

## SEPA guidance on the recovery and disposal of waste in quarries

### 1. Introduction

This document provides guidance on when the infill or restoration of a quarry using waste is likely to be a recovery or a disposal operation, and therefore what type of waste regulation applies to the activity. This guidance has been written specifically for quarries but the principles expressed will also apply to other situations, for example infilling former reservoirs, where it is important to establish whether an activity is a recovery or disposal activity.

### 2. Context

The use of waste to infill or restore a quarry can be either a recovery operation or a disposal operation and it is important to establish which as this affects how SEPA will authorise the activity. SEPA's statutory purpose is to protect and improve the environment in ways that, as far as possible, also help create health and well-being benefits and sustainable economic growth. Where possible, SEPA will encourage the use of waste materials in place of virgin resources in the interests of the sustainable management of resources and One Planet Prosperity.

“Recovery” is defined as “any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. A non-exhaustive list of recovery operations is set out in Part III of Schedule 4 of the Waste Management Licensing Regulations 2011.” The most relevant one to an infilling activity is R10 - land treatment resulting in benefit to agriculture or ecological improvement. To carry out a recovery activity a waste management licence or an exemption from waste management licensing will be required.

*In order for the activity to be considered recovery, it must be shown that the waste is being used instead of other non-waste material which would otherwise have been used for the same purpose and to the same extent. A recovery operation to infill a quarry could be licensed under Waste Management Licensing.*

Disposal is defined as “any operation which is not recovery, even where the operation has as a secondary consequence the reclamation of substances or energy” and there is a separate non-exhaustive list of disposal operations which includes D1 – Deposit into or onto land. To carry out a disposal activity a PPC landfill permit will be required.

*If it cannot be shown that the waste is needed to replace non-waste material, the activity will be considered a waste disposal operation. A disposal operation to infill a quarry would be classified as a landfill and would require a permit under the Pollution Prevention and Control regime.*

In order to be a recovery operation, a two stage test must be applied (as reiterated by the ECJ in case of *Cittá Metropolitana Di Bari v Edilizia Mastrodonato srl* Case C-147/15 28 July 2016). Firstly, would the operator still proceed with the proposed operation even if they had to refrain from using waste in doing so? Secondly, is the waste proposed for use suitable for that use? The responsibility for determining whether the proposed operation satisfies that test lies with the appropriate regulatory agency. In order to assess whether a proposal to infill a quarry with waste is a recovery or a disposal operation SEPA will take into consideration all the circumstances surrounding the proposed operation.

Exemptions from the Waste Management Licensing regime generally do not apply to the infill of quarries. However, there may be limited circumstances where an infilling activity will be exempt. For example, paragraph 9 can apply to the infill of quarries to a maximum depth of up to 2 metres and paragraph 19, where it does not apply to land reclamation, could apply to the stabilisation of vertical rock walls. Where activities can be classed as recovery, but do not meet the conditions required for a waste management licensing exemption, a waste management license will be required.

Scottish Landfill Tax may or may not be applicable to infilling operations at former quarries. This is not a determining factor for SEPA, with regard to whether an activity is considered recovery or disposal. However it may have a significant impact on the operator/applicant, therefore they should be advised to discuss their proposals with Revenue Scotland ([www.revenue.scot](http://www.revenue.scot)) to understand any potential tax implications. Revenue Scotland reserve the right to tax any materials used to infill quarries that are not listed in The Scottish Landfill Tax (Qualifying Material) Order 2016.

### **3. Determining whether the proposal constitutes recovery**

SEPA will evaluate whether or not a proposal constitutes recovery and the following indicators will be considered during this determination. This process is summarised in the flow chart in Appendix 1 but note that the flow chart should not be relied upon in isolation: it must be considered in the context of this whole Guidance note.

#### **i – Need for the works to go ahead**

The operator should be able to demonstrate that the restoration work is necessary. This may include, for example, a condition as part of planning consent. However the presence of a restoration condition alone is not sufficient in itself to definitely demonstrate recovery, as this would not guarantee that the work will go ahead or that it would go ahead with non-waste materials. SEPA recognises that the planning consent for a quarry may require work to be carried out to restore it or make it safe either through conditions or reference to an agreed planning permission. When assessing whether the use of waste for that work amounts to a recovery or disposal operation, SEPA will consider the extent to which the relevant bodies (including SEPA) were directly involved in the design of the restoration proposals when the planning consent was granted and whether there is evidence that the relevant planning authority would be likely to agree to amend the planning consent if an alternative proposal was submitted. Early engagement between SEPA, the planning authority and the operator is to be encouraged.

There may be a requirement under other legislation for specific work to be carried out for a specific purpose. This may be an indicator that the work would be carried out regardless of whether waste is utilised. However the extent of the proposed works will be assessed against

the extent of the obligated works. An example of this could be a Health and Safety notice requiring stabilisation of the quarry walls. Where multiple consents apply to the same quarry, SEPA will adopt a holistic approach in considering how these relate to one another, using this to inform our decision making.

## **ii – Extent of Works**

The works proposed should be enough to satisfy the stated aim and no more. Excessive heights/depths and/or unnecessary landforms or slopes may all be indications that the volume of material being brought onto site is a disposal operation. If benefit to agriculture or ecological improvement can be shown then this is likely to help demonstrate that the infill is a recovery activity. It is also unlikely to be necessary to completely fill a quarry in order to provide this benefit or improvement.

## **iii – Suitability for Use**

The waste must be suitable for the proposed use. It must have the engineering and environmental properties required (if necessary) and be routinely monitored or tested at an appropriate frequency to ensure continued suitability of use. It should not require additional environmental safeguards (eg lining systems) compared to those required by non-waste material. The suitability of the material is intrinsically linked to the extent of the works and to the sensitivity of the site. SEPA will encourage the appropriate use of waste materials in place of natural resources in the interests of the sustainable management of resources.

## **4. Viability**

There may be cases where the details provided to SEPA regarding the requirements of other regimes, the suitability for use, and the extent of works are not sufficient for SEPA to agree that a proposed activity can be classified as a recovery operation. In such cases an operator may elect to provide additional information to demonstrate that the works would be viable even if non waste materials were to be used. Evidence could be provided which costs the proposed works utilising non-waste materials and shows the benefits of the works, for example by a prospective increase in land value, expected income or by cost savings e.g. the costs avoided in the installation and operation of equipment. Further detail is provided in appendix 2.

## **5. Examples**

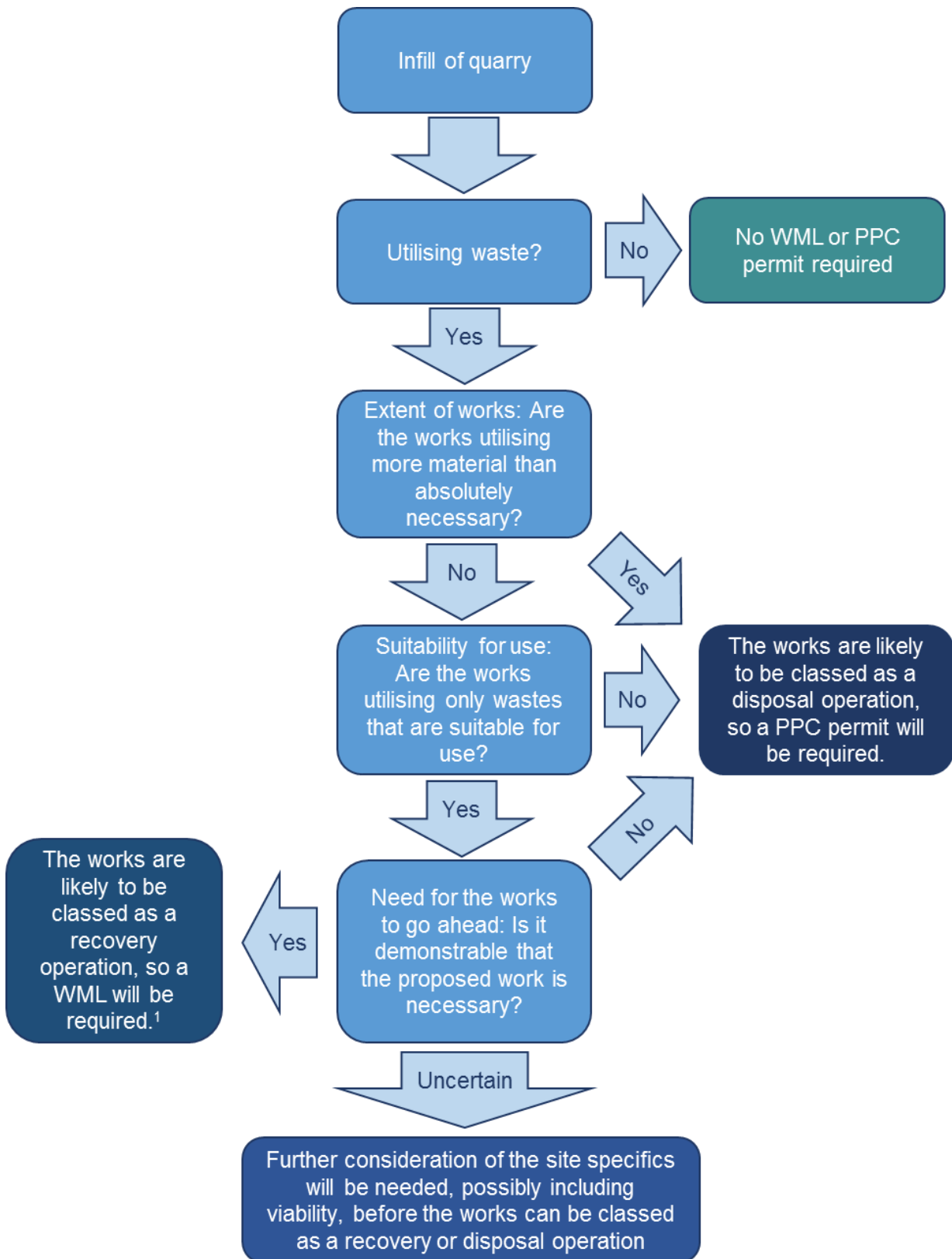
1. If a project proposes utilising non-suitable wastes which would require additional environmental protection measures then it is unlikely to be a recovery operation. For example, the use of hazardous waste soils in a restoration is unlikely to be considered a recovery operation.
2. If a project proposes utilising excessive quantities of material when compared to the stated aim then it is unlikely to be a recovery operation. For example, where an operator proposes to create a layer of topsoil six metres deep where one metre would be sufficient to recover the land, this would be considered a disposal operation and require to be authorised as such.

If the proposed activity is not a recovery operation, it is a disposal operation. This does not mean that the activity cannot proceed. However, it must be regulated as a waste disposal operation under the PPC regime.

## **6. Further Reading**

All SEPA's other guidance documents are available online at <https://www.sepa.org.uk/regulations/waste/guidance/>, including how we determine whether or not something is waste, and our position on the use of recycled aggregates from inert wastes.

## Appendix 1 – Determination Flow Chart



1. Exemptions from the Waste Management Licensing regime generally do not apply to the infill of quarries. However, there may be limited circumstances where an infilling activity will be exempt. Where activities can be classed as recovery, but do not meet the conditions required for a waste management licensing exemption, a WML will be required.

## Appendix 2: Viability – Further Detail

It will be open to applicants who wish to demonstrate that their proposal is a recovery operation to provide a financial case to show that the works proposed would have a reasonable prospect of proceeding if non-waste materials were to be used.

This would not be the same as the demonstration of financial provision that is required in the licensing process. There would be no requirement for any funds to be set aside or for the operator to provide evidence of funds. Its purpose would be to show that there is a demonstrable business case for the works to go ahead whether or not waste materials are used. The financial case would not need to demonstrate financial gain but a prediction of substantial financial loss resulting from the use of non-waste materials could be an indicator that the works would not proceed without waste materials and, therefore, an indicator of a waste disposal activity.

The viability assessment does not hinge solely on profit and it does not seek to quantify the monetary benefit of utilising wastes. However, the presence and direction of payment between the applicant and the waste producer is one indicator for SEPA to consider in terms of determining whether the proposed activity should be classed as recovery or disposal.

Any case put forward could take account of any monetary benefit that the applicant would gain from the site. This could include the value of materials extracted from the site or the value of the land once it has been restored. It could also take account of the cost of not carrying out the proposed works which might include the withholding of bonds or the provision of equipment to maintain the site in a safe condition. Where the proposal forms part of a larger scheme, it will be assessed as part of the whole scheme being commercially worthwhile. The presence of any funding secured for the implementation of the works will also be taken into account.

It is accepted that any such viability assessment cannot be completely future proof and SEPA would not expect it to be. The case should show that the purpose of the proposed activity is reasonable and does not rely on income from the disposal of wastes. If SEPA determines that the activity is a recovery activity SEPA would not expect the financial case to be updated/revisited over the lifetime of the activity.

While SEPA envisages that any financial case submitted would not contain detailed confidential information, we accept that some of that information may be regarded as commercially confidential by the applicant. We confirm that the applicant would be able to apply for their submission or any part of it to be excluded from the public register. Any such application would be determined by SEPA in accordance with the legislation.

It is anticipated that it would be difficult to demonstrate a financial case to support recovery in circumstances where an excavated quarry, with little or no further economically extractable material, has been sold. In these circumstances, SEPA is aware that the value attached to the quarry is often calculated by reference to the available void space and that the purpose of acquisition is generally to use the void for waste disposal.