CUMBERLAND COUNCIL
DELEGATED PLANNING DECISION

1.	**Reference No:**	4/22/2455/DOC4/22/2455/DOC
2.	**Proposed Development:**	APPROVAL OF THE REQUIREMENTS OF PLANNING CONDITIONS 3, 4 AND 12 OF PLANNING PERMISSION REFERENCE 4/20/2455/0F1.APPROVAL OF THE REQUIREMENTS OF PLANNING CONDITIONS 3, 4 AND 12 OF PLANNING PERMISSION REFERENCE 4/20/2455/0F1.
3.	**Location:**	LAND SOUTH OF WATERS EDGE CLOSE, KELLS, WHITEHAVENLAND SOUTH OF WATERS EDGE CLOSE, KELLS, WHITEHAVEN
4.	**Parish:**	WhitehavenWhitehaven
5.	**Constraints:**	ASC;Adverts - ASC;Adverts, Safeguard Zone - Safeguard Zone, Coal - Standing Advice - Data Subject To Change ASC;Adverts - ASC;Adverts, Safeguard Zone - Safeguard Zone, Coal - Standing Advice - Data Subject To Change
6.	**Publicity Representations &Policy**	N/A.
7.	Report:	

Report:

Site and Location:

The Application Site comprises an area of previously developed land extending to 1.37ha loca to the south of Waters Edge Close, High Road, Whitehaven.

The Site comprises part of the site of the clerical buildings and vehicle parking areas serving t former Marchon plant.

The Application Site is bounded by Waters Edge Close to the north; the previously developed now vacant former Marchon plant to the south and west; and, High Road to the east.

The Site is generally level, with some mounds of earth associated with the clearance of the la and likely the adjacent development and hard surfacing present.

The Site is currently enclosed by herras fencing to prevent unauthorised access.

The Site is located in Flood Zone 1.

The Site is not within a conservation area and no Tree Preservation Orders exist.

Proposal:

This Application seeks approval of details reserved by Planning Conditions 3, 4 and 12 of Application Ref. 4/20/2455/0F1.

This report considers Planning Condition 3 only.

3. No development shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to and approved in writing by, the local planning authority. This strategy will include the following components: 1. A supplementary site investigation to provide information for a detailed assessment of the risk to all Controlled Water receptors that may be affected, including those off-site. 2. The results of the site investigation and the detailed risk assessment referred to in (1) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken. 3. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The development shall be completed in accordance with the approved details.

The information submitted in support of the application comprises:

Planning Condition 3 – Contamination

- Reclamation Method Statement for the Proposed Residential Development on Land at Water's Edge, Whitehaven – Report Ref. 8190OR04 Rev02
- RESPONSE TO ENVIRONMENT AGENCY PLANNING CONSULTATION FOR THE PROPOSED RESIDENTIAL DEVELOPMENT AT WATERS EDGE, WHITEHAVEN - Ref: 8190OR07
- Controlled Waters Risk Assessment for Residential Development on Land at Waters Edge, Whitehaven (reference 8190OR13; dated 11 May 2023)

Consultee:	**Nature of Response:**
Environment Agency	Thank you for re-consulting us on the above application.

We have considered the following supplementary report:

• Controlled Waters Risk Assessment for Residential Development on Land at Waters Edge, Whitehaven (reference 8190OR13; dated 11 May 2023).

Environment Agency position

Based on the details as submitted, we would have no objection to the partial discharge of Condition 3, and we would offer the following comments: -

Condition 3

The supplementary information does not provide adequate information on the hydrogeology and contaminant status in groundwater because there is no additional evidence about underlying solid geology. The window sampling techniques are limited to shallow soils and restrictions from obstructions do not allow deep investigations. There are no deep boreholes penetrating the aquifer.

The suggestion that level 2 remedial targets methodology has been undertaken is incorrect. At Level 2, the assessor considers the possible effects of attenuation processes in the soil and saturated zone and predicts the effects of dilution by groundwater flow below the site. There requires installation of an adequate groundwater monitoring system. The shallow installations are inadequate for this purpose.

The statistical assessment of soils to identify contaminant concentration and outliers across the site is acceptable standard practice using 95%tile derivation in unsaturated soils for human health. It should not be used for determination of leachate and groundwater values because the saturated circumstances for assessment are impacted by other factors influencing movement of contaminants in soluble form. Factors of flow orientation, permeability, hydraulic conductivity, transmissivity, dilution etc. require sampling locations to tie in with the conceptual site model of hydrogeology. Each groundwater monitoring point should be representative of groundwater flow at that location, and this is why upgradient and down gradient boreholes are required to establish uncontaminated/baseline and impacted groundwater which can monitor the plume. Comparative total and leachable extraction are specific to the sampling point to evaluate potential release in soluble form from the specifically tested soil. The statistical analysis for soils and leachates is useful but is limited for assessment of water quality.

			The concept for derivation of groundwater values using statistical means is acceptable for multiple sampling events in the same borehole and is useful to interpret seasonal changes. The repeated perched water purging in shallow installation suggests limited continuity of water resource overlying the clay which is not unexpected. It must be stressed, the amalgamation of water quality values across the site in a statistical iteration is not ideal as it does not incorporate the basic conceptualisation of groundwater movement. To progress an evaluation of risk, the report does allow the assessment of likely significance of pollutant linkages in soils to groundwater and the percentile range in soils has provided a satisfactory baseline of soil conditions and leachable evaluation is important. The new leachate data does provide sufficient information to address a level 1 Remedial Target methodology assessment for Controlled Waters and the statistical interpretation adds value to the assessment, but has its limitations. In following the methodology, there would be a requirement to undertake a level 2 assessment due to exceedance of leachate values, but there is insufficient borehole infrastructure and new installations /soil data would be required for a level 2 determination. However, in review of the assessment, it is important to put into perspective the overall site conditions and consider the need for a level 2 assessment given the total concentrations in unsaturated soils, leachate level of exceedance and limited water within the made ground, and thickness of protective natural deposits. Thus, strict exceedance of generic values does not necessarily give rise to enhanced significance of risk in real terms and is site specific. In review of copper concentrations on site, we accept that low concentration in made ground suggest there is no pollutant linkage sourced from soils and more likely that copper has leached from soils and attenuated in the glacial till. We disagree that the elevated concentrations are natural in the till, but accept they form localised background levels. Generally, there is no issue of available copper in tills across Cumbria apart from anomalously metal rich areas. Protocols for further assessment of contaminants in tills and their potential impact on groundwater in the underlying aquifer systems could be endorsed. However, given the low-level exceedance, there would be little benefit and this not required. The removal of the identified hotspot and other visually/olfactory unknown hotspots during earthworks will require further investigation as stated in the report and verification of the remaining in-situ ground will require soils testing to validate the remediation.	

	In conclusion, the extra data has been assessed as per Remedial Target Methodology level 1 to determine risk to water quality. Providing the hot spot of hydrocarbon is chased out and removed and works are validated as part of the scheme, the planning condition 3 could be partially discharged.

Neighbour Responses:
N/A.

Development Plan:

On 1st April 2023, Copeland Borough Council ceased to exist and was replaced by Cumberland Council as part of the Local Government Reorganisation of Cumbria.

Cumberland Council inherited the local development plan documents of each of the sovereign Councils including Copeland Borough Council, which combine to form a Consolidated Planning Policy Framework for Cumberland.

The inherited local development plan documents continue to apply to the geographic area of their sovereign Councils only.

The Consolidated Planning Policy Framework for Cumberland comprises the Development Plan for Cumberland Council until replaced by a new Cumberland Local Plan.

Copeland Local Plan 2013-2028 (Adopted December 2013):

Core Strategy (CS):
Policy ST1 – Strategic Development Principles
Policy ENV3 – Biodiversity and Geodiversity

Development Management Policies (DMP):
Policy DM11 – Sustainable Development Standards
Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species

Emerging Copeland Local Plan (ELP):

Cumberland Council are continuing the preparation and progression to adoption of the emerging Copeland Local Plan 2017-2038.

The emerging Copeland Local Plan 2017-2038 comprising the Publication Draft (January 2022) and Addendum (July 2022) have recently been examined by the Planning Inspector and their report on the soundness of the plan currently remains awaited.

As set out at Paragraph 48 of the National Planning Policy Framework (NPPF), Local Planning Authorities may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan; the extent to which objections to relevant policies have been resolved; and the degree to which emerging policies are consistent with the NPPF.

Given the stage of preparation of the emerging Copeland Local Plan 2017-2038 some weight can be attached to policies where no objections have been received or objections have been resolved. The Publication Draft (January 2022) and Addendum (July 2022) provides an indication of the direction of travel of the emerging planning policies, which themselves have been developed in accordance with the provisions of the NPPF.

Policy DS6PU - Design and Development Standards
Policy DS10PU - Soils, Contamination and Land Stability
Policy SC1PU - Health and Wellbeing
Policy N1PU - Conserving and Enhancing Biodiversity and Geodiversity Strategic
Policy N5PU - Protection of Water Resources

Other Material Planning Considerations

National Planning Policy Framework (NPPF).
Planning Practice Guidance (PPG).
The Conservation of Habitats and Species Regulations 2017 (as amended) (CHSR).

Assessment:

The development has been commenced in conflict with the requirements of Planning Condition 3.

No formal enforcement action has been progressed by the Council.

The development has been completed in accordance with the details submitted in relation to Planning Condition 3; therefore, the works completed have not invalidated the planning permission.

Planning Condition 3 – Contamination

The Environmental Agency has confirmed that based on the details as submitted, they would have no objection to the partial discharge of Condition 3.

Environment Health has confirmed that sufficient information has been provided to approve the planning condition from a human health perspective.

Conclusion

Planning Condition 3 – Contamination

	Approve requirements of planning condition. Planning Condition 3 cannot be fully discharged until the development has been completed in accordance with the approved details.
8.	**Recommendation:** Approve <u>Planning Condition 3 – Contamination</u> Approve requirements of planning condition. Planning Condition 3 cannot be fully discharged until the development has been completed in accordance with the approved details.
9.	**Condition(s):** N/A

Case Officer: Chris Harrison	**Date :** 10/07/2023
Authorising Officer: N.J. Hayhurst	**Date :** 14/07/2023
Dedicated responses to:- N/A	