

**Open Report on behalf of Richard Wills
Executive Director, Environment & Economy**

Report to:	Planning and Regulation Committee
Date:	3 April 2017
Subject:	Revocation of Hazardous Substances Consent Order (No. 1) 2017

Summary:

The County Council is being requested to exercise its powers as the Hazardous Substance Authority to revoke three Hazardous Substances Consents (HSC) which relate to the Theddlethorpe Gas Terminal, St Helens, Mablethorpe, Lincolnshire LN12 1NQ.

The site has previously been subject of three HSCs which create a safeguarding zone around the facility and act as constraint to future development in and around the area. On 23 February 2016 a further HSC was granted (ref: (E)N180/2032/15) which consolidated the changes from the three older HSCs and aligned the site operations with the other major safety consent COMAH (Control of Major Accident Hazards). Following the grant of that consent, the applicant has requested that the County Council revoke the three older HSCs as they are no longer relevant and their existence poses as a significant planning constraint for future development.

Recommendation:

Following consideration of the relevant information it is recommended that the Planning and Regulation Committee authorise the making of the Order to revoke Hazardous Substance Consents refs: N180/1734/93; N/180/1013/96 and (E)N/180/665/99.

Site Location and Key Relevant History

1. The Theddlethorpe Gas Terminal is in close proximity to the resort town of Mablethorpe and the two villages of Theddlethorpe St Helen and Theddlethorpe St Peter. A public right of way runs adjacent to the site boundary and publicly maintained highway A1031 is 500 metres to the west and Kent Avenue 100 metres to the east. The nearest residential property is approximately 50 metres from the entrance to the Gas Terminal. In addition to the east are protected sites including European Wildlife Sites, Special Area of Conservation, Special Protection Area and SSSIs.

2. The Gas Terminal was originally granted planning permission over four decades ago and was commissioned in 1972 to receive and process Natural Gas by pipeline from the North Sea Oil and Gas Fields and distribute processed gas via the National Transmission System (NTS). Further permissions have been granted since, as the operations expanded. In 2016 a retrospective planning application (ref: (E)N180/1754/16) was submitted to the County Council to continue construction and installation of a refrigeration system to replace the existing refrigerant (Freon), which no longer met the standards laid down by the European legislation in respect of hydro chlorofluorocarbon (HCFC) and associated infrastructure with propane and associated infrastructure.

Existing Hazardous Substance Consents

3. There are currently four Hazardous Substance Consents (HSCs) applicable to the site. Two of the HSCs (refs: N180/1734/93 and N/180/1013/96) were issued by East Lindsey District Council who, at that time, were the Hazardous Substance Authority ("HSA"). The two other consents (refs: (E)N/180/665/99 and (E)N180/2032/15) were issued by Lincolnshire County Council. The most recent HSC (ref: (E)N180/2032/15) consolidated the changes from the three older consents and aligns with the other major safety consent COMAH (Control of Major Accident Hazards). Although the previous HSCs subject of this revocation request were issued by East Lindsey District Council (ELDC), the County Council has received written agreement and confirmation from the Planning Team Leader of ELDC that they are happy for the County Council ("the Council") to progress the revocation of these consents on their behalf.

Procedural matters

4. The legislation governing hazardous substances is the Planning (Hazardous Substances) Act 1990 ("the Act"). In addition to granting consent, Section 14 of the Act contains powers to revoke consents, recognising that there are instances where it is expedient to do so and thereby removing this development constraint or the risk of development constraint in the future. Section 14(1) allows for a HSA to revoke a consent, where they consider it expedient to do so, having regard to any material consideration.
5. It should be noted that any revocation will only take effect when it is confirmed by the Secretary of State ("SoS") pursuant to Section 15(1) of the Act.
6. The Hazardous Substance Consents (Appendix B) to be revoked are:
 - N180/1734/93 issued 25 January 1994 by East Lindsey District Council;
 - N/180/1013/96 issued 3 October 1996 by East Lindsey District Council;
 - and
 - (E)N/180/665/99 issued dated 3 November 1999 by Lincolnshire County Council.

7. Under Section 15(3) of the Act where a HSA submit an order under Section 14 to the SoS for his confirmation under this section, the authority shall serve notice of the order –
 - (a) On any person who is an owner of the whole or any part of the land to which the order relates;
 - (b) On any person other than an owner who appear to them to be in control of the whole or any part of that land;
 - (c) On any other person who in their opinion will be affected by the order.
8. Under Section 15(4) a notice under subsection 15(3) shall specify the period (which must not be less than 28 days from the service of it) within which any person on whom the notice is served may require an opportunity of appearing before and being heard by a person appointed by the SoS for that purpose.
9. In respect of legal implications, it should be noted that any revocation under Section 14(1) would be subject to Section 16 of the Act, that if on a claim made to the HSA within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order, the HSA shall pay compensation in respect of that damage.

Material Considerations and Planning Implications

10. The Council is being requested to exercise its powers as the Hazardous Substance Authority under Section 14(1) of the Act to revoke three hazardous substances consents at Theddlethorpe Gas Terminal. ConocoPhillips has indicated that the retention of all four consents would, from an operator's safety management regime, create an unacceptable conflict with the schedule of substances held at the site in respect of COMAH which forms part of the statutory function of the HSE. COMAH seeks to ensure that businesses "Take all necessary measures to prevent major accidents involving dangerous substances" so as to "Limit the consequences to people and the environment of any major accidents which do occur".
11. The revocation procedure is necessary in order to remove an overly restrictive safeguarding zone around the Theddlethorpe Gas Terminal which exists as a consequence of the cumulative effects of the four HSCs. When considering applications for future development in and around the Theddlethorpe Gas Terminal, Planning Authorities are required to consult the Health and Safety Executive ("HSE") who are the safeguarding authority and who make an assessment of the hazard and risk posed by the gas terminal to new developments using its methodology PADHI (Planning Advice for Development near Hazardous Installations). The assessment of risk produces a map with three risk contours (Inner, Middle and Outer) around the site which are used to determine whether a development would be acceptable taking into account its proximity to the site. The HSE indicated that prior to applying the new HSE Consultation Zones created as a consequence of the recent consolidated HSC (ref: (E)N180/2032/15) it

would be necessary for the HSA to revoke the older Hazardous Substance Consents as the retention of all four consents could prevent future development in a significantly wider area than currently applies.

12. As it stands the retention of all four existing HSCs could act as a constraint to types of development that would be considered sensitive uses close to gas terminals. Examples of such developments and uses include tourist and recreational facilities such as caravan parks, tourist attractions and outdoor activity centres which would all be subject and supported by the following policies of the East Lindsey Local Plan (1999):

Policy T2 - Main Coastal Holiday Areas;
Policy T3 - Holiday Service Centre;
Policy T7 - Main Tourist Attractions;
Policy T13 - Static Holiday Caravans;
Policy T14 - New Static Holiday Parks;
Policy T15 - Touring Caravan or Camping Sites; and
Policy REC9 - Countryside Recreation-outdoor.

Public Consultation and Views Expressed

13. This report seeks authorisation from the Council to enact the revocation procedure. There is no public consultation exercise required. However, it should be noted that if the Council resolves to authorise making the Order, the Act requires notice to be served on all interested parties for a period of at least 28 days. Should Members approve the recommendation this would be undertaken by Officers and require notification letters to be sent to all interested parties.
14. Officers have liaised with both the HSE and Theddlethorpe Gas Terminal operator ConocoPhillips (UK) Ltd regarding this revocation and the operator has confirmed that should the County Council apply to revoke the three previous Hazardous Substance Consents, then they would co-operate with the process and would not seek compensation from the Authority. ConocoPhillips (UK) Ltd has provided an undertaking to cover the Council's legal and administrative costs in making the Order and in the event that SoS directs the HSA to facilitate a formal hearing.

Process and Procedure

15. Should the Planning and Regulation Committee consider it necessary and expedient to commence the Revocation process, it would be necessary serve a notice on the site operator. At the same time any other interested parties, in this instance East Lindsey District Council, Health and Safety Executive and Environment Agency, would also be served notices as they are statutory authorities with an interest in site. There would then follow a 28 day consultation period in accordance with Section 15(3) of the Act.
16. The notice of the Revocation Order would simultaneously be forwarded to the SoS, together with any comments received during the consultation

process. Following the conclusion of the consultation process the SoS would either confirm the Order or a formal hearing could potentially be held should any person upon whom the notice is served requires an opportunity to appear before a person appointed by the SoS to consider their views on this matter. In the event of the latter the SoS would direct the County Council to facilitate a formal hearing.

Conclusion

17. The Council is being requested to exercise its powers as the Hazardous Substance Authority under section 14(1) of the Planning (Hazardous Substances) Act 1990 to revoke the following hazardous substance consents which relate to the Theddlethorpe Gas Terminal:
 - N180/1734/93 issued 25 January 1994 by East Lindsey District Council;
 - N/180/1013/96 issued 3 October 1996 by East Lindsey District Council; and
 - (E)N/180/665/99 issued dated 3 November 1999 by Lincolnshire County Council.
18. The planning benefit of revoking the Hazardous Substance Consents is that a significant planning constraint would not come into existence which would have had considerable impact on the viability of development around the Theddlethorpe Gas Terminal given its proximity to an important resort on the Lincolnshire coast.
19. It is therefore considered expedient to make the revocation order as the retention of the four consents would act as a barrier and prejudice the type of development subject to the following substantive policies of East Lindsey Local Plan (Alteration) 1999:

Policy T2 - Main Coastal Holiday Areas;
Policy T3 - Holiday Service Centre;
Policy T7 - Main Tourist Attractions;
Policy T13 - Static Holiday Caravans;
Policy T14 - New Static Holiday Parks;
Policy T15 - Touring Caravan or Camping Sites; and
Policy REC9 - Countryside Recreation-outdoor.
20. Additionally, in pursuance of 14(1) of the Act, there would be no liability for the payment of compensation through revoking the consents as the applicant has indicated that they would not seek compensation. ConocoPhillips (UK) Ltd has provided an undertaking to cover the Council's legal and administrative costs in making the Order and in the event that SoS directs the HSA to facilitate a formal hearing.
21. The proposed development has been considered against Human Rights implications especially with regard to Article 8 – right to respect for private and family life and Protocol 1, Article 1 – protection of property and balancing the public interest and well – being of the community within these

rights and the Council has had due regard to its public sector equality duty under Section 149 of the Equality Act 2010.

Recommendation

It is recommended that the Planning and Regulation Committee authorise the commencement of the statutory process to make the Order to revoke the Hazardous Substance Consents refs: N180/1734/93; N/180/1013/96 and (E)N/180/665/99.

Appendix

These are listed below and attached at the back of the report	
Appendix A	Committee Plan
Appendix B	Hazardous Substance Consents to be revoked

Background Papers

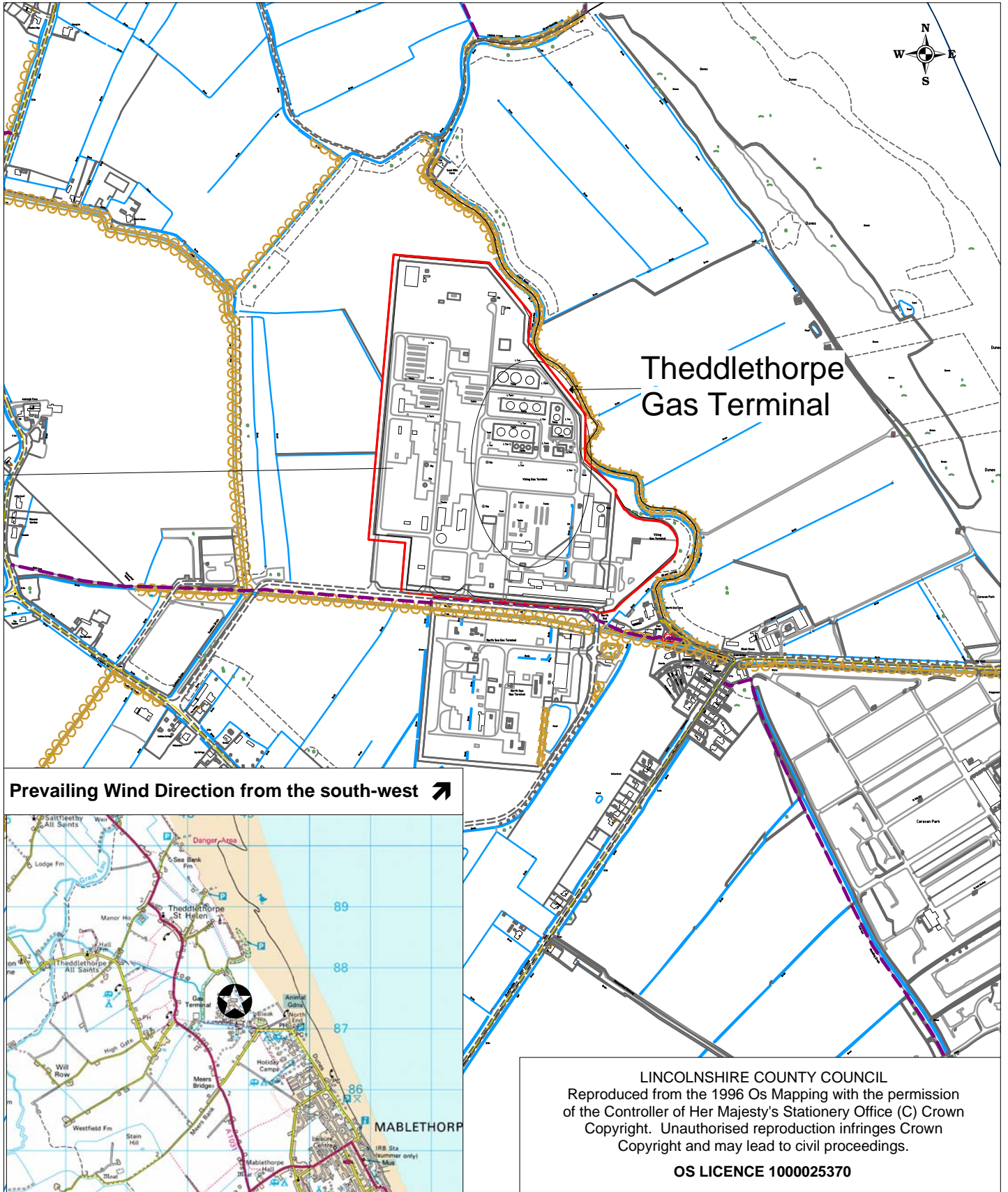
The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Planning Application File (E)N180/1754/16	Lincolnshire County Council, Planning, Witham Park House, Waterside South, Lincoln
Hazardous Substance Consent File (E)N180/2032/15	Lincolnshire County Council's website: https://www.lincolnshire.gov.uk/
Planning (Hazardous Substances) Act 1990	The Government's website http://www.legislation.gov.uk/
East Lindsey Local Plan (Alteration) 1999	East Lindsey District Council's website http://www.e-lindsey.gov.uk/

This report was written by Felicity Webber, who can be contacted on 01522 782070 or dev_planningsupport@lincolnshire.gov.uk

LINCOLNSHIRE COUNTY COUNCIL

PLANNING AND REGULATION COMMITTEE 3 APRIL 2017



Prevailing Wind Direction from the south-west ↗



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OS LICENCE 1000025370

Location:

Theddlethorpe Gas Terminal
 Theddlethorpe St Helens
 Mablethorpe

Description:

The revocation of three Hazardous Substance Consents

Scale: 1:10 000

Planning (Hazardous Substances) Act 1990
 The Planning (Hazardous Substances) Regulations 1992

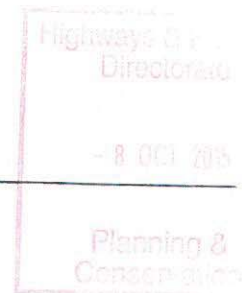
HAZARDOUS SUBSTANCES CONSENT

Name and address of applicant

Conoco (UK) Limited
 Park House
 116 Park Street
 LONDON
 W1Y 4NN

Name and address of agent (if any)

Conoco (UK) Limited
 Theddlethorpe Gas Terminal
 Theddlethorpe St Helen
 MABLETHORPE
 Lincolnshire
 LN12 1NQ



Part I - Particulars of application

Date of application:
 8 June 1999

Application No.
 N/180/665/99
 LCC Ref. No.
 (E)N180/0665/99

Particulars of application:

Hazardous substance application to increase the amount of stored hazardous material at Theddlethorpe Gas Terminal, Mablethorpe Road, Theddlethorpe St Helen.

Part II - Particulars of decision

In pursuance of its powers under the Planning (Hazardous Substances) Act 1990, the Lincolnshire County Council grants consent to the application referred to in Part 1 hereof in accordance with the application and plans submitted subject to the following conditions:-

- (a) The maximum aggregate quantity of substance that may be present -
 - (i) on, over or under the land to which this consent relates;
 - (ii) on, over or under other land which is within 500m of it and controlled by the same person; or
 - (iii) in or on a structure controlled by the same person any part of which is within 500m of it, at anyone time shall not exceed the established quantity of 30 tonnes of Liquefied Petroleum Gas about 1.4 bara, 619 tonnes of Natural Gas, 1,304 tonnes of flammable substance held as mixture of liquid and gas about 1.4 bara, 13,412 tonnes of flammable liquid with a flashpoint less than 21 degrees Celsius and 2,478 tonnes of Methanol.
- (b) The hazardous substance shall not be kept or used other than in accordance with the approved particulars stated in the application form and on Drawing No. TGT-50-DR-002-01 received on 21 July 1999.

Date *3rd November 1999*

4th Floor, City Hall
 Beaumont Fee, Lincoln

Signature Replaced by
 Digital Signature

Head of Planning and Conservation
 Lincolnshire County Council

Note: This consent refers only to that required under the Planning (Hazardous Substances) Act 1990 and does not include any consent or approval under any other enactment, byelaw, order or regulation.

- (c) The hazardous substance shall not be stored outside the area marked for storage on Drawing No. TG 50-DR-002-01 and detailed in the application form received on 21 July 1999.

Reasons

- (a) In order to comply with the requirements of Section 9(4) (c) of the Planning (Hazardous Substances) Act 1990.

- (b) and (c)

In order to comply with the requirements of Section 10(i) of the Planning (Hazardous Substances) Act 1990.

1. If the applicant is aggrieved by the decision of the hazardous substances authority to refuse an application for hazardous substances consent or to grant it subject to conditions, he may appeal to the Secretary of State for the Environment Transport and the Regions in accordance with Section 21 of the Planning (Hazardous Substances) Act 1990, within six months of the date of this notice or such longer period as the Secretary of State may at any time allow. (Appeals must be made on a form which is obtainable from The Planning Inspectorate, Tollgate House, Houlton Street, Bristol BS2 9DJ).

HAZARDOUS SUBSTANCES CONSENT

Agent/Applicant's Name and Address

CONOCO (U.K.) LTD.,
THEDDLETHORPE GAS TERMINAL,
THEDDLETHORPE ST. HELEN,
MABLETHORPE, LINCS.
LN12 1NQ

Applicant's Name and Address

CONOCO (U.K.) LTD.,
GAS TERMINAL,
THEDDLETHORPE ST. HELEN,
MABLETHORPE, LINCS.

Part I - Particulars of Application

Date received:
26/06/96

Application Number:
N/180/1013/96

Particulars and location of the application

PROPOSAL: Hazardous Substance Application to increase the amount of stored hazardous materials.

LOCATION: GAS TERMINAL, THEDDLETHORPE ST. HELEN,
MABLETHORPE, LINCS.

O.S. Sheet Reference: [49.16]

Grid Ref.: [548700][387400]

Field number: 209; 211; 212; 213; 230; 231; 232; 375; 376;
Also O/S number 57.4.

Part II - Particulars of decision

In pursuance of its powers under the Planning (Hazardous Substances) Act 1990, the East Lindsey District Council grants consent to the application referred to in Part 1 hereof in accordance with the application and plans submitted subject to the following condition(s):

1. The maximum aggregate quantity of the substance that may be present-

- (i) on, over or under the land to which this consent relates;
- (ii) on, over or under other land which is within 500 metres of it and controlled by the same person; or
- (iii) in or on a structure controlled by the same person any part of which is within 500 metres of it,

at any one time shall not exceed the established quantity of 30 tonnes of Liquified Petroleum Gas above 1.4 bara, 562 tonnes of flammable gases held as gas, 1207 tonnes of flammable substances held as a mixture of liquid and gas above 1.4 bara and 13,190 tonnes of flammable liquid with a flashpoint less than 21 degrees celsius.

Reason: In order to comply with the requirements of Section 9(4)(c) of the Planning (Hazardous Substances) Act 1990.

2. The hazardous substances shall not be kept or used other than in accordance with the approved particulars stated in form 1 and on the approved plan received by the Local Planning Authority on 24th June 1996.

Reason: In order to comply with the requirements of Section 10 (i) of the Planning (Hazardous Substances) Act, 1990.

3. The hazardous substances shall not be stored outside the areas marked for storage on the approved plan and detailed in Form 1 received by the Local Planning Authority on 24th June 1996.

Reason: In order to comply with the requirements of Section 10 (i) of the Planning (Hazardous Substances) Act, 1990.

NOTES TO APPLICANT:

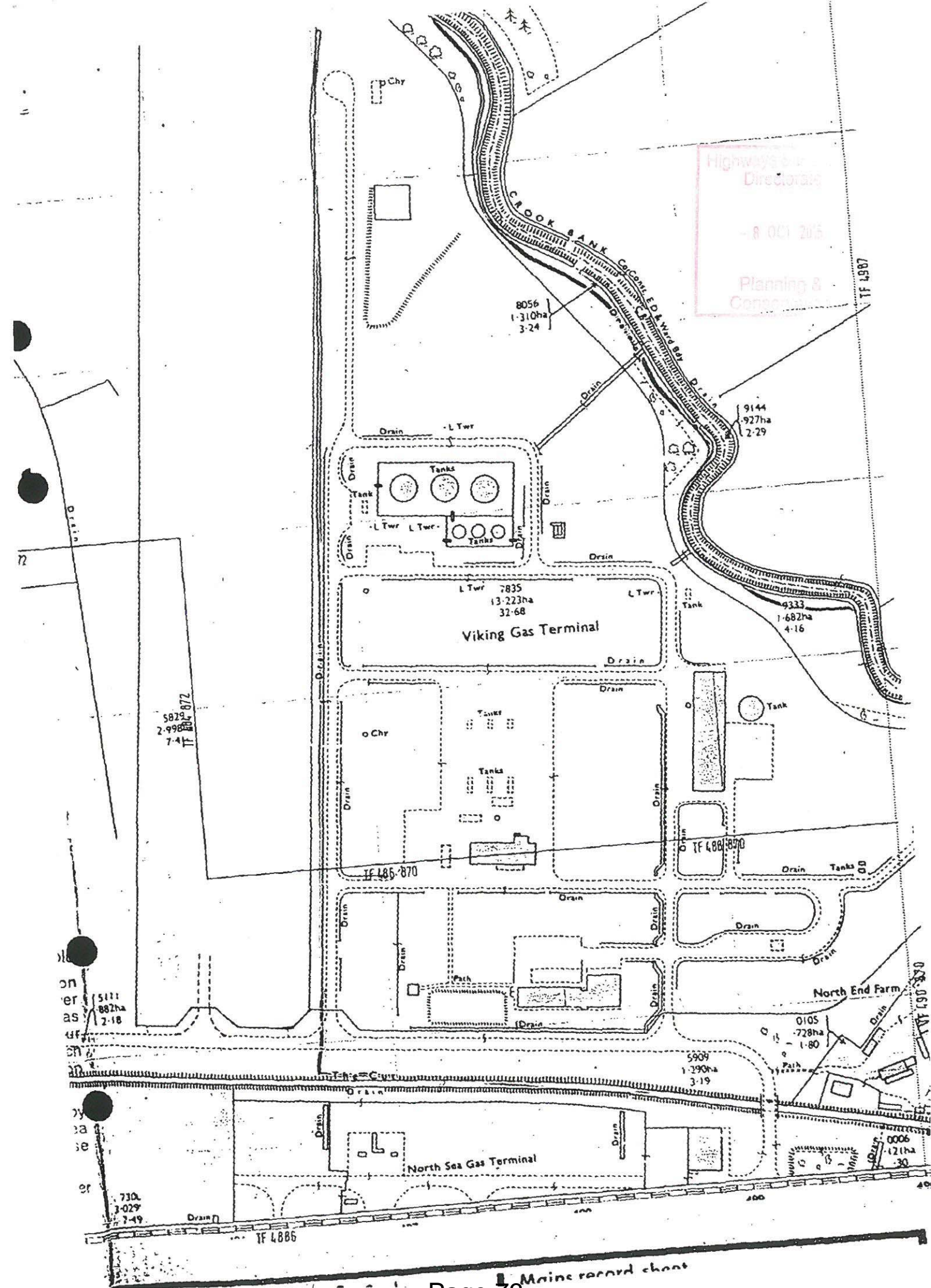
1. The applicant's attention is drawn to the letter and plan attached dated 11th July 1996 from British Gas North.

Signature Replaced
by Digital Signature

Dated: 03/10/96

Signed
Director of Planning and Economic Development

Tel: Louth 601111
EAST LINDSEY DISTRICT COUNCIL, TEDDER HALL, MANBY PARK, LOUTH, Lincs. LN11 8UP



Highway Director's
 - 8 OCT 2015
 Planning & Construction
 TF 4987

8056
 1-31/0ha
 3-24

9144
 927ha
 2-29

9333
 1-682ha
 4-16

L Twr 7835
 13-223ha
 32-68
Viking Gas Terminal

582
 2-99
 7-4
 TF 484-872

TF 485-870

TF 488-890

North End Farm

0105
 728ha
 1-80

5909
 1-390ha
 3-19

North Sea Gas Terminal

0006
 121ha
 3-30

730
 7-029
 7-49

TF 4886

HAZARDOUS SUBSTANCES CONSENT

Agent/Applicant's Name and Address
CONOCO (UK) LTD.,
THEDDLETHORPE GAS TERMINAL,
THEDDLETHORPE ST HELEN,
MABLETHORPE, LINCS.
LN12 1NQ

Applicant's Name and Address
CONOCO (UK) LTD.,
PARK HOUSE,
116 PARK STREET,
LONDON
W1Y 4NN

Highways & Planning
Directorate
- 8 OCT 2013
Planning &
Conservation

Part I - Particulars of Application

Date received:
19/11/93

Application Number:
N/180/1734/93

Particulars and location of the application

PROPOSAL: Hazardous Substance Consent for the process and storage of flammable substances.

LOCATION: CONOCO GAS TERMINAL, THEDDLETHORPE ST. HELEN, MABLETHORPE, LINCS.

O.S. Sheet Reference: [49.16]

Grid Ref.: [548711][387420]

Field No: 231pt; 230pt; 213; 212;211;209;214;232

Part II - Particulars of decision

In pursuance of its powers under the Planning (Hazardous Substances) Act 1990, the East Lindsey District Council grants consent to the application referred to in Part 1 hereof in accordance with the application and plans submitted subject to the following condition(s):

1. The maximum aggregate quantity of the substance that may be present-
 - (i) on, over or under the land to which this consent relates;
 - (ii) on, over or under other land which is within 500 metres of it and controlled by the same person; or
 - (iii) in or on a structure controlled by the same person any part of which is within 500 metres of it,
 at any one time shall not exceed the established quantity of 129.14 tonnes Liquified Petroleum Gas; 235.59 tonnes Gas and Mixture of Gases; 12,596 tonnes Condensate; 12,596 tonnes of Methanol; 12,596 tonnes of Condensate/Methanol Mix.

Reason: In order to comply with the requirements of Section 9(4)(c) of the Planning (Hazardous Substances) Act 1990.

NOTES TO APPLICANT:

1. The applicant's attention is drawn to the attached copy letter from the National Rivers Authority.

Signature Replaced
by Digital Signature

Dated: 25/01/94

Signed
Director of Planning and Economic Development

Tel: Louth 601111
EAST LINDSEY DISTRICT COUNCIL, TEDDER HALL, MANBY PARK, LOUTH, LINCS. LN11 8UP