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08/12/2020

Annwyl Syr/Madam / Dear Sir/Madam,

BWRIAD / PROPOSAL: Hybrid planning application for residential development for up to 250 dwellings (submitted in OUTLINE), associated highway and bridge improvement / realignment works (submitted in FULL). Development involves the demolition of all buildings on site and of the existing B4267 Leckwith Road Bridge

LLEOLIAD / LOCATION: LECKWITH QUAYS

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above, which we received on 4 November 2020.

We received a statutory pre-application consultation notice for this proposal under Article 2D of the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2012. We provided a substantive response to that consultation on 24 June 2020, reference CAS-114967-J7X5.

We have reviewed the Pre-Application Consultation Report, dated October 2020, by RPS Group, reference JPW1365, submitted in support of the application. We note the applicant's responses to our comments in table 3.1 of the report. The requirement in relation to Otters has been satisfactorily addressed.

However, as explained below, this response does not adequately address the additional concerns set out in our letter of 24 June 2020. A copy of that letter is attached.

We have significant concerns with the proposed development as submitted. We recommend you should only grant planning permission if the following requirements are met and the conditions listed below are attached to the permission. Otherwise, we would object to this planning application.

Requirement 1: Flood Risk: The hydraulic modelling to be submitted for review, to demonstrate the risks and consequences of flooding can be managed to an acceptable;

Requirement 2: European Protected Species (Bats): Further information is required to demonstrate that the proposal will not be detrimental to the maintenance of the favourable conservation status of Bats (European Protected Species);

Requirement 3: A Water Framework Directive (WFD): Compliance Assessment to ensure risks posed to WFD objectives have been identified and addressed through appropriate mitigation measures.

Requirement 4: Habitats Regulation Assessment: the Local Planning Authority, as the competent authority, should undertake a Habitats Regulations Assessment of the proposal, as required under the Conservation of Habitats and Species Regulations 2017.

Conditions

- Condition 1: Bat Conservation Plan
- Conditions 2: Otter Conservation Plan
- Conditions 3 Lighting Strategy
- Conditions 4: Construction Environmental Management Plan
- Condition 5: Biosecurity Risk Assessment
- Conditions 6-10: Land Contamination

Further details are provided below

As you are aware, this development proposal requires two planning applications. We have also been consulted on full planning application for the proposed development within Cardiff. Our advice in this letter relates to the outline planning application falling under your authority area. A separate response to Cardiff will be issued in response to the full application falling within that authority's area. Please note that the requirements below are required for both the outline and the full applications.

Requirement 1: Flood Risk

Due to the complex nature of the risk and consequences of flooding associated with the proposed development, we wish to undertake a detailed review of the hydraulic modelling information to ensure that it is fit to inform the FCA. This review may find anomalies/discrepancies in the model which will need to be addressed to ensure that it is representative of the risk of flooding and fit to inform the FCA. This review is likely to take up to 8 weeks to complete. We reserve the right to request further information to establish the risks and consequences of flooding if necessary.

Therefore, until we confirm that the model is representative of the flood risk, we are unable to advise whether the consequences of flooding outlined in the latest FCA, produced by

WSP, 7005-3561-C-RP-0003-03-FCA, September 2020 can be managed to an acceptable level.

Further Advice

Section 6 of TAN15 requires the Local Planning Authority to determine whether the development at this location is justified. Therefore, we refer you to the tests set out in section 6.2 of TAN15. If you consider the proposal meets the tests set out in criteria (i) to (iii), then the final test (iv) is for the applicant to demonstrate through the submission of an FCA that the potential consequences of flooding can be managed to an acceptable level.

Please inform us, in accordance with paragraph 11.7 of TAN15, if you are minded to grant permission for the above application contrary to our advice.

Requirement 2: Additional survey to assess impacts upon bat roosts within trees on site

The DCE Environmental Statement states that an assessment of the trees on site which will be impacted by the proposed works were subject to ground based assessment for bats during August and September 2020. Seven trees were assessed as having moderate potential to support bats. We note that the report recommends further aerial surveys are required to establish any bat use of trees to be impacted.

However, it would appear that these aerial surveys have not been undertaken. We, therefore, advise that the following is provided to inform consideration of the impacts of the scheme on bats, a European protected species prior to determination of the application:

- Additional bat surveys of trees with moderate potential to support roosting bats that will be impacted. These surveys should consist of a climbing inspection and/or a dusk emergence/dawn re-entry observation, carried out in accordance with published guidelines ('Bats Surveys for Professional Ecologists; Good Practice Guidelines' 3rd edition 2016).
- If the above surveys identify any bat roosts, the impacts upon these roosts should be detailed with an indication of how these impacts will be mitigated and/or compensated.

We may request further conditions relating to bats following receipt of the above information.

Requirement 3: Water Framework Directive Compliance Assessment

The application site lies adjacent to the Cardiff Bay water body and runs along approximately 800 metres of the right-hand bank of the River Ely. This water body is classified as a heavily modified water body (HMWB) under the Water Framework Directive (WFD) and is currently at moderate status.

All new bridges that cross a water body pose a potential risk to WFD objectives and geomorphological stability. The proposed bridge has the potential to disrupt the current geomorphic situation e.g. altering flows, sediment transport, erosion. In addition, the proposals for outfalls, bank reprofiling, bankside platforms, vegetation management, new riverside access etc associated with this application pose a risk to the WFD objectives.

Given the above potential risks to the WFD objectives, we consider a WFD compliance assessment is required prior to the determination of this application.

The WFD compliance assessment should assess and confirm how the development and/or its activity will affect a water body, its status and classification. It will need to identify and assess those measures required to reduce risks, avoid, mitigate or compensate for adverse impacts. Consideration must be given to the potential for cumulative impacts within a water body. Although individually an activity may not have a significant impact on the WFD status, the additive effect of several small scale schemes or existing/historical pressures/modifications, within a waterbody may cause deterioration. Examples of such are existing fishing platforms, bridges and pontoons. It is important to consider the cumulative effects of existing pressures in a water body and the combined impacts of the proposed activity and those activities not yet completed, started or ongoing. Such as the Central Quay development (although on the Taff falls into the Cardiff Bay Water Body).

The assessment should not only consider how the proposed development and its activities can prevent a water body from achieving its objectives, as set out in the River Basin Management Plan (RBMP), but also how the scheme can make positive contributions and enhancements to achieve these objectives.

We note that the PAC report states that “A *Water Framework Directive Scoping Report* is being undertaken and will be submitted in due course”.

Requirement 4: The Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations)

The proposed development lies within 5 km of the Severn Estuary Special Area of Conservation (SAC), Special Protection Area (SPA), RAMSAR and Site of Special Scientific Interest (SSSI).

Having considered the information submitted, an adverse effect from the proposed development on the integrity of the Severn Estuary SAC, SPA and RAMSAR cannot be ruled out. There are hydrological links from the proposed development site to these areas. Therefore, there is potential for the features of these protected sites to be affected due to impacts on water quality.

We have been unable to find any information regarding impacts on the SAC mobile features, such as river lamprey. Sea lamprey and river lamprey are designated features of the Severn Estuary SAC and have been found in the River Ely. In order for your Authority

to carry out the HRA, the applicant must provide enough information to allow an assessment of any potential impacts from the proposals on those SAC special features.

Therefore, prior to determination of the application, your authority, as competent authority, will need to carry out an assessment of the proposal as required under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, in order to ensure no adverse effects on the sites' integrity.

Cwm Cydfin Site of Special Scientific Interest (SSSI)

We note the applicant's response to the concerns we raised in relation to the Cwm Cydfin SSSI: *"Cwm Cydfin Site of Special Scientific Interest (SSSI) has no formal rights of way through it. Public access to the SSSI is currently, therefore, legally denied and the applicant has no intention of amending that provision. Whilst it is accepted that it is probably impossible to prevent unauthorised access into the woodland it is stressed that the applicant has no control over that situation. It is suggested, however, that a wildlife fence (simple post and wire, no barbwire) and signage (to explain importance of SSSI) for the landowner of the SSSI is erected by the responsible authority."*

The SSSI can be accessed from the proposed development site (via the Site of Interest for Nature Conservation SINC). Damage to the SINC could also result in damage to the woodland ecosystem of which the SSSI is part. Desire lines through the woodland will result in soil compaction, the loss of ground flora, and increased erosion of the soils. Therefore, allowing access to the woodland will increase the risk of damage on the SSSI.

As such, to ensure no or limited access to the woodland and ultimately the SSSI, permanent fencing and/or a design that minimises access to the adjacent woodland should be proposed at Reserved Matters stage when full details are being prepared. The fencing and/or design features should be maintained during the lifetime of the development in order to reduce damage to the SSSI.

European Protected Species

We welcome the submission of the following documents:

- 'Leckwith Quays Environmental Statement Volume 1: Written Statement', Dated October 2020, by RPS.
- 'Chapter 5.2 Environment Statement – Leckwith Yard, Cardiff, Ecological Assessment', Dated September 2020, by David Clements Ecology (DCE).
- 'Leckwith Quay Landscape Strategy' Dated February 2020, by Novell Tullett.
- Leckwith Quay, 'B4267 Leckwith Road Highway Improvements Street Lighting & Traffic Signals', drawing 70053561-WSP-XX-XX-CR-DE-1300. Dated September 2019, by WSP.

We note the following from The Ecological Assessment report:

- Six of the buildings on site are confirmed bat roosts for common and soprano pipistrelle and brown long-eared bats, with a further building and the road viaduct identified as possible bat roosts;
- Seven trees on site were assessed to have moderate potential to support bat roosts;
- Evidence of otter presence on site using the River Ely; and
- The surveys undertaken did not identify presence of dormice or great crested newts on site.

Otter and all species of British bats are European Protected Species, legally protected under The Conservation of Habitats and Species Regulations 2017 (as amended). Legal protection relates to the animals themselves and the places they use to rest and breed.

Where a European Protected Species is present and development proposal is likely to contravene the legal protection they are afforded, the development may only proceed under licence issued by Natural Resources Wales, having satisfied the three requirements set out in the legislation. One of these requires that the development authorised will 'not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status (FCS) in their natural range'.

These requirements are translated into planning policy through Planning Policy Wales (PPW) December 2018, section 6.4.22 and 6.4.23, and Technical Advice Note (TAN) 5, Nature Conservation and Planning (September 2009). The planning authority should take them into account when considering development proposals where a European Protected Species is present.

Bats

If the above requirement (2) is satisfactorily addressed, then a pre-commencement condition to secure the implementation of a detailed Bat Conservation Plan will be necessary. It may be subject to change depending on the information submitted under requirement 2.

Condition 1: Bat Conservation Plan

A Bat Conservation Plan, informed by complete survey effort, should be provided and is likely to include:

- Results of the additional bat surveys of all trees identified to have moderate potential to support roosting bats that will be impacted (directly or indirectly) by the development. These surveys should consist of a climbing inspection and/or a dusk emergence/dawn re-entry observation.
- Details of impacts (direct and indirect) upon any bat roosts identified within buildings and trees on site.

- Details of measures to mitigate the impacts upon bats, including details of the design and location of replacement roosts appropriate to the species and nature of the roosts identified.
- Details of timing, phasing and duration of construction activities and conservation measures.

Otter

We welcome the statement in the DCE Environment Statement that mitigation for otter needs to include “maintenance of an undisturbed bankside corridor of vegetation which provides adequate cover [for] otter”, and the RSP Written Statement which states that “the wooded banks of the river Ely are to be retained and will act as a buffer to ensure the continued use and protection of the habitat as a corridor for wildlife”. We note the statement in the Landscape Strategy Report that “the riverbank vegetation will be maintained and enhanced” and the specification of a “8m riverside easement zone”, however, the Landscape Strategy Report also details concepts involving development of “access points” and a riverside footpath within this riparian habitat on the west bank of the river.

Condition 2: Otter Conservation Plan

No development, including site clearance, shall commence until an Otter Conservation Plan has been submitted to and approved in writing by the Local Planning Authority. The Conservation Plan/ should include:

- A plan of the vegetated buffer to be retained alongside the river showing the width of the buffer, extent and location of habitat to be retained and created.
- Measures to protect the buffer from human disturbance.
- Details of protective measures to prevent incidental killing, injuring or capture of otters during construction.
- An assessment of the impacts of the proposals upon otter. This should consider direct and indirect impacts and address the construction and operational phases. Clarification of the extent, distribution and structure of existing habitat; habitat lost, habitat to be retained, enhanced, and any habitat to be created; and an assessment of their condition and value for otter. A plan should identify these areas at an appropriate scale.
- Details of initial aftercare (if new habitat is to be created) and ongoing management proposals for the long-term maintenance of retained/created vegetation along the river bank as suitable for otter.

The Otter Conservation Plan shall be carried out in accordance with the approved details.

Justification: To ensure that an approved species Conservation Plan is implemented, which protects species affected by the development.

Condition 3: Lighting Scheme

We welcome the RPS Written Statement commitment that “no lighting of the river corridor or woodland will occur”. We note the proposal within Landscape Strategy to light Old Leckwith Bridge which states: “Subtle lighting to highlight bridge and create shimmering reflections in and from the river.” However, we can find no further details within the application. A lighting scheme is required to demonstrate how the river and woodland will remain unlit during construction and operation of the residential development.

Condition: Prior to its installation, full details of lighting shall be submitted to and agreed in writing by the Local Planning Authority. The Lighting Scheme shall include:

- Details of the siting and type of external lighting to be used.
- Drawings setting out light spillage in key sensitive areas that demonstrate that the River Ely and associated buffer and the woodland surrounding the site shall be unlit by external lighting and be maintained as dark corridors.
- Details of lighting to be used both during construction and operation.

The lighting shall be installed and retained as approved during construction and operation.

Justification: A lighting plan should be submitted, to ensure lighting details are agreed prior to installation and to reduce the impacts of lighting in the interest of protected species, including bats and otters, the habitats and the commuting corridors along the Western boundary of the site and the River Ely.

European Protected Species Licensing

Informative to be included on any planning permission issued:

Warning: A European Protected Species (EPS) licence is required for this development.

Planning permission does not provide consent to undertake works that require an EPS licence. It is an offence to deliberately capture, kill or disturb EPS or to damage or destroy their breeding sites or resting places. If found guilty of any offences, you could be sent to prison for up to 6 months and/ or receive an unlimited fine.

Development should not be commenced until the Applicant has been granted a licence by Natural Resources Wales pursuant to Regulation 55 of the Conservation of Habitats and Species Regulations (2017) authorising the specified activity/ development to go ahead. To undertake the works within the law, you can obtain further information on the need for a licence from Natural Resources Wales on 0300 065 3000, or at <https://naturalresources.wales/conservation-biodiversity-and-wildlife/europeanprotected-species/?lang=en>

We may wish to discuss aspects of the proposed bat mitigation with the applicant in more detail at the EPS licence application stage. Please note that any changes to plans between planning consent and the EPS licence application may affect the outcome of the licence application.

Our advice and request for conditions in relation to land contamination and pollution prevention remain as stated in our letter of 24 June 2020 and are included here for ease of reference.

Pollution Prevention

We note references within the ES that the developer will be preparing a Construction Environmental Management Plan (CEMP) to accompany the planning application. We recommend the following condition is secured to any permission granted by your authority.

Condition 4: Construction Environmental Management Plan

No development, including site clearance and construction works, shall commence until a Construction Environmental and Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall be in substantial accordance with the mitigation measures set out in the Environmental Statement. The CEMP shall include:

- Construction methods: details of materials, how waste generated will be managed;
- General Site Management: details of the construction programme including timetable, details of site clearance; details of site construction drainage, containments areas, appropriately sized buffer zones between storage areas (of spoil, oils, fuels, concrete mixing and washing areas) and any watercourse or surface drain.
- Soil Management: details of topsoil strip, storage and amelioration for re-use.
- CEMP Masterplan: details of the extent and phasing of development; location of landscape and environmental resources; design proposals and objectives for integration and mitigation measures.
- Control of Nuisances: details of restrictions to be applied during construction including timing, duration and frequency of works; details of measures to minimise noise and vibration from piling activities, for example acoustic barriers; details of dust control measures; measures to control light spill and the conservation of dark skies.
- Resource Management: details of fuel and chemical storage and containment; details of waste generation and its management; details of water consumption, wastewater and energy use
- Traffic Management: details of site deliveries, plant on site, wheel wash facilities
- Pollution Prevention: demonstrate how relevant Guidelines for Pollution Prevention and best practice will be implemented, including details of emergency spill procedures and incident response plan, with particular attention paid to silt mitigation measures.
- Water Quality Monitoring Plan - to include
 - Details of monitoring methods
 - Frequent assessment of the visual water quality, particularly whilst carrying out bridgework, or working in or near the watercourse.

- Instructions to notify NRW in the event of a pollution being caused.
- A requirement to stop work and review further measures in the event that existing pollution mitigation is not effective.
- Details of triggers for specific action and any necessary contingency actions, for example the need to stop work, introduction of drip trays, make use of spill kits and shut-off valves.
- Biodiversity Management: details of tree and hedgerow protection; invasive species management; species and habitats protection, avoidance and mitigation measures.
- Details of the persons and bodies responsible for activities associated with the CEMP and emergency contact details.

The CEMP shall be implemented as approved during the site preparation and construction phases of the development.

Justification: A CEMP should be submitted to ensure necessary management measures are agreed prior to commencement of development and implemented for the protection of the environment during construction.

Biosecurity Risk Assessment

Invasive Non-native species (INNS) have been identified on site, namely Himalayan balsam and Japanese knotweed. Specialist advice and detailed method statements for eradicating and controlling the listed invasive species during the site clearance, construction and operational phases should be drawn up and agreed with the Local Planning Authority ecologist.

Often, particularly with Japanese knotweed, INNS management can be required for many years post construction. We, therefore, request the following condition be included on any planning permission the LPA is likely to grant:

Condition 5: No development or phase of development, including site clearance, with the potential to impact on Japanese knotweed or Himalayan balsam shall commence until a site wide Biosecurity Risk Assessment has been submitted to and approved in writing by the Local Planning Authority. The risk assessment shall include measures to control, remove or for the long-term management of Japanese knotweed and Himalayan balsam during site-clearance, construction and operation. The Biosecurity Risk Assessment shall be carried out in accordance with the approved details.

Justification: To ensure that an approved Biosecurity Risk Assessment is implemented, to secure measures to control the spread and effective management of invasive non-native species at the site.

Land Contamination

We note that the site was utilised for a number of industrial and commercial uses from pre-1880s to present day including scrap yards and, lime kilns. Therefore, in view of the

potential risks from historic land contamination to soil and controlled waters, we agree with the conclusion within Chapter 8 of the ES that further site investigation is required.

Your authority, therefore, should only grant planning permission for this scheme if the conditions listed below are attached to the planning permission.

Condition 6 - Land affected by contamination

No development shall commence until the following components of a scheme to deal with the risks associated with contamination at the site, has been submitted to and approved in writing by the Local Planning Authority.

1. A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) 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.
4. 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 (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The remediation strategy and its relevant components shall be carried out in accordance with the approved details.

Justification: To ensure the risks associated with contamination at the site have been fully considered prior to commencement of development, as controlled waters are of high environmental sensitivity; and where necessary remediation measures and long-term monitoring are implemented to prevent unacceptable risks from contamination.

Condition 7 - Contamination verification report

Prior to the occupation of the development a verification report demonstrating 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. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be carried out in accordance with the approved details.

Justification: To ensure the methods identified in the verification plan have been implemented and completed and the risk associated with the contamination at the site has been remediated prior to occupation or operation. To minimise the risks to both future

users of the land and neighbouring land, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Condition 8- Unsuspected 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 unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be carried out as approved.

Justification: To ensure the risks associated with previously unsuspected contamination at the site are dealt with through a remediation strategy, to minimise the risk to both future users of the land and neighbouring land, and to ensure that the development can be carried out safely without unacceptable risks. A site investigation may not uncover all instances of contamination and this condition ensures that contamination encountered during the development phase is dealt with appropriately.

Condition 9- Surface water drainage

No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.

Justification: To prevent both new and existing development from contributing to or being put at unacceptable risk from or being adversely affected by unacceptable levels of water pollution.

Condition 10 - Piling

No development shall commence until details of piling or any other foundation designs using penetrative methods sufficient to demonstrate that there is no unacceptable risk to groundwater have been submitted to and approved in writing by the Local Planning Authority. The piling/foundation designs shall be implemented in accordance with the approved details.

Justification: Piling/foundation details should be submitted to ensure there is no unacceptable risk to groundwater during construction and methods/design are agreed prior to the commencement of development or phase of development.

Informative/ advice to applicant:

The treatment and disposal of contaminated soils and groundwater is regulated by waste legislation and requires an environmental permit.

Excavated materials that are recovered via a treatment operation can be re-used on-site under the [CL:AIRE Definition of Waste: Development Industry Code of Practice](#). This

voluntary Code of Practice provides a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste.

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, Natural Resources Wales should be contacted for advice at an early stage to avoid any delays.

Other Matters

Our comments above only relate specifically to matters included on our checklist, *Development Planning Advisory Service: Consultation Topics* (September 2018), which is published on our [website](#). We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests.

We advise the applicant that, in addition to planning permission, it is their responsibility to ensure they secure all other permits/consents/licences relevant to their development. Please refer to our [website](#) for further details.

If you have any queries on the above, please do not hesitate to contact us.

Yn gywir / Yours faithfully

Mrs Claire McCorkindale

Cynghorydd - Cynllunio Datblygu / Advisor - Development Planning
Cyfoeth Naturiol Cymru / Natural Resources Wales