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NG15 0ED

Our ref: EPR/KB3405MW/A001
Your ref: EPR/KB3405MW/A001
Date: 02/08/2021

Dear Mr Jones,

Environmental Permitting – Recovery or Disposal Operation
Pre-application Reference: EPR/KB3405MW/A001
Proposed Operator: Nelson plant Hire Ltd
Regulated facility: Whitehouse Field, Romsey Road, Hampshire

As part of our pre-application discussions, you have submitted information to us that includes your assessment that the activity you wish to undertake at your site amounts to a recovery operation.

We have now fully considered your submission and we would like to advise you that:

We do not agree with your assessment that your activity is a recovery operation for the following reasons: Not enough evidence has been provided to support the case that the proposed activity is a recovery operation and therefore we cannot confirm that this is a recovery operation. Please see the advice sheet for further information.

You may still apply for a recovery permit, however if you are unable to provide further evidence that supports your claim that the activity is a recovery operation, then the application is likely to be refused. If this happens you will lose your application fee. If your application is refused you have the right to appeal that refusal.

In response to your email dated 19 July 2021:

- For the avoidance of doubt, I write to confirm that during the course of the appeal the Environment Agency (“the Agency”) agreed that any obligation on Nelson Plant Hire Limited (“the prospective applicant”) to complete the works would be subject to the outcome of the ongoing communications between the prospective applicant and Test Valley Borough Council Planning Authority (“LPA”).

- The Agency agreed that if the prospective applicant decided to complete the scheme then the prospective applicant would be required to complete the scheme as per the planning

permission. This does not however mean that the prospective applicant would be under any obligation to complete the scheme as confirmed by the LPA.

- The Agency has been asked to consider whether the prospective applicant is under an obligation imposed by the LPA to complete the scheme by importing a further 22,000m^3 of waste or non-waste. The LPA, has always maintained that it will take enforcement action if necessary as referenced in the Waste Recovery Plan ("WRP"), section 1.1.16. The only action they have taken to date required the applicant to remove materials and/or cease certain activities at the site: Enforcement Notice (1) and (2). The Agency agrees that the approved levels at the site have as yet to be met. As referenced by the Planning Inspector at paragraph 18 of the attached Appeal Decision dated 18 March 2021:

  > 'I do not consider that the LPA can be relied upon to take enforcement action if it was necessary, despite their interest in the site to date. For example, as set out by the LPA, it may require agreement by its Councillors, who may choose not to take action. It could be that the LPA's resources are focused on other enforcement matters. I also accept the EA's view that enforcement action might not be taken if any breach was minor or had limited environmental harm.'

- The Agency's Guidance: https://www.gov.uk/government/publications/deposit-for-recovery-operators-environmental-permits/waste-recovery-plans-and-deposit-for-recovery-permits requires a prospective applicant who asserts that they are under an obligation to do the work due to the threat of enforcement action to explore all offers from the regulator and consider whether a regulator would be likely to agree something different. In an email dated 10 July 2020, the LPA offered the prospective applicant an opportunity to agree an alternative to importing more material. We cannot ignore this offer from the regulator and the prospective applicant has failed to provide any explanation as to why they have failed to respond to the offer as this could be:
  - The quickest and least costly route to complete the scheme so that the golf course can commence operations.
    And
  - To remove any risk of further enforcement action.

- Either the prospective applicant has run into difficulty in completing the scheme with non-waste, otherwise the scheme would have completed by now and the golf course would have been brought into operation. Or, the Agency is concerned that, the scheme would never have been completed with non-waste and that the prospective applicant is reliant on the LPA taking enforcement action to support an application for a Deposit for Recovery Permit to ensure that the scheme is completed. Consequently, the prospective applicant will have acted unreasonably by commencing a scheme that they could never have achieved with non-waste in order to access the benefit of a deposit for recovery scheme.

- Notwithstanding the above, the Agency understands that there is a disagreement between the prospective applicant and the LPA as to what if any amount of material the LPA would obligate the prospective applicant to import. If the regulator would not require material to be imported then the prospective applicant is not obligated to import it. If the LPA would not take enforcement action requiring the prospective applicant to import 22,000m^3 then they cannot be obligated.

- The prospective applicant has attempted to demonstrate that the LPA would take enforcement action obligating them to bring 22,000m^3 of material to the site. From the information we have received to-date, it is unclear whether the LPA will take enforcement action and if the LPA choose to take enforcement action that they would require the prospective applicant to import the volume of material they have proposed.

- Thank you for the update to theWRP which confirms the figure 38,000 is tonnes. It is not unreasonable to consider there will be some compaction and/or settlement of wastes used to fill the void space and to therefore apply a conversion factor (you seem to be using 1:1.73 for m^3 to tonnes). However this needs to be considered within the context of the scheme proposed.

  From the information provided in the WRP it is unclear whether this is a reasonable calculation for the WRP based on the standard you are proposing to meet. We would advise you to consider the proposed:

  - 'USGA Greens' standard

  You must ensure that your WRP makes reference to a uniform compaction of waste. Until you provide the Agency with a compaction standard, we cannot comment further on this point. An article produced by USGA may be of assistance to you:

  Beneath the Surface: New Recommendations for Putting Greens (usga.org and Infographic: What Is A USGA Putting Green?

  This article confirms the point that gravel and drain pipes should be followed by converting to metric, a 100mm layer of gravel, 300mm layer of sand-based rootzone. The Agency's understanding is that the requirements referenced in the prospective applicant's WRP at point 4.3.9, do not mirror those produced by the USGA. The Agency's understanding is that care should be given to ensure materials are not overly compacted, which could prevent the site draining as required. We accept our research on compaction may now be out of date however, you have failed to provide the Agency with the information regarding the standard you are proposing to apply. You must provide details of and confirm the standard you will use and how the proposed design, including any compaction, allows you to meet that standard.

Our advice is that all applicants should consider a conversion factor to convert m^3 to proposed tonnage. However any conversion factor applied should be justified within the context of the standards required for the scheme. The Agency's advice is that you must provide further evidence of how the conversion factor is relevant to the wastes and outcome required for the scheme.

- You have made reference in your email to a Completion Notice. The Agency's understanding is that this invalidates the planning permission if not completed by a certain date but does not require it to be completed. See: Enforcement and post-permission matters - GOV.UK (www.gov.uk).

The Agency's pre-application advice is, that the prospective applicant has failed to demonstrate that they are obligated to complete the scheme and we would therefore advise that further evidence is required in relation to the points outlined above in support of any future request for pre-application advice or in support of an application for a Recovery for Disposal Permit.

Yours sincerely,

Finlay Dampier

Attachments:

- Enforcement Notices 1 and 2
- Email correspondence between Darren Hobson and Steve Hearn dated 10 July 2020.
- Appeal decision dated 18 March 2021

Environment Agency

RvD Advice Form

Name of permitting officer (RvD assessor)	Finlay Dampier
EPR and EAWML References	EPR/KB3405MW/A001 EAWML 407735
Name of the proposed operator	Nelson Plant Hire Limited
Name of the site	Whitehouse Field, Romsey Rd, Andover, Hampshire
Document reference for the submitted waste recovery plan	Waste Recovery Plan April 2021 (Ref: 784-B028534) Response to RFI #1 – dated 25/06/2021 9088 Proposed Surface2-RevA Response to RFI #2 – 16/07/2021 Response to RFI #2 – 19/07/2021

Consideration of Recovery

Is the waste being used as a substitute for non-waste material?
Has the applicant confirmed that if they could not use waste, they would complete the proposed works in the same way with non-waste materials? **Our guidance includes some factors they can use to show they would carry out the scheme using non-waste:** **1. Financial gain by using non-waste materials** **2. Funding to use non-waste (not-for-profit organisations)** **3. Obligations to do the works** They must provide a clear justification, with evidence, to demonstrate that they would do this.
The Operator is relying on a specific obligation to do the works. If the operator could not use waste, they would use an appropriate (chemical, physical) non-waste in order to fulfil what they view as an obligation to do the work through the planning permission granted to them. The Operator has provided evidence that the planning permission (Ref: TVN.6179/8) granted by Test Valley Borough Council approved the development of a 5-hole golf course extension to an existing golf course. The planning permission specified that no development should commence until the ground level alterations were approved by them. These plans were submitted and approved in February 1998 and is shown on Appendix B of the WRP. The works were not completed and subsequently the council has issued two warnings to the operator that details if the works are not completed, then the LPA would take enforcement action against them. Further evidence from Appendix I shows that in an appeal, the LPA stated “there were still works required to deliver on the planning permission for the new golf holes” that evidences

there is still material that must be imported onto the site.

The applicant argues that this creates a specific obligation to do the works as if the works were not completed, the operator would be liable to enforcement action against them by the LPA.

However, we are not minded to agree that the reliance on enforcement from the LPA provides an obligation to do the works. The fundamental issue still remains that the planning permission alone is not a mandatory requirement as it allows something to be done; it does not require it to be done. The WRP argues that due to the enforcement by the LPA however, this creates an obligation for the works to be done, in spite of fundamental reasoning detailed above.

In a previous appeal against the EA, the Planning Inspectorate states:

"*I am not of the view that it is appropriate to rely on the planning system, a separate regime, to ensure that the proposal is one of recovery and remains so. I do not consider that the LPA can be relied upon to take enforcement action if it was necessary, despite their interest in the site to date.*" as well as "*I also accept the EA's view that enforcement action might not be taken if any breach was minor or had limited environmental harm*".

By granting this specific obligation as meeting the definition of recovery, it would create a precedent that future applicants could use to heavily rely on the enforcement of the LPA, a separate regime that the EA would not be in control of and creating an unduly pressure on the LPA that should be the responsibility of the EA.

Further explanation is elaborated within the accompanying advice letter.

Is the material suitable for its intended use?
Has the applicant listed the waste types that they intend to use with an appropriate EWC code and description?
The waste types must be physically, chemically and biologically suitable for the works they are proposing (see Appendix 2).
As shown in section 3.3, the waste types proposed are of the Standard Rules 2015 No. 39. Please note that further assessment of the proposed waste types based on the sensitivity of the site location is carried out as part of the permit determination. 'Recovery vs. Disposal' assessment considers what waste types *may* be suitable, not what waste types *will* be deemed suitable following technical assessment.

What is the purpose of the works?
Has the applicant clearly described the function of their proposed scheme and shown that they are carrying it out to meet a genuine need?

They must explain the need or driver for this function and provide evidence to demonstrate that the function will be delivered by the proposed works, and the extent of the resultant benefits.

As stated in section 4.3, the purpose of the work is to import suitable inert material to develop the 5-hole golf course as an extension of an existing golf course. It is necessary to deliver that function as the LPA has deemed enforcement would be appropriate if the operator were not to reach the final ground levels.

Is the minimum amount of waste being used to deliver the function?

Has the applicant confirmed, and provided justification with evidence, that they only intend to use the minimum amount of waste necessary to carry out the intended function that would otherwise be provided by non-waste? Have they considered alternative proposals that could use a smaller amount of waste to achieve the same function?

They must include the quantity of waste they intend to use in volume (m^3) and tonnage and detail how they have calculated that figure, plus provide plans and cross-sections showing original and planned final levels.

It is intended to import 39,600m3 (amended to 22,000m3 at a conversion rate of 1.7 tonnes/m3) of inert waste soils as evidenced with the cross-sections that relate to the original planned drawings within the planning permission. This can be seen in the following Drawings within the WRP:

- NPH/B028534/PER/01 - Permit Boundary
- NPH/B028534/RES/01 – Approved Design compared with Original Planning
- NPH/B028534/LSC/03 – Proposed Design of Final Surface
- NPH/B028534/SEC/01 – Section Lines through site

However, it is still unclear if this waste is the amount required. In an email addressed to the consultant from the local planning authority it states that “Finally I can see no justification to import material to improve the proposed golf course over and above that which has permission given the amount of material that has already been imported without permission. Further improvements could be created using the material already imported”.

This may indicate that less waste could be used or that all waste already on site could be used.

Paul Jackson (LPA) has provided a response for the agreement of the imported waste material and it is clear there is a disagreement between the Operator and the LPA over the volume of waste required for completion.

In Section 3.2.1 of the WRP, it is stated that: “*As can be seen all the levels on the planning permission plan have been down by approximately 6m to match the requirements of the inspector’s decision, issued on 13 January 2020.”* This agreement was for 5.92m as shown in paragraph 29 of the Inspectors appeal decision (Ref: APP/C1760/C/19/3220542).

If the approximate of 6m were to be used, an increase of 0.8m across the entire site would not demonstrate that the minimum amount of waste were to be used. This was later clarified by the applicant that the 5.92m originally agreed was being used.

In Section 3.2.4 of the WRP, it states that “ *The tees and greens have been joined with a 10 metre wide fairway which is a 5m strip either side of the line shown on the original planning*

drawing. These fairways have then married into the existing surface at a gentle slope (less than 15% as per the planning requirement)".

The interpretation of this is that material is being imported to create 10m wide fairways, which is what is shown on drawing NPH/B028534/LSC/03. This is not in accordance which the approved planning application drawing (Ref: 97063B) which shows no level changes to create the fairways. Paul Jackson also does not agree with the fairway as an additional.

This also demonstrates that the minimum amount of waste is not being used.

The overall approach leads to confusion and disagreement over the minimum amount of waste that is required.

Further explanation is elaborated within the accompanying advice letter.

Will the proposal meet a quality standard?

Has the applicant demonstrated how the scheme will be designed and constructed to be fit for purpose?

They must describe the construction methods and/or standards that will be followed to ensure that the **proposed operation will be finished to an appropriate standard, so that the function will be delivered**

The proposed waste types to be imported are physically similar to the likely primary aggregate non-waste material which would be used – soils, sand, stone or gravel and the operator considers them direct replacements, being suitable and capable of being sufficiently compacted to form a stable landform for the medium and long term use.

Strict waste acceptance procedures will form part of the permit's operating techniques, which will screen all materials entering the site to minimise and prevent prohibited materials from being accepted. Any unsuitable material will be removed from the site.

The proposed scheme has been designed to satisfy the requirements of the planning permission. The greens will be developed in accordance with the internationally recognised USGA Greens standard, requiring all greens are constructed using gravel raft (150mm depth) with a blinding layer (50mm depth) and 300mm of root zone (80% sand and 20% organic matter). However, the letter further justifies what else we would require should this standard be used.

Additional comments

ADVICE: NOT YET SATISFIED TO AGREE RECOVERY

We do not agree with the assessment that this operation is a recovery activity. Not enough evidence has been provided to support the case that the proposed activity is a recovery operation and therefore we cannot confirm that this is a recovery operation.

Appendix 1

Supporting evidence

- **Waste Recovery Plan (Reference: 784-B028534 April 2021)**

Appendices

- **Appendix A – Planning Permission TVN.6179/8 (25/11/1997)**
- **Appendix B – Discharge of Condition 6 of Permission TVN.6179/8 (28/02/1998)**
- **Appendix C – Obligation letter (05/03/1998)**
- **Appendix D – Obligation letter (12/12/2011)**
- **Appendix E – Previous RvD advice form, approving recovery**
- **Appendix F – Excerpt of Inspector's decision notice**
- **Appendix G – WYG's (now Tetra Tech) email to Ms. Stockton of the EA**
- **Appendix H – Ms. Stockton's email to Nelson's / WYG (now Tetra Tech)**
- **Appendix I – TVBC Enforcement Correspondence to Nelson's**
- **Appendix J – EA emails from Emma Bellamy**
- **Appendix K – Appeal**

Drawings

- **NPH/B028534/PER/01 - Permit Boundary**

- **NPH/B028534/RES/01 – Approved Design compared with Original Planning**
- **NPH/B028534/LSC/03 – Proposed Design of Final Surface**
- **NPH/B028534/SEC/01 – Section Lines through site**

Appendix 2

Waste types to be deposited

Waste code	Description	Typical uses and criteria (see key)
01	WASTES RESULTING FROM EXPLORATION, MINING, QUARRYING, AND PHYSICAL AND CHEMICAL TREATMENT OF MINERALS	
01 01	wastes from mineral excavation	
01 01 02	wastes from non metalliferous excavation	A, B, E, F
01 04	wastes from physical and chemical processing of non-metalliferous minerals	
01 04 08	waste gravel and crushed rocks other than those containing dangerous substances	A, B , E, F
01 04 09	waste sand and clays	A, B, E, F
02	WASTES FROM AGRICULTURE, HORTICULTURE, AQUACULTURE, FORESTRY, HUNTING AND FISHING, FOOD PREPARATION AND PROCESSING	
02 04	wastes from sugar processing	
02 04 01	soil from cleaning and washing beet	B, E, F
10	WASTES FROM THERMAL PROCESSES	
10 12	wastes from manufacture of ceramic goods, bricks, tiles and construction products	
10 12 08	waste ceramics, bricks, tiles and construction products (after thermal processing)	A, B, D
10 13	wastes from manufacture of cement, lime and plaster and articles and products made from them	
10 13 14	waste concrete and concrete sludge	A
17	CONSTRUCTION AND DEMOLITION WASTES (INCLUDING EXCAVATED SOIL FROM CONTAMINATED SITES)	
17 01	concrete, bricks, tiles and ceramics	
17 01 01	concrete	A, B, D
17 01 02	bricks	A, B, D
17 01 03	tiles and ceramics	A, B, D
17 01 07	mixtures of concrete, bricks, tiles and ceramics	A, B, D
17 05	soil (including excavated soil from contaminated sites), stones and dredging spoil	

Waste code	Description	Typical uses and criteria (see key)
17 05 04	soil and stones	A, B, E, F [3]
19	WASTES FROM WASTE MANAGEMENT FACILITIES, OFF-SITE WASTE WATER TREATMENT PLANTS AND THE PREPARATION OF WATER INTENDED FOR HUMAN CONSUMPTION AND WATER FOR INDUSTRIAL USE	
19 12	wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) not otherwise specified	
19 12 09	minerals (for example sand, stones) from the treatment of waste aggregates that are otherwise naturally occurring minerals - excludes fines from treatment of any non-hazardous waste or gypsum from recovered plasterboard.	A, B [7]
19 12 12	soil substitutes other than that containing dangerous substances only	E, F [9]
20	MUNICIPAL WASTES (HOUSEHOLD WASTE AND SIMILAR COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL WASTES) INCLUDING SEPARATELY COLLECTED FRACTIONS	
20 02	garden and park wastes (including cemetery waste)	
20 02 02	soil and stones	A, B, E, F

Key to table codes

A. Structural fill for building, stabilising ramps, drainage, road construction.

B. Construction of noise bunds, screening bunds, flood defence bunds, containment bunds, golf courses. Landscaping associated with construction work. Restoration of mineral workings. General fill material.

C. Surface treatment of roads, tracks etc. Drainage.

D. Road/track construction and repair, hard surfacing, car parks etc.

E. Agricultural improvement schemes.

F. Ecological improvements, wetland schemes, lakes

1. Only shellfish shells from which the soft tissue or flesh has been removed.

2. The PFA/FBA/IBA must meet the relevant civil engineering standards for use.

3. If non inert, or where there may be contamination, you must sample and analyse the waste. You may need to carry out an environmental risk assessment to determine if material is suitable for locations where groundwater and/or surface waters could be affected. The Environment Agency will consider this when determining your permit application.

4. Bituminous road planings must not be deposited more than 2 metres deep.

5. Track ballast must be free from significant oil contamination.

6. You must remove water from dredgings before you can use them.

7. Excluding residual 'fines' from mechanical treatment of mixed waste at transfer stations.

8. You must characterise your waste against Environment Agency guidance WM3 to confirm that it is not hazardous waste. The Environment Agency will consider any risks this waste poses when determining your permit application.

9. TGN EPR 8.01 ‘How to comply with your landspreading permit’ provides guidance on the meaning of soil substitutes.