

## Warrington Local Plan

### Inspector's Matters, Issues and Questions identified by the Inspectors

#### Response on behalf of Emerald Kalama Chemical Ltd (ref no: 2452)

#### Matter 6c – Main Development Area: Fiddlers Ferry

Q4. What is the background to the specific policy requirements (set out at MD3.3)? Are they justified and consistent with national policy? Do they provide clear and effective guidance on constraints and suitable mitigation?

Emerald Kalama Chemical Ltd (part of the LANXESS Group) ("Emerald Kalama") operates a major Upper Tier COMAH chemical plant at Dans Road, Widnes, within the administrative boundary of Halton Borough Council.

As outlined in our client's representations at the Publication Draft stage (Regulation 19), they are concerned that draft policy MD3 does not have any regard to safety planning in respect of the adjacent Emerald Kalama site and therefore does not provide clear and effective guidance on constraints and suitable mitigation.

The company designs, manufactures and supplies chemical products for use in the food, fragrance, flavour, pharmaceutical, agrochemical and other industries at this site. This aroma chemicals manufacturing facility operates 24 hours a day, 7 days a week. Emerald Kalama is responsible for a considerable percentage of global sales of fragrances and is a large local employer, with approximately 100 directly employed staff and 30 regular contractors working on the site involved in maintenance support and facilities management. The company also actively sponsors the Widnes Vikings Learning Disability Rugby League Team and sponsors school visits and other activities within The Catalyst Discovery Centre in Widnes. It therefore has a significant economic and social presence in Halton.

The substances stored and used on the site mean that it is subject to the Control of Major Accident Hazards Regulations 2015. It is classified as an Upper Tier Control of Major Accident Hazards ("COMAH") site.

Paragraph 65 of the Hazardous Substances part of the Planning Practice Guidance ("PPG") provides that local planning authorities should know the location of hazardous installations and, when taking public safety into account in formulating local plans, will need to "*take conscious account of the total number of people that will be present in these consultation zones*". Paragraph 66 identifies the chemicals industry (within which the Emerald Kalama site sits) as an important part of the UK economy.

There is no demonstration within the draft Local Plan that the Council has considered whether the allocation of the Policy MD3 area for mixed use development would represent an unreasonable restriction on the operation of the existing adjacent Emerald Kalama site, or that it has considered the amount of people who will be present within this area. This is clearly contrary to the provisions in Paragraph 187 of the NPPF which confirms:

*“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed”.*

Emerald Kamala operate in a very dynamic market where the flexibility to evolve and change the business in response to changing market demands and evolving regulatory standards on Health and Safety, emissions and environmental controls is critical. This means that the uses and processes on site are always evolving and will continue to evolve in the future. It is therefore not possible to be prescriptive about what might happen on the site in the future. This is precisely why Emerald Kamala need appropriate protection from adjacent developments in line with the agent of change principle, through appropriately worded planning policies.

Equally important is a consistent regulatory and land use framework to allow for long term planning and investment. In this context Emerald Kamala benefits from a number of well-established Hazardous Substances Consents that entitle the company to undertake a range of processes on site and store a range of materials.

The NPPF identifies the chemicals industry as being an important part of the UK economy. Emerald Kalama acquired the Widnes site as a key part of its strategic growth and backward integration and has formed a new Fragrance and Flavours Business Unit to accommodate this area of the business. Its right to utilise spare capacity and undeveloped land at the facility as a responsible global operator is an accepted reasonable expectation, as would be the case for any such site. Such intended flexibility should not be hampered by an emerging local plan policy, in line with paragraph 187 of the NPPF.

Emerald Kalama is supportive of the redevelopment of the Fiddler’s Ferry site and are happy to work with the site promoter going forward on the development of the site to ensure that the safety planning requirements associated with the Emerald Kalama site are appropriately considered and taken account of as the site develops.

However, the Emerald Kalama site is not referenced at all within this draft policy or supporting text. The Council has not demonstrated that it has taken any steps to ensure that this operational site will not be adversely affected by the proposal of development within this area or indeed that it has had regard to the wider public safety interests of such development.

Under the Control of Major Accident Hazards Regulations 2015 (COMAH) the HSE (as the 'Competent Authority') regulates major hazards through joint working with the Environment Agency. To achieve its aims, the HSE operates a permissioning and licensing regime for certain work activities involving significant hazard, risk or public concern, for example where there are risks of: multiple fatalities from a single or linked series of events and/or widespread and significant adverse effects on human health.

The HSE's permission is required before any onshore Upper-Tier COMAH establishment, such as the Emerald Kamala site, can operate. In order to obtain this permission, the COMAH establishment is required to prepare a Safety Report that demonstrates, to the HSE's satisfaction, that they can control major accident risks effectively.

Whilst the HSE land use planning policy provides guidance for LPAs on the assessment of planning applications in close proximity with COMAH sites, it does not take account of the knock on effect to the operation of the COMAH site and its safety planning requirements

The HSE's approach to providing LUP advice is based on the following general principles:

- The advice is based on the residual risk to people which remains after all reasonably practicable measures, as required by the Health and Safety at Work etc. Act 1974 and its relevant statutory provisions, have been taken at the establishment which has the benefit/entitlement of an HSC
- Account is taken of the maximum quantities of hazardous substances permitted by the consent and any conditions attached to the consent (Planning Practice Guidance, Hazardous Substances, paragraph 068)
- Where beneficial, the advice takes quantitative account of the frequency aspect of risk as well as hazard – that is the likelihood of an event as well as its consequences
- However, where the quantification of risk is difficult, uncertain, or potentially misleading, the advice is based on residual risk as represented by the consequences of a representative foreseeable major accident. This approach, which was endorsed by the ACMH, is known as the 'Protection Concept' approach and takes into account the likelihood of accidents in a semiquantitative way

- Furthermore, and most importantly, it should be recognised that actual major accidents and their effects may differ both in character and in scale from the representative one. Consequently, a benefit of the Protection Concept is that LUP advice based on it should provide a high degree of protection against more likely smaller major accidents and also very worthwhile protection against unlikely, but foreseeable, larger ones
- The advice is based on cautious best-estimate assumptions with some overestimation preferred where justification is difficult
- Account is taken of the size and nature of the proposed development, the inherent vulnerability of the exposed people and the ease of evacuation or other emergency procedures. Some types of development (e.g. schools and hospitals) are regarded as more sensitive than others (e.g. light industrial) with the advice weighted accordingly; and
- The advice is based on the risk of serious injury, not just fatality, with particular weight given to proposed development which might result in large numbers of casualties in the event of an accident.

### *The Protection Concept*

The Protection Concept is based on the principle of protecting populations potentially exposed to a hazard. The HSE aims to recommend a separation distance between the development and the hazard to provide a high degree of protection.

The worst events are identified and thereafter a representative one ("Representative Worse Case Scenario"), with the aim of representing all potential events, is chosen to determine a separation distance based on a level of harm that could be experienced by an individual.

The HSE considers the use of a Representative Worst Case Scenario to be the most appropriate means of providing its LUP Public Safety advice in the long-term, given the inherent unknowns concerning the range of major hazards events that can or could arise from incidents involving the large scale storage of highly flammable liquids, in combination with the freedoms inherent in planning HSCs.

### *Cautious Best Estimate*

In view of the uncertainties involved in predicting risk, particularly at residual levels, where low likelihood events can have high consequence levels, the HSE uses a 'Cautious Best Estimate' ("CBE") approach when providing its LUP advice.

A CBE approach may tend toward the upper bound estimation when justification of assumptions and methods is difficult.

### *How the HSE's LUP principles are put into practice*

The HSE notifies the LPA of a consultation distance or zone for all sites where an HSC is in place. In most cases the HSE identifies an Inner (red), Middle (green) and Outer (blue) Zone within the Consultation Zone.

When considering planning applications, the HSE uses a categorisation scheme which groups development types broadly according to size, nature (indoor/outdoor), inherent vulnerability of the exposed population, proportion of time people are likely to be present, and ease of evacuation/other emergency measures.

The decision-making matrix from the HSE's LUP methodology is reproduced below.

Level of Sensitivity	Development in Inner Zone	Development in Middle Zone	Development in Outer Zone
1	DAA	DAA	DAA
2	AA	DAA	DAA
3	AA	AA	DAA
4	AA	AA	AA

**DAA = Do not Advise Against** development

**AA = Advise Against** development

As such, whilst it is likely to be relatively straightforward for the promoters of the Fiddler's Ferry site to comply with the requirements of the HSE's land use planning policy, changes to the land uses around the boundary of the Emerald Kamala site will have implications on their safety planning and requirements under the Control of Major Accident Hazards Regulations 2015. The regulations require every COMAH operator to prepare and keep a document setting out their major accident prevention policy as part of a Safety Report.

Major accident prevention should be based on the principle of reducing risk to a level as low as is reasonably practicable ("ALARP") for both human and environmental risks. However, the ideal should always be, wherever possible, to avoid a hazard altogether. 'All measures necessary' includes measures for mitigating the effects of major accidents. Such a Safety Report exists for the Emerald Kalama site, the objective of the operator being to always manage risks to the ALARP standard.

Any change in circumstances may impact on Emerald Kalama's ability to demonstrate to the HSE that it is operating its site to reduce major accident hazards to a level where they are ALARP.

For example, additional mitigation may be needed for Emerald Kamala to comply with their requirements and the cost of such which, depending on the level of mitigation may be significant, would be borne by them and not the 'agent of change'.

This is the critical point as such additional mitigation requirements borne out of changes of land use in the vicinity of the site have the potential to significantly impact on the operation of the Emerald Kalama site and the flexibility that it needs to operate in a dynamic and changing market. There aren't many of these types of facilities in the country, so it is vital that they are given adequate protection and should be considered as a national resource.

In light of the above, Emerald Kalama are concerned by the Council's response to their representations at the Publication Draft stage (Regulation 19) in their Responding to Representations Report (Examination doc: SP6) which states:

*"The Council has taken into account all COMAH designations in its site assessment process and in preparing Policy MD3. The Council considers that specific reference to the COMAH site is not required within the policy wording".*

There is no information within the local plan or its evidence base to show how this has been done. Moreover, the response does not pay any regard to the importance of the facility and its contribution to the local economy notwithstanding the safety planning considerations.

In the first instance, it is essential the planning policy (MD3), which will govern the redevelopment of the Fiddler's Ferry site, clearly sets out the constraints associated with it being adjacent to an Upper Tier COMAH site as these will clearly affect how part of the site can be developed. This will ensure that it is clear to the developer, local residents, interested parties and the decision maker the constraints associated with being located adjacent to the Upper Tier COMAH site and there is an expectation that such constraints will be taken in to consideration when formulating detailed development proposals on the Fiddler's Ferry site including consultation and liaison with Emerald Kalama.

Moreover, there are other development plans which explicitly carve out protection for these types of sites (e.g. Policy EP 3 of the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (adopted July 2019) which designates a special policy area which specifically encompasses the Stanlow Oil Refinery. This is something that does not appear to have been considered by Warrington Borough in the preparation of the Local Plan.

In view of the above and representations made at the Publication Draft stage (Regulation 19), Emerald Kalama consider that a number of modifications are required to policy MD3 to ensure that it is consistent with national policy, effective and therefore sound. The proposed modifications are set out below in response to question 19.

Q5. What is the status of the development concept diagram associated with this allocation? How will this support the preparation of a Development Framework (MD3.2 point 5)?

Emerald Kalama are concerned that the development concept diagram appears to have been prepared without full consideration and assessment of the site's constraints and in particular the location of the site adjacent to an Upper Tier COMAH site with associated COMAH zones. There is no evidence within the draft Local Plan that the Council has had any regard to the constraints associated with the site being adjacent to a COMAH site.

The supporting text to the policy refers to the development concept for Fiddler's Ferry having been informed by a masterplanning exercise. The masterplan prepared to inform this draft policy has no regard to the site's locality next to an Upper Tier COMAH site. It refers only to a nearby site with an employment land allocation. As such, the masterplan is entirely silent on any constraints as a result of the site's proximity to the Emerald Kalama site. The supporting text goes on to say that the:

*"Development Framework will include a more detailed masterplan for the area and a strategy to ensure the timely delivery of supporting infrastructure. This is important given the existing constraints on transport and community infrastructure in the surrounding area, both in Warrington and Halton".*

This makes no reference to the Emerald Kalama site as being a constraint to be given consideration. There also does not appear to be any indication from the masterplanning exercise or the other evidence base documents that any regard has been given to the likelihood of significant effects arising as a result of the proposed allocations within the draft plan, having specific regard to their location adjacent to an Upper Tier COMAH site. It is therefore considered that very little weight can be given to the development concept diagram as it is clearly very high level and has been prepared without the benefit of a full assessment of the site's constraints and opportunities.

Notwithstanding the above, Emerald Kalama support the principles set out at MD3.2 points 5 & 6 which require a Development Framework to be prepared prior to the submission of any planning applications on the site providing that they are identified as one of the key stakeholders and are involved in the preparation of the Development Framework. The Development Framework must be informed by an appropriate assessment that demonstrates the Emerald Kalama site will not be adversely affected by the proposal of development within this area and that the proposals have had regard to the wider public safety interests of such development.

Given the importance of the Development Framework to setting the requirements for the development of the Fiddler's Ferry site, Emerald Kalama consider that it should be prepared as a Supplementary Planning Document to enable appropriate consultation to take place. A more formal approach will ensure that relevant parties are consulted.

7. Are there any contamination or other constraints either on or adjacent to the site, including the need for remediation and flood risk matters, that will inhibit the development of the allocation as envisaged?

Yes – as set out above.

15. Are there potential adverse effects not covered above, if so, what are they and how would they be addressed and mitigated? N.B. The Council's response should address key issues raised in representations

As above.

19. Are any main modifications necessary for soundness?

Taking into consideration the issues raised above, it is Emerald Kalama's position that policy MD3 needs to be modified as follows to make it sound (additional text in red).

*MDA3.2 – 5*

5. The landowner will be required to prepare a comprehensive Development Framework for the Fiddlers Ferry development site. The Development Framework will accord with the site specific requirements of this policy and wider Local Plan requirements. The Framework will be subject to consultation with statutory consultees, **adjacent landowners (including Emerald Kalama)** and the local community before being finalised.

*MD3.3*

37. Development at Fiddlers Ferry must not impact on the operation of the existing infrastructure services which cross or run close to the site including The Vyrnwy Aqueduct, the Grangemouth/Stanlow pipeline (and its associated COMAH zones) and any overhead power lines. **New development must not prejudice or conflict with the continued operation of the adjacent Emerald Kalama Chemicals site.**

In addition to appropriate safeguards in policy MD3, and as set out in the representations at Publication Draft stage (Regulation 19), Emerald Kalama consider that the Local Plan should include a specific policy on hazardous installations and facilities in a similar manner to policy CS23 (Managing Pollution and Risk) of the recently adopted Halton Delivery and Allocations Local Plan (2022) which states:

*"To prevent and minimise the risk from potential accidents at hazardous installations and facilities, the following principles will apply:*



- *Minimisation of risk to public safety and property wherever practicable.*
- *Controlling inappropriate development within identified areas of risk surrounding existing hazardous installations or facilities, to ensure that the maximum level of acceptable individual risk does not exceed 10 chances per million and that the population exposed to risk is not increased.*
- *Ensuring that any proposals for new or expanded hazardous installations are carefully considered in terms of environmental, social and economic factors”.*

If this is not considered appropriate, then Emerald Kamala would request that these safeguards are included within policy MD3.3 -37.