

HAVANT BOROUGH COUNCIL

Town & Country Planning Act 1990

Consultation on Planning Application

MEMORANDUM

From:	Environmental Health	To:	Development Control
Our Ref:	CONS/23/02918	Your Ref:	APP/21/00405
EH Case Officer Extn:	397	Date:	17 November 2023
DC Case Officer:	Ms Josephine Lacey		
DC Case Officer Extn:	N/A		
Application Number:	APP/21/00405		
Site Address:	Langstone Technology Park, 2B Langstone Road, Havant, PO9 1SA		
Proposed Development:	Variation of Conditions 2, 3, 8, 18, 19, 22 and 25 of Planning Permission APP/19/00703 relating to the erection of the flexible use industrial units in the south-western corner of the site (Phase 1).(25.08.21). Request to discharge conditions 4,7,9,10,11,12,13, 14 & 15 (06.09.21).Request to discharge conditions 5 & 6 (24.12.21). Request to discharge conditions 4, 5, 6, 7, 12, and 20 (received 15/08/2022). Request to discharge conditions 16, 17, 19 (received 30/08/2022). Request to discharge condition 15 (Phase 2b) (received 22.6.23). Request to discharge condition 6 (phase 2b and 2c)(received 13.7.23). Request to discharge condition 9 (phase 2)(recd 16.8.23). RECONSULTATION REQUEST for revised plans and/or documents received - condition 9 [Contamination Assessment]; Watching Brief document		

Observations / Comments:

Documents reviewed for the purposes of this application (grey text for reference);

- Clancy Remediation Strategy Report 10/1425/005 Rev. 01 Nov 2021 (Clancy RMS)
- Envirotreat DJS/Hav/RMS/0 Feb 2022 Proposed Remediation Method Statement (received with ETL/DS/100 May 2022) (Envirotreat RMS)
- Envirotreat ETL/DS/100 May 2022 Interim Remediation Verification Report (I-VR)
- Envirotreat ETL/AN/043 Aug 2022 Ground Gas Risk Assessment (GG-RA)
- Envirotreat ESL/SSF/101 Sept 2022 – Watching Brief Verification Report (Sept'22 WB-VR)
- Envirotreat ESL/SSF/101 May 2023 – Watching Brief Verification Report (May '23 WB-VR)
- Envirotreat ESL/SSF/101 May 2023 – Watching Brief Verification Report (Sept '23 WB-VR)
- AAW Proj 4046 Dwg. No.0402 Rev. B – Phasing Plan (APP/22/00615, amending APP/21/00405)
- AAW Proj 4046 Dwg. No.0100 Rev. C – Location Plan (APP/19/00703 red-line)

- PRC Drawing (Job/Stage/Dwg No.) 11319 PL 004 Mar '21 (APP/19/00703 red-line/Blue Line)

Notes on relevant planning conditions, spatial area of effect;

The subject of the consultation is the formal approval of the Envirotreat RMS (previously submitted in an application to discharge c.16, verification), implicitly to supersede the previously approved Clancy RMS. This seeks to amend the schedule of documents approved under c.9 to APP/21/00405.

It should be noted that there are inconsistencies in the spatial area covered by the contamination assessment documents approved under c.9 (not included in the list above), the planning red-line area for APP/21/00405, the area subject of the previous application to discharge c.9, the development phase plan (phases 1 & 2, being progressed), and the previous application to discharge c.16 (verification).

In practice, this means that even where the Council approve the Envirotreat RMS as superseding the Clancy RMS, the Clancy RMS will remain the approved RMS in respect of APP/21/00405 development phase 3 (and possibly other regions). This is particularly relevant in respect of the area referred to as the 'WS2 hotspot area'.

It is additionally noted that the submitted revised WB-VR is material to condition 16 only. The context of the applicant/agent progress chasing this decision would lead me to believe that the intention of the applicant is to discharge c.16 in order to address the 'prior to occupation' restriction. I have reviewed the submitted documentation with this in mind, on the assumption that a prior application to discharge c.16 may remain open (being subject to an extension of time agreement).

Envirotreat DJS/Hav/RMS/0 Feb 2022 Proposed Remediation Method Statement (received with ETL/DS/100 May 2022) (Envirotreat RMS)

The formal submission of this document for approval under c.9 is likely to be in response to comments made under (our ref) CONS/23/01614.

These comments were made in the expectation that the submitted document would comprise a revised version that would resolve some of the inconsistencies between the content and scope of the respective Envirotreat & Clancy RMS's, and the content of the Envirotreat WB-VR and the remediation proposals/verification plan presented in the Envirotreat RMS.

The submitted Envirotreat RMS is unchanged from the previously reviewed version. As previously indicated, there is no in-principle objection to the content of the Envirotreat RMS, however as the ambiguities and issues highlighted previously have not been addressed; it does not simplify the approach to condition discharge under this application, or future applications, as far as was hoped.

This will be accounted for in the commentary below in respect of c.16, and under future applications made in respect of APP/21/00405 red-line c.16, and in respect of any future applications falling within the APP/19/00703 blue-line area.

Given the implied state of progress with phases 1 & 2 of the development, there is no reason to refuse the application. *It is recommended that the Envirotreat RMS be formally approved under the previously discharged c.9* in addition to the Clancy RMS, with the Envirotreat RMS to be take precedence where applicable/appropriate.

Envirotreast ESL/SSF/101 May 2023 – Watching Brief Verification Report (Sept '23 WB-VR)

The revised WB-VR includes a new section to add imported topsoil (clean cover) verification. This aims to address prior comments highlighting the insufficiency of the WB-VR in demonstrating compliance with the provisions of the approved (Clancy) RMS.

This section (and the related appendices) demonstrate importation of some 160T of BS3882 topsoil, it's quality at the point of supply, and 'as placed' quality via 21 no. samples collected from site. The quality of all imported material is within specification, and no concerns arise.

The verification document demonstrates 150mm minimum depth has been achieved, but does not make any comment on the overall depth placed, or any other cover system elements (e.g. installation of geotextile to prevent soil mixing and contaminant mobility via bioturbation).

There remains some ambiguity as to the standard against which the cover system should be compared, both for purposes of ensuring efficacy, and for the purposes of demonstrating that the implementation matches the design. The Clancy RMS states that the cover system should be 300mm, with a minimum of 150mm topsoil, over an anti-mix geotextile. The Envirotreast RMS states that *'Human Health risks will be addressed by [the constructed elements and-]... the 300mm clean capping layer in soft landscaped areas'*. In this way, the works undertaken & verified do not meet the stated or implied requirements of either the approved- or the proposed-RMS.

This is common to other aspects of the remedial/risk mitigation works, and it is not necessarily reasonable or practical at this stage for the Council to continue to seek to align remediation proposals with the site works undertaken and the available verification evidence. Instead, we are probably at a stage where the Council needs to state the conditions of it's acceptance of the submitted documentation in the interests of clarity in the unlikely (but not impossible) event that contamination issues are identified in future which are linked to the development land. Similar caveats would apply to any due-diligence connected with future land or lease transactions, insurances etc. It is not expected that this will cause significant problems, and should be able to be dealt with where issues arise though the use of relatively inexpensive indemnities.

Given this, it is appropriate (as previously) to summarise a commentary on the remediation & risk mitigation provisions under the respective RMS's, in the context of the I-VR & revised WB-VR. As this summary will include a rationale and some caveats, the format used will differ from previous responses, but I have retained the same numerical referencing for continuity.

[1] (RS) Removal of Hotspot around WS5

See consultation comments (our ref) CONS/22/03072; it is agreed that these works have been completed & adequately verified.

[2] (RS) Removal of Hotspot around WS2

This provision falls outside of the stated scope of either the Envirotreast RMS, I-VR or WB-VR. Reference to the red-line & phasing plans confirms that the WS2 hotspot lies with the APP/21/00405 red-line area, development Phase 3.

At this stage, and upon approval of the Envirotreast RMS under c.9, the Clancy RMS ([dynamic] delineation, excavation, removal, testing of base & sides-) will remain the approved RMS for this area, notwithstanding that Envirotreast prefers stabilisation/solidification to address risks for contaminants of this type, as undertaken at the WS5 hotspot.

It is expected that these works will be executed within a future development phase, unless the need for these works is dismissed by structured & evidenced argument (in line with implicit Envirotreat position on the risk posed by this identified hotspot feature). See comments under (our ref) CONS/23/01614. This requirement may be disregarded for the purposes of discharging c.16 in respect of APP/21/00405 development phases 1 & 2.

[3] (RS) Collection & Analysis of soil samples from formation level across the site

This measure has not been undertaken, to the detriment of certainty & the opportunity to further develop the site conceptual model to the benefit of future development phases.

Comments provided under (our ref) CONS/23/01614 remain largely applicable, save for the over-riding effect of the precautionary application of clean cover for human exposure reduction purposes. Those comments highlighted that;

‘The success of remedial works in the absence of a specific controlled waters risk assessment (under a strategy of general betterment) is necessarily reliant upon appropriate expertise in the operation of oversight & active management of both the remedial works (and their verification), and the watching brief...’

and that;

‘The planning authority is being asked to accept a compliance statement in lieu of an evidenced process which confirms the quality of formation-level soils against previously agreed screening criteria’

The lack of clarity over the observation of the Watching Brief during construction phase (see CONS/22/03072, CONS/23/01614, and [8] below-) undermines confidence in accepting a reliance upon this process in lieu of the physical sampling.

Given the purposes of this provision (discussed in CONS/23/01614), the precautionary works undertaken pursuant to [4], and the implicit state of progress of the development works; the Council is necessarily reliant in making a positive determination of this application in respect of c.9 & c.16 upon the explicit liability under NPPF paragraph 184, which for the avoidance of doubt, is not extinguished for regulatory purposes by either this decision or through any future land transactions or lease agreements.

[4] (RS) Provision of 300mm clean soil cover to formation level in all soft landscaped areas

As previously noted, in the Council’s opinion this measure was unlikely to have been necessary across the entirety of the site, and was regarded to be a precautionary proposal to avoid the necessity for investigation work of a far broader scope, which would potentially have been more onerous given the general scheme requirements (e.g. for landscaping purposes).

Inconsistencies in the execution & verification of these works, and the related uncertainty may be reconciled in the same manner as described under [3] above – in reliance upon NPPF para. 184.

[5] (RS) Verifying quality of imported materials

It is agreed that the quality of imported soils has been adequately demonstrated.

[6] (RS) Gas protection suitable to mitigate gas risk (to persons, buildings & services) to the standard of characteristic situation 2

See consultation comments (our ref) CONS/22/03072; it is agreed that the need for this measure has been dismissed by further assessment.

[7] (RS) Protection of Potable Supplies

See consultation comments (our ref) CONS/22/03072; it is agreed that these works have been completed & adequately verified.

[8] (RS, RMS) Watching Brief...during groundworks in general / development

The revised WB-VR presents no additional information- and makes no additional statements in respect of this important measure. Comments made under CONS/22/03072 & CONS/23/01614 remain largely applicable, save that they have been superseded by the progress with development (it being assumed from the context of this application & related communications from the applicant and their agents that all construction groundworks have now been completed.

No empirical data has been provided in respect of screening for volatiles (omitted from reports relating to investigation and enabling works-), and no additional factual information has been provided in respect of general construction works (beyond the drainage works undertaken during the enabling phase.

The planning authority is being asked to accept a qualitative compliance statement in lieu of an evidenced process, where it is unclear whether the authors making that statement actually undertook any observation & monitoring, or reviewed any third-party evidential submissions or statements. This is of course not ideal, and undermines confidence, however, the Council is able to reconcile a planning decision in the same manner as [3] & [4] above, in reliance upon the paragraph 184 liability.

Conclusions & Recommendations

Without prejudice or limitation to the Council's role as a statutory regulator for Contaminated Land (in line with caveats given above-), it is considered reasonable to regard the above-discussed inconsistencies as technical in nature and insufficient to deny approval of the Envirotreat RMS under the previously discharged APP/21/00405 c.9 as explicitly is the subject of this consultation request, or under c.16 of the same application as spatially limited to the approved development phases 1 & 2 (as modified by APP/22/00615), as is the implied intent of the applicant.

The discharge of both conditions may be supported-, and is recommended- on this basis.

Jonathan Driver
Environmental Control Officer