

## EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 28 OCTOBER 2005

05/0368/HS : APPLICATION FOR HAZARDOUS SUBSTANCES CONSENT  
AT DUNNIFLATS, LUGTON KA3 4EA  
BY WILLIAM TRACEY LTD

### EXECUTIVE SUMMARY SHEET

#### 1. DEVELOPMENT DESCRIPTION

1.1 This retrospective application, under the Planning (Hazardous Substances) (Scotland) Act 1997, is for hazardous substances consent for the storage of various amounts of chemicals which are classified within Part B of the Planning (Control of Major-Accident Hazards)(Scotland) Regulations 2000. In these types of applications the applicant is not required to detail the particular types of chemicals, only the classification in which they occur within Part B of the Regulations and the maximum quantity proposed to be present on the site. The applicant has indicated the following classifications and quantities; type B1 *very toxic 10 tonnes*, type B2 *toxic 200 tonnes*, type B3 *oxidising 100 tonnes*, Type B10 (i) *Dangerous for Environment 250 tonnes* and type B10 (ii) *Dangerous to the environment 500 tonnes*. Said chemicals are stored within containers with a capacity of 1m<sup>3</sup>. The above amounts of figures are the maximum amount allowed to ensure that the application site remains within the lower tier category of the Control of Major Accident Hazard COMAH Regulations.

1.2 The applicant has indicated that the site operates as an on-demand warehousing facility for manufacturing plants throughout the country. The site receives the pre-packed consignment of chemicals from the various suppliers which are then stored within the secured warehouses until the factories require them for their manufacturing process.

1.3 This retrospective application is required due to the change in chemical materials which are being stored on the site. During a consultation on a nearby housing proposal, the Health and Safety Executive brought this matter to the attention of the Planning Authority when the discrepancy in the records was noted.

1.4 The applicant indicates that they believed that the hazardous substance consent related to the storage of any hazardous substances on the site. However, the hazardous substance consent KL/HS/93/03 related solely to the storage of ammonium nitrate on the site.

## **2. RECOMMENDATION**

**2.1 It is recommended that the application for Hazardous Substances consent be approved subject to the conditions listed on the attached sheet and that the consent be withheld until a revocation of Hazardous Substance Consent KL/HS/93/03 (Ammonium Nitrate) is completed.**

## **3. CONCLUSIONS**

3.1 As is indicated in Section 5 of the report the application is considered to be in accordance with the development plan. Section 7 of the Planning (Hazardous Substances) Scotland Act 1997 requires that applications for hazardous substances consent be determined giving due regard to the development plan and other material considerations.

3.2 As indicated in Section 6 there are material considerations relevant to this application however none are of significant enough weight as would merit the refusal of the application.

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards it will not require to be referred to the Development Services Committee, as there would be no significant breach of Council Policy.

**Alan Neish**

**Head of Planning, Development and Building Standards**

**Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.**

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### Report by Head of Planning, Development and Building Standards

#### 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination an application for hazardous substances consent which is to be considered by the Local Planning Committee under the scheme of delegation and which is the subject of objection.

#### 2. APPLICATION DETAILS

2.1 **Site Description:** The application site is the William Tracey Ltd compound at Dunniflats, Lugton which sits approximately 330 metres to the east of Lugton off the A735. The site is bounded on all sides by agricultural land. The nearest housing is 240 metres to the west of the site on the A736. The site, an MOD supplies Depot until 1991, contains an arrangement of large storage buildings served by the access drive from the A735. As detailed in the planning history below the site has been used from 1991 for the storage of fertilizers, chemicals and solvents and as an industrial solvent recovery plant. The site has had hazardous substances consent (KL/HS/93/03) for the storage of Ammonium Nitrate since 1993. The applicant indicates that the site currently has 40 full time employees.

2.2 **Proposed Development:** This retrospective application, under the Planning (Hazardous Substances) (Scotland) Act 1997, is for hazardous substances consent for the storage of various amounts of chemicals which are classified within Part B of the Planning (Control of Major-Accident Hazards)(Scotland) Regulations 2000. In these types of applications the applicant is not required to detail the particular types of chemicals, only the classification in which they occur within Part B of the Regulations and the maximum quantity proposed to be present on the site. The applicant has indicated the following classifications and quantities; type B1 *very toxic* 10 tonnes, type B2 *toxic* 200 tonnes, type B3 *oxidising* 100 tonnes, Type B10 (i) *Dangerous for Environment* 250 tonnes and type B10 (ii) *Dangerous to the environment* 500 tonnes. Said chemicals are stored within containers with a capacity of 1m<sup>3</sup>. The above amounts of figures are the maximum amount allowed to ensure that the application site remains within the lower tier category of the Control of Major Accident Hazard COMAH Regulations.

2.3 The applicant has indicated that the site operates as an on-demand warehousing facility for manufacturing plants throughout the country. The site receives the pre-packed consignment of chemicals from the various suppliers which are then stored within the secured warehouses until the factories require them for their manufacturing process.

2.4 This retrospective application is required due to the change in chemical materials which are being stored on the site. During a consultation on a nearby housing proposal, the Health and Safety Executive brought this matter to the attention of the Planning Authority when the discrepancy in the records was noted.

2.5 The applicant indicates that they believed that the hazardous substance consent related to the storage of any hazardous substances on the site. However, the hazardous substance consent KL/HS/93/03 related solely to the storage of ammonium nitrate on the site.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 The Health and Safety Executive have indicated that they have assessed the risks to the surrounding population from the likely activities resulting from the granting of the proposed Hazardous Substances Consent. They have concluded that the risks to the surrounding population arising from the proposed operations are so small that there are no significant reasons on safety grounds for refusing Hazardous Substances Consent. They recommend that a condition be attached to any grant of consent relating to the storage of the materials.

The Health and Safety Executive indicate that these comments are made on the basis that the existing hazardous substance consent for the storage of ammonium nitrate is revoked.

***Following the comments of the Health and Safety Executive it is considered that any grant of consent should be withheld until such time as the Hazardous Substances Consent for ammonium nitrate storage at the site has been revoked. The applicant has indicated that they are willing to revoke the hazardous substance consent for the ammonium nitrate as they no longer store said chemicals on the site. A condition can be attached to any grant of consent addressing the storage issues raised by the Health and Safety Executive.***

3.2 Scottish Environment Protection Agency have no objection to the proposal. They indicate that the site falls within the lower tier criteria for the Control of Major Accident Hazard Regulations 1999 and the applicant has previously notified the competent Authorities (ie SEPA and Health and Safety Executive).

***Noted.***

3.3 East Ayrshire Council's Emergency Planning Unit indicated they have no comment to make on the application.

***Noted.***

3.4 East Ayrshire Council's Environmental Health Division indicate that they have no comment to make on the proposal as the premises fall within the jurisdiction of the Health and Safety Executive for health and safety enforcement purposes.

***Noted.***

3.5 Scottish Natural Heritage has indicated that they have no objection to the proposal.

***Noted.***

3.6 East Ayrshire Council's Roads and Transportation Division have no objection to the proposal.

***Noted.***

3.7 Scottish Power has no objection to the proposal.

***Noted.***

3.8 Transco have indicated no gas mains in the locality and therefore make no comment on the proposal.

***Noted.***

3.9 Railtrack have not responded at the time of writing the report.

***Noted.***

3.10 Strathclyde Fire Brigade have not responded at the time of writing the report.

***Noted.***

3.11 East Renfrewshire Council raise the following issues:-

- (i) Does this application relate to consent for the storage or processing of hazardous substances at the site or for both storage and processing?

***The application relates to the storage of hazardous materials***

- (ii) If processing is proposed what types of treatment are likely to take place?

***No processing of the chemical takes place on the site.***

- (iii) Which road routes will be used to transport the hazardous waste to and from the site?

***The site provides a just in time delivery service to various factories throughout the Country and therefore there is no set route for the transportation of the materials from the site.***

3.12 Dunlop and Lugton Community Council has submitted a petition of objection (43 signatures) to the proposal raising the following issues:

- Lorries, many from abroad, arriving and leaving the site during the night seven days a week.
- Noisy plant and alarms outwith licensed working hours 07:00- 19:00 Monday to Friday 07:00 –13:00 on a Saturday.
- Offensive, possibly noxious odours being emitted - again often after permitted site working hours.
- Small unexplained explosions.
- Spillage of coloured powder on access road.
- Lorries too large for B roads - scraping under railway bridge which is on the main Kilmarnock – Glasgow line. There are now grooves on the bridge – apart from the accident, which demolished part of the bridge and shut railway line for 3 days.

***The above issues have been carefully noted and have been passed onto the relevant enforcement agencies for their investigation.***

#### **4. REPRESENTATIONS**

4.1 One letter of objection and one petition from the Community Council with 46 signatures have been received in relation to this application. One letter of support has been received from the applicant.

4.2 The issues raised by the Community Council are detailed above. The letter of objection raises the following issues:-

The application form does not relate to the type of chemical to be stored and this information should be provided in layman's terms. The storage of hazardous materials should not be allowed in a small village.

***The applicant is not required by the Planning (Hazardous Substances) (Scotland) Act 1997 to detail the actual chemicals being stored. The groupings identified on the application form (i.e. oxidising), allow for the storage of set amounts (i.e. 100 tonnes) of various types of chemicals of a similar risk without the need to list all the various types of chemicals which the applicant may wish to store on the site.***

4.3 I am appalled that these substances are currently being transported and stored without the necessary planning consents. As a local resident, I am aware of the pungent smells coming from the site and am concerned regarding the environmental issues surrounding these toxic substances and worried that if they are entering the air, they will in turn contaminate surrounding land, be a danger to the public and also to the many livestock in the area.

***Neither the Health and Safety Executive nor Scottish Environment Protection Agency have raised any concerns regarding the storage of these materials at the site.***

4.4 I did not receive neighbour notification on this application.

***The objector does not live close enough to the application site to be neighbour notified of the proposal.***

4.5 The applicant's letter in support of the application indicates that to ensure the ongoing viability of the business they are required to obtain the Hazardous Substances Consent for the storage of these types of Hazardous Substance. They indicate that they employ 40 full time individuals on the site and that the application relates to the temporary storage of packaged chemicals for manufacturing by others.

***Noted.***

4.6 The Applicant considers that this application is only required due to a re-interpretation of the existing planning consents by the Planning Authority to ensure that the planning permissions align with the chemical categories listed in the existing COMAH registration.

***It is noted that the approval of the application will help to ensure the continued operation of the existing industrial/storage business, which is a significant employer within the rural community, at this location.***

***As indicated above the application was required due to the change in chemical materials which are being stored on the site. This matter was brought to the attention of the Planning Authority by the Health and Safety Executive during a consultation on a nearby housing proposal when the discrepancy in the records was noted.***

***The applicant indicates that they believed that the Hazardous Substance consent related to the storage of any hazardous substances on the site. However the hazardous substance consent KL/HS/93/03 related solely to the storage of ammonium nitrate on the site.***

## **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

5.1 Sections 7 of the Planning (Hazardous Substances) Scotland Act 1997 requires that applications for hazardous substances consent be determined giving due regard to the development plan and other material considerations. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan and the Adopted East Ayrshire Local Plan (EALP).

### Ayrshire Joint Structure Plan Policy

5.2 Policy ADS 1 of the Ayrshire Joint Structure Plan indicates that the Councils shall promote sympathetic industrial and business development throughout Ayrshire in order to :

- a) Foster growth in the local economy;
- b) Improve the economic well-being of existing and future residents;
- c) Increase the prosperity of its business enterprises.

***This application will ensure the continued operation of an existing industrial/storage business, which is a significant employer within the rural community. Therefore it is considered that the proposal is in accordance with the above policy of the Structure Plan.***

### Adopted East Ayrshire Local Plan (EALP)

5.3 Policy SD3 of the East Ayrshire Local Plan indicates that within the Rural Protection Area development proposals relating to land located outwith settlement boundaries will be acceptable to the Council only where the Development:

- (iii) can be fully justified in terms of social and economic benefit to the community

***This application will ensure the continued operation of an existing industrial/storage business, which is a significant employer within the rural community. Therefore it is considered that the proposal is in accordance with the above policy of the Local Plan.***

## **6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of the application are the consultation responses received which are addressed in Section 3 of this report, the letters of objection addressed in Section 4 of this report, the planning history and the impact on the amenity of the area.

### Consultation Responses

6.2 The consultation responses are detailed in the report and are found to be supportive of the application with the exception of those from the Community Council.

### Letters of Representation

6.3 The letter of objection has been assessed and is not considered to raise significant issues that would merit the refusal of the application.

The applicant's letter in support of the application indicates that to ensure the ongoing viability of the business they are required to obtain the Hazardous Substances Consent for the storage of these types of Hazardous Substances.

### Planning History

6.4 Planning permission KL/W/FL/91/023A was granted on 15 April 1991 for the change of use of the site from a Ministry of Defence depot to storage of fertilisers, chemicals and solvents and industrial solvent recovery plant.

- i) Hazardous Substances application KL/HS/93/03 was granted consent on the 18 November 1993 for the storage of Ammonium Nitrate at the site.
- ii) Planning permission KL/W/FL/91/023B was granted consent on 02 October 1995 for the replacement of Conditions 2 and 3 of KL/W/FL/91/023A.
- iii) Planning permission KL/W/FL/91/023C was granted on 28 March 1996 for the alteration of Condition 2 of planning consent KL/W/FL/91/023A
- iv) Planning permission 97/0594/FL was granted on 16 October 1997 for the erection of plant and temporary buildings in relation to industrial waste and special waste treatment facility.
- v) Planning Permission 98/0654/FL was granted on 27 August 1999 for the replacement of condition 2 of KL/W/FL/91/023A to permit the storage and treatment of contaminated metal and recoverable material and widen access road.
- vi) Planning Permission 02/0217/FL was granted on 12 June 2002 for the erection of plant and buildings and the formation of a landscaped bund.

- vii) Planning permission 04/1205/FL was granted on 30 March 2005 for the erection of temporary buildings and a jet wash unit at the site.

### Amenity of the area

6.5 It is noted that the site has been utilised for a considerable period of time for the storage of Ammonium Nitrate, that the site is an established industrial storage depot, which is located 240 metres away from the nearest dwellinghouse. As the proposal has not raised objection from the Health and Safety Executive or Scottish Environment Protection Agency it is considered that the proposal will not have a significant detrimental impact on the amenity of the area.

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no financial or legal implications for the Council in the determination of this application.

## **8. CONCLUSIONS**

8.1 As is indicated in Section 5 of the report the application is considered to be in accordance with the development plan. Section 7 of the Planning (Hazardous Substances) Scotland Act 1997 requires that applications for hazardous substances consent be determined giving due regard to the development plan and other material considerations.

8.2 As indicated in Section 6 there are material considerations relevant to this application however none are of significant enough weight as would merit the refusal of the application.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application for Hazardous Substances consent be approved subject to the conditions listed on the attached sheet and that the consent be withheld until a revocation of Hazardous Substance Consent KL/HS/93/03 (Ammonium Nitrate) is completed.**

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards it will not require to be referred to the Development Services Committee, as there would be no significant breach of Council Policy.

**Alan Neish**  
**Head of Planning, Development and Building Standards**

19 October 2005  
(CSI/IMB/MMM)

FV/DVM

### **LIST OF BACKGROUND PAPERS**

1. Application Form and Plans.
2. Statutory Notices/Certificates.
3. Consultation Replies.
4. Letters of representation
5. Adopted East Ayrshire Local Plan
6. Approved Ayrshire Joint Structure Plan.
7. Planning History

**Anyone wishing to inspect the above papers please contact Craig Iles  
on 01563 576772**

***Implementation Officer: Dave Morris***

## EAST AYRSHIRE COUNCIL

## TOWN &amp; COUNTRY PLANNING (SCOTLAND) ACT 1997

05/0368/HS

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Site of Proposal:	Duniflats LUGTON Kilmarnock KA3 4EA
Nature of Proposal:	Application for Hazardous Substances Consent
Name & Address of Applicant:	William Tracey Ltd Dunniflats LUGTON Kilmarnock KA3 4EA
Name & Address of Agent:	N/A

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DPOs Reference: CSI/IMB

The above FULL application should be granted subject to the following conditions:-

1. The hazardous substances shall not be kept or used other than in accordance with the application particulars provided in the Hazardous Substances Consent Application form, nor outside the areas marked for storage of the substances on the plan which formed part of the application.

REASON To ensure the materials are stored in accordance with the approved plans.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT  
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S  
PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON  
VIEWING PLEASE CONTACT (01563) 576790.**