

Places & Communities Directorate

Director: Geoff Hughes

Ms L Cook
Planning Inspectorate
3/06a Temple Quay House
2 The Square
Bristol
BS1 6PN

Your Ref:
Our Ref: N111899/O
Please ask for: Mr R Close
Direct Line / Extension: 01432 261803
Fax: 01432 261970
E-mail: rclose@herefordshire.gov.uk

27th November 2012

Dear Ms Cook,

SITE: Porthouse Farm, Tenbury Road, Bromyard, Herefordshire,
DESCRIPTION: An outline application for the erection of up to 127 dwellings (35% to be affordable) with all matters except access to be reserved for future consideration.
APPLICATION NO: N111899/O
APPLICATION TYPE: Outline

I refer to the Planning Inspector's letter dated 19th October 2012 and the more recent letter dated 16th November 2012.

A) Conditions

The Local Planning Authority has had the opportunity to review the schedule of suggested conditions and review them against the advice in Circular 11/95 with specific reference to the Inspector's letter dated 16th November 2012. For the purpose of this letter the most relevant paragraphs of Circular 11/95 shall be set out and each condition shall be individually reviewed.

RELEVANT CENTRAL GOVERNMENT ADVICE

Paragraph 28 of Circular 11/95 makes it clear that a condition may raise doubt about whether the person carrying out the development to which it relates can reasonably be expected to comply with it. If not, subsequent enforcement action is likely to fail on the ground that what is required cannot reasonably be enforced. One type of case where this might happen is where a condition is imposed requiring the carrying out of works on land within the application site (i.e. the red line area) but not, at the time of the grant of planning permission, under the control of the applicant. If the applicant failed to acquire an interest in that land, and carried out the development without complying with the conditions, the Local Planning Authority could only enforce the condition by taking action against the third party who owned the land to which the condition applied, and who gained no benefit from the development. Such difficulties can usually be avoided by framing conditions in a manner that requires that the development authorised by the permission should not commence until works on the third party land has been carried out.

Paragraph 37 of Circular 11/95 states that particular care needs to be taken over conditions which require works to be carried out on land in which the applicant has no interest at the time when

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planning permission is granted. If land is included in the site in respect of which the application is made, such conditions can in principle be imposed, but the authority should have regard to the points discussed in the aforementioned paragraph 28.

Paragraph 38 states that it is unreasonable to impose a condition worded in a positive form which developers themselves would be unable to comply with themselves, or which they could comply with only with the consent or authorisation of a third party.

Paragraph 39 states that although it would be ultra vires, however, to require works which the developer has no power to carry out, or which would need the consent of a third party, it may be possible to achieve a similar result by a condition worded in a negative form prohibiting development until a specified action has taken place.

Condition 7

The scheme of noise attenuating measures proposed for the Polytec-Holden facility by Colin Waters Acoustics and submitted as part of the application, including:-

- Digester Fan - Acoustic Louvre Air - In & Out, Blockwork Enclosure
- Paint Dryer Fan - Acoustic Louvre Enclosure End Intake - 2 sides & Top Acoustic Panel Enclosure
- Extract next to Paint Dryer - Exhaust attenuator upgrade
- Compressor House 'A' - Acoustic Louvre's & Acoustic Louvre Door
- Compressor House 'B' - Acoustic Louvre's & Acoustic Louvre Door
- Chemical Mixer Extract - Exhaust Attenuator
- Dust Extractor - Acoustic Panel Surround & Exhaust Attenuator

shall be completed prior to the first occupation of any of the dwelling houses and thereafter maintained to the satisfaction of the Local Planning Authority.

All other individual noise sources associated with fixed plant on the Polytec Holden site shall be installed and maintained so that they emit to the external environment no more than 50 dB Laeq SPL sound pressure level as measured at 4 metres from the individual noise source.

A rating level of 35 dB LAr,Tr using the methodology prescribed by BS 4142 'Method for Rating Industrial Noise affecting mixed residential and industrial areas' shall not be exceeded at the facade when measured at ground and upper floor level at any dwelling on the site.

Reason: To ensure that the occupiers of the dwellinghouses enjoy a satisfactory level of amenity in compliance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

The first matter element of the recommended condition could be reworded in a negative manner stating "No dwelling hereby permitted shall be first occupied until...". However, the future maintenance places a positive obligation upon Polytec, a third party, upon land which is not in the applicant / developers control. It is significant that the private legal agreement between Polytec and Marsten Developments (Worcester) Limited only requires Marsten to pay for the costs of supply and installation of the noise attenuation equipment with no obligations with respect future maintenance.

To comply with this part of the condition, vis-à-vis, future maintenance the appellant would need access to land that they do not own or have control over. After due consideration, it appears that the Council could not ensure that the scheme of mitigation measures would be maintained in the

future, bearing in mind that although the Polytec site is included in the planning application site, Polytec is a third party that does not obtain any benefit from the planning permission.

That part of the condition relating to all other existing and future fixed plant upon the Polytec site potentially requires positive actions on behalf of Polytec.

Similarly that part of the condition requiring noise levels at the facades of the houses not to exceed a certain level is problematic. Ultimately if the requisite levels were exceeded one would need to take enforcement action against Polytec (assuming their site was proven to be the source of the noise). Given that Polytec is a third party that would not obtain any benefit from the permission, this would appear unreasonable.

Therefore it is submitted that after due review condition 7 would be contrary to the advice contained in Circular 11/95 and fails the reasonableness test.

Condition 27

No vehicle upon the Polytec site fitted with tonal reversing alarms shall operate on site between the hours of 23:00 and 07:00 hours. Prior to the first occupation of any of the dwelling houses hereby permitted, all forklift trucks upon the general industrial site that forms part of the planning application site shall be fitted with white noise reversing alarms/warning systems and thereafter maintained as such;

Reason: To ensure that the occupiers of the dwelling houses hereby permitted do not suffer an undue level of night-time noise, in accordance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

Having reviewed the recommended condition 27 it fails the test of reasonableness as it requires positive actions on behalf of Polytec (a party other than the developer) *including future maintenance* liabilities. It would be unreasonable to impose such a condition worded in a positive form which the developers of the housing would be unable to comply with themselves.

It would not be appropriate to serve a breach of condition notice against the appellant as it would not be within their power to secure compliance with the condition without the support of Polytec. Whilst one may be able to serve an enforcement notice upon Polytec that would appear unreasonable.

Condition 28

Prior to the first occupation of any dwellinghouse hereby permitted a continuous and imperforate 6 metre high timber acoustic fence, sealed at the base, with a density of at least 15 kg/m² be erected along the alignment shown on the drawing number 2589/027 Revision A received 19 March 2012 and thereafter maintained to the satisfaction of the local planning authority.

Reason: To ensure that the occupiers of the dwelling houses hereby permitted do not suffer an undue level of noise in accordance with policy DRI 3 of the Herefordshire Unitary Development Plan 2007.

The proposed acoustic fence would lie upon land within the applicant's control. However, the Local Planning Authority recognises that there are considerable issues with regard future maintenance as the proposed maintenance regime together with future ownership is presently unknown.

Having discussed this matter with the agent for the appellant the Local Planning Authority would suggest the rewording of the condition to read:-

"Prior to the start of construction of any dwelling houses hereby permitted a detailed scheme for the future maintenance of the continuous and imperforate 6 metre high timber acoustic fence, sealed at the base, with a density of at least 15 kg/m² shall be submitted for approval to the Local Planning Authority. The fence shall then be erected prior to first occupation of any dwellings along the alignment shown on the drawing number 2589/027 Revision A received 19 March 2012 and thereafter retained and maintained in accordance with the approved scheme.

Reason: To ensure that the occupiers of the dwelling houses hereby permitted do not suffer an undue level of noise in accordance with policy DR13 of the Herefordshire Unitary Development Plan 2007."

The appellant has supplied the Council with a draft S106 unilateral undertaking with obligations to construct the acoustic barrier and before the occupation of the development to pay to the Council of the sum of £80,000.00 (index linked) to be used for the long term maintenance and/or replacement of the acoustic barrier. A copy is attached as **Annex 1** to this letter.

The undertaking also purports to include covenants by the Council to use this sum over a period of 50 years for the above purpose and to repay any unexpended sum with interest at the end of that period, or earlier if the acoustic barrier is no longer required. Having consulted the local ward members the Council would not wish to take on any future on-going liabilities with regard the acoustic fence, even with the security afforded by the undertaking.

In relation to the draft undertaking following points should be noted:

1. The undertaking is currently in the name of Marsten Developments who own a small part of the site and not necessarily land upon which the residential element will be constructed. Therefore the obligations to construct the barrier and to pay the contribution before the occupation will not be enforceable unless it also binds the housing land.
2. The undertaking includes covenants by the Council, but this a unilateral deed to which the Council is not a party, as such these covenants do not bind the Council.

Condition 29

All dwellings shall be constructed in accordance with BS 8233:1999 so as to provide sound insulation against externally generated noise. The "good" room criteria shall be applied, meaning internal noise levels must be no more than 30 dB LAeq for living rooms and bedrooms, with windows shut and other means of ventilation provided. Levels of 45 dB L_{Amax},fast shall not normally be exceeded in bedrooms (23:00 to 07:00 hours night-time) with the windows closed.

Before any of the development hereby permitted takes place, written details of the methods of construction and attenuation to achieve this standard shall be submitted to the Local Planning Authority for their written approval. None of the development hereby permitted shall take place until the Local Planning Authority has given such written approval. The development shall take place in full accordance with the approved detail and thereafter maintained as such.

Reason: To ensure the occupants of the dwellings enjoy a satisfactory noise environment with regard to LAeq and night-time LMax noise levels, in accordance with policy DRI 3 of the Herefordshire Unitary Development Plan 2007.

It is submitted that unless there can be certainty that the noise mitigation measures set out in conditions 7, 27 and 28 can be secured and maintained, it may be difficult to ensure that the appropriate level of insulation is applied to the houses in order to meet the requirements of this condition. It must also be remembered that whilst noise insulation of dwellings would provide a level of protection to the internal living areas it would not protect outdoor amenity spaces (i.e. gardens).

- B) The agreement entered into between the appellant and Polytec Holden to establish the extent to which this agreement would secure delivery and long term maintenance of the mitigation works to which it refers.**

Both the Local Planning Authority and the agent for the appellant agree that this is merely a private agreement between the appellant and a third party. It is not an Agreement that the LPA can enforce. The LPA note that the Agreement would require the appellant to finance the acoustic mitigation works upon the Polytec site but not any future maintenance (see above)

- C) The efficacy of the proposed 6m high acoustic fence: in particular the extent to which this fence would provide effective noise mitigation in the event that the implementation and or long term maintenance of the other measures currently proposed could not be guaranteed.**

Both the Local Planning Authority and the agent for the appellant agree that the acoustic fence is clearly necessary. The acoustic fence primarily provides mitigation from the movement of stillages upon the open yard and not plant upon the Polytec site, much of which is above the height of the proposed acoustic fence. As such, the other noise mitigation measures (other than the fence) are still required as part of the package.

The Local Planning Authority continues to object to the proposed development for the reasons set out in its Statement of Case. The Inspector's specific attention is drawn again to paragraphs 6.1.1 to 6.1.14 inclusive of that Statement of Case.

Notwithstanding the Local Planning Authority's substantiated objection on noise grounds and without prejudice to their case, if the proposed development were to proceed both parties are agreed as to the package of noise mitigation measures that would be required. The useful exercise that the Inspector has initiated has allowed the Local Planning Authority to conclude that such measures could not satisfactorily be secured by way of planning conditions.

Given the use of planning conditions would not be appropriate the question then arises as to whether there would be any other effective legal mechanism. It appears that the only legal mechanism that could effectively secure the package of noise mitigation measures (including future maintenance) in the long-term would be a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended). Polytec, and any other parties with an interest in their site, would need to be signatories to such an Agreement. There is no evidence that Polytec (and any other parties with an interest in their site) would be willing to enter into such an agreement and no such agreement is before the Inspector. Attached as **Annex 2** is a list of the requirements within "the noise mitigation package" that relate specifically to the Polytec site. Whilst we are aware that Polytec are satisfied that the

appellant pays for the supply and installation of the equipment referred to in A) within **Annex 2**, there is no evidence that they are satisfied with the other obligations (in bold in **Annex 2**). As a consequence the Inspector is respectfully requested to dismiss this appeal.

Yours sincerely

R CLOSE
PRINCIPAL PLANNING OFFICER

ANNEX 1

THIS DEED OF UNDERTAKING dated
is given by

2012

MARSTEN DEVELOPMENTS (WORCESTER) LIMITED, (Company Number
01179455) whose registered office is at 75 The Porthouse, Lowesmoor,
Worcester, WR1 2RS [

(company number) of

("the Owner")

to:-

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Brockington 35
Hafod Road Hereford HR1 1SH ("the Council").

BACKGROUND

1. The Council is the local planning authority for the purposes of this Deed for the area within which the land described in the First Schedule ("the Land") is situated and by whom the restrictions and obligations contained in this Deed are enforceable.
2. The Owner is the registered proprietor with title absolute free from encumbrances of the Land.
3. The Owner has by its agent submitted to the Council the application for planning permission described in the Second Schedule to this deed ("the Application") to develop the Land and adjoining land
4. By a notice of refusal dated []th April 2012 ("the refusal"), the Council refused planning permission for the reasons set out therein and on [] 2012 the Owner appealed to the Secretary of State against the refusal and enters this deed with the intention that certain objections by the Council to the grant of planning permission are overcome.

THIS DEED is made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") and is a planning obligation for the purposes of that section enforceable by the Council; Section 111 of the Local Government Act 1972; Section 1 of the Localism Act 2011 and all other enabling powers and WITNESSES as follows:

1. Words and Expressions

In this Deed the following words and expressions shall where the context so admits have the following meanings:-

- 1.1 the expressions "the Owner" and "the Council" shall include their respective successors in title and assigns.
- 1.2 words importing the singular number only include the plural number and vice versa and where there are two or more parties to this Deed the obligations shall be enforceable against all of them jointly and severally unless there is an express provision otherwise.

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- 1.3 words importing the one gender include the other gender.
- 1.4 references in this Deed to a person or persons shall include corporations unincorporated associations trust bodies and all other legal entities.
- 1.5 words denoting an obligation on a party to do any act include an obligation to procure that it be done.
- 1.6 words placing a party under a restriction include an obligation not to permit an infringement of that restriction.

1.7 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment for the time being in force.

1.8 "Acoustic Barrier" a continuous and imperforate six metre high timber acoustic fence sealed at the base with a density of at least 15kg/m2 along the alignment show on the attached drawing number 2589/027 Revision A dated 19th March 2012

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1.9 "Commuted Sum" shall mean the payment referred to in the Third Schedule

1.10 "Commence Development" and "Commencement of Development" means to commence the Development pursuant to the Planning Permission by the carrying out of a material operation as defined in Section 56(4) of the Act and "Commence Development" and "Commencement of Development" shall be construed accordingly.

1.11 "Development" shall mean the development of the Land and adjoining land as disclosed by the Application

1.12 "First Occupation" means the first occupation of any dwelling constructed on the Land pursuant to the terms of the Planning Permission

1.13 "Index Linked" means Index Linked in accordance with the increase (if any) in the all items retail prices index assessed from the date of this Deed to the date of payment in full provided that if the basis of computation of such index shall change any official reconciliation between the two bases of computation published by the Office of National Statistics (or any Government Department upon which duties in connection with compilation and maintenance of the index have devolved) shall be binding upon the parties hereto and shall be applied in adjusting the application of the index and in the absence of such official reconciliation such adjustments shall be made to the figures of the index as to make it correspond as nearly as possible to the previous method of computation and such adjusted figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published) and in the event of a dispute regarding such adjustments the decision of the Council shall be final

1.14 "the Plan" means the plan annexed to this Deed.

1.15 "the Planning Permission" means a planning permission that may be granted pursuant to the Application.

2. Planning obligations

The Owner for the purposes of Section 106 of the Act undertakes to observe the restriction and perform the obligations specified in the Third Schedule to this Deed.

3. Council's Obligation

The Council undertake to observe and perform the covenants specified in the Fourth Schedule of this Deed

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4.3. Warranty

The Owner warrants that the title information given in this Deed is correct and that no other person or body has or owns any interest legal equitable or otherwise in the Land.

5.4. Notices and Notice of Commencement of Development

A notice under this deed is valid only if: -

~~5.14.1~~ it is given by hand sent by recorded delivery or document exchange or sent by fax provided that a confirmatory copy is given by hand or sent by recorded delivery or document exchange on the same day and it is served at the address shown in this deed for the receiving party (and in the case of the Council is marked for the attention of the Planning Obligations Manager Planning Services, quoting reference) or at any address specified in a notice given by that party to the other parties.

~~4.25.2~~ A notice

~~4.2.15.2.1~~ sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post and on the third working day after posting if sent by second class post

~~5.2.25.2.2~~ sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient

~~4.2.35.2.3~~ sent by fax is to be treated as served on the day on which it is successfully sent or the next working day where the fax is sent successfully after 1600 hours or on a day that is not a working day whenever and whether or not the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail or the document exchange undelivered.

~~5.34.3~~ Not less than 28 days notice of Commencement of Development shall be given to the Council's Planning Obligations Manager, Planning Management Team, Herefordshire Council, Blue School House, Blue School Street, Hereford HR1 2ZB.

5.6. Declarations

It is declared as follows:

~~5.16.1~~ The restrictions and obligation in the Third Schedule to this Deed are planning obligations enforceable by the Council against the Owner

and his successors in title to the Land in accordance with the provisions of section 106(3) of the Act

~~5.26.2~~ No person shall be liable for breach of the restrictions and obligations contained in this Deed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach prior to parting with such interest.

~~5.36.3~~ With the exceptions of paragraphs 5.6; 5.7; 5.9; 5.13 and the delivery clause which take effect on the date of this Deed the declarations restrictions and obligations in this Deed shall take effect upon the grant of the Planning Permission.

~~5.4~~ ~~6.4~~ If the Planning Permission shall expire before Commencement of Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect but without prejudice to the validity of anything done or payments or contributions made or expended whilst this Deed is in force.

~~5.5~~ ~~6.5~~ Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this Deed.

~~5.66.6~~ This Deed is a local land charge and shall be registered as such.

~~5.76.7~~ Within 28 days of completion of the Deed the Owner shall apply to the Land Registry to secure a notice of this Deed against the registered title referred to in the First Schedule and shall use all reasonable endeavours to ensure the registration of such notice

~~5.8~~ ~~6.8~~ The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person other than the Owner or the Council (and any successors in title or assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this Deed.

~~5.96.9~~ On the date of this Deed to pay to the Council their legal costs and disbursements of [] in connection with the acceptance and completion of this deed and their administrative costs of [] towards monitoring of the planning obligations in this Deed.

~~5.106.10~~ All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

~~5.146.11~~ If any payment due under the terms of this Deed is paid late interest calculated at the Council's standard rate of 4% above the Bank of England base rate from time to time will be payable from the date payment is due to the date payment is made.

~~5.126.12~~ If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality or enforceability of the remaining

provisions hereof shall not in any way be deemed to be affected or impaired.

5.136.13 This Deed is governed by and interpreted in accordance with the law of England

IN WITNESS this undertaking is duly executed as a Deed and delivered by the Owner on the date stated at the beginning of this Deed.

FIRST SCHEDULE (the Land)

Land at Porthouse Farm, Tenbury Road, Bromyard, Herefordshire, HR7 4LW registered at the Land Registry under title number HE12943 shown for identification edged red on the Plan.

SECOND SCHEDULE (the Application)

An application for outline planning permission to develop the Land and adjoining land validated by the Council on 2012 and bearing the Council's reference number N1189910 for the erection of up to 127 dwellings.

THIRD SCHEDULE (the Owner's Restriction and Obligation)

- ~~No dwelling erected or to be erected on the Land shall be occupied unless and until the following obligation has been complied with:~~ To construct the Acoustic Barrier prior to the First Occupation of any dwelling constructed on the Land
- ~~Before the Commencement of Development to pay the Contribution to the Council to be used by the Council for~~ To pay the Commuted Sum of £80,000.00 (index linked) no later than the date of First Occupation of any of the dwellings constructed upon the Land. Such sum being utilised by the Council for the maintenance and/or replacement of the Acoustic Barrier for a period of up to 50 years from the date of payment of the Commuted Sum

FOURTH SCHEDULE
(the Councils Obligations)

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The Council covenants with the Owner as follows:

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- 1.1 To use the Commuted Sum only for the maintenance and/or replacement of the Acoustic Barrier for a period of 50 years from the date of payment by the Owner.
- 1.2 To pay the Commuted Sum into an interest bearing account or accounts within 5 working days of its receipt and to keep it there until either it is expended or is repaid pursuant to the provisions of paragraph 3 of this Schedule and for the avoidance of doubt all interest accruing on the said account shall (unless refunded to the Owner) accrue for the benefit of the Council and shall be expended on maintenance or replacement of the Acoustic Barrier.
- 1.3 To refund to the payee of the Commuted Sum to the Council such balance of the Commuted Sum as shall still be held on the earlier of the following events:
- (i) On the fiftieth anniversary of the date of payment of the Commuted Sum or;
- (ii) Or earlier in the event that at any time it is demonstrated to the reasonable satisfaction of the Council that the Acoustic Barrier is no longer reasonably required as a noise mitigation measure.

Together with interest thereon at a rate equivalent to 1% above the Bank of England base rate from time to time in force.

EXECUTED AS A DEED

By ~~affixing the common seal of~~

~~[~~Marsten Developments
(Worcester) Limited

~~In the presence of~~Acting by:

~~Signature of director~~Stennard Harrison

~~Signature of director/company secretary~~

Dated

2012

[DEVELOPMENTS (WORCESTER) LIMITED] MARSTEN

- to -

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

UNILATERAL UNDERTAKING

Given under the provisions of
Section 106 of the Town and Country
Planning Act 1990 (as amended)
relating to

land and premises known as

Land at Porthouse Farm, Tenbury Road, Bromyard, Herefordshire, HR7 4LW

Herefordshire Council,
Brockington,
35 Hafod Road,
Hereford, HR1 1SH.

ANNEX 2

ANNEX 2 - List of the requirements within "the noise mitigation package" that relate specifically to the Polytec site

A) No dwelling hereby permitted shall be first occupied until the scheme of noise attenuating measures proposed for the Polytec-Holden facility by Colin Waters Acoustics and submitted as part of the application, including:-

- Digester Fan - Acoustic Louvre Air - In & Out, Blockwork Enclosure
- Paint Dryer Fan - Acoustic Louvre Enclosure End Intake - 2 sides & Top Acoustic Panel Enclosure
- Extract next to Paint Dryer - Exhaust attenuator upgrade
- Compressor House 'A' - Acoustic Louvre's & Acoustic Louvre Door
- Compressor House 'B' - Acoustic Louvre's & Acoustic Louvre Door
- Chemical Mixer Extract - Exhaust Attenuator
- Dust Extractor - Acoustic Panel Surround & Exhaust Attenuator

has been completed and thereafter that scheme of noise attenuation measures shall be maintained to the satisfaction of the Local Planning Authority.

B) All other existing and future individual noise sources associated with fixed plant on the Polytec Holden site shall be installed and maintained so that they emit to the external environment no more than 50 dB Laeq SPL sound pressure level as measured at 4 metres from the individual noise source.

C) Prior to the first occupation of the first dwelling on the site, and at all times thereafter no vehicle upon the Polytec site fitted with tonal reversing alarms shall operate on site between the hours of 23:00 and 07:00 hours. Prior to the first occupation of any of the dwelling houses hereby permitted, and thereafter, all forklift trucks upon the general industrial site that forms part of the planning application site shall be fitted with white noise reversing alarms/warning systems and thereafter maintained as such;