

Scope and summary

1. *In this rebuttal proof of evidence, I comment on and respond to the proofs of evidence of Caroline Platt, Alison Fuller, Ian Hall and Oliver Matthews.*

In summary:

- (a) I comment on the Appellant's evidence regarding the use of MDF dust to make Powder Bed and the Appellant's statements that these are distinct products. I also respond to statements on behalf of the Appellant the Powder Bed being specifically made from MDF dust due to its properties. I comment that the Appellant has not presented separate assessments of Powder Bed and Fine Bed for end of waste criteria within its justification documents, which would be expected of any end of waste assessment.*
- (b) I respond to the evidence of Oliver Matthews and Caroline Platt regarding terminology used by the Appellant and references to PAS111 and WRA guidance; points set out in Oliver Matthews' evidence on use of comparators; and disagree with Oliver Matthews' evidence regarding the Appellant's statement of a scientific approach and statement of conformity to end of waste when there is absence of expert agreement on the proposals.*
- (c) I comment on Caroline Platt's evidence regarding the Appellant's competitors and regulation information request or enquiry with the Environment Agency.*
- (d) I comment on the Appellant's evidence showing non conformity with its procedures and operating techniques, on matters such as contamination and rejection of wastes, and sampling results for formaldehyde which question further the Appellant satisfying end of waste criteria.*

Detailed comments and response

2. According to witness evidence presented in May 2024, the Appellant states two

distinct products with different properties are manufactured from separate wastes, which it distinguishes between (i.e. MDF dust and particle board).

3. In paragraph 21 of the proof of evidence of Caroline Platt refers to Powder Bed and Fine Bed and describes Powder Bed as *'perhaps our 'best' product, being a premium product which clings to the mat. Powder Bed, like Fine Bed, is applied to the back end of a cubicle.* Paragraph 66 of the same states:

'Powder Bed, therefore, is manufactured from MDF, whereas Fine Bed is produced from chipboard or particle board or similar. The wood which makes Fine Bed is processed by manufacturers as melamine faced chipboard ("MFC") or particle board.

MDF is described elsewhere in the proof of evidence as "MDF dust".

4. In the proof of Alison Fuller respect, at paragraph 53, it is stated that 'Fine bed dust can never be used to make Powder bed'. Paragraph 53 suggests that there are differences between the two wastes used, which raises the question as to if the two materials will behave differently.
5. In paragraph 19 and Table 1 of the proof of Ian Hall, a steady increase in combined 'Powderbed' and 'Finebed' (up to 93% combined in 2023-24) is documented, both of which are derived from treated wood waste. Paragraph 38 of the same, goes further stating untreated wood waste would be unsuitable to make Powder Bed or Fine Bed, conditioner bedding made from untreated wood *'would necessarily be a different product with different qualities from the conditioner bedding currently favoured by our clients'*. The paragraph indicates that the waste derived material from untreated wood material is different and comparison cannot be drawn between the two due to *different qualities*.
6. This evidence is the first indication I have seen from the Appellant that there is any compositional difference between the various waste derived bedding material made from untreated wood waste and treated wood waste. No technical appraisal or similar information in support of this statement is referred

to; and to my knowledge no such information has been presented by the Appellant in the application or Appeal. I would however expect to see such information to justify this statement, since NRW raised this matter in its statement of case of May 2023.

7. The Appellant contends that it makes two distinct 'products' from different wastes, at least one of which has some distinguishing properties relevant to specification of the end 'product' (i.e. MDF dust to make Powder Bed). This information has not been presented in any end of waste justifications or included in any relevant risk assessments. To my knowledge it has not been supported by any technical analysis or justification that has been submitted to NRW. To state that both wastes are classified under list of waste code 03 01 05 oversimplifies and does not account for these differences.
8. In any end of waste justification, I would reasonably expect as a minimum to see separate risk assessments carried out to fit the differing inputs (wastes used); and address the alleged final 'products' with differing properties for end uses to ensure relevant risks are considered per use. This would correspond with other end of waste assessments, where multiple end uses are sought.
9. No information has been presented on the different materials or substances that will have been used by the waste producers. Materials used by the waste producers (MDF, Melamine Faced Chipboard, particle board) may contain different substances and/or ratios of glues, resins etc.
10. No information has been submitted on the waste producers' manufacturing processes. This is in addition to any consideration of possible application of treatments by furniture manufacturers (or alike) as the waste producer.
11. No information has been provided on whether the resulting output composition of the treated wastes differs in any respects. In particular, there remains an absence of information on post-treatment sampling and testing of wastes (waste derived material) prior to it being sent to customers, a matter which has raised previously by both NRW and APHA.

12. I would say the matters I have set out in paragraphs 9-11 above would be directly relevant to any end of waste claim. This would also be separately required for each waste derived material for which end of waste is claimed. Such an approach has not been taken in this application / Appeal.
13. NRW has been presented with *some* sample results data relating to samples taken from wastes received by the Appellant. The data has been anonymised. There is no indication in the sample results data, detailed discussion or analysis in a report, as to the waste descriptions (including whether MDF, particle board etc) and which of the two waste derived material 'products' those wastes have been used for.
14. I do not agree with the statement in paragraph 68 of the proof of Caroline Platt. The Appellant has stated that two specific wastes, albeit both said to be of waste code 03 01 05, are processed differently into two separate waste derived material 'products' for the purposes of attaining different properties. The Appellant says the properties relate to end use. 'Pre-consumer' and 'post-consumer' are not regulatory expressions relevant to waste wood, they do not reflect the matters I have discussed in paragraphs 5 and 6 above.
15. In paragraph 4.25 of the proof of Oliver Matthews, irrespective of NRW's position with regards to waste wood classification, the footnote referenced above is not fully referenced. In the February 2024 (Appendix 2) version, which retains the text in Appendix OM 4, in full states:

'Clean/untreated waste wood is suitable for processing into animal bedding, panel board feedstock, landscaping or equestrian surfaces and biomass. Treated, but non-hazardous waste wood is suitable for processing as a feedstock for panel board or energy recovery in a Chapter IV compliant facility. Hazardous waste wood can only be disposed of in a facility licensed for this purpose.'

1Pre-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.

The Appellant has used industry expressions such as ‘pre-consumer’ but not had regard to the definitions and stated limitations in published material. The above reference is that *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)* and it would not be suitable for other uses such as animal bedding. As noted however this is industry guidance and not regulatory.

16. The statement in paragraph 88 of the proof of Caroline Platt that ‘*Mr Matthews will be instructed to revise our procedures and assist with our final EMS*’ that this raises uncertainty about the procedures taking place on site being subject to change, or not being reflective of intended sampling and testing procedures what is currently drafted and submitted with the application and in this Appeal.
17. In response to paragraphs 90 to 126 of the proof of Caroline Platt, I would not regard this of any relevance to the Appeal. The Appellant accepts by virtue of its application for an environmental permit that regulatory approval is required. Unless it is suggested by the Appellant that those companies are carrying out waste operations in accordance with a regulatory approval such as an environmental permit or waste exemption. To my knowledge, NRW has no regulatory involvement with and is not aware of the specific operations and processes being undertaken by any of the companies mentioned and can therefore provide no further comment. The companies identified within these paragraphs are not located within Wales. For companies in England, it would fall to the Environment Agency to provide regulatory oversight.
18. On paragraph 104 of the proof of evidence of Caroline Platt, the response from the Environment Agency includes reference to the Environment Agency’s waste wood quick guide (LIT 14731) which sets out its position in relation to waste wood and animal bedding. The response from the Environment Agency also includes the following (CP12 pp 17)

‘We have no evidence to suggest that particle board is a risk to animals if used in animal bedding from the chemicals routinely used in the manufacturing process such as urea formaldehyde, methylene diphenyl diisocyanate’

It goes on to state –

‘We (The Environment Agency) consider that waste wood used in animal bedding remains a waste. We have not been approached for an end-of-waste decision via our end of waste service (Weblink – Environment Agency Definition of waste opinion service weblink)’.

19. The Environment Agency’s response also states –

‘We expect waste wood that is used in animal bedding is grade A, clean, chemically untreated wood.

We have an internal guide on waste wood which we have shared with the wood recycling association - attached.’

20. It is unclear to me what questions or information request was put to the Environment Agency. This is due to the full email chain not being reproduced within the appendices provided by the Appellant. This does not provide the whole picture as to what was requested from the Environment Agency (See CP12 pp20). The Appellant is asked to correct the omission and provide a copy of the complete email chain, including the request made of the Environment Agency. As such we would be unable to comment.

21. In paragraphs 16 and 19 of the proof of Alison Fuller, it is suggested that the Appellant intends to further amend procedures for sampling and testing; and that there are policies and procedures “*currently in use*” not in documents submitted in the application or Appeal. What these are is not stated, which is of concern, since such “policies and procedures” may be relevant to the issues in this Appeal.

22. In response to the proof of Alison Fuller, paragraph 47 and AF9, p18 and extract of 'AGR F027 QUALITY TESTING DATA FORM' is reproduced within. Of note is material received on 29.03.2024, supplier name – 'Kronospan Plus'. Under 'Evidence of containments', 'No' is selected, however under 'Details' section it reads 'Some small white pieces of plastic but still good Powderbed'. This suggests that plastic-contaminated waste was allowed to pass through inspection and ultimately find its way into the bedding material. This contamination does not appear to have been recorded upon the 'Non-conformance index' noted within the appendices of Alison Fuller (AF20 pages 73-77). This occurrence is recorded in March 2024 and would raise concerns relating to operator competence. Further evidence of plastic contamination is noted within Appendix AF20 pages 73-77: customers noted plastic/microplastic contamination and also contamination with metals.
23. In respect of the statement that '*Fine bed dust can never be used to make Powder bed*' in paragraph 53 of the proof Alison Fuller, as I have commented above, if two distinct products are being produced then consideration should be given to the production of two different risk assessments. Paragraph 53 suggests that there are differences between the two wastes used, which raises the question if the two waste derived materials will behave differently.
24. Paragraph 38 of the proof of Ian Hall (see above) suggests that, following initial pre-application advice and guidance with NRW, the Appellant has not had any intention of making changes to core operations or processes.
25. In respect of paragraphs 4.10 to 4.25 of the proof of Oliver Matthews, the PAS 111 is industry guidance not regulatory guidance. The Environment Agency was involved in its development, but I am not aware that it has been reviewed since and so therefore it may not reflect current issues. The PAS 111:2012 Specification for the requirements and test methods for processing waste wood is now noted on the BSI website as '(Withdrawn specification)'. When this was queried with the BSI, a response was received indicating '*they (Withdrawn PAS) are no longer updated or subjected to regular governance reviews. As all*

standards are voluntary they can still be used, but BSI will no longer monitor or attest its content for updating’.

26. NOTE 2 in Annex 1 of the PAS 111 has not been referenced within the proof of Oliver Matthews to include the following: *‘Waste regulatory requirements may further limit inputs for specific end-uses. Check with the regulator for the most up to date information.’*
27. In response to paragraph 5.1 of the proof of Oliver Matthews, it is the responsibility of the producer/holder of the waste to ensure waste has been appropriately assessed in accordance with WM3 and Duty of Care requirements are fulfilled.
28. In response to paragraph 6.3, 6.4 & 6.5 and Appendix OM5 of the proof of Oliver Matthews, correspondence referred to in 2020 is from an NRW Operations team not its permitting service. If there was uncertainty or confusion, at the time or subsequently, the letter referenced within OM5, pages 152 -153 clearly states that *‘if you wish to discuss the contents of this letter, please contact Paul Moore using the following email address’*
29. In response to paragraph 6.32 of the proof of evidence of Oliver Matthews, NRW provided analytical comments as referenced in its statement of case [CD 3.3 para 216] and its Analysis of EoW justification Annex V [CD 7.2 NRW154].
30. In response to matters set out in paragraph 6.33, none of the regulatory provisions allow for treated waste wood within animal bedding. The referenced Red Tractor Assurance Scheme and the Alternative Bedding Materials documentation both state that treated waste wood or woodchip produced from chemical preservatives or glues cannot be used. Paragraph 6.63 omits what these documents state and advise, only that they have been critically reviewed.
31. In respect of the matters in paragraph 6.36, the EPR 2016 do not support the use of treated waste wood within animal bedding. No waste regulatory permission exists for the use of treated wood waste under code 03 01 05 as

animal bedding. The Appellant has contended variously that its waste derived animal bedding conditioners are “safe” or “harmless”. I would observe that currently this has not been evidenced with scientific agreement. Dr Hepple’s comments are referenced in my proof of evidence. There is absence of agreement, which would not support its use as either a waste or non-waste under any relevant regulatory controls, whether waste legislation or other legislation referenced by Dr Hepple.

32. On paragraph 6.48, my understanding is that the Environment Agency withdrew the guidance from gov.uk due to their updated webpages and provision of a definition of waste service. The guidance is still relevant and applicable and has not been withdrawn in Wales and currently awaiting publication on NRW’s website.

33. On Paragraph 6.54, I do not agree with the suggested approach of comparing untreated wood waste with treated wood waste in looking for comparable sample results for end of waste. A Material comparator for animal bedding: Straw is available via the .gov.uk website [CD 6.59]. The guidance [CD 6.57. CD 6.58] states that, to decide if your material will have an overall adverse environmental or human health impact:

- if there is an appropriate non-waste derived comparator, do a risk assessment using the comparator approach
- if there is not an appropriate non-waste derived comparator, do a general risk assessment of all substances of potential concern

You cannot use a waste material or a waste derived comparator within an EoW assessment.

34. In response to Paragraph 7.7 of the proof of Oliver Matthews, cubicle conditioners generated by the Appellant will have been derived from waste operations (accepted, stored, mechanically treated etc) without the benefit of any environmental permit or appropriate authorisation. Waste derived material

will have been put to use not in accordance with waste regulatory controls including waste duty of care and without any EoW assessment being satisfied. It would also appear that, prior to this permit application/appeal, the potential risks of these products had not been fully considered. The Appellant has been advised of the NRW regulatory position. No regulatory framework supports the use of treated waste wood within animal bedding and to my knowledge no EoW assessments in this regard have been satisfied. It is for the Appellant to demonstrate (burden of proof) that it would be acceptable for use. Within the referenced document 'Classifying waste wood' [CD 6.32 NRW036] at paragraph 32, the Appellant was made aware that *'any use of treated waste wood in animal bedding would need prior approval from Animal & Plant Health Agency (APHA) and the Food Standard Agency, due to the potential risk of treatments (known or unknown) applied to treated waste wood entering the food chain'*. Despite claims by the Appellant that the material being produced is 'safe' I have seen no evidence from the Appellant that any engagement with the Food Standards Agency has taken place. Given that the Animal & Plant Health Agency were also referenced within the document and we now know that Dr Hepple raises significant concerns, engagement and the satisfying of Food Standards Agency requirements would be assumed imperative. As indicated, the burden of proof rests with the Appellant.

35. On Paragraph 8.5, I disagree with this statement. Consumer uses and applications of products made from all or some of the same materials comprising treated wood wastes received by the Appellant are irrelevant. This would be within its 'bound' form as it would be intended to be used. The material in question is in an unbound form and is being used in an application which it was not produced principally for. As this material (MDF, Particle board, MFC) is not produced with the intention of being used within animal bedding this risk will presumably have not been accounted for during its production and subsequent disposal. Within the 'Classifying waste wood' document [CD 6.32 NRW036] at paragraph 58 c, attention was drawn to health implications... *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. As far as I am aware I have seen no evidence from the Appellant that any engagement with a public health representative or agency has taken place. Risks associated with MDF dust are well known and as highlighted within the rebuttal proof of Tim Morris, concentrations of contaminants above hazardous waste thresholds are documented in a limited data set. As noted, the burden of proof rests with the Appellant.

36. On paragraph 8.19, sampling and testing is only being carried out on the incoming waste material and not upon the final waste derived material. The Appellants statement of conformity is based upon incoming waste material and not upon final waste derived material. Testing to support any end of waste assessment should take place on the final waste derived material.

DECLARATION

I confirm that the facts and matters referred to in this proof of evidence are true to the best of my knowledge and belief. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signed: R Briscoe

Dated: 13 June 2024