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Your Ref:

Our Ref: WS010003

Date: 24 July 2014

Dear Sir/Madam

Planning Act 2008 (as amended) – The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 8(3)

Application by Whitemoss Landfill Limited for an Order Granting Development Consent for Whitemoss Landfill

Second round of written questions

My colleagues and I (the panel acting as the Examining Authority) would like to thank everyone who has made submissions to the examination thus far. Having considered those submissions, we have decided to ask a number of additional questions and to receive further information on matters relevant to the application. These questions are set out in Annex A to this letter.

A number of parties have asked us for more time to respond to these questions, because of summer holidays being taken in August. Therefore we have decided to accept responses to the Panel's second round questions, and comments on the applicant's core documents list, on or before **2 September 2014**. This deadline will also apply to comments on the Statement of Common Ground on the draft DCO articles and requirements.

Comments on the responses to our second round questions will be accepted provided they are received by us on or before **16 September 2014**.

If you have any further queries, please do not hesitate to contact us.

Yours faithfully

Wendy Burden

Wendy Burden
Lead Member of the Panel of Examining Inspectors

Annexes:

- A Examining Authority's second written questions and requests for information**
- B Glossary of abbreviations**

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

Examining Authority's (ExA's) second written questions and requests for information

Responses to be received by the ExA on or before Tuesday 2 September 2014

Unless otherwise stated, the questions are generally addressed to the applicant. However the ExA invites all interested parties to consider whether they have evidence on the issues raised, and to provide answers to any questions where they can.

Where questions are relevant to the applicant, relevant planning authorities or statutory bodies or undertakers, it is expected that answers will be given by each party unless an agreed position on relevant matters is to be included in a Statement of Common Ground.

1 Development Consent Order (DCO)

- 1.1 **EA:** with reference to the EA's answer to FRQ 1.2: has the application dated 19 May 2014 to vary the Environmental Permit (EP) no DP3639LM now been duly made?
- 1.2 **EA:** once the EP application has been duly made, can the EA provide an update to its answers to FRQ 1.27; 2.4e); 3.1; 3.2; 3.3; 3.6; 3.9; 3.21; 3.26; 3.27; 3.29?
- 1.3 **EA:** given the statutory timetable for the examination, is there any stage at which the EA would be able to confirm that the application for the EP would comply with the parameters for the development proposed within the DCO application?
- 1.4 **Applicant, LCC:** with reference to the answer to FRQ 1.6(b): irrespective of the definition of "maintain" in the East Northamptonshire Resource Management Facility DCO, Article 4 to the application DCO allows "maintenance" of everything in Schedule 1 (the authorised project), except where the order or any related agreements say otherwise. There do not appear to be any restrictions on maintenance elsewhere in the DCO. "Maintain" includes activities such as alteration, removal, decommissioning, replacement or improvement. Can the applicant demonstrate that the activities which could be included in the definition of "maintain" have been assessed for their potential environmental impact, and where is this evidenced?

The current drafting would appear to enable significant works to take place under the definition of "maintain" whose effects may not have been assessed in the ES. Does LCC consider that it has enough information on the maintenance works that would be permitted should the DCO be made on the basis of the definition

proposed in the application? If not, what additional evidence should be required?

In the absence of adequate evidence to support the definition as proposed, the ExA considers that a tailpiece should be added to the definition of maintain as follows: *“maintain” includes -----, but not so as to vary from the description of the authorised development in Schedule 1 and only to the extent assessed in the environmental statement and “maintenance” shall be construed accordingly’.*

- 1.5 **Applicant:** with reference to the answer to FRQ 1.13 – the heading to R6 and the text are not consistent with the name of the document listed in R4(10). Would it be more clear if R6 was simply headed “Aftercare” and the text amended to “in accordance with the aftercare requirements of the scheme listed under requirement 4(10)”?
- 1.6 **Applicant; LCC; WLBC; other interested parties:** LCC has reservations about the enforceability of R24(1). Is there any control under the current planning permission for the routing of vehicles? Is there any knowledge of HGV accessing the site from the west along Whitemoor Road South? Could Road Traffic Order restrictions be put in place if considered to be necessary and how would these be secured?
- 1.7 **Applicant, LCC:** detailed issues are raised by LCC in their response to a number of FRQ, and reference is made to a number of detailed points in the Local Impact Report (LIR)¹. The very broad agreement reached in the SoCG does not prevent further discussion on these issues. Further consideration should be given by the applicant in consultation with LCC to the detailed matters raised in the LCC response to FRQ with a view to the resolution of any outstanding detailed matters. The implications of any amendments should then be considered in terms of the wording of relevant requirements and changes put forward and explained accordingly. A further SoCG may be required to deal with these points.
- 1.8 **Applicant, LCC, WLBC, EA:** the EA and the applicant have agreed a list of requirements proposed to be included in the DCO to deal with the potential for a flow of mine water into the site from the mine shafts which are located within the area to be excavated². Have these requirements been agreed with the Mineral Planning Authority? Does the wording of the proposed requirements meet the tests of the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) on the use of conditions?

¹ Eg paras 6.3.18; 6.8.14; 7.1

² SoCG WLL and EA Appendix C

- 1.9 **Applicant, LCC, WLBC, EA:** would the limits on excavation included within the proposed new requirements have any implications for the capacity of the site to accommodate the inputs of hazardous waste proposed in the application over the proposed lifetime of the facility, as set out in the applicant's answer to FRQ 2.1?
- 1.10 **Applicant, LCC:** in response to FRQ 2.1 LCC refers to the absence of a drawing showing the proposed basal contours of the excavation. Can such a drawing be provided which takes into account the limits of excavation identified in the requirements agreed with the EA? Would the parameters of any such drawing be the same as those assessed in the ES, and would the drawing need to be included in the list of plans identified in R4?
- 1.11 **Applicant, LCC:** with regard to the residential property within the application site. That property has not been included in the health impact assessment. Although the applicant has an option agreement to purchase the property if the DCO is granted, does there need to be a requirement in the DCO to ensure that it will remain uninhabited during the lifetime of landfill operations at the site?
- 1.12 **Applicant, NE:** the landscaping, restoration, habitat management and aftercare scheme would be implemented under R4 (10) of the DCO. Amendments have been agreed with NE³. Can the applicant confirm that the wording of the relevant requirement will be amended to refer to the revised scheme?
- 1.13 **Applicant, NE:** a revised soil handling and management scheme has been agreed with NE and is included in the SoCG with NE⁴. Can the applicant confirm that the wording of the relevant requirement R4(11) will be amended to refer to the revised scheme?
- 1.14 **Applicant, LCC:** para 6.2.4 of LCC LIR: can LCC clarify why the provisions proposed in R30 would need to be included in a s106 agreement?
- 1.15 **Applicant, LCC:** para 7.1 of the LCC LIR identifies suggested additions/modifications to R5, 11, 12 and 18. Can the applicant and LCC please discuss and seek to reach agreement where possible.
- 1.16 **Applicant:** in the applicant's 8 July 2014 submissions it is stated at para 3.4.5 that "the detail groundwater management practices will be agreed with the EA either through Requirements or the EP". Is the reference to Requirements those to be included in the DCO? If that is the case, which groundwater management practices would be covered by Requirements in the DCO and would any further Requirements need to be included?

³ SoCG WLL and NE

⁴ SoCG WLL and NE

- 1.17 **Applicant:** is the reference to CDM in para 3.4.7 of the 8 July 2014 submissions a reference to the Construction (Design and Management) Regulations 2007?
- 1.18 **Applicant, LCC:** in the applicant's 8 July 2014 submission para 1.2.13, the applicant states that the LCC land is required in order to gain access to manhole covers within the LCC land, and suggests that appropriate rights rather than ownership might be sufficient⁵. Would LCC maintain its objection to the acquisition of access rights only?
- 1.19 **Applicant:** the following drafting points in the DCO are raised:
- Is it necessary to have two interpretation sections?
 - In article 9(1), should "Order limits" be "Order limits and"?
 - In article 10(1)(b), should the reference to "passengers" be deleted?
 - In articles 15(3) and 15(6)(a)(iv), should the references to temporary acquisition of land be removed?
 - In articles 17 and 18, the sub-paragraph numbering seems to have been incorrectly copied from the model wording. Could this be corrected?
 - In Schedule 1 sub-paragraph (2), there are two subsections labelled (a). Could this be clarified? In the first sub-paragraph (a), should "hazardous waste the" be "hazardous waste of the"?
 - R4: should "environmental document" be "environmental statement" to avoid confusion?
 - R13: insert "the" before Environment Agency
 - R30: delete "the" before "meet" in final clause.
 - R32: amend to "Where under any Requirement details or a scheme or plan are to be submitted for the approval of the relevant planning authority then unless the Requirement provides otherwise—
 1. those details or scheme or plan and that approval must be in writing;
 2. the details, scheme or plan must be implemented as approved;
 3. the approved details, scheme or plan shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority, provided that no amendments may be approved by the relevant planning authority where such amendments may give rise to any materially different environmental effects to those assessed in the environment statement; and
 4. that where under any Requirement there is an obligation to consult with a third party prior to the submission of any details, scheme or plan for approval to the relevant planning authority then there shall be an obligation to consult with the same third party prior to the submission of any amendments

⁵ Note: any change to acquisition of rights would have implications for a redrafted Article 14, the BOR and the Land Plan.

to the approved details, scheme or plan to the relevant planning authority.”

2 **S106 Agreement**

2.1 **Applicant, LCC, WLBC:** the following issues are raised in relation to the s106 Agreement:

- Why has the agreement been made conditional on the payment of the county's legal fees, given that this allows the agreement to be made invalid by simple non-payment of these fees?
- Why have the compulsory acquisition security clauses in the agreement (schedule 4) been made conditional on commencement of development (clause 4.1), given that compulsory acquisition powers are likely to be used before commencement?
- How are the obligations set out in clause 5 of the agreement in relation to schedules 4 and 5 considered to satisfy the test set out in s106(1) of the Town and Country Planning Act 1990?

3 **Policy Matters**

3.1 **Applicant, EA:** the NPS (Hazardous Waste 2010: England and Wales below para 3.2.7) indicates some 500,000 tonnes of hazardous waste being disposed of in landfill in 2010, following a significant fall in earlier years. In the applicant's planning statement at para 8.9 and Appendix PS A, hazardous waste deposited for England and Wales in 2012 is shown as being about 4.25 million tonnes, with 716,463 tonnes recorded for the North West region. Of this, 872,436 tonnes in England and Wales was sent to landfill, with 54,955 tonnes to landfill in the North West. Does the EA agree the applicant's figures?

Can data be provided and agreed for hazardous waste for the last five years showing the amount disposed of in landfill in:

- i. England
- ii. North West
- iii. Lancashire

3.2 **Applicant, LCC, WLBC, EA:** the EA has submitted quarterly returns for Whitemoss Landfill in 2012 and 2013 in answer to FRQ 2.1. These show deposits of 37,189.37 tonnes to the landfill in 2012, with 842.51 tonnes to the Treatment Plant. Are these figures agreed?

Can a table of annual inputs be drawn up and submitted for the last 10 years of operation of the Whitemoss site, to landfill and to the treatment plant? What has been the source of the waste, broken down by regions, in the last five years?

Can any discrepancy between the capacity of the landfill site (with an existing EP for 149500 tonnes of hazardous waste per annum) and the actual levels of deposits over the last 10 years be explained?

- 3.3 **Applicant:** at 7.18 of the response to FRQ 2.4 part (a) it is stated that arisings are expected to increase as the economy improves, in part because of the use of 'producer responsibility schemes'. Can you explain what these are and how these are likely to impact on the level of future hazardous waste arisings?

Can any further quantitative analysis be supplied to demonstrate why the demand for the deposit of hazardous waste at the application site should increase in the future, to the levels anticipated in the DCO application?

- 3.4 **Applicant:** at 8.25 of the Planning Statement accompanying the application it is stated that conclusions drawn from recent reports suggest that there is only a limited demand so far for particular technologies to treat hazardous waste due to a lack of confidence in the market...". Can details of these reports be provided? Also it is stated that such technologies are likely to take a considerable time before they come to market and that the maximum lifetime of the proposed development is relatively short when compared to the length of time it will take to commercialise even those technologies that are being developed today.

What evidence can be provided to support this view, particularly in the context that that the life of the project would be over 20 years?

- 3.5 **Applicant, LCC, WLBC, EA:** in response to FRQ 2.9 at para 7.88 the applicant refers to "repeated calls for sites in the Lancashire, Greater Manchester or Merseyside waste planning areas" can details be provided of these calls.

- 3.6 **Applicant, LCC, WLBC:** the applicant in answer to FRQ 2.9 at para 7.92 refers to the weight to be given to the contribution the extraction of minerals would make to supply. What quantity and what proportion of the excavated material can be expected to be mineral, and what is the basis for such an estimate? To the extent that some minerals would remain and potentially be sterilised by the deposit of hazardous waste, should this affect the weight to be given under para 144 of the NPPF?

- 3.7 **LCC, WLBC:** are the Councils of the view that the application project would or would not be inappropriate development in the Green Belt?

- 3.8 **Applicant:** in the event that the SoS should determine that the application project would be inappropriate then the relevant test is a presumption against hazardous waste infrastructure being located in a Green Belt "except in very special circumstances" (NPS, 5.10.15). The NPS also notes:

- disposal sits at the bottom of the waste hierarchy, with landfill at the bottom of the disposal options (2.3.2);

- there is a need to substantially reduce the relatively large amount of hazardous waste sent to landfill (3.1);
- landfill should become the last resort for waste (3.4.14);
- existing hazardous waste landfill appears to be sufficient for current need (3.4.13).

The ExA notes the applicant's arguments in its Planning Statement (11.6 onwards) but queries whether the factors listed are sufficient to constitute very special circumstances for such development given the analysis of landfill in the NPS. There seems little evidence that a site outside a Green Belt would not be able to list similar benefits, so what are the very special circumstances to justify the development of the application site within a Green Belt.

4 **Environmental Statement**

- 4.1 **EA:** can the EA clarify what controls might be imposed through the EP on the quantity and quality of stockpiles in this case? The applicant points out⁶ that the stockpiles would be of soil and excavated materials and not of waste.
- 4.2 **EA:** the applicant indicates⁷ that the interceptor waste facility is to be refurbished to adapt to changes in the composition of the waste stream. Would such changes, or indeed any increase in the amount of waste throughput to the facility, require any variation to the existing EP for the interceptor waste facility?
- 4.3 **EA:** what stage has the application to vary the EP reached? Is the EA in a position to indicate whether the ExA can be confident that any environmental impacts (apart from noise and dust from the mineral excavation) which are not covered by the requirements in the DCO would be controlled through the EP? Can the EA confirm that conditions in the EP would control/prevent harmful emissions, through air, soil or water, to those who live locally in relatively close proximity to the site, or use the local area for amenity purposes?
- 4.4 **Applicant, LCC, WLBC, EA:** the applicant refers to Table ES1 which sets out the controls to be implemented through the DCO as requirements and those to be implemented through the EP. Are the local authorities and the EA satisfied that Table ES1 accurately reflects the controls to be imposed?
- 4.5 **Applicant, LCC, WLBC, EA:** having regard to the controls identified in Table ES1 are any further controls required? For example, is LCC satisfied that there are adequate control mechanisms for noise and dust for the excavation and export of minerals from the site?

⁶ Para 3.1.3 8 July 2014 submission

⁷ Para 3.1.4 as above

- 4.6 **Applicant, LCC:** para 6.2.4 of LCC LIR: can LCC clarify what engineering/pollution control considerations might arise if the landfill was completed at a lower level than proposed in the DCO application?
- 4.7 **Applicant, LCC, WLBC, EA:** the WLBC LIR refers at para 6.9.5 to the possibility of an accidental release of dust from the site. In what circumstances could such an accident occur; what would be the consequences for local residents and what would be the remedy?
- 4.8 **Applicant, LCC, WLBC:** with regard to noise (LCC LIR para 6.9.8 and WLBC LIR para 6.9.9) do the local authorities have a view as to whether any further requirements would be appropriate to control noise during excavation, construction and operation?
- 4.9 **EA:** will the EA be in a position to comment on the analysis of emissions which would inform the health assessment in consultation with PHE within the timescale of the examination?
- 4.10 **EA:** will the EA be in a position to comment on whether the risk assessments submitted to the EA as part of the EP application demonstrate that the thresholds for the emission of contaminants in groundwater, the ground and to the air would be within the limits which would be set in the EP?
- 4.11 **Applicant, LCC, WLBC, EA Lathom South Parish Council (LSPC):** LCC LIR para 6.9.6 states that odour is considered unlikely to arise from the types of hazardous waste proposed to be deposited at the application site, and there is no record of complaints of odour identified as coming from the site since 2006. However, a number of interested parties have made representations about odours which they identify as originating from the existing gas flare within the site. For example LSPC refers to fumes from the site and the so –called “Pennyland Pong”. Can LSPC provide any evidence they have including records of any complaints submitted over the years, and to whom the complaints have been submitted? Can any explanation be provided for the discrepancy of opinion concerning the past and potential future emission of odour from the hazardous waste landfill site?
- 4.12 **Applicant, EA:** is there any potential for odour to occur from the leachate system, in particular the lagoon?
- 4.13 **Applicant, LCC, WLBC, EA:** interested parties fear the possible emission of toxic gases from the site. What types of gases could be produced by the wastes proposed to be deposited at the site, and would the emission of any potential toxic fumes be accompanied by odour? Is air quality monitoring currently undertaken at and around the site, and would it be a condition of any variation to the EP?

- 4.14 **Applicant, LCC, WLBC, EA; Other Interested parties:** fear of health impacts – the ExA understand the anxiety felt by local people about potential health hazards. Is effective community consultation an appropriate way to mitigate these fears? Would a community liaison group as proposed to be set up through the S106 agreement be an effective forum for fears to be aired?
- 4.15 **Applicant, LCC, WLBC, EA; Other Interested parties:** in its response of 8 July 2014 the applicant suggests the ExA should give no significant weight to the perception of harm (1.2.1) in the absence of evidence to support the fears of a health impact. The NPS (4.10.2) notes that perceptions could lead to anxiety or stress. How should the ExA advise the SoS as to the weight that should be given to the fear? Is there any relevant evidence?
- 4.16 **EA:** will the EA be in a position to indicate, within the timeframe of the examination, whether the Hydrogeological Risk Assessment (HgRA) submitted with the EP application includes containment proposals which accord with the ES and which would be suitably protective of the environment and human health?
- 4.17 **Applicant, LCC, WLBC:** a SoCG on the landscape and visual impact assessment is to be prepared. Any outstanding differences between the parties should be identified in the SoCG. Please set out reasoning to support any remaining differences of opinion.
- 4.18 **Applicant, LCC, WLBC, NE:** LCC LIR para 6.8.11– would any changes to groundwater levels as a result of the proposal have an impact on the hydrological conditions of the three Biological Heritage sites to the east of the application site? NE SoCG para 3.3 states that there would be no unacceptable impact. Do LCC and WLBC have any outstanding concerns relating to local habitats or locally designated sites?
- 4.19 **Applicant, LCC, WLBC, NE:** NE has agreed changes and additions to the landscaping, restoration, habitat management and aftercare scheme with the applicant. Are there any outstanding issues of concern to other interested parties? For example:
- Are adequate measures secured through the DCO to provide for appropriate mitigation and compensation for common lizard; and nesting birds?
 - Are there any other species within the site for which mitigation or compensation measures would be required?
 - Would peripheral ponds be designed to maximise biodiversity benefit?
 - Are the local authorities satisfied with the design of the landscaping, in particular the location of woodland and species of trees, and the introduction of further hedgerows, and would the soil types that would be appropriate for restoration to Grade 2 agricultural land be appropriate for wildflower meadows?

- Would the scheme agreed with NE provide any improvements on the scheme which would otherwise be implemented for the restoration of the existing permitted landfill site?
- 4.20 **Applicant, LCC, WLBC, NE:** is there any tension between the design of the restoration scheme and the designation of the site as being within Landscape Character Area (LCA 3) – Upland Type Mosses?
- 4.21 **Applicant, LCC, WLBC, NE; Wildlife Trust for Lancashire, Manchester and North Merseyside (WTLMNM):** WTLMNM refers to the possibility of active raised bogs and degraded raised bogs on the application site. Are these characteristic of LCA3? Is there evidence of such land cover on the application site, and if so, should they form part of the restoration scheme?
- 4.22 **Applicant, LCC, WLBC, NE:** are the local authorities satisfied with the revised soil handling and management scheme which has been agreed with NE and is included in the SoCG with NE⁸?

5 Other Matters

- 5.1 **Applicant:** in answer to FRQ 4.5 the applicant states (para 18.16) that the engineered containment structures at the site would have a high shear strength with the flexibility to withstand stresses which could be imposed by the type of earthquake which occurs in the UK. What level of magnitude in terms of Richter local magnitude would the containment structures be designed to withstand?
- 5.2 **Applicant, EA, LCC:** is there any other potential means by which the integrity of the containment mechanism for the landfill site could be compromised?

⁸ SoCG WLL and NE

Glossary of abbreviations

BoR	Book of Reference
CDM	Construction (design and Management)
DCO	Development Consent Order
EA	Environment Agency
EP	Environmental Permit
ES	Environmental Statement
ExA	Examining Authority
FRQ	First Round Questions
HgRA	Hydrology Risk Assessment
HGV	Heavy Goods Vehicle
LIR	Local Impact Report
LCA	Landscape Character Area
LCC	Lancashire County Council
LSPC	Lathom South Parish Council
NE	Natural England
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
Para	Paragraph
PHE	Public Health England
R	Requirement
SOCG	Statement of Common Ground
SOS	Secretary of State
WLBC	West Lancashire Borough Council
WLL	Whitemoss Landfill Limited
WTLMMN	Wildlife Trust for Lancashire Manchester and North Merseyside