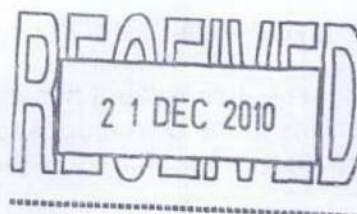


Directorate for Planning and Environmental Appeals

Appeal Decision Notice



Decision by Scott M Ferrie, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/210/2012
- Site address: Dunbar Landfill, Oxwell Mains, Dunbar
- Appeal by Viridor Waste Management Ltd against the decision by East Lothian Council
- Application for planning permission 08/00467/FUL dated 13 May 2008, refused by notice dated 6 November 2009
- The development proposed: erection of an energy from waste with combined heat and power facility and associated works
- Application drawings: listed in schedule at end of this notice
- Date of inquiry and hearing sessions: 21-24 September 2010
- Date of accompanied site inspection: 29 September 2010

Date of appeal decision: 14 December 2010

Decision

I allow the appeal and grant planning permission subject to the 17 conditions listed at the end of the decision notice. Attention is also drawn to the 4 advisory notes at the end of the notice.

Reasoning

1. The determining issues in this case are:
 - whether the proposed development complies with development plan policy and national policy and guidance on the provision of waste management facilities, having regard to (i) the need for the facility and the suitability of the location, bearing in mind the proximity principle, (ii) the likelihood of waste other than residual waste being processed at the facility, (iii) the appropriateness of the Heat Plan; and
 - the acceptability of the impacts of the proposal on (i) landscape and visual amenity (including cumulative impact), (ii) habitats and ecology, (iii) air quality and human health, (iv) road access and traffic generation (including impact on the trunk road junction), having regard to the provisions of the development plan and national policy and guidance.



Need for the facility and suitability of the location

2. Under this issue, I consider it necessary to first consider the general need for waste management facilities of the type proposed here, before moving on to consider in more detail the appropriateness of a facility of the size proposed in the location proposed.
3. The National Planning Framework for Scotland 2 (NPF2) states that the planning system has a crucial role to play in ensuring that installations are delivered in time to allow waste management targets to be met. A network of waste management installations should be facilitated by the planning system, in order to enable the movement of waste to be minimised and EU and national targets to be met, "taking account of opportunities to derive energy from waste and develop local heat networks". It goes on to state that the 25% cap on energy from mixed municipal waste, to be applied at the local and national level, will be a material consideration in development management decisions. Energy from waste (EfW) plants should be highly efficient in terms of energy recovery. Provision for the necessary additional waste management capacity must be made in strategic development plans.
4. Scottish Planning Policy (SPP) states that the Scottish Government has adopted 'zero waste' as a goal. Value should be recovered from products when they reach the end of their lives, either through recycling, composting or energy recovery, in accordance with the waste hierarchy. SPP repeats the statement set out in NPF2 that the planning system has a crucial role in ensuring that installations are delivered in time to allow waste management targets to be met. Reference is also made to the proximity principle, which requires that waste is dealt with as close as possible to where it is produced.
5. Referring more specifically to thermal treatment plants, SPP states that such technology is more beneficial if it delivers both heat and power. The siting of plants close to energy grids or users of heat is "an important factor in determining appropriate locations for installations capable of being run as combined heat and power (CHP) plants". As the operational control of such plants is regulated by SEPA, the planning system should focus on the development itself rather than on control of processes or waste streams.
6. Scotland's Zero Waste Plan (ZWP) sets a target of recycling 70% of all waste arising in Scotland by 2025, with only 5% of remaining waste being landfilled. Waste ought to be treated as high up the waste hierarchy as possible, by preventing, reusing or recycling where feasible. EfW "has an important role to play" and could contribute to 31% of Scotland's renewable heat target and 4.3% of its renewable energy target. To be truly sustainable though, it should only be used for waste streams which cannot offer greater benefits through reuse or recycling. It states an intention that the Scottish Government will introduce regulatory measures to ensure that EfW is only used in such circumstances. These measures will supersede the 25% cap which currently applies only to municipal waste, but is likely to result in similar amounts of resources being available for EfW treatment.
7. SEPA's *Thermal treatment of waste guidelines 2009* (TTWG) set out key principles relevant to the consideration of planning applications for thermal treatment facilities. The guidelines are particularly significant in this case as four of the council's five reasons for

refusal were based on the proposal failing to accord with the TTWG. The six guidelines relate to the proximity principle; capacity and need; site selection; treating residual waste only; recovery of heat and energy; and the 'best practicable environmental option' (BPEO).

8. It is clear to me, based on the considerations set out above, taken together with the evidence of parties to the inquiry session, that there is a significant but largely unmet requirement for the provision of new EfW plants in Scotland. There is no real disagreement between the council and the appellant on this point. An argument was advanced for the council, during the inquiry session, that the requirement of NPF2 that provision for additional waste management facilities must be made in strategic development plans means that such provision ought to await the production of strategic development plans. I do not agree with that interpretation, given the pressing need to deliver additional waste management facilities in time to allow waste management targets to be met. I take this requirement to mean simply that such plans, as they are produced, must make such provision.

9. Having established the general need for waste management facilities of the type proposed here, I now move on to consider the appropriateness of the capacity and location of the proposed plant. The application of the proximity principle, as established by national policy, means that consideration of plant size and general location are inextricably linked.

10. The proposal before me is for an EfW plant with a capacity to process 300,000 tonnes of residual waste per annum, through two lines with a capacity of 150,000 tonnes per annum each. The capacity of the plant is just under the definition of a large scale plant, set at greater than 300,000 tonnes per annum in TTWG. That is significant as national policy does not favour large scale thermal treatment plants. The plant would process non-hazardous residual household, commercial and industrial waste into energy, in the form of heat and the generation of electricity.

11. As I have noted above, national policy and guidance requires me to take account of the 25% cap on energy from mixed municipal waste in considering the need for the plant. The appellant's residual waste calculations are based on a 75% recycling rate (by 2025) for both municipal and commercial and industrial waste. That exceeds the 70% target established in the ZWP. The need assessment is based on the plant processing residual municipal waste arising in the council areas of East Lothian, Midlothian and The City of Edinburgh; and residual commercial and industrial waste arising in the council areas covered by the former Lothian and Borders Area Waste Plan (the three council areas stated above, together with West Lothian and Scottish Borders).

12. Appendix B of the ZWP advises that SEPA will comment as required by planning authorities on planning applications for major waste management proposals in order to contribute towards its role in fulfilling ZWP objectives. In its 13 February 2009 consultation response to the council, SEPA considered the appellant's forecast that 104,000 and 407,000 tonnes per annum respectively of residual municipal waste and residual commercial and industrial waste could be expected to be available in 2025 within the council areas set out above, based on 75% recycling rates. It concluded that on that basis, the appellant had made a case for EfW provision in accordance with the (then extant) Lothian and Borders Area Waste Plan (AWP). That conclusion was however, caveated by

the comment that it was for the council to consider if the proposed location of the facility was "the best one" within the waste strategy area, as that matter lay outwith SEPA's remit.

13. As SEPA indicated that it did not wish to participate in the inquiry session on compliance of the proposal with waste policy, I requested that it provide further written comments on that issue, particularly as the AWP had by then been superseded by the ZWP. In its response dated 13 July 2010, SEPA confirmed that, subject to the imposition of previously specified planning conditions, it remained satisfied that the proposal was consistent with national waste policy and advice.

14. In regard to the specific issue of capacity and need, SEPA confirmed in that response that, as the appellant's need assessment had been based on a recycling rate higher than that set in the ZWP, it was satisfied that its consultation response of 13 February 2009 remained relevant and that "there will be sufficient waste arising".

15. I heard highly detailed evidence from the parties to the inquiry session on this specific issue. The council's position in summary, supported by a detailed assessment of waste arisings prepared on its behalf, is that only 234,085 tonnes per annum of residual waste suitable for incineration would be available, well under the 300,000 tonnes capacity of the proposed facility. It states that although the appellant's approach to the assessment of need is a reasonable starting point, it is too rudimentary. The Joint Action Group's evidence on this matter was in general supportive of the council's case.

16. For the appellant, it was argued that the council's assessment of available residual waste is dependent on levels of recycling and composting which might be achieved in the future and that it does not take account of the potential growth in waste. SEPA had endorsed the growth assumptions included in the appellant's calculations, although it was conceded that waste arisings had not recently increased as predicted. This could be attributed to the general economic conditions prevailing.

17. I attach significant weight to SEPA's conclusion that the appellant's approach to the assessment of need and capacity was appropriate and in accordance with its own guidelines, and that there would be sufficient residual waste arising compared to the capacity of the proposed facility. I do not consider there to be sufficient evidence to support the council's approach to the assessment of need, which I find generally to be unjustifiably conservative and to have arrived at a conclusion completely at odds with that of SEPA.

18. I do accept the council's argument that the facility would need to attract a significant proportion of the residual waste arising within the council areas identified in its need assessment. That would depend to a large degree on matters of commercial competition, an issue which is not before me. I find the appellant's assessment of need, supported by SEPA and council officers, to be reasonable.

19. I consider the council areas identified in the appellant's need assessment to be in general accordance with the proximity principle. SEPA considers the proposal to comply with that principle, taking the TTWG and ZWP into account, and I agree with that conclusion. I note that SPP, although encouraging local authorities to meet all waste

management needs in their own area, recognises that they may also co-operate to develop shared strategic waste infrastructure.

20. Although municipal waste arising in the Scottish Borders council area is not included in the appellant's need assessment, I can see no reason to preclude the treatment of such waste at the proposed facility, bearing in mind the proximity principle. I have adjusted the council's suggested condition on that matter accordingly. That would increase the volume of municipal waste theoretically available for processing at the proposed facility.

21. I now require to consider the application of the proximity principle to the location of the proposed facility within the target area for waste arisings. I agree with the council's argument that Dunbar is located significantly to the east of the centroid of target waste arisings. I also agree that the Millerhill proposal would be better located in that regard. Similarly, other proposed facilities outwith the Lothian and Borders area may be better located to process waste arising in the north and west of the target area.

22. The fact remains though that those other facilities are not far advanced in the planning process, if at all, and certainly not as far advanced as is the case here. I have insufficient evidence to assess the likelihood of the Millerhill proposal being granted planning permission and being developed. I have noted above the statements in both NPF2 and SPP that the planning system has a crucial role in ensuring that installations are delivered in time to allow waste management targets to be met. I give that requirement significant weight in the circumstances of this case. I also attach weight to the advantages of the site in regard to accessibility to the rail and trunk road network. I conclude that the proposal satisfies the proximity principle.

Likelihood of waste other than residual waste being processed at the facility

23. The council is concerned that the appellant has not demonstrated that waste which might otherwise be recycled would not be treated at the proposed facility. I agree that such an outcome would be contrary to the waste hierarchy. SEPA is satisfied that the appellant has satisfactorily demonstrated that only residual waste would be treated at the facility, in accordance with the TTWG.

24. The appellant has also indicated its willingness to accept a condition, as recommended by SEPA and council officers, requiring the submission of a scheme to demonstrate that all practicable and reasonable efforts will be made to ensure that only residual waste would be treated at the facility. That would be subject to the council's approval prior to the facility coming into use and to annual review thereafter. The condition would require that the facility be operated in accordance with the approved scheme.

25. I am satisfied that such a condition meets the tests set out in Circular 4/1998: *The Use of Conditions in Planning Permissions* and that such a condition would satisfactorily ensure that all practicable and reasonable steps would be taken to ensure that only residual waste would be treated at the facility.

Appropriateness of the heat plan

26. The efficient recovery of energy is a key requirement of the TTWG. SEPA, in its consultation response to the council dated 13 February 2009, advised that the revised (Final Version 7) heat plan provided "sufficient information to enable the plant to be capable of being consented as the initial start up efficiency complies with our emerging updated Thermal Treatment Guidelines, with the longer term efficiency being quoted also complying". The consultation response notes however, that the efficient uptake of heat appeared to rely upon the development of horticultural operations on land not currently identified for development.

27. The council's Executive Director of Environment's report to committee on the planning application noted that, as no detail had been provided in regard to the proposed horticultural development, no decision could be taken on whether such development was feasible. It was considered appropriate however, to grant planning permission subject to a condition requiring the submission and approval of a further heat plan.

28. An updated heat plan, dated 24 August 2010, was submitted in anticipation of the inquiry session. It states that the proposed facility would be capable of recovering 26.7 megawatts (MW) of electricity or 17 MW of heat. 2.9 MW of the electricity would be utilised within the plant itself, with up to 23.8 MW capable of being exported to the grid. The appellant is in possession of an offer of connection to the grid. The facility would also be capable of exporting heat, which would increase the overall efficiency of the plant. An average load of 10 MW of heat is currently proposed, but the plant would be capable of exporting at least 17 MW. That would also, given the incentives available, increase the profitability of the plant and would encourage the plant operator to export more heat than the minimum required by SEPA. That ought in turn to ensure that the plant would operate efficiently in regard to energy recovery.

29. The updated heat plan considers potential demand for heat in the area and includes a number of letters from developers with local interests and, most significantly, from the Belhaven Fruit Farm, which is located just to the south-west of Dunbar. That letter confirms an "active interest" in the use of heat produced at the proposed facility. The heat plan states that the facility would be capable of providing sufficient heat to support a horticultural development of about 4 hectares, accounting for 70% of the plant's total heat output. It was conceded for the council during the inquiry session, and I agree, that a development of that nature and scale would, in principle, be consistent with development plan policy. I note the Joint Action Group's point that it would not be sustainable to encourage the production of foods outwith their natural growing season. The TTWG does however, indicate that local food production could be driven by the provision of low grade heat from thermal treatment plants.

30. The council has suggested that a condition requiring the submission and approval of a heat plan detailing the means of delivering of energy and heat outputs from the facility, the identified heat users and the timetable for such deliveries. The condition would also require the implementation of the measures contained within the approved heat plan. I am satisfied, in these circumstances, that the updated heat plan is appropriate and is consistent with the requirements of the TTWG.

Landscape and visual impact

31. The council is concerned that the proposed development would be visually intrusive and would represent a further industrialisation of the area. This concern is shared by many of the objectors to the proposal. The environmental statement (ES) accompanying the application considers the potential impacts of the proposal on the landscape resource and on the visual amenity of the area. That assessment includes consideration of cumulative impacts with the existing industrial developments in the area.

32. An additional issue of cumulative impact with wind farms was raised in the council's response to the appellant's appeal statement. By means of a further procedure notice, I invited the appellant, the council, the Joint Action Group and SNH to make further comment on that issue.

33. The appeal site is located within the operational Oxwell Mains landfill site. The Lafarge Cement Works is about 300 metres to the north-west of the site and the Torness Power Station is about 3.4 kilometres to the east. The current landform of the site has been formed by quarrying carried out in connection with the adjacent cement works and by subsequent partial infilling with quarry waste. Active landfill operations are underway immediately to the east of the appeal site. The plant building would be about 47 metres in height with a stack of 80 metres in height. A visible plume would extend that height by up to a further 40 metres or so in certain conditions.

34. The ES states, bearing in mind the extractive history of the site and its current condition and use, that the landscape sensitivity of the site is considered to be low. The site is located within a large scale coastal landscape where the cement works and power station, along with the quarrying and landfill operations, "inform and influence" the existing landscape character. It concludes that the sensitivity (of the local landscape resource and visual amenity) to further industrial development is considered to be low to medium. In addition, there are no national or regional landscape designations within the 20 kilometre study area.

35. It goes on to note that, although landform would effectively screen the lower parts of the plant building and operations, the upper parts of the building, the stack and the plume would be visible in local views. The large scale of the receiving landscape, together with the existing industrial development, would prevent the plant from appearing out of scale. Overall the ES concludes that the effect of the proposal on the landscape and visual resource of the area is not expected to be significant.

36. In its consultation response to the council, SNH advises that the proposed development would be generally noticeable and often prominent against the sky and along the coastal edge from many key viewpoints, including the A1 trunk road, the east coast rail line, nearby settlements such as Innerwick and Broxburn, several designed landscapes of national importance and areas designated for local landscape value. Concern is expressed in regard to landscape and visual impact arising from the addition of a further large scale built development in this visually open and rural area of East Lothian. It advises that landscape and visual impacts could be reduced through the implementation of suggested mitigation measures and concludes that it does not object to the proposal.

37. The council's Policy and Projects team concludes that the plant, due to its close proximity to the cement works, is most likely to be viewed as an intensification of those works and to be visually associated with them. Accordingly the cumulative visual impact, in the context of other large structures in the coastal plain, would be limited.

38. I noted during my accompanied inspection of the appeal site that the proposed plant would sit within a significant depression in the surrounding landform, created by quarrying operations associated with the adjacent cement works. I consider that this, together with the positioning and orientation of the plant within the site, and subject to landscaping and planting mitigation, would minimise the impact of the proposal in local views. Notwithstanding that, I have absolutely no doubt that the upper part of the plant building, the stack and (when visible) the plume, would all be significant features in the local landscape and in local and more distant views.

39. In my opinion however, the relationship of the proposed development to the adjacent cement works and to the more distant power station cannot be ignored. Whilst the proposal would undoubtedly result in the further industrialisation of this part of the East Lothian coast, I agree with the findings of the ES that those existing industrial developments in particular provide a baseline context which would assist in minimising the landscape and visual impacts of the proposed development.

40. I took particular care during my unaccompanied inspections of the surrounding area to gauge the likely cumulative landscape and visual impacts of the proposal. From Pinkerton, I consider that the proposal would be viewed quite separately from the cement works, but that most views of the plant would be obstructed by intervening landform and vegetation and the plant would be relatively low-lying and less obtrusive than the cement works.

41. The cement works and power station are currently prominent in the expansive view from the south-eastern edge of Innerwick. I do not consider that the proposed development, viewed from there, would have a significant impact in regard to closing the visual gap between the cement works and the power station, although it would further industrialise the landscape to a limited degree.

42. From the viewpoints on the old A1, the John Muir Way, the White Sands access and Barns Ness, to the north and east of the appeal site, there would be some closer range views of the plant. The view from Barns Ness would be partially obscured by landform and vegetation and the proposal would be likely to be perceived as forming part of the cement works complex. That perception would be even more so when viewed from the White Sands access. Overall from this direction, and viewed in the context of the cement works and the landfill site, I do not consider that there would be a significant impact on either the landscape resource or on visual amenity. Nor would there be any significant impact on visual coalescence with Torness.

43. I now turn to address the issue of the likely cumulative impact of the proposal with wind farms. The appellant's supplementary cumulative landscape and visual impact assessment found that there would not be any significant cumulative impacts on landscape character or visual amenity, when viewed with existing or consented wind farms. Taking

proposed wind farm development into account, it concludes that the proposed Lafarge wind farm development would result in a greater change to landscape character than would the appeal proposal.

44. The council's further written submission on cumulative impact found that the cumulative landscape impact of the proposed development would not be significant compared to the impact of the proposed Lafarge wind farm, which would visually bridge the gap between the cement works and Torness. There would be no significant landscape impacts with wind farms in the Lammermuir Hills to the south. There is however, more potential for significant cumulative visual impacts. The proposed development would increase the industrial character of views, but would not fundamentally change visual amenity in the study area. Overall, the council's submission concludes that the proposed facility would cause significant cumulative visual impacts. These impacts would not however, be of the highest significance, due to the proximity of the larger and more heavily industrial cement works. The cumulative impacts on landscape character would not be significant.

45. The Joint Action Group also submitted a report on the likely visual impacts of the proposal. The report does not include any reference to cumulative impact with wind farms, but instead concentrates on the impact of the proposed development on the further industrialisation of the area. I found this submission to be useful in identifying viewpoints of importance to the local community, but do not consider that the visualisations contained in the report can be relied upon in assessing the likely visual impacts of the proposal.

46. I find overall that the proposal would not result in significant impacts, singly or cumulatively, on landscape character. There would, largely due to the massing of the plant building and the height of the stack (and plume), be a significant impact on visual amenity. This would result in some further industrialisation of the coastal plain. This would however, bearing in mind the waste management benefits of the proposal which I have identified above, be mitigated to an acceptable degree by: the low landscape sensitivity of the site; the large scale of the receiving landscape and the presence of large scale industrial buildings in that landscape (principally the cement works and Torness) which would avoid the plant appearing out of scale; the orientation and positioning of the development within a significant depression in the surrounding landform, which together with landscaping and planting, would minimise the impact of the proposal in local views; and the plant's close proximity to the cement works, where it would most likely be viewed as an intensification of those works and be visually associated with them.

47. Taking the above considerations into account, I consider the proposal to be consistent with policy ENV3 of the approved Edinburgh and the Lothians Structure Plan and policies DC1, DP1 and DP2 of the adopted East Lothian Local Plan which together, amongst other things, seek to ensure that new development in the countryside minimises visual intrusion and landscape impact, is of an appropriate scale and character and is integrated in the landscape.

Habitats and ecology

48. There are no nature conservation designations within or immediately adjacent to the site. There are 3 sites of special scientific interest (SSSI) within about 4 kilometres of the site. The 'Firth of Forth SSSI' is about 4.1 kilometres to the north-west of the site and coincides with the 'Firth of Forth Special Protection Area' (SPA).

49. The ES includes an assessment of the expected impacts from noise, land take and air quality on ecological interests within a 15 kilometres radius of the appeal site. Where significant potential impacts have been identified, mitigation is proposed to reduce those impacts to 'negligible' or 'slight'. The proposed mitigation includes native tree and shrub planting and the creation of wetland habitats within the site.

50. SNH, in its consultation response to the council, advises that it has no objection to the proposal in regard to its likely impacts on habitats and species, subject to conditions relating to the timing of site preparation and initial construction works and the agreement of a habitat management plan. There is no evidence before me which leads me to an alternative conclusion.

51. I find the likely impacts of the proposed development on habitats and ecology, subject to appropriate mitigation, to be acceptable. In this regard I consider the proposal to be consistent with policies ENV1A and ENV1B of the approved structure plan, and policies DP13, NH1a and NH1b of the adopted local plan, which together seek to avoid adverse impacts on protected areas and promote biodiversity.

Air quality and human health

52. The ES includes an assessment of the impact of the proposed development on air quality. It states that the proposed plant would be designed to minimise emissions and to render harmless any residual emissions by release through a stack of an appropriate height. Emissions to air would require to comply with standards set out in the European Union *Waste Incineration Directive* (WID). Based on the results of dispersion modelling, the ES concludes that no additional mitigation, other than the plant design and the height of the stack, is considered to be necessary for the dispersion of emissions from the stack. Residual effects are considered to be of 'neutral' or 'slight adverse' significance. Emissions are expected to be below those prescribed by the WID. Odour generation is also expected to be of 'neutral' significance.

53. SEPA states, in its further written submission dated 13 July 2010, that an application for a PPC permit has been submitted by the appellant and is in the process of being considered. Pending that, SEPA advises that it is satisfied that emissions to air from the proposal would not have an adverse impact on ambient air quality.

54. SPP advises that "planning authorities should consider the need for buffer zones between sensitive receptors (for example, houses) and some waste management facilities". The extent of buffer zones will depend on the characteristics of specific sites, but a buffer of 250 metres is suggested as appropriate for thermal treatment plants. In this case the closest houses are located at Little Pinkerton, Meikle Pinkerton and Easter Meikle

Pinkerton, all located about 500 metres to the south-west of the site of the proposed plant. Innerwick is about 2 kilometres to the south-east and Dunbar is further still to the north-west.

55. TTWG advises that SEPA will require sufficient information at the planning stage on environmental impacts to allow it to comment on whether the development is capable of being consented by SEPA under the Pollution Prevention and Control (PPC) Regulations. PAN 63 – *Waste Management Planning* advises that SEPA's consideration of whether to grant a PPC licence will include the potential effects of the proposed development on public health. Planning authorities should therefore, accept that PPC licensing will adequately ensure the protection of public health. On this basis I do not consider that I need give further consideration to impact on human health. I note in this regard that the council chose not to defend that part of reason for refusal 5 which referred to "public concerns about adverse...health impacts".

56. I acknowledge the level of local concern in regard to these particular issues. In light of the circumstances set out above however, I am satisfied that there is no evidence to conclude that the impacts of the proposal are likely to be outwith current air quality objectives and limits or that they would otherwise be unacceptable. Fundamentally, the issue of impact on public health stands to be considered under the PPC licensing regime.

Road access and traffic generation

57. The appellant intends to retain the existing sidings facility to the north of the appeal site in order to facilitate transportation of waste to the plant by rail. That is however, dependent on the source of waste arisings to be sent to the plant and the agreement of customers.

58. The Transport Assessment contained in the ES states that the delivery of waste to the proposed EfW plant is likely to be predominantly by road, although the existing rail sidings facility could also be used. The "vast majority" of waste transported to the plant by road would be transported via the A1, with little or no traffic travelling through Dunbar. The Transport Assessment assesses likely impacts on the road network on a worst case scenario of all waste arriving at the plant by road, and none by rail.

59. Modelling demonstrates that the junctions of the A1087 with the A1 and the local road leading to the appeal site would operate in a satisfactory manner during both the construction and operational phases. Examination of safety records for the road network around the site, considered together with the marginal increase in HGV traffic as a result of the proposed development, demonstrates that road safety is not likely to be an issue. The Transport Assessment concludes that the impact of traffic generated during both the construction and operational phases would be slight and that the overall significance of those impacts would be "minor / negligible".

60. In their consultation responses on the planning application, neither the council's Head of Transportation nor Transport Scotland raised any objections to the proposal on the grounds of impact on the local or trunk road network. I invited the appellant and Transport Scotland to provide further information on updated road traffic accident information relating

to the A1 junction. The parties' responses confirmed that the conclusions of the Transport Assessment in regard to likely impact on road safety remained valid.

61. I conclude that the proposed development is unlikely to result in unacceptable impacts on the road network (including impact on the trunk road junction) or on traffic safety. There is therefore, no conflict with policy T2 of the adopted local plan, which requires that new development must not result in significant adverse impacts, amongst other things, on road safety and the capacity of the surrounding road network to accommodate traffic unrelated to the proposed development.

Other matters

62. I have also considered whether any other likely impacts of the proposed development would justify the refusal of planning permission.

63. The ES concludes that the proposal is likely to have a significant impact on the setting of a number of nationally important sites in the area. In response, Historic Scotland advises that it does not consider the level of impact to warrant its objection to the project from its national historic environment perspective. I agree with that assessment.

64. A number of objectors are concerned that the proposed development would adversely impact on the attractiveness of East Lothian to visitors. There is no evidence before me to suggest that any such impact would be significant. I have in any case concluded above that the proposal is likely to be read in the context of adjacent industrial development and that the landscape and visual impacts would not be unacceptably significant.

Conclusions

65. Bearing all of the above considerations in mind, I now turn to assess compliance of the proposal with the remaining key provisions of the development plan, dealing specifically with waste management, which have been drawn to my attention.

66. Paragraph 7.15 of the structure plan advises that, subject to other policy considerations, the plan is supportive of proposals that meet the capacity requirements of the AWP. There is a presumption against developments that conflict with it. Policy ENV11 provides that proposals meeting the Lothian and Borders AWP's BPEO and capacity and infrastructure requirements will, in principle, be supported.

67. I do not agree with the appellant's contention that, as the AWP is no longer extant, policy ENV11 is no longer relevant to assessment of this proposal. The AWP has been replaced, amongst other things, by the ZWP. I have found above that a case can be made for the development under the terms of the ZWP. The TTWG also requires that proposals need to demonstrate BPEO. Paragraph 2.7 advises that, in the context of a planning application, the environmental effects of the proposed development should be compared to the 'do nothing' option and other available alternatives, in order to assess whether the proposal represents the 'best' option in environmental terms. Such an assessment is carried out in the ES and SEPA has confirmed that it is satisfied with its terms. I have found no persuasive argument to lead me to a different conclusion. In these circumstances

I consider it reasonable to draw support for the proposal from policy ENV11. Even if I am wrong on that, at the very worst the policy would be neutral.

68. Policy W1 of the local plan supports the landfill site at Oxwell Mains as a site for waste treatment and disposal. Development restricting its continued operation will not be supported. Paragraph 9.28 goes on to support proposals for further waste management facilities which accord with stated principles. I am satisfied, having regard to all of the considerations set out above, that there is no fundamental conflict with those principles. I conclude that policy W1 is supportive of the proposal and that there is nothing in the accompanying text to lead me to conclude otherwise.

69. I draw support, in my conclusions on policies ENV11 and W1, from the fact that the council did not refer to either of those policies in its reasons for refusal. In fact the reasons for refusal did not refer to any conflict with the development plan, although the council sought, during consideration of this appeal, to take a contrary position in this regard. I heard at the inquiry session that the council had taken time and care, following the committee meeting, to frame those reasons. There had been support from officers in doing so. I agree with the position of the council in regard to development plan policy as set out in the refusal notice, and conclude overall that the proposal is consistent with the development plan.

70. With reference to the determining issues set out at paragraph 1 above, I conclude that:

- there is a demonstrated need for the facility and that the location is appropriate, bearing in mind the proximity principle;
- there is little likelihood of waste other than residual waste being processed at the facility;
- the updated heat plan is consistent with the requirements of the TTWG;
- the proposal would not result in significant impacts on landscape character. There would be a significant impact on visual amenity and further industrialisation of the coastal plain. This would however, be mitigated to an acceptable degree;
- there is no evidence to indicate that the impacts of the proposal are likely to be outwith current air quality objectives and limits. The issue of impact on public health stands to be considered under the PPC licensing regime;
- the likely impacts of the proposed development on habitats and ecology, subject to appropriate mitigation, are acceptable;
- the proposed development is unlikely to result in unacceptable impacts on the road network (including impact on the trunk road junction) or on traffic safety;
- the proposal complies with (i) development plan policy (including policy on waste) and (ii) national policy and guidance on waste, and that there are no other material considerations which justify the refusal of planning permission in this case.

71. I consider it appropriate that planning permission be granted subject to the attached conditions, which largely address the matters covered in the conditions suggested by the council and SEPA. There is however, one significant exception. Both parties had requested a condition requiring that "the total amount of municipal waste treated in the energy from waste facility hereby approved shall not exceed applicable Scottish

Government waste policy on the amount of municipal waste that can be treated by energy from waste facilities”.

72. NPF2 states that the 25% cap on energy from mixed municipal waste, to be applied at the local and national level, will be a material consideration in development management decisions. Consequently I accept that such a condition would be relevant to planning, as required by Circular 4/1998. Conditions must however, meet all six tests of the circular. I do not consider that this condition meets the test of precision, as the cap is not specified and could be subject to change. I am also not convinced, but slightly less so, that the tests of enforceability and reasonableness are met.

73. I note in this regard that Annex C of the ZWP proposes regulatory changes (to the PPC Regulations) to replace the 25% cap with an approach that requires equivalent treatment standards for all waste streams and sectors. SPP advises that, as operational control is regulated by SEPA, the planning system ought to focus on whether the development is acceptable, rather than on the control of processes or waste streams. I consider therefore, that the suggested condition is in time likely to become unnecessary, as it would seek to control a matter covered by separate legislation. The appellant has indicated a willingness to accept the suggested condition. The circular is clear however, that an unreasonable condition does not become reasonable through the consent of the appellant.

74. I have considered all other matters raised but find none to lead me to a different decision.



Reporter

Conditions

1. No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority. The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:
 - a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
 - b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and buildings. The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
 - c. the ridge height of the proposed building shown in relation to the finished ground and floor levels on the site.

The setting out of the development shall be implemented in accordance with the details approved in terms of this condition.

(Reason: To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.)

2. A schedule of materials and finishes and samples of such finishes for all components of the development, including ground surfaces and boundary enclosures shall be submitted to and approved by the Planning Authority prior to the materials and finishes being used in the development. The materials and finishes used in the development shall accord with the schedule and samples of them so approved.

(Reason: To enable the Planning Authority to control the materials, finishes and colour to be used to achieve a development of good quality and appearance in the interest of the visual amenity of the area.)

3. No lighting units shall be installed on any of the buildings hereby approved or on the land within the application site unless with the prior approval of the Planning Authority.

(Reason: To safeguard the character and appearance of the area.)

4. Prior to the commencement of operation of the energy from waste facility hereby approved, a scheme shall be submitted to and approved in writing by the Planning Authority following consultation with the Scottish Environment Protection Agency (SEPA) to demonstrate that all practicable and reasonable efforts will be made to ensure that only residual waste (i.e. waste remaining after all practicable and reasonable efforts have been made to extract recyclable and compostable material) shall be treated at the energy from waste facility hereby approved. Thereafter an annual review of the scheme shall be submitted to and approved by the Planning Authority following consultation with SEPA. The energy from waste facility hereby approved shall be operated in strict accordance with the approved scheme and any subsequently approved amendments.

(Reason: To ensure that the operation of the development accords with Scottish Government waste policy and with the principles of sustainable waste management.)

5. Unless otherwise approved in writing by the Planning Authority, waste received and treated at the energy from waste facility shall be restricted to:

- (1) non-hazardous residual municipal waste arising within the East Lothian, Midlothian, Scottish Borders and City of Edinburgh Council areas; and
- (2) non-hazardous residual commercial and industrial waste arising within the East Lothian, Midlothian, West Lothian, Scottish Borders and City of Edinburgh Council areas.

For the avoidance of doubt, waste generated outwith these areas but transferred to the facility via transfer stations (or some other form of intermediate treatment or handling facility) within these areas, is not to be classed as arising within the council areas identified in (1) and (2) above and shall not be treated at the facility, unless otherwise approved in writing by the Planning Authority.

To this end, the operator of the energy from waste facility hereby approved shall maintain a written log recording the nature and source of the waste entering the facility. If waste is delivered via a transfer station (or some other form of intermediate treatment or handling

facility) the log must detail the primary geographic source, by council area, of the waste. The log shall be made available to the Planning Authority on request.

(Reason: To ensure that waste is not being transported for treatment at the plant from outwith these council areas, in accordance with the proximity principle.)

6. Prior to commencement of operation of the energy from waste facility hereby approved, a heat plan detailing the means of delivering energy and heat outputs from the facility, the identified heat users and the timetable for such deliveries shall be submitted to and, following consultation with the Scottish Environment Protection Agency, approved by the Planning Authority. Unless otherwise approved in writing in advance by the Planning Authority the approved heat plan shall thereafter be implemented in accordance with the details and timetable so approved.

(Reason: In order to ensure that the energy from waste facility is efficient in accordance with Scottish Government planning policy and SEPA's relevant thermal treatment guidelines.)

7. Prior to the commencement of development of the energy from waste facility hereby approved, details of the off-takes for export of heat and power as well as the potential way leave routes to accommodate pipe work required for the future export of waste heat from the energy from waste facility to the edge of the appellant's land holding shall be submitted to and, following consultation with the Scottish Environment Protection Agency, approved in writing by the Planning Authority. Development shall thereafter be carried out in accordance with the details so approved and to enable compliance with the heat plan approved under the terms of condition 6 above.

(Reason: In order to ensure that the physical measures required to enable heat to be exported are implemented and so ensure that the energy from waste facility is efficient in accordance with Scottish Government planning policy and SEPA's thermal treatment guidelines.)

8. Surface water from the application site shall be treated in accordance with the principles of the SUDS Manual (C697), which was published by CIRIA in March 2007.

(Reason: To ensure that the drainage scheme complies with SUDS best practice to protect nearby watercourses and groundwater.)

9. Prior to the commencement of development a site waste management plan shall be submitted to and approved in writing by the Planning Authority following consultation with SEPA. The plan shall outline the measures for the minimisation and management of waste during the construction of the development. The development shall thereafter be constructed in accordance with the plan so approved.

(Reason: In order to minimise waste production and maximise resource efficiency at the construction stage of the development.)

10. No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping. The scheme shall provide details of: the height and slopes of any mounding on or re-contouring of the site; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall include indications of all existing trees and hedgerows on the land, details of

(Reason: In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.)

(Reason: In the interests of the biodiversity of the area.)

(Reason: To avoid disturbance to breeding birds during the initial phase of construction and site preparation works on the application site.)

(Reason: In the interest of the amenity of the area.)

(Reason: In the interests of road safety.)

advance by the Planning Authority and the footway/cycleway shall thereafter be formed in accordance with the details so approved.
(Reason: In the interests of road safety.)

16. Unless otherwise approved in writing by the Planning Authority, the existing railhead at Oxwell Mains shall be retained and kept available for use.
(Reason: In the interest of the promotion of sustainable modes of transportation of waste to the energy from waste facility.)

17. Prior to the commencement of development details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority and the artwork as approved shall be provided prior to the operation of the energy from waste facility.
(Reason: To ensure that artwork is provided in the interest of the visual amenity of the locality or the wider area.)

Advisory notes

1. **The length of the permission:** This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)
4. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.)

Schedule of application drawings

SAW0602/PA/005	Location Plan
SAW0602/PA/006	Neighbour Notification Plan
15463/A3/SK057	Cycle Shelter Details
15463/A1/SK058	Security Fence Details
15463/A1/SK059	Gatehouse Plans
15463/A1/SK060	Main Office Plans
15463/A1/SK061	Visitor Centre Plans
15463/A1/SK067	Proposed Building Plan
15463/A1/SK068	Proposed Site Layout
15463/A1/SK069	South East Elevation
15463/A1/SK072	North East Elevation
15463/A1/SK071	South West Elevation
15463/A1/SK070	North West Elevation
DWG001	Fire Exit Doors
DWG002	Roller Shutter Doors
DWG003	Window System
DWG004	Curtain Wall System