Deferral report

1. Recommendation

1.1 The Board is requested to authorise the Director of Regeneration, Enterprise and Skills to:

1.1.1 Make an Order under section 14(1) and Section 14(2) of The Planning (Hazardous Substances) Act 1990 ("the Act") to revoke the Hazardous Substances Consent deemed to have been granted by the Council under Section 11 of The Act and granted by express consent on the 17th May 2000 (ref 00/0465/HS) and continued by a further express consent granted on the 12th September 2002 (ref 02/1938/HS) in respect of the East Greenwich Gas Works Site, Blackwall Lane, Greenwich SE10;

1.1.2 Authorise the Director to serve notice on those persons affected by the Order; and

1.1.3 Submit the Order to the Secretary of State for confirmation.

2. Considerations

2.1 The application was deferred at the Planning Board meeting held on 20th June 2018 as Members sought further clarification on a number of points which were as follows:

- Risk of compensation to the Council and a copy of the letter from SGN confirming they would not claim compensation
- Impact on the operation of St Mary Magdalene School.
- Implication for the Silvertown Tunnel
• Greater understanding of SGN and TfL’s plans for the site, should the Hazardous Substance Consent (HSC) be revoked.

**Risk of compensation to the Council.**

2.2 Under s16 of the Act the Council as Hazardous Substances Authority is in theory liable for compensation. The relevant section of the Act states (with the officer's emphasis):

“If, on a claim made to the hazardous substance authority within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order-

a) By depreciation of the value of an interest to which he is entitled in the land or in minerals in, on or under it; or

b) By being disturbed in his enjoyment of the land or of minerals in, on, or under it the authority shall pay him compensation in respect of that damage.

2.3 In using the references to "prescribed time" and "prescribed manner", the Act allows for a procedure for making a compensation claim to be set out in secondary legislation. The original Regulations which had effect in 1992 make no provision for compensation claims. The 1992 Regulations were repealed by the Planning (Hazardous Substances) Regulations 2015, but there is similarly no provision in those regulations for a claim procedure.

2.4 A copy of the letter sent by SGN confirming they did not intend to claim compensation is appended to this report. Whilst this is not a legally binding document it does set out unequivocally their position. Members asked whether the Council could enter into a legal agreement with SGN to prevent any a compensation claim. Whilst the Council has the power to enter into such an agreement, it would be ineffective if SGN were to make a claim regardless of the agreement. The opportunity to make a compensation claim is a statutory right which cannot be taken away by a simple agreement.

2.5 In the unlikely event that a claim was made despite the SGN letter, SGN would need to prove that either there had been a depreciation in the land as a result of the Order or that the enjoyment of the land had been disturbed. Given that the site has not actively stored gas for a number of years and revoking the HSC would release the site for development, it is highly unlikely that ANY compensation would be CLAIMED OR BE payable.
Impact on the operation of St Mary Magdalene School

2.6 Members will recall that the presentation on 20 June included a plan showing the areas of the school site which is within the outer and middles zones of the Health and Safety Executive consultation area. The purpose of the zoned areas is that where a planning application is made for development of land within the zones, the HSE must be consulted. This is on the basis that development in the zones might be affected by an accident on the land to which the consent applies.

2.7 When the planning application for the school was submitted, the HSE was consulted and as a result a condition was imposed on the planning permission (condition 58) which is worded as follows:

No part of the development hereby approved which would be likely to result in children congregating in numbers (supervised or unsupervised) in open areas (i.e. not inside buildings), for example on sport pitches, in playgrounds or at school bus waiting points, and which is located within 375m of the centre of the gasholder at East Greenwich Gasholder Station shall be occupied until such time as the hazardous substances consent(s) for the East Greenwich Gasholder Station has been revoked in accordance with the provision of the Planning (Hazardous Substances) Act 1990, as amended, and written confirmation of revocation had been issued by the Hazardous Substances Authority.

Reason 58: The Health and Safety Executive's advice is that there are sufficient public safety grounds for permission to be refused for these elements of the redevelopment and ensure compliance with Policy 5.22 of the London Plan (March 2015).

2.8 In addition to the condition on the planning application which restricts the use of some of the external areas there is a clause within the lease which prevents the premises being used as a school until evidence has been given to both the Landlord (the GLA) and Knight Dragon (the developer of the Peninsula) that the HSC has been revoked. The extract from the lease is provided for information below:

“(e) Following the Certificate Date, the Tenant shall not use the Premises for the Permitted Use until it has delivered to the Landlord and to KDD evidence reasonably satisfactory to the Landlord and to KDD that:

i) The Hazardous Substance Consent has been revoked; and

ii) An application to the HSE to remove the associated three zone map has been made by the Tenant.”
2.9 So to conclude, the planning permission restricts the use of some of the areas of the playground for use until the HSC is revoked. The lease restricts all operation of the school so unless the Revocation Order is made and confirmed, the school would not be able to open.

Implications for the Silvertown Tunnel

2.10 In the same way as the HSE was consulted on the school planning application, the applicant for the Development Consent Order (DCO) for the tunnel was obliged to follow the same process. As a result, there is a condition on the DCO restricting the use of the Silvertown Tunnel until the HSC for the gas holder is revoked. This is worded as follows:

18.—(1) The Silvertown Tunnel must not open for public use and the tunnel services buildings at the South Portal comprised in Work No. 12 must not be occupied after their practical completion until the hazardous substances consent for the East Greenwich Gasholder Station site has been revoked or modified in accordance with the Planning (Hazardous Substances) Act 1990(b), and in the case of a modification details of the relevant modifications have been submitted to the Health and Safety Executive, and the Health and Safety Executive has advised TfL in writing that it does not advise against the authorised development.

Future plans by TfL

2.11 TfL have confirmed that the Silvertown Tunnel construction compounds have to be within the DCO red line boundary and the boundary excludes the SGN site although it does include some of the land directly north of it. This is shown below:
2.12 TfL have not yet appointed a contractor to deliver the tunnel so the location of the construction compounds is not yet known (other than it needs to be within the red line site plan shown above). The location of the construction compound is linked to the DCO boundary and would not require the HSC to be revoked in advance of the works commencing.

**Future plans by SGN**

2.13 Enquiries have been made to SGN to understand their position in terms of any redevelopment proposals. They have confirmed that they would intend to bring forward some form of redevelopment but have not progressed any plans as yet because of the HSC on the site which prevents any redevelopment. There have been no indications either way with regards to their approach to retaining the gas holder.

3. **Role of the Secretary of State**

3.1 Under section 20 of The Act the Secretary of State may give directions requiring applications for hazardous substance consent application to be referred to him instead of being dealt with by the hazardous substance authority (i.e. the Local Planning Authority). This power to determine powers directly can relate to individual applications such as this.

4. **Conclusion**

4.1 The removal of the HSC is essential for the operation of the St Mary Magdalene School which is due to open in November 2018. It also allows for the wider redevelopment of the Peninsula and all the associated regenerative benefits. There is a theoretical risk that SGN could claim compensation but even if they did, there is no statutory claims procedure to be followed.

4.2 Officer’s recommendation remains as set out in section 1 of this report.

**Background Papers:**
The Planning (Hazardous Substances) Act 1990
The Planning (Hazardous Substances) Regulations 1992
Hazardous Substances Consents ref: 00/0465/HS and 02/1938/HS