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| To: | 1. Rosemary Thomas 2. Minister for Housing and Regeneration | cc | PS First Minister Des Clifford (via PS First Minister) PS Minister for Finance | Tamsin Stirling Gareth Jones John Howells Housing & Regeneration Mailbox |
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| Date: | 16 August 2013 | | | |

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77 CALL IN REQUEST
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (WALES) ORDER 2012
CIRCUIT OF WALES MOTORSPORTS FACILITY (COMPRISING HIGH
PERFORMANCE CIRCUIT; MOTOCROSS CIRCUIT; KARTING CIRCUIT; FOUR-
WHEEL DRIVE CIRCUIT; RIDING ACADEMY; INNOVATION CENTRE; HOTELS;
RETAIL SHOWROOMS; ANCILLARY RETAIL; INDUSTRIAL AND BUSINESS
USES; DRIVER TRAINING AREA; SOLAR PARK; CAMPING; PARKING;
LANDSCAPING AND ASSOCIATED ISSUES), LAND NORTH OF RASSAU
INDUSTRIAL ESTATE, RASSAU, EBBW VALE
APPLICATION NO C/2013/0062**

Issue

1. To consider requests for the Welsh Ministers to call in the above outline planning application for a motorsports facility at Land North of Rassau Industrial Estate, Ebbw Vale.

Timing

2. As soon as possible. An Article 18 “Holding” Direction has been issued to provide the Welsh Ministers with further time in which to consider the call-in requests. The Direction prevents Blaenau Gwent County Borough Council (BGCBC) only from granting planning permission; it does not prevent it from continuing to process or consult on the application. Neither does it prevent it from refusing planning permission.

Recommendation

3. That you agree:
 - (i) not to call in the planning application for determination by the Welsh Ministers but to note the issues discussed below at paragraphs 11 - 15; and
 - (ii) the Statement of Information attached at Doc.1 and that it is made available within 3 working days of the issue of the letters notifying the applicant and BGCBC of the decision not to call in the planning application.

Background

4. The Statement of Information at Doc. 1 contains the facts and analyses relating to the submission that may be published in accordance with the Welsh Government's Code of Practice. This statement should be read in conjunction with the following information, which is considered exempt from publication under the "Code of Practice on Access to Information".
5. Before making a decision on whether to call in a planning application the Welsh Government usually consults professional advisers. The decision on whether to call in an application will always be taken by a Welsh Minister, normally the Welsh Minister with responsibility for planning. An explanatory guide on 'Calling in Planning Applications' is attached for your information at Doc. 2.
6. The application is for outline planning permission for:

A circuit of wales motorsports facility comprising: high performance circuit; motocross circuit; karting circuit; four-wheel drive circuit; riding academy; innovation centre; hotels; retail showrooms; ancillary retail; industrial and business uses; driver training area; solar park; camping; parking; landscaping and associated issues at Land North of Rassau Industrial Estate, Rassau, Ebbw Vale.
7. Land Use Record searches, aerial photograph of the site, a site map outlining red line boundary, illustrative layout of the site, and the planning application form are provided at Doc. 3a - e. A copy of the local planning authority's Officer's Reports to the Council and appendices are at Docs 5, 5a and 5b (in attached folder).
8. The call-in requests relate to the following issues:
 - Protection of open space and the natural environment
 - Impact on biodiversity and wildlife
 - Impact on Special Landscape Areas
 - Noise, light and air pollution
 - Flood risk
 - The scale of development and the impact on the Brecon Beacons National Park

Restricted

- Impact on registered common land
 - Impact of traffic on the road network
 - Sport and recreation
 - Impact on historic environment (Scheduled Monuments and other archaeological evidence)
 - Impact on carbon-rich soils, i.e. peat.
9. Advice has been sought from the Welsh Government's planning policy advisors with responsibility for common land; economic development; transport; and tourism and recreation who have concluded that:

(i) Common Land

"You have consulted me due to my responsibility for common land issues. I have considered the papers submitted as part of your consultation and have the following comments to make.

The Officers report makes specific mention to Policies DM13 and SP9 of the Blaenau Gwent County Borough Council Local Development Plan (LDP) (adopted in November 2012), which state that:

"DM13 Protection of Open Space

Development proposals which affect existing Open Space will only be permitted where it can be demonstrated that: -

- a. The site has no significant amenity, nature conservation or recreational value and;*
- b. There is a surplus of such facilities in the locality, or;*
- c. The loss can be replaced with an equivalent or greater provision in the immediate locality; or*
- d. The development enhances an existing facility.*

SP9 Active and Healthy Communities

To create active and healthy communities the Council will:

- a. Promote the Valleys Regional Park and leisure activities;*
- b. Protect and improve existing open space, sport and leisure facilities; and*
- c. Protect and enhance accessibility to natural green spaces for all members of the community."*

The Council has regarded the common land as falling within these policies. It has not, however, referred to the PPW policy on common land. Nevertheless it is clear that the Council have considered the proposals and taken into account planning policies in respect of common land. From a planning policy perspective I see no basis for requesting call-in on the issue of common land and that it is not a matter of more than local importance. This is of course without prejudice to any

Restricted

consideration of any applications that may come before the Welsh Ministers under common land legislation”

(ii) Economic Development

“The comments in this minute relate to the economic and retail elements of this proposal.

This is an outline application for a major mixed development covering 344 hectares north of Rassau Industrial Estate Blaenau Gwent. The site lies adjacent to Brecon Beacons National Park. The proposal incorporates the following uses:

- *racing circuits (over 59 hectares, plus Motocross, karting, dirt oval and off road tracks),*
- *pit building (26,568sqm),*
- *medical centre (324sqm),*
- *grandstands (8,532sqm),*
- *driver training centre 3,204sqm),*
- *rider academy (9,395sqm),*
- *innovation centre, light industrial and office (14 three storey units, 63,504sqm gross),*
- *industry and warehousing (3 units, 36,272sqm gross),*
- *2 hotels (4 and 5 storey, 23220sqm gross),*
- *Showrooms (7 units, 37,314sqm gross),*
- *Retail (9 units, 2898sqm gross approx.)*
- *petrol filling station,*
- *solar park (12 hectares),*
- *motorsport lodges (27 units),*
- *other ancillary uses.*

National Planning Policy

Planning guidance on economic development is set out in Planning Policy Wales. The planning system should support economic and employment growth alongside economic and environmental considerations within the context of sustainable development. Planning authorities should aim to facilitate the provision of sufficient land required by the market, except where there are good reasons to the contrary.

Local planning authorities should adopt a positive and constructive approach to applications for economic development. In determining applications for economic land uses authorities should take account of the likely economic benefits of the development based on robust evidence. In assessing these benefits key factors include:

- *numbers and types of job expected to be created*
- *whether the proposal will help re-address economic disadvantage or support regeneration priorities*
- *a consideration of the contribution to wider spatial strategies, e.g. growth or regeneration of certain areas.*

Local planning authorities are required to ensure that the economic benefits associated with a proposed development are understood and that these are given equal consideration with social and environmental issues in the decision making

Restricted

process, and should recognise that there will be occasions when the economic benefits will outweigh social and environmental considerations.

Local authorities should also support the shift towards a low carbon economy, for example by encouraging the development of clusters of industrial and commercial uses deriving environmental benefit from co-location. Local authorities should look favourably on proposals for new on site low carbon energy generation.

Local authorities should also seek to:

- co-ordinate development with infrastructure*
- align jobs and services with housing to reduce the need for travel by car*
- promote the reuse of previously developed, vacant and underused land*

Planning Policy Wales promotes established town, district, local and village centres as the most appropriate locations for retailing. Wherever possible this provision should be located in proximity to other commercial businesses, facilities for leisure and employment. When determining retail planning applications local planning authorities should take in to account the need for the development, the sequential approach to development, impact on existing centres, accessibility and impact on travel patterns.

Stores selling bulky goods and requiring large showrooms may not be able to find suitable sites in town centres. Such stores should be located at edge of centre sites or, where such sites are not available, at locations accessible by a choice of means of transport.

Blaenau Gwent CBC Planning Officer Report

The Officer Report (referred to as the Report) has had regard to Planning Policy Wales and all relevant Technical Advice Notes including Draft TAN 23 Economic Development. The Report also considers national and or regional strategies which may be material to the proposal such as the Wales Spatial Plan, Vibrant and Viable Places, Economic Renewal: a new direction, Turning Heads: A Strategy for the Heads of the Valleys and Tourism 2020: driving growth, delivering jobs, developing wealth.

Blaenau Gwent's Local Development Plan was adopted in 2012. The Report states that the proposal is a departure from the LDP because the site is not allocated. However the development is supported by Policy SP1(f) which actively supports a major tourist attraction in the northern study area of the Borough, and Policy SP8 (d) which supports leisure initiatives and allows for tourism in the countryside.

Strategic Policy SP8 Sustainable Economic Growth aims to increase economic activity, diversify the economy and ensure that residents of the Borough maximise their economic potential. The Report considers that the proposal offers an opportunity to meet these objectives. The Report argues the increase in employment land over that already allocated in the LDP is not an issue because the LDP allocations were based on past trends and future projections which do not take account of such a transformational project as the race circuit and associated uses.

Strategic Policy SP7 Climate Change and Policy DM4 Low and Zero Carbon Energy - aims to reduce energy demand and incorporate low carbon energy

Restricted

technologies in new developments; the Report concludes that the proposal addresses low carbon energy production through the solar park element of the application, however it is recognised it fails in relation to making use of previously developed land.

The Report identifies employment as a critical issue in Blaenau Gwent. The Report recognises that policy changes introduced in PPW Chapter 7 in 2012 highlight the importance of assessing the benefits of economic development.

The Report also emphasizes the need for robust data to enable balanced consideration of both environmental and economic issues. Blaenau Gwent instructed the University of South Wales Business School to carry out an independent review of the Environmental Statement. The review estimates 500 full time posts a year, 500,000 visitors a year leading to 1,500 full time jobs, 2,200 posts in association with the business park and a further 1,300 jobs through off site supply chains. The Officer Report stresses that these figures are estimates and may not be accurate. Whilst the Cardiff Business Schools employment figures are lower than the applicants figures set out in the Environmental Statement, they indicate that the higher figures could be reached with appropriate industry and government involvement.

The Report sets out the conclusions of the Chief Regeneration Officer which considers that the positive benefits of regeneration outweigh the negative impacts and should be given considerable weight. Notwithstanding this every effort should be made to ensure the negative impacts are reduced. Blaenau Gwent suffers from high levels of unemployment and economic inactivity, high benefit dependence and limited employment opportunities resulting in low household income and poverty in some cases. By addressing unemployment, the council will be able to start dealing with the other underlying problems. It is also anticipated that the development will attract further private sector investment, particularly in tourism. The development could become part of the Blaenau Gwent Enterprise Zone.

The Report indicates that 9 retail units are proposed consisting primarily of motorsport retail together with food and beverage providers. 8 units will provide a gross floor area of 180sqm whilst a further unit principally for food will have a gross floor area of 1,458sqm. A further 9,965sqm will be set aside for temporary facilities on large event days. 37,314sqm of automotive retail space divided in to 8 'brand centres' is also planned. These are aimed at the sale and promotion of prestige cars.

The Report does not consider the prestige brand centres to be able to be accommodated within town centres due to the nature of servicing and trade. The remaining retail outlets consisting of 8 small retail units and one large unit would serve purely the wider leisure development and would therefore accord with paragraph 10.1.2 of PPW which states that retail should be located in proximity to other commercial businesses, facilities for leisure, community facilities and employment. The Report also recommends a condition to control the retail uses to prevent general A1 food retailing that would compete with town centres.

The Officer Report indicates that provided regard is paid to the environmental impacts (including mitigation), Members can legitimately attach more weight to socio economic factors and if satisfied set aside policy objections in the LDP and approve outline planning permission.

Restricted**Recommendation**

I am content that the officer report has addressed the appropriate issues and taken in to account relevant national planning policy and advice in its consideration of this proposal. My assessment of the economic development and retail information presented in the Officer Report does not lead me to conclude that the outline application is one which should be determined by Welsh Ministers.

Based on the information provided I see no reason why the planning decision should not be taken by Blaenau Gwent County Borough Council. I do not recommend call in."

(iii) Tourism and Recreation

"I have considered this Section 77 request in accordance with this Branch's policy lead responsibilities for tourism and recreation.

The proposed development is a significant undertaking, increasing both tourism and recreation capacity in the Blaenau Gwent region. Having read the Officer's Report, I am pleased to note that the authority is mindful of the advice set out in PPW, TAN 16 and draft TAN 13, and is keen for facilities to be made available for local communities from the tourism and recreational opportunities being developed. This is in accordance with the sustainable tourism agenda set out in draft TAN 13.

I do not consider that the application raises issues in these policy areas which warrant Ministerial intervention by themselves. However, the potential impact on the landscape from this development on a World Heritage Site, and land immediately adjacent to the Brecon Beacons National Park, has a potential ancillary effect on the use of those areas for tourism purposes. Should colleagues with the policy lead for national parks, landscape and heritage issues, consider that the application raises issues which warrant Ministerial intervention, then due to the consequential risk of impact on tourism for the wider south east Wales region, I would support any recommendation from that quarter to call-in."

(iv) Transport

"I can confirm that the request for a call-in is not supported in respect of the transport issues for the reasons that conditions have already been directed to protect the trunk road network."

(v) Scheduled Ancient Monuments

Advice was sought from Cadw which advised that:

"I refer to your request for views on whether the above application should be called in.

Our senior inspector of ancient monuments has read your written advice in terms of the issues which might persuade the Minister to call in a planning application and the questions to consider in terms of framing one's advice.

Whilst issues that are likely to significantly affect sites of historic interest can be the basis for recommending a call in, in Cadw's opinion this would be inappropriate on this occasion. The applicant has submitted an outline planning

Restricted

application and Cadw in its advice to BGCBC has raised significant concerns regarding the impact of part of the indicative development on the setting of a scheduled monument. However, in Cadw's opinion there is nothing to suggest that this issue is beyond the competence of the local planning authority to determine. As such Cadw does not recommend calling in the planning application for Welsh Government to determine."

(vi) Forest Enterprise Land, Woodland Grant Scheme, and National Parks

Advice was sought from Natural Resources Wales (NRW) which advised that

"I refer to your memorandum of 10th June 2013 seeking Natural Resources Wales (NRW) view on whether the above application should be called in for determination by the Welsh Ministers, in view of our professional responsibilities for planning issues associated with Forest Enterprise Land, Woodland Grant Schemes and National Parks.

As advised by you, our response is based upon the questions identified in your memorandum.

(i) *What do you consider to be the issues raised by the application which are relevant to your remit.*

NRW currently considers that the application raises issues in respect of the following:

- Landscape and visual aspects particularly in relation to effects on the Brecon Beacons National Park (BBNP).
- Biodiversity - Loss of Biodiversity Action Plan Habitats and impact on protected species.
- Loss of Common Land and implications for management of the adjoining common land/BBNP.
- Loss of peat soils and implications for carbon emissions.
- Effects on water quality.

(ii) *Has the local planning authority identified those issues in its consideration of the application?*

Yes, its report to Council considers these issues.

(iii) *Has the local planning authority identified the national planning policies and legislation/directives relevant to those issues?*

Yes.

(iv) *Has the local planning authority assessed those issues in an appropriate manner? Here we are not asking whether or not you agree with the conclusions of the authority on the merits of the issue - that is not something we can take into consideration - but whether the authority's assessment has been made in a reasonably robust way, using up-to-date methodology and knowledge.*

Restricted

We consider that the authority has insufficient information at this stage on the potential environmental impacts of the proposal to make accurate assessments of these impacts. We have advised the Authority of this.

- (v) *Does your consideration of these issues lead to you to conclude that the application is one which should be determined by the Welsh Ministers rather than the local planning authority? It would be appreciated if you would give your reasons for your conclusion.*

NRW has engaged in active, extensive discussions with the applicant with a view to resolving those issues which we believe need to be resolved as part of the outline application and clarifying those issues which can be dealt with at the reserved matters stage. This process has yielded some further information to help overcome our concerns but important issues currently remain unresolved. We believe that more time is needed to discuss and agree with the applicant what more needs to be done to resolve these remaining concerns, and for the applicant to have the opportunity to provide the required information. Providing the applicant is willing to engage positively in finding such solutions, we would recommend the decision on call-in should be deferred. We would welcome Welsh Government's help in securing the applicant's commitment. Meanwhile, we will continue working with the applicant and the Local Planning Authority to get the best possible outcome for the environment, the community and the economy.

Further advice was also received from NRW:

"On 16 July 2013 we provided you with an initial response to Mr Greg Matthews' memorandum of 10 June 2013 requesting our advice on call-in requests received by you from others on this scheme. In that response we answered a number of the specific questions in your letter but concluded that more time was needed to continue discussions with the applicant on our concerns over the scheme so as to address your remaining questions. We did so because we considered that through continued positive engagement between ourselves and the applicant, the further information and solutions required to resolve our concerns could be achieved. You wrote back to us via e-mail on 23 July asking for clarification on specific issues on our original response of 16 July. At this time, discussions with the applicant, focusing on biodiversity an habitat mitigation, peat disturbance and landscape, were continuing and led us to contact you to request a further extension to our deadline. On 1 August you e-mailed us to confirm your agreement to this extension to 9 August.

I am pleased to report that this additional time has indeed enabled NRW and the applicant to resolve many of our concerns such that we are able to finalise our response to your correspondence. Our overall advice to you, on the balance of the information now available to NRW and agreement reached with the applicant, accepted by Blaenau Gwent CBC for incorporation into the draft Section 106 legal agreement and related conditions, we are satisfied that the environmental impacts of the scheme can be appropriately managed such that in our opinion the scheme does not need to be called in. These agreed matters are set out in Annex 1 of this letter. I confirm that both NRW and the applicant have signed this agreement. The document at Annex 1 identifies the further work that the applicant's consultants have agreed to undertake and also the mechanism for implementation via condition or Section 106 agreement.

Restricted

In coming to this conclusion we wish to record that, from the outset, we have had serious concerns over the scale, location and nature of the scheme as submitted and the likely resultant environmental impacts. Our approach has been to work with the applicant and the local planning authority to establish whether it was possible for further information to be submitted which adequately demonstrated that the potential impacts could be appropriately mitigated/compensated for. Over the last few weeks, significant time and effort has been invested in achieving this aim and it would have been preferable for this information to have been provided sooner in the process.

The specific questions raised in your e-mail of 23 July are addressed in the attached Table 1 and specifically refer to the position on the date the application was determined by Blaenau Gwent Council. The information contained in that table is based on NRW's technical and professional expertise, including, where relevant, specialist external consultancy input. Our assessment of the issues in it is measured against current legislative and policy requirements and our statutory duties. As we have made clear in our earlier response and in our dealings with a range of stakeholders, NRW has been highly conscious of the potentially significant economic and employment benefits the scheme may bring.

The table concludes in several places that, at the time of its consideration by the LPA, the necessary detail of this outline application was not available to the LPA/Council and therefore could not be assessed, and that the application is of more than local importance. Whilst this is so, as a result of the information now available to us and the commitments contained in Annex 1, we are now satisfied that the environmental impacts of the scheme can be appropriately managed during subsequent stages of the scheme should the planning decision be confirmed. This letter therefore supersedes the position set out in Table 1.

We accept that the questions asked of us relate to the position at the time it was considered by the LPA and our advice in Table 1 is given accordingly. However, we consider it is also reasonable to describe the substantial change in circumstances between that date and the present. As a result, we consider it also reasonable to channel our resources into continuing to work with the applicant and other parties to continue to ensure that the scheme, if consented, is sustainable.

In conclusion therefore and on the balance of the information now available to NRW and commitments made by the applicant and accepted by Blaenau Gwent CBC for incorporation into a revised Section 106 legal agreement and related conditions, in our opinion the scheme does not need to be called in. This advice is provided in the context of the remit of NRW and a specific focus on the impacts of the proposed scheme. There may therefore be other planning matters which you have before you for consideration, particularly those relating to planning policy and our advice is made without prejudice to those matters. We also accept that your own requirements and duties, together with other advice you may receive, may lead you to a different conclusion.

Our response herewith represents the most up to date position. We trust this provides the clarity you were seeking."

Restricted

Copies of the advice and appendices received from Welsh Government's planning policy advisers; Cadw; and NRW are provided at Docs 4a – g in the attached folder.

Advice

10. You must consider whether to call in the planning application in the context of whether or not it raises issues that should more appropriately be considered and determined by the Welsh Ministers rather than the local planning authority, in this case Blaenau Gwent CBC. It is irrelevant that concerns have been expressed about the consequences of granting planning permission. The issue before you is who should be the decision maker and not whether permission should be granted. While the latter must not be considered, it is necessary to identify the nature and scope of the issues apparently raised by the application in order to determine who the decision maker should be.
11. The consultees, and the local planning authority, have considered the issues identified in paragraph 8 above, with the following appearing to be the main issues:
 - Landscape and visual aspects particularly in relation to effects on the Brecon Beacons National Park (BBNP)
 - Biodiversity – Loss of Biodiversity Action Plan Habitats and impact on protected species
 - Loss of Common Land and implications for management of the adjoining common land/BBNP
 - Loss of peat soils and implications for carbon emissions
 - Effects on water quality
12. None of the consultees has recommended that the application be called in because of any of the issues identified in paragraphs 8 and 11 above or for any other reason. NRW have indicated that they are now advising that the application is not called in due to substantial changes that have occurred since the planning application was originally considered by CBC, at which time NRW had serious concerns about the proposed development.
13. From the information provided by NRW the substantial changes appear to be agreements and undertakings between the applicants and NRW and which will be covered by the conditions attached to any grant of planning permission and a legal undertaking under section 106 of the Town and Country Planning Act 1990. Those agreements/undertakings are outlined in a Statement of Common Ground agreed between NRW and the applicants, but which is not legally binding, the main issues being:-
 - “1.2 The objective of this Statement of Common Ground is to identify the commitments to be fulfilled and work to be undertaken by the Applicant to address the concerns of NRW in respect of landscape, peat and biodiversity habitats of the Proposed Scheme at the Application Site (defined in paragraph 1.3 below). (The response letters to Blaenau Gwent Council dated the 21 March, 22 March and 5 June 2013).

Restricted

- 1.3 "Applicant" means Heads of the Valleys Development Company Ltd
 1.4 "Application Site" means the site referred to in the planning application.

2. AREAS OF COMMON GROUND

The common ground between the Parties to this Statement is as follows:

2.1 LANDSCAPE AND VISUAL IMPACTS

The Applicant will work with NRW in developing the detail design of the Proposed Scheme in order to reduce the impact of the Proposed Scheme on the Brecon Beacons National Park ("BBNP") which is a national landscape designation. In particular the following areas will be considered by the Parties and the subsequent on-going discussions are to be carried out with the intention of the Parties acting reasonably to agree the following:

- i) **Design** - landscape and biodiversity to form an integrated basis for design development and are to be considered on a site-wide basis at the very beginning of the detailed project design process. Such a landscape and ecology-led approach to design development will be key if the Proposed Scheme is to minimise unacceptable impacts on the Brecon Beacons National Park and the unique moorland setting of the Application Site.
- ii) **Phasing** - The methodology and sequence of planting and biodiversity establishment [for trees and grassland] will evolve through more detailed discussions with NRW, relating to the intended phasing of the construction programme, and will also inform the movement of materials on site. Advance planting works will be agreed by both parties acting reasonably and undertaken by the Applicant (or its subcontractors), in order to achieve the earliest possible screening of construction activity.
- iii) **Scheme Elements** - The design and location of those elements of the proposed scheme along the northern fringe of the Application Site (Solar farm, car parking and motor cross circuit) are to be given special consideration and agreement with NRW to reduce their impact on views from within and on the special qualities of the BBNP.

To be achieved via condition 39.**2.2 IMPACTS ON PEAT SOILS**

The Applicant has committed to mitigate the residual greenhouse gas emissions from the Proposed Scheme for the lifetime of its operation, calculated according to a methodology to be agreed between the Applicant and NRW.

Furthermore, the Applicant has stated that emissions will be minimised according to a mitigation hierarchy which is based around the principles of avoiding disturbance of peat where reasonably possible, reinstating below the water table peat that is disturbed and offsetting unavoidable residual emissions through habitat improvement on other peatlands in the local area / in Wales.

Restricted

NRW will work with the Applicant to agree the carbon emissions calculation methodology suitable for the Application Site and to advise on areas of peat land habitat management for mitigation of residual impacts.

To be achieved via conditions 53 and 58 and S106 Agreement.**2.3 MITIGATION FOR THE LOSS OF BIODIVERSITY HABITATS**

To compensate for the loss of 236 hectares of biodiversity habitat as a result of the Proposed Scheme, the Applicant will draw up and implement a strategy for improving the grazing and habitat on an area of the adjacent moorland across the dip slopes of Mynydd Llangynidr and Mynydd Llangatw Commons.

The strategy is to be agreed with NRW and the total overall area of mitigation including, that already established within the Application, should be not less than 600 hectares and not more than 800 hectares during the operational life time of the Proposed Scheme. The details of this strategy and the mechanism for delivery to be agreed with NRW.

To be achieved via condition 38 plus the S106 Agreement.

3 MISCELLANEOUS

3.1 Any agreement or consent that is required from any Party under this Statement shall not be unreasonably withheld or delayed.

3.2 The Parties to this Statement agree that this Statement is intended to reflect the areas of common ground between themselves and is not intended to be legally binding.”

14. The Statement of Common Ground identifies issues on which further surveys and considerations are to be carried out after the grant of planning permission but it is arguable that many of those issues go to the principle of whether or not planning permission should be granted. As such, they should be resolved, one way or the other, before a decision is taken on whether or not planning permission should be granted. If they are not and planning permission is granted, but details cannot be agreed, then it is possible that the development would not be carried out in full but with only certain elements of it being implemented.
15. It could be argued that the application should be called in so that these issues are considered by the Welsh Ministers and are resolved, one way or the other, before the decision on merits is taken. However, it is clear from the information provided by NRW, statutory advisers to the Welsh Ministers, that following discussions with the applicants they are confident that these issues can be resolved successfully.

Conclusions

16. Having considered the comments above in respect of the advice provided by NRW, and the advice provided by the other consultees, we can see no reason to disagree with that advice or to disagree with the recommendations that the application should not be called in. Consequently, we recommend that the application should not be called in for determination by the Welsh Ministers for their own determination.

Legal Advice

17. This submission contains no issues that raise the need for legal advice and therefore, no legal advice from Legal Services has been sought. This submission has not been cleared by Legal Services.

Powers

18. The power to call in planning applications which would ordinarily be determined by the Local Planning Authority is contained in section 77 of the Town and Country Planning Act 1990. The powers of the Secretary of State under section 77 were transferred to the National Assembly for Wales and have subsequently been transferred to the Welsh Ministers pursuant to Schedule 11 of the Government of Wales Act 2006.
19. The power is a general one and does not contain any criteria which must be met before it is exercised, and may therefore be exercised in any circumstance where there is a reasonable justification. However, the Welsh Government's published policy on the use of call-in creates a legitimate expectation as to how the power will be used in practice, and must therefore be adhered to unless there is good reason to the contrary.
20. Consideration of whether to use call-in powers is not a consideration of the planning merits of the application. It is appropriate here to consider at a provisional level the planning issues it appears to raise, but whether these are ultimately such as to justify the grant or refusal of permission is a matter for later determination.

Statistics

21. None.

Financial Requirements and Governance Implications

22. There will be no additional financial implications now but any work emanating from this is covered by future indicative DRC or programme budgets.

Restricted

23. The Head of Division responsible for this area of work is satisfied with the financial implications and compliance paragraphs of this submission. Sustainable Futures Operations Unit are content with the previous agreement that casework submissions are not cleared through formal channels, on the basis that any financial pressures which are not manageable within the Division's budget are raised directly with the Head of the Operations Unit.

Press and Publicity Arrangements

24. It is unusual for the Welsh Government to issue a Press Notice in respect of decisions about whether or not to call in a planning application and we do not propose to issue a Press Notice in this case.

Statutory Consideration & Policy compliance

25. This is not a policy submission.

Specialist Policy Advice

26. This is referred to in paragraph 9 above.