

PLANNING COMMITTEE	DATE: 05/11/2018
REPORT OF THE SENIOR PLANNING AND PUBLIC PROTECTION SERVICE MANAGER	CAERNARFON

**Number: 2**

**Application Number: C17/1086/11/LL**

**Registration Date: 10/11/2017**

**Application Type: Full - Planning**

**Community: Bangor**

**Ward: Garth**

**Proposal: Application under Section 73 to vary condition 2 on planning permission C15/1081/11/LL to extend the timescale to complete the development in accordance with the application plans (submission of further information to support a variation of condition 3, cut and fill operations)**

**Location: Former Dickies Boatyard, Beach Road, Bangor, Gwynedd, LL57 2SZ**

**Summary of the Recommendation: TO APPROVE SUBJECT TO A REVISED SCHEDULE OF CONDITIONS**

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**1. Additional Information:**

- 1.1 This application was deferred consideration by the planning committee on 19<sup>th</sup> March 2018 so that issues concerning the treatment and management of Japanese Knotweed may be investigated fully prior to the commencement of further works for the installation of the rip-rap rock armour material. The committee requested re-assurance that the measures to control and/or manage strands of Japanese Knotweed documented within several areas of the site is dealt with properly and that any chemical treatment of the plant does not have an impact on the Menai Straits mussel beds. It was further requested that conditions be amended to restrict any operations on Saturdays and that the treatment programme be certified by an independent knotweed treatment specialist to ensure that the plant has been destroyed prior to the commencement of any further works.
- 1.2 Additional information has been submitted to address the concerns of the planning committee on environmental issues associated with the potential spread of invasive species but also to re-evaluate the conditions imposed on the grant of permission to allow for a longer implementation period for the development in order to secure an effective option for the treatment of Japanese Knotweed. There have been several reports produced by Knotweed specialists which have been the subject of re-consultation with Gwynedd Biodiversity, NRW and Gwynedd Public Protection. A report produced by Knotweed specialists in May 2018 outlined the preferred option for the contaminated ground to be dug up and screened. This method would have reduced the amount of waste transported to a licenced landfill site, using plant machinery to screen and segregate the material to remove the Japanese Knotweed.
- 1.3 However, in response to consultation with NRW and Gwynedd Public Protection, a revised strategy has been submitted, which is based upon the preferred treatment hierarchy in Welsh Government guidance and preference for in-situ treatment over a number of growing seasons using an approved herbicide. The submission received in October 2018 proposes a treatment strategy based upon two application visits undertaken over three specific stages of treatment and monitoring during 2018 – 2019 with further provision that the programme will need to be repeated until the Japanese knotweed is completely none viable and the infestation is assessed and can be signed off.
- 1.4 The site has already been subject to preparatory works to strip back the slate cap in order to expose and document the Japanese Knotweed which was undertaken within a four day period in May this year.

**Description:**

- 1.5 The site is located the within the settlement of Garth, immediately south of Bangor Pier. The application site itself comprises of previously reclaimed land on the Port Penrhyn foreshore, forming part of a larger brownfield site having a historic industrial/commercial use. Planning permission for the erection of 72 residential units and associated works has been implemented on adjoining land which was previously used as a boat yard.
- 1.6 Planning application C15/1081/11/LL was granted subject to conditions on the 20<sup>th</sup> December 2016 for the import of inert soils, slate waste aggregate and rip-rap material on the eastern extent of the former Dickies Boatyard in order to raise ground levels and prepare the site for the next phase of development. The committee report on planning application C15/1081/11/LL makes a full assessment of the development proposal in accordance with national and local planning policy requirements and all other material

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planning considerations including; the principle of the development, visual amenities, residential amenities, traffic and access, biodiversity, pollution control & land contamination, flood risk, sustainability, the economy & response to public consultation. With respect to this application, the assessment of all relevant planning issues in accordance with national and local planning policy requirements will be considered within the context of the development proposed, to extend the timescale for the completion of the development and construction of rip-rap or sea defence rock armour in accordance with the application plans of C15/1081/11/LL.

- 1.7 The site has been used as a builder's compound and temporary repository for material derived from excavation works associated with the Phase 1 residential development. Works have commenced on site to achieve the maximum cap level of 6.98m AOD, enabling the developer to submit an application to Natural Resources Wales to remove the site from the C2 flood risk designation on the development advice maps of TAN 15 (*Development and Flood Risk*). Therefore, the extent of the landraise operation undertaken thus far is proportionate to footprint of materials previously deposited above the mean high water mark. Works to develop the site beyond the mean high water mark into the foreshore in accordance with the currently approved plans will require the import of larger rock armour material to construct the site embankments and retaining wall. In addition, the engineering solution for the placement of rip-rap will require cut and fill operations within the extent of the existing planning permission in order to ensure that the rip-rap is founded on good bearing strata. Revised plans indicate that the operation will require 506m<sup>3</sup> volume of cut and 386m<sup>3</sup> volume of fill deposited on the seaward side of mean high water resulting in the loss of approximately 818m<sup>2</sup> of intertidal habitat within an overall area of 1,400 square metres of other intertidal habitats dominated by deposited materials. The excavations within the foreshore will result in the lowering of this part of the development site by 1.5m. However, as confirmed in the assessment of development proposals previously granted under application ref. C15/1081/11/LL, the actual extent of intertidal mud lost amounts to 380m<sup>2</sup>.
- 1.8 Whilst the application to remove the site from the C2 flood risk designation has been successful, condition '2' imposed on the grant of permission restricts the timescale for implementation of works to a period of nine months from the notification of commencement on 4<sup>th</sup> April 2017. A new Marine Licence has been secured and the applicant therefore seeks an extension of timescale imposed under condition 2 to complete the development in accordance with the approved plans and enable the placement of rip-rap. However, it is confirmed in the amended plans received with the application that the entire operation involving cut and fill and the placement of rip-rap rock armour may be carried out from the footprint of the existing promontory using a long-reach excavator, without the need for plant and machinery to gain access onto the adjoining foreshore.
- 1.9 In addition to the application under Section 73 to amend condition '2', an application to discharge conditions 5, 13 & 21 on planning permission C15/1081/11/LL, has been discussed in the relevant sections of this report which simply requires the submission of additional information for the approval of the local planning authority to ensure details of biodiversity enhancement are incorporated into the scheme design and the need for water sampling, ecological monitoring and any mitigation applied in the interests of protected species.
- 1.10 The development proposed under C15/1081/11/LL did not fall within the description and criteria set out in Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016, but did fall within paragraphs 10(m)

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coastal work & 11(b) other operations (waste disposal) to Schedule 2 of the Regulations. Also, the site is located within 320m of the Traeth Lafan SPA & Traeth Lafan SSSI but also within 300m of the Menai Strait and Bae Conwy SAC. The screening opinion assessed the proposal in accordance with the development criteria under Schedule 3, and concluded that the likely impact of the development on the environment is insufficient to justify the submission of an environmental impact assessment with the planning application.

1.11 The current proposal has been assessed in accordance with the description of development and the applicable thresholds and criteria under paragraph (13) (b) to Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (*any change to or extension of development ..... where that development is already authorised, executed or in the process of being executed*). The implementation of the remainder of the development in accordance with the approved plans (*rip-rap construction & cut and fill operations*) will trigger the applicable thresholds of 'all development' for coastal work under paragraph 10(m) to Schedule 2. However, with respect to the applicable criteria in column 2(b) of paragraph 13; "*in such case the development as changed or extended may have significant adverse effects on the environment*", it is not considered that the proposal under S.73 to amend conditions 2 & 3 on planning permission C15/1081/11/LL, to include cut and fill operations within the extent of the existing planning permission and extend the timescale to for the placement of rip-rap rock armour in accordance with the application plans, will include for the development of any additional land nor will it introduce any significant changes or additional environmental issues not previously assessed in the authority's screening opinion issued in January 2016.

1.12 It is not considered that the application under S.73 to amend condition 2 will cause any additional indirect impacts on European environmental designations previously considered as part of the HRA for application C15/1081/11/LL, in accordance with Regulation 61 of the Habitats and Species Regulations 2010.

## **2. Relevant Policies:**

2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 2.1.2 of Planning Policy Wales emphasise that planning decisions should be in accordance with the Development Plan, unless material considerations indicate otherwise. Planning considerations include National Planning Policy, the Anglesey and Gwynedd Joint Local Development Plan 2011 - 2016.

2.2 Under the Wellbeing of Future Generations (Wales) Act 2015 the Council not only have a duty to carry out sustainable development, but must also take reasonable steps in exercising its functions to meet its sustainable development (or wellbeing) objectives. This report has been prepared in consideration of the Council's duty and the "sustainable development principle", as set out in the 2015 Act, and in making the recommendation the Council have sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

## **2.3 Anglesey and Gwynedd Joint Local Development Plan 2011 – 2026**

Strategic Policy PS 5: Sustainable Development

Strategic Policy PS 6: Alleviating and Adapting to the Effects of Climate Change

Strategic Policy PS 13: Providing Opportunity for a Flourishing Economy

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Strategic Policy PS 19: Conserving and Where Appropriate Enhancing the Natural Environment

POLICY AMG 3: Protecting and Enhancing Features and Qualities that are distinctive to the Local Landscape Character

POLICY AMG 4: Coastal Protection

POLICY AMG 5: Local Biodiversity Conservation

POLICY AMG 6: Protecting Sites of Regional or Local Significance

POLICY AT 1: Conservation Areas, World Heritage Sites and Registered Historic Landscapes, Parks and Gardens

POLICY ARNA 1: Coastal Change Management Area

POLICY CYF 7: Regeneration Sites

POLICY PCYFF 1: Development Boundaries

POLICY PCYFF 2: Development Criteria

POLICY PCYFF 3: Design and Place Shaping

POLICY TRA 4: Managing Transport impacts

## 2.5 National Policies & Guidance:

- Welsh Government Well-being of Future Generations Act (Wales) 2015,
- Policies, guidance and general principles set out in the Welsh Government Planning Policy Wales Edition 9, (November 2016),
- Welsh Government publication, The Control of Japanese Knotweed in Construction and Landscape Contracts,
- Policies, guidance and general principles set out in the Welsh Government Technical Advice Note (Wales) TAN 5: Nature Conservation and Planning (September 2009),
- Policies, guidance and general principles set out in the Welsh Government Technical Advice Note (Wales) TAN 11: Noise (October 1997)
- Policies, guidance and general principles set out in the Welsh Government Technical Advice Note (Wales) TAN 15: Development and Flood Risk (July 2004),
- Policies, guidance and general principles set out in the Welsh Government Technical Advice Note (Wales) TAN 18: Transport (March 2007)
- Policies, guidance and general principles set out in the Welsh Government Minerals Technical Advice Note (Wales) TAN 23: Economic Development (February 2014)
- West of Wales Shoreline Management Plan November 2011

## 3. Relevant Planning History:

- 3.1 Planning Application Ref. C09A/0410/11/LL – Demolish the existing buildings on the Dickies Boatyard site, creation of roundabout and a new vehicular access from Beach Road via Medway Road to the site, creation of footpath from the site to Garth Road and erection of 72 living units – approved 06/01/2012.
- 3.2 Planning Application ref. C12/1141/11/LL to vary condition 2 on planning approval C09A/0410/11/LL relating to finished floor levels of plots 1 to 38 and reduction of ridge heights – approved 26/11/2012.
- 3.3 Planning Application Ref. C14/1072/11/LL – Application to import inert materials in order to raise existing land levels – withdrawn 25/06/2015.
- 3.4 Planning Application Ref. C15/1081/11/LL – Re-submission of a previous application to import inert materials in order to raise existing ground levels – approved 20/12/2016.
- 3.5 Planning Application Ref. C18/0084/11/LL – Full application for engineering operations, including cut and fill, to deliver an extended rip-rap embankment on the

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northern development parcel of Phase II, in addition to further works to reinforce the old sheet piling around the dock wall – Registered Application dated 23/01/2018 awaiting decision.

- 3.6** Planning Application Ref. C18/0238/11/LL – Redevelopment of site to provide 55 residential units, together with the creation of a new vehicular access, estate roads and associated paths, parking spaces and landscaping – Registered Application dated 11/05/2018 awaiting decision.

#### **4. Consultations:**

Bangor City Council:

- Objection on the grounds that the problem of Knotweed brought onto the site has become established and worsened since the site has been worked upon. No further development of the site should take place until this problem has been treated, totally eradicated and certified by specialists in this field,
- Grave concerns that the land in question may be heavily contaminated, including heavy metals, asbestos, and possibly medical waste, thus leading to concerns about disturbance of these and pollution affecting the Menai Straits and mussel beds. The Council considers the Environmental samples to be too few and inadequate in respect of a reasonable assessment of the site and would urge a more extensive survey of the site.

Bangor Civic Society:

Object to the proposal on the grounds of site stability and land contamination, accurate bird counts & bat foraging areas, breeding birds & measures required to fully eradicate Japanese Knotweed. Requirement to delay works until all outstanding issues are addressed.

Gwynedd Public Rights of Way:

No Response

Gwynedd Highways & Transportation Unit:

Do not propose to make a recommendation as the development is not considered to have an adverse effect on any highway, or proposed highway.

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Gwynedd Public Protection:

- No objection although obviously, any extension of time to complete the development will extend the impact on local residents,
- Ensure that conditions are imposed on working hours and to control the effects of noise, dust and to prevent pollution of the environment including the need for water sampling. Need to revise the noise condition for temporary works to 67db for 4 weeks only in any 6-month period,
- Note that water sampling as per requirement of conditions attached to planning permission C15/1081/11/LL is retrospective, although the sampling programme conforms to the requirements of the Construction Environment Management Plan,
- Results of the water sampling programme indicates that there is no evidence of leachate from the site polluting the marine environment,
- Request that the water sampling programme continues and that the sampling methodology be revised and improved to address any anomalies documented in the results,
- Preparatory works and methodology applied to strip back areas of the slate cap in order to expose the Japanese Knotweed growth meets with the approval of the department,
- Concern with a treatment method and environmental risk assessment involving the screening of material using plant machinery, given the results of the ground investigation study undertaken by Tier Environmental Ltd on the original application, C15/1081/11/LL and the potential migration of fugitive particles. The general consensus of opinion is that the excavation of Knotweed and disposal to landfill is the least favoured treatment option available and on-site treatment is therefore preferred where reasonably practicable,
- Treatment using herbicides not effective during the dormant winter phase including September/October. The treatment should be applied at least on two occasions over a growing season to be effective. Whilst spraying the Knotweed now may have an impact on next years' growing phase, such a methodology may not be considered to be a full treatment for this season,
- The approved scheme and timetable for the eradication of Japanese Knotweed referred to in the revised Knotweed Treatment Plan, shall be implemented in full and a validation report confirming the remediation treatment carried out and that the site is free of Knotweed shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme requires the contractor to continue to inspect land for any regrowth for a period of 10 years. Japanese Knotweed can be far more extensive than the visible parts on the surface and the underground parts of the plant may extend laterally up to 7 metres beyond this.

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Therefore, this survey must also note any knotweed adjoining the site.

- The use of tracked machinery on-site should be limited as much as possible until the Japanese knotweed-infested areas have been cleared or cordoned off. If tracked machinery must be used in infested zones, a geotextile overlain with hardcore must be used as a base for vehicles to travel on. In addition a visual and wheel wash method of exiting site should be employed in these instances.

Gwynedd Council Flood  
Risk Management and  
Coastal Erosion:

No Response

Natural Resources Wales:

- Site located in close proximity to the Menai Strait and Conwy Special area of Conservation (SAC), the Lavan Sands, Conwy Bay Special Protection Area (SPA) and Lavan Sands Site of Special Scientific Interest. Proposed works including the rip rap construction and knotweed treatment programme will constitute a source of disturbance to the high tide wintering, wading bird roost at the site during sensitive periods.
- No objection subject to the following conditions imposed on any grant of planning permission to address the concerns of NRW;
  - **Condition 1** –The applicants must ensure during the period of 1st September and 31st March that any works with the potential to disturb or displace roosting birds cease 1 ½ hours prior to high tide and does not recommence until 1 ½ hours after high tide.
  - **Condition 2** – The applicants must produce and implement a works timetable detailing the daily restricted work periods around high tide as specified in the above condition.
- If the amended plans constitute a significant change to the development already approved, it is recommended that the Construction Environment Management Plan be reviewed to ensure that appropriate mitigation measures are applied,
- In addition to the above conditions, NRW issue the following advice for the developer on the proposed knotweed treatment programme;
  - Dish bund identified as the source of knotweed. However, further information requested on the results of trial pits from the exploratory works recently undertaken on site to confirm this,
  - Recommend that wherever possible, knotweed should be treated in its original location as opposed to the proposed dig and screen method with contaminated material being removed off-site to a licenced landfill. Strategy will not



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- guarantee that all of the rhizome system will be removed by processing the material through a 10mm screen,
- Best practice to treat Japanese Knotweed prior to removing it off site. However, a suitable herbicide should be considered as material containing knotweed which has been treated with certain herbicides, may be classified as hazardous waste and in such cases, the Hazardous Waste Regulations 2005 (HWR 2005) would therefore apply,
  - Short-term treatment methodology is not recommended as an effective long-term management solution for the Dickies site,
  - Detailed biosecurity protocol required to ensure how the spread of Knotweed will be minimised from the movement of machinery,
  - Japanese Knotweed plant material and/ or any knotweed contaminated soil which is discarded, intended to discard or are required to discharge is likely to be classified as 'controlled waste'. As such it must be disposed of safely at a licensed landfill site according to the Environmental Protection Act (Duty of Care) Regulations 1990.
  - The use of mechanical treatment to 'screen' the excavated material into clean, uncontaminated waste is constituted as 'waste treatment' and falls within the Environmental Permitting Regulations 2016.
- NRW welcome that the Knotweed will now be treated in-situ in line with their code of practice and in accordance with the applicant's statement which further confirms that the application of herbicide will be based on a minimum of two applications per annum for an anticipated period of two years,
  - Any further development should not proceed until it has been deemed that the Knotweed has been fully eradicated.

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Gwynedd Biodiversity:

- No objection nor ecological concerns to the extension of the time to complete the development, as long as the ecological features are monitored and measures are taken to avoid impact to wading birds such as red shank, greenshank and oystercatchers which roost on the southern edge of the development site; and in the breeding season rock pipits, which nest within the boulders around the site. Records and a report must be provided to demonstrate what measures have been taken, such as restricted hours of works, 1.5 hours before & after high tide between September and March to avoid disturbance to waders,
- Given that the proposed changes (sequence of works and cut & fill operations) will be contained within the red line boundary, it is not considered that the excavation of material from the foreshore will change the conclusions of the Habitats Regulations Assessment undertaken with the original application. No change in the loss of land & habitat. Possibility that the removal of vegetation and deposit of slate waste provides a more attractive roosting habitat for wintering birds,
- Concerns as to any proposals for the screening of slate & imported materials to remove Japanese Knotweed including, given the potential release of contaminated materials in the screening process,
- No objections to a strategy based upon herbicide treatment subject to photographic documentation & monitoring. Apply herbicide in discrete locations directly onto the leaves of the plant in order to minimise the use of thereof in the interests controlling any possible impacts on the receiving environment. Several application of weed killer required over a number of years to eradicate Japanese Knotweed,
- Buddleia an invasive non-native species also requires control.

Menai Straits Fishery Order  
Association:

Concern whether the risk of pollutants being released from the site will increase as a consequence of changes in the construction sequence. The eastern Menai Strait is a designated European Shellfish Water and largest shellfish farming area in the UK. Stress the importance of monitoring the site and adjacent environment to ensure that no pollution incidents arise.

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RSPB Cymru:

- Observations received on the previous grant of permission still valid. Conditions will be necessary to safeguard the high tide bird roost as part of the network of wader roosts associated with the Traeth Lafan Special Protection Area (SPA),
- Adequate ornithological surveys and assessment provided in support of the application and the RSPB concur with the opinion that disturbance to the high tide roost can be avoided through the implementation of timing restrictions,
- It is considered that the recommendations of the winter bird survey report be amended to include September in order to address the presence of Autumn passage birds, therefore extending the sensitivity period for roosting birds between September and March inclusive. Recommend that the three hour restriction of working during high tide should be applied as follows: 1½ hours before and after high tide to tally with the recommended no work period of 3 hours encompassing high tide,
- Require that Section 4.4 of the Construction Environment Management Plan (CEMP) be amended to address the protocol for roosting birds to mirror the clear and specific mitigation measures outlined in the Winter Bird Survey Report.

Crown Estate:

No Response

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Public Consultation:

A site notice was placed at three locations close to the site on the 16<sup>th</sup> November 2017 with neighbouring residents informed by letter as well as a notice appearing in the Caernarfon & Denbigh Herald on the 29<sup>th</sup> November 2017. Twenty Five letters of objection have been received in response to statutory publicity on the application which highlight the following concerns;

Grounds for objection:

- Ingress of water through the site
- Concern about compliance with conditions imposed to protect residential amenity (wheelwash & dust suppression)
- Compliance with planning conditions requiring a scheme of water sampling
- Continued disturbance & health impact associated with operational development
- Grant of permission for an extension of time does not set a precedent for any future applications
- Piecemeal approach to the development and that the rip-rap should have been placed in advance of the landraise operation
- Requirement to submit measures for habitat enhancement under the terms of planning condition
- Impact of proposal on local bat habitat
- Traffic impacts & frequency of haulage vehicles
- Suitability of existing access from Beach Road
- Need to address the requirements of condition 21 for any works below the mean high water mark
- Historic tipping issues with made-up ground within a flood zone containing potential pollutants
- Land contamination issues and the risk to human health receptors but also shellfish waters. Danger of leachate washing into the marine environment because of extra weight of development on land
- Presence of non-native invasive plant species including Japanese Knotweed and the requirement for a full and effective programme for its eradication may be compromised by the placement of rip-rap
- Impacts of run-off on European SAC designation but also, direct impact of rip-rap on local biodiversity habitats, species and bird feeding areas
- Seasonal impacts on wildlife, particularly high tide roosting habitat of wintering birds and large populations of Dunlin & Redshank
- Proximity of Welsh Water pumping station & apparatus
- Visual impact of rip-rap on the character of nearby heritage assets & listed buildings/structures
- Site important for the perception of Bangor & its relationship with the Menai Straits
- Noise, vibration & disturbance
- Timescale required for effective treatment of Japanese Knotweed

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- Monitoring of noise & vibration caused to adjacent property
- Consideration of alternatives in respect of the decaying sheet piling
- Noise in excess of 65DbA does not conform with the relevant BS standards

In addition to the above, the following representations were not considered valid planning objections:

- Validity of the Geotechnical report & scale of sampling carried out with the original application C15/1081/11/LL
- Possible impacts of possible future residential development of the site, e.g. piling for foundations
- Lack of confidence in the applicant
- Rip-rap maintenance issues & responsibility for the site
- Route of vehicles using the county highway infrastructure to access the site
- Possible detrimental impact of the development proposals on the UNESCO World Heritage Site Bid, 'Slate Industry of North Wales'
- Flooding risk & impact of rip-rap on altered or increased water displacement and erosion, impacting on Glandwr Terrace & Greenbank
- Issue of mortgage lenders' requirements with respect to the presence of Japanese Knotweed
- NRW Marine Licence required in advance of planning permission
- Project to be suspended so that an independent review on the suitability of the site for further development including residential use may be conducted
- Suitability of the site for residential use with regard to the requirements of TAN15 (Development and Flood Risk)
- Conclusions of the 2017-18 wintering bird surveys inconclusive, i.e. November to March inclusive
- No details of access track onto the foreshore
- Prolonged period of disturbance, 4 – 5 weeks
- Subsidence attributed to deep excavations
- Property baseline survey before work commences & the developer to have risk insurance to cover repairs
- Vibration caused by piling operations to replace the existing sheeting around the dock wall

#### **Assessment of the material planning considerations:**

##### **The principle of the development**

- 5.1** The site has been used as a builder's compound and temporary repository for material derived from excavation works associated with the Phase 1 residential development at Hirael Bay. The planning permission to raise the level of the land has been implemented up to the maximum cap level of 6.98m AOD, enabling the developer to submit a successful application to Natural Resources Wales to remove the site from the C2 flood risk designation on the development advice maps of TAN 15 (Development and Flood Risk).

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- 5.2 The area known as Hirael Bay had previously been designated as a redevelopment site under policy C5 of the Unitary Development Plan which identified redevelopment sites on the proposals map as those in key locations within or near centres and villages that may provide opportunities for a variety of uses and make effective use of previously developed land or land not being used to its full potential.
- 5.3 Following the adoption of the Anglesey and Gwynedd Joint Local Development Plan, the area which is the subject of this application no longer features as a specific redevelopment designation on the development plan proposals map, rather the whole site is contained within the development boundary for Bangor and subject to Policy PCYFF 1 which states; “ .... *proposals within Development Boundaries will be approved in accordance with other policies and proposals of this plan, national planning policies and other material considerations*”.
- 5.4 Also, paragraph 4.9 of Planning Policy Wales, ‘*preference for the re-use of land*’ states that; ‘many previously developed sites in built-up areas may be considered suitable for development because their re-use will promote sustainability objectives, including sites:
- *In and around existing settlements where there is vacant or under-used land, commercial property or housing;*
  - *In suburban areas close to public transport nodes which might support more intensive use for housing or mixed use;*
  - *Which secure land for urban extensions, and;*
  - *Which facilitate the regeneration of existing communities*’.
- 5.5 However, any future development proposals for this site would be the subject of a separate planning application assessed on its own merits. The principle issue with this application is the assessment of the development proposals and material planning considerations of an application to complete the development in accordance with the approved plans in site preparation works, prior to the submission of a further application for development.
- 5.6 In consideration of the above, the landraise operation has been successful in raising the level of land above the C2 Flood Plain to provide a landform better suited to development. Subject to the consideration of all other material planning considerations including Traffic Impact, Nature Conservation, Amenity, Sustainability, Pollution Control and Flooding, it is considered that the development in principle complies with National and Regional Planning Policy and Guidance as well as the requirements of Policy PCYFF 1 of the Anglesey and Gwynedd Joint Local Development Plan 2011 - 2016.

### **Visual Amenities**

- 5.7 The application site is not subject to any statutory or local landscape constraints but is located approximately 100m south-west of the Ogwen Valley Landscape of Outstanding Historic Interest. The boundary of the Porth Penrhyn / Penrhyn Caste Historic Park and Garden ‘GD40’, is located 385m due east with Bangor Pier, Grade 2\* listed structure, located 240m due north. The Anglesey AONB lies approximately 1,400m due north.
- 5.8 The LANDMAP methodology establishes a systematic method for recording and retrieving information about specific landscape qualities. Historic & Cultural Landscapes are recognised as outstanding features in landscape character area ‘1’

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(*Bangor Coastal Plain*) and landscape pattern largely reflects the influence of the Penrhyn Estate but also the large expanse of intertidal sand and mudflats at Traeth Lafan. Amongst other key issues, the strategy recognises the importance of the Register of Landscapes of Outstanding Historic Interest in Wales and the relationship of the landscape character area with the Anglesey AONB, taking into account the historic and cultural significance of these areas, nature conservation objectives and habitat management.

- 5.9** The assessment of visual impacts reported on the original application concluded that the degree of change in terms of visual impact will be a slight to moderate increase in land levels but for the most part, the uniform embankment of field boulders and rip-rap material around the periphery of the site will be the most prominent feature of the development. However, the placement of rip-rap or rock armour as a means of sea defence is a common feature of several coastal settlements and it is not considered therefore that the provision of such in accordance with the approved plans will look out of place in this setting. The groundworks using plant machinery for cut and fill operations and the placement of rip-rap rock armour will be a temporary intrusion for a relatively short timescale.
- 5.10** Conditions attached to minerals and waste permissions typically include for restoration and afteruse proposals which focus upon the creation of areas for nature conservation interest. As previously stated, the principal purpose of the development is to raise the level of a brownfield site above the C2 Flood Plain in order to provide a platform better suited to development. However, should a situation arise that an application for further development would not be forthcoming, the authority would need re-assurance that the site may be restored to a beneficial afteruse. It would be reasonable therefore to maintain a condition on the permission to ensure that the site be restored to nature conservation interests within a given timescale unless a further application to develop the site is submitted.
- 5.11** In response to consultation on the original application, CADW confirmed that they would not wish to submit any comments as there are no scheduled monuments or registered parks and gardens within the vicinity that would be affected by the proposed development. Given the scale and complexity of the works required to complete the development in accordance with the approved plans, it is not considered feasible to undertake an assessment of any direct or indirect (physical & non-physical) impacts of the development on the surrounding historic landscape (ASIDOHL). In terms of landscape and visual impact it is not considered that the proposal will impact on coastal features, habitats and character, including the setting of the Menai Straits and Anglesey AONB nor the Porth Penrhyn Historic Park and Garden.
- 5.12** It is considered that subject to appropriate restoration conditions, the development therefore complies with the requirements of Policy PCYFF 3, AMG 3 & AT 1 of the Joint Local Development Plan (*design and place shaping, protecting and enhancing features and qualities that are distinctive to the local landscape character and, preserving and enhancing heritage assets such as Historic Landscapes*).

#### **General and residential amenities**

- 5.13** Condition 2 restricts the timescale for implementing the permission to a period of nine months from the notification of commencement (4th April 2017) and in view of this timescale, the applicant seeks an extension of time in order to complete the cut and fill operations and the placement of rip-rap or rock armour stone around the promontory in accordance with the application plans. A further 7,500 tonnes of riprap armour stone

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is required to construct the site embankments up to the maximum cap level of 6.98m AOD which has already achieved on the greater part of the site. An extension of time should also take account of the time period required for the treatment and management of Japanese Knotweed.

- 5.14** The scheme of works involving the import of inert materials in landraise operations was implemented between April and June 2017. This involved a temporary increase in traffic movements along Beach Road involving the transport of 16,845 tonnes of material, typically 25 x 20-tonne loads carrying approximately 500 tonnes per day. In terms of the impact on residential amenities, it remains that the main issues associated with the development is the potential for noise, vibration and dust derived from haulage and engineering operations associated with the reception and use of rock armour for the reclamation of land below the mean high water mark.
- 5.15** In response to statutory publicity on the application, the authority has received a number of objections from local residents concerning compliance with conditions imposed on the original grant of permission to protect residential amenity. The inherent nature of crushed slate waste aggregate used in landraise operations and dry weather conditions encountered at the time the project was implemented, may well have given rise to instances of fugitive dust migration, although it is understood that a wheelwash was used during the latter stages of development. Given the nature and duration of the contract required for the shoreline embankment construction, the impacts of noise, dust, & transport will be proportional to the area of the application. However, there are restrictions dictated by the tide, the terms of the marine licence and mitigation for roosting birds affecting the progress of operations and it is likely therefore that the raised plateau of the Phase 2 land may be required for the temporary storage of materials during the contract period. The applicant anticipates that the duration of works will span over 14 weeks, and that the requirements of the scheme will require a continued supply of 150 tonnes of stone per day, transported to the site on articulated vehicles carrying a 30-tonne payload.
- 5.16** Notwithstanding, it is considered that the cut and fill operations and the import of 7,500 tonnes of rip-rap armour stone may be achieved relatively quickly and any impacts would therefore be short-lived and may be further controlled by planning conditions and the following itinerary of mitigation proposed in the Construction Environment Management Plan submitted with the original application;
- Operator to keep a complaints log to me made available for inspection by the local authority,
  - Working hours;
    - 8.00am – 5.00pm Monday to Friday,
    - 8.00am – 1.00pm on a Saturday.
  - Control measures for the mitigation of fugitive dust, noise levels, vapour & vibration in accordance with existing planning conditions, having regard to off-site receptors. Dust control measures shall include;
    - Sealing of stockpiles by rolling or other means to reduce the potential for the migration of fugitive dust,
    - Dampening down of stockpiles,
    - Regular use of water bowsers and sprays during dry weather,
    - Street sweepers deployed to sweep road surfaces & wheelwash facility on site,
- 5.17** The site is contained within the Bangor development boundary which is subject to Policy PCYFF 1 of the Môn and Gwynedd Joint Local Development Plan. In consideration of the nature of the embankment construction and placement of rip-rap armour stone, the impacts of noise, dust, vibration, working hours and haulage are



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considered a temporary intrusion on the amenities of local residents which may be controlled via planning conditions. The planning committee, in their meeting on the 19<sup>th</sup> March 2018, requested that conditions be amended to restrict any operations on Saturdays. However, the applicant requests that Saturday working be maintained due the restrictions already imposed by high tide which will reduce the working hours available on this site. Given the relatively short duration of operations involving the placement of rip-rap, the request is reasonable and it is considered therefore that the development conforms to policy PCYFF 2 of the JLDP (*development criteria*).

### **Traffic and Access**

- 5.18** As stated above, a temporary increase in traffic movements will occur along Beach Road involving the transport of an additional 7,500 tonnes of riprap rock armour to the site over a 14-week period, involving up to 5 x 30-tonne payload vehicles or 8 x 20-tonne payload vehicles carrying up to 150 tonnes per day. This would involve less than 1 HGV delivery per hour onto the A5 & Class 1 County Highway which is considerably less than the 25 x 20-tonne restriction as currently imposed by condition. If the cut material is deemed unsuitable as fill, it will be taken off-site in accordance with the principle of return loads, thereby minimising the actual transport movements to and from the site.
- 5.19** The Council's Transportation Unit has no objection to the proposal, but did specify the following recommendations with the original grant of permission which will be retained as conditions for the duration of the development;
- Sufficient arrangements should be put in place for a wheelwash facility on site with further provision for a road sweeper during the haulage period,
  - Sufficient signage to be agreed with the transportation service prior to the import of materials to the site in order to warn road users of heavy plant crossing the highway
- 5.20** The site is not accessible to members of the public and the proposal does not affect the movement of people i.e. does not impact on pedestrian areas, footpaths or rights of way. However, it should be noted that there is a public right of way from Glandwr Road to the Crosville Club which is linked via an estate road through the Phase 1 development which forms part of the Sustrans National Cycle Network. The Construction Environment Management Plan submitted in support of the application confirms the use of appropriate signage as a means of warning other highway users that heavy goods vehicles (HGVs) will be frequenting the site during haulage operations and that close co-operation with the Highway Authority will be secured to ensure safe working practice. The CEMP further states that all site activities are to be contained within the hoarding line and a comprehensive traffic management plan will be implemented to ensure no disruption is caused to traffic or pedestrians on the adjoining roads or walkways. A walkway is also proposed around the headland of the Phase 2 development. It is not considered that the development will affect the integrity of the public right of way and the site has direct access onto the A5 County Highway.
- 5.21** In consideration of highway impacts, the proposal is acceptable in principle in that the development is compliant with Policy TRA 4 of the Gwynedd & Anglesey Joint Local Development Plan. A plan to confirm the location of a temporary wheelwash facility will be the subject of a planning condition.

### **Biodiversity & Habitats Regulations Assessment**

- 5.22** The site forms part of a candidate wildlife site (Porth Penrhyn & Menai – 1632) being an inter-tidal area listed under Section 42 (NERC Act 2006) by Welsh Government as

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a habitat of importance to the biodiversity of Wales (*intertidal mud used by waders in the winter such as oystercatcher, curlew, dunlin & widgeon*) and which supports the Traeth Lafan SPA. The area of intertidal mud lost as a consequence of the proposal is 380 square metres within an overall area of 1,400 square metres of other intertidal habitats dominated by deposited materials. This loss will be permanent, however it is a small proportion of the Porth Penrhyn mud flats and is not considered significant. In mitigation, Gwynedd Biodiversity have outlined specific recommendations covered under planning conditions to limit the disturbance on roosting birds during the construction phase but also the potential for long-term impacts.

- 5.23** There have been a number of ecological studies undertaken on the site dating back to 2013 including a Phase 1 habitat survey, HRA screening, preliminary ecological assessment as well as wintering bird surveys. The reports do not identify any significant populations of bats that may be affected by the development proposals and the issue has not been specifically raised by NRW or Gwynedd Biodiversity. The preliminary ecological assessment submitted with the original application confirms COFNOD records of up to eight bat species within a 2km radius of the site, with the nearest record relating to an unidentified species c. 90m northwest of the site. The report goes on to say that; *“The survey area is considered to be of limited value for roosting bats, with the exception of the recently developed residential area which may provide some roosting opportunities for crevice dwelling species. The sea walls around parts of the boatyard are subject to regular ingress of seawater, and are considered to be entirely unsuitable for roosting purposes. As the proposed development will have no impact on the recently developed land, no adverse impacts on roosting bats are anticipated. At present the mosaic of habitats presence on site is of limited value to foraging bats, and it lacks linear features that are favoured by most species for commuting purposes. The proposed development is therefore considered unlikely to adversely impact upon foraging bats”*.
- 5.24** A wintering bird survey carried out between December 2015 – March 2016 was submitted in support of the original development proposals, which has been updated and includes survey data for January, February and March 2018. A summary of data from the 2009-2014 Wetland Bird Survey (WeBS), provided by the British Trust for Ornithology was used to put the results of the winter bird surveys into context of the ornithological importance of the site and as its relationship in terms of wintering bird species with the Traeth Lafan SPA.
- 5.25** The results of the current wintering bird survey carried out in December 2017 appear consistent with the 2015-16 survey results where two of the qualifying species of the SPA, Oystercatcher and Curlew, were recorded within the site, but in relatively small numbers. Small numbers of great crested grebe were recorded outside of the site but within 150 m of the site boundary. Thus, it is not considered that the proposed development site provides a key habitat resource for any of the three SPA qualifying species. However, in addition to the aforementioned qualifying species, redshank was recorded at the site, representing a relatively high proportion of the SPA population (16.6 - 33.3 %). Therefore, the excavation works to facilitate the construction of sea defences in the form of rip-rap, will result in the displacement of some of the redshank associated with the development site.
- 5.26** The Habitats Regulations Assessment undertaken by Gwynedd Council under regulation 61 of the Habitats and Species Regulations 2010, concluded with the original proposals that, the development would not have a significant impact on the Traeth Lafan SPA. The proposed changes (sequence of works and cut & fill operations) will be contained within the red line boundary and Gwynedd Biodiversity therefore do not

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consider that the excavation of material from the foreshore will change the conclusions of the Habitats Regulations Assessment undertaken with the original application given that there will be no change in the loss of land & habitat. However, evidence gathered appears to indicate that the removal of vegetation and deposit of slate waste provides a more attractive roosting habitat for wintering birds. In response to consultation, Natural Resources Wales agreed with the assessment stating that the measures proposed in the application to be sufficient to ensure that significant effects on the Traeth Lafan SPA and qualifying species of Oystercatcher will be unlikely.

- 5.27** In addition, it is not considered that the proposal, alone or in combination with other plans or projects will have an adverse impact on qualifying features of the Menai Strait and Conwy Bay SAC, (*mudflats and sandflats not covered by seawater at low tide & large shallow inlets and bays*) which is located 320 metres from the application site. However because the designated features of the Traeth Lafan SPA & SSS1 are birds which are mobile, any impact to birds must be considered.
- 5.28** Measures have been incorporated into the development proposal to promote biodiversity including the submission of details to promote nesting features for rock pipits into the final design of the scheme in accordance with condition 5 of planning permission C15/1081/11/LL. Application No. C17/1203/11/AC formally discharged the requirements of condition 5 but in addition, the same submission confirmed the itinerary of measures to comply with ecological monitoring in accordance with condition 21.
- 5.29** Works undertaken thus far have been contained to the footprint of materials previously deposited above the mean high water mark. The material is highly compacted following the use of the Phase 2 land as a contractor's compound and the ecological report submitted in accordance with the requirements of condition 21 states that there was no evidence of nesting birds or reptiles given the nature of the ground lacking features for shelter or hibernation. Therefore, with respect to the works already implemented on site, the ecological report and site survey inspections undertaken on the 29th March, 4th April and 18th April 2017 demonstrate compliance with the requirements of condition 21. However, there remains a requirement to maintain ecological monitoring for the duration of the development and in particular the issue of roosting waders.
- 5.30** The outstanding and most ecologically sensitive element of the scheme is the placement of 'rip-rap' along the foreshore together with cut and fill operations to prepare a bearing strata for the rock armour. In response to consultation, Gwynedd Council's Biodiversity unit confirmed that they had no objection nor any ecological concerns to the extension of the time applied for to complete the development, as long as the ecological features are monitored and measures are taken to avoid impact to wading birds such as redshank, greenshank and oystercatchers which roost on the southern edge of the development site; and in the breeding season, rock pipits which nest within the boulders around the site. NRW have no further comments to make on the current proposals but agree with Gwynedd Biodiversity with respect to the continued functioning of the winter, wading bird high tide roost.
- 5.31** The RSPB have provided comment in response to consultation on a further application to extent the rip-rap on the eastern extent of the site. However, their comments and observations received on the previous grant of permission nonetheless remain valid. The RSPB state that conditions will be necessary to safeguard the high tide bird roost as part of the network of wader roosts associated with the Traeth Lafan Special Protection Area (SPA),

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- 5.32** Adequate ornithological surveys and assessments have been provided in support of the application and the RSPB concur with the opinion that disturbance to the high tide roost can be avoided through the implementation of timing restrictions. However, it is considered that the recommendations of the winter bird survey report be amended to include September in order to address the presence of Autumn passage birds, therefore extending the sensitivity period for roosting birds between September and March inclusive. NRW agree with the RSPB recommendation that the three hour restriction of working during high tide should be applied as follows: 1½ hours before and after high tide to tally with the recommended no work period of 3 hours encompassing high tide. NRW further require that the applicants produce and implement a works timetable detailing the daily restricted work periods around high tide as specified in the condition.
- 5.33** RSPB further require that Section 4.4 of the Construction Environment Management Plan (CEMP) be amended to address the protocol for roosting birds to mirror the clear and specific mitigation measures outlined in the Winter Bird Survey Report.
- 5.34** Condition 21 will need to be maintained for the duration of the development so that a comprehensive regime of ecological monitoring may be implemented and to demonstrate what measures have been taken to avoid disturbance to waders, including records of timing of works taking place, reference to plans and photographs and weekly monitoring of nesting birds and feeding waders.
- 5.35** It is considered therefore that the development complies with National Planning Policy guidance as well as Policy PS 19, AMG 4, AMG 5 & AMG 6 of the Gwynedd and Anglesey Joint Local Development Plan.

#### **Pollution Control & Land Contamination**

- 5.36** The issue of pollution control and land contamination has been assessed in the original application ref. C15/1081/11/LL, where the Geo-environmental Report and Supplementary Information submitted in support of the proposal confirmed the risk of contamination within the reclaimed forming part of the Phase 2 land. The application has been the subject of full consultation with Natural Resources Wales and Gwynedd Council Public Protection Service. The Geo-environmental appraisal concluded that; the human health risk assessment has shown that the made ground soils at the site contain asbestos, mercury, lead and PAHs at concentrations that may pose a potentially significant risk to human health receptors. As such, The Construction Environment Management Plan proposes a remediation strategy to mitigate for such risks, i.e. a clean cover system to ensure that the deposit is sealed and the migration of wind-blown particles and silt run-off is minimised.
- 5.37** Further assessment of leachable concentrations of potential pollutants contained in the site concluded that; *“When the significant effects of dilution within groundwater and then subsequently the surface water body are considered, it is evident that the reported leachate concentrations will not present a significant risk to controlled waters. This is supported by the results of groundwater and surface water sampling undertaken as part of the Preliminary Site Investigation (report reference: T/14/1380/PSI, dated 20th February 2014) which demonstrated that no groundwater or surface water concentrations were reported in excess of the respective screening criteria protective of controlled waters”*.
- 5.38** The authority has received concerns by the City Council and local residents that the land in question may be heavily contaminated, including heavy metals, asbestos, and possibly medical waste, thus leading to concerns about disturbance of these and

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pollution affecting the Menai Straits and mussel beds. However, the site is not included on the Authority's register of contaminated land but in respect of dealing with potentially unstable or contaminated land paragraph 13.5.1 of Planning Policy Wales states; *"The planning system should guide development to lessen the risk from natural or human-made hazards, including risk from land instability and land contamination. The aim is not to prevent the development of such land, though in some cases that may be the appropriate response. Rather it is to ensure that development is suitable and that the physical constraints on the land, including the anticipated impacts of climate change, are taken into account at all stages of the planning process. However, responsibility for determining the extent and effects of instability or other risk remains that of the developer. It is for the developer to ensure that the land is suitable for the development proposed, as a planning authority does not have a duty of care to landowners"*.

- 5.39** It remains however that pollution control and site management issues need to be addressed and further monitored in the planning conditions in order to minimise the risk of leachate run-off and increased sedimentation having an adverse impacts on local biodiversity, the shellfish industry and the local water environment but also, the wider impacts on SAC & SPA features on account of possible changes to bird feeding areas as well as hydrological links. In response to consultation on the original application, Gwynedd Public Protection recommended that the mitigation measures proposed are subject to control through planning condition and that the applicant implements a scheme of water sampling and analysis to ascertain the presence of pollutants.
- 5.40** The applicant has confirmed that the slate waste used in raising the site levels does not pose a significant risk of harm to human health or the marine environment. However, in response to the request of the local planning authority, the applicant has undertaken a further water sampling analysis in accordance with the requirements of condition 13 of the existing planning permission. The results of surveys are forwarded to Gwynedd Public Protection Service as soon as they are made available. Although no immediate concerns have been highlighted at the time of writing this report, the situation will be kept under observation. Therefore, the results of testing do not formally discharge the requirements of condition in that such a requirement will need to be repeated for the duration of the works contract, and for a period following the completion of the development, to demonstrate compliance with the requirement for environmental monitoring.
- 5.41** Upon inspection of the site, it appears that the existing concrete embankment formed around the historic layer of tipped material is deteriorating with evidence of scouring due to coastal erosion and wave action. It is considered that the placement of sea rock armour material and formation of the site embankments in accordance with the approved plans will help manage the risk of potential leachate from the underlying layers of made ground that have been exposed to prolonged or sustained impacts of wave action and tidal erosion. It is considered therefore that the proposal to extend the timescale to complete the development in accordance with the approved plans addresses the requirements of Policy PCYFF 2 of the Joint Local Development Plan (development criteria).
- 5.42** As with the original decision notice ref. C15/1081/11/LL, there will be a requirement to issue a note to applicant referring to the consultation responses received from Natural Resources Wales and Gwynedd Council Flood Risk Management and Coastal Erosion who should be contacted direct in respect of specific operational controls within their remit and/or any additional consents or licences required prior to the commencement of works. The provisions of the note should be extended to advise the applicant to

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consult with Welsh Water in respect of their apparatus and the position of a sewer alongside the southern boundary of the development site to secure the rights of access afforded under the Water Industry Act 1991.

### **Non-Native Invasive Plant Species**

- 5.43 The application did include an independent, invasive weed management plan which outlined measures to control and/or eradicate strands of Japanese Knotweed documented within several areas of the site. The report confirmed visible knotweed as sporadic individual growth or small clumps of new growth along the eastern boundary of the development site during an inspection in September 2017, where it appeared that clean slate waste had been deposited on top of material used to raise ground levels. In response to the concerns of the planning committee and NRW, the knotweed consultant appointed by the applicant states that based upon evidence gathered during preparatory works, the ‘dish bund’ of recently imported materials is confirmed as being the source of contamination and is clearly separated from the original hardstanding level of the old boatyard.
- 5.44 Additional information has been submitted to address the concerns of the planning committee on environmental issues associated with the potential spread of invasive species but also to re-evaluate the conditions imposed on the grant of permission to allow for a longer implementation period for the development in order to secure an effective option for the treatment of Japanese Knotweed. There have been several reports produced by Knotweed specialists which have been the subject of re-consultation with Gwynedd Biodiversity, NRW and Gwynedd Public Protection. A report produced by Knotweed specialists in May 2018 outlined the preferred option for the contaminated ground to be dug up and screened. This method would have reduced the amount of waste transported to a licenced landfill site, using plant machinery to screen and segregate the material to remove the Japanese Knotweed.
- 5.45 However, in response to the concerns of both NRW and Gwynedd Public Protection, a revised Japanese Knotweed treatment programme has been submitted, which is based upon the preferred treatment hierarchy in Welsh Government guidance; ‘*The Control of Japanese Knotweed (Fallopia japonica) in Construction and Landscape Contracts*’, and preference for in-situ treatment over a number of growing seasons using an approved herbicide. In response to consultation, NRW do not object to the development proposals, subject to the imposition of conditions to ensure that roosting waders are not disturbed during high tides encountered between September and March but in respect of dealing with Japanese Knotweed, a short-term method or a quick fix is not recommended as an effective long-term management solution for the site.
- 5.46 The submission received in October 2018 proposes a treatment strategy based upon two application visits undertaken over three specific stages of treatment and monitoring during 2018 – 2019 with further provision that the programme will need to be repeated until the Japanese knotweed is completely non-viable and the infestation is assessed and can be signed off.
- 5.47 In response to consultation, Gwynedd Public Protection raised concerns as to the effectiveness of a herbicide application during the dormant winter phase where otherwise, full treatment is inclusive of two applications during a growing season. In response, the applicant further states that the treatment programme is based on a minimum of two applications per annum with further inspections required to monitor progress and that the treatment programme is anticipated to take at least two years.

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- 5.48 As previously stated, the responsibility for determining the extent and effects of instability or other risk remains that of the developer. It is for the developer to ensure that the land is suitable for the development proposed, as a planning authority does not have a duty of care to landowners.
- 5.49 It's important to note therefore that the removal or treatment of Japanese Knotweed in itself does not require planning permission or an environmental permit. Provided that a strand of knotweed is sufficiently contained within the boundary of a property to prevent its spread into the wild, prevent nuisance or encroachment onto adjacent property, there is no obligation to remove or treat the infestation. Subject to NRW guidance, its removal may be supervised either by the landowner or specialist contractor. Any regulatory controls under the remit of Natural Resources Wales is restricted to the issue of permits/licenses for the disposal of the knotweed, either by on-site burial or transfer to an appropriately licenced landfill, the burning of knotweed on site or authorisation for the use of a suitable herbicide in close proximity to water. It is an offence under the Wildlife and Countryside Act to plant or cause knotweed to grow in the wild including such actions as strimming, flailing or the dumping of contaminated material. With respect to the strands of knotweed discovered on the application site, there is no evidence to suggest any immediate statutory nuisance concerns and the applicant has submitted a treatment strategy that follows Natural Resources Wales Code of Practice.
- 5.50 In all of the above, it should be noted that there is no regulatory requirement on part of the Gwynedd Council to certify that any given treatment programme for the removal of Japanese Knotweed is subject to formal approval. However, there remains the issue of a partially implemented development requiring an extended timescale for completion in accordance with the approved plans and the only matter for consideration for the local planning authority is the requirements of policy PCYFF 2 of the JLDP, to ensure provision for the appropriate management and scheme for the eradication of invasive species in order to prepare the site for further development. The success of any given treatment programme cannot be fully assessed until such time a viable monitoring scheme could confirm that measures applied have been sufficient to control and manage the knotweed infestation.
- 5.51 In response to consultation, Gwynedd Public Protection require that the scheme and timetable for the eradication of Japanese Knotweed referred to in the revised Knotweed Treatment Plan shall be implemented in full and a validation report confirming the remediation treatment carried out and that the site is free of Knotweed shall be submitted to the Local Planning Authority prior to the re-commencement of development. The approved scheme requires the contractor to continue to inspect land for any regrowth for a period of 10 years and includes for any remedial works to eradicate any subsequent re-growth. Japanese Knotweed can be far more extensive than the visible parts on the surface and the underground parts of the plant may extend laterally up to 7 metres beyond this. Therefore, this survey must also note any knotweed adjoining the site.
- 5.52 In addition to the above, the following revisions are proposed to the working of conditions '2' & '19' of C15/1081/11/LL respectively. A full list of planning conditions (with revised numbers) is appended to this report;

#### Condition 2

*Subject to full compliance with the Japanese Knotweed Treatment Strategy dated 28<sup>th</sup> September 2018, the applicant's anticipated treatment timescale dated 12 October 2018 and in accordance with the requirements of condition (--), written notice shall be*

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*given to the Local Planning Authority at least 14 days before the re-commencement of development involving the construction of sea defence Rip Rap. All construction works, import of materials and placement of sea defence rip-rap material in accordance with the application plans and details shall cease within 9 months of the notification of commencement of development. The site shall be cleared of all plant machinery, equipment, materials, buildings, structures and timber hoardings by that date. Restoration of the site shall thereafter commence within three years of the cessation of development in accordance with the requirements of condition 19 of this permission, unless a further application to develop the land is granted.*

#### Condition 19

*A restoration and aftercare plan for the site shall be submitted for the approval of the Local Planning Authority by the 4<sup>th</sup> April 2020. Its strategy shall be based upon the findings of the Winter Bird Survey ref. 'RT-MME-126872-02-Rev D dated April 2018 submitted with the application and shall include details of restoration works, landform modelling and a biodiversity management plan to create and restore wildlife habitat. More specifically, the restoration and biodiversity management plan shall include;*

- i. The treatment of the site surface in a manner to secure effective re-establishment of natural vegetation of a type and species typical of the surrounding area,*
- ii. The planting/seeding of appropriate species of vegetation and wild flowers typical of the surrounding area,*
- iii. Measures to enhance habitat for waders & other birds,*
- iv. Aftercare for the treatment of Invasive Plant Species,*
- v. Any engineering operations, remedial works or the import of additional stone/beach defence material to address the stability of the slate cap,*
- vi. Monitoring for Waders during any engineering operations implemented between September and March.*

#### **Flood Risk**

- 5.53** The site was previously contained within an area classified as a C2 Zone in the Development Advice Maps accompanying TAN15 (Development and Flood Risk), described as, “*areas of floodplain without significant flood defence infrastructure*”. Works implemented thus far have been sufficient to achieve the maximum cap level of 6.98m AOD on the greater part of the site, which has enabled the developer to submit a successful application to Natural Resources Wales to remove the site from the C2 flood risk designation.
- 5.54 However, the Flood Consequence Assessment submitted with the original application only addresses the potential flood risk associated with a development solely for the raising of existing ground levels in site preparation works for future development. A detailed hydraulic analysis would need to be prepared for any future planning proposal for built development on the site and such an application would need to be assessed on its merits against planning policy requirements. In this respect, Policy PS 6 of the Joint Local Development Plan states that in order to adapt to the effects of climate change, proposals will only be permitted where they can demonstrate that, amongst other requirements, that development may be located away from flood risk areas and that the overall risk of flooding within the Plan area and areas outside it may be reduced.
- 5.55** Paragraph 6.1 of TAN15 states that; “*...some flexibility is necessary to enable the risks of flooding to be addressed whilst recognising the negative economic and social consequences if policy were to preclude investment in existing urban areas and the benefits of reusing previously developed land*”.



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5.56 Planning Policy Wales requires that for development management and flood risk, “*it is essential that Natural Resources Wales’ advice is obtained and given due weight as a material consideration by planning authorities in determining individual applications*”. TAN15 further states that whether a development should proceed or not will depend upon whether the consequences of flooding of that development can be managed down to a level which is acceptable for the nature/type of development being proposed, i.e. a ‘Flood Consequence Assessment’.

5.57 With respect to flood risk, consultation with NRW on the specification and detailed design of the embankment material (rip-rap) secured the discharge of condition 4 on planning permission C15/1081/11/LL on the 5<sup>th</sup> May 2017. As stated previously, given that the existing concrete embankment formed around the historic layer of tipped material is deteriorating, sea defence material will need to be considered at some point in the near future in the interests of managing further tidal erosion. High tides witnessed in January this year confirmed the encroachment of tidal waters up to the base of the slate waste embankment. Policy ARNA 1 of the Joint Local Development Plan requires that new or replacement coastal defence schemes will only be permitted where it can be demonstrated that the works are consistent with the management approach for the frontage presented in the Shoreline Management Plan, and that there will be no adverse impact on the environment. The aim of the plan is to continue manage the flood defence at Bangor and as such, policies for the built up area around Garth is for Holding the Line, while along the Hirael frontage it would be for ‘Hold the Line’ over the short to medium term and then ‘Managed Re-alignment’. In considerations of nature of the development to complete the sea defence infrastructure in accordance with the approved plans, the proposal further complies with Policy AMG 4 of the Joint Local Development Plan.

### **Sustainability**

5.58 Figure 4.2 of Planning Policy Wales provides a definition of sustainable development in Wales where; “*sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals*”. Furthermore, this report has assessed the sustainability issues of this application in accordance with the goal of sustainable development in paragraph 4.1.1 of PPW to; “*enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations*”, and in accordance with the seven well-being goals of, ‘The Well-being of Future Generations (Wales) Act 2015’ to help ensure that public bodies are all working towards the same vision of a sustainable Wales.

5.59 The principle issue with this application is the assessment of the development proposals and material planning considerations of an application to complete the development in accordance with the approved plans in site preparation works conforms to Policy PS 5 of the Joint Local Development Plan insofar as to adapt to the impacts of climate change and prioritize the re-use of previously developed land.

### **The Economy**

5.60 Technical Advice Note 23, Economic Development states; in determining planning applications local planning authorities need to bear in mind that traditional business use, classes B1-B8, only account for part of the activity in the economy. It is important that the planning system recognises the economic aspects of all development and that

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planning decisions are made in a sustainable way which balance social, environmental and economic considerations. It further states that; Local planning authorities should recognise market signals and have regard to the need to guide economic development to the most appropriate locations, rather than prevent or discourage such development.

### **Response to the public consultation**

**5.61** The main concerns raised by third parties in response to consultation the application consists mainly of the potential impact of traffic, potential impact of the proposal on biodiversity including SAC, SPA and SSSI features, bird species, potential impacts of development within coastal area, impacts on residential amenity, spread of non-native invasive plant species, land contamination & land stability issues and visual amenity/impact of proposals on historic landscape.

**5.62** The Local Planning Authority has considered these objections as material planning considerations in part 5 of this report. Furthermore, the material considerations relevant to this proposal have been assessed having regard to the relevant planning policies and guidance.

### **6. Conclusions**

**6.1** Planning application C15/1081/11/LL was granted subject to conditions on the 20<sup>th</sup> December 2016 for the import of inert soils, slate waste aggregate and rip-rap material on the eastern extent of the former Dickies Boatyard in order to raise ground levels and prepare the site for the next phase of development. The principle issue with this application is the assessment of the development proposals and material planning considerations of an application extend the timescale for the import of rock armour material in order to complete the development in accordance with the approved plans. Policy PCYFF 1 of the Gwynedd and Môn Joint LDP identifies development boundaries on the proposals map that may provide opportunities for a variety of uses and make effective use of previously developed land or land not being used to its full potential. However, any future development proposals for this site would be the subject of a separate planning application assessed on its own merits. The development therefore complies with Policy PCYFF 1 (*Development Boundaries*).

**6.2** Issues that would otherwise fall within the remit of the Natural Resources Wales and Gwynedd Council Flood Risk Management and Coastal Erosion service have been listed in this report, e.g. the requirement for a Marine Licence will be brought to the attention of the developer by means of a 'note to applicant' issued with planning permission, but will not feature in the list of planning conditions on the actual decision notice. In addition, the note to applicant will confirm the location of Welsh Water apparatus and sewer requiring secure access at all times.

**6.3** Commencement and completion of rip-rap construction to be the subject of a written notification to the Local Planning Authority to ensure that the works are completed in as short a timescale as possible to minimise disturbance to local amenity and environmental/marine conservation interests. It is anticipated that the haulage of 7,500 tonnes of rock armour will not be as intrusive as the previous phase of development to raise land levels using slate waste. The inclusion of planning conditions to control the potential nuisance impacts of noise and dust on the amenities of the area (Policy PCYFF 2, *Development Criteria*).

**6.4** Application No. C17/1203/11/AC formally discharged the requirements of condition 5 with respect to the submission of details to promote nesting features for rock pipits into

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the final design of the scheme. In addition, the same submission confirmed the itinerary of measures to comply with ecological monitoring in accordance with condition 21. The development proposal will result in the loss of a small proportion of inter-tidal habitat but is unlikely to have significant impact on the Traeth Lafan SPA and Menai Strait SAC. Gwynedd Council's Biodiversity unit confirmed that they had no objection nor any ecological concerns to the extension of the time applied for to complete the development, subject to Condition 21 being maintained for the duration of the development, to ensure the implementation of a comprehensive regime of ecological monitoring and to demonstrate what measures have been taken to avoid disturbance to waders, including records of timing of works taking place, no works 1hr 30 mins before and after high tide (total of 3 hours), reference to plans and photographs and weekly monitoring of roosting birds and feeding waders. The development therefore complies with National Planning Policy guidance as well as Policy PS 19, AMG 4, AMG 5 & AMG 6 of the Gwynedd and Anglesey Joint Local Development Plan.

- 6.5 Degree of change in terms of visual impact will be a slight to moderate increase in land levels but for the most part, a uniform embankment of field boulders and rip-rap material around the periphery of the site will be the most prominent feature of the development. However, the placement of rip-rap or rock armour as a means of sea defence is a common feature of several coastal settlements and it is not considered therefore that the provision of such in accordance with the approved plans will look out of place in this setting. It is considered that the proposal will not have a direct or indirect (physical & non-physical) impact on the setting of the Ogwen Valley Landscape of Outstanding Historic Interest, the Anglesey AONB or the Coastal Landscape of the Menai Straits and the development therefore complies with the requirements of Policy PCYFF 3, AMG 3 & AT 1 of the Joint Local Development Plan (*design and place shaping, protecting and enhancing features and qualities that are distinctive to the local landscape character and, preserving and enhancing heritage assets such as Historic Landscapes*). The submission of a remedial landscaping plan will be the subject of a planning condition in that the authority would need re-assurance that the site may be restored to a beneficial afteruse. It would be reasonable therefore to consider that the site be restored to nature conservation interests within a given timescale unless a further application to develop the site is submitted.
- 6.6 Works have commenced on site to achieve the maximum cap level of 6.98m AOD, enabling the developer to submit a successful application to Natural Resources Wales to remove the site from the C2 flood risk designation on the development advice maps of TAN 15 (Development and Flood Risk). With respect to flood risk, consultation with NRW on the specification and detailed design of the embankment material (rip-rap) secured the discharge of condition 4 on planning permission C15/1081/11/LL on the 5<sup>th</sup> May 2017 and it is considered that the proposal complies with Policies AMG 4 & ARNA 1 of the Gwynedd and Môn Joint Local Development Plan (*Coastal Protection & Coastal Change Management Area*) as well as the requirements of national planning policy guidance.
- 6.7 The proposal will include a remediation strategy, where the import of rip-rap rock armour would prevent any further deterioration of the site embankments and contain any potential land contamination. In response to the request of the local planning authority, the applicant has undertaken a further water sampling analysis in accordance with the requirements of condition 13 of the existing planning permission and such a requirement will need to be repeated for the duration of the works contract and for a period following the completion of the development, to demonstrate compliance with the requirement for environmental monitoring. Subject to continued compliance with Condition 13 and the scheme of mitigation and monitoring in the Construction

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Environment Management Plan, it is considered that the proposal to extend the timescale to complete the development in accordance with the approved plans addresses the requirements of Policy PCYFF 2 of the Joint Local Development Plan (development criteria).

- 6.8 A condition imposed on the grant of permission could stipulate that prior to the commencement of any further development on site, evidence shall be submitted for the approval of the Local Planning Authority to confirm that the knotweed treatment programme has been successful and certified by an independent consultant that all of the invasive plant material has been removed and/or the submission of a follow-up treatment strategy and scheme of aftercare to ensure that the infestation is managed effectively.
- 6.9 The proposal satisfies the sustainability goals of Planning Policy Wales and The Well-being of Future Generations Act (Wales) 2015.

## 7. Recommendation:

- 7.1 To authorise the Senior Manager, Planning, Environment and Public Protection Services to approve the application subject to the following scope of conditions and where indicated, the submission of specific information in accordance with the requirements of conditions prior to the commencement of the development;

- Commencement within 5 years,
- Temporary operations involving cut and fill operations and the import of 7,500 tonnes of rock armour (rip-rap) material to be implemented within a nine-month timescale of the date of notification to the Local Planning Authority,
- Permitted Operations & Compliance with the Submitted Details/Plans,
- Import of materials restricted to 150 tonnes per day, between the hours of 08.00 – 17.00 Mon to Fri & 08.00 – 13.00 on a Saturday, or a maximum of eight loads per day,
- Prior to the commencement of development, a restoration and aftercare plan for the site shall be submitted for the approval of the Local Planning Authority to include provision for biodiversity enhancement. Restoration to commence thereafter within 3 years of the completion of operations involving the placement of rip-rap unless a further planning permission is granted,
- Mitigation measures to reduce the impact on redshank, rock pipit and other features of local biodiversity interest, including;
  - Prohibiting construction/dumping work one hour before and one hour after high tide between September and March, i.e. a no work period of 3 hours encompassing high tide,
  - Monitoring surveys should be undertaken during the construction period to check that birds are continuing to use the site and that measures to minimise disturbance are being implemented successfully,
  - applicants to produce and implement a works timetable detailing the daily restricted work periods around high tide as specified in the condition
- Removal of civil engineering equipment, structures & surplus plant machinery upon completion of the development,
- Control of fugitive Dust & the provision of on-site wheelwash equipment to be the subject of a planning condition,
- Use restricted to the disposal of rock armour material,

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- Detailed design of the rip-rap material, maximum size of stone to be used and any future maintenance requirements in accordance with details previously approved under condition,
- Pollution control measures, site monitoring and ecological mitigation to be implemented in accordance with an updated Construction Environment Management Plan to be submitted for the approval of the Local Planning Authority prior to the commencement of development to ensure good practice and mitigation to protect the water environment including; working conditions on site and measures to control environmental effects such as movements of HGVs, wheel wash facilities, sheeting of vehicles, secure storage areas, air quality, working hours, noise/vibration, waste management and pollution. Also, the monitoring potential run-off from silt & waste materials to mitigate for the potential environmental impact of the development & spill procedures,
- Applicant to maintain a scheme of water sampling and analysis during the course of the development to ascertain the presence of pollutants in any leachate,
- Fuels or lubricants to be stored in a location to be agreed in writing with the Local Planning Authority. Bunding to be at least 110% of the fuel tank capacity,
- Prior to the commencement of any further development on site, a validation report shall be submitted for the approval of the Local Planning Authority to confirm that the knotweed treatment programme has been successful and certified by an independent consultant that all of the invasive plant material has been removed. The approved scheme requires the contractor to continue to inspect land for any regrowth for a period of 10 years and includes for photographic documentation & monitoring, any remedial works to eradicate any subsequent re-growth and the occurrence of any knotweed immediately adjoining the site,
- The use of tracked machinery on-site should be limited as much as possible until the Japanese knotweed-infested areas have been cleared or cordoned off. If tracked machinery must be used in infested zones, a geotextile overlain with hardcore must be used as a base for vehicles to travel on.
- Note to applicant referring to the consultation response of Natural Resources Wales, Gwynedd Council Flood Risk Management and Coastal Erosion service, but also the location of Welsh Water apparatus requiring secure access at all times,
- Note to applicant that the responsibility and subsequent liability for safe development and secure occupancy of the site rests with the developer and/or landowner,
- Note to applicant that the application has been assessed in accordance with the seven sustainability goals of the Well-being of Future Generations Act (Wales) 2015.