

Mr Rob Cooper
Halton Borough Council
Planning Department
Municipal Buildings
Kingsway
Widnes
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2nd September 2013

HSE Ref.: 4.2.1.3731.
Your Ref.: 13/00278/FUL

Dear Mr. Cooper

Land use planning consultation with the Health and Safety Executive under the Town and Country Planning (Development Management Procedure) (England) Order 2010

Application

Number: 13/00278/FUL

Location: The Heath Specialist Technology College, Clifton Road, Runcorn.

Proposal: Redevelopment of existing 'The Heath School' in Runcorn. Complete new build school, hard and soft landscaping. Existing school to remain open during construction with current buildings demolished on construction

Following on from our meeting on 23rd August 2013 at Halton with Alison Chalmers of the Education Funding Agency, at which HSE's public safety concerns were reinforced in relation to the proposed Heath School redevelopment, HSE requested the opportunity to submit to the local planning authority additional HSE public safety advice so that HSE concerns could be brought to the direct attention of Planning Committee members.

Hazardous Installations
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HSE Public Safety Advice to be brought to the attention of Committee Members

‘The Heath School’ Planning Application (13/00278/FUL)

HSE Role in Providing Land Use Planning Advice

By way of an introduction to HSE’s role in providing land use planning advice to local planning authorities, an overview of the regulatory framework which applies to major hazards sites and major accident hazards pipelines is described below.

HSE advisory role in the planning system arises from the discharge of an important aspect of the UK’s obligations under Directive 96/82/EC (Seveso II). According to Article 1, Seveso II “is aimed at the prevention of major accidents which involve dangerous substances, and the limitation of their consequences for man and the environment, with a view to ensuring high levels of protection”.

This framework is founded on the following principles:

- i) Identification (knowing where Major Hazards Sites and Major Accident Hazards Pipelines are located and the hazards they present)
- ii) Prevention and Control (ensuring safe containment of Hazardous Substances and operation of the site or pipeline)
- iii) Mitigation (locating new Major Hazards Sites and Major Accident Hazards Pipelines away from centres of population, having effective emergency plans and preventing substantial population growth near to such sites or pipelines by preventing incompatible development)

Article 12 of Seveso II, which addresses the third of the above principles, requires controls on new developments such as transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or developments are such as to increase the risk or consequences of a major accident.

Mitigation measures controlling the location of and developments around, major hazard sites and pipelines are delivered by local authorities through planning legislation. There are two aspects to this. The first involves sites with quantities of hazardous substances above certain thresholds requiring Hazardous Substances Consent from the local planning authority acting as the Hazardous Substances Authority. HSE is a statutory consultee to consent applications. The second also involves HSE as a statutory consultee to planning applications for certain developments which fall within the consultation distances of major hazards sites and/or pipelines.

In the land use planning system, HSE's role is advisory. It has no power to refuse consent on a planning application. It is the responsibility of the local planning authority to make the decision in accordance with its statutory duty, weighing local needs and benefits and other planning considerations alongside HSE advice. If minded to go against HSE's public safety advice then the local authority should give HSE advance notice of that intention.

HSE's land use planning advice is not retrospective and cannot be provided for existing developments; it can only be provided for new planning applications.

The essential approach adopted by the HSE is set out in paragraph A4 of *Circular 04/2000: Planning Controls for Hazardous Substances*, which states,

HSE's advice to planning authorities in respect of proposed developments in the vicinity of hazardous installations is based on the following general principles:

- the risk considered is the residual risk which remains after all reasonably practicable preventative measures have been taken to ensure compliance with the requirements of health and safety law;
- where it is beneficial to do so, HSE's advice takes account of risk as well as hazard;
- account is taken of the size and nature of the proposed development; the inherent vulnerability of the exposed population and the ease of evacuation or other emergency procedures. Some categories of development (e.g. schools and hospitals) are regarded as more sensitive than others (e.g. light industrial). HSE weight their advice

accordingly enabling it to advise planning authorities on appropriate uses of land within [the CDs];

- HSE considers the risk of serious injury including that of fatality, attaching particular weight to the risk where a proposed development might result in a large number of casualties in the event of an accident.

The Heath School

The Heath School redevelopment is in the vicinity of Ineos Chlor Vinyls and Mexichem major hazards sites. The 3 Zone Map (Annex 1) shows the location of the proposed Heath School development falling within the middle of three consultation zones.

These consultation zones are set by the HSE and are based on the quantities of named hazardous substances (i.e. Chlorine, Sulphur Dioxide) and/or generic substance groupings (Very Toxic, Toxic, Oxidising, Highly Flammable, etc) permitted by the Hazardous Substances Consents granted or deemed to have been granted by Halton Borough Council.

There are 3 Zone boundaries; Inner (red), Middle (green) and Outer (blue). The basis upon which these zones are set is further described below. HSE`s advice factors event likelihood, population sensitivity and development population numbers.

Basis of 3 Zones

The 3 Zone boundaries represent the **Residual Risk** of receiving a **Dangerous Dose** or worse, at levels of 10cpm (chances per million per year), 1cpm and 0.3cpm respectively. Where a **Dangerous Dose**, as defined by HSE, would lead to:

- Severe distress to all;
- A substantial number requiring medical attention;
- Some requiring hospital treatment; and, Some (about 1%) fatalities

With respect to Ineos Chlor Vinyls and Mexichem, the risk of harm to offsite populations is dominated by exposure to dangerous levels of Chlorine that could typically occur following the accidental release of Chlorine, which will form a dense cloud of toxic gas which will travel in the direction of the wind. A worse case catastrophic (c.350 tonne) Chlorine release, generating a large toxic gas cloud, and

travelling towards the Heath School, would be expected to result in a significant number of deaths with the majority of survivors suffering various degrees of acute Chlorine poisoning.

HSE’s advice

Local Planning Authorities obtain HSE advice directly from PADHI+ , a codified software package, by entering the particulars of a proposed development; zone in which the development falls, development type, development area, dwelling density, etc.

HSE PADHI+ Advice

PADHI+ assigns one of 4 sensitivity levels based on the population type/occupancy, where SL4 represents the most sensitive population (Hospital, School, etc) and by use of a Decision Matrix (reproduced below) either a Do not Advise Against (DAA) response or Advise Against (AA) response is obtained, by the Local Planning Authority.

Level of sensitivity	Development in inner zone	Development in middle zone	Development in outer zone
1	DAA	DAA	DAA
2	AA	DAA	DAA
3	AA	AA	DAA
4	AA	AA	AA

Proposed redevelopment of the Heath School (13/00278/FUL) PADHI+ Advice

With respect to the proposed redevelopment of the Heath School, the development sensitivity is 4 and falls within the middle zone; a HSE **Advise Against** response is obtained.

HSE advises against the proposed redevelopment of the Heath School on grounds of public safety. The redevelopment involves a large and sensitive population (children) at a significant risk of harm from a toxic gas release.

This case is of particular concern as the proposed expansion in pupil numbers from c. 1,100 to c. 1,650 both increases and intensifies, the sensitive population at risk should a major accident occur at Ineos and/or Mexichem.

For the purpose of comparing risks posed by different development types, HSE has developed a method of assessing the degree of risk to populations associated with a proposed development. This is known as the Scaled Risk Integral (SRI). For the proposed Heath School redevelopment the HSE calculates that the resulting SRI will be in excess of 750,000. To put this value into context, HSE policy is to advise against developments with an SRI threshold in excess of 35,000.

Planning cases of serious public concern

As you know, Halton Borough Council is required to “in determining the application, take into account any representations received from a consultee”, including HSE. (Article 16 and Schedule 5 to the Town and Country Planning (Development Management Procedure) Order 2010). Guidance on the approach to the HSE’s advice is given in Planning Circular 04/2000: ‘Planning Controls for Hazardous Substances’ which advises local planning authorities to give “due weight” to HSE’s advice, which relates to “the nature and severity of the risks presented by major hazards to people in the surrounding area”, when taking planning decisions.

In particular, the advice at paragraph A5 of the Circular is that: “In view of their acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances, any advice from HSE that planning permission should be **refused** for development for, at or near to a hazardous installation... should not be overridden without the most careful consideration”. This point was also made in the Regina v Tandridge District Council case. Local Planning Authorities ‘*should nonetheless give great weight to their advice*’ (Regina v Tandridge District Council, ex parte Al Fayed, Times Law Report 28 January 1999).

If however a Local Planning Authority is minded to grant planning permission against HSE’s advice, HSE may, if there are sufficient concerns, request that the Secretary of State for the Department of Communities and Local Government (DCLG) calls-in the application for their own determination. HSE only requests call-in in the most exceptional cases and has criteria to guide the decision making process which is laid out in HSE published ‘criteria document for land use planning cases of serious public safety concern’ SPC/TECH/GEN/49 (Annex 2)

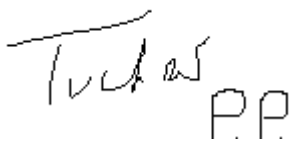
Should Planning Committee members be minded to grant planning permission against HSE advice, Halton Borough Council is then required to write to the HSE. HSE will then have 21 days to consider whether to request the application be called-in by the Secretary of State.

The planning application has yet to be put before Committee; consequently, the HSE is not in a position to comment on whether or not call-in will be sought. However, the age and vulnerability of the affected population (school children), and the substantial numbers of people in the proposed development exposed to a significant level of risk (SRI > 750,000) will be material considerations for HSE in its deliberations.

Alternative locations for the Heath School

Finally with a view to securing a long term permanent solution to HSE's public safety concerns, the HSE suggests to Committee Members that the current development proposal (which consists of the wholesale replacement of all school buildings and facilities) presents Halton Borough Council with an opportunity to consider alternative locations for siting the school.

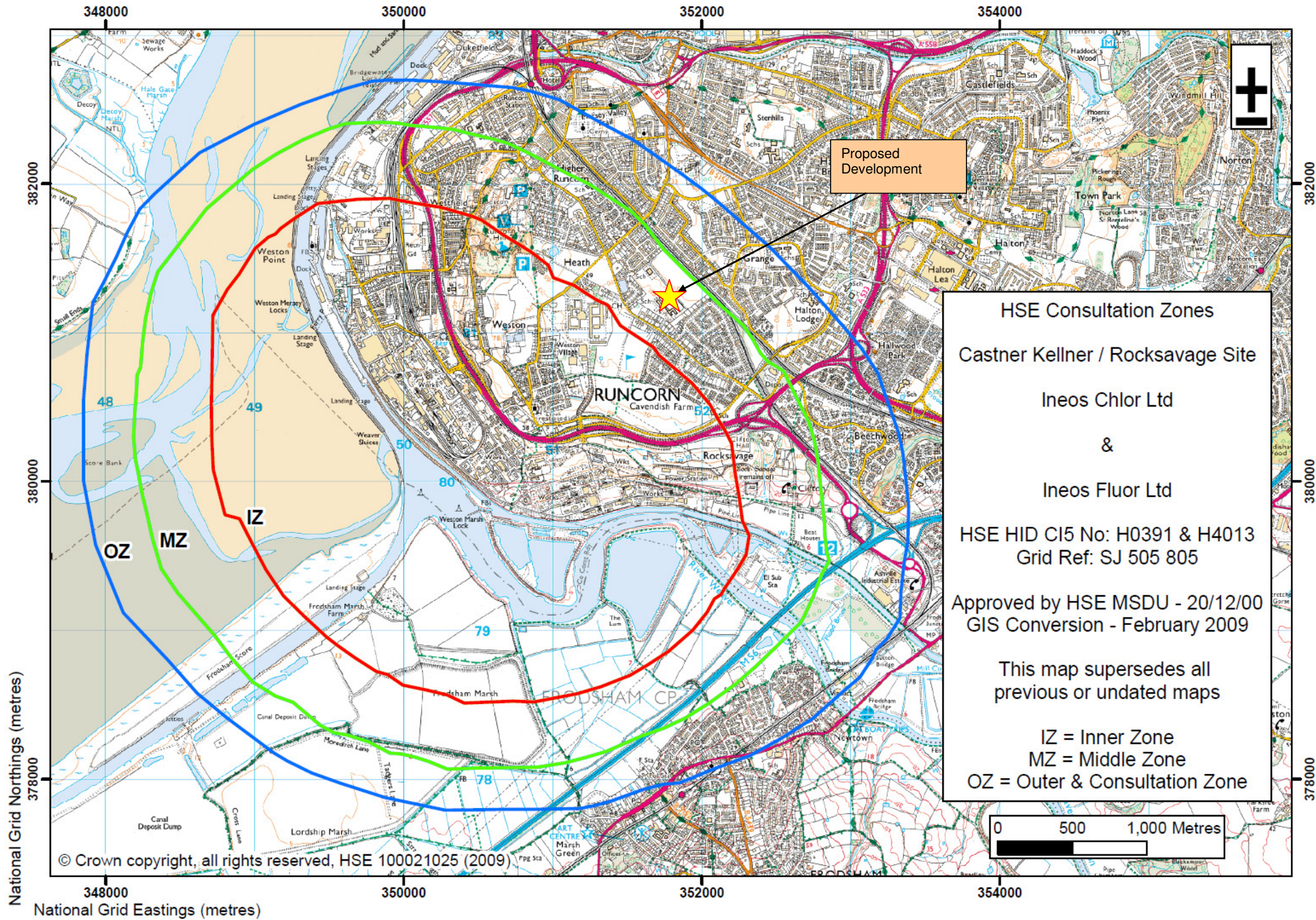
Yours sincerely

Handwritten signature of Richard Cary, consisting of a stylized 'R' and 'C' followed by 'PP'.

**Richard Cary, Principal Inspector
Chemical, Explosives and Microbiological Hazards Division**

C.c. Laura Evans (HSE)
Harvey Tucker (HSE)
Erol Mertcan (TSOL)
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Annex 1 – Ineos ChlorVinyls/Mexichem Three Zone Map & Location of proposed Heath School redevelopment



Criteria document for Land Use Planning cases of serious public safety concern

SPC/TECH/GEN/49

Version No:

1

OG Status:

Fully Open

Author Section:

HID CI5 and HID Policy – Land Use Planning

Issue Date:

15 August 2011

Review Date:

15 August 2013

Target audience:

All staff in HID CI 1, 2, 3, 5, SI 2 and 3, RCPU and LAO.

Purpose

1. This document sets out HSE’s policy when a Hazardous Substances Authority (HSA) or Planning Authority (PA) has advised HSE that it is minded to go against its advice and grant either hazardous substances consent (HSC) or planning permission for development within HSE’s consultation distance (CD) of a major hazard installation/pipeline. The HSE’s policy for land use planning (LUP) is applicable to applications for HSC. HSE will use the criteria in paragraph 8 to decide whether it should:

- in England, request that an application is called-in by the Secretary of State (SoS) for his/her own determination;
- in Wales request that an application is called-in by the Welsh Ministers for their own determination; or
- in Scotland¹, inform Scottish Ministers that HSE maintains its objection to a development proposal and invites Scottish Ministers to call it in for their own consideration.

Background

2. HSAs and PAs have a statutory duty to consult HSE on:

- applications for HSC under regulation 10 of the Planning (Hazardous Substances) Regulations 1992 in England and Wales, and regulation 11 of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 in Scotland; and
- planning applications concerning proposals for developments near to major hazard sites, which are subject to the Control of Major Accident Hazard (COMAH) Regulations 1999 and the Pipelines Safety Regulations 1996. HSE is a statutory consultee under:
 - article 16 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 in England;
 - article 10 of the Town and Country Planning (General Development Procedure) Order 1995 in Wales; and
 - regulation 25 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 in Scotland.

3. The responsibility for making the decision on whether or not to grant HSC or planning permission rests with the HSA/PA. The decision is made after taking into account all relevant considerations, including HSE's public safety advice.

4. To ensure that local officials and councillors are able to make an informed decision about the risks to the public, prior to the decision making process, HSAs/PAs are welcome to contact HSE, which will clarify its advice in cases where it has advised against HSC or development. HSE would also be content to advise developers of major mixed-use schemes. HSE will also consider attending planning committee meetings in order to explain its advice to committee members.

5. When a HSA/PA has informed HSE that it is minded to go against its advice, if HSE has exceptional safety concerns about the risks associated with the proposed storage of hazardous substances or a development within the vicinity of a major hazard installation/pipeline, it will follow its internal process for considering

- in England and Wales, whether it should write to the SoS or the Welsh Ministers respectively to ask that they call-in the application for their own determination; or
- in Scotland, whether it should culminate in an invite to Scottish Ministers to call it in for their own consideration.

6. It is an exceptional course of action for HSE to request that an application be called-in and it will only consider doing so in cases of exceptional concern or where important safety or policy issues are at stake. HSE will normally consider

its role to be discharged when it is satisfied that the HSA/PA has given HSE's advice the most careful consideration and it is acting in full understanding of that advice and the consequences that could follow.

Relevant factors in deciding whether to request call-in

7. Following notification from a HSA/PA that it is minded to grant HSC/planning permission against HSE's advice, the criteria in paragraph 8 will be used to decide whether HSE should request call-in of an application. However, for planning applications only, HSE will firstly consider the following:

- evidence which indicates that the relevant consent entitlement is not being fully utilised and is very unlikely to be fully utilised in the future;
- an indication that the relevant consent has not been used for five years or more; or
- knowledge/evidence that although the HSC remains in place, the major hazard installation/pipeline no longer exists.

Even if one or more of the above are satisfied, unless it is clear that there are enforceable means in place to ensure that the hazardous substance cannot be brought back on to the site, and the HSC remains in place, HSE will still advise against an application for planning permission. However, in such cases, HSE will encourage HSAs/PAs to amend or revoke the HSC before they make a decision to grant planning permission. It may also be possible that the relevant HSA/PA could provide HSE with assurances to allay its safety concerns by the use of a condition, for example preventing the construction/occupation of the building until the HSC has been revoked. In most cases it would then be unlikely that HSE would request call-in.

Call-in criteria

8. When a HSA/PA has informed HSE that it is minded to go against its advice, HSE will consider whether to request that the application be called in by the SoS or, as the case may be, the Welsh Ministers or Scottish Ministers. HSE will consider all relevant factors, but will treat the presence of any of the following criteria as a significant factor in favour of requesting call-in.

- **Any significant residential development or development for vulnerable populations in the inner zone:**
 - Close to the major accident hazard such that the consequences to people from a major accident are very severe;
 - 'Significant residential development' means three or more residential units, thereby placing 8-10 people at high risk;
 - A vulnerable population would include the young (e.g. schoolchildren), the elderly (e.g. residents of a nursing home), or the infirm (e.g. hospital patients). These population groups would be more

susceptible to harm from the hazardous substance and more at risk as they would be difficult to evacuate in an emergency.

- **The risk of death from a major hazard exceeds the Tolerability of Risk (TOR) tolerability limit for a member of the public.**
 - If this limit is ever reached or given the uncertainty in calculating risk values the risks are so high that the actual risk from the site could have crossed the TOR limit.

- **There are substantial numbers of people in the proposed development exposed to a significant level of risk**
 - HSE has developed a method of assessing the degree of societal risk associated with a proposed development known as the Scaled Risk Integral (SRI). In appropriate cases HSE will apply SRI.
 - Where the level of societal risk is substantial HSE will initiate its internal call-in procedure in order to give further consideration to the application;
 - HSE will give the most serious consideration to the application where the level of societal risk is approaching intolerable such that development in the location would create serious public safety concerns. This would be cases where the SRI is between 500,000 and 750,000 which means that HSE will consider recommending call-in for cases of exceptional concern;
 - Where the level of societal risk is so high that it is intolerable HSE will request call-in, this would be cases where the SRI exceeds 750,000.


- **The endangered population is particularly sensitive.**
 - For example, the young, the elderly or those under residential medical care.

- **It is a challenge to HSE's risk criteria for land use planning.**
 - For example, where a HSA/PA repeatedly sets aside HSE's advice, which would result in a cumulative increase in the population around a major hazard installation/pipeline.

Large scale petrol storage sites

9. PADHI³ cannot be used to determine HSE's advice on developments within the Development Proximity Zone (DPZ) of large-scale petrol storage sites, (see [SPC /TECH/GEN/43](#) – Land Use Planning Advice around Large Scale Petrol Storage Sites. HSAs /PAs must therefore refer any planning applications within the DPZ to HSE. If a HSA/PA is minded to grant planning permission for a development in the DPZ against HSE's advice, HSE will consider the application on a 'case-by-case' basis.

Guidance

10. [Circular 04/2000](#)  - 'Planning Controls for Hazardous Substances' provides guidance on the operation of the consent procedure for hazardous substances in England.

11. Circular 5/93 'Planning Controls for hazardous substances - The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993' provides guidance on the operation of the consent procedure in Scotland.

12. Circular 20/01 'Planning Controls for Hazardous Substances' provides guidance on the operation of the consent procedure for hazardous substances in Wales.

Footnotes

1. In Scotland, the Planning Authority has to notify Scottish Ministers when they want to grant planning permission against HSE's advice and cannot issue such permission until Ministers have cleared the application (assuming they do not call it in). The HSC process is the same as England and Wales.
2. This is the case societal risk of the development. That is the frequency of a large number of people being seriously harmed by a major accident which is different from local risk created by the major hazard installation.
3. PADHI (Planning Advice for Development near Hazardous Installations) is HSE's Land Use Planning Methodology, which most HSAs/PAs can access electronically to obtain HSE's advice. **However, applications for hazardous substances consent or for development within the DPZ of a large-scale petrol storage site cannot be routed through PADHI.**