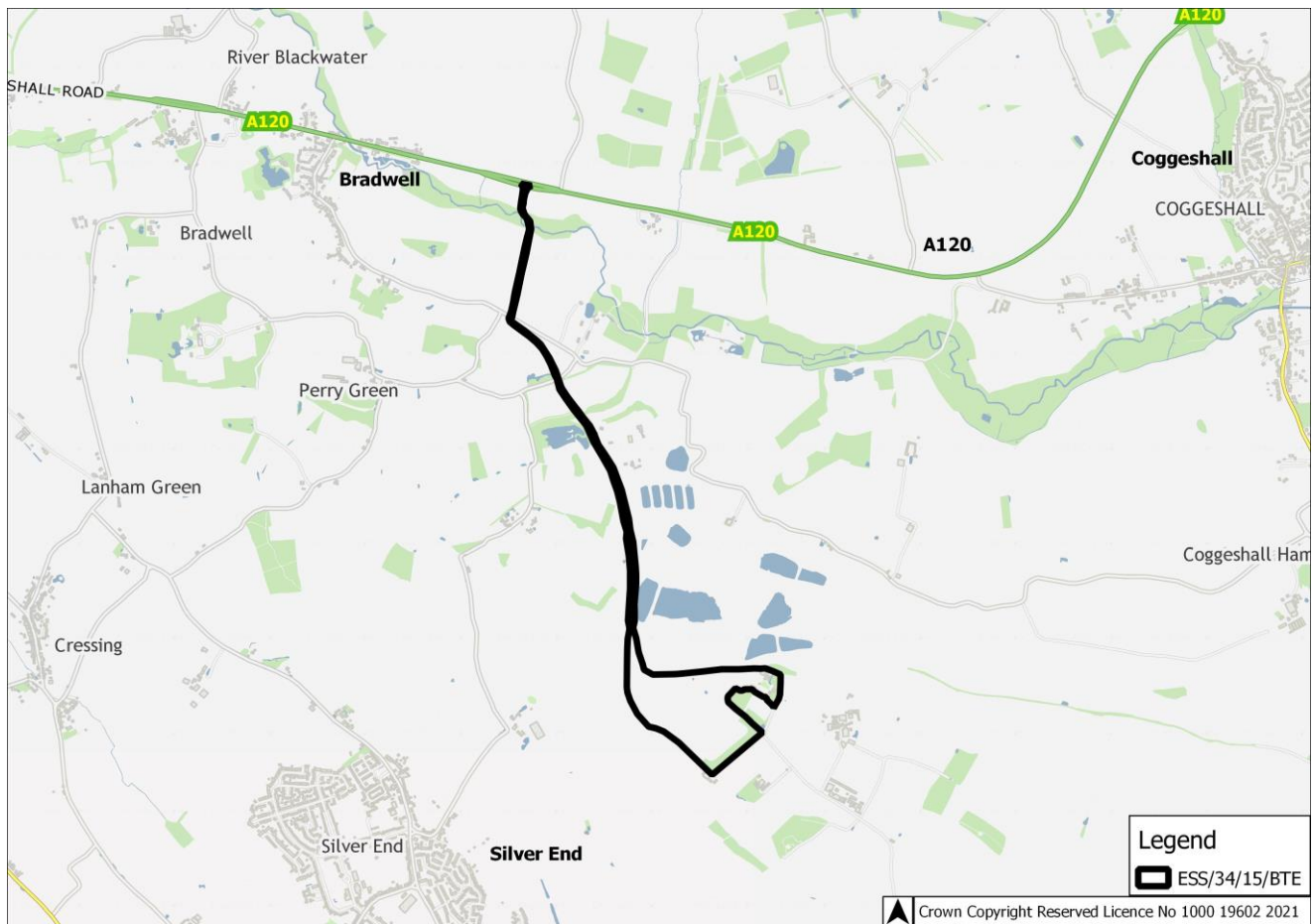


**DR/06/22****Report to:** DEVELOPMENT & REGULATION (25 February 2022)**Proposal:** MINERALS AND WASTE DEVELOPMENT

Details pursuant to Condition 66 (Plan of action for an alternative use or a scheme of rehabilitation) of ESS/34/15/BTE. ESS/34/15/BTE was for "Variation of condition 2 (application drawings) of planning permission ESS/55/14/BTE to allow amended layout of the Integrated Waste Management Facility. The Integrated Waste Management Facility comprising: Anaerobic Digestion Plant treating mixed organic waste, producing biogas converted to electricity through biogas generators; Materials Recovery Facility for mixed dry recyclable waste to recover materials e.g. paper, plastic, metals; Mechanical Biological Treatment facility for the treatment of residual municipal and residual commercial and industrial wastes to produce a solid recovered fuel; De-inking and Pulping Paper Recycling Facility to reclaim paper; Combined Heat and Power Plant (CHP) utilising solid recovered fuel to produce electricity, heat and steam; extraction of minerals to enable buildings to be partially sunken below ground level within the resulting void; visitor/education centre; extension to existing access road; provision of offices and vehicle parking; and associated engineering works and storage tanks. And approval of details required by condition (the details taking account of the proposed amended drawings), the conditions sought to be discharged are as follows: 6 (access road, cross over points), 13 (Signage, Telecommunications & Lighting at Woodhouse Farm complex), 14 (Stack design and finishes), 15 (design details and construction materials), 17 (management plan for the CHP), 18 (green roof), 20 (construction compounds, parking of vehicles), 22 (foul water management), 23 (surface water drainage and ground water management), 24, (groundwater monitoring), 37 (signs on access road at footpath crossings), 43 (lighting scheme during construction), 45 (phasing scheme for access road, retaining wall and mineral extraction), 50 (fencing - temporary and permanent), 53 (ecological survey update), 54 (Habitat Management Plan update), 57 (landscaping - bunding & planting), 59 (trees, shrubs and hedgerows - retention and protection), 60 (tree management and watering adjacent to retaining wall), 61 (Woodhouse Farm parking and landscaping), 62 (traffic calming measures at River Blackwater for otters and voles) and 63 (access road crossing points - lining and signing)"

**Ref:** ESS/34/15/BTE/66/01**Applicant:** Indaver**Location:** Rivenhall Airfield, Coggeshall Road (A120), Braintree, CO5 9DF**Report author:** Chief Planning Officer (County Planning and Major Development)**Enquiries to:** Claire Tomalin Tel: 03330 136821The full application can be viewed at <https://planning.essex.gov.uk>



## 1. BACKGROUND

The current application is not a planning application, but an application to discharge details reserved by condition, in this case condition 66 of the planning permission ESS/34/15/BTE for Rivenhall Integrated Waste Management Facility (IWMF).

Planning Permission for the Rivenhall IWMF was first granted by the Secretary of State (SoS) in March 2010 following a call-in public inquiry (ECC Ref ESS/37/08/BTE). The Inspector's Report and SoS Decision are at Appendix A and B.

While the original application was determined by the SoS, subsequent applications fall to the Waste Planning Authority (WPA) to determine, unless called-in or legislation requires otherwise. There have been subsequent variations to the planning permission and submissions in response to conditions, which have been dealt with by the WPA, the summary below focuses on those relevant to the current application.

The 2010 planning permission was required to be implemented by March 2015. In 2014 a planning application (ESS/41/14/BTE) was made to the WPA to extend the implementation period by 2 years. In December 2014, planning permission was granted for a 1 year extension only, such that the planning permission was required to be commenced by March 2016.

In 2015 a planning application (ESS/34/15/BTE) was made to amend the capacities of the different elements of the IWMF, in particular increasing the capacity of the Combined Heat and Power Plant (CHP) from 360,000tpa to 595,000tpa. The application also incorporated details to discharge a number of conditions of the original permission. The planning permission was granted in February 2016 (copy of the decision notice is at Appendix C) and at that time additional conditions were added, including condition 66. This condition sought to address the possibility that if the development was started but did not progress, the site would not be left without a beneficial use. Implementation of planning permission ESS/34/15/BTE was undertaken in March 2016.

In 2017 two planning applications were made (ESS/37/17/BTE & ESS/36/17/BTE) which in combination sought to increase the height of the stack of the CHP. An Environmental Permit (EP) had been granted by the Environment Agency (EA) but with a higher stack than that permitted by the planning permission, the applications sought to increase the stack height in line with EP. These planning applications were refused in May 2019 primarily as it had not been demonstrated that the harm to the landscape, visual amenity and setting of Listed Buildings was not outweighed by other factors, notably the need for the capacity of the facility. The extant permission for the IWMF therefore remains ESS/34/15/BTE.

The applicant/developer had been Gent Fairhead & Co until October 2018, when it was announced that Indaver would be working with Gent Fairhead & Co. Indaver has since taken on a long-term lease for the IWMF site and works commenced on site in winter 2019/20. Gent Fairhead & Co have an option to lease the land on which there is permission for a market de-ink paper pulp plant facility that forms part of the IWMF.

The planning permission for the IWMF gives consent for:

- A CHP plant (595,000tpa) utilising Refuse Derived Fuel (RDF) generated on site and imported RDF/Solid Recovered Fuel (SRF) to generate heat, steam and electricity to be used on site. Some electricity to be exported to the National Grid.
- Merchant De-Ink Paper pulp plant (MDIP – 170,000tpa) to reprocess waste paper imported to the site, as well as any suitable paper recovered by the MRF and would utilise, heat, steam and power generated by the CHP. Paper pulp board to be exported from the site.
- Anaerobic Digestion (AD – 30,000tpa) facility to treat food and green waste generating biogas for production of electricity on site and generating a compost like output for export.
- Materials Recycling Facility (MRF – 300,000tpa) to sort through imported waste recovering recyclables such as paper, card, plastics and metal.
- Mechanical Biological Treatment Facility (MBT – 170,000tpa), to treat waste by mechanical treatment e.g. shredding and then biological treatment using air and moisture to bio-stabilise the waste, the output being an RDF.

The total amount of waste that can be imported to the site is limited by condition to 853,000tpa. The maximum number of HGV movements is limited to 404 a day Monday to Friday and 202 on Saturday mornings.

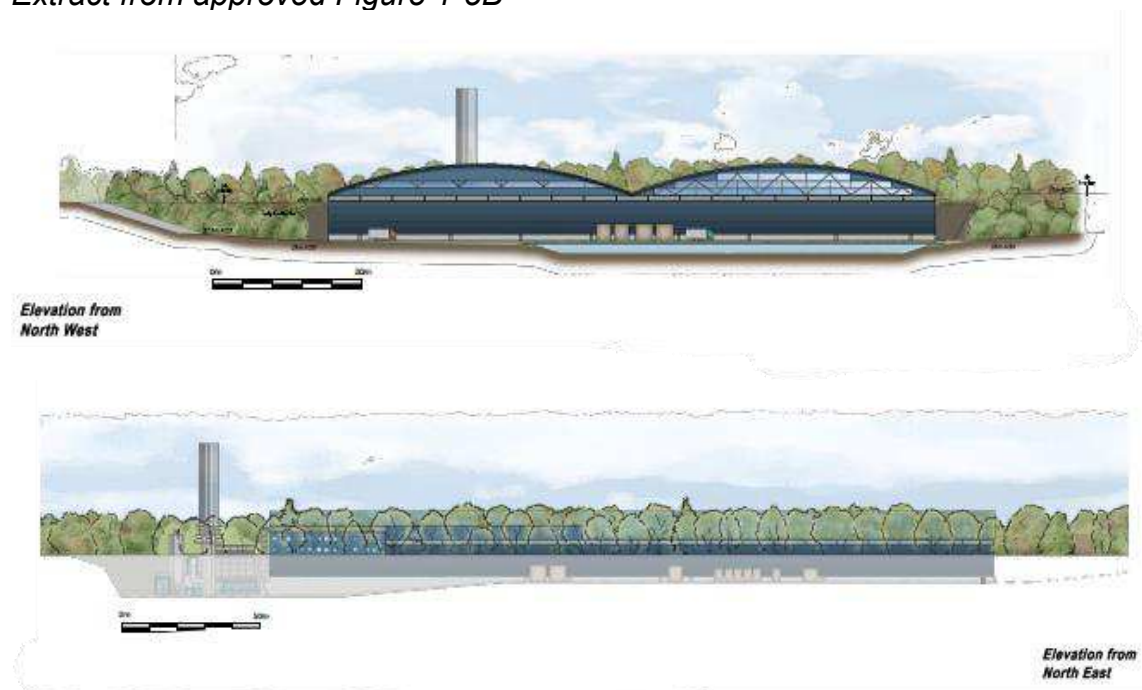
The permission also includes the creation of an extended access road from the A120 and refurbishment of the Woodhouse Farm Listed Buildings complex and other associated infrastructure.

*Extract from Figure 1-5B*



The MDIP, MRF, MBT and AD are permitted to be housed in a double arched building, where the majority of the building is to be located below natural ground. The CHP and other associated infrastructure is to be located also partly below ground to the rear of the IWMF building.

*Extract from approved Figure 1-5B*



The IWMF site overlaps in part with the worked-out areas of Bradwell Quarry, operated by Blackwater Aggregates (a joint company of Cemex and Gent Fairhead & Co). Planning permission for extraction and restoration of sites A3 and A4<sup>1</sup> (see plan below) incorporated the possibility of overburden from within the IWMF site to be utilised to restore sites A3 and A4 to near natural levels rather than low-level restoration. In Spring 2021 works commenced to remove overburden from the IWMF site and be placed in sites A3 and A4 to achieve restoration to near natural levels. These works are ongoing.

## **2. SITE**

The IWMF site is located east of Braintree, approximately 1km to the north east of Silver End and approximately 3km south west of Coggeshall and approximately 3km south east of Bradwell village. The site is 25.3 ha which includes the access road.

The IWMF site at its northern end comprises a narrow strip of land leading southwards from the A120 Coggeshall Road, the location of the access road. To the south the IWMF site widens into an irregular shaped plot of land.

The IWMF site lies within the boundaries of both Bradwell Parish Council and Kelvedon Parish Council, the access road being mainly within Bradwell Parish Council and the remainder of the access road and IWMF itself lying within Kelvedon Parish Council.

The IWMF site lies on the southern part of the former Rivenhall airfield; the runways have been removed as part of mineral extraction. The IWMF site (not including the access road) is located approximately 1.7km south of Coggeshall Road (A120T) and includes the Grade II Listed Buildings of Woodhouse Farm.

Woodhouse Farm buildings are located on the south eastern side of the IWMF site and included in the IWMF planning permission area. The IWMF site also includes woodland protected by Tree Preservation Order, which surrounds the southern boundary of the IWMF itself.

The IWMF site also included an airfield hangar which upon implementation of IWMF permission in 2016 was removed.

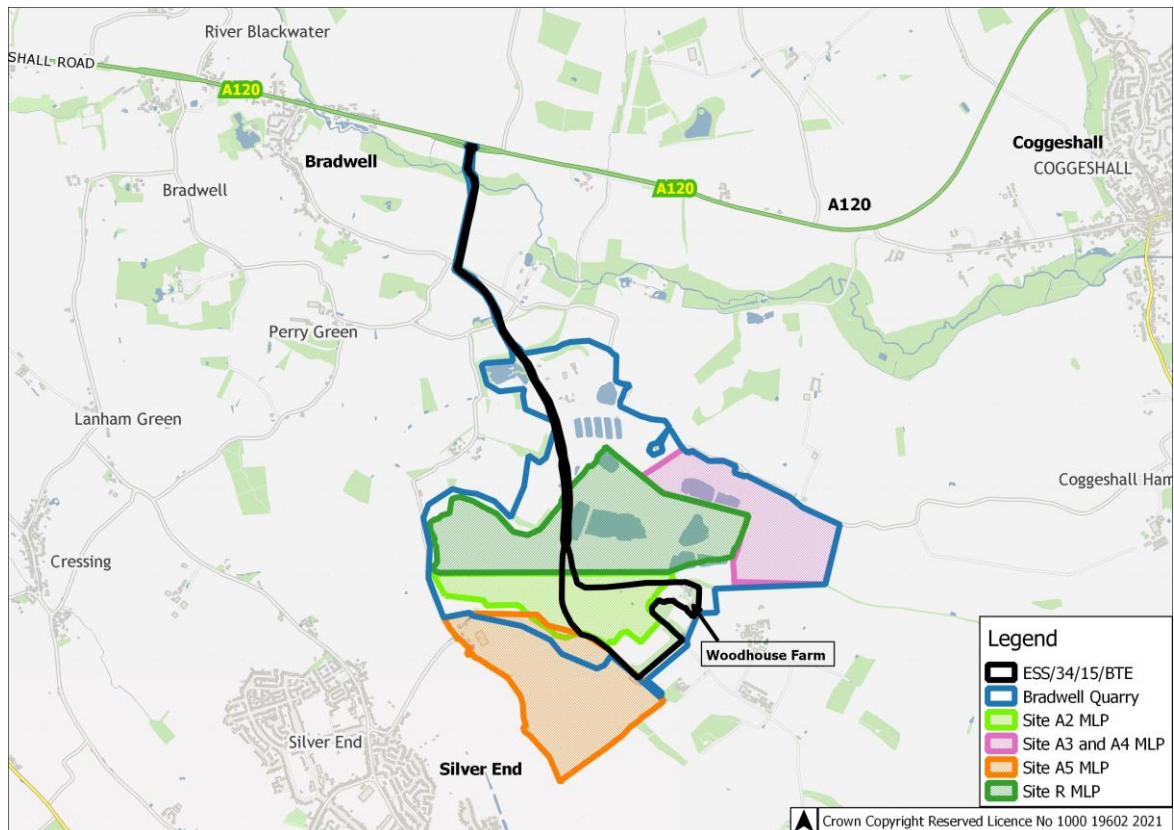
The IWMF site overlaps with Bradwell Quarry where sand and gravel extraction is currently taking place within Minerals Local Plan Preferred site A5. The location plan below shows the extent of previous and current mineral extraction areas; Site R permitted in 2001; site A2 permitted in 2011 (which included extraction in part of the site for the IWMF); and sites A3 and A4 permitted in 2015 and site A5 granted in 2019. Previously worked out areas of the quarry have been restored at low level to arable agriculture with new hedgerows and woodland planting. There are, however, areas of Bradwell Quarry (sites A2, R and A3 and A4) which are awaiting restoration to a combination of arable, woodland and water. The delay in completion of the restoration in these areas has in part been due to the uncertainty as to the progression of the IWMF. With progression of the IWMF, works to

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<sup>1</sup> Sites A3 and A4 are identified as preferred sites for extraction in the Minerals Local Plan (2014)



complete unrestored mineral workings is now ongoing.



The IWMF site is set within a predominantly rural character area, consisting of arable crops in large fields, often without boundaries resulting in an open landscape in gently undulating countryside. The landform around the site forms a flat plateau at about 50m AOD, although the restored minerals workings to the northwest (site R) and southwest (site A5) have been or will be restored at a lower level, creating bowls in the landscape. Site A3 and A4 as previously mentioned are to be restored to near natural levels utilising overburden from the IWMF site.

The nearest residential properties, not including Woodhouse Farm (not occupied), include The Lodge and Allshots Farm located to the east of the IWMF site approximately 450m. To the north/north east on Cuthedge Lane are Heron's Farm at approximately 700m from the site of the IWMF, Deeks Cottage at approximately 850m and Haywards 920m from the site of the IWMF. To the west of the site on Sheepcotes Lane lies Sheepcotes Farm 580mm from the site of the IWMF, also Gosling's Cottage, Gosling's Farm and Goslings Barn and Greenpastures all approximately 1200m from the site of the IWMF. Properties to the southwest within Silver End village lie approximately 850m from the of the IWMF. Parkgate Farm lies south of the site approximately 1000m from the site of the IWMF.

Approximately 400m to the east of the IWMF site boundary and Woodhouse Farm, lies a group of buildings, including the Grade II listed Allshots Farm and a scrap yard.

Approximately 500m to the south east of the IWMF, beyond agricultural fields, there is a group of buildings known as the Polish site. These buildings are used by a number of businesses and form a small industrial and commercial estate to which

access is gained via a public highway Woodhouse Lane leading from Parkgate Road.

A further business operates on the south west edge of the IWMF site, at the "Elephant House", the building being the fire station for the redundant airfield. The site is used by a road sweeping company, but the site is well screened by mature evergreen trees.

The permitted vehicular route to the IWMF site shares the existing access on the A120 and the private access road for Bradwell Quarry. The access route crosses the River Blackwater by two bailey style bridges and crosses Church Road and Ash Lane (a Protected Lane as defined in Braintree District Local Plan Review 2005). The access road is two way from the A120 to Church Road, then single lane with passing bays between Church Road and Ash Lane and then two way south of Ash Lane to Bradwell Quarry processing plant. The crossing points on Church Road and Ash Lane are both single lane width only. Some works have already taken place with respect to the IWMF including preparing the access road to be two way between Church Road and Ash Lane, as well as speed bumps and signage.

To the south of the Bradwell processing area, the permitted access road to the IWMF site has not been constructed. However, works have been undertaken to create a construction access road for plant and staff to the IWMF site where a construction compound has been formed. The site of the IWMF has been largely worked for sand and gravel but then the overburden was replaced. The remaining unworked mineral area within the IWMF site has been cleared of vegetation and topsoils and the subsoils stripped, and overburden is currently being removed to create the void for the IWMF plant and buildings. The remaining mineral within the site will be extracted for which there is planning permission.

The same area of the IWMF site is allocated in the adopted Waste Local Plan 2017 as a site IWMF2 for residual non-hazardous waste management and biological treatment.

The land comprising the IWMF site has no designations within the Braintree Development Plan.

There are two County Wildlife Sites (CWS) within 3 km of the site at Blackwater Plantation West, which is within the Blackwater Valley which the access road crosses. The second CWS is at Storey's Wood (south of the site), which is also an Ancient Woodland.

There are 4 Grade II Listed properties within 1km of the IWMF site including Woodhouse Farm and buildings within 200m, Allshots Farm and Lodge (400m away) to the east, Sheepcotes Farm (1000m) to the west.

Three footpaths (FP's 19, 57 [Essex Way], 58) are crossed by the existing quarry access road and the extended access road to the IWMF would cross the FP35. There is also a public footpath No. 8 (Kelvedon) which heads south through Woodhouse Farm complex. FP 8 (Kelvedon) links with FPs 35 and 55 (Bradwell) to provide links west to Sheepcotes Lane and FP 44 (Kelvedon) runs eastwards

linking with bridleway 1 (Kelvedon - Pantlings Lane) towards Coggeshall.

### 3. PROPOSAL

The application seeks to address the requirements of condition 66 of ESS/34/15/BTE; the wording and reason for condition 66 are set out below.

In the event that the IWMF is not brought into beneficial use within 5 years of commencement of the development (as notified under condition 1) the operator shall within 6 months of the end of the 5 year period submit a plan of action for an alternative use or a scheme of rehabilitation for the site for approval by the Waste Planning Authority. The plan of action for an alternative use or scheme of rehabilitation shall be implemented within 6 months of approval by the Waste Planning Authority.

***Reason:** To ensure that if the development of the IWMF is not progressed to a beneficial use within a reasonable period, that the site is either planned for an alternative use or the site rehabilitated in the interests, of minimising the adverse environment impacts of incomplete implementation and in accordance with WLP W8A, W10E and MLP DM1 and BCS policies CS5 and CS8.*

It should be noted that the Policies referred to within the reason for the condition are those from the 2001 Waste Local Plan, which has since been superseded by the Waste Local Plan 2017. Policy W8A related to allocated sites of the WLP 2001 and is superseded by Policy 3 (Strategic Site Allocations) of the WLP 2017. The site allocated in the WLP 2001 was smaller than that allocated in WLP 2017. The site in the WLP 2017 is similar to that of the permission area for the IWMF. Policy W10E was with respect to Development Control Criteria, now superseded by policy 10 (Development Management Criteria) of the WLP 2017.

The applicant has submitted a letter to address the requirements of condition 66 (a copy of the letter is included as Appendix D) and a clarifying email and the “plan of action” is as follows:

#### **Plan of action**

*RPS [applicant's agent] proposes the following staged plan of action which we believe reflects the circumstances and decisions we currently face. They are presented in a manner which aims to provide the planning authority with transparency in relation to our intentions for the site. In sequence the plan is:*

*1. To build out the permission as authorised by the Planning Permission. Indaver regard this permission as valuable commercially and necessary to deal with the waste management needs arising in the area. As is well known, their immediate focus is to deliver the CHP (or Energy from Waste (EfW)) component within the approved building. They are looking at developing the other consented waste management and energy components too, with the help of GFC, but we cannot yet confirm details of these and when they might be brought forward.*

*If, in the event that for technical or commercial reasons, Indaver is unable to bring forward all parts of the consented development e.g. the market or technology has*



*changed, then they are likely to wish to resort to options under stage 2 or 3 of the plan of action, as set out below.*

*2. Build out those elements within the consent which are technically and commercially viable, all within the building which currently has consent, and/or;*

*3. Submit an application for consent for alternative waste management and/or energy generation uses.*

*Option 2 allows for the possibility of us not building out certain elements of the consented scheme if they prove untenable technically or commercially. In particular, we are concerned that at present the paper pulp plant may fall into this category, and therefore lead us to initiate options 2 or 3 of the plan.*

*Finally, in terms of Option 3, we are exploring the possibility of increasing the power output of the EfW to above the 50 MWe threshold, which would require consent from the Secretary of State under the Planning Act 2008 (a Development Consent Order). Option 3 of the plan caters for this scenario. In addition, although not currently planned, should we wish to apply for something that falls outside the scope of the current planning permission, we will of course approach you and the local liaison committee in advance to set out those plans.*

#### **4. POLICIES**

The following policies of the [Minerals Local Plan](#), adopted July 2014, [Essex and Southend Waste Local Plan adopted 2017](#) and [Braintree Local Plan 2013-2033 - Section 1 adopted February 2021](#), the [Braintree Core Strategy adopted September 2011](#) and [Braintree District Local Plan Review adopted July 2005](#) provide the development plan framework for this application. The following policies are of relevance to this application:

##### **MINERALS LOCAL PLAN (MLP)**

S8 - Safeguarding mineral resources and mineral reserves

##### **WASTE LOCAL PLAN (WLP) 2017**

Policy 1 - Need for Waste Management Facilities

Policy 2 - Safeguarding Waste Management Sites & Infrastructure

Policy 3 - Strategic Site Allocations

Policy 10 - Development Management Criteria

Policy 11 - Mitigating and Adapting to Climate Change

##### **BRAINTREE DISTRICT LOCAL PLAN (BLP S1) 2013-2033 Section 1**

SP 7 Place Shaping Principles

##### **BRAINTREE DISTRICT COUNCIL LOCAL DEVELOPMENT FRAMEWORK CORE STRATEGY (BCS) adopted 2011**

CS5 Countryside

CS8 Natural Environment and Biodiversity

##### **BRAINTREE DISTRICT LOCAL PLAN REVIEW (BDLPR) 2005**

RLP 36 Industrial and Environmental Standards

RLP 62	Development Likely to Give Rise to Pollution, or the Risk of Pollution
RLP 63	Air quality
RLP 65	External Lighting
RLP 72	Water Quality
RLP 80	Landscape Features and Habitats
RLP 81	Trees, Woodlands, Grasslands and Hedgerows
RLP 84	Protected species
RLP 87	Protected Lanes
RLP 90	Layout and Design of Development
RLP 100	Alterations, extensions and changes of use to Listed Buildings and their settings
RLP 101	Listed agricultural buildings
RLP 105	Archaeological Evaluation
RLP 106	Archaeological Excavation and Monitoring

## NEIGHBOURHOOD PLANS

Bradwell With Pattiswick Neighbourhood Plan 2019

Policy 1 Protecting and enhancing the Natural Environment and Green Infrastructure

Coggeshall PC (adjacent parish) Neighbourhood Plan (CNP) was adopted by Braintree District Council as part of the Development Plan in July 2021.

Policy 11 Preventing Pollution (including air and water quality, noise and light)

Kelvedon PC Neighbourhood Plan is at too earlier stage to have weight.

The Revised National Planning Policy Framework (NPPF) was published on 20 July 2021 and sets out the Government's planning policies for England and how these should be applied. The NPPF highlights that the purpose of the planning system is to contribute to the achievement of sustainable development. It goes on to state that achieving sustainable development means the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways: economic, social and environmental. The NPPF places a presumption in favour of sustainable development. However, paragraph 47 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

For decision-taking the NPPF states that this means; approving development proposals that accord with an up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: the application of policies in this NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this NPPF taken as a whole.

Planning policy with respect to waste is set out in the National Planning Policy for

Waste (NPPW published on 16 October 2014). Additionally, the National Waste Management Plan for England (NWMPE) is the overarching National Plan for Waste Management and is a material consideration in planning decisions.

Paragraphs 218 and 219 of the NPPF, in summary, detail that the policies in the Framework are material considerations which should be taken into account in dealing with applications and plans adopted in accordance with previous policy and guidance may need to be revised to reflect this and changes made. Policies should not however be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

Paragraph 48 of the NPPF states, in summary, that local planning authorities may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan; the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies in the emerging plan to the NPPF. Braintree District Council is currently awaiting the outcome of the Examination of Section 2 of the Local Plan 2013-2033, the emerging policies can therefore only be given limited weight.

## **5. CONSULTATIONS**

Summarised as follows:

### **BRAINTREE DISTRICT COUNCIL: Objection**

Braintree District Council expressed its objection in the strongest terms during the consideration of the IWMF at Rivenhall Airfield by the SoS in 2010. However it had to accept the decision of the planning process via the Secretary of State that the proposal was acceptable in principle and has since sought to work proactively with the statutory planning and licencing bodies (namely ECC and the EA) to minimise the impacts on local residents, amenity, infrastructure and the environment. Despite this our local residents continue to express their concern on these proposals. Our recent community engagement exercise on our own climate change strategy saw a significant number of comments about the incinerator which would become the biggest single emitter of carbon dioxide in the District and how impactful that would be on the environment and residents' health.

The Council wishes to express its increasing concern and disappointment that that site owners seem unwilling to bring the site forward in the manner that was consented and that all but the CHP now appear to be lost. The Council would ask that ECC take all possible legal steps to consider how it can compel the applicant to develop the proposal originally consented, or alternatively consider that a new application should be sought to consider properly the proposals as they now stand.

Alternatively, we note that the applicant has stated that they are considering whether they will propose to increase the output of the incinerator to above 50MW, and as stated we believe this would require a new permission through the NSIP process.

Condition 66 was imposed by Essex County Council as part of the permission granted on 26th February 2016. The Officer Report to the County Council's Planning Committee refers to the fact that the planning permission was being granted before the applicant had obtained the required EP from the EA. It is clear therefore that the intention of condition 66 is to prevent the situation that we currently find ourselves in, where some 11 years after the application was originally granted, the proposal has not been brought forward. Indeed the information from the landowner/developer now considers that proposals for part of the permission will come forward in 2024/25. This level of uncertainty for local residents in particular, is not acceptable.

The Plan for Action submitted to discharge this condition appears to be less than a page long and provides little detail, noting technical and commercial reasons but provides none of the details of these reasons that prevents four fifths of the consented scheme being developed. In our view this is a disingenuous approach to the discharging of this condition and the local resident's concerns. The details submitted to discharge condition 66 therefore seem to lack either a plan or action.

The applicant states that the only element of the consented scheme which is currently under active consideration for implementation is the CHP (the Combined Heat and Power Plant). Again the plan of action lacks any substance or detail, simply stating that 'The commissioning of this part of the plant is not expected until 2024/5'. The plan of action provides no details of how, or when, the CHP will be delivered beyond this vague statement. Even allowing a further four years for the CHP to come into beneficial use the plan of action fails to provide a clear programme of how the applicant will achieve this. The District Council considers that a further 4 year period until there is an operational use on the site, which bears limited resemblance to the consented scheme, does not meet the requirements set out in condition 66. There is no plan of action for an alternative use which can be implemented within six months. Indeed the third alternative use would require the submission of an application for consent for alternative waste management and/or energy generation uses. There is no commitment or timeframe given for this to happen. As such the application to discharge this condition should be refused.

A new application, whether to ECC or through the NSIP process appears the only sensible way in which residents, stakeholders and statutory bodies can properly engage and have their say on the plans as they are currently are, and consider these revised proposals in the changed context of the NPPF and increasing focus on the impacts of climate change.

**ENVIRONMENT AGENCY:** No objection

Option 1 is to continue and build the complete IWMF with the intention of delivering the first phase (EfW plant) from 2024/25. Option 1 has no environmental permit issues as the permit was issued on the basis of all elements of the IWMF being built.

Option 2 is to only build those elements of the IWMF which are 'technically and commercially viable'. Depending on what elements were removed, Option 2 may need the developer to apply for a permit variation. This is due to the fact that all the elements of the IWMF are interconnected (integrated) and therefore removing one of more elements of the scheme may have an impact on emissions to the

environment. As a minimum, removal of certain elements is likely to affect the overall energy efficiency of the scheme and also its carbon footprint.

Option 3 provides for a planning application to be made for 'alternative waste management and/or energy generation uses'. Option 3 would need a new environmental permit application to be submitted and a permit to be issued before any commencement of alternative waste treatment and/or energy generation uses.

BRADWELL WITH PATTISWICK PARISH COUNCIL: Objection – consider the details are incomplete as they should provide details of when all the components of the IWMF will be commenced and completed. Option 3 suggests only the incinerator will be built and permission sought to increase its power output. WPA should require a complete plan of action.

KELVEDON PARISH COUNCIL: Objection. The plan of action does not meet the full requirements of condition 66. The plan of action is in contradiction of the authorised permission granted in 2016 and goes against the wishes of the Inspector's original decision.

The plan of action represents a material change and therefore requires a new planning application. It has become clear that the commercial feasibility of a paper pulping plant is currently lacking and therefore, for at least the time being, the IWMF will be little, if anything, more than an incinerator. Commercial reasons should not allow for Condition 66 to be discharged.

The plan of action also does not comply with the waste hierarchy as stated in the ESS/36/17/BTE stack height refusal. Kelvedon Parish Council objects to the construction of an incinerator at this point in time, when Braintree District Council have declared a climate emergency and when there does not appear to be a current shortage of incinerator capacity in this region. There is also the pressing issue of air contamination from both the incinerator and the considerable number of vehicle movements that will be required in order to supply such an enormous incinerator with waste. Current research indicates a very detrimental impact of air pollution on health - linking to asthma and early death.

Furthermore, Kelvedon Parish Council objects to the discharge of Condition 66 on the basis that the applicant appears to have shown disregard for the Planning Authority, the Secretary of State and the planning process, through a process of planning creep and continuous change.

SILVER END PARISH COUNCIL (adjacent Parish): No comments received

COGGESHALL PARISH COUNCIL (adjacent Parish): Objection. The plan of action does not meet the full requirements of condition 66 on the basis:

1. Is non-compliant;
2. Contradicts the Authorised permission granted in 2016;
3. Is not viable as consented by their own admission and therefore ECC must stop the development;
4. Goes against the express wishes of the Inspector's original decision;
5. Does not comply with waste hierarchy as stated in the ESS/36/17/BTE stack height refusal;



6. Does not represent 'non-material changes' and as such requires a new application;
  - a. Changes significantly,
  - b. Is described in a different way,
  - c. Has components removed meaning it is designed differently,
  - d. Will result in different objections;and
7. Contravenes the policies W8A and now W10B and W10C.

In addition the applicant has stated they will not adhere to the authorised permission, CPC requires ECC to enforce condition 66 and cessation of the development coupled with a scheme of rehabilitation.

The response was accompanied by a statement expanding upon the points raised above and the full response is attached at Appendix E

FEERING PARISH COUNCIL (nearby Parish): Objection. We have read the objection comments received by Bradwell with Pattiswick Parish Council and we agree with their comments. The document which has been submitted as a plan of action is missing important information and until this plan of action is complete, we cannot support the discharge.

Feering Parish Council would also like clarity as to Indaver's role in the application for the discharge of condition 66. The original application ESS/34/15/BTE was submitted by Gent Fairhead and permission was given to Gent Fairhead. There is confusion between the relationship between Indaver and Gent Fairhead. Will Indaver be delivering the whole of the Integrated Waste Management Facility or are they just delivering part of it? We would like clarity as to who the "operator" is.

Officer Comment: The planning permission runs with the land, not the applicant.

RIVENHALL PARISH COUNCIL (nearby Parish): Objection, submission made on last day possible and is not "a plan of action for an alternative use" only speculative suggestions and there is no site restoration proposal is included. The restoration scheme should include replanting the woodland.

Condition 66 has been triggered because there has been no beneficial use of the site, in fact nothing has been built since it was granted in March 2010, some 11.5 years ago and it has been stated no waste processing will take place before 2024/5.

Option 1 says that the IWMF will be built as permitted, but it has been stated at Liaison meetings by Gent Fairhead/WREN that the paper pulp plant is now not commercially viable. Indaver have stated at liaison meeting that alternatives are being explored "on and off site" to take heat from the incinerator. Such uses would be outside the scope of the current consent.

Option 2 is to "build out those elements within the consent which are technically and commercially viable, all within the building which currently has consent". But this also does not align with the known facts. Indaver has stated at the liaison meeting, and in writing to the planning authority, that the only element they are

committed to construction is the waste incinerator, with commissioning by 2024/25. There is no commitment to any other elements of the IWMF, no evidence has been submitted that these other elements are not commercially viable.

Option 3 - is to "submit an application for consent for alternative waste management and/or energy generation uses". Indaver state that they are in dialogue with ECC regarding the lawfulness of their approach, but ECC have stated they require the IWMF to be built in full. It appears even after many years that there will be more changes.

Indaver have mentioned the possibility that they may wish to increase the power output to greater than 50MWe, which would require a development consent order from the Secretary of State. The incinerator has grown in size from 300,000 tonnes of waste per year to 595,000 tonnes per year in stages. It now appears that a further increase is under consideration with more, not less, uncertainty as to what the developers are really intending to build.

The application fails to offer any plan of restoration and only vague suggestions of what the alternative to the IWMF could be. It appears the IWMF has consented is not viable as consented and therefore WPA should bring an end to the ongoing "planning creep" and require a fresh and full planning application of what Indaver actually wants to build. This is important because in 2019 the WPA refused an application for a higher stack, with one of the reasons given being that the IWMF was not required for Essex waste needs. A new and full planning application for the actual plant Indaver wants to build would allow consideration of whether that plant is needed for Essex and a judgement could then be made as to whether that plant would be acceptable set against current planning policies and climate change legislation.

**LOCAL MEMBER- BRAINTREE - Witham Northern: Objection.**

By removing Condition 66 this no longer becomes an "integrated" waste management facility, with many of the components from the original planning application stripped out by the developer. If the IWMF is not built out with all the components, then this must be considered a breach of the original planning consent which was for all elements and demonstrates more than a "non-material" change to that application.

Furthermore, the parts that have been removed, such as the Pulping Paper Recycling Facility, brought environmental benefits of recycling and recovery of reusable materials – offsetting some of the harms from incineration. These are now gone, and this goes against the expressed wishes of the inspector's original decision.

The 'plan of action' that has been submitted by the developers is incomplete and, along with the continued changes to the application, demonstrates a complete disregard towards the planning process, the Planning Authority and most importantly to local residents.

**LOCAL MEMBER- BRAINTREE - Braintree Eastern: Objection.**

In 2010 the Inspector permitted an Integrated Waste Management Facility (IWMF) and the then Labour Secretary of State (SoS) supported this. An IWMF is, by

definition, made up of different elements and the inclusion of these “greener” elements was the only reason the dirty, environmentally damaging incinerator secured planning permission.

At no point did the Inspector or SoS allow for individual components to be omitted.

The IWMF has permission for an Anaerobic Digestion Plant (AD) treating mixed organic waste, producing biogas converted to electricity through biogas generators; Materials Recovery Facility (MRF) for mixed dry recyclable waste to recover materials e.g. paper, plastic, metals; Mechanical Biological Treatment (MBT) Facility for the treatment of residual municipal and residual commercial and industrial wastes to produce a solid recovered fuel; De-inking and Pulping Paper Recycling Facility to reclaim paper; Combined Heat and Power Plant (CHP) utilising solid recovered fuel to produce electricity, heat and steam.

Condition 66 sets out that in the event that the IWMF is not brought into beneficial use within five years of commencement of the development (as notified under Condition 1) the operator shall within six months of the end of the five-year period submit a plan of action for an alternative use or a scheme of rehabilitation for the site for approval by the Waste Planning Authority. The plan of action for an alternative use or scheme of rehabilitation shall be implemented within six months of approval by the Waste Planning Authority.

At the Indaver/ECC Rivenhall Waste Liaison Committee on June 17, 2021, Indaver stated that the Paper Pulping Recycling Facility was not commercially viable and would no longer be going ahead.

There has been some disagreement over what John Ahern of Indaver said at the meeting on June 17, 2021, about the hangars for the non-incinerator elements of the IWMF. The meeting was not recorded and there was no stenographer taking verbatim notes. I thought Mr Ahern made a pledge that at some point in the future Indaver would build an “empty hangar” at the cost of “£30million” to house the other elements of the IWMF after the incinerator was built and operational at the end 2025. As chair of committee, I tried to get this minuted but in an exchange of emails Mr Ahern said that was not what he said. Mr Ahern says he said Indaver would not build an empty hangar that it had no use for and costing £30million as that would be a waste of resources. He added: “However we are keen to build the hangars provided we have developed a beneficial use for them.”

So it can be deduced, Indaver currently hasn’t developed a beneficial use for and has no plans to build the infrastructure - empty hangars or otherwise - for the non incinerator elements of the IWMF.

This implies an arbitrary approach to the authorised planning permission.

Indaver has clearly indicated its intention to build the incinerator element of the plant first and vaguely suggests it is seeking partners to develop the AD, MRF and MBT. Seeking partners. Who, when, where, why, what? There are more questions than answers.

A separate company, Wren Renewables had previously stated it would bring

forward the development of the direct use of the heat and steam element of the IWMF.

But now Wren has stated that the market to reprocess high quality paper, the material which was aimed to be treated in the paper pulp plant, has changed, such that at the current time Wren no longer consider there is a market demand for the facility.

Wren has stated it is working with Indaver to find alternative proposals for the direct use of heat and steam from the incinerator. Where, when, with whom?

Thomas Fairhead, a director of Gent Fairhead, the company that secured permission for the IWMF in 2010, is also a director of Wren Renewables. Has another company involved in paper pulping been approached in regards to the viability of the Paper Pulping Recycling Facility at Rivenhall? It would be preferable to have an objective answer from a company not previously involved.

It is quite clear Indaver is only committed to building the incinerator - the dirty, climate-harming element - and not the greener elements of the IWMF as permitted. This is a significant change and one that needs to go back to the committee if not the SoS as a new application.

To date, apart from removing Condition 66, no application has been made to change the development as currently permitted.

Indaver has only made vague pledges to seek partners with respect to the AD, MRF and MBT, and the £30million hangar pledge if there's a "beneficial use" appears to be a cynical attempt to hoodwink ECC to get the incinerator-only element of IMWF through the final stages of planning.

If Indaver does eventually build a hangar at a cost of £30 million for the other elements, that sum is chicken feed when it comes to the profits the incinerator would make in its 30-year life span and could easily be written off as planning expenses. Based on the Croydon incinerator's profit figures, £80-£120 is charged per tonne of waste incinerated - that's £60 million a year income for the 600,000 tonnes per year Rivenhall incinerator or £1.8 billion over 30 years.

The Environment Agency has confirmed the transfer of their permit from Gent Fairhead to Indaver and has been transfer on the "as is" design & extant planning basis.

Dropping the Paper Pulping element of the permission will impact the calculations concerning emissions and heat outputs within the original EA permit, and as such, should be reviewed as well.

The five-year time limit (Condition 66) where the IWMF must be making a beneficial contribution has expired since they had a legal start on the 2<sup>nd</sup> March 2016.

The condition states that they have six months to provide a new plan of works and if none is received six months to restore the site.

Condition 66 requires that if there was no beneficial use of the IWMF within five years of commencement (i.e. 2<sup>nd</sup> March 2021), then the applicant is required within six months (i.e. 2<sup>nd</sup> September 2021) to "...submit a plan of action for an alternative use or a scheme of rehabilitation for the site...".

Indaver's plan of action is to remove Condition 66. That's not a plan of action - that's simply sidestepping the condition.

All this plan of action does is abuse the use of conditions, question their validity and inject a huge level of unacceptable risk and uncertainty; it is simply not clear what will be delivered.

The world has changed in the decade since the IWMF was permitted in 2010. If paper pulping is no longer commercially viable due to the impact of Covid19, then burning waste cannot be considered environmentally sustainable with all the scientific evidence that has been gathered on climate change since 2010 - and empirical evidence we see on our TV screens every day.

In the 11 years of delay and change we have a much deeper understanding of how air quality impacts human health and the environment; waste incineration may have been acceptable in the 20th century but it has simply become unacceptable in the 2020s. The USA stopped building new waste incinerators in the 1990s.

We now understand the impact of poor air quality and the damage that the emissions from the incinerator will do to both our environment and our health in terms of climate change, small particles, and with CO2 emissions taking centre stage and driving an unprecedented and current 1.5C increase in global warming.

Global emissions must peak by 2025 to keep global warming at 1.5C. The Rivenhall incinerator is set to start operating at the end of 2025.

On this basis, ECC must now stop development on the site, understand what is being built and require a new application based on the latest scientific knowledge, not ones that prevailed 5-10 years ago before making a much more informed decision.

Addressing Condition 66 provides the opportunity to reassess environmental impact and climate change impact in light of current data, thinking and evidence. I strongly object to the removal and discharge of Condition 66 and ask ECC's Development & Regulation committee to consider rejecting the application.

## **6. REPRESENTATIONS**

In accordance with the adopted Statement of Community Involvement, as this was not a planning application, but an application to discharge details required by condition no properties were directly notified of the application. Nonetheless, 100 representees have sent in comments, including one from Priti Patel MP, which is attached at Appendix F. The issues raised are summarised as follows:



<u>Observation</u>	<u>Comment</u>
The Inspector's report and SoS decision envisaged the IWMF to be built in its entirety not just the incinerator, all elements should be delivered, CHP, MRF, MBT, AD and paper plant	See appraisal
Plan of action states will build to permission authorised, but focuses on CHP with no commitment to other processes, thus non-compliant with the permission which is for all elements as set out in the description of development.	See appraisal
The applicant has failed to comply with the essential terms of the condition and therefore the application should be rejected.	See appraisal
The "plan of action" constitutes little more than a very brief summary or menu of potential options for further consideration and decision.	See appraisal
There is no detail in the C66 letter about "an alternative use" and nothing at all about a "scheme of rehabilitation" that would constitute a 'plan' and clearly the IWMF has not been "brought into beneficial use within 5 years of commencement of the development".	See appraisal
It is not a "plan of action" but a plan to delay and stall. It makes no firm commitments on the approach being taken and it appears it is being used as a tool to keep open the prospect of more damaging development taking place on this site and because, by their own admission, the currently approved scheme is not commercially viable.	See appraisal
Moreover, the reason given for the condition states that the plan of action is proposed so:	
<i>that the site is either planned for an alternative use or the site rehabilitated in the interests, of minimising the adverse environment impacts of incomplete</i>	

## *implementation*

The submission from Indaver is neither a substantial plan 'for an alternative use' nor is it a plan to rehabilitate the site.

The submission from Indaver and the three options it suggests provides no such certainty over the future and no clarity about what they will develop. It merely concedes that the development cannot take place as currently consented. A clear alternative is not given and no timetable to deliver such an alternative is provided either.

See appraisal

The submission from Indaver is neither a substantial plan 'for an alternative use' nor is it a plan to rehabilitate the site. It is therefore questioned why the application was validated.

See appraisal

Condition 66 is designed to provide people with certainty about the future of the site if the consented scheme is not developed as approved within the designated five year timescale. Condition 66 was put in place to give a reasonable time for the site to be fully completed as proposed, which it has not been. The document from Indaver and the three options it suggests provides no such certainty over the future and no clarity about what they will develop. It merely concedes that the development cannot take place as currently consented. A clear alternative is not given and no timetable to deliver such an alternative is provided either.

See appraisal

Consequently, any decision to discharge condition 66 based on the document and evidence provided by Indaver would not provide further certainty and clarity and would have the opposite effect. The application does not constitute a clear 'plan of action' and as such it must be refused by the Council.

One of the three options includes the prospect of new build incinerator of a

See appraisal

larger and more environmentally damaging scale than the one that falls within the existing consented scheme (Option 3). Although such a proposal would need to go through the Development Consent Order process, the Council should consider in relation to the discharge of condition 66 whether this proposal is viable and credible. A development on this scale would not be viable or credible and given how damaging it would be for the environment the Council should not accept this as being a credible 'plan of action' for the site for the purposes of discharging condition 66.

Options 1 and 2 are not credible as 'plans of action' for the site as they give no details of timescales and both options would represent a significant net increase in the environmental harm caused by the site by focusing on developing and putting into the use the incinerator first or the incinerator only. As such, all three options listed are not credible and as they do not represent a 'plan of action' and do not provide certainty over the future of the site they should be rejected.

See appraisal

Nothing will be brought into 'beneficial use' for several years to come - Indaver say not before 2024/5.

See appraisal

The application states "To build out the permission as authorised by the Planning Permission." It is stated Indaver will be working with Gent Fairhead (WREN), but it has been verbally stated at liaison meetings that the pulping plant is not commercially viable. It has also been stated alternatives to take the heat are being explored on and off site, this is outside the scope of the current consent.

See appraisal

Given the recent liaison meetings, attended by the ECC officers, and the submitted plan of action in response to condition 66 clearly stating they are only

See appraisal

'bringing forward the Incinerator', constructing the remaining elements' only if they are commercial and technically viable'. When do you consider you have been 'officially informed' of the changes?

The operator Indaver stated at all liaison meetings and in writing to the planning authority that the only element they are committed to constructing is the waste incinerator.

See appraisal

How will you mitigate the risk that the applicant only builds the Incinerator under option one contravening the authorised planning permissions?

Given the EA response, when do you consider the integrated nature of the authorised planning is breached?

See appraisal

Given the original application was controversial and only allowed after ministerial call in and with the application expressly including all elements, and it was the clear wish of the then Secretary of State that all would be delivered together, why is ECC not requiring a plan for all elements to be built, as per condition 66?

See appraisal

Please can you identify what beneficial use has been cited and that will allow the discharge of condition 66?

See appraisal

Given the 'uncertainty risk' now associated with this development, why is ECC not stopping this development?

See appraisal

Since the only way residents, stakeholders, and statutory bodies can adequately engage and given the significant level of risk and uncertainty, will the Council and its Development and Regulation Committee stop the currently unauthorised development and require a new application?

See appraisal

The link between the EfW and the paper

See appraisal

plant was given weight in the original consent recommended by the Inspector in 2009 and confirmed by SoS in 2010.

The application makes no commitment to the consented MRF, MBT, AD or paper pulping plant. See appraisal

Indaver state there has been dialogue with ECC in regard to lawfulness of their approach, but WPA has stated it considers the IWMF should be built in accordance with the permission. See appraisal

Indaver state they are exploring increasing the power output to 50MW, which would require a Development Consent Order from the SoS. In other words Indaver are looking to increase the capacity of the waste incinerator yet again, from 595,000tpa to in excess of 800,000tpa

Indaver has stated it does not intend to increase the input to the CHP above 595,000tpa. Any increase in electricity generation capacity would arise from the efficiency of the incinerator. An increase above 50MW would require a Development Consent Order which would be considered by the SoS.

The IWMF has been delayed and changed over a number of years, it is clear the IWMF is not viable and ECC should require a fresh full planning application, when Indaver knows what it wants to build. ECC stated in 2019 that the IWMF was not longer needed for Essex. See appraisal

A new application could be judged against current policy, including sustainable development goals and climate change legislation. See appraisal

The current submission provides no details of a restoration plan and only raises more uncertainty as to the alternatives to the current consent. See appraisal

The plan of action is not complete it does not provide details of when other consented waste management and energy components will be commenced and completed. See appraisal

The plan of action does not provide sufficient detail to discharge the condition. See appraisal



The applicant has stated not all elements are viable and therefore the development should be stopped.	See appraisal
Without all elements goes against the decision of the SoS.	See appraisal
Proposal do not comply with waste hierarchy as stated in 2019 refusal.	Applications ESS/36/17/BTE & ESS/37/17/BTE were for an increase in stack height and the applications were determined on their individual merits at that time.
Proposal requires a new application as described differently, removes elements of the permitted development, would give rise to different objections.	See appraisal
Contravenes WLP policies W8A and now W10B and W10C	These policies while referred to in the decision for ESS/34/15/BTE, have now been superseded by policies of the Waste Local Plan 2017.
Proposals do not adhere to the planning permission; development should be stopped and rehabilitation plan should be submitted.	See appraisal
Does not comply with stack height refusal	Applications ESS/36/17/BTE & ESS/37/17/BTE were for an increase in stack height and the applications were determined on their individual merits at that time.
Non-compliant and contradicts 2016 planning permission	See appraisal
Goes against the Inspector's original decision	See appraisal
The applicant has stated that they will not adhere to the authorised permission and therefore the plan of action must be considered unviable.	See appraisal
The document significantly changes the original proposal and cannot be seen to represent 'non-material change'	The applicant has made the submission to address a condition, it is not an application for a non-material amendment. Also see appraisal.

To proceed in the way described requires a new application	See appraisal
Urge ECC to enforce condition 66, ordering development to be stopped and a scheme of reconstitution to be submitted	See appraisal
Neighbours should have been directly notified of this application.	The application was consulted on in accordance with Statement of Community Involvement. Also see appraisal.
The incinerator was granted consent in 2016 and given 5 years for a reason. Political, economic, social, technological, legal and environmental frameworks change quickly and in a given timescale planning law allows for consents but ensures a backstop for significant changes that may occur over the period.	See appraisal
Section 91 of the Town and Country Planning Act states that the time period in the conditions has regard to the “provisions of the development plan and other <i>material considerations</i> ”.	
The period between 2016 and 2021 is possibly one of the most important and significant upheavals in recent history for changes that can be classed as ‘ <i>material considerations</i> ’.	
a. Political – Brexit, geopolitical changes and local government changes have seen a huge shift in the global, national and local political sphere that changes the way the UK and the local area perceive relationships and policies since 2016. This affects relationships in Europe, supply chains, resource efficiency and environmental expectations. In that period the local area has moved towards green political parties who have seen significant gains in local elections due to the concerns over the incinerator, global warming and	

the extension of the gravel pit.

- b. Economic – the economics of incineration v landfill v recycling v reuse have significantly altered over the last 5 years. Landfill has increased by about 20% in this time. There is little energy from waste in the incinerator to justify the incineration route. It saves money to recycle materials and use in new materials. The demand for recycled content in roads, flooring, concrete, steel, gypsum, insulation, furniture, fabrics, other building materials has increased enormously over the last 5 years and will increase exponentially over the next few years. Burning waste will not allow this demand to be met. It is essential that resources remain on the planet to meet the recycled content demands rather than mining or extracting virgin materials.
- c. Social – there is less contamination in recycling waste due to an additional 5 years of domestic and industrial habits and processes to ensure better segregation. This makes recycling more viable. COVID and lockdowns have changed the way people view the environment and what they expect from local authorities in order to meet carbon targets and recycling which is intrinsic to environmental performance.
- d. Technological – technology is changing rapidly and there are significant advances over the last 5 years in recycling major waste products including concrete, steel, gypsum, plastics, household waste to meet circular economy principles. New recycling processes, 3 D printing, enhanced AI and data use will mean resources can be extracted from materials more easily and

manufacturers are changing to a more flexible and adaptable model for products to allow this.

- e. Legal – since 2016 and the Paris Agreement there is no doubt in anyone's mind that climate change is occurring. Up until that point there were still climate sceptics in government and other industries. The greenhouse gas emissions from the incinerator do not meet the UK 2020 carbon budget or net zero target. In addition the UN IPCC Report August 2021 states unequivocally that the next 10 years are key to reducing emissions to prevent catastrophic change. The incineration strategy does not comply with the 2020 carbon budget submitted by the Committee on Climate Change to the Government in line with the Climate Change Act, which states that to meet targets the UK needs to waste fewer resources. Incineration results in resources being lost forever when part of these could be recycled. The incineration model relies on a constant supply of waste to be incinerated to keep the plant running and profitable. This encourages incineration of resources rather than looking at other routes and a circular economy.
- f. Environmental – all industries recognise that the circular economy is key to achieving net zero as it encourages reuse, material efficiency, standardisation, recycled content in materials, low embodied carbon for materials and designing out waste. Incineration as a means to dispose of waste in 2021 does not fit into this model.

All the built environment key bodies such as RICS, RIBA, BRE, CIOB, UKGBC, LETI Climate Emergency Design Guide and Embodied Carbon Primer and

CIBSE as well as architects, contractors and the supply chains now recognise that a circular building project is key to meeting net zero targets.

For the above reasons an extension of time is not acceptable for an incineration plant that not only is much higher in burnt volumes than originally granted but also does not include the recycling required to meet UK and global targets. The landscape has changed in the last 5 years and to extend the time scales on a scheme that was devised in 2016 when so much has changed does not meet planning or environmental legislation.

No need for facility, will generate green house gases, give rise to air pollution, reduce air quality increasing particulates in the air from the lorries and the removal of elements that were aimed at recycling materials should be investigated.

The Inspector's report in 2010 in making a positive recommendation relied upon the fact, which is referred to several times within the report that the planning permission was granted on the basis of the benefits of the facility because it was integrated. Removal of this integration would not deliver the sustainable development that was envisaged and granted by the Inspector.

If only the incinerator alone is developed, there is potential the applicant would seek to increase the capacity of the incinerator to utilise all the permitted HGV movements.

The potential alternative developments suggested, may not be practical or viable and give rise to different impacts than those previously considered.

The developer in making the

The application is not for an extension of time to implement the planning permission. There is an extant planning permission. The application seeks to discharge condition 66. See also appraisal.

See appraisal

See appraisal

An application would be required to increase the capacity of the incinerator.

The information submitted with the application and presented at the liaison meeting, gave only an indication of possible alternatives that might be proposed at the site. If and when an application is made for alternatives, the impacts would be considered at that time.

The EA permitting regime is separate to



Environmental Permit application made reference to only building the incinerator element of the IWMF

the planning process. The EA have stated that an EP variation may be required if only the incinerator element is brought forward.

Request a copy of the legal advice obtained in relation to this application

Legal advice subject to legal privilege. See also section J

## 7. APPRAISAL

The key issues for consideration are:

- A. NATURE OF THE APPLICATION
- B. INTERPRETATION OF CONDITION 66 AND WHAT IS REQUIRED
- C. WHETHER THERE IS CURRENTLY A BREACH OF PLANNING CONTROL
- D. APPRAISAL OF THE INFORMATION SUBMITTED TO DISCHARGE THE CONDITION
- E. APPRAISAL OF OPTION 1
- F. APPRAISAL OF OPTION 2
- G. APPRAISAL OF OPTION 3
- H. IMPLICATIONS IF NONE OF THE OPTIONS WERE APPROVED TO DISCHARGE CONDITION 66
- I. ENVIRONMENTAL PERMIT
- J. LEGAL ADVICE
- K. CONCLUSION

### A NATURE OF THE APPLICATION

It is important to clarify the nature of the application. This is not a planning application; it is an application to discharge details reserved by a planning condition. There has also been some confusion that the applicant is seeking to delete the condition, which could only be achieved through S73 of the Town & Country Planning Act (often known as a variation application). This is not the case. The application seeks to submit details required by the condition, so that they can be approved or refused, not to delete the condition. An approval granted under a condition attached to a planning permission may itself be granted subject to conditions (this is clear from the terms of section 78(1)(b) of the Town and Country Planning Act 1990 ("the 1990 Act") and the decision in *Pressland v Hammersmith and Fulham LBC* [2016] EWHC 1763, as approved by the Court of Appeal in the Court of Appeal in *Fulford Parish Council, R (On the Application Of) v City of York Council* [2019] EWCA Civ 1359 (30 July 2019). Conditions attached to an approval should not ordinarily go to the principle of the development authorised by the permission. In the present case, however, the approval under condition 66 is referring to a procedure (a plan of action) separate from that which is permitted under the planning permission. The plan of action would supersede the development authorised under the permission and may entail the modification of what is authorised by the permission with appropriate and new conditions controlling the use or development. If the plan of action is the continuation of the development under the existing planning permission, additional conditions to those attached to the permission may be imposed to control how the authorised use may

be carried out. Such conditions must, however, be lawful and imposed in accordance with policy; this is dealt with further below.

As an application to discharge a condition, the application would normally only be subject to consultation with relevant technical consultees to the subject matter of the condition. In this case because of the nature of the condition and the high public interest in the site it was felt appropriate to consult wider, including local councils. Some local residents have raised concerns that neighbours were not directly notified, but the application was consulted on in accordance with the Council's Statement of Community Involvement.

While the application is not a planning application, the application is able to be considered against current planning policy and any other material considerations.

The effect of condition 66 is that a plan of action to bring forward either an alternative use or remediation rehabilitation is required and that any development of the Site under the permission for the permitted development (as amended) will be required to be replaced by the proposals contained in the plan of action or remediation rehabilitation scheme. An application to discharge the condition should include both a scheme of rehabilitation and a plan of action as alternatives. This makes sense of the condition since it achieves a resolution of the future of the permission, in accordance with the purpose of the condition.

It should be noted that the application site for the IWWMF site was included within the planning application areas for the mineral extraction of both sites A3 and A4 (ESS/24/14/BTE and subsequent variations) and later site A5 (ESS/03/18/BTE and subsequent variations). Under these planning applications, restoration schemes were included as to how the IWWMF site would be restored should the IWWMF not progress.

A proposed "alternative use" under the plan of action that is not that already permitted under the existing planning permission (Ref ESS/34/15/TE) would need to be judged against the current policy position and context; this is because the effect of condition 66 is to approve a use or development which will supersede the current authorised use. However, while the "Plan of action" may set out a way forward to achieve an alternative use for the site, anything that is not that already permitted would need to be subject of a new planning application supported by all the necessary supporting information, and potentially require Environmental Impact Assessment, to enable proper consideration of the individual merits of the alternative use. It is not possible under condition 66 to give express planning permission for the "Alternative Use" (unless the same as that already granted planning permission), only a "Plan of action" of how that "Alternative use" might be achieved. The applicant does have the right of appeal should the details be refused or against any condition(s) imposed on any approval.

The timeline for submission under condition 66 was specified and has now expired. It is not therefore possible for a further submission under condition 66 to be made.

## **B INTERPRETATION OF CONDITION 66 AND WHAT IS REQUIRED**

As explained previously condition 66 was added to the conditions of the IWWMF

permission as part of the determination by the WPA of planning application ESS/34/15/BTE.

At the time ESS/34/15/BTE was determined no EP from the EA had been obtained for the IWMF. The purpose of the condition was to seek to ensure that, if the IWMF were implemented but did not ultimately gain an EP or failed to be constructed, there was a mechanism by which the site would be put to alternative beneficial use or the site rehabilitated. The IWMF has subsequently obtained an EP and thus the IWMF has both an implemented extant planning permission and an EP to operate.

Condition 66 requires that if the site was not in beneficial use within 5 years from commencement i.e. by 2 March 2021, then within 6 months (2 September 2021) an application for a scheme of rehabilitation or a plan of action for an alternative use should be made for approval by the WPA.

When originally imposed, the condition did not anticipate the current scenario whereby the implementation of the planning permission was positively progressing but that the site had not been brought into beneficial use. At the time the condition was imposed it was anticipated that within the 5 years an EP would either have been gained and the IWMF completed or that potentially an EP might not have been gained and that the WPA needed a mechanism to minimise the environmental impacts of a partially implemented site, but stalled development.

Representations have also been made that the wording of the condition should allow the WPA to prevent development of the IWMF, as 5 years have elapsed and there is no beneficial use of the site. Notification of commencement i.e. implementation of the planning permission, was given to the WPA in accordance with Condition 1 and it was confirmed by the WPA that the permission had been lawfully implemented on 2 March 2016. Thus, at this stage, there remains an extant permission.

However, the effect of condition 66 is that its mechanism overtakes the originally permitted use and provides for the replacement with either a "Plan of Action" to seek to achieve an alternative use or for rehabilitation of the site, whichever is approved by the WPA. Because the purpose of the condition is to achieve a position by which the adverse environmental impacts of incomplete implementation will be minimised (see the reason for the condition), the application under the condition must include both options: a plan of action for an alternative use and a scheme of rehabilitation as an alternative.

Consistent with its purpose, the condition envisages that, if the "Plan of action for the alternative use" is refused, there will be rehabilitation of the site and that, therefore, an application would allow the WPA to refuse the plan of action for an alternative use but allow rehabilitation. If only a plan of action for an alternative use was capable of being applied for, without the alternative rehabilitation option, and the application was refused (and dismissed on appeal), then the site would remain in its partially developed state, contrary to the purpose of the condition. Consequently, both options should have been applied for, but the application is only for a plan of action for an alternative use. The consequences of this are dealt with below.

It is the WPA view, having taken legal advice, that the condition does not allow for the use permitted under the planning permission and the “alternative use” to come forward simultaneously. Where a plan of action for alternative use proposes any development that requires express planning permission, whilst the plan of action to achieve that “alternative use” might be considered acceptable (such as the timescale for submission of an application), the actual principle and detail of the alternative use could only be properly considered through a separate planning application, with the appropriate supporting information (such as for the provision of the incinerator element of the CHP in isolation).

As there is no definition of “alternative use” in condition 66 the alternative use could be something which is the same as the use permitted under the current planning permission (ESS/34/15/BTE).

Consideration of the 3 Options put forward within the plan of action by the applicant is set out in sections E to G below.

It should be noted that the Department of Levelling Up, Communities & Local Government has requested that before a decision is issued with respect to the application, the SoS is given an opportunity to consider whether he wishes to intervene.

Some letters of representation have raised concern that the submission does not include “plans”. The dictionary definition of a “plan of action” is *“an organised programme of measures to be taken in order to achieve a goal”*. Comments have been made that it was envisaged that the “plan of action” should include drawings as to what is proposed, but the word “plan” in this context (or in its natural meaning) was not intended to mean a drawing and thus drawings are not required.

## C WHETHER THERE IS CURRENTLY A BREACH OF PLANNING CONTROL

There has been much concern raised by local councils and representees that there is a breach of planning control due to the fact that Indaver has openly indicated that it is not clear whether all elements of the IWMF would be built and, at the current time, are only focussing on building the incinerator element of the CHP. It is agreed that the correct interpretation of the planning permission is that all of the approved development (as set out on Plans 1-9A and 10A as conditioned by condition 2) must be carried out for the development to lawfully operate.

The conditions imposed do not prevent the building of the incinerator element of the CHP first. The extant planning permission is not restrictive in what order the individual components of the IWMF should be constructed.

The WPA has taken legal advice on the interpretation of the planning permission and the advice received is that constructing the incinerator element first is not in breach of the planning permission, as long as the construction is in accordance with the planning permission. Statements by the applicant that other elements of the IWMF may not be viable only at this stage gives an indication that other elements may not be built; not that they will not be built. In general terms, unlawful development must take place before any action can be taken by planning

authorities to remedy any breach of planning control, such action satisfying the test of being expedient to do so. At this time, it is considered there is no breach of planning control.

The applicant and its agents have expressed the view that to build the incinerator, without building all the other elements, would not be in breach of the planning permission. Such a contention is wrong. If the incinerator is constructed or commences operation and the other parts of the IWMF are not built and are unable to be integrated with the incinerator, it is the WPA's view that there would be a breach of planning control. The reasoning as to why the WPA take this view is set out below. Alternatively, if there is a clear statement that not all of the uses will be carried out, this will be sufficient to establish that the planning permission is not being completed in accordance with its terms. At the current time the applicant has not categorically stated in writing that it will not build other elements of the IWMF, as permitted. Indeed, option 1 of the condition 66 approval application is based upon all elements being carried out.

Considering the natural meaning of the words used in the description of the development in the planning permission, the description is of an "Integrated Waste Management Facility" which "comprises" certain elements. Naturally read it is considered that "comprises" means "amounts to" or "is"; that is, supported by the use of the word "integrated" – i.e. including the identified elements. Consistent with that description, the nature of that facility is identified in the plans identified in condition 2. Plans 1-9A and 10A identify each of the elements specified in the description of development and show how the facility would operate in an "integrated" manner. It is therefore considered plain that the "Integrated Waste Management Facility" is a development which includes all of the identified elements; the conditions require that to be carried out.

The interpretation of the planning permission is that it is for an integrated facility and was considered and granted on this basis.

The Inspector (in making his recommendation following the call-in inquiry in 2009/10) and the WPA (in considering subsequent applications) took into account all elements of the IWMF and how they would provide an integrated facility, maximising recycling and maximising the use of heat and steam, through a combination of power generation and direct use of the heat and steam to reprocess waste paper, in order to deliver a sustainable development.

It is evident within the Inspector's report and the subsequent WPA officer reports (ESS/34/15/BTE), that the consideration as to the acceptability of the IWMF in planning terms was on the basis that all elements of the IWMF would be delivered to result in sustainable development.

Extracts are set out below from the Inspector's Report of March 2010, with numbers indicating the paragraph from which the extract has been taken. (A copy of the Inspector Report is at Appendix A.) These extracts evidence that the 2008 application was considered by the Inspector on the basis of an integrated facility.

It should be noted that at the time of public inquiry the IWMF was referred to by the applicant as the eRCF (evolution of the Recycling Composting Facility).

Extract from Inspector's report section on "Prevailing Planning Policy":

13.4 "...it seems to me that the MDIP [Market De-ink Paper Pulp] is an integrated part of the eRCF designed to recover high quality pulp from waste."

Extracts from Inspector's report on "The quality of the design and sustainability implications":

13.16 "It seems to me that each of the waste management processes within the eRCF would benefit from the proposed integration with others. However, there is sufficient capacity in each of the processes to allow for variation thereby providing flexibility of use. "

13.17 "The integrated nature of the development would enable the power supply required to run the entire plant to be self generated at a lower carbon emission rate than electricity drawn from the National Grid."

13.19 "The use of SRF in the proposed CHP plant and the export of electricity to the National Grid would contribute to meeting the Government's Renewable Energy target of producing 15% of UK energy from renewables by 2020. The contribution would be increased by the proposed co-location of the MDIP and its consumption of heat from the CHP plant."

13.22 "...I conclude that the design of the eRCF is of high quality and that it would be a sustainable form of development which would enable the management of waste to be undertaken in a sustainable manner."

Extracts from Inspector's report on "Consistency with PPS10" [PPS10 – Planning for Sustainable Waste Management]:

13.32 "The eRCF would provide various means of dealing with waste, all of which would help to reduce the need for landfill. The various elements of the integrated plant would recycle waste, produce compost, and create energy from waste."

13.35 "The proposed facility would help to deliver these objectives by moving waste up the hierarchy. It would recover recyclables, produce compost and reduce the need for disposal of residual material to landfill by using such material as a fuel for combustion in the CHP plant. It would also use imported SRF from other permitted waste management facilities in Essex, which might otherwise go to landfill. The scheme would generate electricity and provide a specialized facility for the recovery of recycled paper. Although the combustion of waste is only one step above landfilling in the waste hierarchy, the CHP is only one of the facilities that would be available at the eRCF. In my judgment, this integrated plant would allow the anticipated waste arisings to be managed as far up the waste hierarchy as reasonably and practically possible. Moreover, it would significantly reduce the amount of residual waste that would need to be sent to landfill. In these respects the proposal is in accord with the objectives of PPS10."

13.38 *"The eRCF would allow Essex to increase its provision of sustainable waste management, secure increases in recycling and recovery, and reduce carbon emissions."*

13.40 *"Overall, I am satisfied that the proposal is consistent with the key planning objectives set out in PPS10. It would help to deliver sustainable development by driving waste management up the waste hierarchy and contribute towards ensuring the timely provision of sufficient waste management facilities to meet the needs of the community. With regard to self sufficiency, the facility would meet a need in the region to deal with MSW and/or C&I waste."*

Extracts from Inspector's report on *"The need for the proposed facility"*:

13.45 *"The CHP would reduce the need for landfilling of residuals from the MBT, and by using residues from the paper pulp recovery process as a fuel, it would remove a need for offsite disposal of such material and the potential for it to be sent to landfill."*

13.48 *The eRCF has the potential to increase still further the amount of recycling, treatment and recovery of waste in the County, and it seems to me that such facilities will be necessary to help ECC to meet its waste targets."*

13.49 *"I appreciate the concern that recyclable material should not be incinerated. Such an approach encourages the treatment of waste at a lower level in the waste hierarchy than need be the case. However, the application proposal would provide facilities to maximise the recovery of recyclable material and there is no reason to believe that materials which could reasonably be recycled would be used as fuel in the CHP."*

13.50 *"The proposed MDIP at Rivenhall would be capable of meeting the needs of Essex and the East of England in terms of the recycling and recovery of high quality paper, thus meeting WSE 2007 key objectives. The facility is likely to stimulate greater recovery of high quality paper waste. I agree with the applicants that it would help to divert a significant quantity of paper and card from landfill."*

13.51 *"The individual elements of the integrated plant would also help to satisfy various needs, including the need to move the treatment of waste further up the waste hierarchy and minimise the amount of waste that would otherwise be sent to landfill."*

Extracts from Inspector's report on *"The viability of the proposal"*:

13.57 *"A plant which is capable of dealing with large quantities of MSW and/or C&I waste (and in this case is combined with a specialised waste paper facility), provides considerable flexibility in terms of the type of waste that could be treated and the customers that could be served. It seems to me that such flexibility helps to maximise the economic viability of the*

project.”

13.64 *“It is arguable that the integrated nature of the proposed eRCF; its exceptionally large scale; and the very significant amount of investment that would obviously be needed for its development would, in combination, result in a degree of inflexibility. On the other hand, the modular nature of the design, the flexibility of capacity of each process, and ability to make alterations to various modules would allow the eRCF to be adapted to varying compositions of waste. Moreover, the multiple autonomous process lines would allow a particular process to be upgraded in stages if necessary. For example, a CHP process line could be upgraded or replaced without shutting down the entire CHP process. In this respect, the large scale of the development provides opportunity for changes to be made to the process without endangering the overall viability of the operation.”*

13.65 *“On balance, I consider that the design of the proposal and its multiple autonomous process lines would provide a reasonable and sufficient degree of flexibility to enable future changes in the composition of waste and the ways in which waste is managed to be accommodated. In this respect, the scheme would not be detrimental to the achievement of increased rates of recycling.”*

Extracts from Inspector’s report on “Conditions and obligations”:

13.161 *“I consider that the provisions of the S106 agreement are necessary to ensure that the necessary highway and access works are completed at the appropriate time in the interests of road safety; ...;to ensure the MDIP is operated as an integral part of the IWMF...”*

Within the conclusion of the officer’s report in 2016 is also evidence that when considering the extant planning permission (ESS/34/15/BTE), it was considered on the basis of an integrated facility as per the extracts below:

“The Inspector in considering the original application stated

*The eRCF is consistent with the key planning objectives set out in PPS10 [now superseded and embodied within the NPPW]. It would help to deliver sustainable development by driving waste management up the waste hierarchy and addressing waste as a resource. It would reduce the need for disposal by landfill and would recycle waste into marketable products. Moreover, it would have benefits in terms of climate change. It would also contribute towards ensuring the timely provision of sufficient waste management facilities to meet the needs of the community and assist in the implementation of ECC’s strategy to provide a framework within which the community takes more responsibility for its own waste. The eRCF would contribute to the implementation of the national waste strategy.*

It is not considered that the proposed changes would undermine these original conclusions. The proposal is sustainable development, in that it meets the needs of Essex & Southend; contributes to the sustainable management of waste; provides recycling capacity for C & I waste; provides



reprocessing capacity for recovered paper efficiently using on site heat and power; provides a source of energy offsetting fossil fuels and reducing greenhouse gases from alternative forms of energy, better waste management, in particular by providing capacity to divert C & I waste from landfill; and is in accordance with the principles of the waste hierarchy set out in the National Planning Policy for Waste.

The development is therefore considered to represent sustainable development for the purposes of the NPPF and is considered to comply with the relevant policies of the development plan taken as a whole.”

*Note: C & I is commercial and industrial waste.*

The WPA do not accept that the development of the incinerator element of the CHP could be operated alone under the existing planning permission.

The WPA considers that to operate the incinerator without all elements of the IWMF developed and integrated with it would be in breach of the planning permission (ESS/34/15/BTE).

If the developer should not construct the IWMF in accordance with the planning permission (which includes the permitted drawings), then the WPA would need to consider how to address any breach of planning control in the usual way, including whether enforcement action was appropriate to remedy any harm caused.

#### D APPRAISAL OF THE INFORMATION SUBMITTED TO DISCHARGE THE CONDITION

The applicant has indicated 3 potential options in their “plan of action”, as described in section 3.

As has been indicated above, there is an issue in that the current application does not propose any rehabilitation as an alternative option and, to that extent, it is defective. However, there are restoration proposals approved under subsequent minerals permissions providing for restoration of the site should the IWMF not have progressed. Whilst it could be argued that the application is invalid, the WPA must have regard to the ultimate expediency of enforcement action if it refuses to consider the application. In that regard, since a plan of action has been proposed, should this be regarded as acceptable, enforcement action could not be considered expedient because the applicant would only need to put in a planning application for the proposals and this (on the assumption that it is granted planning permission) would override any enforcement action undertaken at this stage. In these circumstances, the WPA considers it appropriate to consider the merits of the plan of action, in spite of the deficiencies of the application. The WPA also considers that, given that 3 separate options are proposed, each of which are proposed by the applicant to be acceptable, it may approve only one or more than one of the options.

Option 1 – is to seek to build out the IWMF as permitted

Should the other elements of the IWMF (namely MBT, AD, MRF and MDIP) not be

brought forward due to technical and/or commercial reasons then the applicant has indicated 2 potential alternative ways forward.

Option 2 - To build out those that are commercially and technically viable, which could involve building only the incinerator

or

Option 3 -To submit an application/applications/development consent order for planning permission for alternative waste management and/or energy generation uses.

The WPA is of the view that it should consider each of these options against the Development Plan and other material considerations. Appraisal of the three Options is set out in the subsequent 3 sections of this report – E, F and G.

## E APPRAISAL OF OPTION 1

Option 1 – is to seek to build out the IWMF, as permitted

Condition 66 when drafted, as previously mentioned, did not anticipate the scenario that within 5 years of implementation of the planning permission i.e. 2 March 2021 the IWMF would not be in beneficial use but was positively progressing to achieve its operation. The condition sought to ensure that the site was either rehabilitated or there was a “Plan of action” in place to achieve an alternative beneficial use.

The applicant under Option 1 has proposed to continue implementation of the extant planning permission, with beneficial use planned by early 2026. As mentioned previously, at the current time the works being carried out are considered to be in accordance with the planning permission. The works to construct the site infrastructure (including the extraction of the overburden to create the void in which the facility would sit and works to take forward the refurbishment of the Woodhouse Farm Listing Building complex) are all in accordance with existing planning permission.

The applicant has indicated that it is likely to take 3 to 4 years (i.e. until 2025/26) to construct the IWMF, which is longer than originally proposed (24 months construction). No condition was imposed in the planning permission that restricted the period within which the development was required to be constructed, save for Condition 66. The applicant has provided an anticipated construction timeline that shows why it is predicted that construction period will be longer than originally envisaged.

This longer period of construction would also result in a longer period of the impacts arising from construction, such as construction traffic, noise, dust, light pollution, visual and landscape impacts and a longer period of extended construction hours permitted by condition 35 (7am to 7pm Monday to Sunday, but not public holidays). However, mitigation was included in the application for the IWMF (ESS/37/08/BTE) and conditions imposed in the extant permission to minimise the environmental impacts.

While there have been amendments to National planning policy and updated Development Plan documents since the consideration of the IWMF planning permission in 2016, these changes have not given rise to any significant changes in the objectives and aims of the planning policy since consideration of the IWMF proposals in 2016.

The Waste Local Plan adopted in 2017 confirmed the site of the IWMF as a Strategic Site Allocation (IWMF2) under policy 3 (for residual non hazardous waste management and biological waste management. The IWMF would provide a treatment facility for biological treatment of waste, via the AD facility and in part from the MBT facility. The MRF, CHP and MRF elements of the IWMF would provide waste treatment for residual non hazardous waste. The MRF would provide an opportunity for waste imported to the site to be processed to remove any remaining recyclates prior to incineration. The MDIP would provide a facility to reprocess waste paper utilising the heat and steam directly from the CHP.

Policy 3 of the WLP also requires “Waste Management ...will be permitted where proposals take into account the requirements identified in the relevant development principles:...”.

The development principles for site IWMF2 are set out below in italics with appraisal of conformity below each principle.

*The following specific issues and opportunities are to be addressed:*

- *Any development of the site would need to ensure mineral traffic associated with the quarry (MLP sites A3, A4, A5, A6 and A7) is still able to utilise the existing access road to the A120.*

The access road to the IWMF as permitted would not hinder utilisation of the access road to the A120 for mineral traffic to Bradwell Quarry.

- *Widening of private haul road to two way working and improvement of minor road crossings (as identified in S106 attached to extant planning consent for IWMF)*

Widening of the access road and improvement of the crossings is secured through existing conditions and the existing S106.

- *Waste traffic would use the existing access, which would be required to made to a standard suitable for road traffic from the existing mineral processing area to the waste site. HGV movements would be restricted in line with current permitted movements to avoid adverse impacts to the A120. Provision of screening on south-west, south-east and northern boundaries would be important. Views from the Essex Way should be screened. The access road to the facility should be at low level with planting on both sides of the access road.*

The access road details have been submitted and approved and require a standard suitable for road traffic. Conditions limit HGV movements to 404 movements per day. Tree planting details have been approved providing planting on the south-west, south-east and northern boundaries. The Essex Way is screened by existing vegetation. The access road is permitted at low level and planting provided at natural ground levels screening views of HGV traffic on the extended access road.

- *Future built development to be at low level, with the bulk of any structure to be below ground level. Tree Preservation Order (TPO) to be protected as much as possible and management of surrounding TPO woodland suggested to maximise screening and biodiversity value.*

The main IWMF buildings are located below natural ground levels and the maximum amount of TPO area has been retained, supplement by additional planting and biodiversity enhancements.

- *The impacts from the proposal need to be addressed on the designated buildings located in the vicinity - especially on the setting of the Woodhouse Farm Listed Building.*

The height of the chimney is restricted by condition to minimise its impact upon the setting of Woodhouse Farm Listed Building complex.

- *Right of Ways – Kelvedon footpath 8 runs close to the site and its route should be protected.*

Footpath 8 which passes through the Woodhouse Farm Complex has been retained on its original route.

- *Dust mitigation measures, limits on duration (hours of operation) and noise standards (from noise sensitive properties) will be established in the interests of protecting local amenity.*

Conditions have been imposed to control dust, restrict hours of working both during construction and operation and maximum noise limits set at sensitive properties, noise monitoring is required to show compliance, including a requirement for an updated noise assessment upon installation of plant and process equipment.

- *If the proposed site layout cannot accommodate the statutory easements (relevant to existing infrastructure on the site) the diversion of the existing assets may need to be considered. Any activity that requires excavation should only proceed with caution, and the existing underground infrastructure must be supported and protected and not be put at risk from disturbance.*

The WPA is not aware of the need to divert any existing infrastructure.

Concern has been expressed within representations received to this submission that, since the applications (ESS/36/17/BTE and ESS/37/17/BTE) to increase the height of the stack were refused partly on the grounds that it had not been demonstrated there was a need for the facility, there must be a case that the IWMF is no longer needed. It was necessary to consider need (especially the CHP's capacity) at that time because it had not been demonstrated that the increased stack height would not give rise to adverse impact on landscape, visual amenity and heritage impact and therefore it was necessary to assess whether there was a need within Essex and Southend for the capacity of the IWMF that outweighed the identified harm caused by the increased stack height.

With respect to need, it should be noted that, at the time of the consideration of the stack height increase, the MBT at Tovi Eco Park in Basildon was operational and treating the majority of Essex's residual Municipal Solid Waste (MSW). This MBT ceased to receive residual waste in June 2020 and the majority of Essex's MSW, is now going to landfill, which is considered the lowest option on the Waste Hierarchy – i.e. "Disposal without recovery". The assessment of waste arising and treatment capacity in 2018 for the stack height increase applications showed that approximately 250,000 of commercial and industrial waste was going to landfill, could be potentially diverted to Rivenhall and that the Tovi Eco Park was generating approximately 200,000tpa of refuse derived fuel from 400,000tpa of residual Municipal Solid Waste (MSW). Thus, there was a total potential 450,000tpa of material that could be diverted to Rivenhall CHP, considerably less than the 595,000tpa capacity of the CHP. However, with the loss of Tovi Eco MBT, the potential quantity of suitable material that could potentially be diverted to Rivenhall rises to 650,000tpa (C & I 250,000tpa and MSW 400,000tpa). While it is likely there will be some changes to the assessments made in 2018, within Essex the WPA has not dealt with any applications for facilities with substantial treatment capacity that would substantially change the treatment capacity assessed in 2018. It is therefore considered that at the current time there is a need for the Rivenhall CHP. However, it should be emphasised that just because there may be a need for the treatment capacity provided by Rivenhall CHP, it does not mean that waste arising in Essex would be treated at Rivenhall, as this this would depend on Indaver gaining contracts to do so.

Considerable concern has been raised during the various planning applications associated with the IWMF, including with respect to this submission, as to the potential for adverse impacts from emissions, particularly on the health of residents in the area. Pollution control is matter for control through the EP administered by the EA. When considering previous planning applications, an EP had not been obtained. However, an Environmental Permit has been issued for the IWMF as permitted by planning permission ESS/34/15/BTE, such that it has been adequately demonstrated to the EA, that the IWMF could operate within the required pollution control standards.

The role of the WPA and the EA is set out in paragraph 188 of the NPPF :

*The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.*

Concern has been expressed by objectors that the IWMF will not contribute to mitigating climate change due the CO<sub>2</sub> that would be emitted to the local area from the facility.

The NPPF (para 152) seeks to "shape places in ways that contribute to radical reductions in greenhouse gas emissions". The NPPW (Section 1) recognises the role that driving waste up the Waste Hierarchy has on mitigating and adapting to climate change.

Strategic Objectives (SO4 and SO6) of the WLP are to provide for net self-

sufficiency i.e. ensuring there is adequate capacity within Essex and Southend to deal with the waste arisings within Essex and Southend, such that waste should not be required to transported unnecessary distances.

Landfill contributes to greenhouse emissions, thus diversion from landfilling contributes to reducing greenhouse gases.

The IWMF would contribute to the shortfalls identified in Policy 1 of the WLP of both “biological treatment for non-hazardous organic waste” and “further management of non-hazardous residual waste” and as such would contribute to net self-sufficiency.

Policy 11 of the WLP seeks to minimise the potential contribution waste management would make to climate change *“by reducing greenhouse gas emissions, incorporating energy and water efficient design measures and being adaptable to future climate conditions”*.

Policy 11 sets out a number of factors that will be considered in the determination of applications.

These include inter alia:

- *through transportation related to the development to limit greenhouse gas emissions.* The co-location of the MRF and MBT with CHP as permitted reduces the need for transport movements between such facilities.
- *through sustainable drainage systems.* The IWMF as permitted would capture all site surface water for use in the IWMF, however this might need to be supplemented with river water. Waste water generated by the MDIP would be treated on site within the waste water treatment facility. This waste treatment facility would use, heat, steam and energy generated by the CHP to help treat the waste water.
- *where proposals are capable of directly producing energy to demonstrate that excess heat can be directed to a commercial or industrial user of heat.* The IWMF as permitted would use the heat and steam from the CHP directly in the MDIP and waste water treatment plant and energy generated by the facility would offset energy required to power the IWMF itself.
- *where proposals include AD the gas is either direct to a gas pipeline or stored for use as a fuel.* In the case of the permitted IWMF the gas from the AD facility is being used directly within the CHP to generate electricity.

The Resource and Waste Strategy 2018 supports these principles but goes further as set out below:

*England has around 40 EfW plants. Eight operate in Combined Heat and Power (CHP) mode, delivering greater efficiency than solely generating electricity. We want to help the companies that run EfW plants to use the heat produced to improve their efficiency, and to help industry make the right decisions over infrastructure investment.*

*Work is underway across Government to make the remaining plants more efficient, by assessing and removing barriers to making use of heat produced when incinerating waste. The Department for Business, Energy and Industrial Strategy (BEIS) has a Heat Networks Investment Project, with a £320m capital fund, and we are working to ensure that this project helps to utilise EfW plants as a source of heat for district heat networks where possible. As part of the review of the Waste Management Plan for England in 2019, Defra will work with the Ministry of Housing, Communities and Local Government (MHCLG) to ensure that the Waste Management Plan for England and the National Planning Policy for Waste and its supporting planning practice guidance reflects the policies set out in this Strategy. This will consider how to ensure, where appropriate, future plants are situated near potential heat customers.*

*In addition, we will work closely with industry to secure a substantial increase in the number of EfW plants that are formally recognised as achieving recovery status, and will ensure that all future EfW plants achieve recovery status.*

This has been further reiterated in The Environment Plan 2018 and Waste Management Plan for England 2021.

The EA (in considering the granted EP) commented as follow in the decision document with respect to energy recovery: *“The Operator has not presented an R1 calculation with this application, nor have we received a separate application for a determination of whether the installation is a recovery or disposal facility. The Operator has obtained accreditation under the Defra Good Quality CHP Scheme. This process does not form part of the matters relevant to our determination, but forms part of financial aspects of the project drawing down funding through Renewable Obligations Credits (ROCs). Gaining accreditation under the scheme is however an indication of achieving a high level of energy recovery”.*

Thus, it would appear the IWMF as permitted is relatively efficient in terms of its energy recovery.

It is acknowledged that incineration of waste is now not considered a renewable energy (unless the waste source is biogenic only). However, the use of waste as an energy source does reduce the need to use of fossil fuels and, unlike renewable sources such as wind and solar, are not weather/time of day dependent, thus helping to provide energy security from a non fossil fuel source.

In considering this proposed “alternative use”, i.e. the continuation of the implementation of the extant planning permission it is within the remit of the WPA to apply appropriate additional conditions. Because the proposed “alternative use” under the plan of action will replace the development permitted under the planning permission, the WPA is able to consider imposing conditions on the approval which meet the policy tests in the NPPF and the legal requirements of a condition, namely, that it is relevant to planning, fairly and reasonably related to the development being permitted and reasonable.

In view of the national policy emphasis on ensuring that EfW facilities operate in heat and power mode rather than just power mode, it is felt appropriate to clarify

that the IWWMF should be operated as permitted i.e. with all elements operational, to ensure it delivers sustainable development and as such it is appropriate an additional condition should be imposed to ensure all elements of the IWWMF are delivered and operated in an integrated manner. This condition meets the tests identified above.

In conclusion with respect to Option 1 the continuation of the development of the IWWMF in accordance with the planning permission, constructing and operating all elements of the IWWMF would deliver the sustainable development previously considered and compliant with the Development Plan. However, it is considered appropriate to impose an additional condition to the planning permission to clarify all elements of the IWWMF must be constructed, operated and integrated to ensure delivery of the sustainable development.

## F APPRAISAL OF OPTION 2

Under Option 2 the applicant has indicated there is the possibility of the incinerator alone to be completed as a standalone EfW Facility, not as a CHP, but power generation only, with potentially no other permitted elements of the IWWMF to be constructed and/or operated, particularly with no direct use for the heat and steam generated. Indaver and their agents have indicated that they do not believe this would be in breach of the current planning permission i.e. that the EfW facility could operate as power generator only. As explained previously, this is not the view of the WPA having taken its own legal advice.

The operation of an EfW in isolation with no direct use of the heat and steam would require different justification and consideration than that where the heat and steam is used directly on site. Without the DIMP facility on site there would be no direct use of the heat and steam, which was a significant factor taken into account by the Inspector when considering whether the IWWMF amounted to sustainable development.

The WLP policy 11 seeks to encourage direct use of heat from waste facilities:

*“3. Proposals which are capable of directly producing energy or a fuel from waste should, where reasonably practicable, demonstrate that: a. excess heat can be supplied locally to a district heat network or directed to commercial or industrial users of heat;”*

The NPPW 2014 (section 4) requires WPAs to seek to co-locate heat users with low carbon energy recovery facilities:

*“...looking for opportunities to co-locate waste management facilities together and with complementary activities. Where a low carbon energy recovery facility is considered as an appropriate type of development, waste planning authorities should consider the suitable siting of such facilities to enable the utilisation of the heat produced as an energy source in close proximity to suitable potential heat customers;”*

It is acknowledged that incineration of residual waste is not a fully low carbon energy recovery facility, as the waste will likely contain non-renewable resources



such as plastics. However, the principle of co-locating a heat user with an EfW is encouraged.

Since the determination of the application in 2016 for the IWMF the Resources and Waste Strategy 2018, The Environment Plan 2018 and the Waste Management Plan For England 2021 have been published. All emphasise and highlight the need for EfW facilities to operate in both power and heat mode rather than just power mode.

One of the actions of The Resources and Waste Strategy is

*Actions we will take include: 3.2.1 Driving greater efficiency of Energy from Waste (EfW) plants by encouraging use of the heat the plants produce.*

One of The Environment Plan's stated actions is *"Looking at ways to increase the use of heat produced at waste facilities through better connections to heat networks. The facilities will become more efficient and emit less carbon dioxide."*

This emphasis is reiterated in the Waste Management Plan for England (January 2021) :

*"We have committed in the Resources and Waste Strategy to drive greater efficiency of energy from waste plants by encouraging use of the heat the plants produce. We also want to work closely with industry to secure a substantial increase in the number of energy from waste plants that are formally recognised as achieving recovery (R1) status, and to ensure all future energy from waste plants achieve recovery status. To deliver net zero virtually all heat will need to be decarbonised and heat networks will form a vital component of this. Energy from waste has a role to play in supplying this heat, but currently only around a quarter of energy from waste plants operate in combined heat and power mode, despite most being enabled to do so. We want to see this number increase"*

Option 2, of operating the EfW in power only mode, would not be supported by these recent Government policy statements. It is not doubted that surplus heat and steam could be used to generate more electricity. This is in fact demonstrated by the applicant in Option 3 (put forward as part of this application) that the energy generation might exceed 50MW requiring a DCO from SoS, but this is not as efficient as using the heat and steam directly in a facility on site, which is the situation with the IWMF as permitted.

It can be foreseen that an EfW facility generating only power could be located within the existing physical envelope of the IWMF, such that factors such as heritage impact, landscape and visual impact, ecological impact, light impact, highway impacts, could be unaffected by the change. However, other factors, such as impacts on air quality, noise impact, impacts on the water environment may be different, depending on the nature and operation of a standalone EfW only generating power, such factors would require reassessment. This reassessment would most appropriately be via a new planning application, supported by an updated Environmental Impact Assessment. Also, as indicated by the EA, it may require a new EP.

The applicant is of the view that Option 2 can be progressed without the need for express planning permission. This is not the view of the WPA and, as the plan of action for Option 2 does not propose the submission of a planning application with necessary supporting information/Environmental Statement to test the acceptability of such an Alternative use, the “Plan of action for a standalone EfW” should be refused.

## G APPRAISAL OF OPTION 3

The applicant has indicated that, throughout the construction period for the EfW element of the IWMF they would assess the commercial and technical viability of other elements of the IWMF and, if unviable (commercially or technically) would look for potential alternatives.

The applicant has acknowledged that such alternatives would require planning permission and such applications would need to be considered on their individual merits at that time. This might include an application/applications to the WPA or an application to the SoS for a Development Consent Order.

Potential alternative waste management facilities have been suggested by the applicant that could be co-located with the EfW. One suggestion is a facility to process the incinerator bottom ash (IBA) to produce a secondary aggregate. Alternatively, this IBA would otherwise have to be exported from the site unprocessed for reprocessing elsewhere or for disposal. Another alternative suggested by the applicant is for a facility for dealing with bulky household waste.

The applicant has also indicated that they may wish to apply to allow power generation beyond 50MW, which would require a Development Consent Order from the SoS. Concern has been raised that the input capacity of the EfW would be increased to achieve this increased electricity generation. The applicant has advised that at the current time it is not their intention to increase the input capacity of the incinerator beyond that previously stated of 595,000tpa. It has been explained the increase in generation capacity would arise from a combination of a more efficient EfW plant and the possibility that the heat and steam, rather being as part of a CHP, would be used to generate electricity as an alternative. It would be for the SoS to consider such an application and the application would be determined against national and local planning policy and other material considerations.

Much concern has been raised as to the environmental impacts of an EfW and the sustainability of the proposals, particularly in light of the major concern with respect to CO<sub>2</sub> and the negative contribution to climate change. Such factors would be taken into consideration in accordance with local and national planning guidance if and when further planning applications are considered by the SoS or the WPA.

Option 3 rightly acknowledges that any potential alternative uses of the site would require planning permission and potentially a Development Consent Order from the SoS.

It is only appropriate to approve one “Plan of Action” and, as the applicant has proposed under Option 1 for the continuation of the extant planning permission,

which is actively ongoing, Option 3 is not proposed to be approved. However, this does not of course prevent the applicant coming forward with other planning and/or DCO applications supported by the necessary information and Environmental Statements at some stage. The WPA is aware that initial discussions have commenced with the Planning Inspectorate with respect to a potential DCO application.

#### H IMPLICATIONS IF NONE OF THE OPTIONS WERE APPROVED TO DISCHARGE CONDITION 66

If all Options were refused the condition would remain undischarged. The applicant has the right of appeal.

It should be emphasised that refusing all three options would not prevent the applicant from continuing to develop the IWMF, as long as it was in accordance with the planning permission and until resolution of the condition 66 process, potentially through an appeal. If the appeal were dismissed then the WPA would need to consider whether it was expedient to take enforcement action to achieve rehabilitation of the site in accordance with the approach which is required to be taken under condition 66 (as properly interpreted) – i.e., given no acceptable alternative use under a plan of action, rehabilitation should take place.

If refused, the applicant could alternatively seek to delete the condition through a section 73 (deletion or variation of a condition), so as not to be in breach of the condition.

If no successful appeal or submission was made and the applicant continued to develop the site in accordance with the extant planning permission, the WPA would need to consider whether enforcement action was expedient.

As stated before, if the developer were found to not be developing the site in accordance with the planning permission, then the WPA would need to consider enforcement action at that time.

#### I ENVIRONMENTAL PERMIT

Comments have been made by the public that the suggested changes were not considered as part of the determination of the current EP issued by the EA.

The EA have commented that the suggested options by the applicant do have implications to the EP, either requiring changes or a new EP, depending on the nature of the changes. The incinerator could not operate until any necessary changes to the EP have been obtained from the EA.

#### J LEGAL ADVICE

It will have been noted within the report that legal advice has been sought in relation to the consideration of this application and the planning status of the current planning permission. The full details of this legal advice have not been included, only referenced where necessary to facilitate determination of the application. The legal advice is subject to legal privilege i.e. the right to resist

disclosure of confidential and potentially sensitive material in the context of litigation and investigations, including in relation to potential enforcement. Therefore requests from interested parties to see this legal advice are expected to be resisted.

## K CONCLUSION

The consideration of the application to discharge condition 66 has to be on the basis of the details submitted with respect to “a plan of action for an alternative use”, referred to by the applicant as a “plan of action”.

The applicant has put forward three potential Options and each of these options has been considered against the Development Plan and other material considerations.

It is concluded that only Option 1 should be approved. This would be the continuation of the IWFM as permitted, subject to an additional condition to provide clarification. In particular, the additional condition clarifies that all elements of the IWFM are required to be brought into operation in tandem with the CHP facility. The condition is to ensure the IWFM delivers the sustainable development as originally proposed, namely that the heat and steam is used directly on site in the MDIP. It is permissible to impose such a condition for the reasons explained in Sections A and E. In particular, it is considered that the condition is necessary to ensure the appropriate implementation of Option 1. There are no reasons to suggest that if the IWFM is implemented as permitted it would no longer comply with the Development Plan, the site remains an allocated site within the extant Waste Local Plan and the permitted development accords with the allocation, as explained in Section E.

Whether the IWFM is built out in full, as permitted, remains to be seen, as explained more fully in section C. However, should the non-EfW elements of the IWFM not be built out and operated as part of the approved scheme, then consideration afresh would need to be made whether the development complies with waste planning policy and any other material considerations, such as national waste guidance and policy. Such considerations would need to be taken into account before any recommendation could be made whether or not it would, for example, be considered expedient to take enforcement action

Option 2, where potentially only an EfW generating electricity is delivered. This option is considered by the applicant to be permissible under the current planning permission. This is not the view of the WPA; such development would give rise to different issues that would need to be considered afresh, through a planning application. Insufficient information has been provided to allow an assessment both in terms of any additional environmental impacts and whether an EfW that only generates electricity is in conformity with current national policy seeking to ensure EfW operates in both power and heat mode to maximise the efficiency and sustainability of the development. Insufficient information has been provided to justify option 2. It is therefore considered that this option does not warrant support and should be refused.

Option 3 suggests potential new waste management developments at the site,

which the applicant acknowledges would require further planning applications. Such applications can come forward at any stage regardless of condition 66 and therefore it not considered necessary or appropriate to approve Option 3 and it should be refused.

## 8. RECOMMENDED

Subject to there being no intervention by the SoS, with respect to the 3 Options put forward to discharge condition 66:

Plan of action Option 1 be approved subject to the development of the IWMF being implemented in accordance with:

- a) all the conditions of planning permission ESS/34/15/BTE and for the avoidance of doubt a condition to be imposed on the approval to clarify such as set out below:

### Condition 69

Plan of action Option 1 as detailed in letter from RPA dated 1 September 2021 shall be implemented in accordance with

- a) the conditions of planning permission ESS/34/15/BTE dated 26 February 2016;
- b) any details approved under those conditions or to be approved under those conditions;
- c) Non Material Amendments References ESS/34/15/BTE/NMA1 and ESS/4/15/BTE/NMA2 or any subsequently approved Non Material Amendments; and
- d) the obligations set out in the Section 106 Legal agreement dated 20 October 2009 as amended by deeds of variations dated 1 December 2014, 26 March 2015 and 26 February 2016.

*Reason: For the avoidance of doubt as to the nature of the development hereby permitted, to ensure development is carried out in accordance with the approved application drawings, details (except as varied by other conditions), to ensure that the development is Sustainable Development and is carried out with the minimum harm to the local environment and in accordance with the NPPF, NPPW, Essex Minerals Local Plan 2014 (MLP) policies P1, S1, S10, S11, S12, DM1, DM2 and DM3, Essex and Southend Waste Local Plan 2017 (WLP) policies 1, 3, 10, 11 and 12, Braintree District Local Plan 2013-2033 Section 1 (BLP S1) policy SP 7, Braintree District Core Strategy adopted 2011 (BCS) policies CS5, and CS8 and Braintree District Local Plan Review 2005 (BDLPR) policies RLP 36, RLP 49, RLP 54, RLP 62, RLP 63, RLP 64, RLP 65, RLP 71, RLP 72, RLP 80, RLP 81, RLP 84, RLP 87, RLP 90, RLP 100, RLP 105 and RLP 106;*

- b) A further additional condition to ensure all elements of the IWMF are constructed, operated and integrated as set out below

### Condition 70

There shall be no beneficial operation of the Combined Heat and Power (CHP) plant without all other elements of the IWMF i.e. Market De Ink Paper Pulp Plant

(MDIP) Materials Recycling Facility (MRF), Mechanical Biological Treatment (MBT) plant, Anaerobic Digestion (AD) plant, Waste Water Treatment Plant and all other permitted associated infrastructure having been constructed and available for beneficial operation. For the avoidance of doubt the CHP shall not operate without the MDIP utilising the heat and steam directly from the CHP.

*Reason: To ensure the development delivers Sustainable Development in accordance with the Development Plan. To ensure the development operates in an integrated manner, in particular that the CHP operates in conjunction with the de ink paper pulp plant, such that the facility operates as a combined heat and power facility delivering greater efficiency rather than solely generating electricity in accordance with WLP policy 11, Resources and Waste Strategy 2018 and The Environment Plan for England 2021;*

- c) subject to the obligations set out in the Section 106 Legal agreement dated 20 October 2009 as amended by deeds of variations dated 1 December 2014, 26 March 2015 and 26 February 2016.

Plan of action Option 2 be refused for the following reason:

It has not been demonstrated that the part development of the IWMF would amount to sustainable development contrary to the NPPF and does not accord with the Waste and Resource Strategy, The Environment Plan and The Waste Management Plan for England and WLP policy 11 in that the EfW would only generate electricity rather than utilising the heat directly. Insufficient information has been submitted to determine whether there would be additional adverse environmental effects contrary to the WLP policy 10. Furthermore, because in order to assess whether an EfW only generating electricity amounts to Sustainable Development would require a separate planning application with relevant supporting information/Environmental Impact Assessment to be submitted for such.

Plan of action Option 3 be refused for the following reason:

The acceptability of the proposed alternative waste management facilities could only be considered by way of a planning application with associated details and where necessary Environmental Impact Assessment.

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## **BACKGROUND PAPERS**

Consultation replies  
Representations

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## **LIST OF APPENDICES**

Appendix A The Inspector's Report dated March 2010  
Appendix B SoS Decision March 2010  
Appendix C The planning permission February 2016  
Appendix D The applicant's letter to address the requirements of condition 66

## **EQUALITIES IMPACT ASSESSMENT**

This report only concerns the determination of an application for planning permission. It does however take into account any equality implications. The recommendation has been made after consideration of the application and supporting documents, the development plan, government policy and guidance, representations and all other material planning considerations as detailed in the body of the report.

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### **STATEMENT OF HOW THE LOCAL AUTHORITY HAS WORKED WITH THE APPLICANT IN A POSITIVE AND PROACTIVE MANNER**

In determining this application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the application by liaising with consultees, respondents and the applicant/agent and discussing changes to the proposal where considered appropriate or necessary. This approach has been taken positively and proactively in accordance with the requirement in the NPPF, as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

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### **LOCAL MEMBER NOTIFICATION**

BRAINTREE – Braintree Eastern  
BRAINTREE – Witham Northern