Daneshill Landfill Site

APPEAL PURSUANT TO REGULATION 31 OF THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2016

REGARDING DANESHILL SOIL TREATMENT FACILITY AT DANESHILL LANDFILL SITE

GROUNDS OF APPEAL IN RESPONSE TO REGULATOR INITIATED VARIATION OF THE ENVIRONMENTAL PERMIT FOR DANESHILL LANDFILL SITE ISSUED 29 SEPTEMBER 2023

PERMIT REFERENCE: EPR/NP3538MF/V010

ON BEHALF OF FCC RECYCLING (UK) LIMITED

Grounds of Appeal

1. INTRODUCTION

1.1. Freeths LLP is instructed to act on behalf of FCC Recycling (UK) Limited ("the Appellant"), in relation to an appeal pursuant to Regulation 31 of The Environmental Permitting (England and Wales) Regulations 2016 ("the Regulations").

1.2. The Appellant is appealing conditions imposed by the Regulator Initiated Variation of the Environmental Permit for Daneshill Landfill Site ("the Site"), issued on 29 September 2023, under reference EPR/NP3538MF/V010 (referred to hereafter as "the September 2023 EP").

1.3. Full details of the conditions which this appeal seeks to challenge will be set out below. In summary, the Appellant seeks to challenge the conditions imposed by the EA on the September 2023 EP which require all activities at the Soil Treatment Facility ("STF") which relate to asbestos contaminated materials ("ACMs") to: i) be undertaken inside a building; and ii) require the mechanical screener to be 'fully enclosed'.

1.4. The Appellant has already appealed the Environment Agency's ("the EA") refusal of its application to vary environment permit reference EPR/NP3538MF/V009 ("the EP") to allow for the treatment of ACMs at Daneshill Landfill ("the Site"). The Appellant's appeal of the EP (reference: APP/EPR/636) was validly made and is proceeding by way of Public Inquiry, with an indicative start date for the Public Inquiry of 18 March 2024 ("the Extant Appeal").

1.5. The Appellant respectfully requests that its appeal of the September 2023 EP is conjoined with the Extant Appeal, with the timetable for the Extant Appeal being retained once the appeals are conjoined. The issues raised by the Extant Appeal are substantially the same as those raised by the appeal of the September 2023 EP. Accordingly, conjoining the appeals will ensure that a consistent approach is taken to

both cases and that the appeals are dealt with fairly and efficiently, avoiding any further delays and minimising costs for all parties as far as possible.

1.6. Unless otherwise stated, the definitions used in this document are consistent with those used in the Appellant's submissions for the Extant Appeal.

2. PROCEDURAL BACKGROUND

2.1. Following the submission of the Extant Appeal, the EA gave notice by letter dated 1 August 2023 (addressed to the Appellant's registered office) that it intended to proceed with a regulator-initiated variation of the EP ("the EA's August Letter"). The EA's August Letter enclosed a copy of the draft permit which the EA intended to make.

2.2. The Appellant's agent, upon being notified by the Appellant of the EA's proposed variation, wrote to the Planning Inspectorate by email dated 8 September 2023 to make clear that the proposed variation would not resolve the issues in the Extant Appeal. That position has not changed.

2.3. The Appellant replied directly to the EA's August Letter (outside of the appeal process for the Extant Appeal) by letter dated 15 August 2023 ("FCC's August Letter") to raise administrative errors in the draft permit.

2.4. No further correspondence from the EA was received by the Appellant until the 29 September 2023, when the EA issued the September 2023 EP under cover letter addressed directly to the Site's Compliance Manager.

2.5. The Decision Document ("the DD") which relates to the September 2023 EP confirms that the EA did not undertake public consultation in respect of its decision to issue a regulator initiated variation of the EP. Instead, the DD states that EA, "considered the previous public consultation comments under EPR/NP353MF/V009". The Appellant considers that the EA issued the September EP 2023 in breach of the requirements set out in the Regulations. This appeal is made on a protective basis and the Appellant reserves the right to take separate legal action in respect of the EA's failings.

2.6. The DD references the Appellant's proposals for treatment of ACMs to which the Extant Appeal relates and states:

2.6.1. “The mechanical screening process proposed by the operator may agitate the asbestos containing waste and result in the generation of asbestos fibres. We consider that to carry out this process effectively without endangering human health or without harming the environment, the screener must be fully enclosed and the air within the enclosure (potentially contaminated with asbestos fibres) must be treated via an abatement system prior to release. It is also a requirement of the Agency’s Chemical Waste appropriate measures guidance (Nov 2020) to minimise fugitive emissions to air. Treatment of the air to remove particulates and asbestos fibres is typically done using filtration. High Efficiency Particulate Air (“HEPA”) filters are a commonly available technique to control asbestos fibre emissions and are used at other sites as part of Best Available Techniques (“BAT”) for emissions control. We have therefore included a pre-operational condition on the screening operations (PO7 in table S1.4) for the operator to demonstrate they have fully enclosed the mechanical screener and that all air is being suitably treated prior to operation of the screener.”

2.6.2. “In addition, we have included an improvement condition (IC12 in table S1.3). This requires the operator to provide a report on the monitoring undertaken as part of the sampling of incoming waste and the separated waste streams, from the operation of the asbestos screening process over the first 4 months of operation. The intention is to require the operator to demonstrate that:

- The mechanical screening process is working as intended in separating the bonded asbestos waste fraction in the hand-pickable stream;
- The asbestos screening itself is not creating additional asbestos fibre contamination, and
- The residual waste streams are suitably low in asbestos contamination to allow reuse without endangering human health or without harming the environment.”

"We have also included a restriction in the permit table S1.1 such that soils impacted with asbestos are stored inside a building in a way that minimises emissions (such as using water sprays to dampen waste and sheeting of stockpiles) to prevent fugitive emissions".

2.7. The DD has the effect that the EA's case in defending the Extant Appeal is, in effect, conceded in respect of the following:

2.7.1. Handpicking Station:

2.7.1.1. The Appellant's proposed use of a handpicking station 'as originally applied for' as part of the Proposed Activity is now considered by the EA to be in accordance with BAT.

2.7.1.2. The DD states: "the operator's ***original proposals***[1] for handpicking included an enclosed picking station where operatives in personal protective equipment handpick bonded asbestos fragments from the segregated soil fraction described above. Spray rails for damping down will be used on the input conveyors to the picking station to suppress dust and asbestos fibres. This process is considered to meet the Agency's appropriate measures".[2]

2.7.1.3. It should be noted that this is inconsistent with the wording included in the September 2023 EP at table S1 .1, AR3A, page 19 which states, "…handpicking shall take place in a building…". The Appellant's application did not propose the handpicking station being located within a building. The EA has accepted in the DD that the Appellant's original proposal is compliance with BAT and accordingly the further requirement for the Handpicking Station to be located within the building is demonstrably unreasonable.

[1] For clarification, it should be noted that the application as originally submitted did propose an enclosed handpicking station. However, the proposal for spray rails on the input conveyors were proposed by the Appellant during the application process but not incorporated into the submission documents, due to the absence of engagement from the EA on this point, reflecting the EA's previous position that the Proposed Activity was to be refused entirely. The Appellant will seek permission for via this appeal and are wholly consistent with the details which the EA has accepted are compliant with BAT in the DD.
[2] emphasis added

2.7.2. Treatment of hand-picked asbestos fragments:

2.7.2.1. The EA now accepts that the details provided in the Appellant's original proposal for this element of the Proposed Activity is acceptable and compliant with BAT. The DD states: "The handpicked bonded asbestos fragments are then double bagged and transferred to sealed, lockable containers (generally a skip) for onward disposal to landfill. This is in accordance with the Agency's appropriate measures for handling asbestos waste for transfer and disposal".

2.7.3. Proposed Plan:

2.7.3.1. The EA now concedes that the plan submitted for the proposed activity, as per the Appellant's original application, is acceptable and has been incorporated into the September 2023 EP[3].

2.7.4. Waste acceptance procedures for ACMs:

2.7.4.1. The EA now concedes that the Appellant's pre-acceptance and acceptance confirmation processes for ACM's are acceptable and constitute BAT[4].

2.7.5. Emission Level Values ("ELV's"):

2.7.5.1. The EA now accepts that ELV's can be set in respect of activities that may result in the release of asbestos fibres. The DD states that the relevant ELV for asbestos is: "asbestos fibres = 0.1 f/ml (Environment Agency requirement)" and that this ELV has been applied to the September 2023 EP, "in accordance with Chemical Waste Appropriate Measures and the Waste Treatment Best Available Techniques Conclusions"[5];Accordingly, the EA concedes its case as submitted to the Extant Appeal that, "There can be no emissions of asbestos fibre into the environment"[6].

[3] see page 4 of the DD.
[4] see table S1 .2, page 24 of the September 2023 EP.
[5] all see page 6 of the DD.
[6] as pleaded in the EA's Rule 6 Statement to the Extant Appeal, see for example paragraph 117.

2.8. The Appellant reserves the right to rely upon these concessions as part of its case for its appeal against the September 2023 EP and the Extant Appeal including, but not limited to, the issue of costs.

2.9. The DD further states in respect of monitoring: "Based on the information in the application we are not fully satisfied that the operator's techniques, personnel and equipment have either Monitoring Certification Scheme ("MCERTS") certification or MCERTS accreditation as appropriate. We have applied with requirements and expect the operator to meet MCERTS standards as appropriate."[7]

2.10. The Appellant is unable to understand the EA's comments in the DD regarding MCERTs certification and/or accreditation which is a vague and generalised assertion, unsupported by any evidence. During the appeal process, the Appellant will expect the EA to set out its case on this issue clearly and with specificity. For the avoidance of doubt, the Appellant accepts that monitoring of ambient air emissions in respect of ACM related activities will be carried out in accordance with M17 monitoring guidance.[8]

3. CONDITIONS UNDER APPEAL

3.1. The Appellant appeals the imposition of the following conditions on the September 2023 EP in so far as they relate to ACM related activities at the STF:

3.1.1. The following conditions, as amended, as per Schedule 1 of the September 2023 EP:

3.1.1.1. 3.1.6, 3.5.1, Table S1.1 (AR3A and AR4), Table S1.3 (IC12), Table S1.4 (PO7), Table S3.2, Table S4.1, Table S4.4; and

3.1.2. The following conditions which have been added, as per Schedule 1 of the September 2023 EP:

3.1.2.1. Table S2.8, Table S3.11A.

[7] Page 6 of the DD.
[8] As referred to in Table S3.11A of the September 2023 EP

3.2. In summary, the Appellant will contend that:

3.2.1. the EA's requirement for all ACM related activity at the STF to be located within a building:

3.2.1.1. is unjustified and not supported by a risk-based approach, having regard to the best available evidence;

3.2.1.2. would result in an outcome which would be contrary to the achievement of the waste hierarchy;

3.2.1.3. does not constitute BAT;

3.2.1.4. will result in worse overall environmental outcomes and therefore is in conflict with the IED;

3.2.1.5. will render the Appellant unable to undertake the proposed ACM related activities, resulting in additional hazardous waste being sent to landfill.

3.2.2. in addition, the EA's requirement that the proposed mechanical screener be 'fully enclosed' (the Appellant understands that enclosure of the screener within a building would be insufficient to fulfil the EA's requirement) with all emissions being captured and directed to a HEPA filter:

3.2.2.1. does not represent BAT:

3.2.2.1.1 it is entirely impracticable; there are no 'fully enclosed' screeners available on the market; fully enclosing a screener is 'not available' and therefore cannot constitute BAT. The EA's assertion in the DD that HEPA filters are 'commonly available' and 'used at other sites'

is disputed with specific reference to the screener

3.2.2.1.2 even if it were possible, the additional costs associated with the screener being 'fully enclosed' would be outweighed by the limited benefits which could, theoretically, be obtained by 'full enclosure'; and

3.2.2.1.3 will result in worse overall environmental outcomes by effectively precluding the Appellant's ability to treat ACMs using the screener and would therefore be in conflict with the IED.

4. BACKGROUND AND SUMMARY OF PROPOSED ACTIVITY

4.1. The background to the Appellant's proposed activity regarding the treatment of ACMs at the Site's STF is set out at Section 4 of the Grounds of Appeal for the Extant Appeal. The details provided therein will not be repeated here, so as to avoid unnecessary duplication.

4.2. It is however useful to emphasise the following:

4.2.1. Landfilling at the Site has ceased and the landfill is therefore in the final restoration phase;

4.2.2. The purpose of the STF is to reclaim soils for use in the restoration of the landfill;

4.2.3. Once the landfill has been restored, the STF will become defunct;

4.2.4. If ACMs are permitted for treatment at the STF (without the imposition of the conditions under appeal) it is expected that the landfill at the Site will be fully restored within a 10 year period;

4.2.5. The life of the STF is therefore directly related to the time required to restore the landfill at the Site.

5. RELEVANT LEGAL PRINCIPLES

5.1. An overview of the relevant legal principles and guidance, so far as is relevant to the Appeal, is set out below.

5.2. The Appellant reserves the right to add or amend to its case by way of legal submissions and refer to any other statutory provisions, case law, and regulatory guidance as may be relevant to the Appeal.

5.3. The Appellant further reserves the right to respond to any matters of law and/or guidance raised by the EA, once the Appellant has had sight of the EA's case.

Legislation

5.4. EU Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) ("the IED"): "lays down rules on integrated prevention and control of pollution arising from industrial emissions"…"It also lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment taken as a whole."[9]

5.5. The effect of Articles 10 and 11 of the IED is that "installations"[10] which involve the recovery of hazardous waste by physico-chemical treatment and have a capacity exceeding 10 tonnes per day are required to apply "the best available techniques" hereinafter referred to as "BAT".

5.6. In addition to the application of BAT, Article 11 further requires that installations must be operated (so far as is relevant) "in accordance with the following principles":

5.6.1. All appropriate preventative measures are taken against pollution;

5.6.2. No significant pollution is caused;

5.6.3. The generation of waste is prevented in accordance with Directive 2008/98/EC[11];

[9] Article 1 of the WID.
[10] Defined as a "stationary technical unit".
[11] As amended

5.6.4. Where waste is generated it is in order of priority and in accordance with Directive 2008/98/EC[12], prepared for re-use, recycled, recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment;

5.6.5. The necessary measures are taken to prevents accidents and limit their consequences.

5.7. BAT is defined in the IED and means:

> "the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:
>
> (a) 'techniques' includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;
>
> (b) 'available techniques' means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator;
>
> (c) 'best' means most effective in achieving a high general level of protection of the environment as a whole;"

5.8. In granting a permit for an installation to which the IED applies, Article 14 requires:

[12] As amended

"…that the permit includes all measures necessary for compliance with the requirements of Articles 11 and 18.

Those measures shall include at least the following:

(a) emission limit values for polluting substances listed in Annex II, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another;"

5.9. Annex II of the IED includes asbestos (suspended particles, fibres) within the 'list' of polluting substances.

5.10. Annex III of the IED sets out criteria for use by Members States for determining BAT and specifically includes:

5.10.1. "the furthering of recovering and recycling of substances generated and used in the process and of waste, where appropriate";
5.10.2. "the nature, effects and volume of the emissions concerned";
5.10.3. "the need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it".

5.11. Article 13 of the IED makes provision for harmonised decisions on BAT for certain activities by way of BAT reference documents and for Decisions on BAT conclusions to be issued.

5.12. The BREF for Waste Treatment[13] ("the BREF") does not specifically deal with BAT for the removal of asbestos from contaminated soils for the purpose of recovering those soils for further use. Alongside, the BAT conclusion for waste treatment[14] ("the BAT Conclusion"), the BREF sets out 20 'General BAT Conclusions' including techniques

[13] Best Available Techniques (BAT) Reference Document for Waste Treatment 2018
[14] Commission Implementing Decision (EU) 2018/1147 dated 10 August 2018

to be adopted for ensuring 'overall environmental performance' and managing 'diffuse emissions to air'.

5.13. In particular, it should be noted that the BREF and the BAT Conclusions prescribe requirements for management and operational procedures as part of BAT, such as waste acceptance protocols, implementation of Environmental Management Systems, waste stream management and accident management plans.

5.14. BAT 14 (of the BREF and the BAT Conclusion) relates specifically to diffuse emissions to air and states that:

"In order to prevent or, where that is not practicable, to reduce diffuse emissions to air, in particular of dust, organic compounds and odour, BAT is to use an appropriate combination of techniques given below. Depending on the risk posed by the waste in terms of diffuse emissions to air, BAT 14d is especially relevant".

5.15. In so far as is relevant, BAT 14 "includes" the following techniques:

5.15.1. BAT14 (a) – minimising the number of potential diffuse emission sources; "this *includes* techniques such as: limiting the drop height of material; limiting traffic speed; using wind barriers;

5.15.2. BAT 14 (d) – containment, collection and treatment of diffuse emissions; "this *includes* techniques *such as*: storing, treating and handling waste and material that may generate diffuse emissions in enclosed buildings and/or enclosed equipment e.g. conveyor belts"; collecting and directing the emissions to an appropriate abatement system via an air extraction system;

5.15.3. BAT 14 (e) – "*dampening potential sources of diffuse dust emissions* (e.g. waste storage, traffic areas, *and open handling processes*) with water or fog".[15]

The Environmental Permitting (England and Wales) Regulations 2016 ("the EP Regs")

[15] All emphasis added.

5.16. The EP Regs implement the IED into English law and have the effect, through the operation of Part 1 of Schedule 1 and Schedule 7 of requiring BAT to be applied for the grant of any environmental permit for an installation undertaking physico-chemical treatment of hazardous waste exceeding 10 tonnes per day (a Part A(1) activity).

5.17. Schedule 7 (5) in particular requires the regulator to exercise its relevant functions so as to ensure compliance with the key provisions of the IED, including Article 11.

The Waste (England and Wales) Regulations 2011

5.18 The proposed activity complies with each of these aspects of the IED which is implemented in England through the EPR.

5.19 The Waste (England and Wales) Regulations 2011 implements the Waste Framework Directive in England. Regulation 12 requires the implementation of the waste hierarchy and states that:

'12. (1) An establishment or undertaking which imports, produces, collects, transports, recovers or disposes of waste, or which as a dealer or broker has control of waste must, on the transfer of waste, take all such measures available to it as are reasonable in the circumstances to apply the following waste hierarchy as a priority order—
(a)prevention;
(b)preparing for re-use;
(c)recycling;
(d)other recovery (for example energy recovery);
(e)disposal.

(2) But an establishment or undertaking may depart from the priority order in paragraph (1) so as to achieve the best overall environmental outcome where this is justified by life-cycle thinking on the overall impacts of the generation and management of the waste.

(3) When considering the overall impacts mentioned in paragraph (2), the following considerations must be taken into account—

(a)the general environmental protection principles of precaution and sustainability;
(b)technical feasibility and economic viability;
(c)protection of resources;
(d)the overall environmental, human health, economic and social impacts.'

The Hazardous Waste (England and Wales) Regulations 2005

5.20 The Hazardous Waste (England and Wales) Regulations 2005 includes a duty for the separation of hazardous wastes. Regulation 20 states that:

'20. (1) This regulation applies to the holder where—

(a)the hazardous waste has been mixed other than under and in accordance with a waste permit or a registered exemption, whether by the holder or a previous holder; and
(b)separation is both—
(i)technically and economically feasible; and
(ii)necessary in order to comply with the Waste Directive conditions.

(2) The holder must make arrangements for separation of the waste to be carried out in accordance with a waste permit or registered exemption as soon as reasonably practicable.

(3) In this Regulation "separation" means separation of a waste from any other waste, substance or material with which it has been mixed.'

The Environment Act 1995

5.21 The Environment Act 1995 ("the EA 1995") established and sets out the duties of the EA; the following provisions are particularly relevant:

"Chapter 1 Section 4.— Principal aim and objectives of the Agency.
(1) It shall be the principal aim of the Agency (subject to and in accordance with the provisions of this Act or any other enactment and taking into account any likely costs) in discharging its functions so to protect or enhance the environment, taken as a

whole, as to make the contribution towards attaining the objective of achieving sustainable development mentioned in subsection (3) below;

Chapter 1A Section 5.— General functions with respect to pollution control.
(1) [An appropriate agency's] pollution control powers shall be exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.
(4) [An appropriate agency] shall follow developments in technology and techniques for preventing or minimising, or remedying or mitigating the effects or, pollution of the environment."

The Control of Asbestos Regulations 2012 ("the Asbestos Regulations")[16]

5.22 Regulation 11(1) of the Asbestos Regulations provides that:

"(a) Every employer must prevent the exposure to asbestos of any employee employed by that employer so far as is reasonably practicable; (b) where it is not reasonably practicable to prevent such exposure: (i) take the measures necessary to reduce exposure to asbestos of any such employee to the lowest level reasonably practicable by measures other than the use of respiratory protective equipment…"

5.23 Regulation 16 of the Asbestos Regulations provides that:

"Every employer must prevent or, where this is not reasonably practicable, reduce to the lowest level reasonably practicable the spread of asbestos from any place where work under the employer's control is carried out."

Relevant Guidance

Guidance for Regulated Facilities with and Environmental Permit to Treat or Transfer Chemical Waste ("the Appropriate Measures Guidance")[17]

[16] SI 2012/632
[17] Published by the EA on 18 November 2020: Chemical waste: appropriate measures for permitted facilities - Guidance - GOV.UK (www.gov.uk)

5.24 Reference will be made to the Appropriate Measures Guidance and the Appellant's expert evidence will demonstrate that the Proposed Activity is compliant with the same.

5.25 In respect of the Extant Appeal, the Appellant will continue to make reference to and rely upon the absence of any reference to the Appropriate Measures Guidance by the EA in the determination process of the Application and/or in the DN. The Appellant notes that although the Appropriate Measures Guidance is referred to by the DD, the EA do not provide references for the specific provisions it seeks to rely upon in support for its decision to issue the September 2023 EP subject to unjustified and unreasonable conditions relating to the Proposed Activity.

Sector Guidance EPR S5.06 – Guidance for the recovery and disposal of hazardous and non-hazardous waste ("the Guidance")

5.26 The EA has not issued specific guidance regarding BAT for the treatment of asbestos contaminated soils.

5.27 In the DN for the Extant Appeal, reference is made by the EA[18] to the Guidance notwithstanding that it has been superseded by the BREF and BAT Conclusion.

5.28 Section 2 of the Guidance sets out 'Techniques for Pollution Control including 'summarised' indicative BAT requirements. It highlights that:

"*The indicative BAT requirements may not always be absolutely relevant or applicable to an individual installation, when taking into account site-specific factors, but will always provide a benchmark against which individual Applications can be assessed*"[19].

5.29 Given the status of the Guidance, the Appellant reserves its position to respond to any submission the EA makes with respect to the same.

WHO Air Quality Guidelines for Europe (dated 2000) ("the WHO Guidelines")

[18] See reference to the Guidance by the EA in the DN for the Extant Appeal.
[19] See page 19 of the Guidance

5.32 The WHO Guidelines, which are now over 20 years old, provide the following guidance on asbestos levels stating:

"*Asbestos is a proven human carcinogen (IARC Group 1). No safe level can be proposed for asbestos because a threshold is not known to exist. Exposure should therefore be kept as low as possible.*

Several authors and working groups have produced estimates indicating that, with a lifetime exposure to 1000 F/m3 (0.0005 F/ml*[20] *or 500 F*/m3, optically measured) in a population of whom 30% are smokers, the excess risk due to lung cancer would be in the order of* 10^{-6}*–*10^{-5}*. For the same lifetime exposure, the mesothelioma risk for the general population would be in the range 10–5–10–4. These ranges are proposed with a view to providing adequate health protection, but their validity is difficult to judge. An attempt to calculate a "best" estimate for the lung cancer and mesothelioma risk is described above*."[21]

SoBRA Asbestos in Soil Human Health Risk Assessment (AiSHHRA) Toolbox, December 2021 ("the SoBRA Toolbox")

5.33 The SoBRA Toolbox was developed to aid the consistency and robustness of asbestos in soil risk assessments. It sets out a number of potential assessment tools which can be utilised to determine the level of risk exposure caused by a particular activity.

SoBRA Discussion Paper

5.34 SoBRA also published a Discussion Paper on Guidelines for Airborne Concentrations of Asbestos Fibres in Ambient Air: Implications for Quantitative Risk Assessment, dated January 2021 ("the Discussion Paper"), with the aim of documenting, "the results of research and evaluation undertaken over the past year on air quality thresholds for asbestos in ambient air". The Discussion Paper identifies an absence

[20] fibre concentrations based on optical microscopy are marked F*/m^3. If concentrations measured by Phase Contrast Optical Microscopy (PCM) are to be compared with environmental fibre concentrations measured by a scanning electron microscope (SEM), a conversion factor has to be used: 2 F/m^3 = 1 F*/m^3.
[21] See page 133 of the Guidance

of clear regulatory policy and technical guidance in the UK with regard to environmental thresholds for airborne asbestos fibres, unlike in some other countries, and it presents evidence for differentiating between chrysotile and amphiboles when considering the risk from exposure to asbestos fibres. It is evident from the Discussion Paper that the risk from chrysotile fibres is likely to be over-estimated by some published thresholds that do not distinguish between asbestos type. Related SoBRA guidance, and the Joint Industry Working Group's Decision Support Tools that were published to support the CL:AIRE Guidance, also point to a lower risk of airborne respirable fibres from bound cement asbestos products compared to more friable products.

5.35 The Discussion Paper concludes that:

"It is recommended that the linear version of the H&D model for pleural mesothelioma is used to estimate risk and calculate air guideline values in conjunction with the non-linear variants for peritoneal mesothelioma and lung cancer. SoBRA has developed an excel-based tool to implement both the non-linear and linear versions of the H&D model. This model is provided free to use via the SoBRA website.

It is evident from the assessment presented in this paper that there is a clear requirement for further research into background air concentrations in the UK. This is needed to be able to benchmark the practicability of proposed air guidelines. It is also evident that a step change in air monitoring practice is required; with a move away from the use of occupational monitoring techniques that typically report to 10000f/m^3 (0.01f/ml) and use non-fibre-discriminatory PCM analysis to methods capable of measuring down to at least 10f/m^3 using fibre-discriminatory SEM or Transmission Electron Microscopy (TEM) analysis (as advocated by the authors of CIRIA C733)."

<u>Asbestos in Soil – A Pan European Perspective; NICOLE 2021 ("the NICOLE Report")</u>

5.36 The purpose of the NICOLE Report is to provide an overview of best practice in the industry and examine some of existing clear standards and detailed guidance that exist in European countries regarding risks arising from asbestos in soil.

5.37 Case studies are provided within the NICOLE Report, in particular, it is noted that one such case study dealt with the demolition of remediation of a 44 acre foundry/iron

works site in Ipswich[22]. Asbestos contaminated soil was fed into a three-way screener. The oversize material was proven to be suitable for reuse on site. The mid-size fraction was further processed via a handpicking station. Throughout the works, air was monitored to demonstrate control measures were suitable, allowing 65,000 tonnes of asbestos contaminated soil to be reclaimed, as opposed to disposed of in a hazardous landfill.

Control of Asbestos Regulations 2012 - Interpretation for Managing and Working with Asbestos in Soil and Construction and Demolition Materials: Industry guidance ("the CL:AIRE Guidance")[23]

5.38 The CL:AIRE Guidance was prepared by the Joint Industry Working Group ("JIWG") on Asbestos in Soil and Construction & Demolition (C&D) Materials, supported by the Health and Safety Executive ("HSE"). The CL:AIRE Guidance is aimed at securing improvements within the brownfield and contaminated land industry.

5.39 The CL:AIRE Guidance, "contains industry-produced practitioners guidance"[24] to help employers comply with the Asbestos Regulations when undertaking work on soil and C&D materials that may be or are contaminated with asbestos. The CL:AIRE Guidance states that, "The primary aim of this guidance is to provide clarity about working with asbestos-contaminated soil and C&D materials. It outlines the steps that should be taken by clients, employers and others in the geoenvironmental management and construction sectors that have a duty to ensure that workers and others are not exposed to asbestos as a result of work in, on or with such materials".

5.40 The CL:AIRE Guidance is supported by JIWG decision tools[25], to which reference will be made by the Appellant in support of its case as required.

6. GROUNDS OF APPEAL

6.1. The Appellant's Grounds of Appeal are:

6.1.1. Ground One - the Proposed Activity complies with the requirements of BAT;

[22] See pages 39-41 of the NICOLE Report.
[23] CL:AIRE, 2016.
[24] See paragraph 2 of the CL:AIRE Guidance
[25] Asbestos in Soil (claire.co.uk)

6.1.2. Ground Two - the EA has misdirected itself in its interpretation and application of BAT, in particular BAT14 and BAT 14d;

6.1.3. Ground Three - Article 11 of the IED is complied with.

Ground One – the Proposed Activity complies with the requirements of BAT

6.2. The Appellant will demonstrate that the Proposed Activity, as applied for, is fully compliant with BAT. A full copy of the relevant application was submitted as part of the Extant Appeal and will not be duplicated.

6.3. As set out in detail at the application stage, the Proposed Activity will be operated in accordance with stringent management and operational procedures to ensure that emissions are minimised, where possible, using appropriate techniques.

6.4. The Proposed Activity will be undertaken in accordance with industry best practice. Provectus is an industry leader in the field of the treatment and remediation of asbestos contaminated soils and operates facilities to strict internal controls so as to avoid, where at all possible, any asbestos related emissions.

6.5. There is no justification for the inclusion of IC12 in Table S1.2 of the September 2023 EP. The EA's position fails to recognise that the Proposed Activity will not be receiving homogenous waste streams and fails to adopt an appropriate, risk based approach based on the best available evidence. The EA's position is incoherent and internally contradictory. It seeks to impose an unachievable requirement that the screening component Proposed Activity must not result in the generation of 'additional' asbestos fibres. This fails to have any regard to the key issue of whether the Proposed Activity would result in a material risk to the environment or human health. It further fails to have any regard to the fact that the EA permits the handpicking of asbestos fragments at this and other installations notwithstanding the EA's accepted, "…risk of fibre release from handpicking…".[26]

[26] See paragraph 28 of the EA's Rule 6 Statement for the Extant Appeal, dated 24 July 2023.

6.6. The EA has failed to provide any evidence (technical or otherwise) to support its assertions in the Decision Document that the Proposed Activity will result in any material increase in the amounts of asbestos fibres which may be released, or indeed to support any of the assertions made by the EA in the DD.

6.7. The Appellant will demonstrate, via the analysis of robust monitoring data, that the Proposed Activity will not result in any material increase in the amounts of asbestos fibres which may be released so as to pose a material risk to the environment or human health.

6.8. The Appellant will adduce expert evidence in support of its Appeal to fully assess all potential emission sources which arise from the Proposed Activity and demonstrate that BAT will be complied with throughout the 'life cycle' of the operation.

6.9. The EA has not published any guidance which addresses the requirements of BAT specifically in the context of the remediation of asbestos contaminated soils.

6.10. The DD does not disclose any technical basis on which the EA relies to assert that, in this context, BAT requires all ACM related activities at the STF to be located within a building and/or that the mechanical screener must be 'fully enclosed'. The EA's position is characterised by assertions which are unsupported by evidence, technical or otherwise. The Appellant's expert evidence will demonstrate that the Proposed Activity complies with BAT.

6.11. Reference is made by the EA in the DD to the use of 'full enclosure' and HEPA filters at other facilities, without providing any details or evidence to support this. The Appellant is not aware of any other facility which operates using a 'fully enclosed' screener.

6.12. The EA imposed similar conditions requiring 'full enclosure' of a mechanical screener for ACM related activities at the Appellant's landfill site at Edwin Richard's Quarry ("ERQ"). The Appellant has made repeated applications to comply with the condition imposed at ERQ and demonstrated that it is not possible for this condition (as interpreted by the EA) to be complied with. The Appellant will refer to and rely upon the efforts made to discharge this condition at ERQ as part of its evidence to this appeal, including the EA's recent refusal to agree a local enforcement position which would have provided the Environment Agency with further monitoring data (tested by

a UKAS accredited third party laboratory) from the operation of the mechanical screener on asbestos emissions at ERQ to provide additional reassurance regarding the negligible level of risk.

6.13. The Appellant will contend that the EA has failed to have proper regard to the need to prevent or reduce to a minimum the ***overall impact*** of any emissions on the environment and the risks to it. The EA's decision conflicts with the objectives of ensuring that waste is managed in accordance with the waste hierarchy and the duty imposed by the Hazardous Waste (England and Wales) Regulations 2005, which requires the Appellant to separate hazardous waste where technically and economically feasible.

6.14. The Appellant will rely upon the EA's acceptance that the Appellant has demonstrated BAT is complied with in respect of any dust emissions arising from the non-ACM related activities which have been included within the September 2023 Permit (and which were included in the EP,).

6.15. The Appellant reserves the right to respond to any new technical or expert evidence which the EA seeks to submit through the Appeal process.

Ground Two – EA has mis-interpreted (a) BAT14 and (b) BAT14(d)

(a) BAT14

6.16. The EA has adopted an erroneous interpretation of BAT14 which places undue reliance on selective parts of BAT14d.

6.17. The EA considers that any mechanical screening of ACMs at the STF must be 'fully enclosed' with all asbestos emissions arising from the mechanical screener being "treated via an abatement system prior to release".

6.18. As noted above, in respect of ELVs the DD states that:

6.18.1. "[ELVs] based on BAT, have been added for the following substances in table S3.2 for the air abatement system for the mechanical screener:

- Particulate matter (dust) = 5mg/m3 (BAT-AEL requirement)

- Asbestos fibres = 0.1 f/ml (Environment Agency requirement)

We made these decisions in accordance with Chemical Waste Appropriate Measures and the Waste Treatment Best Available Techniques Conclusions ("BATCs")."

6.19. The September 2023 EP goes on to propose an ELV for ambient emissions of asbestos fibres which is inconsistent with the EA's express conclusion in the DD on this issue (0.01 f/ml as opposed to 0.1 f/ml).

6.20. It should be noted that the EA has not adopted any guidance nor adduced any evidence which supports its assertions that: i) all ACM related activities must be located 'within a building' to be compliant with BAT; ii) that the screener must be 'fully enclosed' in order for the Proposed Activity to be compliant with BAT; iii) that the ELV for ambient emissions of asbestos fibres should be 0.01 f/ml (as opposed to 0.1 f/ml). Neither has the EA carried out any assessment which considers the practicability of any such policy approach being imposed on industry, having regard to the wider objectives of the IED and the need to ensure waste is managed in accordance with the waste hierarchy. No evidence has been provided by the EA to support its assertion in the DD that its decision to issue the September 2023 EP complies with the growth duty imposed by Section 108(1) of the Deregulation Act 2015 and the guidance issued in accordance with Section 100 of the Deregulation Act. The Appellant will demonstrate that the EA's decision will unduly constrain its ability to provide much needed treatment for ACMs and obstruct the restoration of the Daneshill landfill. The EA has failed to provide any evidence that its decision to issue the September 2023 EP subject to conditions for ACM related activities is consistent with other relevant decisions taken by it. The Appellant reserves the right to respond to any evidence and/or submissions made by the EA in respect of these matters.

6.21. It is not technically feasible for the mechanical screener to be 'fully enclosed' so that any emissions arising from it can be collected and directed to a HEPA filter. The Appellant has been unable to locate any 'fully enclosed' mechanical screener which is available on the market. The operation of mechanical screeners (which are used regularly in a wide variety of waste related treatment processes) is adversely affected by attempts to achieve 'full enclosure' via retrofitting the equipment. The Appellant has sought, through its attempts to discharge a similarly worded condition for the permit at its ERQ site, to comply with the EA's requirements but has been unable to

find any technical solution which is capable of 'retro-fitting' a mechanical screener so as to ensure it is 'fully enclosed' as required by the EA. The Appellant will rely on this evidence in the appeal. The Appellant will contend that it would be impossible for it to comply with pre-operational condition PO7 of the September 2023 EP.

6.22. Furthermore, the EA has now made explicit[27] its requirement for all ACM related activities at the STF to be located within a building. However, its position in this respect is internally inconsistent. Firstly, the DD accepts that the Appellant's proposed Handpicking Station is compliant with BAT as applied for (it was not proposed to be located in a building). Furthermore, the construction of temporary buildings would result in greater environmental impacts as a whole, and would effectively preclude the STF from being able to operate. Secondly, there is no requirement, in the September 2023 EP, for any emissions which arise within the building itself (which the EA says must be provided to minimise the risks of asbestos fibre release) to be collected and directed to an abatement system.

6.23. The Appellant will contend that, in order to comply with BAT, it is not necessary for the Proposed Activity to be 'fully enclosed' and/or located within a building and such an interpretation would: i) fail to ensure waste is managed in accordance with the waste hierarchy and ii) conflict with the Appellant's duties to ensure hazardous waste is separated where technically and economically feasible.

6.24. As a starting point, the Appellant will contend that it is important to carefully consider the wording of BAT14. It states: "In order to prevent or, where that is not practicable, to reduce diffuse emissions to air, in particular of dust…BAT is to use an appropriate combination of the techniques given below".

6.25. 8 separate techniques (a. to h.) are then set out within the BAT Conclusion as forming part of BAT14.

6.26. As a matter of literal interpretation, it is self-evident that BAT14 does not require all of the techniques referred to in a. to h. to be deployed in order to establish compliance with BAT14. The key question to be determined is whether the proposal will use "an appropriate combination" of the techniques available.

[27] This was anticipated by the Appellant in its Grounds of Appeal for the Extant Appeal; see paragraph 6.13 of the Grounds of Appeal for the Extant Appeal.

6.27. Determining whether a particular combination of techniques is "appropriate" must be carried out in the context of the overall objective which BAT14 is seeking to achieve, namely the prevention or "where that is not practicable" the ***reduction*** of diffuse emissions to air.

6.28. The Appellant's expert evidence will demonstrate that the Proposed Activity proposes to use a range of appropriate techniques which are specifically referenced within BAT14 including, for example[28]:

6.28.1. BAT14a – the Application proposes limiting the drop height of asbestos contaminated soils at all stages from initial acceptance onwards (as set out in the BAT14 Document);

6.28.2. BAT14d – the Application proposes a number of containment measures will in fact be used including the storage of waste in partially enclosed bays, sheeting of waste awaiting treatment, and the containment of the picking station;[29]

6.28.3. BAT14e – the Application proposes that the waste will be dampened throughout all stages of the waste being handled at the Site.

6.29. The Appellant's evidence will demonstrate that a combination of techniques specified in BAT14 are in fact proposed for use, that they are 'appropriate' and that no other 'available techniques' are reasonably available. The Appellant's evidence will assess the requirements of BAT14 and demonstrate that the Proposed Activity is compliant with the same.

6.30. The Appellant will contend that the EA has failed entirely to explain (and support any such explanation with objective technical evidence) why it considers that the combination of measures proposed by the Appellant is not 'appropriate', within the meaning of BAT14.

[28] N.B. BAT14 b, c and h are not relevant to the Appeal.

[29] It should be noted that the Application did not offer air extraction/filtration for the Handpicking Station. As per the DD for the September 2023 EP, the EA now accepts that air extraction/filtration for the Handpicking Station is not a requirement of BAT.

6.31. The Appellant will demonstrate that it has investigated the availability of equipment specifically designed for the treatment of ACMs. The Appellant will demonstrate that the EA has approved for use, in comparable circumstances, identical equipment as that which will be used by the Proposed Activity; reference will be made to case studies (including but not limited to those within the NICOLE Report) in support of the Appeal.

6.32. The Appellant will contend that the conditions imposed by the EA on the Proposed Activity are unjustified and unreasonable. The EA has failed to provide any specification as to why it considers the combination of techniques falling within BAT14 are not 'appropriate' having regarding the relevant facts. The EA has failed to take relevant technical information into account (which was offered to the EA during the application process). The EA's FOI response to the determination of the EP[30] confirms that the EA did not have the benefit of advice from any technical specialist, either within the EA or from external consultants, before the decision to refuse permission for the Proposed Activity was made. The Appellant will require the EA to disclose, through the course of this appeal, the details of all technical specialists who provided expert assessment prior to the decision to issue the September 2023 EP and details of the substantive technical assessment which was undertaken. The Appellant reserves the right to respond to further submissions and/or evidence which the EA submits during the course of the appeal.

(b) BAT14d

6.33. BAT14 states that, "***Depending on the risk posed by the waste*** *in terms of diffuse emissions to air, BAT14d is especially relevant*" (emphasis added). The level of risk which triggers the 'especial relevance' of BAT14d is not prescribed in BAT14. The Appellant will contend that the EA has failed to properly understand and apply this aspect of BAT14 and BAT14d, in the context of the risks posed by the ACMs which will be recovered by the Proposed Activity.

6.34. BAT14d relates to the 'containment, collection and treatment of diffuse emissions' and "includes techniques *such as*: - storing, treating and handling waste and material that

[30] Letter dated 26/07/23 from Ms Rose Archibald at the EA to Ms Burton of the Appellant, under cover of email dated 26/07/23

may generate diffuse emissions in enclosed buildings and/or enclosed equipment (e.g. conveyor belts); - maintaining the enclosed equipment or buildings under adequate pressure; -collecting and directing the emissions to an appropriate abatement system…" (emphasis added).

6.35. Even where BAT14d is 'especially relevant', it does not require that all of the techniques described ***must*** be utilised in every case. The language makes clear that the techniques which are listed as forming part of BAT14d are 'indicative' in nature, it is not a closed list and the application of any, or indeed all, of the techniques is not prescribed in every case.

6.36. BAT14 directs both operators and regulators to carefully consider the relevance of BAT14d, in certain circumstances and does not prescribe the application of BAT14d in every case. To take such an approach would be to divorce the application of BAT from a proper understanding of the facts relating to a specific proposal, in direct contradiction to its meaning and purpose.

6.37. The 'especial relevance' of BAT14d is directly linked to the risk posed by the waste which is being assessed. This is an issue which must therefore be determined on the facts and applied on a 'case by case' basis, with particular regard to the characteristics of the specific waste stream which is being assessed.

6.38. The wording of BAT14d explicitly provides for 'containment' of diffuse emissions. Accordingly, the BAT Conclusion plainly envisages 'partial' enclosure of certain parts of equipment and processes as being compliant with BAT14d.

6.39. It is therefore erroneous to interpret BAT14d as requiring all ACM related activities to be located within a building in every case. Such a conclusion is not supported by the wording of BAT14d itself.

6.40. As mentioned above, there is an inextricable link between the relevance of BAT14d, and the need of any specific proposals to comply with its terms, and the level of risk to the environment and/or human health posed by the particular waste stream under consideration. The greater the risk, the higher the level of containment will likely be required to comply with BAT14d. Conversely, the lower the risk, the less likely that containment will be required in order to ensure compliance with BAT14d.

6.41. The DD does not provide any evidence which indicates that the EA has assessed or determined the degree of risk posed by the waste stream which the Application specifically proposes to store and handle. A zero-tolerance approach to the processing of asbestos related wastes is specifically cautioned against in the NICOLE Report and is not justified by reference to either BAT14d or Article 11 of the IED.

6.42. The Appellant will adduce monitoring evidence of asbestos emissions in support of its appeal. It should be noted that the Appellant offered to provide this evidence to the EA during the determination of the Application. The EA declined to accept receipt of or take into account the extensive data available from monitoring undertaken in respect of ACM treatment activities at the Appellant's Maw Green and/or ERQ site (undertaken in accordance with mobile permits). The Appellant will rely on the monitoring data available in respect of both Maw Green and ERQ to demonstrate that the risks arising from the Proposed Activity at Daneshill are negligible.

6.43. The Appellant will contend that the EA has incorrectly interpreted and applied BAT14d. Construed properly, the Appellant will demonstrate that the Proposed Activity is compliant with BAT14d and this will be dealt with in full by the Appellant's expert evidence on BAT (which will be submitted as part of this appeal).

6.44. Furthermore, the Appellant will contend that in reaching its decision to issue the September 2023 EP, the EA failed entirely to undertake any, or any proper, assessment of the risk posed by the relevant waste stream in this case. This is a fundamental pre-requisite of BAT14. The Appellant will contend that the EA's failure in this regard has led to the unjustified decision to issue the September 2023 EP.

Ground 3 – the Proposed Activity complies with Article 11 of the IED

6.45. As set out above, the Appellant will demonstrate that the Proposed Activity, as originally applied for, fully complies with BAT and that the EA's decision to impose conditions on the September 2023 EP is predicated on an erroneous and unjustified interpretation of BAT.

6.46. The Appellant will adduce expert evidence to demonstrate that Article 11 of the IED is fully complied with by the Proposed Activity as:

6.46.1. All appropriate preventative measures are taken against pollution;

6.46.2. No significant pollution will be caused;

6.46.3. In accordance with Directive 2008/98/EC[31], the asbestos contaminated soils will be recovered for re-use;

6.46.4. Necessary measures are taken to prevents accidents and limit their consequences.

6.47. The Appellant will adduce technical data to demonstrate, by way of expert evidence, that the Proposed Activity will not result in significant pollution.

6.48. The Appellant's expert evidence will address and explain the definition of hazardous waste in the context of ACMs and will provide quantitative data to demonstrate the magnitude and/or quantum of bonded asbestos which is expected to be processed by Provectus at the STF, based on the operation of existing facilities (operated in accordance with mobile permits).

6.49. The Appellant will emphasise the EA's failure to have regard to the results of monitoring (undertaken at other sites operated by Provectus) during the application process and that this failure to engage with technical information underpins (at least in part) the erroneous conclusion of the EA that the Proposed Activity will result in significant pollution. The Appellant will rely upon monitoring data obtained at other sites operated by Provectus in support of its case.

6.50. The Appellant's expert evidence in support of the Appeal will provide a full review of the location of all relevant sensitive receptors and their location to the STF and to the Site. The Appellant's expert evidence will demonstrate that the Proposed Activity results in a negligible risk, assessed over its full life cycle, to the environment and human health, as a result of the effective deployment of BAT and compliance with the requirements of the Asbestos Regulations. Rigorous and extensive monitoring data will be adduced in support of the Appellant's case to demonstrate that the Proposed Activity will not result in significant pollution.

[31] As amended

6.51. The Appellant will contend that the dispersion of emissions would further lower the potential risks of exposure (which are negligible in any event) even in the highly unlikely event of a release of asbestos fibres from the Proposed Activity.

6.52. The Appellant will contend that the EA has failed to have proper regard to the controls which are in force pursuant to the Asbestos Regulations. The Asbestos Regulations (which are not a substitute for BAT) are a further legislative control which ensures that the Proposed Activity cannot be undertaken if it would result in significant pollution. The Asbestos Regulations would be fully complied with by the Proposed Activity.

6.53. The Appellant will contend that the EA has adopted an erroneous and internally inconsistent approach; the EA accepts that it is lawful and appropriate for exactly the same activities to be undertaken at sites where a mobile treatment licence has been issued. This directly conflicts with the EA's allegation, set out in the DD for the EP, that the Proposed Activity, as applied for by the Appellant, would result in significant pollution risks when proposed at a stationary installation. The apparent distinction relied upon by the EA (in so far as it is possible to currently understand their case on this point) that BAT does not apply to a mobile installation flies in the face of the EA's statutory obligations pursuant to the Environment Act 1996. The Appellant will contend that the EA's approach to mobile treatment licences is equally relevant to the appeal against the September 2023 EP; the conditions imposed therein by the EA are unjustified and unreasonable and directly conflict with the approach taken to mobile treatment licenses where precisely the same activities are undertaken. Furthermore, they will effectively render the Proposed Activity entirely unviable.

6.54. As noted above in paragraph 3.1.1.1, the Appellant appeals the conditions imposed on the September 2023 EP as particularised in Table S1.1 at AR3A and AR4. For the avoidance of doubt, the Appellant contends that the EA's decision to impose any or all of the conditions listed below is entirely unjustified and would render the Appellant unable to operate both the Proposed Activity and the treatment of other hazardous waste streams (by way of bioremediation) which the EP previously granted permission for without the unreasonable restriction regarding maximum storage tonnages:

6.54.1. 'full enclosure' of the screener for ACMs;

6.54.2. location of all ACM related activity within buildings;

6.54.3. restricting treatment of ACMs to 100 tonnes per day;

6.54.4. requiring recovered ACMs to be used on the landfill at the Site as cover. The EA appears to have fundamentally misunderstood the Appellant's proposals in this regard. There is no ongoing landfilling at the Site and accordingly no need for materials to be used as 'cover'. The reclaimed non-hazardous material will be used in the restoration of the landfill;

6.54.5. restricting storage of all hazardous waste to a maximum of 150 tonnes;

6.54.6. restricting storage of ACMS to a maximum of 150 tonnes.

6.55. In accordance with the proposed operational controls as set out in the Application Documents and the provisions of the EMP[32] the Appellant will demonstrate by way of expert evidence, that all necessary measures will be taken to prevent accidents and limit their consequences.

6.56. The Appellant will demonstrate that there is strong policy and regulatory support for the Proposed Activity, which will result in the recovery and appropriate re-use of the soil and reduction of hazardous waste volumes to landfill. The Appellant will adduce expert evidence to demonstrate the pressing need for treatment of soils contaminated with asbestos, arising from the Construction and Demolition sector, and for suitable soils to be available for the purposes of landfill restoration. Disposing of ACMs in hazardous landfill, where treatment options are available to remove hazardous waste fractions, would conflict with the Appellant's legislative duties, result in wider environmental disbenefits overall and would be contrary to the furtherance of the waste hierarchy.

7. SUBMISSIONS MADE TO EXTANT APPEAL

7.1. The Extant Appeal has proceeded to the stage where:

7.1.1. Rule 6 Statements have been submitted by the main parties; and

7.1.2. Written comments on the Rule 6 statements have been submitted by the main parties.

[32] For clarification, the relevant EMP document number is: Nov 21-3982-CAU-XX-XX-RP-V-0307-AO-C2-EMP Final

7.2. The Appellant adopts all of the submissions already made in the Extant Appeal in support of its appeal, save for where they are effectively superseded by the concessions made by the EA as a result of its decision to issue the September 2023 EP and/or as set out in these Grounds of Appeal.

7.3. As noted above, the Appellant applies for this appeal to be conjoined with the Extant Appeal and the Appeal of 3C Waste Ltd against the October 2023 EP which relates to the Maw Green Site and maintains its previous submission that the appeals should be determined by way of Public Inquiry.

8. CONCLUSION

8.1. The Appellant will demonstrate that granting permission for the Proposed Activity as applied for, would be in full accordance with the principles of BAT and the objectives of the IED, including the furtherance of the waste hierarchy. The Appellant will demonstrate that the Proposed Activity will prevent or reduce to a minimum the overall impact of any emissions on the environment and the risks to it and will adduce expert evidence to demonstrate it will not result in significant pollution.

8.2. The Appellant will therefore respectfully request that its appeal be upheld and that the September 2023 EP be varied so as to include the Proposed Activity in accordance with the documents submitted in support of the Application (in so far as they apply to the Proposed Activity) including:

8.2.1. The EMP; and

8.2.2. The following drawings:

8.2.2.1. 3982-CAU-XX-XX-DR-V-1803_S2_P07;

8.2.2.2. 3982-CAU-XX-XX-DR-V-1807_S2_P04;

8.2.2.3. 3982-CAU-XX-XX-DR-V-1810_S2_P02;

8.2.2.4. 3982-CAU-XX-XX-DR-V-1811_S2_P02;

8.2.2.5. 3982-CAU-XX-XX-DR-V-1812_S2_P02;

8.2.2.6. 3982-CAU-XX-XX-DR-V-1800-P02.

8.2.2.7. 3982-CAU-XX-XX-DR-V-1813_S2-PO4

8.3. Furthermore, the Appellant agrees that the documents to be approved, should the appeal be allowed, will be updated to incorporate the provision of spray rails on the input conveyors (which were proposed by the Appellant during the application process but not incorporated into the submission documents)[33].

8.4. The Appellant reserves the right to call additional expert evidence (in addition to that particularised in these Grounds) in support of its appeal by way of rebuttal to the EA's case, once the EA has properly particularised the same.

FREETHS LLP

16 November 2023

[33] See footnote 1, above.