

**WEST OF ENGLAND PARTNERSHIP
JOINT WASTE CORE STRATEGY**

FUTURE CAPACITY REQUIREMENTS

ADDITIONAL STATEMENT BY GARETH PHILLIPS REPRESENTING SITA UK LTD

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ISSUE; Soundness of "Policy 5 – Residual waste treatment facilities – locations",

1. The specific issue which SITA UK Ltd contends to be unsound relates to Policy 5 and its references to Figure 6.1 and indicative capacity requirements.
2. The relevant section of the Policy states;

"The facilities proposed will be required to contribute to the delivery of the Spatial Strategy illustrated in Figure 6.1. Indicative required capacities for residual waste treatment are:

***Zone A - ~390,000tpa
Zone B - ~100,000tpa
Zone C - ~150,000tpa
Zone D - ~60,000tpa
Zone E - ~100,000tpa"***

3. The issue is therefore *"Should there be express recognition that the sites included in Policy 5 represent the minimum necessary level of provision – that the capacity requirement is a minimum, not a ceiling?"*
4. SITA consider that the sites and tonnages referred to are indeed "minimum" requirements and should not be interpreted either as caps or ceilings.
5. Following the advice of PPS 12 and the Companion Guide, SITA UK Ltd contend that Policy 5 is unsound on the basis of the following 6 points;

Point 1

6. **Policy 5 is unsound on the basis that it is not consistent with National Policy due to the Policy being open to interpretation in a way that was demonstrably not intended by the West of England Partnership.**
7. It is my understanding (and I stand to be corrected if this is not the case) that it was not the intention of the West of England Partnership, nor their consultants ERM, to imply or impart a restriction or cap on the provision of waste recovery capacity in any of the identified zones. It is my understanding that the zoning was intended to advise prospective developers of how the West of England Partnership would suggest a strategic spread of facilities, depending on availability of the allocated sites, over the Plan Period.
8. The West of England Partnership recognise that proposals in Zone A would come forward first and were aware of two such proposals.
9. However the West of England Partnership had not intention to limit or restrict development within Zone A or any other zone.
10. **I wish to stress that SITA`s assertion that this Policy is unsound, is in no way a criticism of the West of England Partnership Officers or the way in which the Joint Waste Core Strategy has been compiled.** It is merely an observation that the drafted policy is open to interpretation in various ways, where no such interpretation was intended by those Officers drafting the policy.
11. Even though the Joint Waste Core Strategy has yet to be adopted there have already been two examples of a restrictive interpretation of this Policy being the justification by Planning Committees in separate Authorities for refusal of two separate Planning Applications due to their perceived overprovision of capacity within Zone A and Policy 5 being interpreted as imparting a cap on capacity.
12. In both of these planning applications, the Case Officers, having received advice from colleagues in the West of England Partnership, informed both Planning Committees (Bristol City Council North Planning Committee and South Gloucestershire Council West Planning Committee), that Policy 5 did not intend to set a cap on capacity.
13. This advice from the West of England Partnership to Bristol City Council and South Gloucestershire Council is contained within the respective Officers reports (Please refer to Appendix 1 & Appendix 3).
14. In both situations the Planning Committees resolved to refuse both applications, against Officer recommendation for approval, and both Planning Committees cited non-compliance with the draft Policy 5 as the reason for refusal (Please refer to Appendix 2 & Appendix 4).

15. As both of these refused applications are subject to separate appeals proceedings, I recognise that these planning applications and their reasons for refusal are not a material consideration of this Public Inquiry.
16. However these refused applications provide a clear example that Policy 5 can be, and has been, interpreted in ways and given meaning that was not the intention of the West of England Partnership.
17. Therefore these examples of Policy interpretation by Committee against Officer advice on Policy 5, are of material significance.

Summary of Point 1

18. SITA UK Ltd therefore consider that the wording of Policy 5 is unsound on the basis that it is too readily open to this interpretation, and even before the provision of the "Submission Document" to the Secretary of State that the Policy was being misinterpreted so as to prevent development and also interpreted in a way that was expressly contrary to the intentions and advice of the West of England Partnership.

Point 2

19. **There is no robust or credible evidence base to support the placement or use of a tonnage cap on the provision of waste recovery facilities. Therefore Policy 5 is not "Justified"**
20. It could be argued that whilst the wording of a Policy may be open to interpretation in a way that was not intended by those drafting the Policy, this may not in itself make the Policy "unsound" under PPS12.
21. If this were to be the case then we need to look at the definitions of the wording within that policy to ensure that there is a suitable evidence base to support the precise wording and meaning of that Policy.
22. The main issue revolves around "*indicative capacity*". The Oxford English Dictionary defines "*capacity*" as follows;

"Power of containing, receiving, experiencing or producing; maximum amount that can be contained, produced etc".
23. The definition of capacity therefore imparts the notion of a "maximum" amount / limit / containment / production.
24. If we assume that the West of England partnership deliberately used the word "capacity" in Policy 5 to imply a maximum amount / cap per zone in Figure 6.1 then in order for the Policy to be "sound" and to pass the PPS12 test on being "Justified" then there must be a robust and credible evidence base to support the "cap" or "capacity" limit.

25. Para 6.8.5 of the Submission document references the ERM Spatial Options Appraisal June 2009 and states; *"The spatial strategy of the required residual waste treatment capacity is presented in Figure 6.1. This was derived following a detailed assessment of alternative spatial options that considered population distribution, waste arisings, the strategic road network, transport impacts and deliverability"*.
26. In reviewing the ERM document "Spatial Options Appraisal 2009" I can find no evidence to support either the requirement for a cap or maximum limit / capacity, or any recommendation to impose a cap or maximum limit / capacity.
27. In fact Page 1 of the Spatial Options Appraisal 2009 states *"It is important to note that although the assessed options identify specific capacities for facilities, these capacities should not be considered to be prescriptive. They are indicative only and used specifically to understand the potential benefits and disbenefits of the different spatial options"*.
28. It is for these reasons and following a meeting between SITA, the West of England Partnership and ERM on 13th May 2009 and the assurances given at that meeting that there was no intention to set a capacity cap, that SITA chose not to comment upon Policy 5 in the pre-submission consultation document.

Summary of Point 2

29. It can therefore be concluded that if it were the intention of the West of England Partnership for Policy 5 to impart a cap or maximum capacity in combination or by zone, then Policy 5 would be unsound due to there being no robust or credible evidence base to support the requirement for a cap or maximum capacity and the Policy therefore fails the test of being "Justified" under PPS12.

Point 3

30. **If Policy 5 intends to set a cap or maximum capacity then the Policy is unsound because of the reliance it places on non-existent landfill void. The Policy would therefore be unsound because it would fail the test of being "Effective" on the grounds of not being deliverable.**
31. Para 6.8.2 of the Submission document states that; "The JWCS seeks to deliver, by 2020, diversion from landfill of at least 85% of municipal and commercial & industrial wastes through recycling, composting and residual waste treatment. A minimum of 50% of this total recovery target is intended to be achieved through recycling and composting leaving 35% to be delivered through residual waste treatment capacity".

32. This leaves a remaining 15% to be landfilled.
33. Para 6.10.5 of the Submission Document states " The West of England partnership (WEP) landfill review indicates a need for an additional 5.9 to 6.5 million cubic metres of non-hazardous landfill void within the sub-region throughout the plan period.
34. The Waste Management Capacity Needs Assessment published by ERM in June 2009 recorded that there was (at that time) 3,000,000m³ of consented non-hazardous landfill void within the West of England area.
35. However this report estimated that void space would be exhausted in 2013/14, and that there would be a shortfall in void requiring new void capacity to be provided (as suggested in para 6.10.5 above).
36. In 2009/10 the West of England Partnership undertook sites assessment for potential new landfill void within the West of England and returned no results.
37. Given that;
 - significant volumes of non-hazardous waste are currently transported out of the West of England to be landfilled in Wiltshire, Somerset, Gloucestershire and beyond;
 - it would take at least 3 years to secure planning, build and commission a strategically sized Thermal treatment facility,

it is already likely that non-hazardous waste landfill capacity within the West of England will be exhausted before strategic sized replacement recovery facilities come on-line.
38. Given SITA UK`s extensive experience in operating landfills, it takes around 5 years to secure the land, secure planning permission, and engineer the site before the first tonne of waste is tipped at a new landfill site.
39. If we are to assume that Policy 5 sets a capacity cap on residual waste treatment facilities, then this places a requirement on 15% of residual waste having to be landfilled, where landfill capacity is predicted to be exhausted in 2013/14 and no new replacement void has been identified.

Summary of Point 3

40. If Policy 5 intends to place a cap on recovery capacity, then the Policy is unsound on the basis that the Policy fails the test of "Effectiveness" by not being deliverable. The Policy places undue burden on dwindling landfill void with 15% of residual waste requiring disposal by landfill, where the Partnership have failed to identify any new sites in the West of England for potential non-hazardous landfill void to meet the 5.9-6.5million m³ void shortfall over the plan period. If there were no cap on recovery capacity, then deficiencies in landfill void can be overcome by further

provision of recovery capacity thus making a Policy with no cap on recovery, deliverable, effective and therefore "sound".

Point 4

41. **If we are to assume that Policy 5 intends to cap recovery provision, then the Policy would be unsound through not being justified by failing the test of "the most appropriate when considered against the reasonable alternatives". The Secretary of State's determination of the Ineos Chlor and Ince Marshes applications (Section 36 applications to DECC), has not been referred to in any of the supporting Plan Policy documents. The Policy is therefore unsound if it ignores previous directions given by the Secretary of State when determining matters on capacity provision.**
42. In determining the Section 36 application for Ince Marshes (DECC reference 01.08.10.04/36C) the Secretary of State concluded that "neither waste nor energy policy places a rigid cap on the development of waste management capacity".

Summary of Point 4

43. In disregarding recent case law and determinations from the Secretary of State relating specifically to caps on the development of waste management capacity, Policy 5 could be argued to be unsound.

Point 5

44. **Despite one of the sites allocated in Policy 5 having an alternative means of access (by rail), Policy 5 disregards this potential benefit by being capable of interpretation as placing a cap on capacity within zone A. This would be unsound by failing the test of "Justified" by failing to adhere to the most appropriate strategy when considered against the reasonable alternatives.**
45. If 390,000tpa of capacity has already been permitted elsewhere in Zone A, then it would be the unintentional consequence of Policy 5 of preventing site no` SG39 coming forward for development for waste recovery.
46. This would be a perverse consequence given that site no SG39 is the only rail linked site of all those allocated in the West of England.
47. Under this circumstance, a Policy intending to deliver the spatial strategy would prevent the only rail linked site from being developed.
48. A cap imposed by Policy 5 would be counterintuitive and counterproductive given the stated requirements for flexibility in paras

6.8.6 & 6.8.8, and would fail the test of "the most appropriate strategy when considered against reasonable alternatives".

Summary of Point 5

49. Any cap on capacity contained within Policy 5 may prevent sites with alternative means of access coming forward for development if there is already permitted capacity elsewhere within that particular zone. This would apply to site no` SG36 which is rail linked and to any future non-allocated sites coming forward which have the potential for alternative means of transport.

Point 6

50. **Were there to be a cap on capacity within Policy 5 then this Policy would be unsound on failing the test of being "Effective" by not being "flexible" in regard to permitted capacity which hasn't been built and may not be built.**

51. Paras 6.8.6 refers to the need for flexibility, whilst para 6.8.8. refers to the fact that *"Some areas have more sites listed than may be required. This allows flexibility and subsequent deliverability of the Spatial Strategy to meet the sub-regions needs"*.

52. However Policy 5 (if a capacity cap is implied and accepted) makes no allowance for the fact that a site may have permitted capacity, but is never delivered by the site owner / developer. This would then present a block on any other site coming forward within that zone resulting in a shortfall in capacity.

Summary of point 6

53. Policy 5 is unsound in that it does not have any flexibility within it to allow for the fact that having consented capacity does not mean that capacity will be developed and delivered. Policy 5 does not contain any mechanism to make up any shortfall in delivered capacity and does not make it clear whether the policy refers to permitted or delivered capacity. The Policy therefore fails the "flexibility" test and is unsound.

Given the Above points, how can the Core Strategy be made Sound?

54. The Policy can be made sound by either removing the references to “capacity” from the policy wording and making it clear in Policy terms that there is no inferred ceiling or cap on the provision of waste recovery infrastructure, or by including “minimum” in references to capacity e.g. “minimum capacity”.
55. This would have the effect of ensuring;
- The Policy is no longer open to interpretation and the aims of the Policy are clear and therefore consistent with National Plan Policy (Point 1)
 - The Policy will now be consistent with the robust and credible evidence base used within the Plan Policy process, particularly the Appraisal of Spatial options (June 2009), the Sustainability Appraisal and Quantitative Assessment of transport impacts, none of which demonstrated the need for a cap or maximum capacity level (Point 2).
 - The Policy will now be effective and deliverable as it does not place a requirement to cap recovery capacity and therefore does not impose a minimum requirement (15% of residual waste arisings) on additional landfill void, which needs to be provided from 2013/14 when no new sites have been identified following a thorough search by the West of England Partnership (Point 3).
 - The Policy would no longer be inconsistent with the Secretary of States decisions and case law on Ince Marshes and Ineos Chlor (Point 4).
 - The Policy would not inadvertently prevent suitable sites with alternative means of access from coming forward (Point 5).
 - The Policy would be flexible to allow sites to be developed taking into account that permission for infrastructure does not guarantee that the infrastructure will be delivered and become operational (Point 6).

What is the precise change / wording that is being sought

56. It is the suggestion of SITA UK that in order to resolve the above 6 points and to make this particular Policy pass the test of "Soundness" the Policy wording is amended to;

"The facilities proposed will be required to contribute to the delivery of the Spatial Strategy illustrated in Figure 6.1.

Minimum required capacities for residual waste treatment by zone are;

Zone A - ~390,000tpa

Zone B - ~100,000tpa

Zone C - ~150,000tpa

Zone D - ~60,000tpa

Zone E - ~100,000tpa

Shortfalls in the minimum capacity in any zone can be made up by additional provision in another zone.

57. If the Inspector were minded to retain references to capacity or to seek a maximum limit of the provision of recovery infrastructure, then the following wording to supplement Policy 5 is suggested;

Sites with alternative means of access such as rail / water, shall not be subjected to capacity considerations if they can demonstrate that a significant proportion of waste can be delivered to the site by means other than road-borne transport".

ENDS