

MP, AM & LOCAL MEMBER OBJECTIONS & PETITION

COMMITTEE DATE: 16/12/2020

APPLICATION No. **20/01279/MJR** APPLICATION DATE: 07/07/2020

ED: **SPLOTT**

APP: TYPE: Renewal of previous permission

APPLICANT: Parc Calon Gwyrdd Limited

LOCATION: LAND AT ROVER WAY, PENGAM

PROPOSAL: RENEWAL OF 17/02130/MJR FOR THE REMOVAL OF FILL MATERIAL AND THE CONSTRUCTION OF A BIOMASS POWER PLANT (UP TO 9.5MW) AND A MAXIMUM OF 130,000 SQ. FT. OF INDUSTRIAL ACCOMMODATION (B8 USE CLASS), NEW ACCESS ROADS AND ASSOCIATED LANDSCAPING WORKS

RECOMMENDATION 1 : That, having considered the environmental information, planning permission be **GRANTED** subject to the following conditions:

1. TIME LIMIT

A. Approval of the details of the layout, scale, and appearance of the buildings and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

B. Plans and particulars of the reserved matters referred to in condition 1A above, relating to the layout, scale, and appearance of the buildings and the landscaping of the site shall be submitted in writing to the local planning authority and shall be carried out as approved.

C. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission.

D. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of the last of the reserved matters to be approved, whichever is the later.

Reasons:

A. In accordance with the provisions of Article (3)1 of the Town and Country Planning (General Development Procedure) Order 1995.

B. and C. In accordance with the provisions of Section 92 of the Town and Country Planning Act 1990.

2. PLANS AND DOCUMENTS

The development hereby approved shall be carried out in broad

accordance with following approved plans:

- (i) Location Plan (A(P)-01);
- (ii) Site Plan (A(P)-02);
- (iii) Site Existing (A(P)-03);
- (iv) Proposed Site Sections (A(P)-04);
- (v) Landscape Plan (A(P)-07);

The development hereby approved shall be carried out in accordance with following approved plan:

- (vi) Ghost Island Junction Arrangement With 16.5m Articulated Vehicle Swept Path Analysis (173097/SK/11 Revision A);

The development hereby approved shall be carried out in accordance with following approved document:

- (i) Parameter Schedule, Downs Merrifield Architects, 8 November 2017;

Reason: The plans and documents form part of the permission.

3. PHASING STRATEGY

No reserved matters shall be approved until a phasing strategy for the development of the site (including the removal of fill material) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing strategy.

Reason: To ensure an orderly form of development.

4. VIRGIN WOOD FUEL

The total tonnage of virgin wood treated at the plant hereby approved shall not exceed 75,000 dry tonnes per annum (Virgin wood includes trees, branches and bark derived from forestry work, woodland management, tree surgery and other similar operations including sawmills). No material other than virgin wood shall be processed at the Power Plant. Records of the amount of fuel processed shall be retained and made available to the Local Planning Authority on request.

Reason: The application has been assessed on the basis of this tonnage limit.

5. ENVIRONMENTAL PERMIT

No processing or removal of the 'overburden' material (that above the membrane underlying the original capping layer) shall take place until an appropriate assessment/waste classification of the material has been undertaken and an appropriate Environmental Permit has been granted by the relevant Permitting Authority. All subsequent works to process and remove this material shall be undertaken in accordance with the permit conditions, and all necessary additional sampling requirements of the material as required under the permit, for which evidence of their approval shall first be submitted to the Local Planning Authority.

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

6. GROUND GAS PROTECTION

Following the completion of the reworking of materials in Zone 2, and prior to the construction of any building in Zone 2 (see 'Profile Makeup', Environmental Statement, Appendix 7.5), the developer shall submit to the Local Planning Authority a scheme to investigate and monitor the site for the presence of gases* including a plan of the area to be monitored. The monitoring shall be carried out in accordance with the approved scheme prior to the construction of any building in Zone 2.

Following completion of the approved monitoring scheme details of appropriate gas protection measures to ensure the safe and inoffensive dispersal or management of gases and to prevent lateral migration of gases into or from land surrounding the application site shall be submitted to and approved in writing by the Local Planning Authority. If no protection measures are required than no further actions will be required.

All gas protection measures required by the Local Planning Authority shall be installed and appropriately verified prior to the occupation of any part of the approved development and the approved protection measures shall be retained and maintained until such time as the Local Planning Authority agrees in writing that the measures are no longer required.

* 'Gases' include landfill gases, vapours from contaminated land sites, and naturally occurring methane and carbon dioxide, but does not include radon gas. Gas Monitoring programmes shall be designed in line with current best practice as detailed in CIRIA 665 and or BS8485 year 2007 Code of Practice for the Characterization and Remediation from Ground Gas in Affected Developments.

Reason: To ensure that the safety of future occupiers is not prejudiced.

7. CONTAMINATED LAND MEASURES – ASSESSMENT

No works below the membrane underlying the original capping layer or elsewhere below the overburden shall take place until an assessment of the nature and extent of contamination of the underlying material has been submitted to and approved in writing by the Local Planning Authority. This assessment shall be carried out by or under the direction of a suitably qualified competent person * in accordance with BS10175 (2011) Code of Practice for the Investigation of Potentially Contaminated Sites and shall assess any contamination on the site, whether or not it originates on the site. The report of the findings shall include:

(i) a desk top study to identify all previous uses at the site and potential contaminants associated with those uses and the impacts from those contaminants on land and controlled waters. The study shall establish a

'conceptual site model' (CSM) which identifies and assesses all identified potential source, pathway, and receptor linkages;

(ii) an intrusive investigation to assess the extent, scale and nature of contamination which may be present, if identified as required by the desk top study;

(iii) an assessment of the potential risks to:

- human health
- groundwaters and surface waters
- adjoining land
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
- ecological systems
- archaeological sites and ancient monuments; and
- any other receptors identified at (i)

(iv) an appraisal of remedial options, and justification for the preferred remedial option(s).

All work and submissions carried out for the purposes of this condition shall be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11'

(September 2004) and the WLGA / WAG / EA guidance document 'Land Contamination: A guide for Developers' (2012), unless the Local Planning Authority agrees to any variation in writing.

* A 'suitably qualified competent person' would normally be expected to be a chartered member of an appropriate professional body (such as the Institution of Civil Engineers, Geological Society of London, Royal Institution of Chartered Surveyors, Institution of Environmental Management) and also have relevant experience of investigating contaminated sites.

Reason: To ensure that information provided for the assessment of the risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems is sufficient to enable a proper assessment.

8. CONTAMINATED LAND MEASURES – REMEDIATION & VERIFICATION PLAN

No works below the membrane underlying the original capping layer or elsewhere below the overburden shall take place until a detailed remediation scheme and verification plan to bring the site to a condition suitable for the intended use by removing any unacceptable risks to human health, controlled waters, buildings, other property and the natural and historical environment has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

All work and submissions carried out for the purposes of this condition

shall be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA / WAG / EA guidance document 'Land Contamination: A guide for Developers' (July 2006), unless the Local Planning Authority agrees to any variation in writing.

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

9. CONTAMINATION LAND MEASURES – REMEDIATION & VERIFICATION

The remediation scheme approved by Condition 8 (Remediation & Verification Plan) shall be carried out in accordance with the approved details prior to the occupation of any permanent structure of the approved development unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.

Within 6 months of the completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.

All work and submissions carried out for the purposes of this condition shall be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA / WAG / EA guidance document 'Land Contamination: A guide for Developers' (July 2006), unless the Local Planning Authority agrees to any variation in writing

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

10. CONTAMINATED LAND MEASURES – UNFORESEEN CONTAMINATION

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing within 2 days to the Local Planning Authority. All associated works must stop, and no further development shall take place unless otherwise agreed in writing until a scheme to deal with the contamination found has received the Local Planning Authority's written approval. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme and verification

plan shall be submitted to and approved in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report shall be submitted to and approved in writing by the Local Planning Authority. The timescale for the above actions shall be agreed with the Local Planning Authority within 2 weeks of the discovery of any unsuspected contamination.

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

11. IMPORTED SOIL

Any topsoil [natural or manufactured], or subsoil, to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation which shall be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

Subject to approval of the above, sampling of the material received at the development site to verify that the imported soil is free from contamination shall be undertaken in accordance with a scheme and timescale to be agreed in writing by the Local Planning Authority.

Reason: To ensure that the safety of future occupiers is not prejudiced.

12. IMPORTED AGGREGATES

Any aggregate (other than virgin quarry stone) or recycled aggregate material to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation which shall be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

Subject to approval of the above, sampling of the material received at the development site to verify that the imported material is free from contamination shall be undertaken in accordance with a scheme and timescale to be agreed in writing by the Local Planning Authority.

Reason: To ensure that the safety of future occupiers is not prejudiced.

13. USE OF SITE WON MATERIALS

Any site won material including soils, aggregates, recycled materials shall be assessed for chemical or other potential contaminants in accordance with a sampling scheme which shall be submitted to and approved in writing by the Local Planning Authority in advance of the

reuse of site won materials. Only material which meets site specific target values approved by the Local Planning Authority shall be reused. Reason: To ensure that the safety of future occupiers is not prejudiced.

14. INTEGRITY OF THE MDPE MEMBRANE

Upon completion of the investigation into material underlying the membrane below the original capping layer, a weekly scheme of repairs to restore/maintain the integrity of the membrane where necessary shall be submitted to and approved in writing by the Local Planning Authority. The repairs shall be carried out in accordance with the approved details within a timescale that shall be agreed in writing with the Local Planning Authority.

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

15. NO PILING

Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written permission 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 groundwater.

Reason: There is an increased potential for pollution of controlled waters from inappropriate methods of piling.

16. DRAINAGE DETAILS

No development shall take place until a drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall demonstrate how the site will be effectively drained; the means of disposal of surface water and indicate how foul flows will communicate to the public sewerage system. Thereafter, the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further surface water or land drainage shall be allowed to connect directly or indirectly with the public sewerage system.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

17. POTABLE WATER SCHEME

No building shall be constructed until a potable water scheme to serve the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that the existing

water supply network can satisfactorily accommodate the proposed development site. If necessary a scheme to upgrade the existing public water supply network in order to accommodate the site shall be delivered prior to the occupation of any building. Thereafter, the agreed scheme shall be constructed in full and remain in perpetuity.

Reason: To ensure the site is served by a suitable potable water supply.

18. AIR QUALITY ASSESSMENT

No reserved matters application shall be approved until an Air Quality Assessment (AQA) for the detailed design of the Biomass Plant has been submitted to and approved in writing by the Local Planning Authority. The AQA shall include an assessment of the impact of the plant emissions and any necessary mitigation measures to ensure the overall impacts of the plant are acceptable. The plant shall be constructed in accordance with the approved details and maintained thereafter.

Reason: To ensure air quality is maintained to satisfactory levels.

19. PLANT NOISE ASSESSMENT

Prior to beneficial occupation of the Biomass Power Plant a noise assessment shall be carried out and submitted to and approved in writing by the Local Planning Authority to ensure the noise emitted from fixed plant and equipment on the site achieves a rating noise level of background -10dB at the nearest noise sensitive premises (Rover Way Traveller Site) when measured and corrected in accordance with BS 4142: 2014 (or any British Standard amending or superseding that standard). This assessment shall include an assessment of the impact of the noise from this proposed development after the removal of material from the site which may currently act as a noise barrier to the nearest noise sensitive receptors at the traveller site on Rover Way. The development shall be carried out in accordance with the approved assessment.

Reason: To ensure that the amenities of occupiers of other premises in the vicinity are protected.

20. DELIVERY TIMES

Deliveries shall only take place at the site between the hours of 08:00 and 18:00 Monday to Saturday and at no time on Sundays or Bank Holidays.

Reason: To ensure that the amenities of occupiers of other premises in the vicinity are protected.

21. ODOUR ASSESSMENT

No material shall be removed from the site until an odour assessment has been submitted to and approved in writing by the Local Planning Authority. The assessment shall detail any potential adverse impact from

odours during the removal of material and shall quantify the potential impact of generated odour upon business users and residents in the vicinity utilising methodology set out in the Institute of Air Quality Management's (IAQM) best practise guidance; "Guidance on the assessment of odour for planning." In the event that the assessment indicates a negative impact upon local residents or businesses then the assessment shall include appropriate mitigation measures that shall be implemented to the written satisfaction of the Local Planning Authority prior to the development commencing.

Reason: To safeguard the amenity of nearby and future residents.

22. NO CHIPPING ON SITE

No wood chipping shall take place on the application site.

Reason: To safeguard the amenity of nearby and future residents.

23. STORAGE OF MATERIALS

There shall be no open storage of materials of any kind outside any approved buildings on the site.

Reason: To safeguard the amenity of nearby and future residents.

24. CHP ARRANGEMENTS

Prior to the construction of the Biomass Power Plant hereby approved, details of the creation of electricity and thermal energy, arrangements for establishing a connection to the local grid and the timing for such energy provision shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To maximise the potential for renewable energy in accordance with LDP Policy EN12 (Renewable Energy and Low Carbon Technologies).

25. FUEL ASH

Prior to the approval of any reserved matters application for the Biomass Power Plant, details of a scheme for the management and disposal of fuel ash arising from the development shall be submitted to and approved in writing by the Local Planning Authority. The disposal of the fuel ash shall be carried out in accordance with the approved scheme.

Reason: In order to ensure the disposal of waste from the site without harm to local amenity.

26. CONSTRUCTION AND ENVIRONMENTAL MANAGEMENT PLAN (CEMP)

Prior to the commencement of any removal of existing material, construction works or development on any phase, a Construction Environmental and Management Plan (CEMP) for that phase shall be

submitted to and approved in writing by the Local Planning Authority in order to manage the impacts of construction on that phase. The CEMP shall include:

- (ii) The parking of vehicles of site operatives and visitors;
- (iii) Loading and unloading of plant and materials;
- (iv) Storage of plant and materials;
- (v) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- (vi) Details of highways/footway closures;
- (vii) Wheel washing facilities;
- (viii) Measures to monitor and control the emission of dust and dirt during material removal and construction;
- (ix) A scheme for the recycling/disposing of waste resulting from the removal of fill material and construction works;
- (x) A plan showing the routes for vehicles undertaking material removal, construction and operational activity (i.e. delivery of Biomass Fuel) and the destination of any material removal. No routes through residential areas will be permitted;
- (xi) A list of on-site contacts and their responsibilities;
- (xii) A Construction Drainage Scheme indicating how surface water and land drainage flows will be controlled to prevent contamination, nuisance, subsidence or flooding to land, buildings, watercourses or highways within that phase (or part thereof) or adjacent land, buildings, watercourses and highways during the construction period;

The details so approved and any subsequent amendments as shall be agreed in writing by the Local Planning Authority and shall be complied with in full throughout the construction period for that phase.

Reason: In the interests of highway safety, and protection of the environment and public amenity.

27. SITE WASTE MANAGEMENT PLAN (SWMP)

Prior to the commencement of any removal of existing material, construction works or development on any phase, a Site Waste Management Plan (SWMP) shall be submitted to and approved in writing by the Local Planning Authority. The SWMP shall include (where relevant):

- (i) Details for the transportation of all excavated material, including the type of vehicles to be used;
- (ii) Details of how contaminated material will be treated and disposed;
- (iii) Measures to reduce environmental impacts of construction waste. The development shall be carried out in accordance with the approved SWMP for that phase. Transfer/consignment notes of all material transported off-site shall be made available upon request to the Local Planning Authority.

Reason: To reduce environmental impacts of construction waste.

28. PROVISION OF ROVER WAY JUNCTION

No development shall take place, including the removal of overburden down to the level of the existing membrane, until the Rover Way/Site Access priority junction hereby approved (Drawing No. 173097/SK/11 Revision A) has also been approved in writing by the overseeing highway authority and implemented to their written satisfaction.

Reason: To facilitate safe and efficient access to and egress from the proposed development in the interests of highway and pedestrian safety.

29. PEAK HOUR RESTRICTIONS

No vehicles shall access or egress the site during the morning and afternoon peak periods of 8am to 9am and 5pm to 6pm.

Reason: To avoid congestion on the local highway network.

30. AUTOMATED TRAFFIC COUNTERS

Prior to the commencement of development details of Automated Traffic Counters (ATCs) to be installed to both the Rover Way and Tide Fields Road access/egresses shall be submitted to and approved in writing by the Local Planning Authority. The approved ATCs shall be installed prior to the commencement of development and shall be retained thereafter. The ATCs shall record the number of vehicles accessing and egressing the site. Records of the number, arrival time and departure time of each vehicle shall be submitted to the Local Planning Authority upon request.
Reason: To monitor the number of vehicles accessing and egressing the site

31. OPERATIONAL TRAFFIC MANAGEMENT PLAN

Prior to the operation of the Biomass Plant and associated industrial floorspace, a detailed Operational Traffic Management Plan (OTMP) shall be submitted to and approved in writing by the Local Planning Authority. The OTMP shall include details of the times of operation of the Biomass Plant and commercial units, a schedule of operational related vehicle movements to and from the site as described in Chapter 10 of the Environmental Statement and Technical Appendix 10.1 (para 5.15), any restrictions of movements on the highway network, and the routing of operational related traffic on the local highway network to avoid sensitive receptors as indicated in the Outline Planning Application Environmental Statement and technical Appendix 10.1 (Transport Statement). The development shall operate in accordance with the approved OTMP.

Reason: In the interests of highway safety, and protection of the environment and public amenity.

32. ECOLOGY DATA SHELF LIFE

If site clearance in respect of the development hereby approved does not commence (or, having commenced, is suspended for more than 12 months) within 2 years from the date of the most recent survey, the approved ecological measures secured through (other planning conditions) shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to i) establish if there have been any changes in the presence and/or abundance of habitats and species and ii) identify any likely new ecological impacts that might arise from any changes. Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised, and new or amended measures, and a timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Works shall then be carried out in accordance with the new approved ecological measures and timetable. Reason: To ensure that the assessment of the impacts of the development upon the species concerned, and any measures to mitigate those impacts, are informed by up-to-date information.

33. GREEN INFRASTRUCTURE STRATEGY (GIS)

A comprehensive Green Infrastructure Strategy (GIS) for the site detailing measures to avoid, mitigate and compensate for impacts upon ecological interests, together with measures to provide habitat enhancement shall be submitted to and approved in writing by the Local Planning Authority prior to the approval of any reserved matters applications. The GIS shall incorporate other elements of green infrastructure including trees, a soil resource survey and plan, landscaping and public rights of way, as well as ecology. It shall also encompass each phase of the development as well as the future management of habitats.

The ecological element of the GIS shall include, but not be limited to:

- (i) Timing of works to avoid visual and noise disturbance to overwintering and migratory wetland birds;
- (ii) Landscaping details, based upon pages 19 to 21 inclusive of the Ecology Survey Report 2017, to ensure that the current open mosaic habitats and species-rich grassland form the majority of the semi-natural habitat on site, such that they continue to support the present range of invertebrates and plants;
- (iii) Long-term management prescriptions for buddleia and other invasive scrub species to prevent species-rich grassland and open mosaic habitats from becoming overgrown;
- (iv) Timing of works to avoid destruction of bird nests where possible, and contingency in the event that nesting birds are detected if works need to take place during the nesting season;
- (v) Contingency in the event that reptiles are discovered during site clearance / construction;
- (vi) Eradication plan for Japanese Knotweed and other invasive non-

- native plant species;
- (vii) Details of green roofs and birds boxes, especially Swift nest boxes, on the new buildings;
- (viii) Details of other enhancement measures such as a pond, reptile habitat piles / hibernacula, bug hotels and bee banks etc. The development shall be carried out in accordance with the approved GIS.

Reason: To maintain and enhance green infrastructure provision on the site.

34. WALES COAST PATH

Details submitted in pursuance of Condition 1A shall include a scheme of improvements to the Wales Coast Path. The submitted details shall include, but not be limited to, resurfacing and clearer way marking. The approved scheme shall be implemented in accordance with the approved details prior to the occupation of the development.

Reason: To maintain and enhance the Wales Coast Path.

35. SEVERN ESTUARY COASTAL BUND AND SCREEN

No development shall take place until details of measures to construct a coastal bund and screen to shield earth movements and construction activities from the Severn Estuary European Sites has been submitted to and approved in writing by the Local Planning Authority. The bund and screen shall be constructed in accordance with the approved details and shall be retained and maintained for the entire construction period. The approved details shall include:

- (i) full details of the design of the bund and screen;
- (ii) line-of sight sections to demonstrate that all aspects of the construction including the biomass power plant and industrial buildings, cranes, scaffolding, site operatives and piling rigs are not visible to wetland birds on the foreshore within 200 metres of the application site;
- (iii) a timetable for their provision;
- (iv) a written commitment to only construct the bund and screen between April to September;
- (v) outside of April to September, a written commitment to avoid any construction activity between two hours before high tide and two hours after;

Reason: To avoid any adverse effect upon the integrity of the Severn Estuary European Sites and the SSSI.

36. EXTERNAL LIGHTING

Prior to their installation on site details of all external lighting shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained thereafter.

Reason: To safeguard nature conservation interests.

37. FINISHED FLOOR LEVELS

Details submitted in pursuance of condition 1A shall include the proposed floor levels of any building in relation to the existing ground level and the finished levels of the site. The development shall be constructed and completed in accordance with the approved details.

Reason: Confirmation of the ground and floor levels are required to ensure an orderly form of development.

RECOMMENDATION 2 : To protect the amenities of occupiers of other premises in the vicinity attention is drawn to the provisions of Section 60 of the Control of Pollution Act 1974 in relation to the control of noise from demolition and construction activities. Further to this the applicant is advised that no noise audible outside the site boundary adjacent to the curtilage of residential property shall be created by construction activities in respect of the implementation of this consent outside the hours of 0800-1800 hours Mondays to Fridays and 0800 - 1300 hours on Saturdays or at any time on Sunday or public holidays. The applicant is also advised to seek approval for any proposed piling operations.

RECOMMENDATION 3: The contamination assessments and the effects of unstable land are considered on the basis of the best information available to the Planning Authority and are not necessarily exhaustive. The Authority takes due diligence when assessing these impacts, however you are minded that the responsibility for

- (i) determining the extent and effects of such constraints and;
- (ii) ensuring that any imported materials (including, topsoils, subsoils, aggregates and recycled or manufactured aggregates / soils) are chemically suitable for the proposed end use. Under no circumstances should controlled waste be imported. It is an offence under section 33 of the environmental Protection Act 1990 to deposit controlled waste on a site which does not benefit from an appropriate waste management license.

The following must not be imported to a development site:

- Unprocessed / unsorted demolition wastes.
 - Any materials originating from a site confirmed as being contaminated or potentially contaminated by chemical or radioactive substances.
 - Japanese Knotweed stems, leaves and rhizome infested soils. In addition to section 33 above, it is also an offence under the Wildlife and Countryside Act 1981 to spread this invasive weed;
- and
- (iii) the safe development and secure occupancy of the site rests with the developer.

Proposals for areas of possible land instability should take due account of the physical and chemical constraints and may include action on land reclamation or other remedial action to enable beneficial use of unstable land. The Local Planning Authority has determined the application on the basis of the

information available to it, but this does not mean that the land can be considered free from contamination.

RECOMMENDATION 4: Prior to the commencement of development, the developer shall notify the Local Planning Authority of the commencement of development, and shall display a site notice and plan on, or near the site, in accordance with the requirements of Article 12 of the Town & Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016.

RECOMMENDATION 5: That the applicant be advised that the Wales Coast Path cannot be closed or worked on at any point without the necessary license. If investigative works or new apparatus is to be installed on the right of way or temporary closures are required, an application must be made to Cardiff Council's PROW Team and Network Management for the appropriate licenses.

RECOMMENDATION 6: That the applicant be advised that the works to Rover Way approved under this permission will require the approval of the Highways Authority under a Section 278 Agreement. The applicant is also advised that if they intend to adopt the internal access roads a Section 38 Agreement will be necessary.

RECOMMENDATION 7: The applicant is advised that section 3.25 of Planning Policy Wales states that the land use planning system should take account of the conditions which are essential to the Welsh language and in so doing contribute to its use and the Thriving Welsh Language well-being goal. In this context and with regard to the Welsh Language (Wales) Measure 2011, it is recommended that: (1) developments adopt a Welsh name that is consistent with the local heritage and history of the area, (2) during the construction phase, on site marketing information (i.e. text on construction hoardings / flags / banners – as consented) be provided bilingually and (3) for commercial developments, shopfront / premises signage be provided in Welsh or bilingually. Where bilingual signage is provided, Welsh text must not be treated less favourably in terms of size, colour, font, prominence, position or location (it is recognised that Welsh translation does not extend to company / business names). Cardiff Council's Bilingual Cardiff team (BilingualCardiff@cardiff.gov.uk) can provide advice on unique and locally appropriate Welsh names for developments, bilingual marketing / branding and bilingual signage.

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 Outline planning permission with all matters except access reserved was granted by Planning Committee on 14 June 2018 for the removal of fill material and the construction of a biomass power plant (up to 9.5MW) and a maximum of 130,000 sq ft of industrial accommodation (B8 Use Class), new access roads and associated landscaping works on land at Rover Way.
- 1.2 Condition 1 of the permission requires applications for approval of reserved matters to be made to the Local Planning Authority before the expiration of 3 years from the date of the permission i.e. before 14 June 2021, with

development beginning within

- 1.3 This application seeks to vary condition 1 to extend the life of the outline planning permission by an additional two years from any new decision date to ensure that an appropriate Environmental Permit and approval of the Highways Authority under a Section 278 Agreement have been secured.
- 1.4 The original application was subject to Environmental Impact Assessment (EIA) and was accompanied by an Environmental Statement (ES). This environmental information was considered in the determination of this application. This current application is accompanied by a statement from the agent confirming that the original ES remains adequate to assess the significant effects of the development on the environment in accordance with Regulation 9(2) of The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017.
- 1.5 The Local Planning Authority has screened this application and agrees with the agent's statement, noting that the development parameters have not changed and remain as previously approved.

2. **DESCRIPTION OF SITE**

- 2.1 The site previously accommodated a non-domestic land fill site and extends to approximately 17 hectares. It is currently used by as an off-road motorcycle facility which is managed by the Council. The site contains earth mounds to a height approximately 30 metres above sea level. Rover Way is approximately 8 metres above sea level.
- 2.2 The site is known as the former 'frag tip' site and adjoins the Severn Estuary to the south east. A traveller site abuts the site to the northeast, with Rover Way/existing industrial operations to the northwest and southwest.
- 2.3 Further away to the northwest are the existing residential communities of Tremorfa and Pengam Green.
- 2.4 The Wales Coast Path adjoins the southeast boundary to the Severn Estuary, which is designated as a Special Area of Conservation (SAC), a Special Protection Area (SPA), RAMSAR site, and a Site of Special Scientific Interest (SSSI). A Site of Importance for Nature Conservation also exists beyond Rover Way at Pengam Moors.
- 2.5 The majority of the site, including the indicative area of built development, would be located within Zone B as defined by the Development Advice Map (DAM) referred to under Technical Advice Note 15: Development and Flood Risk (TAN15) (July 2004). However part of the site to the North East includes an access road within DAM zone C2.

3. **SITE HISTORY**

- 3.1 17/02130/MJR: Outline permission granted in June 2018 for the removal of fill material and the construction of a biomass power plant (up to 9.5MW) and a maximum of 130,000 sq ft of industrial accommodation (B8 Use Class), new access roads and associated landscaping works.
- 3.2 14/01765/DCI: Permission granted in March 2015 for a single 500kW wind turbine with associated electrical infrastructure and crane hardstanding.
- 3.3 06/02438/E: Permission granted in December 2006 for the construction of an off-road motorcycle track using recycled aggregate (electric arc slag), sub soil and top soil, provide containerised facilities for office, first aid, training and drying.
- 3.4 97/02263/R: Permission granted in March 1998 to create a new landform to be used for informal public recreation and nature conservation.

4. POLICY FRAMEWORK

4.1 Planning Policy Wales, Edition 10 (December 2018)

4.2 Technical Advice Notes (TANs):

- 5 Nature Conservation and Planning
- 8 Renewable Energy
- 11 Noise
- 12 Design
- 14 Coastal Planning
- 15 Development and Flood Risk
- 16 Sport, Recreation and Open Space
- 18 Transport
- 21 Waste

4.3 Local Development Plan (January 2016):

- KP1 Level of Growth
- KP4 Masterplanning Approach
- KP5 Good Quality and Sustainable Design
- KP6 New Infrastructure
- KP7 Planning Obligations
- KP8 Sustainable Transport
- KP9 Responding to Evidenced Economic Needs
- KP12 Waste
- KP13 Responding to Evidenced Social Needs
- KP14 Healthy Living
- KP15 Climate Change
- KP16 Green Infrastructure
- KP18 Natural Resources
- EC1 Existing Employment Land
- EN5 Designated Sites
- EN6 Ecological Networks and Features of Importance for Biodiversity

EN7	Priority Habitats and Species
EN8	Trees, Woodlands and Hedgerows
EN10	Water Sensitive Design
EN11	Protection of Water Resources
EN12	Renewable Energy and Low Carbon Technologies
EN13	Air, Noise, Light Pollution and Land Contamination
EN14	Flood Risk
T1	Walking and Cycling
T2	Strategic Rapid Transit and Bus Corridor Enhancement
T5	Managing Transport Impacts
T6	Impact on Transport Networks and Services
T7	Strategic Transportation Infrastructure
T8	Strategic Recreational Routes
C1	Community Facilities
C3	Community Safety/Creating Safe Environments
C6	Health
W2	Provision for Waste Management Facilities in Development

4.4 Supplementary Planning Guidance:

Green Infrastructure (November 2017)
 Managing Transportation Impacts (July 2018)
 Waste Collection and Storage Facilities (October 2016)
 Planning Obligations (January 2017)
 Planning for Health and Well-Being (November 2017)

5. **INTERNAL CONSULTEES RESPONSES**

- 5.1 The **Operational Manager, Transportation**, advises that, so long as the development is not changing, nor encouraging additional traffic generation he cannot see that a new Transport Assessment is required, as Rover Way is operating at capacity now. There are a number of restrictive conditions in the permission (for times of arrival, number of trips, monitoring exercises, etc) all of which need to be retained.
- 5.2 The **Shared Regulatory Service (Contaminated Land)** has no comments in relation to this application.
- 5.3 The **Council's Tree Officer** advises that any renewal of permission should include Condition 33 as per the 2017 permission, though he would suggest that this be amended to require a Soil Resource Survey and Plan in accordance with the Soils and Development TGN to inform landscaping details and specifications. The '17 permission refers only to a Soil Resource Survey.
- 5.4 The **Operational Manager, Waste Management**, has no objections to the extension of the outline permission relating to application 17/02130/MJR. Their previous comments remain relevant.
- 5.5 The Council's **Ecologist** has amended the Habitats Regulations Assessment (HRA) in line with advice received from Natural Resources Wales. He considers

that the ecological conditions across the Severn Estuary as a whole are not likely to have changed to the extent that the proposed project is now more likely to have an adverse effect on the integrity of the Severn Estuary EMS. A copy of the Appropriate Assessment is attached to this report.

- 5.6 The **Operational Manager, Environment (Noise & Air)** recommended conditions relevant for noise and odour impact assessments, delivery time restrictions, no chipping and open storage restrictions (conditions 19-22). These conditions have not been discharged and they are not aware of any recent housing developments that would be in closer proximity to this site since the 2017 applications. Therefore their comments remain the same.
- 5.7 The Council's **Public Rights of Way** Team has no objections to the two year extension of the consented application. It would be helpful if the applicant could liaise with them prior to any works being undertaken as licenses will be required to work on the site. Also, they are having a number of issues with fly tipping and illegal access along the Public Right of Way and would like to consider how the path will be protected in the future to prevent illegal access. PRoW has grant funding to make improvements along the Wales Coast Path which is along this Public Footpath therefore further discussions would be helpful.
- 5.8 The **Operational Manager, Drainage Division**, has no comments on the application.
- 5.9 The **Shared Regulatory Service (Air Quality)** understands that this application is an extension request to the previous submitted and consented application 17/02130/MJR. The supporting air quality assessment documentation (original report and subsequent technical note) produced in accordance with 17/02130/MJR concluded that the 24-hour NOx critical level will be exceeded in the Severn Estuary SPA/SAC. However due to the fact that the process contribution for NOx in the outlined saltmarsh area is below 10% of the Critical Level, it can therefore be screened out as insignificant in accordance with Environment Agency guidance (Environment Agency, 2018, Air emissions risk assessment for your environmental permit). It was agreed that following these outcomes that a condition be applied and this judgement still applies to the extension submission.

6. EXTERNAL CONSULTEES RESPONSES

- 6.1 **Dwr Cymru Welsh Water** acknowledges that this application seeks the renewal of planning permission 17/02130/MJR for the 'removal of fill material and the construction of a circa 9.5MW biomass power plant and 130,000 sq. ft. of industrial accommodation (B8 use class), new access roads and associated landscaping works'. They can confirm their comments in their response letter to the original application still stand. They note the conditions recommend in their original response were included on the planning consent (Conditions 16 & 17). However, they can confirm the they have not yet been instructed by the developer to undertake the Clean Hydraulic Modelling Assessment as required under condition 17.

- 6.2 **CADW**, in response to planning application 17/02130/MJR noted that scheduled monument GM296 Pen y lan Roman Site was not inter visible with the development and that the development would have a negligible effect on the setting of scheduled monument GM474 Relict Seawall on Rumney Great Wharf. They therefore had no objection to the original application. They are unaware of any changes to the historic environment in the area surrounding the proposed development since that advice was given and therefore have no objection to the renewal of the consent.
- 6.3 **Glamorgan Gwent Archaeological Trust** note that the current application is for the renewal of 17/02130/MJR and their understanding of the archaeological resource within the application area is unchanged and consequently, their response remains the same and is reiterated below. Information in the Historic Environment Record notes that the application area is formed from industrial material placed to reclaim ground from the Severn Estuary during the 1970s. The ground is formed from layers of material tipped in different events since then, which now comprises a deep formation which has created a 30m AOD land surface. If the proposal were to involve any works which would significantly penetrate beneath the dumped material, essentially entering the estuarine deposits, then there would be the potential for archaeological deposits to be encountered. However, the details provided state that whilst some material will be removed, enough will remain to provide a foundation level at between 12m and 14m to allow enabling works for platforms for the various elements of the development. Archaeological works adjacent to the south west have not shown any significant archaeological features or finds and in this case it is their opinion that the proposed development will not adversely impact on any archaeological resource, and that consequently they do not recommend any mitigation measures.
- 6.4 **Natural Resources Wales** have been consulted on the Council's amended Habitats Regulations Appraisal (Appropriate Assessment) and their comments will be reported to Planning Committee.
- 6.5 **Welsh Government Transport Division**, as the highway authority for the M4 motorway and trunk roads in Wales, does not issue a direction in respect of this application.

7. **REPRESENTATIONS**

- 7.1 **Stephen Doughty MP** objects to further incineration/carbon intensive energy projects being built locally for the following reasons:
- (i) These are completely inconsistent with our UK and Wales Paris Climate Change objectives, the Future Generations Act of the Senedd and Cardiff Council's own One Planet strategy launched just last week.
 - (ii) Air pollution / air quality – Splott already has one incinerator and has significant other adverse contributors to air quality. These include pollution associated with traffic, heavy and light industry and of course the Viridor incinerator. The council has little or no information on the cumulative effect of this. He strongly feels that this information is needed

before a decision can be made. Not least in the context of a respiratory disease pandemic, and wider evidence of air quality impacts on public health - this seems utterly inappropriate.

- (iii) Wentloog Incinerator application – Since the planning authority last considered the biomass application a further application has been submitted for a commercial waste incineration nearby which he also totally objects to. The data does not exist to state that 3 incinerators can operate safely in such a small area - with another in Barry just miles away - and others in the Severnside area, alongside the emissions already associated with another existing major industrial site – the local steel plant.
- (iv) Neighbour Impact – The location of the proposed incinerator is next to a significant residential area, local schools and families living on the Rover Way and Shirenewton Traveller sites. These communities are already surrounded by industry and an extremely busy road. There is not enough information to guarantee their wellbeing will not be significantly impacted.
- (v) Traffic – Rover Way is already heavily congested and additional vehicles will of cause adversely impact on this. Congestion on Rover Way impacts on the entire east of Cardiff but particularly on the roads of Splott, Tremorfa and Pengam Green. More development would require significant additional investment in Rover Way.
- (vi) Eastern Bay Link Road – The Council has a long stated ambition for the road to be completed, construction of this site could well place that ambition in jeopardy.
- (vii) Soil survey – Land at this site is contaminated but the council does not have accurate data as to the extent and this could well have got worse since previous applications. No building should take place on sites where this data is potentially inadequate.

7.2 **Vaughan Gething MS** writes on behalf of a number of his constituents in his capacity as Member of the Senedd for Cardiff South and Penarth. He highlights his concerns surrounding the renewal of planning permission for the proposed Biomass Power Plant on Rover Way. He urges the Planning Committee to reject this application, objecting as follows:

- (i) Air Pollution /Air Quality – Splott already has one incinerator and has significant other adverse contributors to air quality. These include pollution associated with traffic, heavy and light industry and of course the energy from waste incinerator. The Council has little or no information on the cumulative effect of this. He strongly feels that this information is needed before planning permission can be granted.
- (ii) Wentloog Incinerator application – Since the planning authority last considered the biomass application a further application has been submitted for a commercial waste incineration nearby. The data does not exist to state that 3 incinerators can operate safely in such a small area.
- (iii) Impact on neighbours – The location of the proposed incinerator is next

to a significant residential area with many families living on the Traveller's site. These families are already surrounded by industry and an extremely busy road.

- (iv) Traffic – Rover Way is already heavily congested, congestion on Rover Way impacts on the entire east of Cardiff but particularly on the roads of Splott, Tremorfa and Pengam Green. More development would require significant additional investment in Rover Way. Since the last time this application was considered the problem with horses fly-grazing on the side of the road in this area has got much worse, often these animals are not tethered, the council would need to address this problem before any development were permitted;
- (v) Eastern Bay Link Road – The Council has a long stated ambition for the road to be completed, construction of this site could well place that ambition in jeopardy;
- (vi) Soil survey – Land at this site is contaminated but the council does not have accurate data as to the extent and this could have worsened since previous application.

7.3 Councillors Stubbs, Henshaw and Thomas, the Local Members for Splott, object to the application for the following reasons:

- (i) Air pollution – Splott already has one incinerator and has significant other adverse contributors to air quality. These include pollution associated with traffic, heavy and light industry and of course the energy from waste incinerator. The Council has little or no information on the cumulative effect of this. They strongly feel that this information is needed before the application can be determined.
- (ii) Wentloog Incinerator application – Since the planning authority last considered the biomass application a further application has been submitted for a commercial waste incineration nearby. The data does not exist to state that 3 incinerators can operate safely in such a small area.
- (iii) Neighbour Impact – The location of the proposed incinerator is next to a significant residential area with many families living on the Traveller's site. These families are already surrounded by industry and an extremely busy road.
- (iv) Traffic – Rover Way is already heavily congested, congestion on Rover Way impacts on the entire east of Cardiff but particularly on the roads of Splott, Tremorfa and Pengam Green. More development would require significant additional investment in Rover Way. Since the last time this application was considered the problem with horses fly-grazing on the side of the road in this area has got much worse, often these animals are not tethered, the council would need to address this problem before any development were permitted;
- (v) Eastern Bay Link Road – The Council has a long stated ambition for the road to be completed, construction of this site could well place that ambition in jeopardy;

- (vi) Soil survey – Land at this site is contaminated but the council does not have accurate data as to the extent and this could have worsened since previous application;
- (vii) They request that this matter is brought to full Planning Committee and would like to thank the planning committee for considering these points and urge them to reject this application.

7.4 The application was advertised by **9 no. site notices** which were placed at key locations in the vicinity of the application site on 15 September 2020.

7.5 A **petition** of 563 signatures has been received (of which more than 50 are from the Cardiff area) opposing the application on the following grounds:

- (i) No clear reason for extension – No evidence has been given as to why the developer needs more time than currently allowed;
- (ii) Planning blight – An extension of planning permission would likely result in continued uncertainty over the use of the site which has no clear timeframe for completion. Under the Cardiff Local Development Plan this site could be better used;
- (iii) Air quality – They are deeply concerned that there has been no monitoring of small particulates (PM10 and PM2.5) in the locality, despite the nearby steel works, the existing waste incinerator, and the proposal for a second in Wentloog (ref: 19/02588/MJR), as well as the proximity of the site to residents and especially to the Gypsy, Roma and Traveller community on Rover Way adjacent to the planned power plant. Without such monitoring, it is impossible to know whether legal limits are already being approached or even exceeded;
- (iv) Documentation – Further documentation needs to be completed in light of Cardiff Council's policy commitments around Carbon neutrality by 2025. An Environmental Aspect Assessment and Strategic Environmental Assessment and sustainability appraisal should be undertaken. The renewal of this outline planning permission to build a wood-burning biomass incinerator will put the health of local residents at risk and fails to tackle the climate emergency which Cardiff Council and Welsh Government have announced and are resolved to fight against. Splott already has 1 waste incinerator, and with proposals for another in Wentloog, the east of Cardiff is at risk of up to three incinerators within close proximity to homes and schools in Splott, Tremorfa and Pengam Green. In particular, the proposed location of this biomass generator on Rover Way is next to a gypsy and traveller caravan site which has a number of residents with existing disabilities and health conditions (including respiratory problems);
- (v) Burning wood emits similar levels and a similar range of pollutants as burning coal including CO₂, sulphur dioxide, mercury, Volatile Organic Compounds and small particulates such as PM_{2.5}; all of which can be detrimental to human health and the environment;
- (vi) Biomass is a counter productive and flawed form of energy production. Generating a unit of energy from wood emits between 3% and 50% more CO₂ upfront than generating it from coal. Trees help to absorb excessive levels of CO₂ in the atmosphere, but cutting down trees to burn both

releases the CO₂ back into the atmosphere and reduces our ability to capture CO₂. Often wood is shipped in from abroad which furthers the deforestation and climate crisis across the world. Cardiff is the 6th most at risk city in the world to sea level rises and we ask that Cardiff Council reject this application in favour of encouraging investment in clean, renewable forms of energy.

7.6 **11 no. objections have been received from residents** on Cae Syr Dafydd (Canton), Baron's Court Road (Penylan), Hollybush Road (Cyncoed), Adventurers Quay (Butetown), Crwys Road (Cathays), Connaught Road (Plasnewydd), Railway Street (Splott), Inchmarnock Street (Splott), Hawker Close (Splott), Skelmuir Road (Splott) plus one representation from a resident of Newcastle Emlyn, who object to the application for the following reasons:

- (i) Air Pollution – burning waste wood would contribute particulates (PM₁₀ concentrations) to an area of Cardiff already under air pollution stress from a combination of traffic, industrial works, and the Viridor incinerator. Legal nitrogen dioxide limits are being breached at Ocean Way which have not been included. The application should be suspended until further assessment has been carried out. Cardiff's air quality is amongst the worst 10 cities in the UK according to the WHO;
- (ii) Would produce CO₂ contrary to Cardiff's declaration of a Climate Emergency. Cardiff should be encouraging renewable electricity production instead. Biomass electricity is the least efficient way of using land to produce energy. It is not a clean or green energy resource and emits as much CO₂ as fossil fuels. Solar energy would provide a greater return. Importing wood from abroad would increase emissions;
- (iii) The application nearby for a commercial waste incinerator in Wentloog would add to pollution levels and should be factored in;
- (iv) Increased traffic to an area already congested. Over 40 vehicles a day will transport material to the site as well as staff yet a congestion charge is being considered for non-residents;
- (v) Lack of supporting documentation Cardiff Council and Welsh Government have both announced a climate and ecological emergency and committed to carbon neutrality by 2030 since the original approval. The biomass plant contradicts these policy obligations. A Strategic Environmental Assessment needs to be undertaken. Updated documentation has not been provided with the application and relying on information from 2017/18 is not sufficient. A Life Cycle Assessment has not been completed to assess the environmental impacts of the use of materials from acquisition to disposal. It is not understood how the application fits into the Welsh Government's circular economy strategy aspirations. An up-to-date Environmental Aspect Assessment should also be completed to highlight how the company plans on managing environmental risk

using a life cycle approach (both indirect and direct aspects).

- (vi) No Environmental Permit has been secured from Natural Resources Wales. The application should be suspended until one has been granted;
- (vii) Increased health risks to nearby Traveller Community and further afield;
- (viii) Increased operational noise higher than the 20dB stated in the application. Monitoring of other nearby incinerators indicates a higher level.
- (ix) Lack of public consultation;
- (x) Contrary to the policy obligations around climate change and the UK Government's commitment to the Paris Climate Agreement of keeping temperature rises below 1.5%.
- (xi) Contrary to Cardiff's One Planet Strategy;
- (xii) Contrary to the Welsh Government's 2008 'Plant!' scheme (a tree is planted in celebration of every child born or adopted in Wales, with corresponding planting in Uganda since 2014).

7.7 **Friends of the Earth** object in the strongest possible terms to the renewal of planning permission on the following grounds:

- (i) No credible reason has been given for extending the time-period for commencing development. The planning consent granted in September 2017 requires the developer to commence the development within five years of that date, or two years of approval of the reserved matters. This means that the developer still has almost two years left to commence development and have the reserved matters approved. The argument put forward in the S.73 application is that an extension if required to ensure that a planning permit and authorisation by the Highways Authority can be secured. No reasons are given as to why the developer has not - as they understand - applied for such a permit and authorisation so far, nor why they would need more time than is already available to them under the existing planning conditions in order to go through those processes.
- (ii) Planning blight: The Cardiff Local Development Plan classifies the site as one "protected for B Use Class employment generating uses", (EC1.3), stating "In addition, in order to maximise the contribution to providing jobs from existing sites and promote the efficient use of land, the strategy seeks to encourage the intensification and refurbishment of existing employment land and premises which are under used, vacant or in decline." Right now, the site is largely vacant, i.e. it is not being put to use in any way that would provide employment. Since planning

consent was granted in 2017, the developers appear to have done nothing to progress their proposed development, nor have they given any reason for the delays on their part. They are now asking for three additional years to commence employment. This raises the prospect of the site remaining unavailable for any potential job-creating activities for several more years. They understand that time limits to planning consents have been introduced to ensure that land will not unnecessarily be taken out of active use indefinitely for proposed developments that may never materialise. We would suggest that an extension might well result in 'planning blight', i.e. stymie other proposals and developments for longer.

- (iii)** Air Quality – Since the original application was approved in 2017, a new Planning Policy Wales has been published which states in section 6.7.2.: *“National air quality objectives are not ‘safe’ levels of air pollution....It is desirable to keep levels of pollution as low as possible.”* Section 6.7.10 further states: *“asking a sustainable approach will mean balancing short-term needs against long-term objectives to reduce public exposure to airborne pollution and giving particular consideration to the presence of air quality management areas, noise action planning priority areas and areas with sensitive receptors when proposing new development and particularly when preparing development plans.”* They read this as a strengthening of air quality planning policy since the original planning decision was made. In the context of air quality, they are deeply concerned that there has been no monitoring of small particulates (PM10 and PM2.5) in the locality, despite the nearby steel works, the existing waste incinerator, and the proposal for a second in Wentloog (ref: 19/02588/MJR), as well as the proximity of the site to residents; especially to the Gypsy, Roma and Traveller community on Rover Way adjacent to the planned power plant. Without such monitoring, it is impossible to know whether legal limits are already being approached or even exceeded.
- (iv)** Documentation – Since the original approval of this planning permission, Cardiff Council and Welsh Government have both announced a climate emergency and committed to carbon neutrality by 2030. Due to the significant effect on clean air and net CO2 emissions, an extension of this planning permission should be considered bearing these policy changes in mind. In line with these new policy commitments, and in order to take account of the significant long-term environmental effects of this plant, under the EU Directive 2001/42/EC and The Environmental Assessment of Plans and Programmes Regulations 2004, we believe that a Strategic Environmental Assessment and sustainability appraisal needs to be undertaken with regard to this plant. As far as we are aware, a Life Cycle Assessment has not been completed to assess the environmental impact of the biomass plant's use of materials. Full accountability of the industrial ecology, procurement, supply and delivery of materials needs to be accounted for. An up-to-date Environmental Aspect Assessment should also be completed to highlight how the company plans on managing environmental risk using a life cycle

approach (both indirect and direct aspects).

8. ANALYSIS

- 8.1 Members are advised to note that this application seeks to extend the life of the extant planning permission for a further two years from the date of any permission that is granted. No changes to the parameters of the outline permission are proposed. The scale and character of the development would remain as previously approved.
- 8.2 Following receipt of the application a screening exercise took place to establish whether the previous Environmental Statement (ES) remained adequate for the purposes of this application. It was concluded that, mindful the short time that had elapsed since the permission and that no other changes to the approved development were being proposed, the previous ES did indeed remain adequate to assess the significant effects of the development on the environment and no further information was required to assist in the determination of the application.

Planning Policy Context

- 8.3 Since the granting of the original planning permission in June 2018, Edition 10 of Planning Policy Wales has been published (December 2018) (PPW10). PPW10 recognises an energy hierarchy in which all new developments are expected to mitigate the causes of climate change. Reducing energy demand and increasing efficiency through the location and design of new development will assist in meeting energy demand with renewable and low carbon sources.
- 8.4 LDP Policy KP15 (Climate Change) advises that reducing carbon emissions is one of a number of factors that can mitigate against the effects of climate change.
- 8.5 Concerns have been raised during the public consultation surrounding the likely pollution levels generated by the biomass plant against the national planning policy backdrop of PPW10.
- 8.6 In response, it should be noted that the principle of this development has previously been established by the 2018 permission. Members should also note that the Local Planning Policy Context has not changed and remains the adopted development plan just as it was when the original planning application was approved. Finally, the biomass plant comprises one component of the application and needs to be considered in the context of the whole development; the biomass will provide thermal and heat energy to supply up to 130,000 square feet of zero to low carbon industrial development. The proposed development is considered to be in alignment with national and local planning policies to reduce carbon emissions.

Traffic

- 8.7 It is noted that the Operational Manager, Transportation, has no reason to oppose the application provided that all relevant conditions previously attached to the permission are re-attached to any future permission.
- 8.8 Regarding the future route of Eastern Bay Link, no details of the precise route are currently available. It is noted that Welsh Government Transport Division has not raised this as a concern. In any event the route will have to avoid private land and therefore the future extension is not considered to be an issue that could reasonably prevent the delivery of this development.

Land Contamination

- 8.9 It is noted that Shared Regulatory Services' Contaminated Land Team have no comments to make on this application. All previous conditions to safeguard against contamination are considered to remain sufficiently robust and are therefore recommended to be re-attached to any planning permission that Committee resolve to grant.

Noise

- 8.10 It is noted that Shared Regulatory Services Noise and Air Pollution Team remain satisfied that any potential noise impacts can be satisfactorily mitigated through re-attaching conditions, including the requirement to achieve acceptable noise levels through the submission and approved of a noise assessment.

Air Pollution & Health

- 8.11 It is noted that the Shared Regulatory Services Air Quality Officer is satisfied with the 2 year time extension sought, subject to a relevant condition securing the submission and written approval of an Air Quality Assessment confirming that the emissions from the Biomass Plant are within acceptable levels.
- 8.12 The original Environmental Assessment included the existing waste incinerator in Splott in the baseline information. The proposed ERF ('Mor Hafren') at Newlands Road is a 'Development of National Significance' (DNS) and will therefore be considered by the Planning Inspectorate who will submit a report to the Welsh Ministers. As this scheme does not benefit from a planning permission (an application for this project was registered in October 2020) it is not an existing or committed development for the purposes of the EIA Regulations. However, an 'in-combination' assessment of Mor Hafren and other similar developments is included within the Habitats Regulations Assessment (HRA). This HRA has been amended following dialogue with NRW and concludes that the effects of the proposals, including their 'in-combination' effects with other similar projects in the vicinity, would not be likely to have an adverse effect upon the integrity of the Severn Estuary European Marine Sites. NRW have been re-consulted on the amended HRA and their final comments will be reported to Planning Committee.

Residential Amenity

8.13 It is considered that the amenities of local residents can be adequately safeguarded through the imposition of relevant conditions that were previously attached. There is no change to the parameters of the development that would lead to a different conclusion this time. Members are also reminded that the detailed design of the development will require further approval and residential amenity can again be considered at this stage.

Third Party Representations

8.14 In response to the third party representations received which have not already been covered in this report, the following comments are made:

- (i) The applicant is seeking a time extension to keep the permission 'alive' whilst they seek to obtain the necessary Environmental Permit Consent from Natural Resources Wales and approvals for works in the public highway from the Highways Authority. In any event, the Local Planning Authority does not require 'evidence' to justify the time extension – its duty is to determine any valid application it receives.
- (ii) Extending the life of the extant permission would, on the contrary, provide greater certainty for the future use of this site. The site is not allocated for any specific development in the Local Development Plan (LDP);
- (iii) The cumulative impacts of this development together with other developments in the vicinity were assessed in the original Environmental Statement (ES);
- (iv) The proposals for an energy recovery facility in Wentloog comprise a 'Development of National Significance' (DNS). This application by another developer is entirely separate from the current application before Committee. The DNS is currently under consideration by the Planning Inspectorate and will be determined by the Welsh Ministers (PINS ref: DNS/3236340). Any comments on this application should be submitted to the Planning Inspectorate;
- (v) Horses grazing untethered on the verges along Rover Way is a highways management issue to be resolved outside of the determination of this planning application;
- (vi) The Environmental Permitting process is regulated by Natural Resources Wales under separate legislation and sits outside the scope of the planning application process;
- (vii) The application has been publicised by 9 no. site notices and neighbour notification letters, exceeding publicity requirements;
- (viii) The Welsh Government's Plant! Scheme creates new woodlands for future generations across Wales at specific designated sites. However, a Green Infrastructure Strategy to include tree planting is required by condition to be approved prior to the submission of any reserved matters applications. Landscaping is also reserved for subsequent approval.
- (ix) The application is accompanied by an Environmental Impact Assessment which has assessed the likely significant environmental effects of the development. There is no planning requirement to also submit a Life Cycle Assessment.

- 8.15 *Crime and Disorder Act 1998* – Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.
- 8.16 *Equality Act 2010* – The Equality Act 2010 identifies a number of ‘protected characteristics’, namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council’s duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic.
- 8.17 *Well-Being of Future Generations Act 2015* – Section 3 of this Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.
- 8.18 *Environment (Wales) Act 2016* – This Act enshrines in law principles and policies for managing natural resources in a sustainable way. Amongst other things it introduces a new biodiversity duty on public authorities to seek to maintain and enhance biodiversity when exercising their functions, and in so doing to promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions. This duty and the resilience of ecosystems, have been considered and discharged in the evaluation of this outline application. Conditions are recommended that would serve to create and enhance local opportunities for wildlife and enhance biodiversity. This duty would be further considered during the consideration of reserved matters and future discharge of condition applications.

9. CONCLUSIONS

- 9.1 It is recommended that, having considered the environmental information, planning permission be granted for a further two years from the date of this permission, subject to relevant conditions.



rev	description	by	date
1	Amended red line		12/10/17
	first issue	RB	18/8/17

DOWNS MERRIFIELD ARCHITECTS
 1 02921 672672
 www.downsmerrifield.com

project
 Parc Calon Gwyrd
 First-Step Group
 title
Location Plan
 status
 Planning
 scale @ A1
 1:2500

job number	drawing number	rev
129	A(P)-01	1

please consider the environment before printing this document
 refer to dimensions where provided - do not scale from drawing



Area = 16.45 Hectares (40.6 Acres)



rev	description	RB	18/8/17
		by	date

DOWNS HERRIFIELD ARCHITECTS
 1 02921 672672
 www.downsherrifield.com

project
 Parc Calon Gwyrdd
 First-Step Group
 title
 Site Plan
 status
 Planning
 scale @ A1
 1:1250

job number	drawing number	rev
129	A(P)-02	

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Habitats Regulations Appraisal

Severn Estuary Special Protection Area (SPA), Special Area of Conservation (SAC), and Wetland of International Importance (Ramsar Site)

Application No: 20/01279/MJR
Proposal: Renewal of 17/02130/MJR for the removal of fill material and the construction of a biomass power plant (up to 9.5mw) and a maximum of 130,000 sq. ft. of industrial accommodation (B8 use class), new access roads and associated landscaping works
Location: Land at Rover Way, Pengam
DC Officer: Tim Walter

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Introduction

0.1 This planning application was identified as requiring a Habitats Regulations Appraisal in accordance with section 1.5.11 of the approved Green Infrastructure Supplementary Planning Guidance.

0.2 Under Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (as amended), referred to as the 'Habitats Regulations', a competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which...

- a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- b) is not directly connected with or necessary to the management of that site.

...must make an appropriate assessment of the implications for that site in view of that site's conservation objectives. In the light of the conclusions of the assessment, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site.

0.3 The European Sites considered here are the Severn Estuary Special Area of Conservation (SAC) and the Severn Estuary Special Protection Area (SPA).

0.4 As a matter of Welsh Government policy, Ramsar sites (sites listed under the Ramsar convention as wetlands of international importance) should be treated in the same way as SACs and SPAs, including in particular in relation to the consideration of plans and projects likely to affect them. Therefore following a procedure analogous to Regulation 63 in relation to the Severn Estuary Ramsar Site would also help ensure adherence to WG policy. For the remainder of this document these three designations will be referred to as the Severn Estuary European Marine Site (Severn Estuary EMS).

0.5 This procedure, known as a Habitats Regulations Appraisal (HRA), has been invoked because it has been identified that the current project has the potential to affect the Severn Estuary EMS and it is not directly connected with or necessary to the management of those sites.

0.6 Table 1 below sets out the main stages in undertaking a HRA. The subsequent HRA text will refer to Stage 1, Stage 2 etc as described in this table. It may not be necessary to complete all stages for all factors which may affect the designated sites.

Table 1 Habitats Regulations Assessment: Key Stages	
Stage 1	
Screening for likely significant effect	<ul style="list-style-type: none"> ▪ Describe the project being considered ▪ Identify international sites in and around the plan/ strategy area in a search area agreed with the Statutory Body Natural Resources Wales ▪ Examine conservation objectives of the interest feature(s)(where available) ▪ Review proposals and consider potential effects on European sites (magnitude, duration, location, extent) ▪ Examine other plans and programmes that could contribute to in combination effects ▪ Produce Screening Assessment
	<ul style="list-style-type: none"> ▪ <i>If no effects likely – report no significant effect (taking advice from NRW if necessary).</i> ▪ <i>If effects are judged likely or uncertainty exists – the precautionary principle applies proceed to stage 2</i>
Stage 2	
Appropriate Assessment	<ul style="list-style-type: none"> ▪ Agree scope and method of AA with NRW ▪ Consider how project, in combination with other projects, will interact when implemented, taking into account inherent avoidance and mitigation measures (the Appropriate Assessment) ▪ Using the AA, and any conditions or restrictions which may be applied to any planning consent, undertake Integrity Test ▪ Report outcomes of HRA including mitigation measures, conditions or restrictions, and consult with NRW
	<ul style="list-style-type: none"> ▪ If plan will not significantly affect European site proceed without further reference to Habitats Regulations ▪ <i>If effects or uncertainty remain following the consideration of alternatives and development of mitigations proceed to stage 3</i>
Stage 3	
Procedures where significant effect on integrity of international site remains	<ul style="list-style-type: none"> ▪ Consider alternative solutions, delete from plan or modify ▪ Consider if priority species/ habitats affected ▪ Identify ‘imperative reasons of overriding public interest’ (IROPI) economic, social, environmental, human health, public safety ▪ Notify Welsh Government ▪ Develop and secure compensatory measures

0.7 Because the application being considered here is an outline planning application, Regulation 70(3) of the Habitats Regulations applies, i.e. ‘Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect

the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.'

0.8 In simpler terms this means that, taking into account any planning conditions which may be attached to an outline planning consent, that consent can not permit any subsequent development which could adversely affect the integrity of the Severn Estuary EMS.

0.9 The check for likelihood of significant effects is an initial filter, and should be a relatively quick way of deciding whether the project would be likely to negatively affect the site in a significant way. The subsequent appropriate assessment stage would normally form the more in depth assessment. The term 'likelihood' is important. The test is a likelihood of effects rather than a certainty of effects. The check should only allow those projects to proceed where it is clear that any significant effect is unlikely. If there is doubt and further information is needed, it should be concluded that there is a likelihood of significant effects. In this context, and using the normal meaning of the words, "significant" effects are taken to be effects that are worthy of attention, noteworthy. A likely effect is one that is probable or well might happen. (Tyldesley, D. 2009).

0.10 In the Waddenzee case the ECJ ruled that a project should be subject to appropriate assessment **"if it cannot be excluded, on the basis of objective information, that it will have a significant effect on the site, either individually or in combination with other plans and projects"**. This is an important ruling because it establishes that 'likely' should not be interpreted as 'probable' or 'more likely than not'. Rather an effect should be considered likely if it cannot be ruled out on the basis of objective information. (Tyldesley, D. 2009).

0.11 When undertaking an appropriate assessment, the competent authority should distinguish clearly between mitigation (avoidance and reduction) measures and compensatory measures. It should take account of the avoidance and reduction measures built into the project and forming part of the project as proposed or applied for (Tyldesley, D. 2009).

0.12 In considering whether it can ascertain whether the project would have an adverse effect on the integrity of the European site, the competent authority should consider whether the imposition of conditions, or other restrictions, on the project, and the way in which it would be carried out, would enable it to be ascertained that the project would not have an adverse effect on the integrity of the site. (Tyldesley, D. 2009).

0.13 The following definition of the integrity of a site has been adopted by the UK Government. The integrity of the site is *"the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified"*.

1.0 Stage 1

1.1 Project Description (as set out in Design and Access Statement submitted in support of this application)

1.1.1 The proposed development is to extend the time period of an existing planning consent granted under application 17/02130/MJR for a circa 9.5 MWe Combined Heat and Power station which will produce electricity and thermal energy via steam. The fuel source for the power station will be biomass which is a sustainable fuel and will be delivered either via the adjacent Cardiff Docks or sourced from established UK distributors or a combination of both. The details of the project itself are unchanged from that already granted.

1.1.2 The power station will be a cornerstone for the production of green energy and be the heart of a proposed 'green quarter' for Cardiff – supplying both electric and thermal energy for future developments.

1.1.3 In addition to the CHP, the proposed development also includes “high-bay” industrial accommodation, which will be mostly energized by the power station. The industrial units vary in size, 15,000 sq. ft. units on each corner and a terrace of four 25,000 sq. ft. units – all with full articulated lorry access. This would provide circa 12,000m² (~130,000 sq. ft.) of low to zero carbon industrial accommodation. The roof form of the industrial units have a saw tooth shape so to provide south facing angled roofs for long term photo-voltaic use and north facing roof lights. This together with the electric and thermal energy from the power station will ensure that the units will be low to zero carbon generation in accordance with the Welsh Government National Planning Policy.

1.1.4 The site sits within the heart of a historically heavily industrialized area of Cardiff. As such, any analysis must take into account the back drop of material remediation, recycling of metals and plastics and waste water remediation including an anaerobic digestion unit on three sides of the site. The fourth side comprises the Severn Estuary.

1.1.5 Access to the site will be from two positions. The main access point will be from Rover Way towards the north eastern boundary of the site. The secondary access point will be from Tide Fields Road to the south west.

1.1.6 Noise is a key factor within the immediate area as a result of the industrial processes carried out at the Celsa plant, most notably from the Melt Shop directly to the west of Parc Calon Gwyrdd. In order to reduce the impact of noise breakout from this site it is proposed to carefully reprofile the landscaped mounds around the new development, only broken by the location of the two access roads.

1.1.7 The existing footpath on the south of the site will be enhanced as it forms part of the Wales Coast Path. A landscape maintenance strategy will be provided to ensure that the path remains in good condition for walkers and seating and viewpoints provided to enhance the experience for all users.

1.2 Designated sites and their features

1.2.1 Severn Estuary Special Area of Conservation (SAC)

SAC Habitat Features

- Estuaries;
- Mudflats and sandflats not covered by seawater at low tide;
- Atlantic salt meadow (*Glauco-Puccinellietalia maritimae*).
- Sandbanks which are slightly covered by sea water all the time; and
- Reefs.

SAC Species Features

- Sea lamprey *Petromyzon marinus*;
- River lamprey *Lampetra fluviatilis*; and
- Twait shad *Alosa fallax*.

1.2.2 Severn Estuary Special Protection Area (SPA)

The Severn Estuary SPA supports internationally important assemblages of wildfowl and waders during the winter months and migratory periods. These designations are based on:

- Internationally important populations of the Annex 1 species Bewick's Swan.
- Internationally important populations of regularly occurring migratory species (Gadwall, Shelduck, Redshank, Dunlin and European White-Fronted Goose).

The site also qualifies as an SPA since it regularly supports in excess of 60,000 waterfowl during the winter. The species listed on the SPA citation as forming part of the assemblage include Wigeon, Teal, Pintail, Pochard, Tufted Duck, Ringed Plover, Grey Plover, Curlew, Whimbrel and Spotted Redshank. Mallard, Lapwing and Shoveler have also been added as a result of the 1995 SPA review.

1.2.3 Severn Estuary Ramsar Site

- Estuaries
- Assemblage of migratory fish species
- Bewick's swan
- European white-fronted goose
- Dunlin
- Redshank
- Shelduck
- Gadwall
- Assemblage of waterfowl

1.3 Conservation Objectives of the Relevant Designated Sites

The Conservation Objectives of the Relevant Designated Sites are taken as set out in the following document:- Natural England & CCW (2009) *The Severn Estuary / Môr Hafren European Marine Site comprising: The Severn Estuary / Môr Hafren Special Area of Conservation (SAC), The Severn Estuary Special Protection Area (SPA), The Severn Estuary / Môr Hafren Ramsar Site. Natural England & the Countryside Council for Wales' advice given under Regulation 33(2)(a) of the Conservation (Natural Habitats, &c.) Regulations 1994, as amended. June 2009. These Conservation Objectives have not changed since the 2017 application, therefore the advice provided by NRW (then as CCW) under Regulation 33(2)(a), now known as Regulation 37(3)(a), has not changed.*

1.3.1 The Conservation Objectives of the Severn Estuary SAC are:-

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats and habitats of qualifying species
- The structure and function (including typical species) of qualifying natural habitats
- The structure and function of the habitats of qualifying species
- The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely
- The populations of qualifying species, and,
- The distribution of qualifying species within the site.

Further information on the Severn Estuary SAC can be found at :-

<http://www.jncc.gov.uk/ProtectedSites/SACselection/sac.asp?EUCode=UK0013030>

1.3.2 The Conservation Objectives Severn Estuary SPA are:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

Further information on the Severn Estuary SPA and Ramsar Site can be found at:-

<http://www.jncc.gov.uk/default.aspx?page=2066>.

The Conservation Objectives for the features of the Ramsar site are the same as those for the homologous features of the SAC and SPA.

Further information on the Severn Estuary Ramsar Site can be found at <http://www.jncc.gov.uk/pdf/RIS/UK11081.pdf>.

1.4 Factors to which site features are sensitive

1.4.1 With reference to the Conservation Objectives for the features of each site, the tables below list the factors to which each feature is sensitive for issues other than harm to birds. These tables are duplicated from those set out in 'Regulation 33' advice for these sites – see references below.

Table 2 SAC Vulnerabilities

Sensitivity		Exposure		Vulnerability	
High sensitivity	OOO O	High Exposure	x x x x	High vulnerability	⊗⊗⊗⊗ ⊗⊗⊗O ⊗⊗⊗x
Moderate sensitivity	OOO	Medium Exposure	x x x	Moderate vulnerability	⊗⊗OO ⊗⊗x x ⊗⊗⊗
Low sensitivity	OO	Low Exposure	x x	Low vulnerability	⊗⊗O ⊗xxx ⊗⊗x ⊗xx ⊗⊗ ⊗x
No detectable sensitivity	O	No exposure	x	No vulnerability	⊗O
?S =insufficient information on sensitivity; ✓ = migratory fish considered to be sensitive, but insufficient information to assess level of sensitivity					Unknown vulnerability

Categories of operations which may cause deterioration or disturbance ²⁵	Annex I features					Annex II species
	Estuaries	Subtidal Sandbanks	Mudflats & sandflats	Atlantic saltmeadow	Reefs	Fish ²⁶
Physical loss						
Removal / substratum loss	⊗⊗⊗⊗	⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗O	⊗x
Smothering	⊗⊗⊗O	⊗⊗x	⊗⊗⊗	⊗⊗⊗O	⊗⊗	⊗x
Physical damage						
Changes in suspended sediment	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗	⊗x
Desiccation & changes in emergence regime	⊗⊗O	⊗O	⊗⊗O	⊗⊗OO	⊗O	✓xx
Changes in water flow rate	⊗⊗⊗x	⊗⊗O	⊗⊗⊗x	⊗⊗⊗x	⊗⊗O	✓xx
Changes in wave exposure	⊗⊗⊗⊗	⊗⊗O	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗O	⊗x
Abrasion / physical disturbance (of habitats)	⊗⊗⊗x	⊗⊗x	⊗⊗⊗x	⊗⊗⊗x	⊗⊗O	✓xx
Changes in grazing management	⊗⊗	Not relevant	Not relevant	⊗⊗⊗⊗	Not relevant	Not relevant
Non-physical disturbance						
Noise & visual presence	⊗xx	⊗xx	⊗⊗x	⊗xxx	⊗x	✓xxx
Toxic contamination						
Introduction of synthetic compounds	⊗⊗⊗x	⊗⊗⊗x	⊗⊗⊗⊗	⊗⊗⊗x	⊗⊗xx	✓xxxx
Introduction of non-synthetic compounds	⊗⊗⊗x	⊗⊗⊗x	⊗⊗⊗⊗	⊗⊗⊗⊗	?Sxxxx	✓xxxx
Introduction of radionuclides	?Sxx	?Sxx	?Sxx	?Sxx	?Sxx	✓xx
Non-toxic contamination²⁷						
Changes in nutrient loading	⊗⊗⊗⊗ ²⁸	⊗⊗xx	⊗⊗⊗x	⊗⊗⊗x	⊗⊗xx	✓xxxx
Changes in thermal regime	⊗⊗⊗	⊗⊗	⊗⊗⊗	⊗⊗	⊗⊗	✓xxxx
Changes in turbidity ²⁹ (light penetration)	⊗⊗x	⊗⊗x	⊗⊗x	⊗x	⊗xx	✓xxx
Changes in salinity	⊗⊗⊗x	⊗⊗⊗x	⊗⊗xx	⊗⊗⊗x	⊗⊗xx	✓xxxx
Changes in oxygenation	⊗⊗⊗x	⊗⊗xx	⊗⊗xx	⊗⊗xx	⊗⊗xx	✓xxxx
Biological disturbance						
Introduction of microbial pathogens	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗xx	?Sxxxx	✓xxxx
Introduction of non-native species	⊗⊗⊗O	⊗⊗O	⊗⊗OO	⊗⊗	?Sxx	✓xx
Selective extraction of species	⊗⊗⊗x	⊗⊗	⊗⊗	⊗⊗	⊗⊗	✓xx

²⁵ For a further explanation of each category see <http://www.marlin.ac.uk/sah/baskitemplate.php?benchmarks>

²⁶ River lamprey, sea lamprey & twaite shad

²⁷ All elements of non toxic contamination are interrelated and also link closely with changes in suspended sediment (physical damage)

²⁸ The high natural turbidity of the estuary negates these high levels with algal productivity being generally low – the estuary feature is therefore not considered vulnerable – see section 5.6.1.3.(viii)

²⁹ Turbidity here incorporates light penetration; suspended sediment under ‘changes in suspended sediment’ and its deposition under ‘smothering’

Table 3 SPA Vulnerabilities

Sensitivity		Exposure		Vulnerability	
High sensitivity	OOOO	High Exposure	x x x x	High vulnerability	⊗⊗⊗⊗ ⊗⊗⊗O ⊗⊗⊗x
Moderate sensitivity	OOO	Medium Exposure	x x x	Moderate vulnerability	⊗⊗OO ⊗⊗x x ⊗⊗⊗
Low sensitivity	OO	Low Exposure	x x	Low vulnerability	⊗⊗O ⊗xxx ⊗⊗x ⊗xx ⊗⊗ ⊗x
No detectable sensitivity	O	No exposure	x	No vulnerability	⊗O
?S =Insufficient information on sensitivity				Unknown vulnerability	

Categories of operations which may cause deterioration or disturbance	Internationally important populations of regularly occurring Annex 1 species		Internationally important migratory species and waterfowl assemblage		
	Intertidal mudflats and sandflats	Saltmarsh	Intertidal mudflats and sandflats	Saltmarsh	Hard substrates
Physical Loss					
Removal/substratum loss	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗⊗
Smothering	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗
Physical Damage					
Changes in suspended sediment	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗
Desiccation and changes in emergence regime	⊗⊗O	⊗⊗OO	⊗⊗O	⊗⊗OO	⊗⊗O
Changes in water flow	⊗⊗⊗x	⊗⊗⊗x	⊗⊗⊗x	⊗⊗⊗x	⊗⊗⊗x
Changes in wave exposure	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗⊗
Abrasion / physical disturbance (of habitats)	⊗⊗	⊗⊗O	⊗⊗⊗⊗	⊗⊗⊗x	⊗⊗⊗x
Grazing management	Not relevant	⊗⊗⊗⊗	Not relevant	⊗⊗⊗⊗	Not relevant
Non-physical disturbance					
Noise & visual presence	⊗⊗OO	⊗⊗⊗O	⊗⊗⊗O	⊗⊗⊗⊗	⊗⊗⊗O
Toxic contamination					
Introduction of synthetic compounds	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗x	⊗⊗⊗x
Introduction of non-synthetic compounds	⊗⊗⊗	⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗⊗	⊗⊗⊗x
Introduction of radionuclides	?Sxx	?Sxx	?Sxx	?Sxx	?Sxx
Non-toxic contamination					
Changes in nutrient loading	⊗xxx	⊗⊗⊗x	⊗⊗⊗x	⊗⊗⊗x	⊗⊗xx
Changes in thermal regime	⊗x	⊗⊗	⊗⊗⊗	⊗⊗	⊗⊗
Changes in turbidity (light penetration)	⊗xx	⊗x	⊗⊗x	⊗x	⊗⊗x
Changes in salinity	⊗xxx	⊗⊗⊗x	⊗⊗xx	⊗⊗⊗x	⊗⊗xx
Changes in oxygenation	⊗xxx	⊗⊗xx	⊗⊗xx	⊗⊗xx	⊗⊗xx
Biological disturbance					
Introduction of microbial pathogens	⊗⊗xx	⊗⊗xx	⊗⊗⊗⊗	⊗⊗xx	⊗⊗⊗⊗
Introduction of non-native species	⊗x	⊗⊗	⊗⊗OO	⊗⊗	⊗⊗OO
Selective extraction of species	⊗⊗O	⊗⊗O	⊗⊗⊗	⊗⊗⊗	⊗xx

Table 4 Ramsar Vulnerabilities (as related to tables 1 & 2 above, and referring to sections and tables in Reg 33 advice (ref 12.1)).

Ramsar interest features	Relevant SAC and SPA features and supporting habitats	Reference section for advice on operations relevant to the Ramsar features
<i>Ramsar Interest feature 1 : Estuaries</i>	SAC: Annex I habitats Estuaries Intertidal mudflats and sandflats Atlantic Salt Meadows	Section 5.6.1 & Table 22 Section 5.6.3 & Table 22 Section 5.6.4 & Table 22
<i>Ramsar Interest feature 2 : Migratory fish assemblage</i>	SAC : Annex II species River lamprey <i>Lampetra fluviatilis</i> ; Sea lamprey <i>Petromyzon marinus</i> ; Twaite shad <i>Alosa fallax</i>	Section 5.6.6 & Table 22 Section 5.6.6 & Table 22 Section 5.6.6 & Table 22
Internationally important populations of waterfowl		
<i>Ramsar Interest feature 3: Bewick's swan</i>	SPA : Internationally important populations of regularly occurring Annex 1 species (Bewick's swan)	Section 5.7.1 & Table 23
<i>Ramsar Interest feature 4: European white-fronted goose</i> <i>Ramsar Interest feature 5: Dunlin</i> <i>Ramsar Interest feature 6: Redshank</i> <i>Ramsar Interest feature 7: Shelduck</i> <i>Ramsar Interest feature 8: Gadwall</i>	SPA: Internationally important populations of regularly occurring migratory species (same species as column to left) Supporting habitats Intertidal mudflats and sandflats Saltmarsh Hard substrates	Section 5.7.2 & Table 23 Section 5.6.3 & Table 22 Section 5.6.4 & Table 22
<i>Ramsar Interest feature 9</i> Internationally important assemblage of waterfowl	SPA: Internationally important assemblage of waterfowl Supporting habitats Intertidal mudflats and sandflats Saltmarsh Hard substrates	Section 5.7.2 & Table 23 Section 5.6.3 & Table 22 Section 5.6.4 & Table 22

1.4.2 Potential Impacts Arising From Project

1.4.2.1 The proposed development site is between 5 and 200 metres to the northwest of the foreshore of the Severn Estuary, which at this point is designated as a Site of Special Scientific Interest (SSSI), as a Special Area of Conservation (SAC), is classified as a Special Protection Area (SPA), and listed as a Ramsar site.

1.4.2.2 However, the proposed development will not encroach upon the Severn Estuary EMS, so there is no potential for effects due to land take or immediate physical disturbance of habitats. Nonetheless, mindful of the vulnerabilities in Section 4 above, there is potential for the proposed development to have the following impacts:

- Disturbance to bird features arising from removal of overburden, construction activities and from operation of the development;

- Site drainage and release of any existing land contamination causing pollution of the Severn Estuary EMS during removal of overburden, construction and operation of the development ;
- Aerial emissions causing pollution of the Severn Estuary EMS during operation of the development.
- Dust arising from removal of overburden and construction causing contamination and smothering of Severn Estuary EMS habitats
- Increased disturbance to birds caused by use of a temporarily re-aligned Wales Coastal Path at this site

1.4.2.3 These impacts correlate with the categories of operations which may cause deterioration or disturbance as set out in tables 2 to 4 above, as follows:-

Table 5. Comparison of likely impacts of the project with categories of operations which may cause deterioration or disturbance		Impacts arising from proposed development as set out in Tables 2 to 4 above					
		Disturbance to birds during works	Disturbance to birds due to changes in coastal path	Mobilisation of existing contaminants during works	Aerial emissions during operation	Dust emissions during works	Surface and foul water drainage during operation
Categories of operations which may cause deterioration or disturbance	Smothering	X	X	✓	✓	✓	✓
	Noise & Visual presence	✓	✓	X	X	X	X
	Introduction of synthetic compounds	X	X	✓	X	X	✓
	Introduction of non-synthetic compounds	X	X	✓	X	X	✓
	Changes in nutrient loading	X	X	X	✓	✓	✓

1.4.2.4 Tables 2 to 4 above also set out the levels of sensitivity of each of the features of the designations to the categories of operations which may cause deterioration or disturbance. These are summarised in Table 6 below. These levels of sensitivity will be used to assess the likelihood of any significant effect and subsequently and any adverse effect upon the integrity of the Severn Estuary EMS.

Table 6. Levels of sensitivity of Severn Estuary EMS features to identified pathways for adverse effect.

Receptors – Severn Estuary EMS Features		Pathway for adverse effect									
		Mobilisation of existing ground/groundwater contaminants		Disturbance		Smothering			Changes in nutrient loading		
		Toxic Contamination – Introduction of Synthetic Compounds	Toxic Contamination – Introduction of Non-synthetic Compounds	Noise	Visual	Aerial Emissions	Dust	Surface water run-off	Aerial Emissions	Dust	Surface water run-off
SAC Annex I Habitats	Estuaries	High	High	Low	Low	High	High	High	Low	Low	Low
	Subtidal Sandbanks	High	High	Low	Low	Low	Low	Low	Moderate	Moderate	Moderate
	Mudflats & sandflats	High	High	Low	Low	Moderate	Moderate	Moderate	High	High	High
	Atlantic Salt-meadow	High	High	Low	Low	High	High	High	High	High	High
	Reefs	Moderate	Unknown	Low	Low	Low	Low	Low	Moderate	Moderate	Moderate
SAC Annex II Species	Fish	Unknown	Unknown	Unknown	Unknown	Low	Low	Low	Unknown	Unknown	Unknown
Habitats of SPA Annex I species	Intertidal mudflats & sandflats	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Low	Low	Low
	Saltmarsh	Moderate	Moderate	High	High	Moderate	Moderate	Moderate	High	High	High
Habitats of SPA migratory species and waterfowl assemblage	Intertidal mudflats & sandflats	High	High	High	High	Moderate	Moderate	Moderate	High	High	High
	Saltmarsh	High	High	High	High	Moderate	Moderate	Moderate	High	High	High
	Hard substrates	High	High	High	High	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate

1.4.2.5 The potential impacts from section 1.4.2.2 above are considered in turn, as part of the test of likely significant effect, in the following section.

1.4.3 Disturbance to birds during works

1.4.3.1 There is potential for removal of overburden and construction activities to cause visual and noise disturbance to overwintering and migratory wetland birds which are features of the SPA, as set out in Table 6 above. For example, use of cranes, together with noisy activities such as drilling, piling and operation of machinery, could disturb wetland birds while they are roosting or foraging on nearby foreshore habitats.

1.4.3.2 Table 6 illustrates that most of the Severn Estuary EMS features are either highly or moderately sensitive to this type of disturbance.

1.4.3.3 As a general rule, a distance of 200m between the receptor (i.e. the birds) and the activity (i.e. construction) is taken as the maximum distance over which the activity can affect the receptor. The entirety of the proposed project is within 200m of mean high water, and therefore potentially all construction or spoil removal works at this site may cause disturbance to wetland birds on the foreshore.

1.4.3.4 The ES, for example at sections 8.5.7, 8.5.8 and 8.5.9, makes reference to the construction of a bund to shield birds using the foreshore habitats from disturbance during removal of the overburden and construction of buildings. The ES also makes reference to undertaking works during the summer months when overwintering and migratory SPA-feature birds are in low numbers. These are valid suggestions for avoidance and mitigation of impacts, however I do not see that they are integral to or guaranteed by the project, as submitted, in sufficient detail so as to assure me that they will completely remove any possibility of a significant effect.

1.4.3.5 For example, as set out in section B.2.7.b) of Tyldesley 2009, counteracting measures:-

'...must be an integral part of the project, as proposed, so it is concluded that the project as a whole, including its mitigation measures, is unlikely to have an effect on the site. Possible or potential additional measures, such as conditions that might be applied later on, cannot be relied upon at this stage to determine that significant effects are not likely.'

1.4.3.6 Therefore it cannot be excluded, on the basis of the information provided thus far, that the project is likely to have a significant effect upon the Severn Estuary EMS, so an appropriate assessment of this factor is needed.

1.4.4 Disturbance to birds due to changes in coastal path

1.4.4.1 I am advised by my colleague in our Highways department (Jenn Griffiths email dated 22/01/18), that there is no expected increase in footfall in relation to the proposed biomass plant development. However, any measures which could be implemented as part of this proposed development which would discourage coastal path users from accessing the foreshore, would be welcomed. Those measures should be seen in the context of a wider predicted increase in coast path use in this area due to improvements elsewhere, and any such increase should be considered in the light of the HRA of the Wales Coast Path as a whole, conducted by NRW.

1.4.4.2 Therefore the proposed development is not likely to have a significant effect upon the Severn Estuary EMS via the medium of increased footfall along the coastal path at this point, so an appropriate assessment does not need to consider this factor.

1.4.5 Contamination of habitats caused by mobilisation of existing ground contaminants during works

1.4.5.1 The site for this proposed development is on the former 'Frag Tip', a historical landfill which has been identified by Pollution Control as a site with potential significant contamination and ground gas issues present. Therefore, during groundworks, soil contaminants may be disturbed and mobilised into groundwater, which may in turn migrate horizontally into surface waters. These contaminants could potentially harm Severn Estuary EMS habitats.

1.4.5.2 Table 6 illustrates that most of the Severn Estuary EMS features are either highly or moderately sensitive to all of these potential pathways.

1.4.5.3 I note the statement in section 8.5.11 of the ES that:- *'There is potential for an increase in contamination of the estuary habitats during re-working and removal of the tipped slag and other waste material'*. However, I also note from comment provided by Jason Bale on 22nd January 2018 that *'The report provides very little detail on how the works will be undertaken, and what mitigation measures will be implemented, only that such measures will be detailed in the (CEMP)'*. The same communication also indicates that further details remain to be provided, and also that *'...there are no details on appropriate mitigation measures to (sic) that the identified receptors are not adversely impacted from this element of the works'*. Those receptors include the sensitive habitats of the Severn Estuary EMS.

1.4.5.4 Some mitigation measures are proposed, and these are valid suggestions for avoidance and mitigation of impacts, however I do not see that they are integral to or guaranteed by the project, as submitted, in sufficient detail (as confirmed by Jason Bale as above) so as to assure me that they will completely remove any possibility of a significant effect.

1.4.5.5 It should be noted that the liner protecting the underlying 'frag' has already been compromised by coastal erosion and by the deposition of the overburden. Therefore any existing contaminants are already leaching out into the Severn Estuary EMS and nearby habitats, and any new mobilisation of existing contaminants should be seen in the context of this existing leaching. Equally, construction of a bund may serve to stop the existing leaching, but no details of the bund or of its detailed impact upon existing leaching are provided.

1.4.5.5 Therefore it cannot be excluded, on the basis of the information provided thus far, that the project is likely to have a significant effect upon the Severn Estuary EMS, so an appropriate assessment of this factor is needed.

1.4.6 Dust during works

1.4.6.1 As set out in section 8.5.11 of the ES, *'There is potential for an increase in contamination of the Severn Estuary habitats during re-working and removal of the tipped slag and other waste material. This could occur as contaminants are mobilised...as wind-blown dust'*.

1.4.6.2 Furthermore, Section 1.4 of the Construction Phase Impact Assessment October 2017 states that the dust emission class for earthworks at this site is considered to be 'large'. It further states in section 1.5 that dust will arise from piling of foundations, vehicles travelling over unpaved ground, and from the cutting of concrete.

1.4.6.3 Table 6 illustrates that most of the Severn Estuary EMS features are either highly or moderately sensitive to the impact of dust deposition.

1.4.6.4 Some mitigation measures are proposed, for example in sections 2.3 and 2.4 of the Construction Phase Impact Assessment, sections 9.6.2 to 9.6.4 of Chapter 9 – Air Quality - of the ES, and sections 7.6.6 to 7.6.8 of the ES Chapter 7 Geotechnical Conditions & Contaminated Land. These are valid suggestions for avoidance and mitigation of impacts, however I do not see that they are integral to or guaranteed by the project, as submitted, in sufficient detail (as confirmed by Jason Bale as above) so as to assure me that they will completely remove any possibility of a significant effect.

1.4.6.5 Therefore it cannot be excluded, on the basis of the information provided thus far, that the project is likely to have a significant effect upon the Severn Estuary EMS, so an appropriate assessment of this factor is needed.

1.4.7 Aerial emissions during operation

1.4.7.1 The proposed development is for a circa 9.5 MWe Combined Heat and Power station which will produce electricity and thermal energy via steam. However the exact nature and quantities of aerial emissions will not be determined until a later stage in the planning process.

1.4.7.2 With reference to Table 6 above, deposition of aerial emissions of particulates and NOx have the potential to affect the features of the Severn Estuary EMS. I note from the consultation response provided by Craig Lewis of Shared Regulatory Services on 12th January 2018 that he considers the air quality impacts on the Severn Estuary EMS to be significant. Mr Lewis also notes that mitigation technologies and measures to reduce NOx and particulates emissions have yet to be finalised.

1.4.7.3 Therefore it cannot be excluded, on the basis of the information provided thus far, that the project is likely to have a significant effect upon the Severn Estuary EMS so an appropriate assessment of this factor is needed.

1.4.8 Surface and foul water drainage during operation

1.4.8.1 It is noted that foul water arising from an operational development will be discharged via the Public Combined Sewer and treated accordingly. Therefore the proposed development is not likely to have a significant effect upon the Severn Estuary EMS via the medium of foul water emission, so an appropriate assessment does not need to consider this factor.

1.4.8.2 Surface water run-off may lead to contamination, smothering and nutrient enrichment of habitats, so in accordance with Tables 2 to 4 above there is a potential pathway to impact upon the Severn Estuary EMS features.

1.4.8.3 The Surface/Foul Water Drainage Strategy August 2017 identifies the method to dispose of surface water is to drain to the nearby sea, however drawing reference A(P)-02 shows two infiltration ponds which are presumably intended to intercept surface water run-off.

1.4.8.4 Therefore, while there remains uncertainty as to how surface water run-off will be treated, it cannot be excluded, on the basis of the information provided thus far, that the project is likely to have a significant effect upon the Severn Estuary EMS so an appropriate assessment of this factor is needed.

1.5 Other plans and programmes that could contribute to in combination effects

Waste Water Treatment Works Anaerobic Digestion Facility

1.5.1 Applications 13/00686 and 15/00591 propose a small-scale (2MW) anaerobic digestion facility at the Waste Water Treatment Works (WWTW) immediately (200m) to the south west of the Frag Tip. These applications were subject to a HRA, with the following outcomes:-

1.5.2 Atmospheric Pollution - Aerial emissions of NO_x, SO_x and particulates have the potential to affect habitats which are features of the Severn Estuary EMS, such as Saltmarsh and Coastal Grazing Marsh. However, the effects modelling within the Local Air Quality Impact Assessment indicate that Predicted Environmental Concentrations are within the critical levels for these habitats.

1.5.3 Water-borne pollution and mobilisation of existing ground contaminants - Given the distance between the proposal site and the Severn Estuary (about 350m), and the intervening land use (waste-water treatment tanks) it is unlikely that water-borne pollutants and mobilised existing ground contaminants will migrate laterally to the Severn Estuary EMS.

1.5.4 In addition, in their response of 12 May 2015, NRW have indicated that provided the development is carried out as stated in the application and supporting documents, they are of the opinion that the proposal would not be likely to have a significant effect on the Severn Estuary EMS. On this basis it can be assumed that there is not likely to be a significant effect upon the Ramsar site as well.

1.5.5 Therefore, given that the present application for a biomass plant has been identified as being likely to have a significant effect on the Severn Estuary EMS, but the WWTW anaerobic digester has not, the scale of potential contribution of the latter project to the overall atmospheric and waterborne pollution in this area is likely to be minor. However, even a minor addition to an already likely significant effect still results in a small overall increase in LSE, so the appropriate assessment of the present application should consider the in-combination effects of these projects.

Replacement Chimneys to Existing Boiler Room at Unit 68 Portmanmoor Rd Ind. Est.

1.5.6 This proposal (20/01626/MNR) entails replacement of existing chimneys to the existing boiler room at Princes Ltd facility Portmanmoor Road Cardiff, thereby extending their height from 12m to 20m. An Air Dispersion Modelling Report has been produced, and this will be used to inform a HRA for this application. Therefore on a precautionary basis this application is screened in for an in-combination assessment in the HRA for present Rover Way application.

Mor Hafren Bio Power Energy Recovery Facility Newlands Road

1.5.7 This proposal is a Development of National Significance and as such will be determined by the Planning Inspectorate in Wales. A Local Impact Report will be produced by Cardiff Council and the reference number 19/02588/MJR has been allocated to this, and a HRA has been produced for this application. Therefore on a precautionary basis this application is screened in for an in-combination assessment in the HRA for present Rover Way application.

Uskmouth Power Station

1.5.8 An application to Newport Council (Ref 20/0748) has been submitted for the erection of silos and de-dusting building, extension to rail unloading facility, new above ground conveyors and ancillary development. The zone of influence of this proposal could impact upon habitat which could be affected by the current Rover Way proposal. Therefore on a precautionary basis this application is screened in for an in-combination assessment in the HRA for present Rover Way application

1.5.9 Further projects are proposed in Cardiff which may in time be identified as needing a HRA, however at the time of undertaking the present HRA, these projects are not the subject of a pre-application so there are not sufficient details available to determine whether there is likely to be a significant effect on the Severn Estuary EMS in combination with the present 20/01279 application for amended timescales.

1.5.10 These developments include the Cardiff Parkway / Hendre Lakes project, and potential employment development at Longcross Farm. In both cases, a HRW is likely to require in-combination consideration with the present 20/01279 application for amended timescales, but sufficient details of these proposals have not been submitted to Cardiff Council as yet which would allow in combination consideration within the present HRA.

1.6 Summary of Test of Likely Significant Effect ('Significance Test')

1.6.1 The first step in considering a plan or project in accordance with Article 6.3 of the Habitats Directive is to determine whether it was likely to have a significant effect on a SAC or SPA (or Ramsar site). This is a coarse filter intended to identify those plans/projects which require further assessment of their implications and those where significant effects can be ruled out without further assessment. According to ECJ case law, this test should be applied in a precautionary way, such that a plan/project should be considered likely to have a significant effect if it cannot be excluded, on the basis of objective information, that it will have a significant effect. A significant effect is one likely to undermine a site's conservation objectives.

1.6.2 In considering this test, account is taken of any proposed mitigation measures which are integral to and guaranteed by the project, and which would counteract the potential effects described in Section 1.4 above. A summary of the results of the test of likely significance is set out in Table 7 below.

Factor	Likely Significant Effect?
Disturbance to bird features arising from construction activities and from operation of the development;	Yes
Site drainage and release of any existing land contamination causing pollution of the Severn Estuary EMS during construction;	Yes
Aerial emissions causing pollution of the Severn Estuary EMS during operation of the development.	Yes
Dust arising from construction causing contamination and smothering of Severn Estuary EMS habitats	Yes
Increased disturbance to birds caused by use of a temporarily re-aligned Wales Coastal Path at this site	No
Surface and foul water drainage during operation	Yes (surface water run-off only)

1.6.3 Where it is identified in Table 7 above that a factor is likely to have a significant effect upon features of the Severn Estuary EMS, then an Appropriate Assessment and test of adverse effect on integrity is required, and this is set out in section 2 below.

1.6.4 In addition, as set out in section 1.5 above, the impacts of several projects will need to be considered in combination with the present project in the appropriate assessment.

2. Appropriate Assessment

2.1 Agree scope and method of AA with NRW

2.1.1 NRW provided comprehensive comments on this application on 14th December 2017, and their recommendations for the scope of the HRA are as follows:-

- Disturbance to bird features arising from construction activities and from operation of the development;
- Site drainage and release of any existing land contamination causing pollution of the Severn Estuary EMS during construction;
- Site drainage causing pollution of the Severn Estuary EMS during operation of the development; and
- Aerial emissions causing pollution of the Severn Estuary EMS during operation of the development.

Further advice in respect of in-combination assessments was provided verbally on 30th November 2020.

2.1.2 These are broadly the same as those identified in section 1.4.2.2 above. In the same correspondence, NRW offered advice on the methodology of the HRA, and this offer was taken up in a series of telephone calls between the County Ecologist for Cardiff and NRW conservation officers.

2.1.3 As the project has not changed, nor has the Regulation 33 advice as set out above, we are entitled to rely upon this advice for the 20/01279 application for amended timescales. IN NRW's further advice of 16/10/20, NRW advised that Cardiff Council should consider whether there has been a change in the baseline environmental conditions which would lead to a change in likely significant effect or adverse effect upon integrity.

2.1.4 The original HRA was not based upon novel ecological survey work to establish an ecological baseline, but was instead based upon the factors arising from the proposed scheme and the effects they could have upon the conservation objectives of the EMS, together with an assumption of the presence of species and habitats. As none of these have changed, then it is natural that the conclusion of the HRA of the project when considered alone should not change.

2.1.5 Similarly, officers advising on contaminated land and transport impacts have not raised new concerns which were not raised at the time of the original 17/02130 application.

2.2 Consideration of how the project, in combination with other projects, will interact when implemented, taking into account inherent avoidance and mitigation measures (the Appropriate Assessment)

2.2.1 The purpose of this stage of the HRA is to undertake an appropriate assessment of the proposed project in relation to the conservation objectives of the Severn Estuary SAC, SPA and Ramsar sites. Subsequently this assessment, in combination with any conditions or restrictions which may be applied to any planning consent granted, will be used to determine whether the project will have an adverse effect on the integrity of those designated sites. The factors arising from the test of likely significance above, are considered in turn below.

2.3 Disturbance - Noise/visual disturbance of overwintering and migratory bird features of the SPA during removal of the overburden and construction of the Biomass Plant and associated infrastructure

2.3.1 There is potential for construction activities to cause visual and noise disturbance to overwintering and migratory wetland birds which are features of the SPA, as set out in Table 6 above. For example, use of cranes, or personnel working at height on scaffolding etc, together with noisy activities such as drilling, piling and operation of machinery, could disturb bird features while they are roosting or foraging on nearby foreshore habitats. Overwintering birds are disturbed by sudden movements and sudden noises. This can displace the birds from their feeding grounds. Disturbance can prevent the birds from feeding and in response they either a) decrease their energy intake at their present (disturbed) feeding site through displacement activity, or b) move to an alternative less favoured feeding site. Such a response affects energy budgets and thus survival. There is intermittent disturbance from both the landward and seaward side of the site. Bewick's swans are mainly affected by disturbance from the landward side and any increase in disturbance should be avoided. At present NE and NRW assess that the Annex 1 species are moderately sensitive to noise and visual disturbance on the intertidal mudflats and sandflats and highly sensitive to this category of operation on the saltmarsh.

2.3.2 It is acknowledged in the ES that there is a risk of disturbance of overwintering and migratory estuary birds by construction noise and vibration while the work is undertaken. Visual disturbance due to the presence of people and machinery is also possible. The construction of the coastal bund is proposed during the summer months, at a time of year when relatively few birds use the estuary, and the physical presence of the bund would reduce the potential for disturbance of the estuary once it is completed. It is also suggested that it is likely that birds feeding out on the mudflats in front of the tip would quickly become habituated to construction noise behind the coastal bund.

2.3.3 However, beyond this information, no details of the timing of works or of construction of the coastal bund are available at this time, as the present application is for outline consent.

2.3.4 Integrity Test: Disturbance - Noise/visual disturbance of overwintering and migratory bird features of the SPA during construction of the biomass plant and associated infrastructure

2.3.5 In principle, it is possible to avoid disturbance to birds during construction. For example, overwintering and migratory bird species are at their greatest concentration in the Severn Estuary between October and March inclusive. Therefore construction during the April to September period (inclusive) would not cause significant disturbance. However, it is recognised that it may not be feasible to restrict works to this period.

2.3.6 During the overwintering / migratory period, it is possible to avoid disturbance to birds on the foreshore by avoiding works activity during the period between two hours before high tide and two hours after high tide. It is during this four hour window that SPA-feature birds are most likely to occur within 200m of the construction activity. This is the distance within

which we typically consider disturbance effects to be significant. However, again it is recognised that it may not be feasible to restrict construction of the development to outside these four-hour windows.

2.3.7 The proposal to construct a coastal bund, with temporary screening along the top as suggested by NRW in their comments of 14th December, would shield the birds from the development activity provided:-

- Construction of the bund is completed within the April to September period, and
- Where construction of the bund takes place outside the April to September period, no construction activity can take place between two hours before high tide and two hours after high tide, and
- Line-of-sight cross sections can demonstrate that, taking account of the bund and temporary screening along the top, all aspects of construction of the biomass plant and other buildings, including cranes, scaffolding, site operatives, piling rigs etc., are not visible to wetland birds on the foreshore within 200m of the boundary of the construction site.

2.3.8 These measures will be secured by the following planning condition:-

‘Severn Estuary Coastal Bund & Screen

No development shall take place until details of measures to construct a coastal bund and screen to shield earth movements and construction activities from the Severn Estuary European Sites has been submitted to and approved in writing by the Local Planning Authority. The bund and screen shall be constructed in accordance with the approved details and shall be retained and maintained for the entire construction period. The approved details shall include:

- (i) full details of the design of the bund and screen;
- (ii) line-of sight sections to demonstrate that all aspects of the construction including the biomass power plant and industrial buildings, cranes, scaffolding, site operatives and piling rigs are not visible to wetland birds on the foreshore within 200 metres of the application site;
- (iii) a timetable for their provision;
- (iv) a written commitment to only construct the bund and screen between April to September;
- (v) outside of April to September, a written commitment to avoid any construction activity between two hours before high tide and two hours after;

Reason: To avoid any adverse effect upon the integrity of the Severn Estuary European Sites and the Severn Estuary SSSI.’

2.3.9 Provided this planning condition is attached and implemented then **in my view there would be no adverse effect upon the integrity of the Severn Estuary EMS, via the medium of Noise/visual disturbance of overwintering and migratory bird features.**

2.4 Site drainage and release of any existing land contamination causing pollution of the Severn Estuary during construction

2.4.1 The site for this proposed development is on the former 'Frag Tip', a historical landfill which has been identified by Pollution Control as a site with potential significant contamination and ground gas issues to be present. Therefore, during groundworks, soil contaminants may be disturbed and mobilised into groundwater, which may in turn migrate horizontally into surface waters. As set out above, these contaminants are likely to significantly harm Severn Estuary EMS habitats.

2.4.2 Comment provided by Jason Bale on 22nd January 2018 states that *'The (ES) report provides very little detail on how the works will be undertaken, and what mitigation measures will be implemented, only that such measures will be detailed in the (CEMP)'*. The same communication also indicates that further details remain to be provided, and also that *'...there are no details on appropriate mitigation measures to (sic) that the identified receptors are not adversely impacted from this element of the works'*. Those receptors include the sensitive habitats of the Severn Estuary. As this is an outline planning application, and remediation of the pollutants on site will take place on a phased basis, the fine details of those mitigation measures are not available at present.

2.4.3 Waterfowl are subject to the accumulation of toxins through the food chain or through direct contact with toxic substances when roosting or feeding. Their ability to feed can also be affected by the abundance or change in palatability of their prey caused by toxic contamination. At the moment there is no evidence to show that this is the case on the Severn Estuary, but the estuary is vulnerable to oil spills and there is a continuous discharge of toxins into the estuary, some of which bind to the sediments. This is an area that requires further assessment. The intertidal mudflats and sandflats and the saltmarsh are currently **highly vulnerable** to the introduction of synthetic and non-synthetic compounds, in accordance with Tables 2 and 3 above.

2.4.4 Integrity Test - Site drainage and release of any existing land contamination causing pollution of the Severn Estuary EMS during construction

2.4.5 Based on the above concerns and lack of detailed information provided to date, the following conditions are requested to be attached to any approval of the development to counteract any adverse effect upon integrity of the EMS:-

'PC Non Standard Requirement for Environmental Permit

The processing and removal of the 'overburden' material (above MDPE membrane.), shall not commence until an appropriate assessment/ waste classification of the material has been undertaken and an appropriate Environmental Permit, has been granted by the relevant

permitting authority. All subsequent works to process and remove this material must be undertaken in accordance to the permit conditions, and all necessary additional sampling requirements of the material as required under the permit must be reported to the LPA.

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land , neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN13 of the Cardiff Local Development Plan.'

'PC13. GROUND GAS PROTECTION

Following the completion of the reworking of materials in Zone 2, and prior to the construction of any building in Zone 2, the developer must ensure a scheme to investigate and monitor the site for the presence of gases* including a plan of the area to be monitored, shall be submitted to the Local Planning Authority for its approval.

Following completion of the approved monitoring scheme the proposed details of appropriate gas protection measures to ensure the safe and inoffensive dispersal or management of gases and to prevent lateral migration of gases into or from land surrounding the application site shall be submitted to and approved in writing to the LPA. If no protection measures are required than no further actions will be required.

All required gas protection measures shall be installed and appropriately verified before occupation of any part of the development which has been permitted and the approved protection measures shall be retained and maintained until such time as the Local Planning Authority agrees in writing that the measures are no longer required.

* 'Gases' include landfill gases, vapours from contaminated land sites, and naturally occurring methane and carbon dioxide, but does not include radon gas. Gas Monitoring programmes should be designed in line with current best practice as detailed in CIRIA 665 and or BS8485 year 2007 Code of Practice for the Characterization and Remediation from Ground Gas in Affected Developments,.

Reason: To ensure that the safety of future occupiers is not prejudiced in accordance with policy EN13 of the Cardiff Local Development Plan.'

'PC14A. CONTAMINATED LAND MEASURES – ASSESSMENT

Prior to the commencement of any works below the MDPE membrane or elsewhere below the overburden, an assessment of the nature and extent of contamination of the underlying material shall be submitted to and approved in writing by the Local Planning Authority. This assessment must be carried out by or under the direction of a suitably qualified competent person * in accordance with BS10175 (2011) Code of Practice for the Investigation of Potentially Contaminated Sites and shall assess any contamination on the site, whether or not it originates on the site.

The report of the findings shall include:

- (i) a desk top study to identify all previous uses at the site and potential contaminants associated with those uses and the impacts from those contaminants on land and controlled waters. The desk study shall establish a 'conceptual site model' (CSM) which identifies and assesses all identified potential source, pathway, and receptor linkages;
 - (ii) an intrusive investigation to assess the extent, scale and nature of contamination which may be present, if identified as required by the desk top study;
 - (iii) an assessment of the potential risks to:
 - human health,
 - groundwaters and surface waters
 - adjoining land,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - ecological systems,
 - archaeological sites and ancient monuments; and
 - any other receptors identified at (i)
- (iii) an appraisal of remedial options, and justification for the preferred remedial option(s).

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA / WAG / EA guidance document ' Land Contamination: A guide for Developers' (2012), unless the Local Planning Authority agrees to any variation.

* A 'suitably qualified competent person' would normally be expected to be a chartered member of an appropriate professional body (such as the Institution of Civil Engineers, Geological Society of London, Royal Institution of Chartered Surveyors, Institution of Environmental Management) and also have relevant experience of investigating contaminated sites.

Reason: To ensure that information provided for the assessment of the risks from land contamination to the future users of the land, neighbouring land, controlled waters, property and ecological systems is sufficient to enable a proper assessment in accordance with policy EN13 of the Cardiff Local Development Plan.'

'PC14B. CONTAMINATED LAND MEASURES – REMEDIATION & VERIFICATION PLAN

Prior to the commencement of any works below the MDPE membrane or elsewhere below the overburden a detailed remediation scheme and verification plan to bring the site to a condition suitable for the intended use by removing any unacceptable risks to human health, controlled waters, buildings, other property and the natural and historical environment shall

be submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA / WAG / EA guidance document 'Land Contamination: A guide for Developers' (July 2006), unless the Local Planning Authority agrees to any variation.

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land , neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN13 of the Cardiff Local Development Plan.'

'PC14C. CONTAMINATED LAND MEASURES - REMEDIATION & VERIFICATION

The remediation scheme approved by condition PC14B must be fully undertaken in accordance with its terms prior to the occupation of any permanent structure of the approved development unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Within 6 months of the completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA / WAG / EA guidance document 'Land Contamination: A guide for Developers' (July 2006), unless the Local Planning Authority agrees to any variation.

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land , neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN13 of the Cardiff Local Development Plan.'

'PC14D. CONTAMINATED LAND MEASURES – UNFORESEEN CONTAMINATION

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing within 2 days

to the Local Planning Authority, all associated works must stop, and no further development shall take place unless otherwise agreed in writing until a scheme to deal with the contamination found has been approved. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme and verification plan must be prepared and submitted to and approved in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be submitted to and approved in writing by the Local Planning Authority. The timescale for the above actions shall be agreed with the LPA within 2 weeks of the discovery of any unsuspected contamination.

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land , neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN13 of the Cardiff Local Development Plan.'

'PC15A IMPORTED SOIL

Any topsoil [natural or manufactured], or subsoil, to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation which shall be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

Subject to approval of the above, sampling of the material received at the development site to verify that the imported soil is free from contamination shall be undertaken in accordance with a scheme and timescale to be agreed in writing by the LPA.

Reason: To ensure that the safety of future occupiers is not prejudiced in accordance with policy EN13 of the Cardiff Local Development Plan.'

'PC15B IMPORTED AGGREGATES

Any aggregate (other than virgin quarry stone) or recycled aggregate material to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation which shall be submitted to and approved in writing by the Local Planning Authority in advance of its importation. Only material approved by the Local Planning Authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and Guidance Notes.

Subject to approval of the above, sampling of the material received at the development site to verify that the imported material is free from contamination shall be undertaken in accordance with a scheme and timescale to be agreed in writing by the LPA.

Reason: To ensure that the safety of future occupiers is not prejudiced in accordance with policy EN13 of the Cardiff Local Development Plan.'

'PC15C USE OF SITE WON MATERIALS

Any site won material including soils, aggregates, recycled materials shall be assessed for chemical or other potential contaminants in accordance with a sampling scheme which shall be submitted to and approved in writing by the Local Planning Authority in advance of the reuse of site won materials. Only material which meets site specific target values approved by the Local Planning Authority shall be reused.

Reason: To ensure that the safety of future occupiers is not prejudiced in accordance with policy EN13 of the Cardiff Local Development Plan.'

'PC Non Standard Condition –Integrity of the MDPE Membrane

In order to minimise, any potential environmental impacts, of the investigation works of the material underlying the MDPE membrane, where the integrity of the membrane is damaged, then upon completion of the investigation repairs to restore/ maintain the integrity of the membrane must be completed. All areas of damage and subsequent repairs must be recorded and a reported and documented in a weekly report to the LPA. Where the repairs are not deemed suitable the LPA will request that further repairs are implemented as necessary.

Reason: To ensure that any unacceptable risks from land contamination to the future users of the land , neighbouring land, controlled waters, property and ecological systems are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN13 of the Cardiff Local Development Plan.'

2.4.6 If these conditions are attached to consent and subsequently enforced, then **there would be no adverse effect on the integrity of the Severn Estuary EMS via this pathway.**

2.5 Aerial emissions causing pollution of the Severn Estuary EMS during operation of the development.

2.5.1 The proposed development is for a circa 9.5 MWe Combined Heat and Power station which will produce electricity and thermal energy via steam. However the exact nature and quantities of aerial emissions will not be determined until a later stage in the planning process.

2.5.2 With reference to Table 6 above, deposition of aerial emissions of particulates and NOx have the potential the affect the features of the Severn Estuary EMS. The Atlantic Saltmeadow / Saltmarsh and mudflats & sandflats habitats are particularly sensitive to the effects of aerial pollution.

2.5.3 I note from the consultation response provided by Craig Lewis of Shared Regulatory Services on 12th January 2018 that he considers the air quality impacts on the Severn Estuary EMS to be significant. Mr Lewis also notes that mitigation technologies and measures to reduce NO_x and particulates emissions have yet to be finalised because the present application is for outline planning consent.

2.5.4 Integrity Test: Aerial emissions causing pollution of the Severn Estuary EMS during operation of the development

2.5.5 A series of mitigation measures are suggested in section 9.6 of the Air Quality section (Chapter 9) of the ES. These may include emissions abatement technologies to reduce NO_x and PM in the exhaust, and an appropriate stack height and exhaust exit velocity to maximise dispersion. In order to have confidence that there would be no adverse effect on integrity of the Severn Estuary EMS as a result of this factor, the following planning condition, together with other controls (such as Environmental permitting) must be applied to require and enforce counteracting measures which would eliminate any adverse impacts:-

'Condition: No reserved matters application shall be approved until an Air Quality Assessment (AQA) for the detailed design of the Biomass Plant has been submitted to and approved in writing by the Local Planning Authority. The AQA shall include an assessment of the impact of the plant emissions and any necessary mitigation measures to ensure the overall impacts of the plant are acceptable. The plant shall be constructed in accordance with the approved details and maintained thereafter.

Reason: To ensure air quality is maintained to satisfactory levels and to avoid any adverse effect upon the integrity of the Severn Estuary European Sites and the Severn Estuary SSSI.'

In their advice of 03/11/20, Shared Regulatory Services have confirmed that their advice remains the same and that the above condition is still appropriate. Therefore provided this planning condition is attached and implemented then **in my view there would be no adverse effect upon the integrity of the Severn Estuary EMS, via the medium of aerial emissions causing pollution of the Severn Estuary EMS habitats.**

2.6 Dust arising from construction causing contamination and smothering of Severn Estuary EMS habitats

2.6.1 The site covers some 166,500 m² and most of this will be subject to earthworks, involving excavation and haulage of material, tipping stockpiling and site landscaping. The earthworks will last around 6 months and dust will arise mainly from earth-moving vehicles travelling over unpaved ground and from the handling of dusty materials (such as dry soil). Construction will involve a number of steel framed and cladded buildings on concrete slabs, with a total building volume of around 270,000 m³. Dust will arise from piling of foundations, vehicles travelling over unpaved ground, and from the cutting of concrete. The construction will take place over a 24-month period. The number of heavy vehicles accessing the site, which may track out dust and dirt, is currently unknown, but it is estimated that there will be a maximum of around 100 outward heavy vehicle movements per day. The unpaved roadway

length at the site will be around 300 m. Based upon these parameters, the dust emission class for earthworks is considered to be *large*.

2.6.2 Integrity Test: Dust arising from construction causing contamination and smothering of Severn Estuary EMS habitats

2.6.3 The Construction Phase Impact Assessment submitted as part of the ES for this application lists a set of best-practice measures from the IAQM guidance (IAQM, 2016) that it is suggested should be incorporated into the specification for the works. These measures should ideally be written into a Dust Management Plan. Some of the measures may only be necessary during specific phases of work, or during activities with a high potential to produce dust, and the list should be refined and expanded upon in liaison with the construction contractor when producing the Dust Management Plan.

2.6.4 This Dust Management Plan, and its implementation, will be secured by the following planning condition:-

'Dust Management Plan

No development shall take place until a Dust Management Plan (DMP) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved DMP.

Reason: To ensure the satisfactory control of dust and to avoid any adverse effect upon the integrity of the Severn Estuary European Sites and the Severn Estuary SSSI.'

2.6.5 In this case **there would be no adverse effect on the integrity of the Severn Estuary EMS via this pathway.**

2.7 Surface drainage during operation

2.7.1 Surface water running off impervious surfaces can become contaminated with petrol, oil, heavy metals other pollutants from roads and parking areas, as well as fertilizers and pesticides from soft-landscaped areas. Roads and parking area can be sources of polycyclic aromatic hydrocarbons (PAHs), which are created as combustion byproducts of petrol, diesel and other fossil fuels, as well as of heavy metals such as lead, nickel, zinc copper and cadmium, Fertilizer use on landscaped areas can result in nitrates and phosphorus in urban runoff when improperly applied or over-used.

2.7.2 Eroding soils or poorly maintained construction sites can often lead to increased turbidity in runoff. Increased levels of sediment in water bodies can cause smothering of habitats, toxic contamination, and nutrient enrichment. These high levels of nutrients can reduce oxygen and boost algae growth while limiting native vegetation growth. Limited native vegetation and excessive algae has the potential to disrupt the entire aquatic ecosystem due to limited light penetration, lower oxygen levels, and reduced food reserves.

2.7.3 Integrity Test: Surface water drainage causing contamination and smothering of SAC / SPA habitats

2.7.4 Interception of contaminated surface water run-off is vital to avoid the adverse effects set out in Table 6 above. This can be achieved by the enforcement of a planning condition which requires the applicant to demonstrate that surface water will be managed in such a way as to avoid significant adverse impact upon the features of the Severn Estuary EMS, e.g.

‘Condition: No development shall take place until a drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate how the site will be effectively drained; the means of disposal of surface water and indicate how foul flows will communicate to the public sewerage system. Thereafter, the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further surface water or land drainage shall be allowed to connect directly or indirectly with the public sewerage system.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.’

2.7.5 If this were implemented then **there would be no adverse effect on the integrity of the Severn Estuary EMS via this pathway.**

3. Cumulative and in-combination effects

3.1 The following projects are assessed in-combination with the current application.

Replacement Chimneys to Existing Boiler Room at Unit 68 Portmanmoor Rd Ind. Est.

3.2 This proposal (20/01626/MNR) entails replacement of existing chimneys to the existing boiler room at Princes Ltd facility Portmanmoor Road Cardiff, thereby extending their height from 12m to 20m. An Air Dispersion Modelling Report has been produced, and this will be used to inform a HRA for this application. Therefore on a precautionary basis this application is screened in for an in-combination assessment in the HRA for present Rover Way application on the basis of potential impacts of NO_x upon Atlantic Salt Meadow habitats which are a feature of the Severn Estuary SAC..

3.3 An Air Dispersion Modelling report has been produced in support of this application and in his letter of 26/10/20 the Specialist Services Officer (Specialist Enterprise Services) of Shared Regulatory Services (who provide specialist technical advice to Cardiff Council on such matters) has stated that he agrees with the Air Quality Assessment that the significance of the long-term NO_x PC on the critical level can be categorised as Negligible.

Mor Hafren Bio Power Energy Recovery Facility Newlands Road

3.4 An application for a Development of National Significance has been submitted at land of Newlands Road, Cardiff (323618, 179648) by Mor Hafren Bio Power for an Energy Recovery

Facility fuelled by up to 200, 000 tonnes per annum of residual waste and exporting approx. 15Mw of electricity to the grid. The proposed built components within the development plot would comprise: a tipping hall, fuel bunker, process buildings (boiler and turbine halls, and 70m stack), air-cooled condensers, flue gas treatment plant, residue silos, firewater tanks and office and weighbridge. This project has been allocated application number 19/02588 in Cardiff

3.5 This proposal has been subject to a Habitats Regulations Assessment, which has concluded that the proposed development would not be likely to have a significant effect upon any Natura 2000 site, including the Severn Estuary SAC and SPA.

3.6 Moreover, an in-combination screening has been undertaken to examine whether the Mor Hafren project at Newlands Road be likely to have a significant effect when considered in combination with other plans and projects in the area. The conclusion of that in-combination assessment, set out in section 10.1.1 of the HRA document, is as follows:-

'The project alone is not considered to have any likely significant effects on the interest features of the relevant European sites. It follows that a project with no likely significant effects cannot act in-combination with other plans or projects as there are no appreciable effects on the site to consider.'

3.7 This being the case, at the time of production of the present version of the HRA for the renewal of 17/02130/MJR at Rover Way there is uncertainty over the impacts of the Mor Hafren project at Newlands Road, and further assessment of its impacts are ongoing.

3.8 However, NRW have advised that the present 20/01279 Rover Way application, the 19/02588 Mor Hafren project and the 20/01626 Portmanmoor application might all act in combination in terms of releases of NO_x, which may affect the Atlantic Salt Meadow habitat of the Severn Estuary SAC. This being the case, the following in-combination analysis has been undertaken by the Specialist Services Officer (Specialist Enterprise Services) of Shared Regulatory Services (who provide specialist technical advice to Cardiff Council on such matters).

Rover Way, Mor Hafren and Portmanmoor Road In Combination Assessment

3.9 In accordance with the advice produced by NRW when it comes to screening potential impacts expectant of a proposal the Environment Agency's Air Emissions Risk Assessment guidance is used; <https://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit>

3.10 As dictated by this guidance, regardless of the baseline environmental conditions, a process contribution (PC) can be considered as insignificant if:

- the long-term (annual mean) PC is <1% of the long-term environmental standard; and

- the short-term (15-minute, 1-hour, 24-hour mean) PC is <10% of the short-term environmental standard.

3.11 The assessment submitted by the various Consultants for each outlined application considers the above and where necessary correctly proceeds to the next step in the Environment Agency's screening process to calculate the long term predicted environmental concentration (PEC), as well as short term process contribution (PC). Here, background concentrations are taken into consideration to determine outcomes. The emissions are deemed insignificant if:

- the long-term PEC is less than 70% of the long-term environmental standard ; and
- the short-term PC is less than 20% of the short-term environmental standards minus twice the long-term background concentration.

3.12 Adopting the first step, the NOX background/ baseline concentration value established by the report submitted in accordance with application 17/02130/MJR, which was calculated for the Saltmarsh area, is used. This approach ensures a conservative outlook given that the report was produced in 2017 and it is known that background levels do improve with time. Herein the baseline value used is 24.8 µg/m³.

3.13 Subsequently each individual application and focused on the PC calculated at a receptor representative of the Saltmarsh Area:-

PC

- 20/01279 Rover Way Biomass Plant - 0.41 µg/m³
- 20/01626 Portmanmoor Road chimney replacement application - 0.36 µg/m³
- 19/02588 Mor Hafren Energy Recovery Facility Project - 0.25 µg/m³

3.14 By combining the above and adding the baseline value, this produces a cumulative PEC value of 25.82 µg/m³ of NOx. Considering the criteria stipulated by the Environment Agency's Air Emissions Risk Assessment guidance 'The emissions are deemed insignificant if the long-term PEC is less than 70% of the long-term environmental standard', the PEC value of 25.82 µg/m³ is greater than the 70% threshold criteria.

3.15 However, the Environment Agency's guidance specifically outlines that where detailed dispersion modelling has been undertaken, no further action is required if resulting PECs do not exceed environmental standards, which in this instance is the critical level set at 30µg/m³.

When you do not need to take further action

You do not need to take further action if your assessment has shown that both of the following apply:

- your proposed emissions comply with [BAT associated emission levels \(AELs\)](#) or the equivalent requirements where there is no BAT AEL
- the resulting PECs will not exceed environmental standards

When you need to take further action

You'll need to do a cost benefit analysis if any of the following apply:

- your PCs could cause a PEC to exceed an environmental standard (unless the PC is very small compared to other contributors – if you think this is the case contact the Environment Agency)
- the PEC is already exceeding an environmental standard

3.16 Therefore, the PEC value is 25.82 µg/m³ which therefore does not breach the 30µg/m³ critical level. This conforms to the EA's guidance as cited above, and so, considering these three applications in combination, the critical level for impacts of NO_x upon Atlantic Salt Meadow habitat is not breached, so there would be no adverse effect upon the integrity of the SAC.

Uskmouth Power Station

3.17 An application to Newport Council (Ref 20/0748) has been submitted for the erection of silos and de-dusting building, extension to rail unloading facility, new above ground conveyors and ancillary development. The zone of influence of this proposal could impact upon habitat which could be affected by the current Rover Way proposal. Therefore on a precautionary basis this application is screened in for an in-combination assessment in the HRA for present Rover Way application

3.18 However on 25/11/20 NRW provided advice that they continue to have significant concerns with that proposed development and that a revised air quality assessment to allow the competent authority to carry out an assessment under Regulation 63 of the Conservation of Habitats and Species Regulations.

3.19 This being the case, at the time of production of the present version of the HRA for the renewal of 17/02130/MJR at Rover Way there is uncertainty and disagreement over the impacts of the Uskmouth Power Station project.

3.20 Therefore it is not possible to conduct an in-combination assessment with the Uskmouth Power Station project until those impacts are assessed to the satisfaction of all parties. It is recommended that the HRA of the Uskmouth Power Station project includes an in-combination assessment with the present Rover Way project when that assessment is complete.

Other Potential Projects

3.21 Applications 13/00686 and 15/00591 propose a small-scale (2MW) anaerobic digestion facility at the Waste Water Treatment Works (WWTW) immediately (200m) to the south west of the Frag Tip. These applications were subject to a HRA, with the outcome that Atmospheric Pollution and Water-borne pollution and mobilisation of existing ground contaminants were not likely to have a significant effect on the Severn Estuary EMS. In addition, in their response of 12 May 2015, NRW indicated that provided the development is carried out as stated in the application and supporting documents, they are of the opinion that the proposal would not be likely to have a significant effect on the Severn Estuary EMS

3.22 Therefore, any counteracting measures secured in relation to the present application to ensure that there is no adverse effect upon the integrity of the Severn Estuary EMS, together with any similar measures required to ensure that the 15/00591 application is not likely to have a significant effect upon the same site, will ensure that there is no overall adverse effect upon the integrity of the Severn Estuary EMS.

3.23 Further projects are proposed in Cardiff which may in time be identified as needing a HRA, however at the time of undertaking the present HRA, these projects are not the subject of a pre-application so there are not sufficient details available to determine whether there is likely to be a significant effect on the Severn Estuary EMS in combination with the present 20/01279 application for amended timescales.

3.24 These developments include the Cardiff Parkway / Hendre Lakes project, and potential employment development at Longcross Farm. In both cases, a HRW is likely to require in-combination consideration with the present 20/01279 application for amended timescales, but sufficient details of these proposals have not been submitted to Cardiff Council as yet which would allow in combination consideration within the present HRA.

4. Severn Estuary SSSI.

4.1 The Severn Estuary SSSI underpins the international designations and its features are largely similar to the features of those designations. Therefore, any measures identified above to avoid adverse effect upon the integrity of the Severn Estuary EMS will similarly avoid impact upon the SSSI features.

5. Conclusion

5.1 Table 8 below summarises the results of the test of adverse effect upon integrity for all of the factors identified as being likely to have a significant effect upon the Severn Estuary EMS features :-

Table 8 – Summary of Test of Adverse Effect upon Integrity		
Factor	Adverse Effect upon Integrity?	
	Alone	In Combination

Disturbance to bird features arising from construction activities and from operation of the development;	No	No
Site drainage and release of any existing land contamination causing pollution of the Severn Estuary during construction;	No	No
Aerial emissions causing pollution of the Severn Estuary EMS during operation of the development.	No	No
Dust arising from construction causing contamination and smothering of Severn Estuary EMS habitats	No	No
Increased disturbance to birds caused by use of a temporarily re-aligned Wales Coastal Path at this site	No	No
Surface and foul water drainage during operation	No	No

5.2 It is the conclusion of this Habitats Regulation Appraisal that, based upon the planning application and supporting documents as submitted, and provided the suggested planning conditions are attached and implemented, **the proposed development will not have an adverse effect upon the integrity of the Severn Estuary EMS.**

6. Consultation with Natural Resources Wales

6.1 In accordance with Regulation 63(3) of the Conservation of Habitats and Species Regulations 2017 (as amended):- *'The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specify'*.

6.2 NRW were consulted on the original HRA and their comments have been incorporated into the present amended HRA.

7. References

Air Quality Technical Note: Rover Way Biomass Plant Report No. J3017C/1/F2. Air Quality Consultants, April 2018.

The Conservation of Habitats and Species Regulations 2017 <https://www.legislation.gov.uk/ukxi/2017/1012/contents/made>

European Commission (EC) (2000) Managing Natura 2000 Sites: The Provisions of Article 6 of the 'Habitats' Directive 92/43/EEC.

EC (2001) Assessment of Plans and Projects Significantly Affecting Natura 2000 sites: methodological Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.

EC (2007) Guidance Document on Article 6(4) of the 'Habitats Directive' 92/43/EEC. Clarification of Concepts of: Alternative Solutions, Imperative Reasons of Overriding Public Interest, Compensatory Measures, Overall Coherence, Opinion of the Commission.

Habitats Regulation Assessment Screening: Mor Hafren Bio Power Cardiff. August 2020. Bradley Murphy Design Ltd.

IAQM (2012) *Guidance on Air Quality Monitoring in the Vicinity of Demolition and Construction Sites*, [Online], Available: www.iaqm.co.uk/guidance.html.

IAQM (2016) *Guidance on the Assessment of Dust from Demolition and Construction v1.1*.

Natural England & CCW (2009) *The Severn Estuary / Môr Hafren European Marine Site comprising: The Severn Estuary / Môr Hafren Special Area of Conservation (SAC), The Severn Estuary Special Protection Area (SPA), The Severn Estuary / Môr Hafren Ramsar Site. Natural England & the Countryside Council for Wales' advice given under Regulation 33(2)(a) of the Conservation (Natural Habitats, &c.) Regulations 1994, as amended*. June 2009.

Tyldesley, D., (2009) Draft Guidance for Plan Making Authorities in Wales: The Appraisal of Plans under the Habitats Directive, for Countryside Council for Wales CCW Bangor.

'Waddenzee ruling' Case C-127/02, JUDGMENT OF THE COURT (Grand Chamber) 7 September 2004 (1) (Directive 92/43/EEC – Conservation of natural habitats and of wild flora and fauna – Concept of 'plan' or 'project' – Assessment of the implications of certain plans or projects for the protected site).