

Committee Report: 23 March 2020

Application Number:	CX/02/19
Title:	Hazardous Substance Consent Application to store and use an inventory of hazardous substances at the Olleco Anaerobic Digestion Facility.
Site Location:	Olleco Anaerobic Digestion Facility, Samian Way, Aston Clinton, Aylesbury, HP22 5WJ
Applicant:	Olleco
Case Officer:	Mitchel Pugh
Electoral divisions affected:	Aston Clinton/Bierton
Local Members:	Bill Chapple OBE

Recommendation:

The Development Management Committee is invited to APPROVE application number CX/02/19 for a Hazardous Substance Consent Application to store and use an inventory of hazardous substances at the Olleco Anaerobic Digestion Facility, Samian Way, Aston Clinton, Aylesbury, HP22 5WJ, subject to the following conditions:

1. The hazardous substances shall not be kept or used other than in accordance with the particulars provided on the application form, nor outside the areas marked for storage and use of the substances on the Hazardous Substances Location plans – Drawing Numbers 14/092/88v and 14/092/21, which formed part of the application.
2. This hazardous substances consent relates to the following named substance and the quantity of such substance held individually or in combination at the site shall be limited to the following amount:

Hazardous Substance	Maximum Quantity Held tonnes
Biogas (P2 FLAMMABLE GASES Flammable Gases, Category 1 or 2).	12

Resources Appraisal: Not relevant

SUPPORTING INFORMATION

1. Site Description

- 1.1 The Olleco Anaerobic Digestion Facility, hereinafter referred to as 'The Site', is situated within the village of Buckland in the Aylesbury Vale District of Buckinghamshire. The Site comprises 2.3 Hectares of land located to the north east end of Samian Way, opposite Arla Dairy to the east of College Road North, adjacent to the A41 Aston Clinton Bypass and junction of College Road North with the A41. Samian Way runs to the north east off College Road North. The Site is a triangular parcel of land between the Arla Dairy and the Aylesbury Arm of the Grand Union Canal. The canal's towpath runs west to east of the site's northern boundary which is separated from the site by a 3m bund with 2m acoustic fencing on the top and the bund is 0.2m higher as it turns the corner on the eastern side of the site. The eastern boundary is defined by a lane, Buckland Road.

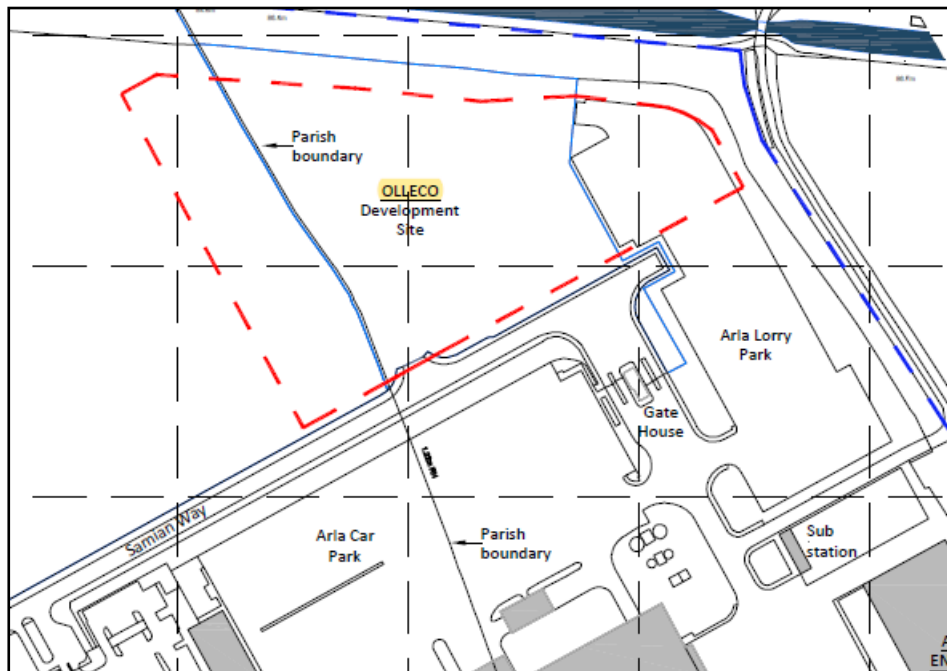


Figure 1. A Plan showing the Olleco Anaerobic Digestion facility (The Site) , outlined in red.

- 1.2 Aylesbury is located approximately 4km to the west, Aston Clinton 1.5km to the south and Buckland approximately 1.5km to the south east, separated by the A41. The Site is accessed from the north eastern end of Samian Way opposite the main gated entrance to the Arla Dairy plant. College Road North serves a number of industrial / commercial uses including, but not limited to: a HWRC site, Mercedes-Benz Retail Park, Jaguar Buckinghamshire and Aylesbury Trade Centre.
- 1.3 Residential properties in the wider locality are College Farm along College Road North (approx. 750m away), and Merrymeade Farm located over the canal bridge to the west of College Road North (approx. 850m away), north west of the Site approximately. To the north east is Monks Court and Monks Farm both of which are in excess of 200m distant from the site. Canal Farm is located approximately 191 metres away from the north eastern corner of the Site; Canal Farm has been subject of several planning applications to convert a former agricultural barn into a residential dwelling house, the most recent of these applications was lodged on the 24th February 2020 and is awaiting a decision at the time of writing this report. Rectory Farm, Puttenham, is located further to the north east at 750m away. Cherry Farm is a residential property sited south of the over bridge on Buckland Road and there are properties south of the A41 on College Road South approx. 800m away. Canal Farm is also approximately 200 metres from the site.

- 1.4 The character of the landscape is of undeveloped open fields with hedgerow boundaries. The Chilterns AONB and Metropolitan Green Belt are located approximately 2.5km beyond the site and beyond Aston Clinton to the south and south east. An existing hedgerow runs north-south across the Site. This has previously been identified as an Important Hedgerow by virtue of the fact it reflects a previous parish boundary.
- 1.5 RAF Halton lies approximately 3 – 4 km to the south of the Site.
- 1.6 Drayton Mead Brook runs in a north south direction on the western side of the Site and enters the site as a culvert at the north western corner which then discharges into the canal.
- 1.8 The boundary with Dacorum Borough Council is located some 800m to the east of the Site.
- 1.9 Within Dacorum Borough to the east is Tring Woodlands SSSI (approximately 5.25km away to the south east) and Tring Reservoir SSSI (approximately 2.5km to the east).
- 1.10 The site is regulated and inspected by the Health & Safety Executive (HSE) as a Lower Tier Control of Major Accidents & Hazards (COMAH) site.

2. Planning History

- 2.1 On the 14th July 2015 the Site was granted planning permission (Ref: CM/78/14) for the following development:

Anaerobic Digestion Plant/Materials Recycling Facility (MRF) together with associated plan and landscaping.

This decision was taken at the Buckinghamshire County Council Development Control Committee on the 9th June 2015.

- 2.2 The grant of conditional consent was subject to a Planning Obligation by Unilateral Undertaking (UU), which was signed by all parties on the 13th July 2015. The UU related principally to the approved routing arrangements for the Site but did also encompass additional matters such as an approved complaints policy and monitoring provisions.

3. Proposal

- 3.1 This is a Retrospective Hazardous Substances Consent application. Planning Permission, Ref CM/78/14, was granted on the 9th June 2015 (Decision Notice issued on the 14th July 2015) for the erection and operation of an Anaerobic Digestion Plant/MRF together with associated plan and landscaping. As part of the development approved by virtue of application CM/78/14, the following relevant substances were outlined to be stored and utilised within the proposed development;

Raw Biogas
Liquid Petroleum Gas (LPG)
Upgraded Biogas (Raw Biogas with added LPG)
Diesel/Gas Oil

- 3.2 The Planning (Hazardous Substances) Act 1990 (“the 1990 Act”), The Planning (Hazardous Substances) Regulations 2015 and The Planning (Hazardous Substances) (Amendment) Regulations 2017 require consent to be obtained for the presence of a hazardous substance on, over or under land unless the aggregate quantity of the

substance(s) present is less than the controlled quantity for that substance. The controls give hazardous substances authorities the opportunity to consider whether the proposed storage or use of the proposed quantity of a hazardous substance is appropriate in a particular location, having regard to the risks arising to persons in the surrounding area and to the environment.

- 3.3 Liquid Petroleum Gas (LPG) is a Named Substance in Schedule 1 Part 2 of The Planning (Hazardous Substances) Regulations 2015 with a controlled quantity of 25 tonnes. The relevant proposal encompasses the storage and/or utilisation of 24 tonnes of LPG (Maximum Quantity).
- 3.4 Upgraded Biogas in the application of the Schedule 1, Part 4, Note 20 of the 2015 Regulations, is considered to be a Named Substance in the implementation of the relevant regulations; Upgraded Biogas falls within Entry 18 of Schedule 1, Part 2 of the 2015 Regulations, with a controlled quantity of 25 tonnes. The relevant proposal encompasses the storage and/or utilisation of 0.3 tonne of Upgraded Biogas (Maximum Quantity).
- 3.5 Diesel/Gas Oil is a Named Substance in Schedule 1 Part 2 of The Planning (Hazardous Substances) Regulations 2015 with a controlled quantity of 25000 tonnes; category P5C-Flammable Liquids, Categories 2 or 3 not covered by P5A & P5B. The relevant proposal encompasses the storage and/or utilisation of 1 tonne of Diesel/Gas Oil.
- 3.6 Raw Biogas, is not a Named Substance in Schedule 1 Part 2 of the 2015 Regulations but is considered to fall within the P2 Flammable Gases, Category 1 or 2, within Schedule 1 Part 1 of the 2015 Regulations. The controlled quantity for P2 Flammable Gases is 10 Tonnes. The relevant proposal encompasses the storage and/or utilisation of 11.4 tonnes of Raw Biogas (Maximum Quantity). The quantity of Raw Biogas stored and/or utilised at the site exceeds the controlled quantity set out within Schedule 1 of the 2015 Regulations; therefore Hazardous Substances Consent (HSC) is required.
- 3.7 In the application of the addition rules in respect of the remaining relevant substances, Buckinghamshire County Council Planning Authority, as Hazardous Substances Authority (HSA) , consider that HSC is not required for the following substances used and stored at the Site:
- Upgraded Biogas
 - LPG
 - Diesel/Gas Oil
- 3.8 Therefore, the application seeks a HSC for the storage of Raw Biogas alongside its use/involvement with an industrial process. The volume of natural gas sought to be stored and used at the site would be 11.4 tonnes, as a maximum tonnage.

4. Consultations and Publicity

- 4.1 Regulation 10 of the 2015 Regulations sets out who shall be consulted on the HSC application. In the interpretation of this regulation, the HSA must consult the following bodies or persons prior to the determination of the application for HSC:

The COMAH competent authority; **Health and Safety Executive (HSE) & Environment Agency (EA)** (acting jointly)

The district or London borough council or county council concerned, where that council is not also the hazardous substances authority; **Aylesbury Vale District Council**

The parish council concerned; **Buckland Parish Council & Aston Clinton Parish Council**

The fire and civil defence authority concerned, where that authority is not also the hazardous substances authority; **Buckinghamshire Fire And Rescue Service**

A person to whom a licence has been granted under section 7(2) of the Gas Act 1986 (licensing of gas transporters)(1); **N/A**

A person to whom a licence has been granted under section 6(1)(b) and (c) of the Electricity Act 1989 (licences authorising supply, etc)(2); **N/A**

- 4.2 Consultations were initially issued on the 14th June 2019. An additional consultation request was issued upon the relevant consultees on the 8th July 2019.

District Council

- 4.3 Aylesbury Vale District Council : No Objection

Consultees (Statutory and Non-Statutory)

- 4.4 The Environment Agency ; No objection to the HSC application

- 4.5 Buckinghamshire Fire and Rescue Service;

No comment on the proposal other than notifying the HSA that the Buckinghamshire Fire and Rescue service already have a site specific risk assessment for the Site.

- 4.6 Aston Clinton Parish Council; No comments received.

- 4.7 Buckland Parish Council:

Buckland Parish Council objected to the proposal due to Olleco's failure to operate the plant in accordance with the current planning consents, including but not limited to obnoxious and dangerous odours being released into the environment.

- 4.8 A person(s) to whom a licence has been granted under section 7(2) of the Gas Act 1986 (licensing of gas transporters) & A person(s) to whom a licence has been granted under section 6(1)(b) and (c) of the Electricity Act 1989 (licences authorising supply, etc);

No relevant persons were identified within Buckinghamshire. As such no consultations notices were issued.

- 4.9 Health and Safety Executive:

In considering this application for Consent, HSE has made the assumption that the requirements of the Health and Safety at Work etc. Act 1974, and all relevant statutory provisions, will be met at the establishment should Consent be granted. Accordingly HSE advises that you should direct the applicant's attention to section 29 of the Planning (Hazardous Substances) Act 1990. On this basis, HSE has concluded that the risks to the surrounding population arising from the proposed operation(s) are so small that there are no significant reasons, on safety grounds, for refusing Hazardous Substances Consent.

It is HSE's understanding that in accordance with Statutory Instrument 2017 No 365, "The

Planning (Hazardous Substances) (Amendment) Regulations 2017” and application of aggregation rules, only the Biogas requires a hazardous substances consent and has been assessed.

Following Government advice that particulars in the application form do not automatically become conditions of consent, it would be beneficial to include the following conditions:

"The hazardous substances shall not be kept or used other than in accordance with the particulars provided on the application form, nor outside the areas marked for storage and use of the substances on the Hazardous substances Location plans – Drawing Numbers 14/092/88v and 14/092/21, which formed part of the application.

5. Summary of publicity undertaken

- 5.1 Regulation 6 of the 2015 Regulations states that the applicant shall during 21 days immediately preceding the application, publish in a local newspaper a notice and post that notice on the land for not less than seven days during that 21 days period. The notice is to invite representations on the application. Evidence of the notice and newspaper advertisement are required to be provided with the HSC submission. The applicant has provided as part of the HSC submission both of these documents which demonstrate both of these requirements have been complied with.
- 5.2 Regulation 7(1) of the 2015 Regulations states that an Application for HSC must not be entertained unless it is accompanied by whichever of certificates A to D set out in Form 2 is appropriate. The required certificates were provided alongside the submission of the HSC application.
- 5.3 Regulation 10 of the 2015 Regulations states that a HSC cannot be determined until a period of 28 days has passed from serving notice on consultees. Consultees were informed of the Hazardous Substances application on the 14th June 2019 and again on the 8th July 2019; at the date of writing this report that date has passed.

6. HAZARDOUS SUBSTANCES CONSENT (HSC)

Purpose of HSC in Planning

- 6.1 Paragraph 3 of the Planning Practice Guidance (PPG) regarding Hazardous Substances frames the rationale behind the HSC process within the planning system;

The hazardous substances consent process ensures that necessary measures are taken to prevent major accidents and limit their consequences to people and the environment. This is a key part of the controls for storage and use of hazardous substances which could, in quantities at or above specified limits, present a major off-site risk [...]

- 6.2 The expectations of Hazardous Substance Control within the Planning System are principally derived from The SEVESO III Directive.

Development Plan and Relevant Material Planning Considerations

- 6.3 In the context of the HSC application, the relevant Development Plan consists of the following;

Buckinghamshire Minerals and Waste Local Plan 2016-2036 (BMWLP)

Adopted Aylesbury Vale District Local Plan 2004 (AVDLP)

- 6.4 The draft Vale of Aylesbury Local Plan (2013-2033) (VALP) has been submitted to the Secretary of State for MHCLG for independent examination. Examination hearings were held in July 2018 and, following the provision of the Inspector's interim findings, Aylesbury Vale District Council are currently preparing Main Modifications for consultation.
- 6.5 Whilst the VALP is yet to be adopted and is not a constituent of the Development Plan, the VALP is considered to be at an advanced stage of preparation and is a material consideration for the determination of planning applications. The subsequent materiality of the VALP in the determination of HSC applications would therefore rely on the relevance of its provisions.
- 6.6 In the assessment of the relevance of the provisions of the Development Plan, it is considered that the BMWLP & AVDLP remain silent on matters relating explicitly to development associated with the storage and use of Hazardous Substances.
- 6.7 In the assessment of the relevance of the provisions of the draft VALP, it is considered that the VALP remains silent on matters relating explicitly to development associated with the storage and use of Hazardous Substances.
- 6.8 In the determination of planning applications decision makers should also give regard to national planning policy. Such regard is also considered to be appropriate in the determination of HSC applications. In the context of the principle of this HSC application, the following pieces of national planning policy are considered to be relevant; National Planning Policy Framework (NPPF) & National Planning Policy for Waste (NPPW).
- 6.9 In the assessment of the relevance of the provisions of the aforementioned National Planning Policy, it is considered that the NPPF & NPPW remain silent on matters relating explicitly to development associated with the storage and use of Hazardous Substances.

7. HSC Consideration

- 7.1 Section 9(2) of the 1990 Act states that when considering an application for a HSC, regard shall be given to any material considerations including the following;
- a) Current or contemplated use of the land to which the application relates
 - b) The way in which the land in the vicinity is being used or likely to be used
 - c) Any planning permission granted for development of land in the vicinity
 - d) Provisions of the Development Plan
 - e) Advice which the HSE have given
- 7.2 It is integral to the HSC determination process to understand that HSC applications submitted pursuant to the provisions of the 1990 Act lie beyond the scope of the Town and Country Planning Act 1990 and of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
- 7.3 Whilst the HSC determination process is distinct from the mechanisms of application consideration set out within Town and Country Planning Act 1990, by virtue of Section 9(2) of the 1990 Act, there are material similarities between the two processes; namely in the materiality of the Development Plan.
- 7.4 For the purposes of this HSC application Buckinghamshire County Council, as HSA, must consider the following factors;

a) Current or contemplated use of the land to which the application relates

- 7.5 The Site is an existing Anaerobic Digestion Facility. Due to the retrospective nature of the HSC application, it is important to acknowledge that the storage and use of Raw Biogas has been a principle component of the development permitted by planning permission CM/78/14. The current HSC application is solely a means of regularising the Site's current operation in respect of Hazardous Substances Control (HZC); in the storage and use of a relevant substance, above the controlled quantity set out within Schedule 1 Part 1 of the 2015 Regulations, the Site has operated in contravention of HZC.
- 7.6 Based on the information provided alongside the HSC application and the approved documentation of planning permission CM/78/14, the storage and use of Raw Biogas does not require any additional plant/machinery or miscellaneous operational development other than that permitted by planning permission CM/78/14; as such the consideration and subsequent grant of HSC would not result in a breach of planning control.
- 7.7 In summary, the HSC being sought by the applicant is directly related to the current and contemplated use of the Site and requires no deviation from the activities (and operational development) consented by planning permission CM/78/14. Officers do not consider the storage and use of Raw Biogas and consequentially the need for HSC, would conflict with the current or contemplated use of the Site.

b) The way in which the land in the vicinity is being used or likely to be used

- 7.8 The land to the south (primarily south-westerly) of the Site, 500-800 metres, is primarily occupied by commercial/industrial uses; Mercedes-Benz Retail Park, Jaguar Buckinghamshire and Aylesbury Trade Centre. The Arla Dairy is the Site's closest neighbour to the south, approximately 165 metres away. These commercial/industrial uses exist within material proximity to the activities relevant to the determination of this HSC application.
- 7.9 The Site is bounded to the north by the Aylesbury branch of the Grand Union Canal, approximately 25 metres from the Site's northern boundary. A public footpath, ACL 40/2, runs along the adjacent Grand Union Canal and as a result falls within material proximity of the Site and its storage/use of Raw Biogas.
- 7.10 Monks Court and Monks Farm, both residential units, are situated approximately 235 metres north east of the Site's northern boundary. Both properties lie across the Grand Union Canal and are the closest residential units to the Site; College Farm (750 metres North), Merrymead Farm (850 meters North West) and Rectory Farm (750 metres East).
- 7.11 In the context of the HSC determination , the following receptors are considered to fall within material proximity (less than 300 metres) to the relevant activities;
- Grand Union Canal and Footpath ACL 40/2
 - Monks Court & Monks Farm
 - Arla Dairy
- 7.12 The Site is not covered by, or in close proximity to, any national or higher level nature conservation designations. Furthermore the Environment Agency, as part of the COMAH competent authority, has not objected to the grant of HSC nor have they presented any cause for environmental concern or risk.

7.13 In summary, the land in the vicinity of the Site contains a mix of commercial/industrial and residential uses. Of these uses, the residential units are considered to more sensitive in respect of the matters requiring HSC. The Grand Union Canal and adjoining footpath ACL 40/2 also present potentially sensitive receptors. Whilst potential areas of sensitivity are accepted, the response of COMAH competent authority does not outline a notable risk upon the environment or human health.

c) Any planning permission granted for development of land in the vicinity

7.14 Based on the information available on public access websites of the 2 relevant Planning Authorities, Buckinghamshire County Council & Aylesbury Vale District Council, no novel development has been granted permission in material proximity to the activities requiring HSC within this proposal.

d) Provisions of the Development Plan

7.15 The Development Plan in this case comprises the BMWLP & AVDLP. Almost all of the policies relate to 'development' which of its own volition is distinct from matters relevant to HZC, however in order to satisfy the determination requirements of Section 9(2) of the 1990 Act, regard must be given to the provisions of the Development Plan.

7.16 Following assessment of the Development Plan, the Officers consider that the BMWLP & AVDLP remain silent on matters relating explicitly to HZC. As such, the provisions of the Development Plan afford no relevant guidance in the determination of this HSC application.

7.17 It is also notable, that the matters which require HSC (storage/use of Raw Biogas) occur with the benefit of planning permission. Whilst the grant of planning permission cannot circumvent the need for HSC, it is considered to be useful when assessing a HSC in respect of the provisions of the Development Plan; such assistance is only afforded when the Development Plan itself remains silent on matters pertaining to HZC.

e) Advice which the HSE have given

7.18 The 1990 Act specifically requires Hazardous Substances Authorities to take account of the advice of the Health and Safety Executive, as part of the COMAH competent authority, the safety regulator, in the determination of HSC applications. The Health and Safety Executive is the key statutory consultee in respect of risk to the public in this case and has carried out risk assessments for the storage and use of Raw Biogas at the Site.

7.19 The Health and Safety Executive has raised no objection to the application subject to the condition set out below being imposed on the issued Consent; specifically the Health and Safety Executive concluded that the risks to the surrounding population arising from the activities requiring HSC are so small that there are no significant reasons, on safety grounds, for refusing HSC. The Health and Safety Executive has also drafted an interim two zone map which, should the HSC be granted, would then be placed on the Health and Safety Executive land use planning advice system.

7.20 The Health and Safety Executive advised that in the grant of HSC it would be beneficial to include following conditions;

The hazardous substances shall not be kept or used other than in accordance with the particulars provided on the application form, nor outside the areas marked for storage and use of the substances on the Hazardous substances Location plans –

Drawing Numbers 14/092/88v and 14/092/21, which formed part of the application.

8. Equality and Diversity Issues

- 8.1 In writing this report due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between different groups and foster good relations between different groups. It is not however considered that any issues with regard thereto are raised in relation to consideration of this application.

9. Conclusion

- 9.1 The proposal seeks HSC for the storage and use of Raw Biogas at the Olleco Anaerobic Digestion Facility in Aylesbury. The storage and use of Raw Biogas, which is the subject of this proposal, must be assessed in terms of the risks posed to the site, its neighbours and the local environment over and above that which already exist at the Site. There are existing statutory regimes in place to control use and locations of storage, and, most importantly, the management regime and these are the matters which determine the safety of the site. In relation to public health and safety neither the Health and Safety Executive nor the Environment Agency has objected to the proposal and it is clear from their comments that the risk from the proposal is considered to be small and manageable in the event of an incident. Accordingly Officers consider that the HSC can be granted subject to conditions.

10. RECOMMENDATION

- 10.1 That the Hazardous Substances Consent be granted in respect of storage and use of Raw Biogas subject to conditions:

Appendix A Conditions

1. The hazardous substances shall not be kept or used other than in accordance with the particulars provided on the application form, nor outside the areas marked for storage and use of the substances on the Hazardous Substances Location plans – Drawing Numbers 14/092/88v and 14/092/21, which formed part of the application.
2. This hazardous substances consent relates to the following named substance and the quantity of such substance held individually or in combination at the site shall be limited to the following amount:

Hazardous Substance	Maximum Quantity Held tonnes
Biogas (P2 FLAMMABLE GASES Flammable Gases, Category 1 or 2).	12

Reasons

To ensure that the hazardous substances are handled and stored in the approved locations and in the interests of safety and risk management. To enable any proposed minor alterations to be assessed for risk and the relevant emergency planning bodies to be notified to ensure emergency action plans are kept up to date. To enable the hazardous substances authority to advise on the need or otherwise for express hazardous substances consent to be obtained for any such changes

To define the substances and quantities held as required by Section 9(4)a,b &c of the

Planning (Hazardous Substances) Act 1990.

Informatives

- 1.** You are reminded that this permission must be carried out strictly in accordance with the above specified plans and the conditions referred to upon this certificate of decision. If any amendments are proposed, you should NOT proceed without first obtaining the written approval of the Hazardous Substances Authority.
- 2.** The maximum quantity of Biogas (hazardous substance) is limited to 12 tonnes. In the event that new hazardous substances are intended to be stored, or the quantity of existing hazardous substance is intended to be increased which will exceed the maximum site capacity, new hazardous substances consent must first be obtained.
- 3.** Section 29 of the Planning (Hazardous Substances) Act 1990 makes it clear that nothing in this consent or conditions shall relieve the developer from obtaining such consents and approvals as may be required by any public, local or statutory undertaker, complying with any bye-law, statute or enactment for the time being in-force, nor from observing common law rights. Furthermore, nothing in this permission shall relieve the developer from any legal instrument, agreement, covenant or contract that may be in force at the site.
- 4.** The applicant is reminded of the provisions of the Health and Safety at Work etc Act 1974 and associated work place legislation.