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for people and wildlife

Environment Agency

Adur & Worthing Councils
Planning team
Portland House
Richmond Road
Worthing
West Sussex
BN11 1LF

**Our ref:** HA/2024/125972/01
**Your ref:** AWDM/0461/24

**Date:** 2 July 2024

Dear Planning team (FAO: Gary Peck),

**REMEDIAL WORK TO ROCK ARMOUR AND SURROUNDING AREA OF SOLDIER'S POINT, SHOREHAM, INCLUDING ADDITION OF A ROUNDHEAD AND IMPROVEMENTS TO LANDSCAPING.**

**FORESHORE NORTH AND EAST OF SHOREHAM SAILING CLUB AND LAND AT EAST CORNER OF CAR PARK, HARBOUR WAY, SHOREHAM-BY-SEA, WEST SUSSEX.**

Thank you for the consulting the Environment Agency on the above application.

We have reviewed the information as submitted and set out our position and comments below.

## Environment Agency position

We have no objection to the proposal provided that the following conditions be attached to any planning permission granted, and that the details in relation to these conditions be submitted and approved by the Local Planning Authority.

### *Condition 1 – Remediation strategy*

**No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:**

1. **A site investigation scheme to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.**

2. **The results of the site investigation and the detailed risk assessment referred to in (1) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.**

3. **A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.**

**Any changes to these components require the written consent of the local planning authority.**

**The scheme shall be implemented as approved.**

*Reasons for condition 1*

The previous use of the proposed development site as an industrial area presents a medium risk of contamination that could be mobilised during construction to pollute controlled waters. Controlled waters are particularly sensitive in this location because the proposed development site is located upon a Principal Aquifer and on the shore of the River Adur estuary.

The submitted 'Phase 1 - Contaminated Land Desk Study: Soldiers Point' (JBA consulting, October 2023) demonstrates that it will be possible to manage the risks posed to controlled waters by this development. Further detailed information will however be required before built development is undertaken. We believe that it would place an unreasonable burden on the developer to ask for more detailed information prior to the granting of planning permission but respect that this is a decision for the local planning authority.

In light of the above, the proposed development will be acceptable if a planning condition is included requiring the submission of a remediation strategy. This should be carried out by a competent person in line with paragraph 189 of the National Planning Policy Framework.

Without this condition we would object to the proposal in line with paragraph 180 of the National Planning Policy Framework because it cannot be guaranteed that the development will not be put at unacceptable risk from, or be adversely affected by, unacceptable levels of water pollution, and to prevent deterioration of a water quality element to a lower status class in the Water framework Directive water body (Adur).

***Condition 2 - Verification report***

**Prior to any part of the permitted development being brought into use, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.**

*Reasons for condition 2*

To ensure that the site does not pose any further risk to the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete. This is in line with paragraph 180 of the National Planning Policy Framework.

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To prevent deterioration of a water quality element to a lower status class in the Water framework Directive water body (Adur).

***Condition 3 - Previously unidentified contamination***

**If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority.**

**The remediation strategy shall be implemented as approved.**

*Reasons for condition 3*

To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site. This is in line with paragraph 180 of the National Planning Policy Framework.

To prevent deterioration of a water quality element to a lower status class in the Water Framework Directive water body (Adur).

**Advice to the Applicant**

*Flood risk activity permit*

The Environmental Permitting (England and Wales) Regulations 2016 require a permit (called a 'Flood Risk Activity Permit') or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal

For further guidance please visit https://www.gov.uk/guidance/flood-risk-activities-environmental-permits.

The Applicant should note that a permit is separate to and in addition to any planning permission granted. The granting of planning permission does not necessarily lead to the granting of a permit.

*Waste on-site*

The CL:AIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works is waste or has ceased to be waste. Under the Code of Practice:

- Excavated materials that are recovered via a treatment operation can be reused on-site providing they are treated to a standard such that they are fit for purpose and unlikely to cause pollution.
- Treated materials can be transferred between sites as part of a hub and cluster

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project.
- Some naturally occurring clean material can be transferred directly between sites.

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on-site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays (by contacting our National Customer Contact Centre on **03708 506 506** (Monday to Friday 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk).

We recommend that developers should refer to:
- The position statement on the Definition of Waste: Development Industry Code of Practice.
- The waste management page on gov.uk.

*Waste to be taken off-site*

Contaminated soil that is (or must be) disposed of is waste. Therefore, its handling, transport, treatment and disposal are subject to waste management legislation, which includes:

- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005
- Environmental Permitting (England and Wales) Regulations 2016
- The Waste (England and Wales) Regulations 2011

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays (by contacting our National Customer Contact Centre on **03708 506 506** (Monday to Friday 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk).

If you receive (or reject) any hazardous waste, you must send a report to the Environment Agency. These are known as ‘returns’. If you dispose of hazardous waste at the premises where it’s produced you may also need to send returns. You should follow the guidance provided here: Hazardous waste: consignee returns guidance.

If you have any queries regarding the above information, please do not hesitate to contact the advisor identified below.

Yours faithfully,

**Environment Agency – Solent & South Downs**

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