construction programme;
- (d) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment and any temporary removal of street furniture;
- (e) measures to promote the use of sustainable transport modes by construction personnel in order to minimise the overall traffic impact and promote sustainable transport modes;
- (f) details of parking for construction personnel within the construction site; and
- (g) details of a co-ordinator to be appointed to manage and monitor the implementation of the plan, including date of appointment, responsibilities and hours of work.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved.

### **Operational traffic routing and management plan**

**24.**—(1) The authorised development must not be commissioned until a written operational traffic routing and management plan has been submitted to and, after consultation with the relevant highway authority, approved by the planning authority.

- (2) The plan submitted and approved must be in accordance with the principles set out in chapter [ ] of the environmental statement and the operational travel plan framework contained in [Appendix X] to the environmental statement.
- (3) The plan submitted and approved must include details of the routes to be used for the transport of fuel, consumables and combustion by-products to and from the authorised development.
- (4) The plan must be implemented as approved.

### **Travel plan – operational staff**

**25.**—(1) The authorised development must not be brought into commercial use until a written travel plan for operational staff has been submitted to and, after consultation with the relevant highway authorities, approved by the planning authority.

- (2) The plan submitted and approved must be in accordance with the principles set out in chapter [ ] of the environmental statement and the operational travel plan framework contained in Appendix [ ] to the environmental statement.
- (3) The plan submitted and approved must include—
  - (a) details of the travel plan budget;
  - (b) measures to promote the use of sustainable transport modes to and from the authorised development by operational staff;
  - (c) provision as to the responsibility for, and timescales of, the implementation of those measures;
  - (d) a monitoring and review regime.
- (4) The approved plan must be implemented within six months after the authorised development is brought into commercial use and must be maintained throughout the operation of the authorised development.

### **Construction hours**

**26.**—(1) With the exception of construction using the concrete slip-forming method, construction using constant pour methods for concrete laying and internal process works relating to mechanical and/or electrical equipment installation, construction activities shall only take place between 07:00 and 19:00 hours Monday to Friday inclusive and 07:00 and 16:00 hours on Saturday and Sunday with no construction activities to take place on Bank or Public Holidays.

### **Piling and penetrative foundation design**

**27.**—(1) No part of Work No 2 may commence until a piling risk assessment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) Construction works for the authorised development must be carried out in accordance with the approved piling method and agreed risk management for that method as set out in the approved piling risk assessment.

(3) All piling and penetrative foundation works must be carried out in accordance with the relevant approved method statement.

**28.**—(1) No impact piling associated with Work No 2 shall take place in the months of January, February, April and August

(2) No more than ten days of impact piling associated with the authorised development, whether consecutive or otherwise, shall take place in the months of November and December.

(3) This requirement does not restrict impact piling associated with the authorised development between the months of March and October inclusive.

### **Employment, skills and training program**

**29.**—(1) Work No 2 may not commence until a written plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to and approved by the planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of Work No.2.

### **Amendments to approved plans, etc.**

**30.**—(1) With respect to any plans, details, schemes or other documents which require approval by the relevant planning authority pursuant to any requirement (the “Approved Plans”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Plans and following any such approval by the relevant planning authority the Approved Plans are to be taken to include the amendments approved pursuant to this sub-paragraph..

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 13 above must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).



SCHEDULE 3  
DEEMED APPROVAL OF REQUIREMENTS

Article 4

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<i>(1)</i> <i>K3 Generating Station Planning Permission condition</i>	<i>(2)</i> <i>Order requirement</i>
6 - The rail strategy approved by the Waste Planning Authority under planning reference SW/10/444/RVAR on 27 June 2017 shall be implemented as approved unless otherwise approved beforehand in writing by the Waste Planning Authority.	10

## PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**Application of this Schedule**

1.—(1) This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as “the authority”) for an approval, consent or agreement required by any of the requirements.

**Decision Period**

2.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In subparagraph (1), “the decision period” means—

- (a) where the authority does not give written notice under paragraph 3(1) or (2) requiring further information, the period of eight weeks from the later of—
  - (i) the day immediately following the day on which the authority receives the application, and
  - (ii) the day on which the authority receives the fee payable under paragraph 4; or
- (b) where the authority gives written notice under paragraph 3(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or
- (c) such longer period as may be agreed in writing by the undertaker and the authority.

**Further information**

3.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a “consultee”) in relation to the application—

- (a) the authority must consult the consultee within five business days from the day on which it receives the application;
- (b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and
- (c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under subparagraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with subparagraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

**Fees**

4.—(1) The undertaker must pay the authority a fee of £97, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under subparagraph (1) to the undertaker, within the relevant period, if it—

- (a) rejects the application as being invalidly made;
- (b) fails to give the written notice required by paragraph 2(1).

(3) Subparagraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In subparagraphs (2) and (3) “the relevant period” means the period of eight weeks from, as the case may be—

- (a) the day on which the authority rejects the application as being invalidly made;
- (b) the day after the day on which the decision period expires.

### **Appeal to the Secretary of State (procedure)**

5.—(1) The undertaker may appeal to the Secretary of State against—

- (a) the authority’s refusal of an application;
- (b) the authority’s grant subject to conditions of an application;
- (c) the authority’s failure to give the written notice required by paragraph 2(1);
- (d) a written notice given by the authority under paragraph 3(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

- (a) its grounds of appeal;
- (b) a copy of the application submitted to the authority;
- (c) any supporting documentation which it wishes to provide.

(3) In subparagraph (2), “the relevant day” means—

- (a) in the case of an appeal under subparagraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;
- (b) in the case of an appeal under subparagraph (1)(c), the day after the day on which the decision period expires;
- (c) in the case of an appeal under subparagraph (1)(d), the day on which the undertaker receives the authority’s notice.

(4) At the same time as it sends the documents mentioned in subparagraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) As soon as reasonably practicable following receipt of the documents mentioned in subparagraph (2), the Secretary of State must—

- (a) appoint a person (referred to in this Schedule as “the appointed person”) to determine the appeal on his behalf;
- (b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person’s address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under subparagraph (5)(b), the authority and any consultee—

- (a) may submit written representations in respect of the appeal to the appointed person; and
- (b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.

(7) Within 10 business days from the last day on which representations are submitted to the appointed person under subparagraph (6), any party—

- (a) may make further representations to the appointed person in response to the representations of another party; and
- (b) must, at the same time, send a copy of any such further representations to each other party.

**Appeal to the Secretary of State (powers of the appointed person)**

6.—(1) The appointed person may—

- (a) allow or dismiss the appeal;
- (b) reverse or vary any part of the authority’s decision, irrespective of whether the appeal relates to that part;
- (c) make a decision on the application as if it had been made to the appointed person in the first instance.

(2) The appointed person—

- (a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;
- (b) if he gives such a notice, must—
  - (i) at the same time send a copy of it to each other party, and
  - (ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.

(3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

**Appeal to the Secretary of State (supplementary)**

7.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to subparagraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under subparagraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.

**SCHEDULE 5**  
**PROTECTIVE PROVISIONS**

Article [XX]

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for WTI/EFW Holdings Ltd (company number 07593865) to construct, operate and maintain the K3 Generating Station with a gross installed capacity of up to 75MW, and to construct, operate and maintain the WKN Waste-to-Energy Facility with a gross installed capacity of up to 42MW.

The Order also authorises for associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in this Order and certified in accordance with **article 18** (certification of plans, etc) of this Order may be inspected free of charge during working hours at the offices of Kent County Council, Sessions House, County Hall, Maidstone, Kent ME14 1XQ.