

**Portland Town Council**  
**Objection to the proposed Portland Energy Recovery Facility**

**Project Plan**

**Proposed timetable:**

1. Consultants' draft report to reach Freeths: by close of business on Friday 3<sup>rd</sup> September 2021.
2. Freeths to send final consultants' reports and wrapper statement to the Council: by close of business on Monday 13<sup>th</sup> September 2021.
3. Council meeting to consider/approve consultation response: Thursday 16<sup>th</sup> September 2021.
4. Consultation deadline for environmental permit: 5pm on Wednesday 22<sup>nd</sup> September 2021.

**Task list and budget**

<b>Task no.</b>	<b>Council priority</b>	<b>Task description</b>	<b>Comments</b>	<b>Costs (all figures exclude VAT)</b>
1.	Essential	<p>Instruct environmental consultants to review the technical details including plant design, proposed operation and management systems.</p> <p>Instruct consultants to:</p> <ul style="list-style-type: none"> <li>• assess whether the plant design and proposed operation appears technically sound and, crucially, whether the proposed installation complies with Best Available Techniques ("BAT");</li> <li>• review the standalone BAT Assessment and the commentary on BAT in the separate Supporting Information document to confirm whether the conclusion is sound (i.e. that</li> </ul>	<p>The Environment Agency cannot lawfully grant the environmental permit (i) if the plant does not comply with Best Available Techniques ("BAT") and/or BAT Associated Emission Levels as set out in technical guidance; or (ii) unless the likely impacts on human health and the environment have been minimised.</p> <p>Appraisal of these issues requires technical rather than legal expertise.</p>	<p>Environmental consultants RSK: <u>£10,515</u> in total for tasks 1, 2 and 7.</p>

		<p>the proposed techniques represent BAT in accordance with relevant guidance notes);</p> <ul style="list-style-type: none"> <li>• review the assessment of fugitive emissions, including water and air emissions, as set out in the overall Supporting Information document, the overall Environmental Risk Assessment and individual technical documents. In particular, review the modelling of emissions to air and confirm compliance with BAT Associated Emission Levels set out in the waste incineration BREF; and</li> <li>• notify you of any other technical issues that they consider may be grounds to object to the application.</li> </ul>		
2.	Essential	Instruct technical consultants to review the Human Health Risk Assessment.	The consultants instructed to review the technical details of the application (task 1, above) can also review the Human Health Risk Assessment.	See task 1 above.
3.	Essential	Instruct Freeths to consider whether any legal grounds of objection to the grant of the Environmental Permit arise in relation to protected sites or protected species.	The proposed facility lies within 10km of 4 protected conservation sites that are protected at European level. The permit application is supported by a Shadow Appropriate Assessment that was prepared for the purposes of the planning	Freeths: £9000 (relying on RSK's review of air quality documents under task 1 above, and the air quality consultant comments already submitted in relation to the planning application by the objector group).

			<p>application. The overall Risk Assessment submitted with the permit application also lists (at section 6.2 "Habitats Assessment") habitats within 10km of the proposed facility that have been taken into account in the air quality assessment.</p> <p>The EA has to be certain, when considering the environmental permit application, that there will be no adverse effect from the permitted activities on conservation sites protected at the European level. In essence, if there is doubt over the environmental effects of the incinerator on sites protected at European level, then the EA would (except in very limited circumstances that are highly unlikely to apply here) be prevented legally from granting an Environmental Permit. The air quality effects of the incinerator on these European sites will be a very important issue to focus upon.</p>	<p><b>Protected sites</b> Review and provide a written critique of:</p> <ul style="list-style-type: none"> <li>• The applicant's shadow Habitat Regulations Assessment (sHRA) (this is the document by which the applicant has sought to assess the impacts of the incinerator on European sites);</li> <li>• The applicant's Environmental Risk Assessment (by Fichtner);</li> <li>• The applicant's Environmental Permit Supporting Information Report (by Fichtner);</li> <li>• The applicant's "natural heritage" chapter of its ES (also relevant to the sHRA);</li> <li>• The air quality critique provided on behalf of the objector group;</li> <li>• The critique by RSK of the air quality information provided by the applicant in support of its environmental permit.</li> </ul> <p><b>Protected species:</b> Provide a written critique alongside the protected sites work above.</p>
4.	Desirable/essential	Instruct acoustic consultants to review the Noise Impact Assessments (August 2020 and May 2021), the noise modelling files and other noise assessment set out in the overall Supporting Information document and Environmental Risk Assessment.	<p>We have discussed the acoustic issues with our recommended acoustic consultant, Clive Bentley.</p> <p>On a very brief review of the documents, Clive has identified that the applicants may not have addressed national and local policy requirements relating to impact on</p>	<p>Acoustic consultant (Clive Bentley of Sharps Acoustics):</p> <ul style="list-style-type: none"> <li>• Review the permit application as a desk top exercise and provide a note setting out the findings: £1200.</li> <li>• Review the planning submission to consider noise impacts on sound character</li> </ul>

			<p>the sound character of the area. However, this is relevant to the planning application rather than the permit application. Although he cannot confirm without reviewing the documents properly, Clive's preliminary view is that he would not expect to find significant faults in the permit documentation.</p> <p>In Clive's view, it is likely to be a better use of resource if he is instructed to review the planning submission to consider noise impacts on sound character as well as, or instead of, reviewing the permit documents.</p> <p>Given that supplementary information relating to environmental impacts has recently been submitted in support of the planning application, there is another opportunity to make observations (deadline: 27<sup>th</sup> September 2021).</p> <p>As we are not instructed the planning application, we would provide Clive Bentley's note on the application to you so that the Town council could submit it in response to the planning application.</p>	and report the findings: <u>£1800.</u>
5.	Desirable	Instruct Freeths to review Section 2.7 (entitled "Legal Framework") of the Supporting Information document to confirm that the applicant has correctly	On a brief review, we have not noted any obvious gas or errors in this legal assessment. For that reason, we have not proposed this a high	Freeths: <u>£3250</u>

		identified and adequately addressed all relevant articles of the Industrial Emissions Directive.	priority task. Nonetheless, you may wish to consider instructing us to undertake a full review.	
6.	<i>Desirable</i>	<i>Instruct Freeths to review the Environmental Statement (“ES”) submitted as part of the planning application to (i) confirm whether the ES complies with the relevant legal requirements; (ii) to identify any likely harm to the environment that may be relevant to the environmental permit application; and (iii) identify any discrepancies between the ES and the permit application documents.</i>	<i>We did not propose this as a high priority task as we have already briefly considered the ES in the context of the planning application and the likely harm identified appeared to be largely visual, which is of limited relevance for the purposes of the permit application.</i>	<i>As a lower priority task which we anticipated would be of limited value to in the context of the permit application, we have not been able to accommodate this work within your budget.</i>  <i>Our fee estimate for this work was £9750 plus VAT.</i>
7	<b>Essential</b>	<b>Instruct external consultant to review the fire prevention plan and risk assessment.</b>	<b>The consultants instructed to review the technical details of the application (task 1, above) can also review the Fire Prevention Plan and Risk Assessment.</b>	<b>See task 1 above.</b>
8	<i>Desirable</i>	<i>Instruct Freeths to investigate the applicant, Powerfuel Portland Ltd and/or its directors, to confirm that they are competent/suitable to hold an environmental permit.</i>	<i>To grant the environmental permit, the Environment Agency must be satisfied that the operator is competent and suitable to hold a permit.</i>  <i>We have checked the Environment Agency’s public register. Powerfuel Portland Ltd does not hold any existing environmental permits or similar authorisations. The company was not, though, incorporated until 18<sup>th</sup> February 2019 and may well</i>	<i>We propose to undertake this task only if there remains any room in the budget when the (higher priority) tasks 1 to 5 and 7 have been undertaken and taking into account cost incurred for task 9 below.</i>  <i>Our fee estimate for this work was £950 plus VAT.</i>  <i>Alternatively, you may wish to look into this yourself.</i>

			<p><i>have been formed for the purposes of this project only.</i></p> <p><i>We do not present this as a priority, as our preliminary research has not highlighted any obvious issues. However, we could conduct further online research, including searching the Environment Agency's public register for each of the three directors.</i></p>	
9.	Essential	<p>Project co-ordination by Freeths to include:</p> <ul style="list-style-type: none"> <li>• Instructing and liaising with consultants undertaking tasks 1,2, 4 &amp; 7 below.</li> <li>• Reviewing consultants' reports, raising any queries and liaising to obtain final versions.</li> <li>• Co-ordination of Freeths team undertaking tasks 3 &amp; 5 below.</li> <li>• Preparing wrapper statement/overall consultation response for the Council.</li> <li>• Responding to any queries the Council may have on receipt of the reports and wrapper statement.</li> <li>• Making any final changes and submitting the consultation response to the Environment Agency.</li> </ul> <p>Please note: the above does not allow for Freeths' attendance at any</p>		£14,235

		meetings with the Council. We have allowed for some email and/or telephone contact following the Council's meeting on Wednesday 15 <sup>th</sup> September.		
<b>TOTAL</b>	<b>For tasks 1 – 5, 7 and 9 (plus 8 <i>if</i> there is room in the budget).</b>			<b><u>£40,000 plus VAT</u></b>

**Freeths LLP**  
**20 August 2021**