

Planning Reference No:	09/0738W
Application Address:	Land off Pochin Way, Middlewich
Proposal:	Additional Information: Erection of Energy from Waste facility with associated buildings, car park and hardstanding areas.
Applicant:	Covanta Energy Ltd
Application Type:	Major Waste
Grid Reference:	712 655
Ward:	Middlewich
Appeal ref:	APP/R0660/A/10/2129865/NWF
Date of Public Inquiry	8 th March 2011

SUMMARY RECOMMENDATION:

- To note the update regarding the forthcoming Public Inquiry.
- To agree further reasons for refusal of the application based on supplementary information and changes made by the applicants since the application was determined and appealed.
- To agree grounds for objection to supplementary information and changes made by the applicants since the application was determined and appealed, that have been submitted for assessment but not included within the application.

MAIN ISSUES:

- The inclusion for assessment, but not addition to the planning application, of a connecting electricity link from the proposed waste site to the national grid overhead power line, and an underground high pressure steam pipeline and return water pipe to and from the waste site to British Salts Cledford Works.
- The inclusion of an application for a great crested newt reception site, the subject of a further report on the agenda.
- The impact on protected species.
- Significant changes to the expected sources of waste to fuel the proposed plant and introduction of significant levels of imports from outside the County.
- Sustainable transport.

1. REASON FOR REFERRAL

This report is submitted to firstly update the Board in relation to the appeal against its refusal of application 09/0738W, an Energy from Waste facility off Pochin Way, Middlewich. It will also bring to the attention of the Board additional information and changes to the application made since the application was refused and after an appeal was registered.

In light of these changes, the views of the Board are sought regarding the introduction of further reasons for refusal, the introduction of objections to assessments submitted not forming part of the application, and authority to compile draft conditions and negotiate a draft Section 106 for recommendation to the Secretary of State should he uphold the appeal.

2. BACKGROUND AND APPEAL UPDATE

Covanta Energy Ltd submitted a planning application, supported by an Environmental Statement, to construct and operate an Energy from Waste Facility, to the Cheshire County Council on 5th March 2009. The application was validated on the 19th March 2009 under reference 8/2009/CCC/3, and initial advertising and consultation was undertaken by the County Council. Following the local government reorganisation of Cheshire on 1st April 2009, a second validation letter was issued by Cheshire East Borough Council on 8th April 2009 amending the application reference to 09/0738W.

Over the following months there was considerable correspondence between the Council, statutory and other consultees, and the applicant, that led to the submission of significant additional information by the applicant to support the application. For the sake of clarity and in order to draw this disparate information together, the applicant was requested to combine the information into a single submission. This was undertaken in December 2009 in the form of Supplementary Information, now referred to as SIP 1. This was advertised and fully consulted upon, and eventually taken into consideration within the officer's report.

The application was refused by the Council's Strategic Planning Board at a special meeting on 26th April 2010.

The applicant, Covanta, submitted an appeal against the Council's decision on 3rd June 2010 and a start date for a Public Inquiry was set for 30th November 2010. The grounds for the appeal are as follows;

- In determining the application, it is necessary to have regard to the substantial and material benefits that will be delivered by the proposed development.
- That the LPA has failed to determine the application in accordance with the adopted policies contained within the Development Plan, the wider strategic policy framework applicable in this case and other material considerations. In particular, the LPA has failed properly or at all to consider and attach proper weight to regional and national energy policies when determining the application.
- That the LPA has failed in its legal duty to consider and attach weight to other material considerations including, in particular, the benefits flowing from the proposed development and the relative lack of adverse impacts, local and national policies on energy from waste developments and recent Secretary of State decisions.
- That the LPA has failed properly to provide reasonable interpretation of its own adopted policies and regional and national policies, having regard to the nature of development proposed and planning precedents.

Covanta subsequently submitted and advertised two further sets of Supplementary Information (SIP 2 and SIP 3) received by the Council on 2nd September and 17th September 2010. The latter being sent the working day before the Pre-Inquiry Meeting (PIM) held in Middlewich on Monday 20th September and hence giving officers, or the inspector little if any time to assimilate the information.

At the PIM, a legal submission was made to the Inspector by the Council claiming that the Environmental Statement supporting the application was unlawful because of the disjointed nature of its submission over a significant time period, and that it was internally inconsistent. As such, it was not possible for ordinary members of the public to follow. SIP 2 and 3 introduced new information, not available to the Board members when they reached their decision on the application. The information has been submitted in an attempt to overcome or address some of the reasons for refusal. The Planning Inspectorate appear satisfied that this information could be advertised by Covanta. However, there was considerable confusion amongst the public as various press adverts appeared giving a variety of dates within which they could respond.

The Secretary of State's response (as the appeal has been recovered and will now be subject to his determination) was to allow Covanta a week to consolidate the various elements of the Environmental Statement into one comprehensive set of documents. The Council further objected to the Secretary of States response claiming that time scales were now too tight and unachievable and necessary consultation could not be undertaken. Furthermore in view of the degree of new information submitted, consideration would be rushed if submission dates for evidence and the start of the Inquiry remained as set.

It was further considered that members of the public, already confused by the multiple submissions of information could only gain an appropriate understanding of the proposals if they had particular energy and persistence to view and cross reference all of the documents.

The Secretary of State was warned that his decision would be the subject of a Judicial Review should the Inquiry not be delayed. The Secretary of State has now agreed to postpone the Inquiry and it will not now commence on the 2nd December as planned. A new date for the commencement of the Inquiry has now been set for the 8th March 2011, and a further Pre-Inquiry Meeting is to be held on Monday 7th February 2011.

The April report to the Board included a section on need within which three waste facilities with planning permissions were brought to the Boards attention, namely Peel Holding's Ince Marsh, Ineos's Weston Point and Bedminster in Lostock. The Weston Point Energy from Waste plant, with a capacity of 850,000 tonnes, is currently under construction. Peel Holdings now have a partner to develop the 600,000 tonnes Ince Marsh Energy from Waste plant and negotiations are in hand to discharge pre-commencement conditions. The partner is Covanta. It is understood that the Bedminster plant has a financial backer.

The Board were also informed that the 25 year PFI contract to treat Cheshire domestic waste collections had been reduced to two bidders; a successful bidder, Viridor has now been selected. Cheshire East and Cheshire West and Chester Councils are currently discussing the withdrawal of PFI support with the Secretary of State. The two planning applications submitted to Cheshire West and Chester

Council by Viridor and RRS were both refused. However, Viridor re-submitted a slightly smaller application, for 200,000 tonnes, and this has now been granted planning permission. The Brunner Mond application for 600,000 tonnes was submitted under the Electricity Act; it is anticipated that the consultation response from Cheshire West and Chester Council will be determined at a forthcoming committee of that Council.

It was reported in April that the thermal capacity of the above three permissions approximated 1.6 million tonnes. With the approval of the Viridor plant, this has now extended capacity to 1.8 million tonnes. Members will be aware that the Cheshire Replacement Waste Local Plan sets a need figure for residual waste, that is waste not expected to be recycled or landfilled at 387,000 tonnes.

3. DETAILS OF SUPPLEMENTARY INFORMATION.

The postponement now provides the opportunity to inform members of the content of material submitted since their determination of the application in April. The original report is appended and includes a detailed description of the original proposals, site history, relevant planning policies, consultation responses and representations and the officer's appraisal leading to a recommendation.

Members should be aware that the position and therefore importance of the Regional Spatial Strategies policies used to support the decision are now the subject of pending change. At present they are still a material planning consideration. The policies of the Waste Local Plan do however closely approximate those of the RSS and it is not considered the abolition of these policies weakens the reasons for refusal.

The grounds for refusal agreed by the Board were;

i) The proposed site is not shown as a preferred site on the proposals map of the Cheshire Replacement Waste Local Plan as adopted by Cheshire East Borough Council and the applicant has not demonstrated that the preferred sites are no longer available or in view of the proximity to housing are less suitable for the proposed development. The proposal is therefore contrary to policy 5 of the Cheshire Replacement Waste Local Plan as adopted by Cheshire East Borough Council.

ii) The applicant has failed to demonstrate that existing capacity with planning permission is inadequate to meet waste management needs. It is therefore considered that there is no requirement for further capacity to be released and that the proposal is contrary to policy 3 of the Cheshire Replacement Waste Local Plan as adopted by Cheshire East Borough Council.

iii) The proposed development would result in the overprovision of waste facilities and lead to a requirement to import wastes from outside Cheshire, thereby undermining the objective of enabling waste to be disposed of in one of the nearest appropriate installations. The proposed development is therefore considered unsustainable and contrary to policy 1 of the Cheshire Replacement Waste Local Plan as adopted by Cheshire East Borough Council.

Council and Sections 9 and 10 of PPS1 Climate Change Supplement, DP1, DP5, DP9, EM10, EM12 and EM13 of the Regional Spatial Strategy.

iv) It is considered that the objections to the proposed development, including the impact on the landscape, outweigh any benefits, and that as no overriding need for the facility has been demonstrated it is contrary to policies 2, 14 and 36 of the Cheshire Replacement Waste Local Plan as adopted by Cheshire East Borough Council, policy DP7 of the Regional Spatial Strategy, and policies GR1, 2, 5 and 6 of the Congleton Borough Local Plan.

v) The applicant has not satisfactorily demonstrated that the application makes adequate provision by means of a grid connection for the recovery and export of energy from the facility. The proposed development falls low on the waste hierarchy and is considered contrary to policies 1, 12 and 34A of the Cheshire Replacement Waste Local Plan as adopted by Cheshire East Borough Council and EM11 of the Regional Spatial Strategy.

SIP 2, submitted 2nd September 2010, comprises;

- a grid connection which is shown by an indicative route, linking the site by possible underground cable across Pochin Way, along ERF Way, either within the road or to either side of it, to the existing 132 kV overhead national grid power cables approximately 800m to the east of the site. The route has yet to be defined in any detail. A temporary pylon and permanent replacement pylon, incorporating platform and transformers, but of the same height as existing, either on the existing site or adjacent to it, are proposed.
- an indicative underground route for a high pressure stream and return water pipeline linking the site southwards to the British Salt works at Cledford Lane. The underground pipelines would leave the southern part of the site, cross Cledford Lane and run along the route of PRow Middlewich Footpath No 20 for approximately 400 metres before crossing the rail way line and entering the British Salt site.
- details of application 10/2551W, a proposed receptor site, to the east of Sanderson's Brook, to accommodate great crested newts displaced from the Covanta site. The receptor site includes three ponds, creation of four hibernaculums and wet grassland and areas of scrub. The application was submitted on 15th July 2010 and a separate report appears elsewhere on the agenda. No further comment on this element is therefore made.

Sip 3, submitted on 17th September 2010 comprises;

- Transport Sensitivity Assessment Tests that model three scenarios of differing percentages of waste imports from areas outside Cheshire supplied by road.
- An Assessment of Carbon Benefits of Sourcing and Treatment that looks at various scenarios and assesses the carbon footprint of these.

4. CONSULTATIONS (External to Planning)

As the appeal is now in the hands of the Planning Inspectorate the Council has only undertaken internal consultations.

The **Public Right of Way Unit** has objected to both elements of SIP 2 as they would obstruct and impact on footpaths Middlewich No 19 and 20 and the extent of that impact has not been assessed due to the indicative nature of the proposal, nor has any mitigation been provided. It is noted that a formal diversion will be required.

The Council's **Archaeology Officer** has no objection to the additional areas and considers an archaeological watching brief would be an appropriate strategy.

The Council's **Arboricultural Officer** has identified that no mature or significant trees are affected by the electricity and steam links. However, immature tree and shrub planting would be removed and not replaced. Impacts are therefore likely to be mainly visual.

The Council's **Conservation Officer** notes that Cledford Hall and its range of farm buildings are listed and on the buildings at risk list. The setting of the buildings have been already affected by development of large industrial units off ERF Way. The incinerator would further affect the setting of the buildings but the two links are unlikely, after construction to have any impact. Landscaping will help mitigate any overall impacts.

The **Highway Engineer** has no objection to the supplementary information.

The Council's **Landscape Officer** notes the lack of detailed design and that proposals for the grid and CHP links are assessed as assumptions based on 'worse case scenarios'. In relation to the grid connection, although considering the landscape has a high capacity to accept change, given the cumulative impact of the EfW plant proposed, he does not feel it has the capacity to accept the scale proposed. He also considers effective mitigation would be difficult to achieve and that the impact would be adverse as removed landscaping would impact on views from ERF Way, Footpath 19 and the Sanderson Brook corridor. He notes removed woodland and scrub along ERF Way, whilst small in area, is the only cover available and hence the impact would be more significant than the assessment states. He considers that there are no real opportunities for mitigation and does not consider the design of the building can be seen as mitigation for the loss. He further considers the replacement pylon with extended platform will have an adverse visual impact especially on walkers using Footpath 19. No comment is offered in relation to the CHP link.

The **Environmental Protection Officer** notes that the supplementary information uses updated figures and also a new methodology to assess air quality. The appellants have not however taken the opportunity to consider the impacts of revised traffic flows along the A54 through Sproston, within Cheshire West, which generated concern by that Council in terms of air quality.

The **Council's Ecologist** has concerns regarding the adequacy of information provided in respect of protected species. The impact assessment and mitigation can only be considered indicative at this stage and must be known prior to any determination as such matters cannot be left to conditions.

5. OFFICER APPRAISAL

SIP2

This submission seeks, in part, to overcome reason 5 of the refusal and includes indicative routes for an electricity grid connection and an indicative route for a steam pipeline to British Salt's Cledford Works. This information has been submitted to assist the overall assessment of impacts for this project which is a Schedule 1 development under the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999, by indicating the likely impacts of these two potential developments. It should be noted however that the information does not constitute an extension to the planning application. The export of electricity or steam from the site, should the incinerator be granted permission, would still need to be the subject of additional planning permissions. Under such circumstances, the applicant has still not demonstrated that the application makes adequate provision for the export of energy from the site, it merely indicates the likely impact such provision may have should, at some time in the future, they seek and are granted planning permission. The applicants have had over a year to amend the application to incorporate energy export details and make this EIA submission comprehensive, but have not taken the opportunity to do so. The application, as submitted and appealed, is for a stand alone incinerator with aspirations for future energy export. It therefore must still be considered low on the waste hierarchy and contrary still to the Waste Local Plan and Regional Spatial Strategy policies. As the applicants have continued to expressly omit any details of energy export facilities from their planning application, they cannot expect to benefit from policy support on matters not applied for.

Both elements (the grid connection and the steam pipeline link), have been accompanied by an environmental assessment based on assumed indicative proposals which cover:

- traffic and transport,
- noise and vibration,
- landscape and visual,
- archaeology and cultural heritage,
- solid waste, hydrology, geology, soils and water quality,
- ecology and nature conservation.

The assessment of the relevant impacts the above developments may have, can only be accurately completed once final details are submitted. However, on some issues, a worst case scenario can be assumed. Such impacts will be cumulative and additional to any arising from the construction and operation of the Covanta Waste plant.

The grid connection will entail the excavation of an 810 metre long trench linking the Covanta site to the national grid. The trench would be located either within the road (ERF Way) or within a corridor either side of it. The corridor would be 1.2m deep and 700mm wide and contain 132kV cables. In order to access the trench and provide a working and storage area for stripped soils and materials, a 5 metre corridor is required. It has been estimated that up to 712 cubic metres of material from the trench may need to be removed, although some may be suitable for

replacement. Any landscaping, in the form of trees and shrubs along the corridor, would need to be removed and would not be replaced due to the need to maintain an easement. It is not known how much, if any of the existing landscaping along ERF Way would be removed. Temporary fencing, lighting and possibly site facilities would be required. Electrical switchgear and transformers would connect the cables to the main plant and would be located to the rear (west) of the main building. A new 32.3 metre high pylon with transformer platform would need to be constructed to link the underground cables into the overhead grid. It is likely a temporary pylon would need to be constructed to facilitate this work. The total duration of works would be between 38 and 42 weeks, although there is a possibility that some elements may overlap, thereby reducing the time for construction.

The steam pipeline connection would consist of an insulated steam pipeline, 630mm in diameter, running 1.6 kilometres from the Waste plant to the British Salt Works, together with a parallel water return pipe of 225mm diameter. Both are likely to be buried approximately 1.4m deep. The indicative route runs south from the proposed waste plant, crosses Cledford Lane, then follows the line of public footpath 20, before crossing under the railway line and continuing within the Salt Works. A temporary road would be required to enable the construction, thereby requiring a working corridor 15 metres wide that would also accommodate stripped soils, excavated materials and work materials. Temporary stoned compounds, 20m by 20m, would be required to enable the pipelines to be bored under the railway line. It is anticipated the works would last a maximum of 33 weeks.

The construction of a grid connection and a steam pipeline will entail additional traffic movements and potential partial road closures to Cledford Lane, Pochin Way and ERF Way. The Highway Engineer does not consider the traffic increase, which would be over a limited time period would be sufficiently significant to warrant refusal and could be controlled by condition.

The works would add to the noise, dust and vibration generated by the construction of the Waste plant. However, the Environmental Protection Officer does not consider this impact would be significant and could be controlled by conditions.

Landscape

The impact on landscape and visual amenity likely to occur was cited as a reason for refusing the original Covanta Waste Plant application. It is considered that further impacts will arise as a result of the proposed grid connection, as existing landscaping, in the form of tree and scrub planting along ERF Way, would be removed and not replaced. Some proposed planting in front of the main building would now have to be omitted to maintain a wayleave over proposed buried cables and a replacement pylon with extended platform is proposed, increasing the visual impact of the overhead power line. Impacts would be both during construction and permanent.

Ecology

Surveys of Sanderson Brook have only been undertaken along the section next to the steam pipeline. They have not been undertaken in the section that would be affected by the construction of the grid connection. The grid connection cables

would need to be laid under the brook and protective measures constructed. Consequently there is likely to be significant disturbance to the brook, its bed and its banks, and any wildlife within it or using it. Otter, a European Protected Species, is known to be increasingly using the brook for movement. It is therefore possible they have holts or resting places within this section. Water vole, not identified within the area to date, could also be present. However, unless surveyed, this can't be established.

Additional surveys have been undertaken to supplement earlier great crested newt (GCN) pond surveys from 2006. These surveys identified the presence of GCN's in ponds within close proximity to the proposed works. It is considered the area is widely used as terrestrial habitat and any works, such as those proposed, would require a licence from Natural England as the species and its habitat would be affected.

Proposed mitigation for GCN's is presently generic and details are being left to be determined once the exact route details are established through negotiation with Natural England. Receptor areas for displaced GCN's are expected to be on the land to the north of ERF Way or that to the south where known GCN ponds already exist. The Environmental Statement indicated that no enhancement is proposed, yet notes two ponds could be improved to provide better habitat. Neither is within the planning boundary or within the ownership of the applicants.

Badgers are known to be present within the area to be used for the CHP pipelines, and there is a likelihood a sett will be affected, however, detailed assessment of impacts and mitigation have not been undertaken as required.

Article 12 (1) of the EC Habitats Directive requires Member states to take requisite measures to establish a system of strict protection of certain animal species prohibiting the deterioration or destruction of breeding sites and resting places. Art. 16 of the Directive provides that if there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species at a favourable conservation status in their natural range, then Member States may derogate "in the interests of public health and public safety or for other imperative reasons of overriding public interest, including those of a social and economic nature and beneficial consequences of primary importance for the environment" among other reasons.

The Directive is then implemented in England and Wales by the Conservation (Natural Habitats etc) Regulations 1994 ("the Regulations"). The Regulations set up a licensing regime dealing with the requirements for derogation under Art. 16 and this function is carried out by Natural England.

Regulation 3(4) of the Regulations provides that the local planning authority must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of their functions.

It should be noted that since a European Protected Species has been recorded on site and is likely to be adversely affected by the proposed development, the planning authority must have regard to the requirements for derogation referred to in Article 16 and the fact that Natural England will have a role in ensuring that the requirements for derogation set out in the Directive are met.

If it appears to the planning authority that circumstances exist which make it very likely that the requirements for derogation will not be met then the planning authority will need to consider whether, planning permission should be refused. Until such time as adequate surveys have been submitted to enable the decision maker to assess whether there are likely to be any impacts and mitigation measures are provided in detail to address those impacts, permission cannot be granted.

SIP 3

The Supplementary Information received on 17th September 2010 (SIP 3) contains two elements, a Transport Assessment Sensitivity Test and a report on Carbon Benefits of Sourcing and Treatment.

The Transport Assessment Sensitivity Tests, it is claimed, complements the Transport Assessment contained within the original Environmental Statement (ES) and SIP 1. Transport modelling within these original documents is based on the proposed plant being supplied by waste generated from within Cheshire East and Cheshire West and Chester Councils. Throughout the planning process, Covanta have continually stated that the facility was proposed for Cheshire waste. Even their Grounds of Appeal refute the Council's assertion that waste may be imported from outside the County.

The Board's determination of the application was based on this. However, SIP 3 now introduces two new scenarios, and three variants of these, which are tested and based on significant levels of waste being imported into Cheshire. This constitutes a significant change to the nature of the application and one made after the Board's determination, after the appeal was lodged and only a single working day before the Pre-Inquiry Meeting.

The first scenario assumes waste is imported from other authority areas in the Mersey Belt (this includes the 10 Greater Manchester Council's, the 5 Merseyside Council's, together with Halton and Warrington). The level of import is then modelled for annual tonnages of 103,000 tonnes, 140,000 tonnes and 172,000 tonnes, the latter being half the proposed plant's capacity. The second scenario assumes for the same set of annual tonnages, imports based on a 50 minute travel time to the site, which would include most of the above authorities together with Flintshire to the west, the Potteries, and as far south as Stafford.

The impact of this revised assumption on waste sources is assessed in terms of traffic movements on local highways and junctions, on air quality and on noise levels. The conclusion reached within the report is that the impacts are not significantly different to the original assessment. Despite an objection from Cheshire West and Chester Council to the earlier ES, where concern over the air quality on the A54 at Sproston was raised, the applicant has not sought to allay these concerns by including information on this area. The proposed changes to now import significant quantities of waste from outside Cheshire are likely to increase road traffic on the A54, as it is the link to the M6, and hence lead to a deterioration of air quality at Sproston.

The original ES did include a Rail Feasibility Study, as required by policies in the Cheshire Replacement Waste Local Plan (CRWLP), particularly policy 27: Sustainable Transportation of Waste and Waste Derived Materials. That Study

looked at the relative costs of road transport compared to providing a rail facility on the site and loading facilities within Cheshire at two locations identified as Ellesmere Port and Knutsford. The conclusion of the Study was that rail transport sourcing waste from Cheshire was not economically feasible. Over short distances there is little benefit to be achieved by implementing a system of rail transfer of waste especially if facilities need to be built. However, this changes significantly over distance and particularly where rail facilities may already exist. Considering waste is now proposed to be imported from outside the County, it is considered essential that an appropriate assessment is submitted for consideration based on the significant changes. Policy 27 states:

An application to develop a waste management facility will only be permitted if it can be demonstrated that the proposed facility will utilise rail, waterway or pipeline transport as an alternative to road transport unless it is shown that such alternative forms of transport have been investigated but would not be practical, economically feasible or more sustainable than sole use of the highway network....

Despite having a railway line adjoining the site, Covanta do not propose to use rail transport and it has not been demonstrated that the amended proposals have been investigated to identify if rail is a suitable alternative. The proposed changes to the application turn what was considered a local facility treating Cheshire waste, into a regional facility accepting waste from other sub-regions of the North West and other Regions such as Wales and the West Midlands.

Policy 12: Impact of Development Proposals, lists relevant environmental issues, including alternative methods of transportation and concludes;

...or the proposal is accompanied by insufficient information on potential impacts the application will not be permitted.

Policy 1: Sustainable Development, states;

.An application must also demonstrate how the development would; c) maximise opportunities for transporting waste by rail or water.

The proposal as now amended is considered to be contrary to policy 27, 12 and 1 of the CRWLP as sustainable alternatives have not been assessed and the sole use of road transport to move large quantities of waste over significant distances and between regions and sub-regions is considered unsustainable. At the time the Board considered the original application, it was still proposed as a facility designed to serve the waste needs of Cheshire, not a regional facility. The proposals now raise sustainable transport as a new issue which is contrary to policies within the CRWLP.

The Assessment of Carbon Benefits of Sourcing and Treatment has been submitted to compare the carbon footprint arising from three scenarios. The first scenario is to compare the proposed plant with landfill. The second scenario compares the overall carbon footprint arising from Cheshire only waste deliveries, the 140,000 tonnes import option from the Mersey Belt and the 140,000 tonnes option from neighbouring authorities within 50 minutes travel time. The third scenario compares the proposed plant with a smaller 204,000 tonnes facility and

landfill, and two smaller facilities. It hasn't been made clear why these scenarios have been selected or what particular relevance they may have.

6. CONDITIONS AND SECTION 106 AGREEMENT

It is standard procedure in appeal cases to provide the planning inspector with a list of conditions for consideration should the inspector be mindful to uphold an appeal. Similarly in cases where it is warranted, an indication of the acceptable content of a Section 106 legal agreement should also be submitted.

At the time the Board considered the original application, Covanta had submitted to the Council draft terms for a section 106 agreement, comments on which were incorporated within the report. Covanta have been requested to submit further details of a unilateral agreement and section 106, but have, as yet, failed to do so.

7. CONCLUSIONS

Following the Boards determination of the Covanta application (09/0738W) in April 2010 and also following Covanta's appeal against that refusal, additional supplementary information has been submitted by Covanta. The information to be added to the Environmental Statement is considered an attempt to overcome part of the reasons for refusal of the application.

The information originally submitted in August and September 2010 in the form of SIP 2 and SIP 3, has now, by order of the Secretary of State, been incorporated within a consolidated environmental statement. This statement will inform the Public Inquiry now due to start on 8th March 2011.

SIP 2 contains an assessment of indicative routes and infrastructure to enable the main site to be connected to the national electricity grid and also to the British Salt Works at Cledford Lane to provide potential high pressure steam. Details of a planning application (10/2551W) for a newt receptor site have also been included. This application is to be separately reported to the Board.

SIP 3 contains a carbon footprint assessment for a variety of alternatives and also assessments for three levels of waste imports from areas outside the County.

As great crested newts, otters, water vole and badgers are or may be present on site, adequate surveys need to be undertaken and there are admitted gaps within the submissions. There will be temporary and permanent loss of habitat as a result of the two links. As European Protected Species are likely to be affected, consideration must be given to the three tests prescribed by the Habitat Regulations. As the Council considers the main facility to be unnecessary in terms of need, it is considered there is an alternative for the proposal; that it is not in the public interest and therefore these elements of the proposed assessment do not meet the tests set by the Habitat Regulations.

It is possible that the submission of adequate surveys and information, and where necessary mitigation, may overcome objections. However, until these are received and agreed, it is considered that these objections are introduced into the Public Inquiry. The impact of the proposed plant is already the subject of objection in terms of landscape and visual impacts. The further works, and particularly the pylon works, are also likely to add to this impact.

Throughout the application submission and determination by the Board, Covanta have insisted the proposed facility was for Cheshire waste arisings. Indeed, even within their grounds for appeal submitted in June 2010, it was claimed in relation to the third reason for refusal that the proposal would not '*lead to a requirement to import wastes from outside Cheshire as claimed by the LPA*'. However, the submission of SIP 3 fundamentally changes the nature of the application, as this is now being assessed under three scenarios of various degrees of waste imports from outside the County from 30 to 50%. The proposed plant is now being considered as a regional facility. The sole dependence on road traffic from distant sources is not considered sustainable. The Environmental Statement no longer has an adequate transport assessment and the role of rail has not been considered. As such the proposed plant is considered contrary to policies 1, 12 and 27 of the Cheshire Replacement Waste Local Plan.

8. RECOMMENDATIONS

- That the report updating members be noted,
- That the Planning and Housing Manager be authorised, on behalf of the Board, to submit comments on the content of any unilateral undertaking made by Covanta and the contents of any Section 106, and to submit to the Inspector a list of acceptable conditions,
- That the Inspector be notified that the Council considers the grid connection and CHP link should be formally submitted in detail for inclusion within a comprehensive planning application and supporting environmental statement.
- That approval be given to introduce further reasons for refusal into the planning appeal as follows:
 1. That the proposal fails to demonstrate that sustainable transport has been adequately considered. It is therefore contrary to policies 1, 12 and 27 of the Cheshire Replacement Waste Local Plan, Policies DP1, DP 4, DP5, DP7, EM 12 and EM 13 of the Regional Spatial Strategy and policy GR 1 of the Congleton Borough Local Plan.
 2. The importation of significant quantities of waste by road from outside the County of Cheshire is considered unsustainable and undermines the principle of treating and disposing of wastes close to source. The importation of waste now proposed is therefore contrary to policies 1, 12 and 27 of the Cheshire Replacement Waste Local Plan, Policies DP1, DP 4, DP5, DP7, EM 12 and EM 13 of the Regional Spatial Strategy and policy GR 1 of the Congleton Borough Local Plan.
- That approval be given to raise objection to the introduced assessments, which have not be included within the application details, as follows:
 3. The indicative routes for the grid connection and steam pipeline would negatively and unacceptably impact on Public Rights of Way, Middlewich footpath N^{OS} 19 and 20. These impacts have not been adequately assessed nor mitigation measures proposed. The assessments are considered

contrary to policy 20 of the Cheshire Replacement Waste Local Plan, and GR16 of the Congleton Borough Local Plan.

4. The indicative route and infrastructure required to provide a grid connection taken cumulatively with the submitted proposal details for a waste facility would have an unacceptable impact in terms of landscape and visual amenity. The assessments are considered contrary to policies 2,12,14, and 36 of the Cheshire Replacement Waste Local Plan, Policy DP 7 and EM 1 of the Regional Spatial Strategy and policies GR 1,2,5 and 6 of the Congleton Borough Local Plan.
5. That adequate ecological surveys and mitigation have not been provided to assess the impact on protected species. The assessments are considered contrary to policies 1, 12 and 17 of the Cheshire Replacement Waste Local Plan, EM1 of the Regional Spatial Strategy.