

Revocation of Hazardous Substance Consents on the Gasholder Site, 50 East Dock Street

KEY INFORMATION

Ward Maryfield

Address

Gasholder
50 East Dock Street
Dundee

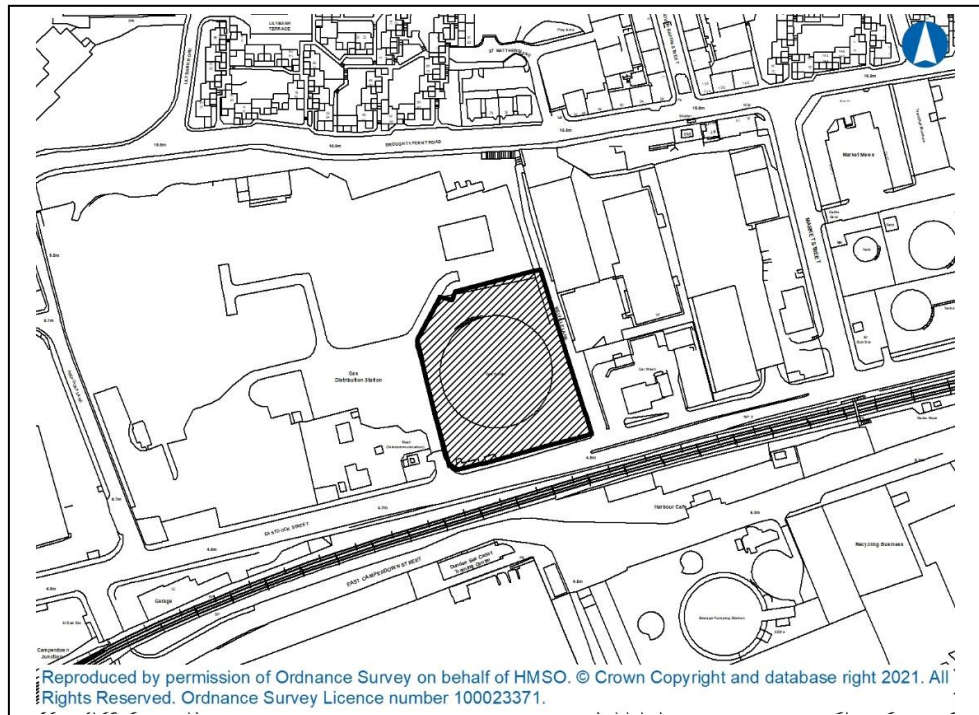
Applicant

Agent

Registered 21 April 2021

**Report by Head of Planning
& Economic Development**

Contact: Claire Myles



SUMMARY OF REPORT

- Authorisation is sought to make an Order to revoke the hazardous substances consents on the gasholder site, 50 Dock Street, Dundee, under section 12(2)(c) of the Planning (Hazardous Substances) (Scotland) Act 1997, subject to the confirmation of Scottish Ministers, and to serve notice of the Order in terms of section 13(3) of the said 1997 Act.
- The proposal is in accordance with the Planning (Hazardous Substances) (Scotland) Act 1997 and Planning Circular 3/2015: Planning controls for hazardous substances.
- In accordance with Dundee City Council's scheme of delegation, this application is to be determined by the Planning Committee as it relates to Hazardous Substance Consent.
- More details can be found at: <http://idoxwam.dundee.gov.uk/idoxpa-web/simpleSearchResults.do?action=firstPage>

RECOMMENDATION

Authorisation is sought to make an Order to revoke the hazardous substances consents on the gasholder site, 50 Dock Street, Dundee, under section 12(2)(c) of the Planning (Hazardous Substances) (Scotland) Act 1997, subject to the confirmation of Scottish Ministers, and to serve notice of the Order in terms of section 13(3) of the said 1997 Act.

1 DESCRIPTION OF PROPOSAL

- 1.1 Authorisation is sought to make an Order to revoke the hazardous substances consents on the gasholder site, 50 Dock Street, Dundee, under section 12(2)(c) of the Planning (Hazardous Substances) (Scotland) Act 1997, subject to the confirmation of Scottish Ministers, and to serve notice of the Order in terms of section 13(3) of the said 1997 Act
- 1.2 The Council has received copies of the historic consents in place on the site from the Health and Safety Executive (HSE) as these predate Council electronic records. The consents include Deemed Hazardous Substance Consents for the storage of natural gas in 1993 (HDC1, HDC2, HDC3), a continuation of consent in 2000 (HDC/0004) and a further continuation in 2001 (HDC/0005).
- 1.3 HSE advise that according to their records National Grid de-notified the site in 2012 under the control of Major Accident Hazard Regulations 1999. HSE state that this suggests that the site no longer required hazardous substances consent.
- 1.4 As with planning permission, hazardous substances consent provides an entitlement that runs with the land. It may be undesirable for a hazardous substances consent which has fallen into disuse to continue to have effect.
- 1.5 It is for Dundee City Council as the planning authority, to formally revoke any hazardous substances consents held by the site under sections 12 or 15 of The Planning (Hazardous Substances) (Scotland) Act 1997.
- 1.6 Planning Circular 3/2015: Planning controls for hazardous substances, states that planning authorities are encouraged to review hazardous substances consents from time to time with a view to revoking redundant ones. This can help to avoid the situation where, for example, an installation is no longer on a site, but the hazardous substances consent is in place and therefore so is the consultation distance. When a hazardous substance consent is granted there is a consultation distance within which HSE must be consulted over any relevant future planning applications. HSE produce a map with three risk contours (or zones), representing defined levels of risk or harm which any individual would be subject to. This represents the consultation distance which triggers consultation with HSE, whose advice on development proposals in the vicinity will be based on the fact such a hazardous substances consent is in place (Figure 1).
- 1.7 HSE have advised that if all hazardous substances consents held by the former Dundee Holder Station site are formally revoked in accordance with The Planning (Hazardous Substances) (Scotland) Act 1997, HSE will remove the consultation distance around the site and there will be no need to consult HSE on proposed developments in the vicinity. This will actively assist the development of vacant sites and the regeneration and expansion of future employment sites within the Principal Economic Development Area and Enterprise Area.

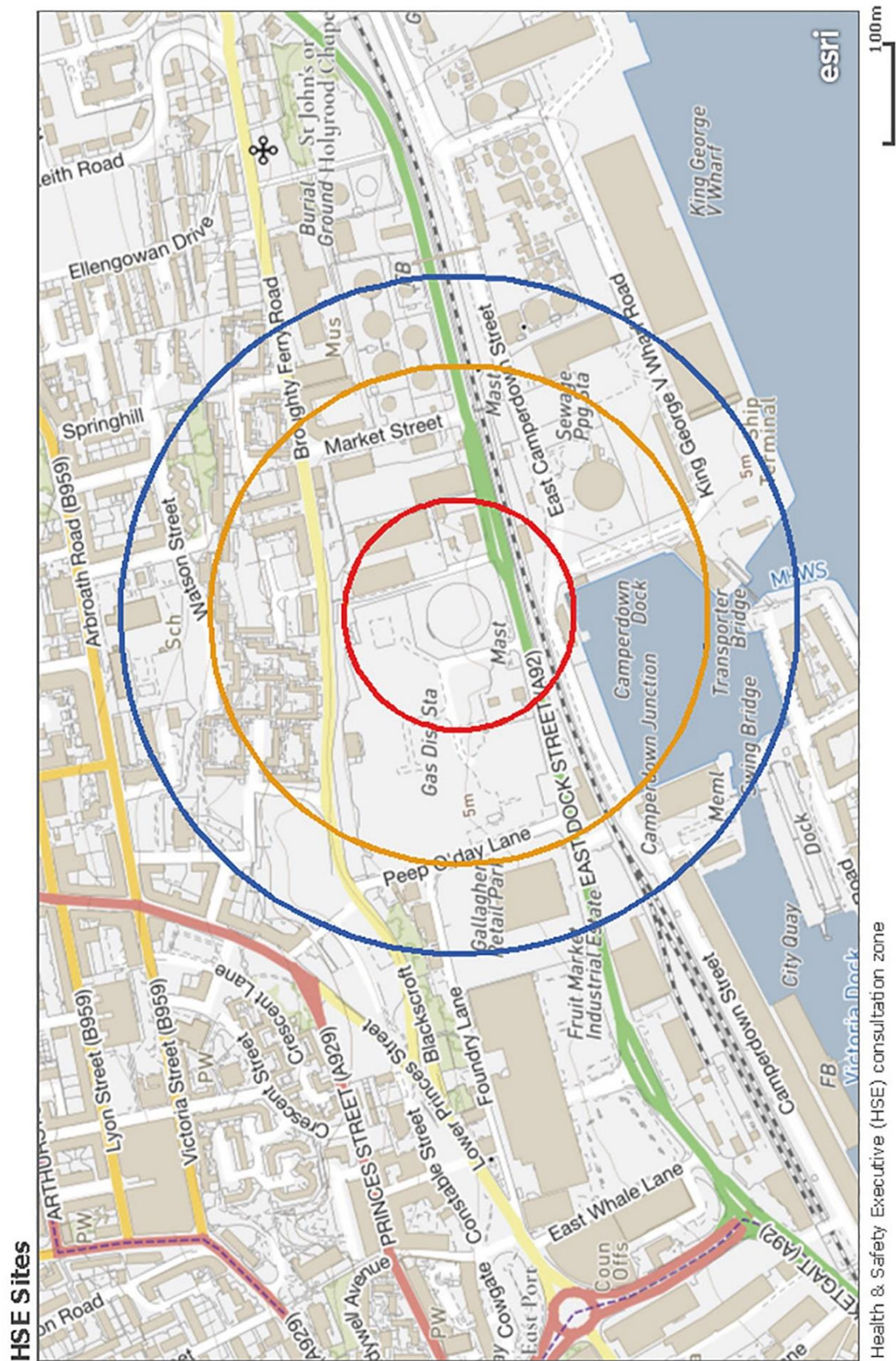


Figure 1 – HES Consultation Zone

2 SITE DESCRIPTION

- 2.1 The decommissioned natural gas holder station is located in a secure site behind a high stone wall which runs in part along the southern boundary of the site on East Dock Street.
- 2.2 It is located on a corner site on the north side of East Dock Street at its junction with Melville Lane (east). The site is bounded by Broughty Ferry Road to the north; East Dock Street to the south; Melville Lane to the east and Peep O'Day Lane to the west.
- 2.3 The surrounding area is a mix of commercial, industrial and residential uses and the Gallagher Retail Park is located to the west of the site.



Figure 2 – Photo of site

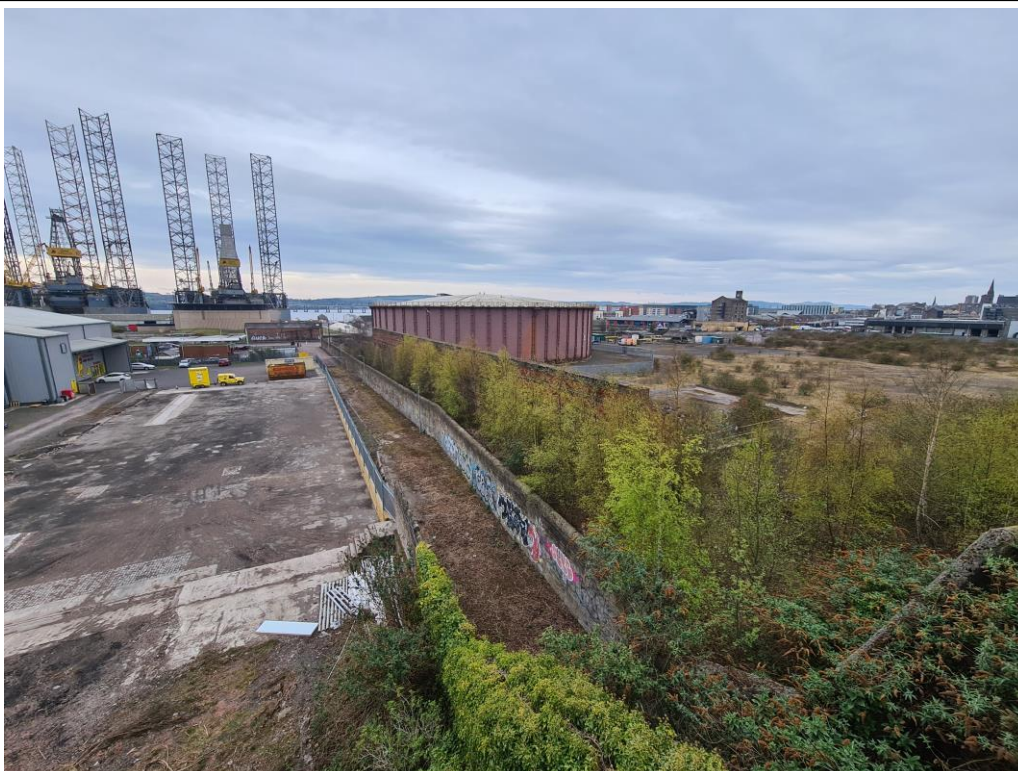


Figure 3 – Photo of site

3 POLICY BACKGROUND

- 3.1 The following plans and policies are considered to be of direct relevance:

TAYPlan 2016-2036

The application raises no issues of relevance.

DUNDEE LOCAL DEVELOPMENT PLAN 2019

Policy 3: Principal Economic Development Areas

Policy 42: Development of or next to Major Hazard Sites

SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTES AND CIRCULARS

Reference has been made to the provisions of the Hazardous Substances (Scotland) Act 1997 and Circular 3/2015: Planning Controls for Hazardous Substances.

- 3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

4 SITE HISTORY

- 4.1 Deemed Hazardous Substance Consent 1993 (HDC1, HDC2, HDC3); a continuation of consent in 2000 (HDC0004) and a further continuation in 2001 (HDC0005).

5 PUBLIC PARTICIPATION

- 5.1 There is no requirement to undertake statutory neighbour notification.

6 CONSULTATIONS

- 6.1 **Health and Safety Executive (HSE)** - HSE were consulted on planning application 20/00433/FULL (Presented to the Planning Committee on 19 April 2021). HSE advised against the granting of planning permission for the installation of 37 self-contained storage units for Kangaroo Self Storage Ltd. This was due to the proposed development lying within the inner zone of the HSE consultation distance of the former Dundee Holder Station at 50 East Dock Street which has hazardous substances consent to store up to a specified quantity of natural gas.
- 6.2 HSE advised that if all hazardous substances consents held by the former Dundee Holder Station site are formally revoked in accordance with The Planning (Hazardous Substances) (Scotland) Act 1997, HSE will remove the consultation distance around the site and there will be no need to consult HSE on proposed developments in the vicinity.

7 DETERMINING ISSUES

- 7.1 Section 12 of the Planning (Hazardous Substances) (Scotland) Act 1997 offers general power by order to revoke or modify hazardous substances consent.
- 7.2 Section 12 (1) states - The planning authority may by order revoke a hazardous substances consent or modify it to such extent as they consider expedient if it appears to them, having

regard to any material consideration, that it is expedient to revoke or modify it. Section 14 states that compensation may be paid if it is shown that any person has suffered damage in consequence of the order under section 12(1).

7.3 Section 12 (2) states - The planning authority may also by order revoke a hazardous substances consent if it appears to them:

- a that there has been a material change of use of land to which a hazardous substances consent relates,
- b that planning permission has been granted for development the carrying out of which would involve a material change of use of such land and the development to which the permission relates has been commenced,
- c in the case of a hazardous substances consent which relates only to one substance, that that substance has not for at least 5 years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity, or
- d in the case of a hazardous substances consent which relates to a number of substances, that none of those substances has for at least 5 years been so present.

7.4 Section 12 (4) requires an order under this section to specify the grounds on which it is made.

7.5 In this instance, Section 12 (2) (c) is relevant by virtue that the site was de-notified in 2012 by the owner under the Control of Major Accident Hazard Regulations 1999.

7.6 Section 13 states an order under section 12 shall not take effect unless it is confirmed by the Secretary of State. Where a planning authority submit any such order to the Secretary of State for his confirmation under this section, the authority shall serve notice of the order:

- a on any person who is an owner, occupier or lessee of the whole or any part of the land to which the order relates; and
- b on any other person who in their opinion will be affected by the order.

7.7 The notice shall specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose. If within that period a person on whom the notice is served so requires, the Secretary of State shall, before he confirms the order, give such an opportunity to that person and to the planning authority.

7.8 Where an order under section 12 has been confirmed by the Secretary of State, the planning authority shall serve a copy of the order on every person who was entitled to be served with notice.

7.9 The process to revoke the existing hazardous substance consents as set out in Section 13 of the Planning (Hazardous Substances) (Scotland) Act 1997 is as follows:

- seek Planning Committee approval to proceed with the revocation process;
- Council serves notice of the order on owner, occupier or lessee of the land for a period of 28 days;
- subject to no objections being received Scottish Ministers confirm the order; and

- Council serves a copy of the order on owner, occupier or lessee of the land.

7.10 There is a risk that objection(s) may be received and this would lead to delay. However, there has been positive communication between Planning and the landowner SGN who has provided contact addresses for serving the notice.

7.11 Authorisation is sought to make an Order to revoke the hazardous substances consents on the gasholder site, 50 Dock Street, Dundee, under section 12(2)(c) of the Planning (Hazardous Substances) (Scotland) Act 1997, subject to the confirmation of Scottish Ministers, and to serve notice of the Order in terms of section 13(3) of the said 1997 Act.

MATERIAL CONSIDERATIONS

THE DEVELOPMENT PLAN

7.12 The provisions of the Development Plan relevant to the determination of this application are specified in the Policy Background section above.

DUNDEE LOCAL DEVELOPMENT PLAN 2019

7.13 **Policy 3: Principal Economic Development Areas** - Principal Economic Development Areas are of citywide significance and as such will be safeguarded for Class 4 "Business", Class 5 "General Industry" and Class 6 "Storage and Distribution". Uses other than these will be resisted. Any development at the Port of Dundee Principal Economic Development Area should not have an adverse effect, either alone or in combination with other proposals or projects, on the integrity of any Natura Site.

7.14 The revocation of the Hazardous Substance Consents will remove the HSE Consultation Zone which is in the Economic Development Area and thus remove the requirement to consult with HSE on related planning applications.

7.15 This will actively assist economic development and enable the development of vacant sites and the regeneration and expansion of future employment sites within the Principal Economic Development Area and Enterprise Area.

7.16 The proposal is in accordance with Policy 3.

7.17 **Policy 42: Development of or next to Major Hazard Sites** – the siting of new or extensions to existing major hazard sites or sites which operate under Scottish Environmental Protection Agency authorisation will not be permitted in close proximity to residential areas and/or areas of public use or interest, where the risk to people or the environment is likely to be significantly increased.

7.18 As noted previously in the report, HSE have advised that if all hazardous substances consents held by the former Dundee Holder Station site are formally revoked in accordance with The Planning (Hazardous Substances) (Scotland) Act 1997, HSE will remove the consultation distance around the site and there will be no need to consult HSE on proposed developments in the vicinity.

7.19 The proposal is in accordance with Policy 42.

7.20 In discharging the statutory duties outlined above the proposals satisfy the requirements of the Dundee Local Development Plan 2019.

- 7.21 It is concluded that there are no material considerations to justify not revoking the hazardous substance consents.

8 CONCLUSION

- 8.1 The proposal is in accordance with the Planning (Hazardous Substances) (Scotland) Act 1997 and the Dundee Local Development Plan 2019. There are no material considerations to justify not revoking the hazardous substance consents. Therefore, authorisation is sought to make an Order to revoke the hazardous substances consents on the gasholder site, 50 Dock Street, Dundee, under section 12(2)(c) of the Planning (Hazardous Substances) (Scotland) Act 1997, subject to the confirmation of Scottish Ministers, and to serve notice of the Order in terms of section 13(3) of the said 1997 Act.

9 RECOMMENDATION

- 9.1 It is recommended that members AUTHORISE an Order to revoke the hazardous substances consents on the gasholder site, 50 Dock Street, Dundee, under section 12(2)(c) of the Planning (Hazardous Substances) (Scotland) Act 1997, subject to the confirmation of Scottish Ministers, and to serve notice of the Order in terms of section 13(3) of the said 1997 Act.