IN THE MATTER OF THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2016

APPEAL BY:

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SITE AT:

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PEDW REF: CAS-02313-Z1D6V4

STATEMENT OF CASE ON BEHALF OF THE NATURAL RESOURCES BODY FOR WALES

Introduction

1. The Appellant appeals against the 'deemed refusal' (non-determination) of its application for an environmental permit. On 28 January 2022, the Appellant submitted application number PAN-016818 ['the application'] for an environmental permit authorising waste operations at its facility in Llay, Wrexham. The proposed waste operations concerned are recovery activity codes R3 and R13 (i.e. pre-treatment storage and mechanical treatment of waste). The application was not determined by the statutory deadline, fixed according to the regulations, and the Appellant exercised its right to serve a notice on NRW triggering the deemed refusal provisions and allowing it a right of appeal to the Welsh Ministers. On 17 October 2022, the Appellant served a notice of 'deemed refusal' on NRW further to para 15(1), Schedule 5 to the EPR 2016. On 3 November 2022, the Appellant submitted to PEDW notice of appeal against the deemed refusal. [1]

2. In the grounds of appeal section of the Appellant's appeal form, the Appellant says it was wrong for NRW not to have determined the application by the determination date. It is agreed that NRW did not determine the application by the statutory deadline, which was 11 October 2022. [2] NRW will say that it was not in a position to determine the application by that date because the Appellant had not provided adequate evidence by the deadline; and, that it was still in the process of considering and consulting on the Appellant's submission of information in response to a Schedule 5 information notice on 16 September 2022.

3. An issue in this appeal is the use of up to 60,000 tonnes of wastes coded 03 01 05 per annum. The proposal includes use of treated non-hazardous waste wood to make animal bedding at the Appellant's facility. NRW's regulatory position is that treated waste wood may not be used for animal bedding. NRW's regulatory position was known to the Appellant before it submitted its application. The NRW regulatory position mirrors that in England under the Environment Agency's regulatory position, as set out in published guidance. The EPR 2016 creates exemptions from the requirement for an environmental permitting including the use of untreated wood only as animal bedding. The regulatory position on the use of treated waste wood in animal bedding is also reflected in various industry and sector guidance.

4. The distinction between the two types of waste coded 03 01 05 as untreated or treated wood is important.

5. The Appellant says cubicle conditioner (made from treated wood waste) is not animal bedding; NRW does not agree, and for regulatory purposes, cubicle conditioner and animal bedding are to be treated the same. (Hence in this statement of case it is referred to as 'cubicle conditioner [animal bedding]'.) Also in issue in this appeal is why the Appellant is not proposing to use untreated wood waste for cubicle conditioner [animal bedding]. NRW considers that untreated wood waste coded 03 01 05 appears suitable for use in cubicle conditioner [animal bedding]. The Appellant has not addressed the issue. If it is an issue of cost, the Appellant should have addressed it.

[1] The appeal was accepted by PEDW as valid, with a starting date of 5 January 2023 allocated to the hearing procedure. On 14 January 2023, Appellant challenged the decision to deal with the appeal via a hearing and PEDW agreed that the appeal procedure should be changed to an inquiry with a revised start date of 20 February 2023.

[2] The Application was accepted as 'duly made' on 13 April 2022. The statutory determination date was thus 13 August 2022. His was, however, recalculated under the EPR 2016. A Schedule 5 Notice requiring further information was issued to the Appellant on 19 July 2022; the Appellant responded to the Schedule 5 Notice after 59 days. The statutory determination date was therefore recalculated to 11 October 2022.

6. Instead, the Appellant has challenged NRW's regulatory position on the use of treated waste wood in animal bedding. In order to do so, the Appellant must be able to prove that the proposed activities would be in accordance with Schedule 9 of the EPR 2016, including Articles 4 and 13 of the WFD. NRW does not consider that the Appellant has demonstrated there is no risk of harm within the objectives under Article 13 of the Waste Framework Directive, namely without risk to the environment, human health and animal health. The Appellant knew the NRW regulatory position before applying for an environmental permit in January 2022. The regulatory position of NRW (or any other UK regulator) has not been subject of judicial review.

7. A second issue is end of waste. The Appellant has claimed end-of-waste status for cubicle conditioner [animal bedding]. The Appellant contends that once processed at its facility, treated waste wood is a 'product' for the purposes of Article 6 of the WFD and is no longer subject to waste legislation. It is not covered by any legislative or quality protocol process, so can only be made out via a case by case assessment following Article 6(4) of the WFD.

8. An issue for the inspector to decide is whether the Appellant is entitled to an end of waste decision. NRW's position is that the inspector is under no obligation to reach a decision in this regard. NRW will say that in any event the Appellant has failed to demonstrate a case by case end of waste assessment, which meets the criteria in Articles 6(1) and 6(2) of the retained WFD. The Appellant has failed to consider the wider regulatory issues. Irrespective of any decision taken in Wales, the Appellant supplies cubicle conditioner [animal bedding] to customers outside Wales and is liable to comply with waste duty of care requirements. The Appellant may quite obviously be averse to selling to its customers something classified as waste (cf. a finished product).

9. A third issue is that the Appellant has omitted post-processing animal bedding and cubicle conditioner from its draft Fire Prevention and Mitigation Plan (FPMP). The material is considered high risk as combustible waste material to be stored in significant quantities for up to three months. It is unacceptable to NRW for such waste not to be included in an FPMP. A standard condition is inserted into waste permits, which the Appellant would, based on the evidence submitted, be in breach of; this would be grounds to refuse the application on grounds of operator competence – that the operator would not comply with the conditions of the permit.

10. There are also outstanding issues with an environmental management system, noise and impact assessment and management plan, required to adequately assess risks of harm and appropriate control measures before an environmental permit can be issued.

11. Subject to the outcome of the above issues, operator competence is in issue. Under the EPR 2016, the regulator must refuse an environmental permit if it considers that the operator would not or is not likely to operate in accordance with permit conditions. NRW has concerns, on the basis of the above issues, on management systems, waste types and acceptance procedures, and the draft FPMP and compliance with NRW FPMP guidance.

12. In general terms, NRW is supportive of activities that further the waste hierarchy and circular economy objectives (these are legal requirements), but this must be balanced against relevant risks. The EP application submitted is effectively an effort to regularise and bring into the regulatory regime the existing activities that the Appellant has been carrying out, without an EP or valid exemption. The proposed activities have not been adjusted or amended from the Appellant's existing activities, which NRW says are not in accordance with the EPR 2016.

13. The application is for a bespoke permit authorising a waste facility that would accept and process approximately 60,000 tonnes per annum of non-hazardous manufacturing waste wood. The Appellant proposes to store and process clean, untreated waste wood to produce animal bedding; and to store and process treated waste wood to produce cubicle conditioner [animal bedding] to be used in the agricultural livestock industry. Given the nature of treated waste wood and the risk to animal welfare, the environment and human health in the use of this waste in animal bedding, NRW have paid careful, and consistent consideration to the proposed activity since it first became aware of the Appellant's proposals. These risks are fundamental to the determination of the permit application. In addition to this, the Appellant claims that the processed, treated waste wood is a finished product and not a waste material.

14. Considered against the regulatory regime, NRW would not refuse to authorise the Appellant from carrying out the proposed activities of storing and treating up to 60,000 tonnes per annum of 03 01 05 waste which is clean, untreated wood to make animal bedding. Similarly, NRW would not refuse to authorise the Appellant from carrying out the proposed activities to treated non-hazardous wood waste for lawful applications e.g. energy from waste facilities. But the Appellant has applied for activities which are contrary to the regulatory position and without justification for its proposals. If the Appellant revised its application, and subject to satisfaction of other matters detailed in the statement of case, NRW would in principle issue a permit.

THE REGULATORY REGIME AND CONTEXT

Environmental permitting

15. In the context of this appeal, the relevant legal framework governing environmental permitting for waste operations is contained in two main pieces of legislation:

    (i) Environmental Permitting England and Wales Regulations 2016 ["EPR 2016"]

    (ii) retained Waste Framework Directive ["WFD"]

16. The EPR 2016 transpose the WFD (and other retained EU legislation) and create an extended procedural framework for environmental permitting, with provision for making applications and granting permits, exemptions, monitoring and enforcement. Specific provisions may apply to the extent that the operation of a regulated facility of a specified description or class requires an environmental permit. The EPR 2016 extend to England and Wales only and apply in relation to Wales within the meaning given by s158 of the Government of Wales Act 2006. [3]

17. The EPR 2016 state that a person requires an environmental permit to "operate a regulated facility" which is defined to include carrying on any "waste operation" . [4]

[3] Regulation 1(2), 1(3)(b)
[4] Regulation 7: "operate a regulated facility" means—
[…] (b) carry on a waste operation […];
"operator", in relation to a regulated facility, means—
(a) the person who has control over the operation of the regulated facility,
(b) if the regulated facility has not yet been put into operation, the person who will have control over the regulated facility when it is put into operation, or
(c) if a regulated facility authorised by an environmental permit ceases to be in operation, the person who holds the environmental permit

18. A "regulated facility" [5] is defined in the EPR 2016 to include a waste operation; this does not include an exempt waste operation or an excluded waste operation.[6]

19. Regulation 12 of the EPR 2016 provides, inter alia, that a person must not, except under and to the extent authorised by an environmental permit, operate a "regulated facility" [7] It is an offence to contravene regulation 12. [8]

20. A "waste operation" means recovery or disposal of waste.[9] The EPR 2016 apply definitions in Article 3 of the WFD, in particular:

> *15.'recovery' means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations;*
>
> […] *19.'disposal' means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations;*

Disposal operations coded D1 to D15 are listed in Annex I to the WFD; and Recovery operations coded R1 to R13 are listed in Annex II to the WFD.

21. For the purposes of the EPR 2016, "waste" is defined in Article 3 of the WFD: [10]

> *1.'waste' means any substance or object which the holder discards or intends or is required to discard;*

22. Regulation 35 of EPR 2016 gives effect to specific schedules that apply to specific types of environmental permits, as set out in Schedules 7 to 25B. Regulation 35(2) states:

> *(2) To the extent that the operation of a regulated facility of a description or class mentioned in any of Schedules 7 to 25B requires an environmental permit, the requirements of that Schedule apply in relation to that regulated facility.*

23. EPR 2016 Schedules 7 to 25B deal with a wide range of activities and substances covered by European Directives and other legislation. They require regulators to secure compliance with the legislation and ensure certain standards of environmental protection when taking decisions about permits.

24. In the context of waste and of relevance to the present appeal, waste operations are subject to Schedule 9 of the EPR 2016. Part 1 of Schedule 9 states at para 3:

> *Exercise of relevant functions*
>
> *3.—(1) The regulator must exercise its relevant functions—*
>
> *(a) for the purposes of ensuring that—*

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[5] Regulation 8(1)
[6] Regulation 8(2)
[7] Regulation 12(1)
[8] Regulation 38(1)
[9] Regulation 2(1)
[10] EPR 2016, Regulation 3(1): "waste", subject to paragraph (6), and except where otherwise defined—
… (b) in any other case means anything that—
(i) is waste within the meaning of Article 3(1) of the Waste Framework Directive[, as read with Articles 5 and 6 of that Directive], and
(ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;

(i) the waste hierarchy referred to in Article 4 of the Waste Framework Directive is applied to the generation of waste by a waste operation;

(ii) waste generated by a waste operation is treated in accordance with Article 4 of the Waste Framework Directive;

(b) for the purposes of implementing Article 13 of the Waste Framework Directive, but not in respect of nuisances and hazards arising from traffic beyond the site of a waste operation;

(c) so as to ensure that the requirements in the second paragraph of Article 23(1) of the Waste Framework Directive are met;

(d) so as to ensure compliance with the following Articles of the Waste Framework Directive—

(i) Article 18(2)(b) and (c);

(ii) Article 23(3);

(iii) Article 23(4);

(iv) Article 35(1).

The "relevant functions" of the regulator are defined in regulation 9 of the EPR 2016 and include determination of an application for an environmental permit and enforcement. [11]

25. Article 4 of the WFD sets out the waste hierarchy to be applied to in waste management. Waste prevention and re-use are the most preferred options, followed by recycling (including composting), then energy recovery, while waste disposal (e.g. through landfill) should be the very last resort.

26. Article 13 of the WFD provides:

Protection of human health and the environment

Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:

(a)without risk to water, air, soil, plants or animals;

(b)without causing a nuisance through noise or odours; and

(c)without adversely affecting the countryside or places of special interest.

27. Welsh Government policy 'Towards Zero Waste' (2010) [see: Annex A] states, generally (at page 18), that activities must be carried out without endangering human health, without harming the environment and without risk of harm to water, soil, plants or animals (i.e. per Article 13 of the WFD). Towards Zero Waste also states (at page 21) that regulators must apply the Precautionary Principle in exercising their decision-making functions.

[11] 9. In these Regulations, "relevant function" means any of the following functions—
(a)determining an application—
(i)for the grant of an environmental permit under regulation 13(1);
….
(f)exercising any of the following powers relating to enforcement—
(i)the power to serve an enforcement notice;
(ii)the power to serve a suspension notice;
(iii)the power to serve a prohibition notice;

28. As regards application procedure, Part 1 of Schedule 5 to the EPR 2016 sets out requirements for applications for an environmental permit, including the requirements for a duly made application, powers to require the provision of further information, public participation, consultation, methods of calculation for the statutory determination date. The EPR 2016 create duties on the regulator to consider representations and determine duly-made applications. Operational guidance as described below supplements the statutory process and is followed by NRW case officers in handling permit applications.

29. Regulation 16 of the EPR 2016 prescribes the various methods for calculating the determination date, depending on the type of application and any intervening events. For the present case, this is detailed in the section on the application, below.

Determination of applications

30. Regulation 13 of the EPR 2016 provides:

> *13.—(1) On the application of an operator, the regulator may grant the operator a permit (an "environmental permit") authorising—*
>
> *(a)the operation of a regulated facility, and*
>
> *(b)that operator as the person authorised to operate that regulated facility.*
>
> *[…]*
>
> *(3) Part 1 of Schedule 5 applies in relation to an application for the grant of an environmental permit.*

31. Schedule 5 of the EPR 2016 states that '*the regulator must grant or refuse a duly-made application*'.[12] Except in specified cases (not applicable in the present case), the regulator may grant an application subject to such conditions as it sees fit.[13]

32. The regulator must refuse an application in certain circumstances. Schedule 5, Part 1, Paragraph 13 of the ER 2016 states:

> *13.—(1) Subject to sub-paragraph (3), the regulator must refuse an application for the grant of an environmental permit […] if it considers that, if the permit is granted or transferred, the requirements in sub-paragraph (2) will not be satisfied.*
>
> *(2) The requirements are that the applicant for the grant of an environmental permit, or the proposed transferee, on the transfer of an environmental permit (in whole or in part), must—*
>
> *(a) be the operator of the regulated facility; and*
>
> *(b) operate the regulated facility in accordance with the environmental permit.*

33. Core Guidance [see: sections 9.1-9.3, NRW Inquiry Document 2] and Regulatory Guidance Note 5 [see: NRW Inquiry Document 13] provide guidance in relation to assessment of operator competence. In summary, NRW must be satisfied as to the operator's competence to operate in accordance with the permit when assessing applications for new permits. NRW must be satisfied that an applicant is competent to deal with the environmental risks associated with the proposed activities thus ensuring environmental protection. Thus, NRW must refuse an application if it considers the

[12] Schedule 5, Part 1, para 12(1)
[13] Schedule 5, Part 1, para 12(2)

operator is not 'competent' (i.e. will not comply with permit conditions) or not willing to comply with the conditions.

34. In the present appeal, notwithstanding NRW did not in fact determine the application (deemed refusal), operator competence must be considered when a decision is in made.

35. Core Guidance also gives guidance on grounds on which the regulator may refuse an application, including where —

    (i) the environmental impact would be unacceptable;

    (ii) the information provided is inadequate; and

    (iii) the requirements of relevant European Directives would not be met.

36. An issue in the current appeal will be that the Appellant has been operating without an environmental permit or valid exemption for a number of years. NRW considers that the Appellant has not adapted and shaped its proposals to comply with the regulatory regime or taken pre-application advice; rather, it has sought a permit for the activities it has been carrying out and challenged the regulatory position. As explained in this statement of case, NRW will say the Appellant does not appear to have given due consideration to these issues and the evidence required prior to making an application.

37. Core Guidance states, at 5.9-5.10:

    Timing of applications

    5.9 Where proposals involve substantial expenditure, whether on construction work, equipment, software, procedures or training, operators should normally make an application when they have drawn up full designs but before any work commences (whether on a new regulated facility or when making changes to an existing one). Where regulated facilities are not particularly complex or novel, the operator should usually be able to submit an application at the design stage containing all information the regulator needs. If, in the course of construction or commissioning and after a permit has been granted, the operator wants to make any changes which mean that the permit conditions have to be varied, the operator may apply for this in the normal way (see chapter 6 on Application Procedures).

    5.10 There is nothing in the EPR to stop an operator from beginning construction before an environmental permit has been issued (but it should be noted that planning requirements are a separate issue). However, the operator risks regulators not agreeing with the design and infrastructure put in place. Therefore, to avoid any expensive delays and re-work, it is in the operator's interest to submit applications at the design stages. Any investment or construction work that an operator carries out before it has an environmental permit will be at its own risk and will in no way affect the regulator's decision.

    Deemed refusal

38. If the regulator does not determine an application by the statutory determination date, the EPR 2016 provides the applicant can initiate a 'deemed refusal' mechanism. Paragraph 15 of Schedule 5, Part 1 states:

    Time limits for determination

    ***15.**—(1) If—*

(a) the regulator has not determined an application within the relevant period, and

(b)the applicant serves a notice on the regulator which refers to this paragraph,

the application is deemed to have been refused on the day on which the notice is served.

… (3) In sub-paragraph (1) "the relevant period" means a period, calculated in accordance with paragraph 16, of—

… (c) in a case where paragraph 6 applies, 4 months, or

… or in any case, a longer period than the period in paragraphs (a) to (d), if it is agreed by the regulator and the applicant.

The mechanism in paragraph 15(1) above is not mandatory; paragraph 15(3) provides that the regulator and the applicant can agree a longer determination date.

End of waste status

39. In its application documents, the Appellant claimed end of waste status over treated wood waste made into cubicle conditioner [animal bedding].

Note: It is understood by NRW that the Appellant as per its proposal accepts that the input or feedstock wood used at the facility is waste. In regulatory terms, this means that the treated and untreated wood that the Appellant is to receive for processing into animal bedding / conditioner at its facility has been generated as a waste by its suppliers, and waste duty of care paperwork including a waste transfer note containing all required particulars is provided. The waste type the Appellant proposes to use on site is 03 01 05.

40. When a substance or object is considered a waste before it is used or transported it must be correctly classified and coded in accordance with the current Waste Classification Technical Guidance (commonly referred to as "WM3").

41. All wastes must be attributed a list of waste code ("LoW"). [14] LoW codes are comprised of three numbers from a series, divided into chapters, heading and sub-heading according to type and provenance of the waste. In context of the present case, waste wood entries can be found in chapters 03, 15, 17, 19 and 20 of the List of Wastes, each of which (except chapter 15) contains a 'mirror hazardous' and 'mirror non-hazardous' waste code for wood.

42. Generally, once a substance or object becomes waste it remains waste unless acceptable recovery has been achieved. Something usually needs to be done to the substance or object for it to cease to be waste. This might involve one or more recovery operations, either complete recovery or other recovery (which includes pre-treatment or pre-processing activities such as mechanical grind, chipping, pulverising etc). A substance may cease to constitute waste when it has undergone a recycling or other recovery operation, and when it complies with the "harmonised end of waste test" in the retained WFD. The conditions to achieve end-of-waste status are set out in the section below dealing with Article 6 of the WFD. Note: Article 6 of the retained WFD has been modified, see Schedule 1A to the EPR 2016 and is now stated to be a 'harmonised' end

[14] The list of waste is contained in retained EU legislation [2000/No 532] and set out in the Annex to 'Commission Decision of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste' (notified under document number C(2000) 1147) (Text with EEA relevance) (2000/532/EC) [CELEX Number 02000D0532-20150601].

of waste test. This is explained in detail in Defra 'Guidance on the legal definition of waste and its application' (2012) [see Annex A].

43. The harmonised end of waste test is set out in Article 6 of the retained WFD.

44. Article 6(1) and (1A) of the WFD as amended state:

> *1. … waste which has undergone a recycling or other recovery operation is considered to have ceased to be waste if it complies with the following conditions:*
>
> *(a) the substance or object is to be used for specific purposes;*
>
> *(b) a market or demand exists for such a substance or object;*
>
> *(c) the substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and*
>
> *(d) the use of the substance or object will not lead to overall adverse environmental or human health impacts.*
>
> *1A Any decision as to whether a substance or object has ceased to be waste must be made—*
>
> *(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and*
>
> *(b) having regard to any guidance published by the appropriate authority or the appropriate agency for the purposes of this Article."*

45. In self-assessment, consideration of whether article 6(1)(d) above has been met, the relevant guidance advocates the use of the comparator approach by comparing the waste derived material against a specific and relevant non-waste material that would be likely replaced by it. The guidance states the waste-derived material should be usable in exactly the same way as the non-waste comparator material and with no greater environmental or human health impact.

46. Article 6(2) of the WFD sets out additional criteria which may be applicable:

> *2. … Any detailed criteria set out in guidance as referred to in paragraph 1A shall ensure a high level of protection of the environment and human health and facilitate the prudent and rational utilisation of natural resources. They shall include:*
>
> *(a)permissible waste input material for the recovery operation;*
>
> *(b)allowed treatment processes and techniques;*
>
> *(c)quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards, including limit values for pollutants where necessary;*
>
> *(d)requirements for management systems to demonstrate compliance with the end-of-waste criteria, including for quality control and self-monitoring, and accreditation, where appropriate; and*
>
> *(e)a requirement for a statement of conformity.*

47. Where no legislative or quality protocol applies (as in the present case), Article 6(4) of the WFD provides:

4. Where criteria have not been set out as referred to in paragraph 1A(a), the appropriate agency, the appropriate agency may decide on a case-by-case basis, or take appropriate measures to verify, that certain waste has ceased to be waste on the basis of the conditions laid down in paragraph 1 and, where necessary, reflecting the requirements laid down in points (a) to (e) of paragraph 2, and taking into account limit values for pollutants and any possible adverse environmental and human health impacts.

The appropriate agency may make information about case-by-case decisions and about the results of verification publicly available by electronic means

48. The language in Article 6(4) '…*taking into account limit values for pollutants and* any possible *adverse environmental and human health impacts'* reiterates the high standard of protection required, see: decision of the CJEU in the *Sappi* case. [15] NRW will say that the precautionary principle should be applied to decision-making in this regard.

49. Article 6(5)

5. The natural or legal person who:

(a) uses, for the first time, a material that has ceased to be waste and that has not been placed on the market; or

(b) places a material on the market for the first time after it has ceased to be waste,

shall ensure that the material meets relevant requirements under the applicable chemical and product related legislation. The conditions laid down in paragraph 1 have to be met before the legislation on chemicals and products applies to the material that has ceased to be waste.

50. NRW will say that the Appellant does not have a right to an end of waste decision from the appropriate agency (i.e. NRW). In context of this appeal the principle also applies to the Welsh Ministers and/or appointed inspector (i.e. appropriate authority). In cases where Article 6(4) of the WFD applies, there is no right to an end-of-waste decision: see Case C–60/18 Tallinna Vesi (Environment - Specific end-of-waste criteria for sewage sludge - Judgment), at [30].

51. Without prejudice to the above, NRW will say that the assessment and supporting evidence presented by the Appellant does not satisfy the relevant criteria in Article 6 of the WFD. Before making its application, the Appellant does not appear to have properly considered end of waste and the evidence to support a case-by-case assessment. The Appellant could have sought an end of waste decision using the chargeable service on the gov.uk domain, which would have resulted in iterative development of a robust evidence base with appropriate comparators and a full, reasoned decision from a regulator. Consequently, the Appellant has been reactive in dealing with the evidence and may now seek to litigate this through the permitting appeal process when it has no entitlement to do so.

52. In the case of *OSS Group Ltd,* [16] the Court of Appeal sought to distill Article 6 of the WFD into a simplified, three-part test:

[15] Case C-629/19 Sappi Austria Produktions-GmbH & Co. KG v Landeshauptmann von Steiermark
[16] R (on the application of OSS Group Ltd) v Environment Agency and others ([2007] EWCA Civ 611) https://www.bailii.org/ew/cases/EWCA/Civ/2007/611.html

""It should be enough that the holder has converted the waste material into a distinct, marketable product, which can be used in exactly the same way as an ordinary fuel and with no worse environmental effects."[17]

Note: the *OSS Group* case pre-dates amendments to the WFD and also to the retained WFD, in particular the harmonised end of waste test set out above.

53. NRW will refer, at inquiry, to case law that waste will not have undergone a complete recovery operation so as to cease to be waste if it remains contaminated after processing (cf. non-waste raw material).

(1) In the *ARCO Chemie* case, [18] the CJEU said, at 96:

"If a complete recovery operation does not necessarily deprive an object of its classification as waste, that applies a fortiori to an operation during which the objects concerned are merely sorted or pre-treated, such as when waste in the form of wood impregnated with toxic substances is transformed into chips or those chips are reduced to wood powder, and which, since it does not purge the wood of the toxic substances which impregnate it, does not have the effect of transforming those objects into a product analogous to a raw material, with the same characteristics as that raw material and capable of being used in the same conditions of environmental protection."

(2) irrespective of steps to remove contaminants, where the processed substance itself is potentially harmful to the environment and to health it may not cease to be waste: see *Castle Cement v Environment Agency*.[19]

(3) The CJEU held in *Lapin elinkeino* [20] that hazardous wood waste (telegraph poles), which were treated to remove risks of harm to the environment and human health, may be capable of meeting the EoW test in Article 6 of the WFD. In the present case, no such treatment is proposed by the Appellant.

54. There is a distinction between activities that achieve complete recovery of waste and those activities which are to be regarded as pre-treatment recovery activities (as listed in Annex II to the WFD, codes R1 to R13).

55. In *Mayer Parry Recycling Ltd v Environment Agency* [21] the CJEU held in relation to recycling of packing waste, that transforming waste into a secondary raw material by inspecting, testing, sorting, cleaning, cutting, crushing, separating, and/or baling it is not a recycling operation as it did not return the substance (metal) to its original state (steel), or enable it to be used for its original purpose (manufacturing new metal packaging) or for other purposes.

56. Guidance published by Defra with other UK appropriate authorities[22] [see Annex A: Defra, 'Guidance on the legal definition of waste and its application' (2012)] presents, at pages 21-23, a flow chart with process questions as Q9 -15. In NRW's submission, the

[17] Above, at para 63
[18] Joined Cases C-418/97 and C-419/97 ARCO Chemie Nederland (Environment and consumers) [2000] EUECJ C-418/97 https://www.bailii.org/eu/cases/EUECJ/2000/C41897.html
[19] Castle Cement v Environment Agency [2001] EWHC Admin 224 https://www.bailii.org/ew/cases/EWHC/Admin/2001/224.html
[20] Case C-358/1134 Lapin elinkeino v Lapin luonnonsuojelupiiri ry [2013] EUECJ C-358/1134 https://www.bailii.org/eu/cases/EUECJ/2013/C35811.html
[21] Case C-444/00 R (Mayer Parry Recycling Ltd) v Environment Agency [2003] EUECJ C-444/00, [2004] 1 WLR 538, [2004] WLR 538, at 82 – 84 https://www.bailii.org/eu/cases/EUECJ/2003/C44400.html
[22] Note: the guidance was marked as withdrawn in England as of 30 March 2023 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69590/pb13813-waste-legal-def-guide.pdf

Appellant's proposal for treated wood waste fails on questions 9, 10, 11, 12, 13 and 14. Whilst domestic courts and the CJEU have repeatedly held that no one criterion in Article 6 of the WFD is decisive, in NRW's submission this is compelling.

57. At para G3.131 the guidance states:

G3.131 Operations which merely dry, chip or grind a waste to be used as fuel are unlikely to rid a substance of its waste status before its final use. They will not address any contaminants present in the substance. They will not produce a product which is distinct from the waste. As the resulting substance is to be used in a manner which is a common form of recovery operation (i.e. recovering energy by burning) the suggestion will be that this is mere pre-treatment.

58. And, at para G3.57-58:

Contaminating substances

G3.57 One of the reasons for controlling waste is that it is frequently contaminated by other substances which are a danger to human health or the environment. So, in the Arco Chemie case, the European Court considered that waste in the form of wood which was impregnated with toxic substances did not lose its classification as waste when it was transformed into chips or those chips were reduced to wood powder since it did not purge the wood of the toxic substances.

G3.58 Where a substance is contaminated by reason of its provenance, that may serve to indicate that it is waste. This is also true if its composition is uncertain.

And, at G3.75:

G3.75 Another point to note is that recovery may take place over several stages. This means that submission to a recovery operation may not result in the substance or object being declassified as waste. If further recovery is necessary then it remains waste until it is the subject of a complete recovery operation and is fully recovered. Only in those examples of recovery operations that result in a final use of the substance (e.g. where waste is used as fuel to generate energy or as a fertiliser to benefit agriculture) will the waste always cease to be waste. In other cases, it will be necessary to assess whether the resulting substance needs to be controlled in order to meet the aims of the WFD. In the waste wood example (see paragraph G3.70 above), the grinding into powder is a necessary step in order to enable the waste to be used as fuel. In the Arco Chemie case79, the resulting wood powder remained contaminated and so it was clear that it should still be controlled under the WFD and so continued to be classified as waste.

59. NRW will say that the Appellant's proposed process for treated wood waste coded 03 01 05 does not meet the definition of complete recovery—

(i) Treated waste wood under the Appellant's proposals would be pre-treatment, not complete recovery.

(ii) The proposed treatment by the Appellant would not alter the properties of the wood waste other than its physical properties, by pulverising the wood waste into finer particles. Additionally, there is no proposal for chemical or biological treatments to be applied to waste wood, such as addition of substances that would alter the waste or enhance sanitary properties for use as animal bedding.

(iii) The Appellant's processes do not remove the potentially harmful substances in treated wood, diluting by mixing not an authorised process and mixing of non-homogenous wood wastes creates further issues where one waste might present greater risk.

(iv) Objectives of the WFD for recovery are only achieved when treated wood is used as animal bedding / cubicle conditioner

Waste exemptions and standard rules permits

Note: until expiry in March 2021, the Appellant had registered with NRW waste exemptions T4, T6, S2. The Appellant's proposed activities do not qualify for any waste exemption in the EPR 2016.

60. There are no waste exemptions which allow use, treatment etc. of treated wood waste as animal bedding, including as a 'finished product'. Where provision is made in respect of animal bedding, the EPR 2016 specifies that only untreated wood waste is permitted.

61. In re exemption T6, 'Treatment of waste wood and waste plant matter by chipping, shredding, cutting or pulverising (T6)' [23] Defra guidance states: *If:[…]you are chipping treated or coated wood,you must not use this for construction, burning as fuel, mulch, animal beddingor as feedstock for composting. The only suitable use for treated or coated wood is the U9 exemption for manufacturing finished goods'.*

62. Although the U9 exemption [24] applies to various waste listed in chapter 3 of the LoW, it does not extend to waste code 03 01 05. Defra guidance states:

> *The waste treated by these methods must be suitable for its intended use, which can include feedstock for producing products such as panel board, mulch, surfacing tracks (paths and bridleways) or fue*l.

And,

> *For the purposes of this exemption, 'finished goods' means goods that are ready for use by an end consumer without any further processing. Waste derived finished goods still need to meet the end of waste test. A manufacturing process should result in a product that is significantly different from the raw materials that it was made from. Wood chip is not considered to be finished goods.*

63. The U8 Exemption 'Use of waste for a specified purpose (U8)' allows of use untreated wood waste at any one time for various specified purposes, including use of up 100 tonnes as animal bedding. Treated wood waste is not permitted under the U8 exemption. Further, under the proposal the Appellant would not itself be using the waste as animal bedding, which would be sold for end use by its customers

Appeal

64. Regulation 31 of the EPR 2016 creates rights of appeal, including against the refusal of an application for an environmental permit:

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[23] See: https://www.gov.uk/guidance/waste-exemption-t6-treating-waste-wood-and-waste-plant-matter-by-chipping-shredding-cutting-or-pulverising
The T6 exemption does not apply to the proposed activities which although of the same type (i.e.chipping, shredding, cutting or pulverising) for recovery of waste, the allowed waste codes under T6 does not include code 03 0105. The total quantity allowed is 500 tonnes ove rany7-day period, pro rata less than half ofthe total quantity proposed of 60,000 tonnes perannum

[24] https://www.gov.uk/guidance/waste-exemption-u9-using-waste-to-manufacture-finished-goods

31.—(1) Subject to paragraphs (2) and (3), the following persons may appeal to the appropriate authority—

(a) a person whose application is refused;

65. The 'deemed refusal' of an application for a permit is not subject of separate provision and is understood to be within regulation 31(1)(a) above. This is reflected in Core Guidance.

66. Regulation 31 also states the powers of the appropriate authority/appointed person:

(4) On the determination of an appeal in respect of a notice, the appropriate authority—

(a)may quash or affirm the notice, and

(b)if it affirms the notice, may affirm it with or without modifications.

(5) When determining an appeal in respect of a decision, the appropriate authority has the same powers as the regulator had when making the decision.

(6) On the determination of an appeal in respect of a decision, unless the appropriate authority affirms the decision the authority must direct the regulator to give effect to its determination when sending a copy of it to the regulator under paragraph 6(2)(a) of Schedule 6.

67. Schedule 6 to the EPR 2016 makes provision for procedural requirements in relation to appeals, but no separate process is stated for deemed refusal.

Classifying waste wood

68. When wood becomes waste, it must be correctly classified and coded in accordance with the current **Waste Classification Technical Guidance (WM3)** ["WM3"] and also appropriately described to ensure that it is managed in accordance with the waste duty of care and further activities are carried out in accordance with the regulatory controls. This is attached in **Annex A.**

69. In certain circumstances, virgin timber is excluded from the scope of the WFD and will not be regarded as waste. [25] Wood, which is not virgin timber/wood or used wood and associated residues such as off-cuts, shavings chippings and sawdust, is waste. It is waste whether the wood is treated or not treated, and it will remain waste and be subject to waste regulatory controls until fully recovered.

70. In WM3, waste wood entries can be found within chapters 03, 15, 17, 19 & 20 of the List of Wastes. Each of these chapters (apart from chapter 15) contains a mirror hazardous and mirror non-hazardous waste code for wood.

71. When classifying waste and determining the correct List of Waste code, there is an absolute legal requirement to assess it as either hazardous or non-hazardous, which will include a determination of the chemical composition of the waste. Without this assessment, the waste defaults to hazardous and the appropriate hazardous waste List of Waste code must be used. NRW does have a temporary position in Regulatory

[25] WFD, Art 2(1): 'The following shall be excluded from the scope of this Directive: … (f) faecal matter, if not covered by paragraph 2(b), straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health.'

Decision RD46.6 in place, allowing departure from this requirement under certain conditions [see: **Annex A].**

72. In January 2018, NRW took a regulatory position on the use of treated wood in animal bedding which states at section 2.4.1:

2.4.1 Use in animal bedding and composting: Treated waste wood is not suitable for recovery in animal bedding or composting operations. This is due to the presence of hazards such as chemical wood treatments and physical contamination that can pose a risk to the environment and animal health.

[See: Annex A, Waste Technical Group paper WTG26 02 'Wrong Waste, Wrong Place' (January 2018); and 'Waste Technical Group Communique' that the paper and recommendation in WTG26 02 was endorsed].

73. NRW's position is that only untreated and clean (free of any fixtures or fittings including for example nails, screws, staples etc.) waste wood can be used for animal bedding or in any other setting where it will come into direct contact with animals/livestock

74. NRW considers that waste wood falls into the following descriptions:

(i) Untreated non-hazardous waste wood, which is waste wood without any form of treatment applied

(ii) Treated non-hazardous waste wood, which which has had some form of treatment applied. This may include, but not be limited to, wood that has been treated by being injected, impregnated, sprayed, infused (soaked) or surface coated with any organic or inorganic substances for the purposes of preserving or protecting it or for changing its appearance and has been assessed and found to be below hazardous waste thresholds. Wood types considered treated include, MDF, chipboard, panel board, plywood, and particle board. This is as a result of the glues/resins and other substances (including a percentage of treated waste wood) used during manufacturing. Some of these treatments may not be obvious and visible such as surface coatings including varnishes and paints, glues, and non-natural veneers.

(iii) Treated hazardous waste wood, which is waste that has been treated, and following assessment, contains hazardous properties above hazardous waste thresholds.

75. If untreated waste wood and treated waste wood are mixed together, the entire load would be classified as treated waste wood. Similarly, if treated non-hazardous wood and treated hazardous wood are mixed together, the entire mixture will be considered hazardous waste.

76. NRW's regulatory position aligns with the position in England taken by the Environment Agency [see EA guidance documents 'Guidance on the use of waste wood' (EA, 2013); 'Position Statement - The environmental regulation of wood' (2010); and 'Quick guide 43_17 Waste Wood' (2017) in Annex A]. It also accords with the regulatory regime created by the EPR 2016, which is subordinate legislation made by Parliament and sponsored by Defra and BEIS. The concern regarding animal health is also the general position of Animal and Plant Health Agency (APHA); e.g. see APHA consultation response to PAL's application.

77. NRW does not recognise or endorse other classifications and terminology of waste wood types, such as found in wood recycling industry sectoral guidance and relied on by the Appellant. Non-regulatory terminology such as "pre-consumer waste wood" is used in

the '**Wood Recycling Association Waste Wood Grades' (updated July 2021) [see Annex A]**:

'Pre-consumer waste wood is waste wood material created during the manufacturing process of virgin wood, not involving the application of treatments, e.g. offcuts or trimmings from virgin/sawn timber. It is also waste wood material created during the manufacturing process of raw, untreated board products such as panel board, MDF and plywood (for clarity, this waste wood can only be used/burnt at source). Waste from joinery activity using these untreated wood materials is also included in this definition.

Material created during the manufacturing process of virgin wood products and/or board products, involving the application of treatments. Waste from joinery activity using these treated wood materials is also included in this definition'.

78. **'PAS 111 -Specification for the requirements and test methods for processing waste wood'** is an industry standard, it is not a quality protocol or a regulatory standard approved or endorsed by NRW. NRW acknowledges that the industry standard has been developed to provide a grading system for use of waste wood by the wood recycling industry, but it does not supersede the regulatory classification for waste wood (i.e. classification under WM3). PAS:111 acknowledges this: '*waste regulatory requirements may further limit input for specific end uses. Check with the regulator for the most up to date information.'*

79. When the treatment of untreated waste wood is being undertaken for subsequent use within animal bedding or similar activity, traceability is a key regulatory consideration and must be ensured so as to give certainty that the wood remains clean and untreated. NRW's position is that any use of waste wood within any application (including animal bedding or similar activities) must be authorised via an appropriate environmental permit or exemption. Operators who intend to undertake a waste processing (treatment) activity require an appropriate environmental authorisation, either an environmental permit (standard rules or bespoke permit) or carried out in accordance with the general and specific conditions of registered waste exemptions in the EPR 2016. If any condition of the exemption cannot be met, an Environmental Permit will be required for the treatment activity.

80. EPR waste exemption T6 (Treating waste wood and waste plant matter by chipping, shredding, cutting, or pulverising) states only "untreated wood" can be processed under this exemption for use within animal bedding. Defra guidance on conditions of the T6 exemption states that if you are chipping treated or coated wood, it must **not** be used within animal bedding.

81. There are two types of environmental permit that can be applied for by the operator of the activity. A Standard Rules environmental permit or a Bespoke environmental permit. A Standard Rules permits contains fixed conditions that cannot be amended, if the conditions of a standard rules permit cannot be met then a bespoke permit must be obtained.

82. There is currently only one Standard Rules permit available for the treatment of solely waste wood. This is an SR2011No4 (Treatment of waste wood for recovery) [see Annex A]. If the conditions of this Standard Rules permit are unable to be met a Bespoke permit would be required. Any Bespoke permit for the treatment of waste wood would be determined upon the specifics of a particular application.

Use of untreated waste wood in animal bedding

83. As outlined above, the conditions of the U8 exemption are only untreated wood shavings, woodchip and sawdust, and oversized compost can be used within animal bedding (or horse manèges) which has been classified and coded as 03 01 05 or 19 12 07. There are no environmental authorisations (exemptions or permits) available for the use of treated waste wood in animal bedding or in any other similar activity.

84. The 'animal bedding' and 'cubicle conditioner' which is being proposed are both used within the agricultural and /or equine sectors and come into direct contact with the animals irrespective of quantities or volumes used.

85. NRW draws no distinction between the terms 'animal bedding' and 'cubicle conditioner' for the purposes of environmental regulation. This is due to associated issues and risks, including but not limited to animal health and welfare impacts, impacts upon the environment and impacts upon the food chain.

86. The Appellant advertise the cubicle conditioner as a form of bedding. The page on their website advertising baled products includes the following statement

    "At Platts, we're best known for our palletised Animal Bedding products"

    Some of the products on the page are feed but most are bedding and all of the cubicle conditioner products have 'bed' in the name which suggests that they are regarded by the Appellant itself as a form of animal bedding e.g. Powder Bed, Fine Bed and Mixed Bed.

Use of treated waste wood in animal bedding

87. There are no environmental authorisations (exemptions or permits) available for the use of treated waste wood in animal bedding or in any other similar activity. NRW's regulatory approach is clear and is consistent with regulatory advice provided to the agricultural sector as the end users of such wastes in these circumstances. This is included in NRW's **Advice for farmers in periods of dry weather.** This is attached in **Annex A.**

88. It is also consistent with the advice provided in the **Wood Recycling Industry document PAS 111** and recently issued '**Waste Wood Assessment Guidance for the UK Waste Wood Industry'** by the Wood Recyclers Association ('WRA'). The purpose of these guidance documents is aimed at helping waste producers and operators to understand and follow procedures to ensure the correct waste wood ends up in the right end market.

Guidance from agricultural assurance schemes and organisations on animal bedding

89. NRW note that independent and nationwide agricultural assurance schemes such as **'Red Tractor'** and organisations such as the '**Agricultural and Horticultural and Development Board'** and '**Meat Promotion Cymru'** specifically state within their guidance that treated wood should not be used within bedding materials. These are attached in **Annex A.**

90. Several independent and nationwide relevant agricultural assurance schemes and organisations have issued guidance on the use of waste wood to produce animal bedding. The guidance published by these organisations reflect the regulatory position that treated waste wood is not suitable to produce or use as animal bedding.

91. The Agriculture and Horticulture Development Board (AHDB) is a statutory levy board, funded by farmers, growers, and others in the supply chain to help the industry. **The Agricultural and Horticultural Development Board's 'The Bedding Materials Directory'** states:

'Treated timber is not permitted for bedding because of the risks to animals, the human food supply chain and problems of dealing with the soiled bedding.'

92. Red Tractor is a food chain assurance scheme that underpins standards of British food & drink. **Red Tractor guidance 'Cattle and Sheep Bedding Materials (Dairy, Beef and Lamb)'** states:

'It is essential that materials used as bedding are Safe, Suitable and Legal. It is essential that they are managed in a way that will keep livestock appropriately clean and consideration is given to the disposal of the product after it has been used as a bedding material, be that spreading to land or inclusion in AD plants. Red Tractor members must keep records of delivery of waste materials intended for bedding. This is important information that may be useful in demonstrating compliance with the law, exemptions and dealing with any problems that may arise with unsuitable loads.'

93. The table in this guidance document states that *'Untreated wood shavings and sawdust - can be used from **untreated wood only**, with a U8 waste exemption to use'* it as a bedding material.

94. The table in this guidance document also states that '*treated woodchip'* is **not** suitable for animal bedding and under additional information it states:

'Grade B, C or D Wood normally includes contaminants such as paint, varnish, chemicals and plastics that may pose a threat to the environment. Includes MDF and chipboard.'

95. Finally, this guidance document also states:

'There are materials that have not been listed. You may need to check their legality and permitted use status- APHA will be able to offer this guidance.'

96. Meat Promotion Wales (HCC) is the industry-led organisation responsible for the development, promotion and marketing of Welsh red meat. **Meat Promotion Wales (HCC) guidance 'Alternative bedding materials for beef and sheep housing systems in Wales'** states:

'Treated timber is not permitted for animal bedding because of the risks posed to the animals being bedded upon it, the potential food chain impacts and problems with dealing with the soiled bedding.'

Waste wood and end of waste

97. As set out above, waste must have been through a recycling or other recovery operation and meet all applicable criteria in Article 6 of the WFD to be classed as non-waste. Once they are classed as non-waste, waste controls do not apply to these materials. End of waste is usually achieved at the completion of the recycling or other recovery process when the material can replace the non-waste comparator. This could be at the point that it becomes a feedstock, where the appropriate comparator is a feedstock, or where it is ready for its final use, if the comparator is a final product. For material where no

appropriate comparator is available, it's likely that recovery and therefore end of waste is only achieved when it is ready for its final intended use.

98. Unless 'End-of-Waste' status has been achieved for any of the waste material being processed or stored at a facility, waste regulatory controls will apply, and an appropriate environmental authorisation (permit or exemption) is required for its subsequent storage and use. This means that whilst the material remains at the proposed facility, it will still be subject to waste regulatory controls and upon each subsequent deposit of material, an appropriate environmental authorisation (permit or exemption) must be in place.

99. In accordance with Article 6 of the rWFD End-of-Waste can be determined using one of three methods:

    • compliance with end of waste regulations
    • meeting a quality protocol
    • through an individual assessment on a case-by-case basis

100. End of waste regulations do not exist for wood or wood related materials. A quality protocol does not exist for wood or wood related materials. Since 2007, the Environment Agency have worked extensively with the Wood Recyclers Association to determine if there is an option for a Quality Protocol for waste wood. Insufficient information/evidence was provided by the industry to conclude that all waste wood input through a waste treatment facility was untreated and therefore there was limited confidence in the ability to achieve end of waste through a quality protocol. Treated wood was not under consideration due to the unknown and unidentifiable treatments applied to wood during production and its use.

101. It is important to note that the Appellant has claimed that that the process material meets PAS 111, however this industry standard itself makes it clear that treated wood (i.e. anything not Grade A in the PAS 111 specifications) should not be used as a feedstock for animal bedding or similar activities. 'PAS 111' is an industry standard and it is **not** a quality protocol or a regulatory standard endorsed by NRW. PAS 111 also states that "Waste regulatory requirements may further limit inputs for specific end-uses. Check with the regulator for the most up to date information".

102. As a result, as no other means of demonstrating EoW are available for the proposed activity, in order for regulatory controls to no longer apply to this material EoW status needs to be determined via an individual assessment on a case-by-case basis.

103. This requires the submission of evidence to demonstrate that the claim of EoW has a valid basis with an application for an end of waste opinion (which is a chargeable service offered by the Environment Agency) or self-assessment basis.

THE APPELLANT'S PERMIT APPLICATION

Pre-application advice

104. On 9 July 2020, NRW sent the Appellant pre-application advice:

    '[…] Our position is that treated waste wood <u>cannot</u> be used to produce animal bedding. An Environmental Permit from NRW would allow the treatment and recovery of waste, however, please be aware that there are limited recovery options for non-hazardous <u>treated</u> waste wood (i.e., wood that has been treated by veneers, MDF, glues, varnishes, stains etc.). Recovery of waste means that the outputs are suitable for the intended

purpose, and as we have made clear, treated non-hazardous waste wood used to produce animal bedding is not suitable as a waste recovery operation.

It is permissible under a waste treatment and recovery Environmental Permit to produce animal bedding from untreated non-hazardous waste wood and virgin timber, by which we mean non-hazardous waste wood from the arboriculture sector, packaging waste, kiln-dried scrap pallets (that have not been treated), packing cases, cable drums and off-cuts from the manufacture of untreated wood products. As part of the application determination process, officers from the Waste Regulation and Permitting Teams may require further clarification regarding your intended process from you or your client.'

This is attached at **Annex A.**

Previous application (PAN-014252)

105. On 21 May 2021, the Appellant previously applied for an environmental permit (application ref. PAN-014252). The application was in the same terms as that subject of the appeal. [26] NRW assessed the application was not 'duly made' and it was returned to the Appellant on 23 September 2021. This was because certain information had not been provided in respect of risk assessment of priority and protected species and receptors, ecological survey and noise impact assessment and management plan.

Current application (PAN-016818)

106. On 28 January 2022, the Appellant submitted an application under the EPRs 2016 for a bespoke environmental permit. As per application PAN-014252, the application was for a waste facility to accept and process approximately 60,000 tonnes per annum of non-hazardous manufacturing waste wood, to produce animal bedding and cubicle conditioner [animal bedding] to be used in the agricultural livestock industry.

Duly made assessment of the application

- NRW PS carried out a duly made assessment, in accordance with guidance Operational Instruction 203_08 [see NRW Inquiry Doc.] .[27] This is an Environment Agency ('EA') legacy guidance document adopted by NRW. To be satisfied the application was duly made, NRW PS needed more information. On 11 April 2022, NRW PS requested the information from the Appellant. This included further information to support noise impact assessment (in accordance with Clause 12 of BS4142), calculations to support the noise impact assessment, revised Environmental Risk Assessment to consider all risks to ecological receptors and revised Application form Part B2.

- On 13 April 2022 the Appellant submitted revised documents to NRW PS including noise impact assessment, noise management plan, Part B2 application form, dust management plan and environmental risk assessment. These are attached at **Annex A.**

[26] On 21 May 2021, the Appellant submitted an application for a bespoke environmental permit for a waste facility to accept and process approximately 60,000 tonnes per annum of non-hazardous manufacturing wood waste (reference PAN-014252). The proposed activities) included:
Storage and treatment of clean, untreated wood waste to produce animal bedding material. Treatment limited to pulverising and removal of wood dust, and;
Storage and treatment of treated wood waste to produce cubicle conditioner [animal bedding] to be used in the agricultural livestock industry. Treatment limited to pulverising to produce wood dust.
[27] Operational Instruction 203_08 - Environmental permitting: how we duly make and consult on applications for water discharges, groundwater activities, waste, mining waste and installations.

107. The application was accepted as 'duly made' on **13 April 2022**. This means NRW PS considered the application was in the correct form and contained sufficient information for us to begin our determination. It does not mean it necessarily contained all the information NRW would need to complete that determination. Further information was requested during the determination, which is detailed further below.

NRW had not yet completed its determination of the permit application and was therefore unable to grant the permit at this time.

Details of the proposal

108. The proposed facility lies in Llay Industrial Estate North, Llay. Industrial and residential receptors are located within the vicinity of the proposed facility. The B5102 Llay Road lies approximately 500m to the south of the proposed facility and the B5373 is approximately 720m to the east of the proposed facility. Several industrial receptors are situated along the southern boundary of the proposed facility, and one is adjacent to the proposed facility on northern boundary. Trees run alongside a large portion of the proposed facility including on the southern, eastern, and north-eastern boundaries. The nearest industrial/commercial buildings are within approximately 7m of the proposed facility. The nearest residential receptors are residential properties at: 'Alandale' that are approximately 680m and 'The Meadows Barns' are approximately 780m from the proposed facility.

109. As regards to protected sites and species, there are numerous recent records for Great Crested Newts ('GCN') and other amphibians between 250m and 500m from the proposed facility. Adjacent to the proposed facility boundary lies a GCN habitat area developed by Platts as part of a planning application. Llay Bog – Site of Special Scientific Interest is approximately 830m from the proposed facility.

110. The proposed activities included:

- Storage and treatment of clean, untreated wood waste to produce animal bedding material. Treatment limited to pulverising and removal of wood dust, and.

- Storage and treatment of treated wood waste to produce cubicle conditioner [animal bedding] to be used in the agricultural livestock industry. Treatment limited to pulverising to produce wood dust.

111. The Appellant proposed to accept and process up to 60,000 tonnes of non-hazardous manufacturing waste wood per annum at the proposed facility, as stated in 'End-of-waste Justification' (submitted by the Appellant on 16 September 2022). This is attached at **Annex A.**

112. The Appellant proposed to store 420 tonnes of unprocessed waste wood at any one time, as stated in their FPMP, document reference 'ECL Ref: PLAT.01.02/FPP, Version: Issue 1, January 2022'. This is attached at **Annex A.**

113. The Appellant claimed that the processed waste wood was a finished product and conformed to the 'quality protocol of **'PAS 111:2012 - Specification for the requirements and test methods for processing waste wood' ('PAS 111')'** and therefore met 'end-of-waste' status.

114. It is important to note that 'PAS 111' is an industry standard – it is **not a quality protocol or a regulatory standard.** 'PAS111' does not demonstrate 'end-of-waste'. This is discussed further in this document.

115. As the Appellant claimed that 'end-of-waste' status had been met, they failed to confirm the amount of processed waste wood proposed to be stored at the facility.

116. Whilst the Appellant's application confirmed that the processed waste wood would be removed from the proposed facility within 3 months from being produced, the Appellant failed to confirm procedures to ensure that the proposed storage time of 3 months would not be exceeded. This is discussed further in sections **'Regulatory Controls'** and '**Fire prevention and mitigation plan (FPMP)'** below**.**

117. The Appellant proposed to store and treat all waste on an impermeable surface with sealed drainage, leading to foul drainage system. No drainage discharges to surface water were proposed.

118. The Appellant provided authorisation to discharge the trade effluent into the public foul sewer from the sewage undertaker, Dwr Cymru Welsh Water. This is attached at **Annex A.** The authorisation confirmed that the trade effluent to be discharged is 'derived from vehicle washing'. [Note: The authorisation does not confirm that run-off from the impermeable surface from external areas of the proposed facility used to store and treat waste is allowed in the discharge. NRW PS consulted with the sewage undertaker Dwr Cymru Welsh Water on the application. No response from Dwr Cymru Welsh Water was received.]

Determination period

119. The application was for a bespoke permit application with a determination period of 4 months.[28] This is subject to proviso in the EPR 2016 that the determination period can be extended by agreement.

120. The EPRs provide that when a Schedule 5 notice requesting further information is issued, the determination clock is "stopped" and the amount of time that is taken for the applicant to respond is then added to the determination time. Taking this into account, the Schedule 5 Notice issued in relation to the application, and the time taken for the Appellant to respond, the statutory deadline for the application was **11 October 2022.**

121. Core guidance, in section 6.15 states: '*The determination periods quoted above can lengthen where: further information is required to determine the application.'*

122. NRW PS kept the Appellant informed throughout the determination process: see Chronology of the permit determination, [**Annex A**]

123. Whilst NRW PS endeavours to take permitting decisions on applications within the statutory time, NRW has a duty to ensure that it determines applications in accordance with the EPRs and relevant guidance.

Consultation on the permit application

124. NRW consulted on the application in accordance with the EPRs, its statutory Public Participation Statement (PPS), Working Together Agreements and internal guidance **'Operational Instruction 233_08 -** ***Environmental permitting: how we determine an application for a permit or carry out an Environment Agency led variation to a permit, for water discharges, groundwater activities, waste, mining waste and installations'***. These are attached at **Annex A.**

[28] See EPR 2016, Schedule 5, Part 1, para 16

125. The application was advertised by a notice placed on NRW's website in line with our Public Participation Statement and no responses from the public were received. A copy of the application and all other documents relevant to determination were stored on NRW's Online Public Register ('OPR'). An electronic link to the OPR is included in **Annex A.**

126. NRW consult other bodies as per working together agreements. Listening to others helps us to make better decisions. We make use of the expertise of others and make sure we have taken into account all the environmental risks.

127. NRW sent copies of the application to the following bodies, in accordance with 'Working Together Agreements':

- Local Planning Authority - Wrexham County Borough Council Planning Department
- Local Authority Environmental Health - Wrexham County Borough Council Environmental Protection Department
- North Wales Fire and Rescue Service
- Betsi Cadwaladr University Health Board
- Dwr Cymru Welsh Water
- Animal and Plant Health Agency

These are attached in **Annex A.**

128. All of the above are bodies whose expertise, democratic accountability and / or local knowledge make it appropriate for us to seek their views directly. Further details along with of the consultation responses we received are set out in **Annex A**. A summary of the consultation responses are provided below.

Determination stage of the permit application

Burden of proof

129. With all environmental permit applications, the burden of proof lies with the applicant to submit sufficient evidence with their application to demonstrate that the proposed activity will not pose a risk to public health or the environment. NRW must have confidence that the activity will not pose a risk to public health or the environment before a permit can be granted.

The proposed activity

130. Section 4.1.2 of the 'Non-Technical Summary ECL Ref: PLAT.01.02/NTS' submitted with the application states *'Platts is proposing to accept waste wood which is both 'treated' with veneers, glues, varnishes and stains, and 'clean', virgin timber, timber from the arboriculture sector, packing waste, kiln dried scrap pallets, and off cuts from the manufacture of untreated wood products'.* This is attached in Annex A.

131. The application included only limited information on where the waste wood was originating from. The application made references to "wood waste from suppliers", however no further information on these "suppliers" was provided. The document 'Environmental Permitting Technical Requirements ECL Ref: PLAT.02.01/EPTR' ('EPTR') submitted 31 January 2022 with the application states at section 4.2.4.2: *'Wood waste accepted on site will come from 'wood processing /wood manufacturing sites.'* We note that in their document **'Reasons for an inquiry'** included in **'Environmental-**

Permit-Appeals-Form' (dated 03/11/22), that it states in point 1 that '*The Appellant accepts **wood residue from suppliers who typically make wood furniture from MDF board or chipboard or similar**. The sawdust and other material pulverised into **animal bedding** and cubicle conditioned, it is sold to about 3000 or more farming and equine clients'.* This is attached in **Annex A.**

132. The List of Waste ('LoW') codes proposed to be accepted at the proposed facility, as listed in Table 1, of the EPTR document included:

Code	Description
02	**WASTES FROM AGRICULTURE, HORTICULTURE, AQUACULTURE, FORESTRY, HUNTING AND FISHING, FOOD PREPARATION AND PROCESSING**
02 01	**Wastes from agriculture, horticulture, forestry, hunting and fishing**
02 01 07	Wastes from forestry
03	**WASTES FROM WOOD PROCESSING AND THE PRODUCTION OF PANELS AND FURNITURE, PULP, PAPER AND CARDBOARD**
03 01	**Wastes from wood processing and the production of panels and furniture**
03 01 05	Sawdust, shavings, cuttings, wood, particle board and veneer other than those mentioned in 03 01 04
17	**CONSTRUCTION AND DEMOLITION WASTES (INCLUDING (INCLUDING EXCAVATED SOIL FROM CONTAMINATED SITES)**
17 02	**wood, glass and plastic**
17 02 01	Wood

Note: the above was subsequently revised so as to limit the proposed waste types to 02 01 07 and 03 01 05.

133. Chapter 17 waste codes are construction and demolition wastes and may contain a range of contaminants. Only waste wood (that has been coded as chapter 17 waste) that can be fully traced back to its origin with confirmation that no treatments have been applied throughout its use can be considered untreated.

134. The Appellant submitted document **'Wood Waste Review (Document Reference PLAT.01.02/WWR'** with the application. This stated, at paragraph 1.1.5:

*'Sample analysis suites of wood waste were developed after discussions with laboratories and covering as wide a range of **likely** substances that **may** be present in the wood wastes. The final suite of analysis was as recommended by the laboratories.'*

135. Paragraph 1.1.5 above suggests ambiguity in the proposal. The use of the words 'likely' and 'may' do not demonstrate confidence in the proposal. This highlights a risk in subsequent uses of treated waste wood; unless the wood can be confidently and fully traced back to its source, it can only be speculatively tested, sampled, and analysed. However, with clean, untreated wood where it has not undergone any form of treatment other than chipping, shredding etc., there can be confidence in its nature, hence why the EPR 2016 allow its use under appropriate exemptions.

136. NRW must also consider the potential for variability in anything that was to be identified, for example suppliers/sites producing the material may change their source material which then alters the composition further along the process, issues such as this will then have an impact upon end of waste. PAS 111 is an industry standard; it is not a regulatory standard. Whilst the waste wood *may* align with PAS 111, this does not mean that it meets the regulatory standard.

Notice requiring further information: Schedule 5 Notice Number 1 (dated 19 July 2022)

137. During the application determination process under the EPRs, under Schedule 5 of the EPRs 2016 we are able to request further information that we require in order to complete our determination.[29] We can do this formally or informally. This is supported by paragraphs 6.17-6.19 of Core guidance.

138. When NRW PS formally request information, this is done by serving a 'Schedule 5 Notice' on the applicant. A Schedule 5 Notice is a statutory notice issued under the EPRs that must clearly specify the information the regulator requires to determine the application, why that information is needed and when the applicant must submit the information. The applicant must provide all of the information specified in the notice. In relation to the application, NRW has issued two Schedule 5 notices: a notice issued on 19 July 2022 i.e. prior to determination date and deemed refusal; and a second notice 9 November 2022, issued post-deemed refusal.

139. In accordance with the EPRs and Core guidance, on 19 July 2022, NRW PS issued a Schedule 5 Notice requiring further information to clarify aspects associated with the Appellant's claim that once the waste wood had been processed that it was no longer waste – and that it was in fact 'End-of-waste' ('EoW'). This is attached in **Annex A.**

140. Section 2.1.4 of the 'EPTR' submitted 31 January 2022 with the application states:

'As part of the Permit application, it is proposed that the processed wood waste material should be considered a ***'product'*** *and* ***should no longer be considered a waste, based on the PAS111 standards and protocols****.'*

141. As the information provided in the application did not demonstrate that the material met 'End of Waste', a Schedule 5 Notice was issued requiring the Appellant to **'Provide further information to demonstrate that the processed wood waste meets 'end of waste'. This must be done via an individual assessment on a case-by-case basis produced in accordance with Article 6 of the revised Waste Framework Directive, including procedures you will have in place to ensure that this is carried out for all waste treated on site.'**

142. The Schedule 5 Notice directed the Appellant to NRW's webpage on **'Meeting the end of waste test'**. This is attached in **Annex A.** NRW's 'Meeting the end of waste test' webpage also includes a link to the guidance document '**Decide if a material is waste or not: general guide (updated version of part 2 of original full document)'**. This guidance was jointly produced by Welsh Government and DEFRA. This is attached in **Annex A.**

143. The Schedule 5 Notice was issued to the Appellant on 19 July 2022 with a deadline of 17 August 2022. On 09 August 2022, the Appellant requested NRW PS to extend the Schedule 5 deadline until 17 September 2022. Thereby requesting an extension to the deadline by one month. This is attached in **Annex A.** On 12 August 2022 NRW PS

[29] See EPR 2016, Schedule 5, Part 1, para 4

agreed to the Appellants request and extended the Schedule 5 deadline until 17 September 2022. This is attached in **Annex A.**

144. The Appellants response to the Schedule 5 Notice was provided on 16 September 2022. This is attached in **Annex A.** The response comprised of 'End of Waste Justification' document, 'clean wood comparison and numerous 'supplier samples'. In total the Schedule 5 Notice response comprised of 59 individual files. These files were submitted by the Appellant on a 'Sharefile' system. NRW PS uploaded the 59 files to the document management system ('DMS').

145. NRW PS needed to undertake consultation on the Appellant's response to the Schedule 5 Notice. **NRW was therefore unable to grant the permit at this time.**

146. On 20 September 2022 once the documents were uploaded to the DMS/OPR, NRW PS consulted internally with NRW waste policy advisors on the Appellant's response to the Schedule 5 Notice. As the Schedule 5 response forms part of the application NRW PS also re-consulted externally with the following relevant bodies. On 23 September 2022 NRW PS sent the Appellant's response to the Schedule 5 Notice to the following, with a request for comments by 21 October 2022:

    - Local Planning Authority - Wrexham County Borough Council Planning Department
    - Local Authority Environmental Health - Wrexham County Borough Council Environmental Protection Department
    - North Wales Fire and Rescue Service
    - Betsi Cadwaladr University Health Board
    - Animal and Plant Health Agency

    These are attached in **Annex A.**

147. On 06 October 2022 NRW PS sent the Appellant's response to the Schedule 5 Notice to the Animal and Plant Health Agency and Welsh Government (Animal Welfare and By Products), with a request for comments by 21 October 2022. This is attached in **Annex A.** On 06 October 2022 NRW PS received a response from the Animal and Plant Health Agency. This is attached in **Annex A.**

148. NRW PS needed to assess the Appellant's response to the Schedule 5 Notice and the consultation responses. **NRW had not completed determination of the application and was therefore unable to grant the permit at this time**.

149. The recalculated statutory determination date was 11 October 2022. NRW PS had not made a decision on the permit application when, on 17 October 2022, the Appellant served a 'deemed refusal' notice on NRW further to paragraph 15(1), Schedule 5 to the EPR 2016. [ref INQUIRY DOC].. This was 21 working days after the Appellant submitted its response to Schedule 5 Notice Number 1. The Appellant did not discuss its intention to take this course of action with the NRW PS prior to serving the deemed refusal notice.

150. On 11 October 2022, NRW PS was still considering Appellant's response to Schedule 5 Notice Number 1. As it was apparent to NRW that the 'EoW Justification' did not meet the end of waste test. NRW PS required further information from the Appellant in order to conclude our determination. Further information on our assessment of the 'EoW Justification' is included in the '**End of Waste Justification'** section below**.**

151. On 17 October 2022, the Appellant served notice of 'deemed refusal' on NRW

152. Given that the Appellant requested an extension to the Schedule 5 Notice Number 1 deadline to which NRW subsequently agreed to, it is unfortunate that the Appellant chose to trigger the deemed refusal, rather than to allow NRW to continue and conclude the determination.

153. In correspondence between NRW PS and Appellant, both parties agreed to maintain communication outside of the appeal process.

154. On 21 October 2022 NRW PS advised the Appellant that Schedule 5 Notice Number 2 was in the process of being drafted when the deemed refusal notice was served. This is attached in **Annex A.** On 26 October 2022 the Appellant advised NRW PS that they would 'look forward' to receiving the Schedule 5 request. This is attached in **Annex A.**

As further information was required, NRW were therefore unable to grant the permit at this stage.

Assessing the Appellant's response to the Schedule 5 Notice Number 1

155. The Appellant submitted document 'Schedule 5 Notice Response End of Waste Justification – ref ECL Ref: PLAT.01.02/EoW Version: Issue, dated 1 September 2022' (''EoW Justification'') in response to the Schedule 5 Notice Number 1 (dated 19 July 2022).

Revised waste types

156. The Schedule 5 response from the Appellant confirmed that 'EWC 17 02 01' was no longer proposed to be accepted at the facility and confirmed that the only EWC code to be processed to produce cubicle conditioner [animal bedding] product is 'EWC 03 01 05 – 'Sawdust, shavings, cuttings, wood, particle board and veneer other than those mentioned in 03 01 0 4'.

End of Waste submissions

157. NRW assess end of waste submissions in accordance with the relevant legislation and guidance. Welsh Government and DEFRA produced joint guidance – **'Decide if a material is waste or not: general guide (updated version of part 2 of original full document) - Updated 31 August 2021**'. This guidance has been produced based on the requirements of Article 6, is the guidance used in England and Wales, and can be found on our website. This is attached in **Annex A.**

End of Waste Justification

158. The Appellant submitted document 'Schedule 5 Notice Response End of Waste Justification – ref ECL Ref: PLAT.01.02/EoW Version: Issue, dated 1 September 2022' ('EoW Justification') in response to the Schedule 5 Notice Number 1.

159. Section 1.1.4 of 'EoW Justification' states: *'Manufacturing waste wood will not be used to produce animal bedding but will be used to produce a cubicle conditioner. The two wood types will not be mixed'.*

160. Section 1.1.5 of 'EoW Justification' confirms that '**It is this manufacturing wood waste which is subject to this EoW assessment'** therefore excludes clean wood, untreated from the EoW claim.

161. It is not known why the Appellant claims that the cubicle conditioner [animal bedding] should be regarded as a product under EoW but no claim has been made in relation to animal bedding, made from untreated waste wood. It is unclear if the Appellant considers the processed clean, untreated waste wood to be a product or if they accept that it remains a waste.

162. **End of Waste has not been proposed by the Appellant for clean, untreated wood and therefore EoW has not been demonstrated for clean, untreated wood. Regulatory controls therefore continue to apply for clean, untreated wood after it has been processed, for its storage and subsequent use.**

163. Uncertainty as to the status of the untreated wood waste would need to be removed in order to appropriately determine the permit on the basis untreated waste wood will achieve end of waste status. Under the current regulatory regime, untreated wood waste would remain waste and subject to the exemption or permit conditions, for permits including adhering to the requirements of a Fire Prevention & Mitigation Plan. The Appellant has not stated what it characterises the 'clean' material output to be. The appropriate agency (here NRW) cannot assume a substance received as waste coded 03 01 05 will have achieved End of Waste status without evidence from the Appellant. As stated throughout this statement of case, clean and untreated waste wood can be used in animal bedding; but, unless it has achieved End of Waste status, would remain waste and still be subject to regulatory requirements. The regulatory regime in the EPR 2016 makes provision for this e.g. by the inclusion of untreated waste wood for use within animal bedding via certain waste exemptions.

164. The Environment Agency adopts an enforcement position in England stating in guidance [see Annex A, 'Guidance on the use of waste wood' (EA, 2013)] at page 2:

'The Environment Agency are however, aware that untreated and clean Grade A waste wood is currently shredded to produce bagged small animal and poultry bedding for retail or in bulk to wholesale markets. We are satisfied at present that where this shredded waste wood is produced to a high specification and that retailers or wholesalers have carried out their own risk assessment before selling this material, although it remains a waste produced from a waste treatment process, we will not take enforcement action unless risks to the environment or human health result.'

165. Another option for an operator may be to demonstrate end of waste for the 'clean' material, including by self-assessment.

166. NRW assessed the Appellant's 'EoW Justification' in accordance with Article 6 and the relevant guidance **'Decide if a material is waste or not: general guide (updated version of part 2 of original full document) - Updated 31 August 2021**'. We have set out our conclusions below, starting with Article 6 first.

Article 6(1) of the revised Waste Framework Directive ('rWFD')

167. NRW assessed the Appellant's 'EoW Justification', submitted in response to Schedule 5 Notice Number 1 issued 19/07/22, in accordance with the conditions provided in Article 6(1) of the rWFD. NRW does not agree the Appellant's response to the Schedule 5 Notice demonstrates that the processed treated wood waste meets 'end-of-waste status' in accordance with Article 6(1) of the rWFD.

168. To consider an operator's determination that they have met the criteria set out above for the use of untreated waste wood in animal bedding, NRW would expect to see detailed evidence including significant justification which satisfies Article 6 (1).

Article 6(1)(a) Substance or Object to be Used for Specific Purposes

169. See sections 2.1.1 and 2.1.2 of the 'EoW Justification'. In consideration of Article 6(1)(a) of the rWFD, the substance or object to be used appears to be produced for a specific purpose. However, NRW's position – mirrored by the EPRs, the other UK Environmental Regulators, the Wood Recycling Industry, independent and nationwide agricultural assurance schemes and organisations – is that the use of the input material is not permitted for such specific purpose, i.e., the use of treated wood waste to produce animal bedding. In consideration of Article 6(1)(a) of the rWFD, substance or object to be used for specific purposes has not been demonstrated as the use of the input material is not appropriate for such specific purpose.

Article 6(1)(b) Market or demand exists for such a substance or object

170. See section 2.2.2 of the 'EoW Justification'. It is unclear from the application why the Appellant proposes to use treated waste wood to produce cubicle conditioner [animal bedding], and what benefits using treated waste wood provides that clean, untreated waste wood doesn't provide. See section 2.1.2 of 'EoW Justification'. Whilst the 'EoW Justification' includes testimonials from farmers, no evidence has been provided to support this claim. We have noted that the 'farmer testimonials' are not independently verified. Furthermore, used in this manner, clean, untreated waste wood provides exactly the same benefit.

171. Defra paper 'Wood waste: A short review of recent research' (2012) [at Annex A] confirms there is an established market for wood waste in animal and poultry bedding (see section 4), and references the 2012 WRAP guidance PAS:111, noting in section 3.2 'grade A' wood waste '*goes to higher value markets such as animal bedding and panel products as well as in any incinerator*'. The Appellant's presentation of market demand for cubicle conditioner [animal bedding] made from treated wood is considered to be fundamentally flawed in that it is premised on waste operations that have been carried out without a permit and are contrary to the regulatory regime in the EPR 2016.

172. No evidence has been provided to demonstrate that the end users are made aware and have a clear understanding of the material used to produce cubicle conditioner [animal bedding]; that they are aware that the source of the material is manufacturing waste wood; that they have a clear understanding of what 'manufacturing waste wood' is; that they are in fact aware that the material is produced from treated waste wood, substances the material may contain and the risks that these could pose.

173. The Appellant's website does not make it clear what material is used to produce the cubicle conditioner [animal bedding]. This then raises further questions that could have implications for the end user in terms of them demonstrating compliance with the standards of certification schemes that they may hold, such as Red Tractor.

174. As stated above, the Red Tractor guidance **'Cattle and Sheep Bedding Materials (Dairy, Beef and Lamb)'** states:

> *It is essential that materials used as bedding are **Safe, Suitable and Legal**. It is essential that they are managed in a way that will keep livestock appropriately clean and consideration is given to the disposal of the product after it has been used as a bedding material, be that spreading to land or inclusion in AD plants. Red Tractor members must keep records of delivery of waste materials intended for bedding. This is important information that may be useful in demonstrating compliance with the law, exemptions and dealing with any problems that may arise with unsuitable loads.*

175. No evidence has been provided to demonstrate that this matter has been considered by the Appellant.

176. No evidence has been provided to demonstrate that the Appellant is being transparent with the end users and therefore allowing the end users the opportunity to make an informed decision on using a material that is does not meet the standards (i.e., is safe, suitable, and legal) under assurance schemes that they may be members of.

177. Using treated waste wood limits the options available to end users when it comes to disposing of this material. The failure to inform end users that the cubicle conditioner [animal bedding] is produced from treated waste wood also means that end users are not made aware of the correct disposal routes for the used material. No evidence has been provided to demonstrate that the Appellant is making the end user aware of this.

178. This leads us to question whether the end user's perception of the material would change if they were aware of the material used to produce cubicle conditioner [animal bedding], how the material used may affect their ability to comply with the standards of the certification schemes, how this limits disposal options for the used material and implications on the end user if not disposing of it in the correct manner. Ultimately, all these factors raise the question if end users would want to continue using this product and if it would then impact the overall demand for the material.

179. **In consideration of Article 6(1)(b) of the rWFD - Market or demand exists for such a substance or object, NRW are aware that there is a significant market already established for the use of untreated and clean waste wood within the agricultural and / or equine sectors. Demand does not exist for the use of treated wood in these sectors. The Appellant has not demonstrated that there is a demand for cubicle conditioner [animal bedding] produced from treated waste wood.**

Article 6(1)(c) The substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products

180. See section 2.3.1 of the 'EoW Justification'. As there are no specific technical requirements in place for animal bedding, the responsibility therefore lies with the Appellant to demonstrate that the material produced does not pose any risks, including but not limited to, animal health and welfare impacts, impacts upon the environment and impacts upon the food chain. In regard to the 'standards applicable to products', consideration must be given to the certification schemes available to and used by end users, as stated above. End users join certified assurance schemes such as 'Red Tractor Certified Farms' because they are recognised and trusted by consumers. Consumers have confidence in the Red Tractor products they are buying and if material used by end users does not meet the standards of certified assurance schemes, it undermines confidence in such schemes.

181. The dairy standards of the Red Tractor Scheme include:

*'Every certified farm must have a Farm Biosecurity Policy to prevent the spread of disease and **protect food safety** and **animal health'.***

182. As a reminder, the standards of the Red Tractor Scheme include:

***'Safe, suitable** and **legal** bedding is provided in lying areas'.*

183. See section 2.3.2 of 'EoW Justification'. The Appellant has referenced guidance - **Department for Environment, Food and Rural Affairs ('DEFRA) publication 'Code**

of Recommendations for the Welfare of Livestock: Cattle (March 2003) in their 'EoW Justification'. The inclusion of this in the end of waste claim is completely flawed.

184. Section 2.3.3 of 'EoW Justification' includes one of the key aspects of this guidance that considers the requirements of animal bedding as ***'Any internal surfaces of cubicles should not be treated with any paints or wood preservatives that may harm the animals'***. This statement is contrary to the Appellants whole proposal of using treated waste wood, where it may contain **'paints or wood preservatives'.** As included in Section 4.1.2 of the 'Non-Technical Summary', ***'Platts is proposing to accept waste wood which is both 'treated' with veneers, glues, varnishes and stains'.*** The Appellant has included and therefore must understand this section of the guidance but maintains that it is acceptable to use treated waste wood in the production of cubicle conditioner [animal bedding], used in the cubicles, where '***Any internal surfaces of cubicles should not be treated with any paints or wood preservatives that may harm the animals'***.

185. Furthermore, consideration must be given to the differing level of risk from paints and wood preservatives that may be present on internal surfaces to those found in cubicle conditioner [animal bedding]. Substances found within paints and wood preservatives on internal surfaces will to a certain extent be bounded and immobile, however, paints and wood preservatives present in cubicle conditioner [animal bedding] will be mobile and will be able to freely disperse around the animal and cubicle, thus increasing the level of risk as they will be more easily inhaled and ingested.

186. Table 2 of the 'EoW Justification' makes references to *'The application rate is such that there is no risk to animal welfare from either contact or dust generation when the material is **applied in the cubicle'***, therefore confirming that the cubicle conditioner is indeed applied directly in the cubicle. Furthermore, no evidence has been provided to demonstrate that there is no risk to animal welfare.

187. Section 2.3.5 of 'EoW Justification' states*: 'it is considered the product is making a positive contribution to animal welfare and delivering on the key aspects of the Code of Recommendations'.* However, we disagree that the Appellant is delivering on the key aspects of the recommendations, as we have identified above, the cubicle conditioner [animal bedding] being produced would not support the key aspect of '**Any internal surfaces of cubicles should not be treated with any paints or wood preservatives that may harm the animals'**.

188. The Appellant states in the application themselves that it would not be suitable to use treated waste wood in animal bedding. See section 1.5.6 of the 'EoW Justification'.

189. NRW are unclear as to why the Appellant would then deem it suitable to use treated waste wood to produce cubicle conditioner [animal bedding]. NRW draws no distinction between the terms 'animal bedding' and 'cubicle conditioner' for the purposes of environmental regulation. This is due to associated issues and risks, including but not limited to animal health and welfare impacts, impacts upon the environment and impacts upon the food chain.

'Pre-consumer waste wood'

See section 4.1.2 of the 'Wood Waste Review (PLAT.01.02/WWR)' ('WWR') document submitted as part of the application on 31 January 2022. This is attached in **Annex A**.

The definition of 'Pre-consumer waste wood' as provided in the '**Wood Recycling Association Waste Wood Grades' (updated July 2021):**

'Pre-consumer waste wood is waste wood material created during the manufacturing process of virgin wood, not involving the application of treatments, e.g. offcuts or trimmings from virgin/sawn timber. It is also waste wood material created during the manufacturing process of raw, untreated board products such as panel board, MDF and plywood (for clarity, this waste wood can only be used/burnt at source). Waste from joinery activity using these untreated wood materials is also included in this definition.

This is attached in **Annex A**.

190. NRW does not have confidence that the Appellant is using the correct terms when referring to the different types of waste wood that they propose to accept and process at the facility. The Appellant states that 60,000 tonnes of **manufacturing waste wood** will be accepted per annum. Section 4.1.2 of the 'WWR' states:

*'Platts have gone to extensive efforts to ensure they only take wood waste supplies from **pre-consumer manufacturing sites** and sourcing such that the material they receive has **minimal contamination.'***

191. There are two points in the above statement that require further clarification. Firstly, what the Appellants interpretation of what 'pre-consumer' is and secondly, the reference to 'minimal contamination'. There is no information in the application documents as to what this contamination may be or includes, or indeed what manufacturing processes have caused the contamination.

In re section 3.1.1 of the 'EoW Justification'. It is confusing that the Appellant states that treated waste wood will be used to produce cubicle conditioner [animal bedding]. They say they will use pre-consumer waste wood; however, pre-consumer waste wood is not treated as per the definition in the 'Wood Recycling Association Waste Wood Grades'.

192. In re sections of 3.1.3 and 3.3.3 of the 'EoW Justification'. It appears that the Appellant's interpretation of 'pre-consumer waste wood' is waste wood after it has been used in the manufacturing process and before it is made available to the public consumer. However, in accordance with the industry definition, as provided above, 'pre-consumer waste wood' is in fact produced much earlier on in the process and is the waste wood material created during the manufacturing process of **virgin wood, not involving the application of treatments**. MDF manufacturers are the consumers of virgin wood, therefore the waste wood is not pre-consumer waste wood by the time it arrives at the manufacturers who then use the wood (i.e., furniture manufacturer).

Annual throughput of treated waste wood and cumulative environmental risk

193. Whilst the application provides details on the total annual throughput of waste wood to be accepted and treated at the proposed facility, there is no information on the proportional amount of treated waste wood or clean, untreated waste wood to be accepted and treated. The application merely states that 60,000 of manufacturing waste wood will be accepted.

194. Section 1.1.4 of the 'EoW Justification' states:

'Manufacturing waste wood will not be used to produce animal bedding but will be used to produce a cubicle conditioner.' However, section 1.1.2 of the 'EoW Justification' also states *'Platts is proposing to accept and process approximately 60,000 tonnes per annum of **non-hazardous manufacturing wood waste** at the Facility'.*

The proposed annual throughput for the whole site is 60,000 tonnes and therefore it is unclear why the Appellant has stated that it will be 60,000 tonnes of **manufacturing wood waste.** It is therefore very difficult to know what waste wood is being used to produce animal bedding and what waste wood is being used to produce cubicle conditioner [animal bedding] and where the waste wood for either originates from.

195. As the annual throughput of treated waste wood has not been made clear in the application, consideration must be given to the total amount of cubicle conditioner [animal bedding] that could be produced, used and later discarded. Potentially this could result in thousands of tonnes per annum of treated waste wood finding its way to the environment, by being composted, included in anaerobic digestion facilities and ultimately being spread to land, contrary to Environment Regulation which excludes the inclusion of treated waste wood. Over a number of years this could result in a significant amount of used material being generated and the means in which it will be disposed of must be considered.

196. **In re** section 2.3.4 of the 'EoW Justification'. This section maintains that the limited quantity used will not cause any health issues for the animal, however, the Appellant has not considered that the cubicles may be cleaned out more than once a day to remove slurry and that potentially more than one scoop would be used in a cubicle each day. This is referenced by farmers using 'Finebed' in videos on the Appellant's website - those farmers **"clean off and bed up twice a day with the Platt's Finebed sawdust"**. The Appellant has not considered health impacts on the animals from using twice the amount, as included in their application. Therefore, the application is not representative of how frequent the cubicle condition [animal bedding] is used. In addition to this, the Appellant has not considered the cumulative impact of the overall use of this product to the environment, which could potentially result in thousands of tonnes of this product being used and later being disposed of each year.

197. Section 2.3.6 of the 'EoW Justification' states:

'A basic example would be a farmer that receives one articulated lorry load of cubicle conditioner a year to provide sanitary provision for his cattle amounting to 22,000kg (22 tonnes).'

Table 2 of the 'EoW Justification' states:

'The cubicle conditioner is applied to the rubber mat at the rear of the cubicle by a scoop with approximately 250 grammes used.'

Based on this amount, used twice a day, a farm with 150 livestock would use approximately 27,375 kg (27 tonnes) of cubicle conditioner [animal bedding] per annum. This further demonstrates our concern that a significant amount of treated waste wood will find its way into the environment each year. Whilst the application states that untreated, clean waste wood is to be accepted and treated to produce animal bedding, there is no evidence of this or of the amount that will be accepted annually.

198. There is inconsistent information throughout the application documents. The 'Environmental Permitting Technical Requirements ECL Ref: PLAT.02.01/EPTR' ('EPTR') submitted 31 January 2022 with the application states in section 4.2.4.2:

'Wood waste accepted on site will come from 'wood processing /wood manufacturing sites'.

199. Section of 1.1.4 of 'EoW Justification' states: *'Manufacturing waste wood will not be used to produce animal bedding but will be used to produce a cubicle conditioner. The two wood types will not be mixed'.*

200. Section 4.1.2 of the 'Wood Waste Review' ('WWR') states:

'Platts have gone to extensive efforts to ensure they only take wood waste supplies from ***pre-consumer manufacturing sites*** *and sourcing such that the material they receive has minimal contamination.'*

201. Section 1.5.3 of the 'EoW Justification' states:

'It is recognised that EWC 03 01 05 covers a very wide range of manufacturing facilities therefore, pre-acceptance checks are undertaken on the source material to determine whether it would be acceptable for use as a cubicle conditioner. If, after the checks have been completed, it is considered acceptable then the supply would be subject to routine sampling and analysis to ensure continued suitability.'

202. Furthermore, the guidance from agricultural industry and the wood recycling industry is clear that treated waste wood must not be used in animal bedding.

203. Section 2.3.2 of the ''EoW Justification'' states:

'***The main requirements of animal bedding can be encompassed under the term animal welfare****. The key aspects can be derived from the Department for Environment, Food and Rural Affairs ("DEFRA") publication "Code of Recommendations for the Welfare of Livestock: Cattle (March 2003).'*

204. Section 2.3.4 of the 'EoW Justification' states:

'As detailed previously, the manufacturing wood waste is not used as a 'bedding' material but as a cubicle conditioner. The bedding material consist of a rubber mat that the cow lays on and is regularly cleaned by the farmer. ***The cubicle conditioner is placed at the rear of the cubicle*** *and used to soak up the slurry produced by the animal in order to maintain the mat as dry as possible.* ***The quantity provided is only a scoop full****, sufficient to soak up moisture, but not in a quantity that would cause any health issues for the animal.'*

205. The cubicle conditioner [animal bedding] is placed in the cubicle, with the livestock. Therefore, the livestock would still come into contact with the cubicle conditioner [animal bedding].

206. As previously stated, NRW draws no distinction between the terms 'animal bedding' and 'cubicle conditioner' for the purposes of environmental regulation. This is due to associated issues and risks, including but not limited to animal health and welfare impacts, impacts upon the environment and impacts upon the food chain. They are used in the same manner in that they both come into direct contact with the livestock. Regardless of the amount of the cubicle conditioner [animal bedding] recommended to be used within the cubicle, there is no de minimis in our position on the use of treated waste wood in animal bedding. As stated above we must consider the significant amount of material that may be produced and the cumulative impact of using and disposing of this material.

207. In accordance with the legislation, NRW's interpretation is that only untreated and clean (free of any fixtures or fittings including for example nails, screws, staples etc.) waste

wood can be used for animal bedding or in any other setting where it will come into direct contact with animals/livestock.

208. This is supported by the conditions of the Environmental Permitting Regulations 2016 and the exemptions that are in place, as included above in '**Use of untreated waste wood in animal bedding'**.

209. **In consideration of Article 6(1)(c) of the rWFD, methods used to measure and assess the suitability of the waste as a replacement bedding or similarly related material: comfort, cleanliness, animal health and welfare impacts, impacts on the environment, impacts on the food chain have not been addressed and documented with detailed evidence. Therefore, the Appellant has not demonstrated that the 'substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products'.**

Article 6(1)(d) The use of the substance or object will not lead to overall adverse environmental or human health impacts

210. In consideration of Article 6(1)(d) of the rWFD, NRW has examined sampling and analysis data submitted, which the Appellant relies on in support of its contention that the "*manufacturing wood waste does not pose a threat to the environment"*. NRW will say that the waste analysis submitted does **not** demonstrate this.

211. See sections 3.1.9 to 3.1.12 of the 'EoW Justification'. The purpose of WM3 assessment is to determine whether a waste contains a hazardous property. Assessment relies on whether the concentration of hazardous substances is at or above prescribed concentrations or in certain circumstances whether that waste displays physical hazards such as flammability. WM3 is not an assessment on whether that waste may pose a risk to human or animal health or the environment in particular circumstances.

212. Furthermore, WM3 assessment only considers hazardous substances that have inherent hazardous properties. It is likely that post-manufacture wood waste will contain contaminates such as plastics, cured resins and glues, and other materials that while not be classified as hazardous substances that may pose a risk to human/animal health or the environment if not correctly managed.

213. It is noted in the analysis of "Clean Wood Bedding Material" and Producer samples for the waste being used for the production of the cubicle conditioner [animal bedding] that there is no assessment for either waste stream of non-conforming material such as plastics or other non-virgin wood material. So, although the manufacture samples showed that the incoming waste could be classified as non-hazardous this does not necessarily mean that a product produced from the waste would not pose a risk to human/animal health or the environment.

214. Furthermore, when carrying out the comparison between "Clean Wood Bedding Material" and Producer samples the Appellant has compared the total of the concentrations hazardous substances included in the analysis suite rather than individual hazardous substances.

215. The End of Waste submission by the appellant is not clear in how they have applied statistics to comparing clean wood contamination to that of wood received from manufacturers. It is assumed that they have derived the maximum and median figures from the spreadsheet entitled "Clean Wood results as a comparator". It is noted that in this spreadsheet the maximum figures for each substance analysed come from a limited

number of samples. These should be regarded as outliers in terms of contamination and not representative of the population as a whole. **It is not therefore considered that Appendix V of the appellants end of waste submission is an appropriate method for comparing the two separate waste streams (clean, untreated waste wood vs treated waste wood from manufacturers).**

216. Median concentrations give a more accurate indication of the respective populations. When median figures are used instead of maximum figures in a similar format to Appendix V it is noted that for heavy metal (Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Nickel and Zinc) **that for most manufacture wood analysis the median is higher for manufacturer wood compared to clean wood and compared to straw**. In some instances the difference is significant for example supplier D the median Arsenic concentration is 9.3 times that of the median for clean wood and 15.8 that of the median for straw. Similarly for supplier B the median lead contamination is 16.2 times that of the median clean wood and 60 times greater that of the straw comparator. Lead and Arsenic compounds are both generally regarded acutely toxic to humans and harmful to the aquatic life. Lead compounds are also considered as being harmful to the unborn child. The results of method for all the samples are presented in a similar format to the appellants Appendix V in '**Analysis of EoW Justification Annex V'**. This is attached in **Annex A.**

217. In consideration of Article 6(1)(d) of the rWFD, whilst the Appellant has undertaken research with users of the material, no research has been undertaken – or under what parameters the research would take place, or evidence provided to demonstrate that an appropriate animal health regulator or food standards regulator has approved the material for use.

218. The methods used to measure and assess the suitability of the waste as a replacement bedding or similarly related material: comfort, cleanliness, animal health and welfare impacts, impacts on the environment, impacts on the food chain have not been addressed or documented with detailed evidence.

219. The statement referencing that the application rate is such that there is no risk to human health from dust generation when the material is applied in the cubicle does not appear to have been reviewed by or received independent verification from a public health organisation/representative.

220. Section 2.3.4 of the 'EoW Justification' states:

'The cubicle conditioner is placed at the rear of the cubicle and used to soak up the slurry produced by the animal in order to maintain the mat as dry as possible. ***The quantity provided is only a scoop full, sufficient to soak up moisture, but not in a quantity that would cause any health issues for the animal.'***

We would question what evidence this statement is based upon. No evidence has been provided to support this claim. The last sentence in this paragraph raises the question if there would be '**a quantity that would cause any health issues for the animal'?** If the product was safe to use as is being claimed by the Appellant, then why do they need to emphasise that the recommended use of the cubicle conditioner [animal bedding] would not be in a quantity that would cause harm to the animals? This also raises the question of what would happen if more than the recommended use was applied and whether there are warnings on the product to direct the users as to what action should be taken if more than the recommended use is applied. As stated above, the Appellant has not considered that the cubicles may be cleaned out more than once a day to remove slurry

and that potentially more than one scoop would be used in a cubicle each day. The Appellant has not considered health impacts on the animal from using twice the amount.

221. As stated above, although the manufacture samples showed that the incoming waste could be classified as non-hazardous this does not necessarily mean that a product produced from the treated wood waste would not pose a risk to human/animal health or the environment. As shown in the Appellant's waste analysis, when individual hazardous substances are compared in many instances the median result presented for manufactures samples is significantly higher than that for "Clean Wood Bedding Material", therefore completely undermining the Appellant's claim that the treated waste wood is comparable to clean, untreated waste wood.

222. Furthermore, the Appellant has not considered the cumulative impact of the overall use of this product to the environment, which could potentially result in thousands of tonnes of this product being used and later being disposed of. The Appellant has not provided evidence or demonstrated that cumulative overall use of the product will not have a detrimental impact on animal welfare, the environment, the food chain or on public health.

    In consideration of Article 6(1)(d) of the rWFD, the Appellant has not demonstrated that 'the use of the substance or object will not lead to overall adverse environmental or human health impacts'**.**

Article 6(2) of the rWFD

223. NRW assessed the Appellant's 'EoW Justification', submitted in response to Schedule 5 Notice issued 19/07/22, in accordance with the conditions provided in Article 6(2) of the rWFD. This is attached in **Annex A.**

224. **NRW does not agree that the Appellant's response to the Schedule 5 Notice demonstrates that the processed treated wood waste meets 'end-of-waste status' in accordance with Article 6(2) of the rWFD.**

225. NRW assessed the Appellant's 'EoW Justification', submitted in response to Schedule 5 Notice issued 19/07/22, in accordance with the conditions provided in Article 6(2) of the rWFD.

Article 6(2)(a) Permissible waste input material for the recovery operation

226. As detailed above in the section 'Article 6(1)(d) The use of the substance or object will not lead to overall adverse environmental or human health impacts' although the manufacture samples showed that the incoming waste could be classified as non-hazardous this does not necessarily mean that a product produced from the treated wood waste would not pose a risk to human/animal health or the environment. As shown in the Appellant's waste analysis, when individual hazardous substances are compared in many instances the median result presented for manufacture samples is significantly higher than that for "Clean Wood Bedding Material", therefore completely undermining the Appellant's claim that the treated waste wood is comparable to clean, untreated waste wood.

227. See section 3.1.2 of the 'EoW Justification'. This statement supports NRW's and the agricultural industry's position that treated wood should not be used as a feedstock for animal bedding or soiling materials.

228. The Appellant has stated themselves in their application that treated wood should not be used as a feedstock for animal bedding or soiling materials.

229. As explained in their application, the cubicle conditioner [animal bedding] is to be used as a 'soiling material'. Section 2.3.4 of the 'EoW Justification' confirms this and states:

'The cubicle conditioner is placed at the rear of the cubicle and used to ***soak up the slurry*** *produced by the animal in order to maintain the mat as dry as possible'.*

230. NRW has no evidence to show that a 'conditioner material' [animal bedding] will be used in a different setting to bedding, it is applied in the same way as bedding and therefore poses the same issues and risks.

231. See section of 3.1.3 of the 'EoW Justification'. In response to this statement, whilst the Appellant has undertaken research with users of the material, no evidence has been provided to demonstrate that the users are aware that the cubicle conditioner [animal bedding] is produced from treated wood waste. No information has been provided on the parameters used within this research or how these parameters were determined. Furthermore, no research has been undertaken or evidence provided to demonstrate that an appropriate animal health regulator or food standards regulator has approved the material for use.

232. See section of 3.1.6 of the 'EoW Justification'. In response to this statement, as considered above, no research has been undertaken or evidence provided to demonstrate that an appropriate animal health regulator or food standards regulator has approved the material for use.

233. In terms of waste classification actual sample analysis laboratory results with the individual components have not been provided. Therefore, it is not clear what the samples have been tested for, what methodology was used, who carried out the testing and whether it was an accredited laboratory. As stated above, although the manufacture samples showed that the incoming waste could be classified as non-hazardous this does not necessarily mean that a product produced from the treated wood waste would not pose a risk to human/animal health or the environment. As shown in the Appellant's waste analysis, when individual hazardous substances are compared in many instances the median result presented for manufactures samples is significantly higher than that for "Clean Wood Bedding Material", therefore completely undermining the Appellant's claim that the treated waste wood is comparable to clean, untreated waste wood.

234. Regardless of the amount of 'conditioner' used there is no de minimis in our position on using treated waste wood in animal bedding.

235. **In consideration of Article 6(2)(a) of the rWFD, the Appellant has not demonstrated that the material is 'permissible waste input material for the recovery operation' or that it ensures a 'high level of protection of the environment and human health'.**

Article 6(2)(b) Allowed treatment processes and techniques

236. Treatment activities proposed include pulverising wood waste to produce wood dust and pulverising wood waste to remove wood dust. These are suitable treatments for waste wood. The Appellant has submitted proposed measures to prevent emissions from these activities although further information is required, as included in Schedule 5 Notice Number 2.

The Appellant has proposed measures in order *'To ensure the 'clean' and 'manufacturing' wood wastes are not mixed'*. See sections 1.5.4 to 1.5.6 of the 'EoW Justification'. Whilst the Appellant has proposed measures to '*clear the process system'*, there is no evidence to demonstrate that these measures will be completely effective and no evidence to demonstrate that all waste residue will in fact be removed by these measures. Therefore, we cannot be confident that there will be absolutely no risk of cross contamination between the processed, treated waste wood and the processed, clean waste wood.

Furthermore, the Appellant states in the last sentence in section 1.5.6 that the cubicle conditioner [animal bedding] will not be suitable for animal bedding. NRW would question **why** the Appellant has claimed that it is not suitable and question **how** it is not suitable for animal bedding.

237. **In consideration of Article 6(2)(b) of the rWFD, the Appellant has not demonstrated that the allowed treatment processes and techniques ensure a 'high level of protection of the environment and human health'.**

Article 6(2)(c) Quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards, including limit values for pollutants where necessary

238. Our response to Article 6(2)(c) is in accordance with our response to Article 6(1)(c) listed above.

239. In addition to this, no research has been undertaken or evidence provided to demonstrate that an appropriate animal health regulator or food standards regulator has approved the material for use.

240. No evidence has been provided by the Appellant to demonstrate that the material produced does not pose any risks, including but not limited to animal health and welfare impacts, impacts upon the environment and impacts upon the food chain.

241. **In consideration of Article 6(2)(c) of the rWFD, the Appellant has not demonstrated that the material ensures a 'high level of protection of the environment and human health'.**

Article 6(2)(d) Requirements for management systems to demonstrate compliance with the end-of-waste criteria, including for quality control and self-monitoring, and accreditation, where appropriate

242. As stated above the Appellant has not demonstrated that the treated waste wood meets end of waste and therefore cannot demonstrate compliance.

243. **In consideration of Article 6(2)(d) of the rWFD, the Appellant has not demonstrated that the material ensures a 'high level of protection of the environment and human health'.**

Article 6(2)(e) Requirement for a statement of conformity

244. The statement of conformity certificate referenced by the Appellant in the 'EoW Justification' refers to two specific criteria that must be complied with (included in section 3.5.2). These limits are from WM3 assessment to determine whether a waste contains a hazardous property. It is not an assessment on whether that waste may pose a risk to human or animal health or the environment in particular circumstances.

245. **In consideration of Article 6(2)(e) of the rWFD, the Appellant has not demonstrated that 'the use of the substance or object will not lead to overall adverse environmental or human health impacts'.**

Guidance on end of waste submissions - 'Decide if a material is waste or not: general guide (updated version of part 2 of original full document) - Updated 31 August 2021'

246. This guidance signposts out to the Environment Agency's 'definition of waste service' and further guidance - **'Guidance for the end of waste request form'**. This is attached in **Annex A.** The Appellant had the opportunity to submit a request to the Environment Agency via their paid service, to obtain an opinion if the cubicle conditioner [animal bedding] achieved end of waste status. The Appellant has not provided evidence to demonstrate that this has been done.

247. There are several areas included in the **'Guidance for the end of waste request form'** that have not been considered or included in the Appellant's end of waste justification.

Process inputs

248. Section C6 of the guidance states: *'All substances which are potentially of concern are identified and sampled for in the waste material*

These may include basic elemental composition, metals, physical properties, anions, polychlorinated biphenyls (PCBs) and dioxins. You should consider the material, source and final use in deciding what substances may be of concern. The selection of the sampling suite should be linked to the hazards posed by the material and appropriately justified.'

Justification of the sampling suite linked to the hazards posed by the material has **not** been provided.

249. Section C6 of the guidance states: *'Appropriate sampling techniques have been used:*

You should give copies of the original laboratory test certificates in addition to the Excel versions of the sampling data) to evidence the sampling techniques and laboratory methods used.'

Original laboratory test certificates to evidence the sampling techniques and laboratory methods used have **not** been provided.

250. Section C6 of the guidance states: *'a process for rejecting material if it does not comply with the specification'.*

This information has **not** been provided.

About the process

See section D4 of the guidance. The Appellant has **not** provided a specification of the **final waste-derived material** but instead has provided analysis of the waste wood carried out as part of the pre-acceptance procedures and therefore before it has been accepted and processed at the facility.

251. See section D5 of the guidance. This information has **not** been included. The waste sampling that the Appellant has carried out is not sufficient as stated above in section

'Article 6(1)(d) The use of the substance or object will not lead to overall adverse environmental or human health impacts'.

Furthermore, the Appellant has not provided measures that will be used if the processed waste does not meet their specification and therefore remains a waste rather than being considered as a product. The Appellant has not explained what action would be taken to ensure that they comply with regulatory controls.

Use of the material and relevant comparator

See section E3 of the guidance. Straw or virgin wood would be appropriate comparators. The use of straw as a comparator is supported by The Environment Agency guidance **'Material comparators for end-of-waste decisions, Animal bedding: straw (Report – SC130040/R13, Version 2)'.** This is attached in **Annex A.** The Appellant has not followed the guidance in selecting an appropriate comparator. The Appellant has not used a non-waste material as a comparator but instead has used clean **waste** wood. No justification on why virgin wood has not been used has been provided.

The joint EA, NRW and NIEA guidance of 31 August 2021 as to waste 'Decide if a material is waste or not: general guide (updated version of part 2 of original full document)' [see Annex A] which specifically states:

"Examples of no-waste by-products could be:

…. Uncontaminated sawdust from a sawmill used as animal bedding."

Variability in the source of the feedstock

Consideration to variability in the source of the feedstock is fundamental and is of concern to this end of waste claim. See section 4.1 of the of the 'EoW Justification'. If the waste material from the individual supply sites changes a revised EoW submission would need to be submitted each time, because of the changing level of risk. An end-of-waste decision is only relevant to the specific submission and any batch that fails to meet the prescribed technical specification that has been supplied, will be regarded as waste, unless the Appellant can show otherwise. The Appellant would need to ensure that they have the necessary quality assured processes and testing regimes in place to ensure this specification is always achieved. It is essential that all of the quality assurance procedures laid out in the submission and accompanying documentation are carried out and that routine sampling of the inputs and outputs of the process are maintained to ensure that there is no deviation in specification from the levels indicated.

The information in the FPMP states that the feedstock will be processed within 5 days and that the processed material (alleged product) will be exported from the site as soon as practicable. The reality seems to be that the material would have been transferred to the dairy farmers before the results of the testing were obtained, which raises the question of whether the proposed testing gives any reassurance at all.

Should any standard or specification that has been relied upon either directly or indirectly in the Appellant's submission change in future, the Appellant may need to review and amend their own standards and specifications to ensure the material retains its non-waste status.

252. Further observations:-

(i) As regards provenance of the treated waste wood, the Appellant's EoW assessment contains no information on where the waste wood comes from and no information on the details of the processes that the waste has been subjected to or the processes it is derived from. The Appellant only provided that the waste is manufacturing waste wood. Therefore, NRW does not have a clear understanding of the nature of the waste used to produce cubicle conditioner [animal bedding].

(ii) Details on the composition and consistency of the waste to be processed is not included within the Appellant's EoW submission. The Appellant's EPTR document states that the pre-acceptance procedure will review the composition and consistency of the waste, although this information is not specifically detailed in the EPTR or the EoW submission.

(iii) As to detailed evidence of the virgin raw material the waste-derived product will replace and a direct and detailed comparison with the chosen virgin 'comparator' raw material, the Appellant has not used straw or virgin 'comparator' raw material in their analysis but instead has used clean waste wood. It is not explained why the Appellant has not used virgin wood as a comparator raw material. The sampling provided by the Appellant has included sampling of wood waste materials received at the facility, prior to processing, rather than analysis of the 'waste-derived product', as required by the guidance. Thus, no analysis of the waste-derived product, including composition, variability and evidence of the way in which it will be used can be made to inform judgement whether it will cause no worse environmental impact than the relevant comparator.

(iv) The Appellant's assessment is based on the low application rate of the cubicle conditioner [animal bedding] being applied, rather than making a comparison of the analysis of the waste derived product against the analysis of virgin 'comparator' raw material. The Appellant's submission does not consider the outcome of using larger amounts of cubicle conditioner [animal bedding], giving rise to questions whether it should contain warnings.

(v) Conclusions drawn from analysis should have a defendable statistical basis. The clearest way to illustrate that a waste-derived product has no worse effects than the virgin comparator would be to provide a summary table comparing clearly, side by side, the waste derived properties, composition, trace components, etc. with the comparator raw material it is replacing. Although the manufacture samples showed that the incoming waste could be classified as non-hazardous, this does not necessarily mean that a product produced from the treated wood waste would not pose a risk to human/animal health or the environment. As shown in the Appellant's waste analysis, when individual hazardous substances are compared, in many instances the median result presented for manufactures samples is significantly higher than that for "Clean Wood Bedding Material", therefore undermining the Appellant's claim that the treated waste wood is comparable to clean, untreated waste wood.

(vi) The 'EoW Justification' references the sampling and methodology recommended in PAS111 and in particular the potential for pathogens to be present in recycled wood waste and that testing should be undertaken where recycled wood waste is used for animal bedding. Additionally, moisture content is a key aspect as elevated levels can accelerate the growth of mould and pathogens. It recommends the moisture content should be less than 30% by weight. However, the Appellant has not submitted evidence to support the claim that the conditioner [animal bedding] will not pose a risk to animal health and therefore no evidence has been provided

to justify why biological testing for cubicle conditioner [animal bedding] is not required. Furthermore, once the cubicle conditioner [animal bedding] is no longer within the control of the Appellant, it has not control over how long it would remain in there, which raises the query of at which point would it pose a risk. Without evidence this claim cannot be substantiated.

(vii) No evidence regarding the development of the 'suites' with the laboratory has been provided. NRW would expect approval or input from the Animal & Plant Health Agency and/or the Food Standard Agency or equivalent expert, due to the potential risk of treatments (known or unknown) applied to treated waste wood entering the food chain.

(viii) As regards validation of testing undertaken, whilst the Appellant confirms that the sampling and testing methodology has been informed by reviewing PAS111 – and it is noted PAS111 refers to UKAS accredited testing – no evidence has been submitted to demonstrate that the sampling and testing was carried out by a UKAS accredited organisation.

(ix) On waste acceptance procedures, including how incoming waste destined for processing into the product would be inspected and sampled, the Appellant's waste acceptance procedures need to meet the standards of How to Comply guidance. Schedule 5 Notice Number 2 specifically requested further information [see points 4.3 and 4.4 in Schedule 5 Notice Number 2, and the actions required in Annex A].

(x) In relation to waste pre-acceptance arrangements, sections 4.2.4.8 and 4.2.4.9 of the EPTR claims that if elevated results for certain substances are found that this can be queried and means of reducing such substance content can be identified. To remove any potential risk, NRW would expect the substance to be removed rather than to reduce it.

(xi) No information has been provided about record keeping procedures for waste receipt, sampling and analysis.

(xii) On section 3.4.9 of the 'EoW Justification' it is not clear how the procedure proposed would work in practice. It is not clear if the waste is to be held and not discharged until the sample results are obtained, or if the waste is discharged into the waste treatment process. It is not clear what action is then taken with the waste if an anomaly is detected within the sampling results. It is not clear if the waste is then quarantined or what action is taken if the waste has already been discharged into the treatment process. No information has been provided as to review procedures for the above systems and management of batches which do not meet the specification.

Regulatory controls

253. It is the regulator's position that treated waste wood is not suitable for use within animal bedding, therefore regulatory controls will apply.

254. As the Appellant has not demonstrated that the processed, treated wood waste meets 'end-of-waste status' in accordance with Article 6, it remains a waste material and therefore regulatory controls still apply for its storage and use.

255. As the Appellant has not provided any evidence that the processed, clean wood waste meets 'end-of-waste status' in accordance with Article 6, it remains a waste material and therefore regulatory controls still apply for its storage and use.

256. Regulatory controls include Environmental Permitting Regulations, waste management and the duty of care. The regulations rely on certain standards, relevant technical guidance, and in regard to this application the relevant guidance including (*but not limited to):*

- 'How to comply with your environmental permit', 'Noise and vibration management: environmental permits - GOV.UK (www.gov.uk)',
- 'BS4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound' and
- 'Fire Prevention and Mitigation Guidance'.
- Waste Duty of Care Code of Practice

These are attached in **Annex A.**

257. In accordance with 'How to comply with your environmental permit':

This guidance explains the conditions or rules of your environmental permit. It describes the standards and measures you must use to control the most common risks of pollution from your activity and how to comply with the conditions of your permit. The rules or conditions of your environmental permit tell you what you must do to protect the environment and people. We call these objective based conditions or rules. In many cases you have flexibility about what measures to use if you can show us you are meeting these objectives.

258. As the Appellant has not proposed measures to manage clean wood waste after it has been processed, they have failed to show how they will control the risk of pollution and failed to show how they comply with the conditions of a permit *(should one be granted)*.

259. As the Appellant has not demonstrated 'end-of-waste status' for the processed, treated wood they have failed to show how they will control the risk of pollution and failed to show how they comply with the conditions of a permit *(should one be granted)*.

260. In accordance with 'How to comply with your environmental permit':

Waste storage

If you store waste pending its disposal or recovery elsewhere, your management system must include:

• storage times and procedures to ensure that these times are not exceeded

• maximum storage capacities for specified storage areas and the facility as a whole and procedures to ensure that these capacities are not exceeded

• maximum storage heights to prevent or minimise the emission of dust, litter and throughput management

• a procedure to identify the specific waste types stored at your facility • procedures to segregate incompatible wastes for example use of appropriate separation distances and or suitable engineering measures.

261. As the Appellant has not proposed measures to manage clean wood waste after it has been processed, the Appellant has failed to meet the above 'waste storage' requirements of How to comply.

262. As the Appellant has not demonstrated 'end-of-waste status' for the processed, treated wood the Appellant has failed to meet the above 'waste storage' requirements of How to comply.

263. The 'EPTR' states that '*All finished product will be removed from the Facility within three months'* but includes no further information on waste storage as required in How to Comply.

264. In accordance with 'The Fire Prevention and Mitigation Guidance', ***'If you are applying for an environmental permit that authorises you to store combustible waste, or you have an existing permit with a permit condition requiring you to have a Fire Prevention and Mitigation Plan (FPMP), you must adhere to this guidance'.***

And,

'This guidance applies to operators that store any amounts of combustible waste materials including (but not limited to):

- ***wood & wood composites (planks, boards, pallets, crates, sawdust, shavings & chips)'***

265. Therefore, the Appellant's FPMP must include **all waste wood**, (including unprocessed and processed) stored at the proposed facility.

266. In addition to not including measures for the storage of processed, clean waste wood, as the Appellant has deemed that the processed, treated waste wood is end of waste and therefore not included all processed wood waste in the EMS and FPMP, they have not considered, proposed or included measures or standards that will be used in order to prevent pollution from the storage of processed, waste wood. **This is a concerning issue and is fundamental to the determination of the permit application.**

267. The application did not meet the standards of these technical guidance documents.

268. As the Regulator, under the EPRs 2016, NRW has a duty to make decisions that protect the environment. To ensure that we make decisions consistently and fairly, we follow legislation, regulatory guidance – DEFRA core guidance, technical guidance and internal operational guidance notes and instructions.

269. Defra's guidance document **'Environmental Permitting Core Guidance for the Environmental Permitting (England and Wales) Regulations 2010' (March 2020) ('Core guidance')** applies and is referred to in the Statement of Case. This is attached in **Annex A.**

Determination of applications

270. **'Operational Instruction 233_08 - Environmental permitting: how we determine an application for a permit or carry out an Environment Agency led variation to a**

permit, for water discharges, groundwater activities, waste, mining waste and installations' ('OI 233_08') applies to the determination of applications for an environmental permit. OI 233_08 is an Environment Agency legacy guidance document adopted by NRW. This is attached in **Annex A.**

271. In accordance with OI 233_08, NRW technically assess permit applications in detail. NRW assesses the operator's application form and supporting documents to decide whether or not to grant a permit and to help determine the appropriate conditions in the permit.

272. The documents NRW assess include (but are not limited to) the following:

- H1 Environmental risk assessment including source, pathway and receptor;
- summary of the operator's management system;
- odour / noise management plan;
- other supporting technical documents, for example; air quality modelling, water quality modelling, energy efficiency.

273. The H1 risk assessment helps applicants identify the key risks from their proposed activities. Once identified the applicant must consider and address these risks in appropriate management plans and submit these with their application. As part of the determination, we assess these management plans in accordance with the relevant guidance to ensure that the measures are suitable in protecting the environment. This is in accordance with Core guidance, paragraphs 7.2 and 7.3.

Management systems

274. NRW guidance **'How to comply with your environmental permit - Version 8, October 2014'** [see Annex A] describes the standards and measures operators must use to control the most common risks of pollution from the activities being carried out.

275. The content of an environment management system ("EMS") depends on the risk and complexity of the proposed activities. It must identify the risks to the environment from the activities and explain in detail the measures the operator will take to prevent or minimise those risks. Applicants must submit a summary of their EMS with their bespoke permit application, and this is assessed in accordance with our guidance. In addition to this, other management plans addressing specific risks may be required depending on the identified risks posed by the proposed waste activities.

Fire prevention and mitigation plan guidance

276. Fire is a key risk from storing large amounts of combustible waste and in accordance with guidance, the Appellant was required to provide suitable management plans to prevent and minimise these risks and to submit these to NRW.

277. Guidance document **'How to comply with your environmental permit'** recognises that fires are a key issue at waste operation sites and specifies that appropriate measures must be included in the management system to prevent fires (page 36). This guidance also requires waste storage procedures to be included (Part 2, page 35).

278. Fires at waste sites is a key issue for NRW.

279. Under the EPRs 2016 (see above), NRW can require and / or request further information it requires in order to determine an application. This also gives an applicant the opportunity to demonstrate the proposed activities can be managed without posing a risk to the environment.

280. Assessing key risks (e.g., fire) from a proposed activity is integral to the permitting process and to NRW PS's decision making. It is the applicant's responsibility to identify and address all risks from their activity.

Fire Prevention and Mitigation Plan ('FPMP')

281. Applicants proposing to operate under a bespoke waste permit to accept, store and/or treat combustible materials must submit a fire prevention and mitigation plan ('FPMP') with their application. The FPMP must be produced in accordance with and meet the required standards specified in NRW's guidance document **'Fire Prevention and Mitigation Plan Guidance - Waste (Version 2 August 2017)'**.

282. The Appellant submitted a Fire Prevention and Mitigation Plan ('FPMP') (ref: ECL Ref: PLAT.01.02/FPP) as part of the application. The plan included some information on proposed fire prevention and mitigation measures. However, the plan did not meet all of the required standards as set out in the guidance.

283. In addition to this, Section 1.1.4 of the FPMP stated:

"The FPP guidance is applicable to the storage of incoming wood waste at the Facility. As the finished product conforms to the quality protocol of PAS 111, the finished product is not subject to the FPP guidance and is therefore, not considered within this FPP document".

284. As 'PAS 111' is not a quality protocol or a regulatory standard and as NRW do not agree that the 'EoW Justification' demonstrates the processed wood waste meets 'end-of-waste', the FPMP must be revised to include **all wood waste** stored on site, in order to comply with the FPMP guidance. This includes all wood waste after it has been processed on site.

285. In addition to this, the Appellant's 'EoW Justification' did not include clean, untreated wood, thereby making it relevant to the FPMP guidance. **NRW were therefore unable to grant the permit at this time.**

Schedule 5 Notice Number 2 (dated 09 November 2022)

286. A second Schedule 5 notice ("Schedule 5 Notice Number 2") was issued to the Appellant on 9 November 2022 with a deadline of 9 December 2022. Schedule 5 Notice Number 2 included the following request for information, with details explaining why the information was required

287. In section 1, revisions to the Appellant's draft FPMP (33 action points) to adhere to NRW Fire Prevention and Mitigation guidance; in section 2, revisions of the Appellant's noise impact assessment to adhere to current guidance 'Noise and vibration management: environmental permits - GOV.UK (www.gov.uk)' and the requirements of BS4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound'. (11 action points); in section 3, revision of the Appellant's dust management plan (3 action points); in section 4, revision of the Appellant's draft Environmental permitting technical requirements document (document reference ECL Ref: PLAT.02.01/EPTR (4

action points) in re checks and risk assessment for use of machinery (white shavings screener) and on site waste acceptance criteria.

355. The extent of the Schedule 5 Notice and the number of issues it covers clearly demonstrates how far the submitted FPMP is from the requirements and the standards of the FPMP guidance.

356. Whilst the NIA report concludes 'no likely significant impact', NRW cannot currently agree with this conclusion as not all operational times have been considered and that the impact of uncertainty has not been suitably minimised.

Interim response to Schedule 5 Notice Number 2

357. On 15 November 2022 NRW PS and the Appellant's consultant had a 'Teams' call. NRW PS confirmed that further clarification would be provided to the Appellant on NRW's decision that the 'EoW Justification' did not demonstrate end-of-waste status. In view of the information that NRW PS agreed to provide to the Appellant, NRW PS agreed to extend the Schedule 5 Notice Number 2 deadline.

358. On 22 December 2022 the Appellant provided a response to the Schedule 5 Notice regarding the noise impact assessment and submitted document 'PLAT.01.02 – Response to NRW (re NIA)' to NRW PS. **This is attached in Annex A.**

Assessment of 'Noise' response - 'PLAT.01.02 – Response to NRW (re NIA)'

359. The document submitted by the Appellant - 'PLAT.01.02 – Response to NRW (re NIA)' – provided response to each of the points in the Schedule 5 Notice Number 2 in relation to the Noise Impact Assessment (NIA). NRW PS subsequently assessed the additional information supplied by the Appellant and conclude that the response failed to satisfy the requirements of the Schedule 5 Notice, issued on 09 November 2022, and the majority of the requirements were not discharged and remained open.

360. A fundamental concern regarding the Appellant's response is that they failed to make it clear within their noise impact assessment if all sound sources will be operated at night and at the weekends. This is critical in assessing the impact of noise from the activity given that the facility proposes to operate 24 hours a day, 7 days a week. Schedule 5 Notice Number 2 was clear in the requirements and why the further information was required.

361. Reference number 2.1 in the Schedule 5 Notice Number 2 required the following action:

2.1 Confirm if all sound sources operate at night and at weekends.

The Appellant's limited response to this simply stated, *'Section 2.2.2 Lists hammer mills and extraction systems under noise generating activities carried out on site'* and failed to answer the question. It is noted that the Section 2.2.2 of the NIA identifies the hammer mills and extraction system as a noise generating activity, however, unlike the HGVs and the forklift truck, which are specified as operating 24 hours per day, 7 days a week, the operation of the hammer mills and extraction system are only stated to operate '*as required'*. Therefore, this does not indicate to us when exactly these sound sources will be in operation and if they will be in operation at night and at the weekends. It is not clear to us what the Appellant means by 'as required' - this term is imprecise and does not define when the plant will actually be put into operation. Given that these noise sources generate the greatest level of noise at the site, it is vital that the Appellant confirms when they will be in use and how frequently. This information should also be

part of their operating techniques, as required by How to Comply so that it is clear to staff on site when certain activities can be carried out. **Therefore, this point in the Schedule 5 Notice Number 2 was not discharged and remained open.**

362. Reference number 2.2 in the Schedule 5 Notice Number 2 required the following action:

2.2 Confirm mode of operation.

Mode of operations states hammer mills and extraction systems operate 'as required' and are manually activated. However, the NIA does not state how often is 'as required' e.g., twice a day, for an hour.'

363. The Appellant's response to this stated, *'The above statement is not provided in either the NIA or NMP reports, please confirm where this statement is from'.*

Section 2.2.2 includes *'operation of hammer mills and extraction systems, machinery operates as required and is manually activated and deactivated'*. The term 'Mode of operation' is from BS4142 and is information that is required within a BS4142 NIA report (see Clause 12 b) for the sources being assessed. We requested further information on mode of operation in accordance with the BS4142 guidance. **Therefore, this point in the Schedule 5 Notice Number 2 was not discharged and remained open.**

Reference number 2.3 in the Schedule 5 Notice Number 2 required the following action:

2.3 Revise existing context to include assessment of the sensitivity of the receptors.

364. The Appellant's response to this stated that *'there are no historical or existing noise complaints related to site production activities*. NRW would question the validity of this statement given the consultation responses received from the Local Authority. See Consultation responses below.

The Appellants response provided some consideration of the local area giving some context but not the actual receptors themselves, e.g., private gardens or outdoor amenity areas and how this may affect the sensitivity.

We requested an assessment of the sensitivity of the receptors, as required by BS4142, Clause 12 d. The Appellant has failed to comply with the requirements of BS4142 in revising the NIA. **Therefore, this point in the Schedule 5 Notice Number 2 has not been discharged and remains open.**

365. Reference number 2.4 in the Schedule 5 Notice Number 2 required the following action:

2.4 Provide justification to support why NSR1 and NSR3 are suitable surrogate locations.

366. The Appellant's response included some information on why the NSRs were not suitable locations. However, as stated in the Schedule 5 Notice Number 2, whilst it is clearly specified why some of the original NSRs are not suitable locations to measure, little justification is given here to say why the new proposed location is a suitable surrogate location.

367. Reference number 2.5 in the Schedule 5 Notice Number 2 required the following action:

2.5 Carry out measurements and provide assessment of noise impacts for weekends.

368. The Appellant's response stated '*it is accepted that we didn't test over the weekend, however the Site operates 24/7 and other units on the industrial estate **may** operate 24/7, therefore there is no reason to presume that the HGV traffic travelling on the B5102 road would decrease, and it is **likely** that the amount of domestic traffic would increase due to the use of personal vehicles over the weekend period. So, it is **likely** that the degree of influence from traffic noise on the NSR locations would increase over weekend periods.*

However, without evidence to support these statements, we cannot assume these are correct. Whilst other units on the industrial estate ***may*** operate 24/7, the Appellant has not provided any evidence to support this. The Appellant has not provided any evidence on the noise generated from weekend traffic and therefore we have no evidence to suggest '*it is **likely** that the amount of domestic traffic would increase due to the use of personal vehicles over the weekend period'.* The use of the words such as '*may*' and '*likely*' do not provide any degree of certainty in the claims that the Appellant is using in making their assessment. Without evidence to support these statements, we cannot assume if the residual and the background sound are the same or lower than during the weekday. **Taking this issue into consideration, this point in the Schedule 5 Notice Number 2 was not discharged and remained open.**

The Appellant confirmed in their response that weekend monitoring would be carried out as requested, and that the Appellant would '*monitor behind the buildings at NSR3 if access can be gained. We will aim to do this in January, subject to appropriate weather conditions.'*

Further noise monitoring was not submitted with this interim response and was not submitted until 23 February 2023.

369. Reference number 2.6 in the Schedule 5 Notice Number 2 required the following action:

2.6 Provide information to justify why 15-minute measurement intervals are suitable and representative for the on-site measurements.

The Appellant also stated: '*15 minute monitoring periods were deemed to be suitable as all noise generating activities, as detailed in Section 2.2.2. of the NIA report, were occurring during the monitoring periods, as detailed in the ECL operators Subjective Comments detailed in Table 9 and Figures 27 to 32 of the NIA report. Although the sound sources on the site were variable, the activities occurring during the 15 minute monitoring periods was deemed by the ECL operator to be representative of normal onsite activities.'*

There are no issues in presenting a 15-minute sample if there was stability in the trace but it is not clearly evident from the graphs. We do not have confidence that 15 minutes is long enough to be representative. The Appellant has stated that the sound is variable and where the sound source is variable 15 minutes may not be sufficient to be representative of the sound sources and this is backed up by the graphs provided, which do not show a stable sound source.

This point in the Schedule 5 Notice Number 2 was not discharged and remained open.

370. Reference number 2.7 in the Schedule 5 Notice Number 2 required the following action:

2.7 Justify your method of calculating the specific sound level with consideration to the below points or provide a revised NIA using a method that reduces uncertainty. Additionally, you need to provide specific sound levels for the night-time and weekends and use them to determine the rating level over background.

The Appellant's response stated '*Paragraph 1: Section 5.1.6. specifies that ambient noise monitoring was performed whilst normal site operations were being carried out, do NRW require a note 'including the hammer mills, extraction systems and vehicle activity'.*

NRW would respectfully point out that it is the Appellant's responsibility to ensure that the noise impact assessment is, a) produced in accordance with the relevant standard (BS4142), and b) that it suitably considers the risk and impact of noise generated from the proposed activity. It is not for the Regulator to dictate what the assessment should or should not state.

As specified in points 2.1 and 2.2 of the Schedule 5 Notice Number 2, no information has been provided on when or how frequently the hammer mills and extraction systems operate, other than '*as required'*. Therefore, we do not know if they were operational during the time ambient monitoring was undertaken. It may be normal for example for the hammer mills to operate for just 1 hour a day, and therefore may not have been operational when the monitoring was carried out.

See 'Paragraph 3' of the Appellant's response. The results provided in Table 8 for the night-time, as with those for the daytime, show that the residual is either above or within 3dB of the ambient and therefore do not provide a reliable indication of the specific sound on their own. We had understood that this is why the on-site monitoring was undertaken. The day-time on-site monitoring may be a true reflection of night-time levels on site, if this is the case then those sound levels propogated to the NSRs and compared to the night-time background levels would indicate a significant adverse impact. As specified in our last point of 2.7, this has not been assessed.

See 'Paragraph 4' of the Appellant's response. Our view of 15 minute monitoring periods are as per our response to 2.6 above.

See 'Paragraph 5' of the Appellant's response. This response still doesn't recognise the uncertainties introduced in this method, or why each sound source was not measured separately in the absence of the other on-site sound sources, which would have further reduced uncertainty.

See 'Paragraph 7' of the Appellant's response. Assuming that day time and night-time noise levels measured onsite are the same, there would be an indicative likely significant adverse impact i.e. +8dB, +10dB and +12 dB. As per our comment above, the actual offsite night-time noise monitoring in Table 8 shows that they are not on their own, a reliable indication of the specific sound due to the residual being either above or within 3dB of the ambient.

This point in the Schedule 5 Notice Number 2 was not discharged and remained open.

371. Reference number 2.8 in the Schedule 5 Notice Number 2 required the following action:

2.8 Correct the L90 figures and amend these to the non-operational times and provide a suitable background (LA90) value for weekends.

The Appellant stated that the typographical errors would be rectified as part of a revised and re-issued report which would include weekend monitoring.

The Appellant also stated that there is no reason to assume the results would be any different to weekly daytime and night-time measurements. As stated above, evidence is required to support the noise impact assessment and it is not appropriate to make decisions on assumptions.

This point in the Schedule 5 Notice Number 2 was not discharged and remained open.

372. Reference number 2.9 in the Schedule 5 Notice Number 2 required the following action:

2.9 Revise the NIA to correct the rating level based on the following:

A character correction of +3dB has been applied, however, it appears that this has been applied to the onsite source sound which is not correct but should be applied to the specific sound.

The Appellant's response clarified how the character correction had been applied and therefore this point in the Schedule 5 Notice was 'closed'.

373. Reference number 2.10 in the Schedule 5 Notice Number 2 required the following action:

2.10 Revise the NIA to consider the potential impact of uncertainty and explain how the uncertainty introduced by the below points has been minimised (in accordance with Clause 10 of BS4142).

In response to 'a)' in the Appellant's response, as specified in our 'Noise and vibration management: environmental permits - GOV.UK (www.gov.uk)' guidance *'The uncertainty of a noise impact assessment is highest when the monitoring periods are short and when the noise source is erratic or variable'.* And. *'Operators must identify and minimise the sources of uncertainty associated with any noise measurement or prediction'*. These points have not been fully identified and minimised. **Therefore, this point in the Schedule 5 Notice had not been discharged remained open.**

In response to 'b)' and 'c)' in the Appellant's response, as stated above it is the Appellant's responsibility to ensure that the noise impact assessment meets the requirements of BS4142, and it is not the Regulator's duty to dictate what the assessment should or should not state.

In response to 'd)' in the Appellant's response*,* we understood that measurement point NSR1 was being used as a surrogate location for the nearest sensitive receptor (properties in the Bramble Court area and we mistook this for 'The Meadows Barn'. From the response we understand that this was not the intention, but that NSR1 is a different noise sensitive receptor. However, this leaves the issue that the Appellant had not therefore assessed the impact at the nearest noise sensitive receptor (dwellings in the vicinity of Bramble Court).

In response to 'e)' in the Appellant's response, the Appellant has not considered the uncertainty in using near-field measurements and how it was minimised. The accuracy of distance measurements is more important in near-field measurements. We gave the use of a laser meter as an example, no alternative to google earth has been considered as a means of accurately measuring distance.

In response to ‘f)’ in the Appellant’s response, as previously stated in the above comments, as the term “as required” is not any way defined, we have no way of knowing when, how frequently or how long for, the hammer mills and extraction systems operate. Nor can we know if they were operating at any point when the off-site measurements were undertaken.

In response to ‘g)’ in the Appellant’s response, see our previous comments on the duration of the on-site monitoring periods above.

In response to ‘h)’ in the Appellant’s response, see our comments to 2.5 above.

This point in the Schedule 5 Notice Number 2 was not discharged and remained open.

374. Reference number 2.11 in the Schedule 5 Notice Number 2 required the following action:

2.11 Provide a revised noise management plan, produced in accordance with our guidance ‘Noise and vibration management: environmental permits - GOV.UK (www.gov.uk)’ and taking the recommendations of the revised noise impact assessment into consideration.

The Appellant has failed to provide a revised noise management plan as requested. As the Appellant has failed to demonstrate a low impact from noise, a noise management plan is required in line with our guidance Noise and vibration management: environmental permits - GOV.UK (www.gov.uk).

Therefore, this point in the Schedule 5 Notice has not been discharged remains open.

375. The Appellant advised that they were unable to progress the end of waste aspect further as NRW PS had not provided further information surrounding the decision on the ‘EoW Justification’. Further detail surrounding the assessment of the the ‘EoW Justification’ document and supporting information is provided in **‘Waste wood classification’** [see Annex A] sent to the Appellant on 23 December 2022. This document outlines NRWs position on classifying waste wood.

Extending Schedule 5 Notice Number 2 deadline

376. On 23 December 2022, NRW PS extended the Schedule 5 deadline until 31 January 2023, to allow the Appellant to provide the outstanding information. This is attached in **Annex A.**

Response to Schedule 5 Notice Number 2

377. The Appellant did not provide a response to Schedule 5 Notice Number 2 by the extended deadline of 31 January 2023.

NRW were therefore unable to grant the permit at this time.

378. On 30 January 2023, the Appellant confirmed to NRW PS that they had experienced delays in carrying out the noise monitoring but that the information was forthcoming.

379. On 23 February 2023, the Appellant submitted a revised noise impact assessment. Further information on this is detailed below.

380. On 28 February 2023, the Appellant advised that they were in the process of obtaining further information in relation to the site condition report and that they were completing the outstanding actions from the Schedule 5 Notice. This is attached in **Annex A.** The outstanding points of the Schedule 5 Notice Number 2 being the revised management plans - 'FPMP', 'DMP' and 'EPTR'.

To date, the Appellant has failed to submit this information to NRW PS.

Revised noise impact assessment

381. On 23 February 2023, the Appellant submitted a revised noise impact assessment to NRW PS **('Noise Impact Assessment at Platts Agriculture Limited, Wrexham - PLAT.01.09/NIA – February 2023, Issue 1')** from here on in discussed as 'NIA2'. This is attached in **Annex A**.

382. The revised 'NIA2' was submitted nearly eleven weeks after the original Schedule 5 Number 2 deadline (09 December 2022).

383. We assessed the 'NIA2' against our current guidance 'Noise and vibration management: environmental permits - GOV.UK (www.gov.uk)' and the requirements of BS4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound'.

Our conclusions to the revised noise impact assessment

384. Our review is based solely on the information provided in the resubmitted NIA and assumes all principal noise sources have been included in the assessment.

385. The consultant's observations of the acoustic environment at the nearest sensitive receptors do **not** provide any confidence that measured Ambient sound levels include sound from the site and therefore no limited inference of impact from the site on the noise sensitive receptors (NSRs) can be made.

386. The assessment results presented by the consultant in Tables 9 - 12 are questionable due to the high Residual sound and that the site is inaudible at all the NSRs. Therefore the route suggested in S7.3.5 of BS4142 should have been followed and referenced in this section i.e. measure closer to the site or a combination of measurements and calculations.

387. The consultant's onsite measurements which are calculated to NSRs (Appendix III), do provide some confidence in their interpretation of the degree of impact but this is specifically for day time as **no assessment of the night time impact is provided by the consultant**. **This was previously requested in the Schedule 5 Notice Number 2, but has not been addressed within 'NIA2'. Additionally, the on-site measurements have not been calculated to NSR4, for day time or night time, to give an indication of impact for that NSR.**

388. In the conclusion and repeatedly through the report the consultant has stated the higher Residual levels over the Ambient sound as a reason for no adverse impact at any of the NSRs. No reference is made in the revised report of the predicted calculations only in Appendix III, and this is presented only for day time impact and night time impact is omitted. We disagree with the presentation of this conclusion without having any reference in the report to calculations provided by onsite measurements and propagated back to NSRs to support their claims.

389. Our review concludes that overall, there is insufficient evidence provided in the revised report to conclude that the predicted noise impacts, as a result of the site operations, are insignificant at the receptors as stated by the consultant.

Our comments on the revised noise impact assessment

390. The consultant states that the site operates continuously between the hours of 06:00hrs on a Monday through to 18:00hrs on a Friday and between 06:00hrs - 18:00hrs on a Saturday and Sunday. The consultant also advises that there are also times when the site may be required to operate overnight on a weekend. Based on the hours of operation, the consultant has measured the daytime and night time period. These periods cover both week and weekend. This is reasonable.

391. S2.2 of the report details the noise generating activities:

- Diesel powered forklift trucks (FLT) (operating continuously)
- Heavy Goods Vehicles (HGV) (operating continuously)
- Hammer mills and extraction system (intermittently/manually activated).

There is no information provided regarding the mode of operation or operational times/duration etc for the hammer mills and extraction system. This information was requested in the Schedule 5 Notice Number 2.

392. S3.2 of the report provides the reader with an overview of the context of the area i.e. industrial estate bounded by rural farmland with boundaries of hedgerows and trees. The occupants of the industrial estate includes woodworking, asphalt mixing, building supplies and aerospace manufacturing. **The report has not stated whether these businesses will influence the night time Ambient sound levels due to their operational times, as no indication of their operating hours is provided.**

393. Weather conditions of wind speed, direction, temperature, humidity, and cloud cover are provided during each measurement period. For the measurements in January 2023 and supported by the photographs of the SLM positions, **there is snow coverage at some of the NSRs and the implications on measured sound levels have not been mentioned.** However, the cloud cover is high and therefore it is considered unlikely that a temperature inversion event was occurring. **An increase in traffic sound as vehicles traverse through wet roads is possible, leading to a potential increase in measured levels. Appendix B (B2.3.2) of BS4142 states that measuring sound when the ground is wet or snow covered is highly discouraged as good practice to reduce uncertainty.** Wind speeds were recorded below 5 m/s as required by BS4142 and wind directions are generally similar during Ambient and Residual measurements.

394. S6 of the report presents the monitoring data for offsite measurements. Tables 5 - 8 identify the NSR and the Ambient, Residual, and where relevant, the Background sound levels. Also included are the author's subjective observations of the sound at the NSR. It is evident from the descriptions that no discernible sound from the site was perceived for many of the Ambient measurements. There are occasions where a 'low hum' was described but the consultant noted it was thought to come from the estate/direction of the site and there was no specific reference to the site being the source. This low hum was also identified in the non-operational times (NSR3 14/10/21). The consultant has not further investigated this source and therefore presented no evidence that this low hum was or was not associated with the site or any other operations in the estate.

395. There are only two occasions during the measurement periods when the difference between the Ambient sound at NSRs and Residual sound is greater than or equal to 3dB (NSR2 and NSR4 both night time weekend measurements). S7.3.5 of BS4142 outlines the alternative when Ambient and Residual sound levels are equal to or less than 3dB. BS4142 suggests the use of calculations to supplement the measurements. However, where Residual levels are high, BS4142 suggests that it is sometimes convenient to carry out the measurement closer to the source where the site noise is audible and then use a calculation to estimate the specific sound at the assessment locations. The consultant has considered monitoring closer to the site where the Ambient noise contains the site noise.

396. Tables 9 - 12 of the report provide the impact assessment gathered from the measurement data presented in tables 5 - 8 for daytime – week and weekend; night time – week and weekend. Each table is reviewed separately:

- Table 9: noise impact assessment, weekday, daytime.

  All Ambient measurements are either less than or equal to 3dB of the Residual measurement. The resultant +17dB (NSR2) and +12dB (NSR4) excess of Rating level over Background sound is ambiguous due to the consultant's observations that no sound from the site being audible in either of the descriptions of the operational sound. **Therefore the consultant's 'initial' assessment result of adverse impact highly likely is both technically incorrect and based on the consultant's observations is applied incorrectly due to the incorrect derivation of the specific sound from the measurements at NSRs.**

- Table 10: noise impact assessment, weekday, night time

  All Ambient measurements are either less than or equal to 3dB of the Residual measurement. The resultant +5dB (NSR1) and +12dB (NSR4) excess of Rating level over Background sound is questionable due to no sound from site in either of the descriptions and therefore **the consultant's initial assessment result of adverse impact highly likely is both technically incorrect and based on the consultant's observations is applied incorrectly due to the incorrect derivation of the specific sound from the measurements at NSRs .**

- Table 11: noise impact assessment, weekend, daytime

  All Ambient measurements are either less than or equal to 3dB of the Residual measurement. The resultant -1dB (NSR1) is incorrect and should be 0 (zero) if the calculation SpL=10log(La-Lr) is applied. However, there is no sound audible from the site during operational measurements.

- Table 12: noise impact assessment, weekend, night time

  There are two periods during the weekend night time monitoring when the difference between the Ambient and Residual levels are greater than 3dB (NSR2 +22dB; NSR4 +20dB) and further assessment can be made of the Specific sound. Except for NSR2, the consultant's description of the sound at the remaining NSRs exclude any reference to site noise. The description of the operational sound at NSR2 identifies a low steady hum but no inference is made that it emanates from the site. In Figure 38 (graph of Ambient LAeq at NSR4) there is clearly a sound source operational that raises the LAeq and in the description the consultant has advised that a compressor from a nearby residential location commenced. It is likely that this compressor has increased the Ambient level above the Residual level. **Therefore the likelihood that**

an 'adverse impact highly likely' is again both technically incorrect due to the consultant's description and the incorrect Specific noise derivation as discussed in Paragraphs above.

397. As discussed in the Paragraph above, all the assessment results presented by the consultant in Tables 9 - 12 are questionable due to the high Residual sound and that the site is inaudible at all the NSRs. Therefore the route suggested in S7.3.5 of BS4142 should have been followed and referenced in this section i.e. measure closer to the site or a combination of measurements and calculations.

398. The consultant has provided onsite measurements in Appendix III (Table 9) and calculated the sound at the NSRs (Table 11). These measurements can be referred to when assessing impact as well as complying with S7.3.5 of BS4142 i.e. measuring at source/closer to source and calculating sound levels at NSRs. The consultant has not measured the individual noise sources in isolation, instead has measured the Ambient sound from the site including all noise generating activities.

399. In Table 11 of Appendix III, the consultant has used the inverse square law to calculate the sound level at NSRs from source measurements. This is an acceptable method however, this principle does not consider other factors that may influence the propagation of sound including ground/air absorption, topography, barriers, weather etc. Due to the omission of these attenuation pathways this is likely to be a conservative calculation which can support the consultant's measurement at NSRs.

400. Table 11 of Appendix III considers the predicted specific sound level at NSRs 1-3. The distances used in the calculations are at the measurement points, not where the sound is potentially to be audible i.e., within the curtilage of the premises - garden areas/amenity spaces etc. Although the distances reduce for NSR2 and NSR3 (20m and 50m respectively), they increase for NSR1 and NSR2 (10m and 25m respectively) but the changes to the results from the consultant's calculations are small with a +1dB increase at NSR4 as stated in Appendix II (Calculations).

401. Table 11 of Appendix III compares the calculated Specific sound from onsite measurements to daytime Background sound measurements. The consultant indicates that the site will operate 24 hours during the week and during the day over the weekend periods (06:00-18:00hrs). It is worth pointing out that BS4142 considers night time periods as 23:00-07:00hrs and therefore 1 hour of the operational time during Saturday and Sunday will be considered a night time period. Due to the operational hours an assessment of the calculated Specific sound against the day time and night time Background sound at NSRs is necessary. Only a daytime assessment has been made by the consultant and no reference to impact at night is included.

402. Data presented in Tables 9 – 12 of the revised report proposes night time weekday Background sound levels of 27dB, 30dB, 33dB and 39dB at NSR1—NSR4 respectively. The Background sound level presented for NSR4 (night time weekday) is incorrect. The correct figure as presented in Table 6 of the revised report is 35dB not 39dB (This does not change the initial impact categorisation to be significant adverse impact as defined in BS4142).

403. Predicted Specific sound levels at NSR1 – NSR3 as stated by the consultant in Table 11 of Appendix III are 39dB, 40dB and 41dB respectively thus using the consultant's predictions, the level of excess over Background are +12dB, +10dB and +8dB and using the categorisation of impact from BS4142, all are likely to be an indication of significant adverse impact, depending on context. This argument is not presented by the consultant in the revised report nor in Appendix III.

404. In S8 of the revised report entitled noise control, the consultant states that the sound impacting upon NSRs is likely to be because of locally occurring noise events rather than the site and as such limited control measures are proposed. The consultant has advised that the applicant undertakes preventative maintenance for all site equipment and periodic boundary noise monitoring. Although these are welcomed, due to the concerns noted above these proposed noise control measures are not necessarily well informed particularly for potential night time noise impact.

405. We do not agree with the consultant's assessment of the uncertainty, given all the points raised above in our comments on the revised noise impact assessment.

406. The final section (S10) of the report produces the conclusions of the assessment. Repeatedly through the report the consultant has stated the higher Residual levels over the Ambient sound as a reason for no adverse impact at any of the NSRs. As a result, the consultant concludes that no further action is required. No reference is made in the revised report of the predicted calculations only in Appendix III. It is in this section that the initial impact is discussed where predicted daytime Specific sound levels are presented lower than measured Residual sound levels. This is presented only for day time impact and night time impact is omitted. We disagree with the presentation of this conclusion without having any reference in the report to calculations provided by onsite measurements and propagated back to NSRs to support their claims.

407. There is insufficient evidence to support the claim that there is insignificant sound from the site impacting upon at all NSRs. In addition, the absence of any observable site noise at the offsite measurement locations introduces large uncertainty into the assessment that should have been minimised. NRW are therefore unable to grant the permit at this time.

Assessment against the legal framework for environmental permitting – proposed waste operations at the regulated facilty

408. Consideration and due regard to the EPRs and Article 13 of the rWFD is fundamental to deciding on whether a permit should be granted for the proposed activity laid out in this statement of case. In considering the information that has been submitted by the Appellant, NRW cannot be confident that the proposed activity and subsequent use of waste will be carried out 'without endangering human health, without harming the environment and, in particular: (a)without risk to water, air, soil, plants or animals, as provided in Article 13.

409. Animal bedding or similar materials which contain clean and untreated waste wood, will be subject to waste regulatory controls after use. Common treatments include anaerobic digestion, composting or other treatments that produce a product for sale. These treatments are considered waste treatments and should have the required permissions.

410. For compost, waste is considered a product when the operator has demonstrated that the material meets the quality protocol. Treated wood is not a permitted waste input in the **Quality Protocol – Compost - End of waste criteria for the production and use of quality compost from source-segregated biodegradable waste,** in the **BSI PAS 100:2018, Publically Available Specification for Composted Materials**, or in the **BSI PAS 110:2014, Specification for whole digestate, separated liquor and separated fibre derived from the anaerobic digestion of source-segregated biodegradable materials.** These are widely recognised standard within the organics recycling sector. These are attached in **Annex A**.

411. For anaerobic digestion, waste is considered a product when the operator has demonstrated that the material meets the quality protocol. Treated wood is not a permitted waste input in the **Quality Protocol - Anaerobic digestate - End of waste criteria for the production and use of quality outputs from anaerobic digestion of source-segregated biodegradable waste.** This is attached in **Annex A**.

412. The Appellant has failed to demonstrate that the use of treated waste wood used to produce cubicle conditioner [animal bedding] will not endanger the livestock that it will be used with. After use, further consideration must be made as to how the used cubicle conditioner [animal bedding] will be disposed of. Whilst clean, untreated waste wood can be spread to land, treated waste wood cannot. The Appellant has failed to consider how used animal bedding made from clean, untreated waste wood will be kept separated from cubicle conditioner [animal bedding], whilst in the cubicle and after it has been used.

413. Used animal bedding made from clean, untreated waste wood once mixed with cubicle conditioner [animal bedding] produced from treated waste wood will result in the entire load being considered as 'treated' waste wood. This means that none of the used bedding material waste can be spread to land, as treated waste wood is not listed in any of the exemptions, nor is it included in the standard rule permits for land spreading, or the quality protocols for compost and this is due to the potential risk of unknown contaminants.

414. NRW considers that the Appellant has failed to demonstrate that the use of treated waste wood used to produce cubicle conditioner [animal bedding] will not:-

(i) endanger the livestock that it will be used with
(ii) harm the environment
(iii) create risk to soil from land spreading
(iv) endanger human health with regards to the food chain.

Operator competence

415. In accordance with guidance, NRW PS assess operator competence for new permits.

416. The EPRs and section 9 of the Core guidance set out requirements for the competence of operators holding environmental permits.

417. Core guidance provides:

> *Operator competence*
>
> *9.1 Operator competence supports the objectives of permitting by examining and maintaining the operator's ability to operate a regulated facility and fulfil the obligations of an operator (see the chapter 5 section on The operator).*
>
> *9.2 Operator competence can be considered by the regulator at any time, whether as part of the determination of an application or at any time during the life of the permit. The regulator may refuse an application, set permit conditions or take enforcement action, having regard to the principles of operator competence described in this Chapter.*
>
> *9.3 Following an application for the grant or transfer of an environmental permit, there is also a specific duty on the regulator not to grant or transfer the permit if it* ***considers that the operator/new operator will not operate the facility in accordance with the permit (see paragraph 13 of Part 1 of Schedule 5[59]). In making this decision the regulator should consider whether the operator cannot or is unlikely to***

operate the facility in accordance with the permit. The regulator might doubt whether the operator could or is likely to comply with the permit conditions if for example, the operator:

• has an inadequate management system;

• demonstrates inadequate technical competence;

• has a record of poor behaviour or non-compliance with previous regulatory requirements; or

• has inadequate financial competence

418. NRW PS must be satisfied as to the operator's competence to operate in accordance with the permit when assessing applications for new permits. NRW must be satisfied that an applicant is competent to deal with the environmental risks associated with the proposed activities thus ensuring environmental protection.

419. NRW PS may refuse an application if it considers the operator is not 'competent' (i.e., will not comply with permit conditions) or not willing to comply with the conditions.

420. Whilst NRW have not yet made a decision on the application, the above information would need to be considered when a decision is in fact made.

421. Whilst we are satisfied that the applicant would be the operator of the proposed facility, for the reasons set out in this document, based on the information provided to date, we are not satisfied that the Appellant would operate the proposed facility in accordance with the conditions of the permit, *if* a permit were issued.

422. The EPR bespoke generic permit template includes the following condition:

1.1 General management

1.1.1 The operator shall manage and operate the activity(ies):

a) in accordance with a written management system that identifies and minimises risks of pollution, including those arising from operations, maintenance, accidents, incidents, non-conformances, closure and those drawn to the attention of the operator as a result of complaints; and

b) using sufficient competent persons and resources.

423. This condition is included in all EPR permits. As the Appellant has failed to provide NRW with an EMS that includes the waste wood proposed to be stored on site after it has been processed – specifically untreated, clean waste wood after it has been processed – the EMS that has been provided does not achieve the above. As the 'EoW Justification' does not demonstrate that the processed, treated waste wood meets end of waste the EMS does not achieve the above in respect of treated wood either. Therefore, it is clear, that should a permit be granted based on the EMS submitted to date, that the Appellant would not be able to comply with the above permit condition.

424. The EPR bespoke generic permit template includes the following condition:

3.7 Fire

3.7.1 The operator shall manage and operate the activities in accordance with a written fire prevention and mitigation plan using the current, relevant fire prevention and mitigation plan guidance.

3.7.2 The operator shall:

(a) if notified by Natural Resources Wales that the activities could cause a fire risk, submit to Natural Resources Wales a fire prevention and mitigation plan which identifies and minimises the risks of fire;

(b)Operate the activity in accordance with the fire prevention and mitigation plan, from the date of submission, unless otherwise agreed in writing by Natural Resources Wales.

425. This condition is included in all EPR permits for facilities that store combustible waste materials. As the Appellant has failed to provide NRW with an FPMP that achieves the above, it is clear, that should a permit be granted based on the FPMP submitted to date, that the Appellant would not be able to comply with the above permit condition.

426. Any decision made will need to consider the requirements of sections 3 and 5 of the '**Well Being for Future Generations (Wales) Act 2015'**. We consider that this decision is in compliance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well- being objective of supporting safe, cohesive and resilient communities.

Environment Permit Appeals Form

427. In the Appellant's submission to PEDW on 03 November 2022 (in the Environment Permit Appeals Form), the Appellant claims that ***'It was wrong of NRW not to have determined the Appellant's application for an environmental permit within the relevant period provided for by Paragraph 15, Schedule 5, Environmental Permitting Regulations 2016 (2016/1154)'*** and requests that the inspector grants the permit on the application dated 31 January 2022 and the further information submitted in response to the Schedule 5 Notice issued on 19 July 2022. This is attached in **Annex A.**

As explained in this statement of case in the sections above, the revised statutory determination date was **11 October 2022** and NRW were in the process of determining the application when the 'deemed refusal' notice was served by the Appellant on **17 October 2022**.

428. This statement of case also provides the further information that was required in to progress the application.

429. In accordance with paragraph 6.15 of Core Guidance, '*determination periods quoted above can lengthen where: further information is required to determine the application.'*

430. Whilst NRW PS endeavours to take permitting decisions on applications within the statutory time, NRW has a duty to ensure that it determines applications in accordance with the EPRs and relevant guidance.

431. The EPR provide the ability to extend the determination date. This is accordance with Schedule 5. Part 1, Paragraph 15 (3) (d):

in any case a longer than the period in paragraphs (a) to (d) if it is agreed by the regulator and the applicant.

432. It is unfortunate that such agreement was not made in relation to this application.

CONSULTATION RESPONSES

Consultation response from Local Authority (Environmental Health - Wrexham County Borough Council)

433. On 10 June 2022, NRW PS received a consultation response from the Local Authority (Environmental Health - Wrexham County Borough Council) including the following information:

- 'Platts Local authority noise proforma' ('noise proforma')
- 'Platts Statutory Nuisance' document
- 'Platts Agriculture 2001 0590'
- 'Platts Agriculture 02654'

These are attached in **Annex A**.

434. The noise proforma stated that there were planning conditions relating to noise applicable to this site and that complaints have been received alleging a noise nuisance within the past three years.

435. 'Platts Statutory Nuisance' document includes four noise complaints from different addresses, from 2019 to 2021. One complaint from a resident in Flintshire.

436. 'Platts Agriculture 2001 0590' document is a copy of the planning permission dated 08 October 2001. This includes conditions the following noise conditions:
    - Noise levels, as measured at the site boundary, shall not exceed 55dB(A) expressed as a One Hour LAeq, between 0800 to 1900 hours
    - Noise levels, as measured at the site boundary, shall not exceed 45dB(A) expressed as a One Hour LAeq, between 1900 to 0800 hours
    - Noise levels, as measured at the site boundary, shall not exceed 50dB(A) expressed as a One Hour LAeq, between 0800 to 1900 hours on Sundays and Bank Holidays

437. These noise conditions included in the planning permission granted for the facility demonstrate that the activity was likely to generate noise emissions and therefore required measures to limit those emissions to prevent noise becoming an issue.
438. These conditions support NRW's review of the Appellant's noise impact assessment in accordance with the relevant guidance.
439. 'Platts Agriculture 02654' document 12 April 1999 is the refusal of planning permission for another site – not the facility that is subject to this appeal.

Consultation response from Welsh Government (Office of the Chief Veterinary Officer for Wales - Animal Welfare and By Products)

440. On 01 August 2022 NRW PS received a consultation response from Welsh Government (Office of the Chief Veterinary Officer for Wales - Animal Welfare and By Products). The response stated the following:
    'Comments that our VA's [veterinary advisors] have made for information –

Phenols/phenolic compounds used to be the products of primary concern in relation to animal toxicity from treated wood. Phenols are also toxic to humans, which is why they have been removed from creosote.

Having looked at various documents under the link I could not find any information which would describe what kind of treated wood they are planning to process, and to what extent. This is in the context of the potential toxicity to livestock of some substances used for treating wood.'

This is attached in **Annex A**.

441. The response from the Office of the Chief Veterinary Officer for Wales, supports NRW's view that treated wood waste is not suitable to be used in animal bedding.

Consultation responses on the further information submitted by the Appellant in response to Schedule 5 Notice Number 1

442. On 04 October NRW PS received a consultation response from North Wales Fire and Rescue Service. The response stated:

'With reference to the above consultation relating to the environmental permit for the site, North Wales Fire and Rescue Service have no comments to make.
The site was recently audited and found to be of a reasonable standard.'

This is attached in **Annex A**.

Consultation response from Animal and Plant Health Agency (APHA)

443. On 06 October 2022 NRW PS received a consultation response from the Animal and Plant Health Agency. The response stated:

'In relation to this consultation, I confess I haven't received one previously but on a methodical check of our delivery areas, we would be interested in;

- *i)Welfare – covered by the PAS111 specifications*
- *ii)Residues – also covered by the PAS111 (treated wood) specifications*
- *iii)Animal ByProduct – no ABP is included in the process'*

This is attached in **Annex A**.

In considering the response received we would interpret that regarding 'welfare' the consultee is indicating that this would consider the use of the material in accordance with the PAS111 specifications, which as documented in this document, PAS111 only allows clean, untreated waste wood to be used in animal bedding. We would interpret that regarding 'residues' the consultee is indicating that this would consider the use of the material in accordance with the PAS111 specifications, which as documented in this document, PAS111 only allows clean, untreated waste wood to be used in animal bedding.

444. NRW will refer to the publication by APHA in 2018 (updated in 2020) of a document entitled 'Information Note: Straw bedding shortage this winter in the UK' which states, at page 2 [this is attached in Annex A]:

Whatever bedding is used, it should be dry and free of visible mould. It is important that farmers and animal-keepers discuss their choice of alternative bedding with their veterinary surgeon so that animal health issues can be considered, for example: Wood shavings, chips or sawdust from recycled wood waste should not have been produced from painted or preservative-treated wood. The Environment Agency (EA) has produced guidance[.]

Consultation response from Local Authority (Environmental Health - Wrexham County Borough Council)

445. On 19 October 2022 NRW PS received a consultation response from the Local Authority - Wrexham County Borough Council Environmental Health Department including comments on noise complaints. The response stated:

'In response to the below consultation. I don't know if its relevant to your consideration but we get the occasional noise complaint attributed to this site:

- *2019 - 1*
- *2020 - 3*
- *2021 - 1*

The complaints allege noise from external machinery, though In Wrexham none of them were substantiated. Some of the complainants live in Flintshire so they may have additional details.'

This is attached in **Annex A**.

REASONS FOR NON-DETERMINATION BY THE STATUTORY DETERMINATION DATE

288. The 'deemed refusal' notice was accompanied by a 'deemed refusal letter' in which the Appellant asserted,

'You have had all the material required in order to grant the permit within the period allowed by the Regulations. The delay in granting the application within the relevant period caused us to serve the paragraph 15 notice on you.'

For the reasons explained in this statement of case, the above statement is incorrect. NRW PS did not have all the information it required to 'grant the permit', as stated above. The Statement of Case and the chronology of the application set out how NRW PS were in the process of determining the application in accordance with EPRs and relevant guidance at the time when the deemed refusal notice was served.

289. On 11 October 2022 NRW did not have all the information required in order to complete determination of the application and therefore was not in a position to exercise its functions and either grant or refuse a permit at this time.

290. The information provided by the Appellant did not suitably consider all the risks from the proposed activity. NRW PS gave the Appellant the opportunity to revise the application to address outstanding matters, namely revising their noise impact assessment and FPMP.

291. On 11 October 2022, NRW was in the process of drafting Schedule 5 Notice Number 2.

292. **Schedule 5 Notice Number 2 (dated 09 November 2022)** demonstrates the extent of the further information that NRW considered was required at the time of the statutory deadline in order to proceed to determination of the application. This included:

(1) requesting further information on the impact of noise from the proposed facility. The noise impact assessment submitted with the application concluded 'no likely significant impact'. However, NRW cannot currently agree with this conclusion as not all operational times have been considered and the impact of uncertainty has not been suitably minimised. Given that that the proposed facility proposes to operate 24 hours a day, 7 days a week, an amended noise impact assessment, and further noise monitoring to provide an assessment of noise impact for weekends, is required. Further information on this is included in the sections '**Noise Impact Assessment ('NIA')'** of '**Schedule 5 Notice Number 2 (dated 09 November 2022)'**'.

(2) The draft Schedule 5 Notice Number 2 also requested further information on the risk of fire from the proposed activity. This is because the FPMP submitted with the application does not include waste wood once it has been processed, as the Appellant sought to justify this on the basis it is a 'product'. Section 1.1.4 of the FPMP states: *"The FPP guidance is applicable to the storage of incoming wood waste at the Facility. As the finished product conforms to the quality protocol of PAS 111, the finished product is not subject to the FPP guidance and is therefore, not considered within this FPP document"*.

NRW does not agree that the 'EoW Justification' demonstrates the processed waste wood, meets 'end-of-waste', and its position is that the FPMP must be revised to include and consider the risk of fire for **all waste wood** processed and subsequently stored on site – to comply with regulatory controls. Further information on this was included in sections of **Schedule 5 Notice Number 2 (dated 09 November 2022)**.

(3) The draft Schedule 5 Notice Number 2 also requested further information on the 'Dust management plan' and the 'Environmental permitting technical requirements' documents submitted with the application.

293. The EPRs 2016 provide that the determination period can be extended by agreement. It was unfortunate that NRW omitted to make a request to the Appellant for their agreement to extend the determination date. Given that the application was being determined and that the response to the Schedule 5 Notice Number 1 was being assessed at this point, this was an oversight on NRW's part not to request agreement from the Appellant to extend the determination date. However, it is acknowledged that the Appellant would not have been under any obligation to agree to an extension of the determination date, had a request been made.

294. In the Appellant's accompanying letter it is stated, referring to guidance, that *'…a right of appeal should be exercised as a last resort*[.]*'* The Appellant chose to serve the deemed refusal notice on NRW and could have agreed an extension to allow ongoing determination. After the notice was served NRW PS confirmed that we were prepared to discuss the options for the applicant outside of the appeals process. This is included in the email from NRW PS to the Appellant sent on 21 October 2022.

295. The Appellant's accompanying letter also stated, '… *Platts is prepared to have further discussions with you in order to secure its environmental permit, and we are instructed to refrain from making the appeal until 31 October 2022. We look forward to obtaining the permit within the next 14 days'.* Of course on a proper reading of the legislation this suggested course was not available. Upon serving notice of deemed refusal, by operation of law, the application was treated as having been refused and NRW had power to grant a permit.

CONCLUSION

Non-determination

296. The Appellant has asserted that it was 'wrong' for NRW to have failed to determine its application by the deadline; and that all information it required to issue the permit was available at the determination date of 11 October 2022. This is not accepted. This statement of case documents the extension requests that the Appellant requested from the Respondent and how the Respondent subsequently granted those extension requests and afforded the Appellant additional time to provide further information. Those being:

    - Extension to the Schedule 5 Notice Number 1 deadline (from 17 August 2022 until 17 September 2022).

    - Extension to the Schedule 5 Notice Number 2 deadline (from 09 December 2022 until 31 January 2023).

297. NRW had not made a decision when the Appellant chose to serve the 'deemed refusal' notice, some 21 working of days after receiving the Schedule 5 Number 1 response from the Appellant. The statement of case documents the determination process followed and reasons why NRW could not grant the permit to the Appellant. Based on the information provided by the Appellant to date and as detailed in this statement of case, the sheer amount of inadequate and outstanding information in support of the application necessary for NRW to determine the application is compelling. On 11 October 2022, NRW simply could not have been satisfied as to discharge of its regulatory functions and mandatory grounds for refusal in Schedule 5 of the EPR 2016 to grant a permit; as such, for all the reasons set out in this statement of case, NRW would have been compelled to refuse the application on the determination date. NRW will say that the Appellant's stated grounds of appeal in the notice of appeal lack any merit

Disposal of the appeal

298. NRW is not satisfied it could grant a permit for the proposed regulated facility, as per the application as made, for the following reasons:

    (1) The application is contrary to the regulatory position set out above. NRW's regulatory position in Wales is clear that treated waste wood cannot be used for animal bedding. NRW's regulatory position has been taken due to associated risks to animal health and welfare, the environment, and human health and the food chain. NRW's permitting decisions functions under Schedule 9 of the EPR 2016 engages Article 13 of the WFD. NRW's position is consistent with all UK environmental regulators and is mirrored by industry and sector guidance, in which the risk of harm is accepted. Correctly classified untreated wood waste does not present these risks and uncertainty. Clean, untreated waste wood is widely used for animal bedding, permissible under legislation and there is an established market for it; excluding unregulated activities in contravention of the EPR 2016, this is not the case for treated waste wood, which does have established markets in other sectors. NRW, Welsh and UK government and other regulators are satisfied that untreated waste wood is appropriate for use.

    The Appellant has not jusitified why untreated waste wood should not be used in its proposed waste operations. If it is a matter of cost, the Appellant has not put any cost-benefit evidence before the regulator. The Appellant appears to be a solvent, profitable corporation capable of costs of compliance with the regulatory regime.

NRW does not agree there is any distinction in regulatory context between the terms ‘animal bedding’ and ‘cubicle conditioner’. The inspector will be invited to conclude there is no material distinction in a regulatory context.

(2) The Appellant applied for a permit with prior knowledge of the regulatory position in Wales (and outside of Wales, where suppliers and many of its customers are located). The Appellant has been operating outside the regulatory regime for a number of years and does not appear to accept it is or should be subject to the regulatory position. The Appellant has elected to challenge the regulatory position. It is not the responsibility of the regulator to produce scientific evidence during the determination of a permit application, in order to make a decision. The burden of proof lies with the Appellant to submit sufficient evidence to demonstrate that the activity will not pose a risk to animal welfare, public health or the environment. NRW would expect evidence from a qualified expert body e.g. animal health or food standards regulator that the material has been considered suitable for use. NRW considers that the Appellant has failed to discharge the burden of proof on the basis of the evidence submitted.

Sampling and analysis evidence submitted is presented which shows that the incoming waste could be classified as non-hazardous. It does not follow that animal bedding made from treated non-hazardous wood waste would not pose a risk to human or animal health or welfare or the environment. Comparative analysis of the evidence submitted by the Appellant indicates that in many instances for the median result for hazardous substances presented for manufactures samples is significantly higher than that for “Clean Wood Bedding Material” thus undermining the Appellant’s claim that the treated waste wood is comparable to clean, untreated waste wood. In addition, as shown in Table 1 above, when individual hazardous substances are compared in many instances the median result presented for manufactures samples is significantly higher than that for straw (which may be a comparator).

The Appellant does not appear to have considered the cumulative risks of the proposal, which could result in thousands of tonnes of this product being used and disposed of. The Appellant has not provided evidence or demonstrated that cumulative overall use of the product will not have a detrimental impact on animal welfare, the environment, the food chain or on public health.

The consultation response received from APHA confirms PAS111 specifications, which as documented in this document, PAS111 only allows clean, untreated waste wood to be used in animal bedding.

The consultation response received from Welsh Government (Office of Chief Veterinary Officer for Wales – Animal Welfare and By Products) highlighted the use of certain chemicals in treated wood and their toxicity to animals and humans. This is the relevant authority that NRW would expect to provide approval of any use of treated waste wood in animal bedding, prior to use or prior to an environmental permit being granted permitting it’s use.

NRW cannot be confident that the proposed activity and subsequent use of waste will be carried out ‘without endangering human health, without harming the environment and, in particular: (a)without risk to water, air, soil, plants or animals, as provided in Article 13 of the WFD.

(3) The Appellant had the opportunity (following Schedule 5 notice) to submit an assessment to demonstrate end of waste. Although claimed in its application, NRW will say that end of waste status for processed treated wood waste has not been demonstrated against the criteria in Article 6 of the WFD and, therefore, (assuming a permit was granted

in the terms sought, which is not accepted by NRW) regulatory controls would continue to apply to treated wood waste, post-treatement.

The Appellant has not submitted any evidence to demonstrate end of waste status for the processed, clean untreated wood waste. Regulatory controls as waste would continue to apply (as evident from the interrelationship between waste exemptions T6 and U8). Notwithstanding this, the distinction is acknowledged in context of the regulatory position of NRW and other regulators on the use of clean, untreated wood in animal bedding, and the enforcement position statement of the EA cited in the statement of case.

(4) The Appellant's end of waste claim affects a key issue for NRW, which is compliance with FPMP guidance and the standard condition inserted into all bespoke waste permits. The Appellant has challenged NRW in this regard. The Appellant has had an opportunity to submit a revised FPMP to include the processed wood waste and to meets the standards set out in the guidance. The Appellant failed to do this.

Regulatory controls for environmental permitting include the EPR 2016 and technical guidance, including the FPMP guidance and How to comply guidance. Further information as requested in Schedule 5 Notice Number 2 remains outstanding. The outstanding information being: revised FPMP; revised DMP; revised EPTR; and NMP.

Given the current FPMP, the risk of fire cannot be discounted. The processed, treated wood waste will be 'wood dust' as per the Appellant's 'EPTR'. Table 1 in the FPMP guidance states that the 'maximum storage time on site' for 'combustible fines/ dusts & very small particle size wastes' is 1 month. The 'EPTR' states that '*All finished product will be removed from the Facility within three months*' and therefore the proposed storage time exceeds the maximum storage time, as specified in the FPMP guidance.

The current waste acceptance procedures provided in the EPTR are not clear on the waste acceptance procedures used by the Appellant at the waste producer's site. Traceability and the source of the waste material is paramount to the intended use and robust waste acceptance procedures must be in place for waste that is being collected from the waste suppliers by the Appellant.

(5) In relation to noise, the risk of noise to the nearest sensitive receptors cannot be discounted. The Appellant's observations of the acoustic environment at the nearest sensitive receptors do not provide any confidence that measured Ambient sound levels include sound from the site and therefore no limited inference of impact from the site on NSRs can be made.

The assessment results presented by the consultant in Tables 9 - 12 are questionable due to the high Residual sound and that the site is inaudible at all the NSRs. Therefore the route suggested in S7.3.5 of BS4142 should have been followed and referenced in this section i.e. measure closer to the site or a combination of measurements and calculations. Onsite measurements which are calculated to NSRs, provide some confidence in interpretation of the degree of impact, but this is specifically for day time as no assessment of the night time impact was provided.

NRW's assessment of the evidence submitted would be that overall, there is insufficient evidence provided in the revised report to conclude that the predicted noise impacts, as a result of the site operations, are insignificant at the receptors as stated by the Appellant. There is insufficient evidence to support the Appelant's claim that there is insignificant sound from the site impacting upon at all NSRs. In addition, the absence of any observable site noise at the offsite measurement locations introduces large uncertainty into the assessment that should have been minimised.

Consultation responses received from the Local authority confirmed that complaints have been received alleging noise nuisance attributed to the site within the past three years. These consultation responses, along with the noise conditions included in the planning permission for the facility, supports NRW's duty to fully consider the risk of noise from the activity and the approach that NRW have taken.

(6) In consideration of paragraph 13 in Schedule 5 of the EPR 2016 and paragraph 9.3 of Core guidance, on the application as submitted, NRW consider the Appellant would not operate the proposed facility in accordance with the conditions that would be appropriately applied to any permit. Specifically, NRW cannot be satisfied the Appellant would comply with an FPMP condition in any permit granted; permit condition controls emission of noise; and the Appellant has not satisfied the requirements for operator competence in respect of management systems.

299. For the reasons set out above, the Respondent has demonstrated that due process in carrying out the determination of the application was followed in accordance with relevant and applicable legislation, policy and guidance.

300. It is not in dispute that the Respondent did not determine the Appellant's application by the statutory determination date. For the detailed reasons outlined in this statement of case, the Respondent submits that it did not have adequate information to have granted the Appellant an environmental permit as per the application and supporting evidence on 11 October 2022. The Respondent would have been compelled to refuse that application at the determination date.

301. For the detailed reasons outlined in this statement of case, the Respondent submits that the Appellant's application for a bespoke permit as made must be refused and respectfully invites the inspector to dismiss the appeal.

NRW Legal Services

3 April 2023