



**No Time
to Waste -
Planning reform
for sustainable
waste infrastructure**

Foreword

The waste and resource management sector has expressed concerns over the planning system more than once in recent times, but I make no apology for that. While some waste infrastructure proposals get planning permission in a straightforward manner, a significant number of major projects are either rejected or only gain permission after expensive, lengthy and unpredictable appeals. This in turn makes it harder for companies like mine and others in the sector to justify committing funds to future projects. Despite this, no one disagrees that substantial investment in Britain's waste management infrastructure is urgently needed and that ESA's members will be key to that investment.



Change is clearly needed, and the Government's approach has been to strip back national planning guidance while seeking to empower local communities to take a more activist role in planning for their local area.

The waste management sector has many good examples of close engagement with local communities, but we are concerned that the Government's reforms may encourage communities to believe that they can stop any unpopular waste application in its tracks regardless of its merits. If this turns out to be true, Britain will never get the modern, sustainable waste management infrastructure it needs. If this belief turns out to be a misperception, local people may become more alienated from the planning system which is something none of us wants.

We believe the solution is a more balanced approach, which we have termed 'responsible localism'. This policy brief sets out how this can be delivered – going with the grain of the Government's reforms but making some important amendments.

Ian Goodfellow
Managing Director, Shanks UK
Chairman, ESA

Executive Summary

- The UK urgently needs to invest £10-20 billion in waste infrastructure. This investment will deliver the UK's targets for moving waste up the waste hierarchy, generating renewable and low carbon energy and making the UK economy more resource efficient.
- However, the planning system remains a complex and time consuming process, creating real project risk for the waste management industry which can undermine the economics of new investment.
- 'Planning by appeal' has become commonplace whereby applications receive officer recommendation, only to be rejected by the local planning committee but then reinstated upon appeal. This drawn-out process is unsatisfactory both for companies and communities.
- The Government's localism agenda does little to address these problems.
- This brief sets out recommendations to reduce planning risk and deliver a 'responsible localism' which combines local community engagement with provision which enables efficient delivery of appropriate waste management infrastructure.

Waste investment is less discretionary than other forms of infrastructure investment

Waste management investment is different from much of the other investment that comes before local planning authorities. It is less discretionary than, say, investment in new housing, retail or transport. This is because the trade off between investing or not in these other sorts of projects are valid choices for communities to make. For waste, the UK has fixed legal obligations and the public rightly insists that **all** waste is dealt with safely and without environmental harm. This means that whilst waste management companies, local authorities and communities must all work together to develop realistic and appropriate waste infrastructure plans, choosing not to invest in appropriate waste infrastructure is simply not an option.

The financial penalties would also be severe. National fines for missing EU landfill diversion targets could reach £180m a year, while businesses and local authorities could see waste disposal costs rise by £110m a year, as the landfill tax continues to rise.



**OPPORTUNITY
AHEAD**

The planning system should convert aggregate need into appropriate local waste investment

The waste management industry is willing to make the financial investment required in new waste management infrastructure. The planning system should be converting high level, national waste management objectives into consents for specific development proposals, which enables the industry to deliver the necessary investment in facilities.

Exhibit 1: Planning timescales are lengthy

Preparing a waste planning application

- up to 12 months for site search and acquisition
- up to 18 months to prepare a planning application, including the facility design
- most waste management development requires an Environmental Impact Assessment:
 - up to 12 months of data gathering/background monitoring
 - up to 3 months to prepare an Environmental Statement
- pre-application consultation:
 - technical consultees
 - local communities
- up to £500k¹ costs in obtaining planning consents (PR, consultants, legal, technical and application fees)

Submitting a waste planning application

- typically 12 months determination period²

Post consent

- up to 36 months to build and commission
- up to £200m building costs

^{1,2} excludes the appeal process

In practice, the planning system has become a major element of project risk

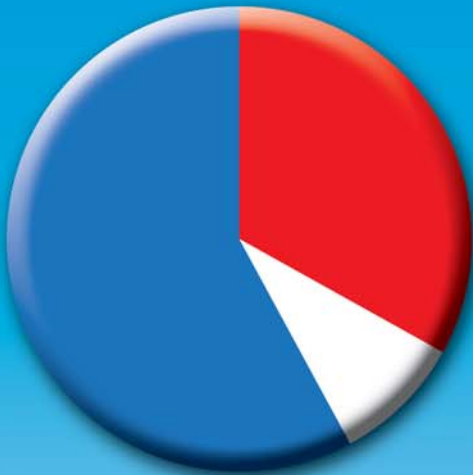
Exhibit 1 shows the complex processes and lengthy timescales involved in making a waste management planning application.




The process outlined in Exhibit 1 would be manageable for waste management companies if the end result was reasonably predictable. In practice, this is not the case, due to four barriers in particular:

Barrier 1: Outdated waste development plans: Waste plans across the country are largely outdated, lagging behind national policy with insufficient recognition of the need for modern waste management facilities (Exhibit 2). Applications for waste management infrastructure are therefore often construed as a *departure from the plan*, triggering lengthy inquiries or planning appeals.



Exhibit 2: Few councils have up-to-date waste plans



-  Complete New-style Waste Plan
-  Core Strategy only
-  No new-style Waste Plan

The Planning and Compulsory Purchase Act (2004) introduced a new approach to spatial planning and required local authorities to replace local and structure plans with new local development frameworks (LDF). However, 7 years on, progress towards adoption of LDFs has been slow and coverage of development plans across England remains a myriad of old style plans, 'saved' plan policies and half completed LDFs. Whilst a number of local authorities have adopted Core Strategies, few authorities have adopted the complete portfolio of development plan documents. Therefore, less than 10% of the expected number of 'new style' waste plans could be considered to be in place.

Barrier 2: Poor coordination between waste and energy policy: Energy policy is often considered a "district matter" whilst waste development remains a "county matter". This can lead to a disconnect where the county waste plan does not spot opportunities to, for example, link a heat offtake from an Energy from Waste (EfW) plant to a potential district heating scheme.

Barrier 3: No regional framework: Most waste management development is too small to be determined by the Infrastructure Planning Commission³, and yet too large to meet the waste management needs of an individual local authority. Regional Strategies provided direction and context on the urgent need for new waste management facilities and apportioned the tonnages of municipal and commercial and industrial wastes that should be planned for, on an annual basis, by each individual planning authority. Planning authorities were required to produce development plans which identified sites capable of managing the amount and types of waste specified within the Regional Strategy.

Since the loss of the regional planning tier, the Government has so far failed to propose adequate means to ensure the strategic need for waste facilities is addressed by the planning system.



³ To be replaced by the Major Infrastructure Planning Unit from April 2012

Barrier 4: Prevalence of 'planning by appeal':

A combination of all these factors has created a policy vacuum for waste planning and increased the tendency for 'planning by appeal', particularly for large scale investment projects, such as Energy from Waste (EfW). A trend has emerged whereby consent is refused by committee, often against officer recommendations, only for a committee decision to be overturned by the Planning Inspectorate upon appeal, who deemed there to be no sound reason for refusal. Indeed of the 14 EfW applications submitted by ESA members since 2009 (with a combined capacity of over 3.1m tonnes/annum) ten were subject to appeal or call in, despite having planning officer approval in 70% of cases. (Four applications were eventually approved on appeal, with a further four decisions still pending.)

'Planning by appeal' is a slow and inefficient means of determining waste planning applications, which adds to the resource burden on developers and can result in the award of costs against the planning authority. It also places huge weight on the role of individual planning inspectors, which can lead to greater unpredictability for companies and communities.

The main reason why delay is so damaging in the waste management industry relates to the problem of holding sub-contractor costings. Typically there is a disconnect between the inflator applicable to the payment mechanism under any Project Agreement and cost inflators sought by sub-contractors which are heavily linked to both raw materials and labour. Added to this there are further problems of currency fluctuation in many cases. This has led in some cases to some projects and their delivery not only being conditional on the obtaining of a satisfactory planning permission but also on the cost of the project being "affordable" once that satisfactory permission has been obtained.

Exhibit 3: Localism - the Government's reform agenda

The Government's flagship policy, the Localism Bill, heralds the greatest shake-up of the planning system in recent times. It aims to place local communities at the heart of the planning system. The Bill is currently subject to parliamentary scrutiny and if passed by both Houses, would take effect from April 2012. Key provisions are:

The **Major Infrastructure Planning Unit** will replace the Infrastructure Planning Commission, (the body formerly responsible for determining the largest, nationally significant projects). However, the MIPU's powers would be limited to examination of an application, and the decision to grant consent made by the relevant Secretary of State.

The **regional planning tier** – including relevant waste management targets and planning policy – has been abolished and instead the Localism Bill introduces a new legal duty on local authorities to **co-operate** in strategic planning.

Neighbourhood plans have been introduced as a new statutory tier of the development plan. Such plans, approved by a local community by referendum, would set out development priorities for the local area and allow certain types of development to proceed without the need for planning permission. Whilst "county matters", such as planning for waste management development, are excluded from the scope of neighbourhood plans, questions remain on how such plans might influence the preparation of local development plans or how both plans might co-exist.

The local authority decision making process could become increasingly accountable to local communities, who, at the request of 5% of the electorate could call for a **local referendum** to be held on a wide range of local authority activities.

The Bill introduces a new mandatory requirement for developers to engage in **pre-application consultation** with local communities before submitting a planning application. A developer would be required to take account of views expressed during the consultation exercise upon submission of final proposals to a planning authority.

Localism risks undermining waste planning

The waste management industry has a history of working with local communities and supports the main thrust of localism. In practice, however, the outlined reforms (Exhibit 3) may do little to alleviate existing concerns over waste planning and in some cases could add to problems.

Risk 1 - Weakening of institutional ability to plan for waste management across local authority boundaries:

An uncoordinated approach to planning for waste management across local authority boundaries will result in duplication of resources and a failure to plan beyond local waste requirements.

The Bill does little to alleviate concerns of a policy vacuum following the abolition of Regional Strategies while the proposed National Planning Policy Framework – an essential reference for preparing local plans and determining consents – would not receive a statutory footing.

It remains unclear how the new duty to co-operate in planning for sustainable development will assist local authorities to bring forward development plans with provision for planning for strategic waste infrastructure, as local authorities need only consider opportunities for co-operation.

The Planning Inspectorate's examination of submitted development plans would provide the first opportunity to test whether the duty to co-operate had been fulfilled: arguably a retrospective and time consuming approach. This issue is even more relevant because, following the cancellation of PFI credits for many projects and the lack of a clear system going forward it is plain that many Waste Disposal Authorities will have no option but to rely on facilities either procured or being procured by neighbouring authorities. An insular and local focus is in direct contradiction to this need.

Risk 2 - 'Presumption in favour of sustainable development' and the National Planning Policy Framework (NPPF) lack rigour needed to create pressure on local authorities to plan waste provision effectively:

The published draft of the presumption in favour of sustainable development is too high level to give guidance as to whether individual waste applications can be classed as 'sustainable'.

Risk 3 - Localism reforms make it harder, not easier, to frame local debates over waste provision in a valid way:

Research by SITA/NOP shows that when residents are given the chance to consider the pros and cons of different waste management options a rational debate can be held. However, upon considering a specific waste management planning application, all too often local communities are encouraged to believe that the choice is between a new plant and the status quo, or that the application can be stopped on non-planning grounds.

The Bill's proposals for local referenda could make the situation worse. It would be inappropriate for local authority planning decisions to be included within the scope of local referenda, and for such decisions – which had already gone through the democratically accountable planning process – to be questioned and overturned by a vocal section of a local community.

Government proposals to address industry concerns merely offer local authorities discretion to exempt statutory processes, such a planning, from the scope of a local referendum. However, 18 months could elapse before a referendum was held on a planning decision, thereby potentially forcing a developer to appeal against non-determination. Such provision would also run contrary to Government proposals that planning applications should be determined within 12 months.

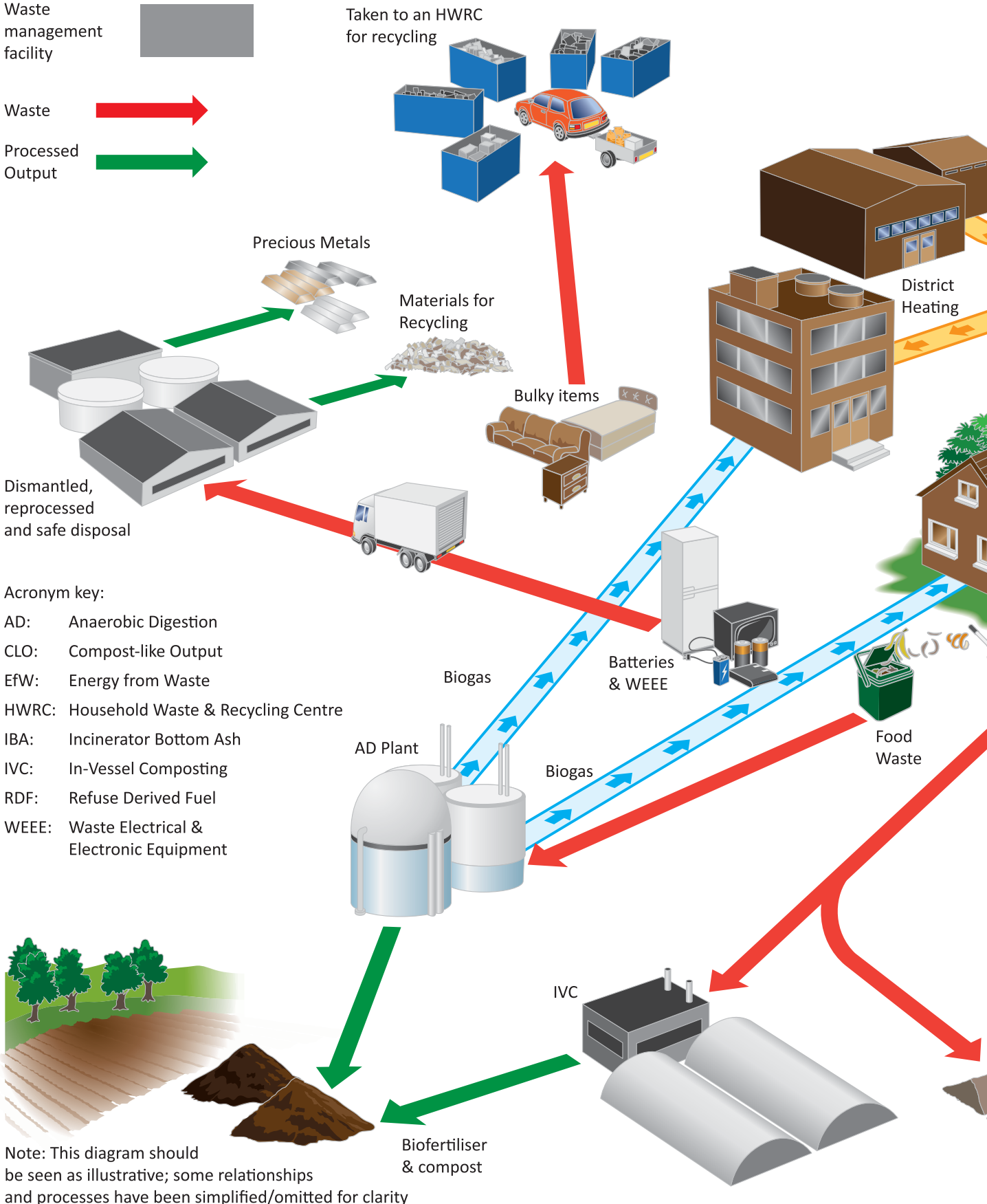
Building colour key:

Houses, offices, factories producing waste 

Waste management facility 

Waste 

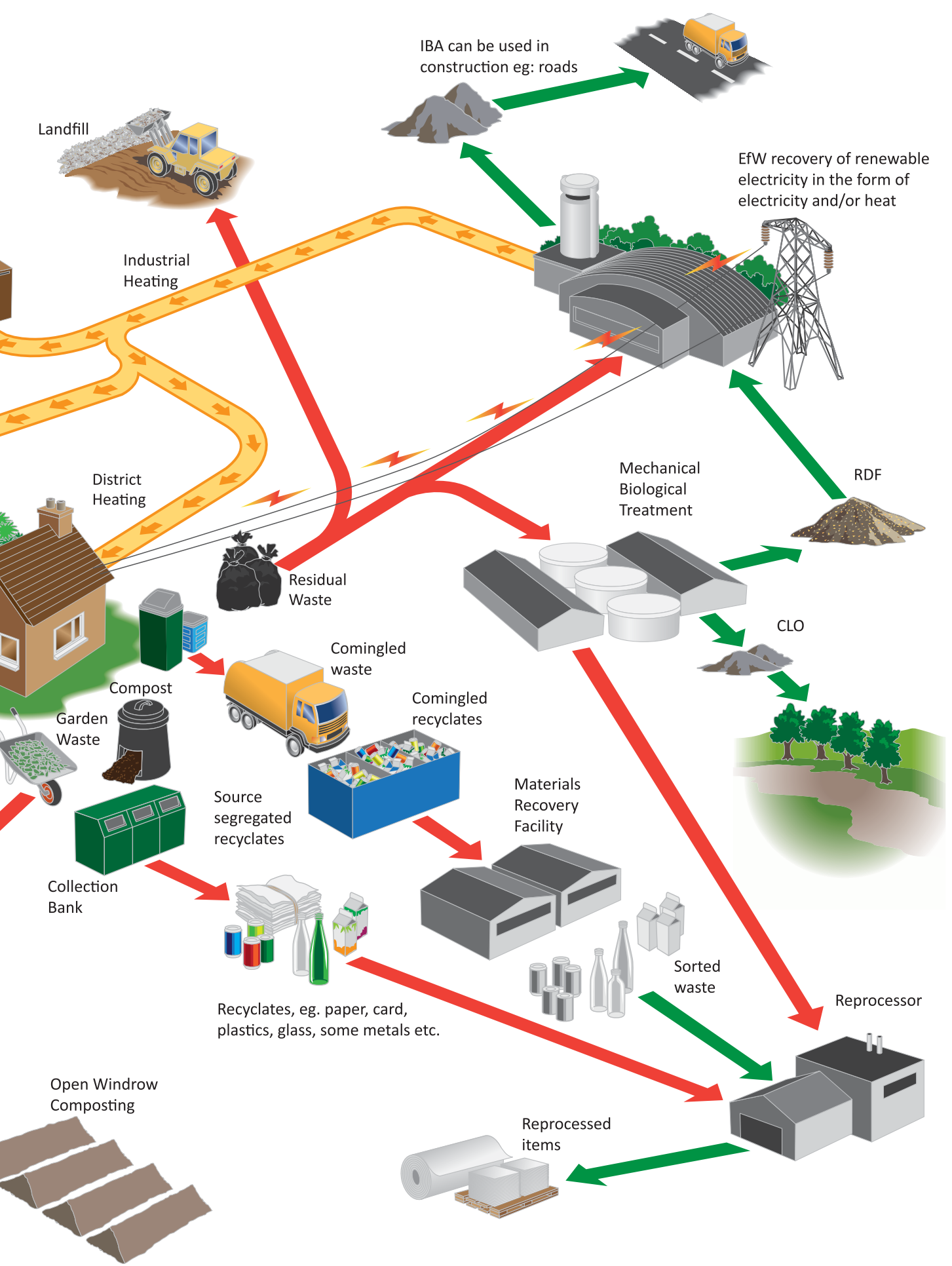
Processed Output 



Acronym key:

- AD: Anaerobic Digestion
- CLO: Compost-like Output
- EfW: Energy from Waste
- HWRC: Household Waste & Recycling Centre
- IBA: Incinerator Bottom Ash
- IVC: In-Vessel Composting
- RDF: Refuse Derived Fuel
- WEEE: Waste Electrical & Electronic Equipment

must deliver a network of waste management facilities



The way forward: responsible localism

What is needed is a pragmatic localism, where the intentions of Government reforms are delivered through an appropriate framework. The following recommendations would help.

1

The National Planning Policy Framework must include a more meaningful reference on the role of waste management in meeting the Government's strategic objectives

The National Planning Policy Framework (NPPF) makes welcome statements about the need to enable development. But waste management is only dealt with in a cursory fashion. There must be clearer statements explaining the role and contribution of waste management facilities to the Government's broader sustainable development objectives and a clear reference to the way in which NPPF policies and principles apply equally to waste planning.

2

Planning authorities should form strategic planning partnerships

A joint approach to waste planning should enable taxpayers and business to benefit from the economies of scale, with waste facilities designed to optimum size and in the right location.

Promotion of recycling must enable movement of materials to areas where they can be cost-effectively inputted into manufacturing processes and it is therefore entirely reasonable to expect the movement of waste across administrative boundaries, with waste transported to the nearest appropriate facility.

In practice, development plan policies should enable the industry to deliver a network of integrated waste management facilities, in which collected waste may be bulked or recycled in one location, recyclates reprocessed at another, or residues treated or disposed of elsewhere (see pages 8-9 for diagram 'Exhibit 4').

3

The Government should propose statutory time limits for the preparation and adoption of development plans

Timely investment in new waste management facilities depends on local authorities having in place up to date local development frameworks with provision towards the allocation of waste management sites, including strategic infrastructure.

Without such, the submission of development proposals is likely to run contrary to a development plan, increasing the chances of proposals being refused and referred to the Planning Inspectorate upon appeal. This not only increases the likelihood of delay in infrastructure delivery, but increases the resource burden on both developer and planning authority.

4

Business rates and a proportion of CIL should be retained for direct community benefit

ESA supports provisions in the Localism Bill to introduce greater flexibility to the Community Infrastructure Levy (CIL), allowing a proportion of CIL funds – collected from developers – to be passed directly to neighbourhoods where development takes place.

ESA also supports the business rate retention proposals in the Local Government Resource Review.

5

Planning decisions should be excluded from the scope of local referenda proposed in the Bill

People and communities need to feel part of the decision making process and, in keeping with localism, ESA Members are committed to engaging with local communities to maintain a high level of public confidence in the industry, and foster acceptance of new infrastructure. However, having each waste planning application subject to local referenda could make the development of modern networks of waste management facilities very difficult.

6

Local authorities should be required to publicise the costs to the tax payer of unsuccessfully defending a planning appeal

'Planning by appeal' is an inefficient process for waste planning and places considerable strain on the public purse. Local authorities which have refusal decisions overturned on appeal should be required to publicise the cost to the taxpayer in defending its decision through the appeal process, and Inspectors should consider awarding costs against local authorities where a local authorities' refusal is found to be flawed.

7

On an annual basis, Defra and CLG should report jointly on progress in delivering waste infrastructure

The planning system has a key role in delivering national waste management targets and objectives and the Government should therefore seek to adopt a robust monitoring process to report on the progress of the planning system in facilitating new waste infrastructure.

Annual reports should monitor:

- the number of adopted waste development frameworks;
- the implementation of national policy through waste development frameworks;
- the take-up of waste sites allocated in development plans;
- the number of waste planning applications determined within the statutory timeframe;
- new waste management capacity consented through the planning system; and
- the number of waste planning applications determined upon appeal.





Annex: Technical recommendations for streamlining the planning system

Extend Permitted Development Rights (PDR) to minor, uncontroversial development on existing waste management sites.

ESA Members are often required to submit planning applications for minor alterations to existing facilities often in response to direction from the regulatory agencies. PDRs should be extended to those minor site alterations which:

- have no impact beyond the site boundary: for example, they will not lead to additional transport movements;
- are minor, low environmental impact development and highly likely to be approved; and
- enable the industry quickly to improve the management and performance of a facility and, in some cases, reduce its impact.

Many local authorities do not require an application for the types of development we consider should benefit from PDR and our proposals would therefore deliver greater consistency across the country.

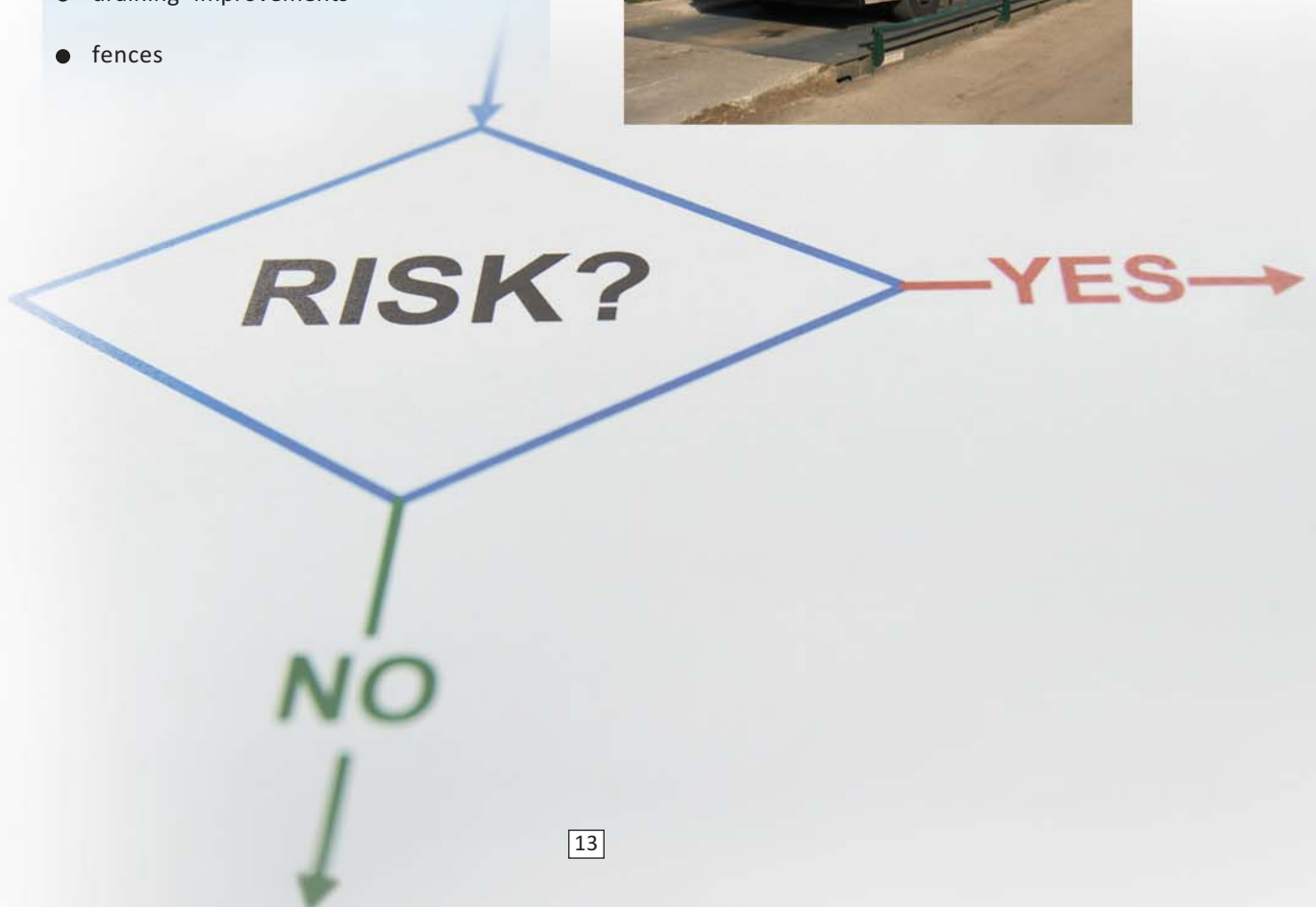
Exhibit 5: Permitted Development Rights

As identified on page 12, certain types of minor additions can be made to an existing, consented development without needing to apply for planning permission. These are called 'Permitted Development Rights'.

However, planning authorities often restrict development associated with waste management facilities, requiring operators instead to submit a full application for planning permission - adding unnecessary expense and delays.

Such an approach fails to take account of the scale and nature of development. ESA suggests the following should benefit from PDR:

- weighbridges
- wheel washes
- storage containers
- hardstandings
- draining improvements
- fences





Improve guidance on change of use

Given the size, scale and operational aspects of modern waste management, developments such as material recovery facilities and waste transfer stations increasingly resemble that of general industrial processes.

The industry and planning authorities would therefore benefit from clearer and more consistent Government guidance on the suitability of B2 and B8 use classes for certain waste management facilities.

The environmental impacts resulting from the activities ESA proposes to include within these use classes are typically less than other industrial activities but in any case would fall under the control of the Environment Agency. This proposal also fits with the trend of encouraging certain waste and secondary resource management facilities to be sited in industrial estates.

12. In this case, the proposed development is a: Mains Septic Tank

13. What is the source of the water supply? Mains Septic Tank

14. How will the surface water be disposed of? Mains Septic Tank

15. How will foul sewage be disposed with? Mains Septic Tank

16. Does the application relate to the erection of a dwelling? Yes No
 If Yes, give details of the proposed development, including the number of dwellings to be erected, in the box below to indicate the type of permission required: Full permission Outline permission

17. Is the proposer a Country-side person? Yes No
 If Yes, complete the above, including details of the person's name and address.

6. Are you aware of a previous application for a similar proposal? Yes No
 If Yes, give ref no. of previous application

7. Please give details of the proposed development, including details of the land to be used. (It is vital that a full and accurate description is given, including the number of houses/apartments to be built, etc.)

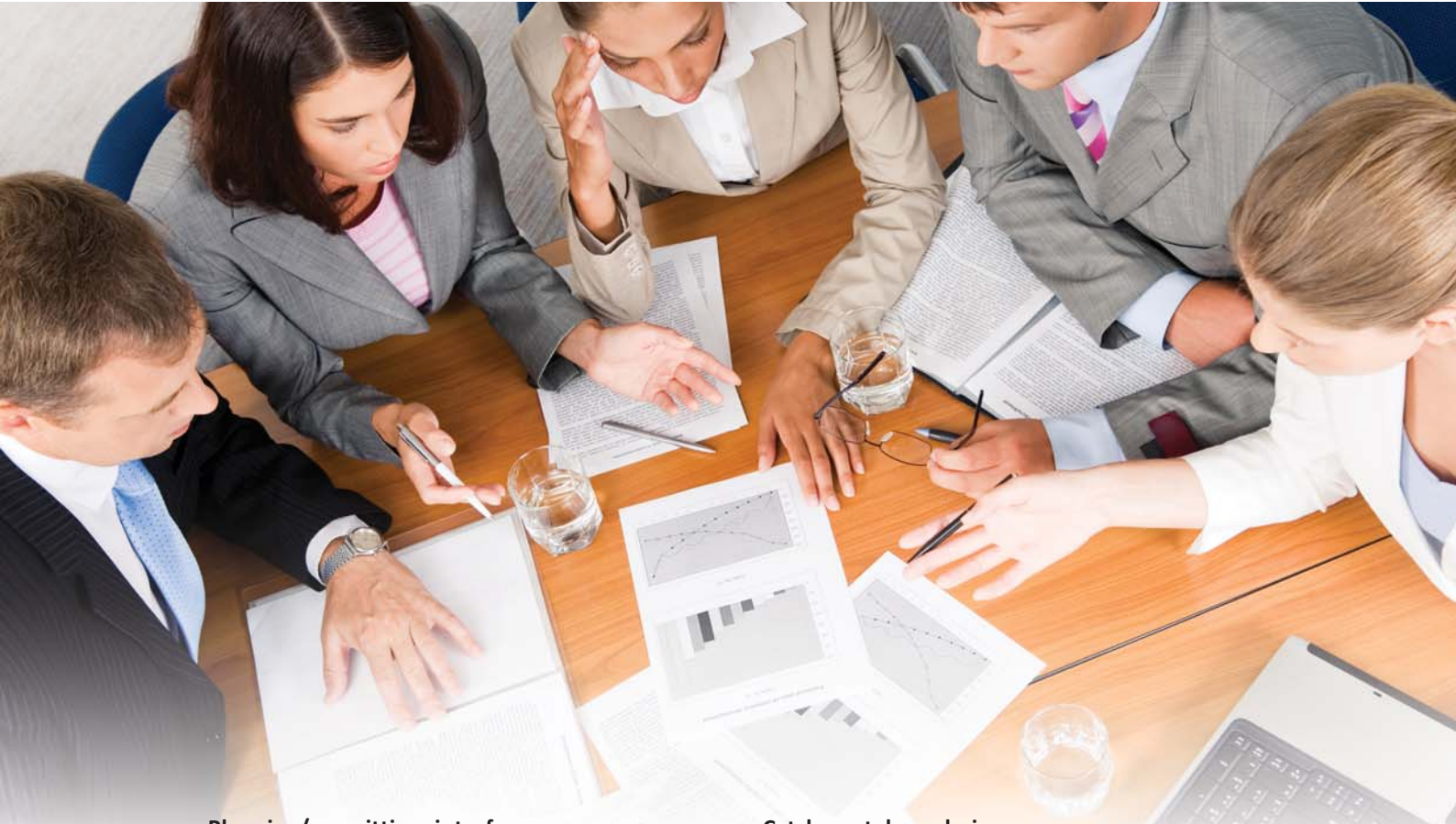
Form P1
Application for permission to develop land
 Please read this page first.
Important: This form should NOT be used for the following types of application:
 Householder Application – Form PHD
 Listed Building Consent – Form LB1
 Conservation Area Consent – Form PCAC1
 Advertisement Consent – Form A1

Proposed additional replacement (n)	
Gross	Net

to the following Existing New

Expected increase





Planning/permitting interface

The Government should streamline the planning/permitting interface and clarify the respective roles and responsibilities of competent authorities engaged in both regimes.

Overlapping interests and requirements within both regimes often leads to duplication of information requests and additional administrative burdens in the form of costs and time for both developers and competent authorities.

Planning authorities should therefore refrain from duplicating the work of the Environment Agency by seeking to regulate pollution control issues through planning consent.

When negotiating the interface between the planning and permitting regimes, planning authorities should seek to consent development in accordance with development plan policies and should work on the assumption that the relevant pollution and control regime will be properly applied and enforced.

Whilst potential environmental impacts may be deemed to be a material consideration, the weight applied by planning authorities to potential impacts should be reduced in so far as they are addressed and mitigated by the Environment Agency in fulfilling its statutory duties.

Catchment boundaries

Planning authorities should refrain from imposing planning conditions restricting the import of waste to consented waste facilities within specified catchment boundaries. Such an approach is not only anti-competitive and difficult to enforce, but fails to acknowledge that some waste facilities could have a highly specialised role requiring a large catchment area extending beyond a planning authority's administrative boundary.

Different waste technologies require considerably different catchments to make them viable and industry investment is made on the assumption that minimum waste inputs can be secured over a payback period.

Imposing catchments on waste facilities would restrict the market available to that facility placing it at a competitive disadvantage. Facilities with restricted catchments would be deemed a higher risk for investors which ultimately could prevent the delivery of modern waste infrastructure.

Most types of modern waste processing facilities are, in effect, just like any other form of industrial processing whereby raw materials and products are transported according to market requirements. The industrial sector is not hamstrung by the debate on catchment areas and neither should the waste processing sector as we move towards resource management and commodities trading.



environmental
services
association

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