

**REVOCATION OF HAZARDOUS SUBSTANCES CONSENT AT THE
FORMER ALBRIGHT AND WILSON LTD WHITEHAVEN WORKS**

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Summary and Recommendations:

This report advises the Panel of the existence of a redundant hazardous substances consent and seeks support to its being revoked.

It recommends that: -

- (a) That subject to paragraph (c) below being satisfied that hazardous substances consent ref 4/92/0956/OHI be revoked.
- (b) That the Panel authorises the Head of Legal & Democratic Services to prepare a revocation order under section 14 of the Planning (Hazardous Substances) Act 1990 for the Secretary of State to confirm.
- (c) That the delegated authority be conditional on the agreement of the owner, in writing, to the revocation including a statement to the effect that they will not suffer loss and do not intend to claim compensation on the revocation of the consent.

1.0 INTRODUCTION

- 1.1 On 30th November 1992 Albright and Wilson Ltd made an application for deemed hazardous substances consent for the storage of sulphur trioxide and ethylene oxide on site at their Whitehaven Works shown edged red on the plan at Annex 1.
- 1.2 Deemed consent no 4/92/0956/OHI was granted on 22nd December 2002 for the storage of 200te of sulphur trioxide and 40te of ethylene oxide on the Whitehaven Site. This consent remains in force.

2.0 PRESENT POSITION

- 2.1 The operations on this site ceased in October 2006.

- 2.2 The hazardous substances consent allows for the storage of sulphur trioxide and ethylene oxide and as long as it remains in place the Health and Safety Executive will maintain a consultation zone around the site which will prevent any future development in the area without consulting the Health and Safety Executive.
- 2.3 The revocation of the existing hazardous substances consent will permit this land to be brought back into effective use (subject to the grant of planning permission). There are proposals for the regeneration of the site as a public amenity space.

3.0 LEGISLATIVE BACKGROUND

- 3.1 Section 14 of the Planning (Hazardous Substances) Act 1990 ("The Act") allows for the hazardous substances consent to be revoked by order.
- 3.2 The Council as a Hazardous Substances Authority can make a revocation order under Section 14(1) or 14(2) of the Act. The revocation will be subject to confirmation by the Secretary of State even if the order is unopposed.
- 3.3 Section 14(1) of the Act is a general power and states that the Council may by order revoke a hazardous substances consent if it appears to them, having regard to any material consideration that it is expedient to revoke it.
- 3.4 Section 16(1) of the Act makes it clear that compensation, which would otherwise be payable for a revocation or modification using powers under section 14(1) is not payable for a revocation if it is made under section 14(2) of the Act.
- 3.5 Section 14(2) of the Act states that a revocation order can be made on any one of the four grounds namely:
- a) that there has been a material change in the use of the land to which the hazardous substances consent relates; or
 - b) planning permission has been granted and commenced for the development of the site and which would involve a material change of use of such land; or
 - c) in the case of hazardous substances consent which relates to one substance that that substance has not for at least five years been present on or over or under the land to which the consent relates in a quantity equal or exceeding the controlled quantity; or
 - d) in the case of a hazardous substances consent which relates to a number of substances that none of those substances has for at least five years been so present.

- 3.6 If none of the above four grounds apply then it is possible that compensation could be payable by the Council which is unsatisfactory.
- 3.7 It is arguable that ground (a) applies. The site has been cleared of most of the former buildings with just a few office buildings remaining. Arguably there has been a material change of use of the site from a sui generis to a nil use. The few remaining buildings left on the site were ancillary buildings to the principal use as a chemical works. As that primary use has ceased with the removal of the majority of the buildings then the remaining buildings do not benefit from any use.
- 3.8 If ground (a) does not apply then the consent can still be revoked under section 14(1) to the extent that the Council consider it expedient to do so having regard to any material considerations. In this case complete cessation of use as a chemical factory is a material consideration. Compensation however may be payable to any person who has suffered depreciation or disturbance as a result of the order being made.
- 3.9 The safest option is to seek an agreement from the owner of the site that they will not suffer loss and that they do not intend to claim compensation on the revocation of the consent.

4.0 RECOMMENDATION

- 4.1 That subject to paragraph 4.3 being satisfied that hazardous substances consent ref 4/92/0956/OHI be revoked.
- 4.2 That the Panel authorises the Head of Legal & Democratic Services to prepare a revocation order under section 14 of the Planning (Hazardous Substances) Act 1990 for the Secretary of State to confirm.
- 4.3 That the delegated authority be conditional on the agreement of the owner, in writing, to the revocation including a statement to the effect that they will not suffer loss and do not intend to claim compensation on the revocation of the consent.

5.0 REASONS FOR RECOMMENDATIONS

- 5.1 The site is no longer used for the production or use of materials stipulated in the current Hazardous Substances Consent and the continuation of the Hazardous Substances Consent is no longer relevant.

6.0 ALTERNATIVE OPTIONS CONSIDERED AND RECOMMENDED FOR REJECTION

- 6.1 Not to revoke the Hazardous Substances Consent (HSC) Ref: Application No. 4/92/0956/OHI. This course of action has been rejected

because the continued existence of the redundant HSC for the site inhibits the proper consideration of any proposed planning application by the Health and Safety Executive and local planning authority.

7.0 FINANCIAL IMPLICATIONS

- 7.1 As the site owners are being asked to confirm that they intend to raise no objections to the revocation of the Hazardous Substances Consent, no compensation will be payable by the Council.

4/92/2956/011
 COVELAND BOROUGH COUNCIL
 NOV 20 1992
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REV N°	REVISION	BY	DATE	CHECKED	APPROVED
SCALE	1:1250	ATAS	NOV 92		
TITLE					
VESSEL LOCATION PLAN					
CIVIL ENGINEERING DEPARTMENT					
ALBRIGHT & WILSON LTD					
REV N°					
FILE REF					