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Redcar & Cleveland Borough Council
Development Department
Belmont House Rectory Lane
Guisborough
Cleveland
TS14 7FD

Our ref: NA/2020/115072/01-L01
Your ref: R/2020/0357/OOM
Date: 29 October 2020

Dear David

OUTLINE PLANNING APPLICATION FOR DEMOLITION OF EXISTING STRUCTURES ON SITE AND THE DEVELOPMENT OF UP TO 418,000 SQM (GROSS) OF GENERAL INDUSTRY (B2) AND STORAGE OR DISTRIBUTION FACILITIES (B8) WITH OFFICE ACCMODATION (B1), HGV AND CAR PARKING AND ASSOCIATED INFRASTRUCTURE WORKS. ALL MATTERS RESERVED OTHER THAN ACCESS. LAND AT SOUTH TEES DEVELOPMENT CORPORATION, EAST OF SMITH'S DOCK AND WEST OF TEES DOCK ROAD, SOUTH BANK.

Thank you for referring the above planning application which received 17 July 2020 and for additionally consulting us which we received 21 September 2020.

Environment Agency position

We have reviewed the submitted proposals and have **no objection** to the principle of this development. As an outline proposal, the full extent of the impact of the development is not known. In accordance with the NPPG, if effects are not identifiable at the time of the principal decision, an assessment must be undertaken at the subsequent stage (reserved matters). We therefore, propose the following six **CONDITIONS**:

1. Submission of an Environment and Biodiversity Strategy
2. Submission of an amended Environment and Biodiversity Strategy relevant to each subsequent reserved matters application.
3. Submission of a high level Water Framework Directive assessment.
4. Submission of a detailed Water Framework Directive assessment relevant to the phasing of the development (where development would impact watercourses).
5. Submission of Construction Environment Management Plan (CEMP)
6. Submission of Fish and Eel ecological assessment.

The suggested conditions and reasons are as follows:

Matter 1: Environment and Biodiversity Strategy

The proposal is submitted in outline however we have noted that the submitted Environment Statement refers to a requirement of full compensation off site, due to an overall biodiversity loss, and does not propose mitigation on site. The documents refer to the detail of this being provided in a forthcoming Environment and Biodiversity Strategy for the wider South Tee Development Corporation Area however we would not be able to agree the principle of a document that does not yet exist. The planning test of the mitigation hierarchy (paragraph 175) should be fully explored through a subsequent

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application(s).

Condition: Submission of Environment and Biodiversity Strategy

Within 12 months of the grant of this planning permission, an Environment and Biodiversity Strategy shall be prepared and submitted to the local planning authority that confirms the approach of providing habitat mitigation and compensatory habitat equivalent to be 363.55 area based biodiversity units and 24 river units, within the site and where demonstrated not to be feasible, off-site, and the mechanisms for its provision and on-going management. That Strategy shall be approved, in writing, by the local planning authority and shall be implemented in accordance with the approved Strategy, and any subsequent agreed amendments to it.

Reason: To ensure that the development proposals and subsequent application fully consider the mitigation hierarchy and to secure mitigation/compensation in the absence of full details. This approach is supported by paragraph 175 of the NPPF and Local Plan Policy N4 of the Redcar and Cleveland Local Plan.

Condition: Submission of amended Environment and Biodiversity Strategy relevant to each subsequent reserved matters (layout) application

Prior to the approval of the reserved matter of layout of any phase of development, the approved Environment and Biodiversity Strategy shall be updated. The strategy shall be submitted to, and approved in writing by, the Local Planning Authority, to include the following:

- The details of any new and enhanced biodiversity to be created on site, within that phase of development;
- The details of compensatory habitat where on-site mitigation is demonstrated not to be feasible, relevant to that phase of development;
- The details of treatment of site boundaries and/or buffers around water bodies, relevant to that phase of development;
- The details of long-term maintenance regimes and management responsibilities, relevant to that phase of development.

The identified mitigation and, where demonstrated to be necessary and feasible, compensation shall be provided in accordance with the Strategy and any subsequent agreed amendments to it, and shall be implemented prior to each phase of development commencing following the approval of reserved matters.

Reason: To ensure that the development proposals and subsequent application fully consider the mitigation hierarchy and to secure mitigation/compensation in the absence of full details and that this is adequately considered as each phase of development is submitted for approval. This approach is supported by paragraph 175 of the NPPF and Local Plan Policy N4 of the Redcar and Cleveland Local Plan.

Matter 2: Water Framework Directive (WFD) assessment

The EIA proposal has not included a WFD assessment. Several non-main watercourses exist on site which are connected to the River Tees. Drainage details have not been provided at this stage although some worst-case scenarios have been provided which include culverting. This is noted as being required and expected to be conditioned in



chapter G of the ES. The tidal Tees Estuary WFD waterbody (GB410302509900) is designated as a heavily modified waterbody, and as such, requires that all practical mitigation is taken to achieve good ecological potential.

As part of the WFD assessment the applicant will need to demonstrate:

- Whether the proposed development will lead to the deterioration of any WFD waterbody.
- Whether the proposed development will compromise the achievement of Good Status or Potential in any WFD waterbody.
- Whether the proposed development will contribute towards a cumulative deterioration of WFD status or prevent cumulative enhancement of WFD status in any waterbody.
- Whether the proposed development will support the delivery of measures identified in the Northumbria River Basin Management Plan (RBMP) that are required to achieve waterbody objectives.

We propose the following conditions, please see the informatives sections for further details:

Condition: High Level Water Framework Directive Assessment

Prior to commencement of development, or at such a time agreed in the phasing plan, a high level Water Framework Directive (WFD) assessment is to be submitted to, and approved in writing by, the local planning authority. This assessment shall include the entire site and consider the impacts of the full development proposal. The scheme shall be implemented in accordance with the approved details, unless otherwise agreed in writing.

Reason: To ensure that the development would not lead to deterioration or prevent the attainment of Good Ecological Status of any waterbody under the Water Framework Directive (WFD) objectives.

Condition: Detailed Water Framework Directive assessment following phasing plan

Prior to the approval of any phase of development that includes watercourses, the approved WFD assessment shall be updated. This shall be submitted to and approved by the Local Planning Authority prior to the relevant phase of development in accordance with the approved phasing plan. The scheme shall be implemented in accordance with the approved details and any mitigation measures recommended as part of the assessment will be adhered to throughout the lifetime of the development, unless otherwise agreed in writing.

Reason: To ensure that the development would not lead to deterioration or prevent the attainment of Good Ecological Status of any waterbody under the Water Framework Directive (WFD) objectives.

Condition: Construction Environment Management Plan (CEMP)

Prior to commencement of development, or in accordance with an agreed phasing plan, a Construction Environment Management Plan for the development shall be submitted to and approved, in writing, by the local planning authority. The plan shall include detail to



ensure mitigation for contaminated or poor quality surface water is appropriately mitigated. The development shall thereafter take place in accordance with the approved details.

Reason: To ensure the environment effects of construction are appropriately managed.

Matter 3: Fish and Eel.

Eel and Stickleback are believed to be present at the proposed development site. European Eel is identified under England's Biodiversity Strategy (EBS) and is listed under section 41 of the Natural Environment and Rural Communities (NERC) Act 2006. Section 40 of the NERC Act 2006 states that local planning authorities must have regard to biodiversity conservation. Any obstructions to fish and eel migration should be avoided as stated in both the Salmon and Freshwater Fisheries Act 1975 and the European Eel Regulations 2009.

The submitted Environment Statement acknowledges the presence of eel upstream of the Lackenby Channel and recognises that some connectivity exists between the Lackenby Channel and the River Tees. The outline proposals suggest that sections of the water course will be culverted; we appreciate these are worst-case scenarios and not finalised plans which would be submitted in a subsequent application. We do not have enough information at this stage to know if the proposed development can meet our requirements for fisheries because the proposal does not include fish surveys (completed June to September inclusive) that would confirm the presence/or lack of eel and fish in the channel.

Condition: Requirement for Fish and Eel ecological assessment

Prior to commencement of development a survey and ecological assessment of eel and fish within the Lackenby and Cleveland Channels is to be submitted and approved, in writing, by the Local Planning Authority. This assessment shall include the following

- Identify the impacts to fish and eel from the development and determine if they may be at risk of harm.
- Identify any rare, declining, protected or otherwise important flora, fauna or habitats within the Lackenby Channel/The Slems.
- Where relevant, assess the importance of the above features at a local, regional and national level, and identify the impacts of the detailed plans of the scheme on those features.
- Demonstrate how the development will avoid adverse impacts.
- Where necessary, propose mitigation for any adverse ecological impacts or compensation for loss.

Reason: An ecological assessment is required to assess how the proposal will affect eel and fish. This assessment will need to demonstrate how this risk will be controlled. Where possible, it should identify opportunities for environmental improvements. This condition is supported by paragraphs 170 and 175 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity.



Beyond this, I have the following information:

Scope of the fish and eel survey – Advice to Applicant

We are able to provide further advice on the scope of the fish survey should this be required. However, we would not be able to review any documents and agree the acceptability of this prior to submission unless this was part of an agreed cost-recovery service. It should be noted that the most optimum time for this survey is *June to September inclusive*, we will object to an assessment that we do not find adequate. Pictures provided by the applicant indicate that the habitat does appear suitable for eel and given this location low in the catchment it could be important habitat.

Should you require further details of this please contact planning.nane@environment-agency.gov.uk. Please note, Sustainable Places North East are currently working under reduced capacity but we will review all cost-recovery, pre-application requests on a case-by-case basis.

Opportunities for enhancement and WFD – Advice to Applicant/ LPA

Ideally, the development would enhance through design. We would be supportive of a strategy which did not culvert and which included improvements to the tidal flap, is possible, that eel can utilise. Regardless of the current condition of the watercourses, potential exists for valuable habitat creation for some fish species such as the critically endangered European Eel. Habitat creation and making the tidal flap more “eel and fish friendly” may be of some benefit to biodiversity mitigation and compensation which the applicant should consider.

Water Framework Directive (WFD) Assessments – Advice to LPA/Applicant

The purpose of a WFD assessment is to clearly identify the implications of the proposed development for the objectives of the WFD and relevant River Basin Management Plan. WFD covers all surface waters including rivers, lakes and estuarine and coastal waters, as well as groundwater. For this purpose, we have requested a high level WFD assessment that considers the entirety of the site and proposal and identifies the potential impacts, if any. The assessment will need to consider the following:

- Hydromorphology
- Biology – habitats
- Biology – fish
- Water quality
- Protected areas

Once further details of the drainage strategy are known, this can be tied into further WFD assessment where necessary in relevant phases of the development.

Culverts – Advice to Applicant

Culverting a currently open watercourse, even if it is poor quality, is not favoured. The function of a river is not only determined by the quality of the water but the geomorphology of the riverbed and riparian habitat. These loss of these habitats would not only be detrimental to biodiversity/ecology but also upon water quality as well. The negative impacts upon river functionality, and the service it provides, compared to a



culverted stream needs to be fully understood and mitigated. It is not solely about the species it supports but also the geomorphological and ecological function of the river which will be lost, which both help to restore water quality. This would be absent in a concrete culvert. The de-culverting of watercourses is an opportunity to provide biodiversity net gains as well as providing amenity value and improving surface water drainage. To not de-culvert would be a missed opportunity.

Buffer Zones from Watercourse – Advice to LPA/Applicant

Development that encroaches on watercourses can have a potentially severe impact on their ecological value. Encroachment from development activities has the potential to cause habitat loss, disturbance and nutrient enrichment. The setback development area needs to maintain this corridor around any watercourses on site and should be maintained and enhanced.

Tees Estuary Habitat Vision – Advice to Applicant

The Tees Estuary Partnership (TEP) has developed a Tees Estuary Habitat Vision that aims to deliver WFD mitigation objectives. The Tees River Trust are already leading an IMMERSE project that sets out to enhance biodiversity of the intertidal zone of the Tees Estuary. This project forms a contribution to achieving the TEP habitat vision of establishing coherent ecological networks that are more resilient to current and future pressures at a landscape scale across local authority boundaries. The techniques employed have been drawn from successful Estuary Edge pilots on the Thames estuary where biodiversity benefits have also been shown to enhance the visual and aesthetic value afforded to new developments.

Car parking and drainage considerations – Advice to LPA/Applicant

Car parking drainage should ideally be permeable to control run off rates and mitigate pollution from oil and fuel leaks. If impermeable surface is used, then drainage should go through an interceptor or trapped gullies to mitigate pollution. There will need to be appropriate maintenance for the lift of the site to maintain effectiveness.

Land contamination and controlled waters – Advice to LPA

Please be aware that whilst we consider the site to be located within a lower environmental sensitive area, **we are not stating in any way that the pollution risk to controlled waters underlying the site is acceptable, should not be considered further by appropriate investigation and assessment.**

We would kindly remind the LPA that they are responsible for ensuring that the applicant appropriately investigate and address the risk to controlled waters, both surface waters and groundwaters. In doing so, this would promote remediation where required and an enhancement of the water environment through the planning regime. We would kindly ask the LPA to take into consideration our comments above with respect to controlled waters risk assessment.

We would highlight that the applicant be reminded of our current guidance which can be found on gov.uk and include Groundwater Protection, EA Approach to Groundwater Protection, Land Contamination

Further information on permitted sites – Advice to LPA/Applicant

The site of this proposed development includes areas of land which currently fall within Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne, NE4 7AR.
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the installation boundary of the following EPR permits:

- JP3638HM - permit held by Sahaviriya Steel Industries (SSI) UK Limited (in Liquidation).
- PP3338MT - permit held by Harsco metals Group Limited.

JP3638HM SSI

We expect that agreement regarding this permit will be closely linked to the outcome of the compulsory purchase order for the SSI assets. Part of the site was historically used for treatment and storage of waste arising from gas cleaning at the Blast Furnace and BOS plant. Since closure of the steel works treatment activities have continued and wastes are still being removed from the site. The estimated quantity of waste on site is approximately 500,000 m³. Although primarily iron oxide some trace elements (zinc in particular) means that there are limited available recovery routes for this material.

PP3338MT Harsco metals Group Limited

The operator has begun pre-application discussions with the Environment Agency regarding surrender of this permit. Until a permit surrender has been agreed we are unable to confirm whether or not any remedial works will be required before the surrender can be completed. **Proposed development in this area should not begin before the permit surrender process is complete.**

COMAH – Advice to LPA/ Applicant

Parts of the development site also form part of a COMAH establishment. The COMAH operator of this establishment is South Tees Site Company Limited. As the COMAH operator they are keeping safe and arranging for safe removal of COMAH inventory of dangerous substances. Demolition or removal of any installation (as defined by the COMAH regulations- see below) is subject to the COMAH regulations due to the presence of dangerous substances.

“installation” means a technical unit within an establishment, whether at or below ground level, in which dangerous substances are produced, used, handled or stored and includes all the equipment, structures, pipelines, pipework, machinery, tools, private railway sidings, docks, unloading quays serving the installation, jetties, warehouses or similar structures, floating or otherwise, necessary for the operation of that installation;

Landfills within and adjacent to development site – Advice to LPA/Applicant

The proposal area encompasses three large operational landfill sites. These are

- ICI Teesport No2 non-hazardous waste landfill site (EPR/RP3631DA),
- ICI Teesport No3 hazardous waste landfill site (EPR/DP3331DJ)
- SSI (In liquidation) non-hazardous landfill site (EPR/RP3434HP).

The site also shares a boundary with two historic, closed landfill sites. These are:

- Clay Lane Steelworks landfill (CLE/160)
- Cargo Fleet Wharf Area landfill (CLE/R021)

ICI Teesport No2 (EPR/RP3631DA)

This site is located close to the centre of the proposed development area. The site was originally operated prior to the introduction of waste management licensing and thus

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operated without regulatory controls before 1976, by the British Steel Corporation. The site was acquired by ICI Chemicals and Polymers Ltd. In 1976 and in 1986 was issued with a Waste Disposal Licence to deposit a variety of both hazardous and non-hazardous industrial wastes.

In 2004 Impetus Waste Management was issued with an Installations Permit to operate the site for the disposal of a variety of non-hazardous and inert wastes only. In 2017 this permit was transferred to Highfield Environmental Ltd. This site is known to generate landfill gas and as an approved landfill has a control and utilisation system in place.

ICI Teesport No3 (EPR/DP3331DJ)

This site adjoins to the north of the Teesport No2 landfill. A permit for the disposal of hazardous waste to landfill was granted in 2004 to Impetus Waste Management Ltd. This was transferred to Highfield Environmental Ltd. in 2017.

SSI (In liquidation) landfill site (EPR/RP3434HP).

This site adjoins directly to the west of the Teesport No2 and No3 landfill sites. This site was originally operated by the British Steel Corporation prior to the requirement for Waste Management Licensing in 1976. In 1978 two permits (CLE3 and CLE8) were issued for the deposit of both hazardous and non-hazardous wastes (including biodegradable wastes) which were produced 'in-house' by British Steel. CLE3 was known to accept the more hazardous materials.

In 2010 TATA Steel UK Limited were issued a combined Permit (CLE3/8) for the disposal of non-hazardous 'in house' steel making wastes which included some biodegradable wastes. The site was taken into the hands of the Official Receiver in 2015 and since that time no further waste have been deposited at the site. The site currently undertakes landfill gas monitoring but **no active landfill gas management system**.

Development on top of or within 50 metres of any permitted landfill site that accepted hazardous or non-hazardous waste (i.e. Teesport No2, No3 and the former SSI landfills) should be considered very carefully, as even with appropriate building control measures in place, landfill gas can accumulate in confined spaces in gardens (e.g. sheds, small extensions) and can gain access to service pipes and drains where it can accumulate or migrate away from the site.

Clay Lane Steelworks landfill (CLE/160).

This historic landfill is located outside (although adjacent to) the South West perimeter of the proposed development area on Puddlers Road Middlesbrough. The permit was issued to Langbaugh Borough Council and was operated between November 1985 and April 1986, for the deposit of construction materials, clay and sub-soils. The Environment Agency hold no information on environmental monitoring for this site although, given the nature of the material deposited it is not expected that landfill gas will be produced.

Cargo Fleet Wharf Area landfill (CLE/R021).

This historic landfill is located outside (although adjacent to) the Western perimeter of the proposed development area and was operated by Cleveland County Council between April 1998 and December 1995 for the disposal of inert wastes (clays and sub-soils). The Environment Agency hold no information on environmental monitoring for this site although, given the nature of the material deposited it is not expected that landfill gas will

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be produced.

Dewatering – Advice to Applicant

It is not clear to the EA if dewatering is required for this proposal.

Dewatering is the removal/abstraction of water (predominantly, but not confined to, groundwater) in order to locally lower water levels near the excavation. This can allow operations to take place, such as mining, quarrying, building, engineering works or other operations, whether underground or on the surface.

The dewatering activities on-site could have an impact upon local wells, water supplies and/or nearby watercourses and environmental interests.

This activity was previously exempt from requiring an abstraction licence. Since 1 January 2018, most cases of new planned dewatering operations above 20 cubic metres a day will require a water abstraction licence from us prior to the commencement of dewatering activities at the site.

More information is available on gov.uk: <https://www.gov.uk/guidance/water-management-apply-for-a-water-abstraction-or-impoundment-licence#apply-for-a-licence-for-a-previously-exempt-abstraction>.

Please consult us on the information submitted to discharge these conditions.

Should you require any further information or clarity, please don't hesitate to contact me.

Yours sincerely,

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