



PLANNING APPLICATION SUPPORTING STATEMENT

by

Veolia Environmental Services (South Downs) Ltd.

for

**Variation of planning condition 38 of Planning Permission LW/462/CM
(EIA), in order to remove the catchment boundary restriction.**

Newhaven Energy Recovery Facility, North Quay, Newhaven, BN9 0AB

22nd October 2014

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Executive Summary

Background to the Application

Veolia Environmental Services (VES) operates the Integrated Waste Management Service (IWMS) for East Sussex County Council (ESCC) and Brighton & Hove City Council (BHCC). This is a long term contract providing a sustainable approach to managing the area's municipal waste through a combination of recycling, composting and residual treatment facilities.

In 2007 planning permission was granted for an Energy Recovery Facility (ERF) at Newhaven with a nominal operating capacity of 210,000 tonnes per annum (tpa) of waste based on 85% availability with a maximum permitted capacity of 242,000 tpa. Construction began in May 2008 and the facility has been operational since mid-2011.

The availability of the ERF has improved year on year as a result of improved maintenance regimes and component reliability such that currently and in the future, availability is expected to achieve 95% and an operational throughput close to the maximum of 242,000 tpa.

The increased availability of the plant is occurring in parallel with a decline in waste volumes, resulting from continued reductions in total waste produced, and increases in the rates of reuse, composting and recycling. In order to maintain the operational efficiency of the plant 'top-up' waste will increasingly be required to bridge the gap between the quantity of suitable municipal waste and the plant capacity. Maintaining the operational efficiency of the plant is important because it maximises energy generation and revenue share with the Council's.

What the Application is for

This planning application seeks permission for the variation of planning condition 38 of Planning Permission LW/462/CM (EIA), in order to remove the catchment boundary restriction on the sources of residual waste which currently restricts the sources of waste to the '*the administrative areas of East Sussex County and Brighton & Hove City*'

No changes are proposed to the permitted capacity of the ERF or to the primary requirement of the ERF to serve the requirements of the IWMS contract with East Sussex and Brighton & Hove Councils'.

What Inputs can Newhaven ERF accept?

The Newhaven ERF is designed to run at 'optimum capacity' making use of it's maximum availability and hence efficiency. The feedstock or fuel is principally targeted at household black bag waste, although inputs of Commercial and Industrial (C&I) waste are equally suitable so long as they meet the ERF design input criteria as well as those imposed by the Environmental Permit.

It is a requirement of the contract with East Sussex and Brighton and Hove City Councils that the ERF will continue to take all residual MSW waste from within the East Sussex, Brighton and Hove administrative areas. Whilst some 'top-up' waste from Commercial and Industrial sources within East Sussex, Brighton & Hove will continue to take place, this application seeks permission to extend the catchment area for the importation of 'top-up' waste.

Why is there not enough waste from East Sussex and Brighton and Hove?

Since the ERF was originally conceived the volume of household 'black bag' waste has reduced as recycling has increased. This reflects the significant efforts made both by the Waste Collection Authorities and the Waste Disposal Authorities in partnership with Veolia in the administration of its contract to develop and expand Integrated Waste Management services.

Actions being taken by the Waste Collection Authorities to improve recycling to meet Government targets such as the Joint Waste Collection Contract (Eastbourne BC, Hastings BC, Rother DC and Weladen DC) and Food Waste Collections (Lewes DC) in conjunction with the services and facilities provided by Veolia will in the future divert further material for recycling and composting away from both landfill and recovery through the ERF.

Whilst there remains C&I waste generated within the East Sussex, Brighton and Hove administrative areas, operational experience has shown that it is difficult to guarantee that there will be sufficient quantity of the right type and at the right time to maintain the plant at full operational capacity, particularly as the ERF is not designed to deal with general skip waste or large volumes of material such as wood or plastic.

The 'optimum capacity' of the ERF is based on the design rate of the plant (tonnes per hour) and the availability (number of hours in the year it is operational). The nominal availability is 85% giving a throughput of 210,000 tonnes per year, but as a result of improved, maintenance and component part reliability, availability of the ERF is typically working at 90-95% availability such that the plant is operating close to the maximum throughput of 242,000 tonnes per year.

Continuing improvements in the rates of reuse, composting and recycling and a continued reduction of all waste types has led to a consequential overall decline in suitable waste volumes available for the ERF. With greater availability of the plant and an overall decline in suitable waste it is increasingly more difficult to maintain the plant at optimum capacity. The changes sought will therefore maintain supply of suitable 'top up' waste to maintain plant efficiency and electricity generation at optimum levels.

How is the Commercial and Industrial Waste in the East Sussex and Brighton and Hove areas currently managed?

Previous studies completed on behalf of the County Council have suggested that there are adequate volumes of C&I waste with a maximum of circa 80,000 tonnes that could potentially be available to meet any shortfall in household 'black bag' waste.

There are a number of operators within the area that provide commercial waste collection services and all aim to increase recycling and reduce the amount that goes to landfill. There is no longer any landfill within East Sussex or Brighton and Hove area since the Pebsham landfill closed in 2013 so anything that requires landfilling goes out of the County or City.

To reduce the volume of C&I waste going to landfill most operators maximise recycling and also remove the combustible waste. Waste from commercial and industrial customers often has high percentages of plastic and wood which are shredded to produce a Refuse Derived Fuel (RDF) which are exported for use to power district heating systems most of which are in Scandinavia. The Newhaven ERF is not designed to take RDF.

Whilst the ERF is receiving some C&I waste of a suitable type there is unlikely to be any increase in volumes as recycling increases across this sector.

Where will the out of area waste come from?

Veolia has operations throughout the UK with significant operations in neighbouring and nearby counties. Haulage costs are expensive so this will be the limiting factor in the distance waste travels.

What tonnage of waste will come from outside East Sussex and Brighton and Hove?

Currently the tonnage of residual waste from East Sussex and Brighton and Hove is approximately 200,000 tpa so we will annually need somewhere between 30,000 and 42,000 tonnes of top up waste from commercial sources. Approximately 20,000 tonnes of commercial waste currently comes from within East Sussex and Brighton and Hove area so somewhere in the region of 10,000 to 20,000 tonnes per annum might come from outside the area.

Will there be an increase in vehicle movements?

No change is being sought to the maximum permitted capacity of the ERF so the overall level of vehicle movements will not change. Indeed the bulk haulage of material from Waste Transfer Stations can be expected to reduce rather than increase, vehicle movements.

Furthermore, since becoming operational there have been two significant changes that have reduced the number of vehicle movements associated with the operation of the ERF. Firstly, the grant

of planning permission in 2011 for the transfer of the Incinerator Bottom Ash by rail has removed 24 movements per day from the local roads. Secondly, there have been changes to the way the Waste Collection Authorities collect waste involving a reduction in the volume of waste being direct delivered by Refuse Collection Vehicle (RCV) and an increase in the amount imported via a Transfer Station by bulker. Both of these changes have reduced the traffic movements such that average HGV movements are currently approximately 140 per day, based on a throughput of approximately 230,000 tpa, compared to the 224 movements per day predicted at the time of the application. Even if the throughput of the ERF increased in line with greater availability to the maximum 242,000 tpa the additional movements would only amount to 8 per day.

What would happen if permission was refused?

Operation of the ERF at below full capacity would result in reduced plant efficiency, lost opportunities to maximise energy recovery of low carbon and part renewable electricity generation and income to ESCC and BHCC from the sale of power to the grid.

Waste Management – More detail on recent changes

Since planning permission was granted for the ERF in November 2007 there have been a number of important functional, economic and policy changes as well as appeal decisions and Defra guidance that are significant to the determination of the current application:

- The economic recession since 2008 has resulted in a general decline in the volumes of all waste types.
- The current forecasts for Municipal Solid Waste (MSW) contained in the adopted East Sussex and Brighton and Hove Mineral and Waste Plan shows for 2015/16 a low forecast of 361,000 tpa compared to that predicted in the former Waste Local Plan of 438,000 tpa.
- The total MSW in the ESCC and BHCC area for 2012/13 was 359,690 tonnes.
- The MSW recycling rate continues to increase and currently 2012/13 stands at 36% with targets of 45% by 2015/16 and 55% by 2025/26.
- In 2012 the ERF treated 226,766 tonnes and in 2013 it treated 232,200 tonnes. Of the 2013 waste inputs 200,963 tonnes was MSW and 31,237 tonnes was Commercial & Industrial waste.

The proposed change to the planning condition also reflects Government guidance on the effective and efficient use of existing capacity, restrictive catchment boundaries as well as a number of relevant Appeal decisions.

- Government advice and guidance makes it clear that there is no requirement for each authority to be self-sufficient in all types of waste infrastructure facility, that they should plan for net self-

sufficiency, but there should not be barriers to transporting waste to existing infrastructure or receiving waste from another area.

- Government inspectors and the Secretary of State have in many recent appeal cases confirmed that conditions restricting the geographic source of waste at ERFs are contrary to the objectives of the 'proximity principle' as defined in the Waste Framework Directive and are anti-competitive.
- Other existing residual waste infrastructure within the SE7 group of authorities is not similarly restricted making the market unbalanced, which also has the potential for waste to be managed contrary to the proximity principle in facilities further away.
- The proposal will ensure that the ERF continues to operate at its optimum design capacity assisting, in accordance with Government guidance, to ensure that the maximum value is obtained from residual waste suitable for energy recovery; and which also meets the energy policy objectives to maximise renewable, low carbon and diverse sources of energy supply.

This proposal is in accordance with national planning policies for waste and energy, is in conformity with the policies of the Development Plan and therefore comprises sustainable development which should accordingly be supported. The variation will not divert locally generated residual waste away from the facility but will instead ensure that the facility remains able to run at optimal capacity and efficiency, maximising generation of low carbon and partly renewable energy, to the benefit of the nation and the Councils of East Sussex, Brighton and Hove.

Conclusion

Veolia acknowledges that this application maybe of concern to local communities and wishes to reassure them that the Newhaven ERF will always give priority to the waste from the East Sussex and Brighton and Hove areas. For this reason in proposing a revision to condition 38 Veolia has proposed that the wording of the revised condition should acknowledge this. The revised wording of condition would follow the same form of wording as that which has been approved at Veolia's Hampshire ERFs. The new condition would read as follows:

Waste imported to the Energy Recovery Facility shall be restricted to waste collected by the Waste Collection Authorities in the administrative areas of East Sussex County Council and Brighton & Hove City Council and to such other municipal and commercial waste only where capacity remains at the Facility that is not required to meet the needs of the waste collection authorities in the administrative areas of East Sussex County Council and Brighton & Hove City Council. The Energy Recovery Facility shall have a nominal capacity of 210,000 tonnes per annum (based on 85% availability) with up to a maximum of 242,000 tonnes of waste delivered for combustion in any one year. For



the avoidance of doubt nominal capacity is the processing capacity of the plant under normal operating conditions taking account of its annual average availability due to planned maintenance events and other plant shutdowns.

1. Background

- 1.1 Veolia Environmental Services (South Downs) Ltd. (VES) operates the Integrated Waste Management Service (IWMS) for East Sussex County Council and Brighton & Hove City Council. This is a long term contract providing a sustainable approach to managing the area's municipal waste. Providing this service requires the development and operation of a network of strategically placed facilities, designed to increase recycling, composting and recovery and to divert waste from landfill.
- 1.2 As part of this service VES has built the Energy Recovery Facility (ERF) at Newhaven, East Sussex. This comprises an ERF with a nominal operating capacity of 210,000 tonnes per annum of waste, together with ancillary facilities including waste transfer station, on land at North Quay Road, Newhaven. Whilst focussed on the residual waste treatment needs of East Sussex and Brighton and Hove, the client authorities also benefit financially from maintaining the facility at optimum efficiency and performance through electricity generation and any subsequent district heating applications.
- 1.3 Planning consent for the facility was granted on 12th November 2007 and construction began in May 2008. The facility has been operational since mid-2011.

2. Current Proposal

- 2.1 Planning Permission LW/462/CM (EIA) permitted the:

CONSTRUCTION AND OPERATION OF AN ENERGY RECOVERY FACILITY TOGETHER WITH ANCILLARY INFRASTRUCTURE INCLUDING WASTE TRANSFER STATION, ADMINISTRATION / VISITOR CENTRE, LANDSCAPING AND HIGHWAY WORKS. LAND AT NORTHERN END OF NORTH QUAY ROAD, NEWHAVEN

- 2.2 This application seeks permission for the variation of planning condition 38 of Planning Permission LW/462/CM (EIA), in order to remove the catchment boundary restriction on the sources of residual waste and bring it in line with Government guidance and a number of appeal decisions. Condition 38 currently states:

There shall be no importation of waste from outside the Waste Local Plan area (i.e. the administrative areas of East Sussex County and Brighton & Hove City) to the Energy Recovery Facility. The Energy Recovery Facility shall have a nominal capacity of 210,000 tonnes per annum (based on 85% availability) with up to a maximum of 242,000 tonnes of waste delivered for combustion in any one year. For the avoidance of doubt nominal capacity is the processing capacity of the plant under normal operating conditions taking account of its annual

average availability due to planned maintenance events and other plant shutdowns.

Reason: To enable the Local Planning Authority to regulate and control the use of the site in compliance with Policies WLP1, WLP2, WLP19a) and WLP35 of the East Sussex and Brighton & Hove Waste Local Plan 2006, and PPS 10.

- 2.3 The proposed wording for condition 38 would be:

Waste imported to the Energy Recovery Facility shall be restricted to waste collected by the Waste Collection Authorities in the administrative areas of East Sussex County Council and Brighton & Hove City Council and to such other municipal and commercial waste only where capacity remains at the Facility that is not required to meet the needs of the waste collection authorities in the administrative areas of East Sussex County Council and Brighton & Hove City Council. The Energy Recovery Facility shall have a nominal capacity of 210,000 tonnes per annum (based on 85% availability) with up to a maximum of 242,000 tonnes of waste delivered for combustion in any one year. For the avoidance of doubt nominal capacity is the processing capacity of the plant under normal operating conditions taking account of its annual average availability due to planned maintenance events and other plant shutdowns.

- 2.4 Whilst the ERF is and will continue to be focussed on the receipt of residual waste from within the East Sussex, Brighton and Hove administrative areas, improvements in the availability of the plant and it's efficiency along with potential changes in waste composition over time as a result of successes in recycling rates achieved by Veolia and the Waste Collection Authorities is expected to provide additional headroom capacity which can be filled to maintain plant efficiency and optimisation. Under such circumstances scope exists to import "top-up" waste from beyond the catchment area to the benefit of plant efficiency, sustainability and to the Council's through increased revenues. Such a change will also reflect Government guidance on the use of restrictive catchment boundaries as well as a number of relevant Appeal decisions.
- 2.5 When the planning application for the construction of the ERF was submitted to ESCC it was supported by a Transport Assessment (TA) which considered the impact of traffic movements associated with the operation of the ERF. Table 9 of the TA detailed the level of traffic movements that would be generated by the operation of the ERF and which were used to assess the impact on the local highway network.

Waste Delivered to site						Residuals/recyclables exported from site				
	Waste type	Vehicle	Waste in	Daily vehicle movements		Material	Vehicle	Waste out	Daily vehicle movements	
				In	Out				In	Out
ERF	Transfer from WTS	Artic	165,000	31	31	Bottom ash	Tipper	61,150	12	12
	Direct from WCA	RCV	75,000	39	39	Ferrous Metals	Artic	9,775	2	2
						FGT residue	Tanker	9,775	2	2
Waste Transfer Station*	Street cleansing/ other	SCV/ other	5,000	16	16	SCV/ other	Artic	5,000	1	1
	Bulky household/ Recyclables	Rollonof	8,000**	3	3	Bulked recyclables /bulky household	Artic	8,000	2	2
Totals			253,000	89	89			93,700	19	19 [†]
Other	Consumables	HGV	5,000**	4	4					
	ERF staff			20	20					
Total daily movements				113	113	Total daily movements		19	19	

Table 9 - Anticipated equivalent maximum yearly waste tonnage and daily vehicle trips

* Under the worst case scenario whereby the ERF is operated at its maximum rate of supply throughout the year, 5000 tpa of this waste will be processed through the ERF, giving the annual ERF throughput rate of 245,000 tpa quoted in para. 5.10

** 50% during the week and 50% at weekends

*** ERF consumables (lime urea and carbon) flow is a maximum value

2.6 Since planning permission was granted by ESCC there have been two significant changes that have reduced the number of vehicle movements associated with the operation of the ERF. Firstly, the grant of planning permission in 2011 for the transfer of the Incinerator Bottom Ash by rail has removed 24 movements per day from the local roads. Secondly, there have been changes to the way the Waste Collection Authorities collect waste involving a reduction in the volume of waste being direct delivered by RCV and an increase in the amount imported via a Transfer Station by bulker. Both of these changes have reduced the traffic movements when compared to the movements predicted at the time of the grant of planning permission. Table 2.1 below details the actual traffic movements associated with the operation of the ERF for 2012 and 2013 and shows that average HGV movements are approximately 140 per day compared to the 224 predicted at the time of the application. Even if the throughput of the ERF increased in line with greater availability to 242,000 tpa the additional movements would only amount to 8 per day.

Table 2.1 Veolia ES South Downs - Newhaven ERF Tonnage & Average Vehicle Count Data 2012-2013		2012			2013		
		Tonnage	Average Vehicle Movements In Per Day	Average Vehicle Movements Out Per Day	Tonnage	Average Vehicle Movements In Per Day	Average Vehicle Movements Out Per Day
Waste Inputs	Direct Delivered	75,511	44	44	75,961	46	46
	WTS	151,255	23	23	156,240	24	24
	Total	226,766	67	67	232,201	70	70
Waste Outputs	APCR	7,897	1	1	7,774	1	1
	Bottom Ash	46,487	0	0	48,667	0	0
	Metals	4,236	2	2	4,220	2	2
	Total	50,723	3	3	60,661	3	3
Other Vehicles	Staff Vehicles		25	25		25	25
	Deliveries (Consumables)		2	2		2	2
	Total		27	27		27	27
Grand Total (HGVs only)		277,489	70	70	292,862	73	73

3. Site and Surroundings

- 3.1 The Newhaven ERF site is located at Grid Reference TQ445022 and has an area of approximately 4.74 hectares (including access road). It is located within the North Quay industrial area adjacent to the River Ouse.
- 3.2 The residential areas of South Heighton and Denton lie beyond the railway and industrial areas to the east. Newhaven itself lies to the south and south west. To the west beyond the river and to the north is open land. Land to the north is within the South Downs National Park.
- 3.3 A full description of the site and surroundings was contained in the original ERF planning application documents.

4. Consideration of need for EIA

- 4.1 The original planning application for the Newhaven ERF was subject to formal Environmental Impact Assessment under the EIA Regulations 1999 and the planning application was supported by an Environmental Statement (ES) prepared by consultants (Terence O'Rourke). Recent changes to the EIA Regulations requires that all subsequent consents for development that was subject to EIA should only be permitted if the Local Planning Authority (LPA) has considered and taken account of environmental information.
- 4.2 The changes proposed by this application do not involve any alterations to the physical building or the capacity of the facility. Consequently it is considered that there will be no additional

environmental impacts that would require a full review of the ES. The ES considered the need for the ERF in the context of the waste arisings and the national, regional, and local waste strategies and against the planning policies relevant at the time. This application considers the current proposal in the context of current waste strategies and the planning policies relevant.

- 4.3 The planning application and ES was supported by a Transport Assessment which considered the traffic and transportation impacts of the construction and operation of the ERF. No changes are being made to the overall physical capacity of the ERF. The current proposals will not result in any change in the capacity of the ERF and consequently the number and pattern of vehicle movements will be similar to existing. However, as detailed in paragraphs 2.5 and 2.6 above other changes have occurred since the submission of the original ES, in particular the grant of planning permission for the rail transfer of the incinerator bottom ash and other changes to the way waste is collected by the Waste Collection Authorities which have impacted on the traffic movements associated with the operation of the ERF such that movements to the ERF are now significantly lower than was anticipated when the application was submitted. For this reason there is not considered to be a need for a review of the Transport Assessment.
- 4.4 This supporting statement therefore includes a review of the changes in planning and waste management policies, considers the trends in the pattern of waste management and future need. The impact of changes on vehicle movements is considered in terms of sustainability.

5. Policy Context

- 5.1 Planning policies for waste management are set against a background of European directives and national legislation that seek to achieve more sustainable forms of waste management.
- 5.2 National policy cascades down to the local level from directives created at a European Level. In respect to waste management source policy includes:
- the Revised Waste Framework Directive (75/442/EEC as amended by 91/56/EEC, 2006/12/EC);
 - the Directive on Integrated Pollution Prevention and Control (IPPC) (96/61/EC);
 - the Landfill Directive (99/31/EEC) and most recently the Directive on Waste Incineration (2007/76/EC).
- 5.3 Historically, waste strategy has focused on controlling waste disposal to prevent unacceptable harm to human health and the environment. The introduction of the Environmental Protection Act 1990 changed the

focus of the management of waste to “cradle to grave”. Most recently, the strategic approach to waste management has been updated through the Landfill Directive (implemented in the UK through the Landfill (England and Wales) Regulations). This introduced the concept of sustainability into waste management planning. A key aim of the Landfill Directive is to reduce the volumes of biodegradable municipal waste sent to landfill and divert it to more sustainable waste management methods. This is measured through the imposition of strict diversion targets.

- 5.4 The Revised EC Waste Framework Directive which came into force on 29th March 2011 (implemented in the UK through the Waste (England and Wales) Regulations 2011) develops the concept of sustainability in waste management further and places a requirement, amongst other things, upon waste managers to take all such measures available to them as are reasonable in the circumstances to apply the following waste hierarchy as a priority order - (a) prevention, (b) preparing for re-use, (c) recycling, (d) other recovery (for example energy recovery), (e) disposal. This is a relevant point in this application as the ERF is targeting residual waste (both MSW and C&I) from nearby surrounding areas which has already passed through treatment activities higher up the hierarchy which would otherwise be disposed to landfill. In addition the ERF segregates a significant tonnage of metals from the imported waste for recycling and generates a substantial tonnage of IBA for recycling and/or reprocessing (management of that proportion at the higher tier in the waste hierarchy rather than by disposal to landfill which is the main alternative at present). In the case of the latter which accounts for some 25% of waste materials combusted at the ERF, this is transported by rail for reprocessing in west London. No restrictions were imposed in respect of exported material from the facility or to destinations outside of the ESCC/BHCC areas.
- 5.5 The ERF achieves an R1 energy efficiency rating over 0.65 in accordance with Annex II of the revised Waste Framework Directive 2008 (and calculated in accordance with the “Guidelines on the interpretation of the R1 Energy Efficiency Formula” published by the European Union on 1 July 2011) meaning that the proposed ERF process is classified as ‘energy recovery’ and that residual MSW and C&I wastes delivered is managed higher up the hierarchy rather than by disposal to landfill which is the main alternative at present.
- 5.6 The European Directives detailed above are translated into National Waste Policy through the Waste Strategy 2007 and the Government Review of Waste Policy 2011. In addition there are a series of European energy policies which are of significance in this case including the Directive on Renewable Energy (2009/28/EC) and the Directive on Climate Change (2009/29/EC). This European policy is also reflected within domestic energy policies.

- 5.7 At a European level the overarching objective of the waste directives, is to “protect human health and the environment” in a sustainable and closely regulated manner and although Directives vary considerably in terms of the technical disciplines (e.g. dealing with emissions to air, soil, surface and groundwater) this remains the ultimate objective. Accordingly these same overarching principles exist at a national, regional and local level, where the focus is to consider local environmental, social and economic circumstances and preferences in order to determine the best combination of waste management technologies for a particular location.
- 5.8 Key national planning policies are set out in the National Planning Policy Framework and Planning Policy and Planning Practice Guidance on Waste.

National Planning Policy Framework (NPPF)

- 5.9 The National Planning Policy Framework (NPPF) was published in March 2012. The Government remains committed to a plan-led system as confirmed in the NPPF, with the development plan forming the basis of all planning decisions. Section 38 of the Planning and Compulsory Purchase Act 2004 provides that:

“If regard is to be had to the development plan for the purposes of any determination to be made under the Planning acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

- 5.10 The NPPF emphasises the presumption in favour of sustainable development which should be seen as a ‘golden thread running through both plan-making and decision-taking’ and explains what constitutes ‘sustainable development’ in the view of the Government, in particular referencing the need to build a strong, competitive economy, promote sustainable transport, deliver good design, meet the challenge of climate change, and have due regard to the natural and historic environment. Although the NPPF does not specifically consider waste development (to be considered within the National Waste Plan: Planning for sustainable waste management) for which consultation was undertaken in 2013, paragraph 5 of the NPPF does remind local authorities to have regard to policies in the Framework (so far as relevant) when making decisions on applications for planning permission to develop waste management facilities.
- 5.11 Other key relevant core NPPF planning principles to the proposed development include a drive to deliver sustainable infrastructure development, strong support for low carbon technologies, conserving and enhancing the natural environment and reducing pollution and actively encouraging sustainable transport options. The proposals comply with these specific NPPF policy objectives. The increased

catchment will offer a more sustainable waste management opportunity to other local authorities and businesses by utilising a low carbon technology. An increased proportion of the waste would arrive in larger bulk vehicles considered to be a more sustainable option than individual, smaller RCV deliveries.

- 5.12 The NPPF also makes it clear that the planning system should ensure there are no unacceptable levels of soil, air, water or noise pollution associated with proposed developments (detailed in paragraphs 122-125). The proposals involve no changes to the ERF infrastructure and there will be no unacceptable impacts upon the local environment or sensitive local receptors. Since being commissioned the ERF has operated without any adverse impact and the proposed variation would not change this position in any way.

Planning Policy and Planning Practice Guidance on Waste

- 5.13 The Government has recently (16th October 2014) replaced PPS10: Planning for Sustainable Waste Management (July 2005), and Planning for Sustainable Waste Management: A Companion Guide to PPS10 (June 2006) with Planning Policy and Planning Practice Guidance on Waste.
- 5.14 The ministerial announcement indicates that the new policy document streamlines previous waste planning policy, making it more accessible to local authorities, waste developers and local communities alike. The new guidance is given in the form of guidance which addresses key topics.
- 5.15 The guidance confirms the continued requirement for Waste Planning Authorities (WPAs) to implement the EU Waste Framework Directive and in particular and of relevance to this application Article 4: Waste Hierarchy and Article 16: Principles of proximity and self-sufficiency.
- 5.16 Driving waste up the Waste Hierarchy (prevention, preparation for reuse, recycling, other recovery including energy recovery and disposal) is a key responsibility for all planning authorities and in making decisions on planning applications for waste management facilities.
- 5.17 With regard to the proximity principle and self-sufficiency the guidance confirms that whilst it should be the aim for WPAs to manage all its own waste “there is no expectation that each local planning authority should deal solely with its own waste to meet the requirements of self-sufficiency and proximity principle. Nor does the proximity principle require using the absolute closest facility to the exclusion of all other considerations”. It goes on to say “The ability to source waste from a range of locations/organisations helps ensure existing capacity is used

effectively, and importantly helps to maintain local flexibility to increase recycling without resulting in local overcapacity”.

National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewables Infrastructure (EN-3)

- 5.17 In its publication of the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewables Infrastructure (EN-3), the Government places significant weight on the need to maximise energy efficiency and safeguard supply, whilst optimising the use of resources in energy generation which minimise the need to rely on fossil fuels in power generation. The NPS for Energy provides clear support for energy from waste developments in terms of the contributions made to the generation of renewable energy. The Overarching NPS for Energy (EN-1) considers the need for more electricity capacity to support an increased supply from renewable energy sources. Section 3.3.10 states that:
- “As part of the UK’s need to diversify and decarbonise electricity generation, the Government is committed to dramatically increasing the amount of renewable generation.....In the short to medium term, much of this new capacity is likely to be onshore and offshore wind, but increasingly it may include plant powered by the combustion of biomass and waste and the generation of electricity from wave and tidal power.”
- 5.18 At section 3.3.11 the NPS goes on to state that “An increase in renewable electricity is essential to enable the UK to meet its commitments under the EU Renewable Energy Directive. It will also help improve our energy security by reducing our dependence on imported fossil fuels, decrease greenhouse gas emissions and provide economic opportunities.”
- 5.19 In its consideration of the role for renewable electricity generation in section 3.4.1, the NPS refers to the initial advice of the Committee on Climate Change in September 2010 on the UK’s renewable energy ambition, in which it agreed that the envisaged contribution from renewable electricity (approximately 30% of total generation) by 2020 is appropriate. At section 3.4.2 it states that:
- “Large scale deployment of renewables will help the UK to tackle climate change, reducing the UK’s emissions of carbon dioxide by over 750 million tonnes by 2030.It will also deliver up to half a million jobs by 2020 in the renewables sector.”
- 5.20 At section 3.4.3 it states that future, large-scale renewable energy generation is likely to come from various sources including:

“Energy from Waste (EfW) – the principal purpose of the combustion of waste, or similar processes (for example pyrolysis or gasification) is to reduce the amount of waste going to landfill in accordance with the Waste Hierarchy and to recover energy from that waste as electricity or heat. Only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be used for energy recovery. The energy produced from the biomass fraction of waste is renewable and is in some circumstances eligible for Renewables Obligation Certificates, although the arrangements vary from plant to plant.”

- 5.21 The Government’s strategy for CHP is also described in section 4.6 which sets out the importance for applicants to include CHP in their schemes.
- 5.22 It follows from the above that the Overarching NPS for Energy provides clear support for the proposed development in terms of the contribution it would make to the generation of renewable electricity. The revision of the catchment and associated tonnage will secure inputs to the ERF ensuring it is able to continue to operate at its design capacity and maximum efficiency.
- 5.23 The NPS for Renewables Infrastructure (EN-3) states (at paragraph 2.5.2) that:
“The recovery of energy from the combustion of waste, where in accordance with the waste hierarchy, will play an increasingly important role in meeting the UK’s energy needs. Where the waste burned is deemed renewable, this can also contribute to meeting the UK’s renewable energy targets. Further, the recovery of energy from the combustion of waste forms an important element of waste management strategies in both England and Wales.”
- 5.24 As a proportion of the residual waste to be treated at the proposed ERF would be biomass (component of the waste which is biodegradable), it follows that the NPS provides clear support for the proposed development in terms of the valuable contribution it would make to meeting the UK’s energy needs and renewable energy targets.

Waste Management Plan for England 2013

- 5.25 The Waste Management Plan for England was adopted in December 2013 and replaces Waste Strategy 2007. It is required to meet the requirements of Article 28 of the EU Waste Framework Directive (WFD) which requires that it should provide:
- An analysis of the current waste management situation, the measures to be taken to improve waste management and to show how the plan will implement the objectives and provisions of the WFD.

- The type, quantity and source of waste generated and of movements of waste across national boundaries.
 - The nature of existing waste collection schemes, and of disposal and recovery installations.
 - An assessment of the need for new waste collection schemes, closure of existing installations and the need for new waste infrastructure.
 - Sufficient information on the location criteria for site identification and of the future capacity requirements for future major recovery installations.
 - General waste management policies.
- 5.26 The plan identifies that its key aim is to set out the work towards a zero waste economy using the waste hierarchy as a guide for sustainable waste management. It confirms that the plan is a high level document and is non-site specific.
- 5.27 The plan does not introduce any new waste management policies but brings together existing policies, under the umbrella of the national plan, in the Waste Review 2011 and other waste management policy guidance. The national waste planning policy guidance as contained in Planning Policy and Planning Practice Guidance on Waste are also key to delivering the objectives of the WFD.
- 5.28 The plan identifies that there has been a continuing decline in household and of commercial industrial wastes from the arisings of 2008 identified in the Waste Review 2011. Forecasts indicate that waste arisings will remain relatively flat with only modest changes up to 2020.
- 5.29 The plan confirms the Government's continued support for efficient energy recovery from residual waste stating that "Our aim is to get the most energy out of waste, not to get the most waste into energy recovery". It also confirms the place of the Proximity Principle from the WFD and the requirement to establish a network of waste disposal installations for recovery of mixed municipal waste collected from households and that "the network must enable waste to be disposed of, or be recovered, in one of the nearest appropriate installations...".

The Government Review of Waste Policy 2011

- 5.30 The Government Review of Waste Policy 2011 (GRWP2011) is guided by the 'waste hierarchy' both as a guide to sustainable waste management and a legal requirement (in accordance with the Revised Waste Framework Directive). There are a series of statements within the Review which offer clear support for the use of energy recovery, in particular:

- At paragraph 22 it is stated that the ‘Government supports efficient energy recovery from residual waste which can deliver environmental benefits, reduce carbon impacts and provide economic opportunities...[with an] aim is to get the most energy out of genuinely residual waste...’.
- At paragraph 47 of the GRWP2011 the Government confirms its commitment to meet (as a minimum), inter alia, the EU Landfill Directive targets on the diversion of biodegradable municipal waste from landfill in 2013 and 2020 (i.e. 50% and 35% of that produced in 1995 respectively) and the rWFD target for the recycling of 50% of waste from households by 2020.
- At paragraph 208 the GRWP2011 states that ‘...the benefits of recovery include preventing some of the negative greenhouse gas impacts of waste in landfill. Preventing these emissions offers a considerable climate change benefit, with the energy generated from the biodegradable fraction of this waste also offsetting fossil fuel power generation, and contributing towards our renewable energy targets. Even energy from the non-biodegradable component, whilst suffering from the negative climate impacts of other fossil fuels, has additional advantages in terms of providing comparative fuel security, provided it can be recovered efficiently’.
- At paragraph 211 the GRWP2011 states that ‘...we will need to have sufficient infrastructure in place to support increasingly efficient recovery that is flexible enough to adapt to changing feedstocks over time. As we recycle more, we need to understand how we can adapt to recover the best value from what is left, while delivering the best environmental outcomes. We are aiming to get the most energy out of the residual waste, rather than to get the most waste into energy recovery’.
- At paragraph 212, the Government’s overarching goals for energy recovery include ensuring that ‘Recovery of energy from waste makes an important contribution to the UK’s renewable energy targets, minimising waste to landfill and helping to meet UK carbon budgets.
- At paragraph 214 the Government states that ‘Energy recovery is an excellent use of many wastes that cannot be recycled and could otherwise go to landfill. It can contribute secure, renewable energy to UK demand for transport, heat, biomethane and electricity and is generally the best source of feedstocks for UK bio-energy needs. Our horizon scanning work up to 2020, and beyond to 2030 and 2050 indicates that even with the expected improvements in prevention, re-use and recycling, sufficient residual waste feedstock will be available through diversion from landfill to support significant growth in this area, without conflicting with the drive to move waste further up the hierarchy. Maximising the potential for growth in continuous generation available from energy from waste will require both better use of the available residual waste and development of high efficiency flexible infrastructure’.

- Paragraph 263 states that “there is the need for councils to work together and look at waste management needs across different waste streams and across administrative boundaries.” It further states that “There is no requirement for individual authorities to be self-sufficient in terms of waste Infrastructure and transporting waste to existing infrastructure to deliver the best environmental solution should not be considered a barrier.”

Planning for Growth

5.31 The Government’s statement issued by Minister of State for Decentralisation Rt. Hon. Greg Clark MP entitled ‘Planning for Growth’ (PfG) (22nd March 2011) states that its top priority is to promote sustainable economic growth and that its expectation is that the answer to development and growth should wherever possible be positive, with the exception of where this would compromise the key sustainable principles set out in the NPPF.

5.32 It states that:

“The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy. The Chancellor has today set out further detail on our commitment to introduce a strong presumption in favour of sustainable development in the forthcoming National Planning Policy Framework, which will expect local planning authorities to plan positively for new development; to deal promptly and favourably with applications that comply with up-to-date plans and national planning policies; and wherever possible to approve applications where plans are absent, out of date, silent or indeterminate.”

5.33 PfG is clearly therefore overwhelmingly supportive of developments which lead to the generation of jobs and associated benefits, and also environmental benefits such as the diversion of waste away from landfill in this case. This Ministerial Statement took immediate effect and has subsequently been afforded substantial weight in a number of recent appeal decisions, including recent EfW appeal cases.

East Sussex, South Downs and Brighton and Hove Waste and Minerals Local Plan 2013

5.34 The 2007 planning permission was determined in the context of the former Waste Local Plan and the reason given for condition 38 was ‘*To enable the Local Planning Authority to regulate and control the use of the site in compliance with Policies WLP1, WLP2, WLP19a) and*

WLP35 of the East Sussex and Brighton & Hove Waste Local Plan 2006, and PPS 10'. The former Waste Local Plan (WLP) has been replaced by the East Sussex, South Downs and Brighton and Hove Waste and Minerals Local Plan (WMP) which was adopted in February 2013. WLP policies quoted in the condition have been replaced by WMP policies as follows:

WLP1 The Plan's Strategy	WMP 3 Implementing the Waste Hierarchy
	WMP 3a Promoting waste prevention, re-use and waste awareness.
	WMP 5 Provision of built waste facilities
	WMP 7a Sustainable locations for waste development
	WMP 7b Detailed criteria
	WMP 18 Transport
	WMP 19 Co-location
WLP2 Transport Strategy	WMP 18 Transport
	WMP 26 Traffic impacts
	WMP 24a Climate Change
WLP19 Energy from waste facilities	WMP 3c Production of energy from waste
	WMP 7a Sustainable locations for waste development
	WMP 7b Detailed criteria
	WMP 23a Design of waste and minerals development: design principles
	WMP 24a Climate change
WLP35 General amenity considerations	WMP 23a Design of waste and minerals development: design principles
	WMP 25 Amenity
	WMP 27 Environment and Environmental Enhancement

- 5.35 The WMP therefore contains a number of policies relevant to the consideration of this application.
- 5.36 Policy WMP3b – Turning Waste into a Resource. This policy relates to new or expanded infrastructure for recycling and recovery to ensure that waste produced in the Plan Area is managed as far up the waste hierarchy as possible. Paragraph 2.76 indicates that achieving the targets for recycling and recovery are achievable and is based on “a recognition that waste imported into the Plan Area for management should also be managed in accordance with the waste hierarchy”.

Paragraph 2.79 goes on to state that “Some waste will be managed in the Plan Area which is produced beyond the area and it is expected that facilities proposed to do this will form part of an expanded network of facilities needed to deliver the recycling and recovery targets set out in this Plan”. Whilst this proposal will not result in any new capacity the current restriction imposed by condition 38 is preventing that waste which would otherwise be imported into the Plan Area from being managed as far up the waste hierarchy as possible. As discussed above Government policy as contained in Waste Review 2011, at paragraph 263, indicates that there should not be barriers to the transportation of waste to existing infrastructure.

- 5.37 Policy WMP5 - Provision of Built Waste Facilities to Ensure Net Self-Sufficiency. This policy identifies the need for additional recycling and recovery capacity over the Plan period. For Recovery the estimates of additional capacity range from 60,000 to 200,000 tpa. Veolia would contend that the available material for Recovery is at the lower end of this range and that most of this material is not suitable for combustion in the ERF. Much of this available material is processed to produce Refuse Derived Fuel for export. (See also paragraph 6.7)
- 5.38 Policy WMP7 - Sustainable Locations for Waste Development. The development of the Newhaven site was approved on the basis that it would be a sustainable location for the treatment of the residual MSW from within the ESCC and BHCC areas. It also provides a sustainable location for C&I waste from the same area. Potential sources of waste from outside this area may result in a movement of waste from a greater distance, although given the location of the site any imports will do so only via the strategic road network. Such volumes of waste from outside the ESCC and BHCC will remain a small element of the capacity of the ERF. As detailed above the Government Review of Waste Policy 2011 at paragraph 263 confirms “There is no requirement for individual authorities to be self-sufficient in terms of waste Infrastructure and transporting waste to existing infrastructure to deliver the best environmental solution should not be considered a barrier.” Whilst the imported waste may come from further afield any increase in the volume from outside the plan area will be via transfer stations using bulkers such that vehicle movements are likely to reduce. Any increase in emissions from vehicles travelling a greater distance would be more than offset by maintaining the operation of the ERF at capacity in terms of maintaining production of energy which would otherwise be reduced if the plant operated below capacity.
- 5.39 Policy WMP26 - Traffic Impacts. As indicated in paragraphs 2.5 and 2.6 and section 6 below there has been a reduction in overall traffic volumes to the ERF compared with that predicted at the time of the original planning application for the construction and operation of the ERF. A continuing decline in the volume of MSW from within the ESCC

and BHCC area as recycling increases would lead to more waste coming from Transfer Stations with the waste transported in bulkers carrying greater payloads. This would further reduce traffic numbers on the local road network.

Recent Relevant Appeal Cases

5.40 With regards to the imposition of catchment restrictions on waste sourcing as currently set out in condition 38, such restrictions are generally considered to be unreasonable and anti-competitive. This submission should also be considered in the light of a large number of recent key appeal decisions which have not supported the imposition of waste source catchment areas despite the arguments in favour of such restrictions made by certain representations. Relevant cases include:

- Ineos Chlor: The construction and operation of an EfW, Combined Heat and Power (CHP) Generating Station at Runcorn, Cheshire (Application Reference 01.08.10.04/8C) dated 16th September 2008.
- Ince Marshes: The construction and operation of a Refuse Derived Fuel Plant and a Resource Recovery Park on land at Ince Marshes, Cheshire (Application Reference APP/Z0645/A/07/2059609) dated 3rd October 2008.
- Eastcroft: The construction and operation of an EfW, for a new third line, Nottingham; referenced APP/Q3060/A/08/2063199 dated 12th February 2009.
- Milton Ernest, Bedford (APP/K0235/A/10/2141593) dated 9th February 2012.
- Avonmouth, Bristol (APP/APP/Z0116/A/10/2132394) dated 6th April 2011.
- Ardley, Oxfordshire (APP/U3100/A/09/2119454) dated 17th February 2011.
- Land off Pochin Way, Middlewich, Cheshire (APP/R0660/A/10/2142388 and APP/R0660/A/10/2129865) dated 20th July 2012.

5.41 The Ineos Chlor decision was made within the provisions of Section 36 of the Electricity Act 1989. Issues relating to waste sourcing were a consideration and the Secretary of State noted (paragraph 3.5 (d) 3rd sub paragraph):

“Concerns have been raised that the source of fuel and waste treatment facilities have not been identified and waste should be disposed of where it is generated. The Secretary of State considered that the sourcing of fuel for the generating station is a commercial matter for the Company...”

5.42 In this case the proposed facility was identified as ‘capable of accepting all the SRF produced in Halton and the surrounding authorities of Greater Manchester, Merseyside, Cheshire’. The Inspector’s reasoning

draws parallels with the Newhaven ERF proposals where VES are looking to determine the location of waste sourcing. With the present uncertainty over forecasts on waste arisings and a desirability to continue to drive up recycling rates and to maintain the efficient operation of the ERF 'top-up' sources may need to be secured from residual MSW and C&I waste streams from neighbouring authorities including Kent, Surrey, and West Sussex and from the surrounding area. If the recycling rate continues to increase to the target of 45% by 2015/16 the available waste for Recovery from the MSW in ESCC and BHCC area could drop down to approximately 195,000tpa. Without 'top up' waste from outside the ESCC and BHCC area this would result in the ERF operating below its full capacity, therefore not providing its full potential in terms of energy generating capabilities and carbon offsetting potential.

- 5.43 In the Ince Marshes decision, the Inspector (paragraph 11.71) placed weight upon the fact that investment in waste management facilities would be expected to assist in resource recovery and re-use and aid security of energy supplies. This point has been reinforced through the release of the Government's Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewables Infrastructure (EN-3), where significant weight is placed upon the need to maximise energy efficiency and safeguard supply, whilst optimising the use of resources in energy generation which minimise the need to rely on fossil fuels in power generation. In a similar vein the Newhaven ERF is a resource recovery operation and a generator of renewable/low carbon energy. The primary driver for the Newhaven ERF is to enable it to maintain its operational capacity, maximise its efficiency whilst providing an effective sub-regional sustainable solution to the management of waste.
- 5.44 The Eastcroft appeal addressed the appropriateness of the imposition of planning conditions which sought to restrict the origin of incoming waste. In this case Nottingham City Council sought to restrict the origin of incoming waste to within 35 miles of the facility, with no more than 50% of waste coming from outside of the Nottingham City Area. This approach was neither supported by the appellant nor the Planning Inspector. There are no catchment restrictions imposed upon the Eastcroft facility.
- 5.45 The Inspector (paragraph 351) commented:

"To adopt such an approach would conflict with advice in PPS10 Companion Guide [paragraph 6.46] which suggests that waste planning authorities should not arbitrarily restrict the movements of waste across borders" (...) "Such an approach would also conflict with one of the key planning objectives in PPS10 [paragraph 3], that the delivery of planning strategies should encourage competitiveness."

- 5.46 Although the Milton Ernest appeal was dismissed by the Secretary of State, the commentary (paragraphs 20-21 of the decision letter) makes it clear that such a condition would not have been necessary had the Secretary of State been minded to grant consent. Agreeing with the Inspector's finding on this issue - the Secretary of State noted that, "... the market is likely to ensure that waste arisings are necessarily treated close to their source and that in the current economic climate it is important that planning restrictions do not impose unnecessary burdens on business".
- 5.47 In respect of the Avonmouth decision, the Secretary of State agreed with the Inspector that no catchment condition was necessary where "... in circumstances where the capacity for the resource recovery remains less than the quantity of the waste needing to be managed, the market is likely to ensure that the majority of the waste closest to the recovery capacity will be managed there" (paragraph 302).
- 5.48 In respect of the Ardley appeal case, Oxfordshire County Council sought to impose a "hinterland" condition which would restrict the waste to be processed at the Energy from Waste plant from within the administrative County of Oxfordshire. The condition required that where the operator has used its reasonable endeavours to source waste from within the County of Oxfordshire, and there remained residual capacity within the plant after sourcing such waste then any waste arising from adjoining counties may be used up to the residual capacity. The Inspector held that the condition (based on the particular facts of this case) would not be enforceable or reasonable, accepting one of the arguments put by the appellant in evidence that it would be contrary to the proximity principle, and sustainability and therefore did not support the suggested condition.
- 5.49 The Middlewich appeal case decision is consistent with previous decisions, such as Ince Marshes. The Inspector's report states (paragraph 135) that "though the WFD requires waste to be recovered in one of the nearest appropriate installations, this only applies to MSW or mixed waste collected by the Council. This distinction between MSW/co-collected waste and C&I may be because it is recognised that cost principally determines where C&I waste is managed and this usually means close to where it arises". In the case of the Newhaven ERF proposal residual waste from surrounding areas will remain a minority input into the facility. Waste derived from surrounding areas will be beneficially used for energy recovery purposes thereby offsetting the need for fossil fuels and increasing landfill diversion.
- 5.50 In respect of this case the Secretary of State confirms that:
- "Article 16 of the Waste Framework Directive seeks to ensure that Member States draw up an integrated and established network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including

where such collection also covers that from other producers. Article 16(3) reaffirms that creating this network should allow waste to be disposed of or, in the case of mixed municipal waste, recovered in one of the nearest appropriate installations. This does not mean that each waste planning authority must be totally self-sufficient in the management of MSW, nor that the waste must go to the nearest installation, as there may be sound environmental and economic reasons for accepting or sending waste from or to adjoining or other authorities. Nor does it mean that the facility must be centrally located within an individual waste planning authority area, given that there are many factors which may influence the preferred location of a facility. Additionally, under the terms of Regulation 18 of the Waste (England and Wales) Regulations 2011, this principle does not apply to C&I waste.”

- 5.51 Recent cases have emphasised that the drive behind Planning for Growth and the NPPF is concerned with removing barriers and helping to make business more efficient and competitive. The development of an alternative, more sustainable waste management facility to treat their residual waste provides businesses with a secure economic solution to their waste disposal needs rather than having to rely upon continued landfill disposal.
- 5.52 The Newhaven ERF is currently competitively disadvantaged by restrictions placed upon it through condition 38, restrictions that are and will increasingly prevent the plant from operating efficiently and delivering optimum performance in energy production. There are other treatment facilities across the sub-region which are not restricted in such a way and consequently are able to source waste from nearby administrative areas. For example facilities such as FCC Allington Quarry Waste Management Facility is able to source its waste unhindered by any catchment restriction and the Rabbit Lancing Energy Recovery Facility is similarly unrestricted and imports suitable biomass waste from East Sussex to its facility in Lancing, West Sussex. Such considerations have also been recognised by other Waste Planning Authorities such as Hampshire and Sheffield who have recently relaxed previously restrictive conditions. See also Annex A - The Hampshire ERFs, which outlines the changes approved by Hampshire County Council and Portsmouth City Council affecting the sources of waste to the 3 ERFs operated by Veolia.
- 5.53 Proposals for waste management facilities that would assist in resource recovery and re-use have an important part to play in meeting the Government’s objectives for renewable, low carbon and diverse sources of energy supply. The appeal decisions and recent planning decisions highlighted above provide examples of how the matter of waste sourcing has been approached elsewhere over the last few years. It is considered therefore that the continued imposition of Condition 38 is contrary to policy guidance. The proposed revisions to the condition therefore delete the waste sourcing restrictions.

- 5.54 With respect to nearest appropriate location and self-sufficiency, the waste collection authorities who would potentially act as the source for 'top-up' MSW input will in time make their own arrangements for the management of these waste arisings. The expansion of the consented catchment will not prejudice the planned capacity of those authorities whom in any event would be in no way obliged to provide MSW should permission be granted. Similarly businesses within the expanded catchment (as currently experienced within the existing catchment) will be able to choose whether to send their waste to the Newhaven ERF or an alternative operator, in accordance with normal competitive practices. The Newhaven ERF facility will provide a welcome method for other authorities and businesses to reduce their reliance upon less desirable waste management routes.
- 5.55 In conclusion, there are strong policy drivers which are supportive of this approach, particularly energy and waste management led. In allowing waste to be managed from outside the administrative areas of East Sussex or Brighton and Hove the waste will be managed at the nearest appropriate location and will be moved up the waste hierarchy, without being detrimental to the management of C&I waste within East Sussex or Brighton and Hove. In turn, the proposal will allow the ERF to operate at its design capacity thus maximising the benefits of the low carbon energy it produces. The proposals will not detract from the waste management ambitions of neighbouring authorities. In the light of all policy considerations it is assessed that the proposal accords with the policy framework of the statutory development plan, and should therefore be considered favourably.
- 5.56 Accordingly, the proposal is considered to be in accordance with the statutory development plan, and in the absence of material considerations that would indicate otherwise; the proposal is considered acceptable.

Defra Energy from Waste – A guide to the debate (Feb 2014)

- 5.57 The latest guidance on EfW makes it clear (Chapter 4, page 6) that Councils have a duty to co-operate to ensure that waste needs across their respective areas are handled properly and appropriately. It also makes it clear that they should have regard to the proximity principle but that this must not be over-interpreted. It goes on to state that...
- “There is nothing in the legislation or the proximity principle that says accepting waste from another council, city or region is a bad thing and indeed in many cases it may be the best economic and environmental solution and/or be the outcome most consistent with the proximity principle.*
- The ability to source waste from a range of locations/organisations helps ensure existing capacity is used effectively and efficiently, and importantly helps maintain local flexibility to increase recycling without resulting in local overcapacity”.*

6. Planning Assessment

- 6.1 The 2007 planning permission was determined in the context of the former Waste Local Plan which was predicting that by 2015/2016 MSW would be 438,000 tonnes per annum (tpa) 418,000 tonnes of which would be household waste. The early predictions prepared as part of the evidence base for the Minerals and Waste Core Strategy indicate that low and high predictions were respectively 420,000 tpa and 473,000 tpa. By the time the Minerals and Waste Plan was adopted in 2013 the predictions for MSW had been reduced and the prediction for 2015/2016 is a low of 361,000 tpa and a high of 392,000 tpa.
- 6.2 The latest published monitoring data for MSW contained in the last two annual monitoring reports (AMR) produced by ESCC indicates that in 2011/12 period the MSW arisings for ESCC and BHCC was 359,991 tonnes, and has remained relatively constant for 2012/13 at 359,960 tonnes. The 2012/13 AMR also indicates that the MSW recycling rate (including reuse and composting) is 36%, with a combined recycling and recovery rate of 94% and that just 6% (22,163 tonnes) of MSW is now going to landfill. The target for MSW in the adopted Waste and Mineral Plan is for recycling to reach 45% by 2015/16 and 55% by 2025/26.
- 6.3 In 2012 the ERF treated 226,766 tonnes and in 2013 it treated 232,200 tonnes. Of the 2013 waste inputs 200,963 tonnes was MSW and 31,237 tonnes was C&I.
- 6.4 The nominal throughput of the ERF is based on the plant availability i.e. the amount of time that the furnaces run to process the waste. At the time of the application 85% availability was typical for this type of plant taking account of plant planned maintenance and downtime due to unforeseen maintenance. An 85% availability gives a nominal throughput of 210,000 tpa. Since the ERF commenced operating the plant has typically achieved than 90-95% availability and in 2012 some 226,766 tonnes was combusted increasing in 2013 to 232,200 tonnes.
- 6.5 The background report prepared by AEA on Review of Future Waste Management Capacity Requirements for the Waste and Minerals provided at Table 50 an estimate of future requirements for Recovery within the Plan area.

Table 50 Annual demand projection for other recovery

Year	MSW		C&I		CDEW		Total	
	Min	Max	Min	Max	Min	Max	Min	Max
2009/10	96,000	96,000	0	0	0	5,000	97,000	101,000
2010/11	78,000	78,000	0	0	6,000	9,000	85,000	88,000
2011/12	135,000	135,000	10,000	20,000	6,000	13,000	152,000	169,000
2012/13	210,000	210,000	19,000	40,000	12,000	18,000	242,000	267,000
2013/14	201,000	210,000	29,000	59,000	12,000	22,000	242,000	291,000
2014/15	191,000	210,000	38,000	79,000	18,000	27,000	247,000	316,000
2015/16	181,000	210,000	47,000	99,000	18,000	31,000	246,000	340,000
2016/17	176,000	210,000	51,000	102,000	24,000	32,000	252,000	343,000
2017/18	172,000	210,000	55,000	104,000	24,000	32,000	252,000	346,000
2018/19	168,000	210,000	59,000	107,000	24,000	32,000	251,000	350,000
2019/20	164,000	210,000	63,000	110,000	24,000	33,000	251,000	353,000
2020/21	160,000	210,000	67,000	113,000	30,000	33,000	257,000	356,000
2021/22	156,000	210,000	66,000	113,000	29,000	33,000	252,000	356,000
2022/23	152,000	210,000	66,000	113,000	29,000	34,000	248,000	357,000
2023/24	149,000	210,000	66,000	113,000	29,000	34,000	244,000	357,000
2024/25	145,000	210,000	66,000	114,000	29,000	34,000	239,000	358,000
2025/26	141,000	210,000	65,000	114,000	29,000	35,000	235,000	358,000
2026/27	140,000	210,000	65,000	114,000	29,000	35,000	234,000	359,000

- 6.6 It can be seen that current input of MSW to the ERF is broadly in line with the minimum forecast. The total amount of C&I waste available for Recovery from within the Plan area is much more difficult to quantify due to the lack of comprehensive data, the number of waste producers/waste management companies handling C&I and the larger number of potential outlets for this type of waste.
- 6.7 Veolia has undertaken its own assessment of the local market within the ESCC and BHCC area. In addition to Veolia, there are 7 key commercial waste contractors operating within the ESCC and BHCC area. Based on their own statements of waste handled and amount recycled it is estimated they annually have in the region of 75,000 tonnes of waste suitable for recovery. This equates broadly with the figure estimated by AEA which has a maximum combined figure for Recovery from C&I and CDEW for the 2013/14 period of approximately 81,000 tonnes. Of the 7 waste companies only 2 provide any regular inputs to the Newhaven ERF and this has varied between 5,000 and 15,000 tonnes annually. There is no commitment from these companies to use the ERF. The remainder of the C&I inputs comes from Veolia’s own commercial waste business within the ESCC and Brighton and Hove areas.
- 6.8 Of the other waste that is suitable for Recovery much of it is collected as skip waste which after recycling has taken place the materials suitable for Recovery includes plastics (particularly hard plastics and plastic film) and biomass (wood). These materials are typically prepared to produce a Refuse Derived Fuel which is exported for Recovery elsewhere particularly to Scandinavia to be used in District

Heating Systems. The Newhaven ERF is not specifically designed to treat RDF as its feedstock and ideally needs residual C&I waste which is more akin to residual MSW i.e. black bag waste.

- 6.9 Whilst there are significant volumes of C&I and CDEW material for Recovery within the plan area, its suitability for acceptance at the ERF has to date proven a challenge and it is not available in the volumes to bridge the gap between Contract Waste and the available ERF capacity.

Restrictions on the movement of waste

- 6.10 The proposal involves deletion of that part of condition 38 restricting waste sourcing to the East Sussex and Brighton & Hove area. This change would reflect the growing co-operation between local authorities in the management of waste in the south east and is fully in line with Government policy. The change will not alter the fact that the majority of inputs to the ERF will continue to come from East Sussex and Brighton & Hove, but will provide flexibility that will not only ensure that the plant continues to operate at optimum efficiency but will also benefit councils in the region (for example allowing reciprocal arrangements when there are temporary problems at facilities) and allow waste to be sourced from neighbouring areas when desirable to optimise the mix of waste inputs, for example where there are short term difficulties with local collections.
- 6.11 It is not possible to predict the exact circumstances when this flexibility will be needed, but as detailed in the policy assessment there are no planning reasons why it should be inhibited by the current source restriction. Government guidance indicates that waste planning authorities should aim to manage waste arising within their own area but “there is no expectation that each local planning should deal solely with its own waste....” (Planning Policy and Planning Practice Guidance on Waste and Chapter 4, page 6 Defra - Energy from waste a guide to the debate – Feb 2014). Planning Policy and Planning Practice Guidance on Waste indicates that restrictions on the movement of waste also constrain the use of existing facilities, removing these restrictions “ensures the existing capacity is used effectively and efficiently, and importantly helps to maintain local flexibility to increase recycling without resulting in overcapacity”. Restrictions based on administrative boundaries also work against the proximity principle. For example Shoreham and Worthing are just as close to Newhaven as are Hastings and Bexhill and yet commercial waste suitable for Recovery from these areas would have to go Portsmouth at a greater distance. Market forces can therefore be a significant factor in achieving the proximity principle given that transport costs are a major factor in deciding where waste is taken.

- 6.12 This approach is reaffirmed by the Government Review of Waste Policy in England 2011 which encourages joint working between councils (for example the “South East 7” partnership described on page 48 of the Review) and recognises that as part of this there is a need to overcome traditional barriers such as local authority boundaries. Paragraph 263 of the Review states that “There is no requirement for individual authorities to be self-sufficient in terms of waste infrastructure and transporting waste to existing infrastructure to deliver the best environmental solution should not be considered a barrier”.
- 6.13 There are a number Energy Recovery Facilities and other facilities either operating or under construction which deal with residual waste within the SE 7 partnership area. Their individual ability to import waste from beyond their administrative area plays an important part in the equalisation of commercial aspects of the management of waste within the partnership area.
- 6.14 The table below details the major facilities other than landfill approved to treat residual waste within the SE7 authorities and whether they have restrictions, either on a geographic or administrative basis, that restrict the source of waste.

County	Facility	Condition restricting geographic or administrative area Y/N
East Sussex	Newhaven ERF	Y
West Sussex	West Sussex MBT	N
	Lancing EfW	N
	Ford Gasification	N
Hampshire	Portsmouth ERF	N*
	Chineham ERF	N*
	Marchwood ERF	N*
Kent	Allington, Maidstone ERF	N
	Kemsley Mill ERF	Y**
	Ridham Dock, Biomass ERF	N
Surrey	Shepperton Eco Park Gasification	N
Isle of Wight	Isle of Wight Gasification	N

*All Hampshire facilities are required to provide capacity for all MSW generated in Hampshire (See also Annex A).

** Kemsley Mill is subject to a hinterland condition requiring a minimum of 20% of waste to come from Kent, Medway, Tandridge and Thurrock.

- 6.15 The South East 7 (SE7) is particularly relevant in the circumstances of the current application as the proposals will contribute to providing flexibility within the SE7 area (East and West Sussex, Hampshire,

Kent, Surrey, Brighton & Hove and Medway). However, the majority of the inputs to the ERF will continue to be from the East Sussex/Brighton & Hove area as priority has to be given to municipal waste from these areas as required by the contract and as stated above transport costs will remain an important driver.

- 6.16 In addition to the appeal cases outlined in Section 5 the Secretary of State's statement in a recent decision letter (09.02.12, ref. APP/K0235/A/10/2141593) relating to an energy recovery facility proposal at Twinwoods Business Park in Bedfordshire is also particularly relevant in this context: "He agrees that transport costs associated with waste are such that it is unlikely that significant amounts of waste would be brought in from any considerable distance; that the market is likely to ensure that waste arisings are necessarily treated close to their source; and that, in the current economic climate it is important that planning restrictions do not impose unnecessary burdens on business". He went on to say that although a condition restricting the source of waste would not necessarily fail the tests of Circular 11/95, such a condition would not have been necessary in the case of the proposal under consideration where it is estimated that waste would primarily be sourced within the plan area. It is clear that such a conclusion would also apply to the Newhaven ERF where the contract ensures that the majority of the waste will be sourced from the plan area.
- 6.17 In the case of the current proposal, where there are long term contractual arrangements in place to ensure priority is given to locally collected municipal waste, there are no material planning considerations that would outweigh the benefits of the proposal in providing operational flexibility.
- 6.18 West Sussex is the administrative authority most closely related to the two served by the Newhaven ERF. There are close links between the areas and historically there has been a considerable amount of "cross border" movement of waste, including exports from the East Sussex and Brighton & Hove areas to the former Horton Landfill at Small Dole in West Sussex. There are only two remaining landfills in West Sussex for non-inert waste both of which are expected to be complete by 2015. These are Brookhurst Wood landfill near Horsham, and the Lidsey landfill which Veolia operates in partnership with Sita. New infrastructure for MSW in West Sussex is now operational at Brookhurst Wood where a Mechanical Biological Treatment plant treats the waste through various processes to reduce the amount of waste going to landfill and produce Refuse Derived Fuel (RDF). The RDF produced by such processes is not suitable for the Newhaven ERF. The future loss of all non-inert landfill capacity will result in some commercial waste suitable for Recovery being available from this area. Whilst planning permission has recently (July 2014) been granted for a 140,000 tpa Gasification Plant at Ford in West Sussex, there is currently only 1 small (50,000 tpa) ERF in Lancing and this is suitable

only for combustion of Biomass (wood). The Newhaven ERF may represent the most appropriate destination for other residual waste, from the West Sussex area, where this can be accommodated without detriment to the primary IWMS focus of the facility.

- 6.19 The shortage of landfill capacity in East Sussex and Brighton & Hove means that residual waste will still need to be exported from East Sussex and Brighton & Hove as recognised by the overarching strategy for land disposal in the adopted Waste and Minerals Plan. Indeed some 25% of the outputs from the Newhaven ERF are exported for reprocessing in west London with a further 2% exported to Cheshire. In this context the import of small quantities of waste into the area may be seen as contributing to the achievement of net self-sufficiency.
- 6.20 The principal focus of the ERF will continue to provide capacity for the IWMS and waste from this source will always be prioritised. However, provision for an element of waste from outside ESCC or BHCC areas, is appropriate in achieving operational efficiency of the facility by allowing more flexibility over inputs, for example to take account of variations in municipal waste arisings. As well as providing for such waste from East Sussex and Brighton & Hove, Newhaven is well located in particular for small inputs from parts of West Sussex, especially the coastal settlements in the south eastern parts of that county or the urban areas in the east and north east, or from other nearby authority areas.
- 6.17 The proposed removal of the source restriction will provide additional flexibility and is consistent with the key planning objectives of Planning Policy and Planning Practice Guidance on Waste, in particular in ensuring that existing capacity is used 'effectively and efficiently' and enabling waste to be disposed of in one of the nearest appropriate installations.

7. Community Engagement

- 7.1 Regular meetings of the Newhaven Community Liaison Group (CLG), have been held over the period since 2011.
- 7.2 The reasons for the need to make the current application were reported to the liaison group on the 21st October 2014.
- 7.3 Members of the CLG raised a number of questions about the application. The following are the key points summarised from the questions raised at the meeting:
- That there was to be no overall increase in the maximum permitted capacity or the amount of waste treated at the ERF.

- That the 'top up' waste from outside the ESCC and BHCC area would currently be in the region of 10,000 to 20,000 tonnes per annum.
- That there would be no increase in the number of vehicle movements and that current vehicle movements are well below the number anticipated at the time of the application

7.4 A Press statement was issued concurrently with the submission of the application.

8. Summary and Conclusions

8.1 This application seeks the deletion of part of condition 38 of planning permission LW/462/CM(EIA) to remove the restriction that prevents the importation of waste from outside the administrative boundaries of East Sussex and Brighton and Hove.

8.2 Since the original planning permission was granted in November 2007 there have been a number of important functional, economic and policy changes as well as appeal decisions and Defra guidance, that are significant to the determination of the current application:

- The economic recession since 2008 has resulted in a general decline in the volumes of all waste types.
- The current forecasts for MSW contained in the adopted Mineral and Waste Plan shows for 2015/16 a low forecast of 361,000 tpa compared to that predicted in the former Waste Local Plan of 438,000 tpa.
- The total MSW in the ESCC and BHCC area for 2012/13 was 359,690 tonnes.
- The MSW recycling rate continues to increase and currently 2012/13 stands at 36% with targets of 45% by 2015/16 and 55% by 2025/26.
- Whilst there is C&I waste within the Plan area, operational experience has shown that it is difficult to guarantee that there will be sufficient quantity of the right type of waste to maintain the plant at full operational capacity.
- Operation of the ERF at below full capacity would result in reduced electrical production and income to ESCC and BHCC from the sale of power to the grid.
- The availability of the ERF has improved year on year and is expected to continue to operate close to 95% during 2014/15 giving a throughput close to the maximum of 242,000 tpa.
- Government advice and guidance confirms that there is no requirement for each authority to be self-sufficient in all types of waste infrastructure facility, that they should plan for net self-sufficiency, and that there should not be barriers to transporting waste to existing infrastructure or receiving waste from another council, city or region.

- Government inspectors and the Secretary of State have in many recent appeal cases confirmed that conditions restricting the geographic source of waste at ERFs are contrary to the objectives of the 'proximity principle' as defined in the WFD and anti-competitive.
- Other existing residual waste infrastructure within the SE7 group of authorities is not similarly restricted making the market unbalanced, which also has the potential for waste to be managed contrary to the proximity principle in facilities further away.
- The proposal will ensure that the ERF continues to operate at its design capacity assisting, in accordance with Government guidance, to ensure that the maximum value is obtained from residual waste suitable for energy recovery; and which also meets the energy policy objectives to maximise renewable, low carbon and diverse sources of energy supply.

8.3 This proposal is therefore considered to be in accordance with national planning policies for waste and energy, conforms with the policies of the Development Plan and therefore comprises sustainable development which should accordingly be supported. The variation will not divert locally generated residual waste away from the facility but will instead ensure that the facility remains able to run at optimal capacity and efficiency, maximising generation of low carbon and partly renewable energy, to the benefit of the nation and the Councils of East Sussex, Brighton and Hove.

8.4 Veolia acknowledges that this application maybe of concern to the local communities and wishes to reassure them that the ERF will always give priority to the waste from the East Sussex and Brighton and Hove areas. For this reason in proposing a revision to condition 38 Veolia has proposed that the wording of the revised condition should acknowledge this. The revised wording of the condition would follow the same form of wording as that which has been approved at Veolia's Hampshire ERFs. The new condition would read as follows:
Waste imported to the Energy Recovery Facility shall be restricted to waste collected by the Waste Collection Authorities in the administrative areas of East Sussex County Council and Brighton & Hove City Council and to such other municipal and commercial waste only where capacity remains at the Facility that is not required to meet the needs of the waste collection authorities in the administrative areas of East Sussex County Council and Brighton & Hove City Council. The Energy Recovery Facility shall have a nominal capacity of 210,000 tonnes per annum (based on 85% availability) with up to a maximum of 242,000 tonnes of waste delivered for combustion in any one year. For the avoidance of doubt nominal capacity is the processing capacity of the plant under normal operating conditions taking account of its annual average availability due to planned maintenance events and other plant shutdowns.

Annex A – The Hampshire ERFs

Veolia has constructed and now operates three ERFs within Hampshire at Chineham near Basingstoke, Marchwood near Southampton and Portsmouth. These are operated as part of Project Integra providing capacity for residual waste collected by the waste collection authorities in Hampshire. Project Integra is the partnership of local authorities and Veolia working together to provide an integrated solution to Hampshire's waste.

In 2009 three planning applications were made to remove inconsistencies between the three ERFs so that they could all operate with the same conditions in respect of the sources of waste. Prior to making the applications each ERF had slightly different restrictions.

The objective was to achieve uniformity in terms of the sources of waste accepted to achieve greater efficiency in the operation of the three plants, within the context of Project Integra.

Prior to the submissions of the applications differences in the sources of the waste permitted at the three ERFs resulted in some movements of waste that were inefficient involving excess miles being travelled to comply with the terms of the planning conditions. For instance Portsmouth could take municipal waste from outside of the county (some East Sussex waste was delivered to the Portsmouth ERF prior to the construction of the Newhaven ERF) but could only take commercial waste collected by or on behalf of a Waste Collection Authority (WCA) so could not take commercial waste collected by a private waste management company. As a consequence some commercial waste collected in south east Hampshire was being taken to Marchwood and non-Hampshire sourced WCA waste was travelling almost the entire length of Hampshire to be taken to Portsmouth. Such movements were contrary to the proximity principle, illogical and environmentally unsustainable as they increased CO2 emissions and added to the cost of disposal.

All three applications were approved and the three ERFs now have the same worded condition which states:

Waste incinerated at the plant shall be restricted to waste collected by or on behalf of the waste collection authorities in Hampshire and to such other municipal or commercial waste only where capacity remains at the plant that is not required to meet the needs of the waste collection authorities in Hampshire.

The varied condition ensures that capacity at the ERFs is always available, to meet the requirements of Project Integra, for the residual household waste collected by the Waste Collection Authorities in Hampshire, but enables any spare capacity that may become available to be utilised by other municipal and commercial waste in a more efficient way than the previous conditions allowed.