

The Scottish Government  
The Directorate for Local Government and  
Communities  
Planning and Architecture  
Planning Decisions  
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Hazardous Installations  
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Head of Unit  
Stuart Reston

Date: 4 March 2014

HSE Ref.: 4.2.1.3961  
Your Ref.: NA/HLD/080

For the attention of Alex Kerr

Dear Mr Kerr

**Town and Country Planning (Scotland) Act 1997  
The Town and Country Planning (Notification of Applications) (Scotland)  
Direction 2009**

**Siting of 120 storage containers, portacabin offices, lighting, CCTV, access gates and fencing. Change of use of existing Shell/Esso storage site to container storage at Site B, Esso Inverness remediation site, Cromwell Road, Inverness - The Highland Council planning application ref. 13/04835/FUL**

1 I refer to your letter of 28 February 2014 regarding The Highland Council's proposal to grant planning permission for the above development contrary to HSE's advice. As requested, HSE has considered whether to recommend to Scottish Ministers that they should determine the application themselves and the following gives HSE's view on that issue.

2 HSE is a statutory consultee for certain proposed developments within its consultation zones around major accident hazard installations and major accident hazard pipelines by virtue of Regulation 25 of the Town and Country Planning (Development Management Procedure) (Scotland) Order 2008. The proposed development lies within the HSE consultation distance of a major hazard site – Certas Energy UK Ltd at Cromwell Road, Inverness. That site is also a large-scale petrol storage site.

3 HSE provides its land use planning advice to enable the Planning Authority to comply with the objective of Article 12 of EC Directive 96/82/EC, (the Seveso II Directive – see addendum). Its objective is to control proposed development around designated sites and pipelines that would increase the risk or consequences of a major accident. As explained in paragraph 16 of Annex B of Circular 5/1993, HSE normally considers its role to be discharged when it is satisfied that the Planning

Authority is acting in full understanding of the HSE's land use planning advice received and of the consequences to public safety that could follow.

4 As also explained in that paragraph, HSE will consider recommending call-in only in cases of exceptional concern or where important policy or safety issues are at stake. After careful consideration, HSE has decided that this case is not one which it would recommend Scottish Ministers to call in. **However, HSE's land use planning advice, for the purposes of Article 12 of the Seveso II Directive, remains that there are sufficient reasons, on safety grounds, for advising against the granting of planning permission in this case, and HSE's decision in this case does not mean that advice is withdrawn. You may wish to note that this letter may be published on the HSE website in due course.**

5 In coming to a decision in this case, HSE was also mindful of the views expressed in Chapter 5 of the First Report of the Advisory Committee on Major Hazards (ACMH) and Chapter 4 of the Second Report of ACMH. In these reports it was stated that:

"... the siting of developments should remain a matter for planning authorities to determine, since the safety implications, however important, could not be divorced from other planning considerations." and

"... local authorities are well placed to take proper account of the full range of local factors, including safety issues, which are relevant to a planning decision."

6 HSE's decision in the present case should not be taken as an indication of how we will respond in other instances where, despite having advised against the granting of planning permission for a development within a DPZ, the planning authority is minded to grant permission. HSE will consider each case on its own merits when dealing with planning applications within a DPZ.

7 HSE acknowledges that in this case the final decision on whether to grant planning permission rests with the Council. We are satisfied that if planning permission is granted the Council will be acting in full understanding of HSE's advice and the consequences that could follow should a major accident occur at the major hazard site.

Yours sincerely



**Gerard Adderley**  
**Major Accident Risk Assessment Unit**

cc. Mr L Frissung, HSE HID CEMHD1A/B, Edinburgh



## ADDENDUM

### Land use planning requirements of the Seveso II Directive

Article 12 of the Directive requires land-use planning controls to apply to all establishments within the scope of the Directive; this includes major accident hazard pipelines:

*1. "Member States shall ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in their land-use planning and/or other relevant policies. They shall pursue these objectives through controls on:*

*a. the siting of new establishments;*

*b. modifications to existing establishments covered by Article 10;*

*c. 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.*

*Member States shall ensure that their land use and/or other relevant policies and the procedures for implementing those policies take account of the need, in the long-term, to maintain appropriate distances between establishments covered by this Directive and residential areas, areas of public use and areas of particular natural sensitivity or interest, and, in the case of existing establishments, of the need for additional technical measures in accordance with Article 5 so as not to increase the risks to people.*

*2. Member States shall ensure that all competent authorities and planning authorities responsible for decisions in this area set up appropriate consultation procedures to facilitate implementation of the policies established under paragraph 1. The procedures shall be designed to ensure that technical advice is available, either on a case-by-case or on a generic basis, when decisions are taken."*

