

Regulatory Committee - 3 September 2024

Proposed remodelling of metals reclamation and recycling process works at Flexdart Limited, Marsh Lane, Water Orton.

NWB/23CM002

Application No.: NWB/23CM002

Advertised date: 16th March 2023

Applicant(s) Flexdart Ltd
Marsh Lane, Water Orton, Birmingham B4
Marsh Lane
Water Orton
Birmingham B46 1ns

Agent(s) Mr Martin Mence,
FB Architecture Ltd
The Courtyard
Roman Way
Coleshill
B46 1HQ

Registered by: The Strategic Director for Communities on 09 February 2023

Proposal: Proposed Remodelling of Metals Reclamation and Recycling Processing Works

Site & location: Marsh Lane, Water Orton, Birmingham B46 1ns. [Grid ref: 418462.291658].

See plan in Appendix A

Recommendations

1. That the Regulatory Committee supports this application and authorises consultation with the Secretary of State in accordance with The Town and Country Planning (Consultation) (England) Direction 2021 and notifies the Secretary of State that it is MINDED to grant of planning permission for proposed remodelling of metals reclamation and recycling processing works subject to a S106 agreement and conditions and for the reasons contained within Appendix B of the report of the Strategic Director for Communities.

2. That the Regulatory Committee authorises the Officers to issue planning permission if the Secretary of State notifies the authority that it does not intend to issue a direction under section 77 of the Town and Country Planning Act 1990 and subject to the completion of the S106 agreement.

1. Application details

- 1.1 This is a planning application to remodel a metals and reclamation & recycling processing works at Flexdart Ltd, Marsh Lane, Water Orton. It seeks to remove the existing facility from the site and reposition it further to the east next to the M42. It forms part of a major scheme to retain a smaller but more efficient waste facility and provide for commercial development. It shares the proposed infrastructure and landscaping and is linked to the overall drainage scheme and biodiversity across the whole development (see Appendix C).
- 1.2 The red line planning application includes the smaller relocated facility and both the shared access road and junction with Marsh Lane and covers an area of 2.45ha. The existing facility at 2.71ha would be reduced to 2.26. The applicant not only owns the application site, but also the four existing industrial buildings, a lake and land further to the north along the River Tame. They also own land to the south of Marsh Lane which is proposed to provide an area for bio-diversity offsetting (see Appendix A). The planning application is supported by a number of technical reports covering design and access. Noise, flooding, ground investigations, ecology, arboriculture, transport, and phasing.
- 1.3 This facility is proposed to include the eastern part of the existing site and open land between the site and the motorway embankment currently used partly for the parking of vehicles. This land is covered by a covenant that that it should only be used for vehicle parking and storage and no buildings.
- 1.4 The proposals include the following elements (see Appendices C,D,E,F, and G):
 - A new 6m concrete/tarmac pedestrian and vehicular access off Marsh Lane (entrance only) 40m west of the existing access which would be closed as part of this development together with a new 6m tarmac access loop road and the retention of the access to the existing frontage units (A-C) for use as an exit for all vehicles. Both access points would have new sliding entrance gates (motorised automatic barriers) with CCTV monitoring. These gates would be closed out of working hours. The existing access which would be closed off together with the entrance to the parking area.
 - A new access to the facility off the loop road with a new sliding gate.
 - A new length of estate road from the loop road with a turning head at the north end of the site and an emergency use gateway. This

road would provide off road lorry waiting space for up to 5 vehicles and be used by Environment Agency staff to access their flood defence embankment on the River Tame.

- At the northern end of the site a new attenuation pond would be constructed together with a 3.5m wide maintenance access track, landscaping and a 4m high welded mesh security fence powder coated (dark green).
- A new materials handling building located on the western side of the site. Two existing buildings would be demolished to accommodate the new building.
- South of the materials handling facility an area where existing buildings and uses (ponds/settlement areas) would be relocated – canteen, changing block, toilet block, office, weighbridge: existing buildings demolished or retained. The relocated buildings are generally low flat, roofed and single storey. The sub station is brick built flat roofed.
- Car Parking areas for staff and visitors (34 spaces) including for disabled, cycle and motorcycles (5 spaces) and electric charging points.
- On the eastern side of the site an open area at the northern end and seven storage bays comprising concrete hard standings with concrete panel walls 8 m high located along the toe of the motorway embankment.
- New landscaping along the frontage of Marsh Lane, along the boundary with the motorway embankment (5m wide), along the northern boundary adjacent to the river and along the estate road.
- 4m high welded mesh security fence powder coated (dark green) would be erected along the frontage of the site behind the landscaping and at the northern end of the site.
- The removal of existing ditches to be replaced by a new drainage system.

1.5 The new materials handling building would be rectangular in shape, steel framed and having dimensions of 18m x 83.5m and 18m x 71m giving an overall floor space of 2,780 sq.ms. It would be 17.8m high to give a minimum head room of 14m which means that the building would have the ability to accommodate the largest articulated tipper lorries to operate within the new indoor space. It would be the highest building on the new development site being about 6m higher than the proposed commercial units.

1.6 The building would have a pitched roof with rooflights and be comprised of light grey profiled insulated composite panels. The northern and southern elevations of the building would comprise:

- Verge - Rectangular colour coated metal profiled verge detail - Medium grey to match eaves.
- High Level Wall Cladding - Horizontal profiled insulated composite wall panel in light grey

- Lower-Level Wall Cladding - Vertical profiled insulated composite wall panels in dark 'graphite' grey.
 - Vertical Dividing Panel - Colour coated & textured slightly projecting vertical insulated composite wall panel. Light colour.
- 1.7 The western elevation which would front onto the estate road would have a similar design and materials but with an eaves detail of - Box gutter with semi-circular colour coated metal profile eaves detail - Medium grey.
- 1.8 The eastern elevation would have a similar design and materials but would be punctuated by 3No. Goods Entrance Doors - Insulated panel roller shutter entrance door with windows in a lower panel. Electrically operated. Silver finish and 3No. Personnel / Emergency Exit Doors - Colour coated metal frame with solid steel faced doors with vision panels where required. Colour to match main entrance frame. Flat surface insulated composite wall panel over doors - silver finish.
- 1.9 The proposal would result in the loss of 1,255 sq. m of internal floorspace but with the retention of existing space and creation of 2,784 sq. m of new space the overall floorspace would increase to 4,279 sq. m. This would provide a notional production capacity of 45,000 tonnes per year but in practice the maximum annual operational through put would be 30,000 tonnes per annum.
- 1.10 The current operations would continue including sorting, separating, granulating, flame cutting, bailing, and washing providing continued employment for 59 full time equivalents.
- 1.11 Landscaping would comprise tree, hedge and shrub planting along with grass land and wildflowers using local native species.
- 1.12 The facility would operate during the hours on 0700 -1700 Mondays to Fridays and sometimes on Saturdays between 0700 -1300.

2. Consultation

- 2.1 **Head of Planning (NWBC)** – The Head of Planning has advised that the Planning Board at its meeting on 5th August 2024 resolved to approve the other development of five industrial units and extension to unit D (including the partial infilling of the eastern edge of the lake) subject to a S106 agreement and planning conditions.
- 2.2 **NWBC Environmental Health Officer** – submitted comments relating to both proposals and in the case of this application has no objection subject to conditions dealing with noise, air quality, amenity and contaminated land.
- 2.3 **Environment Agency** – following the submission of amended plans and reports no objections subject to a condition requiring the

development to be carried out in accordance with the submitted Flood Risk Assessment. A minimum eight metre stand off has been provided from the existing flood defence embankment on the River Tame as requested by the EA and means of access for Agency staff to inspect and maintain the embankment.

2.4 **Highways England** – no objection

2.5 **Water Orton Parish Council** - has made a number of comments on the combined development of industrial development being dealt with by North Warwickshire Borough Council and the remodelling of the recycling facility. Those comments directly relevant to the application before the County Council are:

- Welcomes the introduction of the planned one way system and turning point for HGVs to avoid early morning queuing;
- Welcomes the comprehensive planting scheme to mitigate the large scale development;
- The infilling of part of the eastern edge of the lake to accommodate an extension to existing Unit D should be carefully managed through appropriate planning conditions. Consideration should be given to compensating for the loss of the lake edge;
- No right turn signage upon exiting the site;
- Minimising light pollution;
- The Parish Council receive queries from the community regarding air pollution from the Beaver Metals Site. It is recognised that WCC do not have another site available for the recycling facility to be moved to, therefore the Parish Council welcomes the developers plans to try and bring the recycling facility indoors so that filtration of emissions from the site can be achieved. Due to the importance of improving the air quality in the village the Parish Council are supportive of the required height of the recycling unit required to facilitate this and reduce pollution and contamination from this process which is currently done externally.

2.6 **Planning Policy Team** – has no objections

2.7 **Flood Risk and Water Management** – following a number of submissions and discussions no objection subject to conditions to deal with the submission of a detailed water drainage strategy and its installation and maintenance plan.

2.8 **Rights of Way GIS and Access Information Officer** – no objection subject to advisory notes being added to any consent to deal with obstructions, making good any damage and prior authorisation of any works to the surface of M36.

2.9 **Principal Highway Control Engineer** – no objection subject to conditions, informative notes and two planning obligations requiring sums of money to pay for processes to reduce the speed limit on

Marsh Lane and introduce parking restrictions fronting and around the development.

- 2.10 **Ecology Services** – no objection subject to conditions dealing with construction environmental management plan (CEMP -biodiversity) and habitat management and monitoring plan (HMMP) (LEMP) and external lighting. In the case of the HMMP it has been suggested that this could be secured by way of planning obligation because it is outside the red line boundary.

3. Publicity and Notification

- 3.1 The planning application has been advertised as proposed development which does not accord with the provisions of the development plan in force in the area in which the application is situated and proposed development affecting a Public Right of Way M36.
- 3.2 The Town and Country Planning (Consultation) (England) Direction 2021 requires that where Green Belt development comprises the provision of a building of 1,000 square metres or more and the authority does not propose to refuse an application that it should consult the Secretary of State prior to granting planning permission.
- 3.3 Site notices posted – 13th March 2023
- 3.4 Press notice posted on 16th March 2023
- 3.5 7 nearest residential properties individually notified on 13th March 2023

4. Representations

- 4.1 None received.

5. Previous Planning History

- 5.1 Planning permission granted on 8th April 1994 for the extraction, recycling, and reclamation of scrap metals on 8.079ha of land at Marsh Lane, Water Orton (Ref: NW/92CM009). The permission was subject to the signing of a S106 agreement to surrender previous permissions (save but one) and for the adjoining lake to be only used for recreation purposes and any development previously permitted on the adjoining land not to be carried out.
- 5.2 Planning permission granted on 25th November 1996 to infill existing lagoon with inert materials, construct a concrete settling/holding tank from a yard area and divert water circulation channels at Flexdart Ltd, Marsh Lane, Water Orton (Ref: NW/96CM033).

- 5.3 Planning Permission granted on 27th February 1997 for the erection of a chimney and Talbott Waste to Energy Combustion Unit on land at Marsh Lane, Water Orton (Ref: NW96CM042).
- 5.4 On 26th July 2021 the County Council were consulted by NWBC waste safeguarding grounds (Policy CS8 in the adopted Waste Local Plan) on a planning application (PAP/2021/0372) to “replace current B4 metal extraction and recycling operations with a speculative development for class E (g) (i) (ii) and (iii) (offices, research and development and industrial processes). Class B2 (general industrial) and class B8 uses (storage or distribution).” On assessing the planning application your Officers raised a number of issues with the Borough Council’s Planning Officers including:
- The description of the development did not address the temporary part relocation of the existing waste management use.
 - There was no clear plan to deal with the eventual loss of the use which would be very difficult to replace.
 - As also an extension to an existing facility it was waste development and therefore the proposals included a separate element which the County Council should determine.
 - As a consultee there was insufficient information to comment on either the temporary extension of the use (if dealt with by the Borough) or its impact on the new speculative commercial development (waste safeguarding). At that stage, the proposal included an extension to existing Unit D and 9 further units.
- 5.5 Following lengthy discussions it was agreed that determination of the planning application would be paused so that consideration could be given to retaining the waste management use but as a permanent and improved quality development and providing for new development to help fund the changes. The proposals would then be considered as a major combined scheme but comprise two separate planning applications – a waste application (this application) and an amended and revised commercial development application to be determined by the Borough Council.

6. Assessment and Observations

Location

- 6.1 The existing generally flat 4.84ha site lies over 400m northeast of the village of Water Orton to the north of industrial units (Lakeside Industrial Estate) on Marsh Lane (B4118) and 65m to the west of the elevated section of the M6 Toll and M42 between Junctions 9 and 8.
- 6.2 Marsh Lane is a single carriageway road adjacent to the proposed development site and is approximately 6m in width. It is subject to National Speed Limit (60mph), within the vicinity of the site, reducing to 30mph through the centre of Water Orton. There is a lit footway on the

north and south side of Marsh Lane with a grass verge separating the footway from the carriageway, which continues west until Manor House Lane. There are currently no parking restrictions on Marsh Lane.

- 6.3 It comprises a metal recycling facility mainly in open use using mobile material handling plant with a large number of stockpiles of varying heights and areas of stored processed and non-processed materials and hard standings. There is also existing steel framed, and metal clad single-storey buildings of varying condition which house plant and equipment and storage and concrete panel /storage container boundary walls. There is also an open water treatment tank and small incinerator. The entrance to the site is located at the eastern end together with a car park on open land used for staff and visitor cars.
- 6.4 A row of ISO containers and the flood defence embankment on the south side of the River Tame form the northern boundary of the site with sewage works beyond. An existing fenced fishing lake (Beaver Pool) lies on the western side with a field leading up to the edge of the Village (Old Church Road) beyond. To the east lies rough ground up to the toe of the motorway embankment (north and south bound M6 and M42) with the A446 Lichfield Road and HS2 (Phase 1) construction works at Coleshill Sewage Works beyond. Marsh Lane forms the southern boundary of the site together with 4 existing industrial units (A-D). Beyond the Lane lies rough ground and an enclave of 7 properties lying 85m at the closest point southwest of the western end of the site. There are also railway lines to and from Birmingham further south.
- 6.5 The whole of the site lies within the Green Belt and the majority within Flood Zone 3. The River Tame (north of the site) and Beaver Pool (to the west) are Local Wildlife Sites and land between Marsh Lane and the first railway line is also a LWS - Marsh Lane Grassland & Marsh. Right of Way M36 runs along the northern boundary of the site. The site lies in the County Landscape Character Area of Arden and the Local Landscape Character Area of Cole Valley. This broad flat valley is characterised by a complex mix of urban, transport and industrial uses that now dominate a historic parkland landscape.
- 6.6 The land north of the River Tame lies in the administrative area of Birmingham City Council. In the adopted Birmingham Development Plan (BDP) 2031 this land is shown as being in the Green Belt with land to the east of Minworth a Site of Importance for Nature Conservation.
- 6.7 There are no heritage assets in influencing distance of the site. The nearest Conservation Area is Coleshill to the southeast beyond the A446 and the nearest listed building is The Chestnuts (Grade II) 600m to the west of the site.

7. Planning Policy Context

- 7.1 Section 38(6) of the 2004 Planning and Compensation Act requires that planning applications are determined in accordance with the provisions of the Development Plan 'unless material considerations indicate otherwise'.
- 7.2 The Development Plan relevant to the proposal consists of the Warwickshire Waste Core Strategy Adopted Local Plan (July 2013), the North Warwickshire Adopted Local Plan (Sept 2021) and the adopted Water Orton Neighbourhood Development Plan (June 2022).

National Planning Policy

National Planning Policy Framework (NPPF) (December 2023)

- 7.3 The NPPF has at its heart a presumption in favour of sustainable development to be achieved by three interdependent objectives; economic, social, and environmental, to build a strong competitive economy, vibrant healthy communities while enhancing the natural, built, and historic environment. Paragraph 85 says that planning policies and decisions should help create the conditions in which businesses can invest, expand, and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 7.4 Paragraph 115 in the NPPF says that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 7.5 The NPPF (paragraph 142) makes it clear that the Government attaches great importance to Green Belts. The five purposes of the Green Belt (paragraph 143) are to check the unrestricted sprawl of large built-up areas, prevent neighbouring towns merging into one another, to assist in safeguarding the countryside from encroachment, to preserve the setting and special character of historic towns and assist in urban regeneration, by encouraging the recycling of derelict and other urban land. It also makes it clear that within the Green Belt inappropriate development, which is by definition harmful to the Green Belt, should not be approved except in very special circumstances (paragraph 152).
- 7.6 Paragraph 153 says that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

- 7.7 The NPPF (paragraph 154) set out an exceptions policy for the construction of new buildings which are inappropriate in the Green Belt. While paragraph 155 identifies that other forms of development are not inappropriate in the Green Belt provided, they preserve its openness and do not conflict with the purposes of including land within it. This includes mineral extraction and engineering operations but not waste management. encouraging the recycling of derelict and other urban land. The proposed site is located within the West Midlands Green Belt, as defined by the North Warwickshire Local Plan (Policy LP3).
- 7.8 Paragraph 165 says that inappropriate development in areas of risk of flooding should be avoided by directing development away from areas of highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. When determining any planning applications, local planning authorities should ensure flood risk is not increased elsewhere. Development should only be allowed in areas of risk of flooding where, in the light of a site-specific flood-risk assessment five tests can be met (paragraph 173). While paragraph 175 says that major developments should incorporate sustainable drainage systems unless there is clear evidence that would be inappropriate.
- 7.9 Paragraph 180 says that planning policies and decisions should contribute to and enhance the natural and local environment by protecting amongst other things sites of biodiversity value, and minimising impacts on and providing net gains for biodiversity. It also says that new and existing development should not contribute to, be put at unacceptable risk from, or be adversely affected by unacceptable levels of soil, air, water, or noise pollution of land instability. Where appropriate despoiled, degraded, derelict, contaminated and unstable land should be remediated and mitigated.
- 7.10 When determining planning applications, local, planning authorities should apply a series of principles one of which is if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused (paragraph 186).
- 7.11 Planning policies and decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risk arising from land instability and contamination (paragraph 189). Paragraph 190 says that where a site is affected by contamination or land instability issues, responsibility for securing a safe development rests with the developer and/or landowner. Paragraph 191 says that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living

conditions and the natural environment and the site and wider area sensitivity to any impacts from the development.

- 7.12 The NPPF says planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants (paragraph 192). Paragraph 193 says existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. The applicant (“agent of change”) should be required to provide suitable mitigation before the development has been completed. Paragraph 194 says that the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than control of processes or emissions. Planning decisions should assume that these regimes will operate effectively.

National Planning Policy for Waste (NPPW)

- 7.13 The NPPW sets out the government’s detailed planning policies for waste in order to work towards the objectives of the Waste Management Plan for England. The NPPW states that planning plays a pivotal role in delivering the country’s waste ambitions through, amongst other things, delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste up the waste hierarchy.
- 7.14 The NPPW seeks to ensure that waste management facilities in themselves are well-designed, so they contribute to the character and quality of the area in which they are located.
- 7.15 Appendix B of the NPPW sets out the factors to be considered by waste planning authorities in determining planning applications, including the likely impact on the local environment and amenity and ensure that waste management facilities are well designed, so they contribute positively to the character and quality of their location.

Local Planning Policy

Warwickshire Waste Core Strategy

- 7.16 The adopted Waste Core Strategy (WCS) provides a planning policy framework for the determination of waste related planning applications across Warwickshire. The WCS was adopted by the County Council in July 2013 and remains valid and therefore forms part of the development plan.
- 7.17 **Policy CS1 – Waste Management Capacity:** seeks to ensure that sufficient waste management capacity will be provided to manage the equivalent of waste arisings in Warwickshire and as a minimum,

achieve the County's targets for recycling, composting, reuse, and landfill diversion. Where it is demonstrated that there is no identified capacity gap. Or the where the capacity gap, or where the capacity gap has been exceeded, then any planning application will be assessed against the CS and DM policies and principles of proximity and driving waste up the Waste Hierarchy.

- 7.18 **Policy CS2 – The Spatial Waste Planning Strategy for Warwickshire:** seeks waste management facilities to be well located in accordance with identified broad locations, (the application site is situated a short distance to the north of Coleshill which is one of the broad locations identified), where individual sites are well located to sources of waste, are well located to the strategic transport infrastructure, and do not have significant adverse environmental impacts. Particular preference is shown to sites operating under an existing waste management use, active mineral sites or landfills and land within or adjoining a sewage works.
- 7.19 **Policy CS4 –Strategy for Locating Small Scale Waste Site:** (proposals seeking to manage less than 50,000 tonnes of waste per annum), directs such development to sites within or in close proximity to the primary or secondary settlements within the County or within 5km of the Coventry MUA.
- 7.20 **Policy CS5 – Proposals for reuse, recycling, waster transfer/storage and composting:** encourages proposals for recycling (which includes metals) which accord with other relevant policies. It also says that the Council will seek to meet identified capacity gaps for each waste stream. The site operates as a Materials Recovery Site for both inside and outside the West Midlands.
- 7.21 **Policy CS8 – Safeguarding of waste management sites:** seeks to safeguard existing waste facilities and sites in suitable locations with a permitted permanent waste management use. It says the authority will object to proposals for non-waste development within or adjacent to these sites where they may prevent or unreasonably restrict the use of that site for waste management purposes.
- 7.22 **Policy DM1 – Protection of the Natural and Built Environment:** seeks to ensure that waste developments conserve or where possible enhance the natural environment, by ensuring that there are no unacceptable impacts upon natural resources (air, water, and soil), biodiversity, ecology and heritage, the landscape, adjacent land uses or the distinctive character of the County's settlements.
- 7.23 **Policy DM2 - Managing Health and Amenity Impacts of Waste Development:** relates to environmental controls and states that waste management proposals will be permitted where it can be demonstrated that the development will have no significant adverse impacts on the local environment or communities through, amongst other things,

noise, visual intrusion, odour, dust, emissions, traffic, etc. The policy goes on to state that planning permission will not be granted for waste management proposals where, by reason of the collective impact of different proposals or by reason of a number of impacts for the same development, the proposal has an unacceptable cumulative impact.

7.24 **Policy DM3 – Sustainable Transportation:** requires that developments should use alternatives to road transport where feasible. The policy also requires developers to demonstrate that transport distances are minimised, carbon emissions are minimised and where road transportation is used that there are no adverse impacts upon road safety, capacity, or use of the network. Where appropriate the policy requires developments to supply Transport assessments which demonstrate that the proposal has good access to the Warwickshire Advisory Lorry Routes, the transportation of waste will be kept to a minimum, the proposal is acceptable in highway safety terms and the transportation of waste will not have an unacceptable impact on the environment or local communities.

7.25 **Policy DM4 – Design of New Waste Management Facilities:** requires the design of waste management facilities to minimise the proposal's potential contribution to climate change and to be capable to responding to future changes, demonstrate appropriate scale, density, massing, height, landform and materials, retain and enhance existing landscape features, provide a minimum of 10% onsite energy needs and ensure safe vehicle movements.

7.26 **Policy DM5 – Recreational Assets and Public Rights of Way:** proposals should not have an unacceptable adverse impact on open space, sports, tourism and other recreational facilities and land and no adverse impact upon rights of way.

North Warwickshire Adopted Local Plan (Sept 2021)

7.27 **Policy LP1 – Sustainable Development:** states that planning applications that accord with the policies of the Local Plan will be approved without delay unless material considerations indicate otherwise.

7.28 **Policy LP3 – Green Belt:** sets out the policy requirements for dealing with proposals in the Green Belt.

7.29 **Policy LP11 – Economic Regeneration:** states that the delivery of employment generating uses should reflect the need to broaden the employment base, improve employment choice and opportunities for local people. All employment land will be protected, and support and encouragement will be given to established/lawful rural businesses to expand where this has no significant and demonstrable harm in particular on the character of the area. Proposals for new development outside of development boundaries will be considered against Policy

LP1 and LP2 and should seek to retain the rural character, appearance, and openness of the countryside.

- 7.30 **Policy LP 14 – Landscape** - Within landscape character areas as defined in the Landscape Character Assessment (2010), Arden Landscape Guidelines (1993) and the Historic Landscape Characterisation Project (June 2010) (or successor document) development should look to conserve, enhance and where appropriate, restore landscape character as well as promote a resilient, functional landscape able to adapt to climate change. Specific landscape, geo-diversity, wildlife, and historic features which contribute to local character will be protected and enhanced as appropriate.
- 7.31 **Policy LP16 – Natural Environment:** States that the quality, character, diversity, and local distinctiveness of the natural environment will be protected and enhanced as appropriate relative to the nature of development proposed.
- 7.32 **Policy LP23 – Transport Assessments:** states that transport assessments appropriate to the scale of development proposed, will be required to accompany development proposals.
- 7.33 **Policy LP29 – Development Considerations:** states that development should meet the needs of residents and businesses without compromising the ability of future generations to enjoy the same quality of life that the present generation aspires to. Consideration requirements for developments include promoting healthier lifestyles for the community to be active outside their homes and places of work; avoid and address unacceptable impacts on neighbouring amenities through overlooking, overshadowing, noise, light, air quality and other pollution; protect and enhance the historic and natural environment; and not sterilise viable known minerals; degrade soil quality or pose risk to human health and ecology from contamination or mining legacy and ensure that land is appropriately remediated.
- 7.34 **Policy 30 Built Form** – says that all development in terms of its layout, form and density should respect and reflect the existing pattern, character, and appearance of its setting.
- 7.35 **Policy LP33 – Water and Flood Risk Management** - development proposals must not detrimentally affect the ecological status of a waterbody and where appropriate, incorporate measures to improve its ecological value. New development proposals in or land raising within Flood Zone 3 (including Climate Change) should provide for the following:
- i) Floodplain Compensation; provide floodplain compensation on a level-for-level basis.

- ii) should set back 8m from the top of the banks of Main Rivers and any culverted watercourse, regardless of the flood zone.
- iii) Finished floor levels (FFL) within Flood Zone 3 (including climate Change) and on land adjacent should be set a minimum of 600mm above Flood Zone 3, (including climate change) flood level.
- iv) have agreements in place that “less vulnerable” uses are prevented for changing to those that are more vulnerable, and (only applies to ground floor developments in line with SFRA section 12.4), and single storey residential development, basements and buildings on stilts should not be located within Flood Zone 3 (including climate change), and
- v) include mitigation measures to account for up to the 1 in 100 year (1% AEP) plus climate change fluvial flood event as well as safe access and egress.

7.36 **Policy LP 34 Parking** -Adequate vehicle parking provision commensurate to a proposed development will be expected.

7.37 **Policy LP 35 – Renewable Energy & Energy Efficiency:** says that renewable energy projects will be supported where they respect the capacity and sensitivity of the landscape and communities to accommodate them. New development will be expected to be energy efficient in terms of its fabric and use including, where viable, the production of 10% of operational energy from on-site renewables, in support of the Government’s Clean Growth Strategy.

7.38 NWBC have prepared and adopted an Air Quality & Planning Supplementary Planning Document (SPD) (September 2019). The guidance is designed to support measures to mitigate against and improve the air quality impacts from and on new developments.

Water Orton Neighbourhood Development Plan (adopted June 2022)

7.39 **Policy CP 01** - Existing and new businesses will be supported in Water Orton and their development and/or expansion will be encouraged where it meets local employment needs and is of appropriate scale for the village and rural area.

7.40 **Policy CP 03** - The Parish Council supports the maintenance of the existing industrial floor space. Proposal for new industrial floor space should limit any adverse impact of traffic on the village and its residents.

7.41 **Policy TP 01** - The Parish Council would support the development of a dedicated HGV parking area specifically to alleviate the 'on-road' waiting for the weighbridge on Marsh Lane.

8. Policy Considerations

Waste

- 8.1 Flexdart own Lakeside Industrial Estate along with the fishing lake to the west, land up to the River Tame and land south of Marsh Lane. They trade as Beaver Metals and operate in the UK and overseas. They recycle/reclaim not only scrap and salvage non-ferrous and ferrous metals but have specialist knowledge and processes for the extraction of rare metals from scrapped machinery and manufacturing waste. The recycling operation on the site has been in existence since 1957. Current recycling and recovery operations are estimated to be in the region of 20,000 tonnes per annum although in the past figures have been much higher. The proposal is to create capacity for 45,000 tonnes and to operate around 30,000 tonnes each year.
- 8.2 Policy CS1 sets out the policy position in the situation where there is or is not a capacity gap. This site has received previous planning approvals, so it forms part of the existing capacity for handling/managing waste metals. It is one of two more significant sized facilities recycling/recovering metals in the county both of which operate in North Warwickshire. Its loss would therefore create a gap in capacity and the loss of a significant sized facility.
- 8.3 Policy CS2 below sets out the spatial waste planning strategy for the county and is based on geographical considerations, the size and kind of waste development and compliance with policies set out in the adopted Waste Core Strategy.
- 8.4 The geographical considerations include the use of “broad locations” across a large part of the county. These locations have been defined through a settlement hierarchy approach where priority is given to Primary and Secondary settlements where waste development is preferred and those areas falling outside those settlements. A close proximity buffer based on 5km zones drawn around those settlements is used to define the extent of the broad location. Figure 7.1 which is the Waste Core Strategy Key Diagram shows for the site that it falls within an orange hatched broad location (in close proximity to secondary settlements (e.g., 5km)) based on Coleshill. The site is also well located to sources of waste and the strategic transport infrastructure with access to the A446 and its connections to the M6 Toll and M42 (north) and M6 (south).
- 8.5 The size categorisation approach is defined by Core Strategy Policies 3 and 4 which refer to the different approaches to be taken to determine the appropriateness of large scale and small-scale waste sites. The proposals at the appeal site include a tonnage level of 30,000 tonnes placing it within the category of small-scale waste site and therefore within policy CS 4. Based on its broad location categorisation the proposals would fall within paragraph (i) of that policy.

- 8.6 Policy CS2 then defines 7 “kinds of sites” where support will be given within the broad locations. The appeal site falls into one of the 7 types listed - site operating under an existing waste management use. As such the proposals are considered to comply with policies CS1 and CS2.
- 8.7 Policy CS5 says that proposals for re-use, recycling, waste transfer/storage and composting will be encouraged provided that the proposal accords with all other relevant policies. The proposal accords with policies CS1, CS2 and CS4 and subject to there being no planning objections to policies DM1, 2, 3, 4, 5, 6 and 8 would accord with policy CS5.
- 8.8 Policy CS8 deals with the safeguarding of waste management sites and enables WCC to object to proposals for non-waste development within or adjacent to permitted waste sites where they may prevent or unreasonably restrict the use of that site for waste management purposes. However, specific sites have not been safeguarded. It is important that existing waste management sites which are delivering waste management capacity are protected from inappropriate siting of non-waste developments. In addition, according to the current national planning practice guidance there appears to be a continuing role for the authority to provide details of existing major disposal and recovery installations to comply with Article 28 of the EU Waste Framework Directive (2008/98/EC).
- 8.9 The original concerns were about the potential eventual loss of the existing waste management use and the difficulty of finding a suitable replacement site for a reasonably large open use operation not in close proximity to sensitive receptors and well placed to the strategic transport infrastructure and sources of waste. The original plans sought to create a smaller temporary facility as part of phased plans to redevelop the whole site for commercial development. The potential future users were not specified or known so commercial developments susceptible to dust and particulates could place burdens on the existing use which may not be capable of being overcome. In which case WCC would not be able to support the redevelopment plans as the facility would not be safeguarded for future use.
- 8.10 With this set of proposals those concerns have been overcome. The main operational waste management uses are now to be located in a purpose-built building which provides for containment and increased efficiency and physically separates the waste management uses from the proposed commercial development. The use would be permanent so avoiding a loss of valuable capacity in this important waste stream. The overall appearance of the facility would be improved by the removal of unsightly boundary demarcation and the introduction of more landscaping to soften views from the south and north and introduce more biodiversity.

- 8.11 Policy DM4 – Design of New Waste Management Facilities: requires the design of waste management facilities to.
- minimise the proposal’s potential contribution to climate change.
 - be capable to responding to future changes.
 - demonstrate appropriate scale, density, massing, height, landform, and materials.
 - retain and enhance existing landscape features,
 - provide a minimum of 10% onsite energy needs and
 - ensure safe vehicle movements.
- 8.12 The design of the building and the facility itself is considered to be acceptable within the area, and the proposal will remove a substantial untidy area of outside storage and provide an environmental improvement transferring many of the outside operations indoors into a purpose-built building. The design and layout would satisfy planning policies DM4, LP11, LP30, LP 35 and CP01 and CP03.

Green Belt

- 8.13 The site lies within the Green Belt and policy LP3 applies. It sets out the policy for protecting the Green Belt and for determining planning applications. Paragraph 152 says that Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The starting point is therefore to consider whether the proposal would be appropriate development in the Green Belt.
- 8.14 The applicant refers to paragraph 154 in the current NPPF (December 2023) which says that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt except in certain situations. The authority’s attention is drawn to exception (g):
- (g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
- not have a greater impact on the openness of the Green Belt than the existing development; or
 - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
- 8.15 **Previously developed land** is defined in the Glossary (Annex 2) to the NPPF as: “Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or

was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape”.

- 8.16 Part of the site, the western half, has been occupied by a structure(s) but the eastern half has not. As paragraph 1.2 explains this eastern half the open land next to the motorway embankment is covered by a covenant that that it should only be used for vehicle parking and storage and no buildings. There is no evidence that the land has been occupied by a building. In the opinion of your Officers therefore as the whole “land” has not been subject to occupation exception (g) does not apply in this instance. Turning to the list of other forms of development which are also not inappropriate development in the Green Belt in paragraph 155 does not include waste management facilities in the list of provisos and therefore the facility is considered to be inappropriate development in the Green Belt.
- 8.17 Paragraph 153 in the NPPF says that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. It is therefore necessary to assess the nature and extent of any “actual harm” to the openness of the Green Belt and its purposes caused by the inappropriate development.
- 8.18 Openness can be assessed in terms of a number of factors including spatial, visual, duration, remediability and degree of activity. The site is well screened from the east by the motorway embankment. Views from west and south are limited by existing industrial buildings, but the open aspect of the metal recycling uses and operations and lack of landscaping and amelioration detract considerably. While views from the north are limited by a lack of public view points the current boundary treatment is a discordant element visually and in the landscape. The erection of a large, tall building to house the materials handling and recycling uses and operation would increase the visual impact on the Green Belt. But due to its location, proposed materials and appearance and additional landscaping it is unlikely to lead to any additional impact and therefore further harm to openness.
- 8.19 In terms of the five purposes which the Green Belt serves the following comments would be made:
- to check unrestricted sprawl of large built-up areas. The site lies outside a built-up area. It is already constrained by the River Tame to the north, lake to the west, Marsh Lane to the south and the motorway embankment to the east. While this extends the footprint of

development up to the motorway embankment it is a very small extension to an existing permitted use.

- to prevent neighbouring towns from merging. The nearest town is Coleshill which lies to the southeast but is already separated from the site by railway lines and major roads and HS2.
- to assist in safeguarding the countryside from encroachment. The proposals would not lead to further encroachment of the countryside.
- to preserve the setting and special character of historic towns. There are no historic towns nearby.
- to assist in urban regeneration by encouraging the recycling of derelict and other urban land. This is an existing development outside the built-up area and as such it would not have an effect on this purpose.

8.20 On this basis there would be no actual harm to the openness and its purposes. In terms of policy harm paragraph 152 of the NPPF says that 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

8.21 The following VSCs have been advanced which after consideration are considered to be acceptable.

- The retention and improvement of a significant and specialist waste metal recycling, recovery, and processing facility in the county.
- The retention and continuation of employment for 59 personnel many of whom live locally.
- Improved access arrangements including removal of kerbside vehicular waiting.
- Significant environmental improvements due to the transfer of uses from the open to a purpose-built modern building.
- The introduction of new tree planting, landscaping, and landscape features.
- Removal of unsightly buildings and structures and boundary features.
- The site includes an existing and active waste management facility.

Other Harms

Amenity Issues

Noise

8.22 The proposed development has the potential to increase noise levels in the area and to impact on sensitive receptors. A Noise Assessment has

been carried out for this planning application and the outline application submitted to the Borough Council to assess noise impacts at current levels, construction, and future occupation in accordance with BS:4142:2014.

- 8.23 The noise environment is dominated by the M6 Toll and M42 motorways, railway lines to the south and passing road traffic along Marsh Lane. The nearest noise sensitive receptors to the site are the five houses on Marsh Lane (Rose Cottages). From the noise assessment the impact on these properties from the proposed development is likely to be negligible due to the distances involved and through screening/barriers provided by the existing industrial units.
- 8.24 Policies DM2 and LP29 require increased noise emissions not to have unacceptable adverse impacts on the local environment, economy, or communities. Noise impacts which are negligible, and which can be further mitigated and controlled by planning conditions clearly indicate that there is unlikely to be any unacceptable adverse impacts, so the proposed development complies with policies DM2 and LP29. There are no objections from NWBC Environmental Health Officer subject to conditions.

Dust

- 8.25 Dust emissions associated with the on-site activities have the potential to cause a loss of amenity for future occupants of the wider development (Units 3-5) and existing off-site receptors (existing Unit C and a group of five properties called "Rose Cottages").
- 8.26 The planning application is accompanied by a dust assessment based on "Guidance on the Assessment of Minerals Dust Impacts for Planning V1.1, IAQM, 2016 and that concludes that dust emissions from the metal recycling facility are not considered to represent a constraint to planning consent for the development. This is based on the view that the magnitude of the emissions from materials handling, material processing, stockpiles/exposed surfaces and off-site transportation will be small to medium. This is likely to be due to the proposed development (hard surfacing and paving and concrete bays) and operational controls such as dampening down materials during dry and windy periods and undertaking handling processes within existing buildings and the new building. When the distances to the receptors and prevailing weather conditions are taken into account dust impacts are likely to be negligible/slight and therefore not significant.
- 8.27 Policies DM2 and LP29 require dust emissions not to have unacceptable adverse impacts on the local environment, economy, or communities. Dust impacts which are not significant, and which can be further mitigated and controlled by planning conditions clearly indicate that there is unlikely to be any unacceptable adverse impacts, so the proposed development complies with policies DM2 and LP29. There

are no objections from NWBC Environmental Health Officer subject to conditions.

Environmental Issues

Air Quality

- 8.28 The proposals have the potential to cause air quality impacts as a result of fugitive dust emissions during construction and road traffic exhaust emissions associated with vehicles travelling to and from the site during operation. An Air Quality Assessment has been undertaken and that concludes that during construction air quality impacts would not be significant if good practice dust control measures are implemented.
- 8.29 During the operational phases impacts on annual mean NO₂, PM₁₀ and PM_{2.5} concentrations as a result of traffic generated by the development are predicted to be negligible at all sensitive receptor locations following a review of dispersion modelling results. There are no objections from NWBC Environmental Health Officer subject to conditions.

Ground Conditions and Pollution

- 8.30 The NPPF says planning policies and decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risk arising from land instability and contamination (paragraph 189). Paragraph 190 says that where a site is affected by contamination or land instability issues, responsibility for securing a safe development rests with the developer and/or landowner.
- 8.31 According to the Ground Investigation Report sand and gravel was excavated on the site between 1938 and 1953 and backfilled with foundry sands until the area was gradually built over with the current warehouse and commercial units. The site investigations reveal Made Ground based mainly on foundry sands down to varying depths of 1-5m across the site. There are significant concentrations of heavy metals and inorganic contaminants in the soils and ground water beneath the site. To reduce any risks to human health the Report says that a simple clean soil cover system would be sufficient in the central and northern area of the site.
- 8.32 The Report recommends that the foundry sands are remediated using ground improvement. This could comprise stabilisation using insitu mixing techniques or preloading the ground. Ground improvement and piled foundations will be required. Further testing will be required to produce a final report and to confirm remediation of the site prior to construction of the buildings which are matters that can be covered by planning conditions. On this basis the site is suitable for its intended

purposes. There are no objections from NWBC Environmental Health Officer subject to conditions.

Flooding and Drainage

- 8.33 According to the Environment Agency's indicative flood zone maps, the site is located in Flood Zone 3a (high risk of fluvial flooding), however within an area benefitting from formal flood defences. A site-specific flood risk assessment has therefore been carried out and accompanies both planning applications.
- 8.34 The River Tame, which flows in an easterly direction, is located approximately 20m away from the site and hence poses a fluvial flood risk to the proposed development. The EA's Risk of Flooding from Surface Water Map shows the majority of the site is at a very low risk of surface water flooding. Only isolated areas due to local depressions are shown to be at medium flood risk with flood depths not exceeding 300mm and thus low hazard to people rating. The most north-eastern part of the site and the site entrance at Marsh Lane are shown at low risk of flooding with hazard to people classification varying between danger for some and danger for most. During the 2019 ground investigation the groundwater levels were found between 0.31m and 1.94mbgl, with the north-western corner of the site being under water during the monitoring period. Although the groundwater does not represent a significant flood risk to the site, a probability of shallow above surface flooding exists, and the site is therefore considered to be at medium risk of groundwater flooding.
- 8.35 EA mapping suggests that the site is not at risk of reservoir flooding during the 'dry day' scenario, but that should a reservoir breach event coincide with 'wet day' conditions, the site would be affected. The site is at very low risk of sewer flooding and flooding from artificial sources. Safe access and egress can be provided along Marsh Lane up to and including the 100year fluvial flood event providing a breach of the River Tame flood defences and/ or M42 bridge blockage have not occurred. Safe access and egress are also provided up to the 100year surface water flooding event.
- 8.36 Site specific hydraulic modelling has been carried out and that has concluded that the site is at risk of flooding during a fluvial 1%AEP plus 22% climate change scenario (the design event) and beyond. Considering the above, the future development has the potential to adversely impact the existing floodplain storage and thus increase flood risk elsewhere. Appropriate mitigation measures will therefore be required. The FRA recommends a series of measures to mitigate the risks to the site and third-party land including setting the finished floor levels no lower than 75.37AOD, provision for compensatory onsite flood storage (new attenuation pool at the northern end of the site), a Flood Response Plan, implementing sustainable drainage techniques,

and improve the development's resilience to flooding using flood resilient construction.

- 8.37 The EA in the light amended site layout plans and reports have removed their original objections on the grounds of flood risk and proximity to the Marsh Lane Flood Defence Embankment. Subject to the imposition of a planning condition dealing the development being carried out in accordance with the submitted FRA and the recommended mitigation measures they have no objection. On this basis the development would be in compliance with the current NPPF and policies DM6 and LP33.
- 8.38 In terms of site drainage the existing metal recycling industry re-uses a proportion of the surface water run-off in the processing works and this will be maintained through the proposed development. However, an updated drainage strategy will aim to reduce the volume of clean and unused surface water being discharged via the pumping station. Other surface water runoff will be treated through permeable paving and within an attenuation pond before being pumped at into the River Tame via an existing outfall and headwall.
- 8.39 The proposed attenuation pond and surface water pumping station will limit flows being discharged to the receiving watercourse to a significant betterment for all events up to and including the 1 in 100-year event plus climate change (40%) event, without flooding of the development. The Drainage Strategy report demonstrates that the proposed development may be designed in a sustainable manner without adversely impacting the flood risk either at the Site or to any third-party land in line with NPPF requirements. Flood Risk and Water following a number of submissions and discussions has raised no objection to the proposal subject to conditions to deal with the submission of a detailed water drainage strategy and its installation and maintenance plan.

Transport

- 8.40 The proposed development comprises the consolidation of the existing access/egress points on Marsh Lane to provide a new access to the metal recycling facility which would also be shared by the industrial units (new and existing), a new shared egress located between Units A-B and the retention of the access/egress to Unit D. The existing access/egress to the metal recycling site would be closed. An extension to the loop road between the new access and egress would provide space for vehicles to turn and to wait.
- 8.41 Both planning applications are accompanied by a revised Transport Statement which assesses the cumulative impact on the public highway network from the combined development of industrial uses and metal recycling. The statement reports that the proposed metal recycling development will not result in any intensification of existing

business activities/employment levels (20 deliveries a day). Therefore, the trip generation, and subsequent assignment onto the local highway network, only consider the trips generated by the proposed industrial development. The report says that this is forecast to generate no more than 47 two-way trips in any peak hour period. The statement concludes:

- Appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.
- Safe and suitable access to the site can be achieved for all users; and
- Any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

It also says that this report has demonstrated that the proposed development meets the criteria set out in the NPPF (see paragraph 7.4 above) and that the residual impacts of development are not severe. It is therefore concluded that there is no evidence that the proposed development should be prevented or refused on highways grounds.

8.42 Principal Highway Control Engineer originally raised concerns about the potential impacts of development on the public highway network and the proposed new access arrangements and previous problems from parking of vehicles fronting and around the development including the condition of the highway also raised by the local community. Parking has been an issue for both the existing industrial users and the metal recycling business. Following lengthy discussions the Engineer is now satisfied with the proposals and solutions put forward to address previous concerns. In summary this means:

- Road safety – new access/egress arrangements and planning conditions requiring 160m visibility splays, permanent warning signs and improved tactile crossings and a planning obligation for a payment to cover the cost of a reduction in speed limit on Marsh Lane (60 - 50 mph)
- Parking – new car park spaces across the development including the new waiting spaces for HGVs, new access/egress points, and repairs to Marsh Lane and planning conditions and a planning obligation to pay for new parking restrictions.

8.43 On this basis the development complies with paragraph 115 in the NPPF and planning policies DM3, LP23, LP34 and TP01.

Ecology

8.44 The proposals are for on-site habitat creation including creation of native scrub, grassland, planting of 50 small trees. Both planning applications are supported by an Ecological Impact Assessment which

concludes that to ensure there is no further loss or impact to biodiversity, there is no breach in legislation and that the retained ecological features at the Site can be managed and maintained positively into the future several measures should be provided.

- 8.45 These Measures include a Construction and Environmental Management Plan (CEMP) must be provided to ensure there are no long-term significant effects from the development. The western extent of the Site (the lake) needs to be assessed to establish its status to determine whether the lake qualifies as an LWS. Avoidance and good practice construction measures for protected species are necessary to prevent harm and potential breach of legislation. Enhancement measures should be provided for bats, birds, and hedgehogs, as well as planting recommendations for invertebrates.
- 8.46 The applications are also supported by a biodiversity metric even though they were submitted before the statutory framework for biodiversity net gain (BNG) was introduced in February 2024. This updated metric demonstrates a net gain of 14.30% habitat units (net change of 2.24 units) through the proposals. This means that the gains are above the statutory objective of 10% BNG. On this basis Ecology Services raises no objection subject to conditions dealing with construction environmental management plan (CEMP -biodiversity) and habitat management and monitoring plan (HMMP) (LEMP) and external lighting. The proposals would therefore comply with paragraph 186 in the NPPF (December 2023) and policies DM1 and LP16. In the case of the HMMP it has been suggested that this could be secured by way of planning obligation. NWBC in their consideration of the HMMP have concluded that it should be dealt with by both a condition and an obligation within a Section 106 agreement to cover the off site management and maintenance of land on the applicant's land south of Marsh Lane which is outside the red line boundary.

Public Rights of Way

- 8.47 Right of Way M36 runs along the northern boundary of the site and would not be affected by these proposals and therefore would be in compliance with policy DM5.

S106 Agreement

- 8.48 As indicated above in paragraph 2.9 the Principal Highway Control Engineer has requested two planning obligations and these are:
- a) A sum of £8,000 is requested to pay for a reduction in the speed limit fronting the site (from the Marsh Lane junction with the A446 all the way to the present 30mph signage on the outskirts of Water Orton) from 60mph to 50mph, to be paid on implementation of the planning application. The money will pay for the processing and implementation of the scheme. The contribution shall be written

such that the scheme is shared between this application and application number PAP/2021/0372, with each site paying £4,000 towards the scheme. To ensure the scheme is delivered, the first development to commence shall pay for the scheme in total and the other development shall pay their £4,000 to the first developer when their development commences.

- b) A sum of £8,000 is requested to pay on commencement of the development for the processing and implementation of a Traffic Regulation Order (TRO) on Marsh Lane to stop parking fronting and around the development. The contribution shall be written such that the scheme is shared between this application and application number PAP/2021/0372, with each site paying £4,000 towards the scheme. To ensure the scheme is delivered, the first development to commence shall pay for the scheme in total and the other development shall pay their £4,000 to the first developer when their development commences.

- 8.49 Members will be aware that the content of Section 106 Agreements is subject to statutory tests. These are that any obligations must be necessary to make the development acceptable in planning terms; they must be directly related to the development and finally they must be fairly and reasonably related in scale and kind. From these and from experience with other cases, contributions and requests that might be suggested to rectify existing issues and issues or concerns that are outside of the control of the development would not pass these tests. The requests already outlined are now assessed against these tests.
- 8.50 The request towards Speed Reduction measures in Marsh Lane has already been assessed by NWBC in the course of determining its planning application and they have determined it should be included as a section 106 obligation. Your Officers also consider that this should be included in the section 106. This has been agreed by the applicant.
- 8.51 The request for a contribution towards a parking TRO is considered to be necessary to make the development acceptable in planning terms. Part of the merits of the proposal is to provide adequate access arrangements as well as on-site parking provision, thus removing the likelihood of on-street parking. As such, an Order here would re-enforce that benefit. This would accord with Local Plan Policy LP29 (6) together with the NPPF at paras 114 to 117.
- 8.52 As indicated above in paragraph 8.46 the applicant would need to include measures to secure biodiversity off setting together with its maintenance. It is considered that this requirement is compliant with Local Plan policies, LP1, LP4, LP14, LP30. Para 180 (d) and 186 of the NPPF also provides justification for this approach too. It would be directly related to the development, and it would be proportionate to the size of the development.

- 8.53 In terms of phasing of the development, it is necessary to ensure the retention of the Metal Recycling Facility at this site. This obligation would require the provision of the new recycling facility, prior to the first occupation of any of the new units or extension. This Obligation is necessary for the satisfactory planning of the site and is directly related to the proposal. It would accord with the policies identified above in the Warwickshire Waste Core Strategy.

Referral to the Secretary of State

- 8.54 As explained in paragraph 3.2 above some Green Belt development due to its size and scale requires referral to the Secretary of State under the 2021 Direction. NWBC have judged for their application that the proposal is considered not to be inappropriate development. As such, notwithstanding that the increased floor area is greater than the threshold set out in that Direction, there is no need for referral. Your Officers agree with that approach which relates to the western half of the whole site.
- 8.55 Your Officers however have judged that for its proposal part of the eastern half of the site has not been subject to any built development or previous development. As paragraph 1.2 explains this eastern half the open land next to the motorway embankment is covered by a covenant that that it should only be used for vehicle parking and storage and no buildings. There is no evidence that the land has been occupied by a building. In the opinion of your Officers therefore as the whole "land" has not been subject to occupation exception (g) does not apply in this instance so the development is inappropriate but that there are very special circumstances to outweigh that policy harm to the Green Belt. So, for WCC referral is the appropriate way forward. If Members accept this advice, then there need to give an opinion to the Secretary of State on whether they are minded to approve the development.

9. Conclusions

- 9.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the starting point for the determination of planning applications:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

- 9.2 The proposal is considered to be inappropriate development in Green Belt terms, but there are very special circumstances to overcome that policy harm. No other significant or demonstrable adverse harms have been identified. The main operational waste management uses are now to be located in a purpose-built building which provides for containment and increased efficiency and physically separates the waste management uses from the proposed commercial development.

The use would be permanent so avoiding a loss of valuable capacity in this important waste stream. The overall appearance of the facility would be improved by the removal of unsightly boundary demarcation and the introduction of more landscaping to soften views from the south and north and introduce more biodiversity.

10. Background Papers

- 10.1 Submitted Planning Application – Planning reference NWB/23CM002
- 10.2 Appendix A – Map of site and location.
- 10.3 Appendix B – Planning Conditions.
- 10.4 Appendix C – Site Masterplan
- 10.5 Appendix D – Proposed Site layout – metal reclamation
- 10.6 Appendix E – New Material Handling Building – Site Layout
- 10.7 Appendix F – Existing & Relocated Buildings – Site Layout
- 10.8 Appendix G – New Material Handling Building – Elevations

	Name	Contact Information
Report Author	Paul Wilcox	paulwilcox@warwickshire.gov.uk 01926 412538
Director for Strategic Infrastructure and Climate Change	Steve Smith	stevesmithps@warwickshire.gov.uk
Executive Director for Communities	Mark Ryder	markryder@warwickshire.gov.uk
Portfolio Holder for Transport and Planning	Cllr Jan Matecki	cllrmatecki@warwickshire.gov.uk