

# Proposed Submission Version Local Plan

## PART A - About You

1. Please complete the following:

Please note the email address (if provided below) will be sent a full copy of the submitted response and a unique reference number.

**Name of person completing the form:** Kirsty Smith

**Email address:** [REDACTED]

2. What type of respondent are you? Please select one option only.  
If you are an agent please select the type of client you are representing.

A Developer / Landowner

3. Please provide your contact details:

	Contact details
<b>Organisation name (if applicable)</b>	Emerald Kalama Chemical Ltd
<b>Agent name (if applicable)</b>	Eversheds Sutherland (International) LLP
<b>Address 1</b>	[REDACTED]
<b>Address 2</b>	[REDACTED]
<b>Postal Town</b>	[REDACTED]
<b>Postcode</b>	[REDACTED]
<b>Telephone number</b>	[REDACTED]

## PART B - Representation Form 1

1. To which part of the Local Plan does this representation relate?

From the drop down list please select one option.

MD3 Fiddlers Ferry

2. What does your comment relate to? Please select one option.

None of the above

3. Do you consider the Draft Local Plan to be: Please select one option in each row.

	Yes	No
<b>Legally Compliant</b>		X
<b>Sound</b>		X
<b>Compliant with the Duty to Co-operate</b>	X	

4. If you have answered 'No' to any of the options in the above question then please give details in the box below of why you consider the Draft Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate.

Please be as precise as possible.

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

The National Planning Policy Framework 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.

It is necessary that the Council recognises the importance of the Emerald Kalama site and the need to plan safely for development within the vicinity of this site. Indeed, this is reflected within Policy CS23 of the adopted Halton Local Plan Core Strategy, which is due to be taken through into the emerging Halton Local Plan, which provides that inappropriate development within identified areas of risk surrounding existing hazardous installations or facilities is to be controlled so as to prevent and minimise the risk from potential accidents. Essentially this seeks to prevent certain types of development from being permitted close to COMAH sites.

It should be noted that Emerald Kalama is supportive of redevelopment of the Fiddler's Ferry site taking place and does not want these representations to be viewed as a blanket objection to such. Emerald Kalama wishes to maintain its reputation as being a good neighbour. Notwithstanding that position, it is important that any redevelopment of the Fiddler's Ferry site, given its proximity to the Emerald Kalama site, is approached having sufficient regard to safety planning. It is in this context that these representations are made.

Neither the policy nor the supporting text to the policy has any regard to safety planning in respect of the adjacent Emerald Kalama site. Whilst the Emerald Kalama site sits outwith the Warrington Borough Council administrative boundary area, geographically it is located immediately adjacent. This is an Upper Tier COMAH site and it is therefore essential that the policies within the Local Plan are subject to safety planning for this 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. Nor can we find 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 with the draft plan, having specific regard to its location adjacent to an Upper Tier COMAH site.

Regulation 25 of the Planning (Hazardous Substances) Regulations 2015 provides that Councils preparing plans or programmes relating to new developments around establishments where the siting or developments may increase the risk or consequences of a major accident must take measures to ensure that public consultees (any person of whom the Council is aware would be affected or likely to be affected by, or have an interest in, the relevant plan) are given early and effective opportunities to participate in the preparation, modification or review of the plan and to do so by ensuring that they are informed of any proposals to prepare a relevant plan and provide relevant information about such proposals to them, together with confirmation on how and within which timescale to make comments. Emerald Kalama would be such a consultee given that the draft plan seeks to enable development at the site adjacent to its Upper Tier COMAH site. No such consultation has taken place.

Regulation 10(1)(b) of the Town and Country Planning (Local Planning) (England) Regulations 2012 provides that local plans must take account of the "objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment". Regulation 10(1)(c) provides that local plans must have regard to the need in the long term "(i) to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes; (ii) in the case of existing establishments, to take additional technical measures in accordance with regulation 5 of the Control of Major Accident Hazards Regulations 2015 so as not to increase the risks to human health or the environment". There is no evidence within the draft Local Plan that this Regulation has been considered in proposing Policy MD3.

In order to demonstrate that the policy is legally compliant, the Council must show that the Plan complies with the requirements of both these sets of Regulations.

Paragraph 97 of the National Planning Policy Framework ("NPPF") provides that planning policies "should promote public safety and take into account wider security and defence requirements by a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate. Policies for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security; and b) recognising and supporting development required for operational defence and security purposes, and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area".

There is no evidence within the draft Local Plan that the Council has had any regard to this policy. Indeed, the Emerald Kalama site (an existing operational Upper Tier COMAH 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.

Paragraph 187 of the NPPF provides that planning policies "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...".

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.

For the above reasons, we do not consider that the draft Policy meets the NPPF soundness tests in terms of being justified or consistent with national policy.

6. Please set out what modification(s) you consider necessary to make the Draft Local Plan legally compliant or sound, having regard to the test you have identified above where this relates to soundness. (NB please note that any non-compliance with the duty to co-operate is incapable of modification at examination).

You will need to say why this modification will make the Local Plan legally compliant or sound. It would be helpful if you are able to put forward your suggested revised wording of any policy or text.

Please be as precise as possible.

In terms of modifications to make this policy legally compliant and meeting the soundness tests, it is our position that the Council would need to demonstrate that in seeking to make such policy, it has had regard to the location of the adjacent operational Upper Tier COMAH site and to build in specific provisions to be met in order to ensure the protection of people within this location. If such a policy is considered appropriate to be included, it should explicitly provide that new development must not prejudice or conflict with the continued operation of the Emerald Kalama site.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Please select one option.

Yes, I wish to participate at the oral examination

**If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:**

Given the potentially significant implications of this draft policy on the Emerald Kalama site, an Upper Tier COMAH site, it is considered appropriate to be involved with the discussions in connection with this policy.

You have just completed a Representation Form for MD3 Fiddlers Ferry.

Please select what you would you like to do now?

Complete another Representation Form on a different policy or part of the plan (**Part B**)

## PART B - Representation Form 2

1. To which part of the Local Plan does this representation relate?

From the drop down list please select one option.

DEV4 Economic Growth and Development

2. What does your comment relate to? Please select one option.

None of the above

3. Do you consider the Draft Local Plan to be: Please select one option in each row.

	Yes	No
<b>Legally Compliant</b>		X
<b>Sound</b>		X
<b>Compliant with the Duty to Co-operate</b>	X	

4. If you have answered 'No' to any of the options in the above question then please give details in the box below of why you consider the Draft Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate.

Please be as precise as possible.

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It is necessary that the Council recognises the importance of the Emerald Kalama site and the need to plan safely for development within the vicinity of this site. Indeed, this is reflected within Policy CS23 of the adopted Halton Local Plan Core Strategy, which is due to be taken through into the emerging Halton Local Plan, which provides that inappropriate development within identified areas of risk surrounding existing hazardous installations or facilities is to be controlled so as to prevent and minimise the risk from potential accidents. Essentially this seeks to prevent certain types of development from being permitted close to COMAH sites.

It should be noted that Emerald Kalama is supportive of redevelopment of the Fiddler's Ferry site taking place and does not want these representations to be viewed as a blanket objection to such. Emerald Kalama wishes to maintain its reputation as being a good neighbour. Notwithstanding that position, it is important that any redevelopment of the Fiddler's Ferry site, given its proximity to the Emerald Kalama site, is approached having sufficient regard to safety planning. It is in this context that these representations are made.

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Regulation 25 of the Planning (Hazardous Substances) Regulations 2015 provides that Councils preparing plans or programmes relating to new developments around establishments where the siting or developments may increase the risk or consequences of a major accident must take measures to ensure that public consultees (any person of whom the Council is aware would be

affected or likely to be affected by, or have an interest in, the relevant plan) are given early and effective opportunities to participate in the preparation, modification or review of the plan and to do so by ensuring that they are informed of any proposals to prepare a relevant plan and provide relevant information about such proposals to them, together with confirmation on how and within which timescale to make comments. Emerald Kalama would be such a consultee given that the draft plan seeks to enable development at the site adjacent to its Upper Tier COMAH site. No such consultation has taken place.

Regulation 10(1)(b) of the Town and Country Planning (Local Planning) (England) Regulations 2012 provides that local plans must take account of the "objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment". Regulation 10(1)(c) provides that local plans must have regard to the need in the long term "(i) to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes; (ii) in the case of existing establishments, to take additional technical measures in accordance with regulation 5 of the Control of Major Accident Hazards Regulations 2015 so as not to increase the risks to human health or the environment". There is no evidence within the draft Local Plan that this Regulation has been considered in proposing Policy DEV4.

In order to demonstrate that the policy is legally compliant, the Council must show that the Plan complies with the requirements of both these sets of Regulations.

Paragraph 97 of the National Planning Policy Framework ("NPPF") provides that planning policies "should promote public safety and take into account wider security and defence requirements by a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate. Policies for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security; and b) recognising and supporting development required for operational defence and security purposes, and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area".

There is no evidence within the draft Local Plan that the Council has had any regard to this policy. Indeed, the Emerald Kalama site (an existing operational Upper Tier COMAH 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.

Paragraph 187 of the NPPF provides that planning policies "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...".

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 DEV4 area for employment 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.

For the above reasons, we do not consider that the draft Policy meets the NPPF soundness tests in terms of being justified or consistent with national policy.

6. Please set out what modification(s) you consider necessary to make the Draft Local Plan legally compliant or sound, having regard to the test you have identified above where this relates to soundness. (NB please note that any non-compliance with the duty to co-operate is incapable of modification at examination).

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Please be as precise as possible.

In terms of modifications to make this policy legally compliant and meeting the soundness tests, it is our position that the Council would need to demonstrate that in seeking to make such policy, it has had regard to the location of the adjacent operational Upper Tier COMAH site and to build in specific provisions to be met in order to ensure the protection of people within this location. If such a policy is considered appropriate to be included, it should explicitly provide that new development must not prejudice or conflict with the continued operation of the Emerald Kalama site.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Please select one option.

Yes, I wish to participate at the oral examination

**If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:**

Given the potentially significant implications of this draft policy on the Emerald Kalama site, an Upper Tier COMAH site, it is considered appropriate to be involved with the discussions in connection with this policy.

You have just completed a Representation Form for DEV4 Economic Growth and Development.

Please select what you would you like to do now?

Complete the final part of the form, Customer 'About You' questions and submit response **(Part C)**