

LOCAL MEMBER OBJECTION & PETITION

COMMITTEE DATE: 15/03/2017

APPLICATION No. **16/02384/MJR** APPLICATION DATE: 27/09/2016

ED: **SPLOTT**

APP: TYPE: Variation of conditions

APPLICANT: Viridor Waste Management Limited

LOCATION: CARDIFF ENERGY RECOVERY FACILITY, TRIDENT

INDUSTRIAL PARK, GLASS AVENUE, SPLOTT

PROPOSAL: MODIFY THE SECTION 106 AGREEMENT TO REMOVE THE OBLIGATION THAT ONLY WASTE ARISING FROM THE SOUTH EAST WALES REGION WILL BE PROCESSED AT THE DEVELOPMENT (PARAGRAPH 6.1)

RECOMMENDATION : That, having taken the environmental information into consideration, the Section 106 Agreement be modified to remove the obligation that only waste arising from the South East Wales Region can be processed at the development.

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 Permission is sought under The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 to modify paragraph 6.1 of Section 106 Agreement to remove the obligation that only waste arising from the South East Wales Region can be processed at the development.
- 1.2 Paragraph 6.1 states: *"The owner shall ensure that only waste arising from the South East Wales Region will be processed at the Development."*
- 1.3 The application states that the modification would allow waste from South West and West Wales to travel the relatively short distances to Trident Park ERF for treatment rather than being landfilled or having to travel very long distances to alternative treatment facilities.
- 1.4 A separate application (ref: 16/02256/MJR), also presented to this Committee, seeks permission to vary Condition 22 of the original planning permission (ref: 10/00149/E) to allow a total of 425,000 tonnes of residual waste to be processed at the Energy Recovery Facility (ERF) per annum (an increase of 75,000 tonnes, or 21%).
- 1.5 The application is accompanied by an Environmental Statement (ES) setting out the results of an Environmental Impact Assessment (EIA) which has been undertaken to consider the environmental effects of the proposed development and measures which are available to minimise the identified effects. The following five topics were assessed:

- (i) Traffic;
- (ii) Air Quality;
- (iii) Noise;
- (iv) Ecology; and
- (v) Climate Change

1.6 Effects that were not considered to be significant, because there would be no change to the existing ERF building, are as follows, (agreed by the Local Planning Authority in their scoping opinion) :

- (i) Geology and Soils;
- (ii) Water;
- (iii) Landscape and Visual; and
- (iv) Cultural Heritage.

1.7 The conclusions of the Environmental Statement (attached to this report) found that, in respect of traffic, air quality, noise and ecology, no significant adverse effects on the environment were identified and in respect of climate change, significant environmental benefits were identified.

1.8 Further information in the form of an 'in-combination' assessment for the Habitats Regulations Assessment has been submitted by the applicant, following a request by the Local Planning Authority. No projects or plans identified were considered to present a risk of significant in-combination effects due to emissions to air on the Severn Estuary Special Protection Area (SPA) and Special Area of Conservation (SAC).

1.9 In respect of this application, the applicant contends that the two proposed changes would improve the sustainable waste solution currently available at the ERF, and would also support and assist Wales in meeting its desire to become more self-sufficient in terms of its waste management provision and to generate more power from low carbon/renewable sources. Having regard to current UK and Welsh guidance and recent appeal decisions, they consider that the catchment restriction contained in the legal agreement is no longer appropriate.

1.10 The application documents that the issue of catchment restrictions and the proximity principle are specifically addressed in paragraph 150 – 157 from "Energy from Waste – A Guide to the Debate" (DEFRA, February 2014). At paragraph 152 it states: *"The principle is often over-interpreted to mean that all waste has to be managed as close to its source as possible to the exclusion of other considerations and that local authorities individually need the infrastructure required to do so. This is not the case."* Paragraph 153 goes on to set out the implication of recovering waste in one of the nearest appropriate installations by means of the most appropriate methods and technologies. This confirms that one of the nearest does not mean the absolute closest and that it may be justified to use a more distant solution if it provides a more appropriate method or technology and it says nothing about administrative boundaries. The applicant therefore considers, in respect of Trident Park, it would be in accordance with the proximity principle for suitable waste that is currently either being landfilled in South West Wales or being

exported to England/Europe for treatment or disposal to be managed at Trident Park as this is the nearest appropriate installation for this waste. They consider that the current catchment restriction is preventing the efficient implementation of the proximity principle.

- 1.11 At paragraph 154 the guide confirms: *“there is nothing in the legislation or the proximity principle that says accepting waste from another council, city, region or country 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.”* In respect of the application, the applicant argues that this would apply as the removal of the catchment restriction would enable waste that is currently either being disposed of to landfill within South Wales or being exported to England or Europe for treatment or disposal to be recovered within South Wales.
- 1.12 Paragraph 156 is also directly relevant to the current applications at Trident Park because it recognises: *“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 for residual waste. For an existing plant, taking waste from a range of locations should be seen as a positive by keeping the plant running at maximum efficiency.”* The additional waste is required so that the Trident Park facility can operate at maximum efficiency in terms of generating low carbon/renewable power.
- 1.13 The applicant highlights Technical Advice Note (TAN) 21: Waste (2014), which adopts the same approach: *“Planning authorities should not attempt to restrict waste management developments within their boundaries to deal with only waste arising within their areas. The proximity of a waste disposal or mixed municipal waste recovery installation will depend upon the quantities and types of arisings at local, regional and national levels.”* (paragraph 2.9).
- 1.14 In submitting the application, the applicant also provides a review of appeal decisions regarding fuel sourcing for energy from waste facilities and draws conclusions regarding the applicability and enforceability of waste catchment restrictions:
 - (i) Javelin Park Energy from Waste Facility, Gloucestershire (190,000tpa, allowed on appeal 2015) – The Local Planning Authority suggested a condition to place a geographic restriction on the waste which could be processed. This was considered by the Inspector but was rejected as not being in line with current national policy as set out in the Guide to the Debate (see above) and because such a restriction fails to meet the enforceability test, given that waste sourced from and processed within a waste transfer station would not be traceable in terms of origin. Accepted by the Secretary of State;
 - (ii) Ardley EfW, Oxfordshire (300,000 tpa, allowed on appeal 2010) – The Local Planning Authority sought a planning condition regarding the ‘hinterland’ from which the site could draw waste for energy recovery in the interest of sustainable development by minimising the number of HGV journeys and ensuring that the facility would be available to treat as much of Oxfordshire’s

waste as possible. This was not accepted by the Inspector who considered the condition to be unreasonable and not enforceable as the source of waste could not be ascertained with any degree of certainty.

- (iii) Lostock EfW facility, Cheshire (allowed on appeal, 2012) When considering the need for a catchment restriction the Inspector found that the proximity principle *“does not require it to go to the NAI [nearest available installation] and therefore there is some degree of flexibility for operators. The cost of the transportation of waste is a significant factor in the choice of destination for treatment and this also effectively limits the distance travelled. As already mentioned, as a merchant facility, it would be expected that the transportation costs would be a significant factor in contracts.”* The Inspector concluded that *“the proposal would meet national waste policy in terms of national self-sufficiency through the establishment of a network of facilities which move waste up through the hierarchy, as set out in the WR2011. Market forces and the costs of transport would help to ensure that there would not be unsustainable movements of waste and would help to ensure that the proposal would be one of the NAIs for the recovery of waste close to its source.”*
- (iv) Rookery Resource Recovery Facility (585,000tpa Approved 2013) – The special parliamentary committee rejected a petition from Central Bedfordshire and Bedford Borough Councils, which sought to restrict the source of waste fuel supplies for the facility to the administrative areas of Cambridgeshire, Northamptonshire, Milton Keynes, Bedford Borough, Central Bedfordshire, Luton Borough, Buckinghamshire, Hertfordshire, and the Royal borough of Windsor and Maidenhead. Although this ‘Catchment Area’ had been defined by Covanta (the applicant), the parliamentary committee commented in its report that the *“energy from waste facility, to be provided as a national infrastructure project, will bring benefits as regards power generation and that the economic challenge of sourcing waste is a matter for Covanta”*.
- (v) Ferrybridge Multifuel Power Station, South Yorkshire (500,000tpa, Approved 2011) – received a deemed planning permission by virtue of Section 36 of the Electricity Act. The planning permission does not stipulate any source restrictions for the fuel and subsequently, SSE has contracted with waste management organisations to import fuel, in the form of residual waste, from the north west of England and Wales, as well as from more local sources such as Bradford, Doncaster and Rotherham, as well as Wakefield Councils.
- (vi) Avonmouth EfW facility (350,00tpa, Allowed on appeal, 2011) – The Local Planning Authority wished to restrict the source of waste used as fuel to that arising in the former County of Avon and Gloucestershire, Somerset and Wiltshire. The council's reason for the imposition of the condition was to ensure that the capacity of the plant would not result in widespread importation of waste into the sub-region, which could be seen as eroding the ability of surrounding waste markets to be self-sufficient in dealing with their own waste arisings. However, the Inspector found that *“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”*. He declined to

recommend the inclusion of the condition and the Secretary of State agreed *“that the market is likely to ensure that the majority of the waste closest to the recovery capacity will be managed there and that no hinterland condition is necessary.”*

(vii) Ince Marsh Resource Recovery Facility (RRF) (approved 2009 under an Electricity Act application). The site’s planning permission does not constrain the sources of waste which could be imported for use as fuel. In determining that such control would be inappropriate, the Inspector found that *“as a merchant facility responding to the market it is clear that it would not be appropriate to seek to control the origins of waste by condition or legal obligation”*.

- 1.15 The agent has submitted a carbon impact assessment (CIA) with the application. The CIA reveals that there are considerable areas of Wales that fall outside of the catchment area which are as close or closer to the facility than areas within it. Where the transportation of waste results in a carbon burden, the analysis shows that the carbon burdens associated with the transportation of waste from outside of the current South East Wales catchment area are far outweighed by the carbon benefits of moving waste up the hierarchy and diverting it from landfill disposal to recovery. The results of the carbon assessment therefore demonstrate that the transportation of waste to the ERF from outside the existing catchment restriction will deliver significant carbon benefits compared to the continued disposal of waste to landfill. Therefore from a carbon impact perspective there is no justification for such catchment restriction.
- 1.16 The applicant concludes that UK and Welsh policy has moved on since the catchment restriction at Trident Park was originally imposed in 2010. TAN 21 is clear that such restrictions should no longer be attempted. Having regard to the interpretation of the proximity principle in Guide to the Debate the applicant contends it would clearly be in accordance with the proximity principle for suitable waste that is currently either being landfilled in South West Wales or being exported to England/Europe for treatment or disposal to be managed at Trident Park because this is the nearest appropriate installation for this waste. The current catchment restriction is therefore actually preventing the efficient implementation of the proximity principle.
- 1.17 The review of the approach taken by the Secretary of State and Inspectors to fuel sourcing at other EfW facilities indicates that there is an appreciation that residual waste should be viewed as a resource, inasmuch as other conventional fuel sources are, and that there is no planning merit, or reason of over-riding public interest, to seek to constrain the sources from which these facilities can attract their fuel. In addition, having regard to the approach taken at Ardley and at Javelin Park, it is considered relevant that the Inspector concluded that a catchment restriction condition would be neither necessary, nor enforceable.

2. **DESCRIPTION OF SITE**

- 2.1 The application site comprises approximately 4.5 hectares and is located within an area of high density industrial and commercial uses. In the immediate area the

land uses are characterised by:

- (i) South – Port of Cardiff, including Roath Dock and various industrial railway lines. The Eastern Bay Link Road is currently under construction immediately south of the site;
- (ii) North - Mixed Use commercial and retail developments associated with Ocean Way and further north by the residential areas of Atlantic Wharf and Splott. Approximately 100 flats in blocks up to 6 storeys are located approximately 600 metres north on Lewis Road;
- (iii) East - Industrial uses associated with Portmanmoor Industrial Estate and further to the east by Celsa steelworks and Rover Way;
- (iv) West - Immediately to the west is Celsa Steel works, beyond which is the mixed-use area of the Cardiff Bay redevelopment area, including the residential areas of Adventurer's Quay (6 storey apartments approximately 600 metres southwest), Celestia (apartments adjacent to Adventurer's Quay apartments up to 15 storeys) and Butetown.

2.2 Access to the site is gained from Ocean Way via Glass Avenue.

2.3 The Wentloog/Gwent Levels Special Landscape Area lies some 6 kilometres to the north-east of the site.

2.4 There are no known features of ecological interest within the site.

2.5 There are no statutory designated sites within the application site itself or its immediate vicinity. At its nearest point, the site lies within approximately 600m north of the Severn Estuary, which is of national and international importance due to the presence of extensive areas of intertidal habitats (eg, mudflats, sand banks, rocky platforms and saltmarsh).

2.6 The Flood Risk Maps associated with Technical Advice Note 15: Development and Flood Risk (TAN15) indicate that the proposed application site lies within Flood Policy Zone B. Zone B is defined as being areas that have previously been subject to flooding.

3. SITE HISTORY

3.1 10/00149/E: Permission granted in June 2010 for the erection of an Energy From Waste Facility to include a combine heat and power plant, pre-treatment/recycling facility, incinerator bottom ash recycling and ancillary offices.

3.2 08/2616/E: Permission refused in July 2009 for the erection of an energy from waste facility with combined heat and power plant and ancillary offices for the following reason:

- 1. *In order to operate at its design capacity, without compromising the recycling targets of the Welsh Assembly Government, the proposal would need to import substantial quantities of residual waste material from outside the administrative boundary of Cardiff Council and to export a substantial quantity of hazardous fly ash waste for disposal at an unspecified*

authorised disposal site in England. This would result in the unsustainable transportation of waste material contrary to the objectives of Technical Advice Note 21: Waste.

4. **POLICY FRAMEWORK**

4.1 Welsh Office Circular 13/97: Planning Obligations

4.2 Towards Zero Waste (June 2010)

4.3 Planning Policy Wales, Edition 9 (November 2016):

3.5.5 Planning obligations are useful arrangements to overcome obstacles which may otherwise prevent planning permission from being granted. Contributions from developers may be used to offset negative consequences of development, to help meet local needs or to secure benefits which will make development more sustainable. It is essential that arrangements are fair to both the developer and the community, that the process is as transparent as possible and that development plans provide guidance on the types of obligations which authorities may seek from developers. When granting planning permission local planning authorities may seek to enter into a planning obligation with a developer to:

- restrict development or use of the land;*
- require operations or activities to be carried out in, on, under or over the land;*
- require the land to be used in a specified way; or*
- to require payments to be made to the authority either in a single sum or periodically.*

3.5.7 Planning obligations should only be sought where they are necessary to make a proposal acceptable in land use planning terms. Planning permission may not be bought or sold and negotiations should be conducted in a way that is seen to be fair, open and reasonable. Unacceptable development should never be allowed because of unrelated benefits. Acceptable development should never be refused simply because an applicant is unwilling to offer such benefits. If there is a choice between imposing conditions and entering into a planning obligation, the imposition of a condition is preferable. Conditions are more transparent, offer greater flexibility in the light of changing circumstances and offer a developer the right of appeal to the Welsh Ministers against those conditions considered to be onerous.

4.2.2 The planning system provides for a presumption in favour of sustainable development to ensure that social, economic and environmental issues are balanced and integrated, at the same time, by the decision-taker when...taking decisions on individual planning applications.

4.2.4 Legislation secures a presumption in favour of development in accordance with the development plan for the area unless material considerations indicate otherwise.

4.3.1 All those involved in the planning system are expected to adhere to (inter alia):

- *putting people, and their quality of life now and in the future, at the centre of decision-making;*
- *taking a long term perspective to safeguard the interests of future generations, whilst at the same time meeting needs of people today;*
- *respect for environmental limits, so that resources are not irrecoverably depleted or the environment irreversibly damaged. This means, for example, mitigating climate change, protecting and enhancing biodiversity, minimising harmful emissions, and promoting sustainable use of natural resources;*
- *tackling climate change by reducing the greenhouse gas emissions that cause climate change and ensuring that places are resilient to the consequences of climate change; and*
- *taking account of the full range of costs and benefits over the lifetime of a development, including those which cannot be easily valued in money terms when making plans and decisions and taking account of timing, risks and uncertainties. This also includes recognition of the climate a development is likely to experience over its intended lifetime.*
- *applying the precautionary principle. Cost-effective measures to prevent possibly serious environmental damage should not be postponed just because of scientific uncertainty about how serious the risk is;*
- *using scientific knowledge to aid decision-making, and trying to work out in advance what knowledge will be needed so that appropriate research can be undertaken;*
- *while preventing pollution as far as possible, ensuring that the polluter pays for damage resulting from pollution. In general the Welsh Government will seek to ensure that costs are met by those whose actions incur them;*
- *applying the proximity principle, especially in managing waste and pollution. This means solving problems locally rather than passing them on to other places or to future generations;*
- *working in collaboration with others to ensure that information and knowledge is shared to deliver outcomes with wider benefits.*

4.4.1 The following sustainability objectives for the planning system reflect our vision for sustainable development and the outcomes we seek to deliver across Wales. These objectives should be taken into account...in taking decisions on individual planning applications in Wales. These reflect the sustainable development outcomes that we see the planning system facilitating across Wales.

4.4.3 Planning policies, decisions, and proposals should (inter alia):

- *Maximise the use of renewable resources, including sustainable materials (recycled and renewable materials and those with a lower embodied energy). Where it is judged necessary to use non-renewable resources they should be used as efficiently as possible. The use of renewable resources and of sustainably produced materials from local sources should be encouraged and recycling and re-use levels arising from demolition and construction maximised and waste minimised;*

- *Encourage opportunities to reduce waste and all forms of pollution and promote good environmental management and best environmental practice. Waste arising from demolition and construction should be minimised, and opportunities to recycle and re-use this waste promoted;*
- *Promote a low carbon economy;*
- *Contribute to the protection and improvement of the environment, so as to improve the quality of life, and protect local and global ecosystems. In particular, planning should seek to ensure that development does not produce irreversible harmful effects on the natural environment and support measures that allow the natural heritage to adapt to the effects of climate change. The conservation and enhancement of statutorily designated areas and of the countryside and undeveloped coast; the conservation of biodiversity, habitats, and landscapes; the conservation of the best and most versatile agricultural land; and enhancement of the urban environment all need to be promoted;*
- *Contribute to the protection and, where possible, the improvement of people's health and wellbeing as a core component of achieving the well-being goals and responding to climate change. Consideration of the possible impacts of developments – positive and/or negative – on people's health at an early stage will help to clarify the relevance of health and the extent to which it needs to be taken into account;*
- *Promote quality, lasting, environmentally-sound and flexible employment opportunities;*
- *Support the need to tackle the causes of climate change by moving towards a low carbon economy. This includes facilitating development that reduces emissions of greenhouse gases in a sustainable manner, provides for renewable and low carbon energy sources at all scales and facilitates low and zero carbon developments;*

4.5.7 Planning to minimise the causes of climate change means taking decisive action to move towards a low carbon economy by proactively reducing the demand for energy, facilitating the delivery of new and more sustainable forms of energy provision at all scales and minimising the emissions of greenhouse gases to the atmosphere.

12.1.6 In general, local planning authorities should seek to maximise the use of existing infrastructure

12.5.1 Planning authorities should, in principle, be supportive of facilities which fit with the aspirations of [Towards Zero Waste and associated sector plans] and in doing so reflect the priority order of the waste hierarchy as far as possible.

12.5.3 The land use planning system has an important role to play in facilitating sustainable waste management by providing a framework for decision making which recognises the social, economic and environmental benefits that can be realised from the management of waste as a resource to meet the needs of society and businesses, whilst at the same time:

- *minimising adverse environmental impacts and avoiding risks to human health;*
- *protecting areas of designated landscape and nature conservation from inappropriate development; and*

- *protecting the amenity of residents, of other land uses and users affected by existing or proposed waste management facilities.*

12.5.4 the waste hierarchy provides the key starting point for all types of waste management proposals and consideration of the hierarchy should be set against the wider social, economic and environmental considerations

12.7.2 The benefits which can be derived from proposals for waste management facilities as well as the impact of proposals on the amenity of local people and the natural and built environment must be adequately assessed to determine whether a planning application is acceptable, and, if adverse impacts on amenity or the environment cannot be mitigated, planning permission should be refused.

12.7.4 Planning authorities, other relevant local authority departments and Natural Resources Wales are expected to work closely together to ensure that conditions attached to planning consents and those attached to Environmental Permits are complementary and do not duplicate one another. However, local planning authorities will need to be satisfied that proposals are capable of effective regulation and Natural Resources Wales should assist in establishing this position. In certain circumstances, where proposals are complex, it will be good practice to encourage the parallel tracking of planning and environmental permitting applications.

12.8.6 The Welsh Government's aim is to secure an appropriate mix of energy provision for Wales which maximises benefits to our economy and communities, whilst minimising potential environmental and social impacts. This forms part of the Welsh Government's aim to secure the strongest economic development policies to underpin growth and prosperity in Wales recognising the importance of clean energy and the efficient use of natural resources, both as an economic driver and a commitment to sustainable development.

12.8.8 The Welsh Government is committed to using the planning system to

- *optimise renewable energy generation;*
- *optimise low carbon energy generation;*
- *facilitate combined heat and power systems (and combined cooling, heat and power) where feasible;*

12.8.9 Local planning authorities should facilitate the development of all forms of renewable and low carbon energy to move towards a low carbon economy to help to tackle the causes of climate change.

12.8.10 At the same time, local planning authorities should...ensure that international and national statutory obligations to protect designated areas, species and habitats and the historic environment are observed

13.10.1 The planning system should determine whether a development is an acceptable use of land and should control other development in proximity to potential sources of pollution rather than seeking to control the processes or substances used in any particular development.

13.10.2 Planning authorities should operate on the basis that the relevant pollutant control regimes will be properly applied and enforced by other agencies. They should not seek to control through planning measures, matters that are the proper concern of the pollution control authority. These regimes are set out in the Environment Act 1995, the Environmental Protection Act 1990, the Water Resources Act 1991 and the regulatory regimes introduced by the Pollution Prevention and Control Act 1999. Each of these may have a bearing on the environmental controls imposed on the development in respect of environmental and health concerns and planning authorities will need to ensure that planning conditions do not duplicate or contradict measures more appropriately controlled under these regimes.

13.12.1 The potential for pollution affecting the use of land will be a material consideration in deciding whether to grant planning permission. Material considerations in determining applications for potentially polluting development are likely to include:

- location, taking into account such considerations as the reasons for selecting the chosen site itself;*
- impact on health and amenity;*
- the risk and impact of potential pollution from the development, insofar as this might have an effect on the use of other land and the surrounding environment (the environmental regulatory regime may well have an interest in these issues, particularly if the development would impact on an Air Quality Management Area or a SAC);*
- prevention of nuisance;*
- impact on the road and other transport networks, and in particular on traffic generation; and*
- the need, where relevant, and feasibility of restoring the land (and water resources) to standards sufficient for an appropriate after use. (Powers under the Pollution Prevention and Control Act 1999 require an operator to return a site to a satisfactory state on surrender of an Integrated Pollution Prevention and Control Permit).*

4.4 Technical Advice Notes (TANs):

- 5 Nature Conservation and Planning
- 8 Planning for Renewable Energy
- 11 Noise
- 18 Transport
- 21 Waste

2.9 The nearest appropriate installation principle states that waste falling with Article 16, should be disposed of or recovered in one of the nearest appropriate installations whilst ensuring a high level of protection for the environment and human health. This means taking into account environmental, economic and social factors, to ensure the right waste management facilities are located in the right place and at the right time. There are several reasons why it is important to manage such waste close to where it arises. This includes reducing the detrimental environmental impacts associated with the transportation of waste and retaining the intrinsic value of waste as a resource in line with the need to secure

greater resource efficiency. Planning authorities should not attempt to restrict waste management developments within their boundaries to deal only with arising in their areas. The proximity of a waste disposal or mixed municipal waste recovery installation will depend upon the quantities and types of arisings at local, regional and national levels.

3.3 It is difficult to predict with complete certainty future needs for the disposal of waste and recovery of mixed municipal waste due to the variety of factors that affect future tonnages and actual existing capacity. However, the Waste Framework Directive requires that waste disposal and recovery of mixed municipal waste should be undertaken at one of the nearest appropriate installations to the source of the waste arising. This does not carry with it the expectation that all areas should be self-sufficient in terms of the network. Waste arising in one area may be better treated or disposed of in a neighbouring local authority area or region and the envisaged 'network' of infrastructure is likely to be spread over a wider area than a single local authority administrative boundary. However, in line with sustainability principles, there is an expectation that all areas should be prepared to accommodate infrastructure to support the development of an integrated and adequate network, be it an actual recovery treatment plant, an intermediate treatment facility or any supporting infrastructure such as transfer stations.

4.5 Local Development Plan (January 2016):

KP1	Level of Growth
KP6	New Infrastructure
KP7	Planning Obligations
KP8	Sustainable Transport
KP12	Waste
KP13	Responding to Evidenced Social Needs
KP14	Healthy Living
KP15	Climate Change
KP18	Natural Resources
EN3	Landscape Protection
EN5	Designated Sites
EN6	Ecological Networks and Features of Importance for Biodiversity
EN7	Priority Habitats and Species
EN9	Conservation of the Historic Environment
EN10	Water Sensitive Design
EN11	Protection of Water Resources
EN12	Renewable Energy and Low Carbon Technologies
EN13	Air, Noise, Light Pollution and Land Contamination
EN14	Flood Risk
T2	Strategic Rapid Transit and Bus Corridor Enhancement
T5	Managing Transport Impacts
T6	Impact on Transport Networks and Services
T7	Strategic Transportation Infrastructure
C3	Community Safety/Creating Safe Environments
C6	Health
W1	Sites for Waste Management Facilities

- 4.6 The following guidance documents were supplementary to the City of Cardiff Local Plan (1996), now superseded by the Local Development Plan (LDP). They remain a material consideration insofar as they are consistent with LDP policy:

Biodiversity (2011)

Access, Circulation and Parking (2010)

5. **INTERNAL CONSULTEES RESPONSES**

- 5.1 The **Operational Manager, Transportation**, has no objection to the application.
- 5.2 The **Operational Manager, Environment (Noise)**, has no objection to the application.
- 5.3 The **Operational Manager, Environment (Air)** notes that the Air Quality Assessment (AQA) has been produced following the Scoping Request for Trident Park Viridor (Extra Tonnage per Annum). He has reviewed the AQA and is satisfied by the principles applied and findings produced. Drawing upon comments made by Public Health Wales in reference to the application and the need for the applicant to verify the modelling with their own monitoring, he can confirm this has been undertaken and correct procedures applied.
- 5.4 He notes the following conclusions in the AQA (Chapter 5 of the Environmental Statement):
- (i) the predicted impact of increased emissions from both the stacks serving the Trident Park ERF and additional vehicle movements as a result of the increased tonnage and the removal of the catchment restriction is less than 1% of the relevant long-term and short-term EAL for human receptors;
 - (ii) the effect of this increased impact is considered to be 'negligible' and not significant;
 - (iii) the change in predicted CLe and CLo impacts from both the ERF stacks and additional vehicle movements due to the increased tonnage and removal of waste catchment is considered insignificant and will cause '*no likely significant effects (alone and in-combination)*' for European sites, '*no likely damage*' for SSSI's and '*no significant pollution*' for other sites.
 - (iv) the effect of the cumulative impacts (due to the entire ERF operating at the increased tonnage and the removal of waste catchment) on air quality at human receptors is considered to be negligible and not significant.
 - (v) cumulative annual NO_x impacts exceed 1% of the CLe for a very limited area of potentially sensitive vegetation within the Severn Estuary site. As stated in Chapter 7 '*it is considered unlikely that such impacts would be of significance at above a local level or constitute a likely significant effect.*
 - (vi) the cumulative impacts of nitrogen and acid deposition are <1% of the CLo at all receptor locations and therefore will cause '*no likely significant effects (alone and in-combination)*'.
- 5.5 Overall it is therefore considered that the potential air quality effects resulting from the proposed increase in tonnage at the ERF and the removal of the catchment restriction will not be significant either alone or in combination.

- 5.6 The **Operational Manager, Waste Management**, has no objections to the application.
- 5.7 The **Council's Ecologist** has considered the impact of increased aerial emissions and increased road traffic emissions upon the sensitive habitats of the Severn Estuary. He is satisfied that the application has no other impacts upon nature conservation interests.
- 5.8 The potential impact upon the Severn Estuary designations have been assessed by the Habitats Regulations Assessment (HRA) document provided by SLR consulting, and by the further information dated 13th February 2017 entitled '*Further screening of potential significant in-combination effects of increased emissions to air from Trident Park ERF (16/02256/MJR) on the Severn Estuary SAC/SPA*'. He recommends that these two documents be taken as the Council's HRA of this project as required by Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended).
- 5.9 The conclusion of the HRA was that the proposed projects are not likely to have a significant effect upon the Severn Estuary European Marine Site, either alone or in combination with other plans or projects. He supports this conclusion.
- 5.10 The Severn Estuary is also a Site of Special Scientific Interest (SSSI), and as a Competent Authority Cardiff Council has statutory duties in relation to SSSI under Section 28 of the Wildlife and Countryside Act 1981, as substituted by Schedule 9 of the Countryside and Rights of Way Act 2000. However, the features of the SSSI are broadly the same as those of the European Marine Site, so the assessment of no likely significant effect also applies to the features of the SSSI.

6. **EXTERNAL CONSULTEES RESPONSES**

- 6.1 The **Welsh Ministers** have been notified of the application in accordance with The Town and Country Planning (Environmental Impact Assessment) Regulations 2016 (as amended). Any comments received will be reported to Committee.
- 6.2 **Natural Resources Wales** has been consulted and any comments received will be reported to Committee.

7. **REPRESENTATIONS**

- 7.1 **Councillor G Marshall** records her strong objection to the expansion outside of South East Wales. There will be an accompanying increase in traffic, noise and air pollution if this application is granted. Once again, Splott will bear the brunt of this.
- 7.2 The application was publicised by **press and 10 no. site notices** on 27th October 2016 in accordance with the requirements of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 and by press and 10 no. site notices on 16th February 2017 in accordance with the requirements of The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016. The site notices were displayed at the

following locations (consistent with previous application) :

- (i) Galleon Way;
- (ii) Adventurers Quay;
- (iii) Falcon Drive;
- (iv) Bute Street;
- (v) Schooner Way;
- (vi) East Tyndall Street;
- (vii) Ocean Way;
- (viii) Glass Avenue;
- (ix) Splott Road; and
- (x) Muirton Road.

7.3 A **petition** signed by 73 no. residents of Adventurers Quay has been received objecting to the removal of the South East Wales catchment area restriction. They call upon Planning Committee to reject the applications.

7.4 An objection has been received from **Travis Perkins, Trident Industrial Park**, who express serious reservations about an increased workload for the site as there are unacceptable levels of smells coming from the plant and increased volumes can only increase their exposure to the smells.

7.5 The occupiers of **91 Adventurers Quay** object to the application for the following reasons:

- (i) The applicant proposed in its planning application (10/00149/E) for the Trident Park Incinerator to enter into a unilateral undertaking to limit the source of waste to be from the South East Wales Region. This region included the Project Gwyrdd Partnership area and its physical extent is defined as being those Authorities that are constituent Members of the South East Wales Regional Waste Plan. The planning permission was granted despite considerable public opposition. Without the above undertaking by the applicant the level of opposition would undoubtedly have been even greater. In recognition of this the Planning Committee attached a number of obligations to the planning permission including the South East Wales catchment limitation. The Planning approval for the Trident Park plant was most controversial. No other applications for such facilities in Wales were successful. The proposed removal of this restriction at this stage is therefore a very serious matter.
- (ii) The main emphasis for the requested change relate to current UK and Welsh guidance (which now advises that such restrictions should not be attempted) and details of recent appeal decisions. However, the details provided have no relevance to the planning permission granted in 2010. The catchment restriction was volunteered by the applicant in their application for planning permission which was subsequently granted without the need for appeal. The details relating to the recent appeal decisions cited in the supporting documents focus on the views of the Inspector(s) that "...such a restriction fails to meet the enforceability test, given that waste sourced from and processed within a waste transfer station would not be traceable in terms of origin." And yet, the South East Wales

catchment restriction does not appear to have given rise to problems at the Trident Park plant in its last 2 years or so of operation. Why should it be such an issue now? The council contracts now in place amount for 76% (267,000tpa) of the waste to be processed with other contracts sourced from local SE Wales businesses. Good monitoring and accounting practices can surely be used to identify if waste from outside the area is being processed.

- (iii) It is suggested that the modification would allow waste from South West and West Wales to travel the relatively short distances to Trident Park ERF for treatment rather than being landfilled or having to travel very long distances to alternative treatment facilities. However, the removal of the catchment restriction at this stage would open the door to the future use (and even the possible expansion of the plant) to service waste not only from other areas within Wales but also waste from other sources. There is nothing in the current submission to clearly define any specific catchment area. In fact, the opposite applies and a carte blanche source permission would apply. It is reported in the press that Cardiff is the fastest growing European city which presumably will result in additional waste processing requirements. It is important that in future plant capacity is available to cover the demand that would be associated with such an expansion. It is also suggested that the Trident Park facility is not operating at maximum efficiency in terms of generating low carbon/renewable power because of improved plant availability and because the waste fuel has been found to have a lower energy content than originally assumed. Additional waste is therefore now required. However, they consider that such assessments are premature at this stage. Despite the statements made in the submission documents that Trident Park had been in operational use for 2 years, the actual period of time according to press reports is 18 months (operational from March, 2015). Furthermore, processing of the additional Rhondda Cynon Taf inputs was only due to commence in April, 2016. In other words, the estimates of new plant availability and processing capacity have been based on a maximum of 5 months of experience in the processing of the "267,000tpa of Wales council sourced mix" that will form the major part (76%) of the Trident Park operation for (at least) the next 25 years. They suggest that a longer study timescale would be more appropriate.
- (iv) The new Eastern Bay Link is due to open in April, 2017. It is unfortunate that the estimation of the environmental impact of the proposed S106 changes has been made at a point in time when the construction of the link road was well underway but not completed. It has not been taken into consideration when e.g. conducting the noise assessments at Adventurers Quay in August, 2016, or when assessing the future traffic flows to the plant. No alternative access to the facility is suggested in the applications but when completed the link road will have an obvious impact on traffic movement at the Ocean Bay roundabout. The implications of such proposals should be undertaken when the link road is open and any consideration of the S106 applications deferred until that time.
- (v) Given the importance of these proposed 10/00149/E S106 changes the level of publicity has also been very limited mainly relying on the Western Mail press notice. Although they have been told that public notices were posted no date is recorded on the application summaries to support this and

a request for details of the siting of the notices has resulted in no reply. No public notices were posted in the vicinity of the Adventurers Quay and Celestia residential developments housing well in excess of 1000 people. They therefore propose that the Council rectifies this situation by undertaking more extensive publicity to alert the public to the proposed changes and defers any further activity on the applications until this is done. Such a delay would also provide the applicant with the opportunity to carry out a public consultation exercise should it so wish and for further data to be gathered relating to the operation of the ERF facility.

- (vi) The application summary on the Council's website is indicating that it is expected that the decision on this application is delegated. Whilst they now understand that this is a "default status" recorded until the decision making route is determined, they consider that the proposed catchment change (and the related application for a 21.4% increase in the present allowed tonnage limit) are major departures from the current planning permission and, as such, they should only be determined following consideration in a public meeting of the Planning Committee.

7.6 In respect of the public notification of the planning applications, the occupiers of **91 Adventurers Quay** state:

- (i) Publicity has been inadequate, especially regarding the posting of site notices in in localities most likely to be affected. No public notices were posted in the vicinity of the Adventurers Quay and Celestia residential developments which house well in excess of 1000 people and are located some 650 metres from the Trident Park incinerator.
- (ii) The Local Planning Authority subsequently confirmed that a site notice had in fact been displayed at Adventurers Quay since 27 October 2016. A notice for planning application 16/02256/MJR was then located affixed to a lamp post some 50metres or so from the rear vehicle entrance to Adventurers Quay (see photos below). Residents entering by car would not be aware of a notice at this point and the pavement is used by very few of the residents. The main pedestrian entrances used by residents are accessed via the "fish bridge" adjacent to Celestia. The siting of the notice on the lamp post at this location is totally unacceptable.
- (iii) The Local Planning Authority also stated that a site notice had been put up in Falcon Drive – the vehicle access route to Celestia. There is no visible sign of any planning notice in Falcon Drive and the Celestia Gatekeepers Office are not aware of any being present in the four weeks since the end of October. In addition, only one site notice (at the site entrance to the Trident Park plant) was posted to alert the public to the proposal to remove the South East Wales catchment area waste restriction (16/02384/MJR). The reason given was that "the publicity requirements differ for application to vary legal agreements".
- (iv) The original decision to grant planning permission was very controversial, the level of publicity given to the application being one of questions raised. This important change to the planning permission conditions should therefore have been treated as an exceptional case and full publicity given to it.

- (v) For the reasons given above, the Council has failed to adequately publicise applications which propose significant changes to the operation of the VIRIDOR Trident Park plant. They therefore request the deferment of any determination of the applications until adequate publicity and public consultation has been undertaken.

7.7 Seel & Co, on behalf of the 400+ residents of Adventurer's Quay, objects to the application for the following reasons:

- (i) The relaxation of the catchment area will mean that waste may be transported from further afield than the existing SE Wales catchment again resulting in additional pollution not just to the immediate surroundings but along new routes from new sources. It would also seem increasingly inefficient to transport waste from further afield than for the plant to serve just the SE Wales catchment. Surely regional planning policy should concentrate on ensuring the suppliers of the local waste do so more efficiently and effectively.
- (ii) The residents are concerned that their quality of life may be affected;
- (iii) The consultation processes have not been conducted so as to properly include the residents of Adventurers Quay. There was widespread ignorance of the proposals at the recent owner's AGM and great concern has been raised by owners subsequently that had they been properly consulted many would have raised individual objections and concerns at the proposals. It has been suggested that there has been maladministration in the lack of appropriate and transparent consultation and there should be a judicial review of the conduct of the Local Planning Authority.

7.8 Cardiff Against the Incinerator (CATI) makes the following objections:

- (i) There are no responses from statutory consultees (WG and NRW), nor any evidence that they have been consulted, as required for an EIA application;
- (ii) They support the objections from residents of Adventurers Quay;
- (iii) They request that this application be considered by Planning Committee, being a significant change that would over-ride a decision made by the full Committee to attach the Condition that the waste inputs must be restricted to SE Wales. They remind the Council that the applicant did not want this condition and the Committee voted down the company's first planning application because the Condition was absent.
- (iv) They advise that Viridor is trying to abolish area restrictions at its incinerator plants in England on various pretexts - they are trying to nullify the whole Proximity Principle.
- (v) The Proximity and Regional Self-Sufficiency principles of the Waste Framework Directive and the Welsh Waste Plan (TAN21 and PPW) justify the present restriction in the Planning permit. The commercial interests of the company cannot be allowed to over-ride this basic policy.
- (vi) The company's argument is simplistic and wrong: "*removal of the catchment restriction will enable other areas to benefit from diverting more of their waste from landfill whilst generating additional renewable/low carbon energy.*" They explained at the 'exhibition' that they hope to win business from Swansea and west Wales Councils. That waste at present

has greater separation of recyclables and residuals go to the manufacture of RDF, which is shipped to Europe for fuelling CHP incinerators. Viridor expect Swansea would get the 25% Welsh Govt subsidy, which is a bias against the environmentally preferred options of high recycling and high thermal efficiency. Refusal would not as Viridor assert “result in waste that is suitable for energy recovery continuing to be landfilled”, but waste that is suitable for RDF fuel continuing to supply efficient CHP incinerators in Europe. This is a better fit to Welsh Government waste policy, seeing that no efficient CHP incinerators have been built in Wales. More efficient gasification plants and MBT processes are in the offing in SE Wales, eg. Caerphilly SRF/RDF; Cardiff*, so that giving more of the market to Viridor’s old-technology inefficient plant is likely to be negative in environmental terms.

- 7.9 **Public Health Wales** has consulted with their colleagues at the Environmental Public Health Service and their assessment is based on actual or potential health risks from environmental exposures to chemicals, noise and extreme environmental events such as flooding.
- 7.10 They note that the plant has been operational for two years and has consent to treat 350,000 tonnes of waste per annum. Improved plant availability and a lower than estimated energy content of the waste fuel has resulted in the facility having the capability to process more waste and recover more energy than is currently allowed by the planning permission. They note that the stack height will remain unchanged and the diameter will increase from 1.78 metres to 1.9 metres.
- 7.11 They have no grounds for objection based upon the public health considerations contained in the application.
- 7.12 The air quality assessment accompanying the application predicts the environmental concentration of emissions. They note that this assessment finds that the highest cumulative (plant and vehicle emissions) annual average NO₂ process contribution and highest cumulative annual average PM_{2.5} process contribution at a receptor are predicted to occur at the same receptor point, the Travellers site on Rover Way.
- 7.13 The assessment concludes that the impact of increased emissions from the stacks and additional vehicle movements is considered to be ‘negligible’ and not significant. The proposed changes will result in less than 1% of the relevant long-term and short-term EAL for human receptors. The proposed change will not result in a breach of the air quality objectives at any relevant receptor locations.
- 7.14 Following the receipt of further information (see paragraph 1.6), a 21 day re-consultation took place on 16th February 2017 under Regulation 22 of The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016. **3 No. additional objections** have been received from the occupiers of 36 Madoc Road, Tremorfa, 219 Adventurers Quay and one unaddressed email who oppose the application for the following reasons:
- (i) The removal of any restrictions on volumes of waste incinerated and

increasing the catchment of the incinerator contradicts current International, Welsh Government and Cardiff Council policies of reducing the amount of waste produced by giving, in effect a 'green light' to increase waste production by providing increased capacity at the incinerator.

- (ii) The applicant is bound to say that there will be no effect on the environment from air pollution, traffic generated and noise however the amount of airborne particulate has made a marked increase since the incinerator opened and again when the capacity was increased previously.
- (iii) Any increase in waste incinerated will lead to an increase in HGV traffic on local and new routes outside the current catchment area, to supply the incinerator and put these additional vehicles onto an already congested roads network around Cardiff, which are all already in a very poor condition of repair. Increased vehicle movements will lead to longer journey times, increased noise pollution and increased particulate pollution from the extra vehicles as well as an increased risk to non-vehicular road users in south central Cardiff area.
- (iv) An increase in waste will also lead to increased airborne particulate being released into the atmosphere when it is incinerated.
- (v) The incinerator should never have been built where it was in the first place.
- (vi) Damage to the health and wellbeing of 10,000s of people for profit.
- (vii) Cardiff Council should follow their own – and national / international – policy and reduce waste, not encourage the production of more, by allowing more to be incinerated to the further detriment of the residents and environment of south central Cardiff.
- (viii) This application should be refused.
- (ix) The development is close to residential and wetland areas.
- (x) Pollution from site has led to increased deposits on their property which exceed usual weathering and wear and tear. This is irresponsible and generates health concerns for humans and wildlife.

7.15 The Chairman of the **Adventurer's Quay Management Company**, on behalf of the residents and owners, states that the expansion of processing at the facility is an important issue with increased risk of pollution and threat to public health. Expansion is also likely to add CO2 emissions as waste is transported from beyond a local proximity and is therefore contribute to global warming. He therefore requests, on behalf of residents, that there is a full planning committee consultation so that it can be considered fully.

7.16 **Public Health Wales** notes that further information has been submitted in the form of a revised Habitats Assessment, however this is outside their scope to comment upon.

8. **ANALYSIS**

8.1 The key issues for the consideration of this application are the legal tests for planning obligations, the acceptability in planning policy terms of removing the waste catchment restriction, the likely environmental effects of doing so and consideration of third party representations.

The Tests for Planning Obligations

- 8.2 Planning Policy Wales 9 (PPW9) advises that planning obligations should only be sought where they are necessary to make a development acceptable in land use planning terms. They should not be used to support unacceptable development nor should their absence result in a refusal of acceptable development (paragraph 3.5.7).
- 8.3 The legal tests for when planning obligations can be used are set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010. The tests are:
- (i) necessary to make the development acceptable in planning terms;
 - (ii) directly related to the development;
 - (iii) fairly and reasonably related in scale and kind to the development.

- 8.4 Members must consider whether the catchment restriction obligation meets all three tests.

Planning Policy Considerations

- 8.5 A summary of the key national and local planning policies is provided in Section 4 of this report. The applicant provides references to UK waste policy in Section 1 in support of their application.
- 8.6 The catchment restriction was offered by the applicant to overcome the Planning Committee's reason for originally refusing permission in July 2009, who considered that the imports and exports by the Energy Recovery Facility (ERF) at Trident Park would result in the unsustainable transportation of waste material, contrary to the provisions of Technical Advice Note 21: Waste (TAN 21) (see paragraph 3.2).
- 8.7 A new TAN 21 was published in 2014 which, read in conjunction with Planning Policy Wales 9th Edition (2016) and '*Towards Zero Waste – One Wales: One Planet*' (June 2010), contains the latest guidance for the waste management in Wales (see Section 4).
- 8.8 Relevant extracts from TAN 21 include the following:
- (i) Waste should be regarded as a valuable resource rather than as an unwanted burden (1.22);
 - (ii) Not all waste arising in Wales is managed in Wales, some is exported to other UK counties for treatment, recycling, recovery or disposal. Waste is also imported into Wales (1.22);
 - (iii) It is not necessary for Wales to have within its borders a full suite of facilities necessary to comply with the requirements of the Waste Framework Directive, or to manage all of its own waste (1.22);
 - (iv) All types of waste should be managed sustainably (1.24) in line with the priority order of the waste hierarchy (2.6) (see attached diagram);
 - (v) As waste composition changes over time facilities will need to adapt (1.25).

- 8.9 Paragraph 2.9 of TAN 21 contains guidance on the concept of the ‘nearest appropriate installation’: *The nearest appropriate installation principle states that waste falling with Article 16, should be disposed of or recovered in one of the nearest appropriate installations whilst ensuring a high level of protection for the environment and human health. This means taking into account environmental, economic and social factors, to ensure the right waste management facilities are located in the right place and at the right time. There are several reasons why it is important to manage such waste close to where it arises. This includes reducing the detrimental environmental impacts associated with the transportation of waste and retaining the intrinsic value of waste as a resource in line with the need to secure greater resource efficiency. Planning authorities should not attempt to restrict waste management developments within their boundaries to deal only with arising in their areas. The proximity of a waste disposal or mixed municipal waste recovery installation will depend upon the quantities and types of arisings at local, regional and national levels.*
- 8.10 Applying this guidance to the application, any waste currently being landfilled in West Wales, or being exported to alternative locations in the UK or Europe for treatment or disposal, could be diverted to the application site, the nearest appropriate installation, if the catchment restriction were removed.
- 8.11 In respect of regional collaboration, paragraph 3.3 states: *It is difficult to predict with complete certainty future needs for the disposal of waste and recovery of mixed municipal waste due to the variety of factors that affect future tonnages and actual existing capacity. However, the Waste Framework Directive requires that waste disposal and recovery of mixed municipal waste should be undertaken at one of the nearest appropriate installations to the source of the waste arising. This does not carry with it the expectation that all areas should be self-sufficient in terms of the network. Waste arising in one area may be better treated or disposed of in a neighbouring local authority area or region and the envisaged ‘network’ of infrastructure is likely to be spread over a wider area than a single local authority administrative boundary. However, in line with sustainability principles, there is an expectation that all areas should be prepared to accommodate infrastructure to support the development of an integrated and adequate network, be it an actual recovery treatment plant, an intermediate treatment facility or any supporting infrastructure such as transfer stations.*
- 8.12 Paragraphs 2.9 and 3.3 were published after the Planning Committee’s decision to impose a catchment restriction in 2010, and clearly demonstrate that the sustainable management of waste may include the transportation of waste across regional and national borders.
- 8.13 In addition to the clear guidance in national policy, the recent appeal decisions provided by the applicant in paragraph 1.14 also demonstrate that catchment restrictions are consistently being rejected in the determination of planning appeals by Inspectors, the Secretary of State and Parliamentary Committees. Reasons for their rejection include enforceability, (in respect of conditions), unnecessary (transportation costs would limit distances), and market forces would be an effective control.

Environmental Impact Considerations

- 8.14 The Environmental Statement (ES) accompanying the application assessed the impact of removing the waste restriction on traffic, air quality, noise, ecology and climate change. The conclusions of the ES are attached to this report.
- 8.15 In respect of traffic, the ES concluded that there are no transport related issues that would prevent the removal of the waste restriction. The Operational Manager, Transportation, found no reason to object.
- 8.16 In respect of air quality, the assessment concluded that there would be no significant environmental effects. The Pollution Control Manager (Air Quality) and Public Health Wales found no reason to oppose the application.
- 8.17 No significant effects on the environment were found to occur from increased noise and the Pollution Control Manager (Noise) agreed.
- 8.18 The Council's Ecologist is satisfied with the submitted ecological information, including the further information comprising an 'in-combination' assessment of the development with other sites in the locality. He agrees with the conclusions of the Habitats Regulations Assessment that no direct ecological impacts will arise and, overall, no significant effects will occur on the Severn Estuary designations. Nor does he consider that the interests of the Site of Special Scientific Interest (SSSI) would be adversely affected.
- 8.19 Regarding climate change the assessment found that, the further waste is transported, the higher the carbon burden. However, the results also found that the carbon burdens of transporting waste from outside the current catchment restriction of South East Wales are relatively small, and that the carbon benefits associated with diverting this waste from landfill and recovering it at the Facility outweighs the burden of transportation. Overall, when transport burdens are included, the assessment concludes that the scheme delivers a significant carbon benefit to the alternative of disposal to landfill.

Third Party Objections

- 8.20 In respect of objections by third parties which have not already been addressed in this report:
- (i) It is correct that allowing the proposed modification would enable waste to be transported from outside Wales. However, the application should be determined in the light of current national guidance. Members are also advised to have regard to the recent appeal decisions. It has been determined that transportation costs play an important role in determining the distances that waste would be transported.
 - (ii) It is agreed that Cardiff's rate of growth will lead to an increased demand for waste processing capacity which will need to be met in the future.
 - (iii) The timing of the application submission, 18 months since operations began, is noted. The acceptability of increasing tonnage is addressed in the assessment of application no. 16/02256/MJR which is also presented to this

Committee.

- (iv) The Eastern Bay Link Road (EBLR) extension has been included in the environmental assessment. The overall effect of this link road on traffic along Rover Way indicated that it would lead to a decrease in traffic and therefore a corresponding decrease in NO_x levels, even when highly optimistic traffic growth was assumed. It is not considered to be necessary to defer determination of this application pending the opening of the Link Road extension.
- (v) The public consultation exercise for this application, which included the display of 10 no. site notices in the vicinity of the application site, press notices, and letters of notification, has exceeded the consultation requirements set out in relevant legislation (See paragraph 7.2);
- (vi) It is not considered that the amenities, the quality of life or health of local residents will be adversely affected by the removal of the catchment restriction. Local residents would not be directly affected from the receipt of waste from new locations.
- (vii) Paragraph 2.9 of TAN 21 advises that the proximity of a waste disposal or recovery installation will depend upon the quantities and types of arisings at local, regional and national levels. It therefore recognises that the nearest appropriate installation for the disposal of waste may, in some instances, cross regional or national boundaries.
- (viii) The removal of the catchment restriction would allow Trident Park the opportunity to be regarded as the nearest appropriate installation in line with planning policy. The current restriction prevents this from taking place. The removal of the restriction will also allow market forces to influence the treatment and disposal of waste, which has been recognised in recent appeal decisions. Operators in West Wales would have the option to choose between continuing the transportation of waste to Europe, or processing at Trident Park.
- (ix) It is accepted that other facilities in the pipeline may (or may not) come forward to operation in the future. However, this application must be determined on its planning merits.
- (vii) The use of the site for an Energy Recovery Facility has been assessed previously and found to be acceptable.
- (viii) Increasing the amount of waste processed at the facility is assessed under application no. 16/02256/MJR, also reported to this Committee.
- (ix) The views expressed regarding the enforceability of the catchment restriction are noted. However, in this instance the key issue is not one of enforceability, rather the issue is whether the restriction should continue to be applied in the light of current policy.

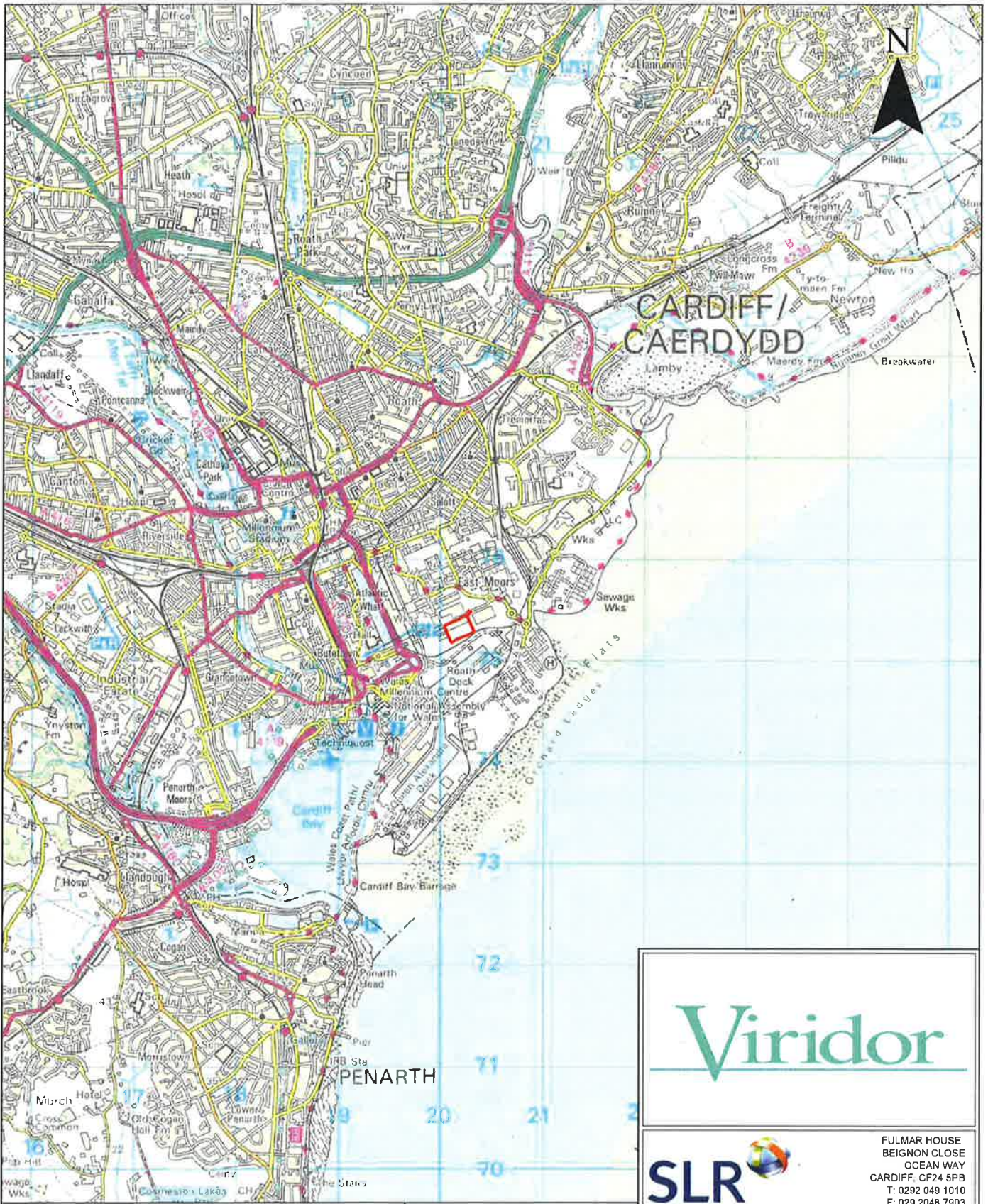
Other Considerations

8.21 *Equality Act 2010* – The Equality Act 2010 identifies a number of ‘protected characteristics’, namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council’s duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic

8.22 *Well-Being of Future Generations Act 2016* – Section 3 of this Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

9. **CONCLUSIONS**

- 9.1 Although the catchment restriction was originally offered by the applicant when seeking the original planning permission, current planning policy clearly advises against placing geographical restrictions on the management of waste. Furthermore, recent appeal decisions offered by the applicant demonstrate that such catchment restrictions have not been supported by Inspectors, the Secretary of State, or Parliamentary Committees.
- 9.2 The application is accompanied by an Environmental Statement which has assessed whether the removal of the catchment restriction would result in significant environmental effects in respect of transportation, air quality, noise, ecology and climate change. In each case no significant effects on the environment have been identified and, in respect of climate change, significant environmental benefits have been identified. This environmental information has been taken into consideration in the determination of this application.
- 9.3 The statutory consultees have accepted the scope and findings of the Environmental Statement and do not dispute the conclusions.
- 9.4 PPW9 advises that Local Planning Authorities should aim to maximise the use of existing infrastructure (paragraph 12.1.6). The long-term contracts currently in place to receive municipal waste from landfill across the SE Wales Region would continue unaffected by the removal of the catchment restriction (These contracts include Prosiect Gwyrdd, a 25 year partnership between the Councils of Caerphilly, Cardiff, Monmouthshire, Newport and the Vale of Glamorgan to process approximately 200,000 tonnes per annum and Tomorrow's Valley, a 25 year partnership between Rhondda Cynon Taf, Merthyr Tydfil, Blaenau Gwent and Torfaen Council for the treatment of up to 100,000 tonnes per annum).
- 9.5 The removal of the catchment restriction will afford other areas beyond SE Wales the opportunity to divert waste from landfill in accordance with the waste hierarchy.
- 9.6 In the light of current planning policy, it is considered that the catchment restriction is not necessary to make the development acceptable in planning terms, nor is it reasonably related in scale and kind to the development. It is recommended that the obligation be removed.



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LEGEND



APPLICATION BOUNDARY

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Viridor

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 global environmental solutions

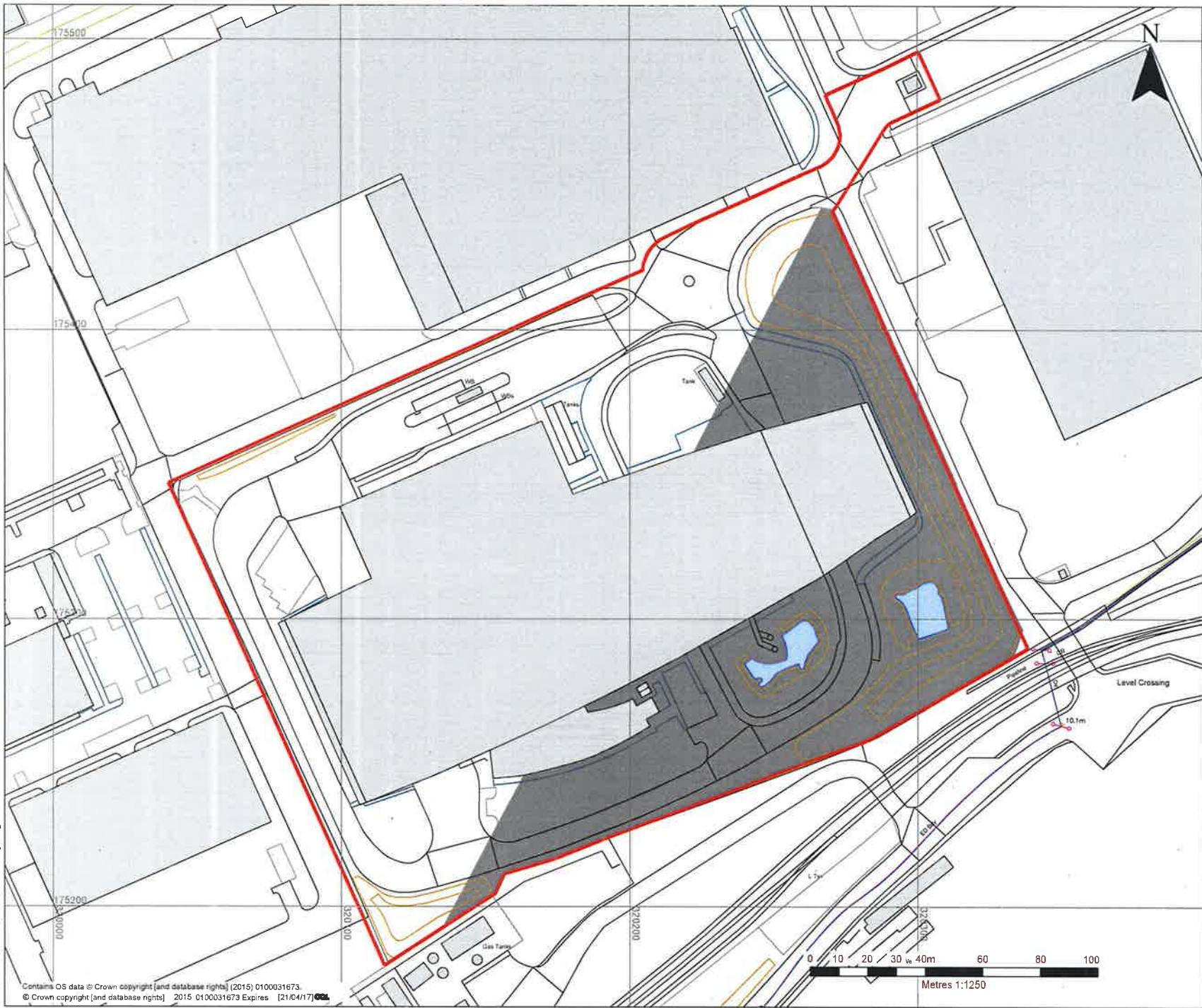
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01

Scale 1:1250 @A3

Date APRIL 2016



LEGEND

 APPLICATION BOUNDARY

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02

Scale 1:1250 @A3

Date APRIL 2016



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9.0 CONCLUSIONS

9.1 Introduction

The EIA process has identified the likely significant effects of the proposed development as follows:

- Traffic;
- Air Quality;
- Noise;
- Ecology; and
- Climate Change.

Effects that are not considered to be significant, because there would be no change to the existing ERF building, are as follows:

- Geology and Soils;
- Water;
- Landscape and Visual; and
- Cultural Heritage.

9.2 Traffic

The traffic assessment has concluded that the proposed waste tonnage increase would generate approximately 17 additional HGVs (34 movements) a day and for robustness has assumed a maximum of 3 HGVs (6 movements) an hour on the local highway network during both morning peak and evening peak.

Traffic surveys and capacity assessments have been undertaken at the Glass Avenue roundabout which concluded that the roundabout currently operates satisfactorily and would continue to do so with the proposed additional waste trips.

It is considered that there are no transport related issues that would prevent the proposed changes going ahead.

No significant adverse effects on the environment identified.

9.3 Air Quality

The air quality assessment has concluded that:

- the predicted impact of increased emissions from both the stacks serving the Trident Park ERF and additional vehicle movements as a result of the increased tonnage is less than 1% of the relevant long-term and short-term EAL for human receptors;
- the effect of this increased impact is considered to be 'negligible' and not significant;
- the change in predicted CLe and CLo impacts from both the ERF stacks and additional vehicle movements due to the increased tonnage is considered insignificant and will cause '*no likely significant effects (alone and in-combination)*' for European sites, '*no likely damage*' for SSSI's and '*no significant pollution*' for other sites;
- the effect of the cumulative impacts (due to the entire ERF operating at the increased tonnage) on air quality at human receptors is considered to be negligible and not significant;
- cumulative annual NOx impacts exceed 1% of the CLe for a very limited area of potentially sensitive vegetation within the Severn Estuary site. It is considered unlikely that such impacts would be of significance at above a local level or constitute a likely significant effect; and
- the cumulative impacts of nitrogen and acid deposition are <1% of the CLo at all receptor locations and therefore will

cause 'no likely significant effects (alone and in combination)'.

No significant adverse effects on the environment identified.

9.4 Noise

The assessment has concluded:

- The additional HGV movements would not cause an increase in the ambient noise level during quieter periods.
- The cumulative noise level (baseline plus predicted HGV noise levels) during noisier periods does not cause an exceedance in the daytime external noise limit of 55dB(A).

The impact of the HGV noise and the significance of the effect at each receptor location assessed is none

No significant adverse effects on the environment identified.

9.5 Ecology

The potential for direct ecological impacts has been discounted, as the proposed development utilises an existing building and infrastructure and does not require any loss of habitat or alteration of current site conditions.

Potential indirect effects upon off-site ecological features, in particular deposition of emitted products (from the facility and associated traffic) on ecologically designated sites have been subject to detailed consideration.

Overall, no significant effects are predicted in respect of all emission types from the proposed increased tonnage alone. A localised ecological impact may occur when the proposed increase is

assessed in combination with existing permitted emissions. This is in respect of NO_x deposition within a restricted interface between the Severn Estuary and Rover Way, where a mix of shingle and gravel, inter-tidal mud and saltmarsh occurs; the latter is considered to represent a sensitive habitat to aerial deposition. The area concerned is already subject to deposition levels which exceed the critical loads for NO_x and whilst the proposed development would add to these, when the size of the designated site and total extent of saltmarsh is taken into account it is considered unlikely that such impacts would be of significance at above a local level or constitute a likely significant effect.

No significant adverse effects on the environment identified.

9.6 Climate Change

The climate change assessment has concluded that:

- The treatment of waste in the Facility (during hot commissioning and in full operations) is shown to have delivered significant carbon benefit over the disposal of the waste to landfill.
- In 2015, the carbon impact of processing 350ktpa of waste (the current permission) at the Facility achieves a carbon benefit of c.116,000 tCO₂e, and a net carbon benefit of c.188,000 tCO₂e when compared to a baseline of continued landfill disposal.
- Approval of the variation application and therefore the treatment of an additional 75ktpa of waste at the Facility will deliver additional carbon benefits over the current permission.
- Approval of the application to increase the tonnage at the Facility to 425ktpa of waste will result in an additional carbon benefit of c.35,000 tCO₂e in 2017.
- The results show that waste transported from outside the existing permitted catchment area exhibits similar net

carbon benefits (of c.400 kgCO₂e or greater per tonne of waste) to the net carbon benefits of the treatment only scenario.

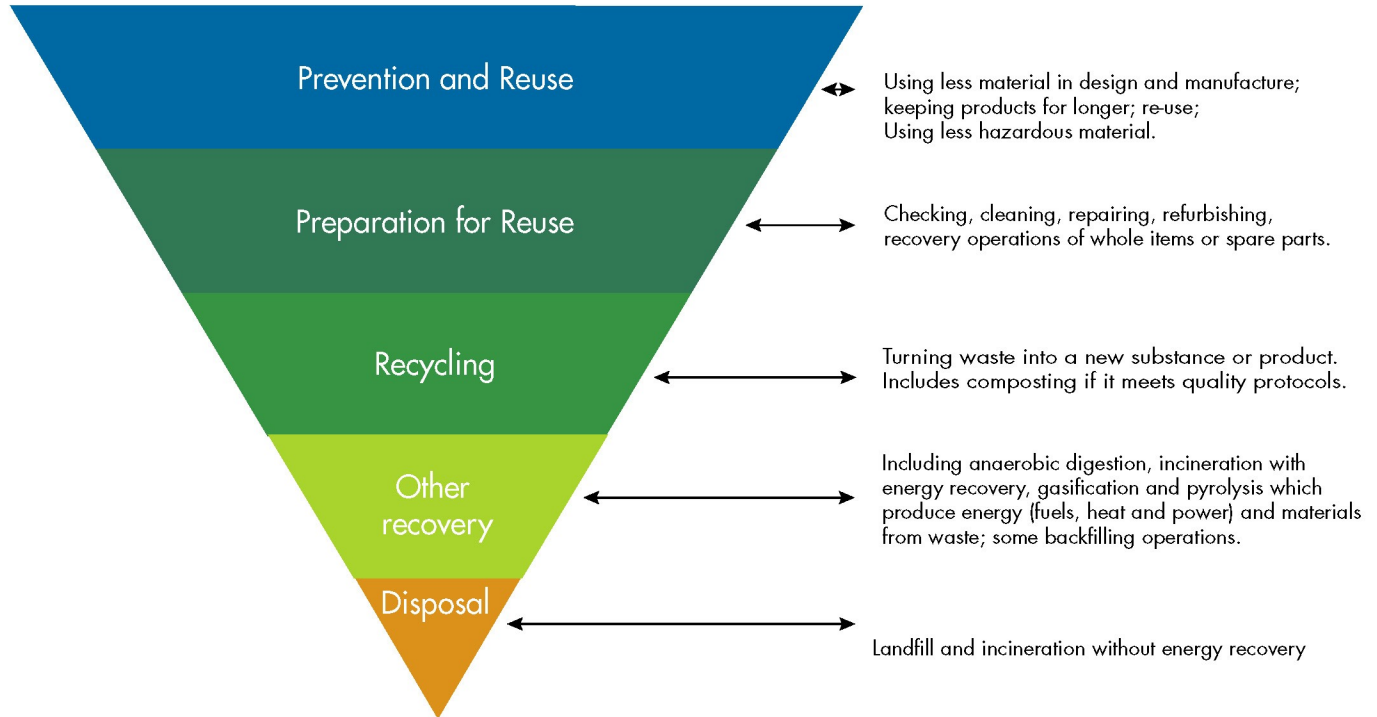
- Treatment of an additional 75ktpa of waste at the Facility will assist in minimising waste quantities to landfill and will contribute additional energy to the national grid, thus utilising domestic resources to produce energy for Welsh households and businesses.

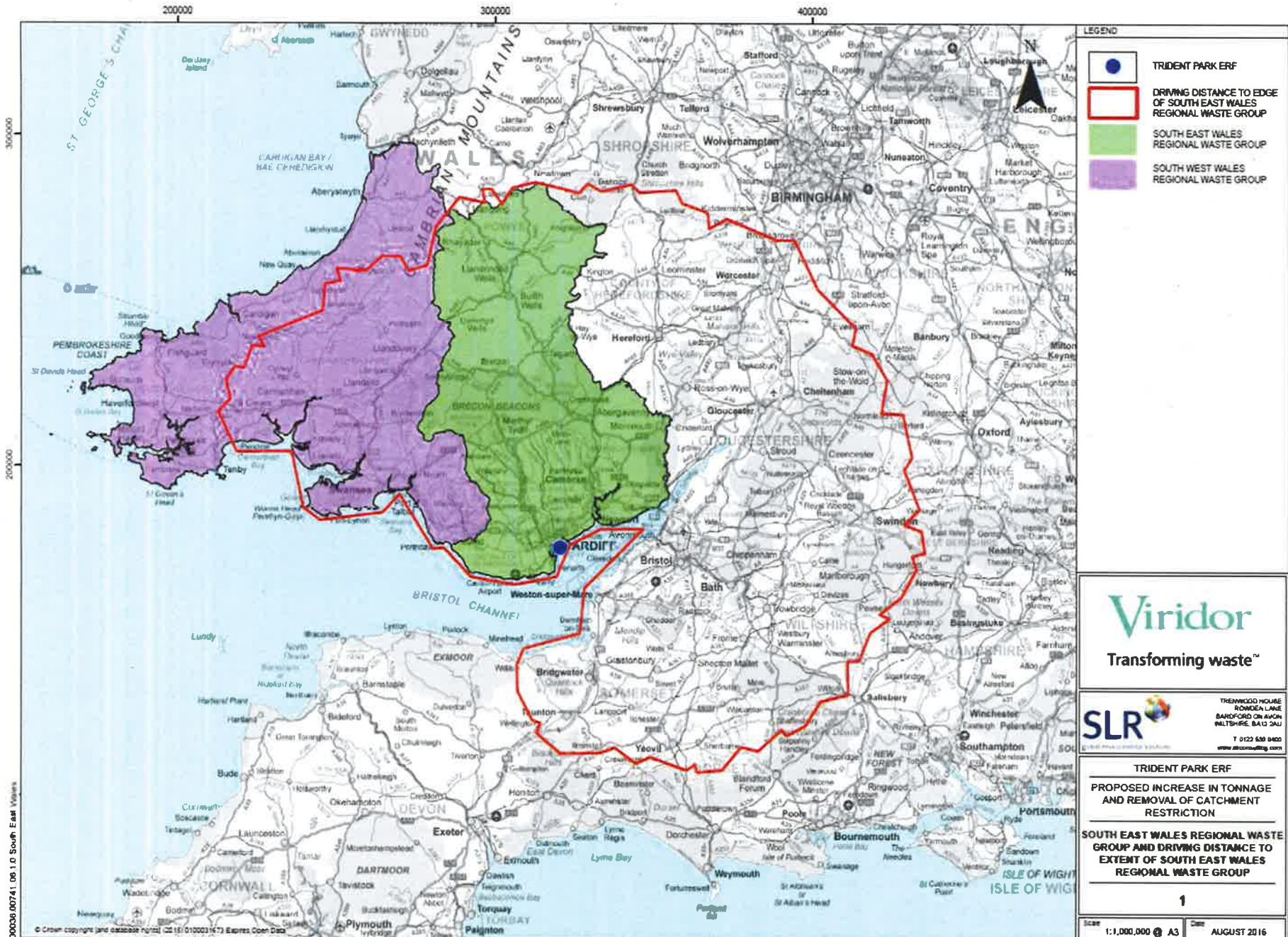
On this basis, it is concluded that the proposed increase in capacity at the Facility will deliver significant additional carbon benefits, which can be delivered quickly and for the remainder of the life of the Facility.

Transportation of waste results in a carbon burden, however analysis has shown that the scale of the transport related carbon burden is relatively modest. The carbon burdens of transportation of waste from outside of the current South East Wales catchment area are far outweighed by the carbon benefits of moving waste up the hierarchy and diverting it from landfill disposal to recovery.

Significant benefits to the environment identified.

Diagram 2.7 – The Waste Hierarchy





- LEGEND**
- TRIDENT PARK ERF
 - DRIVING DISTANCE TO EDGE OF SOUTH EAST WALES REGIONAL WASTE GROUP
 - SOUTH EAST WALES REGIONAL WASTE GROUP
 - SOUTH WEST WALES REGIONAL WASTE GROUP

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AND REMOVAL OF CATCHMENT
RESTRICTION**

**SOUTH EAST WALES REGIONAL WASTE
GROUP AND DRIVING DISTANCE TO
EXTENT OF SOUTH EAST WALES
REGIONAL WASTE GROUP**

1

Scale: 1:1,000,000 @ A3 Date: AUGUST 2016

000036 00741_06 1.0 South East Wales

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