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Dyddiad/Date 29<sup>th</sup> April 2016

Annwyl Syr/Madam / Dear Sir/Madam

**RECLAMATION OF FORMER OPENCAST WORKINGS, RECOVERY OF SECONDARY AGGREGATES AND CONSTRUCTION OF NEW ACCESS ROAD AFFECTING PUBLIC RIGHTS OF WAY - ADDITIONAL INFORMATION - AT TIRPENTWYS, HAFODYRYNYS, PONTYPOOL, TORFAEN**

Thank you for referring the above planning application consultation, which was received by us on 30<sup>th</sup> March 2016.

The following information was forwarded to Natural Resources Wales (NRW):

- i. A letter from SLR to Norman Jones dated 14 March 2016;
- ii. A document titled '*Proposed Reclamation of Former Opencast Workings and Recovery of Secondary Aggregates, Tir Pentwys, Hafrodyrnys Review of Ecological Impact Assessment*' by SLR dated March 2016 Ref: 404.00542.00002/2016, Version No: 2;
- iii. A document titled '*Ti'r Pentwys Implementation Programme;*' and
- iv. A legal document titled '*RE LAND AT TIR PENTWYS, HAFODYRYNYS, PONTYPOOL, TORFAEN, ADVICE*' dated 25 January 2015.

Our response relates to the above documents only. We note that this application has a history dating from 2003 until 2013 with numerous correspondence from our legacy bodies, the Countryside Council for Wales (CCW) and the Environment Agency (EA). In terms of Environment Agency discourse, this relates to matters additional to those raised in the above documents. Please be aware that these matters remain within Natural Resources Wales's remit. Since the formation of NRW there has been limited correspondence on this application, dated 26 August 2014.

**Natural Resources Wales has significant concerns regarding the development as submitted, which are discussed in this letter. This letter includes our advice on measures to overcome our concerns.**

## **Principle of Development**

NRW's correspondence (26 August 2014) regarding this development referred to the review of the Regional Technical Statement for Aggregates (August 2014), which no longer requires Torfaen Council to make any future provision for land-won primary aggregates within its Local Development Plan (LDP). We also referred to advice given in paragraphs 5.2.9 and 5.2.10 of the then Planning Policy Wales, which stated that '*Local planning authorities should seek to protect trees, groups of trees, and areas of woodland where they have natural heritage value or contribute to the character or amenity of a particular locality.*' and that '*Ancient and semi natural woodlands are irreplaceable habitats of high biodiversity value which should be protected from development that would result in significant damage*' (this advice has been transferred into paragraph 5.2.9 of Planning Policy Wales 2016). As such it was considered that if the need for the aggregates was no longer justified to meet county targets, then we would advise that the ancient woodland should be protected from significant damage.

It is understood from the legal advice given in document titled '*RE LAND AT TIR PENTWYS, HAFODYRYNYS, PONTYPOOL, TORFAEN, ADVICE,*' dated 25 January 2015, that as the site is allocated in the adopted LDP for mineral extraction that, unless the LDP is formally revised to indicate differently, this allocation remains in place and is unaltered by the Regional Technical Statement for Aggregates (August 2014). If this is the case NRW has no further comment to make on the principle of development.

## **European Protected Species (bats)**

With regard to bats, our comments remain similar to those made in CCW's letter of March 2013. In providing you with our updated advice, we have significant concerns with the proposed development, as submitted. To overcome these concerns, we recommend that development should only be permitted if the following issues raised below are secured through planning controls (condition and/or section 106 agreement) in any planning permission your Authority is minded to grant. Without the following matters being controlled through the planning permission the proposal is likely to have an unacceptable effect on protected species and we would be likely to object to this application. We would ask you to require the applicant to:

- a) Prepare and agree a Strategy to mitigate the impacts of the scheme on bats to the satisfaction of the LPA and in consultation with NRW. The Strategy must be implemented as agreed. We advise that in addition to mitigatory measures, the Strategy shall include proposals for post-development monitoring, reporting and mechanisms to ensure the mitigation measures are effective.
  - b) Undertake in accordance with published guidance pre-commencement surveys of trees and suitable cracks and/or crevices in the cliff face for bats.
  - c) Prepare and agree a long-term Management Plan for the woodlands. The agreed Plan shall remain in place and be implemented for a period of no less than 25 years. This Plan shall include proposals for on-going review of management and consequential amendments to management if these are shown to be necessary.
- And;

- d) Agree in writing before the start of any works, a scheme for lighting, consistent with the requirements of bats. This scheme should address the construction phase, any phasing of the development and the operational phase and include remedial action to be undertaken where problems are identified by the monitoring scheme.

#### NRW Licence Requirements regarding European Protected Species

We advise that a European Protected Species licence is to be obtained from Natural Resources Wales prior to any development commencing. Please note that any changes to plans between planning consent and the licence application may affect the outcome of a licence application.

#### **Schedule 1 Birds (Peregrine Falcon)**

Although the survey work does not appear to have recorded this species, we understand that local people have reported the presence of Peregrine Falcon in the former quarry area. Peregrine are a fully protected species, listed on Schedule 1 of the Wildlife and Countryside Act 1981.

We would therefore advise that you apply a planning condition to ensure that pre-construction surveys for this species are carried out; and if confirmed a scheme of conservation for Peregrine Falcon is prepared, agreed and implemented to the satisfaction of your Authority.

#### **Section 42 of the Natural Environment and Rural Communities (NERC) Act 2006**

Please note that we have not considered possible effects on all species and habitats listed in section 42 of the Natural Environment and Rural Communities (NERC) Act 2006, or on the Local Biodiversity Action Plan or other local natural heritage interests.

To comply with your authority's duty under section 40 of the NERC Act, to have regard to conserving biodiversity, your decision should take account of possible adverse effects on such interests.

We recommend that you seek further advice from your authority's internal ecological adviser and/or nature conservation organisations such as the local Wildlife Trust, RSPB, etc. The Wales Biodiversity Partnership's web site has guidance for assessing proposals that have implications for section 42 habitats and species ([www.biodiversitywales.org.uk](http://www.biodiversitywales.org.uk)).

#### **Ancient Woodland, Access Track and Mitigation to offset Impacts**

You will be aware that we have previously provided advice on the need to protect ancient woodland and offset effects from development in our letter of 26th March 2013 (ref. DCT-13-070556/C.09.89.01/RJ/JAE).

Given government policy and the details submitted with the current planning application that advice appears to remain relevant and should be considered in the determination of

the planning application. We would suggest that your Authority agree appropriate mitigation and/or compensation to offset the loss and disturbance to ancient woodland

If possible the wide access route should be reduced at selective points and the tree canopies on each side should be in contact to provide access for tree living mammals such as dormice. Although no direct signs of dormouse were found, the habitat is suitable and it is important that further checks are undertaken prior to any vegetation removal. We are supportive of the mitigation and/or compensation measures which includes replanting the clearance corridor with suitable species, introducing a long-term biodiversity-led management programme to remaining woodland habitats and the creation of small areas of woodland plantation outside current areas.

If you have not already done so then the views from your Authority's Ecologist should be sought. Please note that we would not expect further consultation about proposals nor mitigation.

### **Geotechnical Issues**

We refer you to the letter by SLR to the Council (Norman Jones) dated 14 March 2016, which confirms that there are still outstanding geotechnical investigations to be undertaken. Our legacy body, the Environment Agency, provided correspondence regarding such issues in March 2013. We are also aware of a recent meeting to discuss geotechnical matters, although we were not party to this. It is recommended that any additional information regarding geotechnical issues that relates to NRW's remit be forwarded to us for further consideration, allowing a reasonable timescale for consultation and reply.

### **Updated conditions and advice previously requested/provided by the Environment Agency**

We are mindful that conditions previously requested by the Environment Agency were asked to be included in any planning permission your Authority may be minded to grant. We provide our updated advice below:

#### Impact on Water Environment (Surface and Ground Waters)

##### *Excavations and De-watering*

Based on previous correspondence, it has been confirmed that the water table is below the level of excavation and there are no plans for dewatering. If any excavation takes place below the depth of the water table, contrary to the information submitted to us then we would ask to be informed and we would seek further details on how derogation of the groundwater resource at the application site will be prevented.

### *Drainage, Licensed Water Supply (Spring) and Lake*

We refer you to the information contained in the Second Supplementary Environmental Statement (SSES) (ref. 404.00542.00002) by Peak Man Limited, January 2013. Given the submitted information, we continue to be satisfied that groundwater resources and a licensed water supply (a spring at NGR: SO 232 014) should not be adversely affected by development activities.

### *Drainage (foul and surface water)*

From previous correspondence, it is our understanding that all drainage (from the cutting) will be directed into the remaining lake or allowed to infiltrate through sustainable drainage systems (SUDs). We advise that only clean surface water from roofs and paved areas should be discharged into any soakaway. We request the following conditions:

**Condition:** No development approved by this permission shall be commenced until a scheme for the provision and implementation of foul drainage works has been approved by and implemented to the reasonable satisfaction of the Local Planning Authority.

**Reason:** To prevent pollution of the water environment.

The foul drainage system should be sited so as not to cause pollution of any watercourse, well, borehole, spring or groundwater.

**Condition:** Prior to any development proceeding, a comprehensive drainage and lagoon system must be installed to intercept and treat any contaminated surface water run-off from this area. Detailed plans of these proposals must be submitted to and approved in writing by the Local Planning Authority.

**Reason:** Prevention of pollution.

### *Risk Assessment*

A risk assessment should be carried out to ensure that groundwater resources, including the de-regulated spring (at NGR: SO 232 014), are not adversely affected. If the developer / applicant have any queries regarding this, please contact us.

### *Monitoring*

Prior to commencement of works, we would ask that monitoring proposals be agreed and implemented for the lake and spring in order to ensure that quantity and quality is maintained. We would also suggest that a detailed outline of the proposed restoration to the spring catchment is agreed. We request the following conditions:

#### **Condition**

No development shall take place until a water management scheme is submitted to and agreed in writing with the Local Planning Authority. This Scheme shall include monitoring proposals for the lake and spring in terms of quantity and quality; details of mitigation measures in the event that development activities have an adverse impact; and proposals for restoration of the lake and spring catchment.

## **Reasons**

Protection of the water environment.

## **Condition**

The development hereby permitted shall not be commenced until such time as a scheme to:

- *secure the protection of licensed and un-licensed sources; and*
- *secure the maintenance of spring-fed flows*

has been submitted to, and approved in writing by, the local planning authority.

These schemes shall be supported by detailed information, including a maintenance programme; and details to establish current and future ownership of the facilities to be provided. The scheme should be fully implemented and any changes should be agreed, in writing, by the local planning authority.

## **Reason**

We refer you to advice given in Chapter 13, Minimising and Managing Environmental Risks and Pollution, Planning Policy Wales (PPW), which explains that the potential for pollution affecting the use of land will be a material consideration in deciding whether to grant planning permission. We also refer you to our legacy body “Groundwater Protection: Principles and Practice (GP3),” which confirms our position statements for mining induced pollution (K2) and supports our advice contained in this representation. We aim to prevent future environmental impacts by ensuring that the disposal or re-disposal of mining spoil or mineral preparation wastes complies with relevant European and domestic legislation.

### *Pollution Prevention and Methods of Working*

The applicant should be advised that the Severn River Basin Management Plan RBMP) requires the restoration and enhancement of water bodies to prevent deterioration and promote recovery of water bodies. Therefore site operators should ensure that there is no possibility of contaminated water entering and polluting surface or underground waters. To prevent pollution of the water environment, nothing other than uncontaminated excavated natural materials shall be tipped on the site. We refer you to our waste management advice on our NRW website.

With the aim of preventing adverse impacts on the water environment, for example, potential for pollution of surface water from tipped quarry spoil, we would ask for method statements to provide details about activities to be undertaken and measures to be employed preventing pollution. We request the following condition be included should your Authority be minded to grant planning permission:

## **Condition**

The development hereby permitted shall not commence until such time as method statements of working have been submitted to and agreed in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the

approved method statements and any subsequent amendments shall be agreed in writing with the local planning authority.

We would expect the method statements to include the following requirements:

- a) *details of the proposed working and/or activity;*
- b) *the storage of materials;*
- c) *the storage of chemicals;*
- d) *the storage of oil;*
- e) *the storage of hazardous materials;*
- f) *the proposed maintenance and after-care of the site;*
- g) *future landscaping;*
- h) *the provision of road and wheel cleaning facilities; and*
- i) *Proposed scheme for monitoring.*

Any such method statements shall be supported, where necessary, by detailed calculations; include a maintenance programme; and establish current and future ownership of the facilities to be provided. The method statements shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the method statements, or any details as may subsequently be agreed, in writing, by the local planning authority.

#### **Reason**

Protection of the water environment is a material planning consideration and development proposals, including mineral extraction, should ensure that new development does not harm the water environment (surface and ground waters). In this case the proposal may pose a threat to water quality because of the chemicals and/or materials that will be stored and/or used on site. The nature of the work has the potential to result in suspended solids contaminating the water environment.

As part of this condition, the applicant / contractor should ensure that any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.

#### **Condition**

The development hereby permitted shall not commence until such time as a scheme to treat and remove suspended solids from surface water run-off during construction works has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.

#### **Reason**

Prevent suspended solids entering the Afon Lwyd, which is currently classified as poor status under the Water Framework Directive (WFD).

**Condition:** Provision must be made to ensure that no polluting discharge from haul roads and disturbed areas enter any watercourse.

**Reason:**

To protect the water environment.

We ask to be consulted on the details submitted for approval to your Authority to discharge these conditions and on any subsequent amendments or alterations.

**Regionally Important Geodiversity Site**

We note that the planning application area abuts and may therefore have an effect on Otter Hole Regionally Important Geodiversity Site (RIGS No. 574). Protection of these assets is the duty of the Local Authority in accordance with advice given in Planning Policy Wales, Technical Advice Note 5, Nature Conservation and Planning, 2009 (TAN5). We are able to provide basic information on the geological interest of the site if required.

**Flood Risk Management and Ordinary Watercourse**

There appears to be a number of ordinary watercourses within the application site boundary, some of which are either culverted or follow underground routes through the site. Consent is required for both temporary and permanent works in-channel from Torfaen County Borough Council, as the Lead Local Flood Authority. Torfaen County Borough Council will also be responsible for approving any alterations to these watercourses under the Land Drainage Act.

These requirements should be discussed with your Local Authority Drainage Department.

The responsibility for general maintenance of the river and its banks rests with the riparian owner. The applicant should be aware of his responsibilities to ensure that the operations do not interfere with riparian owners common law rights to receive water undiminished in quantity or quality. If any watercourses crossing the site are interrupted or diverted, then notwithstanding the need for any statutory consents or licences, it is the applicant's responsibility to take appropriate steps to protect the rights of the riparian owners, for which he has a liability.

**Restoration Proposals**

We would ask to be consulted on any restoration proposals for the development site and any affected land; providing us with an opportunity to advise on landscape matters.

**NRW Remit**

The applicant should be advised that, in addition to planning permission, it is their responsibility to ensure that they secure all other permits/licences/consents relevant to their development.

If the applicant requires guidance on matters within our remit then this can be found on our website at [www.naturalresourceswales.gov.uk](http://www.naturalresourceswales.gov.uk). Here we provide guidance on environmental planning and regulatory issues, which includes topics on foul drainage, pollution prevention, waste management including the need for an exemption or environmental permit, mining waste operations, biodiversity, invasive species and protected species.

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

Yn gywir / Yours faithfully

**Annabelle Evans**

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**Ein diben yw sicrhau bod adnoddau naturiol Cymru yn cael eu cynnal, eu gwella a'u defnyddio yn gynaliadwy, yn awr ac yn y dyfodol.**

**Our purpose is to ensure that the natural resources of Wales are sustainably maintained, enhanced and used, now and in the future.**